

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TAMMY KITZMILLER; BRYAN AND
CHRISTY REHM; DEBORAH
FENIMORE AND JOEL LIEB; STEVEN
STOUGH; BETH EVELAND; CYNTHIA
SNEATH; JULIE SMITH; AND ARALENE
("BARRIE") D. AND FREDERICK B.
CALLAHAN,

Plaintiffs,

v.

DOVER AREA SCHOOL DISTRICT;
DOVER AREA SCHOOL DISTRICT
BOARD OF DIRECTORS,

Defendants.

Civil Action No. 04-CV-2688

Honorable John E. Jones III

**PLAINTIFFS' BRIEF OPPOSING DEFENDANTS' MOTION FOR A
PROTECTIVE ORDER**

Plaintiffs Tammy Kitzmiller, Bryan and Christy Rehm, Deborah Fenimore, Joel Lieb, Steven Stough, Beth Eveland, Cynthia Sneath, Julie Smith and Aralene and Frederick Callahan file this brief in opposition to Defendants' Motion for a Protective Order ("Defendants' Motion"). Defendants Dover Area

School District and Dover Area School District Board of Directors (“Defendants”) filed their motion seeking to avoid discovery of the draft of The Design of Life (“draft” or “The Design of Life”), a work on Intelligent Design Theory (“IDT”),¹ which was principally authored by Defendants’ expert William Dembski (“Dembski”), as well as communications between Dembski and others who collaborated with him in connection with producing the draft or with promoting IDT (“communications”). Because the draft and the communications are extremely relevant to this litigation, because Dembski already has published numerous portions of the draft on his website and in other formats, and because no harm or burden will result to Dembski or the publisher of The Design of Life, the Foundation for Thought and Ethics (“FTE”), if the draft is produced and Dembski is questioned about the communications, Defendants’ Motion should be denied.

I. COUNTERSTATEMENT OF FACTS

Plaintiffs in this case are challenging, on First Amendment grounds, the requirement imposed by Defendants that ninth grade biology students be instructed by their teachers that Darwinian evolution theory “is not a fact. Gaps in the Theory exist for which there is no evidence.” (Complaint, ¶ 40.) The teachers

¹ Plaintiffs do not acknowledge that Intelligent Design Theory is scientific or a theory in the scientific sense. It is only referred to as Intelligent Design Theory or IDT in this brief for ease of reference, as this is the term assigned to it by Defendants in their Motion.

are then required to state to the students: “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 any student to see if you would like to explore this view in an effort to gain an understanding of what intelligent design actually involves.” (Id.)

Dembski has been identified by Defendants as an expert witness who will opine that “the case for the legitimacy of intelligent design as a scientific explanation and as an alternative to neo-Darwinian theory is overwhelming.” (Ex. 1-A to Defendants’ Motion, p. 11.) With specific regard to Of Pandas and People (“Pandas”), Dembski will testify that “I feel I know it better than anyone” (id. at 10) because “since the summer of 2001, I have worked in producing the third edition of” Pandas (id. at 10), to which Dembski has added so much new material that the new version “is being renamed *The Design of Life: Discovering Signs of Intelligence in Biological Systems*.” (Id.)

Plaintiffs intend to show, at trial, that IDT is the equivalent of “Creation science,” which the Supreme Court already has affirmed to be religion, not science, and therefore not a subject that may be taught in public school science classes. Edwards v. Aguillard, 482 U.S. 578 (1987). Plaintiffs expect vigorous cross-examination of Dembski, including questioning as to his purposes in working on a successor to Pandas, the depth of his knowledge of the science of biology, and

any information he has as to how The Design of Life is to be promoted. Through such questions plaintiffs expect to bring out serious doubt as to the bona fides of IDT as science. Plaintiffs expect that the record of Dembski's communications with others during this project will both support plaintiffs' fundamental contentions about IDT as well as constrain Dembski's expected effort to minimize the religious and "cultural" component of IDT as he is cross-examined about it.

II. COUNTERSTATEMENT OF QUESTION PRESENTED

The simple question presented is, does the material subpoenaed appear reasonably calculated to lead to the discovery of admissible evidence, either in plaintiffs' case in chief or in cross-examining a defense expert witness?

III. ARGUMENT

A. All Relevant Information Is Discoverable.

It is a well settled principle that the Federal Rules of Civil Procedure provide for broad discovery. HealthAmerica Pennsylvania, Inc. v. Susquehanna Health Sys., No. 3:00-CV-1525, 2002 U.S. Dist. LEXIS 26583, *4 (M.D. Pa. May 9, 2002), attached hereto as Exhibit A. Federal Rule of Civil Procedure 26(b)(1) provides:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. . . . For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

Not only are the discovery rules generally intended to be interpreted broadly, but courts have held that the relevancy requirement in particular is to be construed broadly. HealthAmerica, 2002 U.S. Dist. LEXIS 26583, at *4-5. “Relevancy encompasses ‘any matter that bears on, or reasonably could lead to other matters that could bear on, any issue that is or may be in the case.’” Gould, Inc. v. A&M Battery & Tire Serv., No. 3 CV-91-1714, 1996 U.S. Dist. LEXIS 12151, *27-28 (M.D. Pa. May 13, 1996), attached hereto as Exhibit B, quoting Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). The broad “conception of discovery in general and relevance in particular requires that where relevance is in doubt, the court should be permissive in allowing discovery.” Gould, 1996 U.S. Dist. LEXIS 12151, *29, citing Yang v. Reno, 157 F.R.D. 625, 631 (M.D. Pa. 1994), quoting Oppenheimer.

Despite the liberal discovery rules, under certain circumstances courts may limit discovery of relevant materials. This occurs only where the party seeking protection has made a showing of “good cause” and “justice requires [an order] to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c). In such cases, however, the burden of persuasion is on the party seeking the protective order, and “[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.” Cipollone v. Liggett Group, Inc., 785 F.2d

1108, 1121 (3d Cir. 1986). Defendants have failed to establish good cause or otherwise meet their burden of persuasion such that they would be entitled to withhold production of the draft or to keep Dembski from testifying as to the communications. Therefore, Defendants' Motion must be denied.

B. The Information Sought Is Relevant.

The heart of plaintiffs' claim is that IDT is not science, but a religious view masquerading as science. It is analogous to the "creation science" that was struck down in Edwards v. Aguillard, because the purpose of Louisiana's requirement that creation science be taught along with evolution was clearly to advance the "religious belief that a supernatural creator was responsible for the creation of humankind." 482 U.S. 578, 592 (1987). The proponents' leading expert on creation science had testified in the Louisiana legislature that "creation scientists" point to a high probability that life was "created by an intelligent mind." Id. at 591. The Court held that the purpose to advance a religious viewpoint as to the nature of life rendered the legislation unconstitutional. Id. at 604.

Even if Dembski were not a testifying expert, it is undeniable that he is a leading proponent of IDT, and therefore he is likely to possess information as to the true purposes of those centrally involved in developing IDT. If that information reveals IDT to be a religious inference that life was created by "an intelligent mind" (or an "intelligent designer"), plaintiffs' case will be established.

In the present case, however, Dembski is also a testifying expert. He will be subject to cross-examination. That cross-examination may range over his qualifications, how much of his opinion is based on his own knowledge versus that derived from others, and prior inconsistent statements (whether in published pieces or private communications). The material sought is highly relevant to each of these subject areas as well.

Moreover, the material sought may be relevant in cross-examining other defense experts. For example, Defendants' expert Warren Nord proposes to testify that IDT is science because it passes the screening questions Nord would pose as to what is good science: "[H]ow many scientists take IDT seriously? What is (or has been) their standing within establishment science? What kinds of research have they done? To what extent does the theory draw on accepted science? To what extent is it an ad hoc theory? Does it grow honestly out of the evidence, rather than out of prior ideological or religious commitments?" Nord Disclosure at 5, attached hereto as Exhibit C. Nord proposes to opine that "IDT does pass this kind of test." Id. The communications of the leading proponent of IDT, Dembski, in the course of preparing what is to be the definitive text on IDT, can reasonably be predicted to bear upon many of these questions, and may therefore be eminently useful in cross-examining Nord as well as Dembski.

The potential relevance of the material sought cannot be gainsaid.

C. None of the Reasons Advanced by Defendants To Prevent Discovery Applies.

Perhaps in acknowledgment of the relevance of the material sought, Defendants focus their opposition on four supposed justifications for shielding Dembski's draft and communications from discovery. Not one withstands scrutiny.

1. The Draft Is Relevant to Dembski's Knowledge.

Defendants argue that Dembski has not based his opinions in this case on the draft. That is beside the point. The rules no longer require an expert to have relied upon the information in forming his opinion in order for the source of the information to be discoverable. See Fed. R. Civ. P. 26(a)(2); Kresa v. Equitable Life Assurance Soc'y, 196 F.R.D. 254, 258 (M.D. Pa. 2000). As Judge Becker pointed out in Paoli, it is relevant to ask whether a proposed expert is approaching his courtroom science with the same methods and approaches he brings to his labors outside the courtroom. In re Paoli, 35 F.3d 717, 742 (3d Cir. 1994). Since the draft represents Dembski's principal efforts on IDT outside the courtroom, its relevance is assured, whether Dembski relied on it in framing his testimony here or not. Indeed, as a draft Preface to The Design of Life states: "This textbook provides students with an up-to-date overview of intelligent design and its contribution to [the Darwinian] debate." Preface to The Design of Life, pp. v-vi, attached hereto as Exhibit D. The challenge plaintiffs make in this case is to the

requirement that teachers instruct their students that “intelligent design” is an alternative to evolution. Pandas is merely an explanation of IDT. If IDT has evolved beyond Pandas, both plaintiffs and the Court need to know that.

2. The Draft Is Relevant to the Efficacy Vel Non of Pandas.

Defendants argue that the draft is, by now, very different from Pandas, and that plaintiffs already have much information about Pandas. As to the first prong of this argument, if the draft reveals that the substance of Pandas has been eviscerated since it was written in the 1980s, that would be highly relevant to the suitability of Pandas as a reference book in 2004 or 2005. As to the second prong of this argument, plaintiffs are unaware of any doctrine that because they have been able to develop much information on their own, they are precluded from obtaining discovery from their litigation opponent or his expert witness.

3. There Is No Duty To Keep the Draft Confidential.

Defendants claim, without demonstrating where this comes from, that Dembski has a duty to keep the draft confidential. Because Defendants have not shown any facts to impose such a duty, they fail to meet their burden and their argument can be ignored.

