

CHAPTER III.
THIRD DAY'S PROCEEDINGS—TUESDAY,
JULY 14, 1925.

Darrow Objects to Prayer
Court met pursuant to recess.
Present as before.

Whereupon:
Immediately upon the rapping of the bailiff for order in the courtroom, and before the regular session was opened, the following proceedings occurred:

The Court—Rev. Stribling will you open with prayer?

Mr. Darrow—Your honor, I want to make an objection before the jury comes in.

The Court—What is it, Mr. Darrow?

Mr. Darrow—I object to prayer and I object to the jury being present when the court rules on the objection.

Gen. Stewart—What is it?

The Court—He objects to the court being opened with prayer, especially in the presence of the jury.

Mr. Stewart—The jury is not here.
The Court—Are any of the jury in the courtroom?

(No response.)

The Court—No, I do not want to be unreasonable about anything, but I believe I have a right, I am responsible for the conduct of the court, it has been my custom since I have been judge to have prayers in the courtroom when it was convenient and I know of no reason why I should not follow up this custom, so I will overrule the objection.

Mr. Darrow—May we ask if there are any members of the jury in the courtroom?

The Court—Yes, everyone stand up.

Mr. Darrow—May I make the record?

The Court—Yes.

(The bailiff raps for order.)

Mr. Darrow—Just a minute.

The Court—Yes.

Mr. Darrow—I understand from the court himself that he has sometimes opened the court with prayer and sometimes not, and we took no exceptions on the first day, but seeing this is persisted in every session, and the nature of this case being one where it is claimed by the state that there is a conflict between science and religion, above all other cases there should be no part taken outside of the evidence in this case and no attempt by means of prayer or in any other way to influence the deliberation and consideration of the jury of the facts in this case.

For that reason we object to the opening of the court with prayer and I am going to ask the reporters to take down the prayer and make specific objections again to any such parts as we think are especially obnoxious to our case.

The Court—Do you want to say anything.

Gen. Stewart—Go ahead, Gen. McKenzie.

Mr. McKenzie—That matter has been passed upon by our supreme court. Judge Shepherd took a case from the court, when the jury, after retiring to consider their verdict, at the suggestion of one of them to bow in prayer, asked divine guidance, afterwards delivering a verdict not excepted to, and afterwards taken to the supreme court. It was commendable to the jury to ask divine guidance.

No Objection to Secret Prayer

Mr. Darrow—I do not object to the jury or anyone else praying in secret or in private, but I do object to the turning of this courtroom into a meeting house in the trial of this case. You have no right to do it.

The Court—You have a right to

put your exceptions in the record.

Gen. Stewart—In order that the record may show the state's position, the state makes no contention, as stated by counsel for the defense, that this is a conflict between science and religion insofar as the merits are concerned, it is a case involving the fact as to whether or not a school-teacher has taught a doctrine prohibited by statute, and we, for the state, think it is quite proper to open the court with prayer if the court sees fit to do it, and such an idea extended by the agnostic counsel for the defense is foreign to the thoughts and ideas of the people who do not know anything about infidelity and care less.

Mr. Hays—May I ask to enter an exception to the statement "agnostic counsel for the defense."

Mr. Malone—I would like to reply to this remark of the attorney-general. Whereas I respect my colleagues, Mr. Darrow's right to believe or not to believe as long as he is as honest in his unbelief as I am in my belief. As one of the members of counsel who is not an agnostic, I would like to state the objection from my point of view. Your honor has the discretion to have a prayer or not to have a prayer. There was no exception offered and I can assure the court when we talked it over among ourselves as colleagues, there was no exception felt to the opening of these proceedings by prayer the first day, but I would like to ask your honor whether in all the trials over which your honor has presided, this court has had a clergyman every morning of every day of every trial to open the court with prayer?

Our objection goes to the fact that we believe that this daily opening of the court with prayers, those prayers we have already heard, having been duly argumentative that they help to increase the atmosphere of hostility to our point of view, which already exists in this community by widespread propaganda.

"A God Fearing Country"—Stewart

Gen. Stewart—In reply to that there is still no question involved in this lawsuit as to whether or not Scopes taught a doctrine prohibited by the statute, that is that man descended from a lower order of animals. So far as creating an atmosphere of hostility is concerned, I would advise Mr. Malone that this is a God fearing country.

Mr. Malone—And it is no more God fearing country than that from which I came.

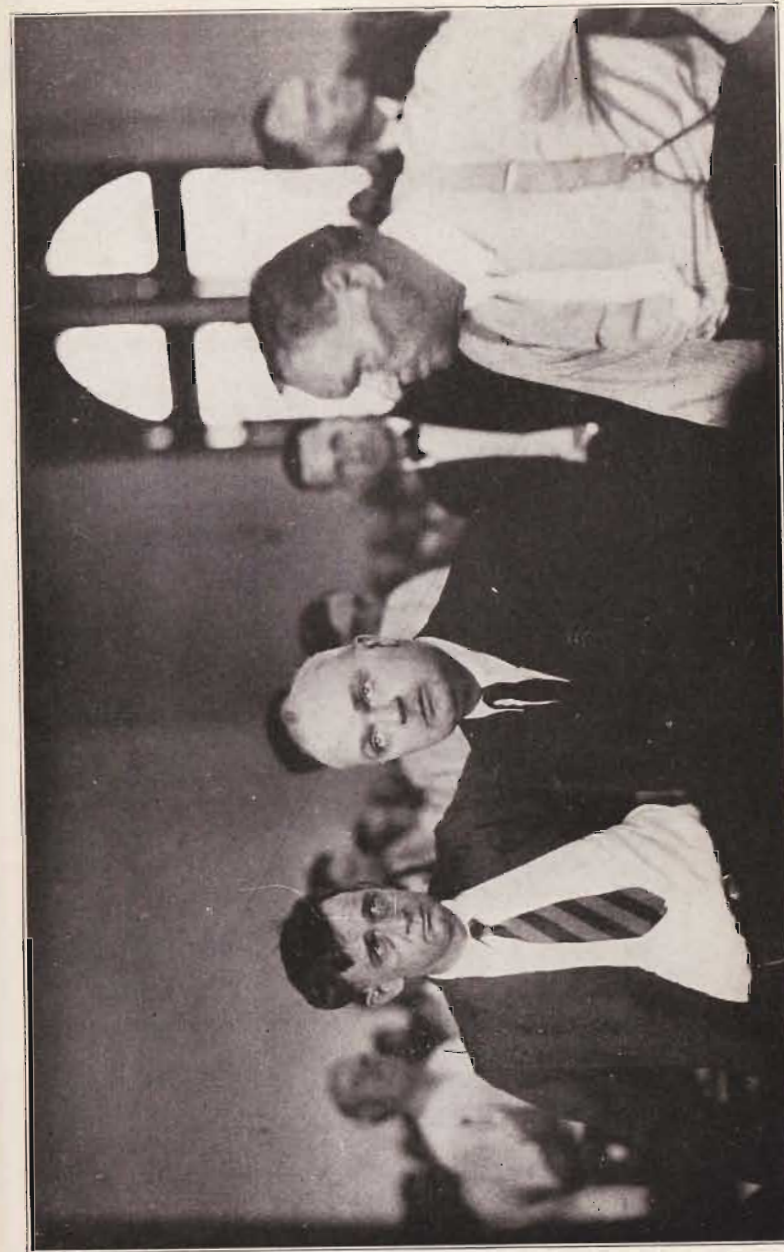
The Court—Gentlemen, do not turn this into an argument.

Mr. Darrow—I would like to reply to counsel, that this statute says no doctrine shall be taught which is contrary to the divine account contained in the Bible. So there is no question about the religious character of these proceedings.

The Court—This court has no purpose except to find the truth and do justice to all the issues involved in this case.

In answer to counsel for the defendant, as to my custom, I will say the several years I have been on the bench I have used my discretion in opening the court with prayer, at times when there was a minister present and it was convenient to do so; other times when there was no large assemblage of people and no minister present, I have not always followed this custom, but I think it is a matter wholly within the discretion of the court.

I have instructed the ministers who have been invited to my rostrum to open the court with prayer, to make no reference to the issues involved in this case. I see nothing that might influence the court or jury as to the issues. I believe in prayer myself; I constantly invoke divine guidance myself, when I am on the bench and off the bench; I see no reason why I should not continue to do this. It is not the purpose of this court to bias or prejudice the mind of any individual, but to do right in all matters under investigation.



Darrow

Arguing about Prayer in the Court
Malone

Stewart

Judge Overrules Objection

Therefore, I am pleased to overrule the objection of counsel and invite Dr. Stribling to open the court with prayer.

Mr. Darrow—I note an exception, your honor.

Thereupon Dr. Stribling proceeded to offer the following prayer:

Dr. Stribling—Our Father, to Thee we give all the praise for every good thing in life and we invoke Thy blessings upon us this morning, as accountable beings to Thee as we enter into the duties of this day. It matters not what our relation to man may be. We have a responsibility to fulfill, righteously the tasks that are ours to do and we would ask Thee this morning, oh God, to make us fully conscious of Thy presence and to give unto us minds that are willing to be directed in the way Thou wouldst have us do. We pray, our Father, to bless the proceedings of this court, bless the court, the judge, as he presides, and may there be in every heart and in every mind a reverence to the Great Creator of the world.

We ask Thee, our Father, to help us, every one to find our place in our relation to every other man, so that we can best serve, can best know human interests and can best sympathize with the needs of every heart.

To this end we ask that Thou wilt enlighten our minds and lead us to understand and know truth in all its every phase, we ask it in the name of our Blessed Redeemer, Jesus Christ, amen.

The Court—Open court, Mr. Sheriff, pursuant to adjournment. Be seated.

Thereupon court was regularly opened.

The Court—Any motions this morning, gentlemen? Any further motions? Col. Darrow, did I understand you to finish your argument or not?

Mr. Darrow—Your honor, I only reserved the right this morning in looking over my points to see whether I had forgotten something.

I find that I covered everything that I wished to cover and submit the argument now.

The Court—Anything further from the state? Of course not.

Gen. Stewart—No, sir; not on that.

The Court—Well, of course, these are profound questions, gentlemen, which you present to me. I worked late last night; but the lights were out until 8:30 and I couldn't do anything until that time. As I said yesterday it is not my disposition to guess if I can avoid doing so, when deciding issues involved in a lawsuit and therefore I will have to ask the indulgence of the court this morning, until I finish my investigation, and the preparation of my ruling upon these questions. I don't know how long that will be—possibly two hours.

• **Neal Presents Demurrer**

Mr. Neal—We have a demurrer that we wish to file and consider for decision nunc pro tunc?

The Court—Involving the same questions?

Mr. Neal—Yes, sir.

The Court—You might consider it as filed now, and let me act on both together if you desire? Is that agreeable to you, Gen. Stewart?

Gen. Stewart—I would like to see the demurrer?

The Court—Have you furnished him a copy?

Mr. Neal—No, sir; but we will.

The Court—If you want to make any pictures, boys, make them now. I will have to excuse you from the stage.

Mr. Neal—The same questions are raised.

The Court—You raised the same questions by a different route.

Mr. Neal—Yes, sir; that is right.

The Court—You are not sure as to the method.

Mr. Darrow—That is all there is to it.

The Court—If you want to make any pictures, I will give you fifteen minutes.

Gen. Stewart—Your honor, just adjourn until this afternoon. It is 10:00 o'clock now?

Mr. Darrow—May we let the record show, just to save bringing up this question again, of prayer—may the record show, without any further objection, on each and every morning that the motion is made and the same ruling is made?

The Court—Yes, sir. Let the record show it.

Mr. Darrow—I don't care to emphasize it at all. I just want to save it.

The Court—Let the record show that it will be treated as made and overruled every morning.

Mr. Neal—Just a moment, I will hand you a copy of the demurrer. Do you have the other motion, judge?

The Court—Yes, sir; I have it. It is in the hands of the court stenographer. I haven't it with me here. Is Mr. Buchanan here?

Mr. Fain—Yes, sir; he is in the transcribing room.

Gen. Stewart—Did I understand, your honor, we would just adjourn until noon?

The Court—No; I haven't said that. We have been adjourning at 11:30.

Gen. Stewart—If your honor wants that much time, I want you to have it. We just want to know definitely if the court wants it.

The Court—Let's see if they want to make any pictures, and then I will make the announcements.

(After photographers completed the taking of pictures.)

The Court—The court will recess until 1:00 o'clock.

AFTERNOON SESSION

1:00 p. m.

Tuesday, July 14, 1923

Judge Warns Reporters

Whereupon the policeman rapped for order and announced that court would reconvene at 2:30 o'clock p. m.

2:15 o'clock p. m.

Whereupon the court announced as follows:

The Court—I want to announce that I gave strict instructions to the

stenographer that my opinion was not to be released to any person or to give any information out. If any member of the press has any intimation as to what my opinion is—no person knows except myself and the stenographer—and sends it out before I begin to read it, I will deal with them for contempt of court.

3:45 o'clock p. m.,

Present as before.

Whereupon:

The court was called to order.

Mr. Hayes—Before your honor presents a decision or the proceedings go further, may I present a petition to the court, addressed to the Hon. John T. Raulston, presiding judge, Rhea county court. We, the following named representatives of various well-known religious organizations, churches, synagogues, do hereby petition your honor that if you continue your custom of opening the daily sessions of the court of Rhea county with prayer—

Gen. Stewart—Your honor, just a minute, I submit that is absolutely out of order.

Mr. Hayes—Mr. Stewart—

Gen. Stewart—This is not an assembly met for any purpose of hearing a motion of that sort, or any thing of that sort. Your honor has passed upon the motion.

Mr. Hayes—I insist upon making this motion.

Gen. Stewart—I am making my exception to the court, will you please keep your mouth shut.

Mr. Hayes—Will your honor hear my motion?

Gen. Stewart—I am making my exception to the court.

The Court—I will hear it.

Gen. Stewart—It is entirely out of order. And I except to it with all the vehemence of my nature.

The Court—I will hear it, proceed, Mr. Hayes.

Petition from Unitarians, Jews and Congregationalists

Mr. Hayes—(Reading the petition.)

To the Hon. John T. Raulston, Presiding Judge, Rhea County Court:

We, the following representatives of various well-known religious organizations, churches and synagogues, do hereby petition your honor that, if you continue your custom of opening the daily sessions of the court of Rhea county with prayer, you select the officiating clergymen from among other than fundamentalist churches in altercation with fundamentalist clergymen.

We beg you to consider the fact that among the persons intimately connected with, and actively participating in this trial of Mr. John T. Scopes there are many to whom the prayers of the fundamentalists are not spiritually uplifting and are occasionally offensive. Inasmuch as by your own ruling all the people in the courtroom are required to participate in the prayers by rising, it seems to us only just and right that we should occasionally hear a prayer which requires no mental reservations on our part and in which we can conscientiously participate.

Signed:

REV. CHARLES POTTER,
Minister, West Side Unitarian church, New York.

RABBI JEROME MARK,
Temple Beth-El, Knoxville, Tenn.

REV. FRED W. HAGAN,
First Congregational church,
Huntington, W. Va.

REV. D. M. WELCH,
Minister, Knoxville Unitarian church.

Mr. Hayes—My motion, your honor, is, without, of course, giving up our exception to your honor's ruling, that if the court denies that, this petition be granted and that we have an opportunity to hear prayer by men who think that God has shown His divinity in the wonders of the world, in the book of nature, quite as much as in the book of the revealed word.

Court Refers Petition to Pastors' Association

The Court—I shall refer that petition to the pastors' association of this town, and I shall ask them—(Laughter and loud applause, and

rapping for order by the policeman.)

The Court—I shall ask the pastors' association from now on to name the man who is to conduct prayer. I shall have no voice, make no suggestions as to who they name, but I will invite the men named by the association to conduct the prayer each morning.

Now, I have an announcement to make.

Mr. Hayes—May I ask your honor if this is a decision on my motion?

The Court—Yes, sir.

Mr. Hayes—So that I may except, so that I may save the record.

Mr. Neal—Your honor knows that the men your honor refers this motion to, are not among the class of men that signed the petition.

The Court—I see by the press one minister has resigned his post recently because Dr. Potter was not allowed to preach in his church and I take it he is in sympathy with Dr. Potter and his doctrine, the others are perhaps fundamentalists, I don't know.

Scoop of Judges Opinion

Now, I have a very serious matter to speak of, I dictated my opinion in this case, which is lengthy. I have been about some four hours in the preparation of the opinion. I gave it to the court stenographer, a reputable court stenographer in secret, with the instruction that no living person know anything as to the conclusions I had reached until I had begun to read my opinion from the bench. I have not intimated to any living soul what my opinion was, except to the stenographer who took the decision.

I am now informed that the newspapers in the large cities are being now sold, which undertake to state what my opinion is. Now any person that sent out any such information as that, sent it out without the authority of this court and if I find that they have corruptly se-

cured said information I shall deal with them as the law directs. Now on account of this improper conduct, apparently at least improper conduct, of some person or persons, the court has decided to withhold his decision until tomorrow morning and tomorrow morning, after the opening of the court, the decision will be read. Now I want, when the crowd is gone from the court room—I want all the members of the press to meet me in this court room. I want to talk with them about this matter. If I find that some representative here has used in stratagem or used any corrupt means or has in any manner secured my opinion, or as to the result of it, and sent it out, I shall promptly deal with him and of course excuse him from any further presence in this court room, so when the crowd is gone I desire that the newspaper men stay with me.

Mr. Stewart—Does Your Honor want the attorneys on either side?

The Court—Yes, sir, the attorneys on both sides.

Mr. Malone—Would it not be possible for us to dispose of the motion or the business which has accumulated quite naturally, because witnesses are on their way here and some are here and we would like to get along with the greatest possible expedition? We regret sincerely that this difficulty has arisen to disturb the court.

The Court—Col. Malone, we cannot go any further until I decide these questions that are before me and I think I have announced satisfactory reasons for not doing so this afternoon. I regret myself very much to have this delay. Of course I don't mind so much personally, because I am absolutely exhausted in the preparation of this opinion.

Mr. Neal—Could you go into the question of the competency of the witnesses?

The Court—No, sir, not until the

proof is offered. Court will adjourn until 9 o'clock in the morning.

Whereupon an adjournment was taken until 9:00 a. m., July 15, 1925.

Judge Meets with Newspapermen

The Court—I have information gentlemen, that the newspapers are being sold in the eastern cities now, which undertake to state what my action was on the motion that is pending before me.

Richard J. Beemish—Was that a deduction?

The Court—I understand it purports to be information. Did you see the wire, Mr. Stewart?

Mr. Stewart—I saw the wire, Mr. Bell, who had that?

The Court—Let's see that.

Mr. Stewart—Mr. Losh, just read it to him.

At this point Mr. William J. Losh handed the message to the court.

A Voice—Your Honor—

The Court—Let me hear this telegram.

Mr. Beemish—Won't we be allowed, won't it be read out, please, so that we can all hear it?

The Court—St. Louis Star out final, carrying story law been held constitutional by judge.

