Lawsuits Delve into Science vs. Religion

by Phyllis Raybin Emerd

Since the 1859 publication of Charles Darwin's *The Origin of Species*, there has been an ongoing debate about the origins of life on earth. That debate pits supporters of Darwin's theory of evolution against religious creationists who believe the creation stories told in the Bible.

The argument has raged since the Scopes Monkey Trial in 1925 and has heated up in recent years with several lawsuits that seek to have intelligent design, a controversial alternative science, taught alongside evolution, or as an alternative to it. In 2005 alone, more than a dozen bills in 13 different state legislatures were introduced to challenge the teaching of evolution in the public school science curricula. Kansas, Georgia, and most recently Pennsylvania, have been thrust into the national spotlight with lawsuits that oppose or dispute the teaching of evolution and instead promote intelligent design, considered by some to be a "scientific" offshoot of creationism.

Evolution v. Intelligent Design

Darwin's theory of evolution explains that all human life developed from non-human single cells as the result of natural processes, which randomly happened over billions of years. New species were formed, according to Darwin's theory, by passing on characteristics that were the result of natural selection, or survival of the fittest. Weaker species failed to survive and only the strong traits continued and ultimately evolved into human beings.

Creationists believe the Bible story of Genesis, which is that God created the earth in six days, about 6,000 to 10,000 years ago. Most creationists feel that God made the first human beings all at once exactly as they are today.

The Center for Science and Culture (CSC), part of the Discovery Institute, a conservative Christian research group in Seattle, is largely responsible for developing and promoting the intelligent design theory. Separating themselves from their creationist counterparts, CSC and supporters of intelligent design see it as an alternative science. They accept that the age of the earth is several billion years old and even accept some parts of the doctrine of natural selection. However, they believe that life is too complex and complicated to be completely explained by evolution. They do not claim that the intelligent designer is God, a higher being, or an omnipotent force, but only that "certain features of the..." CONTINUED ON PAGE 3

Freedom of the Press Helps Everyone, Not Just Reporters

by Cheryl Baisden

In some countries, writing an article like this—where different ideas and opinions are expressed—would be illegal, and could land you in jail. But in the United States, the First Amendment to the U.S. Constitution guarantees citizens the right to express themselves in print.

Freedom of the press is one of our basic rights under the First Amendment, which prohibits the government from restricting what is written in newspapers and magazines, and reported on television and radio.

"The Founding Fathers knew that the press could be a check on government power," says Bruce S. Rosen, a Chatham lawyer who works on First Amendment cases. "The Founding Fathers also hoped that the press would encourage participation in important public issues and educate the public."
against the government’s opinions, the Center asserts, are often arrested.

Freedom of the Press, not absolute

Of course while we are guaranteed the right to a free press, that right can be abused if it involves lies or sensational information that could endanger people’s lives, which is why reporters and publishers sometimes end up in court defending their First Amendment right to express themselves, according to Rosen. Just how far the right to a free press goes is frequently tested in the courts. In some cases, people have sued for defamation of character or libel, which means their reputation was damaged when false information was reported by the press. In those cases, it has to be proven that the report was false, and that the reporter or publisher printed the lie intending to harm the person.

Within certain limitations, the media is free to do as it wishes, however, if a reporter revealed movements of U.S. troops, for example, which jeopardized U.S. lives, that may not be protected, and may be subject to criminal penalties, “says Rosen. “If you wrote lies about someone and hurt their reputation, you may be subject to civil (money) penalties, as well.”

Consumer Reports v. Suzuki

A recent First Amendment case concerning freedom of the press involved a 1988 review published in Consumer Reports, a magazine that tests everything from air conditioners to washing machines and then reports on the results (in a recent review of sports utility vehicles (SUVS), Consumer Reports rated the Suzuki Samurai “not acceptable” because their tests showed it tended to tip and roll during sharp turns. Suzuki charged the magazine with product disparagement (or defaming its product), claiming it intentionally rigged the test so the inexpensive SUV would fail and Consumer Reports could use the results in advertising to raise money. The carmaker said the report defamed the reputation of the SUV, and because of declining sales Suzuki had to stop productions the vehicle.

Consumer Reports claimed the test and results were accurate, and that the magazine had a First Amendment right to report on the Samurai’s failures. Initially dismissed by a federal district court in California, the Ninth Circuit Court of Appeals overturned that decision and re-instated the case in June 2002.


