

9

**The Constitution, Censorship,
and the Schools:**
Tennessee v. John Thomas Scopes

Peter Neal Herndon

The world is to be carried forward by truth, which at first offends, which wins its way by degrees, which the many hate and would rejoice to crush.

—William Ellery Channing, 1849

When we consider what religion is for mankind, and what science is, it is no exaggeration to say that the future course of history depends upon the decision of this generation as to the relations between them.

—Alfred North Whitehead, 1930

INTRODUCTION

Teachers in the New Haven high schools have used this unit in the Law Course offered to seniors, and to juniors taking United States History. I am aware of at least one ninth-grade teacher who has excerpted parts of this unit for use in teaching principles of the U.S. Constitution. Apparently, the materials contained here are readily adaptable for a variety of interest and ability levels.

This teaching unit explores an issue which should be of great interest to both students and professional educators: intellectual freedom. What are the legal boundaries of what may and what may not be taught in public schools? What is the constitutional nature of this question? Besides educators, there are many individuals and groups which have input into the schools: students, parents, and local and state Boards of Education.

Who ultimately has the right to determine what is and what is not permitted to be taught? How often have courts (particularly the Supreme Court) ruled in

cases involving teachers' right to teach and students' right to know? The United States claims to be a pluralistic society in which the rights of minorities are protected. Under law, how does a school system act to indeed protect the rights of minorities within a framework of intellectual freedom and the "right to know"? One of the underlying purposes of this unit is to examine ways of effecting possible changes in schools within the boundaries of the U.S. Constitution.

First, students will examine the issues underlying the famous case that involved a Tennessee science teacher named John Scopes who violated a state law in 1925 that forbid the teaching of Darwin's theory of evolution. The issues of this famous trial will provide the main part of my teaching unit. In this case, famous expert lawyers (in this case the defense had Clarence Darrow plus two other civil rights attorneys who were paid for by the American Civil Liberties Union in New York), came to the defense of a "notorious" defendant. The drama of this case was heightened by the presence of three-time Presidential candidate and religious leader, William Jennings Bryan, who took the witness stand in a defense of Bible truth and in opposition to evolutionary teaching. The famous "monkey trial" is history, with Scopes' penalty a small fine.

However, issues of censorship in the classroom are very much contemporary. In 1987 (*Edwards v. Aguillard*) the Supreme Court struck down a Louisiana law requiring that creationism be taught together with the theory of evolution. By debating the issues themselves, students should become more aware that what may or may not be appropriate to learn about in public school classrooms can be a highly controversial subject. How are such decisions arrived at? What about the dissenters (whether they be judges, parents, teachers or students)?

There are additional cases related to issues raised in the Scopes trial which can be considered as well. What happens when parents object to a New York Board of Education's attempt to remove certain books from the library at the request of other parents (*Board of Education v. Pico*, 1982)? Nine books were actually removed from a high school library because they were considered morally and/or politically objectionable. Was this allowed under the Constitution? Students might consider some of the titles and content of these books and deliver their own "verdicts". Also, what happens if family-religious values conflict with state school requirements (as in *Yoder v. Wisconsin*, 1971) when Amish families objected to their children remaining in school until the age of sixteen?

In 1988, near St. Louis, a high school principal censored the school newspaper, and removed articles about teenage pregnancy, birth control and the impact of divorce on children (*Hazelwood School District v. Kuhlmeier*). Was this allowed under the U.S. Constitution?

Students who have participated in this issue-oriented debate over curriculum in the public schools have had their awareness heightened and their interests kindled. They have learned that Constitutional issues may affect them personally, discussion of issues can be quite emotional, and that court decisions may not satisfy everyone.

I. UNIT OBJECTIVES

This unit of study contains certain basic concepts associated with the topic which students will be expected to understand and use:

Student Vocabulary List

The following is a list of concepts and ideas students should be familiar with after having completed this unit of study:

American Civil Liberties Union	constitutionality (of laws)
adjourn	conviction
<i>amicus curiae</i>	creation-science
appeal (Appellate Court)	criminal law
arrest	cross-examination
Attorney General	Darwinism
bail	defendant
balanced treatment act	defense
bill	dissenting opinion
Butler Act	<i>Edwards v. Aguillard</i> (1987)
case	evidence
checks and balances	evolutionary theory
civil law	exception (in court)
counsel	felony
court record: off the record	fine (by jury or court)
court record: on the record	fundamentalism
Genesis	plea
grand jury	peremptory challenge
impartial	preliminary hearing
indictment	prohibit
jury selection	prosecution

justice	repeal (a law)
lawsuit	sentence: maximum
legislation	sentence: minimum
legislature: lower house	separation of church and state
legislature: senate	separation of powers
litigation	state's case
<i>McLean v. Arkansas</i> (1982)	statute
misdemeanor	<i>Tennessee v. John Scopes</i> (1925)
mistrial	test case
motions (by counsel)	trial by jury
motions: overruled	violation (of law)
motions: sustained	warrant
offense	witness

During this prepared unit of study, students will be assigned to carefully examine court records, testimonies of witnesses and court opinions in an effort to involve them in the legal process and how it operates. They will follow a bill from its inception to its challenge in court, right through to the appeals stage.

This unit has challenged students to develop and use certain critical thinking skills. Students can, if the teacher so desires, become involved in several learning activities that will challenge them to read factual evidence carefully and analyze this evidence in ways that will enable them to become more coherent thinkers and writers. By debating legal issues with their classmates, students learn to improve speaking and listening skills, as well as small group process skills. In summary, students who complete this unit of study will have been exposed to methods which are intended to improve their abilities to decipher, interpret, organize and communicate information more effectively.

In addition to skill-building, students will become familiar with terminology relating to law and the courtroom. Students will be expected to keep lists of vocabulary words and concepts within their groups. Glossaries are available for them to consult. Independent research is encouraged. The teacher hands out specific questions to answer based on group readings to help students accurately summarize facts.

II. UNIT SUMMARY AND STRATEGIES

To introduce the unit to the students, I have taken information from a 1981 court case, *McClean v. Arkansas*, which challenged a "balanced treatment" law

allowing Creation-science and Evolution-science to be taught in Arkansas' public school classrooms. On Day One of the unit, I introduce a role play involving an imaginary biology teacher. This science teacher is required by law to teach Darwin's theory of evolution to his students. He does not believe that evolution should be taught all by itself, without a "balanced treatment" given to the Bible-Creation explanation, a belief both he and many of his students share. But there is nothing mentioned in the science textbook about Bible-Creation, only evolution. His principal warns him to "stick to the textbook." He is not sure what to do. He has four alternatives: (1) teach evolution only; (2) teach Bible creation only; (3) teach both; (4) teach neither.

Following a discussion of the issues and after having been given a "Fact Sheet" on both Creation-science and Evolution-science, (see Lesson Plan section below) students are put into discussion groups with the purpose of preparing a recommendation to the "School Board." After hearing the recommendations, the Board will recommend a policy to be followed in all science classes. This activity is geared toward familiarizing students with concepts such as "balanced treatment," evolution and creation-science, but, more importantly, for them to see that many ideas for laws and litigation arise out of ordinary experiences.

