

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE MIDDLE DISTRICT OF PENNSYLVANIA  
3 HARRISBURG DIVISION

3 TAMMY KITZMILLER, et al., : CASE NO.  
4 Plaintiffs : 4:04-CV-02688  
5 vs. :  
6 DOVER SCHOOL DISTRICT, : Harrisburg, PA  
7 Defendant : 5 October 2005  
8 .....: 9:00 a.m.

7 TRANSCRIPT OF CIVIL BENCH TRIAL PROCEEDINGS  
8 TRIAL DAY 6, MORNING SESSION  
9 BEFORE THE HONORABLE JOHN E. JONES, III  
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 For the Plaintiffs:

13 Eric J. Rothschild, Esq.  
14 Thomas B. Schmidt, III, Esq.  
15 Stephen G. Harvey, Esq.  
16 Pepper Hamilton, L.L.P.  
17 3000 Two Logan Square  
18 18th & Arch Streets  
19 Philadelphia, PA 19103-2799  
20 (215) 380-1992

21 For the Defendant:

22 Patrick Gillen, Esq.  
23 Robert J. Muise, Esq.  
24 Richard Thompson, Esq.  
25 The Thomas More Law Center  
26 24 Franklin Lloyd Wright Drive  
27 P.O. Box 393  
28 Ann Arbor, MI 48106  
29 (734) 930-7145

30 Court Reporter:

31 Wesley J. Armstrong, RMR  
32 Official Court Reporter  
33 U.S. Courthouse  
34 228 Walnut Street  
35 Harrisburg, PA 17108  
36 (717) 542-5569

1 APPEARANCES (Continued)

2 For the American Civil Liberties Union:

3 Witold J. Walczak, Esq.  
4 American Civil Liberties Union  
5 313 Atwood Street  
6 Pittsburgh, PA 15213  
7 (412) 681-7864

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X  
Kitzmiller vs. Dover Schools  
4:04-CV-2688  
Trial Day 6, Morning Session  
5 October 2005

PROCEEDINGS

Page

PLAINTIFF WITNESSES

Dr. Barbara Forrest, Ph.D.:

EXAMINATION ON QUALIFICATIONS:

Direct by Mr. Rothschild	4
Cross by Mr. Muise	22
Redirect by Mr. Rothschild	70

EXAMINATION ON EXPERT OPINION:

Direct examination by Mr. Rothschild	76
--------------------------------------	----

1 PROCEEDINGS

2 THE COURT: Be seated, please. We welcome  
3 you all back for the continuation of the  
4 Kitzmiller et al. versus Dover Area School  
5 District, et al. trial. We remain in the  
6 plaintiff's case, and you may call your next  
7 witness.

8 MR. ROTHSCHILD: Good morning, Your Honor.  
9 The plaintiffs call Dr. Barbara Forrest.

10 (Dr. Barbara Forrest was called to testify  
11 and was sworn by the courtroom deputy.)

12 COURTROOM DEPUTY: Please be seated. State  
13 your name and spell your name for the record.

14 THE WITNESS: Barbara Forrest.

15 B-A-R-B-A-R-A, F-O-R-R-E-S-T.

16 DIRECT EXAMINATION ON QUALIFICATIONS

17 BY MR. ROTHSCHILD:

1 18 Q. Good morning, Dr. Forrest.

19 A. Good morning.

2 20 Q. Where do you live?

21 A. I live in Holden, Louisiana.

3 22 Q. Are you married?

23 A. Yes.

4 24 Q. And do you have children?

25 A. I do.

5       1       Q. How many?

          2       A. I have a son 25, and another son who is 20.

6       3       Q. What do you do for a living?

          4       A. I'm a professor of philosophy at  
          5       Southeastern Louisiana University.

7       6       Q. Matt, could you pull up Exhibit P-348?

          7       Dr. Forrest, is P-348 a copy of your curriculum  
          8       vitae?

          9       A. Yes, it is.

8       10       Q. And is it an accurate representation of  
          11       your education, professional experience, and  
          12       accomplishments?

          13       A. Yes.

9       14       Q. What subjects do you teach at Southeastern  
          15       Louisiana?

          16       A. I teach philosophy 301 and philosophy 302,  
          17       which are introductory courses. I teach

          18       philosophy 310, critical thinking. I teach

          19       philosophy 315, the philosophy of history.

          20       Philosophy 417, intellectual history. I teach

          21       an independent studies course, philosophy 418.

          22       I teach history 630, which is a graduate seminar

          23       in the history of western thought, and I teach

          24       western civilization.

10      25       Q. Do you have a doctorate degree?

- 1 A. I do.
- 11 2 Q. And where did you take that degree?
- 3 A. Tulane University.
- 12 4 Q. Did you write a dissertation?
- 5 A. Yes.
- 13 6 Q. What was that dissertation about?
- 7 A. It was the study of the influence of Sidney
- 8 Hook's naturalism on his philosophy of
- 9 education.
- 14 10 Q. And before we go into that, are you a
- 11 doctor of philosophy?
- 12 A. Yes.
- 15 13 Q. Who is Sidney Hook?
- 14 A. Sidney Hook was a very prominent American
- 15 philosopher in the 20th century.
- 16 16 Q. And -- I'm sorry?
- 17 A. And a close disciple to John Dewey.
- 17 18 Q. Do you subscribe to any particular school
- 19 of philosophy or approach to philosophy?
- 20 A. Yes.
- 18 21 Q. And what is that?
- 22 A. I place myself in the tradition of John
- 23 Dewey and Sidney Hook, which is called pragmatic
- 24 naturalism.
- 19 25 Q. And what do you mean by that, pragmatic

1 naturalism?

2 A. Well, we'll take the pragmatic part first.  
3 That reflects an American school of philosophy,  
4 pragmatism, and for Dewey and Hook as they  
5 understand it, it means that an idea is tested  
6 by whether it helps us resolve a situation of  
7 doubt or uncertainty or helps us resolve a,  
8 solve a practical problem, and one of the things  
9 that they noted was that the patterns of inquiry  
10 that are part of the everyday process of  
11 answering questions, resolving uncertainty, or  
12 solving problems, really matched the processes  
13 that are used in science.

14 So those patterns of inquiry were not  
15 invented in science, but they were used very  
16 effectively, very systematically in science.  
17 Those patterns of inquiry call upon the  
18 cognitive faculties that human beings have,  
19 and because they do, those faculties don't reach  
20 beyond the natural world into the supernatural  
21 world. So the conclusions that we reach about  
22 the world are naturalistic, hence the pragmatic  
23 naturalism part.

20 24 Q. And for Wes's benefit I'm going to ask that  
25 you slow down a little bit.

1 A. Thank you.

21 2 Q. How does that approach of pragmatic  
3 naturalism figure into scholarly research?

4 A. Into my scholarly research? One of the  
5 things that pragmatic naturalism emphasizes  
6 very strongly is that conclusions about the  
7 world must be grounded in data, and the same  
8 applies to public policy issues. One of the  
9 things that Sidney Hook for example stressed  
10 strongly is that when philosophers become  
11 involved in public policy issues they must  
12 know the facts. So that it really does stress  
13 the use of empirical data and being very  
14 careful about the acquisition of that data.

22 15 Q. Are you familiar with the term  
16 philosophical naturalism?

17 A. Yes.

23 18 Q. What does that mean?

19 A. Philosophical naturalism is a comprehensive  
20 understanding of reality which excludes the  
21 supernatural. It is one which looks at the  
22 natural world as the entirety of what exists.

24 23 Q. And are you familiar with the term  
24 methodological naturalism?

25 A. Yes.



25 1 Q. What does that mean?

2 A. Methodological naturalism is really another  
3 term for scientific method. It's a regulative  
4 principle. It's a procedural protocol that  
5 scientists use. It means very simply that they  
6 look for natural explanations for natural  
7 phenomena.

26 8 Q. Is philosophical naturalism part of the  
9 scientific method?

10 A. No, it's not.

27 11 Q. Have you focused your academic research on  
12 any particular subject?

13 A. Yes.

28 14 Q. And what is that?

15 A. I have focused my research on issues  
16 surrounding evolution, the teaching of  
17 evolution, and the creationism issue.

29 18 Q. When you use the term creationism, what  
19 do you mean?

20 A. Creationism means a number of things.  
21 First and foremost it means rejection of  
22 evolutionary theory in favor of special creation  
23 by a supernatural deity. It also involves a  
24 rejection of the established methodologies of  
25 science, and this is all

1 for religious reason.

30 2 Q. And when you say the established rules o  
3 science, are you referring to methodological  
4 naturalism?

5 A. Yes. The naturalistic methodology that I  
6 just explained.

31 7 Q. Is there only one type of creationism or  
8 are there multiple kinds?

9 A. There are multiple kinds.

32 10 Q. Can you describe the types of creationism?

11 A. Well, the oldest kind is young earth  
12 creationism.

13 MR. MUISE: Your Honor, I'm going to object.  
14 He's asking questions of explanation, she's  
15 obviously offering her opinions now on this  
16 case, and we obviously want to voir dire her  
17 about her ability to offer opinions, and this is  
18 going into really the heart of what her opinions  
19 are, the various forms of creationism and so  
20 forth.

21 MR. ROTHSCHILD: Your Honor, I'm not going  
22 to go into opinions in detail, but I think to  
23 ground us, she's using terminology and I think  
24 it's important even for the voir dire and for  
25 your fact finding on Dr. Forrest's

1 qualifications to understand what we're talking  
2 about here.

3 MR. MUISE: Again, Your Honor, it's a very  
4 fine line here between what the definition and  
5 what she's actually offering in terms of what  
6 an opinion is. If we would disagree with what  
7 obviously her "definitions," they're really  
8 sliding into opinions at this point.

9 THE COURT: I think that given the hybrid  
10 nature of this proposed expert that some inquiry  
11 into this areas is probably necessary. I'll  
12 overrule the objection as it relates to that  
13 particular question, which is on young earth  
14 creationism, Mr. Muise, but certainly that  
15 would not estop additional objections if you  
16 feel that the witness is getting too deeply  
17 into those areas.

18 It think it's essential to the plaintiff's  
19 examination in the voir dire statement of this  
20 witness to get into some of those areas. So  
21 it's certainly a, it's an appropriate objection  
22 under the circumstances, but I don't think that  
23 she's far enough into the area that I find an  
24 objection needs to be sustained. So we'll  
25 overrule the objection. We need to proceed.

1 I don't know that the question was answered.

2 Wes, do you want to read back, or do you recall  
3 the question?

4 MR. ROTHSCHILD: If you could read back the  
5 question, Wes, that would be great.

6 THE COURT: Thank you, Wes.

7 (The record was read by the reporter.)

8 THE WITNESS: Would you like me to start  
9 over with that answer?

10 THE COURT: You may. You can start, my  
11 recollection now is that you were, the objection  
12 was rendered mid-answer, so you can restart.  
13 All right?

14 THE WITNESS: There is young earth  
15 creationism, which is the view that the earth  
16 is six to ten thousand years old. There's also  
17 old earth creationism, which is the view that  
18 the earth is several billion years old.

19 BY MR. ROTHSCHILD:

33 20 Q. As part of your study of evolution and  
21 creationism have you studied the subject of  
22 intelligent design?

23 A. Yes.

34 24 Q. And are you familiar with intelligent  
25 design being described as a movement?

1 A. Yes.

35 2 Q. And who describes it that way?

3 A. The proponents of intelligent design, its  
4 leaders have described it as a movement.

36 5 Q. And as you understand how they're using the  
6 term, what do they mean by the term movement?

7 A. It's an organized effort that centers  
8 around the execution of a particular program  
9 that they have.

37 10 Q. Are you familiar with other scientific  
11 topics or theories being described as a  
12 movement? Is there a chemistry movement or  
13 a germ theory movement?

14 A. I've never heard it described as such, no.

38 15 Q. How do you study a movement?

16 A. You look at everything they do. I've  
17 looked at their writings, the things that they  
18 themselves have written. You look at interviews  
19 that have been done with them. I've looked at  
20 speeches that they've given. I've listened to  
21 speeches. I've read articles about them. I've  
22 have even looked at their conference  
23 proceedings. You look at everything.

39 24 Q. Do you have specialized knowledge about  
25 the history and nature of the intelligent

1 design movement?

2 A. Yes.

40 3 Q. And how did you acquire that knowledge?

4 A. By doing research into the movement's  
5 activities, looking at all of their activities,  
6 looking at what they have written, all of the  
7 stuff, the things that I just mentioned.

41 8 Q. Do you discriminate or distinguish between  
9 primary sources and secondary sources in doing  
10 your work?

11 A. Yes. There is a difference.

42 12 Q. And explain to us how you use the terms  
13 primary source and secondary source.

14 A. Well, in scholarship, a primary source is  
15 something written by let's say the person that  
16 you're studying, a book or an article that's  
17 been written by a person. Secondary sources  
18 are sources that are about those people or  
19 about their work, articles.

43 20 Q. And is it common in your academic  
21 discipline to use both kinds of sources to  
22 study whatever topic you're studying?

23 A. Yes. That's standard procedure.

44 24 Q. And have you in fact done that in your  
25 study of the intelligent design movement?

1 A. Yes.

45 2 Q. Have you interviewed members of the  
3 intelligent design movement?

4 A. Directly no.

46 5 Q. And why not?

6 A. I wanted to study the movement and  
7 understand it by looking at the way they  
8 explain it to their intended audiences. I  
9 wanted to see how they themselves explain  
10 it when they're actually addressing their  
11 audience.

47 12 Q. For how long have you done research on  
13 the subject of intelligent design?

14 A. Going on now if you count the two scholarly  
15 articles I published in 1999, 2000, going on now  
16 about eight years.

48 17 Q. And in addition to those articles have you  
18 written a book on the subject of intelligent  
19 design?

20 A. Yes, I've written a book.

49 21 Q. Matt, could you pull up Exhibit 630? Is  
22 this the cover page of the book you wrote on  
23 the subject of intelligent design?

24 A. Yes.

50 25 Q. That's called Creationism's Trojan Horse:

1 The Wedge of Intelligent Design?

2 A. Yes.

51 3 Q. You're obviously listed as the first  
4 author. The second author there, Paul Gross,  
5 who is he?

6 A. Paul R. Gross, my co-author, is a  
7 scientist.

52 8 Q. Who is this book published by?

9 A. Oxford University Press, 2004.

53 10 Q. And is that a leading academic press?

11 A. It's one of the world's leading academic  
12 presses, yes.

54 13 Q. The title includes the term "the wedge,"  
14 the wedge of intelligent design. Why did you  
15 use that word?

16 A. That's a word that the intelligent design  
17 leaders themselves use. It's a word they use to  
18 describe their movement which is guided by a  
19 document called the Wedge Strategy. So it's a  
20 term that they coined.

55 21 Q. And who coined, do you know who coined the  
22 term?

23 A. The wedge? Yes. Phillip Johnson.

56 24 Q. Who is Phillip Johnson?

25 A. Phillip Johnson is the de facto leader of



1 group. He's the gentleman that brought the  
2 other members of the group together. He's also  
3 the advisor for the Center for Science and  
4 Culture.

57 5 Q. What is Mr. Johnson's background? Is he a  
6 scientist?

7 A. No. He's retired now, but he was a law  
8 professor at the University of California at  
9 Berkley.

58 10 Q. And you referred to the Center for Science  
11 and Culture. What is that?

12 A. That was an organization that was  
13 established in 1996 under the auspices of The  
14 Discovery Institute. In 1996 it was actually  
15 called the Center for the Renewal of Science and  
16 Culture. That is the organization in which the  
17 strategy of the intelligent design movement is  
18 being formally carried out.

59 19 Q. And you referred to a document, what is  
20 that document called?

21 A. It's a document called The Wedge Strategy.

60 22 Q. And who wrote that?

23 A. Members of the intelligent design movement.  
24 It's a tactical document that they, in which  
25 they outline their goals and their activities.

61 1 Q. Does it have any connection with The  
2 Discovery Institute?

3 A. Well, yes. It was written under the  
4 auspices, it was written, it's a formal  
5 statement of the strategy of The Center for  
6 the Renewal of Science and Culture.

62 7 Q. And we'll go into that later after the  
8 voir dire. Can you tell us what Creationism's  
9 Trojan Horse is about?

10 A. The book actually looks at the way the  
11 intelligent design movement is, or The Center  
12 for the Renewal of Science and Culture, now  
13 called the Center for Science and Culture, looks  
14 at the way they're executing the Wedge Strategy,  
15 looks at all of the activities that they have  
16 engaged to execute the various phases of the  
17 strategy. The book also does, my co-author does  
18 some scientific critique in the book, and we  
19 also analyze the movement and explain the  
20 significance of these activities.

63 21 Q. How did you go about researching that book?

22 A. I went about researching the book by  
23 looking at all of, every piece of written  
24 information I could find that would explain  
25 what this movement is about. I did a great deal

1 of, spent three and a half years doing empirical  
2 research.

64 3 Q. Using primary sources and secondary  
4 sources?

5 A. Both, yes.

65 6 Q. Did your research include anything relating  
7 to scientific production?

8 A. Yes, it did.

66 9 Q. What did you do?

10 A. I wanted to find out if there were any  
11 articles in peer reviewed scientific journals  
12 using intelligent design as a biological theory.  
13 So I searched the scientific databases where  
14 those articles would be indexed.

67 15 Q. What conclusions did you reach in  
16 Creationism's Trojan Horse?

17 A. That intelligent design --

18 MR. GILLEN: Objection, Your Honor. He's  
19 specifically asking for the conclusions, which I  
20 believe would be a direct question going to her  
21 opinion that she's going to be offering in this  
22 case.

23 MR. ROTHSCHILD: Your Honor, this is about  
24 her scholarly work, writing Creationism's Trojan  
25 Horse ,not about her opinions in this case,

1     although they will be very similar.

2           THE COURT: Well, I think that probably  
3     now crosses the line and exceeds appropriate  
4     voir dire. I think it's sufficient for  
5     qualifications to get into her scholarly works,  
6     the methodology that she utilized in compiling  
7     the scholarly work, time spent for example, but  
8     I think a question which touches on the ultimate  
9     issue, which that was, likely now indicates that  
10    Mr. Muise objection is well founded. So I'll  
11    sustain the objection on that question.

12           MR. ROTHSCHILD: Thank you, Your Honor.

13           BY MR. ROTHSCHILD:

68 14       Q. Have you done -- besides Creationism's  
15     Trojan Horse have you done other writing on  
16     intelligent design?