Appoints Committee to Investigate

Now if this is a deduction, gentlemen, of course, they have a right to guess, so I think it is proper that I appoint a committee of pressmen to ascertain what these papers are carrying and ascertain if they are carrying this as a true story.

Mr. Beemish—That would be very fair.

The Court—I will appoint on this committee, on my own motion, because this matter is more important to me than to anyone else, Mr. Earl Shaub, Richard Beemish, Bert Kinser, Forrest Davis and Tony Muto. I wish you gentlemen would be prepared to report to me as soon as you can. I will hear you at any time. You may be excused.

CHAPTER IV.

FOURTH DAY'S PROCEEDINGS—WEDNESDAY, JULY 15, 1925.

Court met pursuant to recess.

Rev. Dr. Potter Chosen for Prayer.

The Bailiff—Is Preacher Stribling in the house?

The Court—Will everyone stand up? Mr. Chairman of the ministers' association, have you—who did you appoint as the minister to open court with prayer?

The Rev. Stribling—The Rev. Dr. Potter.

The Court—Dr. Potter, come forth to the judge's rostrum and open court with prayer.

Mr. Potter—Oh, Thou to Whom all pray and for Whom are many names, lift up our hearts this morning that we may seek Thy truth. May we in all things uphold the ends of justice and seek that those things may be done which will most redound in honor to Thy glory and to the progress of mankind toward Thy truth. Amen.

The Court—Everybody rise, please.

The Court—Open court, Mr. Sheriff.

The Bailiff—Oyez, oyez, this honorable circuit court is now open pursuant to adjournment. Sit down, please.

Neal Renews Objection to Prayer

Dr. Neal—I want to renew our objection to the prayer and I want the courtesy of the court just a moment to explain my particular attitude. I join with counsel on this side in their objection, but I think that it is such an important matter that I would like the courtesy of the court just a moment to explain my individual reaction or attitude toward this particular exception.

The Court—I will hear you, Judge Neal.

Dr. Neal—Being very brief, indeed. First, may it please your honor, I would like that you read from a case a very well-known principle of law,

and I think you will agree with me when I read it. "The courts will take judicial notice that the religious world is divided into numerous sects and of the general doctrines—" this is quoting from the case of State vs. District Board, 76 Wis., 177—"the courts will take judicial knowledge that the religious world is divided into numerous sects and of the general doctrines maintained by each sect; for these things pertain to general history, and may fairly be presumed to be subjects of common knowledge. Thus they will take cognizance, without averment, of the facts that there are numerous religious sects called Christian, respectively maintaining different and conflicting doctrines; that some of these believe the doctrine of predestination, while others do not; some the doctrine of eternal punishment of the wicked while others repudiate it; some the doctrines of the apostolic succession and the authority of the priesthood, while others reject both; some that the Holy Scriptures are the only sufficient rules of faith and practice, while others believe that the only safe guide to human thought, opinion and action is the illuminating power of the divine spirit upon the humble and devout heart; some in the necessity and efficacy of the sacraments of the church, while others reject them entirely; and some in the literal truth of the Scriptures, while others believe them to be allegorical, teaching spiritual truths alone, or chiefly."

Now, may it please your honor, we differ, of course, very widely with the attorney-general in his opening statement that this is not a religious case. We differ very widely with him in his interpretation of this act—in his effort to simply split the act in two and take the latter clause as the whole of the act. Therefore, believing as we do firmly that certain great

religious questions are involved in this case and appealing to the general knowledge of the court, that any religious atmosphere injected in the proceedings must necessarily be of one particular faith—not that we are religious or irreligious, but simply because this is a religious question—that the whole atmosphere of the court in every respect should be neutral; that the court should receive its sole information in this case from the facts presented by witnesses to the jury and the law presented by the lawyers. That, may it please your honor, is my reason for joining in this objection to the daily prayer.

Sue Hicks Replies to Neal

Sue K. Hicks—I have set over here and remained quiet these three days while the defense counsel have been constantly bringing up objections to these prayers. I want to make a statement in behalf of the court. I have been in this court for about five years and I know that every time that a minister has been in this court room when court was opened that the court was opened with prayer, and I think that their objections, your honor, should be put on the record, if they want them on the record, but this constant heckling every morning should be avoided. We are trying to avoid any religious controversy and we maintain that there is no religious controversy in this case. Their very opposition contradicts their own-selves. They say, your honor, that evolution is not—does not contradict the Bible—does not contradict Christianity. Why are they objecting to prayers if it doesn't contradict the Bible—doesn't contradict Christianity? Now, his case there that he reads dealt only with the sects of the church. This morning's prayer has been opened by a Unitarian. It has been opened by a Baptist and by a Methodist on the different mornings, and other denominations, and I think that the case that he cited is entirely out of order. It has no bearing on the controversy and we think that, your honor from now on should stop any such arguments as this arising and ask the defense to put their ob-

jections on the record and stop this here heckling in court in opening court every morning.

The Court—The court in selecting ministers to open the court with prayer has had no regard to denominational lines and no concern about sects. The court believes that any religious society that is worthy of the name should believe in God and believe in divine guidance. The court has no purpose by opening the court with prayer to influence anybody wrongfully, but hopes that such may influence somebody rightfully. It has been my custom at times when there has been no minister in the court, I have called on some good old pious man whom I knew was good, who believed in God, to open the court with prayer. I don't think it hurts anybody and I think it may help somebody. So I overrule the objection.

Darrow Takes Exception to Remarks of Court—Stewart Apologizes

Mr. Darrow—Your honor, I want to take exception to the remarks of the court.

The Court—Let the exceptions go in the record.

Gen. Stewart—Your honor, on yesterday Mr. Darrow and I had an agreement that the record would show each morning that they expected to the prayer. Perhaps the other attorneys did not understand that, but hereafter it will just show that without any statement being made in open court.

Your honor, I want, before the court proceeds with business—I want to make just a statement of explanation. On yesterday afternoon, if the court please, near the hour of adjournment, I said a thing which upon reflection and deliberation I feel sorry for. Sometimes under the stress of circumstances, perhaps we all do things that we should not do and that is about the only consolation I have to get out of it. Mr. Hays was presenting a matter to the court to which I desired to object and did object and when I interposed my objection, feeling that Mr. Hays did not give me an opportunity to address

myself to the court, I expressed myself toward him in a rather discourteous manner I feel. I meant at the time to be emphatic, but I did not mean to be discourteous. The least that one lawyer can do toward another that is in his attitude toward another lawyer, in the trial of the case, is to be courteous to him and I feel very much ashamed when I feel that I have not been courteous to anybody. Mr. Hays has treated me with much courtesy and I am sure he did not mean on yesterday to try to drown me out with his voice. I know that as soon as I said it I knew I had said the wrong thing and I want to say to him this morning, and the court publicly, that there was nothing back of what I said at all, except a temporarily ruffled temper. I am sorry for it and I apologize for it.

Mr. Hays—If your honor please.

The Court—I recognize Mr. Hays.

Hays Accepts Apology

Mr. Hays—I am happy to accept the apology of the attorney-general, with the knowledge that Mr. Stewart realizes that when he speaks he is speaking in the name of the sovereign state of Tennessee and I would like to condition that upon the suggestion that there be no further reference or allusions that are disrespectful to the state from which counsel for the defense come and no reference or allusions to the economic, political, social or religious views of counsel for the defense and I wish to warn counsel for the prosecution that if statements of that sort are made in the presence of the jury that we should regard them as prejudicial and take exception to them. Permit me to say personally that there are two qualities I much admire in a man. One is that he is human and the other that he is courteous. The outburst on yesterday proves that the attorney-general was human, and the apology proves that he has the courtesy of a southern gentleman.

Neal Demands Further Apology—Stewart Stands Pat

Dr. Neal—I submit as the local counsel in this case, I am not at all satisfied with the apology of Gen. Stewart and he knows why. In that discourteous action yesterday was included another very grave discourtesy to one of my colleagues. I have given him every opportunity to apologize privately for his remark and he has refused, and now I ask him in public to erase from the record the slurring, discourteous remark that he made in regard to another colleague of mine in this case and he knows very well what I refer to.

Gen. Stewart—The very thing that Mr. Hays and I were trying to avoid is being injected again into the case by Mr. Neal. The offense has already been committed and Mr. Neal is attempting to inject into this record the very thing that Mr. Hays and I were trying to avoid. It is very obvious that Dr. Neal is not familiar with court procedure. Even lawyers say things and do things that they should explain and sometimes apologize for. When I do a thing that I feel badly about I apologize. So long as I speak what I conceive to be the truth, I apologize to no man.

(The officer calls the audience to order.)

Mr. Neal—I still think the attorney-general's remarks were extremely discourteous and uncalled for.

Beamish Reports on News Leak

The Court—Is the chairman of the press committee present? If so, I will hear the report from the chairman.

Mr. Richard Beamish (chairman of the press committee) (Reading)—The committee appointed by your honorable court, consisting of Richard J. Beamish, chairman; Phillip Kingsley, Earl L. Shaub, Forrest Davis, and Tony Muto, to investigate a reported news leak of the substance of your honor's opinion upon the motion to quash the indictment of John T. Scopes, respectfully reports: That it has been

ascertained that the brief bulletin to the effect that the decision would uphold the indictment was based upon information which the sender of the bulletin believed to be correct and truthful; that the sender did not obtain this information from your honor's stenographer, nor in any improper or unethical manner; that no good ground exists for further investigation and the committee recommends that the sender of the bulletin be not disturbed in his relations with the court. Signed: Richard J. Beamish, chairman; Earl L. Shaub, Forrest Davis, and Tony Muto. One member of the committee, Mr. Phillip Kingsley, desired to have another meeting, and asked that his name be not included. The other members signed, and joined with the chairman in submitting this report. If the court desires any further information, or any additional details, we will be glad to submit them.

Court—I think the court is entitled to know how this information was had, if you can furnish me that information.

Information Came from Court

Mr. Beamish—Upon investigation, we find that the information came from the court.

The Court—Well—

Mr. Beamish—The circumstances are that the young man who sent the message, met the judge upon his way to the hotel. The judge, I am informed, had a bundle of papers under his arm. The young man asked him if that was his decision. The court replied, No, that the decision was being copied by a stenographer. The next question was, will you read that decision this afternoon? The reply was, that is my intention. The next question was, will you adjourn until tomorrow? To which the reply was, yes, I think so. The inference was that if the motion to quash the indictment was refused, there would be an adjournment. If the motion to quash was affirmed the trial would be ended. It was pure

deduction. The young man then sent the message.

The Court—Who is he?

Mr. Beamish—Mr. Hutchinson.

Court—Come around, Mr. Hutchinson.

Hutchinson Before the Bar

(Mr. Hutchinson comes before the bar.)

Court—I have endeavored since this trial began to be extremely courteous, and do anything I could do for you gentlemen. I do not believe any pressman has a right to ask the court a question except for direct information which the question indicates that he wants. I do not think you had any right to inquire if the court would adjourn until tomorrow.

The Court—Young man, do you want to make any statement at all?

Mr. Hutchinson—I would be very glad to talk to the judge in chambers; I don't think I ought to do so here.

Mr. Beamish—I would ask that any other question be taken up in chambers.

The Court—Anything that I have said, that goes into the press—I have had an honest purpose in making this inquiry; it is no reflection upon you and the court does not mean to reflect upon you at all.

Mr. Beamish—I will say, your honor, for the purpose of the record, that Mr. Hutchinson is an upright, conscientious and thoroughly honest newspaper man and has the approval of the entire corps of journalists.

The Court—He comes to me from Senator Keller, of this state, recommending him very highly. I am sure he had no sinister motive.

Mr. Beamish—I think he had not.

The Court—I want to be fair to all the press and to put you all on the same basis; I think it is proper for me to suggest that you be as courteous to me as I try to be to you.

Mr. Beamish—We want to, your honor.

The Court—And if you want information ask me directly and I will give you a direct answer; if I want

to give you information, I will; if it is not proper, I will not, but I prefer that if you want to ask me a question not to put me on notice as to the information you want, and then take advantage of the answer I may give.

So, you may be excused.

The Policeman—We will have to have order.

Mr. Darrow—May I say a word, and then be through in a very short time?

The Court—Yes.

Darrow is Agnostic—Says Infidel Means Nothing

Mr. Darrow—I don't want the court to think I take any exceptions to Mr. Stewart's statement,—of course, the weather is warm, and we may all go a little further at times than we ought, but he is perfectly justified in saying that I am an agnostic, for I am, and I do not consider it an insult, but rather a compliment to be called an agnostic. I do not pretend to know where many ignorant men are sure; that is all agnosticism means. He did, however, use a word, "infidel," although Mr. Stewart says he thinks I am wrong, but I am quite certain I am not. Of course, the word "infidel" has no meaning whatever. Everybody is an infidel that does not believe in the prevailing religion, among the Saracens, everybody is an infidel that does not believe with them, and in a Mohammedan country, everybody that is not a Mohammedan is an infidel, and among the Christians, everybody is an infidel that is not a Christian, or professes to be. It has no generic meaning, and I don't think I am fairly classified under it. But, I do say this, and I have no doubt the attorney-general will agree with me; I don't know what their particular brand of religion may be; I presume amongst the six or seven there are six or seven different brands, if you analyze it closely enough.

But, while I take no offense for anybody to say in any way that I am an agnostic, for I am, I think everybody's religious rights and re-

ligious liberties are protected under the constitution of Tennessee, and if not, they would be protected under the fellowship that we owe to each other, and I do not think that anybody's religious creed should be used for the purpose of prejudicing or influencing any action in this case.

That is all I shall insist on through this case.

The fact that I am an agnostic ought not to weigh in the balance as to whether Mr. Scopes is innocent or guilty. And, all I ask for is that if counsel thinks it is wise to refer again to it that it shall not be done in such a way in the presence of the jury as to in any manner influence anybody, and I think I am right on that. I do not take any offense whatever in his having said I was an agnostic, although I hate to be accused of such a foolish thing as infidelity because everybody in the world can be accused of that.

The Court—What do you say, Gen. Stewart?

Gen. Stewart—I think we are wasting a lot of valuable time, your honor, in felicitation, and I am ready if these gentlemen will join me, in trying this law suit as lawyers. I would like to get done with this thing.

The Court—I think Col. Darrow is correct when he suggests no reference be made to the religious belief of any counsel in the presence of the jury; that it might prejudice the jury in the trial, and I shall expect that no such references will be made during the trial of this case.

Now, the court is about to read his opinion on the motion to quash the indictment, but I shall expect absolute order in the courtroom because people are entitled to hear this opinion.

Let us have order. No talking, now; let us have order in the courtroom.

If you gentlemen want to make my picture, make it now. (Laughter in the courtroom.)

Then I will proceed to read.

Court Officer—Order in the court-

room. No talking. (Rapping with gavel.)

(Following the photographing of the court.)

Raulston Reads Opinion on Overruling Motion to Quash

State of Tennessee vs. John T. Scopes.

Court—This case is now before me on a motion to quash the indictment on the following grounds:

"First—(a) Because the act, which is the basis of the indictment, and which the defendant is charged with violating, is unconstitutional and void, in that it violates Section 17, Article 11 of the constitution of Tennessee, which reads as follows:

"Section 17. Origin and frame of bills. Bills may originate in either house; but may be amended, altered or rejected by the other. No bill shall become a law which embraces more than one subject, that subject to be expressed in the title. All acts which repeal, revive or amend former laws, shall recite in their caption, or otherwise, the title or substance of the law repealed, revived or amended."

It is insisted by the defendant, through his counsel, that the body of the act involved in this case is not germane to the caption, and that the caption is too general in its terms, and that, therefore the act is unconstitutional and void.

In passing upon this provision of our constitution, our supreme court has said:

"Any provision of a statute germane to the subject expressed in the title directly or indirectly relating to that subject, and having a natural connection therewith, and not foreign thereto, is embraced in the title.

"It is not necessary that the title should express fully what is contained in the body of the act, for it was not intended that the title should express everything contained in the act. So long as the subject matter of the body of the act is germane to that expressed in the title, there is an obedience to the mandates of the constitution."

The general title to the act is one which is broad and comprehensive and covers all legislation germane to the general subject stated. The title may cover more than the body, but it must not cover less. It need not index the details of the act, nor give a synopsis thereof.

It is further said:

"The title of a legislative bill may be broader and more comprehensive than the subject of legislation contained in the body of the act, so that the one real subject of legislation is expressed in the title, and not obscured by foreign matters."

In the case at bar the caption of the act involved provides, among other things, that the purpose of the act is to prohibit the teaching of the evolution theory in the public schools, etc., of the state of Tennessee. It is true that this provision is rather general in its nature and in my conception of the terms employed in the caption and the body those used in the caption are broader and more comprehensive than those employed in the body of the act; but in my opinion the caption covers all the legislation provided for in the body, and is germane thereto, and in no way obscures the legislation provided for.

The purpose of this provision in our present constitution was to remedy an existing evil, and prevent laws on other subjects from being tacked on to a bill upon a wholly different subject, which tacked on laws this way sometimes eluded the attention of the legislature and were passed without sufficient consideration, and when passed, often remained for a time undiscovered, for the reason that the title of the act failed to call attention to the same, and to prevent smuggling through the legislature important measures without due notice to the members of the legislature as to the nature and purport of the matter under consideration.

In my judgment, the caption of this act is sufficient to put any member of the legislature on notice as to what the nature of the proposed legislation is, and that really the caption is more comprehensive than

the body of the act. Therefore, I am content to overrule this ground.

(b) In that it violates Section 12, Article 11 of the constitution of Tennessee which reads as follows:

"Section 12—Education to be cherished; common school fund; poll tax; whites and negroes; colleges, etc., rights of—knowledge, learning and virtue, being essential to the preservation of republican institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the state, being highly conducive to the promotion of this end, it shall be the duty of the general assembly in all future periods of this government to cherish literature and science. And the funds called the common school fund and all the lands and proceeds thereof, dividends, stocks and other property of every description whatever, heretofore by law appropriated by the general assembly of this state for the use of common schools, and all such as shall hereafter be appropriated, shall remain a perpetual fund, the principal of which shall never be diminished by legislative appropriations; and the interest thereof shall be inviolably appropriated to the support and encouragement of common schools throughout the state, and for the equal benefit of all the people thereof; and no law shall be made authorizing said fund or any part thereof to be diverted to any other use than the support and encouragement of common schools. The state taxes, derived hereafter from polls shall be appropriated to educational purposes, in such manner as the general assembly shall from time to time direct by law. No school established or aided under this section shall allow white and negro children to be received as scholars together in the same school. The above provisions shall not prevent the legislature from carrying into effect any laws that have been passed in favor of the colleges, universities or academies, or from authorizing heirs or distributees to receive and enjoy escheated property under

such laws as may be passed from time to time."

It is not seriously insisted by the defendant in this case that the indictment should be quashed on this ground. But that there may be no doubt as to the defendant's rights under this section, I will briefly state the law relative thereto.

This section of the constitution makes it the express duty of every general assembly, at all times, to foster, and cherish literature and science. As one of the chief means of accomplishing this most important purpose, the constitution contemplated the establishment of a common school system, and provided the common school fund. But this provision of the constitution is merely directory to the legislature and indicates the popular feeling and the public policy of the people of the state on this great question.

