

Supreme Court Justices Wrestling With Pesky Arkansas 'Monkey Law'

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The Supreme Court wrestled with the Arkansas "monkey law" last week and several Justices tried to get the monkey off their backs.

They sought during a half-hour oral argument to find ways of avoiding a decision on the broad claim of a former Little Rock school teacher that she has a constitutional right to tell pupils about Darwin's theory of evolution.

But neither the lawyer for Arkansas nor the lawyer for Susan Epperson, 27, now a housewife in Oxon Hill, Md., would offer the Court a narrower basis for ruling on the case.

State Deputy Attorney General Don Langston said his office inherited the defense of the law from a prior administration but insisted he would not concede it was invalid. "It might not be too late, you know," said Justice Abe Fortas.

Mrs. Epperson's lawyer, Eugene R. Warren of Little Rock, conceded that he knew of no prosecutions under the 1926 law, which was inspired by the Tennessee law over which Clarence Darrow and

William Jennings Bryan battled in 1925.

"There's not much danger then," suggested Justice Hugo L. Black. On the contrary, Warren replied, "There's a lot of uncertainty and fright. There have been threats of prosecution."

The Court once resisted attempts to obtain a ruling on Connecticut's ban on contraceptives, saying the lack of enforcement made the controversy seem unreal. It was persuaded of the seriousness of the issue only in 1965 in a criminal case.

Justice William J. Brennan Jr. suggested that the law could be construed to apply only to elementary school teachers and students, not Mrs. Epperson's tenth-grade biology class, in the interest of protecting extremely young minds from controversy.

Not so, replied both lawyers. "Anyone from kindergarten on up is not supposed to be made aware of the theory in Arkansas," Langston said, and that meant teachers were barred from mentioning the theory as well as telling students it was right.

The law makes it a crime, punishable by \$500 fine and dismissal, "to teach the theory that mankind ascended or de-

scended from a lower order of animals."

Mrs. Epperson's civil suit was filed to avoid the risk of criminal prosecution. Since filing the suit, winning at the trial level and losing the State Supreme Court, she has moved with her husband, Air Force Capt. Jon O. Epperson, to 5904 Nancy la., Oxon Hill, where he commutes to a Pentagon assignment.

Justice John M. Harlan asked why the Supreme Court should "get into running the school curriculum," but Justice Potter Stewart said it was a question of excluding one theory but permitting the "opposing theory" of man's development described in the Bible.

"Does the State prohibit discussion of sex?" asked Justice William O. Douglas, who was celebrating his 70th birthday. Langston said he knew of no law against it.

Chief Justice Earl Warren asked whether Arkansas could ban the teaching of geometry. "A line has to be drawn somewhere," Langston said. "That's our problem," said the Chief Justice. "I'm glad it's your problem," Langston said as the courtroom broke out in laughter and the Justices took the case under advisement.