
Judge Cooper Rules Conservative Christians Second Class Citizens and Political Outsiders

Author: Jerry Bergman, Ph. D.

Subject: Social Issues

Date: 06/21/2006

Warbook: Disclaimers War 2/5/2014 JA CL

Abstract

The extreme level of enforcement of Darwinism ideology is nowhere illustrated as well as in the court case reviewed in this article now on appeal. This paper evaluates the decision by Clarence Cooper, United States District judge on the constitutionality of using disclaimers on textbooks that present evolution as a fact. The case, *Jeffrey Selman vs. Cobb County School District and Cobb County Board of Education* 1 02-CV-2325-CC is hereafter referred to as the Ruling. The court appears to have ruled that no criticism of the Darwinian world view is allowed in public schools because criticism of Darwinism is an “endorsement” of religion, and consequently “unconstitutional”! The judge also made it clear that what he calls “fundamentalists,” a term he never defined, are “political outsiders” the reverse of the *Brown v. Board of Education* Supreme court and other court decisions that decided in favor of equal rights for all Americans regardless of religion, creed, race, or color.

Note: All page numbers, unless otherwise noted, refer to the judge’s decision.

Introduction

The court ruling in the decision by United States District judge Clarence Cooper issued on the 13th Day of January, 2005 in the United States District Court for the Northern District of Georgia, Atlanta Division, relates to a subject that I have taught for over thirty years at the college level, evolution. Consequently, I can speak with some understanding and experience about this topic. Suffice is it to say that this decision

contains more errors of fact and obvious contradictions than virtually any other court decision that I have ever read (and I have read many). This entire court case was over a mere three sentences that the Cobb County School District placed on textbooks. The complete statement at issue is: **“This text book contains material on evolution. Evolution is a theory, not a fact, regarding the origin of living things. This material should be approached from an open mind, studied carefully, and critically considered”** (Gross, 2005, p. 3A). The judge ruled that this was an “endorsement” of religion and, therefore, it was “unconstitutional” to state these words in a public school classroom! Before the judges ruling, Darwin Skeptics were consigned to the back of the bus, and after the ruling they are not even allowed on the bus unless they enter incognito and remain in the closet.

The judge reasoned that only two theories about the origin of life and its diversity (i.e. the origin of species) exist, and degrading one, in essence, supports the other. Consequently, since one theory involves a Creator or intelligence we usually call God, he considers that particular theory “religious” and, therefore, criticism of the other theory is unconstitutional support of religion. The reasoning of this ruling is problematic for two reasons. First, if extended to other areas, it would exclude a great deal of accepted science. Second, and more importantly, the reasoning behind this ruling rests on a very narrow view of “religion” that includes only theistic religions. In fact, non-theistic religions exist, and these religions have as their creation story Darwinian evolution. Therefore, by attempting to remain neutral on the topic of origins, this court’s endorsement of the “other side,” supports non-theistic and atheistic religions such as Religious Humanism. In fact, evolutionary naturalism is one of the tenets of Religious Humanism.

Those who object to Darwinism indoctrination in public schools have, so far, been unsuccessful in preventing this indoctrination. All approaches have failed, including requiring presentation of both sides of the controversy. The issue is complex--and is

often not a question of teaching creationism in public schools, but of teaching Darwinism objectively. Many creationists even oppose the teaching of Creationism in the classroom for a number of reasons, including it will likely be poorly taught by teachers who oppose a Biblical worldview, and furthermore, how many teachers in secular schools know enough about the subject to teach it properly (Hollowell, 2004)?

The judge noted that parents began to be concerned about the issue of origins when they learned that instruction on evolution was being strengthened in the new guidelines. One parent, Marjory Rogers, submitted several comment forms criticizing the presentation of evolution in the textbook and “condemned the books for not mentioning any alternative theories, such as one involving a creator” (pp. 6-7). Furthermore, the school board received complaints from other parents to the effect that the textbooks did not present the subject of origins “in a fair manner,” because they did not “offer any information regarding alternative theories or criticism of evolution.” Alternative theories include not just Creationism and Intelligent Design, but also pangenesis, and the aquatic ape theory, to name only two examples.

The concerned parents obtained signatures from 2,300 Cobb County residents requesting that the school board “clearly identify presumptions and theories and distinguish them from fact.” They also asked that the board insure that other theories aside from Darwinism are presented and, last, that a statement be placed in a prominent place at the beginning of the text, informing students “that the material on evolution was not factual but rather was a theory” (p. 7). The school board evidently concluded these were genuine issues and for this reason consulted with legal counsel to determine if there was any way of responding to the parents’ concerns.

Some parents and administrators felt that a “disclaimer” may help to alleviate the ongoing tension between Darwinists and non-Darwinists. The placement of a small “neutralization Sticker” on each biology textbook would not require the changing of the textbook content. Consequently, the legal district council recommended language that it

concluded would be constitutional, producing the language that eventually appeared on the Sticker. This was no small issue. Over two thousand parents who formally complained about how the biology textbooks used in the district presented evolution, and the Sticker seemed to be the ideal solution to a problem that, all to often, schools are in the center of.

