

The State of Tennessee  
vs.  
John Thomas Scopes  
(1925)  
(the Monkey Trial)

# Primary source material for this presentation

- Summer for the Gods – The Scopes Trial and America’s Continuing Debate Over Science and Religion, 1997

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Winner of the Pulitzer Prize in History

## The source of the controversy

- In 1859, Charles Darwin publishes his seminal work, *Origin of Species*
- Introduces his theory that all currently living species, including humans, had gradually evolved, by numerous incremental changes, from lower forms of life through the process of natural selection.

# The Theory's Conflicts with Fundamentalist Christian Doctrine

- That all existing species have evolved from lower forms of life
  - Conflicted with the description in the Book of Genesis of God creating all species in their current form during the seven days of creation
- That the evolution of species has been a very gradual, incremental process occurring over many tens of thousands or even millions of years
  - Conflicted with the estimate of the age of the Earth of approximately 6000 years based on analysis of accounts in the Bible

- That the mechanism of evolution was randomly occurring variations- (mutations) characteristics of current species were the result of a random, sometimes cruel mechanism, natural selection, (the survival of the fittest)
  - Conflicted with the notion in the New Testament of a benevolent God and of the biblical notion of an omnipotent God designing or guiding all of creation.
- That humans were not created in their present form but rather evolved from lower forms, and more recently from some earlier ape-like ancestor
  - Conflicted with the story of Adam and Eve as the first humans in the Book of Genesis

Concern about and Organized Opposition to the  
Teaching of Evolution Among Fundamentalists  
Reaches a Fever Pitch during the Early Part of the  
20<sup>th</sup> Century

Developments in the Early Part of the 20<sup>th</sup>  
Century that Trigger the Growing Concern  
among Fundamentalists about the Teaching  
of Evolution

- A significant portion of school-age children are exposed to the Theory in public schools for the first time in the early part of the 20<sup>th</sup> Century as high school attendance becomes more commonplace
  - Census figures show increase in high school attendance from roughly 200,000 in 1890 to almost 2 million by 1920
  - Tennessee follows national pattern as high school attendance increases from less than 10,000 in 1910 to more than 50,000 by the time of the Scopes trial



- Due to developments in experimental genetics, biologists in the early part of the 20<sup>th</sup> century increasingly accept that evolution is driven by random, incremental variations (natural selection – survival of the fittest)
  - Previously, many prominent scientists who accepted other aspects of the theory, preferred a more theistic mechanism in which God channeled variations into a pattern of progressive development
- High school textbooks are revised to now incorporate this previously controversial aspect of the theory

- Developments in Mendelian genetics increase interest in support for the study of eugenics, the selection of desirable heritable characteristics in order to improve future generations
  - Fundamentalists attribute this growing interest in eugenics to a growing acceptance of the theory of evolution and its “survival of the fittest” theme
  - Popular evangelist Billy Sunday repeatedly links eugenics with the teaching of evolution in his 1925 Memphis crusade, occurring at the time the Tennessee Legislature is considering the law banning its teaching

- Prominent antievolutionists, including William Jennings Bryan, point to the theory of social Darwinism, advocated by Herbert Spencer and others in the late 19<sup>th</sup> and early 20<sup>th</sup> Centuries, as another evil consequence of the teaching of evolution.
- They focus on the use of that theory to excuse the human suffering resulting from the excesses of laissez-faire capitalism, imperialism, and militarism.
  - Bryan dismisses Darwinism in his first public address on the subject in 1904 as “the merciless law by which the strong crowd out and kill off the weak”

- In a speech entitled “The Menace of Darwinism”, delivered by Bryan on multiple occasions, he draws a connection between the theory of evolution and the brutality of World War 1, declaring:

“To destroy the faith of Christians and lay the foundations for the bloodiest war in history would seem enough to condemn Darwinism,”

- In March of 1925, the Tennessee legislature, responding to a growing concern among fundamentalist Christians about the teaching of Darwin's theory in the public schools, passes the Butler Act, named after its sponsor, Tennessee representative John W. Butler, which bans the teaching of evolution in publicly financed schools.
- The Act passes the State House by a vote of 71 to 5 and in the State Senate by a vote of 24 to 6.

## THE BUTLER ACT

- CHAPTER NO. 27
- House Bill No. 185
- (By Mr. Butler)
- AN ACT prohibiting the teaching of the Evolution Theory in all the Universities, Normals and all other public schools of Tennessee, which are supported in whole or in part by the public school funds of the State, and to provide penalties for the violations thereof.
- **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.*
- **Section 2.** *Be it further enacted, That any teacher found guilty of the violation of this Act, Shall be guilty of a misdemeanor and upon conviction, shall be fined not less than One Hundred \$ (100.00) Dollars nor more than Five Hundred (\$ 500.00) Dollars for each offense.*
- **Section 3.** *Be it further enacted, That this Act take effect from and after its passage, the public welfare requiring it.*
- Passed March 13, 1925

The ACLU Takes Note of the Butler Act

- Initially named the National Civil Liberties Bureau, the organization is established in 1917 to defend conscientious objectors and antiwar protesters during a crackdown on dissent that accompanies the U.S. entry into World War I
- The organization starts focusing on the 1<sup>st</sup> Amendment protection of speech as a basis for protecting individual liberties deemed threatened by the criminalization of activities deemed disloyal and harmful to the war effort
- After the armistice, the ACLU expands its activities to defend labor leaders aggressively being prosecuted during the “Red Scare” that accompanies growing labor unrest and new Communist party formation



- ACLU activists take note of the enactment of the Butler Act, viewing it as an assault on academic freedom
- The ACLU publishes an offer to assist any Tennessee teacher willing to challenge the constitutionality of the law in court in numerous Tennessee newspapers.

