## CHAPTER V.

## FIFTH DAY'S PROCEEDINGS—THURSDAY, JULY 16, 1925.

Court met pursuant to adjournment.

Present as before.

Whereupon:

Court—(Raps for order.) Everybody stand up. Dr. Allen, whose name has been—who has been named by the pastors' association to open the court this morning.

Dr. Allen—(Dr. J. A. Allen, pastor, Glensley Avenue Church of Christ, Nashville, Tenn.)—"Our Father who art in Heaven, hallowed be Thy name. We thank Thee for thy blessings upon us all, and for Thy watch, care and protection over us; we pray Thy blessings upon the deliberations of this court, to the end that Thy Word may be vindicated, and that Thy truth may be spread in the earth. We pray Thee to bless and to guide all to Thy Name's honor and glory, to the accomplishment of good in the name of Jesus. Amen.

Court—Open court, Mr. Sheriff.

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

Court—Are there any preliminary matters this morning?

Mr. Hays—If your honor please, we are prepared to make our motion on the admissibility of the evidence.

Mr. Darrow—Well, I wanted to ask one or two more questions.

Court—That's a big question. I thought, perhaps, there might be some preliminary matters to get out of the way.

Mr. Darrow—I want to ask just two or three more questions of Dr. Metcalf.

Court—Is any of the jury in the courtroom? If so, let them retire.

(Dr. Metcalf takes the witness stand.)

**Questions by Mr. Darrow**

Q—Doctor, will you please give us, rather briefly, any other evidence of evolution. The evolution of man.

Gen. Stewart—We want to confine this, so far as the record is concerned. This is done for the purpose of making a record for the supreme court if the defendant should appeal—in order that the defendant may have the benefit of this evidence. It is the insistence of the state that no theory of evolution is competent for the record, before the jury or anybody else, except that theory that teaches that man descended from a lower order of animals. This gentleman (Dr. Metcalf) said yesterday, in a very fair statement, that there were different theories, some true, some perhaps not true, and so forth, but to that particular theory, about which the act itself speaks we want this inquiry confined.

Court—Well, of course, this evidence is going in the record so that in the event the case goes up to the appellate court, they may see what the character and nature of the evidence was that was excluded, if it is excluded, from the jury, so I am inclined to let them get the full testimony of this witness in the record. Of course, I may put some limitations on the number of witnesses that go on the stand if I conclude this evidence is not admissible then I will let you proceed.

Gen. Stewart—Now, your honor, we prefer to proceed in the regular order.

Court—Yes.

Gen. Stewart—The jury was dismissed yesterday for the purpose of asking these questions.

Court—Yes.

Gen. Stewart—And in order that the court might ascertain if this testimony, in the mind of the court, was admissible. Now, your honor, must we spend the morning here—

Court—No, not the morning, I think.

Gen. Stewart—In determining this —whether or not the evidence is admissible. All this is supposed to do is to get before the court just what the evidence is and then, your honor will pass upon it. And if your honor holds it competent, the jury will be brought back, and this man will proceed to testify, and if it isn't competent—

Court—Let me see what the question was.

Gen. Stewart—I say if it isn't competent, now is that we ought to get at once to the issues and let the court pass on the proposition of whether or not it is admissible.

Court—Your plan is, if I was to exclude the evidence, you would want this witness back and have him re-examined.

Gen. Stewart—Yes, sir, that is our procedure, your honor, always as I understand it.

Court—There was a mix-up here by some kind of an agreement or suggestion yesterday.

Gen. Stewart—That was with the suggestion and understanding as I had it that Mr. Darrow would put before the court sufficient of this evidence to let the court and attorneys on the other side intelligibly understand just what he insisted upon.

Mr. Darrow—I don't think we need lose any time—if counsel says the understanding is if the court sustains this objection, we may call them back to prove what they would say. I was proceeding upon a different idea.

Court—I thought if I excluded the evidence, you would put this evidence in; then if I excluded the evidence it would all be in the record, and that would be final so far as this proof is concerned.

Gen. Stewart—No, I didn't so understand it.

### Metcalf Called from Stand.

Court—Then, all right. You may stand aside, Dr. Metcalf.

Mr. Darrow—I am inclined to think that is the best way.

Court—We just didn't understand each other. That's all. I didn't know the witness was to be called back in the event the evidence is excluded.

Gen. Stewart—Will you gentlemen just state what you expect to show and let us make our exception?

Mr. Darrow—I don't think we need to do that because we have asked him questions and they are objected to, and after the court passes upon it and the court excludes it, then we will say what we expect to show.

Gen. Stewart—Well, knowing just what is before the court—(confers with Darrow in undertone).

Mr. Darrow—We expect to show by men of science and learning—both scientists and real scholars of the Bible—men who know what they are talking about—who have made some investigation—expect to show first what evolution is, and, secondly, that any interpretation of the Bible that intelligent men could possibly make is not in conflict with any story of creation, while the Bible, in many ways, is in conflict with every known science, and there isn't a human being on earth believes it literally. We expect to show that it isn't in conflict with the theory of evolution. We expect to show what evolution is, and the interpretation of the Bible that prevails with men of intelligence who have studied it. This is an evolutionist who has shown amply that he knows his subject and is competent to speak, and we insist that a jury cannot decide this important question which means the final battle ground between science and religion—according to our friend here—without knowing both what evolution is and the interpretation of the story of creation. And Mr. Hays is prepared with authorities on that subject.

Court—Now I have a great regard for the opinion of great lawyers, gentlemen, but I have—if I had an opinion of the courts of last resort, I have greater regard for them than I do the words of any lawyer on either side. That is my remarks for the record.

Mr. Hays—But I intend to support my argument with authorities, your honor.

Gen. Stewart—Of course, in this matter, the rules of procedure are the same as you made the other day, and



the state has the opening and closing.

Mr. Hays—I am not sure of that. Not because your statement of procedure may be wrong, but you will perhaps remember that we had an agreement that we might make a motion to receive this scientific testimony, and I didn't understand—

Gen. Stewart—That agreement was withdrawn.

Mr. Hays—Let me finish, will you? We did not for a moment, suppose that you had any idea in your minds by changing the procedure you would have the opening and closing, thereby taking advantage of us in that way, and, therefore, we insist, as a matter of good faith, we should be permitted to argue this matter.

### Lawyers Argue Over Agreement

Gen. Stewart—That, of course—the agreement was mutually withdrawn because we found—

Mr. Hays—Pardon me, we never withdrew the agreement.

Mr. Malone—I was a party to it, and it was not mutually withdrawn.

The Court—I won't stand for any discussion between you gentlemen addressing yourselves to each other. You must address yourselves to the court. Let me hear the attorney-general's statement, and then I will hear you.

Gen. Stewart—This was to be brought up in the regular and usual way by objection made when the witness went on the stand. Now out of perhaps being overzealous to accommodate these gentlemen, I said to them on last Friday, I would take this up out of order—that is, on Monday, we would discuss this proposition as to whether the evidence of these witnesses would be competent, and upon reflection I found that that could not be done, and Mr. Malone and Mr. Neal and myself agreed that that was right, and that the matter would simply come up in its regular order. Later in the day—an hour later—Mr. Neal came to me and said that other counsel did not agree to that and I told him I felt it was an agreement that should stand, but, regardless of that—it doesn't make any difference about an agreement—it is a matter of procedure, and the record can not properly be made up, except in this way—we cannot make up a moot record—we cannot require the judge to give us an advisory opinion in advance—

Mr. Hays—Before the attorney-general starts to make his argument I wish to be heard on the question of the stipulation.

Court—Are you through with your statement, general?

Gen. Stewart—I was just fixing to make a motion to exclude this evidence.

Court—Then, I will hear your motion.

Gen. Stewart—By the way, I want to reduce this to writing.

Court—Do you want to do it now?

Gen. Stewart—Well, we can file this at noon.

Mr. Malone—May I suggest, before you pass upon this motion, that you hear—

Court—Oh, I will hear you, Colonel, but I cannot hear more than one at a time.

Mr. Malone—I don't want you to hear more than one at a time, your honor.

Court—Well, I think—go ahead, judge.

### State Moves to Exclude Evidence

Gen. Stewart—The state moves to exclude the testimony of the scientists by which the counsel for the defendant claim that they may be able to show that there is no conflict between science and religion, or in question, and the story of divine creation of man, on the grounds that under the wording of the act and interpretation of the act, which we insist interprets itself, this evidence would be entirely incompetent.

The act states that should be unlawful, that this theory that denies the divine story of creation, and to teach instead thereof that man descended from a lower order of animals, with that expression, and they have admitted that Mr. Scopes taught that man descended from a lower order of animals, the act under what we insist is a proper construction thereof, would preclude any evidence from

any scientist, any expert, or any person, that there is no conflict between the story of divine creation, as taught in the Bible, and proof that a teacher tells his scholars that man descended from a lower order of animals.

The act says that they shall not teach that man descended from a lower order of animals according to our construction, and for these reasons this testimony would be incompetent.

In other words, the act does say that it shall be a violation of the law to teach such a theory, and, therefore, they cannot come in here and try to prove that what is the law is not the law. That would be the effect of it.

The Court—That is your motion, general?

Gen. Stewart—That is part of it, your honor.

The Court—Be careful not to get any argument into it.

Gen. Stewart—No, sir.

Another thing, your honor, is that this testimony undertakes to present to the jury the opinion of certain men who claim to be expert on this question of evolution, to give to the jury their opinion, when we insist that is the only issue now left to the jury to determine. There is no defense presented here or undertaken to be presented except by these scientific witnesses.

We have proved and have admitted yesterday—

The Court—Wait a minute, General, you are getting into argument.

Gen. Stewart—No, sir; I am not.

The Court—You say if you prove and they admit it would not be any part of your motion?

Gen. Stewart—Yes, sir; it is part of the motion, your honor, to show that there is no issue left except the issue as to whether or not this conflicts with the Bible.

The Court—I think you are making an argument.

Mr. Malone—I am sure he is, your honor.

Gen. Stewart—Now, then, we insist, if the court please, this is incompetent, because it invades the province of the court and the jury. It is not material to the issue here. It cannot be material to the issues. It is for the jury to say whether or not this conflicts, and that is an invasion of their rights, and of the right of the court. I think those are the true principal questions that I want to raise by this motion, that the act does prohibit it. And that under the rules of evidence it is an invasion of the province of the jury and the court.

Mr. Malone—Your honor, I would like to be heard very briefly, about the stipulation. There is no agreement between attorney-general, Dr. Neal and myself. It is question of fact.

### Malone Reminds Court of Promise

Your honor will remember that for the convenience of our witnesses, and for the convenience of witnesses your honor agreed that this matter would be taken out of the usual order, and it was to have been heard on Monday last, and we worked over the week-end and were prepared to be heard on Monday last. But the vicissitudes of the trial interfered with it. On Sunday Gen. Stewart came to our house.

Gen. Stewart—On Saturday.

Mr. Darrow—He doesn't go on Sunday.

Mr. Malone—And saw—

Mr. Darrow—Wouldn't expect to find you there on Sunday, Mr. Malone?

Mr. Malone—No, I probably would not be there on Sunday, but I was at this time. Came out to see Judge Neal and myself, and for a personal reason stated that it would be better as a matter of public policy to revert to the original order. I didn't think it necessary and the General will probably not consider it necessary to state the reason in addition, but Judge Neal and I were sympathetic to his point of view, and then we went into the house—of course, we have other counsel, and the father of our house is Mr. Darrow.

### Darrow Grandfather

Mr. Darrow—Grandfather.

Mr. Malone—And then we sat down and conferred on this matter. And it was determined that we should not go back to the regular order. But as we had considered the questions and given our time in the law library in the preparation of cases, briefs and citations, we should stand by the stipulation that was made.

Now, your honor, we were laboring under a delusion that when a stipulation was entered into in open court, in the presence of the court and the court thereafter set a time for hearing upon it, it was a binding stipulation. We afterwards found out it was the custom in Tennessee that a stipulation should be in writing. We had no idea that the stipulation should be in writing. When we found we had no legal rights, when the the prosecution decided to change its mind again, we did not insist upon the stipulation.

We wish to be fair and we wish to act as lawyers, when we are in Tennessee to act like the people of Tennessee, and when in Tennessee we are bound to know the theory of law, though not a question of fact, it is the theory of your state. We have the right, if we had argued on Monday, according to our ethical stipulation, to open and close this argument.

Gen. Stewart—What right? To open and close it?

Mr. Malone—It was our motion.

Gen. Stewart—For what?

Mr. Malone—Our motion that this evidence be heard. You objected to it.

Gen. Stewart—No, there was no objection. This was all just friendly conjecture.

Mr. Malone—After all, it is for the court to decide. We believe there is an ethical situation here. We have not insisted upon it, because we have been technically barred.

Gen. Stewart—I don't want them to feel that they have been technically barred. I feel this way about a matter of that sort. They don't need a stipulation of the court to hold me in line. A stipulation is a stipulation, with me wherever it is made. I think they should take the same position about it. Dr. Neal and Mr. Malone agreed—

Mr. Malone—We agreed there was merit in your contention.

Gen. Stewart—You agreed, and I came to your house to see you, and saw Dr. Neal.

Mr. Malone—What happened immediately after, when we went into conference? Dr. Neal went into—

Gen. Stewart—It seems to resolve itself into the question of who is in authority.

Mr. Malone—We know who is in authority. Mr. Darrow is in authority.

Gen. Stewart—You should have called him in conference when we went three miles out there to see you.

Mr. Malone—We came back three miles to tell you the truth.

(Laughter in the court room.)

Mr. Hays—General, we are visitors; why not let us go ahead?

The Court—As the court sees it, there is not much at issue.

Mr. Malone—Excepting the opening and closing, your honor.

The Court—It is immaterial, when you address this court, whether you open or close, no jury being present, the court seeking light and truth, and whether you speak in the beginning, or speak in the middle or at the back end, does not make any difference to me. I will hear you just as patiently and give what you say the same consideration.

I would not have counsel from foreign states feel that they have been taken advantage of. As I understood the stipulation a few days ago, for the convenience of counsel for the defendant, there was some negotiations that this question be raised without them bringing their witnesses to Tennessee, or some reason that was consummated. The court could only have acquiesced in it, no objection to it. Since it has been called off the court has no further concern as to that. This motion having been made by the state's counsel, to exclude this testimony, the court feels, under the rule of procedure in Tennessee, that the state is entitled to open and close. I do not see that that gives any advantage to either party myself, because I shall hear both sides alike.

To which ruling defendant duly excepts.

Gen. Stewart—Mr. Bryan, Jr., will present the opening.

The Court—I will hear you, Col. Bryan?

### Bryan's Son Pleads Against Expert Testimony

Mr. Bryan—If the court please.

The attorney-general has requested me on this discussion to divide the time on the expert testimony. It is, I think, apparent to all that we have now reached the heart of this case, upon your honor's ruling, as to whether this expert testimony will be admitted largely determines the question of whether this trial from now on, will be an orderly effort to try the case upon the issues, raised by the indictment and by the plea or whether it will degenerate into a joint debate upon the merits or demerits of someone's views upon evolution.

Mr. Neal—We are very anxious to hear every word. Can you speak a little louder?

Mr. Bryan—This expert evidence is being offered for the avowed purpose of showing that the theory of evolution as understood by the witness, offering the testimony does not contradict the Biblical account of creation, as understood by the witness. All of which, the state contends, is wholly immaterial, incompetent and inadmissible for many reasons since the beginning of time, at least since the beginning of time, since we have had courts and juries and experts to testify, this particular class of testimony has been regarded of all testimony the weakest and most capable of abuse and the most dangerous.

### No Way to Get Expert for Perjury

If a man testifies as to a fact his testimony may be met, or contradicted by other facts. If he testifies falsely, he can be punished for perjury. But if a man gives a false opinion there is no way that you can contradict him. There is no way he can be punished. There has scarcely been a trial in recent years where the material issues have been testified to by experts, but that the public has again been convinced of the utter futility of that testimony.

The Court—Mr. Bryan, I am sure everyone is anxious to hear every word you say. Will you speak a little louder?

Mr. Bryan—I will try to speak a little louder, yes. I have heard a good many harsh things, said about experts. I believe it was my good friend, Mr. Darrow, who, in the Loeb trial characterized one of the experts there used, as a purveyor of perjury. He was probably justified in so characterizing him. But it is a fact, I have not been able in the examination of the books to find any statement as strong as that—but it is a fact, that the courts have unfavorably regarded this sort of evidence, and received it with extreme caution, and investigated it with every care. Our courts have held that the testimony of expert witnesses should be received with caution and investigated with every care.

This rule is stated in Jones on Evidence, and in every work of authority upon evdence. In Volume II, page 374, it is well-stated as follows:

(Reading beginning with the words, "It is the general disposition of the courts to restrict the admission of expert testimony within the strict bonds" to "is desired.")

And the same authority goes on to quote from remarks of Justice Early in the case of Ferguson vs. Hubbell, 97 N. Y., 507, which refers to the famous Tarduie case and early English cases upon this particular subject. Early said as follows:

"The rules admitting the opinions of experts should not be unnecessarily extended. Experience has shown that it is much safer to confine the testimony of witnesses to the facts in all cases where that is practicable, and to leave the jury to exercise their judgment and their experience upon the facts, proved. Where witnesses testify to facts they may be specially contradicted. If they testify falsely they are liable to punishment for perjury, but they may give false opinions without fear of punishment. It is generally safer to take the judgment of unskilled jurors than the opinions of hired and generally biased experts."



Now, this rule has been repeatedly recognized and followed by the courts in this state. In the case of Wilcox vs. State, 94, Tenn., at 112, your own supreme court speaking in regard to this subject, held that it was no error to charge the jury as follows:

### Expert Testimony Field of Speculation

"While expert testimony is sometimes the only means of, or the best way to reach the truth, yet it is largely a field of speculation besought with pitfalls and uncertainties, and requires patient and intelligent investigation to reach the truth."

The same rule is stated and followed in Persons vs. State, 6 Pickle, 291, and Adkins vs. State, 119 Tenn., at 458. The following quotations, if the court please, on this point, are taken from corpus juris, Volume 22, page 498, and following, and are merely the expressions of opinions that have received such widespread recognition and have been followed and cited until they have become axioms of the law.

### Experts Endanger Case.

"The danger involved in receiving the opinion of the witness is that the jury may substitute such an opinion for their own. But courts will not require the parties to encounter this danger unless necessity therefore appears. The jury should not be influenced by the opinion of anyone who is not any more competent to form one than they themselves are. The verdict should express the jurors' own independent conclusions from the facts and circumstances in evidence, and not be the echo of witnesses, perhaps not unbiased."

Of course, if the court please, I do not mean to argue that there are not cases where it is absolutely necessary to have opinions of experts, where the matters in issue are of such a technical or involved nature that expert opinion is the only way by which the truth as to facts may be arrived at. These exceptions will, no doubt, be fully argued to you by the counsel for the defense. However, that may be, the courts are unanimous in adhering to the rule that expert testimony can be introduced only under the stress of necessity. In other words, the court will seek the aid of opinion evidence only where the issues involved or facts are of such a complex nature that the man of ordinary understanding is not competent or qualified to form an opinion, but, if the court please, even this exception is limited by the rule of law to which I shall refer later in my argument, that prohibits in any event the introduction of expert testimony upon the very facts that the jury are to pass upon.

The first test that the court should apply to determine whether expert testimony is admissible in any event, is, whether the facts relevant to the issues are such that they can be introduced into evidence, and whether the jury are competent to draw a reasonable inference therefrom—not necessarily the inference that the court would draw, or that I would draw, or that the expert would draw; and are they competent to draw a reasonable inference of their own. It is the rule supported by the weight of authority, I think, in almost every state of this Union that where all relevant facts can be introduced in evidence and the jury are competent to draw their reasonable inferences, therefrom, that opinion evidence may not be received. This is the law in the state of Tennessee.