The courts are not concerned in questions of public policy or the motive that prompts the passage or enactment of any particular legislation. The policy, motive or wisdom of the statutes address themselves to the legislative department of the state, and not the judicial department. Therefore, this court has no concern and no jurisdiction to pass upon this question, and is contented to overrule on this ground.

(c) In that it violates Section 18, Article 2 of the constitution of the state of Tennessee, which reads as follows:

"Sec. 18. Of the Passage of Bills—Every bill shall be read once, on three different days, and be passed each time in the house where it originated, before transmission to the other. No bill shall become a law until it shall have been read and passed, on three different days in each house, and shall have received on its final passage in each house, the assent of a majority of all the members to which that house shall be entitled under this constitution; and shall have been signed by the respective speakers in open session, the fact of such signing to be noted on the journal; and shall

have received the approval of the governor, or shall have been otherwise passed under the provisions of this constitution."

As I understand the position of defendant's counsel at bar, there is no insistence that this ground is good, and no evidence before the court that would indicate the invalidity of this act, because of any violation of this section of the constitution. Therefore, the same is overruled.

(d) In that it violates Section 3, Article 1 of the constitution of Tennessee, which reads as follows:

"Sec. 3. Right of Worship Free.—That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right, be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishment or mode of worship."

And also:

(e) In that it violates Section 19, Article 1 of the constitution of Tennessee, which reads as follows:

"Sec. 19. Printing Presses Free; Freedom of Speech, etc., Secured.—That the printing presses shall be free to every person to examine the proceedings of the legislature or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof."

"The free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. But in the prosecutions for the publications of papers investigating the official conduct of officers, or men in public capacity, the truth thereof may be given in evidence; and in all indictments for libel, the jury shall have the right to determine the law and the facts, under the direction of the court as in other criminal cases."

Act Does not Interfere with Worship

It will be observed that the first provision in this section of our constitution provides that all men shall have the natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. I fail to see how this act in any wise interferes or in the least restrains any person from worshiping God in the manner that best pleaseth him. It gives no preference to any particular religion or mode of worship. Our public schools are not maintained as places of worship, but, on the contrary, were designed, instituted, and are maintained for the purpose of mental and moral development and discipline.

This section fully provides that: "No man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can in any case whatever control or interfere with the right of conscience; that no preference shall be given by law to any religion or established mode of worship."

I cannot conceive how the teachers' rights under this provision of the constitution would be violated by the act in issue. There is no law in the state of Tennessee that undertakes to compel this defendant, or any other citizen, to accept employment in the public schools. The relations between the teacher and his employer are purely contractual and if his conscience constrains him to teach the evolution theory, he can find opportunities elsewhere in other schools in the state, to follow the dictates of his conscience, and give full expression to his beliefs and convictions upon this and other subjects without any interference from the state of Tennessee or its authorities, so far as this act is concerned. Neither do I see how the act lays any restraint on his right to worship according to the dictates of his conscience. Under the provisions of this act this defendant, or any other person, can entertain any religious belief which most appeals

to their conscience. He can attend any church or connect himself with any denomination or contribute to the erection of buildings to be used for public worship, as he sees fit. (The court is pleased to overrule these grounds.)

(f) In that it violates Section 8, Article 1 of the constitution of Tennessee, which reads as follows:

"Sec. 8. No Man to Be Disturbed but by Law.—That no man shall be taken or imprisoned or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land."

As the court understands, the defendant insists that this section of the constitution is the foundation for what is generally termed the law of the land.

"The law of the land means the law which embraces all persons who are in, or who may come into like situation and circumstances. It may be made to extend to all citizens, or to be consigned, under proper limitations, to particular classes. If the class be a proper one it matters not how few the persons are who may be included in it, if all who are in, or who may come into the like situation and circumstances, be embraced in the class, the law is general, and not partial."

Law of the Land

The law of the land hears before it condemns; it proceeds upon inquiry, and renders judgment only after trial.

"Legislation general in its operation upon the subjects to which it relates, and enforceable in the usual mode established in the administration of government with respect to kindred matters, that is, by process or proceedings adapted, to the nature of the case, is the law of the land."

As the court understands the provisions of the statute involved in the case at bar, it applies alike to all persons coming into the like situation and circumstances, so far as public schools are concerned. That

is, it applies alike to all those who see proper to engage themselves as teachers in the public schools of the state of Tennessee. Therefore, I am of the opinion that this statute is not violative of this section of the constitution and that it does not unlawfully deprive this defendant of any of his liberties, privileges, or property, and for this reason the court is pleased to overrule this ground.

(g) In that the act and the indictment and the proceedings herein are violative of Section 9, Article 1 of the constitution of Tennessee, which reads as follows:

"Sec. 9—Rights of the accused in criminal prosecutions. That in all criminal prosecutions, the accused hath the right to be heard by himself and his counsel; to demand the nature and cause of the accusation against him, and have a copy thereof, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the county in which the crime shall have been committed, and shall not be compelled to give evidence against himself."

And also:

(h) In that the act, prosecution and proceedings herein violate Section 14, Article 1, of the constitution of Tennessee, which reads as follows:

"Sec. 14—Crimes punished by presentment, etc.—That no person shall be put to answer any criminal charge but by presentment, indictment or impeachment."

As the court conceives, both of these grounds are predicated upon the same objection to the statute and the indictment, therefore, they will be considered together. One objection, as the court understands, that is insisted upon is that both the statute and the indictment are too vague and uncertain to put him on notice of the nature of the accusation brought against him. The requirement, as the court understands, is this: The description of

the offense charged in the indictment must be sufficient in definiteness, certainty and precision to enable the accused to know what offense he is charged with and to understand the special nature of the charge he is called upon to answer; to enable the court to see from the indictment a definite offense, so that the court may apply its judgment and determine the penalty or punishment prescribed by way, and also to enable the accused to protect himself from a second prosecution for the same offense.

"A description distinguishing the offense from all other similar offenses is not required. That degree or precision in the descriptions of the particular offense cannot be given in the indictment so as to distinguish it per se from all other cases of a similar nature. Such discrimination amounting to identification must rest in averment by plea and in the proof; and its absence in description in indictment can be no test of the certainty required either for defense against the present prosecution or for protection against a future prosecution for the same matter."

"The description of a statutory offense in the words of the statute is sufficient, and renders the indictment sufficiently certain if it gives the defendant notice of the nature of the charge against him."

The statute involved in this case, in part, reads as follows:

"Sec. 1—Be it enacted by the general assembly of the state of Tennessee, that it shall be unlawful for any teacher in any of the universities, normals, and all other public schools of the state which are supported in whole or in part by the public school fund of the state, to teach any theory that denies the story of the divine creation of man as taught in the Bible and teach instead that man has descended from a lower order of animals."

The indictment, in part, reads: "That John Thomas Scopes, heretofore on the 24th day of April, 1925, in the county aforesaid, then

and there unlawfully did wilfully teach in the public schools of Rhea county, Tennessee, which said public schools are supported in part, or in whole by the public school fund of the state, a certain theory and theories that denied the story of the divine creation of man as taught in the Bible, but did teach instead thereof, that man is descended from a lower order of animals, he, the said John Thomas Scopes, being at the time, and prior thereto, a teacher in the public schools of Rhea county, Tennessee, as aforesaid, against the peace and dignity of the state."

(i) In that the act violates Section 8, Article XI of the Constitution of Tennessee which reads as follows:

"Sec. 8—General laws only to be passed; corporations only to be provided for by general laws—The legislature shall have no power to suspend any general law for the benefit of any particular individual nor to pass any law for the benefit of individuals, inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals rights, privileges, immunities or exemptions other than such as may be by the same law, extended to any member of the community who may be able to bring himself within the provisions of such law. No corporation shall be created, or its powers increased or diminished by special laws, but the General Assembly shall provide by general laws, for the organization of all corporations hereafter created, which laws may, at any time, be altered or repealed; and no such alteration or repeal shall interfere with or divest rights which have become vested."

The court is of the opinion that what has been said in discussing Section 8 of the first article of the constitution of Tennessee above, would also be applicable to the objection made under this ground. In the defining and construing individual rights under this section, our supreme court said:

"If the classification is made under this section, everyone who is

in, or may come into the situation and circumstances which constitute the reasons for and the basis of the classification, must be entitled to the rights, privileges, immunities and exemptions conferred by the statute or it would be partial and void. If the classification is made under Section 8 of the first article of the constitution, everyone who is in or may come into the situation and circumstances which constitute the reasons for the basis of the classification, must be subjected to the disabilities, duties, obligations and burdens imposed by the statute, or it would be partial and void. It follows that the cases that have been decided upon either of the subsections are of equal value in arriving at the meaning of the expression and requirement that all class legislation must be so framed as to extend to and embrace equally all persons who are in or may come into the like situation and circumstances, constituting the reasons for and basis of the classification. Class legislation which has applied equally to all that are in or that may come into the like situation and circumstances and which makes a reasonable and natural classification, is valid and constitutional."

Therefore, the court is pleased to overrule this ground.

(j) In that the act violates Section 2, Article 2 of the constitution of Tennessee; which reads as follows:

Sec. 2. No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted."

So far as the court can recall there is no insistence by the defendant that this ground should be sustained by the court, and for that reason it is passed and overruled.

Second (a) That the indictment is so vague as not to inform the defendant of the nature and cause of the accusation against him.

And also.

(b) That the statute upon which the indictment is based is void for

indefiniteness and lack of certainty.

The questions raised by these sections, have been discussed in another part of this opinion, fully, and the grounds stated upon which the same questions have been overruled. Therefore, these are overruled without further comment.

Third (a) In that the act and the indictment violate Section 1 of the Fourteenth amendment of the constitution of the United States, which reads as follows:

Does Not Violate U. S. Fourteenth Amendment

"Sec. 1, Art. XIV. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

As the court conceives, the defendants raised the same question under this assignment of this ground as they did under Section 8 of Article 1 of the constitution of Tennessee, except, they insist that the act involved in the case at bar, not only violates Section 8 of Article 1 of the constitution of Tennessee, but in like particular violates Article 1 of the Fourteenth Amendment to the constitution of the United States.

In the case of Meyer vs. State of Nebraska, decided by Justice McReynolds, and quoted in 67 Law Ed., United States. Reports on page 390, a case wherein the plaintiff in error was tried and convicted upon an indictment in Hamilton county, Nebraska, under a charge that on May 25, 1920, while an instructor in Zion parochial school, he unlawfully taught the subject of reading in the German language to Raymond Parpart, a child of ten years, who had not attended and successfully passed the eighth grade, the opinion

was based upon an act relating to the teaching of foreign languages in the state, approved April 9, 1919, which was as follows:

"Sec. 1. No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language.

"Sec. 2. Languages other than the English language may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade, as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.

"Sec. 3. Any person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than twenty-five (\$25) dollars, nor more than one hundred (\$100) dollars, or be confined in the county jail for any period not exceeding thirty days for each offense.

Sec. 4. Whereas, an emergency exists this act shall be enforced from and after its passage and approval."

The supreme court of the state affirmed a judgment of conviction. It declared the offense charged and established was the direct and intentional teaching of the German language as a distinct subject to a child who had not passed the eighth grade in the parochial school maintained by the Zion Evangelical Lutheran congregation, a collection of Biblical stories being used therefor, and it held that the statute forbidding this did not conflict with the Fourteenth Amendment, but was a valid exercise of the people's power.

In deciding this case, Justice McReynolds said:

"The problem for our determination is, whether the statute, as construed and applied, unreasonably infringes the liberty guaranteed to the plaintiff in error by the Fourteenth Amendment, 'No state . . . shall deprive any person of life, liberty or property without due process of law.'

"While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without it denotes, not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and to bring up children, to worship God according to the dictates of his own conscience, and generally, to enjoy these privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

"That the state may do much, go very far indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the constitution extends to all—to those who speak other languages as well as to those born with the English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the constitution—a desirable end cannot be prompted by prohibited means."

"The desire of the legislature to foster (a) homogeneous people with American ideals, prepared readily to understand current discussions of civic matters, is easy to appreciate. Unfortunate experiences during the late war, and aversion toward every characteristic of truculent adversaries, was certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the state and conflict with rights assured to plaintiff in error. The interference is plain enough, and no adequate reason therefor in time of peace and domestic tranquility has been shown."

"But the power of the state to compel attendance at some school and to make reasonable regulation for all schools, including a requirement that they shall give instructions in English, is not questioned, nor has challenge been made of the state's power

to prescribe a curriculum for institutions which it supports. Those matters are not in the present controversy. Our concern is with the prohibition approved by the supreme court."

Court Presents Law

In the case of *Pierce et als. vs. Society of the Sisters of the Holy Names of Jesus and Mary*, decided about June 1, 1925, also by Justice McReynolds, coming up from the state of Oregon. This case also involved the right of a citizen as guaranteed by the Fourteenth Amendment of the constitution of the United States. The court, in commenting, said:

"No question is raised concerning the power of a state reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils, to require that all children of proper age attend some school, that teachers shall be of good moral character, and of patriotic disposition, that certain studies, plainly essential to good citizenship, must be taught, and that nothing be taught which is inimical to the public welfare."

"Under the doctrine of *Meyer vs. Nebraska*, 262 U. S., Page 390, we think it is entirely plain that the act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights granted by the constitution may not be breached by legislation, which has no reasonable relation to some other purpose than the competency of the statutes. The fundamental theory of liberty upon which all governments in the United States repose, precludes the general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty to recognize and prepare him for additional obligations."

In the *Meyer* case the statute, in part, provided:

"No person individually, or as a

teacher, shall in any private, denominational or parochial or public school, teach any subject to any person in any language other than the English language."

In passing on the constitutionality of this statute, the court held it unconstitutional under the Fourteenth Amendment to the constitution of the United States. But this act is, as is apparent from its reading, applied to all schools in the state of Oregon, and an obedience to its provisions would have made it impossible for any child, regardless of its nationality, ancestry and purposes in life, to have been taught by any teacher any subject, except in the English language, and I think the court properly held that this was an infringement upon the rights of individuals living in that state; but, as above indicated, it will be observed that the court in passing upon this act, observed, "the power of the state to compel attendance at some school and to make reasonable regulations for schools, including a requirement that they shall give instruction in English," is not questioned. Nor has challenge been made of the "state's power to prescribe a curriculum for institutions which it supports."

It is true that the last quotation above referred to would be classed, in legal parlance, as dictum.

In the case of *Pierce vs. Society of Sisters, etc.*, the act required the children of the state of Oregon to attend public schools, in which the court said that "the child is not the mere creature of the state, and those who nurture him and direct his destiny have a right, coupled with high duty, to recognize and prepare him for additional obligations."

In the Oregon case, the Nebraska case is referred to without any suggestion or intimation that the dictum therein is not good law.

Leeper Again

In the case of *Leeper vs. The State*, reported in 19th Pickle, page 500, wherein it was insisted that the act involved therein was unconstitutional under Section 8 of Article 1 of the constitution of the state of Tennessee.

see, the supreme court of Tennessee said that "The state may establish a uniform series of books to be taught in the school which it provides and controls seems to be a proposition as evident as that it may provide a uniform system of schools, which we take it is not now an open question."

In deciding the Leeper case the court referred to, with approval, the case of the State vs. Hayworth, 122 Indiana, 462, thusly: The reasoning of the court in the case of State vs. Hayworth is so satisfactory and conclusive that we cannot, perhaps, do better than give a synopsis of it. It was held that such an act does not infringe in the slightest degree upon the right of local self-government; that essentially and inferentially the schools in which are educated and trained the children that are to become the rulers of the commonwealth are matters of state, and not local, jurisdiction; that in such matters the state is a unit and the legislature the source of power; that the establishment and control of public schools is a function of the general assembly, both under the constitution, and because it is a matter of state concern. Being a matter of legislative control, the legislature may abandon one plan and try another, if it sees proper, and the courts cannot interfere. It is further pertinently said, that it is impossible to conceive the existence of a uniform system of public schools without powers lodged somewhere to make them uniform, and in the absence of express constitutional provisions the power must necessarily reside in the legislature, and hence it has the power to prescribe a course of study as well as the books to be used, and how they shall be obtained and distributed, and its discretion as to methods cannot be controlled by the courts. We find neither reason nor authority that suggests a doubt as to the power of the legislature to require a designated series of books to be used in school.

The rule prevailing in Tennessee by which the courts are governed in passing upon the constitutionality of statutes is this: The rule of construction that every intendment and

presumption is in favor of the constitutionality of the statute and that every doubt must be solved so as to sustain it; and where it is subject to two constructions, that which will sustain its constitutionality must be adopted.

Under the holdings in the Oregon case and in the Nebraska case, and in the Leeper-Tennessee case, the court is satisfied that the act involved in the case at bar does not violate the Fourteenth amendment to the constitution of the United States, and is, therefore, pleased to overrule this ground.

The court, having passed on each ground chronologically, and given the reasons therefor, is now pleased to overrule the whole motion, and require the defendant to plead further.

(Following the reading by the court of the opinion on motion to quash the indictment).

Defense Expects to Court's Ruling

Mr. McElwee—Your honor, we desire to enter an exception to your honor's ruling in overruling our motion to quash the indictment and in holding the act under which Mr. Scopes is being prosecuted meets the requirements and is not in conflict with the constitution of Tennessee, or of the constitution of the United States. We do this out of abundance of precaution and to keep the record straight in event that a record may be made in this case ultimately.

Mr. Neal—May it please your honor, I would like to remind your honor that at this moment we would like to have considered filed our demurrer, which is absolutely the same as the motion to quash, and I assume that your honor will probably take the same action.

The Court—To be frank, Judge Neal, you handed me a copy of the demurrer, but I have had such great responsibilities that I have not seen it.

Mr. Neal—Well, we assure your honor that it is simply for the purpose of procedure and the record; the demurrer is exactly the same as the motion to quash.

The Court—You mean raises the same questions?

Mr. Neal—It does, yes.

The Court—In different form?

Gen. Stewart—I would like to see the demurrer.

The Court—Did you give me the original?

Mr. Neal—Yes, sir; I gave you the original.

The Court—I have not it. Hand it to the attorney-general.

Mr. Neal—We will advise the attorney-general that the motion to quash, if he would substitute the word demurrer, is the same.

Gen. Stewart—Yes, I understand that, but we want to see the instrument filed as the demurrer.

The Court—Well, just let it be filed and then let the attorney-general see it.

Gen. Stewart—Is that the one the court has filed; I am asking, is that the one?

Mr. Neal—The original I handed to your honor.

The Court—I do not know. I have had so many papers, telegrams and letters, I may have laid it aside.

Mr. Neal—We will file this, may it please your honor, to satisfy the attorney-general. It will take only a moment.

The Court—All right, file that.

Mr. Neal—We file that.

The Court—Hand it to the clerk and let him mark it filed.

Gen. Stewart—I did not see it. I do not know just what objections we may want to interpose.