Dayton Accepts the ACLU's Offer

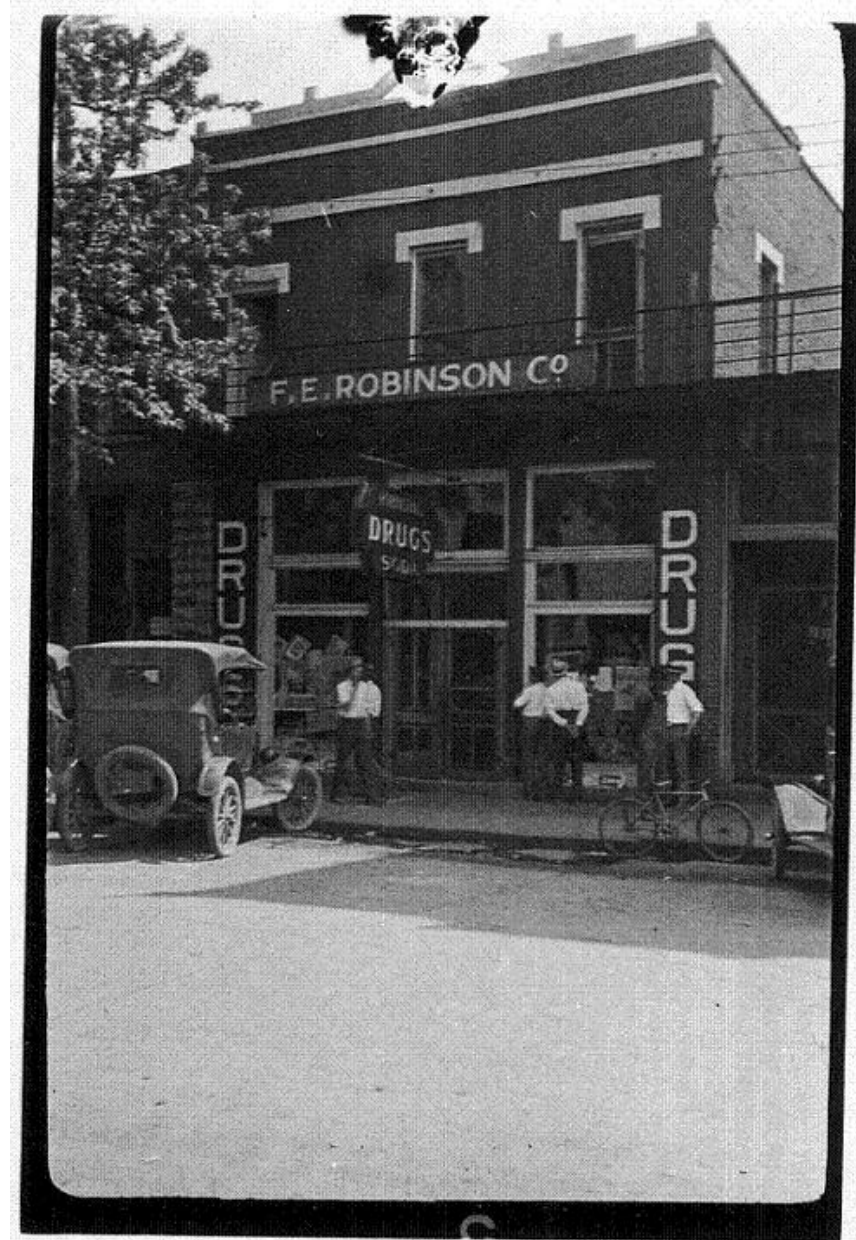


- George Rappleyea, a transplanted New Yorker and manager of the local Cumberland Coal and Iron mines, reads of the ACLU's offer to defend any teacher wishing to challenge the law in the local paper
- As a member of a local "modernist" Methodist Church, Rappleyea believes the theory of Evolution is compatible with Christianity, and he is disdainful of the new law banning its teaching

- Rappleyea goes down to Robinson's Drugstore to share his scheme to stage a test case in Dayton with Frank E. Robinson, the store's owner and chair of the Rhea County school board, and other community leaders including school superintendent Walter White
- Convinces them to support soliciting a local teacher to volunteer to be indicted for violating the law if they could secure the ACLU's agreement to assist with the teacher's defense
- The photo to the right is of a re-enactment of the meeting conducted for publicity purposes.



# Robinson's Drug Store



- The town had recently fallen on hard economic times, losing some key employers, and its population had fallen from a peak of about 3,000 in the 1890's to fewer than 1800 at the time of the trial.
- Local civic and business leaders enthusiastically support the proposal to stage a test case in Dayton, believing it will generate a massive influx of visitors during the trial and otherwise create positive publicity for their community.



## Dayton City Attorneys Agree to Seek Indictment of a Volunteer Teacher

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- City Attorneys Herbert E. Hick and Sue Hicks- pictured at left, agree to participate by prosecuting any case brought against a volunteer public school teacher
  - Sue Hicks named after his mother who died giving birth to him
- The Hicks brothers were no fans of teaching evolution in the local schools but they doubted the new law was constitutional

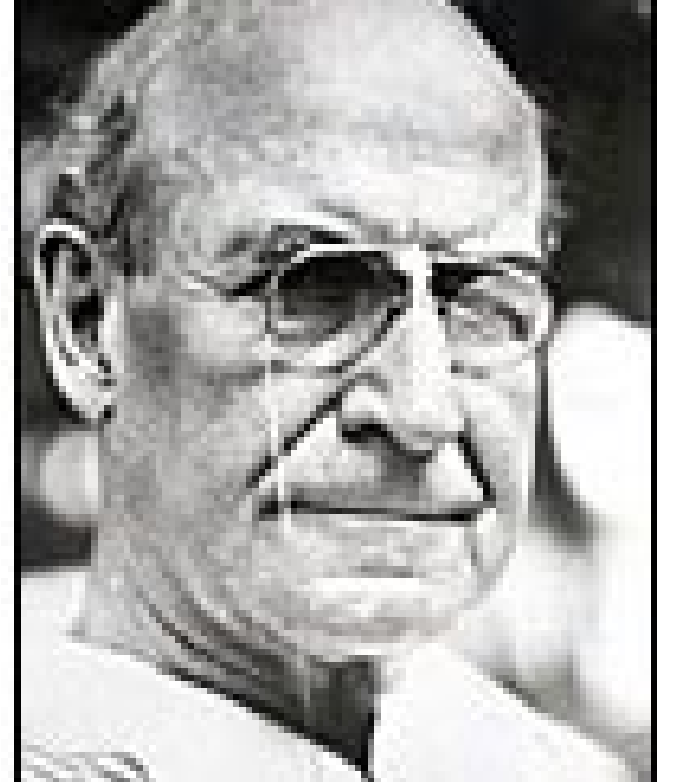


- After securing the ACLU's agreement to participate in the defense of any volunteer defendant, Rappleyea and the other local participants contact the high school's general science instructor and part-time football coach, John T. Scopes, to see if he is willing to be the defendant in the case
- Scope acknowledges having instructed students on the theory of evolution from *Hunter's Civic Biology*, the state approved text prescribed for use in all Tennessee high schools, while substituting for the regular biology teacher and he agrees to be the defendant in a test case



# William Jennings Bryan offers his services to the prosecution

- Bryan had been following the Tennessee legislatures deliberation over the antievolution bill, consulting with supporters of the measure
- After barnstorming the country for twenty years condemning the teaching of evolution, Bryan learns of Dayton's proposal to stage a test case and he offers to assist the prosecution representing the World's Christian Fundamentals Organization
- Local prosecutors and business leaders welcome his participation
- Bryan had not practiced law in over 30 years