In the case of Cumberland Telephone and Telegraph company vs. Dooley, 110 Tenn., page 109, it was sought to introduce the opinion of a witness as to whether or not a fire could have been stopped and controlled with the apparatus then and there at hand; and, it was held that such evidence was not properly a subject of expert opinion, inasmuch as every fact constituting an element of the opinion of such witnesses was capable of being presented to the jury.

Again, in the case of Nashville & Chattanooga Railway vs. J. N. Carroll, 43 Tenn., 368, it was urged that the court erred in refusing to allow an expert to testify what was meant by an obstruction. It was a railroad accident case, and one of the allegations was that the railroad had permitted an obstruction to remain upon the tracks, thus causing the wreck. The obstruction being a hand-car, I believe. The court held that there was no error in excluding the evidence of an expert as to what constituted an obstruction saying: "What is or is not an obstruction, is a simple question of fact which could be determined by the jury as well as the expert."

Now, what are the issues in this case, if the court please? The indictment simply charges that John Scopes taught, in violation of law, that man has descended from a lower order of animals, and the state has offered evidence tending to prove that he did so teach. As a matter of fact, this evidence has not been controverted by the defendant. There is no issue of fact raised by evidence, the facts are agreed upon both sides. Under this state of evidence, if the court please, if this were a civil case instead of a criminal case, your honor would be compelled to take the case from the jury and find for the plaintiff. What issue of fact is there left for the experts to express an opinion upon? There is no issue of fact upon which expert testimony is either proper or necessary. The only question in this case is, whether or not the jury believes that the admitted facts show a violation of the law, and this, I submit, is one of those mixed questions of law and fact to be determined by the jury under the proper instruction of the court, and can never be a proper subject of expert testimony.

And now, if the court please, I come to the limitation I adverted to a moment ago; and that is, that opinion evidence may not, under any circumstances be received to determine the fact in issue; in other words, to invade the province of the jury. The rule is stated in 22 Corpus Juris, 502, and the hundreds of citations supporting it as follows:

"As the opinion evidence rule against admissability is to provide against the mischief of the invasion of the province of the jury, a court should exclude the inference, conclusion or judgment of a witness as to the ultimate fact in issue, and this is true, even though the circumstances presented are such as might warrant a relaxation of excluding the opinion, but for this one circumstance."

In other words, it matters not how technical the subject, how involved the issue may be, there is one place where expert testimony may never, in any event, be received; and that is where it is upon the very issue that the jury is to determine, and that is the situation in this case, if the court please. This has always been the law in Tennessee, as well as other states.

The Court—What case do you read from?

Mr. Bryan—I will read from the case of Bruce vs. Beall, 99 Tennessee, 313. This was, if I remember rightly, a case for personal injuries received in the fall of an elevator, and one of the questions at issue was whether the defendant had been negligent in permitting the cables to be used for a certain period of time, and the court excluded certain questions asked the expert as to whether or not the use for that length of time was safe or not. The court used this language:

"While the general rule is that witnesses must speak the facts, yet, upon questions of skill and science, experts are competent to give their opinions in evidence, but they will not be permitted to state their opinion upon any point the jury has to decide. Deductions from facts belong to the jury, and when the examination extends so far as to substitute the opinion of the witness upon the very issue in controversy, for that of the jury, the province of that tribunal is unwarrantedly invaded. We think it is clear that in no case can the witness be allowed to give an opinion upon the very issue involved, a danger from this would be to substitute the opinion of the experts for that of the jury themselves, whose duty it is to find the facts and whose verdict in only an expression of their deductions from the facts."



This case also cites the case of Gibson vs. Gibson in 9, Yeager, 329, which is one of the early cases, and which is to the same effect.

And again, in the case of Cumberland Telephone and Telegraph Company vs. Mill Company, 109 Tennessee, 381, the court said it is an accepted rule that while experts may testify as to what, in their opinion, may or may not have been the cause of a given result or condition, it is not permissible for them to give their opinion as to the only fact that the jury was organized to determine, the question now under consideration required the witness to enter the domain of the jury and to pass upon one of the ultimate propositions inhering in the verdict.

**Precedents Are Cited.**

Now, this same position, if the court please, has been followed in the case of Cumberland Telephone and Telegraph Company vs. Mill Company—the one I have just cited, In Railroad Company vs. Brangee, which is a strong case, 114 Tennessee, 35, and in Kirkpatrick vs. Kirkpatrick, 1 Tennessee Cases, at 257; Owen vs. Jackson, 1 Appealed Cases, 413, where the court stated:

"Upon the facts to be determined by the jury no witness, expert or nonexpert, should be asked his conclusion upon any material fact that is to be passed upon by the jury."

In the case of Memphis Street Railway vs. Hicks, 1 Cates, File 13, it is said: "It is not permissable to ask a witness, expert or otherwise, his opinion upon issues which are to be determined by the jury. It is proper to propound to a witness a question that calls for an expression of opinion as to any point that the jury will, of necessity, have to determine."

Now, if the court please, as the state sees this case, the only issue this jury has to pass upon is whether or not what John Scopes taught is a violation of the law. That is the issue, and it is the only issue that the jury is to pass upon, and we maintain that this cannot be the subject of expert testimony. To permit an expert to testify upon this issue would be to substantiate trial by experts for trial by jury, and to announce to the world your honor's belief that this jury is too stupid to determine a simple question of fact. Admission of this testimony would be followed and, in our opinion, it would be reversible error. I, therefore, respectfully urge your honor to sustain the objection of the state to the introduction of this testimony.

The Court—Be at ease for two or three minutes.

(After a recess of fifteen minutes the hearing of this case was resumed.)

The Court—We have some lawyers in the case who, at times, indulge in a lot of wit. I do not know who is going to argue the case, and I do not know whether they are going to display their wit or not, but if they do, I don't want any manifestations in the courtroom, for two reasons: The first reason is that it is improper; the second reason is that this floor of the courthouse building is heavily burdened with weight. I do not want to alarm you; I do not know myself, for I am not a mechanic, but I do know that the floor is heavily weighted and the least vibration might cause something to happen, and applause might start trouble.

Mr. Hays—If your honor please, I am rather embarrassed by your allusion that there will be such thunderous applause that the building might come down.

The Court—I believe the other vibrations won't cause it. I will say to you lawyers, gentlemen, that this is, of course a big question. I don't want any lawyer to feel that he has to be in a hurry. Take your time. Of course, I do not want you to occupy unreasonable time, but I want the information.

**Hays is Astounded.**

Mr. Hays—If your honor please, I am learning every day more about

the procedure in the state of Tennessee. First, our opponents object to the jury hearing the law; now, they are objecting to the jury hearing the facts. The jury is to pass on questions that are agitated not only in this country, but, I dare say, in the whole world. There is one proposition made by the opposition, which I believe is unusual; that is, the insistence by the prosecution of trying the case for the defense; for they are continually telling your honor their theory in this case. And, when we have tried to present our theory of this case, they have objected. The learned attorney-general started his argument this morning by saying, we admit Mr. Scopes taught something contrary to the law, while we admit that Mr. Scopes taught what the witnesses said that he did, but as to whether that is contrary to the theory of the Bible should be a matter of evidence. Possibly the prosecution are without evidence. There are other rather unusual propositions of law I have heard this morning and I think they are based on possible differences in fact. One thing appeals to me in this case; that is, that my mind is so constituted that while I concede all the law the other side presents, I cannot see how it is in point. I concede anything Mr. Bryan said on that subject, yet it does not bear on the questions before us. Certainly no court has ever held it to be dangerous to admit the opinions of scientific men in testimony. Jurors cannot pass upon debatable scientific questions without hearing the facts from men who know. Is there anything in Anglo-Saxon law that insists that the determination of either court or jury must be made in ignorance? Somebody once said that God has bountifully provided expert witnesses on both sides of every case. But, in this case, I believe all our expert witnesses, all the scientists in the country are only on one side of the question; and they are not here, your honor, to give opinions; they are here to state facts. For instance, in Mr. Bryan's Tennessee case, where it was concluded that an expert could not give an opinion as to whether the fall of an elevator was caused by negligence. Of course, he could not. Even I, coming from New York, would know that. But an expert could state the facts with reference to the control of a hydraulic elevator. On that point, the expert did not give only opinion evidence. Experts state facts, but, of course, so far as the weight of their authority is concerned, we want to point to your honor that not a single expert in this case is a paid expert, and every scientist who comes here comes in the interest of science, with no promise of compensation. Which leads me to be sure we can warrant theirs being impartial testimony.

With respect to the remark made by Gen. McKenzie the other day, when he said that any Tennessee school boy of 16 should understand this law, I wish to say, that if that is so, they forget it by the time they get to the age of Atty.-Gen. Stewart, and do not again acquire it by the time they reach the charming age of Gen. McKenzie.

Now, as to evolution, does your honor know what evolution is? Does anybody know? The title of the act refers to evolution in the schools, but when that is done, you do not know what evolution is. I suppose ultimately, the jury, because under your constitution they are the judges, ultimately, of the law as well as the facts, and they will have to pass on the evidence, and that is a question that has been observed by scientific men for at least two centuries.

I have in my hand a part of a proof of the book by Dr. Newman, whom your honor, I hope, will have an opportunity to hear. I hope your honor will not give up the opportunity to hear him.

**Two Darwinisms.**

Dr. Newman says:

"The secret of the difficulty lies in the fact that there are two Darwinisms, the popular one and the technic one. The layman uses the term Darwinism as a synonym of evolution in the broadest sense; the evolutionist never uses the word in this sense, but always uses it as a



synonym for natural selection, one of Darwin's chief theories. The general principle of evolution has nothing to do with natural selection. The latter might be totally discredited without in the least shaking the validity of the principle. But this situation is not at all understood by the antievolutionists, who believe that Darwinism (the principle of evolution) is inextricably bound up with Darwinism (the theory of natural selection).

Well, there is a short statement, but of course, it is a comprehensive statement and your honor would want the facts to show how experts—how the scientists came to their opinion, and if your honor says that opinion evidence cannot be introduced, at least evidence of the facts may be introduced, so you gentlemen can determine the facts, and then draw your opinion as to what this statute means. Any boy of sixteen can understand this law, you say, why any boy of sixteen, without special study doesn't even understand the term "lower order of animals" and neither does the prosecution. Their theory seemed to be at the beginning that Prof. Scopes taught and that evolution teaches that man has descended from a monkey. If Prof. Scopes taught that, he would not be violating this law. Now, you will need evidence to prove that that is a fact, because the orders of animals were classified by Linnaeus about 200 years ago, which was an artificial classification. In the first order—the primate order, was man, monkeys, apes and lemurs. That is the first order. To prove that man was descended from a monkey would not prove that man was descended from a lower order of animals, because they are all in the same order of animals—the first order—and that is the use of the term "order of animals" by zoologists and I suppose we have got to interpret this term according to its usual use and so even if Prof. Scopes taught what the prosecution thinks, even then according to our theory, they would not prove that Scopes taught that man descended from a lower order of animals. They might say that man came from a different genus but not a lower order of animals. Perhaps that is new to you, gentlemen, and I confess it was new to me and yet these men had the audacity to come into court and ask the court to pass upon these questions without offering any evidence. What are the questions of fact in this case? Before I get to that I should like to read to your honor this quotation from 22 Corpus Juris, page 165. I don't think I need cite the authorities, because it is almost hornbook law.

The Court—Will you furnish me the memorandum?

Mr. Hays—Yes, sir.

Mr. Hays (Reading)—"It is no objection to the admissibility to a party's testimony that is competent only on his theory of the case; he has a right to have the case submitted to the jury on his theory if there is any testimony to support it."

**Hays Says Prosecution Wants One Side Only**

When these gentlemen tell your honor what their theory of the case is, and then say, "the defense should put in no evidence because this is our theory" they immediately suggest to your honor that you should hear one side of the case only. Your honor may know of the occasion some time ago when a man argued a question for the plaintiff before a judge who had a very Irish wit and after he had finished the judge turned to the defendant and said, "I don't care to hear anything from the defendant, to hear both sides has a tendency to confuse the court" (Laughter in the courtroom). These people cannot bind us by their theory of what our case is. Now then we start at the beginning with a very simple proposition of evidence.

The Court—Have you a paperweight there?

Mr. Hays—I have lots of them, your honor. Where did they get the idea that in a court of law evidence is not admissible to elucidate and explain what it is about? Is the court and jury to pass on a question without knowing what these ques-

tions involve, particularly when they are scientific questions? Apparently the gentlemen of Tennessee believe that testimony in a law court has only to do with direct evidence—that nothing is relevant that is indirect and introduced for the purpose of explanation or elucidation. Of course, your honor knows that isn't the law—that under the law anything is relevant that tends to throw light on the subject and particularly in a case like this, where such great elucidation is necessary. What are the questions of fact? A man is quilty of a violation of the law if he teaches any theory different from the theory taught in the Bible. Has the judge a right to know what the Bible is? Does that law say that anything is contrary to the Bible that does not interpret the Bible literally—every word interpreted literally? Oh, no, the law says that he must teach a theory that denies the story as stated in the Bible. Are we able to say what is stated in the Bible? Or is it a matter of words interpreted literally? Is your honor going to put into that statute any theory contrary to creation as stated in the Bible with the words "literally interpreted word by word" because if you are the statute doesn't say so. Are we entitled to show what the Bible is? Are we entitled to show its meaning? Are we entitled to show what evolution is?

**Entitled to Show What Evolution Is**

We are entitled to show that, if for no other reason than to determine whether the title is germane to the act. Are we entitled to show that the development of man from a cell does not make him a lower order of animals? I know that every human being develops from a cell in the very beginning of life. I know that in the womb of the mother the very first thing is a cell and that cell grows and it subdivides and it grows into a human being and a human being is born. Does that statement, as the boy stated on the stand, that he was taught that man comes from a cell—is that a theory that man descended from a lower order of animals? I don't know and I dare say your honor has some doubt about it. Are we entitled to find out whether it is or not in presenting this case to the jury? Further than that, how well substantiated is the doctrine of evolution? I presented your honor in opening this case, with what I conceive to be a parallel statute and a great many people smiled. You remember my supposed statute concerning the Copernican theory and my friend, the attorney-general proposed another statute concerning the rights of teachers. I would like to say the only difference between the attorney-general and myself is that I believe such statutes are unconstitutional—I believe his was unconstitutional, as well as my own and this. The only difference between the parallel I proposed and the law we are discussing, humorous as my parallel may have been—is that the Copernican theory is accepted by everybody today—we know the earth and the planets revolve about the sun. Now, I claim, and it is the contention of the defense these things we are showing are just as legitimate facts, just as well substantiated as the Copernican theory and if that is so, your honor, then we say at the very beginning that this law is an unreasonable restraint on the liberty of the citizens and is not within the police power of the state. Apparently, my opponents have the idea that just as long as the question is one of law for the court, then no evidence is required. There was never anything further from the truth. They had apparently the idea that the court takes judicial knowledge of a subject, such as matters of science, and that then no evidence need be introduced. If your honor is interested in my personal opinion I should like to say if on no other ground even though your honor thinks these are questions of law and even if the court believes that the court takes judicial knowledge—if on no other ground, this testimony would be admissible, in order to inform the court, because the court must be informed as to what the issues are and what these



things mean. In Jones' Commentary on Evidence, Vol. 1, page 26—and your honor will realize that this is no reflection on the court—that the author said:

"Courts should observe the utmost caution to avoid assuming knowledge of natural facts and laws that are beyond the scope of common, positive knowledge."

And, in Dumphrey vs. St. Joseph Stock Yards company, 118 Mo., App., 506, the court said:

"The mysteries of nature are so manifold, deep and subtle, that the finite man cannot indulge in dogmatic conclusions affecting them without falling into error. Human nature being microcosmic, is not certainly known save in its prominent outlines."

Jones says further:

"It goes without saying that every judge upon the bench would disclaim such an encyclopedic knowledge added to a phenomenal memory, as would serve him on every application that the court should take judicial cognizance of a given fact. However wide his reading the suggestions frequently make a demand upon him, to which, without some means of reference or refreshing his knowledge, he might not be able to respond."

**Points Out Duty of Judge**

And further:

"The judge has no right to act upon his personal or special knowledge of facts as distinct from that general knowledge which might properly be important to other persons of importance."

Your honor well knows that there are occasions on which a judge takes what is called perhaps unfortunately judicial knowledge, because they are presumed not to be ignorant of what everybody else knows. I take that statement from Commonwealth vs. Peckham, 2 Gray, Mass., 514.

When we come to the proposition of judicial notice the taking of judicial notice has always favored a party litigant. A court is never bound to take judicial notice except possibly the laws of the statutes. If a matter is not of such common knowledge as to be known by everybody, a court may take judicial cognizance, in which case evidence must be introduced to inform the court, but doesn't take judicial notice in the sense that no evidence is required. Do I make myself clear?

The Court—You might just review your statement.

Mr. Hays—I like the term judicial cognizance better than the term judicial notice, because the court even takes judicial cognizance of facts of which it has no actual judicial knowledge at all. If the court takes judicial cognizance of matters, since the court is merely human and the bounds of knowledge are limited somewhat, the court must take testimony and evidence on facts which are not matters of common knowledge in order to inform itself, because there is nothing more important than that the court should not fall into error on questions of fact as well as of law. Perhaps this statement makes it clearer and this is supported by any number of federal cases and I think it is such sound law that my opponents won't require any further elucidation.

"The court is not bound to receive evidence as to a matter of which it takes judicial notice, but it is, of course, bound to notice facts merely as the facts as to those matters of law upon which an issue of fact cannot be made."

The Court—Such as matters of common knowledge?

**Court Bound to Notice Facts**

Mr. Hays—Yes, sir. But it is, of course, bound to notice facts correctly. In other words if your honor does take judicial cognizance you are bound to notice the facts correctly. It is not prejudicial error to receive evidence in such cases and even as to these matters the court may seek information—that is as to common ordinary matters it has been held will require the production of evidence. If your honor says, "I will take judicial notice of all science, I will take judicial notice of evolution in the field of geology, zoology, embryology and everything else, "you would be doing us a great

favor, but we assume that the court won't take that position, but even if it is a question of law and involves only a question of judicial knowledge, your honor must receive the evidence and I take it if your honor does receive the evidence—this being a criminal case—the evidence must be given in the presence of the jury. This author says "Proof may be required of facts of which the court entertains doubt, even though they are subject for judicial notice. Especially may this be so when to the court's doubt is added denial of such facts." And in connection with that cites Marshall vs. Middleborough and Commonwealth vs. King, 150 Mass., 221. I am stressing this point not because I have any doubt that there are questions of fact, but because if your honor should confine us to the narrow ground in your judgment as to whether the evidence should be required, yet we are entitled to put in this evidence and it would be error to refuse to receive it. May I read that again, your honor? (Reading.)

"Proof may be required of fact of which the court entertains doubt, even though they are proper subjects for judicial notice. Especially may this be so when to the court's doubt is added denial of such facts."

Now there is another very interesting phase of this situation, which shows the necessity for evidence. The state here prosecutes Scopes—it is a crime as I understand it not to use school books prescribed by the state and to use a school book as Prof. Scopes used it, is also a crime. I assume that the state of Tennessee did not intend to make it a crime if the teacher used it and likewise make it a crime if the teacher didn't use it. I cannot imagine two laws, one of which compels a man to do a thing and another which makes it a misdemeanor for him to do it.

