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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DEC 27 2011

John A. ... Clerk
By Glorietta Robinson Deputy
GLORIETTA ROBINSON

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES

17 DAVID COPPEDGE, an Individual,
18 Plaintiff,

19 vs.

20 JET PROPULSION LABORATORY,
21 form unknown; CALIFORNIA
22 INSTITUTE OF TECHNOLOGY, form
23 unknown; GREGORY CHIN, an
24 Individual; CLARK A. BURGESS, an
25 Individual; KEVIN KLENK, an Individual;
26 and DOES 1 through 25, inclusive,
27 Defendants.

CASE NO. BC 435600

REPLY ON MOTION *IN LIMINE* #5

**DEFENDANT CALIFORNIA INSTITUTE
OF TECHNOLOGY'S REPLY IN SUPPORT
OF MOTION *IN LIMINE* #5 ("DML 5") FOR
AN ORDER EXCLUDING OR LIMITING
THE TESTIMONY OF PLAINTIFF'S
EXPERT DAVID K. DEWOLF;
DECLARATION OF CAMERON W. FOX**

FSC Date: February 24, 2012
Time: 9:00 a.m.
Place: Department 54
Judge: Hon. Ernest M. Hiroshige
Trial Date: March 7, 2012

1 **I. INTRODUCTION**

2 Coppedge's Opposition illustrates precisely why his expert David K. DeWolf's testimony
3 must be excluded from trial or, at minimum, significantly narrowed. Coppedge will deploy
4 DeWolf to lecture the jury about intelligent design and its theories, confuse them with irrelevant
5 anecdotes about intelligent design proponents who have no connection or similarity to Coppedge,
6 and tell them that they should view Caltech's witnesses as being hostile to Coppedge simply
7 because that is how intelligent design proponents claim to have been treated elsewhere and how
8 they believe they are perceived generally. None of this is relevant to this lawsuit, and all of it is
9 unduly prejudicial to Caltech.

10 At the same time, the only potentially relevant evidence on intelligent design is what the
11 witnesses knew about it, and how they perceived it. That can be established only through the
12 witnesses' own testimony. See Coppedge's chart of the witnesses' deposition testimony on
13 precisely these topics, at Opp'n 3 - 4. The jury does not need DeWolf to tell them, nor indeed can
14 DeWolf tell them, what Chin or Burgess know or think about intelligent design. Only Chin and
15 Burgess can do so.

16 In reality, Coppedge's effort to put DeWolf in front of the jury is no different from his
17 desire to show the intelligent design DVDs at trial. It is all part of a larger campaign by
18 Coppedge (and more importantly, the Discovery Institute and the Alliance Defense Fund
19 ("ADF"), which are helping to finance this lawsuit) to use this case as a platform for promoting
20 intelligent design. DeWolf himself has a personal interest in this outcome. He is a paid senior
21 fellow at the Discovery Institute, whom he considers to be a client, and he is an affiliate of the
22 ADF, for whom he taught seminars for roughly seven years.¹ What DeWolf's deposition
23 revealed is that he does not have (nor does he care about) any real knowledge of the facts here.
24 While DeWolf will surely learn the facts before trial, Caltech is confident that those facts will not
25 impact his opinions at all. DeWolf has been hired to promote intelligent design, and the facts

26
27 ¹ Deposition of David K. DeWolf, Day One Tr. 18:19-21; 54:17-55:12; 57:6-8; 60:5-24. The
28 deposition was taken on Dec. 14 and 15, 2011; a third day is anticipated, but not scheduled. As of
the filing of this Reply, only the rough deposition transcript for the first two days was available.
Cited excerpts thereof are attached to the Declaration of Cameron W. Fox as Exhibit A.

1 simply do not factor in. The Court should resist this misuse of trial time by a patently self-
2 interested “expert” witness.

3 **II. DEWOLF’S “EXPERT” TESTIMONY SHOULD BE BARRED FROM TRIAL**

4 **A. DeWolf Will Not Offer Proper Expert Testimony.**

5 **1. Coppedge Does Not Show That The Testimony Is A Proper Topic for Expert Testimony.**

6 As Caltech explained in its moving papers, DeWolf’s testimony regarding intelligent
7 design will not concern matters beyond the common experience of the jurors, but instead will
8 seek to usurp the jury’s function by telling them why Caltech’s managers acted as they did, i.e.,
9 that their actions demonstrate an unlawful intent to discriminate or retaliate against Coppedge.

10 The topics that Coppedge contends are “far beyond the range of common experience”
11 (Opp’n at 4) include the treatment of academics and scientists who support intelligent design and
12 theories about the origins of the universe and biological life. Opp’n at 2, 5-6. But Coppedge is
13 ignoring a critical point here: assuming *arguendo* the jurors are unfamiliar with these topics, it is
14 immaterial, because they are irrelevant to this case. With respect to the alleged actions toward
15 academics and scientists, these individuals were paid to teach or conduct science (not maintain
16 computer systems), by different decision makers, at different institutions around the country (not
17 Caltech), under circumstances entirely different from those in this case.² Nor did intelligent
18 design otherwise relate in any way to Coppedge’s job as a System Administrator. DeWolf Day
19 Two Tr. 12:23-13:2 (Q. Did the subject of intelligent design have anything to do with Mr.
20 Coppedge’s job duties as a systems administrator? A. As you have narrowly defined it, the
21 answer would be no. . .). Origins theory is likewise totally irrelevant to whether Coppedge
22 experienced religious discrimination or retaliation.³

23 Meanwhile, on the topics that actually are potentially material to this case – e.g. Chin’s
24 motivations during the March 2, 2009 meeting – DeWolf is no better than the jury at assessing

25 _____
26 ² Coppedge’s job was to ensure that computer systems and related applications operated
effectively on the Cassini project. The subject of intelligent design had nothing whatsoever to do
with the job he was paid to perform.

27 ³ See Caltech’s Motion *in Limine* No. 3 For An Order Excluding Any Contention That Plaintiff’s
28 Conduct Was Justified Because Of NASA’S And/Or JPL’S Programs And Research Regarding
The Origins Of Life, incorporated herein by reference.

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1 them. The jury can and should determine for themselves the reasons Caltech and its witnesses
2 acted as they did. *See, e.g., Westbrook v. State of Cal.*, 173 Cal. App. 3d 1203, 1210 (1985) (“If
3 the jurors would be able to draw a conclusion from the facts testified to as easily and as
4 intelligently as the expert, the opinion testimony of the expert is not admissible.”).

5 Finally, Coppedge’s chart regarding the witnesses’ knowledge of intelligent design serves
6 a purpose contrary to what he intended. Far from showing that intelligent design is beyond
7 common experience (it does not), the chart confirms that the *content* of intelligent design theory
8 and history is irrelevant to this case. Coppedge admits the witnesses had little or no knowledge of
9 these topics, so these topics could not have motivated the witnesses’ actions toward Coppedge,
10 and expert testimony about them will not illuminate any of the matters at issue. All that is
11 potentially relevant is whether the witnesses viewed intelligent design as religion, which can be
12 explored only through their own testimony, as the chart makes clear. The chart also fails to show
13 that intelligent design is beyond common experience. The fact that many witnesses equate
14 intelligent design with religion does not mean they “don’t understand” it, as Coppedge contends;
15 it simply means they disagree with him, and instead concur with the legitimate and widely held
16 view that intelligent design is no different from creationism.⁴

17 **2. DeWolf Will Not Merely Testify As To Ultimate Issues, But Rather**
18 **Will Take Them Away From The Jury.**

19 Coppedge insists that DeWolf’s appropriation of the jury’s job is not problematic because
20 expert testimony can “embrac[e] the ultimate issue to be decided by the trier of fact.” Opp’n at 8.
21 But DeWolf is not simply touching upon, or “embracing” the questions of religious
22 discrimination and retaliation; rather, he is actually opining that adverse treatment occurred
23

24 ⁴ This is the position taken by all leading scientific organizations (including the National
25 Academy of Sciences (“NAS”) and the American Association for the Advancement of Science
26 (“AAAS”)), and at least one court. *See Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707,
27 726 (M.D. Pa. 2005) (“The overwhelming evidence at trial established that ID is a religious view,
28 a mere re-labeling of creationism, and not a scientific theory.”). DeWolf acknowledged that none
of the following major scientific or science teaching organizations support intelligent design: the
NAS, the AAAS, the American Institute of Biological Sciences, the National Science Teachers
Association, and the National Center for Science Education. DeWolf Day One Tr. 114:9-18;
115:3-8; 115:23-116:1; 117:11-24; 118:14-17. DeWolf also conceded that no comparable
organization endorses intelligent design theory. *Id.* 119:8-21.

