Kitzmiller in Retrospect

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WHERE’S MY SPUTNIK MOMENT?

It’s been more than ten years since the school board in Dover, Pennsylvania, decided to include the concept of “intelligent design” in its science classrooms. In 2005, *Kitzmiller v Dover* became the first constitutional test case of the notion, where its defenders claimed that “intelligent design” was a rival to the theory of evolution. In fact, it was revealed in federal court to be nothing more than revamped creationism.

Back then, I was the education reporter for the local newspaper, and covered the trial (Figure 1) and the events that took place in the community. Even though I don’t come from a science background, it became clearly evident to me who was on the side of deception and who was on the side of truth.

![Figure 1. Lauri Lebo interviews Professor Steve Steve (the mascot of The Panda’s Thumb blog, http://pandasthumb.org) and NCSE’s Nick Matzke in Harrisburg, Pennsylvania. Photograph: Wesley R Elsberry, http://wesley-fine-art.bwnu.us.](image)
So when Judge John E Jones III issued his decision, which exposed “intelligent design” as nothing but a fraud used to promote religion in the classroom, I thought that we had reached the high-water mark of anti-science and this nation would witness a Sputnik moment. American voters and politicians would, perhaps, experience a renewed interest in science and science education and that America—demonstrating the same spirit and commitment that took us to the moon—would lead the world in addressing the realities of climate change.

I blame plaintiff Barrie Callahan for my fantasy.

Dick Thompson, the Thomas More Law Center attorney, who represented the Dover Area School Board, had promised board member Bill Buckingham that even if they lost, they were going to “lead a revolution in evolution,” appealing the case all the way to the US Supreme Court.

However, in the school board election, which took place after the trial’s conclusion, but before Jones issued his decision, the Dover electorate voted out the eight “intelligent design”-touting board members up for election. They replaced them with a slate of pro-evolution board members, including plaintiff Bryan Rehm, who would most definitely not be appealing Jones’s decision.

Callahan declared the irony delicious. “The revolution in evolution”—as the “intelligent design” policy had been advertised—“had been thwarted by the democratic process.”

Unfortunately, my new Sputnik moment never arrived. A decade later, as the nation prepares for a presidential election year, not only do most of the Republican candidates question the reality of evolution and human influence on climate change, but the bogus subject of vaccines and autism has become presidential debate fodder.

**What became of “intelligent design”?**

Despite the political charade of candidates spouting anti-science talking points today, one lasting impact of the trial was the blow it dealt the Discovery Institute, which had heavily invested its reputation in promoting “intelligent design.”

“Dover really took the rug out from under the Discovery Institute,” said Barbara Forrest, whose expert testimony in the Kitzmiller trial exposed the Discovery Institute’s religious goals.

Forrest is the co-author of *Creationism’s Trojan Horse: The Wedge of Intelligent Design* (Forrest and Gross 2004), which exposed the Discovery Institute’s Wedge Document, the definitive playbook to reshape public policy to reflect conservative Christian values.

Initially, the Discovery Institute put out numerous pieces decrying the unfairness of Jones’s decision. But its fellows and staff also turned their attention to a different strategy.

Just as creation science gave way to “intelligent design” following *Edwards v Aguillard*, intelligent design metamorphosed following *Kitzmiller v Dover*. Developing a piece of model legislation based on “academic freedom,” Discovery Institute’s lobbyists began peddling it to sympathetic state lawmakers.
Although the exact provisions vary a bit, these so-called academic freedom bills basically encourage teachers to discuss scientifically dubious views on various topics—with evolution often explicitly given as an example, along with global warming—and prevent state and local educational authorities from intervening.

Such bills were enacted in Louisiana in 2008 and Tennessee in 2012, over the protests of those states’ scientific and educational establishments.

However, even this strategy hasn’t been on the frontlines much lately. In those states, such as Texas, where anti-science activists had launched their strongest attacks, there have been only a few anti-science rumblings. And the vast majority of academic freedom bills that have been introduced have perished in committee.

“It’s been weirdly quiet,” said Dan Quinn, spokesman for the Texas Freedom Network.

“In the last legislative session, there were no bills proposed on evolution,” Quinn said. “There were a couple bills that were good for science—they didn’t go anywhere—but no anti[-science] bills. I was waiting for them, so it was a real surprise, actually.”

Even Texas’s famed textbook battles have calmed down, he said. Although it’s possible that could change next year when the Texas state board of education undertakes a project to streamline the social studies and science standards, he said. “They assure us that they’re just working to tighten them up and make them shorter,” Quinn said. But he acknowledges that when it comes to Texas and creationism, one never says never.

“It’s quite possible that we could have another battle with the scientific standards,” he said.

**What became of “academic freedom”?**

Even in states where Discovery’s model legislation was successful, the impact has been a far cry from the ambitious goals to overthrow scientific “materialism and its destructive moral, cultural and political legacies” that were first outlined in the institute’s secret 1998 Wedge Document.

In Louisiana, one of two states where academic freedom legislation was passed under the name of the “Louisiana Science Education Act,” the impact has been minimal, Forrest said. “‘Academic freedom’ in Louisiana has had virtually no effect on the teaching of science,” she said. “Teachers are basically ignoring it. Some parishes are trying to use it, but it’s where they have been teaching creationism all along, mostly in north Louisiana.”

The law has not yet been challenged in court, but the state education standards also haven’t been changed to address the new law.

Similarly, in Tennessee, a 2012 Discovery-written bill passed that encourages students to explore scientific questions, learn about scientific evidence, develop critical thinking skills, and respond appropriately and respectfully to differences of opinion about controversial issues. But the bill became law without Governor Bill Haslam’s signature and the state’s science curriculum standards were never changed to reflect the new law.
Essentially, Forrest said, those who were already teaching it in violation of the US Constitution are using the law as a poorly designed legal cover in the event they are challenged for pushing their religious views on students.