This statement did not please everyone. It upset “many evolutionists” because, they claimed, “the Sticker diminishes the status of evolution among other theories” (Hollowell, 2004). Needless to say, the Sticker ended up in court. The case was heard in November of 2004. The Sticker was attacked on a number of grounds. One attack is to claim that evolution is “science” and the opposition to it is not. The problem with this conclusion is “How could arguments on one side be science, and the counter arguments be non-science?” Is the argument that the thymus is vestigial (and evidence of evolution) science, and those facts that argue it is useful to mature T-cells, and not vestigial or proof of evolution, non-science (or religion)?

A key question in this debate is “What is science?” Kenneth Miller, a professor of biology at Brown University, and Joseph Levine in their text titled *Prentice Hall Biology* (2002) define science as any activity that furthers the goal of science, which is to investigate and understand nature, to explain events in nature, and to use those explanations to make useful predictions. Science has several features that make it different from other human endeavors. First, science deals only with the natural world. Second, scientists collect and organize information in a careful, orderly way, looking for patterns and connections between events. Third, scientists propose explanations that can be tested by examining evidence. In other words, science is an organized way of using evidence to learn about the natural world. The word science also refers to the body of knowledge that scientists have built up after years of using this process (p. 3).

They add that science always starts with observations, but an observation by itself has little meaning in science, because the goal is to understand what was observed. Scientists usually follow observations with inferences. An inference is a logical interpretation based on prior knowledge and experience (p. 4).

Given this definition, science clearly involves both arguments in support of Darwinism and against it. Under the subheading “A Scientific View of the World,” the text states that many people

think about everyday events in a scientific way. Suppose a car won’t start. Perhaps it’s out of gas. A glance at the fuel gauge tests that idea. Perhaps the battery is dead. An auto mechanic can use an instrument to test that idea. A logical person would continue to look for a mechanical explanation, testing one possible explanation after another until the cause of the problem was identified. All scientists... bring the same kind of problem-solving attitude to their work. They consider the whole universe a system in which basic rules apply to all events, small or large. Scientists assume that those rules can be discovered through scientific inquiry (p. 6).

Importantly, scientists must collect data to achieve the goal of science, which is a better understanding of nature. For scientists, science is an ongoing process, not the discovery of an unchanging, absolute truth. Scientific findings are always subject to revision as new evidence is developed. In keeping with this approach to pursuing knowledge, certain qualities are desirable in a scientist: curiosity, honesty, open-mindedness, skepticism, and the recognition that science has limits. An open-minded person is ready to give up familiar ideas if the evidence demands it. A skeptical person continues to ask questions and looks for alternative explanations. Scientists are persuaded by logical arguments that are supported by evidence. Despite recognizing the power of science, scientists know that science has definite limits (2004, p. 6).

In the glossary, the text states that science is an “organized way of using evidence to learn about the natural world; also, the body of knowledge that scientists have built up after years of using this process” (p. 1088). These definitions make it clear that facts are science regardless of which side of the controversy they support. Both evolution and creation are explanations derived from extrapolations of those facts. Kelly Hollowell, who has degrees both in biochemistry and law, adds that because “evolution and intelligent design are not provable by empirical observation” neither are scientific theories. She adds that each theory of origins

posses scientific character because they each attempt to correlate and explain scientific data. Yet, both intelligent design and evolution are best characterized as explanatory models on mans’ origins. They are philosophical and historical in nature, not empirical.

Use of the Term “Theory”

A major problem for those who objected to the Sticker was the claim that the words “evolutionary theory” are misleading because the term “theory” in science does not have the same meaning as it does for laymen. Many lay people interpret the word theory as having the connotation of a “guess,” such as illustrated by the expression “that’s just your theory.” In science, these critics claim, a theory is a well supported idea that is applicable to a wide variety of information and facts. A review of science textbooks finds that there exists far less agreement regarding the definition of the word theory than its critics allege. The term theory is actually often used in science writings in the so-called public sense as well as in the “scientific” sense. Another problem is that the Sticker was written in language for students and teachers, who are laypersons, not scientists.

The court quoted Dr. Kenneth Miller who argued “the Sticker plays on the popular understanding of the term theory, suggesting to the informed reasonable observer that evolution is only a highly questionable ‘opinion’ or a ‘hunch.’ The Sticker thus has great potential to prompt confusion among the students.” In fact, using Miller’s own definition from his textbook shows that the Sticker implies no such thing (2002, p. 35). Miller claims that this disclaimer will “confuse” students about the nature of science, yet he admitted that in science a theory is an *explanation* of a natural phenomenon, and a “fact” is a *confirmed* observation. All scientific theories are tentative because, by definition, all scientific theories are falsifiable and theories that are not falsifiable are not science. Furthermore, the court itself called evolution a theory, noting that evolution is now the only theory of origins being taught in Cobb County classrooms (p. 26).

Motivations of the Board

The court noted that, although the motivations of the school board to vote for the Sticker varied widely, the board unanimously decided to adopt the Sticker. Board member Mr. Johnston sincerely wanted students to consider critical information about Darwinism, and he did not want to inject religion into science instruction. Lindsey Tippins was concerned that science textbooks do not address the controversy about macroevolution from an evidentiary position (pp. 9-10). Tippins inquired about the permissibility of teaching ID, but was told that this option was not acceptable. Consequently, she clearly understood the Sticker's purpose was to facilitate discussion in the classroom about controversial issues and not bring religion, Intelligent Design, or Creationism, into the classroom.