It is extraordinary, however, that Defendants would make this argument at all, *because Mr. Dembski has published draft sections of this book*

repeatedly, on various websites. On different occasions, versions of Dembski's draft were available on at least three separate websites. See

- <http://www.designinference.com/>;
- <http://www.professorenforum.de/volumes/v05n03/Artikel1/dembski.pdf>;
- and
- http://www.iscid.org/papers/Dembski_HumanOrigins_062204.pdf.

Dembski even declared that he modified a chapter of the draft after a critic posted comments on a website identifying some of the more glaring errors in the chapter.

See

- Dembski and Human Origins - <http://www.pandasthumb.org/pt-archives/000291.html>; and
- Dembski on Human Origins, reprise - <http://www.pandasthumb.org/pt-archives/000506.html>.

Dembski and Defendants cannot convincingly contend that they must protect the confidentiality of the draft, or be harmed by its production, when Dembski has himself published portions of it in the past.

4. Disclosure Will Not Impose on Dembski's Right To Perform IDT Work.

Defendants' last assertion is that if required to disclose the draft and "private communications," Dembski's ability to speak and associate freely will be

impeded. As is true about their contentions concerning confidentiality of the draft, Defendants have made this broad assertion without offering up any evidence to support it.

It must be obvious to every proposed expert witness that enlisting in someone else's battles may become a little messy at times. The fact that Dembski would prefer to proceed unencumbered by certain aspects of his history, however, is no reason to exempt him from the type of inquiry every expert witness might face. This is all the more true when the expert himself is the one who brought up the subject of a text in draft. Furthermore, plaintiffs offered and are willing to execute a reasonable protective agreement to assure the confidentiality of the draft whereby they would not use any quotes from the draft except in the context of the litigation, and, even then, they would be willing to file such parts under seal.

So far as "private communications" are concerned, no privilege is claimed or implicated here. Plaintiffs have no interest in inquiring into purely personal matters. But plaintiffs have an obvious and important interest for inquiring into communications regarding strengths or weaknesses of IDT as science, the purposes –religious or otherwise – of IDT proponents, and the expectations and intentions as to the marketing of IDT materials. If IDT is a charade or masquerade, it should be unmasked. If it is not, surely Dembski would

be unimpaired, notwithstanding the material subpoenaed here, in pursuit of his goals for IDT.

IV. CONCLUSION

The liberal discovery rules allow discovery as to any relevant matter in a litigation. The draft and the communications are directly relevant to the primary issue in dispute in this litigation. Furthermore, Dembski already has published numerous portions of the draft on his website and in other formats, and no harm will result to Dembski or the FTE if the draft is produced and if Dembski is questioned about the communications. Therefore, Defendants' Motion should be denied.

Respectfully submitted,

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Dated: May 10, 2005

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2005, a copy of the foregoing
Plaintiffs' Brief Opposing Defendants' Motion for a Protective Order should be
served on the following counsel through the electronic case filing system:

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/s/ Thomas B. Schmidt III
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EXHIBIT A

6 of 100 DOCUMENTS

HEALTHAMERICA PENNSYLVANIA, INC., COVENTRY HEALTH AND LIFE INSURANCE COMPANY, and COVENTRY HEALTHCARE MANAGEMENT CORPORATION, Plaintiffs vs. SUSQUEHANNA HEALTH SYSTEM, THE WILLIAMSPORT HOSPITAL & MEDICAL CENTER, DIVINE PROVIDENCE HOSPITAL, MUNCY VALLEY HOSPITAL, and SUSQUEHANNA PHYSICIAN SERVICES, Defendants

NO. 3:00 CV1525

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

2002 U.S. Dist. LEXIS 26583

May 9, 2002, Filed

SUBSEQUENT HISTORY: Adopted by, Motion denied by *Healthamerica Pa., Inc. v. Susquehanna Health Sys., 2002 U.S. Dist. LEXIS 26580 (M.D. Pa., June 4, 2002)*

PRIOR HISTORY: *Healthamerica Pa., Inc. v. Susquehanna Health Sys., 2002 U.S. Dist. LEXIS 26586 (M.D. Pa., Apr. 26, 2002)*

DISPOSITION: [*1] Recommended that Plaintiffs' Motion for Protective Order be denied.

LexisNexis(R) Headnotes

COUNSEL: For Healthamerica Pennsylvania, Inc, Coventry Health and Life Insurance Company, Coventry Healthcare Management Corporation, PLAINTIFFS: David E Lehman, McNeese, Wallace & Nurick, Harrisburg, PA USA.

For Healthamerica Pennsylvania, Inc, Coventry Health and Life Insurance Company, Coventry Healthcare Management Corporation, PLAINTIFFS: Lee Calligaro, Patricia M Wagner, Tanya B Vanderbilt, William G Kopit, Epstein Becker & Green, PC, Washington, DC USA.

For Susquehanna Health System, Williamsport Hospital & Medical Center, The, Divine Providence Hospital, Muncy Valley Hospital, Susquehanna Physician Services,

DEFENDANTS: Jonathan B Sprague, Kathleen Chancler, Post & Schell, Mark L Mattioli, Post & Schell, PC, Brian M Peters, Philadelphia, PA USA.

For Susquehanna Health System, Williamsport Hospital & Medical Center, The, Divine Providence Hospital, Muncy Valley Hospital, Susquehanna Physician Services, DEFENDANTS: J David Smith, McCormick Law Firm, Williamsport, PA USA.

For Susquehanna Health System, Williamsport Hospital & Medical Center, The, Divine Providence Hospital, Muncy Valley Hospital, [*2] Susquehanna Physician Services, DEFENDANTS: John J Miles, Ober, Kaler, Grimes & Shriver, Washington, DC USA.

For Frank J Bolock, SPECIAL MASTER: Frank J Bolock, Rosen Jenkinns & Greenwald, Scranton, PA USA.

JUDGES: Judge Munley.

OPINION:

REPORT AND RECOMMENDATION OF SPECIAL MASTER, FRANK J. BOLOCK, JR., REGARDING PLAINTIFFS' MOTION FOR PROTECTIVE ORDER REGARDING DEFENDANTS' EFFORTS TO OBTAIN THE DEPOSITION OF ALLEN WISE

AND NOW comes, Frank J. Bolock, Jr., Esquire,

Special Master appointed in the above captioned matter pursuant to Order of Court dated July 9, 2001, who sets forth the following Report and Recommendation:

I. BACKGROUND

1. In February, 2002, prior to the stipulated Stay Order in this case, Plaintiffs filed a Motion for a Protective Order seeking to prevent the Defendant from obtaining the deposition of Allen Wise, the CEO of Coventry Health Care, Inc.

2. A Motion for Protective Order was filed with the United States District Court for the Middle District of Pennsylvania and, simultaneously, was forwarded to the Special Master with a request for either the entry of an Order by the Court and/or a Report and Recommendation from the Special Master.

3. Defendants [*3] filed a Reply in opposition to the Motion for Protective Order.

4. The Special Master recently filed a Report and Recommendation suggesting the lifting of the Stay Order based upon the agreement of counsel.

5. Shortly after the filing of the Report and Recommendation of the Special Master regarding the stay and discovery deadlines, counsel for the Defendant requested the Special Master issue a Report and Recommendation regarding Plaintiffs' Motion for Protective Order.

II. DISCUSSION

The Special Master has had the opportunity to review Plaintiffs' Motion for Protective Order, Defendants' Reply to the Motion for Protective Order, Plaintiffs' Reply to Defendants' Opposition to Motion for Protective Order, as well as various correspondence exchanged by and among counsel relative to this issue.

Plaintiff argues that Allen Wise, CEO of Coventry Health Care, Inc., the parent corporation of the Plaintiffs, has no relevant information regarding the underlying lawsuit and, further, that the Defendants have had ample opportunity to obtain and, in fact, have obtained from other sources, the information that Mr. Wise could conceivably provide in his deposition.

Defendants contend [*4] that the deposition of Allen Wise is necessary as they believe that Mr. wise may have information relevant to the subject matter involved in the underlying lawsuit.

The Federal Rules of Civil Procedure provide for

broad discovery. In order to obtain the deposition testimony of a witness, the party seeking the deposition need only demonstrate that the information sought is reasonably calculated to lead to the discovery of admissible evidence. The United States Supreme Court in the case of *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 57 L. Ed. 2d 253, 98 S. Ct. 2380 (1978), has articulated the definition of reasonableness pursuant to *F.R.C.P. 26(b)(1)*

The key phrase in this definition - "relevant to the subject matter involved in the pending action" - has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.

It is well settled in the law that given the very broad definition of relevance, a party seeking to preclude discovery Has the burden of demonstrating that the information sought either does not come within the broad scope of relevance [*5] as defined by the United States Supreme Court and the Federal Rules of Civil Procedure or the information is of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure. *Crossley v. Iroquois Foundry Co., Inc.*, 1992 U.S. Dist. LEXIS 7368 (E.D.Pa.)

Plaintiffs herein have failed to meet their burden with respect to matters necessary to preclude discovery.

III. RECOMMENDATION

Based upon the foregoing, it is recommended that Plaintiffs' Motion for Protective Order be denied.

Any Exceptions to this Report & Recommendation may be filed in accordance with *F.R.C.P. p. 53*.

ROSENN, JENKINS & GREENWALD, L.L.P.

BY:

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EXHIBIT B

1996 U.S. Dist. LEXIS 12151, *

4 of 6 DOCUMENTS

GOULD, INC., Plaintiff v. A & M BATTERY & TIRE SERVICE, et al., Defendants

3 CV-91-1714

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA*1996 U.S. Dist. LEXIS 12151*

May 13, 1996, Decided

May 13, 1996, FILED

DISPOSITION: [*1] Defendants' motion to compel discovery GRANTED.

COUNSEL: For GOULD, INC., plaintiff: Dennis R. Suplee, Diana S. Donaldson, Schnader, Harrison, Segal & Lewis, Philadelphia, PA. Jacob P. Hart, Schnader, Harrison, Segal & Lewis, Phila., PA. Mark A. Lockett, Philadelphia, PA. John M. Armstrong, Esq., SCHNADER HARRISON SEGAL & LEWIS, Phila, PA.

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For AMERICAN SCRAP CO., defendant: Eugene E. Dice, Harrisburg, PA.

For AMSOURCE (PENN IRON & METAL), defendant: Donald H. Brobst, Wilkes Barre, PA. Robert D. Schaub, Wilkes-Barre, PA. Joseph G. Ferguson, Rosenn, Jenkins & Greenwald, Wilkes Barre, PA. Robert N. Gawlas, Jr., Wilkes Barre, PA.

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For BRISTOL METAL CO., INC., defendant: Michael L. Krancer, Blank, Rome, Comisky & McCauley, Philadelphia, PA.