The next class period, after hearing from the "School Board," we learn that a "Balanced Treatment" Act has been challenged in court and has been struck down. Students will then hear the court's reasons, which relate to First Amendment protections against establishment of a religion. Is this censorship? Students will be encouraged to discuss their views on forms of censorship carried on in public schools and the "reasonable limits" of such censorship. Who has the right to censor? Can policies and laws be challenged? If so, how? This should lead us into our assignment for the next several days, the issues surrounding the case of *Tennessee v. John Thomas Scopes*, the so-called "monkey trial" held in Dayton, Tennessee in July, 1925, in which a science teacher was arrested for teaching evolution in violation of the state laws at that time.

TENNESSEE V. JOHN THOMAS SCOPES

For the next five to six class periods the students will study the famous case as a way of understanding the legal process. To begin, we will examine the bill presented by Tennessee representative John Washington Butler. Butler was a second-term legislator and was concerned about reports that the teaching of

Charles Darwin's theory of evolution in Tennessee schools was causing disbelief in the Biblical account of creation among young people.

Why had Butler sponsored such a bill? Butler firmly believed that:

In the first place, the Bible is the foundation upon which our American Government is built . . . The evolutionist who denies the bible story of creation, as well as other Biblical accounts . . . robs the Christian of his hope and undermines the foundation of our Government.

(Quoted in Ginger, *Six Days or Forever?*, 4)

The bill was referred to committee, and was passed by the lower house by a vote of 71 to 5.

Then it was the senate's turn. The bill in the senate was promoted, among others, by former Secretary of State and three-time Presidential candidate William Jennings Bryan, who would later participate as a special prosecutor in the Scopes trial a few months later. Bryan had helped successfully to sponsor an anti-evolution bill which had become law in Florida two years earlier. Bryan's view was that evolution, if taught, should be recognized for what it was, a series of educated guesses.

The Senate passed the bill with little opposition by a vote of 24 to 6, exactly as written by John Butler. (See Appendix, Document 1.) Eight days later, Governor Austin Peay signed the bill into law, fully expecting that the law would not effectively change science teaching in Tennessee. (Appendix, Document 2.) The Butler anti-evolution Act was now law. Would it be enforced? Would there be a test case? Tennessee and the world did not have long to wait for an answer.

THE DEFENDANT: JOHN THOMAS SCOPES

According to John Scopes, he agreed to stand trial as a result of a drugstore discussion that got out of hand. More than one observer has concluded he was snared into it by those seeking publicity for their hometown of Dayton. A mining engineer named George Rappelyea, a native New Yorker, had been reading in the newspaper that the American Civil Liberties Union in New York was willing to supply a defense team of distinguished lawyers to handle a test case of the recently passed anti-evolution law in Tennessee, the Butler Act. Rappelyea thought immediately of Dayton's new science teacher and football coach, Scopes. Two days later, a meeting was arranged after school at F.E. Robinson's

drugstore, and during the debate over evolution, Scopes admitted that he did not see how it would be possible to teach biology without mentioning Charles Darwin's theory. In fact, he said, the Tennessee-approved textbook, used in Dayton, Hunter's *Civic Biology*, contained a chapter on the evolution of man and Darwin's theory of natural selection.

Scopes admitted he was opposed to the Tennessee anti-evolution law because he did not think that the state should tell all the Tennessee schools what could and could not be taught, that was a matter for a local or county school board, not the state. After some more discussion, Scopes agreed to be arrested; and on May 10, 1925, he was given a preliminary hearing before three judges. It was charged that he had taught the theory of evolution to his class on April 24 from Hunter's *Civic Biology* textbook, which contained sentences such as: "We have now learned that animal forms may be arranged so as to begin with the simple one-celled forms and culminate with a group which contains man himself." (Appendix, Document 4) A grand jury was scheduled to meet to formally indict Scopes. Bond was set at \$1,000, and was paid by Robinson and Rappelyea. The grand jury met on July 10, one month earlier than scheduled, just to make sure that Dayton would get the test case publicity.

Meanwhile, Scopes had been invited to New York City to meet with the A.C.L.U. to choose counsel and plan legal strategy. Scopes was very pleased that the famous trial lawyer Clarence Darrow had volunteered his services for this case. Assistance would be given by Dudley Field Malone and Arthur Garfield Hays, two other well-known attorneys. Three other lawyers represented Scopes, including a Tennessee law professor John R. Neal, who was placed in charge of the case.

THE TRIAL ITSELF

I. Day One: July 10 (Friday)

Court was called to order promptly at 9:00 A.M. by Judge John T. Raulston. The defendant, John T. Scopes was there with his six attorneys, including Darrow and two other lawyers, Malone and Hays, from outside of Tennessee. They were introduced to the court by the chief counsel, Mr. John Neal. The prosecution was represented by A.T. Stewart, the attorney-general, Ben McKenzie, McKenzie's son Gordon, and five other lawyers, including William Jennings Bryan. Bryan, it should be noted, had a special interest in this case, since he had helped to draft Tennessee's anti-evolution bill. He was a staunch defender of fundamental Bible beliefs. More than one hundred reporters and two from London,

England, sat at the press tables. The courtroom was bulging with over four hundred spectators who lined the walls. The judge asked that the session be opened with prayer, as he did throughout the trial.

A new indictment of Scopes had to be handed down, since the first indictment was done so hurriedly on May 25. Quickly, the first order of the court was to impanel a new grand jury and read them the anti-evolution statute that Scopes allegedly had violated. (Appendix, Document 1)

He then read from Genesis, Chapter One, containing the divine story of creation in the Bible. "And God created man in his own image, in the image of God created He them, male and female, created He them." (Appendix, Document 3)

The judge went on to explain that the issue before the grand jury was not the wisdom of the Butler Act, but whether there had been a violation of it. If so, after an impartial examination of evidence (three of Scopes' students had to be rounded up in order to give statements to the jury), it was found that the teacher broke the law, then it was their duty to return a report to the judge so stating. By 11 A.M. the grand jury returned an indictment. Now at last the case of *Tennessee v. John Thomas Scopes*, No. 5232, could begin.

Before the selection of jury members for the trial to begin, Darrow wanted to know if and when his scientists were going to be able to testify for the defense. This question was a major issue before the court: Could the defense try to prove in the trial that the theory of evolution was a valid scientific proposition, and that it did not necessarily negate the teachings of the Bible? Or would the scope of the case be narrowed to the simple violation of the Butler Act?

Judge Raulston then ordered the selection of jury members to begin, even though a jury pool of only sixteen men was present. Darrow was shocked that the judge expected the jury to be impaneled in one afternoon; why there were times when two hundred veniremen and several weeks were needed to select a satisfactory jury.