Teresa Plenge stated the school board was simply trying to come up with a constitutional way to guide science class discussions and yet still encourage students to think critically (p. 10). Her intent was not to invoke discussion about Creationism, but to encourage teachers to be tolerant of students' beliefs. She felt that teachers should get back to the task of studying Darwinism and that the purpose of the Sticker was to promote critical thinking among students.

Board member Laura Searcy added that she felt the Stickers would help to notify parents about the issue so that they could handle potential difficulties that Darwinism instruction might create. Ms. Searcy was "rigidly opposed to alternative theories" of origins being taught in the classroom but only wanted students to analytically evaluate topics other than evolution. She added that the board singled out this topic because it was the only subject creating controversy (p. 11).

Likewise, school board member Betty Gray was concerned about the parents that did not want evolution teaching to infringe on students personal beliefs about the origin of life. She decided that the Sticker would serve the dual purpose of clarifying for teachers the fact that this topic *could* be discussed, and yet it would also indicate to parents that the science classroom would be tolerant of the range of views that students

have regarding origins. The court concluded that Ms. Gray's testimony "was credible," adding that her intent was to insure that the science classroom would be safe for youngsters to express themselves, "whatever their views are" (p. 12).

Mr. Johnston and Mr. O'Neill testified by affidavit that they were in favor of the Sticker with the goal of *promoting tolerance* and the acceptance of a diversity of opinions (p. 12). Diversity and tolerance seem like laudable goals mentioned numerous times in this case as a motivation for the Sticker.

The court noted that, after the school board adopted the Sticker, "numerous citizens, organizations, churches, and academics from around the country contacted the School Board, and individual School Board members, to praise them for their decision to open the classroom to the teaching and discussion of creationism and intelligent design" (pp. 12-13).

Conversely, the board also received letters expressing dismay over their decision. The Sticker caused some parents, such as Kathy Chapman, to be alarmed. Chapman "immediately felt that the Sticker 'came from a religious source' because, in her opinion, religious people are the only people who ever challenge evolution. She viewed the Sticker as promoting the religious view of origin[s] and questioning the science in the textbooks" (p. 16). Jeff Silver perceived that the Sticker opened "the door to introducing schools of thought" based on faith and religion into science classes. He also believed that the Stickers "disparaged evolution and implicitly asked students to think about alternative theories" (p. 16). One wonders what is wrong with thinking about alternative theories.

Implementation of the Policy

The School Board had the Stickers printed in the summer and fall of 2002. They were then sent to the schools where they were physically affixed to all of the science textbooks that contained material about the origin of life. The board also revised its origins policy in September of 2002. This policy stated that the school district "believes

that the discussion of disputed views of academic subjects is a necessary element of providing a balanced education, including the study of the origin of the species.” It further added that the purpose of the policy is to

foster critical thinking among students, to allow academic freedom consistent with legal requirements, to promote tolerance and acceptance of diversity of opinion, and to ensure a posture of neutrality toward religion. It is the intent of the Cobb County School Board of Education that this policy not be interpreted to restrict the teaching of evolution, to promote or require the teaching of creationism, or to discriminate for or against a particular set of religious beliefs, religion in general, or non-religion (p. 15).

The revised regulation adopted in 2003 stated under no circumstances should teachers use instruction in an effort to coerce students to adopt a particular religious belief or set of beliefs or to disavow a particular religious belief or set of beliefs. Instruction should be respectful of personal religious beliefs, and encourage such respect among students. Teachers should not interject their personal faith-based beliefs, or lack thereof, into such instruction, and should maintain a posture of neutrality toward religion (p. 15).

The Sticker, and the motivations for its use and its meaning, were specifically defined in the school board policy. Consequently, in ruling that the Sticker was unconstitutional, the court also negated the school board’s policy. Is the court, in essence, saying that teachers should in class openly “disavow a particular religious belief or set of beliefs” and that teachers should “interject their personal” lack of belief and *not* maintain a posture of neutrality toward religion in the classroom? Importantly, the school superintendent, high school science curriculum supervisors, nor the “Board members who testified at trial have received complaints about the teaching of religion or religious theories of origins in science classes” (p. 16).

Does the Sticker Single Out Darwinism?

Another claim the court made is that “many in the scientific community maintain that evolution is *not* a theory of the origin of life, but is a theory concerning the origin of the *diversity of life*” (p. 3, emphasis mine). The judge could easily have consulted the

leading biology textbooks to determine that this is not true. Most texts I have reviewed teach that naturalistic evolutionary theory not only explains the diversity of life, but also the *origin* of life.

Another claim was that the Sticker diminishes the “status” of evolution compared to other scientific theories. The judge noted that evolution was the only theory mentioned in the Sticker--yet, he claimed, other scientific topics taught in school also “have religious implications, such as the theories of gravity, relativity, Galilean heliocentrism” (p. 8). The question “why single out evolution” is obvious: no one has a problem with most all other science theories, such as gravity. Obviously, everything in science (as well as in every other field) has religious implications, but the religious-science conflict centers around evolutionism primarily because evolution strikes at the *central core* of theism, i.e., whether life was created by intelligence, or is a result of the outcome of natural forces, natural law, time, chance, and the accumulation of mutations (copying errors).