One of the arguments that Consumer Reports had put forth in its defense was that, as a magazine, it is protected by the 1964 U.S. Supreme Court decision in the case of The New York Times v. Sullivan, which held that in order to prove defamation the reporting question must be proven to have malicious intent or a “reckless disregard for the truth or advance knowledge of falsity.”

In his dissenting opinion in the Consumer Reports case, Judge Alex Kozinski of the Ninth Circuit Court cited the Sullivan case stating, “I find it incomprehensible that a review truthfully disclosing all this information could be deemed to be “malicious” under New York Times Co. v. Sullivan. If Consumers Union [the company that owns Consumer Reports] can be forced to go to trial after this thorough and candid disclosure of its methods, this is the death knell for ratings. It will be impossible to issue a meaningful consumer review that a band of determined lawyers can’t pick apart in front of a jury. The ultimate losers will be American consumers. Manufacturers would be required to provide independent information about the safety and usefulness of products they buy with their hard-earned dollars,” Judge Kozinski wrote.

Finally resolved

In November 2003, the U.S. Supreme Court denied the request to hear the case. After an eight-year battle, both Consumer Reports and Suzuki agreed to have the case dismissed in July 2006. With the dismissal of the case, neither side will receive monetary damages and neither side is required to admit liability in the matter. According to Rosen, if the case had gone to trial, the Suzuki product would have found that Consumer Reports’ review was protected under the First Amendment, since the magazine’s article explained the reasons for its ratings.

Suzuki agreed the product is dangerous, you also need to provide the basis for your opinion,” he says. “You can’t prove, but if after you give your reasons the conclusion is a matter of opinion, it is protected.

This is why newspapers can publish restaurant and movie reviews without worrying about being sued, unless they make outrageous claims they can’t support. For example, Rosen explains, a reviewer could say a restaurant’s food is excellent. If the food could poison you, the restaurant owner could sue and win unless the food really did poison someone.

To Rosen, the importance of freedom of the press cannot be overstated. “Without freedom of the press you would be unable to express your opinion in print or on television or radio, and democracy as we know it would cease to exist,” he concluded.
Challenges Over Evolution vs. Creationism Through the Years

The U.S. Supreme Court has used the establishment clause in the First Amendment of the U.S. Constitution to decide many cases regarding the teaching of evolution vs. creationism. Below are a few notable cases decided by the Court and several lower courts.

**Eversen v. Board of Education (1947)** — The U.S. Supreme Court ruled on the meaning of the establishment clause. In this case, the court ruled that the Act was passed to prevent the teaching of evolution in public schools. The court held that the Act violated the First Amendment and the Fourteenth Amendment, which deals with equal protection under the law.

**McEuen v. Arkansas Board of Education (1982)** — In this case, the Arkansas Board of Education ruled that teaching evolution was not an infringement of religious beliefs, and scientific discussions should be focused on how life began and evolved and not on the ultimate cause or origins.

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**Segraves v. State of California (1981)** — In this case, the court held that the Act violated the First Amendment and the Fourteenth Amendment, which deals with equal protection under the law. The court ruled that the Act was not an unconstitutional establishment of religion.

**Webster v. New Lenox School District (1987)** — In this case, the court held that the Act was an unconstitutional establishment of religion. The court ruled that the Act violated the First Amendment and the Fourteenth Amendment, which deals with equal protection under the law. The court ruled that the Act was not an unconstitutional establishment of religion.

**Pelazo v. Capistrano School District (1994)** — In this case, the court held that the Act violated the First Amendment and the Fourteenth Amendment, which deals with equal protection under the law. The court ruled that the Act was not an unconstitutional establishment of religion. The court ruled that the Act was an unconstitutional establishment of religion.

**Selman v. Cobb County School District (2005)** — In this case, the court held that the Act violated the First Amendment and the Fourteenth Amendment, which deals with equal protection under the law. The court ruled that the Act was not an unconstitutional establishment of religion. The court ruled that the Act was an unconstitutional establishment of religion.

**Kitzmiller v. Dover—Scopes II, but in reverse** — According to The New York Times, lawyers at the Thomas More Law Center in Michigan, a nonprofit Christian legal organization, convinced school boards throughout the country to find one willing to teach intelligent design and challenge evolution in the classroom. School districts in Michigan, Minnesota, and West Virginia accepted, among others, turned them down. Despite a warning from their lawyer, the school board in Dover, Pennsylvania said yes.