The Court—Let's see if I understand the proof a while ago on that, Mr. Hays. I understood Prof. White to say that the contract whereby it was provided that this Hunter's Biology was to be used, expired in August, 1924.

Mr. Hays—I understand that, but I understood until a new textbook was prescribed the state used the same book, but there will be further evidence on that subject. Of course he did not undertake to testify what the law was. I was merely using this for the purpose of illustration.

**Crime Either Way.**

If your new law intended to amend the old one it would have said so. I say as I look at it there are two laws in this state, one of which compels a teacher to use the book and the other of which makes it a crime for him to use the book. I don't think the Tennessee legislature meant by their statute to say something quite different from what was taught in the book, because in the meaning of the term, what is evolution, what is stated in the Bible, is a matter that requires evidence. If your state of Tennessee intended to make it a crime to teach things in that book at the same time compelling the teacher to use that book, well, it has done something I believe no other state in the Union has ever done since the Union was founded and I don't think the state has done it, and I think the reason why those two statutes can be reconciled will come out in the evidence. When you gentlemen find out what evolution is we think you are compelled to take our theory because of those two laws which are diametrically opposed, unless you say which is evidence and find out what these facts are.

Now, your honor, one thing has rather surprised me about this motion on the evidence. I believe that when we all were lawyers and none of us were advocates that we all agreed upon this proposition. I refer, of course, to our opponents as well as, I may say, to your honor, we all agree upon the proposition that evidence was admissible. Mr. Bryan—I should not, perhaps, mention the name—the distinguished leader of the prosecution—

**Court and Hays Argue Over Bryan's Name**

The Court—There is no reason why you should not mention counsel's name.



Mr. Hays—Mr. Bryan, the distinguished leader of the prosecution.

The Court—Do you mean young Bryan?

Mr. Hays—Mr. W. J. Bryan.

The Court—He has not appeared as counsel, yet?

Mr. Hays—What?

The Court—When I say that, he is counsel, but I mean that he has not made any argument.

Mr. Hays—May I put it this way: That the prosecution gave us to understand before we came down here—

Mr. Darrow—Is his appearance entered?

Mr. Malone—Is Mr. W. J. Bryan's name entered in this court as counsel on that side?

The Court—I just stated that he appears as counsel, but he has made no argument and I thought the lawyer was referring to something he said. Of course something he said on the outside, you should not refer to. But any reference you make to young Mr. Bryan, who has made an argument is an entirely different thing.

Mr. William Jennings Bryan—Your honor, may we not, as well in the beginning, recognize that however much interested the attorneys for the defense are in making me this case, they ought to recognize the attorney-general is in charge of this case, and they ought to recognize this, about which they speak so honestly and knowingly, when it comes to this fact, that the attorney-general is in charge of the case, and I am associate counsel.

Gen. Stewart—As a matter of personal privilege, your honor, I will state that in law, the attorney-general has charge, but in the presence of such a distinguished person as Mr. Bryan, that lawyers bear him respect.

Mr. Hays—May I say this?

The Court—You may proceed.

Mr. Hays—On this point, on the admission of evidence, I should be justified in stating the opinion of anybody and your honor would accept it according to its legal worth.

I assume that if I state the opinion of one of the counsel for the prosecution I am stating the opinion of a lawyer which your honor will recognize for what it is worth.

**Should Obey Golden Rule.**

I am stating the opinion of a lawyer made when he was merely a lawyer and not an advocate. Of course, we men in New York, when we read the opinion of this distinguished lawyer to the effect that this was a duel to the death, to the effect that this case was a duel to the death without evidence, was evidence to be given? We relied then upon the opinion of that distinguished lawyer and we have spent thousands of dollars bringing witnesses here. And I have heard that men, even though charged with more religion than I am, ordinarily obey the golden rule and there is a proposition of ethics in that.

But, wholly aside from that, I assume that was his opinion as a lawyer when he was not an advocate.

Now, your honor, you have heard the opinion of the defense as lawyers. And finally I shall refer to the opinion as a lawyer of one who plays a far more important part in this case.

Your honor said, before this matter came up, that the only difference—this statement was made, and if the statement is incorrect, your honor will correct me. I am reading:

"The only difference between the attitude of Judge Raulston and those of either side is that he calls the case an investigation."

"A judge should begin all investigations with an open mind and should never hastily and rashly rush to conclusions.

"So long as there is any question of either law or fact in doubt he should diligently inquire for the truth."

I am quoting that and I think it is sound.

Certainly, if your honor determined this case is an investigation it was because your honor had in mind, it could mean nothing else, when speaking as a lawyer, that you would require evidence, on these facts.

You said on one occasion, that the case would warrant one of three decisions: First, one of not guilty; second, that the defendant taught evolution and, third, that the law was unconstitutional. Either that the law was unconstitutional, but that there was nothing in the subject of evolution when the subject was properly understood, to break down religious faith. Can we take that position, your honor, without showing what evolution is, without showing what the subject is?

Doesn't that require evidence?

And, finally, with your honor so ably stating the duties of a judge, that a judge should begin all investigations with an open mind, and never hastily or rashly rush to a conclusion, so long as there is any question of either law or fact in doubt he should diligently inquire for the truth.

When your honor said that, had you any doubt, as a lawyer, that in this investigation you wanted to hear the facts and the law to the fullest extent?

Who is afraid of the statement of facts? Or do our friends on the prosecution feel that our scientists merely state opinions, and give no evidence of facts? But if this is to be an investigation facts are necessary. If this is to be an investigation, your honor, as a lawyer, knows it is necessary to properly introduce that evidence.

It may be your view was made up from the fact that the court has a right to inform himself. It may be your view is narrower than mine? Or your honor's duties, as the court, to inform the court, but if you, as a lawyer, had a mind that this evidence was admissible, there is no doubt whatever, and shall take it not only as a lawyer, but also as a judge, because yesterday your honor stated that the caption of the act was germane to the body. "In my conception of the terms employed in the caption of the body."

**Judge Should Have Open Mind**

That was your conception before you heard the evidence. Now, the evidence is to be produced, and I assume that, when later we make a motion to dismiss, or a motion in arrest of judgment, and argue again, your honor will take it up and hear us with an open mind. Am I right about that?

The Court—Oh, yes.

Mr. Hays—That your honor's position would be the same unless you permitted the introduction of evidence.

Now, then, I assume when all of us were lawyers and not advocates, we agreed that the evidence was admissible.

Your honor, this is a serious thing. It is an important case. The eyes of the country, in fact of the world, are upon you here. This is not a case where the sole fact at issue is whether or not Mr. Scopes taught Howard Morgan that life was evolved from a single cell.

The Court—We will take a few minutes recess.

Whereupon a few minutes were taken. After which the following proceedings were had:

(Following recess.)

The Court—I will hear you, Mr. Malone.

Mr. Bryan—No, Mr. Malone is entitled to speak after Mr. Hicks and Gen. McKenzie.

The Court—Oh, I see.

Mr. Bryan—They are only to have two arguments, we want to use two more.

Mr. Hicks—If your honor, please, in this case, as we understand, they will only have one more argument for the defense, I think it would be proper that the general go ahead and present his arguments at this time, and leave me out.

The Court—No, I will hear you all.

Mr. Hicks—If your honor please—

The Court—Come around.

Mr. Darrow—We want to hear you.

Mr. Malone—You are the best looking man on that side.

Mr. Hicks—If your honor pleases, it is now insisted by the defense that they have the right to inject into this lawsuit a large number of theologians and scientists from different parts of the United States, who will come in here and testify that science and the Bible are not in conflict, that the subject that was taught by J. T. Scopes does not conflict with the Bible.

Now, in regard to the gentlemen for the defense; they have put me in the position which I have experienced as a gun pointer in the navy trying to fire upon a submarine. You will see the periscope at one place, and it will go down and in another moment it will be here, and in another moment it will be there. Mr. Hays has said that these experts are paying their own expenses to come here to testify in this case.

The Court—I am not interested in that, Mr. Hicks, at all. I do not care whether they are or not.

Mr. Hicks—If your honor please, they admit that those experts who are coming here are greatly interested in this trial, in the outcome of this trial, and I just want to call your honor's attention to the fact that this is the position that they are in, and to the regard which the higher courts of the state of Tennessee take in regard to the admission of expert testimony in any case. Our higher courts have said that it is largely a field of speculation, and that it is full of pitfalls, that it is full of danger, and must be received with great caution.

Now, in every other case which has been called to the minds of the courts of Tennessee, how much more so must it be in the case at bar, because the theory of evolution itself is unproven and such an eminent scientist as Bateson accepts evolution because he cannot find any better theory to advocate as to the creation of animal life upon earth.

Mr. Darrow—When did he state that?

Mr. Hicks—In his speech at Toronto.

Mr. Darrow—Oh, no, we have that speech.

Mr. Hicks—It was something to that effect.

Mr. Malone—Oh, well, something to the effect.

The Court—Address any objection you have to the court, gentlemen.

Mr. Hicks—That is all right, I don't care. If your honor please, the words of the statute itself preclude the introduction of such testimony as they are trying to bring into the case. I call your honor's attention to the last clause of this act, they are very careful to admit that—they are very careful to leave out even any mention of Section 1, and this law reads: "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 or other public schools of the state, which are supported in whole or in part by the public school funds 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"—instead of what?—"instead of the story of divine creation as taught in the Bible that man has descended from a lower order of animals."

Now, this proof is amply shown, that Mr. Scopes taught that man descended from a lower order of animals—

The Court—Do you think that that meets the requirements of the statute?

Mr. Hicks—Absolutely. There is no question as to that, your honor. In other words, instead of the Bible theory of creation, he taught that man descended from the lower order of animals. Now, on the construction of any statute, our courts hold this, that if one clause of that statute, one part of it is vague, not definitely understood, that you must construe the whole statute together, that you must look at the other part of that statute and see what is the character, what is the intention which our legislature intended to put into that act. Now, that the last part defines that first part. It says what this evolution, or law is, to teach instead—instead of what?—instead of the Bible story of creation, that man has descended from a lower order of animals.

**Know What We Want.**

Now, in regard to that very feature of it, your honor, I would like to review just a little Tennessee law—down here, in Tennessee, we believe in Tennessee law, and when our leading courts, our courts of last re-

sort, pass upon a question, we do not think you need to go outside of Tennessee to find law, when it is upon the very issues involved in the case, in regard to the construction of statutes. I would like to read from 142 Tennessee, ex rel Thomason vs. Temple, it says:

"A few elemental rules in the construction of statutes support our conclusions.

"A statute is to be construed so as to give effect and meaning to every part of the statute"—

They can not take the first part of the statute and leave off the last, which Mr. Darrow endeavored to do here the other day in his great speech—

"—And words may be modified, altered, or supplied so as to obviate any repugnancy or inconsistencies."

Now, if our legislature had the intent to prohibit teaching in our schools that man descended from the lower order of animals, they would not have to put that last clause on there, that explains the whole thing, and from that the court can, and could, define the section, as to what the intent of the legislature is. Reading further from Thomason vs. Temple:

"In 36 Cyc., 1111, it is said; 'For the purpose of determining the meaning, although not the validity of a statute, recourse may be had to considerations of public policy, and to the established policy of the legislature as disclosed by a general course of legislation.'

"And in Grannis vs. Superior court, 146 Cal., 247, 79 Fac., 893, 106 Am. St. Rep. 26, it is said: 'The provision of the code must be construed with a view to effect its objects, and when the language used is not entirely clear, the court may, to determine the meaning, and in aid of the interpretation, consider the spirit, intention and purpose of a law, and to ascertain such object and purpose.'"

What is the purpose of this law? It is to prevent the teaching in our schools that man descended from a lower order of animals, and when he taught that, as has been proven by our proof in chief, he violated the law, and cannot get around it.

"'Consider the spirit, intention and purpose of a law, and to ascertain such object and purpose may look into contemporaneous and prior legislation on the same subject, and the external and hisorical facts and conditions which led to its enactment.'"

Now, in the case of Norris vs. People, Fourth Colorado Appeals, 136, a statute was construed which penalized any person who should, by false representations, "obtain a credit, thereby defraud any person." It was held that the word "and" should be supplied before the word "thereby," the court saying:

**Construing a Statute**

"An insignificant alteration in the phraseology, or the omission of a word of this description in the adoption of a statute of another state, or in the revision of a statute, does not necessarily imply any intention to alter the construction of the act. It is equally settled that wherever there is an apparent mistake on the face of a statute the character of the error may often be determined by reference to other parts of the enactment, which may always be legitimately referred to in order to determine its legitimate construction."

In other words, in that last clause of this act, the legislature set forth their intention what they intended to do; that is just as plain as can be.

The Court—Now, if I understand you correctly, Mr. Hicks, you say when the state proved that he taught—that you insist that the state proved that he taught that man descended from a lower order of animals, and that by implication this proof meets the requirement of the first clause of the act?

Mr. Hicks—Absolutely. In other words, in construing that first clause, "to teach," where it prohibits any teacher in any public school, or schools supported in whole or in part by the state, to teach any theory which denies the story of the divine creation as taught in the Bible and then our legislature goes on and explains what that is—"and to teach



instead"—instead of what?—that is my point.

The Court—What does the proof show, Mr. Hicks? Does the proof show Mr. Scopes taught that this little cell of life first evolved into a lower order of animals; is that your insistence?

Mr. Hicks—It says that it began in the sea.

The Court—That it began in the sea?

Mr. Hicks—As a little one-celled animal, and it continued to evolve on up through different stages of life until it culminated in man himself.

The Court—Before it culminated in man, if it went directly from that one cell and never crystallized into a lower animal—

Mr. Hicks—That is not the proof.

The Court—What is the proof?

Mr. Hicks—The proof shows it started as a one-celled animal, and then developed along for a while in the sea.

The Court—Does he call it a one-celled animal, or a one-celled life, or what?

**Life Began as One Cell in the Sea.**

Mr. Hicks—As I remember, he stated that life, animal life, began as one cell in the sea, and that it lived in the sea for a time, and it developed up and crawled out on the bank.

The Court—And developed into what?

Mr. Hicks—Into a higher form of life.

Gen. Stewart—That all animal life developed from one cell, from the same egg, the man, the monkey, the horse, the cow, everything.

Dr. Darrow—That is what it is, all animal life began in that one cell.

The Court—Is that the state's insistence, that this witness swore—

Mr. Hicks—Yes, sir.

The Court—That it never did develop into the different animals, but came direct to man?

Mr. Hicks—No, sir.

The Court—I am trying to get your theory.

Mr. Hicks—Our theory is, he taught it developed into the different animals, and came from one animal to another, and passed on up until it culminated into man himself.

The Court—It might be of one common origin, and from that one common origin fowl, beast, fish and man came. Now, do you understand them to say that from this one cell it developed directly into man without first having become a different kind of animal?

Mr. Hicks—No, that is not the proof.

The Court—But that it developed into different animal life, and from that animal life into man?

Gen. Stewart—Through all different kinds of animal life.

The Court—Well, all right.

Mr. Hicks—Now, if your honor please, the only issue here in this case—

The Court—A little louder.

**What Did Scopes Teach?**

Mr. Hicks—The issue of fact for the jury to determine is whether or not Prof. Scopes taught man descended from the lower order of animals. Now, if your honor is going to permit them to make a special issue of these experts, if you are going to permit them to come in here as a secondary jury, which they are endeavoring to do, that is an unheard of procedure in the courts of Tennessee. We are not endeavoring to run here a teachers' institute; we do not want to make out of this a high school or college; we do not object for these foreign gentlemen, as they please to call themselves—

The Court—Do not call them that.

Mr. Hicks—They call themselves that.

Mr. Malone—That is all right.

The Court—That is all right.

Mr. Hicks—We do not object to them coming into Tennessee and putting up a college, we will give them the ground to put the college on. If they want to educate the people of Tennessee as they say they do, but this a court of law, it is not a court of instruction for the mass of humanity at large. They, themselves, admit that it is their purpose, your honor, to enlighten the people of Tennessee. Now, your honor, how can these experts qualify as jurors?

I would like to be given the right to challenge these men, to pass upon them before they come into this court and give their opinions upon the facts which are in issue; the very province of the jury is invaded by the gentlemen we do not have the right to pass upon. I would like to be given the right to challenge three without cause, because they are without the state of Tennessee, and they come in to interpret our law, of our legislature. What do they know about the Bible? They have to qualify in both the Bible and science before they can.

Mr. Malone—May it please your honor, I do not know whether he is talking about the attorneys or the expert witnesses.

Mr. Hicks—I am talking about the expert witnesses. I will talk about you gentlemen later.

Mr. Hays—We want you to hear them first, before you decide.

Mr. Darrow—After they testified, the motion would be to strike their testimony, if you do not know.

Mr. Neal—I might say, we have a very distinguished Tennessean, the state gologist, Wilbur Nelson.

Gen. Stewart—I expect we would get along better if there were less heckling.

The Court—Proceed.

Mr. Hicks—Go to it. Any question you would like to ask.

Mr. Darrow—There is one question I would like to call your attention to.

Mr. Hicks—All right, Mr. Darrow.

Mr. Darrow—A question of law. I would like to have your view on it, and anybody else that speaks afterward. The caption of this act, as has been so often said, is entitled, "An act to prevent the teaching of evolution in public schools." The body of the act says: "Whoever teaches any doctrine as to the origin of man, contrary to that contained in the divine account in the Bible, and that he descended from some lower organism, is guilty," and so on. Now then, in order to make your act constitutional, the court must hold that the body of the act describes evolution. Does the court get me?

The Court—Yes.

Mr. Darrow—Do you?

Mr. Hicks—Yes.

Mr. Darrow—Unless the act itself is an act against evolution, then it is not constitutional, and, therefore, you must assume that this act forbidding the teaching of evolution, the body of the act not mentioning evolution, and the caption of the act does not present anything else, so, to say it is constitutional, you must say the body of the act means evolution.

Mr. Hicks—If your honor please, I do not care to take up that. Your honor has held that the act is constitutional.

The Court—Proceed with your argument, Mr. Hicks.

### Experts Must Qualify Both as Scientists and Bible Authorities.

Mr. Hicks—Now, if your honor please, I insist this, when the experts come in they have to qualify upon two subjects, as experts upon the Bible and experts upon the particular branch of science, which they are supposed to know about. Now, why should these experts know anything more about the Bible than some of the jurors? There is one on there I will match against any of the theologians they will bring down, on the jury; he knows more of the Bible than all of them do.

Mr. Malone—How do you know?

Mr. Hicks—What is the interpretation of the Bible? Some of the experts whom they have brought here do not believe in God; the great majority, the leading ones, do not believe in God; they have different ideas—

Mr. Malone—If your honor please, how does he know until he gets them on the stand, what they believe? We object.

The Court—Sustain the objection; you cannot assume what they believe.

Mr. Malone—We would prefer for the sake of speed to have discussed only the witnesses whom we have called, and not the ones we may have called, but have not.

The Court—Sustain the objection. You cannot anticipate what they will say.

Mr. Hicks—I say this, this witness, when asked the hypothetical question as to whether or not what Prof. Scopes taught denies the story of the divine creation as taught in the Bible, is absolutely usurping the place of the jury. He is taking the place of the jury. He is invading it. Now, all these Tennessee decisions hold it is a kind of evidence that should be received with great caution—it is a matter of speculation—these scientists differ over it—Mr. Darrow said in his speech not long ago, that evolution is a mystery. Therefore, if expert testimony is full of pitfalls or dangers, or uncertainties in any issue, how much more so must it be in this issue; how much more so must it be in this issue in regard to evolution when Mr. Darrow himself says that evolution is a mystery. So, why admit these experts? Why admit them? It is not necessary. Why admit them? They invade the province of the jury. Why admit them, because the ones that they have introduced so far have not qualified as experts; he has only qualified in one line, and that is in the line of biology. If they want to make a school down here in Tennessee to educate our poor ignorant people, let them establish a school out here; let them bring down their great experts. The people of Tennessee do not object to that, but we do object to them making a school house or a teachers' institute out of this court. Such procedure in Tennessee is unknown. I do not know how about where these foreign gentlemen come from, but I say this in defense of the state, although I think it is unnecessary, the most ignorant man of Tennessee is a highly educated, polished gentleman compared to the most ignorant man in some of our northern states, because of the fact that the ignorant man of Tennessee is a man without an opportunity, but the men in our northern states, the northern man in some of our larger northern cities have the opportunity without the brain. (Laughter.)