The judge implies that the religious implications of other theories should be discussed (and I agree), but, to be consistent, the judge would also declare that discussion of the religious implications of all other theories is also unconstitutional. The solution is to stress that all other theories are also theories, not to rule that stating evolution is a theory is unconstitutional. If the judge wishes to author a Sticker that *would* be constitutional, he should do so.

Dr. Wes McCoy, a high school science teacher serving on a textbook adoption committee, proposed an *alternative* Sticker. This Sticker stated this “textbook contains material on evolution, a scientific theory, or explanation, for the nature and diversity of living things. Evolution is accepted by the majority of scientists, but questioned by some. All scientific theory should be approached with an open mind, studied carefully and critically considered” (p. 13). The Sticker proposed by Dr. McCoy would likely also be unacceptable to the court, as would any words that, in any way, appeared to discredit

Darwinism. It appears *any* Sticker that treats Darwinism in an objective fashion would be objectionable. Although gravity is called a law, scientists at the higher level of research still have many questions about a wide variety of scientific theories (or at least they discuss the shortcomings of the theory, such as, to give three examples, the Bohr theory of the atom, the Big Bang theory and Einstein's theory of relativity).

Is a Sticker a Church?

The ACLU-led lawsuit against the School Board claimed that the Sticker "violates the separation of church and state by promoting religion." The problem with this argument is the failure to recognize that if the sticker does in fact promote a certain religion--theism-- its removal will also have the effect of promoting religion--non-theistic religion such as atheism. Removal of the sticker will not return the status quo for several reasons. One is that the court removed it, thus implying theism is less acceptable than the opposite, atheism. Secondly, the purpose of the sticker was to neutralize the textbook, and its removal allows the concern that the parents responded to which resulted in the sticker to remain.

The committee believed that the textbook written by Kenneth Miller and Joseph Lavine was one of the best books they had reviewed for high school students. The Miller and Lavine book openly teaches what is normally defined as religious values and beliefs. For example, note the quote below (copied from my 1995 edition).

Darwin knew that accepting his theory required believing in *philosophical materialism*, the conviction that matter is the stuff of all existence and that all mental and spiritual phenomena are its by-products. Darwinian evolution was not only purposeless but also heartless--a process in which the rigors of nature ruthlessly eliminate the unfit. Suddenly, humanity was reduced to just one more species in a world that cared nothing for us. The great human mind was no more than a mass of evolving neurons. Worst of all, there was no divine plan to guide us (1995, p. 161).

The judge also notes that the school board, “unanimously adopted the text book recommended by the administration *with the condition* that the Sticker “would be placed in certain of the science textbooks” (p. 8). Furthermore, the judge *admitted* that the school board was made up of “a variety of persons” religiously and that the majority “did not intend to promote or benefit religion in voting for the Sticker” (p. 9).

Many commentaries have also concluded that including a *simple Sticker*, such as the one described above, on textbooks is not even close to the equivalent of the state “establishing” a religion as the constitution forbids. Stickers are not churches or religions, even Stickers that advocate approaching a theory with an open mind. The school district lawyer, Linwood Gunn, said the Sticker was simply meant to “encourage critical thinking,” and that it was “silly” to consider a Sticker the “promotion of religion.” He added that the Sticker “doesn’t say anything about faith … [or] religion.” Gunn added that the school board was simply trying to accommodate all views--those of both theists and atheists. Those who oppose evolutionism and Darwinism argue that opposition to this Sticker illustrates the level of fanaticism of many Darwinists.

The lawsuit also claimed that the disclaimer is a “fundamentalist Christian expression,” ignoring the fact that Muslims, Jews, Christians and about 90% of the U.S. population do not accept Darwinism as commonly understood by scientists today. This position was supported by the brief filed by Hindu scholars in support of the school.

One of the parents who filed the lawsuit, Geffery Selman, claimed the Sticker is “like saying everything that follows the Sticker isn’t true” (AP November 9, 2004 p 10). Obviously the Sticker neither states, nor implies, any such thing. Nevertheless, in an attempt to justify its removal, Selman also claimed that the Sticker impeded an adequate educational experience because reading these three sentences will somehow make the student’s entire science education inferior! He even argued that the Sticker might cause college admission counselors to question the science education of Cobb County students because they are “forced to endure the presence of the warning label on their textbooks”

(Hollowell, 2004)! Neither he nor anyone else cited any evidence to support these claims, and much empirical evidence exists against them.