In a country where approximately one in eight public school science teachers continue to teach creationism as scientifically credible in their classrooms (Berkman and others 2008), Discovery’s tepid legislative successes are a far cry from the cultural revolution proposed in its Wedge Strategy.

**Going private?**

While the anti-science education bills may have slowed down, another battlefront is growing. However, rather than a cultural overthrow of scientific understanding, the school privatization movement seeks to be a profit-driven revolution of the concept of public education.

But even though science education isn’t the target, it can still be a casualty.

As private schools and for-profit charter school corporations seek lucrative taxpayer dollars to fund their bottom line, it appears that some anti-science organizations are taking advantage of the same opportunities.

In Louisiana, the effect of its anti-evolution Science Education Act pales in comparison to Governor Bobby Jindal’s expansive private school voucher program, which diverts millions of taxpayer dollars to fund private schools—including Christian schools that teach out-and-out young-earth creationism from textbooks that claim that dinosaurs and humans lived together. Florida, Indiana, Ohio, and Arizona have similar voucher programs that fund religious schools.

Meanwhile, in Texas, unenforced and unclear regulations are allowing some corporate charter schools to teach similar lessons.

Charter schools, which are privately run but publicly funded, were first established in the early 1990s as a way to try out experimental education strategies in smaller and more flexible settings than traditional public schools. But in many instances, for-profit companies have seized on the opportunity to take over schools in order to redirect taxpayer dollars to fund their corporate bottom line.

Legally, charter schools are required to follow state education standards the same as traditional public schools and they are forbidden from teaching creationism. But last year, a Slate magazine article by Zack Kopplin showed that for-profit charter school corporations in Texas and other states were openly teaching creationism in their science classes (Kopplin 2014).

As initially planned, charter schools were granted freedom from many regulatory and policy requirements in order to create innovative environments where new educational programs could be tried out in smaller settings.

Quinn said that the problem is that it remains unclear just how much autonomy these corporate charter schools are supposed to have over curriculum and state standards. Additionally, a lack of oversight in many states creates a friendly environment to teach creationism.
So while the Christian right is not leading the corporate charter-school takeovers, Forrest said, they certainly know a good opportunity when it arises.

“They’re not spearheading the movement,” Forrest said, “but they are along for the ride.”

Who’s next on the privatization bandwagon?

After more than twenty years of promoting attacks on the teaching of evolution in public school science class, the Discovery Institute is also now venturing into charter school policy. In the past year, it started the American Center for Transforming Education, a separate foundation to promote charter schools. Donald P Nielsen, the chairman of Discovery’s new program on public education reform, is the author of *Every School: A Citizen’s Guide to Transforming Education* (Nielsen 2014), published by Discovery Institute Press.

According to his book, Nielsen’s plan, which is not a unique proposal in the privatization movement, calls for abolishing the system of representational democracy in urban school districts by eliminating elected school boards and replacing them with appointed officials.

This new playbook appears similar to climate change denialist groups like the Heartland Institute—which has devised school curricula denying the reality of climate change. Heartland also promotes school privatization, while calling for less government regulation and transparency over charter schools.

Whether this new strategy represents an abandonment of Discovery’s religious goals of intelligent design and its Wedge Strategy remains to be seen.

Nonetheless, the changes in public education in the past decade has made it more difficult to track the classroom attacks on science.

“We know how to fight creationists,” Forrest said. “We’ve won every time in the courtroom. But now it’s so much more complicated. The climate science education is much more difficult. There are so many publicly aligned powerful forces lined up to fight it.”

Rob Eshbach, one of the Dover teachers who refused to teach intelligent design, believes the challenges facing science teachers have definitely evolved in the past ten years. “Corporate charter schools link student success to profit,” he said. “While in some schools, this could mean an opportunity for students to collaborate, it can also create cut-throat environments for teachers and students where they work against each other.”

Bryan Rehm, a physics teacher and *Kitzmiller* plaintiff, said that he was concerned with how the privatization of education redirects taxpayer money from the classroom and into the pockets of private management companies, leaving science teachers and teachers in general with fewer resources.

But that doesn’t mean battles can’t still be won. Last year, a York County school district near Dover fought off a corporate takeover in a story that had many similarities to the ten-year-old *Kitzmiller* fight. The York City School District was supposed to become the first Pennsylvania district run entirely by a for-profit charter corporation, as part of previous governor Tom Corbett’s school privatization strategy. As part of a new distressed school district law, a governor-appointed official was forcing a plan through the courts to have a Florida-based charter corporation take over York’s schools in order to make it the state’s
new model for education. But just as in Dover, teachers, parents and taxpayers organized and successfully stood up for their children's education, organizing rallies, lobbying their elected officials and garnering national attention. At the same time York’s battle was playing out, Pennsylvania voters ousted Governor Corbett, primarily due to his massive cuts to the state's public education budget. He was replaced with a pro-public education governor, who halted the York court case.

Much like Dover, this privatization model was thwarted by the democratic process.

**What’s the moral?**

Reflecting on the *Kitzmiller* trial ten years on, there’s good news and bad news. The bad news is that, despite the successful outcome in the trial, assaults on the integrity of science education continue, adapting (ironically) to the changing legal and educational landscapes. The good news is that the people and organizations who have fought so effectively against these assaults have, with new tools and new allies, continued to fight the good fight. The battle for science can be won, and *Kitzmiller* lights the way to victory.

**References**


**About the author**

Lauri Lebo covered the *Kitzmiller* trial for the *York Daily Record* and is the author of *The Devil in Dover* (New York: New Press, 2008). She is now an organizer with the Pennsylvania State Education Association.

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