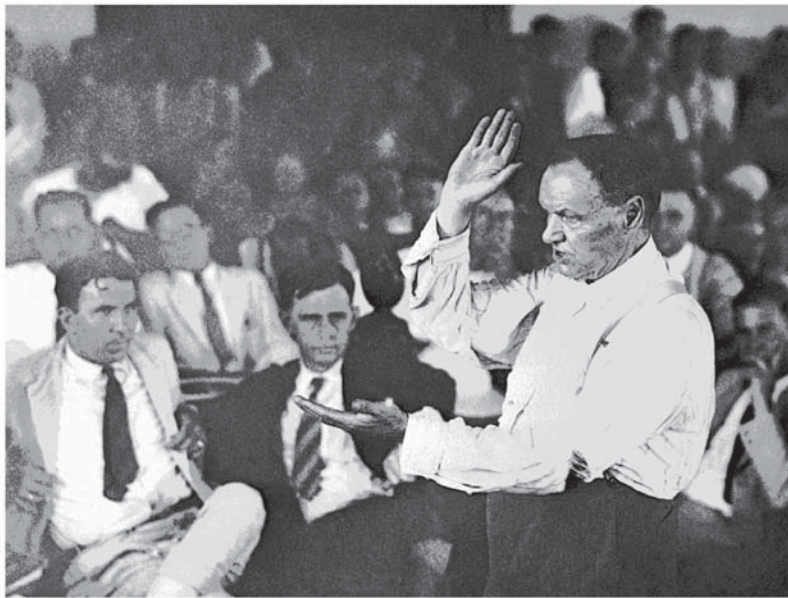


DEFINING MOMENTS  
THE SCOPES  
“MONKEY TRIAL”



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*Amnigraphics*

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# Chapter Four

## FIREWORKS IN THE COURTROOM



Every step in human progress, from the first feeble stirrings in the abyss of time, has been opposed by the great majority of men. Every valuable thing that has been added to the store of man's possessions has been derided by them when it was new, and destroyed by them when they had the power. They have fought every new truth ever heard of, and they have killed every truth-seeker who got into their hands.

—H. L. Mencken, "Homo Neanderthalensis,"  
*Baltimore Evening Sun*, June 29, 1925

The Scopes "Monkey Trial" re-convened on Monday morning, July 13, 1925. Once again the temperature and humidity combined to create stifling conditions in the courtroom. Judge Raulston opened the proceedings by inviting a local pastor to offer a prayer. This time the defense really fumed. Darrow stood and politely asked that the court dispense with the prayers, since the case held religious issues and the prayers might influence the jury. The judge waved off Darrow's concerns and called the pastor forward.

The pastor, Reverend Moffett, prayed: "Oh God, our Father, Thou who are the creator of the heaven and the earth and the sea and all that is in them. Thou who are the preserver and controller of all things, Thou who wilt bring out all things to Thy glory in the end, we thank Thee this morning that Thou does not only fill the heavens, but Thou doest also fill the earth." Whether the pastor had planned his remarks before Darrow's objection or changed them at that moment, they expressed clear support for the prosecution team.

Once the prayer concluded, the first order of business was to seek relief from the heat. Coats and ties were removed and slung over chairs. Even Raulston, who had a personal electric fan at his disposal, removed his suit coat. Only Malone remained in his impeccably tailored clothing. By now his self-discipline had been noted by everyone.

### Defense Moves to Quash the Indictment

“If a dramatist with a keen ear for dialogue and a rapid imagination had tried to write a script, he couldn’t have outdone the Dayton trial,” Scopes wrote in his memoir. “As soon as it opened that morning, it created friction. Every sentence was pointed and loaded with conflict.”

*“If a dramatist with a keen ear for dialogue and a rapid imagination had tried to write a script, he couldn’t have outdone the Dayton trial,” Scopes said. “As soon as it opened that morning, it created friction. Every sentence was pointed and loaded with conflict.”*

Scopes’s defense team went right to work. The attorneys immediately sought to quash Scopes’s indictment, asserting that the law he was accused of breaking was itself in violation of the Constitution of the State of Tennessee. This move ensured that if Scopes was found guilty, the defense would have the option of filing an appeal with Tennessee’s Supreme Court.