Most of the media weighed in on the side of those opposing the Sticker. A headline in the *Journal Gazette*, for example, claimed that the Sticker makes “Georgia looks silly” and that “some in Atlanta worry that Georgia is making itself look like a bunch of rubes or, worse, is discrediting its own students” (Wyatt, 2004, p. 5A). Furthermore, “dozens” of science instructors argued that the Sticker “makes the state look backwards.” And high school teacher Wess McCoy worried “the issue could tarnish his students” (Wyatt, 2004, p. 5A). It is irrational to claim that three short sentences will do all of this harm. Students can just ignore the Sticker (as most likely will). In response to Selman’s claim, Hollowell concluded that

Darwinists have long discovered an effective way to silence those who question evolution is to marginalize them by name-calling and character assassination. They characterize those who support the intelligent design movement as Bible-thumping fundamentalists, dangerous pseudo-scientists, flat-earthers, and so on. Undaunted by such juvenile attacks, there are many bona fide critical thinking scientists, myself included, that support intelligent design (2005).

Collen R. Purrington, a biology professor at Swarthmore, even created a series of mock Stickers to poke fun at the Cobb County Board of Education Sticker. An example: “this textbook promotes intelligent design Creationism, as an alternative to evolution and natural selection because intelligent design is the premise of several best-selling science fiction novels.”

Are the Disclaimer Notes also Unconstitutional?

Along with the disclaimer the board passed a set of “notes” to explain the policy that stated students have a “basic right and privilege” to “form his/her own opinion or maintain beliefs taught by parents on this very important matter. Students are urged to exercise critical thinking and gather all information possible and closely examine each

alternative toward forming an opinion" (Quoted in *World* July 1, 2000, p. 11). The court's ruling not only outlaws the disclaimer, but also the notes, implying that to urge students to "exercise critical thinking and gather all information possible and closely examine each alternative towards forming an opinion" is unconstitutional when it comes to Darwinism. Students evidently are to accept without question the Darwinian version of the origin and diversity of life, the naturalist's creation story.

The judge stated that evolution is accepted "by the majority of scientific community" thereby admitting that *part* of the scientific community does *not* accept evolution. Do these scientists not deserve to be heard? Gunn said he expects the Sticker disclaimer will hold up in court on appeal because its goal is to "improve the curriculum while also promoting an attitude of tolerance for those that have different religious beliefs" (Wyatt, 2004).

Is Darwin Unconstitutional?

In view of the judge's decision, statements such as the following by Charles Darwin in his autobiography also would be unconstitutional:

Another source of conviction in the existence of God follows from the extreme difficulty or rather impossibility of conceiving this immense and wonderful universe, including man with his capacity of looking far backward and far into futurity, as a result of blind chance or necessity. With thus reflecting I feel compelled to look to a First Cause having an intelligent mind in some degree analogist to that of man; I [therefore] deserve to be called a Theist (1958, pp. 92-93).

Darwin adds that this conclusion was "strong" in his mind when he wrote the *Origin of Species* (1859). The judge would have to rule that these words were unconstitutional because this statement *openly* teaches intelligent design. The *motive* of presenting these words on a Sticker (or textbook) is to convince the reader that God exists, thus, as the judge ruled in this case, these words are an unconstitutional endorsement of religion. Conversely, Darwin continued, since he wrote the *Origin of Species* his belief in God

“has very gradually with many fluctuations become weaker” and, furthermore, he added, “can the mind of man, which has, *as I fully believe*, developed from a mind as low as that possessed by the lowest animals, be trusted when it draws such grand conclusions?” (1958, p. 93).

Darwin then concluded, “I, for one, must be content to remain an Agnostic” (Darwin, 1958, p. 94). Would *these* conclusions by Darwin be deemed *constitutional* by the judge? Judging by the contents of many textbooks that have never been challenged by the court, they would be allowed. What if the *motivation* of adding this clarification of Darwin’s thoughts was to convince students that the agnostic (or theist or atheist) religious worldview was correct? Likewise, this motive has never been challenged by the courts, which have consistently ruled that the goal to *dissuade* people away from theism (or the Bible) is appropriate. The courts have ruled this way because they assume that this conclusion results from an objective, academic study of history (or reality). Thus, to persuade students to believe in God is unconstitutional, but to dissuade people *away* from belief in God has consistently been deemed constitutional. The courts would, no doubt, also argue, as they have in the past, that Darwin’s statement indicating theism is “unscientific,” but his statement indicating atheism (or at least agnosticism) is “scientific.”

It is important to stress that the judge never defined terms that were central to the case including faith, religion, nor science, and he implies all ideas “from a religious source” are inferior, unwelcome or in some way negative. The Sticker hardly discouraged considering evolution ideas, but simply asked students to critically evaluate them. Jeffrey Selman concluded that the Sticker “singled out evolution” and, therefore, was “obviously religious” (pp. 16 & 17). If critically evaluating evolution is religious, by implication evolution *cannot* be critically evaluated, but rather must be uncritically accepted on faith (or authority).

The court ruled the Sticker had Two Secular Purposes

The court ruled in this case that the school board

did *not* act with the purpose of promoting or advancing religion in placing the Sticker in the science text books. To the contrary, the court found that the School Board sought to advance two secular purposes. First...to encourage students to engage in critical thinking as it relates to theories of origin. Second, given the movement in Cobb County to strengthen teaching of evolution and to make it a mandatory part of the curriculum, the School Board adopted the Sticker to reduce offense to those students and parents whose personal beliefs might conflict with teaching on evolution (p. 22).