The jury selection process which followed was quite fascinating. And it was complete by the end of the afternoon, much to everyone's surprise. In order for students to more completely understand this segment of courtroom procedures, students may participate in a role play, where potential jurors are interviewed by the defense and prosecution attorneys, each with varying viewpoints toward either evolution or the Bible. In this way, with role-playing attorneys given only two peremptory challenges, the students will heighten their awareness not only of how jury selection works but also the issues at stake in the Scopes case. (Appendix, Document 7)

After accepting the first and second jurors, Darrow interviewed an ex-miner now a farmer, Jim Riley. Darrow inquired as to whether he had ever talked to anyone about evolution or heard any sermons about it. Riley said no.

DARROW: Ever hear Mr. Bryan speak about it?

RILEY: No, sir.

DARROW: Ever read anything he said about it?

RILEY: No, sir; I can't read.

DARROW: Well, you are fortunate. (Laughter)

(Quoted in Ginger, 98)

Riley was accepted, along with eight other farmers; two were landowners, and one a shipping clerk.

During the questioning, Darrow revealed that his strategy was to contend that evolution did not necessarily contradict Genesis, and therefore under the wording of the Butler Act, establish that his client, Scopes, may only have partially broken the law: the part that said it was forbidden to teach, "any theory that man has descended from a lower order of animals." According to the defense motion, Scopes would have to commit two separate acts to be fully guilty under the law, the other act being that, "any theory that denies the story of the Divine Creation as taught in the Bible", is illegal. Was this the lawmakers' original intent, or just legal "hairsplitting?" The court would have to rule on this motion (See Day Four of the trial).

II. Day Two: July 13 (Monday)

Court was delayed for a few minutes so that the radio microphones could be adjusted. Judge Raulston commented proudly, "My gavel will be heard 'round the world." After prayer, attorney-general Stewart read the indictment against Scopes, followed by defense attorney Neal's motion to quash the indictment.

The prosecution argued 1) that freedom of religion applied only to worship in churches, and 2) that it had been established by the U.S. Supreme Court (*Meyer v. Nebraska*) recently that a legislature had power to control public school curriculum. To the prosecution it was a simple matter:

B. MCKENZIE: Under the laws of the land, the constitution of Tennessee, 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 . . .

As to the clarity of the statute (McKenzie continued):

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? (Grebstein, 57)

Was evolution, then, to be construed as a set of “religious beliefs?” This same question would recur fifty years later in similar cases argued before the United States Supreme Court. (See “Two Modern Cases” below)

After the prosecution made its major point, that is, that the state has a duly constituted authority and legal responsibility to prescribe the curriculum for the public schools, Darrow got his chance to reply. His sarcasm was evident:

As hard as it is for me to bring my mind to conceive it, almost impossible as it is to put my mind back into the sixteenth century, I am going to argue it as if it was serious, and as if it was a death struggle between two civilizations. (Grebstein, 60)

He was finished, and court adjourned for the day.

III. Day Three: July 14 (Tuesday)

After a third straight day of opening court with prayer, Darrow opened another assault on the court, demanding that prayer be removed from the courtroom, since the case pitted science against religion and this might prove an undue influence on the jury. Judge Raulston ruled that prayers would not unduly influence him or the jury, so the prayers would continue.

Was it science versus religion? Academic freedom versus the right of the state to standardize the curriculum? A simple matter of a state law being violated by a high school science teacher? The judge refused to rule on these matters until the next court session. Everyone was getting impatient, especially the jury members, who had been barred from the courtroom for two days. When, if ever, would they be allowed to hear the arguments that would decide the fate of John Scopes?

IV. Day Four: July 15 (Wednesday)

It took the judge an hour to read his 6,000-word statement denying the defense motion, stating that the intent and wording of the Butler Act was clear, that the state had a constitutional right to determine what was (and what was not) taught in the public schools, and any teacher who wanted to teach evolution was free to teach it in the private schools or elsewhere. Fur-

thermore the Butler Act did not force religious beliefs on anyone. Sobeit. The court had spoken.

A rousing victory for the prosecution. The trial would proceed. The jury would be sworn in.

After a recess until 1 P.M., the court was to hear the only testimony that became part of the official court record, even though the trial would last eight days.

After the plea of Not Guilty was entered by the defense, a brief statement followed by the attorney-general, Mr. Stewart, stating that Scopes had violated the state law by teaching that man had descended from "a lower order of animals."

With the jury still not present, Mr. Malone gave the defense's opening statement in which he maintained: (1) there was no direct conflict between the theory of evolution and the theories of creation in Genesis; (2) stories of creation in Genesis were not scientifically correct.

After the jury was seated, Howard Morgan, fourteen, and one of Scopes' science students, testified that his teacher had taught that man was a mammal and that life gradually had evolved from the sea. A sample of the cross-examination by Darrow:

Q: He didn't say a cat was the same as a man?

A: No sir; he said man had a reasoning power; that these animals did not.

Q: There is some doubt about that, but that is what he said, is it? . . .

Q: Well, did he tell you anything else that was 'wicked'?

A: No, not that I remember of.

This exchange caused even members of the prosecution to grin.

Q: Now, that is about what he taught you. It has not hurt you any, has it?

A: No, sir.

(Grebstein, 102, 103, 105)

After hearing from another of Scopes' students, Harry Shelton, the prosecution called F.E. Robinson, the school board member who had ordered the biology books used by Scopes. Darrow, in cross-examination, established that Scopes' textbook, was indeed approved by the state.

Darrow then read to the jury from the textbook the reasons why man was classified with the vertebrates, then the mammals, then with the apelike mammals. Not to be outdone, Stewart read into the record the first two chapters of Genesis. Balanced treatment. The state's case was officially over; Bryan had not even made a statement!

The defense began its case after being allowed to swear in ten witnesses, nine of them distinguished scientists, all scheduled to testify as to the validity of evolution. The first witness sworn in was Dr. Maynard Metcalf, a zoologist, author and member of a Congregationalist church.

Was evolution a fact, he was asked?

The whole plan of evolution . . . seen so clearly in the universe as a whole, makes a tremendous *probability* in favor of the evolution of man (Grebstein, 115, emphasis added)

Scientists, Metcalf insisted, disagreed that the evolution process was a “fact,” but he doubted “the truth of any hypothesis—as to the methods of the evolution which this or that or the other man—even great men of science—might bring up.” Inconclusive testimony at best. As it turned out, it was the only testimony on evolution the jury was to hear, from a scientist, at least.

V. Day Five: July 16 (Thursday)

After prayer, the question before the court was this: whether to uphold the state’s motion to exclude all scientific experts testimony on the truth or the falsity of evolution. W. J. Bryan, Jr., made the point that expert testimony would be only opinion, not fact.

According to the state, since Scopes had taught that man had descended from a lower order of animals, he had denied the Bible’s account of Creation. After lunch, William Jennings Bryan made his first speech. For an hour he warned of the evils of evolution and the truth of the Bible. And what of the children?