The Rest of the Prosecution Team

# Tom Stewart

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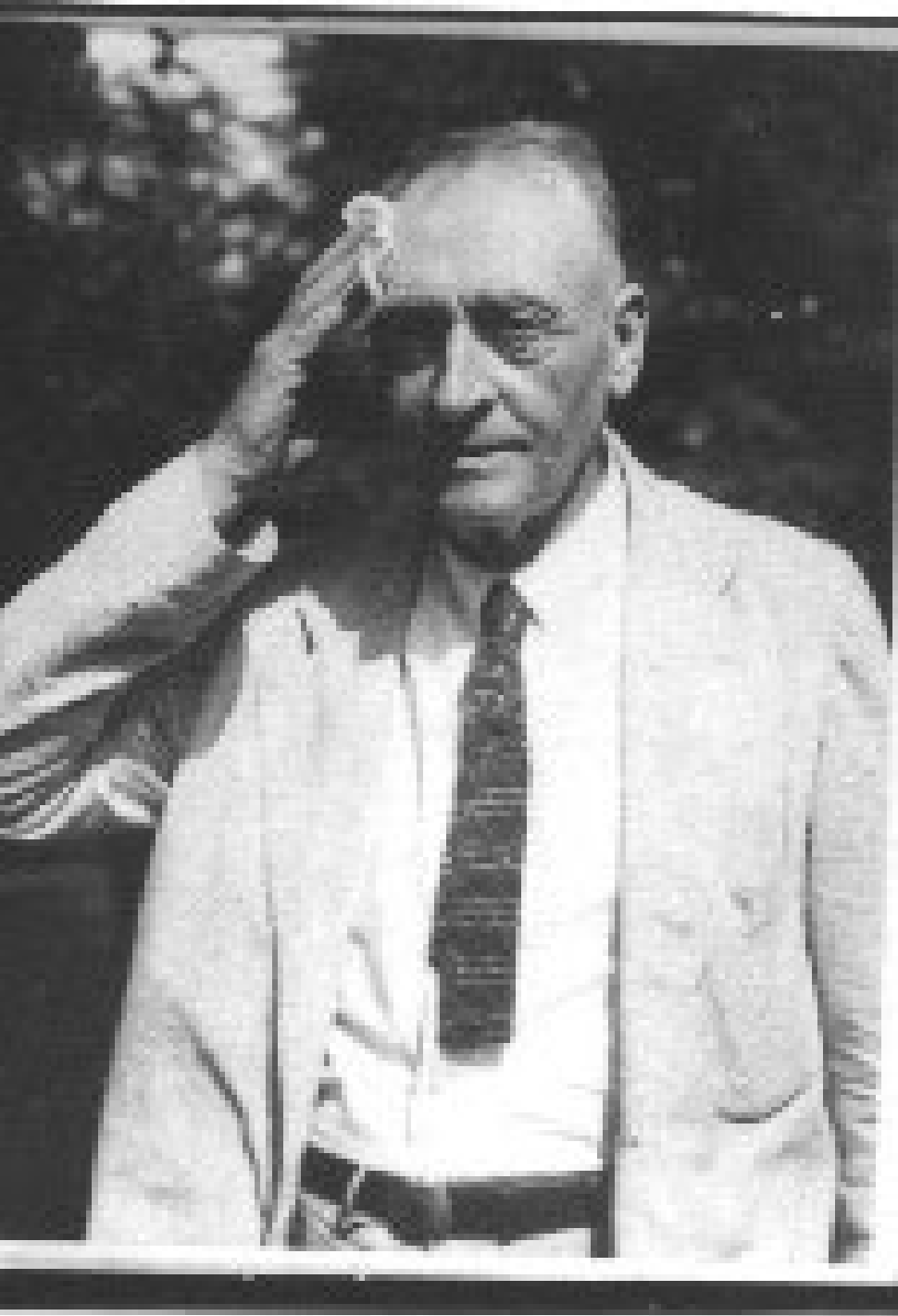
- The lead prosecutor in the case
- Attorney General for the 18<sup>th</sup> Judicial District of Tennessee which includes the town of Dayton
- Later elected as a U.S. Senator



## Wallace Haggard

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- The local Dayton attorney and strong supporter of the law's ban on teaching evolution, volunteers his services
- Haggard is characterized in *Summer for the Gods* as being "better known for his exploits on the gridiron for Vanderbilt than in the courtroom for clients."



# Gordon McKenzie

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- Dayton attorney and former Attorney General for Dayton's judicial district
- Supporter of the antievolution law on religious grounds
  - "I insist that the teaching of evolution in public schools is detrimental to public morals, storms the very citadel of our Christian religion, repudiates God and should not be permitted" he tells the press shortly before the grand jury met to consider an indictment of Scopes

# William Jennings Bryan Jr.



- Son of William Jennings Bryan
- Former U.S. Attorney in Arizona and now practicing law in California

# Bryan Arrives in Dayton on the Royal Palm Limited from Miami 3 Days Ahead of the Trial



- The train makes its 1<sup>st</sup> stop ever in Dayton
- Bryan is met by a least half the normal population of the town and numerous reporters and photographers
- “Just say I am here.” he declares. “I am going right to work and I am ready for anything that is to be done.”

# Bryan Uses His Opportunity To Educate The Public about What Was At Stake Ahead Of The Arrival Of The Defense Team

- Strolls around town in his shirt sleeves greeting citizens and talking to reporters
- Lectures the School Board on the dangers of teaching evolution
- Gives public addresses at a Progressive Dayton Club banquet given in his honor and outdoors near the Morgan Springs Hotel resort outside of town

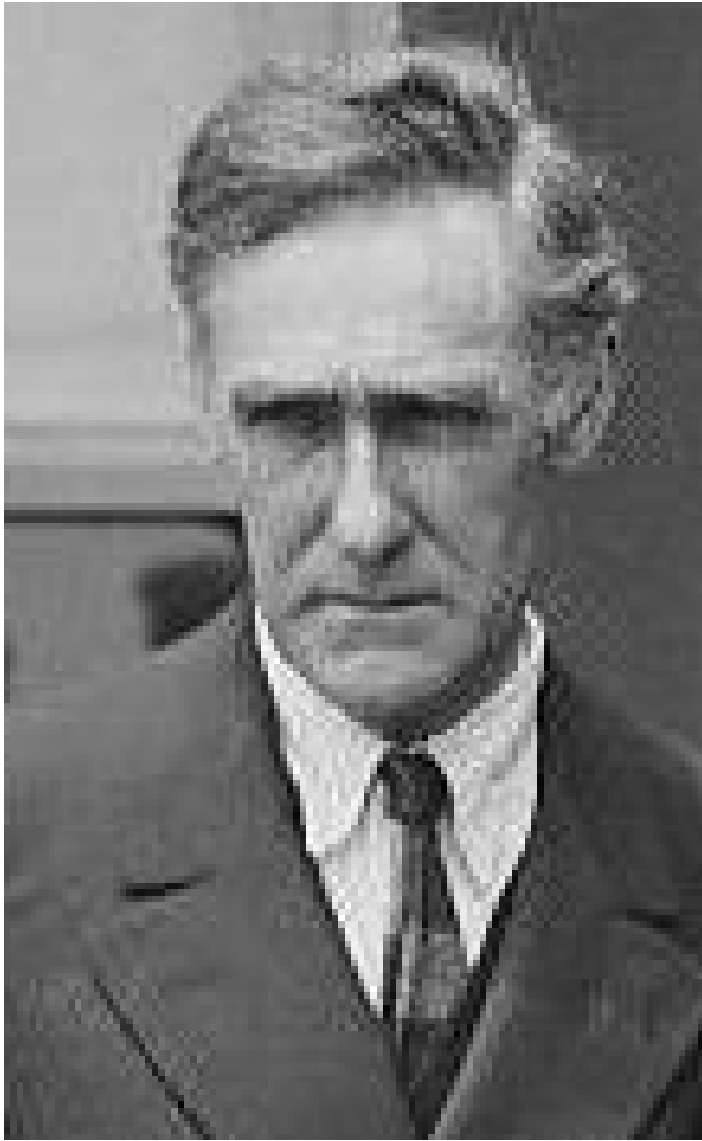


# The Defense Team for John Scopes



# Arthur Garfield Hays

- A founding member and most influential attorney on the executive committee of the ACLU
- Advocates an absolutist position on free speech that opposed all government restrictions on “the expression of opinion of any kind, at any time, by anyone anywhere.”
- Believed high profile litigation was a powerful means of educating the public about injustice



# John R. Neal

- A law professor formerly on the faculty of the University of Tennessee
- Claimed the University decided not to renew his year- to-year contract because he supported the teaching of evolution at the University
- His dismissal is investigated by the American Association of University Professors (AAUP), an organization recently formed to protect teachers from discrimination for exercising academic freedom-
- The AAUP finds insufficient evidence to support his claim
- Unsuccessful candidate for governor in 1924



# Dudley Field Malone

- A New York attorney fond of supporting radical causes, who at the time is specializing in handling high profile international divorce
- Formerly served as an assistant to William Jennings Bryan during his tenure as Secretary of State- and reportedly harbored resentments towards his former boss
- An outspoken proponent of women's suffrage and other progressive causes
- Unsuccessful as a candidate for New York Governor for the newly formed Farmer Labor Party.