The summary judgment ruled that these two purposes were secular and not a sham. Furthermore, the court found the School Board testimony highly credible. Fostering critical thinking is clearly a secular purpose for the Sticker, which the court finds is not a sham. First, it is important to note that a large population of Cobb County citizens maintained beliefs that would potentially conflict with the teaching of evolution ... the Sticker appears to have the purpose of furthering critical thinking because it tells students to approach the material on evolution with an open mind, to study it carefully, and to give it critical consideration (p. 24).

The court then added the Sticker language that states evolution is a theory and not a fact, “somewhat undermines the goal of critical thinking by predetermining that students should think of evolution as a theory when many in the scientific community would argue that evolution is factual in some respects” (p. 24). Of course, many in the scientific community also argue that macroevolution is *not* factual (the court never defined evolution, nor even distinguished between micro- and macroevolution, and one would be hard pressed to find anyone in the scientific community who believes that microevolution was not factual). One would also be very hard pressed to find anyone in the scientific community, including creationists that did not agree with the statement, “evolution is factual in some respects” (p. 24). Contradicting the judge’s previous claim, the court correctly concluded that the School Board “did not seek to disclaim evolution by encouraging students to consider it carefully. Rather, the School Board sought to

encourage students to analyze the material on evolution themselves and make their own decision regarding its merit" (pp. 24-25).

The court notes that "the School Board's singling out evolution is understandable in this context, and the undisputed fact that there are other scientific theories with religious implications that are not mentioned in this Sticker ... supports the court's conclusion that the board was not seeking to endorse or advance religion. Therefore, the court continues to believe that the School Board sincerely sought to promote critical thinking in adopting the Sticker to go on the text books" (p. 26). The fact is "evolution was the only topic in the curriculum, scientific or otherwise, that was creating controversy at the time of the adoption of the textbooks and Sticker" (p. 26).

The court further ruled that the Sticker must be removed because its chief purpose is to "accommodate or reduce offense to those persons who hold beliefs that might be deemed inconsistent with the scientific theory of evolution" (p. 26). These people *cannot* be accommodated in any way, and are political outsiders. This outcome is actually contrary to Supreme Court's *Brown vs Board of Education* decision and other court decisions that decided in favor of equal rights for all Americans regardless of religion, creed, race or color.

The Religious Motivation of Some Makes a Law Unconstitutional

The court then claims that "there is no dispute that there is a large number of Cobb County citizens opposed to the teaching of evolution in a rigid fashion," a conclusion based on the evidence (p. 27). The court added that it is clear that "many of these citizens were motivated by their religious beliefs." How does the court know this? Did it do a survey of the over two thousand citizens that submitted a petition specifically inquiring as to *why* they opposed evolution? The court simply assumed this without evidence. Furthermore, this claim discriminates against those with religious beliefs. Those who oppose could claim that *any* action was motivated by religious beliefs, thus

unconstitutional. This claim could also be used to discredit those with no “religious beliefs.”

People oppose Darwinism for many reasons, and the court gave no indication as to what these were, implying that religion was the *only* reason. Although the court implied that these people were endeavoring to “endorse or advance religion” the clear testimony is that many were seeking only to reduce the state’s hostility toward religious beliefs by indoctrinating them in a position that they felt was damaging to their beliefs. The fact that many were endeavoring to achieve neutrality, as the court itself indirectly recognized in its decision, was overruled, favoring the few that were influenced by *their* religion (such as atheism, agnosticism, or liberal Christianity).

The court stated that the “highly credible testimony of the School Board members made it clear that the School Board adopted the Sticker to placate their constituents and to communicate to them that students’ personal beliefs would be respected and tolerated in the classroom” (p. 27). In striking down the Sticker, the court clearly implied that these students’ personal beliefs would *not* be respected, nor tolerated in the classroom. This ruling expresses clear, open, and blatant hostility toward the beliefs of a “large number of Cobb County citizens.” The court then noted, “The Constitution does not require the government to ‘show a callous indifference to religious groups.’” Yet the court’s decision shows exactly this attitude: The court ruled unconstitutional a Sticker that the School Board adopted to put “student, parents, and teachers on notice that evolution would be taught in a manner that is inclusive rather than exclusive” (p. 28). And “the law clearly holds that mere accommodation of religion is insufficient to render the Sticker unconstitutional” (p. 28). And yet the court concluded that what the School Board was trying to achieve--accommodate religion--was unconstitutional in contradiction to its’ own conclusions.

The judge’s Decision

The court concluded that it is

convinced that the Sticker at issue serves at least two secular purposes. First, the Sticker fosters critical thinking by encouraging students to learn about evolution and to make their own assessment regarding its merit. Second, by presenting evolution in a manner that is not necessarily hostile, the Sticker reduces offense to students and parents whose beliefs may conflict with the teaching of evolution. For the forgoing reasons, the court concludes that the Sticker satisfies the first prong of a *Lemon* analysis (p. 30).