BRYAN: Why, my friends, if they believe it, they go back to scoff at the religion of their parents: And the parents have a right to say that no teacher paid by their money shall rob their children of faith in God and send them back to their homes, skeptical, infidels, agnostics or atheists. (Grebstein, 127)

After a short recess, Malone made a long emotional speech to the court, in which he made an impassioned appeal (1) to recognize the Bible as a book on religion not science; (2) to realize there is no major conflict between Bible creation and evolution; (3) conclude that the truth could only be known if scientific testimony were allowed. On this last point Malone pleaded: “Is our only weapon—the witnesses who shall testify to the accuracy of our theory—Is our only weapon to be taken from us, so that the duel will be entirely one-sided?”

VI. Day Six: July 17 (Friday)

In perhaps the most dramatic statement yet made at the trial, Judge Raulston revealed that his thinking had remained unchanged. “It is not within the province of the court under these issues to decide and determine which is true,

the story of divine creation as taught in the Bible, or the story of the creation of man as taught by evolution.” No experts were needed to comprehend the simple language of the law; no scientific testimony would be heard. The result: pandemonium in the courtroom. When order had been restored, the two sides bristled at each other. A sample follows:

HAYS: We say that it is a denial of justice not to permit the Defense to make its case on its own theory.

COURT: Let the exception be entered of record.

STEWART: I desire to except to exceptions made in that manner . . . I think it is a (poor) reflection on the Court . . .

COURT: Always expect this Court to rule correctly.

DARROW: No sir, we do not. (Laughter)

COURT: I suppose you anticipated it? (my ruling)

DARROW: Otherwise we should not be taking our exceptions here, your Honor. We expect to protect our rights in some other Court. Now that is plain enough, isn't it? . . . I do not understand why every request of the State and every suggestion of the Prosecution should meet with an endless amount of time, and a bare suggestion of anything that is perfectly competent on our part should be immediately over-ruled.

COURT: I hope you do not mean to reflect upon the Court?

DARROW: Well, your Honor has the right to hope.

(Grebstein, 137)

Raulston was clearly angered and said to Darrow: “I have a right to do something else, perhaps.” The crowd waited to see if the Judge would send Darrow to jail for contempt. But the Court did nothing. Instead he adjourned the court until Monday.

VII. Day Seven: July 20 (Monday)

Monday's session began abruptly. Judge Raulston immediately cited Darrow for contempt of court for remarks expressed on Friday to the court that were “contemptuous and insulting.”

After lunch, Darrow made a statement to the court apologizing for his ill-mannered remarks on Friday. The Judge, in the name of Christ, forgave Darrow

and accepted his apology with these words, “we forgive him and we forget it, and we commend him to go back home and learn in his heart the words of the Man who said: ‘If you thirst come unto Me and I will give thee life.’ ” (Quoted in Grebstein, 143) The courtroom applauded, as they had Darrow when he had finished his remarks. At this point, Judge Raulston announced that cracks had developed in the ceiling beneath the courtroom. He was fearful that the building would collapse, so he ordered court to convene outdoors for the afternoon session. The evidence by scientists continued to be read into the record (approximately 35,000 words altogether from seven scientists).

Next, the Judge agreed to have a large sign saying “READ YOUR BIBLE” removed from the courthouse, near where the absent jury was scheduled to sit. Again the judge wanted to appear as “fair” as he could.

Then, the surprise move by the Defense came: they wanted to call William Jennings Bryan as a witness, an expert witness on the Bible! The judge hesitated, the Prosecution objected, but Bryan seemed afraid not to. How could he refuse to give battle? He looked to the Judge to save him, but Raulston seemed to welcome the opportunity, giving Bryan permission to call Darrow to the witness stand as well. That opportunity was to be denied Bryan, however. And Darrow was to have the opportunity he had been waiting for since the trial began—to attempt to make a “monkey” out of Bryan.

Throughout the questioning, Darrow relentlessly pointed to miracles that, he said, could not have happened in a scientifically ordered world. Bryan replied, “One miracle is just as easy to believe as another.” Darrow was frustrated at Bryan’s refusal to give exact answers. He got angrier.

DARROW: What do you think?

BRYAN: I could not say.

DARROW: (Was the estimate of the time of the flood figured out) from the generations of man?

BRYAN: I would not want to say that.

DARROW: What do you think?

BRYAN: I do not think about things I don’t think about.

DARROW: Do you think about things you do think about?

BRYAN: Well, sometimes.

(Grebstein, 151)

At this even the judge joined in the laughter. And despite objections for the questioning to stop, Bryan remained, insisting that the defense had “no other purpose than ridiculing every Christian who believes in the Bible.” Darrow’s response to Bryan: “We have the purpose of preventing bigots and ignoramuses from controlling the education of the United States and you know it—and that is all.”

Bryan’s final retort: “I am simply trying to protect the word of God against the greatest atheist or agnostic in the United States. (prolonged applause from the crowd) I want the papers to know I am not afraid to get on the stand in front of him and let him do his worst.” (Grebstein, 164)

The questions continued. More arguing. Bryan did admit that the “days” in Genesis, he thought were “periods of time” not necessarily literal twenty-four hour days, but he “would not attempt to argue against anybody who wanted to believe in literal days.”

The testimony, which had lasted for over an hour and a half, was the “event” everyone had hoped for. The questioning ended with both men trading insults, and Bryan, obviously exhausted and trembling, was still willing to continue until Darrow was satisfied.

BRYAN: I want the world to know that this man, who does not believe in a God, is trying to use a court in Tennessee—

DARROW: I object to that.

BRYAN: (continuing) to slur at it, and while it will require time, I am willing to take it.

DARROW: I object to your statement. I am examining you on your fool ideas that no intelligent Christian on earth believes.

(Grebstein, 169, 170)

Darrow had the final slap in the face. Court was adjourned until 9 A.M. Tuesday.

VIII. Day Eight: July 21 (Tuesday)

The Judge announced that Mr. Bryan’s testimony the previous day would have no relevance to deciding the case either in this court or the appeals court, so therefore he was eliminating it from the court record. The jury would not consider it as evidence.

The jury was brought in for the first time in days, and Darrow read his charge to the jury, saying that this case could only be settled in a higher court, "and it cannot get to a higher court unless you bring in a (guilty) verdict." He was telling the jury he wanted them to find the defendant, Scopes, guilty!

Raulston explained that the fine, if the jury found Scopes guilty, should be set by the judge, unless they wanted to impose a fine of more than \$100.00; otherwise they could just find the defendant guilty "and leave the punishment to the court."

The jury retired for awhile and after nine full minutes returned with a verdict. Guilty. They left the matter of a fine to the court. The defendant, Scopes, silent throughout the trial, rose to face the judge, who imposed the minimum \$100.00 fine. Finally, Scopes was allowed to make a brief statement:

Your Honor, I feel that I have been convicted of violating an unjust statute. I will continue in the future, as I have in the past, to oppose this law in any way I can. Any other action would be in violation of my ideal of academic freedom — that is, to teach the truth as guaranteed in our constitution, of personal and religious freedom. I think the fine is unjust. (Grebstein, 176)

The judge then allowed some closing remarks from the various participants. The attorneys remarked on the hospitality of the judge, and the people of Tennessee; everyone seemed gracious and in good spirits. Even Darrow, humorously thanked the judge for his kind treatment in not having sent him to jail. Bryan gave a brief summary of the trial's significance:

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 The people will determine the issue. They will take sides upon this issue; they will examine the information . . . and the facts will be known, and upon the facts, the decision will be rendered 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 . . .

