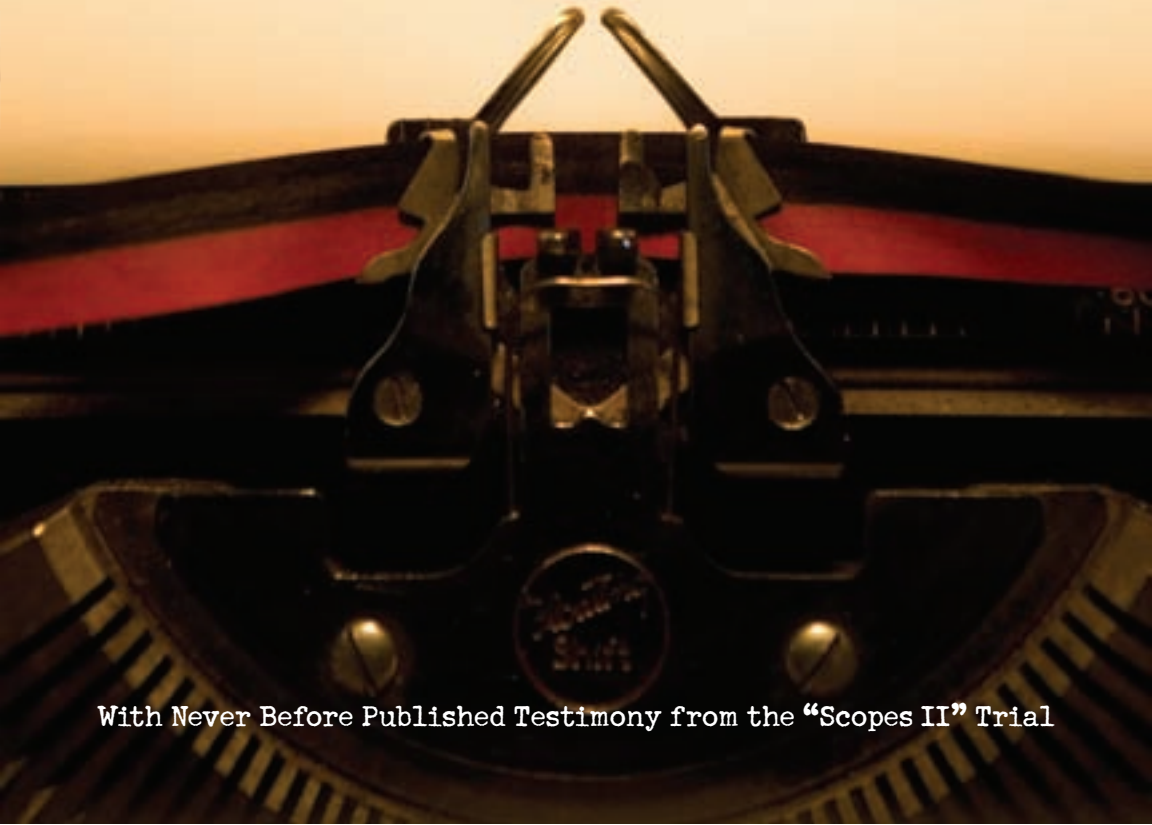
Norman Geisler

Creation & the Courts

Eighty Years of Conflict in the Classroom and the Courtroom



With Never Before Published Testimony from the "Scopes II" Trial

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Baylor University

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Foreword

Duane T. Gish[1]

No one is better prepared than Dr. Norman Geisler to write an account of the Arkansas creation/evolution trial of 1981. Geisler was not only present during the trial; he was the lead witness for the creationist side and one of its most brilliant witnesses. His testimony, in my view (I was present during the entire trial), effectively demolished the most important thrust of the case by the ACLU. Unfortunately, in my opinion, no testimony, and no effort by any team of lawyers, no matter how brilliant, could have won the case for the creationist side. Judge Overton accepted the ACLU mind-set that anything that hints of God, even scientific evidence for creation, must be barred from public schools. Secular humanism will be our official state-sanctioned religion, if Judge Overton's decision is allowed to stand.

Geisler's account of the trial (see chapter 3) is carefully and thoroughly documented. His description of the actual course of the trial is interesting, and his critique of Judge Overton's official decision is incisive,

1. Dr. Gish, a leading scientist defender of creation, was present for the entire 1981 "Scopes II" trial in Arkansas. He was an expert advisor to the defense and is a noted author and debater on behalf of scientific creationism. With only minor editing, this is the foreword he wrote for *The Creator in the Courtroom* (Norman L. Geisler with A. F. Brooke II and Mark J. Keough [Milford, Mich.: Mott Media, 1982]).

thorough, and accurate. Geisler's account is in refreshing contrast to the usually (though not always) distorted and biased accounts that appeared in the mass media and a relief from the sophistry that appeared in so many scientific journals. No eyewitness account can be accurate in all details, but I can certainly recommend this book's fair and thorough account of the famous 1981 Arkansas creation/evolution trial.

Preface

Wayne Frair[1]

Geisler on the Stand

In *McLean v. Arkansas Board of Education* (1982) the court considered an Arkansas statute that required balanced teaching of *both* evolution and creation when the subject of origins was discussed. After a two-week trial, December 7–17, 1981, the court ruled on January 5, 1982 that the statute was unconstitutional because it essentially would promote a biblical religious view. This Arkansas statute was a forerunner of the subsequent one in the state of Louisiana.

The December 1981 trial effectively was a travesty of justice, as is made clear in the only book by a person who was there for the entire trial (Norman Geisler, *The Creator in the Courtroom,* 1982). The federal court judge, William Overton, was from the start biased against the defense.

I personally arrived in the courtroom on Friday, December 11, the final of five days of testimony by the plaintiffs, who were represented

1. Dr. Frair was present at the Arkansas *McLean* trial (1981–1982). He was an expert witness who spoke in favor of teaching both evolution and creation. Dr. Frair is a longtime science teacher, author, member of the prestigious American Association for the Advancement of Science, and a world-renowned expert on turtles.

by the American Civil Liberties Union (ACLU). The first witness for the defense, Dr. Geisler, was on the witness stand in the afternoon of December 11. At that time I was sitting next to Dr. Duane Gish, who was known as a leading creationist and an unexcelled debater in the modern creationist movement.[2] Geisler's presentation was superb (see chapter 4), and at its end Gish was absolutely exuberant (see foreword). In no uncertain words he declared to me that Geisler successfully had demolished every one of the arguments presented by ACLU witnesses during their preceding five days of testimony.

Then in the cross-examination (see appendix 4), ACLU lawyer Anthony Siano began to mock Dr. Geisler based not on his court testimony but rather on some comments dealing with spaceships that Geisler had made in a pretrial deposition. Geisler tried in vain to be straightforward and honest as the cunning lawyer goaded him with superfluous mockery—a pitiful miscarriage of justice that was not opposed by Judge Overton.

My Testimony

On the following Monday I had the opportunity to be on the witness stand for about one and a half hours. Coverage of my testimony is given in chapter 7 of *The Creator in the Courtroom.* I said that Arkansas was "on the very cutting edge of an educational movement" that would improve the quality of U.S. education. Without hesitation I added that if Charles Darwin were alive today he would be a creationist. I backed up that statement with quotations from L. S. Berg, A. H. Clark, H. Nilsson, G. A. Kerkut, and S. Lovtrup. These date back to the 1920s.

The final material I used was from the famous British paleontologist Colin Patterson, who had spoken about a month earlier (November 5, 1981) in New York City at the American Museum of Natural History (AMNH). Patterson had expressed strong feelings against evolution, and I quoted from his talk. The ACLU lawyer objected, but fortunately

2. See Marvin L. Lubenow, *From Fish to Gish* (San Diego, Calif.: Creation-Life, 1983).

Judge Overton overruled because I had been there for that AMNH presentation.

I felt that my testimony would have a positive impact for truth in opposition to what had been heard from the plaintiffs and their witnesses. They all had been coached thoroughly to stress two issues. These were (1) there is no science supporting a creation position, and (2) creation is religion, which should not be intruded into science. They said this repeatedly, even though the Arkansas law at issue in the trial prohibited religious instruction and clearly defines "creation science" as "the scientific evidences for creation and inferences from these scientific evidences."

Newspapers and magazines across the country thrived on articles about the trial—some very fair and others misleading (see appendices 1 and 2). A generally quite accurate newspaper coverage of the whole trial was written by reporter Cal Beisner and appeared in the weekly *Pea Ridge (Arkansas) County Times,* Wednesday, December 30, 1981. One very biased and inaccurate report was written by Roger Lewin and was published in the January 8, 1982 issue of *Science,*[3] arguably the world's leading weekly publication of scientific information. A major portion of the report was a gross misrepresentation of my testimony. After reading Lewin's article I wrote a letter to the magazine, from which I quote:

> Roger Lewin's treatment (*Science* 215:142) . . . of the Little Rock creation trial falls somewhat short of the quality of reporting I would consider the readers of *Science* should expect. . . .
>
> My presentation until cross-examination emphasized scientific data; and among other things I endeavored to make clear that from literature dating back into the 1920's and up to the present time there is a body of information published by respected scientists who have theorized and speculated in ways more consistent with a creation model than a macroevolutionary model. A Russian book, *Nomogenesis or Evolution Determined by Law* by Leo S. Berg (original edition 1922), was republished by Massachusetts Institute of Technology Press in 1969. The [foreword] to the recent edition was written by Theodosius Dob-

3. Roger Lewin, "Where Is the Science in Creation Science?" *Science* 215 (January 8, 1982): 141-146.

zhansky, who described Berg as "one of the outstanding intellects among Russian scientists" and further that "the depth as well as the amplitude of his scholarship were remarkable." (p. xi) In this 477-page book Berg demonstrates that living things have developed polyphyletically.

There have been other scientific (and "non-religious") writings including [British] Kerkut's *Implications of Evolution,* Pergamon Press, 1960, which have cast doubt upon a monophyletic model. I quoted from this book at the trial because much of what Kerkut says currently is very pertinent. For instance:

> Most students become acquainted with many of the current concepts in biology whilst still at school and at an age when most people are, on the whole, uncritical. Then when they come to study the subject in more detail they have in their minds several half-truths and misconceptions which tend to prevent them from coming to a fresh appraisal of the situation. In addition, with a uniform pattern of education most students tend to have the same sort of educational background and so in conversation and discussion they accept common fallacies and agree on matters based on these fallacies.
>
> It would seem a good principle to encourage the study of "scientific heresies." There is always the danger that a reader might be seduced by one of these heresies but the danger is neither as great nor as serious as the danger of having scientists brought up in a type of mental strait-jacket or of taking them so quickly through a subject that they have no time to analyze and digest the material they have "studied." A careful perusal of the heresies will also indicate the facts in favour of the currently accepted doctrines, and if the evidence against a theory is overwhelming and if there is no other satisfactory theory to take its place we shall just have to say that we do not yet know the answer.
>
> There is a theory which states that many living animals can be observed over the course of time to undergo changes so that new species are formed. This can be called the "Special Theory of Evolution" and can be demonstrated in certain cases by experiments. On the other hand there is the theory that all the living forms in the world have arisen from a single source which itself came from an inorganic form. This theory can be called the "General Theory

> of Evolution" and the evidence that supports it is not sufficiently strong to allow us to consider it as anything more than a working hypothesis. It is not clear whether the changes that bring about speciation are of the same nature as those that brought about the development of new phyla. The answer will be found by future experimental work and not by dogmatic assertions that the General Theory of Evolution must be correct because there is nothing else that will satisfactorily take its place. (156–157).

> It certainly is true that there are differences of opinion among creationists as there are among evolutionists, but both creation and evolution models can be presented in a broad sense within biology classes without this being a "religious" exercise. Neither evolutionists nor creationists need be paranoid regarding this issue, but we should realize that in our country we enjoy freedom *of* religion, not freedom *from* religion.
>
> The causes of science education will not be served well by name-calling and misrepresentation or distortion of the ideas being presented by those with whom we disagree. It is true that most scientists today believe that macroevolution is a well-established concept; however, for improving scholarship and understanding, especially those promoting only macroevolution probably will profit from perceptively heeding what responsible creationists are trying to say.

The editors of *Science* did not print any portion of my letter or even acknowledge having received it. Their published write-up of my testimony at the Arkansas trial was so inaccurate that I wondered if the author, Roger Lewin, even was in the courtroom when I gave testimony.

I had written the letter to *Science* rather quickly and soon realized that there was a lot more I could have said; so I composed the following to present a more accurate account of what I actually had said during the trial:

> I have been researching in biochemical taxonomy of reptiles since 1960, and did discuss some of my research from the witness stand. This write-up mentions three books which were earlier ones referred to; however I also quoted from a 1960 book, a 1969 book and other literature reaching into

the 70's. These authors basically did not just have some misgivings about some aspects of evolutionary theory, they had serious objections.

My own studies on erythrocyte size indicated that an evolutionary progression is anything but obvious from the facts. Blood cells have not become smaller as animals have climbed the evolutionary tree because the largest cells are found among amphibians and some birds have larger cells than some fish.

With regard to the matter of my stating that considerable progress has been made in past decades, this is completely obvious. In my cross-examination ACLU lawyer Bruce Ennis mentioned in a somewhat casual way several fields of endeavor; and he said: "Haven't we made progress in these?" The answer was obviously, "Yes;" and I was not thinking of myself in an adversarial relationship to the lawyer at this point. I recognize now that I should have showed how in these fields the evidence has pointed more toward a creationist position than a macroevolutionary one. For instance, genetic drift. Genetic drift does not help in understanding macroevolution. It is one of their problems, because it runs counter to what would be anticipated on the basis of natural selection. . . . So what to me was an extremely minor concession to this lawyer has been made to look as though it were a big concession on my part.

During my testimony I indeed stressed the "limited change model"; and I referred to the natural groups which are found in nature. Act 590 used the term "kinds". This concept, by the way, is not a new one because it was commonly held 150 years ago. In fact, a recent book (Pitman, Michael. *Adam And Evolution.* Grand Rapids, MI: Baker Book House: 1984) presents nature as consisting of archetypes, which was the term used more than a century ago.