1 because of intelligent design – an opinion that the jury may accord undue weight, because of his
2 label as an “expert.” *See, e.g., DeWolf Day One Tr. 83:11-13* (“If he didn’t advocate for
3 intelligent design he would have been treated differently . . .”). Permitting such testimony
4 constitutes prejudicial error. *See, e.g., Kotla v. Regents of Univ. of Cal.*, 115 Cal. App. 4th 283,
5 293 (2004) (finding prejudicial error to permit expert testimony about “indicators” of retaliation
6 that “created an unacceptable risk that the jury paid unwarranted deference to [the expert’s]
7 purported expertise when in reality [the expert] was in no better position than they were to
8 evaluate the evidence concerning retaliation.”).

9 3. **Coppedge Does Not Address The Fact That DeWolf’s Opinions Are**
10 **Built On Speculation, Not Matters Upon Which Expert Testimony**
 May Be Based.

11 Coppedge’s Opposition does not even address, much less rebut, Caltech’s concern that
12 DeWolf is basing his opinions on his personal speculation about what the witnesses must have
13 been thinking. As Caltech established in its moving papers, such speculation is not a proper basis
14 for expert testimony. Cal. Evid. Code § 801(b) (an expert opinion must be “[b]ased on matter . . .
15 perceived by or personally known to the witness or made known to him . . .”).⁵

16 DeWolf confirmed at his deposition that he plans to base his opinions about Coppedge’s
17 treatment at Caltech on assumptions about how intelligent design proponents believe they are
18 perceived and treated, in general, rather than on the facts of *this* case – hence his continuing
19 recourse to the term “consistent.” *See, e.g., DeWolf Day One Tr. 69:25-70:3* (“The treatment of
20 David Coppedge *is consistent* with the resistance to the scientific theory of intelligent design
21 . . .”) (emphasis added); *72:14-17* (“I saw what in my experience was *consistent* with the reaction
22 of intelligent design being characterized as religion and not considered as a scientific theory.”)
23 (emphasis added); *79:6-9* (“I do have an opinion about whether the treatment that he received was
24 reflective of and *consistent* with the hostility toward intelligent design that I described earlier.”)
25 (emphasis added). DeWolf will not be offering an opinion on what happened, but rather, on what
26 he thinks would have been *consistent* with his assumptions.

27
28 ⁵ *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 589 (1993) (The “trial judge must ensure
and any [expert opinion] admitted is not only relevant, but *reliable*.”) (emphasis added).

1 Indeed, DeWolf testified that he is basing his opinions on only three discrete events and/or
2 comments: Edgington’s “statement in his deposition that intelligent design is religion”;
3 “Margaret Weisenfelder’s statement that she viewed the DVD but didn’t find there was much
4 science in there, it seemed that it was religion”; and the March 2, 2009 meeting between
5 Coppedge and Chin. DeWolf Day Two Tr. 20:1-21:6. DeWolf has not considered Coppedge’s
6 actual relationships with these individuals, much less all the other events and interactions in his
7 nearly fourteen years at JPL – and there is no indication he intends to do so before trial, as he
8 views them as “unnecessary” to his opinion. *See, e.g., id.* at 21:16-25 “[Q] [I]n forming your
9 opinions, have you taken into account at all the work-related complaints that were made with
10 respect to Mr. Coppedge? A. *They are unnecessary to my opinion*, which is that these incidents
11 reflect hostility. Q . . . [I]n forming your opinions did you take into account in any way the work-
12 related complaints that were made about Mr. Coppedge? A. No.”) (emphasis added).

13 In short, DeWolf is basing his supposedly “expert” testimony on nothing more than
14 preconceived notions about treatment of intelligent design proponents, coupled with rank
15 speculation that those notions explain what happened here.

16 **4. Coppedge’s Attempt To Rely On Religious Accommodation and**
17 **Establishment Clause Case Law Is Disingenuous.**

18 Finally, Coppedge tries to justify DeWolf’s testimony by contending that “[w]here the
19 content of a religious view or practice is at issue,” expert testimony has been proffered on these
20 topics. This effort is disingenuous at best. Having insisted that intelligent design is science, not
21 religion, and having characterized his claim as one of “perceived-as” religious discrimination,⁶
22 Coppedge cannot rely on case law involving actual religious beliefs and practices simply because
23 it is a convenient way to publicize his supposedly scientific views. Put differently, because
24 Coppedge is not trying to establish that intelligent design is religion, there is no need for an expert
25 to opine on whether it is religion or whether Coppedge’s belief in it is genuine.

26
27 ⁶ *See, e.g.,* Second Amended Complaint ¶ 64 (“Defendants discriminated against Plaintiff on the
28 basis of religion because they perceived him to be and asserted that he was engaged in religious
speech and ordered him to discontinue it.”).

1 To the extent that Coppedge is trying to show that the witnesses perceived intelligent
2 design as religion, this can be established through testimony, as his chart makes clear. Opp'n at
3 3-4. And to the extent he simply wants to engage in a debate over whether intelligent design
4 actually is religion, this is irrelevant, as discussed below, and in Caltech's motion *in limine*
5 briefing with respect to the intelligent design DVDs.⁷

6 The reasons for which experts were admitted in the cases that Coppedge cites have no
7 application here. Most of the cases concern whether claimed religious beliefs or practices were
8 genuine (and in some cases, whether they were religious at all), for purposes of assessing the
9 impact of various laws or procedures. *See, e.g. People v. Woody*, 61 Cal. 2d 716, 717 (1964)
10 (considering whether peyote use constituted a bona fide religious observance, such that
11 application of a statute prohibiting possession would violate the First Amendment); *Konikov v.*
12 *Orange County*, 290 F. Supp. 2d 1315, 1319 (M.D. Fla. 2003) (finding expert testimony "relevant
13 to determining the extent to which the Orange County ordinance restricts Rabbi Konikov's ability
14 to practice his Jewish faith"); *Montgomery v. County of Clinton*, 743 F. Supp. 1253, 1258 (W.D.
15 Mich. 1990) (expert testimony by a rabbi regarding position of Judaism on autopsies permitted,
16 where mother who observed the Jewish faith claimed that autopsy of son violated her free
17 exercise rights); *Theriault v. Carlson*, 495 F.2d 390, 391 (5th Cir. 1974) (assessing inmate's
18 "alleged deprivation by certain federal prison authorities of the constitutional rights of prison
19 inmates to practice their religious faith, known as the 'Church of the New Song' or the
20 'Eclatarian' faith").

21 The remaining case, *Conrad v. City and County of Denver*, 656 P.2d 662, 666 (Colo.
22 1982) is likewise inapposite. There, the court considered whether inclusion of a nativity scene in
23 Denver's holiday display constituted an endorsement of Christianity, in violation of Colorado's
24 constitution. Experts testified that "the creche represents Christianity," a relevant fact for the
25 resolution of that case. No parallel can even be drawn here; the only intelligent design writings or

26 ⁷ Caltech incorporates by reference its moving and reply papers on its Motion *in Limine* No. 2 For
27 An Order Excluding Testimony, Evidence, Argument And Comment Regarding The Content Of
28 DVDs Coppedge Distributed To Co-Workers And Films Regarding Alleged Hostility Proponents
Of Intelligent Design Have Experienced, and its Opposition to Coppedge's Motion *in Limine* No.
1 To Permit The Showing Of Two Intelligent Design DVDs To The Jury.

1 objects at issue – the intelligent design DVDs – indisputably represent the intelligent design
2 theories that Coppedge holds and promotes. No expert is needed to confirm that.

3 **B. DeWolf's Testimony Is Irrelevant and Should Be Excluded Under California**
4 **Evidence Code Sections 210 and 350.**

5 Caltech has established that the topics on which DeWolf is expected to testify have no
6 relevance to the issues in this case. *See* discussion, above, and in Caltech's moving papers.
7 DeWolf confirmed as much at deposition: he freely admits that his opinions about intelligent
8 design are not even specific to this case. DeWolf Day One Tr. 40:16-17. His deposition
9 testimony also establishes that those opinions that ostensibly pertain to Coppedge are based on
10 assumptions, not facts. *See* discussion, above.

11 Coppedge's attempts to establish relevance fail.

12 First, Coppedge contends that a "cultural conflict exists over whether intelligent design is
13 religious dogma." Opp'n at 9. Even assuming that were true, it has no bearing on resolution of
14 Coppedge's religious discrimination and retaliation claims, because whether intelligent design
15 actually is religion is irrelevant. The only arguably relevant issue with respect to this supposed
16 "conflict" – whether the complaining employees and decisionmakers viewed intelligent design as
17 religion – can properly be explored only through witness testimony, as Coppedge's chart makes
18 clear. Opp'n at 3-4. Testimony by DeWolf about how people unrelated to this case supposedly
19 perceive intelligent design has no bearing on this question.

