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Gary C. Leedes  

University of Richmond

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RESPONSE TO FROM SCOPES TO EDWARDS

Gary C. Leedes*

Mr. Dhooge’s one-dimensional article is designed to make us believe that the Louisiana legislature was overpowered by politically powerful biblicists who want science fiction introduced into the public schools. It is remarkable that the legislative history is not cited by Dhooge except for those portions which are included in the Court’s distorted presentation of the record in *Edwards v. Aguillard.* Dhooge, echoing the Court, impugns the motives of Louisiana lawmakers who emphatically opposed improperly presented creation-science. It is difficult to credit Justice Brennan and Mr. Dhooge with a fair reading of the record when they cite snippets of testimony taken out of context. Indeed, it is intellectually irresponsible to suggest that religious fundamentalists managed to convince the Louisiana legislature to endorse any sectarian creeds.

If Justice Brennan and Mr. Dhooge re-read the legislative history with open minds, they will see that the Balanced Treatment Act does not authorize teachers to use materials referring to supernatural events or a biblical creator. I have examined the entire legislative history, and can say—without any doubt—that it does not support the conclusion that the Balanced Treatment Act was intended to advance the biblical version of special creation. The erroneous citations in Justice Brennan’s opinion are too numerous to deal with in this article, but I will mention a few of the most glaring flaws.

Justice Brennan, for instance, notes that “Senator Keith . . . cited testimony from other experts to support the creation science view that ‘a creator [was] responsible for the universe and every-

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2. The pages of the Joint Appendix omitted in the citations of the Court and Dhooge disclose that the academic freedom of students was the Act’s secular purpose, as Justice Scalia’s dissent demonstrates.
thing in it.”3 Checking the Joint Appendix—before and after the page cited by the Court—one will find that Keith was attempting to describe “a body of scientific data called scientific creationism that is totally apart and separate from the Bible.”4 Keith simply reported that Robert Jastrow, an astrophysicist from Columbia University, had written “there is scientific data that points to creationism.”5

According to Justice Brennan, Keith quoted Jastrow who said the Big Bang “is an indication that points to a creator as being responsible for the universe and everything in it.”6 I have underlined that part of Justice Brennan’s quote, which unfairly attributes religious motivation to Keith when, in fact, Keith was merely alluding to “a body of evidence known as creation-science that is totally apart from the teaching of the Genesis account of creation.”7 Contrary to Justice Brennan’s misleading reference to Keith’s reliance on Dr. Jastrow, Keith was stressing how scientific evidence that undercuts the rhetoric of cocksure evolutionists can be properly presented without any religious overtones.

The Court’s opinion also indicates that witness Boudreaux, made a statement necessarily “equating creation science with a theory pointing to ‘conditions of a creator’ . . . .”8 What Dr. Boudreaux, who believes in design rather than pure chance, actually said was this:

I can say without a doubt that there is evidence in all areas of physical science which supports creation-science, which incidentally is simply to say that the objective information of science does indeed point to conditions of a [creation], and in fact those evidences are in contradiction to the proposals put forth in the hypothesis of evolution.9

3. Edwards, 107 S. Ct. at 2581 (quoting 2 Joint Appendix at E-497) [hereinafter the two volume Joint Appendix is cited as either 1 App. or 2 App.].
4. 2 App. at E-493.
5. 2 App. at E-496-97.
6. 2 App. at E-497.
7. 2 App. at E-497-98.
9. 2 App. at E-501-02. Boudreaux’s testimony makes more sense if the word “creation” (the actual word he spoke, which I placed in the bracket of Justice Brennan’s quote from the Joint Appendix) is used rather than the word “creator” (a typographical error in the Joint Appendix). I am relying on Wendell R. Bird’s annotations to the Joint Appendix, which correct typographical errors and clarify Boudreaux’s testimony.
Boudreaux's statement, about conditions for created organisms, read fairly in context, refers back to his written statement that covered the following subjects: the theory of relativity,\textsuperscript{10} astrophysics,\textsuperscript{11} the fossil record,\textsuperscript{12} the geological record,\textsuperscript{13} the Second Law of Thermodynamics\textsuperscript{14} and the mathematical improbabilities of evolution.\textsuperscript{15} Boudreaux's presentation was limited (as he repeatedly emphasized) to hard data that is "astrophysical, biological, chemical, geological, and physical in nature."\textsuperscript{16} Thus, Boudreaux's focus was upon the laws of science operating upon observable data. It is misleading to suggest otherwise.

Although almost 100 legislators voted for the Act,\textsuperscript{17} the majority opinion singles out representative Jenkins because he allegedly contended "that the existence of God was a scientific fact."\textsuperscript{18} Nothing could be further from the truth.\textsuperscript{19} Jenkins stated unequivocally that only "facts belong in science courses."\textsuperscript{20}

A smoking gun is not found in Senator Saunders' testimony. Saunders, in Justice Brennan's words, "note[d] that [the] bill was amended so that teachers could refer to the Bible and other religious texts to support the creation-science theory,"\textsuperscript{21} as if this characterization proves that Saunders was religiously motivated.\textsuperscript{22} Senator Saunders was actually "deleting all references" to religion in the bill\textsuperscript{23}—part of his attempt to eliminate all legislative purposes "except for academic freedom."\textsuperscript{24} Saunders' comment about the Bible merely showed that a teacher may answer a student