# Clarence Darrow

- A Chicago attorney who at the time of trial was the most famous trial lawyer in America.
- Darrow's fame or notoriety, depending on your point of view, had been enhanced the previous year by his defense of Nathan Leopold and Richard Loeb, two wealthy Chicago teenagers convicted of killing an acquaintance just to see if they could get away with murder.

- The sensational proceeding in the Cook County criminal court received extensive national coverage in the media, being dubbed the “Trial of the Century” before the media bestowed the same moniker to the Scopes trial.
- Darrow succeeded in persuading the sentencing judge to spare the defendants from the death penalty with a closing argument that lasted approximately 12 hours over two days!

- Darrow had previously worked closely with the ACLU in his role as the premiere defender of radical labor leaders.
  - Defended famed socialist labor leader Eugene Debs against criminal charges arising out of the Pullman strike.
- A life-long agnostic, Darrow had spent a lifetime in public debates and lectures and through numerous popular books and articles ridiculing traditional Christian beliefs
- Darrow had been engaging in a long-distance debate with Bryan through the exchange of comments in newspapers about the fundamentalists' attack on the teaching of evolution.
- Learning of Bryan's decision to join the Scopes prosecution team while consulting with Dudley Field Malone in New York, he jumps at the chance to represent Scopes, offering his services free of charge for the first time in his career in a communication with John R. Neal who had already been retained by Scopes

# ACLU Officials Try to Dissuade Darrow from Participating

- John Neal had accepted Darrow's offer on behalf of Scopes without consulting ACLU officials
- While Arthur Hays supported Darrow's inclusion on the defense team, other ACLU officials and supporters, familiar with Darrow's frequent, mocking criticisms of traditional Christian beliefs, were concerned that his strident anti-clerical views would surface during the trial and detract from the ACLU's strategy of focusing on its claim that the law interfered with Scopes academic freedom and speech as protected by the 1<sup>st</sup> Amendment.
- They feared that an overly aggressive attack on traditional Christian beliefs by Darrow could antagonize a jury and members of mainstream Christian denominations who did not oppose the teaching of evolution



- ACLU officials and supporters privately meet with Darrow to try to persuade him to withdraw his offer to join the defense, and with John Scopes to try to persuade him to reject Darrow as co-counsel.
- John Neal and John Scopes ultimately decide to keep Darrow on the defense team, noting that he would be far and away the most experienced and talented trial lawyer of the group.



## Presiding Judge John Raulston

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- Elected Judge of the 18<sup>th</sup> Tennessee Judicial District in 1918
- Defeated for re-election in the year following the trial
- Previously served in the Tennessee legislature
- Unsuccessful Republican candidate for the U.S. House in 1908
- Unsuccessful candidate for Governor

# Dayton Prepares for the “Trial of the Century”

- Newspapers estimate up to 30,000 visitors would be drawn to the epic confrontation between Bryan and Darrow
- Town officials ask the Southern Railway to schedule extra passenger trains to and from Chattanooga on the days of the trial.
- They petition the governor to call up the state militia to control the expected crowds, but settle for hiring six extra policemen from Chattanooga.
- Mainstreet merchants decorate their shops with pictures of apes and monkeys

- Six blocks of the town's main street are blocked off as a temporary pedestrian mall
- Robinson's Drugstore offers its patrons simian sodas
- Stray monkeys appear in various shops around town
- 500 additional spectator seats and a movie camera platform are added to the courtroom
- Telegraph and telephone lines are installed to facilitate minute by minute reports of the proceedings
- The Chicago Tribune's new radio station, WGN (acronym for World's greatest Newspaper), brings in its equipment for the first ever live radio broadcast of a trial

# The trial gets underway on July 10, 1925

- The hoped-for massive influx of tourists never materializes
  - Only an estimated 500 visitors stayed in Dayton during the trial, and almost half were with the media.
- 1<sup>st</sup> spectators start to file into the courtroom before 7 a.m. , a full two hours before the scheduled start of the trial
- By 8:45, all of the seats in the courtroom were taken and the general public began to spill out into the hallway

- Defense counsel and the defendant arrive ahead of the prosecutors.
- Spectators in the courtroom break into applause as Bryan, Stewart and the other prosecutors arrive shortly before 9:00.
- Presiding Judge Raulston arrives and walks over to greet Bryan
- Applause breaks out again as Bryan and Darrow shake hands
  - Despite their differences on the topic of religion, the two had worked together for a variety of political causes and they remained on cordial terms
- The Judge authorizes the attorneys and court personnel to dispense with the customary requirement to wear coats and ties during the trial in anticipation of temperatures forecast to push 100 degrees in the overcrowded, poorly ventilate courtroom

- The proceedings open with a long prayer by a local fundamentalist minister acknowledging a divine “source of our wisdom” and praying that “the holy spirit may be with the jury and with the accused and with all the attorneys” so that they would “be loyal to God”.
  - The prosecuting attorneys were observed bowing their heads throughout the prayer, while the defense attorneys appeared to stare out of the window.
  - Spectators punctuated the prayer at various points with audible “amens”.

- Each day of the trial started with a prayer delivered by a local minister, and the Defense would later raise formal objections to having any prayer to open the proceedings, citing the nature of the case.
- At one point later in the trial, the Defense formally submits a petition signed by visiting “modernist” clerics asking the Court to at least alternate between fundamentalist and modernist ministers for the morning prayer.
- Over defense attorney Hay’s objection, Judge Raulston responds by stating he will refer the petition to the local pastors’ association and ask it to determine who will give the daily prayer.
- Defying defense counsels’ and attending journalists’ expectations, the association alternates the assignment between fundamentalist and modernist ministers going forward.



- Jury selection takes only two hours as each side is granted only three peremptory challenges and Darrow and the defense focuses on securing a verbal commitment from prospective jurors to keep an open mind and decide the case on the evidence presented at the trial, resigning themselves to the reality of an overwhelming fundamentalist predisposition of the jury pool.
- Only twenty potential jurors, all white males per local custom and rule, are questioned to impanel the twelve jurors.
- The Court adjourns for the weekend.

- The Baltimore Sun's syndicated journalist H.L. Mencken reports from the scene-  
“It was obvious after a few rounds that the jury would be unanimously hot for Genesis. The most that Mr. Darrow could hope for was to sneak in a few men bold enough to declare publicly that they would have to hear the evidence against Scopes before condemning him.”