The Court—Let me understand the arrangement; Mr. Malone and Col. Darrow are both to speak, are they?

Mr. Darrow—No, your honor, we have arranged with the attorneys that Mr. Bryan and Gen. McKenzie will speak, then Mr. Malone and Mr. Stewart, I am not going to speak—I am saving up.

The Court—I will hear you, Gen. McKenzie, and will adjourn for the noon hour.

Mr. Darrow—Your honor, cannot we get through, because we have some witnesses here from a great distance, some have to get away, it is a very great hardship?

The Court—I think it highly probable the court will not pass on this question today—I don't know.

Mr. Darrow—I think you ought to pass on it immediately, even if you pass on it wrong. It is a very great hardship for these men to wait here, some of them have to go.

The Court—I will hear you general.

### General McKenzie Confesses Love-at-First-Sight for Darrow.

Gen. McKenzie—May it please your honor, I do not want to be heard but a very few moments. I want to say this, since the beginning of this lawsuit, and since I began to meet these distinguished gentlemen, I have begun to love them—everyone—and it is a very easy task, in fact, it was a case, when I met Col. Darrow—a case of love at first sight. These other gentlemen come right on, but you know they wiggled around so rapidly that I could not get my lover turned loose on them until I got a chance, but I love the great men. The newspapers have some of them said, that McKenzie is waving the bloody shirt. I just want to make this explanation, I have referred to the great metropolitan city, and of these distinguished gentlemen being from New York, for this reason, we have some of our own boys up there.

Mr. Malone—You bet you have.

### Talks of Littleton and Carlisle.

Gen. McKenzie—From the South, we have Martin W. Littleton, I guess these gentlemen admire him. We do. We feel proud of him. We think he is so smart that he scintillates—stands at the very head of his profession, and I thought that I was paying the gentlemen a compliment, I never meant anything about it. This is our country from one ocean to the other, and from New York to that section away down where we can bathe our feet in the Gulf of Mexico and all our possessions, and you know this, the thing of bathing your feet ought to be a good thing, it would save the use of selling so much of this antifoot sweat.

Then we had another great man up there from the South, considered a pretty fair lawyer, John S. Carlisle. He had a great big sign up there, it said: "Counsellor of Counsellors"—a powerful, good man to resort to if you happened to get into a pinch, in a tight place for knowledge. We love him. We love these distinguished gentlemen, and love our local counsel, they are one of us, among us.

But, to the question in controversy in this case, if the honorable court please, as earnestly as I have believed any proposition of law to be established in this state, I believe that this act construes itself; that there is not a thing on the face of the earth that is ambiguous about it.

### We Have Done Crossed the Rubicon.

We have done crossed the Rubicon. Your honor has held that the act was reasonable, within the powers of the legislature; that it was not vague, indefinite and void as it was insisted as one of their grounds for motion in this case. That has been passed over, that it was a valid exercise of the police power of the state of Tennessee and that Tennessee had the right to regulate its common schools and prescribe any common school curriculum it desired. That never left anything on the face of the earth to determine, except as to the guilt or the innocence of the defendant at bar in violating that act. The theory of evolution, as to whether it contradicts the Bible, your honor has allowed and correctly so, to introduce that Bible on the stand and it has been read to the jury. It is the duty of your honor to construe all writings if it gives any construction, that is the oldest principle of law in every state in this Union, it is a primary principle of law. What is there to construe? Another thing, is there any ambiguity about it, that these distinguished gentlemen through their experts can explain, that is competent in evidence in this case? No, a thousand times no, if it has a single bit of ambiguity bearing on the face of the instrument, there is no remedy for it. It can not be, as the old language of the law is, helped by expert proof, that is the language, it has been held a thousand times in regard to wills and deeds, and other instruments. I have an authority right here, it is an old one, your honor knows all about it, if it is obsolete on its face, too void for enforcement, you can not make a new contract by shooting in your proof, and it must fall only if there is a case of latent ambiguity; that is, if it says, "I bequeath to my good friend Col. Darrow, of New York, my shotgun," and there happens to be two Col. Darrows up there, they say you can introduce proof to show which Col. Darrow I have reference to.

### Not Opposing Bible.

They do not undertake to destroy the Bible, or set up a story in contradiction of it, but attempt to reconcile, that is the point I want your honor to catch, and I know your honor does.

### Says God Made Man Complete.

The Court—General, let me ask you a question. Is this your position, that the story of the divine creation is so clearly set forth in the Bible, in Genesis, that no reasonable minds could differ as to the method of creation, that is, that man was created, complete by God?

Gen. McKenzie—Yes.

The Court—And in one act, and not by a method of growth or development; is that your position?

Gen. McKenzie—From lower animals—yes, that is exactly right.

The Court—That God created Adam first as a complete man, did not create a single cell of life.

Gen. McKenzie—That is right.

The Court—The cell of life did not develop in time.

Gen. McKenzie—That is right, and man did not descend from a lower order of animals that originated in the sea and then turned from one animal to another and finally man's head shot up.

The Court—Here is what I want to get, the act says it shall be unlawful to teach any theory that denies the divine story of the creation of man; that is one issue. Or teach or instead thereof—

Mr. Malone—"And" is the word.

The Court—And teach instead thereof that man descended from a lower order of animals. Now, in order to make a case, does the state have to prove that the defendant Scopes taught a theory denying the divine creation, and then go further and prove that he taught that man descended from a lower order of animals; or do you claim that if you meet the second clause, by implication of law you have met the requirement of the first?

Gen. McKenzie—Yes, that is exactly it. I want to read this, you may look to the caption as well as the body of the act to resolve any ambiguity. Let us read the act.

It being an act of the state of Tennessee that it shall be unlawful for any teacher in the universities, normals or other public schools of the state, which are supported in whole or in part by the public funds to teach a theory that denies the story of the divine creation of man as told in the Bible—

The Court—Now, General, just suppose he stopped there, and the other clause were stricken out, would this proof be competent for the purpose offered, or not?

Mr. B. G. McKenzie—I think not. No, sir, I do not.

The Court—You think the divine story is so clearly told, it is not ambiguous and should be accepted by any one of reasonable fairness?

Mr. B. G. McKenzie—I do. But it goes further, and leaves it out of the proposition, and says, and teach instead thereof that man is descended from a lower order of animals, and, therefore, defines the other proposition. It tells exactly what it means, in both the caption and the body of the act. And our supreme court, in case after case, in Tennessee, has sustained our contention as to the interpretation of statutes. Now, if your Honor please, as said a minute ago, they don't want to destroy that account.

The Court—They want to reconcile—

### Evolutionists Would Have Man Descended from Soft Dish Rag.

Mr. B. G. McKenzie—They are seeking to reconcile it, if your honor please, and come right along and prove by the mouth of their scientist that when he said God created man in His own image, in His own image created He him out of the dust of the ground and blew into him the breath of life, and he became as a living creature they want to put words into God's mouth, and have Him to say that He issued some sort of protoplasm, or soft dish rag, and put it in the ocean and said, "Old boy, if you wait around about 6,000 years, I will make something out of you." (Laughter.) And they tell me there is no ambiguity about that.

Mr. Darrow—Let me ask a question. When it said, "in His own image," did you think that meant the physical man?

B. G. McKenzie—I am taking the Divine account—"He is like unto me."

Mr. Darrow—Do you think it is so?

B. G. McKenzie—I say that, although I know it is awfully hard on our Maker to look like a lot of fellows who are profusely ugly, to say he favored the Master.

Mr. Darrow—You think then that you do?

Mr. McKenzie—You are all right. I don't mind your favoring Him, but when one commits acts against the

law, there ought to be some remedy for it.

Mr. Darrow—Wait a minute, colonel. You do think the physical man is like God?

B. G. McKenzie—Why, yes, I do and I will give you my reason.

Mr. Darrow—I think God knows better. You think men must believe that to believe the Bible, that the physical man as we see him looks like God.

B. G. McKenzie—Yes, sir, and I will give you my reasons as soon as you want them.

Mr. Darrow—And when you see man, you see a picture of God.

### Believes Bible Story

B. M. McKenzie—Like unto Him and made in His image; and the reason why I believe that firmly is because the Bible teaches it. When Christ came to earth—and I believe in the virgin birth of Christ.

Mr. Neal—Mr. McKenzie?

B. G. McKenzie—What is it, Mr. Neal? Do you want to ask a question?

Mr. Neal—Do you think if a teacher in the Tennessee schools if he failed to teach that man is physically like God, would be violating the statute?

B. G. McKenzie—Well, we will try that law suit when we get to it. Let us talk about the matters involved in this case.

Mr. Darrow—Let me ask another question?

B. G. McKenzie—All right.

Mr. Darrow—I don't think we will have any trouble as long as he gives me the title of colonel. He is calling everybody else colonel. You spoke about it taking a good many thousand years to get man under our theory. You said there was the first day, the second day, the third day, the fourth day, the fifth day, the sixth day, and so on. Do you think they were literal days?

B. G. McKenzie—Colonel, we didn't have any sun until the fourth day. I believe the Biblical account. Now, in regard to Christ being just a man, walking around looking like us. I believe He was the same, a man of sorrow and grief, crucified for us. And I believe that still. And when He was here, He was like other men, but he was in the image of God. And that is why I believe He was in the image of man.

Mr. Malone—Your honor, I am objecting, on this ground. I don't know whether the general is arguing now, or testifying as an expert witness on the other side.

B. G. McKenzie—He is objecting to me, yet, Mr. Malone said a speech of an hour yesterday, presenting their theories of the case; it was on evolution, and it was not competent.

Mr. Malone—The court admitted it.

### Hints Few Darrow Disciples in Rhea County.

B. G. McKenzie—Yes, and he is the best judge in the world. Now, if the court please, I say they are seeking to put words into the mouth of God, and substitute another story, entirely different to God's word. They bring in a distinguished gentleman, and I believe he is absolutely a disciple of Col. Darrow. He says evolution is an established fact, and that there are a lot of them in this country. But I tell you one thing, no great number of them grow on the mountain sides and in the valleys of Rhea. Then, after they get all their testimoney in, and the issues were drawn, they didn't throw light on the proposition. They introduced sixty witnesses, and have a lot of hypotheses, but they don't know anything about the things that are to be testified about. They can't read scientific works for us and put them in evidence.

Mr. Darrow—I think you misunderstand our position. What we claim is that there is no question among intelligent men about the fact of evolution. As to how it came about, there is a great deal of difference.

B. G. McKenzie—That is it. Yes, you are now coming back to the point in the defense in which you say you want us to recognize your theory, and yet you just absolutely jangle along, going in one door and out the same door. I wonder if that man has ever read the Bible.



Mr. Darrow—He had one with him.

### McKenzie Cracks Jokes.

Mr. McKenzie—That may be. But it is not competent for anything after they get all the witnesses in court, and then want to charge the jury after you submit it to him. It reminds me of the shape that the old Dutch judge was in, when there were a lot of witnesses swearing different tales. They say they know that man is both of the animal and vegetable kingdoms, coming from the same source. If that is so, this great array has been eating up their relations — they are depopulating their relatives very rapidly.

But that is another proposition. That judge, when he went to charge the jury, he said, "Now, gentlemen of the jury"—He was a new judge—"If the plaintiff and his witnesses have sworn the truth about this matter, you will find, of course, for the plaintiff; but, if, on the other hand, the defendant and his witnesses have sworn the truth, you will, of course, find for the defendant. But if you are like me and believe that they are all swearing lies, I don't know what the debble you will do."

I don't know where they got their evidence, but they are putting it up against the Word of God. I reckon the next thing will be to—

Mr. Hays—May I interrupt you for a moment?

B. G. McKenzie—Yes, sir.

Mr. Hays—You seem so sure as to what our witnesses are going to testify. We have not brought our witnesses out; how is it that you are in a position to know what they are going to say?

Mr. McKenzie—You know no expert testimony is competent in this case, but I think this is competent.

The Court—He asked you how you knew what they were going to testify.

Mr. McKenzie—I think his witness swore the truth when he said none of them knew. He said they didn't know, and I think they will tell the truth. Do you believe the story of divine creation?

### "None of Your Business."

Mr. Hays—That is none of your business.

Mr. McKenzie—Then don't ask me any more impertinent questions.

Mr. Malone—General, will you give me the law?

The Court—I do not think that Col. Hays' answer to Gen. McKenzie was as courteous an answer as he should give in this court.

### Apologies

Mr. Hays—That is so. Instead of those words, I will say I think it doesn't concern Gen. McKenzie.

Mr. McKenzie—I will say to you that I have as little concern as to where you emanated from, or as to where you are going, as any man I ever met.

Mr. Hays—Now, may I ask for an apology, your honor?

The Court—Yes, sir.

Mr. McKenzie—I didn't mean to give offense; I beg your pardon.

Mr. Hays—It is like old sweethearts made up.

The Court—Col. Bryan, it is only fifteen minutes to noon. Can you complete your argument in that time?

Mr. Bryan—What time is it now?

The Court—A quarter of twelve.

Mr. Darrow—Although it is a short while—

Mr. Malone—Can't we continue a little longer?

The Court—That is what I am getting at.

Mr. Malone—I am not referring to Col. Bryan's time; I am asking for Court to continue longer.

Mr. Gordon McKenzie—We have some ceiling fans coming. I want to ask your honor to adjourn a little early and let them put the fans in.

The Court—I have information that the sheriff wants to put ceiling fans in during the noon hour. I think you all will like to be cooled off. Will they be put in during the noon hour?

Mr. McKenzie—Yes, sir; they will be.

The Court—We will adjourn until 1:30.

## AFTERNOON SESSION

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

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

The Court—Now as I announced this morning, the floor on which we are now assembled is burdened with a great weight. I do not know how well it is supported, but sometimes buildings and floors give away when they are unduly burdened, so I suggest to you to be as quiet in the courtroom as you can; have no more emotion than you can avoid; especially have no applause, because it isn't proper in the courtroom. Now I regret very much that there are many people here who cannot get inside and hear the speaking, but, of course, it isn't within my power, physical power, to enlarge the courtroom. Mr. Counsel for the defendant—Mr. Counsel for the defendant, have you—has Mr. Darrow decided to speak or not?

Mr. Darrow—No, Mr. Malone is the only other.

The Court—The only other counsel to speak for that side?

Mr. Darrow—Yes.

The Court—Well, I believe Mr. Bryan then will speak next for the state.

### William Jennings Bryan's Speech.

If the court please we are now approaching the end of the first week of this trial and I haven't thought it proper until this time to take part in the discussions that have been dealing with phases of this question, or case, where the state laws and the state rules of practice were under discussion and I feel that those who are versed in the law of the state and who are used to the customs of the court might better take the burden of the case, but today we come to the discussion of a very important part of this case, a question so important that upon its decision will determine the length of this trial. If the court holds, as we believe the court should hold, that the testimony that the defense is now offering is not competent and not proper testimony, then I assume we are near the end of this trial and because the question involved is not confined to local questions, but is the broadest that will possibly arise, I have felt justified in submitting my views on the case for the consideration of the court. I have been tempted to speak at former times, but I have been able to withstand the temptation. I have been drawn into the case by, I think nearly all the lawyers on the other side. The principal attorney has often suggested that I am the arch-conspirator and that I am responsible for the presence of this case and I have almost been credited with leadership of the ignorance and bigotry which he thinks could alone inspire a law like this. Then Mr. Malone has seen fit to honor me by quoting my opinion on religious liberty. I assume he means that that is the most important opinion on religious liberty that he has been able to find in this country and I feel complimented that I should be picked out from all the men living and dead as the one whose expressions are most vital to the welfare of our country. And this morning I was credited with being the cause of the presence of these so-called experts.

### Duel to the Death?

Mr. Hays says that before he got here he read that I said this was to be a duel to the death, between science—was it? and revealed religion. I don't know who the other duelist was, but I was representing one of them and because of that they went to the trouble and the expense of several thousand dollars to bring down their witnesses. Well, my friend, if you said that this was important enough to be regarded as a duel between two great ideas or groups I certainly will be given credit for foreseeing what I could not then know and that is that this question is so important between religion and irreligion that even the involking of the divine blessing upon it might seem partisan and partial. I think when we come to consider the importance of this question, that all of us who are interested as lawyers on either side, could claim what we—what your honor so graciously grants—a hearing. I have got down here for fear I might forget them, certain points that I desire to present for your honor's consideration. In the first place, the statute—our position is that the statute is sufficient. The statute defines exactly what the people of Tennessee desired and intended and did declare unlawful and it needs no interpretation. The caption speaks of the evolutionary theory and the statute specifically states that teachers are forbidden to teach in the schools supported by taxation in this state, any theory of creation of man that denies the divine record of man's creation as found in the Bible, and that there might be no difference of opinion—there might be no ambiguity—that there might be no such confusion of thought as our learned friends attempt to inject into it, the legislature was careful to define what it meant by the first part of the statute. It says to teach that man is a descendant of any lower form of life—if that had not been there—if the first sentence had been the only sentence in the statute, then these gentlemen might come and ask to define what that meant or to explain whether the thing that was taught was contrary to the language of the statute in the first sentence, but the second sentence removes all doubt, as has been stated by my colleague. The second sentence points out specifically what is meant, and that is the teaching that man is the descendant of any lower form of life, and if the defendant taught that as we have proven by the textbook that he used and as we have proven by the students that went to hear him—if he taught that man is a descendant of any lower form of life, he violated the statute, and more than that we have his own confession that he knew he was violating the statute. We have the testimony here of Mr. White, the superintendent of schools, who says that Mr. Scopes told him he could not teach that book without violating the law. We have the testimony of Mr. Robertson—Robinson—the head of the Board of Education, who talked with Mr. Scopes just at the time the schools closed, or a day or two afterward, and Mr. Scopes told him that he had reviewed that book just before the school closed, and that he could not teach it without teaching evolution and without violating the law, and we have Mr. Robinson's statement that Mr. Scopes told him that he and one of the teachers, Mr. Ferguson, had talked it over after the law was passed and had decided that they could not teach it without the violation of the law, and yet while Mr. Scopes knew what the law was and knew what evolution was, and knew that it violated the law, he proceeded to violate the law. That is the evidence before this court, and we do not need any expert to tell us what that law means. An expert cannot be permitted to come in here and try to defeat the enforcement of a law by testifying that it isn't a bad law and it isn't—I mean a bad doctrine—no matter how these people phrase the doctrine—no matter how they eulogize it. This is not the place to try to prove that the law ought never to have been passed. The place to prove that, or teach that, was to the legislature. If these people were so anxious to keep the state of Tennessee from disgracing itself, if they were so afraid that by this action taken by the legislature, the state would put itself before the people of the nation as ignorant people and bigoted people—if they had half the affection for Tennessee that you would think they had as they come here to testify, they would have come at a time when their testimony would have been valuable and not at this time to ask you to refuse to enforce a law because they did not think the law ought to have been passed. And, my friends, if the people of Tennessee were to go into a state like New York—the one from which this impulse comes to resist this law, or go into any state—if they went into any state and tried to convince the people that a law they

had passed ought not to be enforced, just because the people who went there didn't think it ought to have been passed, don't you think it would be resented as an impertinence? They passed a law up in New York repealing the enforcement of prohibition. Suppose the people of Tennessee had sent attorneys up there to fight that law, or to oppose it after it was passed, and experts to testify how good a thing prohibition is to New York and to the nation, I wonder if there would have been any lack of determination in the papers in speaking out against the offensiveness of such testimony. The people of this state passed this law, the people of this state knew what they were doing when they passed the law, and they knew the dangers of the doctrine—that they did not want it taught to their children, and my friends, it isn't—your honor, it isn't proper to bring experts in here to try to defeat the purpose of the people of this state by trying to show that this thing that they denounce and outlaw is a beautiful thing that everybody ought to believe in. If, for instance—I think this is a fair illustration—if a man had made a contract with somebody to bring rain in a dry season down here, and if he was to have $500 for an inch of rain, and if the rain did not come and he sued to enforce his contract and collect the money, could he bring experts in to prove that a drought was better than a rain? (Laughter in the courtroom.) And get pay for bringing a drought when he contracted to bring rain. These people want to come here with experts to make your honor believe that the law should never have been passed and because in their opinion it ought not to have been passed, it ought not to be enforced. It isn't a place for expert testimony. We have sufficient proof in the book—doesn't the book state the very thing that is objected to, and outlawed in this state? Who has a copy of that book?