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\textsuperscript{10} Id. at E-132.
\textsuperscript{11} Id. at E-135-38.
\textsuperscript{12} Id. at E-138.
\textsuperscript{13} Id. at E-143.
\textsuperscript{14} Id. at E-146.
\textsuperscript{15} Id. at E-151-53.
\textsuperscript{16} Id. at E-132. His complete written statement, entitled "An Objective Scientific Analysis Of Evolution as a Viable Option to Origins," is reprinted at 1 App. at E-127-60.
\textsuperscript{17} "The House approved it 71-19 (with 15 members absent), . . . the Senate 26-12 (with all members present)." Id. at E-741-44; Edwards, 107 S. Ct. at 2597 (Scalia, J., dissenting).
\textsuperscript{18} Edwards, 107 S. Ct. at 2581 n.13.
\textsuperscript{19} Justice Brennan cited 2 App. at E-561-62 and E-610 as his page references. The closest support for Justice Brennan's mischaracterization appears on 2 App. at E-562 when Jenkins asked, "[i]f there is a God, and he exists, that will be a fact will it not, a scientific fact?" In his very next sentence, Jenkins adds, "[i]f he does not, that would seem to be a scientific fact as well." Id.
\textsuperscript{20} See 2 App. at E-611.
\textsuperscript{21} Edwards, 107 S. Ct. at 2581 n.13.
\textsuperscript{22} Id.
\textsuperscript{23} 1 App. at E-440.
\textsuperscript{24} Id.
whose question requires an answer that refers to the Bible. Senator Saunders eventually voted to repeal the Balanced Treatment Law,\(^{25}\) a vote not mentioned by Justice Brennan.

Justice Brennan scrapes the bottom of the barrel when he writes that Keith sponsored the Balanced Treatment Law because "evolution is contrary to [Keith's] family's religious beliefs."\(^{26}\) Keith had described a teacher's threat—made to his 12-year-old son who refused to accept the school's explanation of evolution.\(^{27}\) The youngster was threatened with suspension from school. This incident prompted Keith to sponsor the Bill. Keith explained, "I don't resent the theory [of evolution] being taught. I resent it being taught as fact . . . ."\(^{28}\)

Nevertheless, Justice Brennan asserts that Keith was "arguing [that] evolution [advances] some religions contrary to his own"\(^{29}\) that are antagonistic toward a God-centered universe.\(^{30}\) Keith did believe that "public school teachers are now advancing religion in violation of the Establishment Clause."\(^{31}\) Indeed, a science teacher did in fact try to impose her faith on Keith's child. Justice Brennan, however, concluded that Keith "sought to alter the science curriculum to reflect endorsement of a religious view that is antagonistic to the theory of evolution."\(^{32}\) But Keith's statements only

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25. 2 App. at E-911.
27. 1 App. at E-74-75.
28. 1 App. at E-74.
30. Paul Kurtz has stressed the important role of evolution in Secular Humanism. Kurtz, A Secular Humanist Declaration, Free Inquiry, Winter 1980-81, 3, 6; see also Humanist Manifesto I and II 13-14 (P. Kurtz, 2d ed. 1973) (importance of evolution to "Religious Humanism"). Indeed, "religious humanists" have taken evolution to be a central part of their religious belief system. See E. Larson, Trial and Error (1985). For example, George Simpson, a Harvard University paleontologist proclaimed, "[i]t is evolution that can provide answers, so far as answers can be reached rationally and from objective evidence to some of those big and universal questions" about how to live and act. G. Simpson, This View of Life: The World of an Evolutionist 37-38 (1964). Simpson joined with other humanists in sponsoring an American Humanist Association statement denouncing measures that would require giving "creationists views of origins . . . equal treatment and emphasis in public-school biology classes and text materials." "A Statement Affirming Evolution as a Principle of Science, The Humanist, (Jan.-Feb. 1977). Naturalistic humanism, sometimes called secular-humanism, is "[a]n eclectic set of beliefs born of the modern scientific age, and centered upon a faith in the supreme value and self-perfectibility of human personality; [it] differs from Theistic Humanism . . . ." B. Dunham, Giant In Chains 28 (1953) (citing XI The Humanist, October 1951, at 194).
31. Edwards, 107 S. Ct. at 2599 (Scalia, J., dissenting). I have deleted Justice Scalia's numerous references to the Joint Appendix.
32. Edwards, 107 S. Ct. at 2590-91 (emphasis added).
indicate his belief that a balanced presentation of creation-science furthers the academic freedom of students and neutralizes the atheistic religious implications.\footnote{33}

As Justice Scalia notes, "Senator Keith's argument may be questionable, but nothing in the statute or its legislative history gives us reason to doubt his sincerity [or that of his supporters]."\footnote{34} Nevertheless, seven Justices in a mendacious tour de force held the Balanced Treatment Act was an "endorsement of a religious view."\footnote{35} Mr. Dhooge's article, which unfortunately does not adequately cite the appropriate parts of the Joint Appendix, demonstrates how Justice Brennan's slick opinion perpetuates misunderstandings about design theories of creation-science. Dhooge's one-sided article will accelerate the deforming forces of religious bigotry prejudice, and it suggests that many lawyers, who have faith in evolution, lack respect for evidence.

\footnote{33} Even the district court acknowledged there is a view that "the First Amendment does not prohibit governmental activity of a religious nature so long as the activity is neutral as to all religions." \textit{Aguillard v. Treen}, 634 F. Supp. 426, 429 (E.D. La. 1985). This is also Justice Rehnquist's view. \textit{See Wallace v. Jaffree}, 472 U.S. 38, 98 (1985). Perhaps, it is also the view of the Constitution's framers. \textit{See generally} R. Cord, \textit{Separation of Church and State} (1982).


\footnote{35} \textit{Edwards}, 107 S. Ct. at 2582 (emphasis added).