Raulston promptly ordered the jurors to leave the room and to be sequestered where they could not hear procedural arguments. The jurors had been sworn in simply for the misdemeanor case, not for complicated debates on the constitutionality of the Butler Act.

Defense attorney John Neal, his unkempt appearance in stark contrast to Malone, asked the judge to set protocol for the discussion on constitutionality. Neal wanted the defense to offer opening remarks. Then the prosecution could rebut, after which the defense would have the right to deliver final arguments. Neal was the defense attorney who knew the most about Tennessee law. He believed this defense motion might be the only chance Scopes’s side had to present its views, especially since Raulston still had not indicated whether he would allow testimony from the defense’s expert witnesses.

Raulston agreed to Neal’s request. The flamboyant Neal then launched into a lengthy and rambling speech detailing how the Butler Act violated the

Tennessee Constitution's separation of church and state clause. He reminded the judge that the Constitution existed to protect the minority—in this case, those who supported evolution in science classes—from decisions by the majority. He ended his remarks by declaring that the Butler Act established the teaching of religion in public schools, a clear violation of Tennessee's Bill of Rights.

At the conclusion of Neal's speech, ACLU attorney Arthur Garfield Hays rose to address the judge. Hays insisted that passage of the Butler Act was akin to passing a law ordering teachers to tell students that the sun revolved around the earth. (Hays used this analogy in part because Kentucky legislators had recently used this argument to defeat a proposed anti-evolution statute in their state.) "The Copernican theory [that the Earth and other planets in our solar system revolve around the sun] is a matter of common knowledge," Hays reminded the court. "Evolution is as much a scientific fact as the Copernican theory. The State may determine what subjects shall be taught, but if biology is to be taught, it cannot be demanded that it be taught falsely."

### McKenzie Takes the Floor

The prosecution began its rebuttal with a speech by former Rhea County attorney general Ben McKenzie. A retired Tennessee lawyer with a "country gentleman" Southern drawl, McKenzie knew that he could count on support from the audience. He courted this local approval by couching his remarks in humor. He nonetheless managed to stick barbs into the defense attorneys at several points.

First McKenzie ridiculed Hays's linkage of the Copernican theory and Darwin's evolutionary theory as scientific theories that were equally deserving of a place in Tennessee's public school curriculum. "It is not half so much kin to this case as he says we are to the monkeys," McKenzie quipped.

McKenzie then threw out his own challenge. "The questions [based on the Butler Act and Scopes's indictment] have all been settled in Tennessee," he said, "and are favorable to our contention. If these gentlemen have any laws in the great metropolitan city of New York that conflict with it, or in the great white city of the Northwest [Darrow's Chicago] that will throw any light on it, we will be glad to hear about it. They have many great lawyers and courts up there." In his own folksy, Southern way, McKenzie was implying that



Prosecuting attorney Ben McKenzie (at left with arm around Clarence Darrow) established a recurring prosecution theme when he implied that Scopes’s defense attorneys, most of whom hailed from large northern cities, had no business litigating a case in a rural court in Tennessee.

city lawyers like Hays, Malone, and Darrow had no business litigating a case in a rural court in Tennessee. McKenzie’s remarks met with loud applause and cheers from the assembled spectators.

Malone objected vigorously. “We are here, rightfully, as American citizens,” he said.

Judge Raulston responded that McKenzie was renowned for his sense of humor.

“Why, you all ain’t acquainted with me,” McKenzie added. “I love you.”

Malone again demanded that McKenzie stick to the issues under discussion.

Undaunted, McKenzie replied: “I love you.”

“Sure you do,” Darrow snarled in response.



More heated debate followed after the lunch break. Making his first appearance for the prosecution, young Tom Stewart proved a worthy foe for the seasoned lawyers across the aisle. Stewart vigorously denied that the Butler Act ran counter to the provisions for separation of church and state in the Tennessee Constitution. He noted that John Scopes had every right to lecture on the theory of evolution anywhere but in a public classroom. He reminded the judge that taxpayers funded the public schools, and asserted that taxpayers should have ultimate authority—through their elected state representatives—over what could be taught in the schools. Finally, he pointed out that the Butler Act did not require that students attend one particular church, or any church at all.