The question about the number of these "kinds" is a very good one. At present we do not know. I would estimate perhaps somewhere in the vicinity of 8,000. It is not easy to be concrete regarding "kinds" any more than it is for systematists to give a definition of any of the taxonomic categories other than species. One cannot readily define an order except in relation to class and family; and I tried to make this clear to the court. Our taxonomic schemes are human inventions; they are not rigid, but they are practical. A scientist who understands taxonomy is not deeply concerned about having precise definitions for his categories. The same holds for the "kinds" concept.

As a matter of fact, I did define "kind" in terms of reproduction, which is at least a partially acceptable definition. If organisms can reproduce hybrids, they may be considered to belong to the same kind. (See Lester, Lane P., Bohlin, Raymond G. *The Natural Limits to Biological Change.* Grand Rapids. MI: Zondervan Publishing House, 1984.) My current opinion, which was established after my research reported in 1985 (Frair, Wayne. "Biochemical evidence for the origin and dispersion of turtles." *Proceedings of the 11th Bible-Science Association National Conference;* 1985 August 14-16; Cleveland, OH. Harley Hotel: 97-105; and Frair, Wayne. "The enigmatic plateless river turtle, Carettochelys, in serological survey." *J. Herpetology.* 19(4):515–523: 1985), is that turtles represent a single kind. . . .

Next, the matter of the "ancestry" for man and apes. Lawyer Ennis referred to a quotation in our book from theologian Leupold; and he tried to make it look as though I had said this. I did not say it; and even though I may have agreed with the statement, I indicated to the court that I was there to talk about scientific matters and not my own personal beliefs about the Bible and what it says.

Lastly, with regard to the matter of faith, it certainly is true that faith is involved whether a person holds to an evolution or a creation position. Often the distinction is not made clearly between the faith commitment to a belief in supernaturalism or naturalism. One takes either of these two positions; one also takes the position either that there was an abrupt appearance of unrelated groups in nature or that all types of organisms are related in a single tree (see Frair, Wayne. Biochemical evidence for the origin and dispersion of turtles.) . . .

It is my hope that future scholars will obtain a copy of the trial transcript; but if this is not possible, at least my opinion regarding some of these matters now should be clearer.

Transcript Blockage

Because of other commitments, I did not try seriously to obtain a transcript of my trial testimony until the summer of 1998. I contacted the attorney general, who referred me to the Federal District Court Clerk's Office in Little Rock. He called me saying that the records had

been transported to Fort Worth, Texas. But my efforts to learn how to locate the records there were unsuccessful.

My next step was to contact a very capable and experienced lawyer. After considerable effort, she reported a level of frustration similar to my own. I then suspended my efforts to obtain the transcripts, pending further time and resources for following through with other possible options.

Even though I and other defense witnesses so far have not been able to obtain copies of our defense testimonies, Dr. Geisler has subsequently obtained his, which is presented in this book (see chapter 4 and appendix 4). I not only listened to his oral testimony as it was given at the trial but also heard all the other nine defense testimonies, each of which produced valuable information supporting Act 590.

But it was Geisler's penetrating presentation that exposed the fallacies of the plaintiffs' underlying philosophical positions. His trial testimony, now published in this book, stands as a monument of powerful and persuasive logic. This material had an important historical impact, but now that it is in print many years later, it will serve to enlighten and encourage many of us who still are facing similar challenges today.

Acknowledgments

I wish to express deep appreciation to my wife, Barbara, my assistants Christina Woodside and Lanny Wilson, and to my friend Doug Van Gordon for their valuable help in the preparation of this manuscript.

Introduction

Creation versus evolution is in the news again. In fact, it has never left the news since the *Scopes* trial of 1925. It has only gone through mountain peaks and valleys.[1] The most important of these "peaks," as far as the courts are concerned, include the following decisions.[2]

The *Scopes* Trial (1925)

The case of *State of Tennessee v. John Thomas Scopes* is one of the most famous trials in American history. The issue was whether or not it was constitutional to teach evolution instead of the biblical account of creation in public schools. The law in question read: "It shall be unlawful for any teacher . . . to teach any theory that denies the story of Divine Creation of man as taught in the Bible, and to teach instead that man

1. The battle has recently reached such a fevered pitch that one writer described the March 2006 meeting of the American Association for the Advancement of Science as a "call to arms for American scientists, meant to recruit troops for the escalating war against creationism and its spinoff doctrine, intelligent design" (Richard Monastersky, "On the Front Lines in the War over Evolution," *Research and Books,* March 10, 2006).

2. Other court cases bearing on the issue include *Washington Ethical Society v. District of Columbia* (1957), *Smith v. Mississippi* (1970), *Wright v. Houston Independent School District* (1972), *Moore v. Gaston County Board of Education* (1973), *Steele v. Waters* (1975), and *Van Orden v. Perry* (2004).

has descended from a lower order of animals." The decision rendered by the Dayton, Tennessee court was that it was illegal to teach evolution, and John Scopes was found guilty of doing just that. The resulting fine of $100 was later overturned on a technicality: only a jury, not the judge, had the authority to assess the fine.

The *Epperson* Ruling (1968)

Tennessee was not the only state that had anti-evolution laws. Similar laws were passed in Oklahoma, Florida, and Texas. Between 1921 and 1929 such bills were introduced in some twenty states. Oklahoma repealed their law in 1926, but the Tennessee law stayed on the books until 1967. Arkansas too was a holdout, but their law was finally addressed by the U.S. Supreme Court in 1968. In this *Epperson v. Arkansas* decision the Court struck down the last state anti-evolutionary law. From the Court record we read:

> Appellant Epperson, an Arkansas public school teacher, brought this action for declaratory and injunctive relief challenging the constitutionality of Arkansas' "anti-evolution" statute. That statute makes it unlawful for a teacher in any state-supported school or university to teach or to use a textbook that teaches "that mankind ascended or descended from a lower order of animals". . . . The statute violates the Fourteenth Amendment, which embraces the First Amendment's prohibition of state laws respecting an establishment of religion. . . . The sole reason for the Arkansas law is that a particular religious group considers the evolution theory to conflict with the account of the origin of man set forth in the Book of Genesis. . . . The First Amendment mandates governmental neutrality between religion and religion, and between religion and non-religion. . . . A State's right to prescribe the public school curriculum does not include the right to prohibit teaching a scientific theory or doctrine for reasons that run counter to the principles of the First Amendment. . . . The Arkansas law is not a manifestation of religious neutrality. . . .[3]

3. *Epperson v. State of Arkansas,* 393 U.S. 97 (1968).

The Supreme Court ruled that it was a *violation of the First Amendment* to forbid the teaching of evolution in public schools.

The *Segraves* Ruling (1981)

In *Segraves v. State of California,* a California superior court ruled that the California State Board of Education's *Science Framework* provided adequate accommodation to Kelly Segraves's views, contrary to his argument that the discussion of evolution violated his children's freedom of religion. Further, the court demanded a policy that included all areas of science, not just origins. This ruling did not penetrate to the heart of the issue of whether teaching creation was a violation of the First Amendment. Determination of this issue would await the next two decisions.

The *McLean* Ruling (1982)

In *McLean v. Arkansas Board of Education,* the issue was whether it was legal for the state to mandate that, whenever evolution is taught, creation should be taught as well in a balanced treatment of both. The U.S. District Court ruled that this would constitute ". . . an establishment of religion prohibited by the First Amendment to the Constitution which is made applicable to the states by the Fourteenth Amendment." Why? In the judge's words, because, "In traditional Western religious thought, the conception of a creator of the world is a conception of God. Indeed, creation of the world 'out of nothing' is the ultimate religious statement because God is the only actor."[4] The case was never appealed, since Jon Buell of the Dallas-based Foundation for Thought and Ethics, which eventually produced a textbook (*Of Pandas and People*)[5] for teaching creation alongside evolution

4. *McLean v. Arkansas Board of Education,* 529 F. Supp. 1255 (E.D. Ark. 1982).

5. Percival Davis and Dean H. Kenyon, and Charles B. Thaxton, *Of Pandas and People: The Central Question of Biological Origins* (Dallas: Haughton, 1993).

in public schools, requested that the Arkansas attorney general not appeal the case. The Foundation believed that a similar law that had been enacted in Louisiana was better worded, had less baggage, could be better argued, and, therefore, had a better chance of success when appealed to the Supreme Court. I personally felt that the downside of this was that the *McLean* court decision, with all of its problems and weaknesses, would become a bad precedent for future decisions if left unappealed. This is precisely what happened when a case involving this issue went to the Supreme Court (*Edwards v. Aguillard,* 1987).

Mozert v. Hawkins County Board of Education (1987)

Students and parents had claimed that it was a violation of their First Amendment rights of free exercise of religion for the school board to be "forcing student-plaintiffs to read school books which teach or inculcate values in violation of their religious beliefs and convictions." Evolution was one such view to which they objected. This was upheld by the District Court but overruled by the Sixth Circuit Court. The latter court argued that even though students were offended, there was no evidence that anyone was "ever required to affirm his or her belief or disbelief in any idea or practice" taught in the text or class. The court insisted that there was a difference between "exposure" and being "coerced" to accept the ideas. They noted that the only way to avoid all offense was not to teach anything. They insisted that: "The lesson is clear: governmental actions that merely offend or cast doubt on religious beliefs do not on that account violate free exercise." They insisted that this exposure to offensive views was simply a matter of "civil tolerance" of other views and did not compel anyone to a "religious tolerance" whereby they were compelled to give equal status to other religious views. "It merely requires a recognition that in a pluralistic society we must 'live and let live.'"[6]

6. *Mozert v. Hawkins County Board of Education,* 827 F. 2d 1058 (1987).

The *Edwards* Ruling (1987)

The Louisiana law was shorter, but it too mandated that creation be taught in a balanced way whenever evolution is taught in public schools. When this law was tested in the highest court, the justices ruled (7 to 2)[7] in *Edwards v. Aguillard* (1987) that it was an unconstitutional violation of the First Amendment to mandate teaching creation in a balanced way whenever evolution is taught in public schools. In the Court's own words, "The Act impermissibly endorses religion by advancing the religious belief that a supernatural being created humankind."[8]

Since the time of *Edwards,* many creationists have clung to wording in the decision which allows for teaching "all scientific theories about the origins of humankind" or "any scientific theory that is based on established fact."[9] This they see as grounds for allowing creation (or intelligent design, as many now prefer to call it) along with evolution. However, focus shifted from state mandated laws to working with local school boards. Others have been satisfied with the *Edwards* court's statement that "We do not imply that a legislature could never require that scientific critiques of prevailing scientific theories be taught."[10] Thus, they have attempted a negative path of getting textbooks and schools to admit that evolution is only a theory, not a fact, and/or to allow critique of evolutionary views. Still other efforts have settled for simply getting creationist material into public school libraries and hopefully into the hands of biology teachers with the hope that they will voluntarily teach both evolution and creation.

More positive efforts to teach design alternatives to evolution have been organized under the name of the "intelligent design" ("ID") movement. Under the initiative of University of California at Berkeley law professor Phillip Johnson in his book *Darwin on Trial* (Regnery, 1991), the pace was set for attacking the naturalistic grounds for evolution with the hope that some form of intelligent design could be taught alongside evolution in public schools. Michael Behe's landmark volume, *Darwin's Black Box*

7. Rehnquist and Scalia dissented. See chapter 6.
8. *Edwards v. Aguillard,* 482 U.S. 578 (1987).
9. Ibid.
10. Ibid.

(Free Press, 1996), gave a scientific defense of intelligent design on the microbiological level. This, combined with a series of volumes by William Dembski (see his *Mere Creation: Science, Faith, and Intelligent Design* [InterVarsity, 1998]), forms the basis for this growing movement.

Differences between the ID movement and the earlier "scientific creationism" movement include several things.[11] First, ID as such is not committed to teaching a specific view of the age of the earth. The question is simply left open. Second, ID makes no affirmations about the nature or scope of Noah's flood. Third, ID advocates make no identification of the cause of intelligent design with God or any supernatural being. Fourth, they oppose laws mandating the teaching of creation or intelligent design. Rather, they concentrate only on showing that some intelligent cause (whether in or outside the universe) is a more likely cause for first life and new life forms. In this way they hope to escape the religious baggage of the "scientific creation" movement and avoid the wrath of the high court against mandating teaching about a creator or any supernatural cause. However, this hope was dashed in the first test of ID in the courts (*Dover,* 2005).

The *Webster* Ruling (1990)

In *Webster v. New Lenox School District* (see appendix 5) the tables were turned. Ray Webster, who taught social studies at the Oster-Oakview Junior High School in New Lenox, Illinois, sued the school for forbidding him to teach "creation science" in his social studies class. Webster claimed this was a violation of his First and Fourteenth Amendment rights.

The superintendent of the school claimed Webster was advocating a Christian viewpoint that was prohibited by the high court, and that he was instructed not to teach "creation science, because the teaching of this theory had been held by the federal courts to be religious advocacy. . . . In *Edwards v. Aguillard* . . . (1987), the Supreme Court [had] determined

11. Also, because ID is less defined than most creationist efforts in the courts, it has a more diverse constituency, including proponents of Eastern Orthodoxy, Judaism, Roman Catholicism, and the Unification Church. Most creationists, however, would consider themselves Christian fundamentalists or evangelicals.

that creation science, as defined in the Louisiana act in question, was a nonevolutionary theory of origin that 'embodies the religious belief that a supernatural creator was responsible for the creation of humankind.'"[12]

The district court concluded that Webster did not have a First Amendment right to teach creation science in a public school and determined that the school board had the responsibility to ensure that the "Establishment Clause" of the First Amendment was not violated. "By relying on *Edwards v. Aguillard* (1987), the district court determined that teaching creation science would constitute religious advocacy in violation of the first amendment and that the school board correctly prohibited Mr. Webster from teaching such material." Strangely, the court added, "Webster has not been prohibited from teaching any nonevolutionary theories or from teaching anything regarding the historical relationship between church and state."[13] This failure on the part of the courts to see that the only "nonevolutionary" view is some form of creation (see appendix 6) continues to be a problem for the creationist cause, as is evident in the *Dover* decision (see chapter 7).