20 Second, Coppedge's entire defense of what he calls the "similar examples of
21 discrimination" (i.e. the incidents involving academics and scientists) is that JPL's position on
22 their irrelevance "is precisely the line taken by people who know absolutely nothing about the
23 subject." Opp'n at 9. Coppedge's conclusory counterargument obviously offers no guidance on
24 the admissibility of testimony about these individuals. Meanwhile, Caltech has made a strong –
25 and now, un rebutted – showing that those situations are neither similar to Coppedge's
26 circumstances, nor admissible.

27 Third, Coppedge claims that Caltech's relevance argument is premature because DeWolf
28 had not yet been deposed. Caltech completed its deposition examination of DeWolf on December

1 14 and 15, 2011. While the deposition will continue for a third day (not yet scheduled), the only
2 purpose for doing so is for Coppedge's counsel to conduct direct examination of DeWolf (to
3 which Caltech may have some redirect examination). In any event, the first two days of
4 deposition were more than sufficient for Caltech to confirm that DeWolf's trial testimony will
5 substantially mirror that found in his declaration. Indeed, De Wolf admitted that the opinions he
6 intends to offer at trial are the same opinions he submitted in his declaration. DeWolf Day One
7 Tr. 8:7-15. Caltech maintains all of its objections to DeWolf's testimony, including those
8 pertaining to relevance.

9 **C. DeWolf's Testimony Must Be Excluded Under California Evidence Code**
10 **Section 352.**

11 Caltech established in its moving papers that DeWolf's testimony must be excluded under
12 Section 352. None of the topics on which DeWolf will testify have any probative value to this
13 case. The main purpose for his testimony (besides promoting intelligent design) is to unduly
14 prejudice Caltech, by having an "expert" improperly suggest to the jury that they must find that
15 Coppedge experienced hostility, and therefore that he was subjected to unlawful discrimination
16 and retaliation – even though no facts support this conclusion. *See Spencer v. General Elec. Co.*,
17 688 F. Supp. 1072, 1077 (E.D. Va. 1988) (stating that admission of evidence in the form of expert
18 testimony will create unfair prejudice "by creating an aura of special reliability and
19 trustworthiness."). Coppedge offers no response to Caltech's argument regarding Section 352.

20 **D. DeWolf's Deposition Testimony Confirms That His Trial Testimony Will Be**
21 **Akin To Inadmissible Character Evidence.**

22 In its moving papers, Caltech explained that DeWolf's testimony also must be excluded
23 because he presupposes that Caltech's managers (and the employees who complained about
24 Coppedge) oppose intelligent design, and that opponents of intelligent design are necessarily
25 hostile toward its advocates. This constitutes inadmissible character evidence. Cal. Evid. Code §
26 1101(a). DeWolf's deposition testimony has confirmed that this is exactly what DeWolf is going
27 to do at trial: regardless of the facts, he will assume, and therefore testify, that JPL employees
28

1 were hostile toward Coppedge, because such hostility would be consistent with how intelligent
2 design advocates believe they are generally treated.

3 Coppedge argues that this is not character evidence because JPL does not specify an
4 “emotional, mental, or personality fact” that DeWolf will testify about. Opp’n at 10. In fact, JPL
5 did specify such a fact – hostility – and DeWolf did proceed to testify at deposition about it. He
6 will do the same at trial. Coppedge then makes a critical admission here, stating “it is unlikely
7 that DeWolf will have any basis for knowing much about [the witnesses’] personalities . . .”
8 Opp’n at 10. Indeed, he has no basis at all – but this does not stop him from assuming hostility of
9 these witnesses on the grounds of nothing more than his views regarding how intelligent design
10 proponents allegedly are treated in general. The Court should exclude this admittedly baseless,
11 improper testimony about how Caltech’s witnesses “must” have acted.

12 **III. THE COURT SHOULD STRIKE PLAINTIFF’S SUR-REPLY, IN THE EVENT**
13 **HE FILES ONE**

14 Coppedge states that as of the date he filed his Opposition, DeWolf’s deposition had not
15 been taken, so “[his] opinions are not fully known” and “Plaintiff therefore reserves the right to
16 respond to JPL’s reply brief . . .” Opp’n at 9, n.2. This is nonsense: DeWolf is Coppedge’s
17 expert, meaning his opinions were (or should have been) known to Coppedge, regardless of when
18 the deposition took place. In reality, Coppedge just wants a chance to rebut this reply, but there is
19 no such “right to respond” in the California Code of Civil Procedure, the California Rules of
20 Court, or anywhere else. Thus, any sur-reply by Coppedge is improper, and the Court should
21 strike it. In the event the Court does not do so, Caltech will seek leave to file a response.

22 **IV. CONCLUSION**

23 For the foregoing reasons, and those set forth in its moving papers, Caltech respectfully
24 requests that the Court grant its Motion and bar the testimony of expert David K. DeWolf in its
25 entirety, or in the alternative, preclude Coppedge and his counsel from offering any testimony or
26 documentary evidence, making reference to or presenting any argument (through DeWolf or
27 otherwise) that proponents of intelligent design historically have been subjected to hostility or
28 discrimination or that Caltech’s treatment of Coppedge is an illustration of any such hostility

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1 toward advocates of intelligent design. Any testimony should be limited simply to explaining
2 what intelligent design purports to be.

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DATED: December 27, 2011

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12/27/2011

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EX.A

UNCERTIFIED, UNEDITED ROUGH DRAFT
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1 USING A REALTIME ROUGH DRAFT TRANSCRIPT

2 * * * * *

3 THE FOLLOWING REALTIME UNEDITED TRANSCRIPT
4 REPRESENTS THE REPORTER'S RAW SHORTHAND NOTES AND SHOULD
5 BE TREATED AS A DRAFT.

6 CONSEQUENTLY, YOU MAY SEE A VARIETY OF ERRORS
7 SUCH AS MISTRANSLATED MATERIAL, ERRORS IN CAPITALIZATION
8 AND PUNCTUATION, MISSPELLINGS, WORDS MISSING, TRANSPOSED
9 WORDS, DOUBLE WORDS, CONTEXTUAL HEARING MISTAKES OR
10 HEARING MISTAKES OF SOUND-ALIKE WORDS, POSSIBLE
11 INCORRECT SPEAKER IDENTIFICATION, AND STENO OUTLINES
12 THAT HAVE NOT BEEN TRANSLATED.

13 BE ASSURED THAT IN THE FINAL, EDITED VERSION
14 OF THE TRANSCRIPT, ALL ERRORS ARE CORRECTED.

15 EFFECTIVE JANUARY 1, 1998, CCP SECTION
16 2025(R)(2) WAS AMENDED TO READ AS FOLLOWS: "WHEN
17 PREPARED AS A ROUGH DRAFT TRANSCRIPT, THE TRANSCRIPT OF
18 THE DEPOSITION MAY NOT BE CERTIFIED AND MAY NOT BE USED,
19 CITED, OR TRANSCRIBED AS THE CERTIFIED TRANSCRIPT OF THE
20 DEPOSITION PROCEEDINGS. THE ROUGH DRAFT TRANSCRIPT MAY
21 NOT BE CITED OR USED IN ANY WAY OR AT ANY TIME TO REBUT
22 OR CONTRADICT THE CERTIFIED TRANSCRIPT OF THE DEPOSITION
23 PROCEEDINGS AS PROVIDED BY THE DEPOSITION OFFICER."

24 THIS TRANSCRIPT MAY NOT BE REPRODUCED OR
25 DISTRIBUTED EXCEPT FOR USE BY COUNSEL OR COUNSEL'S

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UNCERTIFIED, UNEDITED ROUGH DRAFT
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7 MR. BECKER: VAGUE AND AMBIGUOUS AS TO

8 OPINIONS.

9 BY MR. ZAPP:

10 Q YOU CAN ANSWER THE QUESTION.

11 A I HAVE NO INTENTION OTHER THAN WHAT I'M BEING
12 ASKED TO OPINE ABOUT. SO I ASSUME I WON'T BE ABLE TO
13 EXPRESS AN OPINION ABOUT SOMETHING I HAVEN'T BEEN ASKED
14 TO EXPRESS AN PAN ABOUT.