17       A. Yes.

69 18       Q. And are those reflected on your curriculum  
19     vitae?

20       A. Yes, they're there.

70 21       Q. Do you have expertise in philosophical  
22     issues relating to naturalism?

23       A. Yes, I've done some work in that.

71 24       Q. Do you have expertise in the history and  
25     nature of the intelligent design movement,

1 including its creationist roots?

2 A. Yes.

72 3 Q. Did you write an expert report in this  
4 case?

5 A. Yes.

73 6 Q. How many expert reports did you write?

7 A. I wrote the expert witness report, and  
8 I wrote a supplement to that report.

74 9 Q. What was the first expert report about?

10 A. It really very closely mirrors the research  
11 I have done, for example the research I did on  
12 book, it's a summary of actually what the, the  
13 work I did on the book. It talks about the  
14 nature of the intelligent design movement.

75 15 Q. And what kind of materials did you rely  
16 upon in preparing your first report?

17 A. I relied mostly on the materials, the same  
18 materials I used in writing the book, and also  
19 some materials on file in the archives at the  
20 National Center for Science Education.

76 21 Q. What was the second report about?

22 A. The supplementary report is about the  
23 textbook Of Pandas and People.

77 24 Q. And what materials did you rely upon to  
25 prepare that report?

1       A. I relied on materials that were issued  
2       under subpoena from the Foundation For Thought  
3       And Ethics supplied to me by the legal team.

78      4       Q. And Matt, if you could pull up Exhibit 347?  
5       Is that the first page of your first expert  
6       report?

7       A. Yes, it is.

79      8       Q. And Matt, if you could pull up Exhibit 349,  
9       is that the first page of your supplemental  
10      expert report?

11      A. Yes.

12             MR. ROTHSCHILD: Your Honor, at this time  
13      I'd like to move to qualify Barbara Forrest as  
14      an expert in philosophical issues relating to  
15      naturalism and the history and nature of the  
16      intelligent design movement, including its  
17      creationist roots.

18             THE COURT: All right, Mr. Muise, you may  
19      question on qualifications.

20             MR. MUISE: Thank you, Your Honor.

21             CROSS EXAMINATION ON QUALIFICATIONS

22             BY MR. MUISE:

80      23      Q. Good morning, Dr. Forrest.

24      A. Good morning.

81      25      Q. You're not an expert in science, correct?

1       A. No, I'm not a scientist.

82    2       Q. And you have no formal scientific training?

      3       A. No.

83    4       Q. You have no training in biochemistry?

      5       A. No.

84    6       Q. You have no training in microbiology?

      7       A. No.

85    8       Q. You're not trained as a biologist?

      9       A. No, I'm not a biologist.

86   10       Q. So it would be true to say that you

     11       don't know whether Darwin's theory of evolution

     12       has provided a detailed testable rigorous

     13       explanation for the origin of new complex

     14       biological systems, would that be accurate?

     15       A. Actually that is the kind of knowledge that

     16       any person that has some understanding of

     17       science would know, an educated person would

     18       know that that is an established theory.

87   19       Q. But with regard to my question, do you know

     20       whether or not Darwin's theory of evolution

     21       has provided a detailed testable rigorous

     22       explanation for the origin of new complex

     23       biological features?

     24       A. As my understanding is, yes, it has.

88   25       Q. Do you know whether the theory of

1 evolution, in particular natural selection,  
2 can explain the existence of the genetic code?

3 A. Excuse me, repeat the question, please?

89 4 Q. Sure. Do you know whether the theory of  
5 evolution, in particular natural selection, can  
6 explain the existence of the genetic code?

7 A. My understanding is that natural selection  
8 does offer some explanation for that. I could  
9 not give you the explanation as a scientist  
10 would give it to you of course.

90 11 Q. Do you know whether the theory of  
12 evolution, in particular natural selection,  
13 can explain the development of the pathways  
14 for the construction of the flagellum?

15 A. As I understand it there is work being done  
16 on that as of now, yes. It does offer some  
17 explanation.

91 18 Q. Do you know whether the theory of  
19 evolution, in particular natural selection,  
20 can explain the existence of defensive apparatus  
21 such as the blood clotting system and the  
22 immunity system?

23 A. All of those things are being addressed,  
24 yes.

92 25 Q. You have no particular scientific expertise



1 to be able to address those questions, is that  
2 correct?

3 A. No, sir, that's not my area of expertise,  
4 no.

93 5 Q. So it would be fair to say that you're not  
6 qualified to give an opinion as to whether the  
7 bacterial flagellum is irreducibly complex,  
8 meaning whether or not it can be produced by  
9 a step-by-step Darwinian process?

10 A. That's not my area of expertise.

94 11 Q. And it would also be true that you wouldn't  
12 be qualified to -- I'll repeat that question.  
13 Is it also fair to say that you're not qualified  
14 to give an opinion as to whether the blood  
15 clotting cascade is irreducibly complex?

16 A. That's not my area of expertise.

95 17 Q. And you're also not qualified to give  
18 an opinion as to whether the immune system  
19 is irreducibly complex, is that correct?

20 A. That is not my area of expertise.

96 21 Q. So, ma'am, you're not qualified to give  
22 an opinion as to whether the claims made by  
23 intelligent design advocates such as Michael  
24 Behe are scientific, is that correct?

25 A. I have relied on the work of established

1 scientists such as my co-author Paul Gross,  
2 and they have a tremendous amount of expertise,  
3 and that is what I have relied upon.

97 4 Q. But in terms of your particular expertise,  
5 you're not qualified to give that opinion, is  
6 that correct?

7 A. No, sir, and I have never claimed to be.

98 8 Q. Ma'am, you're not an expert in religion?

9 A. No.

99 10 Q. You're not an expert in the philosophy of  
11 science?

12 A. I'm not a philosopher of science.

100 13 Q. You're not an expert in the philosophy of  
14 education?

15 A. No. That's not the area that I practice in  
16 as a philosopher, no. Although I did do quite a  
17 bit of work on my dissertation with respect to  
18 Sidney Hook about that.

101 19 Q. Ma'am, you're not a mathematician?

20 A. No.

102 21 Q. You're not a probability theorist?

22 A. No.

103 23 Q. You do not possess formal training in  
24 mathematics, is that correct?

25 A. No.

104 1 Q. You have no --  
2 A. Well, college math.

105 3 Q. Certainly. And you have no doctorate in  
4 mathematics, is that correct?  
5 A. No, my Ph.D. is in philosophy.

106 6 Q. So, ma'am, you're not qualified to give an  
7 opinion as to whether Dr. Dembski's claim of  
8 complex specified information is valid, isn't  
9 that correct?  
10 A. That is not my area of expertise and I have  
11 not offered opinions on that.

107 12 Q. Ma'am, this is a concept that he wrote  
13 about in a book published by Cambridge  
14 University Press, correct?  
15 A. The Design Inference, yes.

108 16 Q. So you're familiar with The Design  
17 Inference?  
18 A. Yes, I know that he's written that book,  
19 uh-huh.

109 20 Q. And Cambridge University Press is similar  
21 to like the Oxford University Press is a peer  
22 reviewing academic press?  
23 A. Yes.

110 24 Q. And again the book that Dr. Dembski wrote,  
25 The Design Inference, explains his ideas of

1 complex specified information, correct?

2 A. Well, Dr. Dembski has written that that  
3 book does not address the implications of design  
4 theory for biology, so -- but that book is a  
5 highly technical book that is not within my  
6 area of expertise.

111 7 Q. And that book does discuss the concept  
8 of complex specified information, correct?

9 A. Yes, I believe it does.

112 10 Q. I want to explore your understanding of  
11 intelligent design as it relates to the opinions  
12 you intend to proffer in this court. Ma'am, is  
13 it your understanding that intelligent design  
14 requires adherence to the claim that the earth  
15 is six to ten thousand years old?

16 A. No, it doesn't require that, although there  
17 are young earth creationists integrally involved  
18 in the intelligent design movement.

113 19 Q. But again your answer is intelligent design  
20 does not require adherence to that tenet?

21 A. No, they themselves do not make that a  
22 requirement.

114 23 Q. Is it your understanding that intelligent  
24 design does not require adherence to the six day  
25 creation event that is a literal reading of the

1 account in the Book of Genesis?

2 A. No, it does not require that. Intelligent  
3 design is a broader type of creationism.

115 4 Q. But it doesn't require a literal reading of  
5 the Book of Genesis, correct?

6 A. It does not.

116 7 Q. In fact, it doesn't require a literal  
8 reading of any scripture, correct?

9 A. It does not require a literal reading of  
10 scripture, but it is based on scripture.

117 11 Q. Is it your understanding that intelligent  
12 design requires adherence to the flood geology  
13 point of view advance by creationists?

14 A. It's my understanding that it does not  
15 require that.

118 16 Q. Is it your understanding that intelligent  
17 design requires the action of a supernatural  
18 creator?

19 A. Yes, it is my understanding that it does  
20 require that.

119 21 Q. Is that an assumption that you based your  
22 opinions on?

23 A. No, it's not an assumption. It's based on  
24 statements made by the movement's leaders.

120 25 Q. But your understanding that it requires

1 the actions of a supernatural creator forms a  
2 foundation for the opinions you intend to offer  
3 in this case, right?

4 A. Yes. Based on the statements of the  
5 movement's leaders themselves.

121 6 Q. Now, ma'am, you spoke about during your  
7 initial examination by Mr. Rothschild this  
8 concept of methodological naturalism, correct?

9 A. Yes.

122 10 Q. And methodological naturalism is a  
11 convention that's imposed upon scientific  
12 inquiry, is it not?

13 A. No, it's not a convention that is imposed  
14 upon scientific inquiry. Methodological  
15 naturalism is a methodology. It's a way of  
16 addresses scientific questions. It reflects the  
17 practice of science that has been successfully  
18 established over a period of centuries. It's  
19 not imposed upon science. It reflects the  
20 successful practice of science.

123 21 Q. Well, you would agree it places limits  
22 on scientific exploration?

23 A. It does place limits on what science can  
24 address, that's correct.

124 25 Q. Should scientist be allowed to follow the

1 evidence where it leads or should they be  
2 constrained to follow the evidence only where  
3 materialism allows?

4 A. Science by its nature and on the basis of  
5 its successful practice cannot address questions  
6 of the supernatural, and that's because the  
7 cognitive faculties that humans have will not  
8 take us beyond the reach of those faculties.  
9 And so science is really an intellectually  
10 quite humble process. It does not address  
11 supernatural claims. It has no methodology by  
12 which to do that.

125 13 Q. And are you aware of a claim advanced by  
14 Nobel laureate Francis Crick called "Directed  
15 Panspermia"?

16 A. Yes.

17 MR. ROTHSCHILD: Objection, Your Honor.  
18 This line of questioning is going well outside  
19 what would be relevant to qualifications.

20 MR. MUISE: Your Honor, she's testified  
21 about the methodological naturalism, and I'm  
22 just trying to make a searching inquiry as to  
23 her understanding of methodological naturalism,  
24 and its application in this case is how it's  
25 going to relate to her follow on opinions that

1 I'm sure Mr. Rothschild is going to try to  
2 elicit.

3 MR. ROTHSCHILD: I think what Mr. Muise is  
4 doing is getting into a discussion of whether  
5 methodological naturalism is a valid  
6 methodology, is a representative methodology  
7 science or not. It's a perfectly appropriate  
8 question for him to ask Dr. Forrest as were  
9 asked of Dr. Pennock, but I'm not sure whether  
10 this is getting us in terms of qualification.

11 THE COURT: How does that go, Mr. Muise, to  
12 whether or not she's an expert in the area --

13 MR. MUISE: Your Honor, I think it also goes  
14 to the reliability of her follow on opinions  
15 that are going to be addressed by this witness.

16 THE COURT: I don't think it goes to  
17 reliability. No, I don't think it's close  
18 enough to the stated purpose of the witness,  
19 at least in part, which is an expert in  
20 methodological naturalism. I think we're going  
21 to get afield of that with the question. If  
22 she's otherwise qualified it's certainly a  
23 proper question on cross by you, but I'll  
24 sustain the objection.

25 MR. ROTHSCHILD: Thank you, Your Honor.



1 MR. MUISE: I have one more question along  
2 this line, Your Honor, but I think it goes to  
3 sort of the assumption that's going to be the  
4 basis for her opinion that I just wanted to  
5 elicit at this point.

6 THE COURT: Well, we'll see.

7 BY MR. MUISE:

126 8 Q. Ma'am, is it your understanding that  
9 there's no dispute amongst philosophers of  
10 science as to whether methodological naturalism  
11 is a proper limitation imposed upon scientific  
12 inquiry?

13 A. There may be some dispute among  
14 philosophers of science, but there is really,  
15 that's not a question in dispute among the  
16 people who do the science, the scientists  
17 themselves. That is the way they do science.  
18 It reflects the established, the successful  
19 practice of science by the scientists  
20 themselves.

127 21 Q. So using methodological naturalism then as  
22 a procedural approach to science as opposed to  
23 just necessarily a philosophical approach to  
24 science?

25 A. It's not a philosophical approach. It's

1 just a fancy term for scientific method. That's  
2 all it is.

128 3 Q. Do you believe it's improper for academics  
4 such as scientists and philosopher of science  
5 to challenge the popular convention of  
6 methodological naturalism?

7 A. People are certainly free to discuss it  
8 in any way they choose. The fact is that it  
9 reflects the only workable procedure that  
10 science has at the moment.

129 11 Q. Ma'am, you consider yourself to be a  
12 secular humanist, is that correct?

13 A. I'm affiliated with the secular humanist  
14 organization. I don't usually put a label on  
15 myself in that way.

130 16 Q. Is methodological naturalism consistent  
17 with your world view as a secular humanist?

18 A. Yes, it very much reflects what I explained  
19 about the pragmatic naturalism of the people  
20 John Dewey and Sidney Hook, in whose tradition  
21 I place myself.

131 22 Q. Do you see the theory evolution as a  
23 necessary feature of secular humanism?

24 A. It's not a necessary feature of secular  
25 humanism. The theory of evolution is something

1 that virtually all secular humanists endorse  
2 because they have a great deal of respect for  
3 the practice of science.

132 4 Q. You mentioned in your testimony this  
5 concept of philosophical naturalism.

6 A. Yes.

133 7 Q. Is philosophical naturalism consistent  
8 with methodological naturalism?

9 A. Could you explain what you mean by  
10 consistent, please? Consistent with?

134 11 Q. Are they related in any way?

12 A. They are not the same thing. One can,  
13 for example a scientist uses the naturalistic  
14 methodology of science. That does not commit  
15 the scientist to the world view of philosophical  
16 naturalism. Philosophical naturalism takes you  
17 beyond scientific method.

135 18 Q. So for example Dr. Miller, the fact he  
19 testified that he does not, or that he rejects  
20 philosophical naturalism would be consistent  
21 with the way you just answered --

22 A. Oh, correct.

23 MR. ROTHSCHILD: Objection, Your Honor.

24 This is going again well beyond the  
25 qualifications.

1 THE COURT: Well, she answered the question.  
2 I'll overrule the objection and let the answer  
3 stand.

136 4 Q. Ma'am, does the fact that methodological  
5 naturalism might coincide with your secular  
6 humanist world view, would that discredit  
7 methodological naturalism from consideration  
8 by scientists?

9 A. When you say that methodological naturalism  
10 coincides with the world view of secular  
11 humanism, if I could explain something about  
12 that? Methodological naturalism is used by  
13 every human being every day. Every human being  
14 who has to solve a problem, answer a question,  
15 uses it every day. It's completely  
16 noncontroversial, and so it coincides with just  
17 about any philosophical position that one might  
18 take on the nature of reality. It does not  
19 logically entail philosophical naturalism.

137 20 Q. Ma'am, you testified I believe that your  
21 area of expertise is in the nature and strategy  
22 of the intelligent design creationist movement,  
23 correct?

24 A. That is the subject of my book and a good  
25 deal of my published work, yes.

138 1 Q. Now, you call it intelligent design  
2 creationists, correct?

3 A. Right, yes.

139 4 Q. Now, describing it as creationists, is that  
5 your way to discredit the science of intelligent  
6 design without actually addressing the scientist  
7 claim?

8 A. Not at all. I use that term because the  
9 leaders, the movement's own leaders have used  
10 it. They have used the term creationist  
11 themselves.

140 12 Q. You do not address the scientific claims  
13 of intelligent design in your report, correct?

14 A. No, I didn't address the scientific claims  
15 in the report. My book does cover that because  
16 my co-author is a scientist himself.

141 17 Q. Well, you're going to be testifying today  
18 pursuant to your report, is that correct?

19 A. My testimony today is connected to my  
20 report, yes.

142 21 Q. Now, we heard testimony in this case  
22 demonstrating that the term evolution can have  
23 different meanings. It can simply mean change  
24 over time or it could also refer to the theory  
25 of evolution, for example natural selection.

1 Does that comport with your general  
2 understanding of --

3 A. There are various facets to evolutionary  
4 theory.

143 5 Q. Now, isn't it also true that the term  
6 creation has more than one meaning?

7 A. Yes.

144 8 Q. Could creationism --

9 A. Excuse me, if I could correct that, there  
10 are different types of creationism.

145 11 Q. Well, would you agree that creationism can  
12 simply mean an innovative design capable of  
13 bringing about biological complexity?

14 MR. ROTHSCHILD: Objection, Your Honor.

15 Mr. Muise cut off his line of questioning on  
16 my direct examination because it got into  
17 opinion testimony. Now he's cross examining  
18 on the meaning of creationism, and I don't see  
19 how this goes to qualifications.

20 THE COURT: Mr. Muise?

21 MR. MUISE: Again, Your Honor, she used the  
22 term intelligent design creation, and this is  
23 really going to go to the foundation of the  
24 opinions that she's going to be offering. I  
25 think it is related. It's one thing to elicit

1 the opinions of creationism. It's another thing  
2 for her to describe what her understanding of  
3 that term is and whether or not she considered  
4 those various understandings in the opinions  
5 that she's going to be offering.

6 THE COURT: Well, let's look at it this way.  
7 Mr. Rothschild introduced her as an expert on  
8 the methodology, on methodological naturalism.  
9 We have covered that area. Also the history and  
10 nature of intelligent design, of the intelligent  
11 design movement, including its creationism  
12 origin. Now, if you want to ask what that  
13 means, ask it that way I think, rather than get  
14 into -- I think the nature of the objection is  
15 there are various types of creationism.