On the surface, it would appear that *Webster,* if left standing, would eliminate all possibility of teaching creation in public schools. However, there were mitigating circumstances in *Webster* (see appendix 6) that left a crack in the door for teaching ID in science classrooms. But that door was later slammed shut by the *Dover* decision (2005).

The *Peloza v. Capistrano* Ruling (1994)

In *Peloza v. Capistrano* the Ninth District Court of Appeals upheld the ruling that a teacher's freedom of religion was not violated by a school district's requirement that evolution be taught in biology classes. It ruled that the school district had the right to require a teacher to teach a scientific theory such as evolution in biology classes. Of course, this ruling did not state that creation could not be taught. For evolutionists, this had already been decided by the *Edwards* decision (1987). Most creationists disagreed,

12. *Webster v. New Lenox School District,* 917 F. 2d. 1004 (7th Cir. 1990).
13. Ibid.

claiming that creation could be taught as one of the alternate theories of origin allowed by *Edwards.* Other creationists, like myself, feared that the courts would see this as applying only to alternate naturalistic theories. The *Dover* decision (2005) confirmed this fear, at least on a local scale.

The *Freiler* Ruling (1997)

In *Freiler v. Tangipahoa Board of Education* the U.S. District Court of Louisiana rejected a policy that required that a disclaimer be read whenever evolution is taught, ostensibly to promote critical thinking. The court noted that this disclaimer applied only to evolution, not to creation, and therefore that, "in maintaining this disclaimer, the School Board is endorsing religion by disclaiming the teaching of evolution in such a manner as to convey the message that evolution is a religious viewpoint that runs counter to . . . other religious views."[14] Later, in 2000, the Fifth Circuit Court of Appeals affirmed the decision. The chilling effect of this ruling goes beyond this particular disclaimer and discourages other disclaimers as well, even though the actual decision does not rule out the possibility of other disclaimers regarding origins.

The *LeVake* Ruling (2000)

LeVake v. Independent School District came from the District Court for the Third Judicial District of the State of Minnesota. Rodney LeVake, a high school biology teacher, had argued for his right to teach "evidence both for and against the theory" of evolution. The school district contended that his proposal did not match the curriculum, which required teaching evolution. Given the precedent case law requiring a teacher to teach what he is hired to teach, the court ruled that LeVake's free speech rights did not override the required curriculum and the school district was not guilty of religious discrimination in denying his right to teach both for and against evolution. Interestingly, this is exactly the opposite of what evolutionists argued at the *Scopes* trial in 1925.

14. *Freiler v. Tangipahoa Board of Education,* No. 94-3577 (1997).

The *Dover* Ruling (2005)

The first test for teaching intelligent design (ID) hit the courts in the *Kitzmiller v. Dover Area School District* case. The Dover Area School District near Harrisburg, Pennsylvania, had adopted a policy requiring that students be read a statement that included the following:

> The Pennsylvania Academic Standards requires students to learn about Darwin's theory of evolution. . . . Because Darwin's theory is a theory. . . . the theory is not a fact. . . . Intelligent design is an explanation of the origin of life that differs from Darwin's view. The reference book, "Of Pandas and People," is available for students who might be interested in gaining an understanding of what intelligent design actually involves.[15]

This policy was not put forward by any group connected with the ID movement, such as the Seattle-based Discovery Institute, nor by the producers of the ID text for public schools, *Of Pandas and People*.[16] Indeed, the associate director of the Discovery Institute, John West, released a statement which read in part, "Discovery Institute strongly opposes the ACLU's effort to make discussions of intelligent design illegal. At the same time, we disagree with efforts to get the government to require the teaching of intelligent design."[17]

The Dover policy was opposed by the ACLU and Americans United for Separation of Church and State and defended by the Thomas More Law Center, a Christian law firm based in Ann Arbor, Michigan. The *Dover* case was heard by U.S. District Court Judge John Jones III between September 26 and November 4, 2005. The decision was rendered on December 20, 2005. It ruled that (1) the Dover School District policy is unconstitutional, (2) intelligent design and creation its progenitor are not science and should not be taught in Dover science classes, and (3) intelligent design and other forms of creation are essentially religious and are, therefore, a violation of the First Amendment establishment

15. *Kitzmiller v. Dover Area School District,* 400 F. Supp. 2d 707 (M.D. Pa. 2005).

16. See note 5, above.

17. See John G. West, "Discovery Institute's Position on Dover, PA 'Intelligent Design' Case," September 21, 2005, at http://www.discovery.org/scripts/viewDB/index.php?command=view&id=2847.

clause. In the words of the court, "For the reasons that follow, we hold that the ID [intelligent design] Policy is unconstitutional pursuant to the Establishment Clause of the First Amendment of the United States Constitution and Art. I, § 3 of the Pennsylvania Constitution."[18]

The *Dover* decision has not been appealed because the school board, which now has an anti-creation majority, does not want to appeal it. However, the issue inevitably will be raised again and eventually will be brought before the U.S. Supreme Court. How the Court will rule no one knows for sure. But if precedent is followed, it is unlikely that the high court will (1) allow any creation or design view to be mandated for schools, or (2) allow any view to be taught that implies a supernatural creator.

Meanwhile, the lessons of history may be gleaned to guide the future of this discussion. Having been an eyewitness of the famous "Scopes II" (*McLean,* 1982)[19] trial, I feel compelled to cast what light I can on this very important issue. Indeed, since the Arkansas courts refused to publish my testimony (given in 1981), which was crucial to the outcome of the trial, until after the Supreme Court ruled against teaching creation six years later (in 1987), there is a vital part of history that has been hitherto unknown that is now being revealed for the first time in this publication (see chapter 4). It is to these ends that I present this important but missing link in the history of the creation-evolution controversy, in the hope that it may cast some light on the issue as it is now again coming into the courts and—hopefully—have a positive influence on the outcome.

18. *Kitzmiller v. Dover Area School District,* 400 F. Supp. 2d 707 (M.D. Pa. 2005).

19. See our eyewitness account in Norman L. Geisler with A. F. Brooke II and Mark J. Keough, *The Creator in the Courtroom: "Scopes II"* (Milford, Mich.: Mott Media, 1982).

1

The *Scopes* Trial (1925)

Background of the Controversy

Charles Darwin started the evolution revolution. There were evolutionists before Darwin, even in ancient times, but Darwin was the first to propose a plausible scientific mechanism by which evolution could have occurred. Between the 1859 publication of his landmark volume *On the Origin of Species* and 1900, the naturalistic macroevolution theory literally conquered the intellectual scientific world of the West.

From the beginning, serious religious and moral implications were apparent in Darwin's theory. Darwin himself called it "my deity 'Natural Selection.'"[1] The very subtitle of his book, referring to the "preservation of favoured races in the struggle for life," has racial implications. Alfred Wallace, the "coinventor" of natural selection,

1. Darwin said, "I speak of natural selection as an active power or deity. . . . To believe in miraculous creations or in the 'continued intervention of creative power' is to make 'my deity "Natural Selection" superfluous' and to hold the Deity—if such there be—accountable for phenomena which are rightly attributed only to his magnificent laws" (Darwin, in a letter to Asa Gray, June 5, 1861 [in Francis Darwin, ed., *The Life and Letters of Charles Darwin,* 2 vols. (New York: Basic Books, 1959), 2:165]).

deified the very evolutionary process. "Wallace put more and more emphasis on the spiritual agency, so that in *The World of Life* it is described as 'a Mind not only adequate to direct and regulate all the forces at work in living organisms, but also the more fundamental forces of the whole material universe.' For many years Wallace was interested in spiritualism and psychical research."[2] Darwin's friend Karl Marx declared, "But nowadays, in our evolutionary conception of the universe, there is absolutely no room for either a creator or a ruler."[3] Henri Bergson deified the evolutionary process in his work *Creative Evolution* (1898), calling it a Life Force. Herbert Spencer, whom Darwin called "our great philosopher," made evolution into a cosmic process. In Germany, Ernst Haeckel, who developed social evolution from Darwin's theory, claimed that "the idea of 'design' has wholly disappeared from this vast province of science."[4] As Harvard paleontologist Stephen Jay Gould would later explain, "Evolution substituted a naturalistic explanation of cold comfort for our former conviction that a benevolent deity fashioned us directly in his own image. . . ."[5]

In America a few strong voices spoke against Darwin. In 1860 the famous Harvard zoologist Louis Agassiz wrote a critical review of *On the Origin of Species*.[6] At Princeton, Charles Hodge wrote a strong critique in 1878 titled *What Is Darwinism?* His answer was straight to the point: "What is Darwinism? It is Atheism. This does not mean that Mr. Darwin himself and all who adopt his views are atheists; but it means that his theory is atheistic, that the exclusion of design from nature is

2. "Wallace, Alfred," in Paul Edwards, ed., *The Encyclopedia of Philosophy,* 8 vols. (New York: Macmillan and The Free Press, 1967), 8:276.

3. Karl Marx and Friedrich Engels, *On Religion* (New York: Schocken, 1964), 295.

4. Ernst Haeckel, *The Riddle of the Universe at the Close of the Nineteenth Century* (New York: Harper & Brothers, 1900), 260.

5. Stephen Jay Gould, cited in Jonathan Wells, *The Politically Incorrect Guide to Darwinism and Intelligent Design* (Washington, D.C.: Regnery, 2006), 62.

6. Agassiz wrote in *American Journal of Science:* "[Darwin] has lost sight of the most striking of the features, and the one which pervades the whole, namely, that there runs throughout Nature unmistakable evidence of thought, corresponding to the mental operations of our own mind" ("Professor Agassiz on the Origin of Species," *American Journal of Science* 30 [June 1860]:143–147, 149–150).

. . . tantamount to atheism."[7] The logic is impeccable: no design, no designer; no creation, no creator. Evolution as a theory is atheistic, even though not all evolutionists are atheists.

Perhaps the most frightening consequences of Darwinism were the ethical ones. In 1924 a young Adolf Hitler wrote *Mein Kampf,* in which he proposed following the example of evolution and weeding out the weaker breeds of mankind. And he proceeded to put his proposal into action, exterminating those he considered less fit. Hitler justified his action by evolution, claiming, "If Nature does not wish that weaker individuals should mate with the stronger, she wishes even less that a superior race should intermingle with an inferior one; because in such a case all her efforts, throughout hundreds of thousands of years, to establish an evolutionary higher stage of being, may thus be rendered futile."[8]

The implications of Darwinism were not perceived quickly in America by the religious community in general.[9] In fact, it took some sixty years and a World War. But by the time of Hitler the implications were becoming clear. One year after Hitler's racist book, the people of Tennessee passed the Butler Act on March 13, 1925, forbidding the teaching of evolution in the public schools. Interestingly, the biology textbook that had been used in the schools before this taught a racism similar to Hitler's views. To quote from the book:

> At the present time there exist upon the earth five races. . . . These are the Ethiopian or negro type, originating in Africa; the Malay or brown race, from the islands of the Pacific; the American Indian; the Mongolian or yellow race, including the natives of China, Japan, and the Eskimos; and finally, *the highest type of all, the Caucasians,* represented by the civilized white inhabitants of Europe and America.[10]

7. Charles Hodge, "What Is Darwinism?" in *What Is Darwinism? And Other Writings on Science and Religion,* ed. Mark A. Noll and David N. Livingstone (Grand Rapids, Mich.: Baker, 1994), 177.

8. Hitler, *Mein Kampf* (New York: Reynal & Hitchcock, 1940), 161–162.

9. See David Livingstone, *Darwin's Forgotten Defenders* (Grand Rapids, Mich.: Eerdmans, 1987).

10. George William Hunter, *A Civic Biology* (New York: American Book Company, 1914), 196 (emphasis added).

Although such racist implications did not come out at the *Scopes* trial, it was clear from the speech prepared for the trial by William Jennings Bryan, leader of the anti-evolution movement, that both the theological and ethical implications of evolution were paramount in the minds of the anti-evolution forces. Two citations from the speech will make the point: "But it is not a laughing matter when one considers that evolution not only offers no suggestions as to a Creator but tends to put the creative act so far away as to cast doubt upon creation itself" (325).[11] Indeed, Bryan pointed to statistics showing that half of all scientists did not believe in God (329–330). He concluded: "If all the biologists of the world teach this doctrine—as Mr. Darrow says they do—then may heaven defend the youth of our land from their impious babblings" (333). Further, Bryan saw the serious ethical implications of evolution. He cited agnostic Clarence Darrow's defense of a young man who allegedly had committed murder. Darrow had argued that it was the influence of the atheist and evolutionist Friedrich Nietzsche on the young man that led him to do it (330–331). Bryan also cited Darwin himself (in *The Descent of Man*) approving of savage and barbarous acts in emulation of nature which weed out the weak and inferior breeds (335). Bryan summed up the issue this way: "Let us, then, hear the conclusion of the whole matter. Science is a magnificent material force, but it is not a teacher of morals. It can perfect machinery, but it adds no moral restraints to protect society from the misuse of the machine" (338).

Evolutionists, on the other hand, saw creationists' efforts as an attempt to squelch freedom and scientific progress. Darrow's concluding comments at the trial sum up their feelings: "I think this case will be remembered because it is the first case of this sort since we stopped trying people in America for witchcraft because here we have done our best to turn back the tide that has sought to force itself upon this—upon this modern world, of testing every fact in science by a religious dictum" (317).

11. All references to the trial transcript in this chapter are from William Hilleary and Oren W. Metzger, eds., *The World's Most Famous Court Trial: Tennessee Evolution Case* (Cincinnati, Ohio: National Book Company, 1925), which contains the trial transcript plus the "Text of Bryan's Proposed Address in Scopes Case" (321–339). The speech was prepared for delivery at the trial but not given because arguments to the jury by both sides were eliminated by mutual agreement.