- Court resumes on Monday without the jury present to consider the defense motion to dismiss the charge as a violation of several provisions of the Tennessee and U.S. Constitutions.
- The defense focuses on provisions of Tennessee's constitution because at the time of the trial, the Supreme Court had interpreted the the Bill of Rights in the U.S. Constitution to have limited application to state action.
- They argue the Tennessee constitution's guarantee of freedom of speech and religion and a clause directing the legislature to cherish science and education were being violated.
- They also argue that both the State's and the U.S. Constitution's prohibitions against depriving persons of liberty without due process of law barred the prosecution based on earlier court decisions interpreting those provisions to preclude patently unreasonable laws.

- Prosecutor Stewart focuses on the right of legislatures to control how public tax dollars are spent in arguing that freedom of speech and religion were not implicated.
  - “Mr. Scopes might have taken his stand on the street corners and expounded until he became hoarse, but he cannot go into the public schools... and teach his theory.”
- While both defense attorneys Hays and Malone took turns arguing the motion, Darrow has the last word for the defense, delivering a two-hour oration that was characterized in much of the media as a brilliant rebuttal to the prosecutors’ argument.

- Notable excerpts from Darrow's argument-
  - Reading from the Tennessee Constitution- “ All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience.’ That takes care even of the despised modernist, who dares to be intelligent”
  - Noting that Constitution provided further that “no preference shall be given by law to any religious establishment or mode of worship”, Darrow continued, “Could you get any more preference – your honor, by law?”

- “It [the law] 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.”
- “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 Mormon, or the book of Confucius, or the Buddha, or the Essays of Emerson.”

- “It [the Bible] is not a book on biology, its writers knew nothing about it....They thought the earth was created 4,004 years before the Christian Era. We know better. I doubt there is a person in Tennessee who does not know better.”

# Many newspapers provide glowing reviews of Darrow's argument

- The New York Times reported, “While he was talking there was absolute silence in the room except for the clicking of telegraph keys. His words fell with crushing force, his satire dropped with sledgehammer effect upon those who heard him.”
- The Chicago Tribune, his hometown paper, characterize it as “one of the greatest speeches of his career.”
- Newspapers across the country reprinted Darrow's speech at length and echoed on their editorial pages his pleas for tolerance.



- Other newspapers capture the local sentiment about Darrow's speech
  - Memphis Commercial Appeal features a front-page editorial cartoon captioned "Darrow's Paradise," picturing a cold, aloof Darrow huddled atop a black mountain in hell, surrounded by skulls of "annihilation", the dragon of "agnosticism"
- After adjourning for the day to consider the arguments, the Judge denies the motion – stating regarding the constitutional issue of religious freedom:
  - "I cannot conceive how the teachers' rights under this provision of the constitution would be violated by the act in issue.... 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."

- On what was reportedly the hottest day of the trial, during a recess before opening statements, the defendant Scopes joins young prosecutors Wallace Haggard and William Bryan, Jr. for a swim in a pond outside of town.
- Prosecutors return to a packed courtroom and have to ask spectators to vacate their chairs
- Tom Stewart delivers a two-sentence opening statement declaring that Scopes violated the law by teaching that “mankind is descended from a lower order of animals.” Therefore, he has taught a theory which denies the story of divine creation of man as taught in the Bible.”

- Dudley Malone delivers a more extensive opening statement for the defense declaring-

“We will show by the testimony of men learned in science and theology that there are millions of people who believe in evolution and in the story of creation as set forth in the Bible and who find no conflict between the two. The defense maintains that this is a matter of faith and interpretation, which each individual must determine for himself.”

- Malone continued

“There might 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,”

- Malone quotes from a 20-year old article in which the elder Bryan endorsed Thomas Jefferson's Statute of Religious Freedom that Malone claimed repudiated the anti-evolution law
- Malone continued-  
“The defense appeals from the fundamentalist Bryan of today to the modernist Bryan of yesterday,”

- Lead prosecutor Stewart finally objected to Malone's repeated references to Bryan, but Bryan waives him off declaring  
    "I ask no protection from the court, and when the proper time comes, I shall be able to show the gentlemen that I stand today just as I did, but that this has nothing to do with the case at bar."
- This response from Bryan elicits raucous cheers and applause from the spectators

# The Prosecution Presents its Case

- Lead prosecutor Tom Stewart calls just four witnesses.
- He calls high school freshman Howard Morgan and high school Senior Harry Shelton to testify about being present in class when Scopes discussed the theory of evolution during biology class.
- He calls School Superintendent White to testify that Scopes had admitted teaching about the theory of human evolution from Hunter's Civic Biology, and to identify a King James version of the Bible for the purpose of admitting it into evidence as what was meant by the reference to the Bible in the law.
- He calls school board chair and drug store owner Frank Robinson to testify that Scopes admitted to him that "any teacher in the state who was teaching Hunter's Biology was violating the law."

- Defense attorney Hays objects to Stewart's submission of the King James Bible into evidence, arguing that the law did not specify any particular version of the Bible.
- The Judge overrules the objection, noting that in southeastern Tennessee, that *was* the Bible.
- The Prosecution rests, having taken less than two hours to present its case.



- Darrow calls the defenses first witness, the Zoologist Maynard M. Metcalf, to the stand.
- Before Darrow can ask his 1<sup>st</sup> question, prosecutor Tom Stewart interrupts to remind Darrow that Tennessee court rules provided that a defendant choosing to testify had to be the 1<sup>st</sup> defense witness.
- Darrow turns and addresses the Court , stating for the record that Scopes would not take the stand, and declaring - “Your honor, every single word that was said against this defendant, everything was true.”

- The defense's evidence would instead be the testimony of experts on the theory of evolution and on the Bible to discuss the relationship of the two for the purpose of raising doubt as to whether the teaching the theory of evolution actually denied "the story of the divine creation of man as taught in the Bible", a key element of the charge.
- Their experts on biblical interpretation would testify that they did not interpret the account of creation in the Book of Genesis as representing an accurate, factual account of that creation, and that a Christian could believe in man's divine creation as more generally described in the Bible and still accept evolution as God's mechanism for accomplishing it.

- After Darrow elicited testimony about Metcalf's credentials, and asked him to state what evolution is with regards to the origin of man, Tom Stewart stood up and objected to the admissibility of such expert testimony. arguing that the Butler Act outlawed any teaching about human evolution regardless of what evolution meant or whether it conflicted with the bible.
- Defense attorneys countered that the law only barred instruction in evolution that denied the biblical account of creation.
- The Judge then excused the jury to allow the defense to present Metcalf's testimony outside the hearing of the jury so he could make a ruling on its admissibility.

- During direct questioning by Darrow, Metcalf describes the technical evidence of evolution and affirms its universal acceptance among biologists.
- At the conclusion of his testimony, the Court adjourns for the day
- The following day, each of the attorneys on both sides take turns arguing about the admissibility of Metcalf's testimony
- William Jennings Bryan Jr. opens for the prosecution, delivering a low-key recitation of case precedents supporting the State's position that the jury was perfectly capable of determining the simple questions of fact presented by the case without any assistance from the so-called experts.