16 I think the question likely traipses over  
17 into appropriate cross examination if she's  
18 qualified as an expert. I'll allow you to press  
19 on creationism as she uses it and as she defines  
20 it. As it relates to her expert report I think  
21 arguably that's within qualifications. I'll  
22 sustain the objection to that particular  
23 question. So you'll have to rephrase it.

24 MR. MUISE: If I may, Your Honor, in part  
25 with your explanation, the point I just wanted

1 to make is that she didn't use this, she doesn't  
2 define it this way. So it is sort of, it's  
3 contrary to you said it would be okay to ask  
4 her what she meant by creationism. My point is  
5 to say she didn't consider this definition of  
6 creation, which is sort of the alternative way  
7 of asking the same question that you've just  
8 referred to.

9 THE COURT: What definition?

10 MR. MUISE: The one that I used, Your Honor,  
11 an innovative design capable of bringing about  
12 biological complexity.

13 THE COURT: Well, if she didn't use that,  
14 again to question her in that way is appropriate  
15 cross, assuming that she's admitted. I say that  
16 again. It's how she uses it, not how she didn't  
17 use it, that's at issue as it relates to her  
18 credentials in my view.

19 MR. MUISE: Then we'll save that one for  
20 cross then, Your Honor.

21 BY MR. MUISE:

146 22 Q. Dr. Forrest, you claim to be an expert on  
23 the so-called Wedge Strategy, correct?

24 A. That's the subject that I did research on  
25 for three and a half years, yes.



147 1 Q. And this is reflected in the document The  
2 Wedge Strategy, is that correct?

3 A. That's the title of the document.

148 4 Q. Now, is it true that that document was  
5 purportedly stolen from the office of Discovery  
6 Institute?

7 A. According to Dr. Meyer that's what  
8 happened.

149 9 Q. Did you ever talk to Dr. Meyer about that?

10 A. No.

150 11 Q. And this document was a fund raising  
12 proposal by Discovery Institute, correct?

13 A. That's the way they have described it.

151 14 Q. Now, I believe you answered a question to,  
15 you answered one of Mr. Rothschild's questions  
16 indicating that you have never interviewed  
17 personally any Discovery Institute employee or  
18 fellow regarding the nature and strategy of this  
19 intelligent design movement that you're going to  
20 be testifying about, is that correct?

21 A. No, I did not.

152 22 Q. Have you personally interviewed any  
23 Discovery Institute employee or fellow regarding  
24 any of the claims in your report or what you're  
25 going to testify about today?

1 A. No.

153 2 Q. Now, in your report you rely heavily on  
3 this so-called Wedge Document. Yet you do not  
4 rely on Discover Institute's statement in a  
5 document that they drafted called The Wedge  
6 Document: So What?, which explain the genesis  
7 and the nature of the purpose of the Wedge  
8 Document, is that accurate?

9 A. That document was drawn up after my book  
10 was published. That was produced quite a  
11 while after I did my work.

154 12 Q. And that was produced though before you  
13 wrote your report, correct?

14 A. Before, yes, before I wrote the report.

155 15 Q. So what is the methodological criteria you  
16 use to rely heavily on Discovery Institute's  
17 Wedge Document, but then to disregard Discovery  
18 Institute's own explanation of what the nature  
19 and purpose of this document is?

20 A. The Discovery Institute, or the Center for  
21 the Renewal of Science and Culture has provided  
22 a wealth of written material that I have  
23 consulted. I wanted to, if I was going to use  
24 that document as a reference point in my  
25 research I needed to authenticate it, and I

1 wanted to find authentication of the document  
2 independently of what the people at the  
3 Discovery Institute might actually say to me  
4 if I had interviewed them. So I found  
5 independent verification of its authenticity  
6 on their own web site.

156 7 Q. But again, ma'am, my question is you did  
8 not rely at all on the Discovery Institute's own  
9 published written explanation of what the Wedge  
10 Document actually is, which would be a primary  
11 source document based on your testimony,  
12 correct?

13 A. That information came considerably after  
14 I had completed my research for the book. I  
15 needed independent verification that the  
16 document was authentic, and I found it in  
17 text on their web site.

157 18 Q. But, ma'am, the explanation came after  
19 you wrote your report in which the --

20 THE COURT: I get the point. Let's move on.

158 21 Q. Now, ma'am, as we know you prepared an  
22 expert report and a supplemental report for this  
23 particular case which is going to serve as the  
24 basis for your testimony, is that accurate?

25 A. Correct.

159 1 Q. And again it's the report that's serving  
2 as the basis of your testimony?

3 A. Yes.

160 4 Q. Not your book?

5 A. The report, which reflects my book  
6 actually.

161 7 Q. With the exception that we just went  
8 through?

9 A. Right.

162 10 Q. Now, I believe you testified on direct that  
11 your testimony, your report and your testimony  
12 are based in large part on statements that were  
13 made by people that you claim to be leaders of  
14 the intelligent design movement?

15 A. They're not people that I claim to be  
16 leaders. They are leaders, and they provided  
17 a wealth of written material for me to use.

163 18 Q. And I believe you stated that you consider  
19 those statements to be the best evidence of the  
20 nature of the intelligent design movement?

21 A. I would take those statements that they  
22 make and the materials they produced to explain  
23 what they're doing to be the best evidence of  
24 what they're doing, yes.

164 25 Q. Except their explanation of Wedge Document,

1 correct?

2 A. Which was written only in response to  
3 chapter 2 of my book.

165 4 Q. Now, I believe your report, and I believe  
5 you also testified here, you indicated that  
6 primary data consists of statements by not only  
7 the Wedge leaders, but their allies and  
8 supporters, is that correct?

9 A. Well, primary data would be statements by  
10 the Wedge leaders themselves, things that they  
11 have written. That would be what I would  
12 consider primary data. Things that are stated  
13 by their allies and supporters I would consider  
14 secondary data.

166 15 Q. And you relied on that secondary data to  
16 form your opinions that you're going to offer  
17 in this case?

18 A. I relied both on primary and secondary  
19 sources.

167 20 Q. And your focus on these allies and  
21 supporters was the focus on the religious  
22 alliances and association of members of  
23 the intelligent design, correct?

24 A. That's correct.

168 25 Q. So is it your opinion that because

1 intelligent design proponents associate with  
2 religious organizations that this shows that  
3 the scientific claims that they've made aren't  
4 science?

5 MR. ROTHSCHILD: Objection, Your Honor.  
6 Again this has nothing to do with  
7 qualifications. It's perfectly appropriate  
8 cross examination of the opinions that  
9 Dr. Forrest is going to deliver, but we're  
10 spending a lot of time here doing just that  
11 which Mr. Muise or Mr. Thompson will have the  
12 opportunity to do after I have asked her about  
13 her opinion.

14 THE COURT: The operative word I think  
15 in your question was opinion that may be  
16 troublesome. But I'll let you speak to it,  
17 Mr. Muise.

18 MR. MUISE: Your Honor, as we intend to show  
19 during this voir dire that she selectively takes  
20 statements and focuses on certain alliances to  
21 the exclusion of all the scientific evidence,  
22 all the scientific work, to reach her subjective  
23 conclusion, and I'm just going through to  
24 demonstrate that her methodology is  
25 fundamentally flawed.

1           THE COURT: Well, an expert's conclusion is  
2 necessarily subjective. Can we all agree on  
3 that?

4           MR. MUISE: To some point, Your Honor. I  
5 mean, that's the whole point of the Daubert is  
6 to understand that there's some sort of a  
7 methodology that is a reliable methodology that  
8 is a reliable methodology that you're going to  
9 apply.

10          THE COURT: Well, even if I open the gate  
11 under Daubert for an expert, that expert is  
12 testifying in a subjective fashion, isn't it?  
13 Or she?

14          MR. MUISE: Your Honor, if you have a  
15 historian who for example only looks at  
16 statements from Southerners and they conclude  
17 that the South won the Civil War, I think you  
18 could say that there's a problem with the  
19 reliability of that testimony.

20          THE COURT: Admittedly there is a somewhat  
21 indistinct line here, and I understand that  
22 you're trying not to cross the line. This is  
23 a hybrid expert. This expert I think we can all  
24 agree doesn't fit within the express criteria in  
25 Daubert. You'd have to struggle to go through

1 the multipart test and to apply it to this  
2 particular expert. However, some of your  
3 questions go to weight quite clearly, and it  
4 is undoubtedly going to be your purpose during  
5 cross examination, if the witness is admitted,  
6 to talk about what's not included or what is  
7 misunderstood or was never considered as it  
8 relates to her report.

9 Now, it does cross the line on  
10 qualifications as it gets to the comprehensive  
11 nature of what she looked at and didn't look at,  
12 and I would ask that you restrict your questions  
13 to that. Now, you have questioned her in that  
14 area for example. The subsequent statement  
15 which quite clearly at least from the court's  
16 standpoint came out after her book as it related  
17 to the Wedge Strategy, I think that that's  
18 appropriate for the purpose of credentials and  
19 for the purpose of voir dire, but I think your  
20 most recent question did cross that admittedly  
21 indistinct line, and I'll sustain the objection.

22 BY MR. MUISE:

169 23 Q. Ma'am, again looking at the data that you  
24 relied on, is it true that the data with regard  
25 to the associations was focused on associations



1 with religious organizations and religious  
2 affiliations?

3 A. Those are not their only associations.  
4 Those are important ones, but those are not  
5 the only ones, and I did look at some others.  
6 For example, they formed associations with  
7 members of parts of education for example.  
8 So there are others. The religious ones are  
9 important. They're not the only ones.

170 10 Q. And the focus for the purpose of your  
11 opinions was the focus on those religious  
12 organizations, is that correct?

13 A. As the movement describes itself in looking  
14 at the associations which they themselves have  
15 cultivated, that was information that I needed  
16 to examine and to include in my research and my  
17 writing. It's an important part of what they  
18 do, and it actually is a stated part of their  
19 strategy to form those associations.

171 20 Q. Now, ma'am, it's true this Wedge Document  
21 serves as the foundation for a majority of your  
22 opinions, is that correct?

23 A. It's a reference point. It's a reference  
24 point for my work. It certainly is not the  
25 entire foundation of it, but it's an important

1 reference point.

172 2 Q. You have no evidence that the board members  
3 of the Dover area school district had any  
4 knowledge of this Wedge Document, is that  
5 correct?

6 A. I have no evidence of that.

173 7 Q. And in your deposition you were asked  
8 whether you believe that the people who prepared  
9 the policy at issue in this case were acting  
10 under the guidance of the so-called intelligent  
11 design movement, and you answered, "I have no  
12 way to know." Is that correct?

13 A. That's correct. I have no knowledge that  
14 they were acting in that fashion.

174 15 Q. Ma'am, you're a member of the National  
16 Center for Science Education?

17 A. I'm on their board of directors and I'm  
18 also a member.

175 19 Q. And member of the ACLU?

20 A. Correct.

176 21 Q. You're a member of the National Advisory  
22 Council of Americans United for the Separation  
23 of Church and State?

24 A. Yes, that's correct.

177 25 Q. And you're a member of the New Orleans

1 Secular Humanist Association?

2 A. That's correct.

178 3 Q. And that association is affiliated with the  
4 Council of Secular Humanists?

5 A. That's correct.

179 6 Q. Now, ma'am, you said your opinions are  
7 going to be based in large part on this primary  
8 source data, which I believe you described as  
9 statements of certain proponents of the  
10 intelligent design?

11 A. The writings of the proponents of  
12 intelligent design.

180 13 Q. Now, prominent scientists have made  
14 non-scientific claims about Darwin's theory  
15 of evolution. That's true, correct?

16 A. Could you give me an example of that,  
17 please?

181 18 Q. Certainly. Richard Dawkins, you know who  
19 he is, correct?

20 A. Yes.

182 21 Q. A prominent biologist and Darwinian  
22 supporter?

23 A. Yes.

183 24 Q. Wrote a book called The Blind Watchmaker?

25 A. Yes.

184 1 Q. And you cite this book in your report,  
2 correct?

3 A. Yes. I cite many things in my report.  
4 I'm sure it's in there somewhere.

185 5 Q. I believe it's actually on page 17 at  
6 footnote 63?

7 A. Yes, I have a couple of hundred footnotes.

186 8 Q. And in your report you claim this book is  
9 "considered a classic popular explanation of  
10 evolution theory."

11 A. Yes, it is.

187 12 Q. Now, in this book Dawkins claims that,  
13 "Darwin made it possible to be an intellectually  
14 fulfilled atheist." Are you aware of that?

15 A. Yes, he does make that statement.

188 16 Q. Are you aware that the Council for Secular  
17 Humanists gives out an award for the humanist of  
18 the year?

19 A. Humanist of the year? Yes, it's an award  
20 they give out.

189 21 Q. And Richard Dawkins received that award in  
22 1996?

23 A. I'm not specifically aware of that, but --

190 24 Q. You're aware that in his acceptance speech  
25 he stated, "Faith is one of the world's great

1 evils, comparable to the smallpox virus but  
2 harder to eradicate."

3 A. I don't have any knowledge of that speech.

191 4 Q. Do you agree with that statement?

5 A. Would you repeat it, please?

192 6 Q. "Faith is one of world's great evils,  
7 comparable to the smallpox virus, but harder  
8 to eradicate."

9 A. No, I don't agree with that.

193 10 Q. Do you know who Stephen J. Gould, the late  
11 Stephen J. Gould was?

12 A. Yes, a very well known paleontologist.

194 13 Q. From Harvard University?

14 A. Right. He's deceased.

195 15 Q. Correct. And he claimed, "Biology took  
16 away our status as paragons created in the image  
17 of God," and, "Before Darwin we thought that a  
18 benevolent God had created them." Are you aware  
19 that he made those claims?

20 A. Yes.

21 MR. ROTHSCHILD: Your Honor, I'm going to  
22 object to this line of questioning. It has  
23 nothing to do with qualifications.

24 MR. MUISE: Your Honor, again it's going to  
25 go to the methodology that she's applying in

1 this case. She's saying she's rely on primary  
2 statements of individuals, of intelligent design  
3 movement leaders to reach her opinion.

4 MR. ROTHSCCHILD: I'm sure the --

5 THE COURT: Let Mr. Muise finish.

6 MR. MUISE: I'm going to demonstrate that  
7 you've got supporters of the Darwinian theory of  
8 evolution making non-scientific claims, but that  
9 does not go to the scientific nature of the  
10 underlying claims that they're making. It goes  
11 to the heart of what she -- what they're trying  
12 to propose her and offer as an expert, it goes  
13 right to the heart of the methodology that she's  
14 applying in this case.

15 THE COURT: Well, the essential point that  
16 you're attempting to make I assume by your  
17 questioning is that things were left out.

18 MR. MUISE: Not necessarily that things were  
19 let out, but that the whole methodology is  
20 unreliable that she's applying here.

21 THE COURT: Well, why was it unreliable?  
22 Because there were certain things, areas,  
23 quotations, treatises that were not considered  
24 or were left out of the analysis? Isn't that  
25 the point that you're trying to make?

1           MR. MUISE: Well, I think the point is to  
2 show the fallacy of --

3           THE COURT: But you didn't answer my  
4 question. You are attempting to show it appears  
5 by your questions that the witness, the proposed  
6 expert witness does not cite or therefore  
7 presumably didn't consider certain statements  
8 that are not in her report or certain activities  
9 by individuals you're naming in your cross  
10 examination. Isn't that what you're doing?

11           MR. MUISE: I am asking those questions,  
12 Your Honor, to set up the question regarding the  
13 methodology that she employed. So it's sort of  
14 a necessary predicate to get to the question  
15 regarding the methodology that she employed in  
16 this case.

17           THE COURT: I think we're going to make  
18 this unduly difficult, and this could go on  
19 endlessly. Let's break it down again. Do  
20 you or do you not controvert at this stage  
21 that the witness is an expert on methodological  
22 naturalism?

23           MR. MUISE: Your Honor, I would say no.  
24 In fact, she stated specifically she's not an  
25 expert in the philosophy of science. This deals

1 directly with that. She said it's a method  
2 employed by scientists. She is not trained as  
3 a scientist. She has no scientific claims. She  
4 is using this as imposing some sort of broader  
5 world view, and you can look specifically at how  
6 she's approaching her attack of intelligent  
7 design is on the non-scientific claims made by  
8 scientists, and she doesn't even address any  
9 of the scientific claims. So with terms of  
10 methodology, she's a philosopher. She's not  
11 a philosopher of science and she's not a  
12 scientist. Methodological naturalism is a  
13 philosophy imposed on science.

14 MR. ROTHSCHILD: Your Honor?

15 THE COURT: Let's take just that portion  
16 of it.

17 MR. ROTHSCHILD: Her dissertation is about  
18 she's a naturalist and she is intimately  
19 familiar with pragmatic naturalism and  
20 philosophical naturalism and mythocological  
21 naturalism. She is not trained as a philosopher  
22 of science, but interpreting these areas are at  
23 the core of her work. It's what she writes  
24 about. If you examine her curriculum vitae,  
25 she has written on this subject, not just about



1 creationism and intelligent design, but about  
2 the issues of naturalism generally.

3 THE COURT: Well, here's -- and then the  
4 further purpose stated by Mr. Rothschild is the  
5 history as I said earlier and nature of the  
6 intelligent design movement, including its  
7 creationism origins. Now, if I understand your  
8 question, Mr. Muise, correctly, and I'm not sure  
9 that I do, but your concern, you don't want her  
10 qualified at all, I recognize that, but your  
11 particular concern goes to her bona fides as  
12 they relate to a scientific background. Is that  
13 a fair statement?

14 MR. MUISE: That's part of it, Your Honor,  
15 because she does make claims in her report. I'm  
16 not sure how she's going to say initially she  
17 doesn't believe intelligent design is science,  
18 but yet she has no scientific knowledge for  
19 that.

20 THE COURT: I understand.

21 MR. MUISE: The other point is that, I mean  
22 this is going to cause the court to really go  
23 off after red herrings. She's focusing on  
24 non-scientific claims, and as I was intending to  
25 bring out further as Dr. Miller testified,

1 scientists often make non-scientific claims.  
2 That does not undermine the science that they're  
3 doing, and that's the point I'm making by  
4 bringing up Richard Dawkins, Stephen J. Gould,  
5 and the others that I'm going to bring up, and  
6 it's a fundamental flaw.