Background of the *Scopes* Trial

It is in this context that what has been called "the world's most famous court trial"[12] occurred. The ACLU, eager for an opportunity to challenge the Tennessee law forbidding the teaching of evolution, advertised to get someone to break the law. John Scopes, a young teacher, volunteered to do so,[13] and the rest is history. Little Dayton, Tennessee, became a circus. The media of the world converged on the Rhea County Courthouse, where on a sultry July 10th the trial began. For the rest of the story, rather than referencing the popular movie *Inherit the Wind,* we can consult the actual stenographic record of the proceedings published in *The World's Most Famous Court Trial: Tennessee Evolution Case.*[14] Another excellent source is Edward J. Larson's Pulitzer Prize–winning book *Summer for the Gods,*[15] one of the best books ever written on the trial.

The Tennessee Law Forbidding the Teaching of Evolution

The focus of the *Scopes* trial was the Tennessee law forbidding the teaching of evolution which was enacted on March 21, 1925. It read in part:

> Section 1. Be it enacted by the General Assembly of the State of Tennessee, that it shall be unlawful for any teacher in any of the Universities, Normals and all other public schools of the State, which are supported in whole or in part by the public school 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 that man has descended from a lower order of animals (5).

The case (No. 5232) was called *State of Tennessee v. John Thomas Scopes.* The trial lasted for eight days, from July 10 through July 21. Clarence

12. See note 11, above.

13. The indictment accused Scopes of teaching evolution on the specific day of April 24, 1925. Later, Scopes could not remember if he had actually taught evolution on that particular day. Nonetheless, the trial proceeded on the assumption that he had.

14. See note 11, above.

15. Edward J. Larson, *Summer for the Gods* (New York: Basic Books, 1997).

Darrow, famous agnostic ACLU lawyer, was lead attorney for the defense. William Jennings Bryan, one-time Democratic presidential candidate and defender of creation, was a visiting attorney for the state.

Highlights from the Trial

While the entire trial transcript is well worth reading, certain highlights are important for the ongoing saga of creation in the courts. The actual legal issue was: did or did not John Scopes "[teach] any theory that denies the story of the Divine creation of man as taught in the Bible, and . . . teach instead that man has descended from a lower order of animals" in violation of the law of the state of Tennessee?

First Day (Friday, July 10)

Opening Prayer[16]

The court was opened in prayer by Rev. Cartwright, who besought "God, our divine Father . . . the Supreme Ruler of the universe" for wisdom for the court and jury, justice for the defendant, reminding all in attendance that there is a day coming when "all of the nations of the earth shall stand before Thy judgment bar." The prayer was offered in "the cause of truth and righteousness." It concluded, "to Thy glory and grace for ever more. Amen" (3).

Introduction of Attorneys

Judge John T. Raulston asked Attorney General Tom Stewart to introduce the outside counsel for the state, William Jennings Bryan and his son (who was unnamed in the court transcript, since he "need[ed] no introduction"). For the defense Mr. (Judge) Neal, Clarence Darrow, Arthur Hays, Mr. Dudley Field Malone, and Mr. Thompson were introduced (4). Other attorneys for the state included Mr. McKenzie and Mr. Hicks.[17]

16. The crucial part of each prayer is included here since these prayers were disputed by the defense.

17. The court records included very few first names.

The Law That Scopes Is Alleged to Have Violated Was Read

The law in question was Chapter 27 of the Acts of 1925 of the State of Tennessee, enacted on March 21, 1925. The act was read as follows:

> Section 1. Be it enacted by the General Assembly of the State of Tennessee, that it shall be unlawful for any teacher in any of the Universities, Normals and all other public schools of the State, which are supported in whole or in part by the public school 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 that man has descended from a lower order of animals (5).

The Reading of Genesis Chapter One

Judge Neal then said, "Since the act involved in this investigation provides that it shall be unlawful to teach any theory that denies the divine creation of man as taught in the Bible, it is proper that I call your attention to the account of man's creation as taught in the Bible, it is proper that I call your attention to the first chapter of Genesis." The chapter was read in its entirety. The crucial parts are repeated here from the court record:

> In the beginning the Lord [*sic*] created the heaven and earth. . . . And God created great whales, and every living creature that moveth. . . . And God made the beasts of the earth after his kind, and cattle after their kind, and everything that creepeth upon the earth after his kind. . . . So God created man in His own image, in the image of God, created He him; male and female created He them (vv. 1, 21, 25, 27) (5–6).

The Charge of the Judge to the Grand Jury

Judge Neal charged: "You will bear in mind that in this investigation you are not interested to inquire into the policy or wisdom of this legislation. . . . Our constitution imposes upon the judicial branch the interpretation of statutes and upon the executive branch the enforcement of the law" (6). He told them the violation would only be a mis-

demeanor, but reminded them there are serious misdemeanors, such as those involving "the evil example of the teacher disregarding constituted authority in the very presence of the undeveloped mind whose thought and moral he directs and guides" (7).

A New Indictment Is Returned

Both sides agreed to quash the original indictment (No. 5231) and replace it with a new one (No. 5232). This was apparently to avoid its being overturned on a technicality. The judge named it *Case No. 5232 State of Tennessee v. John Thomas Scopes* (7).

The only other significant occurrence the first morning was concerning the competency of the witnesses. Darrow expressed his belief: "I think that scientists are competent evidence—or competent witnesses here, to explain what evolution is, and that they are competent on both sides" (8). Attorney General Stewart responded: "we think that it isn't competent as evidence; that is, it isn't competent to bring into this case scientists who testify as to what the theory of evolution is or interpret the Bible or anything of that sort" (8–9). He suggested, therefore, that they go immediately to qualify jury members so as not to pollute the jury pool by the discussion.

The rest of the day was spent interviewing potential jurors. When one prospective juror, Rev. Massingill, was asked by Darrow if he ever preached for or against evolution, he answered: "Well, I preached against it, of course! (Applause)." At this outburst the judge warned: "if you repeat that, ladies and gentlemen, you will be excluded" (14). There ensued a short disagreement over whether they should swear in the jurors immediately or wait until Monday morning.

Second Day (July 13)

Opening Prayer

The invocation on the second day of the trial was offered by Rev. Moffett to "God, our Father, Thou Who are the creator of the heaven and the earth. . . ." He prayed for "wise decisions" to be made and for

"blessing" of the jury, the lawyers, the media, all involved in this case "in the name of our Lord and Saviour, Jesus Christ" (45).

Swearing In of Jury

Before the jury was sworn in, the judge had to call for order in the courtroom (45), saying, "we cannot proceed in the courtroom, as many people as there are without absolute order" (46). Before the jury could be sworn in the judge considered the motion to quash the indictment. The indictment was read first. In part it charged that: "John Thomas Scopes, heretofore on the 24th day of April, 1925, in the county aforesaid, then and there, unlawfully did wilfully teach in the public schools of Rhea county . . . a certain theory and theories that deny the story of the divine creation of man as taught in the Bible, and did teach instead thereof that man has descended from a lower order of animals . . ." (47).

The Defense Argument

The defense then made a motion to quash the indictment. They argued against both the indictment and the anti-evolution act on which it was based, citing a long list of reasons divided into three broad categories. First, they discussed constitutional issues:

a) The act is in violation of Section 17, Article II of the state constitution, which states that all bills must have only one subject and it be clearly stated in the title (47–48);

b) It violates Section 12, Article XI: "Education to be cherished," since it does not cherish a student's education in science.

c) It violates Section 18, Article II, which says, "No bill shall become a law until it shall have been read and passed, on three different days in each house, and shall have received, on its final passage, in each house, the assent of a majority. . . ." (48);

d) It violates Section 3, Article I, "That all men have a natural and indefeasible right to worship Almighty God according to the dictates of his own conscience" (48);

e) It violates Section 19, Article I, which states, "That the printing presses shall be free to every person. . . . The free communication of

thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject . . .” (48–49).

Defense attorney Hays joined in the defense argument that the indictment was indefinite, insisting that Scopes was “charged in the caption of the act with one thing and in the body of the indictment it is put in another way” (55). It is also not clear, he said, what “teach” means. If it means simply exposing students to the theory, “I presume our teachers should be prepared to teach every theory on every subject. Not necessarily to teach a thing as a fact” (56). “It should not be wrong to teach evolution, or certain phases of evolution, but not as a fact” (56).

Attorney Hays suggested that the court consider a hypothetical law, parallel to the evolution law, this one forbidding the teaching of a heliocentric universe, which “denies the story that the earth is the center of the universe, as taught in the Bible, and [teaches] instead, that the earth and planets move around the sun” (56). He concluded: “My contention is that an act of that sort is clearly unconstitutional in that it is a restriction upon the liberties of the individual. . . . The only distinction you can draw between this statute and the one we are discussing is that evolution is as much a scientific fact as the Copernican theory, but the Copernican theory has been fully accepted, as this [theory of evolution] must be accepted” (56–57). Thus, “To my mind, the chief point against the constitutionality of this law is that it extends the police powers of the state unreasonably and is a restriction upon the liberty of the individual.” It was unreasonable, he said, because “it would only be reasonable if it tended in some way to promote public morals” (57). And this is not possible unless we know what evolution is.

f) It violates Section 8, Article I, that, “No man can be disturbed but by law. That no man shall be taken . . . or deprived of his life, liberty or property but by the judgment of his peers or the law of the land” (49).

g) It also violates Section 9, Article I on “Rights of the accused in criminal prosecutions” (49).

h) It violates Section 14, Article I, which says “that no person shall be put to answer any criminal charge but by presentment, indictment or impeachment” (49).

i) It violates Section 8, Article II, which forbids passing laws "for the benefit of any particular individual, inconsistent with the general laws of the land" (49).

j) It violates Section 2, Article II, that "No person [is] to exercise powers of more than one department" (49).

Second, the defense charged that "the indictment is so vague as not to inform the defendant of the nature and cause of the accusation against him" (49).

Finally, they claimed that "the act and the indictment violate Section 1 of the Fourteenth amendment of the constitution of the United States," which says, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" (49–50).

With the court's approval, the defense began to argue their points. The following highlights are instructive.

First, they argued that the law in question had two subjects: evolution and creation. The title of the act spoke of "evolution," but the body spoke of "any theory," not just the theory of evolution, which violated Section 17, Article II of the state constitution, that all Bills must have only one subject and that it be clearly stated in the title (47).

Second, they argued that the act violated Section 12, Article XI of the state constitution, which stated that education is to be cherished. The law clearly stated that this includes "literature and science" (51). But, "in no possible way can science be taught or science be studied without bringing in the doctrine of evolution, which this particular act attempts to make a crime." The defense went on to say, "Whether it is true or not true, all the important matters of science are expressed in the evolution nomenclature" (51).

Third, they promised to address later the charge of the alleged irregularity of the passage of the bill.

Fourth, the defense considered it "the most sacred provision of the constitution of Tennessee . . . that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; . . . that no human authority can, in any case whatever, control or interfere with the rights of conscience." This they called "the most important contention of the defence" (51–52). Hence, "Our con-

tention, to be very brief, is that in this act there is made mandatory the teaching of a particular doctrine that comes from a particular religious book, and to that extent, . . . they contravene the provisions of our constitution" (52).

The jury retired in spite of the objection of the defense because the judge felt that "if you gentlemen are going to discuss matters that are vital to the issues in this case, before the court, it is in the discretion of the court to have the jury retire" (52–53).[18]

Fifth, the defense argued that the right to freedom of expression applies "whether the site of it is in a schoolhouse, or store, or street, or building, or any place . . . limited only by . . . responsibility under libel law" (53).

Sixth, in accord with Section 9, Article I of the state constitution, which demands a clear definition of the crime, the defense insisted that "the crime in this act—the definition is so indefinite that it is absolutely impossible for the defense to know exactly the nature of its charge—of the charge" (53). This is particularly true, they said, since it is speaking about "a doctrine in the Bible [which] is so indefinite that every man that reads the Bible will have a different interpretation as to exactly what that theory of creation is . . ." (54). Further, "we think that the indictment should set out just exactly what our defendant was supposed to have taught" (55).

Finally, they claimed "that *our main contention after all, may it please your honor, is that this is not a proper thing for any legislature . . . to make and assign a rule in regard to. In this law there is an attempt to pronounce a judgment and conclusion in the realm of science and in the realm of religion"* (55, emphasis added). In brief, they argued that it was not the province of the courts to make pronouncements in these areas.

State Response to Defense Arguments

The state offered two responses to the defense, the first by attorney McKenzie. He made two main points. First, he said, the Supreme Court of Tennessee had ruled too often on this issue. The language of the

18. Though the stenographer (or editor?) put a "?" mark at the end of the sentence, clearly the judge herein expressed his view and immediately ruled accordingly.

indictment was the language of the statute: "no particular religion can be taught in the schools. We cannot teach any religion in the schools, therefore, you cannot teach any evolution, or any doctrine that conflicts with the Bible. That sets them up exactly equal. No part of the constitution has been infringed by this act." Furthermore, he argued, the U.S. government recognizes the right of the state to regulate its own schools and sends it federal funds to do so.

As to the defense's hypothetical illustration involving the Copernican theory, this "was not at all a similar case to this act; it has no connection with it; no such act as that has ever passed through the fertile brain of a Tennessean" (57). In short, the state said, it was a false analogy.[19]

As for the clarity of the law, McKenzie argued in effect that titles do not have to be exact or complete descriptions of what is in the law, only accurate ones—good enough "to give notice to the legislature that they should prevent surprise and fraud in the enactment of laws" (58).

Again concerning the clarity of the law, McKenzie insisted that "you do not construe these statutes according to their technical sense, unless it is a technical statute; you construe them in common ordinary language, and give them an interpretation like the common people of this state can understand" (58). We do the same thing when we say that "Under the law you cannot teach in the common schools the Bible. Why should it be improper to provide that you cannot teach this other theory?" (58).

Further, as to their argument about the schools' right to cherish science, "the legislature under the constitutional provision may as well establish a uniform system of schools and a uniform administration of them . . ." (59). The state has the inherent right to control its schools. So, "if they think the teaching of evolution is harmful to the children of the state, . . . they may pass the act" (59). Further, even if they do not think it is harmful, as "the supreme head of the schools, . . . They can pass the law under the inherent powers vested in them" (60).