Although the judge concluded that the school board's purpose for the Sticker was to accommodate the religious views of the parents, the plaintiffs argued that the result is to advance religion and is thus unconstitutional (p. 28). On the question of endorsing

religion, the court declared the Sticker "unconstitutional" for the reason that an informed, reasonable observer would interpret the Sticker to convey a message of endorsement of religion. That is, the Sticker sends a message to those who oppose evolution for religious reasons that they are favored members of the political community, while the Sticker sends a message to those who believe in evolution that they are political outsiders. This is particularly so in a case such as this one involving impressionable public school students who are likely to view the message on the Sticker as a union of church and State" (p. 31).

Concluding that the Sticker sends the message that those who oppose evolution for religious religions are "favored members of the political community" stretches the facts enormously, especially in view of the fact that the so-called "favored members of the political community" has lost *every* court case in which they tried to exercise their political rights in this area since the Scopes trial. The court repeated this claim on page 36, stating, "the Sticker communicates to those who endorse evolution that they are political outsiders, while the Sticker communicates to the Christian fundamentalist and creationists who push for a disclaimer that they are political insiders." Of course, it does no such thing and, if it did, the court's ruling officially declares those who *oppose* the Sticker "political insiders."

This effort to accommodate clearly does not represent favoritism, only accommodation. Similarly, accommodating those whose religion prohibits working on

Saturday (because Saturday is their Sabbath, such as Seventh Day Adventists, Jews, or Muslims) does not make Seventh Day Adventists, Jews, or Muslims “favored members of a political community.” Furthermore, it is, at best, extremely unlikely and most likely ludicrous to believe that students would interpret the message on the Sticker as a “union of church and State.” At any rate, the judge should have relied upon scientific research to determine whether or not the Sticker would imply either favoritism or union of church and state. I have polled a number of students on this, and they unanimously agreed that the Sticker conveys no such message. After reading the Sticker, they were asked if they “viewed the message on the Sticker as a union of church and State.” All stated no, and several commented that to conclude such would be ridiculous.

The court added that, by “denigrating evolution, the School Board appears to be endorsing the well-known prevailing alternative theory, creationism or variations thereof, even though the Sticker does not specifically reference any alternative theory” and “the informed, reasonable observer would infer that the School Board’s problem with evolution to be that evolution does not acknowledge a creator” (pp. 36-37). Consequently, the court ruled, “the Sticker sends an impermissible message of endorsement” (p. 37). The court’s ruling implied that it is unconstitutional to “acknowledge a Creator” in school (for a discussion of this issue see Beckwith, 2003).

The court then gave an inaccurate history of the opposition to teaching evolution in public schools by what the court called “Christian fundamentalists and creationists” (p. 32). As noted, a wide variety of Christian denominations, and many Muslims as well as Jews, also oppose teaching Darwinism dogmatically in the schools. I know of no statute that made it “criminal to teach evolution in the schools” as the judge claimed (p. 32). The Butler Act made it a misdemeanor *only* to teach human evolution as fact in public schools, allowing the teaching of the evolution of other life forms. The court then concluded that

the informed, reasonable observer would know that a significant number of Cobb County citizens had voiced opposition to the teaching of evolution for religious reasons [and] that citizens and parents largely motivated by religion put pressure on the School Board to implement certain measures that would nevertheless dilute the teaching of evolution, including placing disclaimer in the front of certain text books that distinguish evolution as a theory, not a fact. Finally, the informed, reasonable observer would be aware that the language of the Sticker essentially mirrors the viewpoint of these religiously motivated citizens (p. 33).

A common claim by courts is that religious motivations render a judgment inferior, suspect, or even illegal. This is indicated by the judge's statement that while the School Board may have considered the request of its constituents and adopted the Sticker for sincere, secular, purposes, an informed, reasonable observer would understand the School Board to be endorsing the view point of Christian fundamentalists and creationists that evolution is a problematic theory lacking an adequate foundation (p. 33).

Again, the board ruling does no such thing! Importantly, the court acknowledged that the amicus brief submitted by biologists and Georgia scientists indicates that "some scientists" have questions regarding certain aspects of evolution, which the informed observer would also be aware of. The court, though, ruled that on the "whole, however, the Sticker would appear to advance the religious view points of the Christian fundamentalists and creationists who were vocal during the text book adoption process regarding their beliefs that evolution is a theory, not a fact, which students should critically consider." Thus the court concluded that, even though there also exists a clear secular purpose (and scientists who disagree with Darwin), the Sticker appeared to advance the religious view point of a certain group. Consequently, this indicates that *all* accommodations to religious persons would "advance" the viewpoint, or at least lends credibility to the viewpoint, of religious persons, and, therefore, is unconstitutional. This ruling has made all "religious persons" second-class citizens.

The court's main concern was the statement that "evolution is a theory, not a fact," concerning the origin of living things (p. 33). The court ruled this critical language runs afoul of the Establishment Clause, not because of its truth or falsity, even though the

amicus brief submitted by the *Colorado Citizens for Science et al.* opposing the Sticker that “the statement is not entirely accurate,” but rather the problem with the language was that there has been a lengthy debate between advocates of evolution and the “proponents of religious theory of origins” and, therefore, the board appeared to side with theists and this, the court implies, is improper: the school cannot side with those who are theistically-religiously motivated, but it *can* side with those who are differently-religiously motivated i.e. atheistically-religiously motivated.