7         There's two flaws. There's the fallacy of  
8 the ad hominem which is going to apply here and  
9 the fallacy of the genetic that she's going to  
10 apply here, and that methodology has no basis  
11 for the issues in this case. She's doing ad  
12 hominem attacks against certain members. She  
13 excludes altogether their scientific writings,  
14 and to present this to this court so that it can  
15 make a determination whether intelligent design  
16 is science or not, Your Honor, I just think it  
17 is not expert opinion that is worthy of any of  
18 the issues that are in this case.

19         THE COURT: Mr. Rothschild is eager to  
20 respond.

21         MR. ROTHSCHILD: I am, Your Honor. We are  
22 not suggesting that Dr. Forrest is here to  
23 address the purported scientific claims of  
24 intelligent design. We put together a very  
25 complementary expert team which includes

1 scientists, scientist philosophers, as well as  
2 theologians and experts on teachings, and  
3 someone who has studied the intellect, the  
4 intelligent design movement.

5         The core question here, the question of  
6 whether intelligent design is science, is a very  
7 important question in this trial, but the core  
8 question is is intelligent design a religious  
9 proposition, and it is on that subject that  
10 Dr. Forrest is extremely qualified based on all  
11 the empirical research she has done. If we were  
12 to suggest that she could answer Professor  
13 Behe's claim for irreducible complexity,  
14 Mr. Muise would rightfully cross examine her  
15 and have her disqualified on that subject.  
16 That's not what she's here to do.

17         THE COURT: Well, I believe that Mr. Muise's  
18 concern as I read the report, that the report  
19 may cross into the scientific realm and may  
20 transcend the stated qualifications of this  
21 expert based on her co-author for example, based  
22 on the examination of other individuals. I  
23 think that that's a valid concern as stated by  
24 him. Now, I see this witness I will tell you  
25 based on what I have thus far perceived as a

1 proper expert on methodological naturalism,  
2 despite Mr. Muise's objection.

3 I don't think that it's essential to  
4 that that she be qualified generally in the  
5 scientific area. I think that her credentials  
6 and experience would allow her to testify in  
7 that area as an expert. The stated purpose, the  
8 history and nature of the intelligent design  
9 movement, and having read the report obviously  
10 I think is a proper area for her to testify in.

11 I'm not going to prevent further  
12 questioning on this, but I'll tell you based on  
13 what I have seen that I think it is, that she's  
14 certainly qualified to do that by her scholarly  
15 work by the time spent studying the intelligent  
16 design movement. Now, within that area there  
17 may be portions of the report and they may  
18 generate testimony that is objectionable, and  
19 I am not preventing objections in those  
20 particular areas, and in particular as they  
21 relate to science.

22 So that would not disqualify her generally  
23 as an expert, and to move this along, if I admit  
24 her generally so that she can give a historical  
25 panoply, that is certainly well within the realm

1 of possibility that we'll get objections as they  
2 relate to areas that are not necessarily  
3 historical in nature. And the questions that  
4 you asked with respect to the areas not  
5 considered, it's very difficult on voir dire  
6 as it relates to an expert and, you know, I  
7 view this expert not necessarily as a scientific  
8 "expert" but as I've used the term hybrid on a  
9 couple of different occasions to some degree,  
10 this witness is a historian.

11 I find that she may aid the court, but it  
12 certainly goes to weight and it's certainly  
13 appropriate cross examination concerning what  
14 she did not consider, and I think we're now  
15 going a little bit afield and you're getting  
16 into that. I think that that allows to admit  
17 her for these purposes and to not inhibit the  
18 defense on cross examination, as it goes to what  
19 was considered and not considered, strikes an  
20 appropriate balance, and we ought not get unduly  
21 hung up here on the qualifications stage.

22 This is a bench trial. I understand that  
23 I'm going to hear additional testimony. I  
24 understand in particular I'm going to hear  
25 testimony from the defense on the scientific

1 claims as they relate to intelligent design.  
2 So the gate keeping function of Daubert as you  
3 well know, although it's not limited by its  
4 terms to jury trials, but it is much more  
5 important, and you'll have to trust that the  
6 court can separate this out.

7 So you can proceed with your voir dire  
8 questioning, but those are my general thoughts  
9 on this witness. I do understand your concern,  
10 but I don't see those concerns as being  
11 sufficient that I would prevent this witness  
12 from testifying. Now, I'll rule explicitly  
13 after you finish your voir dire, but I hope that  
14 gives you some guidance, and you may proceed.

15 MR. MUISE: Thank you, Your Honor, and if  
16 I may well, note Mr. Rothschild mentioned about  
17 her testimony regarding religion, and as she  
18 testified in voir dire she does not have  
19 expertise in religion. So that's another  
20 area that she has identified she doesn't have  
21 expertise.

22 THE COURT: Well, that may allow for  
23 particularly precise and clinical either  
24 objections or points to be made on cross  
25 examination, but again I don't think it

1 generally disqualifies her.

2 MR. MUISE: Your Honor, if I may indulge  
3 the court in one further inquiry, because the  
4 other component as you know that we have a lot  
5 of concern with is the 703 issue that's  
6 associated with her testimony, and all of these  
7 statements, which is the reason for the line of  
8 inquiry that I was pursuing with regard to  
9 non-scientific claims by scientists with a  
10 different world view no doubt is that her  
11 testimony, there's not way to unravel all  
12 those statements that she has put in her expert  
13 report to show which are the ones that are  
14 inappropriate and which are the ones that might  
15 very well be appropriate to whatever the inquiry  
16 is.

17 THE COURT: Well, what makes them  
18 inappropriate?

19 MR. MUISE: Well, You have hearsay on top  
20 of hearsay. You have the fact that she's, you  
21 know, just disregarding, one of the main things  
22 is the sources that she has chosen, which is  
23 some of the questions are going to get into,  
24 articles written by Dr. Dembski, he holds three  
25 Ph.D.'s, a theologian, a philosopher, a

1 mathematician. She cites from the philosophy,  
2 theology, but not from the math, and concludes  
3 look, it's philosophy and theology, it's not  
4 science. But there's no way to unravel those --

5 THE COURT: Well, you're getting into the ad  
6 hominem attack issue that you raised earlier.  
7 You wouldn't gainsay that some hearsay may be  
8 admissible under 703 as part of an expert  
9 report, would you?

10 MR. MUISE: No, and I perfectly understand  
11 that it is as long as it's proper.

12 THE COURT: What's proper?

13 MR. MUISE: Proper is one that would  
14 demonstrate some measure of reliability and  
15 trustworthiness to actually support the claim  
16 that the witness wants to testify to.

17 THE COURT: And the whole purpose of my  
18 ruling on the motion in limine is to allow you  
19 to reserve an objection as it relates to any  
20 particular statement that's made. Now, it may  
21 be torturous to go through it that way, but  
22 that's the only way I know how to do it. So  
23 I can't, I'm not going to give a blanket  
24 prohibition and say that hearsay is inadmissible  
25 generally.



1           On the other hand there may be a statement  
2           that for example, and I'm not saying it would  
3           be, but hearsay on hearsay, or that it would be  
4           taken out of context or particularly unreliable,  
5           you've got the opportunity to press on that or  
6           to object. So I'm not preventing you from doing  
7           that by admitting her. The purpose of admitting  
8           her as an expert does not mean to tie this up  
9           again, or to attempt to tie it up, that part and  
10          parcel every portion of this report can come in  
11          in testimony.

12          It by no means indicates that, and you  
13          reserve any well placed exceptions, but we're  
14          going to be all morning on qualifications if  
15          we're not careful. I think to some degree you  
16          see where I'm going, and I think that this is  
17          it's a difficult area for counsel, it's a  
18          difficult area for the court, because this is  
19          not, if there is such a thing as a typical  
20          expert, this is not a typical expert. This is  
21          an area that is blazing new territory, and we're  
22          going to have to do the best we can with it, and  
23          I think the best way is to admit this witness  
24          for the purposes stated, however to allow the  
25          defense abundant latitude to object if it gets

1 into, as her testimony gets into particular  
2 portions of the report.

3 MR. MUISE: Your Honor, I don't know if  
4 we're reaching the point in time in the morning  
5 where it might be appropriate for a break,  
6 because I wouldn't mind to have a moment to  
7 consult with co-counsel, and may we just cut  
8 off the voir dire and then proceed with --

9 THE COURT: I think that's probably well  
10 taken. Why don't we do that, and then I'll  
11 hear you -- well, I'll allow you to -- well,  
12 I'll give you some limited opportunity to  
13 complete your voir dire when we come back, but  
14 I want to move through it. I think we've got  
15 to cut to the chase here. We've been at this a  
16 while. We'll take about a 20-minute break.  
17 I'll give you limited opportunity for additional  
18 voir dire, I'll hear your objections if you have  
19 additional objections, and then we'll make a  
20 determination on the record with respect to  
21 admitting this witness and her testimony for  
22 the purpose stated by Mr. Rothschild. So we'll  
23 be on break for about 20 minutes.

24 MR. MUISE: Thank you, Your Honor.

25 (Recess taken at 10:12 a.m. Court resumed

1 at 10:41 a.m.)

2 THE COURT: Be seated, please. We're back  
3 on the record. Mr. Muise, do you have  
4 additional questions on voir dire?

5 MR. MUISE: We have a few more, Your Honor,  
6 and we're going to be wrapping up it in short  
7 order.

8 THE COURT: All right.

9 BY MR. MUISE:

196 10 Q. Ma'am, based on what you testified to  
11 earlier this morning, it's clear the testimony  
12 you intend to offer this afternoon is going to  
13 be based in large part on statements made by  
14 certain intelligent design proponents, is that  
15 accurate?

16 A. It's based on my consultation of their  
17 writings and things about them in which they  
18 are quoted.

197 19 Q. Ma'am, do you agree with Dr. Miller's  
20 testimony that not everything a scientists  
21 says is science?

22 A. Scientists make lots of statements  
23 sometimes when they're speaking not as  
24 scientists, but as just people.

198 25 Q. In the testimony you intend to offer this

1 morning and this afternoon, ma'am, how will this  
2 court know when you're referring to scientific  
3 claims made by intelligent design and  
4 philosophical or theological claims made  
5 intelligent design proponents?

6 A. That sounds like it would depend on the  
7 question. The question would have to specify  
8 and then I would have to specify.

199 9 Q. Isn't it true in your report you've made no  
10 effort to distinguish these sorts of claims?

11 A. I'm not exactly sure, I'm sorry, what  
12 you're asking me.

200 13 Q. Well, isn't it clear in your report, and  
14 I'm assuming then your subsequent testimony  
15 today, does not make clear the distinction  
16 between religious motivations of some  
17 intelligent design proponents, the religious  
18 implications of intelligent design, and  
19 intelligent design as science, isn't that  
20 correct?

21 A. I look at the nature of intelligent design  
22 in the intelligent design movement. That  
23 includes a number of things. It includes most  
24 basically the substance of the movement itself,  
25 the essence of what it is, but also involves

1 motivations of the people who are carrying out  
2 this movement and the goals that they have. So  
3 I look at all of it, most basically the nature  
4 of intelligent design and the movement that's  
5 being used to carry it out.

201 6 Q. But you don't address the scientific claims  
7 of intelligent design, for example irreducible  
8 complexity or complex specified information, is  
9 that correct?

10 A. That's not what I was called upon to do in  
11 my report.

202 12 Q. So is it accurate to say your focus is on  
13 the philosophical and theological claims made by  
14 intelligent design proponents?

15 A. Yes. If I may say, in my book we do look  
16 at the scientific claim. My co-author is a  
17 scientist, so I have some source of expertise  
18 to draw from whenever I need to address that,  
19 but that's not my primary area.

203 20 Q. Again, ma'am, you're testifying as to your  
21 report, not your book, correct?

22 A. Right.

23 MR. MUISE: Your Honor, we have no further  
24 questions, and we move to exclude this witness  
25 from testifying as an expert in this case.

1 MR. ROTHSCHILD: Could I ask one question on  
2 redirect of voir dire?

3 THE COURT: You can, and then we'll hear  
4 argument on qualifications. Go ahead.

5 REDIRECT EXAMINATION ON QUALIFICATIONS

6 BY MR. ROTHSCHILD:

204 7 Q. Dr. Forrest, is it your view, your opinion,  
8 that intelligent design is at its core a  
9 philosophical and theological claim?

10 A. It is my view that at its core intelligent  
11 design is a religious belief.

12 MR. ROTHSCHILD: No further questions on  
13 voir dire, Your Honor.

14 THE COURT: Any recross on qualifications?

15 MR. MUISE: No, Your Honor.

16 THE COURT: All right. So you object to the  
17 expert's testimony for the purposes stated by  
18 Mr. Rothschild, and we stated and restated those  
19 purposes. So there's no need to do that at this  
20 point. I'll allow you to expand on that  
21 argument if you like.

22 MR. MUISE: Your Honor, this last question  
23 that he just proposed to her she said during the  
24 voir dire when I asked her if she had any  
25 expertise in religion, she said no. She has

1     apparently tracked the nature and the history  
2     of this so-called intelligent design movement.  
3     She can't address the scientific claims of this.  
4     The issue at the heart of this case is whether  
5     or not intelligent design is science.

6             THE COURT: As framed by you.

7             MR. MUISE: Well, Your Honor, I think their  
8     claim that it's not science. She's made no  
9     efforts to address the science component of it,  
10    because she can't. She has no expertise. She  
11    has focused on the philosophical and theological  
12    claims of proponents of intelligent design.

13            THE COURT: Well, the problem with that is  
14    that it is an issue to be sure, but another  
15    issue, and I understand that they work hand  
16    in glove in some cases, these issues, is the  
17    religious underpinnings of, or the alleged  
18    religious underpinnings of the intelligent  
19    design movement as cast by the witness. Why  
20    isn't she competent to testify as to that?

21            MR. MUISE: Your Honor, again the religious  
22    underpinnings of William Dembski, who's a  
23    theologian and a philosopher in addition to a  
24    mathematician, is no more relevant than the  
25    interrelated underpinnings of Richard Dawkins

1 to say whether or not evolution is --

2 THE COURT: I might agree with that, but  
3 that goes to what I said earlier, Mr. Muise,  
4 which is that you may have objections as they  
5 relate to specific portions of her testimony,  
6 and I restate, because I think it needs to be  
7 restated, that nothing that I do in terms of  
8 admitting this expert, assuming that I admit  
9 her, would prevent you from doing that. But  
10 to parse out portions of a report that may be  
11 objectionable in that way doesn't help you in  
12 terms of her admissibility generally as an  
13 expert. We're talking about two different  
14 things. So what other arguments do you want to  
15 make on that point?

16 MR. MUISE: Again, Your Honor, as  
17 indicated from the last question, just the  
18 interrelationship, there's no way to separate  
19 out those objectionable claims from what she's  
20 going to be testifying to. That is in part and  
21 parcel of what she's going to be opining is  
22 relying on those sorts of objectionable claims,  
23 these philosophical and theological statements  
24 of proponents.

25 And so the fact that they're so



1 intertwined, there's no way that this court or  
2 even us sitting here when she makes a particular  
3 claim can parse out what is the basis, the  
4 material that she's relying on to make that  
5 claim, and those materials are objectionable  
6 and undermine the reliability, and if I may just  
7 make one other --

8 THE COURT: Well, the materials themselves  
9 may constitute hearsay. We've already been down  
10 that path. 703 doesn't exclude hearsay. In an  
11 effort to be fair I said the materials had to  
12 be brought in in part so that we can assure  
13 ourselves that you're given the fair opportunity  
14 to discern whether or not, and I'm fairly  
15 certain you did this beforehand, and so it's  
16 principally for my benefit to see whether or not  
17 the statements are taken out of context, which  
18 would be one way to measure that, particularly  
19 when you're parsing out, using that word again,  
20 a particular statement, and I'm perfectly  
21 willing to do that on an objection from you.  
22 But to say that this witness, who is engaged  
23 in a scholarly exercise and has produced a  
24 published work, that she can't testify generally  
25 subject to well placed objection on the history

1 of intelligent design as it arose, I'm having  
2 difficulty seeing why she can't.

3 MR. MUISE: And just a couple of more points  
4 to that, Your Honor. With regard to the  
5 context, that was the point of some of my last  
6 questions, because if the context is a  
7 philosophical or a theological claim made by a  
8 proponent, that is the context that makes it  
9 irrelevant, and that's the point.

10 THE COURT: Do you mean as to their personal  
11 beliefs?

12 MR. MUISE: That's correct, Your Honor.

13 THE COURT: Well, and it has to be tied to  
14 the -- we're talking in the abstract. A mere  
15 statement of faith by a particular individual  
16 standing alone, not tied in some way to an  
17 analysis of the, not just an analysis but not  
18 tied to that individual's work or works,  
19 treatises, published works as they relate to  
20 intelligent design, that may be indeed  
21 objectionable. I'm not preventing that.  
22 And this report may have instances of that.  
23 But again I don't think it disqualifies the  
24 witness as an expert.

25 MR. MUISE: Just two last -- well, it's

1 related, but one last point I guess, Your Honor,  
2 is that as she testified there's no evidence  
3 that anyone in the school board knew anything  
4 about this Wedge Document which forms the  
5 foundation of her opinion, nor that any person  
6 on the Dover area school district was aware of  
7 or operating under the guidance of this  
8 conspiratorial intelligent design movement  
9 that's somewhere operating out there.

10 THE COURT: But that's weight and relevance.  
11 That's not expert qualifications, is it?

12 MR. MUISE: Well, again, Your Honor, I think  
13 it's more than just the qualifications. There's  
14 a reliability question that's associated with  
15 this 703 --

16 THE COURT: No, the purpose then would  
17 be effect, I think, from the plaintiff's  
18 standpoint. Having admitted the testimony,  
19 you of course can argue that for the effect  
20 prong perhaps, for example, and not the purpose  
21 prong, and the failure to tie the matters  
22 testified to to the individual school board  
23 members makes the testimony irrelevant and that  
24 it shouldn't be considered by the court. But  
25 we're not there, and we're not in your case and

1 I don't think that that goes to qualifications.  
2 So you're morphing your qualifications argument  
3 into a relevancy argument, and I don't think  
4 that's appropriate at this point.

5 MR. MUISE: Thank you. No further argument,  
6 Your Honor.

7 THE COURT: I'm going to admit the expert  
8 then, again subject to timely objections by  
9 the defense, for the purpose stated by  
10 Mr. Rothschild, which is an expert on  
11 methodological naturalism and the history  
12 and nature of the intelligent design movement,  
13 and Mr. Rothschild, you may proceed.