(At this point, Mr. Hays walked over to Gen. Stewart, standing in front of the judge's stand, whereupon)

Mr. Hays—I don't suppose you object to shaking hands, after this is all over? (Extending hand.)

Gen. Stewart (shaking hands with Mr. Hays)—That is all right.

The Court—The court will take a ten-minute recess.

(Court thereupon recessed for ten minutes.)

Mr. Hicks—If the court please, before you recess, we would like to call our witnesses.

The Court—Not just now.

The Court—I desire to announce to the press that my copy of the opinion fails to show my action on grounds "D" and "E" on page 9, just before the letter "F" on that page. Just after the word "fit" there should be written in, "The court is pleased to overrule these grounds," there being two incorporated and discussed together.

Dr. Neal—In regard to the demurrer, we have not been able—this copy was simply nothing but a memorandum and not complete, and if it so happens that the copy I gave your honor was the one that was filed—I did not find it there—we would like the record to show we filed the demurrer, and we will file it in the exact terms of the motion to dismiss.

The Court—This was a very—what time is it?

Gen. Stewart—11:13, your honor.

Mr. Neal—Let's dispose of this.

The Court—Oh, yes. This has required quite a bit of energy, as you must know, for the court to read the opinion that has just been delivered in the atmosphere by which he was surrounded, and I am inclined to adjourn the court and give you gentlemen also an opportunity to get your demurrer together, or get from me the copy, if I can find it. I have so many papers I will do my best—that you might have your demurrer ready to file at 1 o'clock.

Mr. Neal—May I make a suggestion?

The Court—Yes.

Mr. Malone—I make it, as the court knows, with the greatest respect for your wishes, and I know you are worn out and you are tired, and yet I hope that it will be possible for all sides so to co-operate, so that we can move at a greater speed. I do not like to speak of personal matters, but we are lawyers with clients and the importunities are very great for us to speed up and return to our practice, and I hope we will be able to take as few adjournments as possible.

Gen. Stewart—There was a thing that occurred this morning in the absence of Mr. Malone and I heartily agree with his views. We are all lawyers, and I hope we can co-operate, and I am sure we will to expe-

dite the trial of this case as rapidly as possible.

Mr. Hays—Would it not be possible to continue court for a later hour than the usual hour for adjournment?

The Court—I will take that up. My custom in life is never to cross my bridge until I get to it, and when I get to that I will determine it. The court will adjourn until 1 o'clock, instead of 1:30. Let the court stand adjourned.

AFTERNOON SESSION

Court Thanks Little Girl for Flowers

The Court—Everyone stand up. Open court, Mr. Sheriff.

The Bailiff—Oyez, oyez, this honorable court is now open pursuant to adjournment. Be seated, please.

Mr. Neal—Your honor, please, I would like to straighten out this.

The Court—I desire to thank the lady, little girl or whoever it may be that is so mindful of the court as to send up this beautiful bouquet. (Applause.)

Mr. Neal—May it please your honor.

The Court—I will hear you, judge.

Mr. Neal—We wish to straighten out this question of the demurrer that have—both the motion to quash and the demurrer, both having been filed, and I think that I have satisfied the attorney-general that they are identical and I presume your honor will rule on them.

The Court—Are you satisfied, Gen. Stewart, that they are identical?

Gen. Stewart—Yes, sir, they are identical, but, of course, we except to the filing of the demurrer because their motion to quash has previously been filed and I want to preserve any exception to the filing of it for that reason.

Mr. Neal—We filed it to be considered filed as of before.

The Court—Well, that exception, of course, is purely technical and I will overrule it and let the demurrer be filed and then I will overrule the demurrer?

Mr. Neal—And then we except to your ruling, may it please your honor.

The Court—Yes, sir. Are you ready to proceed now, Mr. Attorney-General?

Gen. Stewart—I think so, your honor, we prefer to call our witnesses and I take it first that the jury would be brought in. First let me call our witnesses, your honor.

State's Witnesses Called

The Court—Call your witnesses and see if you are ready to proceed.

Sue K. Hicks—I want all these witnesses to meet me outside in front of the door of Mr. McKenzie's office right immediately after your names are called. Answer to your names as they are called. Harry Shelton—

The Court—Mr. Sheriff, take these names and call them outside, please. If there is an officer at the door let him repeat the call.

Sue K. Hicks—Orville Gannaway, Morris Stout, Howard Morgan, F. E. Robinson, Jack Hudson, Fraser Hutchinson, James N. Benson.

Gen. Stewart—Is Walter White, the prosecutor here? Walter White? Col. Darrow, we may have to get you to agree to what we can prove if we cannot find the witnesses.

Mr. Darrow—We might round them up later in the day. (Laughter in the courtroom.)

Gen. Stewart—These witnesses have already been subpoenaed, I am informed and we expected to get to them on yesterday, but there has been this delay and we will go out for a conference, if your honor will give us about five minutes.

The Court—Do you want a conference?

Gen. Stewart—Just about five minutes, I think, is all we require.

The Court—Col. Darrow, will you want any time?

Mr. Darrow—Time for what?

The Court—Time for a conference? If you do we might make the conferences simultaneous.

Mr. Darrow—We are all ready.

The Court—The court will be at ease for a few minutes and let you

talk and laugh a little while if you want to.

Thereupon after the recess the following proceedings occurred:

Mr. Malone—If the court please—

The Court—(Rapping for order.)

Mr. Malone—If the court, please, we are informed, we do not know from how reliable a source, that the witnesses for the state are in the building, and if they are in the building, we know of no reason why there should be any further delay.

The Court—Mr. Sheriff, notify the counsel to come in, if they have finished their conference. They were having a little conference.

Mr. Malone—Apparently. (Laughter in the courtroom.)

Thereupon a policeman returned to the bench and announced to the court that the attorneys would be in in a few minutes.

The Court—All right. Thereafter the following occurred after the lapse of a few moments:

The Court—Tell the attorney-general to come in.

Thereupon the policeman rapped for order.

Jury Called

The Court—Let the clerk call the jury. Call the jury, please. When your names are called, gentlemen, come in and have seats in the jury-box.

Thereupon the clerk called the names of the jurors and the policeman repeated them as follows:

W. F. Roberson, J. W. Dagley, Jim Riley.

The Court—Are they responding, any of them? Call outside. We excluded them from the courtroom and I judge they are still excluded. Call the jury from the outside, you will have to begin all over again.

Thereupon the names were called as follows:

W. F. Roberson, J. W. Dagley, Jim Riley, W. G. Taylor, R. L. Gentry, J. R. Thompson, W. G. Smith, J. R. Goodrich, J. H. Bowman, Bill Day, R. F. West, J. S. Wright.

The Court—Have your seats in the jury box, gentlemen.

A Newspaper Reporter—Can we

have chairs, judge?

The Court—Gentlemen, I do not believe the whole courtroom should expect the judge to look after chairs. Let the sheriff do that, appeal to the sheriff.

Gentlemen, let me see the jury.

I wish you would call the jury again, Mr. Clerk, and if your names are not correct, stop the clerk and correct them. Answer to your names, and if not correct, indicate it.

Whereupon the names were called again, as follows:

W. F. Roberson, J. W. Dagley, Jim Riley.

A Juror—J. W. Riley.

The Court—J. W. Riley, he prefers.

Thereupon the calling of the names was continued.

W. G. Taylor, R. L. Gentry, J. R. Thompson, W. G. Smith, J. R. Goodrich, J. H. Bowman, Bill Day.

A Juror—W. G. Day.

The Court—W. G. Day.

Thereupon the calling continued. R. F. West, J. S. Wright.

The Court—All present.

Mr. McKenzie—As a matter of suggestion, I wish at this time to ask the court to make the announcement to the people, and ask them that they not carry off the chairs of the attorneys. We are a necessary evil in the courtroom, supposed to be a part of it.

Thereupon the policeman announced that no chairs should be carried off from the attorneys, from either the state or the defense or the press.

The Court—Are you ready to read the indictment?

Gen. Stewart—The indictment has been read, your honor, but we can read it again.

Foreman Requests Electric Fans

Juror Thompson—If it ain't out of order, I would like to make the request, the unanimous request of the jury to take up the matter of some electric fans here. This heat is fearful. While I think I could stand my part of it—

The Court—The county judge is

the man you would have to appeal to on that.

The Juror—He is a mighty nice man and some intimation from you would do some good.

Mr. McKenzie—Nothing would give me greater pleasure than to have them installed, but on account of the depleted state of the treasury I do not believe the county can do it.

Mr. Malone—I will buy some fans.

The Court—Col. Thompson, I will divide my fan. Perhaps we can borrow some small fans, and place them on the table, Mr. County Judge. Maybe we can place some small fans on the table.

Are there any further preliminary matters, before the jury is sworn, or before the plea, I mean?

Gen. Stewart—The state is ready.

The Court—What is your plea, gentlemen?

Defendant Pleads Not Guilty

Mr. Neal—Not guilty, may it please your honor.

The Court—Not guilty. Now gentlemen, I shall ask the counsel for both sides to make an opening statement, please, in which you will please briefly outline what your theory is in the case, before I swear the jury.

Gen. Stewart—It is the insistence of the state in this case, that the defendant, John Thomas Scopes, has violated the antievolution law, what is known as the antievolution law, by teaching in the public schools of Rhea county the theory tending to show that man and mankind is descended from a lower order of animals. Therefore, he has taught a theory which denies the story of divine creation of man as taught by the Bible.

Mr. Hays—If the court pleases, may I for the purpose of the record, on the opening statement of the attorney-general move to dismiss the case of the prosecution?

The Court—Yes, and I overrule the motion.

Mr. Hays—And I take an exception.

The Court—Yes, sir.

Now, I will have your statement, gentlemen? Order in the courtroom. I will swear the jury later, when I get these issues made up.

Col. Malone, I will hear from you, sir?

Mr. Malone—If the court please, for the purpose of brevity, though it is impossible to be as brief as the present conception of the prosecution's case, and for the purpose of accuracy, I will stick to my notes, with regard to the statement of the defense. It is going to take a long while, so I do not want to keep your honor standing.

The Court—Col. Malone, I don't want any argumentative statement made. I just want a brief statement of your theory.

Mr. Malone—I understand that, your honor.

The Court—Yes.

Mr. Malone—But we have more than one theory.

The Court—Yes; your theories, then. Put it in the plural.

Malone's Statement of Defense Theory of Case

The defense believes that "God is a spirit and they that worship Him must worship Him in spirit and in truth."

The defendant, John T. Scopes, has been indicted for the alleged violation of an act passed by the Tennessee legislature, which prohibits the teaching of the evolution theory in all the universities, normal schools and public schools of Tennessee, which may be supported in whole or in part by the public school funds of the state.

Section 1 of the act provides: "Be it enacted by the general assembly of the state of Tennessee that it shall be unlawful for any teacher in any of the universities, normals and all other public schools in the state, which are supported in whole or in part by the public school fund of the state, to teach any theory that denies the story of the divine creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animals."

Section 2 provides:

Bible Story Not Scientifically Correct

Neither do we believe that the stories of creation as set forth in the Bible are reconcilable or scientifically correct. The defense will also prove by credible testimony that there is more than one theory of creation set forth in the Bible and that they are conflicting. But we shall make it perfectly clear that while this is the view of the defense we shall show by the testimony of men learned in science and theology that there are millions of people who believe in evolution and in the stories of creation as set forth in the Bible and who find no conflict between the two. The defense maintains that this is a matter of faith and interpretation, which each individual must determine for himself, and if you, men of the jury, are able to reconcile the theory of evolution and the theories of creation as set forth in the Bible, you are not only entitled to your view, but you will be supported in it by millions of your citizens who are of high culture, learning and deep religious faith.

The defense will prove these facts to you and you will determine the question for yourself.

No Conflict Between Evolution and Christianity

While the defense thinks there is a conflict between evolution and the Old Testament, we believe there is no conflict between evolution and Christianity. There may be a conflict between evolution and the peculiar ideas of Christianity, which are held by Mr. Bryan as the evangelical leader of the prosecution, but we deny that the evangelical leader of the prosecution is an authorized spokesman for the Christians of the United States. The defense maintains that there is a clear distinction between God the church, the Bible, Christianity and Mr. Bryan. (Here Mr. Malone referred to Mr. Bryan's introduction to Jefferson's "Statute of Religious Freedom").

The great political leader in com-

"Be it further enacted that any teacher found guilty of a violation of this act shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$100, nor more than \$500, for each offense."

In contradiction of the opinion of the legal leader of the prosecution, the attorney-general, the defense contends that before you, gentlemen of the jury, can convict the defendant, Scopes, of a violation of this act, the prosecution must prove two things:

First—That Scopes taught a theory that denies the story of the divine creation of man as taught in the Bible, and

Second—That instead and in the place of this theory he taught that man is descended from a lower order of animals.

Scopes Must Have Taught Evolution and Also Denied Bible Story

The defense contends that to convict Scopes the prosecution must prove that Scopes not only taught the theory of evolution, but that he also, and at the same time, denied the theory of creation as set forth in the Bible.

The defense contends the prosecution must prove that the defendant, Scopes, did these two things and that what he taught was a violation of the statute.

We will prove that whether this statute be constitutional or unconstitutional the Defendant Scopes did not and could not violate it. We maintain that since the Defendant Scopes has been indicted under a statute which prohibits the teaching of the evolutionary theory, the prosecution must prove as part of its case what evolution is.

So that there shall be no misunderstanding and that no one shall be able to misinterpret or misrepresent our position we wish to state at the beginning of the case that the defense believes there is a direct conflict between the theory of evolution and the theories of creation as set forth in the Book of Genesis.

menting on Jefferson's principles said:

Reads from Bryan's Writings

"The conciseness of Jefferson's style is well illustrated in this statute. Read it over. There is not a superfluous word, and yet there is enough to guard religious liberty. It is not strange that this doctrine so well set forth by Jefferson more than a century ago is now a part of the constitution and bill of rights of every state of this Union. Not only is that today the law of this land, but it is spreading throughout the world. It was only a short time ago that the Czar of Russia issued a decree in which he acknowledged the right of all the subjects of his empire to worship God according to the dictates of their own conscience, and I believe that when we come to measure the relative importance of things, the importance of an act like that, the very foundation upon which we build religious liberty—the importance of an act like that, which, gradually spreading, has become the creed of 80,000,000 people, and is ultimately to become the creed of all the world—when we come to consider the vast importance of a thing like that, how can we compare lands or earthly possessions with it?

"In the preamble to this statute, Jefferson set forth the main reasons urged by those who believed in religious freedom. Let me call attention to some of the more important ones. He said, in the first place, that to attempt to compel people to accept a religious doctrine by act of law was to make not Christians but hypocrites. That was one of the reasons, and it was a strong one. He said, too, that there was no earthly judge who was competent to sit in a case and try a man for his religious opinions, for the judgment of the court, he said, would not be a judgment of law, but would be the personal opinion of the judge. What could be more true. No man who has religious convictions himself bears them so lightly that he can lay them aside and act

as a judge when another man's religious convictions are involved. Then he suggested—and I think that I am justified in elaborating upon this suggestion a moment—that religion does not need the support of the government to enable it to overcome error. Let me give the exact words of his report, for I cannot change them without doing injury to them:

"And finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist of error and has nothing to fear from the conflict unless, by human interposition, disarmed of her natural weapons—free argument and debate; errors cease to be dangerous when it is permitted freely to contradict them."

"Tell me that Jefferson lacked reverence for religion. He rather lacks reverence who believes that religion is unable to defend herself in a contest with error. He places a low estimate upon the strength of religion who thinks that the wisdom of God must be supplemented by the force of man's puny arm."

Jefferson paid a tribute to the power of truth when he said that truth was able to overcome error in the open field; and that it was this sublime confidence in the triumph of truth that distinguished him from many of the other great men of his time. In fact, of all the men who have lived upon this earth, I know of no man who surpassed Jefferson in his confidence in the ultimate triumph of truth; and upon what can people build if not upon faith in truth? Take from man his belief in the triumph of that which is right and he builds upon the sand. Give to man an abiding faith in the triumph of that which is true and you give him the foundation of a moral character that can withstand all reverses.

In the preamble to the statute for religious freedom.

Bryan Said Religion Not Subject to Legislation

Jefferson put first that which I want to speak of last. It was that the regulation of the opinions of

men on religious questions by law is contrary to the laws of God and to the plans of God. He pointed out that God had it in His power to control man's mind and body, but that He did not see fit to coerce the mind or the body into obedience to even the Divine Will; and that if God Himself was not willing to use coercion to force man to accept certain religious views, man, uninspired and liable to error, ought not to use the means that Jehovah would not employ. Jefferson realized that our religion was a religion of love and not a religion of force."

No Science Can Be Taught Without Recognizing Evolution

These words were written by William Jennings Bryan and the defense appeals from the fundamentalist, Bryan, of today, to the modernist, Bryan, of yesterday.

We maintain and we shall prove that Christianity is bound up with no scientific theory, that it has survived 2,000 years in the face of all the discoveries of science and that Christianity will continue to grow in respect and influence if the people recognize that there is no conflict with science and Christianity. We will show that science occupies a field of learning separate and apart from the learning of theology which the clergy expound. We will show that throughout the ages, every scientific discovery or new invention has been met by the opposition of people like those behind this prosecution who have pretended that man's inventive genius was contrary to Christianity. We shall prove by experts and scientists in every field of scientific knowledge that there is no branch of science which can be taught today without teaching the theory of evolution, and that this applies to geology, biology, botany, astronomy, medicine, chemistry, bacteriology, embryology, zoology, sanitation, forestry and agriculture. We will show that it will have been impossible for men like Luther Burbank and others without knowledge and faith in the theory of evolution to produce their invaluable experiments and results.

lution to produce their invaluable experiments and results.

Do Not Contend Man Came from Monkeys

The prosecution has twice since the beginning of the trial referred to man as descended from monkeys. This may be the understanding of the theory of evolution of the prosecution. It is not the view, opinion or knowledge of evolution held by the defense. No scientist of any pre-eminent standing today holds such a view. The most that science says today is that there is an order of men like mammals which are more capable of walking erect than other animals, and more capable than other animals in the use of the forefeet as hands.

There are indications that not 6,000 years ago, but through the long course of the ages from this order came man in one direction, and monkeys in the other. All that science says is that probably some time not 6,000 years ago, but in the course of the ages, and all that science says today is that there are tendencies which indicate the validity of this opinion.

Human Embryo Has Tail

For the purpose of illustration, we hope to show you from embryology about the development of a child from a single cell to its birth. In the course of this development the cell divides repeatedly as growth proceeds and the mass grows. The parts begin to appear at first without resemblance to those of a human being. The arms and legs, for example, first appear as little rounded knobs without fingers or toes. Gradually they elongate and toes and fingers appear. At the end of four months the work of development is practically completed except for proportion. At an early stage, perhaps at the end of one month, the embryo has a tail about one-fourth as long as the rest of the body. This, of course, is not the tail of a monkey, but the tail in formation which is part of the embryo. It also has gill slits; not the gill slits of a fish, but the gill slits

of an embryo baby. One of these later plays an important part in connection with hearing. At six months the body is covered with a complete coating of hair which it loses before birth.