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For BROOKFIELD METAL CO., defendant: Donald H. Brobst, (See above).

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For ELMAN RECYCLING CO., defendant: Kristin Carter Rowe, Esq., (See above).

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For I. SOLOMON METAL CO., INC., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Joseph G. Ferguson, (See above). Robert N. Gawlas, Jr., (See above).

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For J. BROOMFIELD & SON, INC., defendant: Steven E. Snow, Providence, RI.

For J. SEPENUK & SONS, INC., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Joseph G. Ferguson, (See above). Robert N. Gawlas, Jr., (See above).

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For JOE KRENTZMAN & SONS, defendant: Bernard A. Labuskes, Jr., Harrisburg, PA.

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For LOUIS COHEN & SON INC., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Joseph G. Ferguson, (See above). Robert N. Gawlas, Jr., (See above).

For LOUIS KUTZ & SON, defendant: Kristin Carter Rowe, Esq., (See above).

For LYELL METAL, defendant: Burton D. Tanenbaum, (See above). Glenn E. Pezzulo, CULLEY, MARKS, TANENBAUM, REIFSTECK, POTTER & CAPELL, Rochester, NY.

MEYER-SABA METAL CO., defendant, [PRO SE], James Saba, Sr., c/o Meyer And Saba Metal Co., Inc., Kingston, PA.

For MODERN JUNK & SALVAGE CO., defendant: William J. Rubin, (See above). Marc K. Cohen, Ober,

Kaler, Grimes & Shriver, Baltimore, MD. Michael W. Davis, Lancaster, PA. James A. Humphreys, III, Esq., BARLEY SNYDER SENFT & COHEN, Lancaster, PA.

For [*6] MONTGOMERY IRON & METAL CO., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Joseph G. Ferguson, (See above). Robert N. Gawlas, Jr., (See above).

For MORGAN HIGHWAY AUTO PARTS, defendant: Stanley P. DeGory, Esq., BONYA & DOUGLASS, Indiana, PA.

For NEWBURGH SCRAP CO., defendant: Donald H. Brobst, (See above).

For OLEAN STEEL SALES & SERVICE, defendant: Daniel A. DeRose, Kehoe & DeRose, Olean, NY. Richard Brickwedde, (See above).

For P. JACOBSON, INC., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Joseph G. Ferguson, (See above). Robert N. Gawlas, Jr., (See above).

For P. K. SCRAP METAL CO, defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Joseph G. Ferguson, (See above). Robert N. Gawlas, Jr., (See above).

For PASCAP CO., INC., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Joseph G. Ferguson, (See above). Robert N. Gawlas, Jr., (See above). Pascap Co., Inc., [PRO SE], PASCAP CO., INC., C/O Anthony J. Capasso, Bronx, NY.

For PENN HARRIS METALS CORP., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Joseph G. Ferguson, (See [*7] above). Robert N. Gawlas, Jr., (See above).

For R & R SALVAGE INC., defendant: Andrea R. Moore, Buffalo, NY. Christine M. Megna, Esq., JAECKLE FLEISCHMANN & MUGEL, Buffalo, NY.

For RIEGEL SCRAP & SALVAGE, defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Joseph G. Ferguson, (See above). Robert N. Gawlas, Jr., (See above).

For ROTH BROTHERS SMELTING CORP., defendant: Richard Brickwedde, (See above).

For ROTH STEEL CORPORATION, defendant:

Thomas E. Starnes, (See above). Robert N. Steinwurtzel, (See above).

For S. KASOWITZ & SONS INC., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Joseph G. Ferguson, (See above). Robert N. Gawlas, Jr., (See above). Marc E. Kasowitz, Jack Atkin, Mayer, Brown & Platt, New York, NY. Susan M. Lee, Esq., KASOWITZ HOFF BENSON TORRES & FIEDMAN, New York, NY.

For SAM KAUFMAN & SON METALS CO., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Robert N. Gawlas, Jr., (See above). John R. Embick, Kittredge & Donley, Phila, PA.

For SQUARE DEAL METAL RECYCLING, defendant: Square Deal Metal, c/o Jerome M. Feldman, Vice-President, Richmond Hill New York, NY.

For [*8] TIMPSON SALVAGE CO., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Joseph G. Ferguson, (See above). Robert N. Gawlas, Jr., (See above). Sidney Manes, Green & Seifter, Attorneys, P.C., Syracuse, NY.

For UNITED METAL TRADERS, INC., defendant: Donald H. Brobst, (See above). Robert N. Gawlas, Jr., (See above).

For WALDORF METAL CO., defendant: Donald B. Mitchell, Jr., (See above).

For WALLACE STEEL INC., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Joseph G. Ferguson, (See above). Robert N. Gawlas, Jr., (See above). Sidney Manes, (See above).

For WEINER IRON & METAL CORP., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Joseph G. Ferguson, (See above). Robert N. Gawlas, Jr., (See above).

For WEINSTEIN & CO., defendant: Morgan G. Graham, Buffalo, NY.

For WILLIAM F. SULLIVAN & CO., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Joseph G. Ferguson, (See above). Robert N. Gawlas, Jr., (See above). Paul H. Rothschild, Springfield, MA.

For WIMCO METALS, INC., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above).

Robert N. Gawlas, Jr., [*9] (See above). Gary M. Fremerman, Esq., Kelley Drye & Warren, Washington, DC. Daniel M. Steinway, Kelley, Drye & Warren, Washington, DC.

For JOINT DEFENSE GROUP, defendant: Richard H. Friedman, Harrisburg, PA.

For DE MICROMIS GROUP, defendant: Stanley P. DeGory, Esq., (See above).

For MICRO GROUP, defendant: James A. Humphreys, III, Esq., (See above). Michael W. Davis, Esq., BARLEY SNYDER SENFT & COHEN, Lancaster, PA.

For WHITE & WILLIAMS DEFENSE GROUP, defendant: Michael H. Malin, White & Williams, Philadelphia, PA. Robert Toland, II, Esq., White & Williams, Phila, PA.

For MARJOL SITE DE MINIMUS SCRAPDEALERS GROUP, defendant: Richard Brickwedde, (See above).

For MARJOL SITE PRP GROUP, defendant: Donald B. Mitchell, Jr., (See above). Laurel A. Bedig, (See above).

For EXXON, INC., defendant: Kelly H. Scoffield, Harry B. Wright, Esq., Exxon Company, U.S.A., Houston, TX.

For BODOW RECYCLING CO., defendant: Kevin M. Young, (See above). Kristin Carter Rowe, Esq., (See above).

For KREIGER WASTE, defendant: Brian Yeager, Scranton, PA.

For KEARNEY SCRAP CO., defendant: Joseph B. Thor, East Newark, NJ.

For MARLEY'S DIV OF ABE COOPER, defendant: [*10] Donald H. Brobst, (See above). Robert D. Schaub, (See above). Joseph G. Ferguson, (See above). Robert N. Gawlas, Jr., (See above).

For RIVERSIDE IRON & STEEL CORP., defendant: Debra R. Levin, Riverside Iron & Steel, Chicago, IL. Ronald G. Backer, Rothman, Gordon, Foreman & Groudine, P.A., Pittsburgh, PA.

For ALEXANDRIA SCRAP CORPORATION, third-party plaintiff: Donald B. Mitchell, Jr., Laurel A. Bedig, Arent, Fox, Kintner, Plotkin & Kahn, Washington, DC.

For LAWRENCE FIEGLEMAN, third-party defendant:

Mark A. Lockett, Philadelphia, PA. G. Wayne Renneisen, Philadelphia, PA.

For BRISTOL METAL CO., INC., third-party plaintiff: Michael L. Krancer, Blank, Rome, Comisky & McCauley, Philadelphia, PA.

For UNITED STATES AIR FORCE, third-party defendant: Alan D. Greenberg, Environment & Natural Resources Div., Environmental Defense Section, U.S. Department of Justice, Washington, DC.

For UNITED STATES DEPARTMENT OF THE NAVY, third-party defendant: Alan D. Greenberg, (See above). Robert R. Long, Jr., U.S. Attorney's Office, Harrisburg, PA.

For DEPARTMENT OF DEFENSE, third-party defendant: Alan D. Greenberg, (See above). Robert R. Long, Jr., (See above).

For [*11] UNITED STATES DEPARTMENT OF THE ARMY, third-party defendant: Alan D. Greenberg, (See above).

For RICHARD B. CHENEY, (in his capacity as Secretary of Defense), third-party defendant: Alan D. Greenberg, (See above). Robert R. Long, Jr., (See above).

For H. LAWRENCE GARRETT, III, (in his capacity as Secretary of the Navy), third-party defendant: Alan D. Greenberg, (See above). Robert R. Long, Jr., (See above).

For DONALD B. RICE, (in his capacity as Secretary of The Air Force), third-party defendant: Alan D. Greenberg, (See above).

For MICHAEL P.W. STONE, (in his capacity as Secretary of The Army), third-party defendant: Alan D. Greenberg, (See above). Robert R. Long, Jr., (See above).

For DEFENSE REUTILIZATION AND MARKETING SERVICE, third-party defendant: Alan D. Greenberg, (See above). Robert R. Long, Jr., (See above).

For JOHN STEWART, COLONAL (in his capacity as the Director of the Defense Reutilization and Marketing Service), third-party defendant: Alan D. Greenberg, (See above). Robert R. Long, Jr., (See above).

For UNITED STATES DEFENSE LOGISTICS

AGENCY, third-party defendant: Alan D. Greenberg, (See above). Robert R. Long, Jr., (See above).

For [*12] CHARLES MCCLAUSAND, GENERAL (in his capacity as head of the Defense Logistics Agency), third-party defendant: Alan D. Greenberg, (See above). Robert R. Long, Jr., (See above).

For A. SHAPIRO & SONS, defendant: Richard Brickwedde, Green & Seifter, Syracuse, NY.

For ABE COOPER-WATERTOWN CORP., defendant: Adam J. Schultz, DEVORSETZ, STINZIANO, GILBERTI & SMITH, Syracuse, NY. Richard Brickwedde, (See above).

For ACME METALS & RECYCLING, INC., defendant: Merwyn J. Burstein, Burstein Law Offices, Springfield, MA.

For AMERICAN BAG & METAL CO., INC., defendant: Gerald J. Mathews, Esq., MENTER RUDIN & TRIVELPIECE, P.C., Syracuse, NY.

For ANNADALE SCRAP COMPANY, defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Robert N. Gawlas, Jr., (See above).

For ANNE PIRCHESKY, former shareholder of Eric's Iron & Steel corp., a dissolved corporation f/d/b/a Riverside Iron & Steel Corp., defendant: Ronald G. Backer, (See above).