The judge put it this way:

Now my friends, the man . . . who is big enough to search for the truth and find it, and declares it in the face of all opposition is a big man Now, my friends, the people in America are a great people. We are great because we are willing to lay down our differences when we fight the battle out and be friends. (Grebstein, 178, 180)

Following the benediction, the court was adjourned.

Finally, there was an appeal to the Tennessee Supreme Court, heard six months later, and argued by the same A.C.L.U.-sponsored lawyers for Scopes. Obviously, Bryan could not participate, since he had died on July 26, 1925, five days after the trial ended.

In his ruling, seven months later, on January 14, 1926, Chief Justice Green claimed that the Butler Act was clear in its meaning and intent and that it, indeed, was constitutionally valid. As for Scopes, due to Judge Raulston's setting of Scopes' fine rather than the jury, the verdict was reversed on a legal technicality. No further appeal was possible because of the judge's error, so the case was thrown out of court. Motions for a new hearing were denied. One justice of the court dissented from the majority ruling because he felt the Butler Act was vague and unclear and should have been struck down for that reason.

SCOPES CASE: ISSUES FOR DEBATE

What was the significance of Dayton, Tennessee, July, 1925? Was it a carnival? A rural sideshow? An anachronism? Or, as one observer put it, was it "a great historic guidepost on the road to emancipation in the search for truth?" (Tompkins, ed., *D-Days at Dayton*, 63)

Who won the Scopes case? There were, of course, differing opinions. An Oklahoma paper declared: "Mr. Bryan came out more than victorious. He made a monkey out of the defense counsel and left them gasping." In Little Rock, Arkansas, the *Gazette* reported, "For the state of Tennessee the Scopes trial has been a moral disaster. It will plague the citizen of Tennessee wherever he may go." Dudley Malone, the Defense attorney, said the trial had been a "victorious defeat." Students, having read and discussed most of the testimony of the trial, will be assigned to debate orally one of three positions on the following resolution:

RESOLVED, that the Scopes trial was a clear victory for the Anti-Evolutionists.

The three positions will be the Affirmative (agrees with the resolution), the Negative (disagrees with the resolution), and the Middle Position (sees elements of victory for both sides). From the very beginning of the Scopes case, students should know which position they will be defending, and should be gathering "evidence" for their point of view.

Following the classroom debate, students should view the film "Inherit the Wind" (videocassette available through the Institute office or your local Video

store) in whole or in part, for the students' critical analysis (See Appendix for "Student Worksheet"). If time permits only one class period, begin showing from Day Seven of the trial, the day that Bryan takes the stand, the obvious climax of the film. Students should note how the film differs from historical fact and try to determine why the playwrights did so. Was the film in any way "biased" for or against either side in the case? Good insights should be gained from this class activity and critical thinking skills sharpened.

TWO MODERN CASES

To wrap up the unit, a discussion of issues in two modern cases brings the issues in controversy into the present. In *McClean v. Arkansas* (1982) the U.S. District Court decided to strike down, on constitutional grounds the Arkansas "Balanced Treatment Act" (Act 590) enacted by the General Assembly in March, 1981. The Act stated:

Balanced treatment shall be given in the public schools within this State . . . to the extent that (teaching methods) deal in any way with the subject of the origin of man, life, the earth, or the universe. Treatment of either evolution-science or creation-science shall be limited to scientific evidence for each model . . . and must not include any religious instruction or references to religious writings . . .

Further the act required "instruction in *both* scientific models if public schools choose to teach either." (*italics added*)

The emphasis appeared to be toward offering students the benefit of two models: "This legislature enacts this Act for public schools with the purpose of protecting academic freedom for students' differing values and beliefs . . . This legislature does not have the purpose of causing instruction in religious concepts or making an establishment of religion." (Quoted in LaFollette, ed., *Creationism, Science and the Law*, 15, 16, 17)

Nevertheless, with all its apparently "good motives," the Arkansas "Balanced Treatment Act" was struck down as an attempt to bring "religious instruction into the classroom." The court's conclusion in a lengthy decision and after months of testimony, concluded that "The First Amendment principles are not determined by public opinion or by a majority vote . . . No group, . . . may use the organs of government, of which the public schools are the most conspicuous and influential, to foist its religious beliefs on others." (Quoted in LaFollette, 72) Despite the gains at respectability made by creation-scientists, this decision had a devastating effect on their credibility. The question troubling many non-

scientific laymen remains: Isn't the court, by prohibiting creation-science from the classroom, exercising a form of censorship which denies students and teachers "academic freedom?"

These issues surfaced again, this time in Louisiana, with a court challenge to its 1981 "Balanced Treatment Instruction Act." This time, the appeal went all the way to the top of the judicial ladder. The U.S. Supreme Court decided, in June, 1987, by a vote of 7 to 2, to strike down the Louisiana statute. *Edwards v. Aguillard* featured a high school science teacher, who, along with parents and other colleagues, won victories in two lower federal courts before the big victory in Washington, D.C.

And so, another round has been fought in the science v. religion controversy. Will there be a next round? Some, in 1925, didn't think so, but they were proven wrong. Can religion and science be reconciled in certain areas? Do they have to "agree to disagree" in others?

A scientist who testified in the Scopes trial brought the issue forward this way:

Neither the right kind of mind (scientific) nor the right kind of heart (religious) will suffice without the other. Both are needed if civilization is to be saved. (Quoted in Tompkins, ed., 167)

III. SAMPLE LESSON PLANS

Lesson One: Freedom to Teach, Freedom to Learn? (Two Days)

Objectives:

1. To involve students in the contemporary debate over academic freedom v. censorship in public schools;
2. To acquaint students with the concept of "balanced treatment;"
3. To allow students to explore possible solutions to conflicting ideas and beliefs; particularly those that affect students in schools.

Procedures:

1. The classroom teacher introduces a dilemma (Day One) to the class: that of a high school biology teacher who believes that his students should know that there are two possible explanations to the origins of the universe and of plant and animal life. However, only one, evolution, is discussed in the textbook. The principal tells him to "teach what's in the book—period." He is troubled by this and believes he has a good case, since many of his students and their parents are persuaded that "Creation-Science" should also

be taught, alongside of “Evolution-Science”. He decides to take it to the Board of Education meeting for them to decide.

2. Students are divided into three groups. Each is given a “fact sheet” (below). The three groups discuss among themselves what they will present to the Board members tomorrow. The alternatives are: (1) teach evolution only (the textbook); (2) teach creation-science only (ignore the textbook); (3) teach both evolution and creation-science.
3. The teacher should answer questions about various terms, but remember that this exercise is one in problem-solving; the technical difficulties of this issue as a legal problem will be discussed later.
4. If there is time, tentative conclusions may be shared among the entire class.
5. Assignment: Poll at least five adults on this issue and be prepared to report findings tomorrow.