- Later in the afternoon, the elder William Jennings Bryan electrifies the gallery, starting and finishing with technical arguments about the propriety of expert testimony in the case, but spending most of his hour-long argument broadly condemning the teaching of evolution, including the following excerpts:
- “Your honor, it isn’t proper to bring experts in here to try to defeat the purpose of the people of this state by trying to show that this thing that they denounce and outlaw is a beautiful thing, And the people denounce it because it undermines morality.
- Holding aloft *Hunter’s Civic Biology*, Bryan exclaims “There is the book they were teaching your children that man was a mammal and so indistinguishable among the mammals that they leave him there with 3,499 other mammals. Including elephants!” in a joking reference to Republicans

- “The Christian believes man came from above, but the evolutionist believes he must have come from below.”
- “When it comes to Bible experts, do they think that they can bring them in here to instruct members of the jury? The facts are simple, the case is plain, and if these gentlemen want to enter upon the field of education work, ... then convene a mock court for it will deserve the title of mock court if its purpose is to banish from the hearts of people the Word of God as revealed.”

- Dudley Malone counters for the defense with a spirited thirty-minute defense of academic freedom that also elicits an appreciative response from many in the gallery, and a standing ovation from the assembled press. Excerpts follow:
- “We have come here for this duel, but does the opposition mean by duel that one defendant shall be strapped to a board and that they alone shall carry the sword? Is our only weapon—the witnesses who shall testify to the accuracy of our theory—is our only weapon to be taken from us?”
- “We feel we stand with science. We feel we stand with intelligence. We feel we stand with fundamental freedom in America. We are not afraid,”

- "We say 'Keep Your Bible', but keep it where it belongs, in the world of your conscience... and do not try to tell an intelligent world and the intelligence of this country that these books written by men who knew none of the accepted fundamental facts of science can be put into a course of science."



- Tom Stewart closes for the State, returning the focus on the question at hand, the propriety of admitting expert testimony, but he uncharacteristically engages in some of his own soaring rhetoric including the following excerpts:
- “We have the right to participate in scientific investigation, but, if the court please, when science strikes upon that which man’s eternal hope is founded, then I say the foundation of man’s civilization is about to crumble. Shut the door to science when science sets a canker on the soul of a child”
- “They say it 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... because I want to know beyond this world that there might be an eternal happiness for me and for others.”
- At the close of arguments, the court recesses and the Judge announces he will render his ruling the following day.

- Newspapers across the country provide sensational accounts of the arguments
- The New York Times called it “the greatest debate on science and religion in recent years.” and printed the complete text of Bryan’s and Malone’s speeches, starting on page one.
- “They Call Us Bigots When We Refuse to Throw Away Our Bibles” read the title for the lead article in the Chicago Tribune, quoting from Bryan’s argument.

- The next morning, the Judge rules against admitting any expert testimony on the Theory of Evolution or on the Bible, essentially adopting the legal arguments of the prosecution.
- Hays requests permission to submit the rest of the expert testimony the defense had prepared, outside of the hearing of the jury, to make a complete record for an appeal.
- Judge Raulston offers to let the experts either submit sworn affidavits or summarize their testimony for the court reporter.
- Hays presses for live testimony from the witness stand and Bryan interjects that he assumes they would then be subject to cross examination.

- Darrow objects to the notion of cross examination and the Judge then engages Darrow in the following tense exchange –
- Judge: “Colonel , what is the purpose of cross-examination? Isn’t it an effort to ascertain the truth?” (the Judge had adopted the practice of some of the people in town of addressing Darrow as “Colonel”, a salutation Darrow had accepted with good humor)
- Darrow: “Has there ever been any effort to ascertain the truth in this case?”
- The Judge rules the defense could submit written affidavits or read prepared statements into the record and that any witnesses actually put on the stand could be cross examined by the prosecution.

- Darrow states they will prepare written statements and he requests adjournment for the rest of the day and the weekend to prepare them.
- The Judge questions the need for so much time, provoking a frustrated Darrow to shout: “I do not understand why every request of the state and every suggestion of the prosecution should meet with an endless waste of time, and a bare suggestion of anything on our part should be immediately over-ruled,”
- Judge Raulston responded: “I hope you do not mean to reflect upon the court?”
- Darrow replied: “Well, your honor has the right to hope.”
- Judge Raulston- foreshadowing his later ruling citing Darrow in contempt: responds “I have the right to do something else perhaps.”

- The Judge adjourns court for the rest of the day and the weekend.
- H.L. Mencken and dozens of other prominent journalists from out of town assume the newsworthy portion of the trial is over, and they depart from Dayton.
- In his final report from Dayton, Mencken writes:

“All that remains of the great cause of the State of Tennessee against the infidel Scopes is the final business of bumping off the defendant. There may be some legal jousting on Monday and some gaudy oratory on Tuesday, but the main battle is over, with Genesis completely triumphant”

- The public filled every seat in the gallery by 8:30 a.m. Monday morning in anticipation of hearing closing arguments.
- The Judge opens the session before the jury has been summoned to return to the courtroom, reading from a prepared statement citing Darrow for contempt for his remarks on Friday and directing him to appear Tuesday for sentencing.
- The defense submits its written statements from experts into the record and Hays is allowed to read selected statements out loud in the courtroom outside of the hearing of the jury, a process that extended beyond the break for lunch.

- Darrow interrupts the oral recitation of expert statements after lunch to apologize to the Judge for his remarks Friday.
- Judge Raulston dismisses the contempt citation, reciting from memory a long religious poem about forgiveness.
- The Judge then moves the proceedings outdoors to the speakers' platform that had been constructed on the courthouse lawn just prior to the trial.
- Later speculation about the motives for the Judge's move included that he was concerned about the growing stress placed on the building from the overflow crowds, that he wanted to provide some relief to the participants and spectators from the heat, and that, believing that all that remained were much anticipated closing arguments, he wanted to provide more members of the public with an opportunity to witness them.
- After reconvening outside, the number of spectators rose from the 500 or so evacuated from the courtroom, to an estimated 3,000 sprawled across the courthouse lawn



- Before the judge directed the bailiff to bring the jury back , defense attorney Hays announces the defense is calling to the witness stand William Jennings Bryan as its final expert witness on the Bible.
- Prosecutors McKenzie and Stewart strenuously object, but Bryan waives them off and agrees to take the stand upon the condition that he would be able to then question Darrow, Malone and Hays.
- “All at once?”, Darrow mockingly replies, agreeing to Bryan’s stipulation.
- The Judge, apparently eager to hear from Bryan, permits the extraordinary, legally problematic questioning of one of the prosecutors by Darrow to begin.

- Later accounts by Darrow and others on the defense team revealed that Darrow had come up with this scheme of calling Bryan as an expert witness over the weekend, anticipating that Bryan, in his fervor to defend the Bible, might not be able to resist honoring the unusual request.
- Darrow proceeds to question Bryan about whether he accepted particular biblical accounts as being literally true, focusing on passages that were even then widely understood to conflict with commonly accepted scientific knowledge

# Photo of Darrow examining Bryan



# Excerpts from the trial transcript-

- Darrow: “Do you believe Joshua made the sun stand still”
- Bryan: “I believe what the Bible says. I suppose you mean that the earth stood still?”
- Darrow: “I don’t know, I am talking about the Bible now”
- Bryan: I accept the bible absolutely. I believe it was inspired by the Almighty, and He may have used language that could be understood at that time instead of using language that could not be understood until Darrow was born” eliciting laughter and applause from the spectators.
- Darrow: If the day was lengthened by stopping either the sun or the earth, it must have been the earth?”
- Bryan: “Well I should say so.”