For N. BANTIVOLGLIO METALS, INC., renamed as Bantivoglio Metal Company a/ki/a Bantivoglio Metals and f/k/a N. Bantivoglio's Sons, Inc., defendant: Ronald J. Patterson, Esq., ARCHER & GREINER, P.C., Haddonfield, NJ.

For [*13] BLADENSBURG RIVER ROAD METALS COMPANY, INC., defendant: Gary M. Fremerman, Esq., Kelley Drye & Warren, Washington, DC.

For CHAPIN & FAGIN DIV. OF GCF INC., defendant: Morgan G. Graham, Buffalo, NY.

For CHAUNCEY METAL PROCESSORS, INC., defendant: Kevin M. Young, Young Stockli & Rowe, Executive Woods, Albany, NY. Kristin Carter Rowe, Esq., Young Stockli & Rowe, Executive Woods, Albany, NY.

For CLIMAX MANUFACTURING COMPANY, a/k/a Spevak's Waste Material Company, defendant: Adam J.

Schultz, (See above). Adam J. Schultz, Esq., DEVORSETZ STINZIANO GILBERTI HEINTZ, Syracuse, NY.

For CONTINENTAL METALS CORPORATION, defendant: Joseph A. Tabaka, Esq., Daniel B. Hargrove, Esq., MARKOVITZ & TABAKA, Pittsburgh, PA.

For DENVER CONSTRUCTION CORP., f/d/b/a Lukens Metal Co., defendant: Mark Norman Cohen, (See above).

For E. EFFRON & SON, defendant: Kevin M. Young, (See above). Kristin Carter Rowe, Esq., (See above).

For EISNER BROTHERS, defendant: Marc Eisner, EISNER BROTHERS, INC., Poughkeepsie, NY. John P. Stockli, Jr., Esq., Young Stockli & Rowe, Executive Woods, Albany, NY.

For ERIC'S IRON & STEEL CORPORATION, f/k/a Riverside Iron & Steel Corp, defendant: [*14] Ronald G. Backer, (See above). Eric's Iron & Steel Corporation, [PRO SE], c/o Eric Pirchesky, Winston-Salem, NC.

For ERIC PIRCHESKY, former shareholder of Eric's Iron & Steel Corp., a dissolved corporation f/d/b/a Riverside Iron & Steel Corp., defendant: Ronald G. Backer, (See above).

For G. CARLOMAGNO SCRAP, defendant: David A. Rockman, Esq., RIKER DANZIG SCHERER HYLAND & PERRETTI, Morristown, NJ.

For G.M. HONKUS & SONS, INC., defendant: Thomas W. Cartwright, Esq., SPENCE CUSTER SAYLOR WOLFE & ROSE, Johnstown, PA.

For GENERAL BATTERY CORP, defendant: Kenneth R. Myers, Morgan, Lewis & Bockius, Philadelphia, PA. Dennis J. Valenza, Esq., David G. Butterworth, Esq., MORGAN LEWIS & BOCKIUS, Phila, PA.

GEORGE MOSS, defendant, [PRO SE], Duryea, PA.

For GORDON STEEL CO., defendant: Michael W. Davis, (See above).

For GORDON WASTE CO., defendant: Michael W. Davis, (See above).

For HAROLD STRAUSS, in his own capacity and as distributee of the assets of Denver Construction Corporation f/d/b/a Lukens Metal Co., defendant: Mark Norman Cohen, (See above).

For HUDSON SCRAP METAL, INC., defendant: John J. Privitera, MCNAMEE, LOCHNER, TITUS & WILLIAMS, [*15] P.C., Albany, NY.

For I. RICHMOND & COMPANY, INC., defendant: Philip L. Hinerman, Fox Rothschild O'Brien & Frankel, Philadelphia, PA.

For INDUSTRIAL & MILL SUPPLIERS, INC., defendant: Charles L. Williams, Jr., Esq., Gentry Locke Rakes & Moore, Roanoke, VA.

For JACOB SHER, f/d/b/a Hudson Scrap, defendant: John J. Privitera, (See above).

For JULIAN C. COHEN SALVAGE CO., defendant: Donald B. Mitchell, Jr., Arent, Fox, Kintner, Plotkin & Kahn, Washington, DC.

For K MART CORP., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Robert N. Gawlas, Jr., (See above). Shavan Giffen, Esq., KMART CORPORATION, Troy, MI.

For KREIGER WASTE PAPER CO., defendant: Brian Yeager, Scranton, PA.

For LEVENE'S SON, INC., defendant: Michael H. Malin, White & Williams, Philadelphia, PA.

For LEVINE'S IRON & METAL, INC., defendant: David C. Hook, Esq., HOOK & HOOK, Waynesburg, PA.

For LONI-JO METALS, f/t/a Attonito Recycling Corporation, defendant: Donald H. Brobst, (See above). Robert N. Gawlas, Jr., (See above).

For M.C. CANFIELD SONS, f/k/a and f/t/a Lukens Metal Corp., defendant: Neal J. Hurwitz, Esq., New York, NY.

For M.H. BRENNER'S [*16] INC., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Robert N. Gawlas, Jr., (See above).

For M. BURNSTEIN AND COMPANY, INC., defendant: David C. Hawkins, Esq., MORRISSEY & HAWKINS, Boston, MA.

For M. WILDER & SON, INCORPORATED, defendant: Donald H. Brobst, (See above). Robert N. Gawlas, Jr., (See above).

For NOLTS AUTO PARTS, /Nolt's Factory Warehouse, defendant: Peter M. Schannauer, Appel & Yost, Lancaster, PA.

For NOTT ENTERPRISES, INC., f/k/a Frank H. Nott, Inc., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Robert N. Gawlas, Jr., (See above).

For NOVEY METAL CO., defendant: William C. Kriner, Clearfield, PA.

For PERLMAN & SONS, defendant: Leonard H. Cohen, Esq., Richard J. O'Brien, Esq., CAIN HIBBARD MYERS & COOK, Pittsfield, MA.

For PHILIP LEWIS & SONS, defendant: Robert Toland, II, Esq., White & Williams, Phila, PA.

For RIVER ROAD PRODUCTS, INC., defendant: Eric Taylor Gormsen, Esq., ANDERSON KILL OLICK & OSHINSKY, Washington, DC. Gary M. Fremerman, Esq., (See above). Daniel M. Steinway, (See above).

For SMITH IRON & METAL CO., defendant: Patrick A. Genzler, Esq., Michael L. Sterling, [*17] Esq., VANDEVENTER BLACK MEREDITH & MARTIN, Norfolk, VA. Alfred J. Owings, Esq., Spinella, Owings & Shaia, P.C., Richmond, VA.

For SOLA METAL, defendant: Lawrence M. Rosenstock, Esq., TENZER GREENBLATT FALLON & KAPLAN, New York, NY.

For STAGER WRECKING CO., defendant: Donald H. Brobst, (See above). Robert N. Gawlas, Jr., (See above).

For BEST BATTERY COMPANY, INC., THE, defendant: Nathan Braverman, Esq., Gregory M. Miller, Esq., SHAPIRO & OLANDER, Baltimore, MD.

For UNITED HOLDING CO., INC., a/k/a United Iron & Metal Company, Inc., defendant: Donald H. Brobst, (See above). Robert D. Schaub, (See above). Robert N. Gawlas, Jr., (See above).

For USA, defendant: Alan D. Greenberg, Environment & Natural Resources Div., Environmental Defense Section, U.S. Department of Justice, Washington, DC.

For UNIVERSAL WASTE, INC, defendant: Donald H. Brobst, (See above). Robert N. Gawlas, Jr., (See above).

For VIRGINIA IRON AND METAL COMPANY, INC., renamed as Virginia Iron & Metal Company of Portsmouth, Inc., defendant: Charles M. Lollar, Esq., HEILIG MCKENRY FRAIM & LOLLAR, Stoney Point Center, Norfolk, VA. Susan Taylor Hansen, Esq., COOPER SPONG & DAVIS, P.C., Portsmouth, [*18] VA.

For VIRGINIA SCRAP IRON & METAL CO., INC., defendant: Sam Golden, Virginia Scrap Iron & Metal Company, Inc, Roanoke, VA. Charles L. Williams, Jr., Esq., (See above).

For ZUCKERMAN STEEL COMPANY, INC., defendant: Brian M. Madden, Esq., Front Royal, VA.

For JACOB SHER, third-party plaintiff: John J. Privitera, MCNAMEE, LOCHNER, TITUS & WILLIAMS, P.C., Albany, NY.

For BUFF & BUFF INC., third-party defendant: Robert J. Alessi, Esq., LeBoeuf, Lamb, Greene & MacRae, Albany, NY. Michael Peters, Esq., LEBOEUF LAMB GREENE & MACRAE, Albany, NY.

For CAPITOL BAG & WASTE CO., INC., third-party defendant: Robert J. Alessi, Esq., (See above). Michael Peters, Esq., (See above).

For CAPITOL SCRAP METAL CO., third-party defendant: Edwin Utan, Scranton, PA.

For RAY CARDAMONE, third-party defendant: Joseph R. Cardamone, Esq., Schenectady, NY.

For R. COHEN & SON OF GLENS FALLS, INC., third-party defendant: Neil M. Gingold, HANCOCK & ESTABROOK, Syracuse, NY.

For EASCO WAREHOUSE, third-party defendant: Neil M. Gingold, (See above).

For I. FIGELMAN & SON, third-party defendant: Neil M. Gingold, (See above).

For NATHAN H. KELMAN, INC., third-party [*19] defendant: Robert J. Alessi, Esq., (See above). Michael Peters, Esq., (See above).

For NATHAN'S WASTE & PEPPER STOCK CO., INC., third-party defendant: Robert J. Alessi, Esq., (See above). Michael Peters, Esq., (See above).

For NEW YORK TELEPHONE COMPANY, third-party

defendant: Carol R. Abramson, Esq., New York, NY.

For ONTARIO SCRAP METAL INC., third-party defendant: Neil M. Gingold, (See above).

For LOUIS PERLMAN & SONS, INC., third-party defendant: Leonard H. Cohen, Esq., Richard J. O'Brien, Esq., CAIN HIBBARD MYERS & COOK, Pittsfield, MA.

For WILLIMANSETT WASTE CO. INC., third-party defendant: Edmund J. Gorman, Esq., ROBINSON DONOVAN MADDEN & BARRY, Springfield, MA.

For ZEKE'S ENTERPRISES, third-party defendant: Richard A. Reed, Esq., BOND SCHOENECK & KING, Albany, NY.