Lesson One: “fact sheet”: Evolution-Science and Creation-Science

Directions: After reading this “Fact Sheet,” discuss in your group your recommendations to the Board of Education. What should students study in science class?

Evolution-Science:

1. The earth is millions, perhaps billions of years old; it has to be that old in order for the slow evolutionary changes to take place;
2. The universe at first was in a state of disorder and non-living material; it has evolved (changed) over millions of years into one of order and life has emerged from non-life;
3. Life in early stages was simple; the present living kinds have developed from processes known as “mutation” and “natural selection;”
4. Man has emerged from an ancestor common to apes;
5. Reliance on rocks and the fossil record to show that later species are related to earlier species, now no longer living (extinct).

Creation-Science:

1. The earth is relatively recent; its age can be measured in thousands of years;
2. The universe was created suddenly, energy and life came from nothing (there was no pre-existing matter prior to “creation”);

3. Basic changes have not occurred in animal and plant kinds, only within certain limits;
4. Separate ancestry of man and apes;
5. Explanation of the earth's rock and fossil record by catastrophic events, including worldwide flood;
6. Denial that "mutation" and "natural selection" can explain the great variety in plant and animal kinds from a single organism.

Arguments: Evolution v. Creation-Science

1. Creation-Science is a religious belief and therefore cannot be introduced in public schools because the Constitution forbids the government to pass laws which promote particular religion.
2. Creation-Science advances beliefs from Genesis in the Bible.
3. Creation-Science is really religion and not science.
4. Creation-Science would force students to make a false choice between "religion" and "science", keep religion out of science classes.

Arguments: Creation-Science v. Evolution (for "balanced treatment")

1. Creation-Science's purpose is to deal with the issues of origins of life on a scientific basis, with no references to the Bible or religious doctrine.
2. The universe is very complex and orderly: could it all just have happened, without the outside power and plan of a Creator?
3. Evolution is merely a theory; since there are only two possible explanations for the origins of the universe and life on earth, why not expose the students to both, rather than one explanation?

Sources:

Montagu, Ashley, *Science and Creationism*

LaFollette, Marcel, *Creationism, Science and the Law*

Lesson Two: The Scopes Trial: Issues and Answers

Objectives:

1. To familiarize students with issues of law, particularly the issue of First Amendment rights and how they may or may not pertain to the classroom situation;
2. To become more aware of actual courtroom procedures and terminology (e.g., cross-examination, grand jury, indictment, etc.);
3. To sift through the issues present in the Scopes case;

4. To try to understand why some court cases receive so much publicity and others do not;
5. To involve students in the processes of courts through role plays, mock interviews and film.

Procedures:

1. As students read the actual day-to-day happenings of the case (see above), certain “key questions” should be referred to (below) and have students prepare answers ahead of time for discussion in class.
2. Issues discussed: Examine the Documents (found in the Appendix) One and Two, to try to get students to understand what the Butler Act really said (is it clear?) and what the Governor said about it. What is the students’ opinion of the law? (This law is actually still on the books in Tennessee; an attempt to repeal it in 1951 was defeated.) Who in 1925 would be happy about such a law? Who would be unhappy? What could a science teacher do about such a law? What if he or she broke the law?

Assignment: Examine Documents 3 and 4 (see Appendix). What conflicts, if any, do you see in these two pieces of historical evidence? Why would people criticize either one?

Procedures: (Day Two)

1. After discussing issues raised by last night’s assignment, focus on the person John Scopes (Read selection in class provided in unit above). Have students discuss who he was, what he believed in, how it all happened that he became the defendant in a famous trial. How do the students react? Would they want to be Scopes? Why or why not?
2. Next hand out Documents 5 and 6 (see Appendix), edited documents from the First Day of the trial. Notice all the names of attorneys. How does court open? What does this tell you? Read carefully what the judge says to the grand jury members. If you were a member of the grand jury, how would you decide? Why?

Assignment: Examine Document 7 to prepare for tomorrow’s class, a Role-Play (optional) in selecting a jury for the Scopes trial: interviewing potential jury members. Question (Document 7): Would you have done what the Defense Attorney, Darrow, did at the end of this interview (he rejected the jury member)? Explain.

Procedures: (Trial Questions)

As students read the selected information about the trial, be aware of issues and terminology which will help students understand and appreciate the worldwide attention this trial was getting in the media. How might they have “covered” the trial? What kinds of stories might they have written?

Lesson Three: *Inherit the Wind* (Film on Videocassette)

Objectives:

1. To observe, in dramatized form, the issues brought out by the Scopes case;
2. To encourage students (as a test of their knowledge of facts about Scopes) to differentiate between historical fact and dramatic fiction;
3. To look for bias on the part of those writing or producing the movie.

Procedures:

1. Before viewing the film, explain that names have been changed to fictitious ones:
 - William J. Bryan (Matthew Harrison Brady)
 - Clarence Darrow (Henry Drummond)
 - John Scopes (Bert Cates)
2. Hand out “Student Worksheet” (included in unit) for students to use as they watch the film.
3. Note: If time allows you to show part of the film only, then start with the beginning of the Seventh Day of the trial, which features the interrogation of Brady (Bryan) by Drummond (Darrow).

Student Worksheet: *Inherit the Wind*

Introduction

Now that we have studied the issues and personalities in the famous Scopes case, we will view a dramatization of this trial. As in the Scopes case the defendant (Bert Cates) is arrested for violating the state law that made it a crime to teach any theory that contradicts the Bible. The defendant is represented by a famous trial lawyer (Henry Drummond) from Chicago, a religious agnostic. Another of the defense supporters is a journalist (E.V. Hornbeck), who does not take the trial seriously at all. The minister’s daughter (Rachel Brown), who is the defendant’s

fiancee, is called as a prosecution witness in the trial by the prosecution attorney (Matthew Harrison Brady). Brady is a former candidate for President, a Bible expert and a supporter of conservative views and the “common man.”

Discussion Questions

As we view the film, be prepared to discuss the following:

1. The journalist Hornbeck describes the trial as the “Persecution of the educated.” What do you think he meant by this statement? Do you agree or disagree with his opinion?
2. What role did the media play in the trial (both newspapers and radio)? Compare this to the role of the media (tv included) in recent trials or Congressional hearings. Why was this trial a “media event”?
3. Comment on the statement made by the defense lawyer Drummond, “Right has no meaning to me whatsoever. Truth has meaning as a direction.” What does he mean by this difference?
4. What is the meaning of the Bible verse which has provided the film’s title, found in Proverbs 11:29? “He that troubleth his own house shall inherit the wind; and the fool shall be servant to the wise of heart.” How can it be applied to the dramatic events?
5. How is the word “evolution” used in explaining change?