The court in this ruling clearly favors the non-theistically-religious viewpoint, a stance that is self-evidently *not* neutral, a goal the court claimed to be striving to achieve. The court also claimed to have reviewed law review articles that “affirm that encouraging the teaching of evolution as a theory rather than as a fact is one of the latest strategies to dilute evolution instruction employed by anti-evolutionists with religious motivations” (p. 35). The court ignored the fact that those favoring teaching Darwinism in schools often have “religious” motivations or, more actively, motivations opposing theism and defending alternative “religious” views (Ruse, 2005).

The court also argued that, although evolution instruction is required in Cobb County classrooms, the two sentence Sticker distracts and “effectively” dilutes evolution instruction “to the benefit of the anti-evolutionists who are religiously motivated individuals” (for example, see page 39) even though all origin of life positions are religiously motivated. From the very beginning of Darwinism, religious motivations have been critical on both sides. The court ruled that both views are not allowed, and only one view can be presented, the view that is held, almost without exception, by the atheistic community and not the view held by the majority in the theistic community. Many in the atheistic community and others, including many scientists, were “thrilled” with this decision (Holden, 2005, p. 334; Ebert, 2005, p. 182).

One Result of this Case

The decision will also continue to divide the nation into the so-called red (Republican) and blue (Democrat) states. A *Moody Monthly* article (April 1998, p. 86) concluded that the decision against Stickers will also be “another straw that will promote some people to exit the public school system, feeding the growing Christian school movement as well the growing home school movement.” The recent adverse ruling in the Dover case has furthered the determination of many persons and churches to home school or start their own schools.

Summary

Although the Sticker is composed of only three sentences, and the textbook on evolution contains hundreds of pages, the court ruled that these three sentences are not permitted in public school classrooms (p. 40). The court concluded, “the constitution requires that the government pursue a course of complete neutrality toward religion” (p. 42). The judges ruling hardly does this, but instead clearly conveys hostility toward religion, inferring that the ideas of a certain group of theists are not only unwelcome, but also cannot even be accommodated.

The court concluded that the Sticker sends “a message that the School Board agrees with the beliefs of Christian fundamentalist and Creationists, which the court ruled is unconstitutional because the School Board has “improperly entangled itself with religion by appearing to take a position [for religion]. Therefore, the Sticker must be removed from all of the text books into which it was placed” (p. 42). Thus, the court ruled, accommodation that entangles the government with one religion is, in this case, inappropriate. The court then sided with another “religious” view, which the court implied is a proper view.

The court has by this ruling made non-theists, non-Creationists privileged citizens. Only their views will prevail in the schools, and accommodation will not occur because “the Sticker aids the beliefs of Christian fundamentalists and Creationists” and,

therefore, is unconstitutional. Furthermore, because removal of the Sticker aids the beliefs of non-Creationists and non-Christian fundamentalists, including atheists, it is appropriate to remove it. This extremely biased decision openly entangles the court with religion. The School Board cannot accommodate parents it concludes were religiously motivated. The court has not completed a scientific survey, so no one knows whether or not this is the case, although some parents, no doubt, opposed Darwinism on scientific grounds, or at least non-religious grounds, as the court indicated.

Postscript: On May 25 2006 the United States Court of Appeals for the Eleventh Circuit Court vacated judge Coopers decision, citing eighteen factual issues of concern and concluding they did not want to decide this case on less than a complete record. No doubt the court noted many of the same issues mentioned in the review above.

References

Anonymous. 2000. “‘Critical Thinking’ is Not Enough: Darwin Disclaimer Tossed Out by court.” *World*, July 1, p. 11.

Beckwith, Francis J. 2003. *Law, Darwinism, and Public Education: The Establishment Clause and the Challenge of Intelligent Design*. Lanham, MA: Rowman and Littlefield.

Darwin, Charles. 1958. *The Autobiography of Charles Darwin 1809-1882*. Edited by Nora Barlow. New York: Norton.

Ebert, Jessica. 2005. “Georgia court Bans Biology Textbook Stickers.” *Nature*, 433:182.

Gross, Doug. 2005. “Evolution Disclaimer Struck Down.” *The Journal Gazette*, Friday, January 14, p. 3A.

Holden, Constance. 2005. “Teaching Evolution: judge Orders Stickers Removed from Georgia Textbooks.” *Science*, 307:334.

Levine, Joseph S. and Kenneth R. Miller. 1994. *Biology: Discovering Life*. Second Edition. Lexington, Massachusetts: D. C. Heath and Company.

Miller, Kenneth R. and Joseph Levine. 2002. *Prentice Hall Biology*. Upper Saddle River, NJ: Prentice Hall.

Ruse, Michael. 2005. *The Evolution-Creation Struggle*. Cambridge, MA: Harvard University.

United States District court for the Northern District of Georgia Atlanta Division. 2005. *Jeffrey Michael Selman, Kathleen Chapman, Jeff Silver, Paul Mason, and Terry Jackson, Plaintiffs vs. Cobb County School District and Cobb County Board of Education, Defendants*. January 13.

Wyatt, Kristen. 2004. "Evolution Backers Say Georgia Looks Silly." *Journal Gazette*, Friday, November 12, p. 5A.