For EXIDE CORP., f/t/a Bay State Battery and Mid-Atlantic Distributors, defendant: Kenneth R. Myers, Morgan, Lewis & Bockius, Philadelphia, PA. Dennis J. Valenza, Esq., David G. Butterworth, Esq., MORGAN LEWIS & BOCKIUS, Phila, PA.

JOHN BRUNESE & SON, defendant, [PRO SE], Millerton, NY.

For NEW CASTLE JUNK, defendant: Kevin J Garber, Reed, Smith, Shaw and McClay, Pittsburgh, [*20] PA.

For SAM KASSAB, defendant: Conrad A. Falvello, Sugarloaf, PA.

For WM. KUGLER & BRO., INC., defendant: Jon Louis Wilson, Esq., JACKSON WILSON & DOUGLAS, Lockport, NY.

For WORCESTER METAL & BATTERY, defendant: Robert W. Harrington, Esq., Boston, MA.

For JOINT DEFENSE GROUP, third-party plaintiff: Richard H. Friedman, Harrisburg, Pa.

For LAWRENCE FIEGLEMAN, third-party defendant: G. Wayne Renneisen, Philadelphia, PA.

For JOSEPH FIEGLEMAN, third-party defendant: Mark A. Lockett, Philadelphia, PA. G. Wayne Renneisen, (See above).

For MARC A. ROBIN, third-party defendant: G. Wayne Renneisen, (See above).

For ANTHONY BONADIO, third-party defendant: G.

Wayne Renneisen, (See above).

For JOHN DELEO, third-party defendant: Joseph A. Ricci, Harrisburg, PA. Francis E. Marshall, Jr., MARSHALL & FARRELL, P.C., Harrisburg, PA.

For WIMCO METALS, INC., third-party plaintiff: Donald H. Brobst, Wilkes Barre, PA. Robert D. Schaub, Wilkes-Barre, PA. Robert N. Gawlas, Jr., Wilkes Barre, PA. Gary M. Fremerman, Esq., Kelley Drye & Warren, Washington, DC. Daniel M. Steinway, Kelley, Drye & Warren, Washington, DC.

For M.N. ADELSON & SONS, INC., third-party [*21] defendant: Robert P. Ging, Jr., Esq., Confluence, PA.

For GEORGE BERMAN & SON, INC., third-party defendant: Stanley W. Greenfield, Greenfield & Associates, Pittsburgh, PA. Paul G. Kay, Greenfield & Associates, Pittsburgh, PA.

For MENZOCK SCRAP COMPANY, third-party defendant: Leonard E. Sweeney, Esq., The Law Firm, Pittsburgh, PA. Thomas J. Dancison, Jr., The Law Firm, Pittsburgh, PA.

For FEDERAL GOVERNMENT GROUP, defendant: Alan D. Greenberg, U.S. Department of Justice, Environmental Defense Section, Denver, CO.

For FIEGLEMAN GROUP, THE, defendant: G. Wayne Renneisen, Philadelphia, PA.

For NAPORANO IRON & METAL CO., defendant: Donald H. Brobst, Wilkes Barre, PA. Robert D. Schaub, Wilkes-Barre, PA. Robert N. Gawlas, Jr., Wilkes Barre, PA. Peter E. Nahmias, LOWENSTEIN, SANDLER, KOHL, FISHER & BOYLAN, Roseland, NJ.

JUDGES: Richard P. Conaboy, United States District Judge

OPINIONBY: Richard P. Conaboy

OPINION:

MEMORANDUM AND ORDER

Presently before the Court is a motion for an Order Compelling Discovery filed on behalf of the Joint Defense Group and the Marjol Site PRP Group. ("Defendants"). Defendants seeks this Court to issue an order compelling Plaintiff [*22] Gould to produce various information relating to the following: (1) names of individuals with knowledge of the case; (2) production

of a privilege log with respect to information Gould claims is privileged by the attorney/client privilege or work product privilege; (3) information regarding changes in Gould's corporate structure; (4) information relating to other lawsuits that Gould is currently litigating; and (5) information regarding insurance coverage at the Marjol Site.

In its brief in opposition to Defendants' motion, Plaintiff Gould has indicated that it has already produced some of the requested information or that it is about to produce some of the requested information.

For the reasons which follow, we will grant Defendants' motion. Although granting Defendants' motion, our ruling will apply to all parties. Each party has demonstrated an inability to proceed without this Court's intervention. Accordingly, we will intervene and order the production of discoverable information.

BACKGROUND

In December 1991, Plaintiff Gould initiated this action by filing a complaint against various Defendants seeking recovery pursuant to the Comprehensive Environmental Response, Compensation [*23] and Liability Act ("CERCLA"), 42 U.S.C. § 9601, et seq., for costs incurred and to be incurred to cleanup contamination at the Marjol Site located in the Borough of Throop, Lackawanna County, Pennsylvania.

Marjol Battery & Equipment Company operated a battery-breaking operation in Throop, Pennsylvania from 1963 until May 1980 when Gould acquired the stock of the company. Gould operated the battery-breaking operations until April 1981 when it shut down its battery-breaking operations.

In September 1982, the Pennsylvania Department of Environmental Resources ("DER") advised Gould that no remediation would be necessary and no enforcement actions would be taken at the site unless battery-breaking operations resumed. However, the EPA began investigating the Marjol Site in 1987 and after performing preliminary tests, concluded that there may be "an imminent and substantial endangerment to the public health, welfare or the environment."

In April 1988, the EPA and Gould entered into a Consent Agreement and Order pursuant to § 106 (a) of CERCLA, 42 U.S.C. § 9606(a), to conduct site stabilization activities concerning lead and other hazardous substances at the Marjol Site and other residential [*24] properties.

In May 1990, Gould entered into a second consent order, this one with both the EPA and DER. This Order was based on the Resource Conservation and Recovery

Act ("RCRA"), 42 U.S.C. § 6928(h). Pursuant to this second consent order, Gould agreed to perform a RCRA Facility Investigation and Corrective Measure Study ("CMS") at the Marjol Site. EPA is currently evaluating Gould's CMS, and will ultimately select a final remedy at the Marjol Site.

DISCUSSION

To date, numerous discovery requests of the Defendants have been either unanswered or objected to by Plaintiff Gould. Accordingly, the present motion to compel is before the Court. In reading over the respective briefs, it is clear to this Court that our intervention is necessary due to the parties antagonistic attitude toward each other and total inability to efficiently move this matter to trial.

Certain information requested by the Defendants, seven and eight months ago, has not been produced by Plaintiff Gould. Information concerning the full identification of witnesses has not been produced by Gould. In responding to Defendants interrogatory requests, Gould identified fourteen individuals with knowledge of discoverable [*25] information. However, Gould provided only a list of names, leaving out relevant information on the whereabouts of the individuals. Gould does assert that four of the individuals referenced above have been deposed and two others were identified as attorneys who practice with major law firms. That still leaves eight individuals whose identity has been limited to names only. Gould claims that this is an issue that the parties do not disagree on and that Gould is in the process of compiling the information requested by Defendants.

We take notice of Gould's response, but we must ask when this information is going to be produced. Only a few months before trial on this matter and nearly eight months after the discovery requests, Gould has still not produced the information. Contrary to Gould's assertions, our intervention is necessary. The identity requests of these fact witnesses is clearly discoverable and Gould has stated its willingness to comply. However, the lack of this information's production, only serves to further delay the progression of this matter.

The record is clear, Gould has not produced the identities of approximately eight fact witnesses to the Defendants. Gould [*26] asserts it will produce the information shortly. Shortly is not an acceptable time for this Court. This litigation has been ongoing for nearly six years and both sides are merely delaying the action and running up enormous costs. Gould has the information which Defendants requested nearly eight months ago. Accordingly, Defendants motion to compel the

identification of the remaining fact witnesses will be granted.

Defendants also motion the court for an order to compel Gould's production of a privilege log on information asserted as privileged pursuant to the attorney/client privilege or work product privilege. This issue is extremely similar to the issue regarding the identity of the fact witnesses in that Gould has stated that production of a privilege log is in the preparation stages and will be produced shortly.

This Court has previously ordered the return of certain materials in Defendants' possession to Gould because of an asserted privilege by Gould. There is no need for a privilege log on this information, as Defendants have clearly already seen the information.

The instant motion concerns material not previously seen by either party. Therefore, any material that is claimed [*27] to be protected by either the attorney/client privilege or work product privilege must be explained through a privilege log. While our holding grants Defendants' motion to compel on this issue, our decision relates to all parties involved. Any party asserting a privilege either on the attorney/client privilege or work Product privilege will be ordered to compile an appropriate privilege log.

The remainder of Defendants motion to compel concerns the production of non-privileged documents that Defendants assert are relevant to the instant case.

On May 2, 1996, we issued a Memorandum and Order granting a separate motion to compel production of information leading to relevant information. We will follow the reasoning established in our May 2, 1996, Memorandum and Order in deciding the remainder of Defendants' motion to compel.

Rule 26(b)(1) of the Federal Rules of Civil Procedure states in part that "parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." As the United States Supreme Court has held, relevancy encompasses "any matter that bears on, or that reasonably could lead to other matters that could [*28] bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 57 L. Ed. 2d 253, 98 S. Ct. 2380 (1978). The scope of *Fed.R.Civ.P. 26(b)(1)* is quite broad and allows information, even with a remote connection to the issues at hand, to be discoverable, whether or not the information will be admissible at trial.

Defendants are seeking information regarding changes in the corporate structure and ownership

subsequent to Gould's acquisition of the Marjol Company and the sale of GNB by Gould. Defendants are also seeking to compel information from Gould concerning other claims, administrative actions or other lawsuits regarding the Marjol Site.

Gould has refused to produce certain requested information on the grounds of relevancy. Gould has also objected to some of Defendants' discovery requests as being overbroad, duplicative and cumulative. We are not Ordering Gould to reproduce information that they have previously turned over to the Defendants. Furthermore, any contentions of the discovery request being "unimaginably large" is not a valid basis to withhold discovery. See, *Compagnie Des Bauxites De Guinea v. Insurance Co. of North America*, [*29] 651 F.2d 877 (3rd Cir. 1981), aff'd 456 U.S. 694, 72 L. Ed. 2d 492, 102 S. Ct. 2099 (1982).

In *Yang v. Reno*, 157 F.R.D. 625 (M.D.Pa. 1994) (Rambo, C.J.), this Court applied the Supreme Court's broad relevancy standard, as set forth in *Oppenheimer*, by holding that:

This [broad] conception of discovery in general and relevance in particular requires that where relevance is in doubt, the court should be permissive in allowing discovery.