Finally, the state attorneys said, claiming an alleged right to teach anything under the right to worship law is "ridiculous." A teacher hired

19. This response is notably weak, since it does not give the strong dissimilarities to show that it is a false analogy. If evolution were an empirical science and creation were not, then it would have been a good analogy.

to teach mathematics cannot decide on his own to teach architecture. "The teaching in the schools has nothing whatever to do with religious worship, and as Mr. McKenzie brought out, he can preach as he wants to on the streets—his religious rights—but he cannot preach them in school" (60).

Attorney General Stewart Responds to the Motion to Quash

Stewart returned to the objection that the law and its caption did not coincide. He added that in Tennessee law the caption could be broader than the law but not the reverse. All that was necessary was that they be "germaine [*sic*] one to the other" (62). And both the caption and the law "deal with only one thing, and that is to prohibit the teaching in the public schools of Tennessee the evolutionary theory" (62). And as for the possibility that the law was broader than the caption in that it may be affirming that one cannot both teach evolution and also teach that the Bible is untrue, this would be eliminated by "the rule of construction in Tennessee which prohibits the court from placing an absurd construction on the act" (62).

He also added to the alleged "cherish . . . science" part of the constitution the argument of Justice White's dissenting opinion that this was merely a directive to the legislators that expressed a popular feeling of the people and was not a constitutional mandate to put science over everything else (62–63).

He then addressed the "free worship" argument, noting that "this [law] . . . does not even approach interference with religious worship" (65). It was addressed only to public school systems. "This does not prevent any man from worshiping God as his conscience directs and dictates" (65). It did not require anyone to join a particular denomination, contribute to a particular religion, or attend any given church.

At this point Clarence Darrow objected, claiming that the law stated that "no preference shall ever be given, by law, to any religious establishment." He insisted that the Tennessee anti-evolution law erred by "giving preference to the Bible." He asked, "Why not the Koran?" (65). Stewart's answer was: "The laws of the land recognize the Bible; the

laws of the land recognize the law of God and Christianity as a part of the common law." In short, "We are not living in a heathen country." Stewart asked the ACLU attorney, Malone: "Do you say teaching the Bible in the public school is a religious matter?" Malone responded, "No." And he hastily added: however, "I would say to base a theory set forth in any version of the Bible to be taught in the public schools is an invasion of the rights of the citizen, whether exercised by police power or by the legislature" (66).

Stewart continued his argument by pointing out that "It is not an invasion of a man's religious rights. He can go to church on Sunday or any other day that there might be a meeting. . . ." Rather, "this is the authority, on the part of the legislature of the state of Tennessee, to direct the expenditure of the school funds of the state and through this act to require that the money shall not be spent in the teaching of the theories that conflict or contravene the Bible story of man's creation" (67).

Stewart then addressed the "freedom of speech" argument of the evolutionists, that John Scopes had a right to give his views on evolution anywhere he wanted, including in the public schools. Stewart responded, "Under that question, I say, Mr. Scopes might have taken his stand on the street corners and expounded until he became hoarse, as a result of his effort and we could not interfere with him." But "he cannot go into the public schools, or a school house, which is controlled by the legislature and supported by the public funds of the state and teach this theory" (67–68).

Darrow shifted the topic, inserting: "We claim the statute is void" because it was not specific as to what the crime was. Stewart responded, "The wording of the indictment complies with the wording of the statute. In such a case it is generally held to be good" (68). Further, in Tennessee law, "less strictness is required in indictments for misdeameanors [*sic*] than in felonies" (69). It was specific enough for the purpose. Everyone knew that Scopes wasn't indicted for "arson" or for "transporting liquor." Rather, "He is here for teaching a theory that denies the story of divine creation . . ." (69–70).

After looking over the original list of arguments the defense offered, Stewart narrowed the list to what he called "the principal one, I think

on which this case rests. It is the Fourteenth Amendment to the United States Constitution" (70), which says, "Nor shall any state deprive any person of life, liberty or property without the due process of law, nor deny to any person within its jurisdiction the equal protection of the laws" (71). On this basis, Stewart said, evolutionists argue that the state (and its schools) has no right to abridge freedom of speech for the evolutionist view in schools. Stewart responded by citing a court precedent on the very issue in *Meyer v. State of Nebraska,* in which the court stated: "Nor has challenge been made to the state's power to prescribe a curriculum for institutions which it supports" (71). He added, "How much stronger could they make the language? How much more . . . would we have them say than to recognize the right of the state of Tennessee to direct and control the curriculum in the Rhea County High School?" (72).

Clarence Darrow's Speech for the Defense

The next thirteen pages of the transcript record Clarence Darrow's famous anti-bigotry speech, in which he uses the terms "bigotry" and "bigoted" no less than eleven times. Along with this there is a liberal use of other pejorative terms, such as "fundamentalist" (79–80, 82, 86) and "fundamentalism" (87), "narrowness" (77), "not tolerant" (84), "hatred" (87), "venom" (80), "ignorance" (75, 79, 87) or "ignorant" (76). Searching for the thread of his argument is difficult, but a dominant theme is the need to preserve freedom of thought and speech. He makes the following points:

First, legislatures have the right to prescribe curriculum only within limits. "They could not prescribe it, . . . under your constitution, if it omitted arithmetic and geography and writing." Nor "could they prescribe it if the course of study was only to teach religion . . ." (75). Nor could they "establish a course in the public schools of teaching that the Christian religion as unfolded in the Bible, is true, and that every other religion, or mode or system of ethics is false . . ." (75).

Second, he argued: "And so it is, unless there is left enough of the spirit of freedom in the state of Tennessee, and in the United States, there is not a single line of any constitution that can withstand bigotry

and ignorance when it seeks to destroy the rights of the individual; and bigotry and ignorance are ever active" (75).

Third, "I think the sooner we get rid of it in Tennessee the better for the peace of Tennessee, and the better for the pursuit of knowledge in the world . . ." (75).

Fourth, he insisted that "There is not a word said in the statute about evolution, there is not a word said in the statute about preventing the teaching of the theory of evolution—not a word," as there was in the caption. And, "Does the caption say anything about the Bible?" (76).

Fifth, the statute referred to the Bible as a "divine" book, "But the state of Tennessee under an honest and fair interpretation of the constitution has no more right to teach the Bible as a divine book than that the Koran is one, or the book of Mormons, or the book of Confucius, or the Buddha, or the Essays of Emerson, or any one of the other 10,000 books to which humans have gone for consolation and aid in their troubles" (77). "No legislature is strong enough in any state in the Union to characterize and pick any book as being divine" (77). Here Darrow attempted to show the Bible was a purely human book. "It is not a book of science. Never was and was never meant to be." In fact, "There are two conflicting accounts [of creation] in the first two chapters" (78). In addition, he said, there were some 500 sects or churches who did not agree among themselves as to how to interpret the Bible (79).

Sixth, Darrow argued, this law was inspired by "the fundamentalists [who] are after everybody that thinks. I know why he [John Scopes] is here. . . . because ignorance and bigotry are rampant, and it is a mighty strong combination, your Honor, it makes him fearful" (79).

Seventh, "Now as to the statute itself. It is full of weird, strange, impossible and imaginary provisions. Driven by bigotry and narrowness they come together and make this statute and bring this litigation. I cannot conceive anything greater" (77).

Eighth, Darrow argued that John Scopes should have taught evolution because "the doctrine of evolution . . . [is] . . . believed by every scientific man on earth" (80).

Ninth, "the indictment is void because it is uncertain, and gives no fact or information and it seems to me the main thing they did in bringing this case was to try to violate as many provisions of the constitution as they could, to say nothing about all the spirit of freedom and independence that has cost the best blood in the world for ages" (81).

Tenth, Darrow argued, the state by its constitution is committed to teaching science and "is committed to teaching the truth." And on no reading of "the spirit of the law"[20] concerning freedom of religion should the truth about evolution be kept out of our schools (82).

Eleventh, Darrow declared that the "fundamentalists" who inspired this law were enemies of "freedom" and that the law resulted in "tyranny"; and he added, "since man was created out of the dust of the earth [Gen. 2:7] . . . there is nothing else your Honor that has caused the difference of opinion, of bitterness, of hatred, of war, of cruelty, that religion has caused" (82).

Twelfth, he said again, there are over 500 sects or churches, all of them having their own interpretation of Scripture. Who is to say which one is right? Yet this law demands that one of these interpretations be correct in order for one to understand it. Yet it considers him a criminal if he breaks it (82–83).

Thirteenth, "Can a legislative body say 'You cannot read a book or take a lesson, or make a talk on science until you first find out whether you are saying [anything] against Genesis'?" (83).

Fourteenth, "It makes the Bible the yard stick to measure every man's intellect, to measure every man's intelligence and to measure every man's learning" (84). But this is to establish religion.

Fifteenth, "Yes, within limits they have [the right to establish curriculum]. We do not doubt it, but they probably cannot say writing and arithmetic could not be taught, and certainly they cannot say nothing can be taught unless it is first ascertained that it agrees with the Scriptures; certainly they cannot say that" (84–85).

20. Darrow is unwittingly quoting the Bible (2 Cor. 3:6) in support of his view, though he admitted he was unaware of his source.

Sixteenth, this law makes it a criminal act to teach evolution in a public school. If so, then it should be a criminal act to do it in a private school or to write it in a book or newspaper (86–87).

Finally, Darrow attributed the law in question to the "religious bigotry and hatred" of "fundamentalism." He insisted that "Ignorance and fanaticism is ever busy and needs feeding" (87) and pleaded that the law be overturned lest we go "marching backward to the glorious ages of the sixteenth century when bigots lighted fagots to burn the men who dared to bring any intelligence and enlightenment and culture to the human mind" (87).

Third Day (July 14)

The third day of the trial began with Darrow objecting to opening prayer on the grounds that it might bias the case. Stewart referred to him as "the agnostic counsel for the defense" (90) and said "this is a God fearing country." The judge affirmed he "has no purpose except to find the truth and do justice" (90) and overruled Darrow's objection on the grounds it had been his custom to open the court in prayer. Dr. Stribling then prayed to "Our Father," the source of all blessing, asking him to bless the proceedings of the court, and petitioning God that there may "be in every heart and in every mind a reverence to the Great Creator of the world" (91). Later a group of clergy from "other than fundamentalist churches" requested that they be allowed to pray too. The judge requested the local "pastor's association" to choose those who would lead in prayer (93).

Fourth Day (July 15)

Objection About Prayer

As the fourth day of the trial began, ACLU attorney Neal objected again about prayer on the grounds that it injected a religious atmosphere into the case. Mr. Hicks replied for the state: "They say, your honor, that evolution is not—does not contradict the Bible—does not contradict Christianity. Why are they objecting to prayers if it doesn't contradict

the Bible—doesn't contradict Christianity," noting they had had a Unitarian, a Baptist, and a Methodist pray on different mornings. The judge replied, "The court believes that any religious society that is worthy of the name should believe in God and believe in divine guidance. . . . I don't think it hurts anybody and I think it may help somebody. So I overrule the objection" (96).

Stewart Apologizes About "Agnostic" Comment

Defense attorney Hays took exception to the previous day's comment about the "religious views of the counsel for the defense" (97). He had been referred to as "the agnostic counsel for the defense" (90). Stewart apologized, and Hays accepted his apology. The judge admonished the press about a news leak (97–98). Darrow said he considered it not an insult but a compliment to be called an agnostic (99).

Judge Overrules Motion to Quash

The judge rejected the ACLU motion to quash the indictment. He noted that "the caption covers all the legislation provided for in the body, and is germane thereto, and in no way obscures the legislation provided for" (100). He further noted that "The courts are not concerned in questions of public policy or the motive that prompts passage or enactment of any particular legislation." For "The policy, motive or wisdom of the statutes address themselves to the legislative department of the state, and not the judicial department" (101). Nor does it violate any freedom of thought or worship for the defendant since "there is no law in the state of Tennessee that undertakes to compel this defendant, or any other citizen, to accept employment in the public schools." Further, "The relations between the teacher and his employer are purely contractual and if his conscience constrains him to teach the evolution theory, he can find opportunities elsewhere . . ." (102). The other grounds of the motion to quash were rebutted as well, using precedent cases cited by the state and others such as *Pierce v. Society of Sisters*, *Leeper v. the State*, and *Meyer v. Nebraska*. The judge noted from the Meyer case the dictum: "Nor has challenge been made of the 'state's power to prescribe

a curriculum for institutions which it supports'" (107). He concluded, "The court, having passed on each ground chronologically, and given the reasons therefor, is now pleased to overrule the whole motion, and require the defendant to plead further" (108).

The Prosecution of the Case Begins

Preliminaries being out of the way, the actual prosecution of the case began. The witnesses and jury were called (110–111). Mr. Neal pleaded "not guilty" on behalf of the defendant John Scopes (112).

Malone Outlines Defense Case

Attorney Malone began the case for the defense with a quotation not identified but from John 4:24, declaring: "The defense believes that 'God is a spirit and they that worship Him must worship Him in spirit and in truth'" (112). He then gave the basic points of the defense as follows:

First, "The defense contends that to convict Scopes the prosecution must prove that Scopes not only taught the theory of evolution, but that he also, and at the same time, denied the theory of creation as set forth in the Bible" (113).

Second, he said, the defense also believed that "the prosecution must prove as part of its case what evolution is" (113).

Third, "the defense believes there is a direct conflict between the theory of evolution and the theories of creation set forth in the Book of Genesis" (113).

Fourth, "Neither do we believe that the stories of creation as set forth in the Bible are reconciliable or scientifically correct" (113).

Fifth, nonetheless, the defense would show that "there are millions of people who believe in evolution and in the stories of creation as set forth in the Bible and who find no conflict between the two" (113).

Sixth, "While the defense thinks there is a conflict between evolution and the Old Testament, we believe there is not conflict between evolution and Christianity" (113). "There may be a conflict between evolution and the peculiar ideas of Christianity, which are held by Mr.

Bryan as the evangelical leader of the prosecution, but we deny that the evangelical leader of the prosecution is an authorized spokesman for the Christians of the United States" (113).