All these stages of development can be seen, preserved and are used in the course of instruction in any of the great medical schools of the country. The embryo becomes a human being when it is born.

Evolution never stops from the beginning of the one cell until the human being returns in death to lifeless dust. We wish to set before you evidence of this character in order to stress the importance of the theory of evolution. If the teaching of the theory of evolution in this field is to be excluded by law you will have to find adequate training for your doctors in medical schools outside of your state or you will have to import physicians from Chicago and New York, as the defendant Scopes had to import Mr. Darrow and myself.

Evolution Theory Vital to Agriculture

We expect to show you how vital to agriculture is the theory of evolution in connection with the development of important varieties of crops, plants, strawberries, peaches and other products essential to the life and prosperity of the people.

We expect to show you how vital is the theory of evolution to geology. We expect to offer you testimony as to the gradual building of the earth, its age and how its age is determined. We expect to show you how by the evolution of the earth's crust it is possible to tell where earthquakes are most likely to occur, so that mankind, for its safety, may have warning.

Moses No Edison

Much of this learning we hope to set before you will not be found in the Bible, but we maintain that all scientific truth cannot be contained in the Bible since so many truths that we all know about have been discovered since the Bible was written. Moses never heard about steam, electricity, the telegraph, the

telephone, the radio, the aeroplane, farming machinery, and Moses knew nothing about scientific thought and principles from which these vast accomplishments of the inventive genius of mankind have been produced.

The purpose of the defense will be to set before you all available facts and information from every branch of science to aid you in forming an opinion of what evolution is, and of what value to progress and comfort is the theory of evolution, for you are the judges of the law and the facts, and the defense wishes to aid you in every way to intelligent opinion.

Denies Attempt to Destroy Christianity

The defense denies that it is part of any movement or conspiracy on the part of scientists to destroy the authority of Christianity or the Bible. The defense denies that any such conspiracy exists except in the mind and purposes of the evangelical leader of the prosecution. The defense maintains that the book of Genesis is in part a hymn, in part an allegory and a work of religious interpretations written by men who believed that the earth was flat and whose authority cannot be accepted to control the teachings of science in our schools.

The narrow purpose of the defense is to establish the innocence of the defendant Scopes. The broad purpose of the defense will be to prove that the Bible is a work of religious aspiration and rules of conduct which must be kept in the field of theology.

The defense maintains that there is no more justification for imposing the conflicting views of the Bible on courses of biology than there would be for imposing the views of biologists on courses of comparative religion. We maintain that science and religion embrace two separate and distinct fields of thought and learning.

We remember that Jesus said: "Render unto Caesar the things that are Caesar's and unto God the things that are God's."

Stewart Objects to Mention of Bryan
Gen. Stewart—Your honor, I except to that part of the statement that has brought in Mr. Bryan's name.

Court—Have you finished your statement, Mr. Malone?

Mr. Malone—No, sir, I have not.

Gen. Stewart—And that you strike his name out.

Court—I hardly think that Col. Bryan's name should be injected into your statement, Col. Malone. I will just exclude it—eliminate it.

Mr. Malone—Will your honor hear me first?

Court—I will hear you.

Mr. Malone—I suppose this court, at any rate, will take judicial notice of the fact that Mr. Bryan is a most important member of this prosecution, in the court's mind, and in my mind. I suppose the court will take judicial notice of the fact that Col. Bryan is a recognized leader of his day and Col. Bryan's name is used in this connection in the same way that any other great leader's name would be used in that connection. My relations with Mr. Bryan have been such for so many years, he would be the last one to think anything I have to say here would have any personality in it. There is no reflection upon him in presenting our views, where we are representing conflicting ideas. I maintain that I have a right to use Mr. Bryan's name as representative of the views conflicting with our own.

Court Sustains Objection

Court—I do not think Mr. Bryan's personal views are involved in this case, so I think it is not proper in connection with this statement to mention him, and sustain the motion to eliminate his name.

Mr. Malone—Your honor, will you give me an exception?

Court—Yes.

Mr. Malone—Shall I continue?

Court—Yes.

(Mr. Malone resumes reading on the fourth page of his written statement.)

Insert Mr. Malone's statement,

page 8, between immediately following first paragraph thereon, after the word 'Force,' insert:)

These words, your honor, were written twenty years ago by a member of the prosecution in this case, whom I have described as the evangelical spokesman of the prosecution, and we of the defense appeal from his fundamentalist views of today to his philosophical views of yesterday, when he was a modernist to our point of view.

Gen. Stewart—Your honor, I want to interpose an objection again. He is treading upon the soil your honor directed him not to tread upon.

The Court—Yes, Col. Malone, I would like that you not make further reference to Col. Bryan. Let that be excluded.

Mr. Malone—Yes, your honor, I do not think Mr. Bryan is the least sensitive about it.

Bryan Speaks

Mr. Bryan—Not a bit.

The Court—It is not a question of whether it gives offense, it is a question of your legal rights.

Mr. Malone—I believe I am acting in my legal rights and if your honor excludes that, I will take an exception.

Mr. Bryan—The court can do as it pleases in carrying out its rules; but I ask no protection from the court, and when the proper time comes I shall be able to show the gentlemen that I stand today just where I did, but that this has nothing to do with the case at bar.

Mr. Malone—One of the reasons for the defense was—

(Loud applause in the court room.)

The Court—I will have to exclude you, gentlemen, the jury is present now, and I cannot tolerate any expression of feeling on the issues in this case at all in the presence of the jury.

Mr. Malone—Your honor, I have been granted an exception?

The Court—Proceed. Yes.

Mr. Malone—We maintain and we shall prove that Christianity is bound up with no scientific theory—

Gen. Stewart—Your honor, at this juncture, while Mr. Malone is on his feet, I think it is improper for him to argue that it is a religious question. Your honor has excluded in overruling the motion to quash this morning any such arguments as that, because your honor held that it did not violate that clause of the constitution that guaranteed religious liberty, and I think the statement is entirely out of order.

The Court—Have you finished your statement, Col. Malone?

Mr. Malone—I have not, sir. You know, your honor, we have been waiting for a long while to get busy here, so I must have a little bit of time.

The Court—You may proceed. It is difficult for me to cut out parts of his statement while he is reading. You may proceed and I will rule on these questions when they are presented later in proof.

Mr. Malone (Continued reading)—“We maintain, and we shall prove that Christianity is bound up with no scientific theory, that it has survived 2,000 years in the face of all of the discoveries of science, and—I would like a little quiet. I have got a loud voice, but I cannot talk during a lot of debating.”

(Order was restored.)

(Mr. Malone continues reading down through pages 8, 9, down to and including, “The development of a child from a single cell to its birth,” whereupon:

State Objects to Any Theory of Evolution Being Read

Mr. B. G. McKenzie—If the court please, we desire to enter an exception to Mr. Malone reading any theories in regard to evolution. In other words, may it please this honorable court, the question will present itself to your honor as to whether or not these scientific witnesses are competent. He is undertaking now, under his statement to influence the jury by reading a statement to them.

Mr. Malone—Just a moment, your honor will hear me on that statement.

Mr. McKenzie—Wait until I get through.

Mr. Malone—Yes, but I do not want his honor to rule until you hear me.

Mr. McKenzie—We do not want him to read that. Naturally if it is read, and your honor rules these scientific witnesses are incompetent for the defense, then Mr. Malone has no right to read a theory or theories on evolution in the presence of this jury, in order to prejudice them one way or the other, and present an argument in support of it.

The Court—I think it is proper for the court to withhold his rulings upon these questions until the evidence is offered. I will instruct the jury that this attorney, gentlemen, is merely making a statement that is not proof in the case. He is merely outlining what he hopes to prove, what his theory is. While it is your duty to hear the statement, but keep in mind that it is not evidence, and that you are not to consider this statement in determining the issues, but the purpose of the statement is to get before your minds in the beginning what they hope or propose to prove. Now, the court may later allow them to prove these theories, or the court may not allow them to be proven. So, it is difficult for me to chop his statement up, so I will just let you proceed.

Mr. Malone—Your honor, I entirely agree with the court, and I could not have stated it better myself. The defense is not pretending to give testimony, the defense is merely explaining its theory, and if when we offer this testimony, your honor does not want it, he can reject it.

The Court—Yes.

Mr. Malone (continuing reading)—“All these stages in development, etc.

(Following conclusion of Mr. Malone's statement.)

Gen. McKenzie—If your honor, please, we again renew our motion to strike the argument and instruct the jury that it is unprecedented and unknown to the forms of law, for a lawyer to attempt to discuss

his case before the jury before the issues are made up. Your honor asked both sides to present the issues not to the jury, but to your honor. Then, your honor submits the issues to the jury, the testimony is given by the witnesses, and your honor gives them the law.

Mr. Malone—That is the procedure.

Gen. McKenzie—This is wholly improper, argumentative. It is not a statement as to what the issues are. Your honor has already held that this act is constitutional, it being the law of the land, there is but one issue before this court and jury, and that is, did the defendant violate the statute. That statute interpretes itself, and says that whenever a man teaches that man descended from a lower order of animals as contradistinguished from the record of the creation of man as given by the word of God, that he is guilty. Does the proof show that he did that, that is the only issue, if it please the honorable court, before this jury. My friend is talking about a theory of evolution that it took him two years to write, that speech. (laughter.) That is not proper, if your honor please, if it is proper, it would be like a couple of gentlemen over in my country, where they were engaged and were trying a lawsuit before a justice of the peace, and they had a large number of witnesses. Finally one lawyer said, “let us have a conference,” and they went out to confer, and they came back in and said, “if your honor please, the witnesses in this case, some of them are not very well, others are awfully ignorant, and we have just agreed among ourselves to dispense with the evidence and argue the case.” That is what my good friend Malone wants to do. (Loud laughter and officer rapping for order.) And that is exactly what he has done, and hence I make that motion to instruct the jury that they must not consider Col. Malone's argument for the present, but to give him a chance after a while to shoot again.

Mr. Malone—Your honor if my brother is the spokesman momentarily of the defense, I am very happy that the judge has explained his theory. We are willing that the prosecution should state all of the theories they have got about this, and if they have got any more, we would like to hear them. We do not want to shut them off from stating anything in their minds. And so far as I am concerned, I believe your honor correctly instructed the jury that what I have stated to the court and the jury that is our theory of the case. We are prepared to back it up by the evidence and by the evidence to the jury. The jury, we believe, is an intelligent body of citizens that know the difference between testimony taken from the witnesses, and oratorical flights of the judge and myself.

Gen. McKenzie—If your honor please, we understand, and for the present there could not have been anything in the minds of the lawyers—we are not mediocre as lawyers—

Mr. Malone—That is not what I meant.

Gen. McKenzie—The only mistake the good Lord made is that he did not withhold the completion of the job until he could have got a conference with you.

Mr. Malone—I rather think you are right. (Laughter in court room.)

The Court—Any further statement from the state's side?

Gen. Stewart—None whatever.

(Jury was thereupon sworn by the court in due form.)

Examination of White

(Direct examination of Mr. Walter White continued by Attorney-General A. T. Stewart):

Gen. Stewart—Col. Darrow has very kindly consented not to be captious in objecting. I may use a few leading questions in order to get the evidence out.

Q—Mr. White, do you know what particular books, or what particular subjects, Mr. Scopes taught in the high school?

A—He was a science teacher; he taught chemistry, biology and other subjects in the science course.

Q—Did he teach this book, Hunter's biology?

A—Yes, sir.

Q—Will you file that book as Exhibit 1 to your testimony?

A—Yes, sir.

Q—What school did he teach in, Mr. White?

A—The Rhea County Central High school, here in Dayton.

Q—Is that school supported by state and county funds?

A—Yes, sir.

Q—You say it was in this county, Rhea county?

A—Yes, sir.

Q—How long have you been superintendent of public instruction?

A—A few days more than six and a half years.

Q—Has Mr. Scopes been teaching in the high school here for more than a year?

A—No, sir, he taught last year only.

Q—Do you know when this last term of school that he taught was out?

A—May 1, 1925.

Q—Do you remember when the prosecution in this case was first begun, Mr. White?

A—May 5th—May 5th, 1925.

Q—Some three or four days after adjournment of the school?

A—Four days after the school completed its term.

Q—Did you have any conversation with him concerning this teaching of Hunter's biology, after the passage of this law or at any time?

A—I talked with him about it on the afternoon of May 4th, 1925, the day before this—

Q—Trial?

A—This trial was started.

Q—He had already been arrested then?

A—No, sir, he had not been arrested.

Mr. Darrow—It was before the preliminary hearing?

Q—About the 5th of May, the warrant was sworn out. The 5th of May?

A—Yes, sir.

Q—When was the preliminary trial?

A—On Saturday, May 9.

Q—You talked with him then after school had adjourned?

A—Yes, sir.

Q—That was on the fourth of May?

A—Yes, sir.

Q—School adjourned on May 2?

A—The first of May, 1925.

Q—What was the conversation between you and the defendant Scopes as to the teaching of Hunter's biology?

Mr. Darrow—Was that after the defendant had had his trial?

Gen. Stewart—That is, of course, with reference to his admission that he committed the offense, prior to the trial.

Court—The admission that he taught it?

Gen. Stewart—Yes, sir. We think it is competent as an admission.

Mr. Darrow—It is.

Court—Proceed.

A—Mr. Scopes said that he taught this biology, and that he had reviewed the entire book.

Mr. Darrow—What is the last part of that statement.

Q—How is that?

A—That he had reviewed the entire book during certain days in April, somewhere, after having taught it to the boys. That he had taught this book, and had reviewed the entire subject, as it is customary for the teacher to do, and among other things he said he could not teach that book without teaching evolution. And I defended the evolution statute, and he said—

Mr. Darrow—We except to that.

Court—Not what you defended, but what you said.

A—The substance of what I said about this? I told Prof. Scopes that he had violated the Tennessee statutes.

Q—Were you at that time discussing this new law that was passed?

A—Yes, sir.

Q—That law was passed on the twenty-first of March, was it?

A—The twenty-first of March, of this year, and he said he couldn't teach biology without violating this law.

Q—And he said that in teaching

biology, he was teaching evolution and that would be in violation of the law.

A—Yes, sir.

Q—What was the date of this conversation?

A—He came up while Mr. Rappleyea and I were discussing this, and then all three of us discussed it for some little time after the crowd scattered. It grew out of a conversation between Mr. Rappleyea and myself in regard to the law.

Q—He said he had taught it here in Rhea county?

A—Yes, sir.

Q—And said he had reviewed it somewhere about the twenty-first of April?

A—Somewhere along there in April, 1925.

Q—You say it was customary to review the books there at the defendant's school?

A—Yes, sir.

Q—Did he say to you in reference to this book that he had taught that part that pertained to evolution?

A—Yes, sir.

Q—What did he say?

A—He admitted that he had taught that. He said that he couldn't teach the book without teaching that and he could not teach that without violating the statute.

Q—Did he say that it was unconstitutional?

A—He defended his course by saying that the statute was unconstitutional.

Q—He taught that in the high school here in Dayton?

A—Yes, sir.

Q—In Rhea county?

Q—Mr. White, I will ask you if this is the King James version of the Bible, and to file it as an exhibit to your testimony?

Mr. Hays—Do you mean to file that in evidence?

Gen. Stewart—We offer this in evidence, yes, sir, as explanatory of what the act relates to when it says "Bible."

What is the Bible?

Mr. Hays—What is the Bible? Different sects of Christians disagree in their answers to this question. They

agree that the Bible is the inspired word of God, that the Creator of the universe is its Author, and that it is a book of divine instruction as to the creation of man, his relation to, dependence and accountability to, God. The historical and literary features of the Bible are of the greatest value, but its distinctive feature is its claim to teach a system of religion revealed by direct inspiration from God. It bases its demand for the reverence and allegiance of mankind upon the direct authority of God Himself. The various Protestant sects of Christians use the King James version, published in London in 1611, while Catholics use the Douay version, of which the Old Testament was published by the English college at Douay, in France, in 1609, and the New Testament by the English college at Rheims in 1582, and these two versions are often called, respectively, the Protestant Bible and the Catholic Bible. The original manuscripts containing the inspired word of God, written in Hebrew, in Aramaic and in Greek, have all been lost for many hundreds of years, and each of the Bibles mentioned is a translation, not of those manuscripts, but of translations thereof into the Greek and Latin. The earliest copy of the Old Testament in Hebrew now in existence was made as late as the eleventh century, though there are partial copies made in the ninth and ten centuries. The oldest known Greek manuscripts of the Bible, except a few fragments, belong to the fourth and fifth centuries. Each party claims for its own version the most accurate presentation of the inspired word as delivered to mankind and contained in the original scriptures." Which version does the Tennessee legislature call for? Does it intend to distinguish between the different religious sects in passing this law? Does it mean the Protestant, the St. James version, rather than the Catholic or Douay Bible? They could be required to call some witness here to testify what the Bible is. The court says further: "The versions differ in many particu-

lars. There are differences of translation, many of which seem unimportant, though Catholics claim that there are cases of wilful perversion of the Scriptures in King James' translation, from which erroneous doctrines and inferences have been drawn. The Lord's prayer is differently translated in the two versions. Of the different translations of the Lord's prayer in later versions of the Bible, the following language of a Protestant has been quoted with approval by a Catholic author: 'Even the Lord's prayer has been tampered with and a discord thrown into the daily devotions. The inspired text is changed and unsettled, the faith of the people in God's Holy Word is undetermined, and aid and comfort given the enemy of all religion.' The Douay version also contains six whole books and portions of other books which are not included in King James' version. The Catholic church regards these as a part of the inspired Scriptures, entitled to the same faith and reverence as the other portions of the Bible, while the Protestant churches do not recognize them as a part of the Scriptures." "There are many sects of Christians and their differences grow out of their different constructions of various parts of the Scriptures—the different conclusions drawn as to the effect of the same words."

Should Designate Violation

In other words, your honor, they should be required to designate the violation of the law. The court may take judicial notice of the Bible, but the court does not take judicial notice of a fact that is at issue between the parties. It can only take judicial notice of matters that are of common knowledge. That is a matter to be proven.

Now, your honor, in the Encyclopedia of Evidence I find this: "It has been held that when a fact of history is in issue before a jury, it must be proved." And, again, "Generally speaking, however, courts are bound to take notice only of the public laws and the facts es-

tablished thereby, and the official capacity and seals of some officers."

This is a criminal statute and should be strictly construed. There is nothing in the statute that shows they should be controlled in their teaching by the St. James version. The statute might have said that, but it did not. And yet, with an unaccountable confidence they have presented a book to your honor, and attempt to put that book in evidence with the confidence of a man not learned in religion, because any man learned in religion knows it is no more the version of the Bible than a dozen or half a dozen other books. Therefore, your honor, we object to the Bible going in evidence, or that book going in evidence, but insist that the prosecution prove what the Bible is before they put it in evidence.

Court—Mr. Hays, would you raise the same objection if they attempted to file any other Bible?