15 Q PRECISELY.

16 A I DON'T MEAN TO QUIBBLE WITH YOU BUT I GUESS I
17 DON'T UNDERSTAND THE QUESTION.

18 Q THE QUESTION IS VERY SIMPLE. I'M ENTITLED TO
19 KNOW AS WE SIT HERE IN THE DEPOSITION EVERY OPINION THAT
20 YOU INTEND TO TESTIFY TO AT TRIAL. AND IF ALL OF THOSE
21 ARE CONTAINED IN THE DECLARATION, THEN A SIMPLE YES
22 ANSWER TO MY QUESTION WILL COVER IT. IF THEY ARE NOT,
23 THEN I NEED YOU TO ESPOUSE WHATEVER OTHER OPINIONS THAT
24 YOU --

25 A THOSE ARE THE ONLY OPINIONS --

NOT TO BE USED FOR EVIDENTIARY PURPOSES

8

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1 MR. BECKER: VAGUE AND AMBIGUOUS STILL.

2 THE WITNESS: THOSE ARE THE ONLY OPINIONS I
3 INTEND TO TESTIFY TO AT TRIAL.

4 BY MR. ZAPP:

5 Q SO LET ME ASK THE QUESTION SO IT'S CLEAN.

6 A OKAY.

7 Q SO IS IT CORRECT THAT ALL THE OPINIONS ABOUT
8 WHICH YOU INTEND TO TESTIFY AT TRIAL ARE CONTAINED IN

9 THE DECLARATION THAT YOU FILED IN OPPOSITION TO MOTION
10 FOR SUMMARY JUDGMENT.

11 MR. BECKER: VAGUE AND AMBIGUOUS AS TO THE
12 MEANING OF OPINION.

13 BY MR. ZAPP:

14 Q YOU CAN ANSWER THE QUESTION.

15 A THAT'S CORRECT.

16 Q AND THEN LET'S HAVE MARKED SO WE AVOID ANY
17 AMBIGUITY AS EXHIBIT 2 TO MR. DEWOLF'S DEPOSITION THE
18 DECLARATION OF DAVID DEWOLF WHICH IS 17 PAGES IN LENGTH
19 AND WHICH WAS FILED ON OR DATED EXCUSE ME, AUGUST 29 OF
20 2011.

21 BY MR. ZAPP:

22 Q AND IS EXHIBIT 2 THE DECLARATION TO WHICH YOU
23 WERE JUST REFERRING AS BEING THE DOCUMENT THAT CONTAINS
24 ALL THE OPINIONS ABOUT WHICH YOU INTEND TO TESTIFY TO?

25 A I'M SORRY, CAN YOU REPEAT THAT QUESTION.

NOT TO BE USED FOR EVIDENTIARY PURPOSES

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1 Q IS EXHIBIT 2 THE DECLARATION TO WHICH YOU WERE
2 REFERRING THAT CONTAINS ALL THE OPINIONS THAT YOU INTEND
3 TO TESTIFY TO AT TRIAL?

4 MR. BECKER: AND I'D LIKE TO HAVE A RUNNING
5 OBJECTION AGREED TO WITH RESPECT TO WORD OPINION OR
6 OPINIONS.

7 MR. ZAPP: I DON'T UNDERSTAND THE OBJECTION.
8 BUT YOU CAN DO WHATEVER YOU --

9 MR. BECKER: DO YOU WANT ME TO EXPLAIN IT TO

22 INSTITUTE. THEY'RE MY CLIENT. OKAY? AND SO THE
23 CONVERSATIONS I HAVE WITH DISCOVERY INSTITUTE PEOPLE
24 REGARDING DISCOVERY INSTITUTE MATTERS, WHICH TWO YEARS
25 AGO THIS WAS AT ONE TIME, WE WOULD CONTEND WOULD BE

18

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1 PRIVILEGED AT THAT TIME OR AT LEAST THERE WOULD BE WORK
2 PRODUCT ISSUES INVOLVED THEN. WITH RESPECT TO THE
3 LITIGATION AFTER IT WAS FILED I WOULD SAY THAT THERE
4 WOULD STILL BE CONTINUING WORK PRODUCT ISSUES WITH
5 RESPECT TO THE DISCOVERY INSTITUTE'S INVOLVEMENT IN THE
6 CASE. HE'S FREE TO TALK ABOUT THEM. THERE'S NO BALL TO
7 HIDE HERE. THE DISCOVERY INSTITUTE IS THE REFERRING
8 AGENT FOR HIS SERVICES. AND TO THE EXTENT THAT HE HAD
9 ANY DISCUSSIONS WITH THEM ON THE ISSUE OF HIS OFFERING
10 EXPERT WITNESS TESTIMONY IN THIS CASE, I THINK THAT'S
11 FAIR GAME. I THINK WITH ANYTHING THAT PRECEDED THAT, IT
12 PROBABLY ISN'T.

13 MR. ZAPP: OKAY. LET ME JUST HAVE THE WITNESS
14 ANSWER THEN.

15 Q IS IT YOUR UNDERSTANDING THAT MR. BECKER IS AN
16 ATTORNEY WHO REPRESENTS THE DISCOVERY INSTITUTE AT
17 TIMES?

18 A YES.

19 Q AND YOU'RE ALSO AN ATTORNEY WHO REPRESENTS THE
20 DISCOVERY INSTITUTE AT TIMES?

21 A YES.

22 Q WERE THERE COMMUNICATIONS THAT YOU AND
23 MR. BECKER HAD EITHER ALONE OR WITH OTHER ATTORNEYS OR

24 RENDER THIS OPINION?

25 A YES.

40

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1 Q WHAT INFORMATION DID YOU REQUEST FROM
2 MR. BECKER OR MR. COPPEDGE?

3 A I DON'T RECALL WHAT I SPECIFICALLY ASKED FOR
4 BEYOND WHAT BILL DESCRIBED TO ME IN THE TELEPHONE
5 CONVERSATION FOLLOWING UP ON THE EMAIL. SO HOW MUCH I
6 ASKED FOR AND HOW MUCH HE SIMPLY OFFERED TO ME, I DON'T
7 RECALL HOW THAT FELL OUT.

8 Q DID YOU RECEIVE ALL THE INFORMATION -- STRIKE
9 THAT.

10 WHENEVER YOU DID REQUEST INFORMATION, DID YOU
11 RECEIVE THE INFORMATION YOU REQUESTED?

12 A YES.

13 Q AND DID YOU RECEIVE OR OTHERWISE OBTAIN ALL THE
14 INFORMATION YOU FELT WAS NECESSARY FOR YOU TO RENDER
15 OPINIONS YOU'RE RENDERING IN THIS CASE?

16 A THE FIRST THREE OPINIONS IN MY DECLARATION ARE
17 NOT SPECIFIC TO DAVID COPPEDGE OR INFORMATION THAT BILL
18 WOULD HAVE SUPPLIED TO ME. AS TO THOSE FIRST THREE
19 QUESTIONS OR FIRST THREE OPINIONS, I'M CONTINUALLY
20 RECEIVED NEW INFORMATION. BUT I BELIEVE BASED UPON WHAT
21 I HAVE RECEIVED AND LEARNED OVER THE YEARS, I HAVE
22 SUFFICIENT INFORMATION TO FORM AN OPINION AS TO THE
23 FIRST THREE. AS TO NO. 4, I HAVE RECEIVED ENOUGH
24 INFORMATION TO FORM AN OPINION, YES.

10/27/2011

15 Q I APOLOGIZE. SO IS YOUR POSITION FELLOW OR
16 SENIOR FELLOW?

17 A I AM NOW A SENIOR FELLOW.

18 Q DID YOU FIRST BEGIN YOUR ASSOCIATION WITH THE
19 DISCOVERY INSTITUTE IN 1990 -- STRIKE THAT.

20 WHEN DID YOU FIRST BEGIN YOUR ASSOCIATION WITH
21 DISCOVERY INSTITUTE?

22 A BASED ON MY READING OF MY RESUME, I BELIEVE IT
23 WAS IN 1998. I DON'T RECALL. EXCUSE ME, COULD YOU
24 REPEAT THE QUESTION? I'M NOT SURE I ANSWERED.

25 MR. BECKER: WHEN DID YOU FIRST BEGIN YOUR

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1 ASSOCIATION WITH DISCOVERY INSTITUTE?

2 THE WITNESS: IT WAS BEFORE I BECAME A FELLOW.

3 BY MR. ZAPP:

4 Q RIGHT.

5 A AS I DESCRIBED IN THE DECLARATION, IT WAS MY
6 AFFILIATION WITH STEPHEN MEYER WHICH BEGAN MY
7 ASSOCIATION WITH THE DISCOVERY INSTITUTE.

