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'Inanity' Is in the Eye of the Beholder — Judge Jones Plays Scientist

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Judge John E. Jones of the U.S. District Court in Pennsylvania handed down his decision in the now-infamous trial over the teaching of intelligent design in the public schools. In a written opinion, Judge Jones ruled that the Dover School Board had acted unconstitutionally in mandating that science teachers be required to read a brief statement about Intelligent Design and evolution before addressing evolutionary theory in the classroom.

Proponents of evolutionary theory are hailing the decision as a landmark defense of evolution while groups like the ACLU and Americans United for Separation of Church and State celebrate the decision as a victory for their radical notion of church-state separation.

Judge Jones predicted in his opinion that his decision would be characterized as judicial activism — and he is surely right. “Those who disagree with our holding will likely mark it as the product of an activist judge,” Jones wrote. “If so, they have erred, as this is manifestly not an activist court.” Well, saying so doesn't make it so.

Just consider for a moment the actual statement that teachers were to read. It is reproduced here in its entirety:

The Pennsylvania Academic Standards require students to learn about Darwin's theory of evolution and eventually to take a standardized test of which evolution is a part.

Because Darwin's theory is a theory, it continues to be tested as new evidence is discovered. The theory is not a fact. Gaps in the theory exist for which there is no evidence. A theory is defined as a well-tested explanation that unifies a broad range of observations.

Intelligent design is an explanation of the origin of life that differs from Darwin's view. The reference book, “Of Pandas and People,” is available for students who might be interested in gaining an understanding of what intelligent design actually involves.

With respect to any theory, students are encouraged to keep an open mind. The school leaves the discussion of the origins of life to individual students and their families. As a standards-driven district, class instruction focuses upon preparing students to achieve proficiency on standards-based assessments.

That's it. That brief statement, ordered to be read to high school biology classes, was enough to send the secularists and the defenders of evolution into panic.

In his opinion, Judge Jones described the Dover school board's policy as “breathtaking inanity” and described Intelligent Design as “an old religious argument for the existence of God,” not a credible scientific theory.

The judge's legal rationale was largely based in his declaration that the school board had actually been motivated by religion rather than by concern for scientific objectivity. In all honesty, that is almost surely the case, and the defendants did not well serve the cause of truth by attempting to obfuscate on this question. The larger question is this — why should their subjective motivation matter?

We must assume that this question is prompted by the late Chief Justice Warren Burger's test as articulated in his opinion in the 1971 case, *Lemon v. Kurtzman*. This "test" has three parts, as Chief Justice Burger explained: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive government entanglement with religion.'"

Will the federal courts now follow Judge Jones' lead and push behind "secular purpose" to "secular motivation?" This is a truly frightening thought. The argument that any public policy proposal must be driven by an exclusively secular motivation on the part of its proponents has been advocated by philosophers such as Robert Audi and the late John Rawls, but such a move goes far beyond the *Lemon* test.

Judge Jones also bases much of his decision on the constitutional arguments devised by Justice John Paul Stevens. In Justice Stevens' view, a policy or practice can be ruled unconstitutional if "an objective observer" would "perceive" such a policy or practice as a state endorsement of religion. Of course, that leaves Justice Stevens ready to take the role of the "objective observer." [See his majority opinion in *Santa Fe Independent School District v. Doe*, 2000.]

In addition, Judge Jones also sought to base his decision on Justice Sandra Day O'Connor's "endorsement test." O'Connor went even beyond Justice Stevens, arguing that a policy or practice should be ruled unconstitutional if a "reasonable observer" who represents "a community ideal of social judgment, as well as rational judgment" would be offended by a perceived religious endorsement. This "test" is no test at all, merely a verbal mechanism that allows a judge to play the part of the "reasonable observer."

The most amazing (and perplexing) aspect of Judge Jones' decision is his willingness to play scientist. Evidently, the judge is not satisfied to rule on the mere question of the law and the Constitution. Instead, he offers a lengthy scientific treatise.

As reporters David Brown and Rick Weiss of *The Washington Post* explain, the judge's 139-page written opinion is both "a passionate paean to science" and "a strategic defense of Darwinian theory."

More: *When evolution's defenders find themselves tongue-tied and seemingly bested by neo-creationists — when they believe they have the facts on their side but do not know where to find them — this 139-page document may be the thing they turn to.* Do we really pay federal judges to pose as scientists?

Referring to himself, Judge Jones asserts that "no other tribunal in the United States is in a better position than are we to traipse into this controversial area." And traipse he does, arguing that "[j]ust because scientists cannot explain today how biological systems evolved does not mean that they cannot, and will not, be able to explain them tomorrow." In other words, any attack on evolutionary theory *has* to be based in a religious bias.

Michael J. Behe, a professor of biochemistry at Lehigh University and one of the nation's leading proponents of Intelligent Design, told *The New York Times*, "I think he really went way over what he as a judge is entitled to say. . . . He talks about the ground rules of science. What has a judge to do with the ground rules of science? I think he just chose sides and echoed the arguments and just made assertions about our arguments."

Professor Behe is surely right on that score. The decision in this case, *Kitzmiller v. Dover Area School District*, is not likely to be appealed, but the issue is not going to go away. Judge Jones' decision is a further indication of what happens when a judge decides to play scientist and to discern the motivations of citizens. Interestingly, even before he handed down his ruling, Judge Jones was celebrating the fact that he would have this opportunity. "I became a judge with the hope of having an opportunity to rule in matters of great importance," he said [see coverage in *The Houston Chronicle*]. That is not a reassuring comment — especially from one who insists that he is not an activist judge.

The concept of Intelligent Design is an intellectual tool that points to the complexity of the universe and demonstrates the conceptual inadequacy of evolutionary naturalism. It is not the Christian doctrine of creation. As a Christian theologian committed to the biblical doctrine of creation, complete with an affirmation of a young earth and the divine creation of all things (and of all species), I know the difference.

That's what makes Judge John E. Jones' decision in this case so very troubling. An idea as simple and uncomplicated

as Intelligent Design looks to him like an ideological assault from Christian commandos.

ADDITIONAL COVERAGE: *The San Francisco Chronicle*, *The Indianapolis Star*, *The Seattle Times*, *The Los Angeles Times*, *The Boston Globe*, *Slate.com*, *BBC News*, *Salon.com*, *Aljazeera* [Qatar], *The Guardian* [London], *The Times* [London], *Voice of America*, *TIME*, *TIME* [analysis], *The Globe and Mail* [Toronto].

SEE ALSO: Statements from [Americans United for Separation of Church and State](#), [American Civil Liberties Union](#) [ACLU], [American Association for the Advancement of Science](#) [AAAS], [Discovery Institute](#).

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