Mr. Hays—Not if they put it in evidence, and someone testifies that the King James version is the Bible; and then the jury could believe or disbelieve the statement.

Court—Let your objection be overruled. Let it be introduced as the Bible.

Mr. Hays—We except to that.

Mr. Darrow—What parts of the Bible are you going to introduce, anyway? Is it the whole book, and each of us to read from it such passages as we want? I am asking for this purpose—I don't know what your practice is here, but as a rule in our courts you have to have a certified copy or you cover it by stipulation.

Gen. Stewart—Just make such excerpts as you care to take out of it. We file the whole book, and the judge can order it attached to the supreme court record in the original form.

Court—I can order the book itself sent up.

Mr. Darrow—Yes, and save that much work. We just want to know what particular edition it is.

Court—Well, you may inspect it and cross-examine the witness about it.

Mr. Darrow—No—Just a minute. Not just any Bible.

Gen. Stewart—Of course we were going into the story of the creation.

Mr. Darrow—We want it so we can get a copy of the same book; that is all.

Gen. Stewart—This is the—

Mr. Darrow—Scofield.

Gen. Stewart—Holman's Pronouncing Edition of the Holy Bible, containing the Old and New Testaments. Translating—Text conformable to that of 1611, known as the authorized or King James version.

Bible as an Exhibit

Mr. Hays—Now, if the purpose is to offer this book in evidence, we take exception to it. The act provides that one shall not teach a certain theory, different from what is taught in the Bible, and now he undertakes to provide that he shall not teach a theory contrary to the St. James' version of the Bible. If the court should take judicial notice of this exhibit as the Bible, you must likewise take judicial notice that there are various Bibles. And the King James' version is not necessarily the Bible and when they introduce one book in evidence, we are saying there are several different books called the Bible. It is not relevant unless those books are the same. You know there is a Hebrew Bible, of some thirty-nine books; and there is a Protestant Bible, and a Catholic Bible—the Protestant of sixty-six and the Catholic of eighty books; and you have the King James' version, and a revised version and there are 30,000 differences between the King James' version and it. You have the King James' version and it. You have the King James version here; there are thousands of Bibles. Who is to say that the King James version is the Bible? The prosecution will have to prove what Bible it is, and they will have to state the theory as taught in the Bible, and I presume the prosecution will be able to point

out which theory of the creation as taught in the Bible they relied upon in prosecuting Mr. Scopes. We will insist upon an answer to this question. In *People vs. Ring*, an Illinois case, the court says:

Mr. Malone—What publishers?

Gen. Stewart—A. J. Holman & Co., Philadelphia, publishers.

Mr. Darrow—I didn't know the edition exactly. I am sure we can get that on sale here, can't we.

Gen. Stewart—How is that?

Mr. Darrow—Do you know whether we can find that on sale here?

Gen. Stewart—Yes, sir, you can find that same edition on sale, I think, at Robinson's drug store.

The Court—Of course, you can certify it. It is a Bible in common use. If we can't find it, we will have to get an extra one in the case, when we—I take it that another copy of this same Bible can be secured without difficulty, surely, at Mr. Robinson's.

Mr. Darrow—In this small town, I don't know.

Court—If you can't get that here, you can get it in some other town.

Teaching by Scopes

Direct examination of Mr. White continues by Gen. Stewart:

Q—On Pages 194 and 195 of this book, (biology) where the doctrine of evolution and the evolutionary tree is shown by a drawing. Did Mr. Scopes say that he reviewed that about the 20th of April, with the rest of the book?

A—It is my understanding that he reviewed the important parts of the book and that he reviewed that part, that refers to Charles Darwin's theory of evolution.

Q—And the same thing applies on Pages 252 and 253 and Pages 254 and 255?

A—Yes, sir.

Q—Which would refer to evolution?

Mr. Darrow—I turned down the leaves of that.

Gen. Stewart—They are marked right now. I want to call attention to the particular parts of that book.

Mr. Darrow—They are marked here.

Gen. Stewart—That is the particular part of the book that bears up on the theory of evolution.

Mr. Darrow—Then, we make the same reservation as we did to the Bible.

Gen. Stewart—Yes, you can certify the book.

Mr. Darrow—Hadn't you better mark this?

The Court—The stenographer will mark the books, colonel. He will mark them as exhibits. Better mark them as we go along.

Mr. Darrow—Your honor, one of the court reporters has called my attention to the fact they were terribly crowded coming in the courtroom over there.

The Court—Well, Mr. Sheriff, do the best you can; you are right there.

Mr. Darrow—I don't like to disturb anybody, but at the same time—

A Voice—One of them has quit.

The Court—Can you get along all right?

Mr. Darrow—What I was getting at—What I was getting at, it is pretty hard to get out for the reporter.

The Court—If they are crowded there, let them speak up.

Mr. Darrow—We are interested in them, anyhow. I have not asked him to read the first two chapters of Genesis of the Bible, nor any of the chapters of that book.

Gen. Stewart—We might ask you to read it before argument.

Mr. Darrow—We can do that on any argument. But, I don't care to burden the record with all of that; of course, the first two chapters of the Bible—

Gen. Stewart—Better mark it?

Mr. Darrow—Your honor, may we have it indicated?

Gen. Stewart—I mean as an exhibit.

Mr. Darrow—Oh, yes.

Gen. Stewart—This is Exhibit 1, will you mark it?

Bible as Exhibit

Thereupon said book was marked Exhibit 1 and the Bible was marked Exhibit 2.

Gen. Stewart—You may cross-

examine, if you care to.

Cross-examination by Mr. Darrow:

Q—Mr. Witness, will you please speak loud?

A—Yes, sir.

Q—For the reporters. This book of Hunter's, what is the name of that book?

Gen. Stewart—Biology. I thought you were asking me about the book.

Mr. Darrow—I am asking the witnesses.

A—George William Hunter's Civic Biology.

Q—Where did Mr. Scopes get it?

A—In the course of study, Mr. Robinson, the book man for this section handled the books.

Q—That was the official book adopted by the board, was it not?

A—In Tennessee, the board of education does not adopt books.

Q—Who does?

A—The Tennessee textbook commission adopts the book.

Q—Official book adopted by the Tennessee textbook commission?

A—That was the official book adopted by the Tennessee textbook commission in 1919, but the contract expired August 31, 1924, a five-year contract.

Q—Had any other book been adopted in the meantime?

A—No, sir.

Q—And these books were to be purchased at certain places, were they?

A—Certain depositories in Tennessee.

Q—The Robinson store was one of those depositories, was it?

A—Yes, sir.

Q—So, he taught this, which was the official book at that time?

A—Yes, sir.

Q—And did you ever have any talk with him before the time it was charged he taught it?

A—I did not.

Q—You are charging he taught it on the fourth day of May?

A—Yes, sir.

Gen. Stewart—How is that?

Mr. Darrow: Q—You never said anything to him about it or to any other teacher about not teaching it?

A—No, sir; I did not for these reasons—

Q—I don't care anything about the reason, but you may give it.

A—Under the Tennessee law, I have not—

Q—Nobody ever said anything to you about it, did they?

A—No, sir.

Q—You never complained of Mr. Scopes as a teacher?

Scopes' Work Satisfactory

A—I had no complaint against his work in general.

Q—That is what I am speaking of.

A—No complaint against his work in general.

Q—That's all, do you know how long this book has been used?

A—It has been used since 1909, the school year of 1909.

Mr. Darrow—That is all.

Gen. Stewart—That is all.

The Witness—All right.

Gen. Stewart—Step down.

(Witness excused.)

Howard Morgan's Testimony

Howard Morgan, a witness in behalf of the prosecution, having been first duly sworn, testified as follows:

Direct examination by General Stewart:

Q—Your name is Howard Morgan?

A—Yes, sir.

Q—You are Mr. Luke Morgan's son?

A—Yes, sir.

Mr. Darrow—Will you speak a little louder? Some of these reporters say they cannot hear.

Gen. Stewart—You both will have to speak a little louder.

Q—You are Mr. Luke Morgan's son?

A—Yes, sir.

Q—Your father is in the bank here, Dayton Bank and Trust company?

A—Yes, sir.

Q—How old are you?

A—14 years.

Q—Did you attend school here at Dayton last year?

A—Yes, sir.

Q—What school?

A—High School.

Q—Central High school.

A—Yes, sir.

Q—Did you study anything under Prof. Scopes?

A—Yes, sir.

Q—Did you study this book, General Science?

A—Yes, sir.

Q—Do you want to see it?

Mr. Darrow—Will you mark the number?

The Court—Let the stenographer mark it.

Mr. Darrow—Is that the one you just showed me?

Gen. Stewart—No, it is another book, General Science, by Lewis Elhuff.

The Court—Let it be marked first.

Gen. Stewart—Were you studying that book in April of this year, Howard?

A—Yes, sir.

Gen. Stewart—Mark this 3.

Whereupon said book was marked exhibit 3.

Q—Did Prof. Scopes teach it to you?

A—Yes, sir.

Q—Who did you study it under?

A—Prof. Scopes.

Q—When did you complete the book?

A—Latter part of April.

Q—When was school out?

A—First or second of May.

Q—You studied it then up to a week or so before school was out?

A—Yes, sir.

Q—Now, you say you were studying this book in April; how did Prof. Scopes teach that book to you?

I mean by that did he ask you questions and you answered them or did he give you lectures, or both? Just explain to the jury here now, these gentlemen here in front of you, how he taught the books to you.

A—Well, sometimes he would ask us questions and then he would lecture to us on different subjects in the book.

Q—Sometimes he asked you questions and sometimes lectured to you on different subjects in the book?

A—Yes, sir.

Q—Did he ever undertake to teach you anything about evolution?

A—Yes, sir.

Q—Did he undertake to teach you anything about any theory—

Mr. Darrow—I think, your honor, I will object to that. Ask him what it is.

Gen. Stewart—Q—What did he teach you in reference to?

The Court—What is the difference?

Mr. Darrow—Why—

The Court—All right.

Gen. Stewart—Q—About any evolutionary theory as to where man came from.

(Laughter in courtroom.)

Gen. Stewart—Just state in your own words, Howard, what he taught you and when it was.

A—It was along about the 2d of April.

Q—Of this year?

As Boy Heard Story

A—Yes, sir; of this year. He said that the earth was once a hot molten mass, too hot for plant or animal life to exist upon it; in the sea the earth cooled off; there was a little germ of one cell organism formed, and this organism kept evolving until it got to be a pretty good-sized animal, and then came on to be a land animal, and it kept on evolving, and from this was man.

Q—Let me repeat that; perhaps a little stronger than you. If I don't get it right, you correct me.

Mr. Hayes—Go to the head of the class.

Gen. Stewart—He said that in the beginning, the earth was a crystalline mass, too hot for any life to exist upon it; that it cooled off and finally the soil formed and the sea formed, plant life was on the earth, and that in the sea animal life began with a little one-celled animal.

A—Yes, sir.

Q—Which evolved and evolved and finally got bigger and became a land animal?

A—Yes, sir.

Q—And the culmination of which was man?

A—Yes, sir.

Q—Is that right?

A—Yes, sir.

Q—Did he say—

Mr. Darrow—Would you mind asking what he said?

Gen. Stewart—Yes, sir; I will do that.

Q—Now, when was it he taught you this that we have just repeated?

A—Well, it was in April.

Q—During class?

A—Yes, sir.

Q—What were you studying, what subject, when he said that?

A—We were studying General Science book.

Q—This General Science book?

A—Yes, sir.

Q—That is the theory that he taught you about a man being a little germ and sprouting in the sea, and so forth, and finally culminating and coming out on dry land; is that in this book? Could you find it in this book?

A—No, sir; I couldn't find it.

Q—Did you look for it?

A—No, sir.

Q—If it is in there, you could not find it?

A—No, sir.

Gen. Stewart—I hand it to you, gentlemen, to find it. (Handing book to counsel.)

Gen. Stewart—I ask you further, Howard, how did he classify man with reference to other animals; what did he say about them?

A—Well, the book and he both classified man along with cats and dogs, cows, horses, monkeys, lions, horses and all that.

Q—What did he say they were?

A—Mammals.

Q—Classified them along with dogs, cats, horses, monkeys and cows?

A—Yes, sir.

Q—You say this was along about the 2d or 3d of April of this year?

A—Yes, sir.

Q—In high school of Rhea county.

A—Yes, sir.

Q—At Dayton?

A—Yes, sir.

Gen. Stewart—Cross-examine.

Cross-examination by Mr. Darrow:

Q—Let's see, your name is what?

A—Howard Morgan.

Q—Now, Howard, what do you mean by classify?

A—Well, it means classify these animals we mentioned, that men were just the same as them, in other words—

Q—What didn't say a cat was the same as a man?

A—No, sir; he said man had a reasoning power; that these animals did not.

Q—There is some doubt about that, but that is what he said, is it?

(Laughter in the courtroom.)

The Court—Order.

Gen. Stewart—With some men.

Mr. Darrow—A great many.

Q—Now, Howard, he said they were all mammals, didn't he?

A—Yes, sir.

Q—Did he tell you what a mammal was, or don't you remember?

A—Well, he just said these animals were mammals and man was a mammal.

Q—No; but did he tell you what distinguished mammals from other animals?

A—I don't remember.

Q—If he did, you have forgotten it? Didn't he say that mammals were those beings which suckled their young?

A—I don't remember about that.

Q—You don't remember?

A—No.

Q—Do you remember what he said that made any animal a mammal, what it was or don't you remember?

A—I don't remember.

Q—But he said that all of them were mammals?

A—All what?

Q—Dogs and horses, monkeys, cows, man, whales, I cannot state all of them, but he said all of those were mammals?

Whale Stumps Him

A—Yes, sir; but I don't know about the whales; he said all these other ones.

(Laughter in the courtroom.)

The Court—Order.

Mr. Darrow:

Q—You might never have seen a whale suckling its young?

A—I did not.

Q—But the others were all mammals?

A—Yes, sir.

Q—You don't know whether he told you why they were mammals or not, did you?

A—No, sir.

Q—And you don't know whether they were mammals or not, only what he told you?

A—I just know what he said; he said they were mammals.

Q—And you didn't know that the definition of a mammal was a species that suckled its young, did you?

A—No, sir.

Q—Well, did he tell you anything else that was wicked?

A—No, not that I remember of.

Q—Will you please step down here; I cannot come down there or I would.

(Witness steps down to counsel's table.)

Q—Is this one of the books he taught you from?

(Handing book to witness.)

A—Yes, sir.

Q—Now, read that and see whether you remember that after you read it.

A—Examples of mammals, lions, monkey, lion, cat, dog, horse, cow, monkey and man.

Q—Isn't there some more that you remember when you look it over?

A—I don't remember.

Q—And I will read over this, and then see whether you can remember. Heading is Mammals. Mammals compose a group of animals which are the most highly developed of all; the egg produced by the female is microscopic in size and fertilized within the body of the mother.

Q—Do you remember that? Anyway, you studied it, didn't you?

A—Yes, sir.

Q—And you are like the rest of us, you don't remember all you study, I suppose. Well, we are all that way.

(Reading.) And there grows into the young animal all the parts of an adult.

That is the grown being, adult, I suppose. I don't suppose I dare read this.

(Reading.) After birth the young are nourished for a time by milk secreted by the mammary glands of the mother.

Q—Do you remember this is in the book?

A—It is in the book, but I don't remember him saying anything about it.

Q—Well, you read this anyhow?

A—Yes, sir.

Q—Examples of mammals are the elephant, lion, mink, cat, dog, horse, cow, monkey and man.

A—Yes, sir.

Q—Now, he said the earth was once a molten mass of liquid, didn't he?

A—Yes, sir.

Q—By molten, you understand melted?

A—Yes, sir.

Q—Running molten mass of liquid, and that it slowly cooled until a crust was formed on it?

A—Yes, sir.

Q—After that, after it got cooled enough, and the soil came, that plants grew; is that right?

A—Yes, sir; yes, sir.

Q—And that the first life was in the sea.

Q—And that it developed into life on the land?

A—Yes, sir.

Q—And finally into the highest organism which is known as man?

A—Yes, sir.

Q—Now, that is about what he taught you?

Q—It has not hurt you any, has it?

A—No, sir.

Mr. Darrow—That's all.

(Laughter in courtroom.)

Mr. Hays—Q—Is there anything in this book that says man is descended from a monkey, you have read the book?

A—Yes, sir.

Q—That man descended from monkey?

A—No, sir; not that I know of.

Gen. Stewart—It is not in the book about man coming from the same cell that the monkey came from, either, Col. Darrow.

A—I could not find it, Mr. Darrow.

Mr. Darrow—Well, it doesn't.

Mr. Malone—Not even by what he said it descended.

Gen. Stewart—Come down. (Witness excused.)

Another Pupil's Story

Harry Shelton, a witness in behalf of the prosecution, having been first duly sworn, testified as follows:

Direct examination—By Gen. Stewart.

Q—Your name is Harry Shelton?

A—Yes, sir.

Q—Did you go to the high school up here?

A—Yes, sir.

Q—Study under Prof. Scopes?

A—Yes, sir.

Q—When was school out, Harry?

A—May first.

Q—This year?

Q—What class were you in?

A—Biology.

Q—Among others, did you study this Civic Biology?

A—Yes, sir.

Q—Prof. Scopes teach it to you?

A—Yes, sir.

Q—When did you have a review of it?

A—Along in April some time; I don't remember what day.

Q—Around the middle part of April. How long before school was out?

A—About three weeks, I guess.

Q—About three weeks, that would be about the middle of April, then?

A—Yes, sir.

Q—Did you study—did Prof. Scopes teach you anything about evolution during that time?

A—He taught that all forms of life begin with the cell.

Q—Begin with the cell?

A—Yes, sir.

Q—Did he teach you during that time, during that review, did he teach you these pages, 194 and 195? Did you review this with the other?

A—Yes, sir; reviewed the whole book.

Q—Reviewed the whole book; that was along about the middle of April, and he taught you this particular book at that time?

Gen. Stewart—That is all I want to ask you.

Cross-examination—By Mr. Darrow.

Q—How old are you?

A—Seventeen.

Q—Prof. Scopes said that all forms of life came from a single cell, didn't he?

A—Yes, sir.

Q—Did anybody ever tell you before?

A—No, sir.

Q—That is all you remember that he told you about biology, wasn't it?

A—Yes, sir.

Q—Are you a church member?

A—Sir?

Q—Are you a church member?

A—Yes, sir.

Q—Do you still belong?

A—Yes, sir.

Q—You didn't leave church when he told you all forms of life began with a single cell?

A—No, sir.

Mr. Darrow—That is all.

The Court—No talking in the courtroom. Who do you want next?

Mr. Darrow—That is all.

Gen. Stewart—That is all.

(Witness excused.)

F. E. Robinson, a witness in behalf of the prosecution, having been first duly sworn, testified as follows:

Direct examination—By Mr. Stewart.

Q—You are Robinson, known as Robinson's drug store?

A—Yes, sir.

Q—Where all this thing started?

A—Yes, sir.

Q—Did you have any conversation with Scopes along about the time that this trial started with reference to his teaching the theory of evolution?