Id. at 631. See, *Midland-Ross Corp. v. United Steelworkers of America*, 83 F.R.D. 426, 427 (W.D. Pa. 1979) (relevance is construed broadly to include 'any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case,' quoting *Oppenheimer, supra*). We have determined that this liberal relevancy standard during the discovery stage permits Defendants to pursue their inquiry into the changes in Gould's corporate structure as well as the nature of other claims or lawsuits involving the Marjol Site.

Once again, we note that Gould has responded to numerous discovery requests. Our holding today does not require Gould to duplicate information previously produced. [*30] However, our holding does grant the Defendants' motion to compel and Gould will be ordered to produce the requested information relating to the

identity of fact witnesses, changes in Gould's corporate structure, and information concerning other claims or litigation involving the Marjol Site.

CONCLUSION

For the reasons indicated above, we will grant Defendants' motion to compel discovery. Gould will be ordered to comply with Defendants' discovery requests relating to the identity of certain individuals with knowledge pertinent to the instant case, changes in Gould's corporate structure, and information concerning other claims or lawsuits involving the Marjol Site. An appropriate Order is attached.

Richard P. Conaboy

United States District Judge

ORDER

AND NOW, THIS 13th DAY OF MAY, 1996, IT IS HEREBY ORDERED THAT:

1. Defendants' motion to compel discovery (Doc. No. 1044) is GRANTED.
2. Gould shall produce, by June 4, 1996, information on the identity of witnesses, changes in corporate structure and information relating to other claims or lawsuits involving the Marjol Site.
3. All parties are directed to compile a privilege log of materials claimed to be [*31] privileged pursuant to the attorney/client privilege or work product privilege.
4. A privilege log shall not be required for the information previously in Defendants' possession which was ordered to be returned to Plaintiff Gould.
5. This Order disposes of document number 1044.
6. The Clerk of Court is directed to mark the docket sheet accordingly.

Richard P. Conaboy

United States District Judge

EXHIBIT C

**FEDERAL RULE OF CIVIL PROCEDURE 26
DISCLOSURE OF EXPERT TESTIMONY
WARREN A. NORD, Ph.D.**

Case: *Tammy Kitzmiller, et al. v. Dover Area School District and Dover Area School District Board of Directors*

Case No. 04-CV-2688

Expert's Background and Experience:

I have a Ph.D. in philosophy from the University of North Carolina at Chapel Hill (1978), where I teach the philosophy of religion and occasional courses in the philosophy of education. I have written two dozen book chapters and articles in professional and scholar journals on religion and education, and two books: *Religion and American Education: Rethinking a National Dilemma* (University of North Carolina Press, 1995), the most comprehensive study of religion in secondary and higher education published in the last fifty years, and [with Charles C. Haynes] *Taking Religion Seriously Across the Curriculum* (ASCD Press) a handbook for teachers on how to deal with religion in the public school curriculum. In both books, my aim has been to chart a middle course in our culture wars, one that takes religion seriously, but in a constitutionally permissible and educationally sound way. I have also worked with teachers and school administrators in many seminars, workshops and conferences.

My views in this case have not been determined by any commitment I have to intelligent design theory (IDT) or to any convictions I have about evolution. While I believe that IDT should be considered science (as I will argue below) I am agnostic about whether it is better science than conventional neo-Darwinism. While I have no doubt that evolution has occurred, I do think that *how* it occurred is still an open question.

I approach this case as a philosopher who has developed a general theory of liberal education and applied it in two books and more than two dozen articles to the role of religion in secondary and higher education. A part of this project has been to deal with the science curriculum and the possible place of religion, and now IDT, in it.

Making students aware of the controversy surrounding Darwin's theory of evolution, including making students aware of IDT, as the Dover Area School District is doing in this case, is both educationally and constitutionally justifiable. Indeed, it is a strikingly modest response to a major educational problem.

Attached to this report as Exhibit A is a copy of my curriculum vitae.

- I. **The following includes a complete statement of my opinions to be expressed, the reasons and basis underlying them, and the data and other information considered in forming them.**

CRITICAL THINKING

Believing with great confidence that they know how to make sense of the world, the Great Temptation of educators is to teach students nothing but the truth—as they understand it, of course. When this happens, however, education is reduced to training or socialization or indoctrination, even if those educators are right about how to make sense of the world. Properly understood, education requires the ability to think critically, to reason one's way through conflicting evidence and arguments. Students must learn about alternative ways of making sense of the world if they are to be educated.

One can't think critically about what it means to be a Democrat unless one also understands something about what it means to be a Republican; one can't think critically about capitalism unless one understands criticisms of, and alternatives to, capitalism.

There is nothing new about this. We can trace the core idea of this kind of critical thinking back to Socrates and Greek philosophy. It has been elaborated in a variety of ways since then, and there is broad agreement about this in principle today. Indeed, educators have applied the idea to new domains of education so that nowadays it is widely (and rightly) believed that to be educated one must know something about how women, traditionally oppressed minorities, and members of non-Western cultures make sense of the world. In part this is a matter of according respect to different people and cultures; more to the point is the conviction that we can only know how to live our lives and think about the world if we take seriously the different traditions and values that people hold, *particularly when we disagree*.

We disagree deeply in our culture about how to make sense of nature; we disagree about evolution; we disagree about the relationship of science and religion. This being the case, we are obligated, I believe, to educate students about the alternatives rather than simply train them in any particular approach to making sense of the world, even if we educators, we scientists, are confident that it is the right one.

My own sense of the matter is that public education is profoundly *illiberal* in failing to include religious interpretations of the subjects that comprise the curriculum. Indeed, public education actively discourages critical thinking by failing to provide students any critical distance on the secular ways of thinking and living that they are taught to accept uncritically in their various courses.

CONSTITUTIONAL NEUTRALITY

I believe that it is improper for public schools to ignore religion. It is, of course, uncontroversial that it is *permissible*, constitutionally, to teach about religion in public schools when done properly. No Supreme Court justice has ever held otherwise. But a

stronger argument can and should be made based on sound, secular, pedagogical reasons for doing so.

For the past fifty years the Court has been clear that public schools must be *neutral* in matters of religion—in two senses. Schools must be neutral *among religions* and they must be neutral *between religion and nonreligion*. Clearly, schools can't promote religion; they can't proselytize; they can't conduct religious exercises. But neutrality is a two-edged sword. Schools cannot favor nonreligion over religion. As Justice Black put it in the seminal 1947 *Everson* ruling, "State power is no more to be used so as to handicap religions than it is to favor them." (330 U.S. 1, 16) Similarly, in his majority opinion in *Abington v. Schempp* (1963), Justice Tom Clark wrote that schools can't favor "those who believe in no religion over those who do believe." (374 U.S. 203, 225) And in a concurring opinion, Justice Goldberg warned that an "untutored devotion to the concept of neutrality" can lead to a "pervasive devotion to the secular and a passive, or even active, hostility to the religious." (*Ibid.*, at 306)

But this is just what has happened. An "untutored" and naïve conception of neutrality has led educators to ban smoking guns, *explicit* hostility to religion, when the hostility has been philosophically rather more subtle—though no less substantial for that. For by teaching students to think of all domains of knowledge in secular rather than religious ways, public education nurtures a secular mentality. No doubt many of the particular claims made by scientists and secular scholars can be reconciled with most religion; it is at the level of theories and, still more deeply, of philosophical presuppositions or *worldviews* that they are often in tension or conflict, for we teach students to *interpret* experiences and evidence in secular rather than religious ways.

Indeed, there is no such thing as a *neutral point of view*. The only way to be neutral when we disagree is to be *fair to the alternatives*, taking everyone seriously.

IS EVOLUTION HOSTILE TO RELIGION?

Most agree that evolution conflicts with those fundamentalist or conservative forms of Christianity that insist on reading Genesis as literal truth. It would be a huge mistake, however, to think of the battle over evolution as primarily one between fundamentalists and all the rest of us reasonable folks. It is not widely appreciated that neo-Darwinism conflicts with a good deal of liberal theology, because it insists that the mechanism of evolution (natural selection acting on random mutations and recombinations of genes) is inherently purposeless. For many liberals, evolution is God's way of creating the world, but they have typically held that evolution has a purpose, that it exhibits *design*.

The scientific and educational establishments have tried to avoid the appearance of conflict either by holding a "two-worlds" view of science and religion (such that they cannot, in principle, conflict with each other because they are about different domains of reality), or that science plays by the rules of a merely *methodological* naturalism but is not committed to a *philosophical* naturalism which would deny the existence of God.

Historically, the two-worlds view of the relationship of science and religion has been held by many scientists and liberal theologians (and was officially endorsed by the National Academy of Sciences in 1981), but my sense of the matter is that it is increasingly viewed as naïve by those scholars who work on the relationship of science and religion. Most of this scholarly work (typically by theological liberals) over the last several decades has attempted to *integrate* science and religion, rather than keeping them in separate and distinct spheres. I might add that there has been an *immense* amount of scholarly work on the relationship of science and religion over this time; this is clearly an area of great intellectual excitement (to the point of warranting occasionally cover stories in *Time* and *Newsweek*).

It is true that we can distinguish, in principle, between a methodological naturalism (that doesn't allow design or appeal to any kind of supernatural causes as a matter of scientific method) and a philosophical naturalism that denies that there is any design or supernatural causes in the world. The *educational* problem is that unless students are made clear about this distinction, they will inevitably conclude that science does tell us everything that there is to be said about nature, and God plays no role in nature. In effect, then, the distinction collapses. Of course, many scientists and philosophers believe that methodological naturalism is the most reasonable position precisely because they are philosophical naturalists; it is obviously the methodology of choice for philosophical naturalists.

In the absence of any significant effort to deal with those philosophical questions (the two-worlds view and methodological naturalism) science education will inevitably promote the idea that science is able to explain all of reality, and as neo-Darwinism is hard to reconcile with any conception of God, science will, in effect, teach students that God has nothing to do with nature—a deeply controversial position.

IS IDT RELIGION OR SCIENCE?

I believe that public education must take religious ways of making sense of nature seriously if it is to promote critical thinking (and a truly liberal education) and be constitutionally neutral. Of course, defenders of IDT claim that it is not religion, but even if it is religion, it would be appropriate for schools to take it seriously. Its advocates are correct, however; IDT is not religion.

In spite of a good deal of propaganda to the contrary, IDT and creation-science are apples and oranges. IDT does not require the kind of creedal commitment or fundamentalist belief that creation-science does. Indeed, it does not depend on scripture, religious tradition, faith, or religious experience in any way. And while any God would be an intelligent designer, IDT does not claim that intelligent design leads us to the God of Christianity or Judaism or Islam—or, indeed, to any *god* at all. Whether design requires a god is a philosophical or theological question that cannot be answered by IDT.