In October 2006, the eight-member Dover School board voted to become the first district in the U.S. to require that students in 9th grade biology class be taught intelligent design. According to court documents, because the district was teaching evolution, teachers were required to read the following disclaimer: “Because Darwin’s theory is a theory, it continues to be tested as no other scientific theory. Gaps in the theory exist for which there is no evidence… Intelligent design is an explanation of the origin of life that differs from Darwin’s view. The statement was supposed to read the intelligent design textbook, Of Pandas and People, which was available in the school library.

A group of teachers in Dover responded to this order by sending a letter to the school district superintendent. According to New York Magazine columnist Ken Andersen, the teachers wrote (all in caps), “Intelligent Design is not science. Intelligent Design is not a scientific theory.”

As expected, a group of parents sued the school board, stating in their lawsuit that the board had, “injected religious creationism into science classes in the guise of intelligent design.” The trial ruled whether intelligent design was actually based on religious beliefs and whether it violated the establishment clause of the U.S. Constitution.

During the six-week trial in September 2005, a Harrisburg, Pennsylvania, district attorney heard scientists testify both in support of and in opposition to intelligent design. Attorneys from the More Center, who represented the Dover School Board, said that the issue was not whether students should have academic freedom and access to different scientific theories. They declared the board did not have a religious agenda and was not motivated by religion.

The New York Times reported that in his opening statement, the attorney for the parents called Pelazo’s version of creationism “the most accurate, first-century version of creationism.” He declared that the trial would show that the school board had originally wanted creationism to be taught in the classroom, with one member proposing that creationism and evolution be given equal time. Intelligent design was substituted, the attorney said, after the school board was advised that the courts had already found that teaching creationism in schools is unconstitutional.

The verdict

In December 2005, U.S. District Judge John E. Jones III ruled against the Dover School board and, in his written opinion, called intelligent design “a religious view
High Court Revisits Church-State Debate

neutral toward religion,” the court majority said, “and may neither promote nor discourage it.” Reflective, perhaps, of the mixed opinions that exist on this topic, however, the same court ruled, in an equally close 5-4 vote, to uphold the constitutionality of the Ten Commandments monument in Texas. In that case, the courts considered, among other things, that the monument stands among some 17 other monuments and plaques on the capitol grounds. “The pair of rulings suggests that the Ten Commandments may be displayed inconspicuously among other documents or monuments, but cannot be made the focus of attention in a courthouse or government building,” The Los Angeles Times reported.

Other issues

In addition to cases above, Cige notes that the courts have, in the past, considered such issues as whether religious displays, such as Christmas trees or menorahs, should be constitutionally allowed in public places, for example in schools or government buildings. Also at the heart of considerable controversy, which is still being debated, is whether it is constitutionally permissible for students in public schools to recite the Pledge of Allegiance with the words “under God,” in it. Perhaps the greatest variable in the debate, Cige suggests, is the court’s interpretation of the U.S. Constitution, an interpretation that can change over time. That is one reason why, he says, so much importance is placed on the nominees to the U.S. Supreme Court.

Nothing personal

While debates about church-state issues raise questions and sometimes raise tempests, Martin Pachman, school board attorney in East Brunswick where the coaching incident occurred, reminds people not to take them personally. “In the end, it’s not about whether one religion is better than another — or whether no religion at all is best,” Pachman says. “It comes down to the U.S. Constitution and finding a balance between allowing people to practice their beliefs freely and at the same time preventing state enforcement of any one particular religious belief.”

Casey Luskin, legal affairs director for the Discovery Institute, told The Los Angeles Times that keeping students in legal limbo about alternatives to evolutionary theory amounted to censorship. The Los Angeles Times reported that the case was ultimately settled out of court, with the El Triunfo Unified School District agreeing to terminate the existing course and never to offer such a course again.

Poll shows divide over man’s origin

Despite court rulings, a July 2005 poll, conducted by the Pew Forum on Religion and Public Life, a non-partisan, non-advocacy organization, revealed that 42 percent of the people polled held “strict creationist views,” while 48 percent said, “they believed humans have evolved over time.” In all, 64 percent said creationism should be taught alongside evolution in schools and more than a third were in favor of replacing evolution with creationism.

These statistics seem to show that Americans are deeply divided on their views of evolution and intelligent design. Attorney Viola Lordi of Wilentz, Goldman and Spitzer in Woodbridge, who specializes in school law, thinks that the evolution of this controversy is that adults take what kids learn in school seriously—enough to fight about it in court. “We are a multi-cultural society and people bring different views to the table,” Lordi said. “This issue of evolution was fought 80 years ago and in 100 years, we may still be arguing about it.”

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