A—Yes, sir.

Q—Just state what that was, if you remember it.

A—Well—

Mr. Darrow—Just a minute; what is the question?

(Question read.)

Gen. Stewart—About the time this trial started.

Mr. Darrow—Get the date of it.

Gen. Stewart—Q—That was along about May 4 or 5?

Admitted Violating Law

A—I don't remember what date; it was the next week after school was out. Scopes said that any teacher in the state who was teaching Hunter's Biology was violating the law; that science teachers could not teach Hunter's Biology without violating the law.

Q—That Hunter's Biology—

A—That is the adopted book—

Mr. Darrow—We will admit it was accepted.

Gen. Stewart—And you except only to Walter White's testimony?

A—That was a state adopted book, and Dr. Rappleyea said you have been teaching this book? And he said yes. He said if you got the book out of stock, and ask if he had taught this in regard to evolution, since this law was passed. He said: yes, I reviewed the book. And he said: Well, you have been violating the law. He said so has every other man violated the law. He said when it was passed Prof. Ferguson discussed the law that a man could not teach science from any of the books published now without violating the law.

Gen. Stewart—On evolution?

Mr. Darrow—He said biology.

The Witness—Biology.

Gen. Stewart—I didn't mean to prompt him, but he was speaking about that.

Mr. Darrow—Oh, I know you did not.

Gen. Stewart—Q—You say Dr. Rappleyea got the book out. Did he open it and examine it?

A—Yes, sir.

Q—Where the evolutionary tree is?

A—Yes, sir.

Q—Did you say he taught this along with the rest of this?

A—He said he had reviewed that the last two or three weeks of school.

Q—Page 194 of the biology?

Mr. Darrow—Will you read that?

Gen. Stewart—On page 194, where the evolutionary tree is. He said he discussed this with Prof. Ferguson?

A—Yes, sir.

Q—And that was about the time it was passed that he discussed it?

A—When it was published in the papers; yes, sir. When it was being passed.

Q—That was before he reviewed the book?

A—Yes, sir.

Q—Who is Prof. Ferguson?

A—He is principal of the Rhea County High school, Central High school, where Scopes taught.

Q—In this high school?

A—Yes, sir; under Prof. Ferguson.

Q—Under Prof. Ferguson?

A—Yes, sir.

Q—And Scopes said he taught this book in Rhea county?

A—Yes, sir.

Q—And that was along—well, about the middle of April, you say then?

A—Well, he said that he had reviewed it the last two or three weeks.

Q—And the school was out the first of May?

A—Yes, sir; the first of May.

Q—And you are the chairman of the School Board of this county?

A—Yes, sir.

Q—And Scopes told you that he knew of the law?

A—Yes, sir.

Q—And you discussed it with him?

A—Yes, sir.

Mr. Stewart—I think that is all. You may cross-examine.

Cross-examination by Mr. Darrow:

The Court—If counsel for the state will stop; they are talking too loud.

Gen. Stewart—Beg pardon, I didn't get that?

The Court—You are talking loud; the lawyers were.

Gen. Stewart—Just conferring with each other.

Mr. Darrow—I will be very careful while he is looking through it. I will wait.

Q—He showed you a book which has been marked "a civic biology," or entitled "A Civic Biology," which I hold in my hand?

A—Yes, sir.

Q—You were selling them, were you not?

A—Yes, sir.

Q—And you were a member of the school board?

A—Yes, sir.

(Laughter in the courtroom.)

Mr. Darrow—I think someone ought to advise you that you are not bound to answer these questions.

Gen. Stewart—The law says teach, not sell.

(Laughter in the courtroom.)

Mr. Darrow—And this part on page 194 was read, was it?

A—Yes, sir.

Q—That was opened and read.

A—Yes, sir. That was opened and read.

Q—And any part of 195?

A—Yes, sir.

Q—And then I think another page, another I think some place. I don't remember.

Q—Well, now read it. It has not been read?

Doctrine of Evolution

"The Doctrine of Evolution—We have now learned that animal forms may be arranged so as to begin with very simple one-celled forms and culminate with a group which contains man himself. This arrangement is called the evolutionary series. Evolution means change, and these groups are believed by scientists to represent stages in complexity of development of life on the earth. Geology teaches that millions of years ago, life upon the earth was very simple, and that gradually more and more complex forms of life appeared, as the rocks formed latest in time show the most highly developed forms of animal life. The great English scientist, Charles Darwin, from this and other evidence, explained the theory of evolution. This is the belief that simple forms of life on earth slowly and gradually gave rise to those more complex and that thus ultimately the most complex forms came into existence."

Q—Did you examine this evolutionary tree?

A—Yes, sir.

Q—You don't know whether man is in there, do you?

A—Yes, sir; man is in here.

Q—I am afraid they left him out. You put him in with the mammals, but nothing in there—the word man is not written in there, is it?

A—I don't believe it is; the word man is not, but it says in the books

Q—I am going to read the rest on the other page. This table down here:

"The number of Animal Species. Over 500,000 species of animals are known to exist today."

That wasn't read was it?

A—I think the whole book was read.

Q—Not the whole book?

A—I don't know. We read most of the book.

Q—Do you know what was read?

A—That was read, that page was read.

Q—Take the table?

A—Well, I don't know about that.

Mr. Darrow—Do you claim anything on the table? If you don't I will not incur the record.

(Thereupon counsel conferred out of the hearing of the jury and the shorthand reporters.)

Mr. Darrow—That is followed by table. "Over 500,000 species of animals are known to exist today, as the following table shows:

Protozoa	8,000
Sponges	2,500
Coelenterates	4,500

I would rather you read this, I don't know whether you can read it?

Gen. Stewart—I don't care whether you read it at all, or not.

Mr. Darrow:

Echinoderme	4,000
Flatworms	5,000
Roundworms	1,500
Annelids	4,000
Insects	360,000
Myriapods	2,000
Arachnids	16,000
Crustaceans	16,000
Mollusks	61,000
Fishes	13,000
Amphibians	1,400
Reptiles	3,500
Birds	13,000
Mammals	3,500

Total 518,900

Q—This part of that he also read?

A—Yes, sir.

Q—And on page 195. "Man's Place in Nature"—Although we know that man is separated mentally by a wide gap from all other animals, in our study of physiology we must ask where we are to place man. If we attempt to classify men, we see at once he must be placed with the vertebrate animals because of his possession of a vertebral column. Vertebral column, you understand is, backbone?

A—Yes, sir.

Mr. Darrow (Reading)—"Evidently, too, he is a mammal, because the young are nourished by milk secreted by the mother and because his body has at least a partial covering of hair. Anatomically we find that we must place man with the apelike mammals, because of these numerous points of structural likeness. The group of mammals which includes the monkeys, apes, and man we call the primates. I see another line marked here. I am ashamed to read that, too.

"Mammals are considered the highest vertebrate animals, not only because of their complicated structure, but because their instincts are so well developed. Monkeys certainly seem to have many of the mental attributes of man."

Gen. Stewart—Just go right on.

Mr. Darrow—I am going to. You have underscored part of it. I want to read it too.

Mind of the Monkey

"Prof. Thorndike, of Columbia university, sums up their habits of learning as follows:

"In their method of learning, although monkeys do not reach the human stage of a right life of ideas, yet they carry the animal method of learning, by the selection of impulses and association of them with different sense-impressions to a point beyond that reached by any other of the lower animals. In this, too they resemble man; for he differs from the lower animals not only in the possession of a new sort of intelligence but also in the tremendous extension of that sort

which he has in common with them. A fish learns slowly a few simple habits. Man learns quickly an infinitude of habits that may be highly complex. Dogs and cats learn more than the fish, while the monkeys learn more than they.

In the number of things he learns, the complex habits he can form, the variety of lines along which he can learn them and in their permanence when one formed, the monkey justifies his inclusion with man in a separate mental genus."

Q—That is what was read?

A—Yes, sir.

Q—Anything else in that book you can say was read?

A—No.

Q—How many of those did you have for sale?

A—Oh, I have been selling that book for six or seven years.

Q—Have you noticed any mental or moral deterioration growing out of the thing?

Gen. Stewart—How is that?

Mr. Darrow; Q—Have you noticed any mental or moral deterioration growing out of that thing?

Gen. Stewart—Exception.

The Court—I sustain the exception.

Mr. Darrow—Exception.

Q—How do you get them, Mr. Robinson?

A—From the depository at Chattanooga for this county.

Q—What is the depository?

A—The place that the state designates to handle the state books.

Q—You got them from the state authorities and are the only one who handles them in Dayton?

A—In Dayton, yes, yes.

Q—Were they adopted, as you understand it?

A—By the state board of education.

Q—State board of education?

A—Yes, sir.

Q—And state whether or not they got it from you?

A—Yes, sir.

Gen. Stewart—Perhaps as Mr. Darrow has seen fit to read from that part of the biology in question, your honor, I want at this point to read the first two chapters

of Genesis in order to get it into the record.

The Court—You may proceed.

Mr. Darrow—No objection to that.

Gen. Stewart—(Reading from the first two chapters in Genesis.)

Gen. Stewart—Are you through with the cross-examination? Come down.

(Witness excused.)

Mr. Darrow—Gentlemen, I don't know how many more you want to put on, but according to my suggestion—you have some other boys, who will testify the same, just give the names?

Gen. Stewart—One little boy in the science class with the little Morgan boy, whose testimony would be the same.

Mr. Darrow—Give us the name.

Gen. Stewart—Morris Stout. Charles Hagley will testify substantially the same as the Shelton boy.

This book was reviewed about the 20th of April.

Mr. Darrow—Very well.

Gen. Stewart—The state rests.

Thereupon the prosecution rested in chief.

Mr. Darrow—Yes, we would like to continue, two or three minutes would be enough.

The Court—Go ahead.

See that these reporters get in and out; they cannot get in and out. Let the witnesses for the defense come forward.

Thereupon witnesses for the defense came forward.

The Court—Let the witnesses be sworn.

Mr. Hays—Your honor, before the witnesses are sworn, it is necessary for us as a matter of procedure to move to dismiss the prosecution's case.

The Court—Let it be overruled.

Mr. Hays—Exception.

Thereupon the witnesses were duly sworn.

The Court—These executive officers have charge of the courtroom, who shall go in and out, keeping the

opening of the aisles, who shall occupy a chair or not. It is foolish to expect the judge of the court to provide chairs for everybody, to leave the bench and have somebody move back, appeal to the sheriff and executive officers, because I have as many responsibilities as I can get along with, without having to attend to these details.

* * *

Testimony of Dr. Metcalf, with the jury excluded, was taken as court adjourned.

Metcalf's Testimony Wednesday Afternoon

Maynard M. Metcalf, the first witness for the defense, being sworn and examined, testified:

Direct Examination:

Questions by Clarence Darrow, Esq.:

Q—Give us your name?

A—Maynard M. Metcalf.

Q—Where do you live?

A—My legal residence is Baltimore. I am living—I have been living the last year in Washington. I do not know how to answer your question.

Mr. Darrow—Living here in Dayton now?

Gen. Stewart—Just a moment, I do not mean to interrupt, but I want to impart a little information to you as a matter of procedure. Of course, you know we are going to except to this scientific testimony. But, we have a rule in this state that precludes the defendant from taking the stand if he does not take the stand first.

Mr. Darrow—Well, you have already caught me on it.

The Court—That is a technicality, we have not gone into the merits. I will allow you to withdraw the witness.

Mr. Darrow—Your honor, every single word that was said against this defendant, everything was true.

The Court—So he does not care to go on the stand?

Mr. Darrow—No, what is the use?

The Court—Well, that is all.

Q—(Mr. Darrow) What is your profession or business?

A—I am a zoologist.

Q—And just what is included in that?

A—It is the study of animals.

Q—How long have you been a zoologist?

A—Why, I began special study, with special interests, when I was about 14 years old. I do not know when I became a zoologist. I am now 58, I think—no 57, I think that is right.

Q—You have not learned it all yet, have you?

A—I am afraid not.

Q—Where do you say you began studying?

A—Why, when I was a youngster starting in at Oberlin college, at the age of 14.

Q—That is Oberlin, O.?

A—Yes, sir.

Q—What is the name of that college—Oberlin college?

A—Oberlin college.

Q—How long did you study at Oberlin?

A—Well, I was there—you mean after I was 14, after I began the study of zoology?

Q—Yes?

A—Four years.

Q—Then, what did you do?

A—I went to the Johns Hopkins university for graduate study in zoology.

Q—How long were you there?

A—Four years, the usual time.

Q—Well, that would make you out there at 22 years of age, then what did you do?

A—Well then, I accepted a position as associate professor of biology at the Woman's college, of Baltimore, it was then called, it is now Goucher college.

Q—How long were you there?

A—I was there until the spring of 1906, if you will excuse me from the mental arithmetic, I will state it that way.

Q—All right, that is just as good. And you are teaching zoology there?

A—What is that?

Q—You were teaching zoology there?

A—Yes, sir, I was teaching zoology with a little botany associated with it.

Q—And from there where did you go?

A—I went abroad.

Q—Where?

Worked in Germany

A—Working at the Naples zoological station, spending a year and a half at the zoological institution and then spending about a half year at the Institute Fur in connection with the Virschow hospital in Berlin.

Q—And from that time?

A—I had, already, before I went abroad, accepted a professorship in Oberlin, and I returned then to my Alma Mater in 1908, after this work in Berlin.

Q—What was the professorship you accepted?

A—Zoology, and the head of the department of zoology.

Q—And you have been there up to the present time?

A—No, I resigned in 1914 to give all of my time to research, in order to be free from teaching duties, I resigned.

Q—Where did you work after that?

A—I worked in my own laboratory, which I called the Orchard laboratory, used that name in publication, which was my private laboratory, which I and a few advanced students in Oberlin college were working in. They were working with me, but by sub-rosa arrangement.

Gen. Stewart—What kind of an arrangement?

A—Sub-rosa.

Q—Is that a zoological term?

A—No, straight Latin.

Mr. Darrow—You are thinking of Rosa.

Mr. Stewart—I though maybe it was a cigar of some kind.

Mr. Darrow—It does sound like one.

Q—(Mr. Darrow) And then what did you do next?

A—Well, I continued that work until—it is hard work for me to remember just what year it was, I

think it was three years ago, I went to the Johns Hopkins for a year's work in connection with their laboratory, as the guests of the university, then I returned again to my home, and then last year I have been residing in Washington.

Q—As the guest of which university, Oberlin or Johns Hopkins?

A—Beg pardon?

Q—As the guest of which university?

At Johns Hopkins.

A—As the guest of Johns Hopkins university for that one year.

And then you returned to Oberlin—went to Washington?

A—Yes.

Q—What were you connected with in Washington?

A—I had charge of—I was chief of the division of biology and agriculture of the national research committee.

Q—That was carried on by the government?

A—That was instituted by an executive order of President Wilson, immediately after the war. It was really instituted during the war, for the study of scientific problems associated with the war, and after the war was over, by executive order of President Wilson, it was continued, for the study of scientific problems of use to the country in peace time.

Q—Give us your connection there?

A—In the division of biology and agriculture, the appointments of the chairmanship are regularly one-year appointments, and my appointment expired the 30th of June of this year.

Q—Are you out of a job?

A—No, I am afraid not. I wish I were.

Q—What are you doing now?

A—A year and a half ago I accepted a position on the faculty of the Johns Hopkins university, with the plan to go there at such time as my other duties made convenient, and I am to go there next spring after I return from a zoological trip to South America.

Q—And who is connected with

the zoological trip to South America?

A—No one, except I have had some financial assistance from the National Academy of Science, that is the only connection.

Q—Are there others going with you?

A—No. No, I go alone.

Q—And what position are you to hold at Johns Hopkins?

A—Associate in research, associate in zoology, a purely research position.

Q—You have received degrees at colleges?

A—Yes, a few.

Q—I do not know whether you know any more on account of degrees, but I will let you mention them?

A—I beg pardon.

Q—I say I do not know whether you know any more on account of degrees, but I will let you mention them?

A—Well, I do not think they mean much. I took A. B. from Oberlin, and took Ph. D. from Johns Hopkins and have been given doctor of science, honorary, by Oberlin, since.

Q—Have you memberships in various organizations in the line of zoology?

A—Yes, I am a member of a number of the research organizations in this country, and I also have some memberships outside of zoology in economic organizations in this country and abroad, and am a member of one or two organizations abroad—two or three.

Q—In that line?

A—In zoology, or one is in economics.

Q—Have you held any offices in scientific organizations.

A—Oh, yes, from time to time.

Q—You might mention any of them that you have held?

Scientific Connections

A—Well, I have been secretary-treasurer of the Zoological society of the American Society of Naturalists. I have been president of the American Society of Zoologists and been president of Section F, zoological section of the American As-

sociation for the Advancement of Science, and I have been on the executive committee of both of these organizations. Oh, I do not know, a number of years. I am on the executive committee now of the division of biology and agriculture of the National Research Council. There are a lot of those offices which pile up on a man; he cannot avoid them.

Q—Have you written articles or books?

A—Oh, yes. When a man is engaged in research he has got to pass on the results of his work.

Q—What you have done?

A—Surely.

Q—How many pamphlets and articles?

A—Oh, I suppose sixty or seventy. I do not know, I have not any idea.

Q—In the main I suppose these were scientific magazines?

A—Yes, sir.

Q—Or journals?

A—Yes, sir. I was not counting any outside of the scientific journals.

Q—Are you a member of any church organization?

A—Yes.

Q—What one?

Member of Congregationalist Church.

A—The Congregationalist church. Do you want to know the particular church?

Q—Yes?

A—I am now a member of the United church, in Oberlin, which is a Congregationalist church. I have been a member of two other congregationalist churches—no, one Presbyterian and one Congregationalist.

Q—You have been a Presbyterian, too, have you?

A—Well, I joined the Presbyterian church when I was 11 years old, I think—I am not sure.

A—And have you been connected with church activities aside from being a member?

A—Yes.

Q—In what way?

A—Well, in Baltimore I had charge of a Bible class in the church for about three years. I had charge

of a Bible class of college students, well, not exclusively college students, mostly college students, in Oberlin. That is all, I think—of course I have had some church offices, but those do not mean much.

Q—Not unless it is treasurer or something like that.

A—No, nothing worse than deacon.

Q—Doctor, do you understand, or at least ever studied and read evolution?

A—Surely.

Q—For how long?

A—I cannot answer that question. I think I heard the word and the thought was long ago. I could not remember when, and an old brother with whom I used to sleep, used to discuss with me evolutionary subjects until we went to sleep at night, night after night, before I was eight years old. I guess I had been brought up on it.

Q—Did your evolutionary studies include the development and evolution of man, in a general way?

A—I have never been a student of human morphology or human physiology distinctly, but I have been somewhat of a student of evolution, and especially interested in man, and I have given some lectures here and there on prehistoric man, early man.

Q—And you have studied as to the origin of man, have you not?

A—Well, I have not studied firsthand very much as to the origin of man, I have not been an archeologist or anthropologist, but I have read on it, and such lectures as I have given have been compendia from work done by other men, not my own work.