The Court—Do you mean the Bible?

Mr. Bryan—No, sir; the biology. (Laughter in the courtroom.)

A Voice—Here it is; Hunter's Biology.

**Cannot Teach Bible in State.**

Mr. Bryan—No, not the Bible, you see in this state they cannot teach the Bible. They can only teach things that declare it to be a lie, according to the learned counsel. These people in the state—Christian people—have tied their hands by their constitution. They say we all believe in the Bible for it is the overwhelming belief in the state, but we will not teach that Bible, which we believe even to our children through teachers that we pay with our money. No, no, it isn't the teaching of the Bible, and we are not asking it. The question is can a minority in this state come in and compel a teacher to teach that the Bible is not true and make the parents of these children pay the expenses of the teacher to tell their children what these people believe is false and dangerous? Has it come to a time when the minority can take charge of a state like Tennessee and compel the majority to pay their teachers while they take religion out of the heart of the children of the parents who pay the teachers? This is the book that is outlawed if we can judge from the questions asked by the counsel for the defense. They think that because the board of education selected this book, four or five years ago, that, therefore, he had to teach it, that he would be guilty if he didn't teach it and punished if he does. Certainly not one of these gentlemen is unlearned in the law and if I, your honor, who have not practiced law for twenty-eight years, know enough to know it, I think those who have been as conspicuous in the practice as these gentlemen have been, certainly ought to know it and that is no matter when that law was passed; no matter what the board of education has done; no matter whether they put their stamp of approval upon this book or not, the moment that law became a law anything in these books contrary to that law was prohibited and nobody knew it better than Mr. Scopes himself. It doesn't matter anything about who ordered these books—the law supercedes all boards of education for the legislature is the supreme court on this subject from which there is no appeal. What does this law teach, my friends? We have little—what is the Morgan boy's first name?



**Howard Morgan Understands Subject Better Than Darrow.**

A Voice—Howard.

Mr. Bryan—Little Howard Morgan—and, your honor, that boy is going to make a great lawyer some day. I didn't realize it until I saw how a 14-year-old boy understood the subject so much better than a distinguished lawyer who attempted to quiz him. The little boy understood what he was talking about and to my surprise the attorney's didn't seem to catch the significance of the theory of evolution and the thought—and I'm sure he wouldn't have said it if he hadn't had thought it—he thought that little boy was talking about the individuals coming up from one cell. That wouldn't be evolution—that is growth, and one trouble about evolution is that it has been used in so many different ways that people are confused about it, but I am not surprised that the gentleman from New York—Mr. Hays, was confused, the National Education association even is confused, for if you noticed the other day they had a meeting in Indianapolis and it was said that they were going to tell Tennessee where to head in. We had several flaming advance notices of how the ignorance and bigotry of Tennessee was to be scored by the educational association—the teachers of the United States. Well, during the early days we would have flaming announcements of what was going to be done and then we had a very mild report. The chairman of the committee on resolutions reported that there would be no resolution passed—no, they were not going to say a word. Why? Well, there were so many different kinds of evolution or so many definitions of evolution that if they made a general statement it would be useless and if they went into detail it would excite controversy. (Laughter in the courtroom.) No wonder the gentleman from New York was not able to distinguish by just hearing it once, between the evolution of life that began in the ocean away down in the bottom and evolved up through animals bigger and bigger, until finally they got a land animal some way and then when it got on the land where it had a firmer footing it kept on evolving more and more and then finally man was the climax. That little boy could understand that and I wonder if the lawyers cannot understand it by this time. (Laughter in the courtroom.) That is evolution and that is what he taught. Not the growth of an individual from one cell, but the growth of all life from one cell and while I am on this point I might call attention to another thing that the distinguished lawyer who spoke this morning—Mr. Hays, said. He quotes, I think, from Linnaeus, if I am not mistaken. I may not be as familiar with these scientific experts as he is, but I know some of them even besides those already brought here and Linnaeus I think was the one he referred to who gave us the classification and put man among the primates. Am I correct? Was it Linnaeus? And the monkeys were also among the primates, and he says if he taught that man came from a monkey he didn't violate the law in this state, because the monkey is in the same class of primates with man.

Mr. Hays—No, I didn't say that. I beg your pardon.

Mr. Bryan—What did you say?

Mr. Hays—I said the term order of animals was a scientific term and that they were in the same order and that the words should have been the words you used. They are of a different class, but they are of the same order.

Mr. Bryan—Then are there ranks in an order or all one rank?

Mr. Hays—No, there are various ranks in the order. They should have used your words, should have

used the words "class" or "families" —that is what I said.

Mr. Bryan—No matter what you said it wouldn't make much difference because the answer would be just the same. (Laughter in the courtroom.) I want to remind your honor that if men and monkeys are in the same class, called primates, that doesn't settle the question, for it is possible that some of those primates are the descendants of other primates, but if it were true that every primate was in a class by itself and was not descended from any other primate, therefore, according to evolution all the primates in that class descended from other animals, evolved from that class, and you go back to the primates, to the one evolved until you get to the one-cell animal in the bottom of the sea.

**Christian Believes Man from Above—Evolutionist from Below.**

So, my friends, if that were true, if man and monkey were in the same class, called primates, it would mean they did not come up from the same order. It might mean that instead of one being the ancestor of the other they were all cousins. But it does not mean that they did not come up from the lower animals, if this is the only place they could come from, and the Christian believes man came from above, but the evolutionist believes he must have come from below.

(Laughter in the courtroom.)

And that is from a lower order of animals.

Your honor, I want to show you that we have evidence enough here, we do not need any experts to come in here and tell us about this thing. Here we have Mr. Hunter. Mr. Hunter is the author of this biology and this is the man who wrote the book Mr. Scopes was teaching. And here we have the diagram. Has the court seen this diagram?

The Court—No, sir, I have not.

**Bryan Shows "Tree of Life" to Court**

Mr. Bryan—Well, you must see it (handing book to the court.)

(Laughter in the courtroom.)

On page 194—I take it for granted that counsel for the defense have examined it carefully?

Mr. Darrow—We have examined it.

Mr. Bryan—On page 194, we have a diagram, and this diagram purports to give some one's family tree. Not only his ancestors but his collateral relatives. We are told just how many animal species there are, 518,900. And in this diagram, beginning with protozoa we have the animals classified. We have circles differing in size according to the number of species in them and we have the guess that they give.

Of course, it is only a guess, and I don't suppose it is carried to a one or even to ten. I see they are round numbers, and I don't think all of these animals breed in round numbers, and so I think it must be a generalization of them.

(Laughter in the courtroom.)

The Court—Let us have order.

Mr. Bryan—8,000 protozoa, 3,500 sponges.

**Must Be More Than 35,000 Sponges.**

I am satisfied from some I have seen there must be more than 35,000 sponges.

(Laughter in the courtroom.)

Mr. Bryan—And then we run down to the insects, 360,000 insects. Two-thirds of all the species of all the animal world are insects. And sometimes, in the summer time we feel that we become intimately acquainted with them—a large percentage of the species are mollusks and fishes. Now, we are getting up near our kinfolks, 13,000 fishes. Then there are the amphibia. I don't know whether they have not yet decided to come out, or have almost decided to go back.

(Laughter in the courtroom.)

But they seem to be somewhat at home in both elements. And then we have the reptiles, 3,500; and then we have 13,000 birds. Strange that this should be exactly the same as the number of fishes, round numbers. And then we have mammals, 3,500, and there is a little circle and man is in the circle, find him, find man.



There is that book! There is the book they were teaching your children that man was a mammal and so indistinguishable among the mammals that they leave him there with thirty-four hundred and ninety-nine other mammals.

(Laughter and applause.)

Including elephants?

**Has Daniel Story Beaten.**

Talk about putting Daniel in the lion's den? How dared those scientists put man in a little ring like that with lions and tigers and everything that is bad! Not only the evolution is possible, but the scientists possibly think of shutting man up in a little circle like that with all these animals, that have an odor, that extends beyond the circumference of this circle, my friends.

(Extended laughter.)

He tells the children to copy this, copy this diagram. In the notebook, children are to copy this diagram and take it home in their notebooks. To show their parents that you cannot find man. That is the great game to put in the public schools to find man among animals, if you can.

Tell me that the parents of this day have not any right to declare that children are not to be taught this doctrine? Shall not be taken down from the high plane upon which God put man? Shall be detached from the throne of God and be compelled to link their ancestors with the jungle, tell that to these children? Why, my friend, if they believe it, they go back to scoff at the religion of their parents! And the parents have a right to say that no teacher paid by their money shall rob their children of faith in God and send them back to their homes, skeptical, infidels, or agnostics, or atheists.

This doctrine that they want taught, this doctrine that they would force upon the schools, where they will not let the Bible be read!

Why, up in the state of New York they are now trying to keep the schools from adjourning for one hour in the afternoon, not that any teacher shall teach them the Bible, but that the children may go to the churches to which they belong and there have instruction in the work. And they are refusing to let the school do that. These lawyers who are trying to force Darwinism and evolution on your children, do not go back to protect the children of New York in their right to even have religion taught to them outside of the schoolroom, and they want to bring their experts in here.

As we have one family tree this morning given to us, I think you are entitled to have a more authentic one. My friend, my esteemed friend from New York, gave you the family tree according to Linnaeus.

Mr. Malone—Beg pardon, Mr. Bryan?

**Hits at Darwinism.**

Mr. Bryan—I will give you the family tree according to Darwin. If we are going to have family trees here, let us have something that is reliable. I will give you the only family tree that any believer in evolution has ever dared to outline—no other family tree that any evolutionist has ever proposed, has as many believers as Darwin has in his family tree. Some of them have discarded his explanations. Natural selections! People confuse evolution with Darwinism. They did not use to complain. It was not until Darwin was brought out into the open, it was not until the absurdities of Darwin had made his explanations the laughing stock, that they began to try to distinguish between Darwinism and evolution. They explained that evolutionists had discarded Darwin's idea of sexual selection—I should think they would discard it, and they are discarding the doctrine of natural selection.

But, my friends, when they discard his explanations, they still teach his doctrines. Not one of these evolutionists have discarded Darwin's doctrine that makes life begin with one cell in the sea and continue in one unbroken line to man. Not one of them has discarded that.

Let me read you what Darwin says, if you will pardon me. If I

have to use some of these long words—I have been trying all my life to use short words, and it is kind of hard to turn scientist for a moment.

(Laughter in the courtroom.)

And try to express myself in their language.

Here is the family tree of Darwin and remember that is the Darwin that is spoken of in Hunter's biology, that is Darwin he has praised. That is the Darwin who has series—

Mr. Malone—What is the book, Mr. Bryan?

Mr. Bryan—"The Descent of Man," by Charles Darwin.

Mr. Malone—That has not been offered as evidence?

Mr. Bryan—I should be glad to offer it.

Mr. Malone—No, no, no. No, no.

Mr. Bryan—Let me know if you want it, and it will go in.

Mr. Malone—I would be glad to have it go in.

(Laughter in the courtroom.)

Mr. Bryan—Let us have it put in now so that there will be no doubt about it.

Mr. Malone—If you will let us put our witnesses on to show what the works are—

Mr. Hays—If you will let us put evidence in about it, perhaps we can settle the questions of what it is. I would be satisfied.

Mr. Bryan—If you attach that condition to it, I may not be willing.

Mr. Hays—No.

Mr. Bryan—You seemed to be so anxious about Darwin, I thought you would be content.

Mr. Malone—I merely wanted to know whether it was a book offered by the prosecution; that was the purpose of my question.

Mr. Bryan—No. It was just referred to and Mr. Hays quoted from Linnaeus on the family tree. I will read this.

**Reads from "Descent of Man."**

"The most ancient projenitors in the kingdom of the Vertebrata, at which we are able to obtain an obscure glance, apparently consisted of a group of marine animals, resembling the larvae of existing Ascidians. These animals probably gave rise to a group of fishes, as lowely organized as the lancelet, and from these the Ganoids, and other fishes like the Lepidosiren must have been developed. From such fish a very small advance would carry us on to the amphibians. We have seen that birds and reptiles were once intimately connected together; and the Monotremata now connect mammals with reptiles in a slight degree. But no one can at present say by what line of descent the three higher and related classes, namely, mammals, birds and reptiles were derived from the two lower vertebrate classes, namely, amphibians and fishes. In the class of mammals the steps are not difficult to conceive which led from the ancient Monotremata to the ancient Marsupials, and from these to the early progenitors of the placental mammals. We may thus ascend to the Lemuridae, and the interval is not very wide from these to the Simiadae. The Simiadae then branched off into two great stems, the new world and the old world monkeys, and from the latter, at a remote period, man, the wonder and glory of the universe, proceeded."

**"Not Even from American Monkeys."**

Not even from American monkeys, but from old world monkeys. (Laughter.) Now, here we have our glorious pedigree, and each child is expected to copy the family tree and take it home to his family to be submitted for the Bible family tree—that is what Darwin says. Now, my friends—I beg pardon, if the court please, I have been so in the habit of talknig to an audience instead of a court, that I will sometimes say "my friends," although I happen to know not all of them are my friends. (Laughter.)

The Court—Let me ask you a question: Do you understand the evolution theory to involve the divine birth of divinity, or Christ's virgin birth, in any way or not?

Mr. Bryan—I am perfectly willing to answer the question. My contention is that the evolutionary hypothesis is not a theory, your honor.



The Court—Well, hypothesis.

Mr. Bryan—The legislature paid evolution a higher honor than it deserves. Evolution is not a theory, but a hypothesis. Huxley said it could not raise to the dignity of a theory until they found some species that had developed according to the hypothesis, and at that time, Huxley's time, there had never been found a single species, the origin of which could be traced to another species. Darwin himself said he thought it was strange that with two or three million species they had not been able to find one that they could trace to another. About three years ago, Bateson, of London, who came all the way to Toronto at the invitation of the American Academy for the Advancement of Sciences—which, if the gentlemen will brace themselves for a moment, I will say I am a member of the American Academy for the Advancement of Science—they invited Mr. Bateson to come over and speak to them on evolution, and he came, and his speech on evolution was printed in Science magazine, and Science is the organ of the society and I suppose is the outstanding organ of science in this country, and I bought a copy so that if any of the learned counsel for the plaintiff had not had the pleasure of reading Bateson's speech that they could regale themselves during the odd hours. And Bateson told those people after having taken up every effort that had been made to show the origin of species and find it, he declared that every one had failed—every one—every one. And it is true today; never have they traced one single species to any other, and that is why it was that this so-called expert stated that while the fact of evolution, they think, is established, that the various theories of how it come about, that every theory has failed, and today there is not a scientist in all the world who can trace one single species to any other, and yet they call us ignoramouses and bigots because we do not throw away our Bible and accept it as proved that out of two or three millian species not a one is traceable to another. And they say that evolution is a fact when they cannot prove that one species came from another, and if there is such a thing, all species must have come, commencing as they say, commencing in that one lonely cell down there in the bottom of the ocean that just evolved and evolved until it got to be a man. And they cannot find a single species that came from another, and yet they demand that we allow them to teach this stuff to our children, that they may come home with their imaginary family tree and scoff at their mother's and father's Bible.

**Bryan Refers to Own Degrees.**

Now, my friends, I want you to know that they not only have no proof, but they cannot find the beginning. I suppose this distinguished scholar who came here shamed them all by his number of degrees—he did not shame me, for I have more than he has, but I can understand how my friends felt when he unrolled degree after degree. Did he tell you where life began? Did he tell you that back of all these that there was a God? Not a word about it. Did he tell you how life began? Not a word; and not one of them can tell you how life began. The atheists say it came some way without a God; the agnostics say it came in some way, they know not whether with a God or not. And the Christian evolutionists say we come away back there somewhere, but they do not know how far back—they do not give you the beginning—not that gentleman that tried to qualify as an expert; he did not tell you how life began. He did not tell you whether it began with God or how. No, they take up life as a mystery that nobody can explain, and they want you to let them commence there and ask no questions. They want to come in with their little padded up evolution that commences with nothing and ends nowhere. They do not dare to tell you that it ended with God. They come here with this bunch of stuff that they call evolution, that they tell you that everybody believes

in, but do not know that everybody knows as a fact, and nobody can tell how it came, and they do not explain the great riddle of the universe—they do not deal with the problems of life—they do not teach the great science of how to live—and yet they would undermine the faith of these little children in that God who stands back of everything and whose promise we have that we shall live with Him forever bye and bye. They shut God out of the world. They do not talk about God. Darwin says the beginning of all things is a mystery unsolvable by us. He does not pretend to say how these things started.

The Court—Well, if the theory is, Col. Bryan, that God did not create the cell, then it could not be reconcilable with the Bible?

Mr. Bryan—Of course, it could not be reconcilable with the Bible.

The Court—Before it could be reconcilable with the Bible it would have to be admitted that God created the cell?

**Evolution Not Reconcilable with Bible.**

Mr. Bryan—There would be no contention about that, but our contention is, even if they put God back there, it does not make it harmonious with the Bible. The court is right that unless they put God back there, it must dispute the Bible, and this witness who has been questioned, whether he has qualified or not, and they could ask him every question they wanted to, but they did not ask him how life began, they did not ask whether back of it all, whether if in the beginning there was God. They did not tell us where immortality began. They did not tell us where in this long period of time, between the cell at the bottom of the sea and man, where man became endowed with the hope of immortality. They did not, if you please, and most of them do not go to the place to hunt for it, because more than half of the scientists of this country—Prof. James H. Labell, one of them, and he bases it on thousands of letters they sent to him, says more than half do not believe there is a God or personal immortality, and they want to teach that to these children, and take that from them, to take from them their belief in a God who stands ready to welcome his children.

