

**Program:** The Great Scopes Monkey Trial: State of Tennessee vs John Scopes

**Speaker:** Hal Johnston, Lieutenant Colonel (Ret.), Veterans Court

**Introduced by:** Alan Schmidt

**Attendance:** 131

**Guests:** David & Mag Zanner, Sam Miller, Margi Weckley, Lana Anderson,

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The Trial of the Century: many have been called that, but the issues in the Scopes Monkey Trial are still being argued today, so it should have the title!

It should have been a very short trial, but the lawyers (a total of eleven!) got involved so it went on for eight days. In fact, the two famous lawyers from that trial were in it for the publicity and to push forward their own beliefs and agenda. Clarence Darrow claimed that "John Scopes is not on trial; civilization is on trial." William Jennings Bryan stated that "the contest between Christianity and Evolution is a duel to the death."

Hal Johnston, Lieutenant Colonel (retired), a practicing lawyer in the Indianapolis Veterans Court, presented the background and highlights of the "Duel to the Death," as well as the "duels" between religion and science since.

It all began with the Butler Act, passed by politicians in Tennessee in 1925 to appease many of their voters. It was less than two pages long and was never expected to be enforced. But some in the state and the ACLU in Washington decided to put it to the test. The act stated that offenses included teaching any theory that "denies the story of the Divine Creation of Man" as taught in the Bible, without defining any of the terms or even which bible. It did NOT prohibit the teaching of modern cosmology, modern geology or modern biology. Penalties included a fine but no jail time. The author of the law did not even understand what evolution was. Ironically, the only state-approved textbook on the subject in Tennessee, *Hunter's Civic Biology*, included evolution.

John T. Scopes was asked if he'd stand trial to test the Butler Act. He was a coach and a part time teacher in Dayton, TN, who was never booked into jail or even arrested. Charges were brought by grand jury indictment on 25 May 1925. The Defense wanted to take a moderate approach including expert witnesses; they were prepared to lose at trial but win on appeal. The prosecution (except for Bryan) wanted to prevent expert testimony and focus on the simple question: Did he teach evolution or not? Bryan wanted to equate evolution with atheism and immorality, furthering his anti-evolution campaign.

Every day of the trial began with prayer. Understandably there were objections to this, but Judge Raulston allowed it. Then there were questions about which Bible to use and requests to include Jewish and Unitarian prayers, which were referred to the Pastors Association resulting in such prayers being allowed. The jurors selected on day one were all white males; all were religious but knew little to nothing about evolution. On the second day the defense moved to quash the indictment on constitutional grounds and the judge asked the jury to leave the court room while this and other legal questions were argued. During such arguments in the entire eight days, the jury was permitted to sit in on deliberations for barely an hour total! Expert testimony was not allowed but the

judge ruled that the experts could read statements into the record with no cross-examination by the state. It was a hot July day, so the trial was moved outside.

The defense called prosecution lawyer Bryan as a witness. This was highly unusual, but the defense was betting that Bryan would orate and say things damaging to the prosecution's case. On the final day, the judge struck Bryan's testimony which meant that Darrow did not take the stand. Darrow, in another unusual move, asked the judge to direct the jury to convict his client. He also waived his final argument which meant that Bryan could not deliver his "Great Speech." The judge directed the jury to convict Scopes as requested. They deliberated for nine minutes and convicted him. The judge imposed a \$100 fine (about \$1,400 today).

Judge Raulston gave the defense lawyers thirty days to perfect their appeal. After much more legal maneuvering, the defense missed the thirty-day deadline, so the state Supreme Court refused to hear arguments about the admissibility of expert testimony. The court, however, upheld the Butler Act on all counts, including that it did not violate the principle of the separation of church and state. In spite of that, they reversed Judge Raulston's ruling based on a technicality; the judge imposed the fine while the Butler Act required that the jury impose the fine. The state Supreme Court issued a statement that clearly said this "bizarre case" should not be prolonged further and suggested that the state Attorney General drop it, which he did.

Although not enforced, the Butler Act wasn't repealed until 1967. In 1968, the U.S. Supreme Court ruled on the issue in *Epperson v. Arkansas* and provided a major victory for science in the classroom. It stated that the Anti-Evolution Law was intended to protect a particular religious teaching, violating the constitutional principle of government neutrality in matters of religion. The creationists didn't give up but they suffered from divisions based on personalities and doctrine. The controversy continued with two cases: *Daniel v. Waters* in 1975 and *Herndon v. Campbell* (Indiana) in 1977 where the creationists lost again. Various state laws and lawsuits on science vs. religion in the classroom have continued until as recently as 2005.

Interestingly, Dayton, TN, has a Scopes Monkey Trial Festival each summer that includes a re-enactment of the trial. In 2017 a statue of William Jennings Bryan was at last joined by a statue of Clarence Darrow on the courthouse lawn in Dayton.



Hal Johnston