14 DIRECT EXAMINATION ON EXPERT TESTIMONY

15 BY MR. ROTHSCHILD:

205 16 Q. Good morning again, Dr. Forrest?

17 A. Good morning, again.

206 18 Q. Do you have an opinion about whether  
19 intelligent design is a form of creationism?

20 A. Yes.

207 21 Q. And what is that opinion?

22 A. My opinion is that it is creationism.

208 23 Q. The district in this case has argued  
24 that creationism is limited to a literal  
25 interpretation of the account of Genesis from

1 the Old Testament of the Bible. Do you agree  
2 that that's a proper definition of creationism?

3 A. No, I don't agree.

209 4 Q. What do creationists themselves say on that  
5 subject?

6 A. Creationists themselves recognize  
7 variations among themselves. They recognize  
8 the young earth position. They recognize the  
9 old earth position. This is quite well known  
10 among creationists themselves.

210 11 Q. Do you have an opinion about whether  
12 intelligent design is religious in nature?

13 A. Yes.

211 14 Q. And what is that opinion?

15 A. That it is essentially religious.

212 16 Q. On what do you base your opinion that  
17 intelligent design is a form of creationism?

18 A. On the statements by the movement's own  
19 leaders, they have at times referred to it  
20 that way.

213 21 Q. Anything else?

22 A. Yes. Their rejection of evolution in favor  
23 of a supernatural intervention in the process of  
24 nature and in favor of special creation of life  
25 forms.

214 1 Q. Has your review of the history of the  
2 writing of Of Pandas and People confirmed  
3 your conclusion that intelligent design is  
4 creationism?

5 A. Yes.

215 6 Q. On what do you base your opinion that  
7 intelligent design is a religious proposition?

8 A. On the statements of its leaders. They  
9 have so defined it.

216 10 Q. We're going to go into those statements  
11 in some detail, but has Phillip Johnson made  
12 statements to that effect?

13 A. Yes, he has.

217 14 Q. Matt, could you pull up Exhibit 328? Do  
15 you recognize this document?

16 A. Yes.

218 17 Q. What is it?

18 A. It is entitled "Starting a Conversation  
19 About Evolution." It is a review of a book by  
20 Dell Ratzsch. This is written by Phillip  
21 Johnson.

219 22 Q. And Dr. Forrest, have you in preparation  
23 for your testimony highlighted passages of some  
24 of the documents we're going to use as exhibits  
25 today?

1 A. Yes, I have.

220 2 Q. Did you do that for this exhibit?

3 A. Yes.

221 4 Q. Matt, could you go to the highlighted  
5 statement in this exhibit? And Dr. Forrest,  
6 could you read that statement into the record,  
7 using quotes to indicate when you're quoting  
8 from the document?

9 A. Yes.

10 MR. MUISE: We object to the statement as  
11 hearsay.

12 THE COURT: Well, you're going to have to  
13 do better than that.

14 MR. MUISE: Again, Your Honor, it goes to  
15 the content. This is not a claim made by, a  
16 scientific claim. It's at best a philosophical  
17 theological claim that's made by somebody that  
18 she purports to be an intelligent design  
19 proponent, and as she said in direct testimony  
20 Phillip Johnson is a lawyer. He's not a  
21 scientist.

22 THE COURT: We'll have to take it in the  
23 context of the entire passage and presume that,  
24 meaning I have to see it on the screen, you're  
25 going to have to give me the exhibit.

1 MR. ROTHSCHILD: Your Honor, it's exhibit --

2 THE COURT: Why don't you --

3 MR. ROTHSCHILD: -- 328.

4 THE COURT: That's helpful to me.

5 MR. ROTHSCHILD: Can I address Mr. Muise's

6 point?

7 THE COURT: Let me read it first.

8 MR. ROTHSCHILD: Sure.

9 (Brief pause.)

10 THE COURT: What is this drawn from?

11 MR. ROTHSCHILD: This is an article as

12 Dr. Forrest described written by Phillip

13 Johnson.

14 THE COURT: Let me see the title page of

15 that again.

16 (Brief pause.)

17 THE COURT: The objection is overruled.

18 BY MR. ROTHSCHILD:

222 19 Q. Could you read that passage into the

20 record, please?

21 A. Yes. "My colleagues and I speak of

22 theistic realism, or sometimes mere creation,

23 as the defining concept of our movement. This

24 means that we affirm that God is objectively

25 real as creator, and that the reality of God



1 is tangibly recorded in evidence accessible to  
2 science, particularly in biology."

223 3 Q. And based on your reading of this article,  
4 what is the movement that Mr. Johnson was  
5 referring to?

6 A. He's referring to the intelligent design  
7 movement.

224 8 Q. This is one example of intelligent design  
9 movement leaders' own statements indicating the  
10 religious nature of the proposition?

11 A. Yes.

225 12 Q. In preparing your expert report and  
13 preparing to testify today did you examine  
14 prior court cases relating to the teaching  
15 of evolution?

16 A. Yes.

226 17 Q. And why did you do that?

18 A. Because it gives a good understanding  
19 of the history of this issue and shows the  
20 religious objections to the teaching of  
21 evolution in those cases.

227 22 Q. Was there any opinion that was particularly  
23 important to your opinion?

24 A. Yes.

228 25 Q. And what was that?

1       A. That was the Edwards vs. Aguillard, 1987  
2       United States Supreme Court reading.

3           MR. MUISE: Your Honor, we're going to  
4       object to any testimony related to any court  
5       cases or prior decisions. She's not an attorney  
6       in this case. There's only one legal expert  
7       in this courtroom, and it's the judge, and it's  
8       not this witness.

9           THE COURT: Of course that remains to be  
10       seen. What do you have to say about that?

11          MR. ROTHSCHILD: Your Honor, she is not  
12       going to discuss this court case. She's going  
13       to discuss it as a historical fact that's  
14       important to the intelligent design movement,  
15       including, and this is my -- we're going to go  
16       to this in the next couple of questions, an  
17       affidavit presented in that case in support of  
18       creation science by Dean Kenyon, the author of  
19       Pandas.

20          THE COURT: Well, to the extent that  
21       Mr. Muise interposes a protective objection  
22       as it may relate to a legal interpretation of  
23       the case you'll not be able to go there, and  
24       I'll sustain the objection on that basis. The  
25       questions up to this point with respect to the

1 existence of the case, the naming of the case,  
2 are not objectionable, but I understand I think  
3 the basis of your objection is that she can't  
4 legally interpret the case. I'll hear another  
5 objection, I'll allow you a continuing objection  
6 in that vein, but we haven't gotten to that  
7 point yet. You may proceed.

8 BY MR. ROTHSCHILD:

229 9 Q. What court wrote the opinion in Edwards  
10 that you have read?

11 A. The United States Supreme Court.

230 12 Q. And do you know when the court issued its  
13 opinion?

14 A. June 19th, 1987.

231 15 Q. I'm not asking you to interpret it, but  
16 what's your understanding of what the court  
17 ruled in that case?

18 MR. MUISE: Objection, Your Honor.

19 MR. ROTHSCHILD: Your Honor, this is just  
20 background.

21 THE COURT: No, I'll sustain that objection.  
22 I think that's problematic, and I think  
23 furthermore the court is capable of  
24 understanding that case. So it's probably  
25 a needless question anyway. So let's move on.

1 BY MR. ROTHSCHILD:

232 2 Q. What is the Edwards decision important  
3 to the opinions you're going to give today?

4 A. Because one of the expert witnesses was  
5 Dr. Dean H. Kenyon, who is a co-author of  
6 Pandas.

233 7 Q. And did Dr. Kenyon submit an affidavit in  
8 support of the teaching of creation science in  
9 that case?

10 A. Yes, he did, in 1986.

234 11 Q. And have you reviewed that affidavit?

12 A. I have.

235 13 Q. Matt, could you call up Exhibit 418?  
14 I apologize, the text is a little hard to  
15 read, but do you recognize this document?

16 A. Yes.

236 17 Q. What is it?

18 A. That's Dr. Kenyon's affidavit.

237 19 Q. And have you highlighted portions of this  
20 document that are important to your opinion  
21 about intelligent design?

22 A. Yes.

23 MR. ROTHSCHILD: Matt, could you go to the  
24 first, could you actually highlight the heading  
25 so we can see clearly that that is an affidavit?

1 I think you need to go down a little -- there  
2 we go.

3 MR. MUISE: We object on the basis of  
4 hearsay again for any testimony relating to  
5 this affidavit, this out of court statement  
6 issued by Mr. Kenyon.

7 THE COURT: Again you're going to have to  
8 do better than a basic hearsay objection, and  
9 it's also an affidavit that appears to have been  
10 part of the record papers in that case. Now, is  
11 it unreliable? Do you have any reason to doubt  
12 its voracity?

13 MR. MUISE: Well, Your Honor, again with  
14 regard to it's an affidavit given in a court  
15 case that's not addressing the issue of  
16 intelligent design. Again she's relying on  
17 these statements to arrive at an opinion that's  
18 not substantiated by, you know, by weaving this  
19 web of these assorted statements throughout the  
20 course of the testimony. We're going to  
21 continue to object to any of the statements  
22 that keep coming up, Your Honor, and I'll ask  
23 for a standing objection on that, but --

24 THE COURT: Well, I don't think a standing  
25 objection is going to work for you because you

1 may have particular things you want to say about  
2 it. You have to do what you have to do. I'll  
3 overrule the objection.

4 MR. ROTHSCHILD: And, Your Honor, we're not  
5 introducing this for the truth of the matter  
6 asserted. We're introducing it for these are  
7 Dr. Kenyon's statement, and I'd just like to add  
8 for the record the first exhibit that received  
9 this kind of objection, Exhibit 328, is already  
10 in evidence. It came in through Dr. Pennock,  
11 and I'm not sure why Dr. Forrest is being  
12 treated differently than other expert witnesses  
13 in this case. Could you go to the first  
14 highlighted passage, Matt?

15 BY MR. ROTHSCHILD:

238 16 Q. Could you read that into the record,  
17 Dr. Forrest?

18 A. Yes. "Definitions of creation science  
19 and evolution. Creation science means origin  
20 through abrupt appearance in complex forms,  
21 and includes biological creation, biochemical  
22 creation or chemical creation, and cosmic  
23 creation."

239 24 Q. Why is that statement in Dr. Kenyon's  
25 affidavit important to your opinion about

1 intelligent design?

2 A. That statement is important because it  
3 reflects the definition in Pandas.

240 4 Q. And when you say the definition in Pandas  
5 what is the term that's defined the Pandas?

6 A. The term in Pandas is intelligent design.  
7 It's pretty much the same definition here that  
8 he's giving for creation science.

241 9 Q. And we're going to look at some of that  
10 language in Pandas later, but why don't we go  
11 on to the next highlighted passage. Why don't  
12 you go ahead and read that.

13 A. "Creation science does not include as  
14 essential parts the concept of catastrophism,  
15 a worldwide flood, a recent inception of the  
16 earth or life from nothingness, ex nihilo, the  
17 concept of time, or any concepts from Genesis  
18 or other religious texts."

242 19 Q. Why is that important to your opinion?

20 A. That's important because it recognizes that  
21 there are different types of creationism, that  
22 it's broader than just young earth creationism.

243 23 Q. And I think we have one more passage  
24 highlighted, Matt.

25 A. "Sole alternative to scientific

1 explanation, it is not only my professional  
2 opinion, but that of many leading evolutionists  
3 scientists at present and in the past, that  
4 creation science and evolution are the sole  
5 scientific alternative, scientific explanation,  
6 although each includes a variety of approaches.  
7 Either plants and animals evolved from one or  
8 more initial living form, biological evolution,  
9 or they were created, biological creation."

244 10 Q. Why is that important?

11 A. That's important because he's setting out  
12 what is called the dual model, or the two model  
13 view of evolution and creation, which means that  
14 he considers these the only two alternatives.

245 15 Q. And why is that significant to the issue  
16 of intelligent design?

17 A. That's significant here because in 1986  
18 when Dr. Kenyon wrote this he was also working  
19 on Pandas the same year, and the two model  
20 approach means that if the idea of evolution  
21 is undermined, that leaves creation science by  
22 default. It also indicates that since he was  
23 working Pandas and that book speaks as an  
24 intelligent design theorist, he doesn't see  
25 any significant distinction between the two,



1 between creation science and intelligent design.

246 2 Q. I'd like to talk now about the writing of  
3 the book Of Pandas and People. When was the  
4 book first published?

5 A. 1989.

247 6 Q. And was there a second published version?

7 A. 1993.

248 8 Q. Have you prepared a timeline to assist your  
9 testimony today on the issue of the creation of  
10 Pandas?

11 A. Yes.

249 12 Q. Matt, could you pull up the timeline  
13 and place the Edwards decision and Mr. Kenyon's  
14 affidavit, Dr. Kenyon's affidavit on the  
15 timeline, and then could you also put up the  
16 two published versions of Pandas in 1989 and  
17 in 1993? What organization created Of Pandas  
18 and People?

19 A. The book was created by The Foundation for  
20 Thought and Ethics.

250 21 Q. Who runs that organization?

22 A. The founder and president is Mr. John  
23 Buell.

251 24 Q. And what do you know about him?

25 A. Mr. Buell at one time worked for Campus

1 Crusade For christ. Then he worked for Probe  
2 Ministries, and I believe he left Probe in order  
3 to found, to set up The Foundation for Thought  
4 and Ethics.

252 5 Q. And what is Probe ministries?

6 A. Probe Ministries a campus youth ministry.  
7 It operates on university campuses.

253 8 Q. Do you have any knowledge of whether  
9 Mr. Buell is a scientist?

10 A. He's not a scientist.

254 11 Q. Have you reviewed public filings by the  
12 foundation which demonstrate their stated  
13 mission or purpose?

14 A. Yes.

255 15 Q. Matt, could you pull up Exhibit P-12?

16 Do you recognize this document?

17 A. Yes. It's the articles of incorporation  
18 for The Foundation for Thought and Ethics.

256 19 Q. And Matt, could you highlight the dates on  
20 that document? And that indicates that the  
21 articles of incorporation were filed in 1980  
22 and a follow-up report in 1993?

23 A. Correct.

257 24 Q. Does this, do these articles of  
25 incorporation contain a mission statement

1 by, or a description of what the FTE does?

2 A. Yes, there is a description.

258 3 Q. Matt, could you go to the highlighted  
4 passage? And Dr. Forrest, could you read the  
5 highlighted text under Article 5?

6 A. Yes, this is Article 5, "The purposes  
7 for which the corporation is formed are, 1)  
8 the primary purpose is both religious and  
9 educational, which includes, but is not limited  
10 to, proclaiming, publishing, preaching,  
11 teaching, promoting, broadcasting,  
12 disseminating, and otherwise making known  
13 the Christian gospel and understanding of the  
14 Bible and the light it sheds on the academic  
15 and social issues of our day."

259 16 Q. Do you consider that to be announcing a  
17 religious agenda?

18 A. Yes, I do.

260 19 Q. Have you seen other documents prepared by  
20 The Foundation for Thought and Ethics that  
21 confirm that in fact that organization has a  
22 primarily religious agenda?

23 A. Yes, I have.

261 24 Q. Matt, could you pull up Exhibit P-633.  
25 Do you recognize this document?

1 A. Yes.

262 2 Q. And what is it?

3 A. It is a 1983 publication called The  
4 Foundation Rationale.

263 5 Q. And who publishes this document?

6 A. This is published by The Foundation for  
7 Thought and Ethics. The copyright is below  
8 the title.

264 9 Q. And have you highlighted portions of this  
10 document --

11 A. Yes.

265 12 Q. -- that indicate the religious agenda?

13 A. Yes.

266 14 Q. And Matt, could you go to the first  
15 highlighted portion of the document?

16 MR. MUISE: Your Honor, we object on the  
17 basis of hearsay.

18 THE COURT: Are you objecting to the  
19 document, reference to the document generally,  
20 or to individual parts of the document?

21 MR. MUISE: Well, I understand she's going  
22 to start testifying about individual parts of  
23 the document as to Mr. Rothschild's indication  
24 about highlighting certain sections.

25 THE COURT: Before we go further let's

1 go back to the first page if I could ask.

2 (Brief pause.)

3 THE COURT: All right, that objection is  
4 overruled. You can proceed.

5 BY MR. ROTHSCHILD:

267 6 Q. Could you go to the first highlighted text,  
7 Matt, and could you read this text into the  
8 record and explain why it's important?

9 A. Yes.

10 MR. MUISE: Objection to the reading of this  
11 portion of the text into the record on the basis  
12 of hearsay.

13 MR. ROTHSCHILD: I'm not offering it for  
14 the truth, Your Honor.

15 THE COURT: And the author of this is?

16 MR. ROTHSCHILD: If you can go to the second  
17 page, Matt? Charles Thaxton and John Buell, the  
18 president and academic editor of the foundation  
19 including during the times Pandas was being  
20 developed.

21 THE COURT: Do you have any additional  
22 objection?

23 MR. MUISE: Your Honor, this is a document  
24 that self-authenticates. I mean, it's fine that  
25 he can read that off the document, but there's

1 no way to authenticate that this is in fact that  
2 document.

3 THE COURT: Well, it doesn't self  
4 authenticate, but that's not the issue.  
5 You know, in a 703 analysis it's part of  
6 an expert report. I think the question is  
7 whether you don't think it's authentic,  
8 not whether it self-authenticates, because  
9 we're not in a strictly, or in a strict  
10 hearsay inquiry. We've been down this  
11 road before, hearsay is admissible. So the  
12 self-authenticating part is not it.

13 Now, if you tell me that you don't think  
14 this is real, if you tell you think it was  
15 altered, if you tell me that there's no way for  
16 you to know, I might consider that. But you  
17 had the report, you've had the ability to check,  
18 presumably you've had the ability to access FTE  
19 documents. So if it's something other than it  
20 doesn't self-authenticate then I'm going to  
21 overrule the objection.

22 MR. MUISE: Well, that was in response to  
23 just showing his signature. My objection is the  
24 hearsay objection that we stated at the front,  
25 at the beginning of this testimony. It is the

1 context. This is a philosophical, a theological  
2 claim, not a scientific claim.