8 Q AND THAT WAS 1994, ACCORDING TO YOUR
9 DECLARATION.

10 A THAT'S -- YES.

11 Q YOU BELIEVE THAT TO BE ACCURATE?

12 A I BELIEVE THAT TO BE ACCURATE, YES.

13 Q AND WHAT IS THE DISCOVERY INSTITUTE?

14 A THE DISCOVERY INSTITUTE IS A THINK TANK LOCATED
15 IN SEATTLE, WASHINGTON.

18 SCIENCE AND CULTURE?

19 A CORRECT.

20 Q AND FROM THE TIME PERIOD THEN OF 1994 FORWARD,
21 HAVE YOU HAD SOME CONNECTION IN SOME WAY WITH EITHER THE
22 CENTER FOR THE RENEWAL OF SCIENCE AND CULTURE OR ITS
23 SUCCESSOR, THE CENTER FOR SCIENCE AND CULTURE?

24 A IT WASN'T REALLY A SUCCESSOR. IT WAS THE SAME
25 ENTITY BUT WITH A DIFFERENT NAME.

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1 Q JUST A RENAMING?

2 A YES.

3 Q AND WHEN YOU SAY YOU ARE A SENIOR FELLOW, WHAT
4 DOES THAT MEAN?

5 A I'M NOT ENTIRELY SURE.

6 Q DO YOU RECEIVE ANY COMPENSATION FROM THE
7 DISCOVERY INSTITUTE?

8 A I DO.

9 Q AND HOW LONG HAVE YOU RECEIVED COMPENSATION
10 FROM THE DISCOVERY INSTITUTE?

11 A THAT I'M NOT ENTIRELY SURE OF. I BELIEVE -- MY
12 GUESS WOULD BE THAT IT CORRESPONDS ROUGHLY TO THIS
13 DESIGNATION AS A FELLOW IN 1998.

14 Q IN TERMS OF WHEN IT BEGAN?

15 A YES.

16 Q AND ARE YOU PAID FOR SPECIFIC WORK YOU DO OR IS
17 THERE SOME SPECIFIC AMOUNT OR FLAT AMOUNT OR STIPEND OR
18 HOWEVER YOU WOULD CHARACTERIZE IT THAT YOU GET PAID AS A

22 RECOMPENSE FROM THE DISCOVERY INSTITUTE SINCE -- FROM
23 2005 TO THE PRESENT OTHER THAN WHAT YOU'VE TOLD ME?
24 A OCCASIONALLY I GET FREE BOOKS.
25 Q ANYTHING ELSE?

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1 A FREE DVDS.
2 Q FOR THOSE THAT DON'T WANT TO READ IT? ANYTHING
3 ELSE?
4 A NOT THAT I RECALL.
5 Q HAVE YOU EVER BEEN ASSOCIATED WITH THE ALLIANCE
6 DEFENSE FUND?
7 A I HAVE.
8 Q IN WHAT CAPACITY?
9 A I HAVE BEEN AN INSTRUCTOR AT PROGRAM CALLED THE
10 BLACKSTONE FELLOWSHIP.
11 Q AND HAVE YOU HAD A CONTINUING RELATIONSHIP WITH
12 THE ALLIANCE DEFENSE FUND IN THAT CAPACITY?
13 MR. BECKER: THAT'S VAGUE AND AMBIGUOUS.
14 THE WITNESS: COULD YOU REPHRASE?
15 BY MR. ZAPP:
16 Q HOW LONG HAVE YOU BEEN ASSOCIATED WITH THE
17 BLACKSTONE FELLOWSHIP?
18 A I BELIEVE MY FIRST TEACHING ROLE WAS IN THE
19 EARLY 2000S, 2001, 2002, ROUGHLY IN THAT AREA.
20 Q AND HAS IT BEEN CONTINUOUS SINCE THAT PERIOD?
21 A I NO LONGER PARTICIPATE IN THAT.
22 Q DURING WHAT PERIOD OF TIME DID YOU PARTICIPATE
23 THEN?

24 A ROUGHLY 2001 TO 2008, I BELIEVE.

25 Q AND WHAT WAS YOUR PARTICIPATION DURING THAT

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1 TIME PERIOD? YOU WERE AN INSTRUCTOR?

2 A I WAS.

3 Q AND I GUESS MY QUESTION IS -- AND YOU CAN

4 DESCRIBE IN YOUR OWN TERMS -- DID YOU TEACHING LIKE ONE

5 SEMINAR OR DID YOU TEACH A CLASS OVER A PERIOD OF TIME

6 OR WERE YOU CONTINUALLY TEACHING? WHAT WAS THE SCOPE OF

7 WHAT YOU DID?

8 A I TAUGHT A CLASS.

9 Q AND TYPICALLY WAS IT FOR A SET PERIOD OF TIME?

10 A YES.

11 Q HOW LONG?

12 A IT WAS AN HOUR AND A HALF, I BELIEVE.

13 Q AND WAS IT GIVEN FOR OVER A PERIOD OF TIME? IN

14 OTHER WORDS LIKE A QUARTER, A SEMESTER, SOMETHING LIKE

15 THAT?

16 A NO, IT WAS A ONE TIME PERFORMANCE.

17 Q AND DO YOU UNDERSTAND THE DISCOVERY

18 INSTITUTE -- STRIKE THAT.

19 ARE YOU FAMILIAR WITH -- STRIKE THAT.

20 DO YOU UNDERSTAND THE ALLIANCE DEFENSE FUND TO

21 PROVIDE RESOURCES TO KEEP THE DOOR OPEN FOR THE SPREAD

22 OF THE GOSPEL THROUGH THE LEGAL DEFENSE OF RELIGIOUS

23 FREEDOM, AMONG OTHER THINGS?

24 A CAN YOU REPHRASE THE QUESTION.

6 Q YOU JUST INDICATED TO ME JUST FOR THE RECORD,
7 MR. DEWOLF, THAT THE OPINIONS 1, 2, 3 AND 4 THAT ARE
8 STATED HERE ARE NOT GOING TO CHANGE; CORRECT?

9 A 1, 2, AND 3 ARE NOT GOING TO CHANGE.

10 Q NO. 4 IS GOING TO CHANGE?

11 A YES.

12 Q NO. 4 NOW READS, QUOTE, THE TREATMENT OF DAVID
13 COPPEDGE BY THE JET PROPULSION LABORATORY IS CONSISTENT
14 WITH THE IRRATIONAL HOSTILITY OFTEN EXHIBITED TOWARD
15 ADVOCATES OF INTELLIGENT DESIGN.

16 HOW IS THAT OPINION GOING TO CHANGE? WHAT ARE
17 YOU GOING TO SAY?

18 A I THINK THAT I WOULD REMOVE THE IRRATIONAL
19 HOSTILITY. I THINK THAT'S A POOR -- IT DOESN'T CAPTURE
20 WHAT IS CONTAINED IN THE SUBSTANCE OF THE OPINION. THE
21 SUBSTANCE OF THE OPINION DESCRIBES THE MISMATCH OF
22 EXPECTATIONS.

23 Q JUST TELL ME WHAT IS THE OPINION THAT'S GOING
24 TO BE EXPRESSED IN PLACE OF WHAT IS WRITTEN HERE?

25 A THAT THE TREATMENT OF DAVID COPPEDGE IS

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1 CONSISTENT WITH THE RESISTANCE TO THE SCIENTIFIC THEORY
2 OF INTELLIGENT DESIGN THAT I HAVE DESCRIBED EARLIER IN
3 THE OPINION. SO IN OPINION --

4 Q JUST A SECOND. SO THE OPINION WILL NOW BE
5 QUOTE, THE TREATMENT OF DAVID COPPEDGE BY THE JET
6 PROPULSION LABORATORY IS CONSISTENT WITH THE RESISTANCE

10 A THAT IS THE PLACE WHERE I BELIEVE A JURY WILL
11 HAVE TO EVALUATE BASED UPON LIVE TESTIMONY, I DID NOT
12 HAVE THE BENEFIT OF LIVE TESTIMONY OR A COMPARATIVE
13 DISCUSSION OF DIFFERENT WITNESSES, BUT FROM THE
14 DEPOSITION TRANSCRIPTS THAT I READ, I SAW WHAT IN MY
15 EXPERIENCE WAS CONSISTENT WITH THE REACTION OF
16 INTELLIGENT DESIGN BEING CHARACTERIZED AS RELIGION AND
17 NOT CONSIDERED AS A SCIENTIFIC THEORY.

18 Q AND WHEN YOU SAY THAT YOU WERE UNCERTAIN -- TO
19 QUOTE YOU, WHEN YOU SAY THAT I AM A LITTLE
20 CONFUSED -- SO WHEN YOU SAY THAT --

21 (WITNESS CONFERS WITH COUNSEL.)

22 BY MR. ZAPP:

23 Q WELL, I GUESS WHAT I'M STILL CONFUSED BY IS
24 WHEN YOU SAY A REFLECTION OF A LARGER CULTURAL PATTERN
25 VERSUS HOW MUCH OF IT WAS UNIQUE AND INDIVIDUAL TO HIS

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1 CIRCUMSTANCES, WHAT ARE THE TWO THINGS YOU'RE COMPARING?