Seventh, Malone cited Bryan as saying, "to compel people to accept a religious doctrine by act of law was to make not Christians but hypocrites" (114). For religion is a matter of love, not of force.

Eighth, he argued that "Christianity is bound up with no scientific theory, that it has survived 2,000 years in the face of all the discoveries of science and that Christianity will continue to grow in respect and influence if the people recognize that there is no conflict with science and Christianity" (115).

Ninth, he said the defense believed that "there is no branch of science which can be taught today without teaching the theory of evolution" (115).

Tenth, Malone also claimed that the defense would support evolution from science, offering embryological development as evidence. He cited "gill slits of an embryo baby" as one example, claiming "The embryo becomes a human being when it is born" (114–115).

Eleventh, he claimed the defense would show the practical benefits of evolution for mankind, in agriculture, in geology, and in "every branch of science" (116).

Twelfth, he said that "the book of Genesis is in part a hymn, in part an allegory and a work of religious interpretations written by men who believed that the earth was flat and whose authority cannot be accepted to control the teachings of science in our schools" (116).

Malone concluded his summary of what the defense intended to do by saying: "The narrow purpose of the defense is to establish the innocence of the defendant Scopes. The broad purpose of the defense will be to prove that the Bible is a work of religious aspiration and rules of conduct which must be kept in the field of theology" (116).

After an objection by the state to mentioning Bryan by name and Bryan saying he did not mind but would set the record straight about his views when he had an opportunity (117), the jury was sworn in by the court (119).

Witnesses for the State Take the Stand

Mr. Walter White, superintendent of the Rhea County School District and the first witness called by the state, verified that Scopes was a science teacher, that he taught out of a textbook titled *A Civic Biology,* by George William Hunter,[21] that he had reviewed the whole book around April 21, and that he had remarked to White that "he couldn't teach biology without violating this law" (120) and that he [White] believed that Scopes did "teach" evolution from that text to the Rhea County students. ACLU attorney Hays objected to the King James Version of the Bible being offered as evidence for "the Bible" in the law, noting that there were numerous versions of the Bible, of different translations, and even the Catholic Bible with "80 books"[22] (123) in it as opposed to 66 in Protestant Bibles (123). A student in Scopes's class, Howard Morgan, answered the question about teaching evolution: "Did Prof. Scopes teach it to you?" by responding, "Yes, sir" (125). Another pupil, Harry Shelton, confirmed that Scopes had taught evolution to them (129). Mr. Robinson, member of the school board and owner of the store that sold the evolution biology books, also testified to a conversation with Scopes wherein he admitted that "any teacher in the state who was teaching Hunter's Biology was violating the law; that science teachers could not teach Hunter's Biology without violating the law" (129).

Under cross-examination, Darrow had Robinson read sections from Hunter's book about what evolution means, and that there are "over 500,000 species of animals" (131). State's attorney Stewart had Genesis 1 and 2 read in order to get it into the record, and the state rested its case.

The defense called Professor Maynard M. Metcalf, a zoologist from Oberlin College in Ohio, to the stand. He testified that, "I am absolutely convinced from personal knowledge that any one of these men [in my field] feel and believe, as a matter of course, that *evolution is a fact"* (137, emphasis added). He went on to say, "but I doubt very much if any two of

21. See note 10, above.

22. This is an error. Roman Catholics accept only 11 of the 14 Apocryphal books into their Bible, and only 7 of them are listed in the table of contents, with 4 additions being made to Daniel and Esther. This makes a total of 77 books in the Roman Catholic Bible but only 73 listed in the table of contents: 46 in the OT and 27 in the NT. See Norman Geisler and William Nix, *A General Introduction to the Bible* (Chicago: Moody, 1986), chapter 15.

them agree as to the exact method by which evolution has been brought about" (137). Later he described evolution as "a tremendous probability," which it "would be entirely impossible for any normal human being" to have "even for a moment the least doubt" about (143). The only evidence he alluded to, however, was similarities among animals and "varieties of human kind appearing earlier in the geological series" (143).

(The jury was retired while the attorneys argued about whether these scientific testimonies about evolution were relevant to the case.)

The witness continued: "The fact of evolution is a thing that is perfectly and absolutely clear . . . [but] the methods by which evolution has been brought about—that we are not yet in possession of scientific knowledge to answer" (139). When asked how old life is, his "guess" was "600,000,000 years" (141).

Fifth Day (July 16)

Opening Prayer

Dr. J. A. Allen, a Church of Christ pastor, opened in prayer to "Our Father who art in Heaven," that "Thy Word may be vindicated, and that Thy truth may be spread in the earth." This he prayed "in the name of Jesus. Amen" (145).

After more wrangling between the attorneys about the need for scientific testimony (145–147), the state moved to exclude the evidence 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" (147). To paraphrase, the law against teaching evolution is the law, regardless of the evidence for it or against it. So, "there is no issue left except the issue as to whether or not [what Scopes taught] conflicts with the Bible" (148).

Bryan's Son's Speech on the Danger of Expert Witnesses

The son of William Jennings Bryan then pleaded the case against expert testimony, arguing that it is "the weakest . . . and most dangerous" and there is no way to contradict it since it is only an opinion

(150). Another "danger involved in receiving the opinion of the witness is that the jury may substitute such opinion for their own" (151) even though it is "largely a field of speculation besought with pitfalls and uncertainties" (151). And "It is generally safer to take the judgment of unskilled jurors than the opinions of hired and generally biased experts" (150–151). Furthermore, "There is no issue of fact raised by evidence, the facts are agreed upon both sides" (152). So, "To permit an expert to testify upon this issue would be to substantiate [substitute?] 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" (153).

ACLU Attorney Hays Responds

Defense attorney Hays responded that the defense agreed that Scopes taught evolution, "but as to whether that is contrary to . . . the Bible should be a matter of evidence" (154). Further, the jury needed to know the facts of science in order to know what evolution is. Further, evolution must be proven to be contrary to "the Bible." But which Bible? And whose interpretation of it? (156). Further, he said, the defense needed to be allowed to present the facts of evolution, which, he believed, were as firmly established as "the Copernican theory," which was "accepted by everyone today" (156). Further, for the court even to render an informed decision, "the court must take testimony and evidence on facts which are not matters of common knowledge" (157).

State's Attorney Hicks Argues for the Clarity of the Law

Mr. Hicks, attorney for the state, argued that the words of the law itself "preclude the introduction of such testimony as they are trying to bring into the case" (161). The law says it is unlawful to teach "any theory that denies the story of divine creation . . . as taught in the Bible." That is clear. So, if the next phrase is not clear (that is, if "that man has descended from a lower order of animals" is not clear), then it must be understood in the light of the first phrase. For the courts have ruled that "if one clause of that statute, one part of it is vague, not definitely

understood, . . . you must construe the whole statute together" (161). "They cannot 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 . . ." (162). Further, 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 the purpose of the law "is to prevent the teaching in our schools that man descended from a lower order of animals, and when he [John Scopes] taught that, as has been proven by our proof in chief, he violated the law, and cannot get around it" (162).

State's Attorney McKenzie Argues "We Have Crossed the Rubicon"

State's attorney McKenzie observed that the court had already "crossed the Rubicon" when the judge ruled that the act was clear. "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" (166).

The judge then asked McKenzie if he believed the divine story of creation in the Bible was so clear that "no reasonable minds could differ as to the method of creation, that is, that man was created, complete by God." He answered "Yes" (166). The judge reinforced the question by saying, "And in one act, and not by a method of growth or development; is that your position?" McKenzie responded, "From lower animals—yes, that is exactly right" (166–167). Then the judge asked, "do you claim that if you meet the second clause, by implication of law you have met the requirement of the first?" McKenzie replied, "Yes, that is exactly it" (167).

The Speech of William Jennings Bryan

The afternoon of the fifth day began with a speech by William Jennings Bryan, who made the following main points.

First, "we believe the court should hold, that the [scientific] testimony that defense is now offering is not competent and not proper testimony . . ." (170).

Second, "our position is that the statute is sufficient. . . . The statute needs no interpretation" (171). The second part "was careful to define what it meant by the first part of the statute." It "removes all doubt" by pointing out "specifically what is meant" (171).

Third, "Mr Scopes knew what the law was and knew what evolution was, and knew that it violated the law, [and] 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" (171).

Fourth, the opposition is saying in effect, "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" (172).

Fifth, "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?" (172). "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" (175).

Sixth, Bryan attacked evolution directly, asserting: "My contention is that the evolutionary hypothesis is not a theory, your honor" (176) because it has never been confirmed by fact that there is "a single species, the origin of which could be traced to another species" (177). He claimed, "the Christian believes man comes from above, but the evolutionist believes he must have come from below" (174). He showed the evolution tree in Hunter's *Civic Biology* book from which Scopes allegedly had taught (174). He cited Darwin's *Descent of Man* (1871), where Darwin said man came from the "new world . . . monkey" (176).

Seventh, Bryan affirmed his belief that [1] "the Bible is the Word of God . . . [2] the record of the Son of God, [3] the Saviour of the world, [4] born of the virgin Mary, [5] crucified and [6] risen again.[23] That Bible is not going to be driven out of this court by experts who come hundreds

23. Here Bryan states six of the fundamental doctrines that characterize a "fundamentalist."

of miles to testify that they can reconcile evolution with its ancestor in the jungle, with man made by God in His image . . ." (181–182).

Clarence Darrow's Response

Darrow read a quote from Bryan, in which Bryan said, "It is the duty of the university . . . to be the great storehouse of the wisdom of the ages, and to let students go there, and learn, and choose." He continued the quote, "Every changed idea in the world has had its consequences. Every new religious doctrine has created its victims" (182). The implication seemed to have been that this was inconsistent with what Bryan was now arguing.

Malone's Response

ACLU attorney Malone made a variety of observations. His comments ranged from the trivial to the profound. The following is a summary of his main points.

First, he correctly noted that "it does seem to me that we have gone far afield in this discussion" (183).

Second, he then proceeded to criticize Bryan, whom he classed as "the leader of the prosecution," for being a "propagandist" and making a "speech against science" (183).

Third, he charged that creationists want everyone to believe the world is only "6,000 years old," "the world was flat," and the earth is "the center of the universe" (183).

Fourth, in response to the Darwin quote about man coming from monkeys, he noted the change in evolutionists' views, asking: "Haven't we learned anything in seventy-five years?" He also likened creationists to the Roman Catholic persecution of Galileo, who opposed the view that the sun moves around the earth (183).

Fifth, he perceived the conflict as one of ideas "by men of two frames of mind": theological and scientific. The theological mind he described as one that was closed, established by the revelation of God in the Bible, which it believed should be understood literally. The scientific mind, by contrast, was open, in progress, changing, and not based on any reve-

lation from God. It believed that the Bible is only an inspiration and a guide, a set of ideas and sermons (184).

Sixth, "This theory of evolution, in one form or another, has been 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" (184).

Seventh, if the state was correct in its understanding of the anti-evolution law, then "or" and not "and" should have connected the two parts of it. But it does not, and so the state must prove two things, not just one.

Eighth, he asserted, the Bible is not a book of science. Hence, the state is wrong in claiming in effect that "only the Bible shall be taken as an authority on the subject of evolution in a course on biology" (185).

Ninth, in response to the judge's question he affirmed his belief that "the theory of evolution is reconcilable with the story of divine creation as taught in the Bible" (186). Hence, the defense does not believe that God created the first man "complete all at once" (186).

Tenth, Malone uttered one of the most profound lines in the trial: "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" (187).

Eleventh, Malone also made some profound statements about truth: "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 is imperishable, eternal and immortal and needs no human agency to support it" (187).

Twelfth, brimming with optimism, Malone proclaimed: "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" (188).

Darrow Adds Some Comments

Clarence Darrow then added some thoughts of his own. First, "We say that God created man out of the dust of the earth is simply a figure of speech" (188).

Second, when asked: "[Do] you recognize God behind the first spark of life?" Darrow answered: "We expect most of our witnesses to take that view. As to me I don't pretend to have any opinion on it" (188).

Third, "there is no such thing as species—that is all nonsense. Science does not talk about species. . . . It is a process we are interested in and the Bible story is not inconsistent with that" (189).

Fourth, to the judge's question as to whether life has a "common source" of "one cell," Darrow answered, "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 . . ." (189).

Fifth, Darrow admitted humans have reason "very much greater than any other animal," but never answered the judge's question as to where it came from (189).

Sixth, when asked about the evolutionists' view on immortality, he replied that "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" (189).

Stewart Refocuses the Issue

Attorney General Stewart tried to get the discussion back on track. He made several points.

First, he insisted that the purpose of the legislature in passing the law in question took precedence over any disputable construction in that law (190, 192, 193).

Second, he noted that there was nothing to which expert witnesses could testify, except to whether evolution was consistent with the Bible. But the people of Tennessee had already decided on that issue in the wording of the law (191–192).

Third, "it is the duty of the court to never place an absurd construction upon an act. And I submit that the construction, as I understand it, they insist upon would be absurd" (192).

Fourth, it is also a matter of precedent law that "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 . . . and viewing the legislation in the light of its general purpose" (193).

Fifth, "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" (197). "I say scientific investigation [about origins] is nothing but a theory and will never be anything but a theory" (198). "I say, bar the door, and not allow science to enter" (197).

Sixth, "There should not be any clash between science and religion. . . . How did it occur? It occurred from teaching that infidelity, that agnosticism, that which breeds in the soul of a child, infidelity, atheism, and drives him from the Bible that his father and mother raised him by, which . . . drives man's sole hope of happiness and of religion and of freedom of thought, and worship, and Almighty God, from him" (197).

Seventh, "Yes, discard that theory of the Bible [about creation]—throw it away, and let scientific 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 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 teaching upon which this civilization has been built will be taken from us" (197–198).

Sixth Day (July 17)

Opening Prayer

On the sixth day of the *Scopes* trial, Dr. Eastwood opened with a prayer to "Our Father and our God," praying for "justice" in the courts and "blessings" on the court, jury, counsel, and the press "in the name of our Lord and Master Jesus Christ. Amen" (201).