3 THE COURT: Well, it is a newsletter to  
4 close this loop, but it's a newsletter that  
5 appears to the court to have been published by  
6 The Foundation For Thought and Ethics by  
7 Mr. Buell. The court knows what Mr. Buell's  
8 position is, and Mr. Thaxton. They are, it is  
9 not a matter of controversy that they are the  
10 publishers of the book Of Pandas and People.  
11 It is a work that is roughly contemporaneous  
12 with I think the first publishing or at or  
13 around the time of the publishing of the book,  
14 or at least if predates it, it doesn't predate  
15 it by much, I'm not certain, so I'll overrule  
16 the objection.

17 MR. ROTHSCHILD: Your Honor, one more thing.  
18 Mr. Muise is objecting because these are  
19 philosophical and theological statements, and  
20 I think most of what Dr. Forrest is going to  
21 testify about surely are, and it is the  
22 plaintiff's position that intelligent design  
23 is at its core a philosophical, theological,  
24 religious statement. So that, I mean, that's  
25 what she's here to testify about, so it's not

1 going to be surprising if those kinds of  
2 statements are, you know, the core of  
3 Dr. Forrest's testimony today.

4 THE COURT: Well, if you said that to  
5 get Mr. Muise to stop making continued  
6 objections, you're probably going to fail.  
7 So let's move on.

8 BY MR. ROTHSCHILD:

268 9 Q. Dr. Forrest, if you could read that and  
10 explain why it's significant to the issue of  
11 the foundation mission or agenda.

12 A. Yes. "Many of the same Christian parents,  
13 however, are not concerned about the teaching  
14 of evolution in public schools. Falling SAT  
15 scores and increasing drug abuse, violence,  
16 abortion, and homosexual activity among teens  
17 are the concerns of these parents. Why the fuss  
18 about creation being taught in public schools  
19 anyway they ask. As we shall show, there is a  
20 fine line of reasoning which usually lies hidden  
21 when either the subject of origins or morality  
22 is discussed, but which actually ties the two  
23 concerns together. Once this reasoning is  
24 understood it becomes evident that not only does  
25 the exclusive teaching of evolution encourage



1 our children's rejection of Judeo-Christian  
2 morality, but it also prepares young minds for  
3 the reception of religious views which these  
4 same parents would find unacceptable."

269 5 Q. Before you explain the significance, you  
6 did read "it's a fine line of reasoning." It  
7 didn't say "a fine line," just "a line," so it's  
8 "a line of reasoning," so --

9 A. Did I insert the word "fine?"

270 10 Q. You did?

11 A. I'm sorry. "There is a line of reasoning."

271 12 Q. If you could explain why is this important  
13 to your opinion about the FTE's agenda?

14 A. This shows that FTE's objection to the  
15 teaching of evolution is it undermines moral  
16 values and the religious beliefs of young  
17 students.

272 18 Q. Is that a common theme in the creationist  
19 movement?

20 A. That's found throughout the creationist  
21 movement.

273 22 Q. Matt, I think there's another passage that  
23 Dr. Forrest asked you to highlight.

24 A. "To understand how this can happen we  
25 must recognize that there are two basic views

1 of world and man, theism and naturalism. These  
2 are philosophical categories, not religious.  
3 They can also be called metaphysical positions,  
4 world views, or idea systems. Philosopher or  
5 not, we all have such a view. Theism and  
6 naturalism are mutually exclusive systems of  
7 thought as can be seen from a single  
8 distinction. Theism affirms a fundamental  
9 creator/creature distinction, whereas naturalism  
10 denies this distinction and defines total  
11 reality in terms of this world."

274 12 Q. Why is that important?

13 A. That's very important because one of  
14 the most common themes in creationism is the  
15 rejection of naturalism to juxtapose it as  
16 the opposite of theism, and for that reason to  
17 see evolution as inherently atheistic.

275 18 Q. If you could highlight another passage,  
19 Matt? Could you read this into the record,  
20 please?

21 A. "That's why Christians, in fact all  
22 theists, must insist that whenever origins  
23 are discussed, public schools allow the teaching  
24 of the evidence for creation alongside  
25 instruction in the naturalistic concept of

1 evolution. If the scientific rationale for  
2 both creation and evolution were taught there  
3 would be an equality demanded by the symmetry  
4 of the two metaphysical views, theism and  
5 naturalism. If both are not taught, it is not  
6 just the subject of origin that is affected.  
7 The whole of naturalistic thought is given  
8 privileged status by the state, with the de  
9 facto result that young minds are prepared to  
10 reject theistic approaches to morality and  
11 religion. At the same time they are prepared to  
12 receive both moral relativism and the various  
13 naturalistic religions such as unity, Buddhism,  
14 Scientology, and religious humanism."

276 15 Q. Do you have an understanding based on this  
16 passage why the authors are advocating the  
17 teaching of creationism?

18 MR. MUISE: Objection. That calls for  
19 speculation, Your Honor.

20 THE COURT: I'll sustain the objection.

277 21 Q. We'll move on to the next exhibit. Matt,  
22 could you pull up Exhibit 566? And do you  
23 recognize this document?

24 A. Yes.

278 25 Q. What is it?

1 A. It's a 1995 fund raising letter written by  
2 Mr. Buell.

279 3 Q. And how did this document come into your  
4 possession?

5 A. This is one of the subpoenaed document that  
6 FTE provided to the legal team, and the legal  
7 team provided it to me.

280 8 Q. And have you highlighted portions of this  
9 letter that are important to your opinion?

10 A. I have.

281 11 Q. Matt, could you go to the first highlighted  
12 passage?

13 MR. MUISE: Your Honor, we object on the  
14 basis of hearsay.

15 THE COURT: Overruled.

282 16 Q. This indicates that this is a discussion  
17 of the book Pandas?

18 A. Yes. Shall I read that?

283 19 Q. I'll read that into the record.  
20 "Production of supplemental textbook for  
21 biology is already complete. The teachers  
22 are now using it in all 50 states. This book  
23 Of Pandas and People is favorably influencing  
24 the way origins is taught in thousands of public  
25 school classrooms." This is what Mr. Buell is

1 conveying to his fund raisers?

2 A. Yes. He's talking about the book Of Pandas  
3 and People.

284 4 Q. Matt, could you go to the next highlighted  
5 passage? And could you read that into the  
6 record? Go on to the next page where this  
7 continues.

8 A. "Our commitment is to see the monopoly of  
9 naturalistic curriculum in the schools broken.  
10 Presently, school curriculum reflects a deep  
11 hostility to traditional Christian views and  
12 values and indoctrinates students to this  
13 mindset through subtle but persuasive arguments.  
14 This is not merely a war over ideas, but over  
15 young people and how their lives will be shaped.  
16 The current deplorable condition of our schools  
17 results in large part from denying the dignity  
18 of man created in God's image. Even junior high  
19 students recognize that if there is no creator,  
20 as textbooks teach, then there is no law giver  
21 to whom they must answer, and therefore no need  
22 of a moral lifestyle, much less a respect for  
23 the life of their fellow man. The message of  
24 the foundation is that this is simply  
25 unacceptable."

285 1 Q. What do you understand Mr. Buell to be  
2 conveying?

3 MR. MUISE: Objection, calls for  
4 speculation.

5 THE COURT: Doesn't the document speak for  
6 itself?

7 MR. ROTHSCHILD: I mean, I think based on  
8 her overall review of the documents and the  
9 history of the writing of Pandas I think  
10 Dr. Forrest can give some helpful conclusions  
11 about that. I think the document does speak  
12 for itself very well.

13 THE COURT: Well, on that basis I'll sustain  
14 the objection.

15 MR. ROTHSCHILD: Okay.

16 BY MR. ROTHSCHILD:

286 17 Q. You mentioned that Dean Kenyon was one of  
18 the authors of Pandas?

19 A. Yes.

287 20 Q. And he was the expert in the Edwards case?

21 A. Yes.

288 22 Q. Tell us what do you know about Dean Kenyon?

23 A. Dr. Kenyon is a biophysicist who taught at  
24 San Francisco State University. He's one of the  
25 co-authors of Pandas. He's also a fellow of the

1 Center for Science and Culture. He's a member  
2 of the intelligent design movement. He also  
3 wrote sections of young earth creationists books  
4 in the 1970's.

289 5 Q. And can you identify any of those books  
6 for us?

7 A. One of those books was by Henry Morris and  
8 Gary Parker. I believe the title is What Is  
9 Creation Science?

290 10 Q. Go ahead.

11 A. Another of those books that he wrote a  
12 section for was by the young earth creationist  
13 A.E. Wilder Smith.

291 14 Q. And who is Henry Morris?

15 A. Henry Morris is affiliated with the  
16 Institute for Creation Research. He's widely  
17 known as the leading, the leader of the young  
18 earth creationist contingent in the United  
19 States.

292 20 Q. Who is the other author, named author of  
21 Pandas?

22 A. Percival Davis.

293 23 Q. What do you know about him?

24 A. Percival Davis is the co-author of two  
25 earlier books, both taking the young earth

1 creationist view. He was the co-author in 1967  
2 with Wayne Frair of The Case for Creation. He  
3 was the co-author of the later edition of that  
4 book with Mr. Frair, 1983, called A Case For  
5 Creation.

294 6 Q. Matt, could you pull up Exhibit 344. Is  
7 that the cover page of A Case For Creation?

8 A. Yes, that's the 1983 edition.

295 9 Q. And it's making a case for young earth  
10 creation?

11 A. Yes. Near the end of the book they side  
12 with the young earth view.

296 13 Q. Did Mr. Davis ever renounce his support for  
14 young earth creationism before he became  
15 involved with or wrote Pandas?

16 A. Mr. Davis?

297 17 Q. Yes.

18 A. Not that I'm aware of, no.

298 19 Q. Has he ever to your knowledge renounced his  
20 support for young earth creationism?

21 A. I'm not aware that he has, no.

299 22 Q. Who else has been involved with the  
23 creation of Pandas? You mentioned Mr. Buell  
24 Mr. Davis, Mr. Kenyon.

25 A. One of the other people involved was a lady



1 named Nancy Pearcey. I believe she was one of  
2 the contributing editors to Pandas.

300 3 Q. And what do you know about her?

4 A. She is a young earth creationist. She's  
5 also a long time member of the intelligent  
6 design movement. She's a fellow of the Center  
7 for Science and Culture.

301 8 Q. And has she been involved with any other  
9 publications that you're aware of?

10 A. Yes.

302 11 Q. And what is that?

12 A. The Bible Science Newsletter.

303 13 Q. And Matt, if you could pull up Exhibit 634?  
14 Is this an example of the Journal of the Bible  
15 Newsletter that Dr. Pearcey was the editor of?

16 A. That's the May 1989 edition.

304 17 Q. And Matt, could you highlight the section  
18 to the right that says "dedicated to"?

19 MR. MUISE: Your Honor, we object on the  
20 basis of hearsay.

21 THE COURT: Do you want to expand on your  
22 objection other than hearsay?

23 MR. MUISE: Again, Your Honor, it goes to --  
24 you've got a Bible science newsletter. There's,  
25 I mean the context for this does not fit into

1 what, you know, they're trying to claim that  
2 this isn't science. Again they're relying on  
3 philosophical and theological claims. This is  
4 specifically from a Bible science newsletter.

5 MR. ROTHSCHILD: Your Honor, what we're  
6 trying to demonstrate is that the book that is  
7 in the Dover school Of Pandas and People is a  
8 creationist book, and we have various forms of  
9 evidence, including that the authors and other  
10 editors involved with the creation of that book  
11 are clear and explicit creationists.

12 THE COURT: Is the author of this newsletter  
13 one and the same with a co-author?

14 MR. ROTHSCHILD: Nancy Pearcey is, and I  
15 think Dr. Forrest will testify, was involved  
16 with the creation of Pandas. She's not listed  
17 as a named author, but is a contributing editor,  
18 a reviewer of the book, and --

19 MR. MUISE: And again, Your Honor, this is  
20 going to, you're talking about a person's  
21 private religious beliefs they're putting in  
22 a Bible of science newsletter.

23 THE COURT: We'll see whether it is.  
24 I understand that objection. Your general  
25 objection to the document is overruled, but

1 you can interpose more clinical objections as  
2 we get into the parts of the newsletter other  
3 than the highlighted part, which is where we  
4 are now. So the objection to the newsletter  
5 generally is overruled. The objection to this  
6 highlighted passage is overruled.

7 BY MR. ROTHSCHILD:

305 8 Q. And could you read the highlighted passage?

9 A. Yes. "Dedicated to special creation,  
10 literal natural Bible interpretation, divine  
11 design and purpose in nature, a young earth,  
12 a universal Noachian flood, Christ as God and  
13 man, our saviour, Christ centered scientific  
14 research, the inerrancy of scripture."

306 15 Q. Is this a newsletter devoted to making the  
16 case for young earth creationism?

17 A. Yes, it is.

307 18 Q. And, Your Honor, just to clarify one point  
19 on the record, if I could approach the witness?

20 THE COURT: You may.

308 21 Q. Dr. Forrest, I'm handing you what we marked  
22 as P-11, which is the 1993 version of Of Pandas  
23 and People, and I'm turning your attention to  
24 the page little Roman numeral III, which  
25 includes acknowledgments, and is Nancy Pearcey

1 mentioned on that page?

2 A. Yes.

309 3 Q. And what is she mentioned as having done?

4 A. Under editors and contributors she is  
5 mentioned as the person who contributed the  
6 overview chapter.

310 7 Q. Thank you. Do you have an opinion about  
8 whether the book Of Pandas and People is a  
9 creationist book?

10 A. Yes.

311 11 Q. And what is that opinion?

12 A. It is a creationist book.

312 13 Q. And why do you say that?

14 A. First, the inspection of the content of the  
15 1993 edition contains references to a creator.  
16 There is a reference to a master intellect.  
17 There is a reference to an intelligent designer  
18 who shapes living forms out of clay for example,  
19 and other such things. You have the usual  
20 creationist's criticisms of evolutionary theory.  
21 In addition to the content of the book itself  
22 the earlier drafts of Pandas are written in the  
23 language of creationism using that term.

313 24 Q. Did you in fact review drafts of Pandas?

25 A. Yes.

314 1 Q. And how did you, how did those come into  
2 your possession so you could review them?

3 A. Those were among the materials that FTE  
4 supplied under subpoena to the legal team,  
5 and the legal team provided them to me.

315 6 Q. I'm going to ask you now to look at several  
7 documents and ask you to confirm whether these  
8 were in fact drafts of Pandas that you reviewed  
9 in order to prepare your supplemental report and  
10 your testimony today. Matt, could you start by  
11 pulling up Exhibit P-563? Do you recognize this  
12 document?

13 A. Yes.

316 14 Q. What is it?

15 A. That is the table of contents for a 1983  
16 document, a draft entitled Creation Biology  
17 Textbook Supplements.

317 18 Q. And you said it's a 1983 draft. What did  
19 you do to determine that?

20 A. That year is written by hand at the top of  
21 one of the pages, and it's also in the header  
22 line in later pages of the book, apparently the  
23 header line put there by the word processor.

24 MR. MUISE: I'm going to object based on  
25 the hearsay.

1 THE COURT: Objecting to --

2 MR. MUISE: This document in particular,  
3 she's referring to some handwritten components  
4 of this particular document as well.

5 THE COURT: That's not a hearsay objection,  
6 is it?

7 MR. MUISE: If you have writing on the  
8 document, Your Honor, that's hearsay upon  
9 hearsay.

10 THE COURT: It doesn't go to the truth.  
11 She's saying there's writing on the document.

12 MR. MUISE: I believe she was going to  
13 testify that's how she determined the apparent  
14 age of this particular document. So she  
15 obviously had to rely on the truth of that.

16 MR. ROTHSCHILD: Your Honor, she relied on  
17 both the handwriting and what I think she is  
18 describing something in typewriting. Those are  
19 the only date markings on the document. That's  
20 how she was able to make a judgment about  
21 whether that is in fact the date. It's not  
22 essential to our proof, Your Honor, but I don't  
23 think there's anything --

24 THE COURT: I think it goes to weight.  
25 I'll overrule the objection.

1 BY MR. ROTHSCHILD:

318 2 Q. Matt, could you pull up Exhibit P-560.

3 And this is, as many of these documents has what  
4 looks like an envelope page or a folder page on  
5 it, but if you could go to the next page, Matt?  
6 Do you recognize this document?

7 A. Yes, this document is a later draft  
8 entitled Biology and Creation by Dean H. Kenyon,  
9 P. William Davis, who was Percival Davis. It's  
10 copyrighted 1986 by The Foundation for Thought  
11 and Ethics.

12 MR. MUISE: Again, Your Honor, we'd object  
13 to the admission or use of this document in  
14 testimony on the basis of hearsay.

15 THE COURT: Where did this come from,  
16 Mr. Rothschild?

17 MR. ROTHSCHILD: We served a subpoena on The  
18 Foundation for Thought and Ethics, and the  
19 documents were produced in response to that  
20 subpoena. A number of these drafts were shown  
21 to Mr. Buell, who confirmed that they are in  
22 fact drafts of what became Pendas. We also  
23 have other evidence that demonstrates that that  
24 is the case, and that's how Dr. Forrest received  
25 it.

1 THE COURT: Specifically on the point of  
2 whether or not Buell disavowed any of this  
3 writing, do you have anything to say about that?

4 MR. MUISE: I'm not aware of him disavowing  
5 the writing. I'm not sure whose signature is  
6 on the, "Sincerely Yours," whose hand this  
7 letter is actually from.

8 THE COURT: Was Mr. Buell specifically  
9 deposed on these matters?

10 MR. ROTHSCHILD: He was, Your Honor.

11 THE COURT: Unless you have some basis to  
12 tell me that he disavowed what's on here or  
13 that this is not the document as it was turned  
14 over in discovery, then I would be inclined to  
15 overrule the objection.

16 MR. MUISE: It still doesn't affect the  
17 hearsay objection, Your Honor, whether he  
18 acknowledges it's the document or not, and  
19 I understand you've been overruling the  
20 objections to hearsay, but I'm making an  
21 objection for the record we believe this  
22 document --

23 THE COURT: Well, there's a reliability  
24 aspect that I'm considering. I think it is  
25 technically hearsay. The hearsay objection



1 more doesn't help me under 703. I think the  
2 purpose of this type of torturous, albeit  
3 necessary, analysis is to give you the  
4 opportunity to do exactly what we're doing.  
5 And so on that basis I'll overrule the  
6 objection. You may proceed.

7 BY MR. ROTHSCHILD:

319 8 Q. I think you described that document as  
9 another one of the draft documents you reviewed?