2 MR. BECKER: I'M GETTING LOST.

3 MR. ZAPP: I'M JUST TRYING TO UNDERSTAND --

4 THE WITNESS: RIGHT.

5 MR. ZAPP: THAT MR. DEWOLF SAID THAT HE WASN'T
6 SURE HOW MUCH OF IT WAS A REFLECTION OF A LARGE LARGER
7 CULTURAL PATTERN OR HOW MUCH OF IT WAS UNIQUE TO HIS
8 CIRCUMSTANCES. IS UNIQUE AND INDIVIDUAL TO HIS
9 CIRCUMSTANCES.

10 Q SO I'M TRYING TO UNDERSTAND WHAT THE CONTRAST
11 IS TO YOU OR WHAT THE COMPARISON IS BETWEEN.

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19 (WITNESS AND COUNSEL LEAVE THE DEPOSITION ROOM
20 FROM 3:57 P.M. TO 4:04 P.M.)

21 MR. ZAPP: LET'S GO BACK ON THE RECORD.

22 Q YOU SAID OFF THE RECORD, MR. DEWOLF, THAT YOU
23 WANT TO CLASSIFY YOUR OPINION?

24 A YEAH.

25 Q WHICH ARE YOU TALKING ABOUT?

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1 A I'M TALKING ABOUT OPINION NO. 4. AND I THINK I
2 SAID SOME THINGS EARLIER IN TERMS OF BEING CONFUSED.
3 WHAT I MEANT TO SAY WAS THAT THERE IS A POTENTIAL -- LET
4 ME PUT IT THIS WAY. I DO NOT HAVE AN OPINION AS TO
5 WHETHER OR NOT DAVID COPPEDGE WAS DISCRIMINATED AGAINST
6 BY JPL. I DO HAVE AN OPINION ABOUT WHETHER THE
7 TREATMENT THAT HE RECEIVED WAS REFLECTIVE OF AND
8 CONSISTENT WITH THE HOSTILITY TOWARD INTELLIGENT DESIGN
9 THAT I DESCRIBED EARLIER.

10 Q AND WHEN YOU REFER TO THE TERM HOSTILITY TOWARD
11 INTELLIGENT DESIGN, ARE YOU REFERRING TO THE FACT THAT
12 IT'S CONSISTENT WITH THE DISCRIMINATION THAT HAS BEEN
13 SHOWN TOWARD OTHERS WHO HAVE ADVOCATED OR SUPPORTED
14 INTELLIGENT DESIGN?

15 A YES.

16 Q SO WHAT YOU'RE SAYING IS -- IN A DIFFERENT WAVE
17 SAYING THE SAME THING IS THAT THE TREATMENT OF DAVID
18 COPPEDGE BY THE JPL IS CONSISTENT WITH THE
19 DISCRIMINATION THAT HAS BEEN SHOWN TOWARD OTHERS WITH
20 SUSPECT TO THE SCIENTIFIC THEORY OF INTELLIGENT DESIGN;

25 Q ALL RIGHT. SO I'M JUST TRYING TO CLARIFY. ARE

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1 YOU STATING AN OPINION ONE WAY OR THE OTHER AS TO
2 WHETHER OR NOT MR. COPPEDGE WAS DISCRIMINATED AGAINST OR
3 TREATED DIFFERENTLY BECAUSE OF HIS BELIEF IN INTELLIGENT
4 DESIGN?

5 MR. BECKER: VAGUE AND AMBIGUOUS.

6 THE WITNESS: DIFFERENTLY COMPARED TO WHAT?

7 BY MR. ZAPP:

8 Q DIFFERENTLY THAN HE WOULD HAVE OTHERWISE BEEN
9 TREATED?

10 MR. BECKER: VAGUE AND AMBIGUOUS, INCOMPLETE --

11 THE WITNESS: IF HE DIDN'T ADVOCATE INTELLIGENT
12 DESIGN HE WOULD HAVE BEEN TREATED DIFFERENTLY, YES.

13 BY MR. ZAPP:

14 Q AND ARE YOU ALSO SAYING THAT WHATEVER YOU READ
15 OR WHATEVER HOSTILITY THAT YOU BELIEVE YOU PERCEIVED --
16 STRIKE THAT.

17 ARE YOU ALSO SAYING THAT THE TREATMENT THAT YOU
18 BELIEVE MR. COPPEDGE RECEIVED FROM JET PROPULSION
19 LABORATORY IS CONSISTENT WITH OTHER INSTANCES WHERE YOU
20 BELIEVE INDIVIDUALS HAVE BEEN DISCRIMINATED AGAINST OR
21 TREATED DIFFERENTLY THAN THEY OTHERWISE WOULD HAVE BEEN
22 TREATED BECAUSE MUCH THEIR BELIEF IN INTELLIGENT DESIGN?

23 A I'M UNABLE TO ANSWER YOUR QUESTION BECAUSE OF
24 THE POTENTIAL CONFUSION OVER THE WORD DISCRIMINATE AND
25 THE USE OF THE TERM JET PROPULSION LAB BECAUSE THERE ARE

9 A THAT'S ITS MISSION.
10 Q AND NEW MEMBERS ARE ELECTED BY CURRENT MEMBERS
11 BASE ON THEIR DISTINGUISHED AND CONTINUING ACHIEVEMENTS
12 IN ORIGINAL RESEARCH WITHIN THEIR RESPECTIVE AREAS;
13 CORRECT?
14 MR. BECKER: CALLS FOR SPECULATION.
15 BY MR. ZAPP:
16 Q IF YOU KNOW.
17 A I DON'T HAVE ANY REASON TO DISAGREE WITH THAT
18 CHARACTERIZATION.
19 Q AND HAS THE NATIONAL ACADEMY OF SCIENCES
20 SPECIFICALLY STATED THAT INTELLIGENT DESIGN IS NOT
21 SCIENCE?
22 MR. BECKER: LACKS FOUNDATION.
23 BY MR. ZAPP:
24 Q LET ME BACK UP. ARE YOU FAMILIAR WITH THE
25 NATIONAL ACADEMY BOOKLET ON INTELLIGENT DESIGN AND

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1 EVOLUTION?
2 A YES.
3 Q AND IN THAT BOOKLET, DOES THE NATIONAL ACADEMY
4 OF SCIENCES JBASICALLY ENDORSE EVOLUTION?
5 A AGAIN, ONE OF THE DIFFICULTIES IS IN USING
6 EVOLUTION TO DESCRIBE A VARIETY OF DIFFERENT CONCEPTS.
7 AND SO WHEN YOU USE THAT TERM, IT CAN MEAN A VARIETY OF
8 DIFFERENT CLAIMS.
9 Q IN THAT BOOKLET, DID THE NATIONAL ACADEMY OF

10 SCIENCES STATE IN SUBSTANCE OR IN EFFECT THAT
11 INTELLIGENT DESIGN WAS NOT SCIENCE?

12 A YES, IT DID, AND ONE OF THE IMPORTANT FEATURES
13 OF THAT IS THE WAY IN WHICH THE DEBATE ABOUT SCIENCE
14 CONTINUES. SO THAT THERE ARE ALTERNATE THEORIES ABOUT
15 ORIGINS THAT CONSTITUTE SCIENCE BY THE DEFINITION OF
16 PHILOSOPHERS OF SCIENCE AND THE FACT THAT SOME
17 SCIENTISTS OR EVEN A MAJORITY OF SCIENTISTS DISAGREE
18 WITH THAT DOESN'T ESTABLISH IT AS A FACT.

19 Q WOULD YOU AGREE THAT THE MAJORITY OF SCIENTIST
20 DO NOT RECOGNIZE INTELLIGENT DESIGN AS A SCIENTIFIC
21 THEORY?

22 MR. BECKER: CALLS FOR SPECULATION.

23 THE WITNESS: AND IT DEPENDS UPON THE
24 DEFINITION OF SCIENTISTS. SO FOR EXAMPLE A MAJORITY OF
25 BIOLOGISTS, THAT'S PROBABLY TRUE.

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1 MR. BECKER: BUT IT CALLS FOR SPECULATION.

2 BY MR. ZAPP:

3 Q ARE YOU FAMILIAR WITH THE AMERICAN ASSOCIATION
4 FOR THE ADVANCEMENT OF SCIENCE?

5 A I AM.

6 Q AND HAS THAT ORGANIZATION ENDORSED INTELLIGENT
7 DESIGN AS A SCIENTIFIC THEORY?

8 A NO.

9 Q YOU'RE FAMILIAR WITH THE AMERICAN INSTITUTE OF
10 BIOLOGICAL SCIENCES?

11 A THAT DOESN'T RING A BELL WITH ME.

12 Q I'LL REPRESENT TO YOU THAT IT'S A NONPROFIT
13 SCIENTIFIC ASSOCIATION DEDICATED TO ADVANCING BIOLOGICAL
14 RESEARCH AND EDUCATION?