**Discusses Virgin Birth, Resurrection, and Atonement.**

And your honor asked me whether it has anything to do with the principle of the virgin birth. Yes, because this principle of evolution disputes the miracle; there is no place for the miracle in this train of evolution, and the Old Testament and the New are filled with miracles, and if this doctrine is true, this logic eliminates every mystery in the Old Testament and the New, and eliminates everything supernatural, and that means they eliminate the virgin birth—that means that they eliminate the resurrection of the body—that means that they eliminate the doctrine of atonement and they believe man has been rising all the time, that man never fell, that when the Savior came there was not any reason for His coming, there was no reason why He should not go as soon as He could, that He was born of Joseph or some other co-respondent, and that He lies in his grave, and when the Christians of this state have tied their hands and said we will not take advantage of our power to teach religion to our children, by teachers paid by us, these people come in from the outside of the state and force upon the people of this state and upon the children of the taxpayers of this state a doctrine that refutes not only their belief in God, but their belief in a Savior and belief in heaven, and takes from them every moral standard that the Bible gives us. It is this doctrine that gives us Nietzsche, the only great author who tried to carry this to its logical conclusion, and we have the testimony of my distinguished friend from Chicago in his speech in the Loeb and Leopold case that 50,000 volumes had been written about Nietzsche, and he is the greatest philosopher in the last hundred years, and have him pleading that because Leopold read Nietzsche and



adopted Nietzsche's philosophy of the superman, that he is not responsible for the taking of human life. We have the doctrine—I should not characterize it as I should like to characterize it—the doctrine that the universities that had it taught, and the professors who taught it, are much more responsible for the crime that Leopold committed than Leopold himself. That is the doctrine, my friends, that they have tried to bring into existence, they commence in the high schools with their foundation in the evolutionary theory, and we have the word of the distinguished lawyer that this is more read than any other in a hundred years, and the statement of that distinguished man that the teachings of Nietzsche made Leopold a murderer.

Mr. Darrow—Your honor, I want to object; there is not a word of truth in it. Nietzsche never taught that. Anyhow, there was not a word of criticism of the professors, nor of the colleges in reference to that, nor was there a word of criticism of the theological colleges when that clergyman in southern Illinois killed his wife in order to marry someone else. But, again, I say, the statement is not correct, and I object.

Mr. Bryan—We do not ask to have taught in the schools any doctrine that teaches a clergyman killed his wife—

The Court—Of course, I can not pass on the question of fact.

Mr. Darrow—I want to take an exception.

Mr. Bryan—I will read you what you said in that speech here.

Mr. Darrow—If you will read it all.

Mr. Bryan—I will read that part I want; you read the rest. (Laughter.) This book is for sale.

Mr. Darrow—First, of all I want to say, of course this argument is presumed to be made to the court, but it is not, I want to object to injecting any other case into this proceeding, no matter what the case is. I want to take exception to it, if the court permits it.

The Court—Well, Col. Bryan, I doubt you are making reference to what Col. Darrow has said in any other case, since, since he has not argued this case, except to verify what you have said, it can not be an issue here, perhaps you have the right—

Mr. Bryan—Yes, I would like very much to give you this.

Mr. Darrow—If your honor permits, I want to take an exception.

The Court—You may do so.

Mr. Bryan—If I do not find what I say, I want to tender an apology, because I have never in my life misquoted a man intentionally.

Mr. Darrow—I am intimating you did. Mr. Bryan, but you will find a thorough explanation in it. I am willing for him to refer to what he wants, to look it up, and I will refer the court to what I want to later.

The Court—All right.

Mr. Darrow—It will only take up time.

Mr. Bryan—I want to find what he said, where he says the professors and universities were more responsible than Leopold was.

Mr. Darrow—All right, I will show you what I said, that the professors and the universities were not responsible at all.

Mr. Bryan—You added after that you did not believe in excluding the reading of it, that you thought that was one of the things—

Mr. Darrow—The fellow that invented the printing press did some mischief as well as some good.

Mr. Bryan—Here it is, Page 84, and this is on sale here in town. I got four copies the other day; cost me $2; anybody can get it for 50 cents apiece, but he cannot buy mine. They are valuable.

Mr. Malone—I will pay $1.50 for yours. (Laughter.)

**Bryan Quotes Darrow in Loeb-Leopold Case.**

Mr. Bryan (Reading)—"I will guarantee that you can go down to the University of Chicago today—into its big library and find over 1,000 volumes of Nietzsche, and I am sure I speak moderately. If this boy is to blame for this, where did he get it? Is there any blame attached because somebody took

Nietzsche's philosophy seriously and fashioned his life on it? And there is no question in this case but what it is true. Then who is to blame? The university would be more to blame than he is. The scholars of the world would be more to blame than he is. The publishers of the world—and Nietzsche's books are published by one of the biggest publishers in the world—are more to blame than he. Your honor, it is hardly fair to hang a 19-year-old boy for the philosophy that was taught him at the university." Now, there is the university and there is the scholar.

Mr. Darrow—Will you let me see it?

Mr. Bryan—Oh, yes, but let me have it back.

Mr. Darrow—I'll give you a new one autographed for you. (Laughter.)

Mr. Bryan—Now, my friends, Mr. Darrow asked Howard Morgan, "Did it hurt you? Did it do you any harm? Did it do you any harm?" Why did he not ask the boy's mother?

Mr. Darrow—She did not testify.

Mr. Bryan—No, but why did you not bring her here to testify?

Mr. Darrow—I fancy that his mother might have hurt him.

Mr. Bryan—Your honor, it is the mothers who find out what is being done, and it is the fathers who find out what is being done. It is not necessary that a boy, whose mind is poisoned by this stuff, poisoned by the stuff administered without ever having the precaution to write poison on the outside, it is the parents that are doing that, and here we have the testimony of the greatest criminal lawyer in the United States, stating that the universities—

Mr. Darrow—I object, your honor, to an injection of that case into this one.

The Court—It is argument before the court period. I do not see how—

Mr. Darrow—If it does not prejudice you, it does not do any good.

The Court—No, sir; it does not prejudice me.

Mr. Darrow—Then, it does not do any good.

The Court—Well. (Loud laughter and great applause.)

Mr. Bryan—If your honor, please, let me submit, we have a different idea of the purpose of argument, my idea is that it is to inform the court, not merely to prejudice the court.

The Court—Yes.

Mr. Darrow—I am speaking of this particular matter.

The Court—Suppose you get through with Col. Darrow as soon as you can, Mr. Bryan.

Mr. Bryan—Yes, I will. I think I am through with the colonel now. The gentleman was called as an expert, I say, did not tell us where life began, or how. He did not tell us anything about the end of this series, he did not tell us about the logical consequences of it, and the implications based upon it. He did not qualify even as an expert in science, and not at all as an expert in the Bible. If a man is going to come as an expert to reconcile this definition of evolution with the Bible, he must be an expert on the Bible also, as well as on evolution, and he did not qualify as an expert on the Bible, except to say he taught a Sunday School class.

Mr. Malone—We were not offering him for that purpose. We expect to be able to call experts on the Bible.

Mr. Bryan—Oh, you did not count him as an expert?

Mr. Malone—We count him as a Christian, possibly not as good as Mr. Bryan.

Mr. Bryan—Oh, you have three kinds to be called.

Mr. Malone—No, just Americans. It is not a question of citizenship and not a distinction.

Mr. Bryan—We are to have three kinds of people called. We are to have the expert scientist, the expert Bible men and then just Christians.

Mr. Malone—We will give you all the information you want, Mr. Bryan.

Mr. Bryan—Thank you, sir. I think we have all we want now. (Applause.) Now, your honor, when it comes to Bible experts, do they think that they can bring them in here to instruct the members of the jury, eleven of whom are members of the church? I submit that of the eleven members of the jury. more of the jurors are experts on what the Bible is than any Bible expert who does not subscribe to the true spiritual influences or spiritual discernments of what our Bible says.

Voice in audience, "Amen!"



### Must Be a Christian to Understand the Bible.

Mr. Bryan—(Continuing) and the man may discuss the Bible all he wants to, but he does not find out anything about the Bible until he accepts God and the Christ of whom He tells.

Mr. Darrow—I hope the reporters got the amens in the record. I want somewhere, at some point, to find some court where a picture of this will be painted. (Laughter.)

Mr. Bryan—Your honor, we first pointed out that we do not need any experts in science. Here is one plain fact, and the statute defines itself, and it tells the kind of evolution it does not want taught, and the evidence says that this is the kind of evolution that was taught, and no number of scientists could come in here, my friends, and override that statute or take from the jury its right to decide this question, so that all the experts that they could bring would mean nothing. And, when it comes to Bible experts, every member of the jury is as good an expert on the Bible as any man that they could bring, or that we could bring. The one beauty about the Word of God is, it does not take an expert to understand it. They have translated that Bible into five hundred languages, they have carried it into nations where but few can read a word, or write, to people who never saw a book, who never read, and yet can understand that Bible, and they can accept the salvation that that Bible offers, and they can know more about that book by accepting Jesus and feeling in their hearts the sense of their sins forgiven than all of the skeptical outside Bible experts that could come in here to talk to the people of Tennessee about the construction that they place upon the Bible, that is foreign to the construction that the people here place upon it. Therefore, your honor, we believe that this evidence is not competent, it is not a mock trial, this is not a convocation brought here to allow men to come and stand for a time in the limelight, and speak to the world from the platform at Dayton. If we must have a mock trial to give these people a chance to get before the public with their views, then let us convene it after this case is over, and let people stay as long as they want to listen, but let this court, which is here supported by the law, and by the taxpayers, pass upon this law, and when the legislature passes a law and makes it so plain that even though a fool need not err therein, let us sustain it in our interpretations. We have a book here that shows everything that is needed to make one understand evolution, and to show that the man violated the law. Then why should we prolong this case. We can bring our experts here for the Christians; for every one they can bring who does not believe in Chrstianity, we can bring more than one who believes in the Bible and rejects evolution, and our witnesses will be just as good experts as theirs on a question of that kind. We could have a thousand or a million witnesses, but this case as to whether evolution is true or not, is not going to be tried here, within this city; if it is carried to the state's courts, it will not be tried there, and if it is taken to the great court at Washington, it will not be tried there. No, my friends, no court or the law, and no jury, great or small, is going to destroy the issue between the believer and the unbeliever. The Bible is the Word of God; the Bible is the only expression of man's hope of salvation. The Bible, the record of the Son of God, the Savior of the world, born of the virgin Mary, crucified and risen again. That Bible is not going to be driven out of this court

by experts who come hundreds of miles to testify that they can reconcile evolution, with its ancestor in the jungle, with man made by God in His image, and put here for purposes as a part of the divine plan. No, we are not going to settle that question here, and I think we ought to confine ourselves to the law and to the evidence that can be admitted in accordance with the law. Your court is an office of this state, and we who represent the state as counsel are officers of the state, and we cannot humiliate the great state of Tennessee by admitting for a moment that people can come from anywhere and protest against the enforcement of this state's laws on the ground that it does not conform with their ideas, or because it banishes from our schools a thing that they believe in and think ought to be taught in spite of the protest of those who employ the teacher and pay him his salary.

The facts are simple, the case is plain, and if those gentlemen want to enter upon a larger field of educational work on the subject of evolution, let us get through with this case and then convene a mock court for it will deserve the title of mock court if its purpose is to banish from the hearts of the people the Word of God as revealed. (Great applause.)

The Court—We will take a short recess.

### Darrow's Statement.

The Court—Col. Darrow, did you say you had a statement you wanted to make.

Mr. Darrow—I want to read what I said. I shan't include an argument.

The Court—There is no objection, colonel.

Mr. Darrow—I shan't include argument; I don't think I have the right. Following what Mr. Bryan said—(Commotion in courtroom near judge's stand.)

Court Officer—Just a picture machine fallen over.

Mr. Darrow—Following what he used in a paragraph explanatory of it that I want to quote:

"Now, I do not want to be misunderstood about this. Even for the sake of saving the lives of my clients, I do not want to be dishonest, and tell the court something I do not honestly think in this case. I do not believe that the universities are to blame. I do not think they should be held responsible. I do think, however, that they are too large, and that they should keep a closer watch, if possible, upon the individual. But you cannot destroy thought because, forsooth, some brain may be deranged by thought. It is the duty of the university, as I conceive it, to be the great storehouse of the wisdom of the ages, and to let students go there, and learn, and choose. I have no doubt but that it has meant the death of many; that we cannot help. Every changed idea in the world has had its consequences. Every new religious doctrine has created its victims. Every new philosophy has caused suffering and death. Every new machine has carved up men while it served the world. No railroad can be built without the destruction of human life. No great building can be erected but that unfortunate workmen fall to the earth and die. No great movement that does not bear is toll of life and death; no great ideal but does good and harm, and we cannot stop because it may do harm.

In connection with Nietzsche, he was not connected with a university at all; he was a disciple of the doctrine of the superman.

W. J. Bryan—I want to show that Nietzsche did praise Darwin. He put him as one of the three great men of his century. He put Napoleon first, because Napoleon had made war respectable. And he put Darwin among the three great men, his supermen were merely the logical outgrowth of the survival of the fittest with will and power, the only natural, logical outcome of evolution. And Nietzsche, himself, became an atheist following that doctrine, and became insane, and his father and mother and an uncle were among the people he tried to kill.



Darrow—He didn't make half as many insane people as Jonathan Edwards, your great theologian. And he did not preach the doctrine of evolution. He said that Darwin had a great mind. I suppose Col. Bryan would say that. And Napoleon, though neither Mr. Bryan nor I adore Napoleon—I know I don't, and I don't think he does. He did not teach the doctrine of evolution.

Court—All right, colonel, be certain to return the book.

### Malone Replies to Bryan.

Dudley Field Malone—If the court please, it does seem to me that we have gone far afield in this discussion. However, probably this is the time to discuss everything that bears on the issues that have been raised in this case, because after all, whether Mr. Bryan knows it or not, he is a mammal, he is an animal and he is a man. But, your honor, I would like to advert to the law, and to remind the court that the heart of the matter is the question of whether there is liability under this law.

I have been puzzled and interested at one and the same time at the psychology of the prosecution and I find it difficult to distinguish between Mr. Bryan, the lawyer in this case; Mr. Bryan, the propagandist outside of this case, and the Mr. Bryan who made a speech against science and for religion just now—Mr. Bryan my old chief and friend. I know Mr. Bryan. I don't know Mr. Bryan as well as Mr. Bryan knows Mr. Bryan, but I know this, that he does believe—and Mr. Bryan, your honor, is not the only one who believes in the Bible. As a matter of fact there has been much criticism, by indirection and implication, of this text, or synopsis, if you please, that does not agree with their ideas. If we depended on the agreement of theologians, we would all be infidels. I think it is in poor taste for the leader of the prosecution to cast reflection or aspersions upon the men and women of the teaching profession in this country. God knows, the poorest paid profession in America is the teaching profession, who devote themselves to science, forego the gifts of God, consecrate their brains to study, and eke out their lives as pioneers in the fields of duty, finally hoping that mankind will profit by his efforts, and to open the doors of truth.

Mr. Bryan quoted Mr. Darwin. That theory was evolved and explained by Mr. Darwin seventy-five years ago. Have we learned nothing in seventy-five years? Here we have learned the truth of biology, we have learned the truth of anthropology, and we have learned more of archeology? Not very long since the archeological museum in London established that a city existed, showing a high degree of civilization in Egypt 14,000 years old, showing that on the banks of the Nile River there was a civilization much older than ours. Are we to hold mankind to a literal understanding of the claim that the world is 6,000 years old, because of the limited vision of men who believed the world was flat, and that the earth was the center of the universe, and that man is the center of the earth. It is a dignified position for man to be the center of the universe, that the earth is the center of the universe, and that the heavens revolve about us. And the theory of ignorance and superstitution for which they stood are identical, a psychology and ignorance which made it possible for theologians to take old and learned Galileo, who proposed to prove the theory of Copernicus, that the earth was round and did not stand still, and to bring old Galileo to trial—for what purpose? For the purpose of proving a literal construction of the Bible against truth, which is revealed. Haven't we learned anything in seventy-five years? Are we to have our children know nothing about science except what the church says they shall know? I have never seen harm in learning and understanding, in humility and open-mindedness, and I have never seen clearer the need of that learn-

ing than when I see the attitude of the prosecution, who attack and refuse to accept the information and intelligence, which expert witnesses will give them. Mr. Bryan may be satisfactory to thousands of people. It is in so many ways that he is satisfactory to me; his enthusiasm, his vigor, his courage, his fighting ability these long years for the things he thought were right. And many a time I have fought with him, and for him; and when I did not think he was right, I fought just as hard against him. This is not a conflict of personages; it is a conflict of ideas, and I think this case has been developed by men of two frames or mind. Your honor, there is a difference between theological and scientific men. Theology deals with something that is established and revealed; it seeks to gather material, which they claim should not be changed. It is the Word of God, and that cannot be changed; it is literal, it is not to be interpreted. That is the theological mind. It deals with theology. The scientific is a modern thing, your honor. I am not sure that Galileo was the one who brought relief to the scientific mind; because, theretofore, Aristotle and Plato had reached their conclusions and processes, by metaphysical reasoning, because they had no telescope and no microscope. These were things that were invented by Galileo. The difference between the theological mind and the scientific mind is that the theological mind is closed, because that is what is revealed and is settled. But the scientist says no, the Bible is the book of revealed religion, with rules of conduct, and with aspirations—that is the Bible. The scientist says, take the Bible as guide, as an inspiration, as a set of philosophies and preachments in the world of theology.

**Theological and Scientific Minds Differ.**

And what does this law do? We have been told here that this was not a religious question. I defy anybody, after Mr. Bryan's speech, to believe that this was not a religious question. Mr. Bryan brought all of the foreigners into this case. Mr. Bryan had offered his services from Miami, Fla.; he does not belong in Tennessee. If it be wrong for American citizens from other parts of this country to come to Tennessee to discuss issues which we believe, then Mr. Bryan has no right here, either. But it was only when Mr. Darrow and I had heard that Mr. Bryan had offered his name and his reputation to the prosecution of this young teacher, that we said, Well, we will offer our services to the defense. And, as I said in the beginning, we feel at home in Tennessee; we have been received with hospitality, personally. Our ideas have not taken effect yet; we have corrupted no morals so far as I know, and I would like to ask the court if there was any evidence in the witnesses produced by the prosecution, of moral deterioration due to the course of biology which Prof. Scopes taught these children—the little boy who said he had not been hurt by it, and who slipped out of the chair possibly and went to the swimming pool; and the other who said that the theory he was taught had not taken him out of the church. This theory of evolution, in one form or another, has been up in Tennessee since 1832, and I think it is incumbent on the prosecution to introduce at least one person in the state of Tennessee whose morals have been affected by the teaching of this theory.

After all, we of the defense contend, and it has been my experience, your honor, in my twenty years, as Mr. Bryan said, as a criminal lawyer, that the prosecution had to prove its case; that the defense did not have to prove it for them. We have a defendant here charged with a crime. The prosecution is trying to get your honor to take the theory of the prosecution as the theory of our defense. We maintain our right to present our own defense, and present our own theory of our defense, and to present our own theory of this law, because we maintain, your honor, that if everything that the state has said in its testimony be true—and we admit it is true—that under this law the defendant Scopes has not violated that statute. Haven't we the right to prove it by our witnesses if that is our theory, if that is so. Moreover, let us take the law—Be it enacted by the state of Tennessee that it shall be unlawful for any teacher in any universities, normals or any other schools in the state which are supported in whole or in part by public funds of the state, to teach any theory that denies the story of divine creation of man as taught in the Bible, and to teach him that man is descended from a lower order of animals. If that word had been "or" instead of "and," then the prosecution would only have to prove half of its case. But it must prove, according to our contention, that Scopes not only taught a theory that man had descended from a lower order of animal life, but at the same time, instead of that theory, he must teach the theory which denies the story of divine creation set forth in the Bible. And we maintain that we have a right to introduce evidence by these witnesses that the theory of the defendant is not in conflict with the theory of creation in the Bible. And, moreover, your honor, we maintain we have the right to call witnesses to show that there is more than one theory of the creation in the Bible. Mr. Bryan is not the only one who has spoken for the Bible; Judge McKenzie is not the only defender of the word of God. There are other people in this country who have given their whole lives to God. Mr. Bryan, to my knowledge, with a very passionate spirit and enthusiasm, has given most of his life to politics. We believe—(Applause.)