10 A. Yes.

320 11 Q. Could you pull up P-1, Matt? Do you  
12 recognize this document?

13 A. Yes. This one is entitled Biology and  
14 Origins, again by Dean H. Kenyon, P. William  
15 Davis, who was Percival Davis, copyright 1987,  
16 by The Foundation for Thought and Ethics. This  
17 is another draft.

321 18 Q. Matt, could you pull up P-562?

19 A. This is a cover page I believe.

322 20 Q. Why don't we go to the next page, Matt.  
21 Do you recognize this document based on the  
22 second page of the exhibit?

23 A. Yes, this is a draft entitled Of Pandas and  
24 People: The Central Questions of Biological  
25 Origins ,by Dean H. Kenyon, P. William Davis,

1 copyright 1987, Foundation for Thought and  
2 Ethics.

323 3 Q. Another draft you reviewed?

4 A. Another draft.

324 5 Q. And Matt, could you pull up P-562? Again  
6 I think this looks like an envelope page. If  
7 you could go to the next page? Do you recognize  
8 this document?

9 A. Yes. This is another draft, Of Pandas and  
10 People: The Central Questions of Biological  
11 Origins, Dean H. Kenyon, P. William Davis as  
12 authors. Copyright 1987, Foundation for Thought  
13 and Ethics.

325 14 Q. And one more draft document, if you could  
15 pull up P-565? Do you recognize this document?

16 A. Yes. This is a document entitled  
17 Introduction to Summary Chapter. It appears  
18 to be a summary of the chapters of Pandas.

19 MR. MUISE: Again, Your Honor, I'm going to  
20 object to this document based on the hearsay.

21 THE COURT: Overruled.

326 22 Q. And was this another draft you reviewed?

23 A. Yes, I have this to review.

327 24 Q. Were you able to place a date on the draft?

25 A. As nearly as I could figure this must have

1     been produced around 1983 judging by Mr. Buell's  
2     comments in his deposition.

328 3     Q. You read Mr. Buell's deposition on the  
4     subjects of these drafts?

5     A. Yes.

329 6     Q. Three of the documents that we looked at,  
7     Biology and Origins and two drafts of Of Pandas  
8     and People have the copyright date 1987 on them.  
9     Were you able to by examining the documents  
10    determine when in 1987 they would have been  
11    created?

12    A. Yes, there was some indication.

330 13    Q. And what was that indication and what did  
14    it tell you?

15    A. There were two 1987 drafts in which in the  
16    introduction to teachers the June 19th, 1987  
17    Edwards decision was referred to in a footnote.  
18    In an earlier draft in that introduction that  
19    footnote is missing. There's no reference to  
20    Edwards, indicating that that was done before  
21    Edwards. The other two 1987 drafts were done  
22    after the Edwards decision.

331 23    Q. And is it correct that it's Biology and  
24    Origins that doesn't have the reference to  
25    Edwards, and the two Pandas drafts titled

1 Pandas --

2 A. Yes, I believe that's correct.

332 3 Q. They do mention Edwards?

4 A. Yes.

333 5 Q. Matt, could you go back to the timeline?

6 And could you place Biology and Creation,

7 Biology and Origins, and the two Pandas

8 drafts on the timeline? Thank you. Did you

9 compare the drafts of Pandas to the published

10 versions?

11 A. Yes, I did.

334 12 Q. And did your review of the drafts of Pandas

13 indicate whether it had originally been written

14 as a creationist book?

15 A. Yes, my review of the draft shows that

16 it was written as a creationist book.

335 17 Q. And what caused you to come to that

18 conclusion?

19 A. Well, the earlier drafts are all stated in

20 the language of creationism. The word is used

21 in various cognates as that term are used

22 throughout.

336 23 Q. Can you give us a specific example of

24 where that occurred?

25 A. Specific example?

337 1 Q. Specific example of the use of creationism  
2 in the early drafts.

3 A. Yes, it's used in a definition.

338 4 Q. Okay. And have you highlighted text in  
5 each of the drafts as well as the published  
6 versions which illustrate this point?

7 A. Yes.

339 8 Q. Matt, could you pull up the 1986 Biology  
9 and Creation, P-560, and go to page 210? And  
10 is this the text you're referring to as the  
11 definition?

12 A. Yes. That's it.

340 13 Q. And could you read what you're referring to  
14 as the definition in the draft Biology and  
15 Creation?

16 A. Yes, this is a definition of creation.

17 "Creation means that the various forms of life  
18 began abruptly through the agency of an  
19 intelligent creator with their distinctive  
20 features already intact. Fish with fins and  
21 scales, birds with feathers, beaks, and wings,  
22 etc."

341 23 Q. The proposition stated there, is there a  
24 term for that?

25 A. Yes, there's a term for this. Abrupt

1 appearance, or special creation.

342 2 Q. Matt, could you now pull up Biology and  
3 Origins, P-1? And including the highlighted  
4 text on page 213, and I'm not going to ask you,  
5 you'd have to do a lot of reading, I won't ask  
6 you to do this, is this the same definition we  
7 just saw in Biology and Creation, creation means  
8 various forms of life began abruptly?

9 A. Yes. That's the same.

343 10 Q. Matt, could you now go to P-562, which is  
11 one of the draft titles of Of Pandas and People  
12 and go to pages 2-14 through 15 where the  
13 definitions are depicted? And is it the case  
14 that in this draft titled Pandas we still have  
15 this definition, creation means that various  
16 forms of life began abruptly?

17 A. Yes.

344 18 Q. Could you go, Matt, to P-652? And this is  
19 another draft of Pandas with copyright 1987?

20 A. Yes.

345 21 Q. And Matt, could you pull up the definition  
22 and the highlighted text there? That's changed  
23 now, hasn't it?

24 A. Yes, there is a change.

346 25 Q. Could you read the text of this definition

1 section?

2 A. "Intelligent design means that various  
3 forms of life began abruptly through an  
4 intelligent agency, with their distinctive  
5 features already intact. Fish with fins and  
6 scales, birds with feathers, beaks, wings, etc."

347 7 Q. And Matt, could you pull up P-6? This  
8 is the first published version of Pandas?

9 A. Yes.

348 10 Q. And could you go to page 99 through 100,  
11 Matt? The definition we saw in that last draft  
12 of Pandas made it into the published version in  
13 1989?

14 A. Yes, this is the published version.

349 15 Q. "Intelligent design means that various  
16 forms of life began abruptly through an  
17 intelligent agency with their distinctive  
18 features already intact. Fish with fins and  
19 scales, birds with feathers, beaks, and wings,  
20 etc." And then if you could pull up P-11, and  
21 go to page 99? Same definition as used there  
22 for intelligent design?

23 A. Yes, and this is the 1993 definition of  
24 Pandas.

350 25 Q. And notwithstanding the substitution of a

1 few words, is that still a declaration of the  
2 proposition of special creation?

3 A. Yes. It's a definition in terms of abrupt  
4 appearance.

351 5 Q. And is that special creation?

6 A. Yes, special creation.

352 7 Q. And based on your examination, is what  
8 occurred here is that the same definition was,  
9 used only substituting words intelligent design  
10 and intelligent agency for creation and  
11 intelligent creation?

12 A. Yes, that substitution was made.

353 13 Q. Matt, could you pull up the slide we have  
14 to depict that?

354 15 Q. And we couldn't get all the versions  
16 up there, but we have Biology and Creation,  
17 Biology and Origins, and the first of the  
18 two Pandas drafts, and then the final published  
19 version as being used in Dover, and the only  
20 substitution is intelligent design for creation  
21 and intelligent agency for intelligent creator?

22 A. Yes, that's correct.

355 23 Q. I'd like to go back to the timeline and  
24 just review what you've observed here. We have  
25 this 1986 Biology and Creation draft, and that



1 uses the definition creation equals life began  
2 abruptly?

3 A. Yes.

356 4 Q. And that same definition is used in Biology  
5 and Origins in 1987?

6 A. Correct.

357 7 Q. And then you have the Edwards decision, and  
8 that was the case which ruled that creation  
9 science is unconstitutional?

10 A. Correct.

358 11 Q. And the court in that case considered Dean  
12 Kenyon's affidavit in which he defined creation  
13 as being abrupt appearance?

14 A. That's correct.

15 MR. MUISE: Your Honor, I'm kind of slow on  
16 the take obviously, but the claim that creation  
17 science holding in Edwards, I'm going to object  
18 based on the prior objection.

19 THE COURT: We'll sustain the objection.  
20 Again the court understands what that case said.  
21 That's not a necessary part of this analysis  
22 in any event. The objection is sustained.

359 23 Q. And Dr. Kenyon in that affidavit also said  
24 creation science and evolution are the only  
25 two possible alternatives?

1 A. Right. The only two alternatives.

360 2 Q. And then after the Edwards decision we have  
3 one of these drafts of Pandas still define  
4 creation as life began abruptly?

5 A. Yes.

361 6 Q. But by the second draft it switched to  
7 intelligent design equals life began abruptly?

8 A. Correct.

362 9 Q. That continues into the two published  
10 versions?

11 A. That's right.

363 12 Q. Was the substitution of intelligent design  
13 for creation in the definitions section the  
14 only incident where intelligent design was  
15 substituted for creation from the drafts to  
16 what was ultimately published?

17 A. No. That substitution was made throughout.

364 18 Q. Have you prepared an exhibit to demonstrate  
19 this point?

20 A. Yes.

365 21 Q. Matt, could you pull up the first slide of  
22 the exhibit? And I'm going to ask you what this  
23 depicts, but first could you explain how this  
24 graph was created?

25 A. This graph was created based on a word

1 count of the word, a count of the number of  
2 times the word "creation" was used, the number  
3 of times the word "design" was used. The counts  
4 were conducted on ASCII files on the raw text of  
5 the draft.

366 6 Q. Did you do this yourself or did you ask  
7 somebody to do it for you?

8 A. The NCSC staff did the word counts and  
9 created the chart.

367 10 Q. Can you tell us, did you do anything to  
11 confirm the accuracy of their work?

12 A. Yes. I recreated the word counts on a  
13 couple of the drafts myself and got exactly  
14 the same results, the same counts.

368 15 Q. Can you describe for us what this graph  
16 depicts?

17 A. The graph depicts the number of times these  
18 word were used in the various drafts. For  
19 example, on the left-hand side you can see the  
20 in Creation Biology, 1983, the term "creation"  
21 was used right about 150 times. The word  
22 "design" was used about 50 times, and so the  
23 red line marks the number of times the word  
24 "creation" occurs in the drafts. The blue line  
25 marks the number of times the term "design" is

1 included in the drafts. What you see in version  
2 1, 1987, in that draft of Pandas you see that  
3 subsequent to that version there is an abrupt  
4 decline in the number of times the word  
5 "creation" is used, and you can see that in  
6 version 2 it's used less than 50 times in Pandas  
7 1987 version 2, whereas in Pandas 1987 version 2  
8 the number of uses of the word "design" rises  
9 steeply to somewhere between 250 and 300 times.

369 10 Q. I noticed that in the earlier versions  
11 where "creation" is still being used quite a  
12 bit you do have also fairly significant use of  
13 the word "design." Do you draw any conclusions  
14 based on that?

15 A. Yes. The conclusion is that they are being  
16 used interchangeably. They're virtually  
17 synonymous.

370 18 Q. And did you read these drafts?

19 A. Yes, I looked through the drafts, yes.

371 20 Q. And based on reading them is that what's  
21 depicted graphically here is consistent with  
22 what you observed when you read it?

23 A. Yes. The visual inspection shows very  
24 clearly the substitution of the term "design"  
25 for the term "creation."

372 1 Q. And was it also the case that in the early  
2 drafts the terms were sometimes used  
3 interchangeably?

4 A. Yes.

373 5 Q. Matt, could you pull up the next slide?  
6 And this is isn't terribly different, but why  
7 didn't you describe what this depicts?

8 A. It's a bit broader search. You'll notice  
9 that the word "creation" has an ending, it has  
10 an "-is" ending. That is so that the counter  
11 will pick up any cognate of that word,  
12 creationist or creationism, that both will be  
13 counted, and here we're looking for the term  
14 "intelligent design" rather than just "design."  
15 What this indicates is that you see the same  
16 thing in these drafts. In the early drafts you  
17 see the use of the term "creationism" and its  
18 various cognates.

19 Not very much use at all of the term  
20 "intelligent design." In fact, in Creation  
21 Biology it's zero times. And then subsequent  
22 to the version 1 of Pandas 1987 you see a steep  
23 decline in the use of the term "creation" and  
24 its various cognates, and you see a very sharp  
25 rise in the use of the term "intelligent design"

1 in that second version of Pandas of 1987.

374 2 Q. And based on your review do you see the  
3 change happening after the Edwards decision?

4 A. Yes.

375 5 Q. Have you seen any other documents that  
6 suggest that the foundation for thought and  
7 ethics understood that the Edwards decision  
8 had consequences for the book it was preparing?

9 A. Yes, I have.

376 10 Q. Matt, could you pull up Exhibit P-350?  
11 What is this document?

12 A. This is a January 30th, 1997 letter written  
13 by Mr. Buell to Mr. Arthur Bartlett of Jones &  
14 Bartlett Publishers. He is soliciting interest  
15 in the Pandas text.

377 16 Q. And is that a mainstream publisher?

17 A. It's a publisher of textbooks. Apparently  
18 it publishes a lot of textbooks.

378 19 Q. Did Jones & Bartlett end up publishing  
20 Pandas?

21 A. No.

379 22 Q. Who did?

23 A. Houghton Publishing.

380 24 Q. And what kind of books does Houghton  
25 Publishing publish?

1       A. It's an agricultural publishing firm. They  
2 do not employ science writers, or at that time  
3 did not employ science writers or science  
4 editors.

381 5       Q. Matt, could you go to the second page of  
6 the document? And I asked you to highlight  
7 in that, the third paragraph, it says here, "  
8 Our manuscript is entitled Biology and Origins."  
9 That was a working title for Pandas as we saw it  
10 in the earlier draft?

11       A. Yes, that is a working title.

382 12       Q. And now could you go back to the first page  
13 of the document, Matt? And could you illuminate  
14 the passages that Dr. Forrest asked you to  
15 highlight? And could you read that into the  
16 record, Dr. Forrest?

17       A. "In ruling on the so-called Louisiana  
18 Balance Treatment acts, this spring the U.S.  
19 Supreme Court may not affirm state mandated  
20 teaching of creation, but they will almost  
21 certainly let stand the above academic freedom  
22 for teachers."

383 23       Q. Do you have an understanding of what case  
24 Mr. Buell is referring to here?

25       A. He's referring to the Edwards case.

384 1 Q. And if you could go to the next highlighted  
2 passage, Matt? Could you read this into the  
3 record?

4 A. "The enclosed projection showing revenues  
5 of over 6.5 million in five years are based upon  
6 modest expectations for the market, provided the  
7 U.S. Supreme Court does not uphold the Louisiana  
8 Balanced Treatment acts. If by chance it should  
9 uphold it, then you can throw out these  
10 projections. The nationwide market would be  
11 explosive."

385 12 Q. What do you understand Mr. Buell to be  
13 conveying there?

14 MR. MUISE: Objection. Calls for  
15 speculation.

16 MR. ROTHSCHILD: Your Honor, I think  
17 Dr. Forrest can interpret this in relation what  
18 she has studied about the writing of Pandas and  
19 Mr. Buell's stated rationale.

20 THE COURT: No, I think it speaks for  
21 itself. I'll sustain the objection.

22 BY MR. ROTHSCHILD:

386 23 Q. Do the drafts of Pandas that you reviewed  
24 address the issue of the age of the earth?

25 A. Yes.



387 1 Q. And how do they treat that?

2 A. They recognize the various positions on  
3 the age of the earth among different types of  
4 creationists.

388 5 Q. And do they say one is right and one is  
6 wrong?

7 A. No. Actually they recognize the young  
8 earth view, the old earth view, and although  
9 the preference is clearly for the old earth  
10 view, they treat the young earth view  
11 respectfully as a scientific position which  
12 just simply needs more research.

389 13 Q. I'd like you to look at one exhibit I think  
14 provides an example of that. Can you pull up  
15 P-555? This is what you called the summary  
16 chapter 1 of the drafts that Mr. Buell was  
17 provided by the foundation?

18 A. Correct.

390 19 Q. And Matt, could you turn to page 22 of the  
20 document and highlight the first passage? Could  
21 you read this into the record, Dr. Forrest?

22 A. "The standard evolutionary interpretation  
23 is that rock strata around the world were laid  
24 down over several million years. Thus, they  
25 document a time sequence. Organisms that appear

1 as fossils in lower strata lived earlier than  
2 those in higher strata."

391 3 Q. And is this your understanding of the sort  
4 of the standard evolutionary interpretation?

5 A. It's the standard evolutionary view.

392 6 Q. Could you go to the next passage, please,  
7 and could you read that into the record,  
8 continuing on to the next page?

9 A. "Among creationists there is considerable  
10 skepticism regarding this traditional  
11 interpretation. Three major alternative  
12 interpretations are found in creationist  
13 literature. One, old earth creation. Some  
14 creationists accept the same time sequence in  
15 the rocks as evolutionists do, but they draw a  
16 different conclusion. They propose that at  
17 various times throughout the history of the  
18 earth an intelligent agent stepped into the  
19 course of natural history to create a new type  
20 of living thing."

393 21 Q. Before you go on, Dr. Forrest, at this time  
22 as of the writing of this draft were they still  
23 using the term "creation" for the central  
24 concept of the book?

25 A. Yes.

394 1 Q. But they're referring here to an  
2 intelligent agent stepping into the course of  
3 natural history to create a new type of living  
4 thing?

5 A. That's correct.

395 6 Q. That proposition, is that the same thing  
7 that's stated in the writings of intelligent  
8 design?

9 A. Yes.

396 10 Q. Why don't you go on --

11 A. "Number 2, young earth creation. It is  
12 possible that the earth is actually quite young,  
13 and that the order we see in the rocks is due to  
14 something besides the progression of life  
15 forms."

397 16 Q. And then if you could do just one more  
17 passage?

18 A. One more, sorry. "3, agnostic  
19 creationists. Under this label we include  
20 scientists who deny that there is any real order  
21 in the fossil record at all."

398 22 Q. These passages indicate there are various  
23 form of creationism?