The Ruling of the Judge About Expert Testimony

The conclusion of the judge's ruling on whether to allow expert testimony was as follows:

> In the final analysis this court, after a most earnest and careful consideration, has reached the conclusion that under the provisions of the act involved in this case, it is made unlawful thereby to teach in the public schools of the state of Tennessee the theory that man descended from a lower order of animals. If the court is correct in this, then the evidence of experts would shed no light on the issues. Therefore, the court is content to sustain the motion of the attorney general to exclude the expert testimony (203).

The Ensuing Discussion

After the defense insisted on getting the evolutionists' testimony into the record, Stewart charged that, "It is a known fact that the defense consider this a campaign of education to get before the people their ideas of evolution and scientific principles" (205). Defense attorney Malone denied this immediately.

Darrow's Angry Statement

After Bryan asked for and was given the right to cross-examine the expert witnesses, Darrow shot back: "We want to submit what we want to prove. That is all we want to do. If that will not enlighten the court cross-examination of Mr. Bryan would not enlighten the court" (206). He then added, "What we are interested in, counsel well knows what the judgment and verdict in this case will be. . . . I do not understand why . . . a bare suggestion of anything that is perfectly competent on our part should be immediately over-ruled." To this the judge retorted, "I hope you do not mean to reflect upon the court?" Darrow snapped: "Well, your honor has the right to hope" (206–207).

The court agreed, however, for the purposes of appeal, to allow the expert testimony to go on the record.[24] The question was left open as to whether the testimony would be written or oral, and court was dismissed early, at 10:30 a.m., until Monday morning.

Seventh Day (July 20)

Opening Prayer

A minister prayed to "Almighty God, our Father in Heaven," and gave thanks for "all the kindly influences" on our lives and acknowledged that "we have been stupid enough to match our human minds with revelations of the infinite and eternal." He prayed for God's "guidance and directing presence . . . in all things . . . we ask for Christ's sake. Amen" (211).

Darrow Cited for Contempt of Court

The judge read a section from the previous day's record and concluded: "I feel that further forbearance would cease to be a virtue, and in an effort to protect the good name of my state, and to protect the dignity of the court over which I preside, I am constrained and impelled to call upon the said Darrow, to know what he has to say why he should not be dealt with for contempt" (212).

Letter from Governor Peay

The defense requested that they be allowed to read a letter from the governor in which he opined that, "It will be seen that this bill [the law that Scopes was accused of violating] does not require any particular theory or interpretation of the Bible regarding man's creation to be taught in the public schools." He further offered his view that "The widest latitude of interpretation will remain as to the time and manner of God's process in His creation of man" (213). He added, "After careful examination I can find nothing of consequence in the books now being

24. The *Scopes* verdict was appealed to the Tennessee Supreme Court, where it was upheld in 1927.

taught in our schools with which this bill will interfere in the slightest manner" (214).

The judge noted, "That is the governor's opinion about it," but added, "with all deference to Gov. Peay—[he] does not belong to the interpreting branch of the government. His opinion of what the law means . . . is of no consequence at all in the court, and could not have any bearing, and I exclude the statement" (214).

Defense Attempts to Offer New Textbook as Evidence

ACLU attorney Hays offered as evidence a new science textbook that had been adopted for the schools since the *Scopes* trial had begun. Sections were read where Darwin is praised for having contributed to "a great part of [the world's] modern progress in biology" (215) and where it is explained how some primates "evolved (developed) along special lines of their own." But the book added, "none of them are to be thought of as the source or origin of the human species. It is futile, therefore, to look for the primitive stock of the human species in any existing animals" (215).[25]

Further Discussion over Testimony

Continued wrangling over the law ensued, with defense attorney Hays charging that the law was "unreasonable" and, therefore, unconstitutional. He insisted that that was why they wanted to offer evidence (216). Attorney General Stewart continued to insist that the defense only wanted the evidence on the record for propaganda purposes: "I stated that the primary purpose of the defense is to go ahead with this lawsuit for the purpose of conducting an educational campaign and say to the publice [*sic*] through the press their idea of their theory" (218). The judge gave an hour for the defense to summarize for the court what their witnesses wanted to say before he made

25. It would appear that this statement was carefully crafted to support evolution while at the same time appearing to deny it. Three things are noteworthy in this regard: (1) The book speaks about the evolution of primates, (2) it does not deny the evolution of man but simply says man did not evolve from any "existing animals," and (3) it implies that scientists are still looking for "the source or origin of the human species."

his final decision on whether to allow their testimony in the record (though not for the jury, nor to decide the case, only for the record for appealing the case).

Summary of Rev. Walter C. Whitaker's Testimony

Defense attorney Hays described Walter C. Whitaker, an Episcopal rector, as a "Christian and an evolutionist at the same time" (223). Hays said Whitaker's testimony would be as follows: "As one who for thirty years has preached Jesus Christ as the Son of God . . . I am unable to see any contradiction between evolution and Christianity." He also would say, "a man can be a Christian without taking every word of the Bible literally" (223).

Summary of Shailer Mathews's Testimony

Shailer Mathews, Dean of the University of Chicago Divinity School, was quoted as saying, "a correct understanding of Genesis shows that its account of creation is no more denied by evolution than it is by the laws of light, electricity, and gravitation. The Bible deals with religion" (224). Further, "There are two accounts in Genesis of the creation of man. They are not identical and at points differ widely. It would be difficult to say which is the teaching of the Bible" (224). Further, "so far from opposing the Genesis account of the creation of man, the theory of evolution in some degree resembles it. But the book of Genesis is not intended to teach science, but to teach the activity of God in nature and the spiritual value of man" (224). Thus, "The theory of evolution is an attempt to explain the process in detail. . . . Genesis and evolution are complementary to each other, Genesis emphasizing the divine first cause and science the details of the process through which God works" (225). He noted that "This view that evolution is not contrary to Genesis is held by many conservative evangelical theologians, such as Strong, Hall, Micon, Harris and Johnson. Mullins also holds to theistic evolution" (225). Other statements were read into the record.

Darrow's Apology for Contempt

After lunch, Clarence Darrow apologized to the judge, saying, "Of course, your honor will remember that whatever took place was hurried, one thing followed another and the truth is I did not know just how it looked until I read over the minutes as your honor did and when I read them over I was sorry that I had said it" (225). The judge replied in part, "My friends, and Col. Darrow, the Man that I believe came into the world to save man from sin, the Man that died on the cross that man might be redeemed, taught that it was godly to forgive. . . . The Savior died on the cross pleading with God for the men who crucified Him. I believe in that Christ. I believe in these principles. I accept Col. Darrow's apology" (226).

Further Testimony

A statement was taken from Rabbi Rosenwasser which included the notation that the King James translation was inaccurate, including "create" (from the Hebrew *bara*, which should be translated "set in motion") (228). He concluded: "If the Hebrew Bible were properly translated and understood, one would not find any conflict with the theory of evolution which would prevent him from accepting both" (229).

Dr. H. E. Murkett was also cited as saying: "We would also be able to prove that the Bible, properly interpreted, does not conflict with the theory of evolution . . ." (229). Other testimonies were taken on this same issue.

Statement of the Defense

The defense added their own statement: "Of course, the defense, as lawyers, take no position on the truth of the stories of the Bible, but we wish to state that we should be able to prove from learned Biblical scholars that the Bible is both a literal and figurative document, that God speaks by parables, allegories, sometimes literally and sometimes spiritually" (230). Citing Psalm 139:15–16 about God forming an embryo in the womb, they concluded: "Here there is a distinct statement that the human body was created by the process of evolution. Also Roman [*sic*] VIII 22 says: 'For we know that the whole creation groaneth and

travaileth in pain together until now'" (230). "In other words, we should prove that the Bible is subject to various interpretations depending upon the learning and understanding of the individual, and that, if this is true, there is nothing necessarily inconsistent between one's understanding of the Bible and evolution." They added, "They may accept them as legends or parables, and thus not find them inconsistent with any scientific theory" (231). Strangely and ironically, the defense ended their statement with a quotation from 2 Timothy 4:3–4 (Goodspeed translation), which declares, "The time will come when they will not listen to wholesome instruction, but will overwhelm themselves with teachers to suit their whims and tickle their fancies, and they will turn from listening to the truth and wander off after fiction" (231)!

Other Scientists Offer Statements

Anthropologist Fay-Cooper Cole argued that "evidence abundantly justifies" (235) evolution. He cited vestigial (useless) organs, similarities of animals, and human-like ancestors of man to support evolution. He referred to "Piltdown" man, subsequently exposed as a fraud (237), as well as "Neanderthal," "Java," and "Cromagnon." He concluded, "From the above it seems conclusive that it is impossible to teach anthropology or the prehistory of man without teaching evolution" (237–238).

Wilbur A. Nelson, Tennessee state geologist, reviewed the rock formations without mentioning a single "missing link," yet concluded that such information would not have been possible "unless the teaching of evolution had been permitted" (239). The only real evidence offered for evolution was that "the relative ages of the rocks correspond closely to the degrees of complexity of organization shown by the fossils in those rocks" (241).

One geologist, Kirtley F. Mather of Harvard, went so far as to say, "There are in truth no missing links in the record which connects man with other members of the order of primates" (247). He admitted that "it is possible to construct a mechanistic, evolutionary hypothesis which rules God out of the world," but it is not necessary because a theistic evolutionary model has both (248). He insisted that science and religion cannot conflict because the latter deals with the ultimate cause and the

former with immediate causes. Hence, "Science has not even a guess as to the original source or sources of matter. . . . For science there is no beginning and no ending; all acceptable theories of earth origin are theories of rejuvenation rather than of creation—from nothing" (248). Yet he was convinced that "knowing the ages of the rocks has led to better knowledge of the Rock of Ages" (250).

Zoologist Maynard Metcalf contended that "intelligent teaching of biology or intelligent approach to any biological science is impossible if the established fact of evolution is omitted" (251). He added, "Not only has evolution occurred; it is occurring today and occurring even under man's control" (253). "Evolution is a present observable phenomenon as well as an established fact of past occurring" (253).

Zoologist Winterton C. Curtis of the University of Missouri admitted that creation of different types was not only a "possibility" but was actually held by some scientists: "One of the pre-Darwin ideas was that each animal, while created separately, was nevertheless formed in accordance with a certain type that the Creator had in mind, hence the resemblance" (257). Indeed, this view of a common Creator vs. a common ancestor continued after Darwin among some scientists (Louis Agassiz of Harvard being one) and is growing today. In spite of this, and in spite of the admission (by Curtis, quoting from a letter written to him) that "As to the nature of this process of evolution, we have many conjectures, but little positive knowledge," Curtis concluded, again quoting from the letter, "Let us then proclaim in precise and unmistakable language that our faith in evolution is unshaken" (259).

Horatio Hackett Newman, zoologist at the University of Chicago, argued from micro- to macroevolution while also acknowledging the difficulty of knowing the history of evolutionary development: "For the study of past evolutionary events we use the historical method so successfully employed in archaeology and ancient history; for the study of present evolution we make use of the methods of direct observation and experiment" (264). By contrast, "we admit that the evidences of past evolution are indirect and circumstantial . . ." (264). Strangely, he then proceeded to compare evolution to gravity, claiming that "The evidences upon which the law of gravity are [*sic*] based are no less in-

direct than those supporting the principle of evolution" (264).[26] He claimed there are 180 vestigial organs which are "evidence that man has descended from ancestors in which these organs were functional," including the "abbreviated tail" at the end of the backbone (268). He rejected the old creationists' view that "species" are a "fixed and definite assemblage such as one would expect it to be if specifically created as an immutable thing" (270). He called "special creation" a "rival explanation" to evolution (280).

Before the Jury Is Called Back into the Courtroom

Just before the jury was called back into the courtroom, Darrow protested the presence of a sign near the jury box which declared, "Read Your Bible" (280). State's attorney McKenzie asked, "Why should it be removed? It is their defense and stated before court, that they do not deny the Bible, that they expect to introduce proof to make it harmonize. Why should we remove the sign cautioning people to read the Word of God just to satisfy the others in the case?" (281). Darrow suggested balancing it with a sign on reading "Hunter's Biology" or "Read your evolution" (282). The court removed the sign, lest anyone be offended, and called for the jury.

The Defense Asks for Roman Catholic and Jewish Bibles as Evidence

The defense asked for Catholic and Jewish Bibles as evidence that there are differences in the Bible, not just in interpretations of it. The judge allowed for the Catholic Bible in English, but said "I don't believe it is worth fussing over. I don't think there is any conflict in it" (283). Stewart reminded the court that the "indictment was based on the

26. This is hardly the case, since gravity is a theory whose truth can be constantly and directly verified in the present by measuring the theory over against the observable and recurring laws of nature, whereas macroevolution cannot be so measured. It is a theory about past unobserved events of origin which are not recurring in the present and, hence, are no more observable than a historical event or archaeological event of which we have remains from the past.

King James Version of the Bible" (283), and that the Bible phrase in the indictment was not in question (284).

The Defense Calls Bryan as a Witness

In a surprise move, the defense called William Jennings Bryan as a witness, and he was willing to comply, though he was not actually sworn in as a witness. The next twenty pages containing Bryan's testimony were not an official part of the trial and were struck from the record the next day (304). Nonetheless, they contain fascinating exchanges that were highly sensationalized in the media. Bryan testified that he believed the Bible was the inspired Word of God and that "everything in the Bible should be accepted as it is given there; some of the Bible is given illustratively. For instance: 'Ye are the salt of the earth'" (285). He believed all the miracles in the Bible including that Jonah was literally swallowed by a great fish (285). He even went so far as to say he would believe the Bible, if it had said Jonah swallowed the whale, though he qualified it by saying, "the Bible doesn't make as extreme statements as evolutionists do" (285). Bryan confessed his belief that the sun stood still at Joshua's command, though he did not believe this was opposed to the scientific belief that the earth goes around the sun. It was a miracle that was written in "language that could be understood then" (286).