IS IDT SCIENCE?

Arguably, what should be taken seriously as science is in part, at least, a matter of what good scientists take seriously, rather than a matter of *a priori* doctrines about the nature of science. On this argument, it seems relevant to ask how many scientists take IDT seriously? What is (or has been) their standing within establishment science? What kinds of research have they done? To what extent does the theory draw on accepted science? To what extent is it an ad hoc theory? Does it grow honestly grow out of the evidence rather than out of prior ideological or religious commitments? (And, correlatively, does establishment science grow honestly out of the evidence rather than out of prior ideological or philosophical commitments?) My own view (as a philosopher, not a scientist) is that IDT does pass this kind of test. Certainly it falls into a quite different class from old-fashioned creation-science, and the other kinds of pseudo-science with which it is often associated by its critics.

But whether or not IDT is good science is in part, at least, a philosophical question. Modern science has prided itself on its openness to new evidence and to the potential falsification of its theories. There is, nonetheless, a kind of scientific fundamentalism, in which methodological naturalism functions much as does Scripture for religious fundamentalists: just as fundamentalists are not open (in principle) to scientific evidence that falsifies Scripture, so methodological naturalists are not open (in principle) to non-naturalistic evidence, claims, or theories that might be taken to falsify established science.

There is, no doubt, reason why scientists adhere to a methodological naturalism: science owes much of its progress over the past several centuries to the fact that it has excluded supernatural causes and design from its explanations. As a result, most scientists have developed a faith—that is, a *trust*—that methodological naturalism will, in the long run, prove adequate to the task of discovering the basic structure of nature. But unless the nature and limitations of this methodological naturalism are themselves the subject of discussion, unless methodological naturalism is itself open to potential falsification, this commitment will be, in effect, an *uncritical* faith—and surely there is some risk in uncritically trusting that all of reality can be explained in naturalistic categories. I might mention that naturalism is deeply controversial among even secular intellectuals in dealing with some aspects of reality—mind and morality, for example.

Now it may be that a measure of faith is essential to the practice of any intellectual tradition (I suspect that it is), but public schools should not be in the business of nurturing such faith, whether it be in religion, politics, economics *or* science. A liberal education should encourage critical thinking, and this can only be done when we are willing to lay bare and question our fundamental assumptions. Certainly one of the most important of these assumptions is the nature and adequacy of scientific method. When (if at all) might it need revision? This is both a legitimate and a tremendously important question to raise.

Naturalism is now deeply entrenched in modern science (whether as a matter of methodology or philosophical conviction). Still, we need to remember that until Darwin (indeed, for sometime after him) biology employed design explanations. Only for the last 100+ years have such explanations been held to be beyond the pale; the idea of a fully naturalistic biology is a relatively new phenomenon in the history of science. It can plausibly be argued, as advocates of IDT do, that what is crucial to (a reformed) science is a *reasoned* understanding of nature based on observation and experiment, and that a further commitment to naturalism (methodological or philosophical) places *unreasonable* constraints on scientific explanations.

THE PURPOSE OF SCIENCE EDUCATION

The purpose of high school science courses should not be to *train scientists* but to contribute to the *liberal education of students* by initiating them into our ongoing cultural conversation about how to make sense of the world. Science texts do not now convey to students anything of the controversial nature of this conversation. We typically teach science as one more disciplinary monologue that students must listen to uncritically. By refusing to take seriously contending interpretations of nature we teach science, in effect, as a matter of authority, and students typically come to accept the claims of science as a matter of faith in the (dominant) scientific tradition rather than of critical reason.

Science texts typically include a perfunctory chapter on scientific method, but these chapters never include any substantive discussion of the relationship of religion to science or take seriously questions about limitations or possible revision of scientific method. When they do address religion, it is usually to affirm a two-worlds view. Because science and religion are assumed to be incommensurable activities, the authors of science texts are presumably absolved of the responsibility to say anything about religion. But, as I have suggested, the two-worlds view of the relationship is deeply controversial and *itself* needs critical discussion. In any case, nature of the relationship is a philosophical problem of a kind that can't be settled scientifically.

In my opinion, all science texts should include a substantive chapter addressing historical and philosophical questions having to do with science, design, and religion, initiating students into the lively on-going conversation about these matters in our intellectual life. When they deal with religiously and culturally controversial topics (like evolution, or the origins of life, or the Big Bang, ecology, or the relationship of the brain and the mind) texts must tell students enough about this conversation to enable them to make some sense of it. Texts must alert students to the fact that they are about to study something controversial. The point isn't to convert science courses into philosophy or religion courses; it is to locate scientific interpretations of nature in the context of our larger cultural conversation; it is to transform a monologue into a discussion. This is what critical thinking and liberal education require.

It is worth noting that the *National Science Education Standards* open some room for this kind of approach. The seventh of eight proposed content standards requires that science education "give students a means to understand and act on personal and

social issues" (p. 107) such as health, sexuality, and the environment—all areas of our social life where, the *Standards* acknowledge, religious beliefs and values are relevant (pp. 197-98). Moreover, because science provides no moral direction, "understanding science alone will not resolve local, national, or global challenges." (p. 199) Perhaps, then, science should be studied in tandem with ethics and religion?

The eighth content standard requires that students learn that "science reflects its history and is an ongoing, changing enterprise." (p. 107) Indeed, "scientists are influenced by societal, cultural, and personal beliefs and ways of viewing the world. Science is not separate from society but rather science is a part of society." (p. 201) Consequently, students should learn the role "that science has played in the development of various cultures." (p. 107) Not surprisingly, then, teachers need to be able to make "conceptual connections" to "other school subjects." (p. 59) Arguably, the implication of these claims is that science should be taught not as a disciplinary monologue, but in cultural context, developing conceptual connections to other areas of the curriculum and other domains of our culture, perhaps even including religion, as part of a good liberal education.

IS ANY CRITICISM OF DARWIN'S THEORY INHERENTLY RELIGIOUS?

In *Selman v. Cobb County School District*, Judge Cooper held that while the Cobb County disclaimer passed the first prong of the *Lemon* Test, it failed the second prong by having the *effect* of conveying, to an informed, reasonable observer, an endorsement of religion, suggesting that some are "favored" members of the community while others are "outsiders." It is not my task nor within my expertise to give a legal analysis of the ruling, but I do want to make several comments about it from an educational perspective.

As it stands, this is far too sweeping a reading of what the second prong of the *Lemon* Test should properly prohibit, for it rules out educationally sound, neutral policies regarding religion based on the public's perception of them: if the public were *truly* informed and reasonable, they would recognize why the disclaimer is justifiable.

Judge Cooper argued that because the disclaimer "targets only evolution" it appears to endorse not just critical thinking about evolution (its avowed purpose) but it conveys a religious message. I believe that in the absence of adequate textbooks and an adequate science curriculum, a broader disclaimer (or disclaimers in other science classes) would be justifiable; evolution isn't the only matter warranting a disclaimer. But given the religious and cultural controversy over evolution, it is clear why it has pride of place. And even if the motivation of most of those who argued for the disclaimer is religious, there is a powerful, fully secular, justification for it. As part of a liberal education all students should be made aware of important cultural controversies, and the controversy over evolution is clearly an important one—one might even say that it is of cosmic importance. This is true whether one is religious or an atheist. *Any* educated person should know something about it. The disclaimer alerts students to the controversy.

Judge Cooper also held that because an informed, reasonable observer would know that religious fundamentalists want evolution considered only as a theory, rather than a fact, an informed, reasonable observer would assume that in making the fact/theory distinction the disclaimer endorses their viewpoint. The situation is actually a little more complicated. Because scientific theories can be *confirmed* they aren't mere speculation, and it is appropriate, I believe, for science texts to teach students that *most* scientists believe that neo-Darwinism is a *confirmed* theory. Still, the distinction rightly suggests that because neo-Darwinism is a theory, its confirmation rests not simply on observation, but on a wide range of complex considerations which are potentially open for reinterpretation. And, as I have argued, texts (and disclaimers, if necessary) should alert students to the fact that there is significant disagreement about whether neo-Darwinism is confirmed.

Without intending to, Judge Cooper suggested how far-fetched his position was in noting that "the Sticker [disclaimer] is a statement composed of only three sentences, and the Sicker makes up only a very small part of a text that contains hundreds of pages on evolution." Indeed, Cobb County chose the textbook that devotes hundreds of page to evolution (what is the message conveyed here?) yet it cannot devote three sentences to explaining that it is controversial? This is extraordinary.

If public schools are to provide a liberal education (which requires critical thinking) then they are *at least* obligated to inform students of important controversies; ideally they should also teach students about them.

THE PRESENT CASE

By making students aware of the controversy surrounding Darwin's theory of evolution,¹ including IDT, the Dover School District is promoting legitimate, secular, pedagogical goals and enhancing their science education and student learning.

The parents challenging the actions of the Dover School District claim that IDT is improperly singled out for religious reasons. As I have argued, public schools have an obligation (not just the right) to inform students that there are a variety of religious as well as secular ways of thinking about nature and origins, but if the decision is made to limit consideration to *scientific* theories (an improvement over the status quo, even if it falls short of the ideal), then it seems to me appropriate to single out IDT, both because it is the only *major* scientific challenger to the conventional naturalistic wisdom, but also because it is part of a major cultural controversy, and schools should at least alert students to (and ideally inform them about) major cultural and intellectual controversies.

¹ The Dover curriculum and statement should probably have referred to neo-Darwinism rather than "Darwin's Theory," which suggests a nineteenth century theory that has now been modified considerably. Still, "Darwin's Theory" and "Darwinism" serve as acceptable popular terms for identifying the dominant view of evolution among scientists.

It is surely proper to remind students with regard to any theory they should keep an open mind. That this claim is made with regard to evolution and nothing else in the curriculum simply suggests the *importance* of this particular controversy.

Given a proper understanding of liberal education, public schools must not uncritically encourage students to accept neo-Darwinism (or any theory) when we deeply disagree and the disagreement is a matter of some cultural significance. At the least, students must be alerted to the controversy (and ideally they learn something of the contending positions). Of course, students must learn what the great majority of scientists take to be good science, but they must also learn where the points of controversy are. The Dover School District is taking a modest step in the right direction.