- Darrow: “Now Mr. Bryan, have you ever pondered what would have happened to the earth if it had stood still?”
- Bryan: “No.”
- Darrow: “You have not?”
- Bryan: “No,; the God I believe in could have taken care of that, Mr. Darrow.”
- Darrow: “Don’t you know it would have been converted into a molten mass of matter?”
- At this point, Tom Stewart objects again to this line of questioning as irrelevant, but again, Bryan waives off his co-prosecutors’ concerns stating: “They 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. “, eliciting loud applause from the spectators.

- Darrow sarcastically notes: “Great applause from the bleachers.”
- Bryan responds –”From those you call yokels. Those are the people whom you insult.”
- Darrow responds- ““You insult every man of science and learning in the world because he does not believe in your fool religion.”
- Lead prosecutor Stewart jumps up again declaring- “This has gone beyond the pale of a lawsuit, your honor,” the prosecutor pleaded. “I have a public duty to perform, under my oath and I ask the court to stop it.”
- “To stop it now would not be just to Mr. Bryan”, the Judge rules.

- During Bryan's further testimony, among other matters, Bryan affirms his belief in the biblical story of a worldwide flood killing all animals not saved on Noah's arc, and of Jonah being swallowed by a large fish, emerging alive three days later.
- After admitting that he had never investigated where Cain got his wife, being one of only two siblings, both boys, born to the original humans, Adam and Eve, he tried to deflect Darrow by joking he would leave such investigations to the agnostics.
- At one point in the questioning, Darrow focuses in on the Book of Genesis' account of the seven days of creation.

- Darrow: “Have you any idea of the length of these periods?”
- Bryan: “No; I don’t.”
- Darrow: “Do you think the sun was made on the fourth day?”
- Bryan: “Yes.”
- Darrow: “And they had evening and morning without the sun?”
- Bryan: “I am simply saying it is a period.”
- Darrow: “They had evening and morning for four periods without the sun, do you think?”
- Bryan: “I believe in creation as there told, and if I am not able to explain it I will accept it.”



- Some fundamentalist ministers and parishioners later express dismay about Bryan's equivocation about the length of each of the seven days of creation described in the Book of Genesis, an apparent retreat from literalism that supported the defense claim that the Bible was subject to varied interpretation that could accommodate the theory of evolution.
- At the end of the questioning, Bryan declares "The only purpose Mr. Darrow has is to slur the Bible, but I will answer his questions," with Darrow shouting in response "I object to your statement. I am examining your fool ideas that no intelligent Christian on earth believes."
- The judge finally had heard enough and he abruptly adjourned court for the day.

- Reporters present for this exchange rush out to transmit the news of this extraordinary episode in the trial.
- Newspapers across the country printed the complete transcript of the encounter.
- Most newspaper accounts conclude that Darrow's examination of Bryan was a triumph for the defense.
- That evening, a frustrated Tom Stewart emphatically tells Bryan he should not resume his testimony the next day, nor call defense counsel to the stand, telling Bryan if he demanded to go forward, the Judge would either forbid it or, absent such opposition from the bench, the State would dismiss its case.
- Bryan reluctantly agrees not to force the issue.

- A light rain falling the following morning forces the trial back indoors.
- At the outset, Judge Raulston states he is barring further examination of Bryan and ordering his prior testimony to be expunged from the record, stating  
“I feel that the testimony of Mr. Bryan can shed no light upon any issue that will be pending before the higher court,” the judge ruled; “the issue now is whether or not Mr. Scopes taught that man descended from a lower order of animals.”

- In response, Darrow states to the Judge-

“We have no witnesses to offer, no proof to offer on the issues that the court has laid down here,” he declared. “I think to save time we will ask the court to bring in the jury and instruct the jury to find the defendant guilty.”

- Tom Stewart immediately concurs with Darrow’s proposal.
- After the trial, Darrow would explain the reasons for this defense move to expedite the close of the trial
  - To deprive Bryan of an opportunity to make a closing statement, and
  - To avert the possibility, however unlikely, of a mistrial that would have forced the defense to participate in a futile retrial before being in a position to challenge the constitutionality of the antievolution statute in a higher court.

- After the parties and the Judge agreed upon the form of the jury instructions, the jury was finally brought back into the courtroom having heard only two hours of testimony during the entire trial, and having been absent for all of the memorable speeches.
- Addressing the jury before they were excused to deliberate, Darrow states:

“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.”
- Prosecutor Stewart followed, with his own brief statement.

“What Mr. Darrow wanted to say to you was that he wanted you to find his client guilty, but did not want to be in the position of pleading guilty, because it would destroy his rights in the appellate court.”

- It takes less than nine minutes for the jury to return to the courtroom with its guilty verdict.
- The Judge stated he intended to impose the minimum fine of \$100.00
- Prosecutor Stewart expressed concern to the court that the law technically provided that the jury should impose the penalty.
- Judge Raulston noted the longstanding tradition of having the judge impose penalties in misdemeanor cases, and, after eliciting Darrow's consent to proceeding in that manner, and after the jury declined the Judge's offer to allow it to impose a harsher penalty, he imposed the minimum fine, a development that would have significant ramifications on appeal.
- Defendant Scopes addresses the Court for the first and only time-calling the antievolution law unjust and vowing to continue to fight it in the name of academic freedom.

# The Aftermath

- Having been denied his opportunity to question defense counsel after being examined by Darrow, Bryan, only hours after court had adjourned, released a number of brief questions asking counsel about their belief in God, biblical truth, Christ, miracle, and life after death.
- Darrow quickly responded , affirming his agnosticism on every point, and noting with respect to immortality- “I have been searching for proof of this all my life, with the same desire to find it that is incident to every living thing, and I have never found any evidence on the subject.”
- Bryan immediately embarks on a campaign to characterize the trial in a light favorable to fundamentalism, stating in a press release -“Is the Bible true is the question raised by the Tennessee law, and that question is answered in the affirmative as far as this trial can answer it.”



- Bryan described Darrow's contemptuous behavior in court to the press as exhibit A in the moral case against a life without God.
- Darrow, asked by reporters about this statement, replied "Mr. Bryan's convulsions seem due to the fact that I placed him upon the witness stand. Of course, I cannot help having some pity for Mr. Bryan for being obligated to show his ignorance by simple and competent questions asked him on the witness stand."

- Bryan spends two days while still in Dayton revising his unused closing statement into a fiery 15,000 word stump speech, leveling four specific charges against the theory of evolution
  - That it contradicted the biblical account of creation
  - That its survival of the fittest explanation for human development destroyed both faith in God and the love of others
  - That the study of evolution diverted attention from spirituality and socially useful pursuits
  - That its deterministic view of life undermined efforts to reform society
- Bryan writes- “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,”

- Bryan leaves Dayton and heads to Chattanooga where he meets *Chattanooga News* editor George Fort Milton to arrange publication of his address.
- The following day, he drives to Tom Stewart's home town of Winchester where, fulfilling a promise to Stewart, he delivers his new address to a crowd estimated at over 2,000.
- He reportedly tells a journalist in Winchester- "If I should die tomorrow, I believe that on the basis of the accomplishments of the last few weeks I could truthfully say, well done."

- He returns to Chattanooga to continue to work on the address, and spoke of an expanded crusade against the teaching of evolution
- The following day, he returns to Dayton, where he attended Sunday services at the southern Methodist church.
- Later that day, five days after the conclusion of the trial, Bryan dies in his sleep while taking an afternoon nap.
- The cause of death is reported to be Apoplexy, the term then used for what is now called a stroke.