Although defense attorneys attempted to stop the irrelevant proceedings, since Bryan was willing the judge allowed his testimony to continue. Bryan charged that the ACLU attorneys "did not come here to try this case. They came to try revealed religion. I am here to defend it, and they can ask me any question they please" (288). Bryan accepted the historicity of Noah's flood (288–289), and the superiority of the Christian religion (291–292). He denied that the earth is only about 6,000 years old (298) and that the "days" of Genesis were only 24 hours long (299). As to whether the earth is young or old, Bryan said, "I do not think it important whether we believe one or the other" (302). When asked by Stewart what the purpose of the defense attorney's questions was, Bryan retorted: "The purpose is to cast ridicule on everybody who believes in the Bible, and I am perfectly willing that the world shall know that these gentlemen have no other purpose than ridiculing every Chris-

tian who believes in the Bible" (299). He added, "I am simply trying to protect the word of God against the greatest atheist or agnostic in the United States" (299). Bryan did not know where Cain got his wife but was content to believe it because the Bible said so (302). He believed in a literal Adam and Eve and a literal fall (303).

Bryan's last words were, "The only purpose Mr. Darrow has is to slur at the Bible. . . . I want the world to know that this man, who does not believe in a God, is trying to use a court in Tennessee . . . to slur at it, and while it will require time, I am willing to take it." Darrow's last words were: "I object to your statement. I am exempting you on your fool ideas that no intelligent Christian on earth believes" (304). With that the court adjourned for the day.

Eighth Day (July 21)

Opening Prayer

Dr. Camper prayed, "Oh God, our Heavenly Father. . . . We pray Thy blessing upon each one that has a part in this court here today. . . . We ask it in the name of Jesus Christ. Amen" (305).

Bryan's Testimony Struck from the Record

The judge expressed regret that he had allowed Bryan's testimony because of "an over-zeal to be absolutely fair to all parties" (305). He struck it from the record.

Darrow Enters Plea of Guilty

Darrow claimed, "we have no witnesses to offer, no proof to offer on the issues that the court has laid down here. . . . I think to save time we will ask the court to bring in the jury and instruct the jury to find the defendant guilty" (306). Bryan pleaded with the press to be just in presenting his response to their report of his testimony the previous day, insisting that they should also print "the religious attitude of the people who come down here to deprive the people of Tennessee of the right to run their own schools" (308).

The Jury Is Brought in and Charged

The jury was then brought in and instructed as to the proper construction of the law: they were to understand the statute as only forbidding the teaching of evolution and making no assertion about what the Bible teaches about creation. The judge declared, "you are not concerned as to whether or not this is a theory denying the story of the divine creation of man as taught, for the issues as they have been finally made up in this case do not involve that question" (310). He pointed out that he had previously ruled that the second part of the statute merely explained the first; it did not make it necessary that the teacher also teach the biblical view on creation (whatever that may be).

The judge reminded the jury that the fine, if the defendant were found guilty, must be between $100 and $500. He defined the term "beyond reasonable doubt": not beyond all doubt, but beyond any doubt that "would prevent your mind resting easy as to the guilt of the defendant" (310).

Darrow told the jury that "there is no dispute about the facts. Scopes did not go on the stand, because he could not deny the statements made by [his students]" (311). Darrow added, "we cannot even explain to you that we think you should return a verdict of not guilty. We do not see how you could. We do not ask it. We think we will save our point and take it to the higher court . . ." (311).

Bryan's Last Speech

William Jennings Bryan's closing remarks are best summarized in the following two excerpts: "Here has been fought out a little case of little consequence as a case, but the world is interested because it raises an issue, and that issue will some day be settled right, whether it is settled on our side or the other side" (316). He added, "The people will determine this issue. They will take sides upon this issue. . . . no matter what our views may be, we ought not only desire, but pray, that that which is right will prevail, whether it be our way or somebody else's" (317).

Darrow's Last Speech

In his summary, Clarence Darrow said, "I think this case will be remembered because it is the first case of this sort since we stopped trying people in America for witchcraft because here we have done our best to turn back the tide that has sought to force itself upon this—upon this modern world, of testing every fact in science by a religious dictum" (317).

Benediction

Dr. Jones closed in prayer, reciting 2 Corinthians 13:14: "May the grace of our Lord Jesus Christ, the love of God and the communion and fellowship of the Holy Ghost abide with you all. Amen" (319).

The Appeal of the Decision

Scopes was found guilty and ordered to pay a fine, but the fine was appealed and overturned on a technicality. The judge had issued the minimal fine of $100, but according to the law the jury should have set the amount, not the judge. Legally, the end of the case was like a tornado ending with a whimper. Of course, the issue lives on and perhaps will never die this side of eternity. The *Scopes* trial passed into history, but the legend survives, fueled by the fictional movie *Inherit the Wind,* from which the media show clips whenever the issue resurfaces.

Some Implications of the Trial

Important implications may be drawn from the *Scopes* trial for succeeding clashes in the courts. Several will be noted here, as they will bear on our further discussion.

1. The Framing of the Issue: Religion Against Science

By the very wording of the law at issue in the *Scopes* trial, the issue became framed from its inception as one of religion against science.

This unfortunate shadow has haunted every major creation/evolution trial since then, even though proponents of creation have strenuously attempted to make it a purely scientific issue by calling it "scientific creation" or "intelligent design" (see chapter 7). In the minds of the media and, through them, in the minds of the general public, the issue is still religion vs. science. Overcoming this mind-set has been one of the major challenges for the creationist movement. To date, the challenge has not been met. An important attempt to do this was squelched so as not to be available for the crucial Supreme Court decision in *Edwards* (1987). This will be discussed in detail in chapters 3, 4, and 7.

2. The Popularity of Science

Another important factor in this debate has been the popularity of science and the seizure of the "high ground" by the evolutionists. The successes of science are voluminous, and the practical effects of these successes are felt by everyone. Attacking science in the name of religion has not had great success in modern times. Since the vast majority of scientists embrace evolution, it is not popular in educated circles to attack evolution. Adding to the problem, most religious leaders, including early fundamentalists like A. A. Hodge, B. B. Warfield, James Orr, and even the Baptist theologian Augustus Strong have embraced theistic evolution as a viable solution to the problem. Having this option open makes it more difficult for those who claim that "evolution is against God." Meanwhile, naturalistic evolutionists have been successful in exploiting the courts to their advantage against the creation and intelligent design movements while at the same time convincing the courts that creation and intelligent design are no more than attempts by fundamentalists to get their religious views taught in public school. Again, this must be, but never has been, successfully overcome in a major court decision. A major hope to reverse this is found in my suppressed testimony (see chapter 4) and is spelled out in chapter 7.

3. The Ambiguity of the Term "Science"

Evolution is considered science and is even called a "fact" by evolutionists. Creation, of course, is not thought of by the courts after *Scopes* as scientific but as a biblical and religious tenet. Given these premises implicit in the first major evolution/creation court case, the deck is loaded against creation, for its proponents acknowledge that it is something taught in a religious book—the Bible—while evolution is abstracted from any of its religious connotations and is portrayed as pure "science." However, there are two different kinds of science: origin science and operation science. Creation qualifies as a science under origin science (see chapter 8).

4. The Ambiguity of the Term "Evolution"

Another ambiguity in favor of macroevolution is the failure to clearly distinguish between microevolution, which is an empirical science, and macroevolution, which is being taught as if it too were an empirical science when it is not (see chapter 8). This equivocation has enabled evolution to survive the court tests of legitimacy while creation has not fared so well.

5. One-sided Use of Freedom of Speech

Another factor favoring evolution over creation in the public schools is the evolutionists' one-sided use of "freedom of speech" laws. Evolutionists in *Scopes* and later have been able to convincingly apply this freedom to teaching their views while somehow forgetting that they should apply it equally to teaching creation. After all, the sword of free speech has two edges. It applies not only to the proponent (e.g., evolutionists) but also to his opponents (creationists).

Evolutionists have been successful in convincing the courts that it is not the province of the courts to make laws "in the realm of science and in the realm of religion" (55). Somehow, the higher courts since this time (that is, from 1968 to 2005) do not see that they have made pronouncements in these very areas, and in every case those pronounce-

ments have favored one view over the other—just the opposite of the fairness for which they had pleaded in *Scopes!*

6. Emphasis on Minority Rights

Another issue creationists have not exploited is that of minority rights. Evolutionists were able to argue this convincingly in their favor at the *Scopes* trial. But creationists were not able to persuade the courts of this at the *McLean* case in Arkansas (1981–1982). Nor have subsequent cases utilized this argument effectively for teaching creation alongside evolution. For if evolution could gain its rights as a minority view in the schools while the creationist majority was passing laws against it, then why can't creationists do the same for their minority view now?

The Conclusion of the Trial

John Scopes was found guilty of violating the anti-evolution law of the state of Tennessee and was fined $100 by the judge. The trial adjourned, the world went home, but it has not been the same since. William Jennings Bryan died a short time later, but the controversy lives on.

In the *Scopes* trial of 1925, the legal victory was won by creationists, but the bigger and much more important public relations victory had been won by evolutionists—thanks in large part to a biased media. And even though it would be a whole generation before the Supreme Court in the 1968 *Epperson* case (see chapter 2) would strike down the last anti-evolution law, nonetheless, the theory of evolution, already accepted by the intellectual community, continued to gain ground in schools and, through them, in the wider public arena. And it was only a matter of time before this victory would work its way successfully through the courts (see chapters 3–7).

Additional Reading

Conkin, Paul M. *When All the Gods Trembled: Darwinism, Scopes, and American Intellectuals.* Rowman & Littlefield, 1998.

Geisler, Norman, with A. F. Brooke II and Mark J. Keough. *The Creator in the Courtroom: Scopes II*. Milford, Mich.: Mott Media, 1982.

Geisler, Norman, and Kerby Anderson. *Origin Science: A Proposal for the Creation-Evolution Controversy*. Grand Rapids, Mich.: Baker, 1987.

Hitchcock, James. *The Supreme Court and Religion in American Life.* Vol. 1. Princeton, N.J.: Princeton University Press, 2004.

Hodge, Charles. "What Is Darwinism?" In *What Is Darwinism? And Other Writings on Science and Religion*. Ed. Mark A. Noll and David N. Livingstone. Grand Rapids, Mich.: Baker, 1994.

Larson, Edward J. *Summer for the Gods*. New York: Basic Books, 1997.

———. *Trial and Error: The American Controversy over Creation and Evolution.* New York: Oxford University Press, 2003.

Moore, James R. *The Post-Darwinian Controversies.* New York: Cambridge University Press, 1979.

Roberts, Jon H. *Darwinism and the Divine in America: Protestant Intellectuals and Organic Evolution, 1859–1900.* Madison: University of Wisconsin Press, 1988; revised, Notre Dame, Ind.: University of Notre Dame Press, 2001.

"Norman Geisler has always been a 'trail-blazer' for people who want to speak out about their faith, and *Creation and the Courts* blazes a trail into the truth of creation vs. evolution. Through his firsthand personal experience in the 'Scopes II' trial and his exhaustive research into other similar trials, Geisler will draw you into the world of our legal system, better preparing you to address issues of creation and evolution."

Josh D. McDowell, *author; speaker*

"As both an eyewitness in the courtroom and a highly respected scholar in the classroom, Norman Geisler provides a unique perspective to one of the most critical discussions of our time. From the Scopes trial to the recent Dover case, Geisler summarizes and counters the often unexamined assumptions left in their wake. This is an invaluable resource on the subject, and I enthusiastically recommend it."

Ravi Zacharias, *author; speaker*

"Norman Geisler has provided a compilation and commentary on the issue of evolution, public education, and the courts that will serve as an important resource for decades to come. Dr. Geisler convincingly shows that much of the debate over this issue is a jurisprudential mess resulting from philosophically confused though well-meaning scientists and jurists. He offers just the sort of clarity this debate requires."

Francis J. Beckwith, *Professor of Philosophy and Church-State Studies, Baylor University; author,* Law, Darwinism, and Public Education

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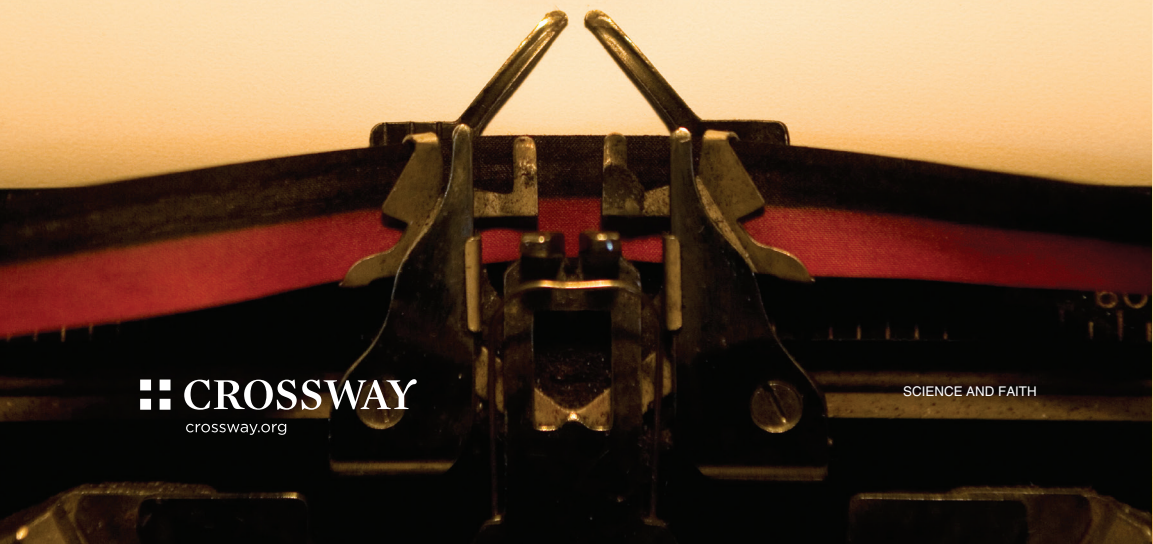
Norman Geisler (PhD, Loyola University) serves as the distinguished senior professor of theology and apologetics at Southern Evangelical Seminary and is the author or coauthor of some sixty books, including his four-volume *Systematic Theology*. He has taught at the university and graduate level for nearly forty years and has spoken or debated worldwide.



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