15 A YES. I BELIEVE I KNEW BY ANOTHER NAME.

16 Q WHAT WAS THE NAME YOU --

17 A THERE WAS AN ASSOCIATION OF BIOLOGY EDUCATION
18 WITH I BELIEVE A SIMILAR MISSION.

19 Q AND DOES THE AMERICAN INSTITUTE OF BIOLOGICAL
20 SCIENCES PUBLISH A PEER-REVIEW JOURNAL CALLED
21 BIOSCIENCE?

22 A YES.

23 Q AND HAS THE AMERICAN INSTITUTE OF BIOLOGICAL
24 SCIENCES RECOGNIZED INTELLIGENT DESIGN AS A SCIENTIFIC
25 THEORY?

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1 A NO.

2 Q YOU'RE FAMILIAR WITH THE JOURNAL SCIENCE?

3 A YES.

4 Q AND THAT'S A VERY PRESTIGIOUS PEER-REVIEWED
5 SCIENTIFIC THEORY JOURNAL; CORRECT?

6 A YES.

7 Q AND IS THERE ANY PEER-REVIEWED ARTICLE ON
8 INTELLIGENT DESIGN -- STRIKE THAT.

9 ARE YOU AWARE OF ANY PEER-REVIEWED ARTICLE ON
10 INTELLIGENT DESIGN EVER BEEN PUBLISHED IN SCIENCE, THE
11 JOURNAL?

12 A I'M NOT SURE WHETHER IT WAS PUBLISHED IN

13 SCIENCE. I HAVE A LIST OF CLOSE TO A HUNDRED
14 PEER-REVIEWED SCIENCE JOURNAL ARTICLES AND BOOKS ON
15 INTELLIGENT DESIGN.
16 Q WHERE DO YOU HAVE THAT?
17 A I HAVE THE BEGINNING OF IT -- AGAIN I DIDN'T
18 PRINT OUT THE WHOLE THING -- BUT IN THE MATERIAL THAT I
19 BROUGHT WITH ME.
20 Q WHY DON'T WE GO ON AND WE'LL LOOK FOR IT WITH
21 WE GO THROUGH THE DOCUMENTS?
22 A I CAN SUPPLY THAT TO YOU.
23 Q YOU'RE FAMILIAR WITH THE JOURNAL NATURE?
24 A YES.
25 Q AND IS THE JOURNAL NATURE AGAIN A VERY

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1 PRESTIGIOUS PEER-REVIEWED SCIENTIFIC JOURNAL?
2 A YES.
3 Q IS THERE ANY PEER-REVIEWED ARTICLE ON
4 INTELLIGENT DESIGN IN NATURE?
5 A THERE MAY BE AN ARTICLE ADDRESSING INTELLIGENT
6 DESIGN IN NATURE.
7 Q IS THERE ANY PEER-REVIEWED ARTICLE ENDORSING
8 INTELLIGENT DESIGN AS A SCIENTIFIC THEORY IN NATURE?
9 A AGAIN, I'M NOT SURE WHETHER ON THE LIST THAT I
10 WILL PROVIDE YOU WITH THAT MAY BE INCLUDED.
11 Q ARE YOU FAMILIAR WITH THE NATIONAL SCIENCE
12 TEACHERS ASSOCIATION?
13 A I AM.
14 Q AND IS THAT AN ASSOCIATION PRESUMABLY OF

15 SCIENCE TEACHERS THROUGHOUT THE UNITED STATES?
16 A YES.
17 Q WHICH IS COMMITED TO SCIENCE EDUCATION?
18 A THAT IS THEIR MISSION STATEMENT.
19 Q AND THEY PUBLISH PROFESSIONAL JOURNALS AT
20 DIFFERENT LEVELS FOR SCIENCE TEACHING?
21 A YES.
22 Q HAS THE NATIONAL SCIENCE TEACHERS ASSOCIATION
23 EN GORED ENTITLED TO AS A SCIENTIFIC THEORY?
24 A NO.
25 Q YOU'RE FAMILIAR WITH THE NATIONAL CENTER FOR

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1 SCIENCE EDUCATION?
2 A YES.
3 Q AND THAT'S A NONPROFIT THAT'S AFFILIATED WITH
4 THE AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE;
5 CORRECT?
6 A IT IS AN ORGANIZATION DEVOTED TO THE PROMOTION
7 OF ESSENTIALLY A -- THE EXCLUSION OF THEORIES LIKE
8 INTELLIGENT DESIGN FROM CONSIDERATION IN SCIENCE
9 EDUCATION.
10 Q SO I GUESS THE NEXT QUESTION IS OBVIOUS. HAS
11 THE NATIONAL CENTER FOR SCIENCE EDUCATION EVER
12 ENDORSED --
13 A NOT SURPRISINGLY --
14 Q LET ME FINISH THE QUESTION. HAS THE NATIONAL
15 CENTER FOR SCIENCE EDUCATION EVER ENDORSED INTELLIGENT

16 DESIGN AS A SCIENTIFIC THEORY?

17 A NOT SURPRISINGLY, NO.

18 Q ARE YOU FAMILIAR WITH THE NATIONAL ASSOCIATION
19 OF BIOLOGY TEACHERS?

20 A I AM.

21 Q IS THAT AN INTERNATIONAL ORGANIZATION AGAIN
22 COMMITTED TO EDUCATION IN BIOLOGY AND LIFE SCIENCE?

23 A AGAIN, AS YOU DESCRIBE THEM, THAT IS THEIR
24 MISSION STATEMENT. I WOULD URGE THAT IN DESCRIBING THAT
25 MISSION, THEY FALL SHORT OF IT TO THE EXTENT THAT THEY

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1 DO NOT CONSIDER A LEGITIMATE SCIENTIFIC EXPLANATION SUCH
2 AS INTELLIGENT DESIGN WHERE IT'S APPROPRIATE.

3 Q THEN THE NEXT QUESTION WILL BE OBVIOUS THEM.
4 HAS THE NATIONAL ASSOCIATION OF BIOLOGY TEACHERS EVER
5 ENDORSED INTELLIGENT DESIGN AS A SCIENTIFIC THEORY?

6 A NOT TO MY KNOWLEDGE.

7 Q ARE YOU AWARE OF ANY -- STRIKE THAT.

8 ARE YOU AWARE OF ANY RECOGNIZED NATIONAL OR
9 INTERNATIONAL SCIENTIFIC ORGANIZATION ORGANIZATION THAT
10 HAS RECOGNIZED OR ENDORSED INTELLIGENT DESIGN IN THE
11 SCIENTIFIC THEORY?

12 A I'M NOT SURE WHAT YOU MEAN BY NATIONALLY OR
13 INTERNATIONALLY RECOGNIZED.

14 Q IN OTHER WORDS, IF I'M NOT LOOKING AT A
15 MOM-AND-POP LOCAL ORGANIZATION BUT RATHER LOOKING AT ANY
16 NATIONAL OR INTERNATIONAL ASSOCIATION SUCH AS THE
17 NATIONAL ACADEMY OF SCIENCES, THE AMERICAN ASSOCIATION

18 FOR THE ADVANCEMENT OF SCIENCE, THE AMERICAN INSTITUTE
19 OF BIOLOGICAL SCIENCES --

20 A NOTHING THAT IS COMPARABLE TO THE NATIONAL
21 ACADEMY OF SCIENCES OR...

22 Q YOU SAID THAT THE CENTER FOR SCIENCE AND
23 EDUCATION -- STRIKE THAT. LET ME RESTATE THE QUESTION.

24 YOU SAID THAT THE CENTER FOR SCIENCE AND
25 CULTURE, WHICH IS CURRENTLY A PART OF THE DISCOVERY

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1 INSTITUTE, FORMERLY WAS KNOWN AS THE CENTER FOR THE
2 RENEWAL OF SCIENCE AND EDUCATION; CORRECT?