Darrow interrupted at that point. He reminded Stewart that the Tennessee Constitution protected citizens from the “preference” of one religion over any others. But he charged that the Butler Act gave preference to the Bible. “Why not the Koran?” he asked.

“If your Honor please, the Saint James version of the Bible is the recognized one in this section of the country,” responded Stewart. “The laws of the land recognize the Bible; the laws of the land recognize the law of God and Christianity as a part of the common-law.”

Malone responded that this view would be prejudiced against any Jewish Tennesseans. Stewart replied that people of that faith were permitted to worship as they pleased, and that this matter had nothing to do with his main point: that taxpayers had a right to influence curriculum in taxpayer-funded schools.

### **Darrow Challenges the Butler Act**

On the afternoon of July 13, Clarence Darrow gave his first lengthy statement of the trial. Darrow had visualized the entire Scopes trial in advance as a grand master might contemplate a chess game. He desperately wanted to avoid allowing Bryan to make any closing remarks. He knew Bryan had been working on a summation speech for weeks. The defense had the power to conclude the case without any summation. It could simply ask the jury to find Scopes guilty. Darrow was prepared to take this step, but he wanted to make as many points about evolution and theology as he could before doing so.

Standing before the judge with his thumbs hooked in his old-fashioned bright suspenders and his shoulders hunched, Darrow hardly seemed to epit-



Lead defense attorney Clarence Darrow condemned the Butler Act as unconstitutional and a product of “ignorance and bigotry” during the opening day of the trial.

omize the urbane intellectual from Chicago. In fact he looked and talked like the man he was—a blunt, self-educated native of small-town America. But Darrow was also a master at delivering well-crafted, emotionally charged courtroom speeches. This talent was on full display that afternoon.

Darrow began his remarks with a cutting response to McKenzie’s suggestion that big-city outsiders had no business participating in the trial. Darrow reminded the judge that William Jennings Bryan, Jr., a “very pleasant gentleman,” hailed from California. Then, in his first acidic remark of the afternoon, Darrow added: “Another who is prosecuting this case, and who is responsible for this foolish, mischievous and wicked act ... comes from Florida.” This was a clear reference to Bryan, an Illinois native who spent much of his life in Nebraska before he and his wife moved to Florida for her health.

Darrow then moved on to describe the Butler Act not only as “foolish” and a product of “ignorance and bigotry,” but also a dangerous setter of legal prece-

dent because it allowed one particular religious sect—Christian fundamentalists—to limit the constitutional right of everyone else, even other Christians.

Darrow also returned to the points his fellow defense attorneys had made earlier in the day. He reminded the judge that the indictment against Scopes stated that the teacher had taught *evolution*. But the attorney then pointed out that the Butler Act made no explicit mention of evolution; it simply said that it was illegal to teach any theory of human origins that contradicted the book of Genesis in the Bible.

Building on this point, Darrow argued that in order to comply with the Butler Act, every science teacher in Tennessee would have to study the Bible in depth so as to ensure that they never contradicted any scripture at any time. If they were forced to take such steps, said Darrow, science teachers would be required to teach that the earth was flat and that the sun revolved around it. They could not teach chemistry or offer instruction on how to build a locomotive or an engine, since this information could not be found in the Bible. “Just imagine making it a criminal code that is so uncertain and impossible that every man must be sure that he has read everything in the Bible and not only read it, but understand it, or he might violate the criminal code.”

Darrow stated that he personally would applaud and defend anyone who took solace from the Bible, which he described as “a book primarily of religion and morals.” But he noted that many other people worshipped in other ways, and he asserted that those religions held their own validity too. “Here is the State of Tennessee, living peacefully, surrounded by its beautiful mountains, each one of which contains evidence that the earth is millions of years old—people quiet, not all agreeing upon any one subject and not necessary,” said Darrow. “If I could not live in peace with people I did not agree with, why—what—I could not live! Here is the State of Tennessee going along in its own business, teaching evolution for years, state boards handing out books on evolution, professors in colleges, teachers in schools, lawyers at the bar, physicians, ministers, a great percentage of the intelligent citizens of the State of Tennessee, evolutionists, have not even thought it was necessary to leave their Church. They believed that they could appreciate and understand and make their own simple and human doctrine of the Nazarene [Jesus Christ], to love their neighbor, be kindly with them, not to place a fine on and not to try to send to jail some man who did not believe as they believed, and got along all right with it too.”