The Court—Mr.—



**Bible Not Book of Science.**

Mr. Malone—I would like to say your honor, as personal information, that probably no man in the United States has done more to establish certain standards of conduct in the mechanics and world of politic than Mr. Bryan. But is that any reason that I should fall down when Bryan speaks of theology? Is he the last word on the subject of theology?

Well do I remember in my history the story of the burning of the great library at Alexandria, and just before it was burned to the ground that the heathen, the Mohamedians and the Egyptians, went to the hostile general and said, "Your honor, do not destroy this great library, because it contains all the truth that has been gathered," and the Mohamedian general said, but the Koran contains all the truth. If the library contains the truth that the Koran contains we do not need the library and if the library does not contain the truth that the Koran contains then we must destroy the library anyway."

But these gentlemen say the Bible contains the truth—if the world of science can produce any truth or facts not in the Bible as we understand it, then destroy science, but keep our Bible." And we say "keep your Bible." Keep it as your consolation, keep it as your guide, but keep it where it belongs, in the world of your own conscience, in the world of your individual judgment, in the world of the Protestant conscience that I heard so much about when I was a boy, keep your Bible in the world of theology where it belongs and do not try to tell an intelligent world and the intelligence of this country that these books written by men who knew none of the accepted fundamental facts of science can be put into a course of science, because what are they doing here? This law says what? It says that no theory of creation can be taught in a course of science, except one which conforms with the theory of divine creation as set forth in the Bible. In other words, it says that only the Bible shall be taken as an authority on the subject of evolution in a course on biology.

The Court—Let me ask you a question, colonel? It is not within the province of this court to determine which is true is it?

Mr. Malone—No, but it is within the province of the court to listen to the evidence we wish to submit

to make up its own mind, because here is the issue—

The Court—I was going to follow that with another question. Is it your theory—is it your opinion that the theory of evolution is reconcilable with the story of the divine creation as taught in the Bible?

Mr. Malone—Yes.

**Scientists Are God-Fearing Men.**

The Court—In other words, you believe—when it says—when the Bible says that God created man, you believe that God created the life cells and that then out of that one single life cell the God created man by a process of growth or development—is that your theory?

Mr. Malone—Yes.

The Court—And in that you think that it doesn't mean that he just completed him, complete all at once?

Mr. Malone—Yes, I might think that and I might think he created him serially—I might think he created him anyway. Our opinion is this—we have the right, it seems to us, to submit evidence to the court of men without question who are God-fearing and believe in the Bible and who are students of the Bible and authorities on the Bible and authorities on the scientific world—they have a right to be allowed to testify in support of our view that the Bible is not to be taken literally as an authority in a court of science.

The Court—That is what I was trying to get, your position on. Here was my idea. I wanted to get your theory as to whether you thought it was in the province of the court to determine which was true, or whether it was your theory that there was no conflict and that you had a right to introduce proof to show what the Bible—what the true construction or interpretation of the Bible story was.

Mr. Malone—Yes.

The Court—That is your opinion.

Mr. Malone—Yes. And also from scientists who believe in the Bible and belong to churches and who are God-fearing men—what they think about this subject, of the reconcilement of science and religion—of all science and the Bible—your honor, because yesterday I made a remark, your honor, which might have been interpreted as personal to Mr. Bryan. I said that the defense believed we must keep a clear distinction between the Bible, the church, religion and Mr. Bryan. Mr. Bryan, like all of us, is just an individual, but like himself he is a great leader. The danger from the viewpoint of the defense is this, that when any great leader goes out of his field and speaks as an authority on other subjects his doctrines are quite likely to be far more dangerous than the doctrines of experts in their field who are ready and willing to follow, but what I don't understand is this, your honor, the prosecution inside and outside of the court has been ready to try the case and this is the case. What is the issue that has gained the attention not only of the American people, but people everywhere? Is it a mere technical question as to whether the defendant Scopes taught the paragraph in the book of science? You think, your honor, that the News Association in London, which sent you that very complimentary telegram you were good enough to show me in this case, because the issue is whether John Scopes taught a couple of paragraphs out of his book? Oh, no, the issue is as broad as Mr. Bryan himself has made it. The issue is as broad as Mr. Bryan has published it and why the fear? If the issue is as broad as they make it why the fear of meeting the issue? Why, where issues are drawn by evidence, where the truth and nothing but the truth are scrutinized and where statements can be answered by expert witnesses on the other side—what is this psychology of fear? I don't understand it. My old chief—I never saw him back away from a great issue before. I feel that the prosecution here is filled with a needless fear. I believe that if they withdraw their objection and hear the evidence of our experts their minds would not only be improved



but their souls would be purified. I believe and we believe that men who are God-fearing, who are giving their lives to study and observation, to the teaching of the young—are the teachers and scientists of this country in a combination to destroy the morals of the children to whom they have dedicated their lives? Are preachers the only ones in America who care about our youth? Is the church the only source of morality in this country? And I would like to say something for the children of the country. We have no fears about the young people of America. They are a pretty smart generation. Any teacher who teaches the boys or the girls today, an incredible theory

**No Need to Worry About Children.**

—we need not worry about those children of this generation paying much attention to it. The children of this generation are pretty wise. People, as a matter of fact I feel that the children of this generation are probably much wiser than many of their elders. The least that this generation can do, your honor, is to give the next generation all the facts, all the available data, all the theories, all the information that learning, that study, that observation has produced—give it to the children in the hope of heaven that they will make a better world of this than we have been able to make it. We have just had a war with twenty-million dead. Civilization is not so proud of the work of the adults. Civilization need not be so proud of what the grown ups have done. For God's sake let the children have their minds kept open—close no doors to their knowledge; shut no door from them. Make the distinction between theology and science. Let them have both. Let them both be taught. Let them both live. Let them be reverent, but we come here to say that the defendant is not guilty of violating this law. We have a defendant whom we contend could not violate this law. We have a defendant whom we can prove by witnesses whom we have brought here and are proud to have brought here, to prove, we say, that there is no conflict between the Bible and whatever he taught. Your honor, in a criminal case we think the defendant has a right to put in his own case, on his own theory, in his on way. Why! because your honor, after you hear the evidence, if it is inadmissible if it is not informing to the court and informing to the jury, what can you do? You can exclude it—you can strike it out. What is the jury system that Mr. Bryan talked so correctly about just about a week ago, when he spoke of this jury system, when he said it was a seal of freedom for free men, in a free state? Who has been excluding the jury for fear it would learn something? Have we? Who has been making the motions to take the jury out of the courtroom? Have we? We want everything we have to say on religion and on science told and we are ready to submit our theories to the direct and cross-examination of the prosecution. We have come in here ready for a battle. We have come in here for this duel. I don't know anything about dueling, your honor. It is against the law of God. It is against the church. It is against the law of Tennessee, but does the opposition mean by duel that our defendant shall be strapped to a board and that they alone shall carry the sword, is our only weapon the witnesses who shall testify to the accuracy of our theory—is our weapon to be taken from us, so that the duel will be entirely one-sided? That isn't my idea of a duel. Moreover it isn't going to be a duel.

**Truth Is Imperishable and Eternal.**

There is never a duel with the truth. The truth always wins and we are not afraid of it. The truth is no coward. The truth does not need the law. The truth does not need the forces of government. The truth does not need Mr. Bryan. The truth is imperishable, eternal and immortal and needs no human agency to support it. We are ready to tell the truth as we understand

it and we do not fear all the truth that they can present as facts. We are ready. We are ready. We feel we stand with progress. We feel we stand with science. We feel we stand with intelligence. We feel we stand with fundamental freedom in America. We are not afraid. Where is the fear? We meet it, where is the fear? We defy it, we ask your honor to admit the evidence as a matter of correct law, as a matter of sound procedure and as a matter of justice to the defense in this case. (Profound and continued applause.)

The bailiff raps for order.

Is the Rev. Dr. Jones or the Rev. Dr. Cartwright in the house? An old resident of Dayton, Mr. Blevins, has passed away and his funeral will be this afternoon at 4:30, those wishing to attend may do so. Pass out quietly.

The Court—Col. Darrow, did you say you had something you wished to say?

Mr. Darrow—No, I just wanted about that much, to try a little more to specifically answer the questions you asked Mr. Malone. I wouldn't think of trespassing or making a speech as I have explained to the attorney-general. Your question as I understood it was whether the doctrine of evolution was consistent with the story of Genesis that God created man out of the dust of the earth—whether the doctrine of evolution that he came up from below a long period of time is consistent with it. What I want to say won't be more than that much. We say that God created man out of the dust of the earth is simply a figure of speech. The same language is used in reference to brutes many times in the Scriptures and it doesn't mean necessarily that he created him as a boy would roll up a spitball out of dust—out of hand—but Genesis, or the Bible says nothing whatever about the method of creation.

The Court—The processes?

Mr. Darrow—It might have been by any other process, that is all.

The Court—So your theory—your opinion, Colonel, is that God might have created him by a process of growth?

Mr. Darrow—Yes.

The Court—Or development?

Mr. Darrow—Yes.

The Court—The fact that he created him did not manufacture him like a carpenter would a table?

Mr. Darrow—Yes, that is all. That is what we claim.

The Court—You recognize God behind the first spark of life?

Mr. Darrow—You are asking me whether I do?

The Court—Your theory—no, not you.

Mr. Darrow—We expect most of our witnesses to take that view. As to me I don't pretend to have any opinion on it.

The Court—My only concern is that as to your theory of it.

Mr. Darrow—So far as this question is concerned, we claim there is no conflict because it doesn't mean making man like a carpenter would make him, but that it is perfectly consistent to say that he was made by a process—perfectly consistent with the Bible—not inconsistent with it—that he was made out of the dust of the earth. Animals were made out of the dust of the earth and everything was made out of the dust of the earth and that had nothing to do with the process, but simply gives a general statement and there is nothing in the Bible which shows the process.

The Court—Colonel, let me ask you another question. You have stated your theory—is it your theory that man and beast had a common origin of life? Does your theory teach that men developed directly from that common origin without first developing into the form of any other animal or that he developed in the one form of life or one physical existence and then passed from that to another form of physical existence—or what is your theory?

**No Such Thing as Species.**

Mr. Darrow—The theory of evolution as I understand it, and which I believe—it will only take a moment because I have no right to make any



argument—life commenced probably with very low forms, most likely one-celled animals and probably in the sea or on the border of the land and sea. That out of that one form grew another. That there is no such thing as species—that is all nonsense. Science does not talk about species. There are differences—and that the differences came by various processes which perhaps none is certain of, but are easily traced through all the history of life that is now extinct, that life has joined on to it, one linking with another and that man is the highest product of it, having the first stem of all life in a very low organism and one branch growing out and soon another branch in that direction and another branch in that direction until we reach the apex in man, where he stands alone, but connects his whole history with the primal origins of life. We say that is entirely consistent. It is a process we are interested in and the Bible story is not inconsistent with that.

The Court—Let me see if I get you clearly?

Mr. Darrow—Not necessarily; some people might say it was and some not.

The Court—A common source—you say all life came from the one cell?

Mr. Darrow—Well, I am not quite so clear, but I think it did. It all came from protoplasm, which is a bearer of life and probably all came from one cell, but all human life comes from one cell. You came from one and I came from one—nothing else, a single cell. All animal life came that way.

The Court—What I want to be clear on—do you say that man developed directly from that one cell into man or did he develop from that one cell into a lower animal and so on from one form of animal life to another until the apex man was reached and he was man?

Mr. Darrow—One form of animal life grew out of another, beginning below—variation exists—variations of all kinds. All life varies and we are creating those new variations every day. They are not species, they are variations and as you went on up there would be a variation in animal structures on up to man. That is surely consistent with the story that man was created out of the dust of the earth.

The Court—According to your theory where did man become endowed with reason?

Mr. Darrow—Well, judge, I don't suppose there is any scientist today but what knows that the lower order of animals have reason.

The Court—It is just in a higher development in man?

Mr. Darrow—No, reason begins way below man.

The Court—I say man has a greater development?

Mr. Darrow—Oh, yes, much greater—very much greater—very much greater than any other animal.

The Court—Does your theory of evolution speak at all on the question of immortality?

Mr. Darrow—There are a lot of people who believe in evolution and who believe in the theory of immortality and no doubt many who do not. Evolution, as a theory, is concerned with the organism of man. Chemistry does not speak of immortality and hasn't anything to do with it. Geology doesn't know anything about it. It is a separate branch of science. I know there are a lot of evolutionists who believe in immortality.

The Court—Those who believe in immortality, where do they—do they also believe that other animals are indowed with immortality?

Mr. Darrow—John Wesley used to believe it, he was an evolutionist in a way. He expected to meet his dog and his horse in the future world. Indians believe it. It has been very common all through the ages, but I don't know—I couldn't say exactly how all evolutionists believe. As to where the idea of immortality came from and as for me I am an agnostic on that. I don't claim to know. I have been looking for evidence all my life and never found it.

Mr. Hays—Might I not ask the court, don't your very inquiry show

the necessity of evidence in this case? We have witnesses who can testify to all of this and all that we ask is a chance.

The Court—I was just endeavoring to get Col. Darrow's conception of the theory. I will hear you, Gen. Stewart.

### Gen. Stewart Disclaims Kin of Monkey or Ass.

Gen. Stewart—This discussion, which is supposed to be a purely legal discussion, has assumed many and varied aspects. Young Haggard, with the prosecution, suggests to me that it would be necessary that I preach a sermon in order to answer what has been said. My views of things—it has been my nature to always be progressive and liberal in the use of the word evolution. The word evolution, as Mr. Bryan stated, has been misunderstood. The word has been misused. I am not an evolutionist. I don't believe that I came from the same cell with the monkey and the ass, and I don't believe they do as much as they appear anxious to be so classified. I believe that civilization was one time at a very low ebb. I believe that it was in an embryonic stage, so to speak. I believe there was a little civilization. I believe that man is more or less a cave-man and I think sometimes when our tempers get ruffled that we have sufficient evidence of that fact, as I am sure Mr. Hayes will agree with me. I do not ascribe to this theory of evolution, however, which undertakes to teach in defiance of the law of the state of Tennessee, that man descended from a lower order of animals. This is an argument being presented to your honor for the purpose of aiding or assisting your honor, if such be possible, from these gentlemen interested on both sides of this case, in determining whether or not scientific testimony shall be introduced here. The primary purpose of which is to show that there is no conflict between science and the Bible, or strictly speaking, that there is nothing in the theory of evolution that man came from a lower order of animals which conflicts with the story of divine creation. I think, your honor, this turns on an entirely legal question. Mr. Bryan, Jr.—William Jennings Bryan, Jr., very ably presented to the court this morning, even though he was sick and hardly able to do it, a splendid brief that he had prepared on the subject of such testimony being an invasion of the right of the court and jury. That having been so ably handled, I only care, your honor, to discuss this feature, and that is the construction of the act. Who has a copy of that act, please?

Mr. Malone—I have a copy of it. (Mr. Malone gives copy of act to Gen. Stewart.)

Gen. Stewart—We are all familiar at this time with the wording of the act, but it is well to have it before us.

(Counsel thereupon read the act in question.)

Your honor is familiar with the citations, and above all of them, that the cardinal rule of construction in all instruments, and this includes legislative acts, is that the court shall always endeavor to construe the instrument in full accord with the intention of the maker thereof.

### Must Determine Intention of the Legislature.

The general assembly, the legislators, convened at Nashville, the last session, that is the spring of 1925—passed this act. It was passed on the 21st. It was signed or approved by the governor on the 21st of March. According to the working of the act it takes effect from and after its passage, which means the date of approval, March 21st. The intention being the test which the court always placed upon written instruments.

Then we have a broad latitude of discussion in undertaking to ascertain what was the intention of the legislature in the passage of this act. To determine this intention the whole act is looked to. The caption, the body and all of the act, and as your honor well knows, outside matter, except under very peculiar circumstances, is inadmissable to determine what the intention of the legislature might be.



I think, if your honor please, that this act—that a correct construction of this act, as a matter of law, prohibits the introduction of this scientific testimony. If you place scientists on the witness stand, men who claim to know and who say they are versed and who no doubt are, no doubt you have many splendid and eminent gentlemen here, who say they are versed in matters of science and particularly in that branch of science which devoted itself to this theory of evolution.

If you place them upon the witness stand, they must confine themselves to that branch or theory of evolution which teaches that man descended from a lower order of animals. That is because the act says so; that is because the act states in so many words, that they shall not teach that man descended from a lower order of animals. I think under the construction, what I concede to be a proper construction of the act that any other theory of evolution might be lawfully taught. Perhaps, but the theory of evolution that we deal with is, whether or not man descended from a lower order of animals, and none other. And we have no right to discuss any other, and the scientists, according to my opinion, would have no right, if the court please, to undertake to talk about any other theory, if they were allowed to talk about any, they would have to qualify as to their familiarity with this particular evolution, the particular kind of evolution that teaches that man descended from a lower order of animals. That is true, I think, your honor, on that question.

That being true, then, if the court please, I think we have proved it sufficiently. Our proof shows it beyond any question. I think the book read shows it, and I think the words from the mouths of witnesses shows it beyond a question that the defendant here did teach to the children in Rhea county High school, that man descended from a lower order of animals. And that they taught that theory.

### What Could Scientists Testify To?

Now what could these scientists testify to? They could only say as an expert, qualified as an expert upon this subject, I have made a study of these things and from my standpoint as such an expert, I say that this does not deny the story of divine creation. That is what they would testify to, isn't it? That is all they could testify about.

Now, then, I say under the correct construction of the act, that they cannot testify as to that. Why? Because in the wording of this act the legislature itself construed this instrument according to their intention. Now, says, that any theory that teaches that man descended from a lower order of animals, necessarily—necessarily, denies the story of divine creation. They say it denies it, and, therefore, who can come here to say what is the law is not the law? Who can come here to testify from the witness stand that it does not deny the story of divine creation, when the act says it does?

Your honor, I feel as confident that that is the correct construction as I live by faith, I mean emphasis when I make such an expression, I mean—I do not mean, if the court please, to show any disrespect when I say that. But I mean, if the court please, that as much as I can believe anything under the sun, that that is the correct construction of that act.

Mr. Hays—May I ask you a question, general.

Gen. Stewart—I don't want to be disrespectful; but I cannot keep my line of thought.

Mr. Hays—When you get through?

Gen. Stewart—When I have completed this, all right.

It would be unlawful to teach any theory that denies the story of the divine creation of man, as taught by the Bible, in the Bible, and to teach instead thereof, that man descended from a lower order of animals, instead—instead of what? Instead of the story of divine creation. It shall be unlawful to teach instead of

the divine story of creation that man has descended from a lower order of animals. That is what the legislature meant? That is a correct construction.

It is a rule of construction in the state of Tennessee, a rule of the court, if your honor please, that in construing an act of the legislature, that it is the duty of the court to never place an absurd construction upon the act. And I submit that the construction, as I understand it, they insist upon would be absurd.

Would it be necessary to say that the school-teacher brings his class in and says to them: Now, children, I proceed to instruct you as to the story of the divine creation of man as told by the Bible. But I am not going to do that, or that is not true, or something to that effect, and instead of that, I will teach you and instruct you that man descended from a lower order of animals.

Now, he don't have to do that. You don't have to do that. Under a correct construction of the act, if the court please, when this teacher teaches to the children of the high schools of Rhea county, that they are descended from a lower order of animals, he has done all that is necessary to violate this act. He has at the same time taught a theory that denies the divine story of the creation of man.