Q—But, you are familiar with that work?

A—Yes, sir, fairly broadly.

Q—And your studies in zoology, they have naturally been connected with the study of evolution?

A—Yes, I have always been particularly interested in the evolution of the individual organism from the egg, and also of the evolution of organisms as a whole from the beginning of life, that has been a

sort of peculiar interest of mine, always.

Q—Are you an evolutionist?

A—Surely, under certain circumstances that question would be an insult, under these circumstances I do not regard it as such.

Q—Do you know any scientific man in the world that is not an evolutionist?

Stewart Objects.

Gen. Stewart—We except to that, of course.

The Court—Sustain the exception.

Mr. Stewart—Of course if you want to take a vote—

Mr. Darrow—No, no, we are talking about scientific things.

Q—(Mr. Darrow) or, is it or not accepted by scientific men?

Mr. Stewart—We object.

The Court—Sustain the objection.

Mr. Hays—We want to take an exception.

Mr. Stewart—You are entitled to it. Your honor is ruling on it?

Is Evolution a Guess?

Mr. Hays—Now, your honor, one of our constitutional points was the question of whether this law was within the police power of the state, depended upon material.

The Court—No, I do not think that is whether or not it was a reasonable exercise of the police power. That would depend largely upon whether evolution is a mere guess by a few men, or generally accepted by all scientists. Certainly it is material from that point of view. I do not think you can bring one witness to prove what others believe.

Mr. Hays—If he knows that, if he knows how far the theory is substantiated—

The Court—That would be hearsay testimony.

Mr. Hays—Hearsay testimony is allowed in cases where it is a question of how a scientific theory is substantiated. The question here depends very largely on our ability to determine whether any such exercise of the police power is reasonable, and here we call a witness to say, among other things, that in

the profession that is largely accepted, that is the question, your honor.

Mr. Darrow—While that is not material, may I ask, your honor, at least—

Gen. Stewart—Your honor has passed on that.

The Court—Let the gentleman ask and then—

Mr. Hays—Our whole case depends upon proving that evolution is a reasonable scientific theory.

The Court—I do not know how you can prove it reasonable by proving what some other person believes.

Mr. Hayes—We expect to prove what all science says.

The Court—Then bring them here and offer them. I will hear you.

Witness—I am very glad to be examined on my own judgment.

The Court—Sustain the exception.

Mr. Hayes—Exception.

Mr. Darrow—I do not know whether the practice is to state what we expect the answer to be. Of course, I will not state it before the jury, but I want to give it to the reporter.

Mr. Stewart—We want that in the record later.

Mr. Darrow—I will do that later.

Gen. Stewart—Let the reporter go right to them.

(At this point the reporters and attorneys went to the witness chair and the following occurred:)

Q—(Mr. Darrow.) What would you say, practically all scientific men were or were not evolutionists?

Many Scientists Evolutionists

A—I am acquainted with practically all of the zoologists, botanists and geologists of this country who have done any work; that is, any material contribution to knowledge in those fields, and I am absolutely convinced from personal knowledge that any one of these men feel and believe, as a matter of course, that evolution is a fact, but I doubt very much if any two of them agree as to the exact method by which evolution has been brought about, but I think there is—I know there is not a single one among them who has the least doubt of the fact of evolution.

(The following then occurred in the hearing of the jury:)

Gen. Stewart—Of course, we do not want this part of the record to be in the papers. Of course we will have to keep that away from the jury. They will read that.

Gen. McKenzie—Your honor has a right to keep it from the jury.

Metcalfe's Testimony Kept from Jury.

The Court—I will instruct the stenographers (reporters) to not give that part of the transcript to the newspapers. Do you object to that? Get this whole issue and then I can excuse the jury and hear from you.

Mr. Stewart—There are different kinds of evolution. We, of course, maintain it is limited to that particular kind described in this law suit.

Mr. Darrow—How is that?

Mr. Stewart—The point I am making is, there may be different kinds of evolution, perhaps there are, but this question we are insisting on in this case is just that one described by the act itself.

Mr. Darrow—By the act itself?

Mr. Stewart—By the act itself—the law.

Mr. Darrow—Well, you are going to object to that, too?

Mr. Stewart—I am objecting to a general question as to what evolution is. I suggest, your honor, that we discuss some points about this. We might ask your honor to retire the jury and thresh it out here.

Mr. Darrow—Suppose I ask one more question.

The Court—Let us get all the issues now that are going to be in dispute.

Mr. Stewart—We can put them in the record after the jury goes out, I take it, we will not object to it in that way.

Mr. Malone—I take it, we will not have the argument in the presence of the jury. If the attorney-general objects, I see no reason why we should not get the point up in the presence of the jury.

The Court—Of course, the question cannot prejudice the case, since there is no answer.

Mr. Darrow—Will you state what evolution is, in regard to the origin of man?

Mr. Stewart—We except to that.

Mr. Darrow—Now we are ready—

Mr. Stewart (Continuing)—On the further ground that we are excepting, your honor, to everything here that pertains to evolution or to anything that tends to show that there might or might not be a conflict between the story of the divine creation and evolution, and on the same theory we will except to this scientific testimony on the ground it is incompetent, because it is, so far as this case is concerned, it invades the province of the court and jury, and ask your honor to exclude the jury while we argue this matter.

Says Jurors Not Informed

Mr. Darrow—Of the jury, only one of whom every read about evolution, is forced to say what evolution is, without his hearing evidence.

Gen. Stewart—We want your honor to exclude the jury.

The Court—I suggest this, now, gentlemen. You have in mind what the issues are going to be on this question. I wish you would ask now such questions as would correctly and fairly make the issues, so that then I will excuse the jury and hear your argument on those questions, and not have to do it over and over again.

Mr. Stewart—And when we exclude the jury now, we do not want any more questions along this line. I think we have a right to insist that the jury not hear any of the rest of those. They have a certain duty to perform.

The Court—If you have—well, gentlemen of the jury, now, I think the radio, perhaps, is in operation, and when I excuse you gentlemen, I excuse you for the purpose that you do not hear the proceedings up here. Please do not linger in the courthouse yard, because you might still perhaps stay up here as down there. I excuse you until 9 o'clock in the morning.

Juror Thompson—I just wanted the benefit of the jury there is not a

single juror that has heard a single word pass over the horns out there.

The Court—Thank you, gentlemen. Juror Thompson—I just wanted you to know, that is all.

(The jury thereupon retired.)

The Court—Now, gentlemen, I anticipate that this is the most difficult thing the court is going to have to pass on. Do you think you have time to argue this question this afternoon? It is 4:35.

Gen. Stewart—No, we would not have time to complete it. We can get on it.

Mr. Darrow—All of us are tired.

The Court—Of course, this is a question I want all the light I can on, because I anticipate that it is extremely important and perhaps difficult.

Mr. Darrow—I will just ask one more question, so as to make the issues plainer.

(The officer rapped for order, saying: "Let us have order in the courtroom; respect the court.")

The Court—I will hear you, gentlemen.

Mr. Darrow—I will put two or three short ones.

Gen. Stewart—The last question you asked him—what was the last question?

Questions by Mr. Darrow.

Q—Now I want to ask the question, is there anything in the theory of evolution in conflict with the account of the creation of man in Genesis or in the Bible?

Gen. Stewart—We except to that.

Mr. Darrow—I just want to add one or two more and then we will let it all go together. It won't take me but a minute.

Q—Is evolution taught in all the leading colleges of the world?

Gen. Stewart—We except to that, of course.

Q—Or the western world—I will exclude the east; I don't know about that.

A—It is in China and Japan and in India.

Gen. Stewart—You want his answers in the record, don't you?

Mr. Darrow—They are all in there, aren't they?

Gen. Stewart—Do you want the witness to answer them now?

Mr. Darrow—Counsel suggests what is probably the right way, we should let him answer these questions.

Gen. Stewart—I thought they wanted the answers in the record, and he hasn't given them, and I thought you wanted them in the record.

The Court—If you want them in the record you may let him answer, and then they can move to exclude the answer.

Mr. Darrow—Well, counsel suggests that you might answer them altogether.

The Witness—I had rather not do that; I had rather answer them seriatim.

Makes Fine Distinction

A—Evolution and the theories of evolution are fundamentally different things. The fact of evolution is a thing that is perfectly and absolutely clear. There are dozens of theories of evolution, some of which are almost wholly absurd, some of which are surely largely mistaken, some of which are perhaps almost wholly true, but there are many points—theoretical points as to the methods by which evolution has been brought about—that we are not yet in possession of scientific knowledge to answer. We are in possession of scientific knowledge to answer directly and fully the question: "Has evolution occurred?"

Q—Now, will you tell what it means, the fact of evolution?

A—A definition is perhaps the most difficult thing that a man can ever be asked to engage in, for any definition in order to be accurate and adequate would have to be fearfully prolix. I beg then to be allowed to answer in a way that certainly will not be adequate, but that may be accurate as far as it goes.

Mr. Darrow—Do it that way, then.

A—Evolution, I think, means the change; in the final analysis I think it means the change of an organism from one character into a different character, and by character I mean its structure, or its behavior, or its function, or its method of develop-

ment from the egg or anything else—the change of an organism from one set characteristic which characterizes it into a different condition, characterized by a different set of characteristics either structural or functional could be properly called, I think, evolution—to be the evolution of that organism; but the term in general means the whole series of such changes which have taken place during hundreds of millions of years which have produced from lowly beginnings the nature of which is not by any means fully understood to organism of much more complex character, whose structure and functions we are still studying, because we haven't begun to learn what we need to know about them.

Q—Could you briefly sketch what that change is, from inorganic matter on, as far as we know?

A—Well, there must—I can try to do it briefly; you say, including the inorganic?

Q—Yes, starting with the inorganic world.

A—We have all sorts of changes, but leaving that all out of account there has been a tremendous series of changes with the inorganic world by which the universe has been brought into existence and has been molded into its present characteristics. The sun is comparatively young and the earth has gone through a long course of development and change. That is a matter—those two matters are for astronomers and geologists to talk about. I am not an expert in the field of inorganic evolution, although there is a tremendous field of phenomena there, but we are inclined to evolution of living things, of organic evolution, as it is called, we have to conceive of the earliest living things as being able to live upon inorganic food. We have only plants today with that ability. No animal is able to sustain life on the basis of inorganic feed. They have to have other plants and animals to live upon.

Q—Would it bother you for me to interrupt you for one question for the purpose of the record?

A—No, indeed.

Q—Tell us what you mean by organic and inorganic.

A—Organic evolution is connected with living things, organic things are the subject of living bodies, or things that are made by the living activities of those living bodies. There are certain chemicals found in the bodies of living things that are distinguished as against inorganic things which means like rocks and stones and earth.

Q—Minerals?

A—Yes, minerals, and so on.

Q—How do you classify botany, plants?

A—Organic, of course, because they are a part or bodies of living things. Now from the first living things which could live on inorganic substances, there developed a whole series of forms in the plant group gradually becoming more and more complex. They make really a remarkably beautiful series as you study them, and this series of increasing complexity in the plants as we find them shown in the rock, the actual plants themselves whose bodies we study in the fossil condition in the rock.

Q—Can you estimate the age of those?

A—Why, no; it takes a chemist to estimate the age of some of these things, for it is a determination of the processes of disintegration in the rock which have been caused largely by chemical forces, aided by the activities of certain bacteria, and I am not an expert in that field, and I would rather not answer.

Q—Could you make any estimate how long from the beginning of organic matter?

A—No, for this reason: I am inclined to believe that there may have been whole series of animals and plants living at certain times upon the earth, which have been completely wiped out, to be succeeded—not completely, but been almost completely wiped out by changes in the earth—to be succeeded by other faunas and floras—other groups of animals and plants reaching development and then in a large measure disappearing. We do not know how

many times the different processes in connection with the change upon the earth's surface may have wiped out practically all or wholly certain faunas and floras, and on that account I don't think we are in a position to say when the earliest organisms appeared upon the earth. We do know that there was a very abundant fauna and flora as early as the Cambrian period.

Q—How long ago was that?

Does Not Talk in Years

A—Oh, that is an awfully hard question to answer in years. No geologist talks years—it is ages—and they are beginning now in such matters as the changes in the metals especially, the relations between uranium and lead—to get some idea of the numbers of millions of years that have passed since certain strata which contained fossils were formed, but I am not familiar with that field, I am not a chemist and I do not like to answer scientific questions outside of the field where I know a little of what I am talking about. I would have to be answering what I have heard from others, and I don't like to testify to that kind of stuff.

Q—More than 6,000 years ago, wasn't it?

600,000,000 Years Modest Guess.

A—Well, 600,000,000 years ago is a very modest guess.

Q—Well, just go on where I interrupted you.

A—Well, at the same time that this tremendous series of plants was developing from a lowly condition into the more or less elaborate condition which we now find, there was also developing alongside them a series of animal forms, or differences between the animals and plants, which caused their divergence in their evolution, being largely due to their different habits in connection with food. The plants standing still and letting the food come to them for the most part, while animals hustled and got their food, and that rather fundamental difference between animals and plants has led to the animals developing locomotor organs and grasping

organs and other things which have led to still other things which the plants have not developed. The necessities of life have been different under the two food habits and they have been met by a different series of adaptation. Does that sufficiently answer for a sort of general outline of evolution as a fact, and not of the causes of evolution at all?

A—No, I don't.

Life Began on the Borderline

Q—No, I don't quite understand the causes—I might ask something about it. Could you tell us something about the order of plant life and animal life?

A—Well, it isn't quite so easy to tell about the order in which plants evolved with certainty, possibly, as it is to tell about some of the higher animals. There is a rather interesting index difficult to explain that tells us something about the different periods in the earth's history when different kinds of animals emerged from the sea and came into the land. I don't know that we have any similar record, any similar index for the plant, so the only thing we can say about the plants is that there is this series of complexities and that that corresponds to the record in the rock.

Q—Can you say where—I mean within a reasonable certainty—where animal life began, whether in the sea or on the land?

A—I think probably that animal life and plant life both began at the border line between the water and land where were conditions a little more complex—a little more likely to be productive of such a remarkable substance as a living substance but for long periods or over long periods in the earth's history there probably was no such thing as land life, either plant or animal, but all living things were marine.

Q—And what about the development of life in the sea—sea animals becoming land animals and land animals coming out of the sea?

A—The conditions of life in the seas are very simple and very easy for an organism which has this green coloring matter in it which we call

chlorophyll and which is able on this account to absorb energy from the sun. You see green plants microscopic unicellular plants living in the ocean are both in a solution containing all of the mineral constituents which they need for their food and they also are exposed to sunlight whose energy they absorb by means of chlorophyll. It is, therefore, somewhat advantageous for them to remain small and unicellular and not to divide into cells and then keep those cells in groups because they cannot then do as well—be surrounded on all sides by their nutriment media and are exposed on all sides to its sources of energy the sunlight, but when terrestrial life began there were conditions of difficulty and in order to meet those conditions of difficulty it would be necessary in order to be successful to develop means adequate to meet those difficulties and the needs of such life have been the occasion—not the cause—have been the occasion for the development of the structures needed to meet conditions of existence there.

Q—Some animal life have gone from the earth to the sea, have they not?

A—Yes, some complex animals have gone back into the ocean, whales and the seal, and a great many of the water birds that spend a considerable portion of their life on the sea have gone back from the land. Of that we are entirely confident on abundant evidence.

Q—The whale (and I am diverting just a little because of some other matter that came up), the whale suckles its young, does it not?

A—Yes.

Q—And how is the whale classified?

A—The whale is a mammal.

Q—Will you give us the definition of mammal?

A—There again I hate to give definitions, but I can tell you some characteristics of mammals.

Q—All right.

Mammals Described

A—Mammals, all of them, have hair—either developed or rudimentary—

on some part of their body. The possession of hair is a mammalian characteristic, hair not being known outside the group of mammals. The little hair-like feathers of birds are true feathers and not hair. They differ fundamentally in their structure from hair, and mammals also suckle their young. The mammals all have a vertebral column—a backbone; they all have two pairs of limbs unless they have secondarily lost those through adaptation to conditions of life. The fore limbs and hind limbs—those limbs always have a shoulder or hip girdle. The bone in the trunk attached to a linear series of bones, running out in the arm or leg, finally coming to a group of transversally arranged bones in the wrist or ankle, succeeded again by almost uniformly—I think—in the mammals except through degeneration—five digits and that is a rather—there are other series of characteristics, but the mammalian eyes have certain characteristics and different glands in connection with the body and I might, if I stopped to think up my lesson, tell you fifty points that are characteristic of the order of the mammals in distinction from other organisms.

Q—Now in the classification of the scientist-zoologist, where does man come?

A—He is classed among the primates. Man is not a very highly evolved animal in his body. He isn't as highly specialized as a great many organisms. His hand, for example, is a very generalized structure, nowhere near as much specialized as the hand of a bird, but he clearly belongs among the mammals. A group well up, I think, toward what we could call the well elaborated members of that group physically.

Q—You might tell us just what you mean by primate, for the benefit of us lawyers?

A—Well, I think because the group has been regarded as including man, the group has been given the primacy, I suppose that some of the insects, if they were sufficiently intelligent, might question that, but we do not question it.

The primates mean that order of organisms which include the lemurs, the tailed monkeys of this hemisphere, the tailless monkeys, the ape and baboon and so on of the eastern hemisphere and man and also quite a large number of forms of whose—of whom we have a satisfactory fossil record which we may class as apes or may class as men. It is a little hard to say, it is a little hard work to say over half a dozen or so forms about which there can be legitimate differences of opinion as to where they should be classified, whether as man or as ape.

The Court—Col. Darrow, will this extend very much further? It has been a pretty hard day for me.

Mr. Darrow—(After conferring with Gen. Stewart). I might ask three or four more questions for the benefit of counsel.

Q—Will you give us some of the evidences of the evolution of man from a lower organism?

Evidences of Evolution.

A—The great fundamental series, and I use that word in the plural—of evidences, and there are far more than one series—are found not in man himself, but in the whole organic world. The whole plan of evolution indicated so clearly throughout the whole realm of organic life paralleling as it does the whole plan of evolution seen so clearly in the universe as a whole makes a tremendous probability in

favor of the evolution of man. When then we find just such differences among species and different varieties of men as we find among animals and when we find what we may fairly call the more lowly genera, species and varieties of human kind appearing earlier in the geological series just as do the simpler animals, among the lower forms appearing in the lower rocks, that inherent compulsion toward belief in evolution which is found in all of the universe is tremendously reinforced for man. The series is so convincing that I think it would be entirely impossible for any normal human being who was conversant with the phenomena to have even for a moment the least doubt even for the fact of evolution, but he might have tremendous doubt as to the truth of any hypothesis—as to the methods of the evolution which this or that or the other man—even great men of science—might bring up.

Q—And you say that evolution as you speak of it means including man?

A—Surely.

The Policeman—Now, folks, tomorrow we will continue this trial and there is not going to be anybody let in here only to be seated, not going to have any standing room at all, they can go on the outside where they can hear what is going on here right on the lawn.

The Court—We will adjourn until 9 o'clock tomorrow morning.