Throughout Darrow’s remarks, the stifling courtroom was so quiet the crowd could hear the clicks of the telegraph operators as they sent the lawyer’s words across the wires to the newspapers. He concluded by voicing his fears about the possible legacy of the Butler Act and similar legislation: “If today you can take a thing like evolution and make it a crime to teach it in the public school, tomorrow you can make it a crime to teach it in the private schools, and next year you can make it a crime to teach it . . . in the church.

“At the next session you may ban books and newspapers. Soon you may set Catholic against Protestant, and Protestant against Protestant, and try to foist your own religion upon the minds of men. If you can do one, you can do the other. Ignorance and fanaticism are ever busy and need feeding. Always they are feeding and gloating for more. Today it is the public school teachers, tomorrow the private. The next day the preachers and the lecturers, the magazines, the books, the newspapers.

“After awhile, your Honor, it is the setting of man against man and creed against creed, until with flying banners and beating drums we are marching backward to the glorious days of the sixteenth century when bigots fired [kindling] to burn the men who dared to bring any intelligence and enlightenment and culture to the human mind.”

When Darrow finally sat down, Judge Raulston adjourned court for the day. As Darrow collected his papers—and a round of hearty handshakes from his colleagues—some audience members hissed. Few spectators seemed to have been moved by his words.

The following day, the Memphis, Tennessee *Commercial Appeal* ran an editorial cartoon depicting Darrow as the Anti-Christ, alone on a hill surrounded by skulls, demons, and Satan. In his column for the *Baltimore Evening Sun*, Mencken wrote that the impact of Darrow’s speech on the courtroom observers in Dayton “seem[ed] to be precisely the same as if he had bawled it up a rainspout in the interior of Afghanistan.”

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### More Debate about Courtroom Prayers

A thunderstorm hit Dayton the evening after Darrow’s speech, knocking out the electrical power. By morning the power had been restored, but Judge



Clarence Darrow's lengthy remarks concerning the Butler Act's potential impact on the future of American law left most courtroom spectators unimpressed.

Raulston had not yet completed his opinion on the defense motion to quash Scopes's indictment. Raulston announced that he would need a few more hours to work privately. Nevertheless, he called forward a pastor to open the court day with a prayer.

This time Darrow rose to formally object to the daily prayer and its potential impact on the jurors. "I object to prayer and I object to the jury being present when the court rules on the objection," he said. Darrow claimed that Raulston was turning the courtroom "into a meetinghouse." Darrow also pointed out that in Raulston's regular duties as circuit court judge, the court did not always open with a prayer.

A heated debate then erupted between Ben McKenzie and Stewart for the prosecution and Malone and Hays for the defense. Stewart accused Scopes's





Arthur Garfield Hays and other defense attorneys strongly objected to Judge Raulston's decision to allow each day of the trial to open with a prayer.

defense team of being “agnostics” who needed to remember that Tennessee was a “God-fearing country.” Malone denied being an agnostic (while declaring that he supported Darrow's right to be considered one) and assured Stewart that New York City was just as God-fearing as Tennessee. Stewart countered by insisting that the Scopes case was not about religion in any case; it was about determining whether the defendant had broken a legal statute.

Raulston overruled the defense's objection and invited yet another fundamentalist pastor to deliver a prayer. This one, Dr. Stribling, ended his address: “May there be in every heart and in every mind a reverence to the Great Creator of the world.” On that note, the court adjourned until after lunchtime.

As the court reconvened for an afternoon session, Hays handed Raulston a petition from Dayton's small number of “modernist” pastors. The petition asked that they be given an opportunity to offer morning prayers, just as their fundamentalist colleagues had been doing over the first few days of the trial. Raulston said he would ask the local pastors' association to choose the persons who would pray for the rest of the trial. This decision drew laughter and applause from the assembled crowd, because most of Dayton's pastors were decidedly anti-evolution. Nevertheless, for the duration of the trial, modernist clergymen alternated with fundamentalist clergymen in delivering the opening prayers.