3 A SCIENCE AND CULTURE.

4 Q SCIENCE AND CULTURE, THANK YOU. I KEEPING
5 MAKING THE SAME MISTAKE.

6 IN OTHER WORDS, THE SAME ORGANIZATION, JUST A
7 NAME CHANGE; CORRECT?

8 A CORRECT.

9 Q AND LET ME HAVE MARKED THEN AS EXHIBIT 7 A
10 DOCUMENT WHICH IS KNOWN AS THE WEDGE STRATEGY.

11 MR. BECKER: IT'S BEEN DEBATED AD NAUSEAM FOR
12 CENTURIES.

13 HOW LONG ARE YOU GOING TO GO? BECAUSE AT THIS
14 RATE, I THINK I'M GOING TO HAVE TWO HOURS OF REDIRECT.

15 MR. ZAPP: WELL, YOU KNOW, IF YOU'RE GOING TO
16 HAVE TWO HOURS OF REDIRECT, I'M AFRAID WE'RE GOING TO BE
17 HERE TO MIDNIGHT AND I DON'T THINK OUR COURT REPORTER --
18 LET'S STAY ON THE RECORD -- CAN GO THAT LONG. I HAVE

Day Two

1 Test test test Jet Propulsion Laboratory California
2 Institute of Technology swear wear
3 BY MR. ZAPP:

4 Q Good morning, Mr. Dewolf. Thank you for
5 staying over so we can complete your deposition. I
6 appreciate that?

7 A Good morning, Mr. Zapp.

8 Q We are trying to move through this as
9 expeditiously as we can.

10 You need for me to review any of the
11 admonitions or anything that we've foreclosed
12 yesterday -- or let me restate.

13 If you don't understand one of my questions,
14 tell me that. If you don't hear one of my questions,
15 please tell me and I'll restate it for you; okay?

16 A Okay. Yes.

17 Q We will work really hard today to not step on
18 each others words to make our court reporters job
19 easier and I will do my best not to begin my questions
20 until you finished your answers.

21 Okay?

22 A Yes.

23 Q All right.

24 So in reviewing the -- strike that.

25 Did you review any other documents between the

1

1 end of the deposition yesterday and this morning?

9 describes specifically what his job duties were with
10 respect to handling the networks, helping to facilitate
11 the electronic communications with the satellite, et
12 cetera.

13 A You agreed with me earlier that even people
14 whose job duties --

15 Q Only asking about his job duties, not his
16 otherwise interest in Cassini or any other employees
17 otherwise interest in the scientific projects on which
18 they working.

19 The question is: Did Mr. Coppedge's job
20 duties as a systems administrator have anything to do
21 with the subject of intelligent design -- or restate
22 the question.

23 Did the subject of intelligent design have
24 anything to do with Mr. Coppedge's job duties as a
25 systems administrator?

13

1 A As you have narrowly defined it, the answer
2 would be no.

3 But the -- but his job as an employee, which
4 is a larger designation than his job duties, it would
5 have something do with that.

6 Q Move to strike everything after the word "no"
7 as nonresponsive.

8 Did you review facts from the record regarding
9 the relationship that Mr. Coppedge had with Clark
10 Burgess, who is known as Cab?

11 A I believe some of the facts that I reviewed
12 had to do with Cab.

2 recollection inconsistent with that.

3 Q And are you aware Mr. Chin -- strike that.

4 Are you aware that the project manager,
5 Bob Mitchell suggested to Mr. Chin at various points in
6 time prior to March of 2009 that Mr. Coppedge should be
7 taken off the project.

8 A I think I said earlier that it is not my
9 expert opinion that -- that the hostility toward
10 intelligent design was the only reason David was fired.

11 My expert opinion is the behavior of Greg Chin
12 and others is reflective of the kind of discrimination,
13 of which there are other examples cited in my expert
14 report, that is the equation of intelligent design with
15 religion, the belief that it's inappropriate to a
16 scientific enterprise and the stigmatizing of people
17 holding that view as violating some cardinal rule of
18 science.

19 Q So is it your opinion that this alleged
20 hostility toward intelligent design was a motivating
21 factor for Mr. Coppedge being laid off in January of
22 2011.

23 MR. BECKER: Calls for a legal conclusion.

24 THE WITNESS: I don't have an opinion on that.

25 BY MR. ZAPP:

20

1 Q Okay. what you are saying, as I understand,
2 is that there there is hostility, as you said, toward
3 intelligent design as a scientific theory. Are you
4 saying David's treatment resulted from that?

5 A I'm saying that the interchange between

6 Greg Chin and David Coppedge on that day in 2009 was
7 reflective of that kind of --

8 Q Is there any other interchange or incidents
9 that you saw in all of the information that you
10 reviewed that would be reflective of that same kind of
11 hostility?

12 A Yes. In Edgington, for example, his statement
13 in his deposition that intelligent design was religion,
14 that in Margaret Weisenfelder's statement that she
15 viewed the DVD but didn't find there was much science
16 in there, it seemed that it was religion. So, again,
17 there is an unwillingness to consider intelligent
18 design as a legitimate scientific theory.

19 Q Any other incidents besides Mr. Chin's
20 incident in March 2, 2009, the interchange with
21 Mr. Chin and Mr. Coppedge, I meant, and the information
22 that he just cited from Mr. Edgington and
23 Ms. Weisenfelder?

24 A The subsequent disciplinary action may reflect
25 the ratification of that discriminatory animus, but I

21

1 didn't see in the materials that were supplied to me in
2 the deposition transcripts beyond those three examples.

3 Q Okay. And when you are saying that the
4 subsequent discipline may reflect it, are you saying
5 that is true or you just don't know?

6 A I don't know.

7 Q And do you have, in forming your opinions, did
8 you take into account at all how Mr. Coppedge's skills

9 and performance as a systems administrator compared to
10 the other, performance and the skills of the other
11 systems administrators that were working --

12 A I was not asked to form an opinion about that.

13 Q That was not taken into account in forming
14 your opinions, correct?

15 A I believe that's correct, yes.

16 Q Um, and in forming your opinions, have you
17 taken into account at all the work-related complaints
18 that were made with respect to Mr. Coppedge?

19 A They are unnecessary to my opinion, which is
20 that these incidents reflect hostility.

21 Q Okay. Answer my questions yes no or you don't
22 know in forming your opinions did you take into account
23 in any way the work-related complaints that were made
24 about Mr. Coppedge?

25 A No.

22

1 Q In forming your opinions did you take into
2 account or at least consider that it could be the
3 manner in which Mr. Coppedge interacted with others
4 rather than the topic or content of intelligent design
5 that led to people's complaints?

6 A Yes.

7 Q How did you take that into account?

8 A In reviewing -- the incidents it seemed that
9 it was the content rather than the style that was
10 offensive.

11 Q What specifically led you to that conclusion?

12 A Again, the training and experience that I've

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 CITY OF LOS ANGELES AND COUNTY OF LOS) ss:
4 ANGELES)

5 I am employed in the City of Los Angeles and County of Los Angeles, State of
6 California. I am over the age of 18, and not a party to the within action. My business address is
as follows: 515 So. Flower Street, 25th Floor, Los Angeles, CA 90071.

7 On December 27, 2011, I served the foregoing document(s) described as:

8 **REPLY ON MOTION *IN LIMINE* #5**

9 **DEFENDANT CALIFORNIA INSTITUTE OF TECHNOLOGY'S REPLY IN**
10 **SUPPORT OF MOTION *IN LIMINE* #5 ("DML 5") FOR AN ORDER EXCLUDING**
11 **OR LIMITING THE TESTIMONY OF PLAINTIFF'S EXPERT DAVID K. DEWOLF;**
12 **DECLARATION OF CAMERON W. FOX**

13 on the interested parties as follows:

14 William J. Becker, Jr., Esq. Attorney for Plaintiff
15 THE BECKER LAW FIRM DAVID COPPEDGE
16 11500 Olympic Blvd, Suite 400
17 Los Angeles, CA 90064

18 Email: bbeckerlaw@gmail.com

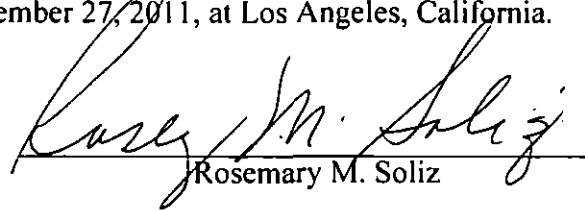
19 **VIA ELECTRONIC MAIL:**

20 By personally emailing the aforementioned document in PDF format to the email
21 address designated for the above listed counsel.

22 **VIA U.S. MAIL:**

23 By placing a true and correct copy thereof in a sealed envelope(s) as addressed
24 above. I am readily familiar with the firm's practice of collection and processing of
25 correspondence for mailing. Under that practice such sealed envelope(s) would be
26 deposited with the U.S. postal service on December 27, 2011, with postage thereon
27 fully prepaid, at Los Angeles, California.

28 I declare under penalty of perjury under the laws of the State of California that the
above is true and correct and was executed on December 27, 2011, at Los Angeles, California.


Rosemary M. Soliz

12/27/2011 1:02:12 PM