- II. **My qualifications as an expert witness are included in my curriculum vitae, which is attached to this report as Exhibit A, and in my experience and background outlined in this report.**
- III. **The compensation I will receive for my study, case preparation, and testimony in this matter is \$100.00 per hour. All travel expenses will be billed at cost.**
- IV. **I have not testified as an expert at trial or by deposition within the preceding four years.**

Signed: Wm J. Nad Date: 3-29-05

12-27-2004{PRIVATE }

WARREN A. NORD

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Education

B.A. (in philosophy) The University of Minnesota at Morris (1967)
Ph.D. (in philosophy) The University of North Carolina at Chapel Hill (1978)
Dissertation: *Political Obligation and Moral Philosophy*
Advisor: E. M. Adams, Kenan Professor of Philosophy

Military Service in the U. S. Army, 1969-71

Positions

1981 to the present: Lecturer in Philosophy, UNC-Chapel Hill
1979-2004: Director, Program in the Humanities and Human Values, UNC-Chapel Hill
1978-79: Coordinator of Humanities Programs, UNC Division of Continuing Education
1976-77: Assistant Director, North Carolina Humanities Council

Professional Memberships

American Philosophical Association, American Academy of Religion, American
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Fields of Interest

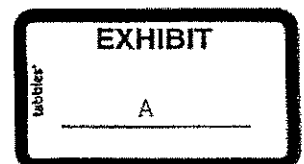
Philosophy of Religion, Philosophy of Education, Religion and Education, Ethics,
Philosophy of the Humanities

Courses Taught

Philosophy of Religion, Philosophy of Education, Religion and Education

Awards and Offices

NDEA Title IV Graduate Fellowship (3 years)
Chair, Southern Humanities Council (1991-92)
Vice President, National Council on Religion and Public Education (1992-94)
Editorial Board, *Religion and Education* (1994 - present)
Research Study Leave, College of Arts & Sciences, UNC-CH (Fall Semester, 1996)
Lilly Endowment Research Leave (Spring Semester, 1997)
Advisory Board, Kenan Ethics Institute, Duke University (1997-2004)
Board of Trustees, Taylor Charitable Trust (1998 - present)
Research Study Leave, College of Arts & Sciences, UNC-CH (Fall Semester, 2000)



PUBLICATIONS

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- Taking Religion Seriously Across the Curriculum* [with Charles C. Haynes] (Alexandria, VA: ASCD Press, 1998): 221 pages.

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Published by the UNC-Chapel Hill Program in the Humanities and Human Values

The E. M. Adams Reader [editor] (2002): 536 pages.

Philosophy, Reality, and the Humanities: An Introduction to the Life and Thought of E. M. Adams [booklet] (2004): 48 pages.

Do the Humanities Make Us Humane? [booklet] (2004): 56 pages.

Accepted for Publication:

"Religion, Spirituality, and Education in a (Not Entirely) Secular Culture," *Gateways to Spirituality*, edited by Peter Cobb (Peter Lang Publishing): 21 manuscript pages.

"Liberal Education, Moral Education, and Religion," *Moral Formation and the University*. ed. Douglas Henry and Michael Beatty (Baylor University Press): 25 manuscript pages.

"Religion, Pluralism, and Public Education in America," *Religion and Education*: 15 manuscript pages.

Work in Progress:

Review of *Does God Belong in Public Schools?* by Kent Greenawalt (Princeton University Press) commissioned by Columbia University's *Teacher's College Review*.

God and Education [working title] a book on religion and education for the public: approx. 250 pages.

Education, Morality, and the Meanings of Life [working title] a book that explores the intersection of morality, the humanities, and liberal education: approx. 250 pages.

Articles in Popular Publications:

Feature articles and op/ed pieces in *The National Forum*, *The Washington Post*, *The Washington Post Weekly*, *Newsday*, *The Los Angeles Times*, *The Charlotte Observer*, *The Raleigh News & Observer*, *the Independent Weekly*, and the *UNC-Chapel Hill Alumni Review*.

LECTURES and PANELS

More than 150 presentations for the American Academy of Religion, the American Educational Studies Association, the American Association for the Advancement of Science, the American Association of Colleges of Teacher Education, national ASCD conferences, the National Bicentennial Conference on the Religion Clauses of the First Amendment, the National Humanities Center, the (national) Character Education Partnership, the Southeastern Commission for the Study of Religion, the North Carolina Religious Studies Association, the North Carolina Center for the Advancement of Teaching, the North Carolina Bar Association, the North Carolina Council of Churches, the North Carolina Department of Public Instruction, the North Carolina School Boards Association, the Freedom Forum World Center (San Francisco), the Freedom Forum World Center (Washington, D.C.), the Freedom Forum First Amendment Center at Vanderbilt University, the Foreign Policy Research Institute/Bryn Mawr College, the Center for Theology and the Natural Sciences/Haverford College, the Center for Spiritual and Ethical Education (Atlanta), the School of Education/Boston University, the University of the South, the annual Sommers Lecture at Millsaps College, the Kenan Ethics Institute/Duke University, the Public Religion Project/University of Chicago, the Center for Communitarian Studies/George Washington University, WNET/Columbia University, the keynote lecture at the annual John Dewey Conference at the University of Vermont, the national Phi Beta Kappa/Wabash College, Baylor University, UNC-Chapel Hill, and many other colleges, schools, civic, educational and religious organizations.

WARREN A. NORD

short bio

WARREN A. NORD received his B. A. from the University of Minnesota (1967) and his Ph.D. from the University of North Carolina at Chapel Hill (1978)—both in philosophy. From 1979 to 2004 he was Director of the Program in the Humanities and Human Values at UNC-Chapel Hill. He continues to teach the philosophy of religion and the philosophy of education in the Philosophy Department.

While he was director of the Program in the Humanities and Human Values it sponsored over 700 seminars, workshops, and conferences, attended by more than 40,000 participants.

As a scholar he is the author of more than thirty book chapters and articles in scholarly and professional journals, and two books: *Religion and American Education: Rethinking a National Dilemma* (UNC Press, 1995), a comprehensive study of historical, philosophical, constitutional, and pedagogical issues relating to religion in secondary and higher education; and, with Charles C. Haynes, *Taking Religion Seriously Across the Curriculum* (ASCD, 1998), a guidebook for educators on “taking religion seriously” across the K-12 curriculum.

EXHIBIT D

THE DESIGN OF LIFE

Discovering Signs of Intelligence in Biological Systems

Michael J. Behe
Percival Davis
William A. Dembski
Dean H. Kenyon
Jonathan Wells

The important thing in science is not so much to
obtain new facts as to discover new ways of
thinking about them.

—Sir William Lawrence Bragg

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Preface

A decade has passed since *Of Pandas and People's* second edition appeared in print. Written by Percival Davis and Dean Kenyon, this book was the first intelligent design textbook. In fact, it was the first place where the phrase "intelligent design" appeared in its present use. Since the second edition of *Pandas*, intelligent design (or ID as it is now abbreviated) has gone from a small and marginalized protest against Darwinian evolution to a comprehensive intellectual program for reconceptualizing biology. Ten years ago intelligent design consisted mainly of sporadic criticisms of Darwinism and offered only vague glimmers of what a positive science of intelligent design might entail. Since then, intelligent design has laid the foundations for a general biology whose fundamental organizing principle is intelligent agency and not blind natural forces.

The impact of intelligent design is being felt both in the scientific community and in the culture at large. Front page stories in major newspapers like the *New York Times* are giving intelligent design respectful treatment (in their science section no less).¹ Television dramas, movies, and popular novels are exploring the theme of intelligent design. And of course, intelligent design is being fiercely debated throughout the academic world. Consequently, it is high time to issue a revised and expanded edition of *Pandas* that reflects the progress of intelligent design over the last ten years.

Darwinian theorists have long acknowledged that biological organisms "appear" to be designed. Oxford zoologist Richard Dawkins, a leading Darwinian spokesperson, has admitted, "Biology is the study of complicated things that give the appearance of having been designed for a purpose."² Statements like this echo throughout the biological literature. Francis Crick, Nobel laureate and co-discoverer of the structure of DNA, writes, "Biologists must constantly keep in mind that what they see was not designed, but rather evolved."³ Nevertheless, Darwinists insist that this appearance of design is illusory because the mechanism of natural selection entirely suffices to explain the observed complexity of living things.

Over the last forty years, however, many evolutionary biologists have acknowledged fundamental problems with the Darwinian explanation for apparent design.⁴ As a result, an increasing number of scientists have

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begun to argue that organisms *appear* to be designed because they really *are* designed. These scientists (known as *design theorists*) see evidence of actual intelligent design in biological systems. As their numbers have grown, their work has sparked a spirited scientific controversy over this central issue. They argue that, contrary to Darwinian orthodoxy, nature displays abundant evidence of real, not just apparent, design. For instance, mathematician William Dembski has published an important work on the theoretical underpinnings for detecting design. In *The Design Inference: Eliminating Chance Through Small Probabilities* (Cambridge University Press, 1998) he shows how design is empirically detectable and therefore properly a part of science.

Unlike contemporary neo-Darwinists, who deny evidence of real as opposed to merely apparent design, contemporary design theorists see impressive evidence of *actual* design in living systems. Biochemist Michael Behe is a case in point. His book *Darwin's Black Box* (Free Press, 1996) details the design constraints that organisms face at the biochemical level. Likewise, developmental biologist Jonathan Wells argues persuasively for design in embryological development.⁵ Through his book *Icons of Evolution* (Regnery, 2000), Wells has also become the leading spokesperson for correcting textbook errors in the teaching of biological evolution.

The Foundation for Thought and Ethics is therefore extremely fortunate to have Dembski, Behe, and Wells join the original authors, Percival Davis and Dean Kenyon, in this sequel to *Of Pandas and People*. Though originally planned as a third edition of *Pandas*, *The Design of Life* quickly took on its own identity. More than half the material is completely new, and what remains of the original material has been completely revised and updated. Though there is continuity with the old book, *The Design of Life* is essentially a new book. As a supplemental text *The Design of Life* can be adapted to both high school and college biology courses. (High school and college teacher's guides are in preparation.)

The need for a book like this is as urgent as ever. Most contemporary biology textbooks act as though all serious debate about biological origins has long since ceased. Thus students get the impression that any challenge to Darwinism is a challenge to science and must be religiously motivated. But Darwinism is not the only available scientific account of biological origins. There is in fact a substantial scientific literature that critiques the adequacy of the Darwinian explanation for the complexity and "apparent design" of biological organisms.⁶ Thus the debate—the *scientific* debate—over Darwinian evolution remains very much alive. This textbook

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provides students with an up-to-date overview of intelligent design and its contribution to that debate.

Jon A. Buell, President
The Foundation for Thought and Ethics
Richardson, Texas

++++IMAGES++++

Covers of second edition of *Pandas*

New York Times front page story on ID

Los Angeles Times front page story (possibly)

Cover of *The Design Inference*

Cover of *Darwin's Black Box*

Cover of *Icons of Evolution*

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