Observation Questions

The authors of the play, Jerome Lawrence and Robert E. Lee, insist their play “is not history.” Try to correct the fictitious parts of the play as you remember them from your study of the Scopes trial. Complete the chart below (add others):

Fiction:

1. Bert Cates is arrested and dragged from his classroom, led by the minister and the mayor.
2. Henry Drummond stands alone in his defense of Bert Cates.
3. E.V. Hornbeck’s newspaper, the *Baltimore Herald*, arranges for Henry Drummond to defend Cates and pay all legal fees.
4. Testimony by all scientific experts is completely ignored by the judge.
5. Other observations you may have noticed:

Thought Question: Why change the facts at all? What purposes might the authors have in mind in altering the historical facts of the case?

APPENDIX

Teaching Materials useful in teaching Scopes

Document 1: The Butler Act, 1925

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 (high schools) and all other public schools 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 . . . (Grebstein, 3)

Document 2: Governor Austin Peay's special message to Tennessee legislature, March 21, 1925 (excerpts)

After a careful examination I can find nothing of consequence in the books now being taught in our schools with which the bill will interfere in the slightest manner. Therefore, it will not put our teachers in any jeopardy (legal danger). Probably the law will never be applied. It may not be sufficiently definite to permit of any specific application or enforcement. Nobody believes that it is going to be an active statute . . . (quoted in Ginger, 7)

Document 3: Excerpts from Genesis, chapter one

In the beginning God created the heaven and the earth . . . (v. 1) And God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth. (v. 26)

So God created man in his own image, in the image of God created he him; male and female created he them. (v. 27).

And God saw every thing that he had made, and, behold, it was very good. And the evening and the morning were the sixth day. (v. 31)

And on the seventh day God ended his work which he had made; and he rested on the seventh day from all his work which he had made. (Chapter 2, verse 2)

Document 4: Excerpts from George W. Hunter, *A Civic Biology*

The Doctrine of Evolution. We have now learned that animal forms may be arranged so as to begin with very simple one-celled forms and culminate with a group which contains man himself. This arrangement is called the evolutionary series. Evolution means change, and these groups are believed by scientists to represent stages in complexity of development of life on the earth. Geology teaches that millions of years ago, life upon the earth was very simple, and that gradually more and more complex forms of life appeared, as the rocks formed late in time show the most highly developed forms of animal life. The great English scientist Charles Darwin, from this and other evidence, explained the theory of evolution. This is the belief that simple forms of life on the earth slowly and gradually gave rise to those more complex and that thus ultimately the most complex forms came into existence. (page 194 of text)

Man's Place in Nature:

If we attempt to classify man, we see at once he must be placed with the vertebrate animals because of his possession of a vertebral column. Evidently, too, he is a mammal, because the young are nourished by milk secreted by the mother and because his body has at least a partial covering of hair . . . We must place him with the apelike mammals, because of these numerous points of structural likeness. The groups of mammals which includes the monkeys, apes and man we call the "primates." Monkeys certainly seem to have many of the mental attributes of man . . . (and therefore) the monkey justifies his inclusion with man in a separate mental genus." (page 195 of text) (Grebstein, 28)

Document 5: Dayton, Tennessee, Friday, July 10, 1925

State of Tennessee v. John Thomas Scopes

Nos. 5231, 5232

In the Circuit Court of Rhea County, Tennessee

Hon. J. T. Raulston, Judge

Counsel for the State

A.T. Stewart, Attorney General

William J. Bryan

William J. Bryan, Jr.

B. G. McKenzie

J. G. McKenzie

H. E. Hicks

W. C. Haggard

Counsel for the Defendant

John R. Neal

Clarence Darrow

Dudley Field Malone

Arthur G. Hays

W. O. Thompson

First Day

THE COURT: The court will come to order. The Reverend Cartwright will please open court with prayer.

THE REV. CARTWRIGHT: We beseech Thee, our Heavenly Father, that Thou will grant unto every individual that share of wisdom that will enable them to go out from this session of the court, with the consciousness of having under God and grace done the very best thing possible, and the wisest thing possible . . . Hear us in our prayers, our Father, this morning, for the cause of truth and righteousness . . . that the affairs of church and state may be so administered that God may beget unto Himself the greatest degree of honor and glory.

THE COURT: Seat everyone you can, Mr. Sheriff, and those that can't get seats, let them stand around the wall.

THE COURT: Mr. Attorney General, come right up here, please. Let me have my docket, Mr. Clerk.

9:22 A.M.—Mr. Attorney General I am calling the case of the State v. John Thomas Scopes . . .

THE ATTORNEY GENERAL: If the Court please, in this case we think that it is proper that a new indictment be returned.

THE COURT: Do you want a jury empaneled?

THE ATTORNEY GENERAL: Yes, sir, and a new indictment.

THE COURT: Yes, sir.

THE ATTORNEY GENERAL: This indictment has been returned by agreement on both sides, but both sides are anxious that the record be kept straight and regular, and that no technical objection may be made in the appellate courts.

THE COURT: Very well . . .

THE COURT: Now let's proceed to draw the jury, gentlemen . . .

(Grebstein, 32, 33)

Document 6: The Judge's Charge to the Grand Jury

Gentlemen of the grand jury . . . the statute which it is alleged that John T. Scopes violated, is Chapter 27 of the acts of 1925 which makes it unlawful to

teach . . . any theory that denies the story of divine creation of man as taught in the Bible and instead thereof that man descended from a lower order of animals. (the judge reads Section 1 of the Act)

(the judge reads first chapter of Genesis)

Therefore, the vital question now involved for your consideration is, has the statute been violated by the said John T. Scopes? . . .

If you find the statute has been thus violated, you should indict the guilty person . . .

You will bear in mind that in this investigation you are not interested to inquire into the policy or wisdom of this legislation . . .

The policy and wisdom of any particular legislation addresses itself to the legislative branch of government, provided the proposed legislation is within constitutional limits.

Our constitution imposes upon the judicial branch the interpretation of statutes and upon the executive branch the enforcement of the law . . .

You may proceed with your investigation. (Grebstein, 34)

Document 7: Darrow Challenges a Jury Member

After the prospective jury member is questioned by the judge and the Attorney General for approval, the Defense is allowed determine whether or not the person is suitable.

Questions by Mr. Darrow:

Q: What is your business?

A: I am a minister.

Q: Whereabouts?

A: I live in the second district of Rhea County, twenty miles north.

Q: Ever preach on evolution?

A: I don't think so, definitely; that is, on evolution alone.

Q: Did you ever preach on evolution?

A: Yes. I haven't as a subject; just taken that up; in connection with other subjects. I have referred to it in discussing it.

Q: Against it or for it?

A: I am strictly for the Bible.

Q: I am talking about evolution, I am not talking about the Bible. Did you preach for or against evolution?

A: Is that a fair question, judge?

THE COURT: Yes, answer the question.

A: Well, I preached against it, of course! (Applause)

THE COURT: Let's have order.

MR. DARROW: Your honor, I am going to ask to have anybody excluded that applauds.

THE COURT: Yes, if you repeat that, ladies and gentlemen, you will be excluded. We cannot have applause. If you have feelings in this case you must not express them in the courtroom. If you do, I will have to exclude you.

Q: Have you formed a strong conviction against evolution?