- Darrow is interviewed while vacationing in the Smoky Mountains about Bryan's sudden death. A journalist commented - "People down here believe that Bryan died of a broken heart because of your questioning,"
- Darrow reportedly replied "Broken heart nothing; he died of a busted belly." probably referring to reports that Bryan had eaten an unusually large meal before retiring to take his nap.
- In the 1950's Broadway play, *Inherent the Wind*. A fictionalized depiction of the trial, and the subsequent 1960 movie version, this line is instead spoken by the fictional character E. K. Hornbeck, loosely based on the journalist H.L. Mencken

- Many of Bryan's supporters come to believe that the stress of the trial, and particularly Darrow's two-hour rigorous examination of him on the trial's last day, precipitated his stroke, and he becomes a martyr to the anti-evolution cause
- Scopes comments during a brief return visit to Dayton- "Soon afterward there was a rumor about town that 'that old devil Darrow' had killed Bryan with his inquisition."
- The following month, George Rappleyea, the instigator of the scheme to conduct the trial in Dayton, reported to ACLU officials in New York, "The death of Bryan swept away any victory we might have gained before the people of Tennessee; I am the only modernist that now remains in Dayton."

- Announcing a state holiday to mark Bryan's funeral, Governor Peay proclaims that Bryan died "a martyr to the faith of our fathers"
- Bryan's funeral became a national event, with thousands filing by an open coffin, first in Dayton, and then in several major cities along the train route to Washington D.C., his final resting place in Arlington National Cemetery.
- As Bryan lay in state, the governor of Mississippi declares that his state "will probably follow the lead of Tennessee and bar the teaching of evolution in school.", a prediction that came true during the State's next legislative session.
- In the fall of 1925, Texas Governor Miriam Ferguson directs her state's textbook commission to delete the theory of evolution from high school textbooks.

- Darrow becomes as much a pariah to religious modernists and mainline Christians as he was to fundamentalists.
- Walther Lippmann, in an editorial for the New York World characterizing Darrow's conduct during the trial as a disservice to the friends of evolution, writes- "The truth is that when Mr. Darrow in his anxiety to humiliate and ridicule Mr. Bryan resorted to sneering and scoffing at the Bible, he convinced millions who act on superficial impressions that Bryan is right in his assertion that the contest at Dayton was for and against the Christian religion."



- John Scopes declines the local school board's offer to renew his teaching contract conditioned on his compliance with the anti-evolution law.
- He states that his opportunity to interact with the distinguished scientists who had traveled to Dayton to be expert defense witnesses "had broadened my view of the world."
- He leaves Dayton to attend graduate school in the field of geology at the University of Chicago and becomes a petroleum engineer.

- Reacting to the backlash from Darrow's behavior at the trial, some ACLU officials again unsuccessfully maneuver to remove Darrow from the case for the appeal. .
- Defense attorney John Neal misses a deadline for filing a bill of exceptions outlining alleged errors during the trial, forfeiting the defense's ability to argue about the conduct of the trial, including the court's exclusion of the defense's expert witnesses, leaving the sole issue the constitutionality of the statute.

- The Tennessee Supreme Court rules the statute is constitutional
- Rejecting the claim that the statute violated defendant Scope's individual liberty, it finds that the law only applied to public employees acting in their official capacity, noting Scopes "had no right or privilege to serve the state except upon such terms as the state prescribed."
- Rejecting the claim that the statute violated the establishment of religion clauses in the State and Federal constitutions, it finds the law did not require the teaching of anything and therefore could not be deemed to give any preference to any religious establishment.

- The Court did, however, reverse the conviction based on the jury's failure to impose the fine in the case, an issue neither side had raised on appeal.
- The Court's opinion added "We see nothing to be gained by prolonging the life of this bizarre case" and urged the prosecutors to dismiss the charge.
- Without comment, Tennessee's new attorney general dismissed the case.

- The publisher of Hunter's Civic Biology deletes the six-page section on evolution from copies sold in some southern states in 1926.
- The passage in the text about the "development of man" is revised to eliminate references to subhuman species and to refer only to races of man in the earlier stages of the development of civilization and adding "Man is the only creature that has moral and religious instincts."

- In honor of William Jennings Bryan, Bryan University, now named Bryan College, is founded in Dayton, Tennessee in 1930.
- Excerpt from a Message from Bryan College President Douglas F. Mann in the current College Course Catalogue

“As a Christian liberal arts college, Bryan will challenge you academically to think critically regarding the world of ideas while affirming the truth of the Word of God as the foundation of all life and learning. We believe that the study of every discipline should enable you to see God’s creative hand and give Him glory through its pursuit. Bryan provides the type of academic rigor which prepares you to enter the best graduate and professional schools while growing in faith and the spiritual disciplines. “

- Students majoring in biology are required to take both of the following courses.
- BIB 222 OLD TESTAMENT LITERATURE & INTERPRETATION Every semester 3 hours This course provides an analysis of the Old Testament as the foundation of the whole Bible. It focuses on the theological, literary, and historical dimensions of the Old Testament text and story; draws theological connections to Jesus and the New Testament; and makes application to modern Christianity, both corporate (church) and personal (spiritual growth).
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- BIB 224 NEW TESTAMENT LITERATURE & INTERPRETATION Every semester 3 hours This course provides an analysis of the New Testament as the culmination of the whole Bible. It focuses on the theological, literary, and historical dimensions of the New Testament text; draws theological connections to major figures of the Old Testament and its biblical theological emphases; and it makes application to modern Christianity, both corporate (church) and personal (spiritual growth).

- Biology majors must elect one of the following courses their junior year-
- BIO 314 BIOLOGICAL ORIGINS Second semester 3 hours An introductory survey of current theories for the origin of life, the origin of culture and its diversity, and the origin of language and its diversity. The first half of the course presents an evolutionary perspective on these issues; the second half presents a young-age creation perspective. In each case the best argument in favor of the position is presented.
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- BIO 317 HISTORY OF LIFE First semester 3 hours An introductory survey of life's origin, diversification, and history. Includes a review of mechanistic theories for the origin of the first cell, intra-specific variation and change, speciation, and the origin and diversification of higher groups. Also includes a survey of the fossil record and the evidence it gives of the history of diversity and organismal form through time. Prerequisite: two semester general biology survey. Offered alternate years.



- After several earlier failed attempts, the Tennessee legislature finally repeals the Buter Act in 1967.
- Late 20<sup>th</sup> century fundamentalist leader Jerry Falwell becomes the latest critic of Bryan's testimony at the trial when he states that Bryan "lost the respect of fundamentalists when he subscribed to the idea of periods of time for creation rather than twenty-four hour days."

- The Supreme Court, in a series of cases starting with the Warren Court in the 50's and 60's, firmly establishes the doctrine that the 14<sup>th</sup> Amendment applied the protections of the Bill of Rights to state actions, and it invalidates various practices in public schools deemed to violate the Establishment Clause of the 1<sup>st</sup> Amendment
- In a 1987 opinion, the Court rules that the Louisiana Creationism Act violated the clause.
- The Act prohibited the teaching of evolution in public schools unless it was accompanied by instruction in "creation science".
- The Court found the Act advanced a religious doctrine by requiring either the banishment of the theory of evolution from public school classrooms or the presentation of a religious viewpoint that rejected evolution in its entirety.