Why? Because the act says so. Instead—instead of what? Instead of the story of divine creation. Instead of the story of divine creation, and I submit, your honor, that with the application of reason, no other construction can be placed upon this.

What will these scientists testify? They will say, no, this was simply the method by which God created man. I don't care. This act says you cannot testify concerning that, because it denies the literal story that the Bible teaches, and that is what we are restricted to. That is what the legislature had in mind.

Why did they pass that act? They passed it because they wanted to prohibit teaching in the public schools of the state of Tennessee a theory that taught that man was descended from a lower order of animals. Why did they want to pass an act which would deny the right of science to teach this in the schools? Because it denies the story of divine creation. That is why they wanted it passed. And that is why they did pass it. And I submit, your honor, that no other construction can be placed upon it, and no other reasonable reply can be made to the construction.

That is why the legislature, if your honor please, passed this statute. That is why, because this act in so many words says that when you teach that man descended from a lower order of animals you have taught a theory that denies God's Bible, that is what they are driving at.

And to bring experts here to testify upon a construction of the Bible, is (pounding with his hand on the shorthand reporter's table) I submit, respectfully, to your honor, that would be a prostitution upon the courts of the state of Tennessee, and I believe it. It is not admissible, if the court please, under any construction they can place upon it. I know your honor's honest desire to do right about this, and your honor knows that I want to make a correct and proper argument, and not to misstate what I conceive to be the law. And my only purpose is to tell your honor what I conceive to be the everlasting truth about the matter.

Your honor knows if I were to undertake to place a captious construction upon this, your honor knows that when I say that I believe that construction, that I think I am right about it.

I have studied the act. I do not undertake to say that I am right and everybody else is wrong. I do not take that position, but I have studied that act and I believe I am right and I have never believed anything any stronger yet. That is how much emphasis I can put on it. The cardinal rule of construction in Tennessee, as I stated, your honor, is that the intention of the legislature shall govern your honor in construing the statute.



**The Legislature Knew What It Meant.**

Do you suppose, your honor, that the legislature intended to open the doors to an unending and everlasting argument about whether there is a conflict? Did they have such a thought in mind? How could they? How could the legislature of this state, a body of such splendid men, as we had there last year—how could they design such a thought—how could they hope to place upon the people of this commonwealth such a dangerous law?

They did not have that in mind. How do we know? The act says they did not. They had no thought that the doors would be opened to religious argument and that men would be brought upon the witness stand to testify as to their opinion whether there was a conflict or not a conflict. They determined themselves, this question: Whether there was a conflict between the story of divine creation and the theory that man came from a lower order of animal—monkey, rat, or what not. They say so. And therefore you stand here in the face of this act and undertake to put this on.

Some of the authorities I have cited, your honor, I would like to read to show you how strong the courts make this.

First—A statute should never be given an absurd construction, but must always be construed, if possible, so as to make them effective and carry out the purposes for which they are enacted. The legislative intent will prevail over the literal or strict language used. And, in order to carry into effect this intent, general terms will be limited and those that are narrow expanded.

How much stronger could they make it? General terms will be limited and those that are narrow will be expanded. How eager are the courts that the act shall be construed so as to carry out the intention of the legislature into the court? That is 117 Tennessee, 381 and 134 Tennessee 577.

"Uncertainty of sense does not alone spring from uncertainty of expression. It is always presumed, in regard to a statute, that no absurd or unreasonable result was intended by the legislature. Hence, if viewing a statute from the standpoint of the literal sense of its language it is unreasonable or absurd and obscurity of meaning exists, calling for judicial construction, we must, in that event look to the act as a whole, to the subject with which it deals, to the reason and spirit of the enactment, and thereby, if possible, discover its real purposes; if such purposes can reasonably be said to be within the scope of the language used, it must be taken to be a part of the law, the same as if it were expressed by the literal sense of the words used. In that way while courts do not and cannot bend words, properly, out of their reasonable meaning to effect a legislative purpose, they do give to words a strict or liberal interpretation within the bounds of reason, sacrificing literal sense and rejecting interpretation not in harmony with the evident intent of the lawmakers rather than that such intent should fail."—134 Tennessee, 577."

Another excerpt from the same case. "In construing a statute the meaning is to be determined, not from special words in a single sentence or section but from the act taken as a whole, comparing one section with another and viewing the legislation in the light of its general purpose.—134 Tennessee, 612"

What was the general purpose of the legislature here? It was to prevent teaching in the public schools of any county in Tennessee that theory which says that man is descended from a lower order of animals. That is the intent and nobody can dispute it under the shining sun of this day. That was the purpose of it. Because it denies the story of the divine creation of the Bible. That is the intent, and to bring men, mere men here, made of mud and clay, common mud and clay, to say, that God's word is not contravened by this act. Your honor, there would never be an end to such inquiry as that, there would never be an end, because American citizens to the extent of 100,000,000

abroad in the land of the age of discretion, all have their own opinion, about these things.

Therefore, therefore, what good does the opinion do? We get back to the act every time. Under a construction of this law it is not admissible.

"The fundamental rule, says, Judge Cooper, speaking for the court in the case of Brown vs. Hamlet in 8th Lea 735, 'of construction of all instruments is that the intention shall prevail, and for this purpose the whole of the instrument will be looked to. The real intention will always prevail over the literal use of terms. Legislative acts fall within the rule, and it has been well said that a thing which is within the letter of the statute is not within the statute unless it be within the intention of the law makers.'"

Many cases are cited but it is not necessary for me to read all of these, your honor is familiar with that principle, I know.

The Court—General, as I understand your position, there are two set qualities—

Gen. Stewart—Yes, sir.

The Court—You say when you meet the requirements of the second clause and prove that it is violated, that by necessity by implication of law, meets the first section.

Gen. Stewart—Yes, sir.

Mr. Hays—May I ask your honor to ask Gen. Stewart a question?

The Court—Ask him yourself.

Mr. Hays—You construe the statute to be just the same as if the first part were out, that it is only the second part that you have to prove, so the statute must be the same as if the first part were out. Am I right on that?

Gen. Stewart—So far as the evidence is concerned.

Mr. Hays—So far as the evidence is concerned. You also agree with me, do you not, that one rule of construction in Tennessee is that every word or phase in the statute should be given some meaning?

Gen. Stewart—No, sir.

Mr. Hays—You do not.

Gen. Stewart—No, sir. The court has a right, under our rules of construction, to leave out the words that do not express the intention of the legislature.

Mr. Hays—And haven't you a presumption that the legislature intends that those words must mean something, when it puts words into the statute? Why do you leave out the words? Why not leave out the other words as well?

### "Intention" of Legislature "Must" Prevail.

Gen. Stewart—The cardinal rules of construction is that the intention of the legislature must prevail, and it must prevail over everything else.

Mr. Hays—But, it must be gathered from the terms of the act.

Gen. Stewart—You cannot—

(A train whistle interrupts for a moment.)

You cannot change the rule of construction with reference to the intention of the legislature by requiring it to give a meaning to every word.

Mr. Hays—No, general, but I should like to know—you cannot ask the court to accept this statute by cutting out one clause.

Gen. Stewart—Which clause?

Mr. Hays—The first part, that any story contrary to the story of creation taught in the Bible, you construe the statute as if it were cut out?

Gen. Stewart—No, sir; only as to the evidence.

Mr. Hays—As to the evidence, yes.

Mr. Darrow—Doesn't the statute show?

Gen. Stewart—That shows the intention of the legislature as clearly as though they had talked for a month.

Mr. Darrow—They don't have to have any intention if it is plain.

Gen. Stewart—There is an intention every time a man does an act. You have to show the intention whether it is plain or ambiguous. You must always show the intention, that is the first thing you come to.

Mr. Darrow—It shall be unlawful to teach that man descended from a lower order of animals and of course, that would follow your argument, but if it would be legal without what precedes it that has to be given a construction.



Gen. Stewart—The meaning is that the legislature conceived in its mind that that theory did deny the story of creation and it wanted to be emphatic. It had in its mind the Bible, and it had in mind no man should teach a theory contrary to the story of the Bible creation.

Mr. Hays—Exactly the same as if the word "and" was "or."

Gen. Stewart—No. It would not. Anything else?

Mr. Hays—Yes, sir. Perhaps we will agree on this. Hasn't the court to determine on a motion to dismiss as to whether this act is a reasonable act under the police power of the state?

Gen. Stewart—The court has passed upon that already.

Mr. Hays—Hasn't the court, with an open mind, met our argument when we move to dismiss and to produce evidence?

Gen. Stewart—A motion to dismiss is unknown in criminal procedure in Tennessee.

Mr. Hays—Or on a motion in arrest of judgment?

Gen. Stewart—It is unknown in criminal procedure, at this state of a trial.

Mr. Hays—At any rate I can bring up the question before the court in some fashion.

The Court—It cannot come until after conviction.

Mr. Hays—Whenever it comes. There will come a time in this case when we can make the argument that this act is unconstitutional, because it is unreasonable. If we may make that argument, we have a right to produce evidence before your honor in the trial of this case to show that the act is unreasonable. If we do not have that right, don't you agree that the court has a right to accept the evidence if it chooses to do so?

Gen. Stewart—No, sir; I absolutely do not.

Mr. Hays—I am sure of both of these propositions. On the same thing that the general is sure.

### Stewart Pretty Sure.

Gen. Stewart—I am just as sure you are wrong as I am sure I am right.

(Laughter and applause.)

Mr. Hays—As the man said to his wife, "You are right and I am wrong."

Gen. Stewart—What did she say?

Mr. Darrow—She said something or other.

The Court—Order please.

Gen. Stewart—Is that all?

Mr. Hays—I think those are the two important issues, though.

Gen. Stewart—Now, your honor, the first report, the first volume of the report of the proceedings of the supreme court of Tennessee, is called First Overton, and the second volume is called Second Overton. Digressing a moment from the immediate points at issue, the reports in that day were gotten out after the names of the judges on the supreme bench, and they then had three, perhaps.

Some weeks ago, in searching the books for something to aid a case, like in the construction of this act, I found a case in Second Overton, and, by the way, which is referred to in one of the United States supreme court reports. This was a lawsuit in which the legal question was, whether or not an entry was a special or general entry and the court in order to determine this, had to determine upon the construction of a statute.

I want to read, if your honor please, a part of what the court said:

"The reasoning powers of men differ as much as their faces. Sometimes different premises are assumed. At others different deductions are drawn from the same premises. With some the result of a process of reasoning is believed to be a fair inference from the premises taken, and consonant to the natural order and fitness of things. Whilst others think they see with equal clearness the process distorted, the result absurd and inconvenient. The truth is we are all imperfect beings, imperfection is the lot of humanity; and in

this sublonary state of existence, the views of the wisest head are but limited and indistinct. Ours is but the twilight of knowledge, and he who has the strongest mental eye has, by any method of reasoning he may adopt, only a little better chance of seeing matters as they are disposed by the Supreme Arbiter of all things. Laws were made for the better government of societies; particularly for the convenience and happiness of the community on whom they were intended to operate. Where laws are not local in their nature, operate indiscriminately on the individuals of whom such society is composed, and where civil rights are continually growing out of them and men have for a considerable time immediately succeeding the introduction of these laws, thought and acted alike in relation to them, we may safely adopt the general sense of those concerned, as the most exceptionable ground of decision. In this we cannot err. Individuals may make mistakes in selecting their means of happiness in their process of reasoning, but societies rarely found to have settled down in principle unappropriate to their situation.

**Judge Depends on Others' Rulings.**

The first utensil a lawyer lays hold of in order to ascertain the law arising in any case is the concurrant opinion of judges or sages of the law who have preceded him; he applies it in preference to any reasoning of his own, independent of experience which he has had, in which the experience of the wisest men in all countries and ages shows that he is continually subject to err. In the absence of evidence of this kind as to what shall be considered a ground of interpretation, courts have adopted the general sense of society for a length of time immediately after the enactment of a law, as much more safe and infallible than theoretic reasoning in all cases where the words of a law are not directly and flatly opposed to such consideration. And even this barrier has been broken down by long and inveterate habits. If the individuals of whom society is composed are generally satisfied with an erroneous construction of a statute and have evinced that satisfaction by conforming their actions to it, who has a right to find fault? Surely not the courts. Legal constructions have always in view the happiness of the people. If they are content and happy in the practical construction of any statute, the end is attained."

That is referring, your honor, to a statute that had been for some time the law and a practice had grown up under this particular statute. Now, your honor, a law is passed in Tennessee and it applies to all people who are within the jurisdictional limits of this sovereign state. A law is passed in Kentucky, in Ohio and in New York and it applies to all who are within the boundaries of its jurisdiction.

This Union, composed of different states, necessarily the different states have different laws which are shaped and formed so as to meet the needs, the conveniences and the notions of the people who dwell within each jurisdiction. This law, which is in test at bar, was passed by the Tennessee legislature. It is a Tennessee law, and it applied to all within the boundaries of this commonwealth, the same as it would apply were it the law of any other state to the boundaries of that commonwealth.

This rule of construction says that the court has in mind always the happiness and contentment of the people. What people? All the people upon whom this law is restrictive, upon whom this law may be enforced, which conforms with this nation. The legislature. It was formed and passed by the legislature, because they thought they saw a need for it. And who, forsooth, may interfere?

**What is the Thing?**

What is that, that is back of this law? What is this thing that comes here to strike within the bounds of this jurisdiction, and to tell the people of this commonwealth that they are doing wrong to prohibit the teaching of this theory in the public schools? From whence does this opposition originate? Who conceived the idea that Tennessee did not know what she was doing? They say it is sponsored by a lot of religious bigots. Mr. Darrow said that, substantially that.

Ignorant—Who said so? A little handful of folks—a mere handful, who bring to you a theory which they, themselves, can never say is anything but a theory. How far back can science go? How can science go? How can science know that man began as a little germ in the bottom of the sea? Science should continue to progress and it should be unhampered in the bounds of reason, and I am proud of the progress that it has made, and I should say, your honor, that when science treads upon holy ground, then science should invade no further. Almighty God, in His conception of things here, did not intend that there should be a clash upon this earth between any of the forces here, except—save and except the forces of good and evil, and I am sorry that there has come a clash between scientific investigation and God's word.

**Stewart on the Side of Religion.**

If we, if the court please, who live in this sovereign jurisdiction prefer to worship God according to the dictates of our own consciences, and we give everyone that right to do so, and your honor, I would criticize no man for his individual view of things, but, why, if the court please, is this invasion here? Why, if the court please, have we not the right to interpret our Bible as we see fit? Why, have we not the right to bar the door to science when it comes within the four walls of God's church upon this earth? Have we not the right? Who says that we have not? Show me the man who will challenge it. We have the right to pursue knowledge—we have the right to participate in scientific investigation, but, if the court please, when science strikes at that upon which man's eternal hope is founded, then I say the foundation of man's civilization is about to crumble. They say this is a battle between religion and science. If it is, I want to serve notice now, in the name of the great God, that I am on the side of religion. They say it is a battle between religion and science, and in the name of God, I stand with religion because I want to know beyond this world that there may be an eternal happiness for me and for all. Tell me that I would not stand with it. Tell me that I would believe I was a common worm and would writhe in the dust and go no further when my breath had left my body? There should not be any clash between science and religion. I am sorry that there is, but who brought it on? How did it occur? It occured from teaching that infidelity, that agnosticism, that which breeds in the soul of the child, infidelity, atheism, and drives him from the Bible that his father and mother raised him by, which, as Mr. Bryan has so eloquently said, and drives man's sole hope of happiness and of religion and of freedom of thought, and worship, and Almighty God, from him.

**"Bar the Door."**

I say, bar the door, and not allow science to enter. That would deprive us of all the hope we have in the future to come. And I say it without any bitterness. I am not trying to say it in the spirit of bitterness to a man over there, it is my view, I am sincere about it. Mr. Darrow says he is an agnostic. He is the greatest criminal lawyer in America today. His courtesy is noticeable—his ability is known—and it is a shame, in my mind, in the sight of a great God, that a mentality like his has strayed so far from the natural goal that it should follow—great God, the good that a man of his ability could have done if he had aligned himself with the forces of right instead of aligning himself with that which strikes its fangs at the very bosom of Christianity.

Yes, discard that theory of the Bible—throw it away, and let scien-

tific development progress beyond man's origin. And the next thing you know, there will be a legal battle staged within the corners of this state, that challenges even permitting anyone to believe that Jesus Christ was divinely born—that Jesus Christ was born of a virgin—challenge that, and the next step will be a battle staged denying the right to teach that there was a resurrection, until finally that precious book and its glorious teachings upon which this civilization has been built will be taken from us.

**Religion in American History.**

Yes, we have all studied the history of this country.

How many have read the story in history, when the Puritan fathers of this land went on Sunday to their church through the dense woods, no one perhaps except the father and mother and one or two little children, braved the dangers that lurked behind each tree in the forest for in those days the Indians killed the Puritans on frequent occasions. Why did they do these things? Going on Sunday to the religious worship and on other days to worship God according to the dictates of their own conscience?

We are taught that George Washington, on one occasion, before a battle he fought, led his army in prayer, and on another occasion that he secreted himself in a hiding place and prayed in private to the great God for victory. We are told that the great general of the southern Confederacy, Robert E. Lee, prayed to God before each battle and yet here we have a test by science that challenges the right to open the court with a prayer to God. I ask you again, who is it, and what is it, that comes here to attack this law and to say to this people that even though we are but a handful, you are a bunch of fools—who is it, I say—I do not know just who they might be, but they are in strange company. They come and say, "Ye shall not open your court with prayer, we protest"—they say we shall not teach our Bible to our children, because it conflicts with scientific investigation. I say scientific investigation is nothing but a theory and will never be anything but a theory. Show me some reasonable cause to believe it is not. They cannot do it.

Mr. Hays—Give us a chance.

Mr. Stewart—A chance to what?

Mr. Hays—To prove it, to show you what it is.

**Not Entitled to a Chance.**

Gen. Stewart—If your honor please, that charge strikes at the very vitals of civilization and of Christianity and is not entitled to a chance (applause and laughter throughout house) to prove by the word or mouth of man that man originated in the bottom of the sea. It is as absurd and as rediculous as to say that a man might be half monkey, half man. Who ever saw one—at what stage in development did he shed his tail—where did he acquire his immortality—at what stage in his development did he cross the line from monkeyhood to manhood. Yes, I confess, your honor, their purpose might be to show that to me, but not because they descended from a lower order of animals.

Now, if your honor please, this has been an unusual discussion. We have all gone beyond the pale of the law in saying these things, and I submit to your honor that in its analysis it must rest upon a construction of the statute and upon the law, as given by Mr. Bryan this morning, and is an invasion of the province of the court and jury, I submit, your honor, that under a correct construction of this statute that this scientific evidence would be inadmissible, and I ask your honor, and I say to your honor, to let us not make a blunder in the annals of the tribunals in Tennessee, by permitting such as this. It would be a never-ending controversy, it would be a babble of song, so if the court please, I ask your honor respectfully and earnestly, to disallow the admission of this testimony, and I ask it because I believe under the law of Tennessee, it is absolutely inadmissible.



Mr. Hays—May I ask you a question?

Gen. Stewart—Yes, sir.

Mr. Hays—You understand, do you not, that our scientists are going to state facts from which the court and jury can draw opinions. Does your same argument apply, assuming that our scientists will testify to facts?

Gen. Stewart—Personally, yes.

Mr. Hays—Does it, as a lawyer and attorney-general, not only personally?

Gen. Stewart—Within myself there is only one man.

Mr. Malone—He is a good talker.

The Court—The court will adjourn until 9 o'clock tomorrow morning.