A: Well, I have.

Q: You think you would be a fair juror in this case?

A: Well, I can take the law and the evidence in the case, I think, and try a man right . . .

Q: Have you heard of Mr. Scopes?

A: Yes, Sir; yes.

Q: You have heard that he is an evolutionist, haven't you?

A: Yes, sir, I have heard that . . .

Q: You now have the opinion that evolution is contrary to the Bible and that my client has been teaching evolution; as you stand there now, that is your opinion?

A: Sure it is.

Q: You could change it if you heard evidence enough to change it on?

A: Yes, sir.

Q: Otherwise you couldn't?

A: I have no right to; I don't think.

MR. DARROW: I challenge for cause.

THE COURT: Well, I want every juror to start in with an open mind. I will excuse you, Mr. Massingill.

After a total of seven additional challenges by Darrow, the Court, and the prosecution, the jury was completed. (Grebstein, 40-42)

Document 8: The Court Questions Darrow

B: Do you believe that the Bible is the revealed will of God, inspired and trustworthy?

D: I think there is much of value in the Bible, but I do not believe it is written or inspired by God. I believe it should be taken as every other book, and that the portions in it that are sublime, like such portions of every other great book, might be called inspired . . .

B: Do you believe in the miracles recorded in the Old and New Testaments?

D: I do not believe in miracles. I believe the universe acts and always has acted according to immutable law, and that whatever may be back of the universe, it has never violated these laws.

B: Do you believe in the immortality of the soul?

D: 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. (Grebstein, 132-133)

Document 9: Quotation Sheet—Evolution and the Bible

As you read the following statements, ask yourself which of the following might agree with each one: John Scopes, William J. Bryan, Clarence Darrow, Judge Raulston.

1. "Evolution has no purpose; man must supply this for himself."
2. "The Butler Act rested on the belief that truth can be determined by taking a vote."
3. "Parents should not be deprived by Government of the right to direct the lives and education of their own children."
4. "If I lose faith in Genesis, I'm afraid I'll lose faith in the rest of the Bible, and if I want to commit larceny I'll say I don't believe in the part of the Bible that says 'thou shalt not steal.' The same thing applies to murder."
5. "In a democracy issues of policy must be resolved by the elective process, not by appointive judges."
6. "In the history of the world there has been nobody who has dealt scientifically with all questions."
7. "Morality depends on religion. Government cannot be indifferent to religion."
8. "Apart from human purposes, no purpose exists."

9. "Human life is nothing without purpose. Read the Bible to determine God's purpose for you."
10. "Man has no real freedom of will; he is a machine; a product of heredity and environment."

Annotated Bibliography

- Coletta, Paolo E. *William Jennings Bryan*, 3 Volumes. Lincoln: University of Nebraska Press, 1969. A sympathetic and thorough treatment of the "Great Commoner." Volume 3 was helpful in its treatment of the Scopes trial and deals well with the question, "Who won the Scopes trial?"
- De Camp, L. Sprague. *The Great Monkey Trial*. Garden City, New York: Doubleday and Company, Inc., 1968. Well-documented, with a helpful discussion of Darwinian discoveries and experiments; brings out the humorous as well as the serious.
- Ginger, Ray. *Six Days or Forever? Tennessee v. John Thomas Scopes*. New York: Oxford University Press, 1958. Full of useful quotations; incisive and personal. Two especially good chapters, "Law as Symbolic Action" and "Some Perspectives" offer excellent insights into the trial as it fit into the 1920's and as its legacy lives on today.
- Grebstein, Sheldon Norman, ed. *Monkey Trial: The State of Tennessee v. John Thomas Scopes*. Boston: Houghton Mifflin Company, 1960. Selected documents from the Scopes trial; an excellent teaching aid. Includes a section called "The Editorial Reaction" which students should find fascinating; also selections from Scopes' textbook and the Bible.
- Follette, Marcel C., ed. *Creationism, Science, and the Law: The Arkansas Case*. Cambridge, Massachusetts: The MIT Press, 1983. Documents from the case over "Balanced Treatment" of Creation-Science and Evolution-Science, with articles by historians, journalists, scientists and legal experts.
- Montagu, Ashley, ed. *Science and Creationism*. New York: Oxford University Press, 1984. Fairly technical, philosophical articles; one excellent contribution is "Creation, Evolution and High School Texts" which gives actual samples of what Creation-Science texts contain. Some contributors were witnesses at the Arkansas trial.
- National Academy of Sciences, Committee on Science and Creationism. *Science and Creationism: A View from the National Academy of Sciences*. Washington, D.C.; National Academy Press. 1984. A nicely illustrated, attractively prepared book particularly created for classroom use; sensitively written. Only 26 pages.
- Shapley, Harlow, ed. *Science Ponders Religion*. New York: Appleton-Century-Crofts, 1960. Scientists write about religion; several selections on evolution and religion and the impact of one on the other; a philosophical work.
- Tompkins, Jerry R., ed. *D-Days at Dayton. Reflections on the Scopes Trial*. Baton Rouge: Louisiana State University Press, 1965. Very useful collection of articles, including

John Scopes' recollections forty years after the trial. Includes several Appendices of Affidavits read into the Dayton Court record in 1925. Illustrated.

Weinberg, Arthur, ed. *Attorney For the Damned*. New York: Simon and Schuster, 1957.

A summary of the many famous cases Clarence Darrow was participant in; a good introduction to the Scopes trial to set the mood.

Articles

Bentley, Michael L. "On the Teaching of Origins." *Today's Education*, 70 (April/May 1981): 56G-58G.

Betts, John Rickards. "Darwinism, Evolution, and American Catholic Thought, 1860-1900." *Catholic Historical Review*, 45 (July 1959): 161-185.

"Californians Will Monitor Evolution Teaching in Schools." *Christianity Today*, 26 (5 February 1982): 69-70.

"The Creationists." Special section in *Science*, 81 (December 1981).

"Creationists Lose in Arkansas." *Christianity Today*, 26 (22 January 1982): 28-29.

Donohue, John W. "Creation and Evolutions 'A Balanced Treatment.'" *America*, 146 (6 February 1982): 90-92.

Gish, Duane T. "Creation, Evolution, and the Historical Evidence." *American Biology Teacher*, 35 (March 1973): 132-140.

Gish, Duane T. "The Scopes Trial in Reverse." *The Humanist*, 37 (November/December 1977): 50-51.

Grabiner, J.V., and P.D. Miller. "Effects of the Scopes Trial: Was it a Victory for Evolutionists?" *Science*, 185 (6 September 1974): 832-837.

Saladin, Kenneth S. "Opposing Creationism: Scientists Organize." *The Humanist*, 42 (March/April 1982): 59, 61.

Sky, Theodore. "The Establishment Clause, Congress, and the Schools: An Historical Perspective." *Virginia Law Review*, 52 (December 1966): 1395-1466.

Zuidema, Henry P. "Genetics and Genesis: The New Biology Textbooks that Include Creationism." *Creation/Evolution*, (Summer 1981): 18-22.