24 A. Yes. Here there are three.

399 25 Q. And do I understand correctly that this

1 draft is not taking any position on one version  
2 being right and the other being wrong and one  
3 being inside science and one being out?

4 A. They are all considered science.

400 5 Q. Per the authors of this chapter?

6 A. Yes.

401 7 Q. How does Pandas treat this issue of the  
8 age of the earth?

9 A. In Pandas, and I'm speaking of the 1993  
10 version that I looked at, in Pandas all of these  
11 views are subsumed under the grouping of design.  
12 They're referred to as design proponents. There  
13 is some indication that there's a preference for  
14 the old earth view and that the young earth,  
15 that other design proponents prefer to condense  
16 the history, the age of the earth into thousands  
17 of years.

402 18 Q. Based on your reading about the intelligent  
19 design movement, including these drafts but also  
20 more widely, do you find this treatment of the  
21 various arguments for the age of the earth to be  
22 important?

23 A. Yes, they're important.

403 24 Q. Why?

25 A. They're important because it indicates that

1 the young earth view is considered a scientific  
2 view, which they believe creation science to be,  
3 and that they are treating it respectfully and  
4 consider it a part of creation science.

404 5 Q. I think you said during the qualifications  
6 stage of this, of your testimony, that  
7 intelligent design proponents in fact have  
8 called themselves creationists. Is that right?

9 A. Yes, they have.

405 10 Q. Matt, could you pull up Exhibit 360 and  
11 highlight the title and author? Can you read  
12 this into the record and tell us what this  
13 document is.

14 A. Yes. This is a title. It's called  
15 Challenging Darwin's Myth by Mark Hartwig.  
16 That's a slight misspelling. It should be  
17 H-A-R-T-W-I-G.

406 18 Q. And when was this published?

19 A. This was in May of 1995.

407 20 Q. Who is Mark Hartwig.

21 A. Mark Hartwig is an intelligent design  
22 proponent. He's a long time fellow of the  
23 Center of Science and Culture. He also at one  
24 time worked for the Foundation for Thought and  
25 Ethics.

408 1 Q. Have you highlighted certain passages in  
2 this article?

3 A. Yes.

409 4 Q. Matt, could you go to the first highlighted  
5 passage? Could you read this into the record,  
6 please?

7 A. "Today a new breed of young..." --

8 MR. MUISE: Objection, Your Honor. Hearsay.

9 THE COURT: Well now, this might be somewhat  
10 different. You said, Mr. Rothschild, in your  
11 question that the author of this was affiliated  
12 at one time with The Foundation for Thought and  
13 Ethics, is that correct?

14 MR. ROTHSCHILD: I didn't say it, but  
15 Dr. Forrest did.

16 THE COURT: Or in answer to a question that  
17 was stated. Standing out there and unconnected  
18 to either FTE or directly linked to Pandas  
19 there's a danger that we're going to get afield  
20 here. So there may be another basis for the  
21 objection. A proponent of intelligent design  
22 and that proponent's beliefs, if not tied up  
23 some place, I think could be objectionable.

24 MR. ROTHSCHILD: Your Honor, I think  
25 Dr. Forrest testified, and she'll correct me

1 if I'm wrong, that Mr. Hartwig is familiar with  
2 the, affiliated with the Discovery Institute,  
3 which is obviously a central player in this  
4 movement, and I'll warn you in advance that the  
5 next document we're going to look at was written  
6 by Paul Nilsen, another member of the Discovery  
7 Institute, very active, and both of them give a  
8 historical summary of certain aspects, some of  
9 the history of the intelligent design movement.

10 I mean, you'll recall Mr. Muise admonished  
11 Dr. Forrest for not having looked at the so what  
12 document written after her book, and I think she  
13 suggested in reaction to her book. These are  
14 two people writing as insiders of this Wedge  
15 movement and the Discovery Institute about how  
16 this came about and who these people are. So  
17 I think it's extremely relevant. It's exactly  
18 what someone studying the history of the  
19 intelligent design movement would look at as a  
20 primary source for how this movement was  
21 created.

22 THE COURT: All right. I'll overrule the  
23 objection.

24 MR. ROTHSCHILD: Thank you, Your Honor.

25 BY MR. ROTHSCHILD:

410 1 Q. Could you read this passage into the  
2 record?

3 A. "Today a new breed of young evangelical  
4 scholars is challenging those Darwinist  
5 assumptions. They argue that intelligent design  
6 is not only scientific, but is also the most  
7 reasonable explanation for the origin of living  
8 things, and they are gaining a hearing."

411 9 Q. Could you tell us what the term evangelical  
10 means?

11 A. Evangelical refers to a particular position  
12 in Christianity in which the adherents believe  
13 themselves to have the responsibility of  
14 evangelizing, of carrying out what they consider  
15 to be the great commission to carry the gospel  
16 around the globe.

17 MR. MUISE: Your Honor, objection. She  
18 testified that she is has no expertise on  
19 religion, and here she is now expounding on  
20 carrying religious affiliation, the dogmas of  
21 a particular group.

22 MR. ROTHSCHILD: Your Honor, I think based  
23 on both her education, what she teaches, and  
24 what she's written about, while she certainly I  
25 don't think would describe herself as a



1 theologian like Jack Haught, these are the  
2 kind of terms that people in her field would  
3 work with every day and she's certainly worked  
4 with as part of her research and writing.

5 THE COURT: To the extent that the question  
6 is answered I didn't find the answer to be  
7 objectionable, so we won't strike it. So the  
8 objection is overruled as it relates to that  
9 answer, that question and that answer.

10 BY MR. ROTHSCHILD:

412 11 Q. Dr. Forrest, were you able to conclude by  
12 reading the article who the evangelical scholars  
13 were that Mr. Hartwig is referring to?

14 A. He names them.

413 15 Q. And we'll go to another passage when that  
16 occurs and I won't ask you to do that by memory.  
17 Matt, could you go to the next highlighted  
18 passage? And could you read this passage into  
19 the record?

20 A. "In March 1992 a landmark symposium took  
21 place at Southern Methodist University in  
22 Dallas. Phillip Johnson, Steven Meyer, William  
23 Dembski, Michael Behe, and other Christian  
24 scholars squared off against several prominent  
25 Darwinists. The topic was Darwinism science, or

1 philosophy. The remarkable thing about the  
2 symposium was the collegial spirit that  
3 prevailed. Creationists and evolutionists met  
4 as equals to discuss serious intellectual  
5 questions. Not surprisingly, few issues were  
6 resolved, but in today's Darwinist climate,  
7 where dissent is frequently written off as  
8 religious bias, just getting the issues on the  
9 table was an accomplishment."

414 10 Q. And are the individuals named there,  
11 are those the evangelical scholars in the  
12 intelligent design movement that Mr. Hartwig  
13 was referring to?

14 A. Yes. These are the evangelical scholars to  
15 whom he's referring.

415 16 Q. And is he referring to them by another  
17 title as well?

18 A. Christian scholars.

416 19 Q. And another one? Is he referring to them  
20 as creationists?

21 A. Oh, yes. Yes.

417 22 Q. Who were squared off in debate with what he  
23 calls Darwinists or evolutionists?

24 A. Yes. He notes that they are taking  
25 opposing sides.

418 1 Q. This is a good a time as any, are these --  
2 the named individuals, are they important people  
3 in the intelligent design movement?

4 A. These are the leaders. These are the  
5 people who founded the Wedge Strategy.

419 6 Q. That's true of Mr. Johnson, Mr. Meyer,  
7 Mr. Dembski, and Mr. Behe?

8 A. Yes. That's true of all of them.

420 9 Q. I think there's one more passage that we  
10 have highlighted in there.

11 A. "Creationists are still far from winning,  
12 but they believe things are getting better. As  
13 Johnson points out, creationist arguments are  
14 growing more sophisticated, while more  
15 Darwinists are still responding with cliché.  
16 Now it's the creationists who come across as  
17 asking the hard questions and demanding fair  
18 debate."

421 19 Q. Again when he's referring to creationists,  
20 he's referring to those individuals?

21 A. He's talking about those people he named,  
22 yes.

422 23 Q. I think you also said during the  
24 qualifications part of your testimony that  
25 intelligent design and Pandas make many of

1 the same arguments as prior creationists, is  
2 that right?

3 A. Yes.

423 4 Q. Have you prepared a demonstrative exhibit  
5 which addresses that question?

6 A. Yes, I have.

424 7 Q. Matt, could you pull that chart up?  
8 And before we get into the substance, can  
9 you describe what you're attempting to  
10 demonstrate through this exhibit?

11 A. I made a chart showing the line of  
12 development from the young earth scientific  
13 creationism of the 1970's through the 1980's  
14 to intelligent design creationism in the 1990's  
15 to the present.

425 16 Q. And each page of this exhibit depicts a  
17 different argument or theme?

18 A. Yes, each page depicts one aspect that you  
19 find in creationism through these many decades,  
20 three decades.

426 21 Q. And underneath the particular argument or  
22 theme you have a representative statement on  
23 that point?

24 A. Yes.

427 25 Q. And Your Honor will probably be happy to

1 hear, I'm not going to ask Dr. Forrest to read  
2 every one of those statements. We're happy to  
3 make them available to you as part of the  
4 record, but I'm going to ask her just to talk  
5 about the topic and key points within those  
6 statements. So why don't you start with this  
7 first comment, argument, or theme, rejection of  
8 naturalism?

9 A. The first ones comes from 1974, it's  
10 again Henry Morris, a well known young earth  
11 creationist, and he is rejecting naturalism  
12 as an explanation. This is typical in  
13 creationism to reject naturalistic explanations.  
14 Dr. Kenyon in 1986 in his affidavit also rejects  
15 the, or does not accept the claim that there is  
16 a naturalistic origin of life. In 1998 you see  
17 Dr. Dembski in a book called Mere Creation  
18 rejecting naturalism, distinguishing it from  
19 creation, and it's clear here that he rejects  
20 it for religious reasons because he says that,  
21 "As Christians we know naturalism is false.  
22 Nature is not sufficient," and this is very  
23 common throughout creationism.

428 24 Q. And based on your reading of creationist  
25 intelligent design work, what's the alternative

1 to the naturalism that they're rejecting?

2 A. There's only one alternative to a natural  
3 explanation, and that's a supernatural  
4 explanation.

429 5 Q. Could you go to the next page of the chart?

6 And Your Honor, after we're through with this  
7 exhibit if you'd like to take a lunch break,  
8 that would be a good time.

9 THE COURT: All right.

430 10 Q. Evolution's threat to society, is this a  
11 common theme?

12 A. This is also a very common theme. Here you  
13 see Mr. Morris in 1974 charging evolution with  
14 tending to rob life of meaning and purpose, and  
15 I might point out that Phillip Johnson actually  
16 goes a little farther and says it does rob life  
17 of its meaning and purpose. The second quote is  
18 from Duane Frair and Percival Davis, who are the  
19 co-authors of Pandas, and this comes from their  
20 book 1983, A Case For Creation. They also  
21 regard this doctrine of evolution dangerous to  
22 society. The third quote comes from the Wedge  
23 Strategy document itself and makes the same  
24 point, that Darwin portrays human beings not as  
25 moral beings but as animals and machines, and

1 what this does is to undermine human moral  
2 freedom and moral standards.

431 3 Q. And we'll talk more about that document  
4 later, but why don't we go to the next slide?

5 A. The next slide is about abrupt appearance.  
6 This is where life forms appear in the history  
7 of earth fully formed. In 1974 in Henry  
8 Morris's book Scientific Creationism he makes  
9 that point with the animals appearing suddenly  
10 with no transition of, no evidence of earlier  
11 life forms. In Dr. Kenyon's affidavit he says  
12 the same thing, you see abrupt appearance of  
13 animals in complex form, and in Mr. Kenyon and  
14 Percival Davis' book Of Pandas and People, 1993,  
15 of course there's the definition of intelligent  
16 design as the abrupt appearance of fully formed  
17 animals that we talked about earlier.

432 18 Q. And you called that also special creation?

19 A. That's also called special creation,  
20 right. It requires a special intervention  
21 by a supernatural deity into the processes  
22 of nature.

433 23 Q. Why don't we go to the next slide?

24 A. This one is about gaps in the fossil  
25 record, focusing specifically on the Cambrian

1 explosion. This is a very frequently used  
2 target of criticism in evolution theory about  
3 the Cambrian fossil. Henry Morris in 1974  
4 pointed out that there's a gap between the one  
5 celled microorganisms and the invertebrate phyla  
6 of the Cambrian period. I'll repeat that for  
7 you. Henry Morris in 1974 points out that there  
8 is a very large gap between one celled  
9 microorganisms and the mini invertebrate phyla  
10 of the Cambrian period, that species appear in  
11 the fossil record with no apparent precursors,  
12 which he calls no incipient forms leading up to  
13 them, and he doesn't anticipate, he forecloses  
14 any possibility that further fossil collecting  
15 will fill in these gaps.

16 In the next item, this is from Duane Frair  
17 and Percival Davis, again from their 1983 book,  
18 they're also pointing to what they consider to  
19 be gaps in the fossil record, and they attribute  
20 these gaps, they explain these gaps, these  
21 abrupt things as special activity of God. They  
22 believe that that's a reasonable explanation for  
23 these gaps in the pre-Cambrian fossil record.

24 The third item of the quote comes from a  
25 paper published by Dr. Stephen Meyer in 2004,



1 and he is also making the same criticisms in  
2 regard to the record of the Cambrian fossil  
3 record. He says that this record implies the  
4 absence of clear transitional forms that would  
5 connect the Cambrian animals to earlier animals,  
6 and likewise he suggests that these gaps are  
7 not going to be filled in by simply collecting  
8 more fossils, gathering more samples.

434 9 Q. Dr. Forrest, based on this morning I'm  
10 not going to dare to qualify you as a  
11 paleontologist, and we will hear from  
12 one later on, but can you tell me whether  
13 Henry Morris is a paleontologist?

14 A. No, he's not a paleontologist. I believe  
15 he's a hydraulics engineer.

435 16 Q. What about Duane Frair and Percival Davis?

17 A. No, they're not paleontologists, and  
18 neither is Dr. Meyer.

436 19 Q. Thank you. We can go to the next slide.  
20 Supernatural design and biochemical complexity.  
21 Tell us about those connections.

22 A. Yes, with regard to the supernatural design  
23 of biochemical complexities, the general comment  
24 in these that unites them is that the complexity  
25 of DNA for example simply is not possible

1 through natural processes, that it requires  
2 input from outside by a supernatural creator.  
3 Henry Morris points this out, he says that the  
4 complex systems such as the DNA molecules are  
5 not the products of chance. You need a great  
6 creator for that. And Dr. Kenyon's 1986  
7 affidavit, you see him pointing out that  
8 biomolecular systems require, these complex  
9 systems that he's talking about require  
10 intelligent design.

11 This has to be put in from the outside,  
12 from out, and he's talking here about outside  
13 the system of nature. And then a quote from  
14 Dr. Behe's book Darwin's Black Box, he also  
15 rejects the idea that there is a natural process  
16 that could produce biochemical complexity. In  
17 fact, if you will look, if you will note he  
18 refers to this process as a phantom process,  
19 which suggests that he doesn't actually see a  
20 natural process that can produce this type of  
21 complexity.

437 22 Q. So this argument from biochemical  
23 complexity to a supernatural creator, that's  
24 not new to Mr. Behe?

25 A. No, it's not new at all, and again I point

1 out that that's the only conceptual alternative  
2 to a natural explanation. If you reject the  
3 idea that natural processes could do this, you  
4 are of course endorsing the supernatural  
5 explanation.

438 6 Q. And this argument is not new to intelligent  
7 design?

8 A. It's not new at all. It's been there for  
9 decades.

439 10 Q. Could you go to the next slide, Matt?

11 This is the heading, "Teach the controversy,  
12 alternative theories, strengths and weaknesses  
13 of evolution." Tell us what this is about.

14 A. Yes, the intelligent design movement uses  
15 very frequently the argument that children  
16 should be taught the controversy, that there's  
17 a controversy within science itself about the  
18 status of evolution, and I really would like to  
19 begin with the more recent quotes, because what  
20 they mean by teaching the controversy, and these  
21 are encapsulated in this quote, both of them, is  
22 that children should be taught about intelligent  
23 design as an alternative theory to evolution,  
24 and that children should be taught the strengths  
25 and weaknesses of evolution, and all of these

1 are mentioned in a quote by Dr. Meyer and John  
2 Angus Campbell, who is also a fellow for the  
3 Center for Science and Culture in March of this  
4 year endorsing this position.

5 If you look back in 1973, Duane Gish, who  
6 is also another very well known young earth  
7 creationist, is essentially saying the same  
8 thing. In fact, he says that students should  
9 be made aware of the weaknesses of evolution,  
10 and he considers teaching them only evolution to  
11 be a form of indoctrination. In 1986 you see  
12 Dr. Kenyon make the same observation and  
13 actually using the term indoctrination. He  
14 believes that alternative views, by which he  
15 means creation science, should be presented in  
16 public school science classes. So this is also  
17 a very common theme. It's not new at all. It  
18 also includes the argument that students should  
19 be taught the evidence against evolution.

440 20 Q. So when we hear these arguments in relation  
21 to intelligent design, it's right out of the  
22 creationists' playbook?

23 A. Right out of the creationists' playbook.  
24 It's not new at all.

25 MR. ROTHSCHILD: Your Honor, I think we're

1 done with this set of slides, and we can take a  
2 break here if that's your preference.

3 THE COURT: All right. Let's do this at  
4 this juncture, and we will be in recess then  
5 until 1:30. That should give everybody an ample  
6 lunch break. We'll reconvene and pick up this  
7 witness's testimony at 1:30 this afternoon.

8 MR. ROTHSCHILD: Thank you, Your Honor.

9 (End of volume 1 at 12:09 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1           Kitzmiller et al. vs. Dover Schools  
2                   Trial Day 6, Morning Session  
3                           5 October 2005  
4  
5  
6

7                   I hereby certify that the proceedings  
8           and evidence are contained fully and accurately  
9           in the notes taken by me on the trial of the  
10          above cause, and that this copy is a correct  
11          transcript of the same.

12  
13  
14  
15

16                                   s/ Wesley J. Armstrong  
17                                   \_\_\_\_\_

18                                   Wesley J. Armstrong  
19                                   Registered Merit Reporter

20  
21

22                   The foregoing certification of this  
23          transcript does not apply to any reproduction  
24          by any means unless under the direct control  
25          and/or supervision of the certifying reporter.