### A Newspaper Scoop

After receiving the pastors' petition, Raulston disappeared from the packed courtroom for a lengthy period of time. The rainstorm had done nothing to quell the heat, and everyone suffered as they waited for the judge's return.

When Raulston did return from his chambers, he was furious. He had learned that some afternoon newspapers were already reporting his ruling on

## Songs Devoted to the “Monkey Trial” Controversy

The uproar surrounding the Scopes “Monkey Trial” inspired numerous songwriters and poets to pen new works on the subject. Nearly all of these works expressed support for William Jennings Bryan and the anti-evolution perspective. But the tone of these works varied enormously. Some songs, such as “Fiddlin’ John” Carson’s “There Ain’t No Bugs on Me” adopted a lighthearted, amused viewpoint on the whole issue. But many others took a much more serious tone, and Bryan’s death shortly after the trial’s end triggered a wave of respectful eulogies such as “The Death of William Jennings Bryan” by Charles O. Oaks.

The following song, “The John Scopes Trial” by Carlos B. McAfee, is representative of the solemn tone that most “Monkey Trial”-inspired songs and poems took:

All the folks in Tennessee  
Are as faithful as can be  
And they know the Bible teaches what is right  
They believe in God above and his great undying love  
And they know they are protected by His might

### CHORUS

You may find a new belief—it will only bring you grief  
For a house that’s built on sand will surely fall  
And where-ever you may turn—there’s a lesson you will learn  
That the old religion’s better after all  
Then to Dayton came a man  
With his new ideas so grand  
And he said we came from monkeys long ago  
But in teaching his belief  
Mister Scopes found only grief  
For they would not let their old religion go  
Then the folks throughout the land  
Saw his house was built on sand  
And they said we will not listen any more  
So they told him he was wrong and it wasn’t very long  
Till he found that he was barred from ev’ry door  
Oh you must not doubt the word  
That is written by the Lord  
For if you do your house will surely fall  
And Mister Scopes will learn where-ever he may turn  
That the old religion’s better after all

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Robison, Carson J. (Carlos B. McAfee, pseud.) “The John T. Scopes Trial,” 1925. Special Collections, Leonard H. Axe Library, Pittsburg State University.

the constitutionality of Scopes’s indictment, even though he had not yet read his decision in court. “If I find that [reporters] have corruptly secured such information I shall deal with them as the law directs,” Raulston railed. He promptly adjourned the court without issuing his ruling and ordered five well-known journalists (not including H. L. Mencken) to determine how the press had learned of his decision in advance.

In his memoir *Heathen Days*, Mencken described how the “scoop” occurred. During the lunch break, William K. Hutchinson of the Hearst newspaper chain slyly asked Raulston if, after he gave his decision, court would adjourn until the next day. Raulston replied that it would.

Raulston had made a foolish mistake. If he had decided to uphold the defense’s charge that the indictment was unconstitutional, *the trial would have ended at that point and there would be no “next day” of the trial*. By stating that the case would go on, the judge unwittingly revealed to Hutchinson his intention to deny the defense’s motion to dismiss the indictment.

The following morning, Day Four of the Scopes trial, began with a more conciliatory prayer. Judge Raulston then asked the committee of journalists for their findings on the “scoop.” By Mencken’s account, the five journalists spent the better part of the previous night playing poker. After a few hours’ rest, they dressed in their best attire, reported to the courtroom, and allowed their committee chairman, Richard Beamish, to defend Hutchinson. Beamish played to Raulston’s vanities, acknowledged that professional ethics had been breached, and then beseeched the judge’s pardon on behalf of his colleague.

Raulston had probably figured out what had happened by that time. He pardoned Hutchinson, but warned the assembled press corps against future challenges of the court’s authority. Proceeding with the business of the trial itself, Raulston then issued his widely anticipated ruling against the defense’s motion to quash the indictment. The two sides would now commence making their arguments.

### Opening Statements

The jury, which had missed most of the excitement of the trial’s first three days, was called into the courtroom. They filed in and took their seats in the jury box. The prosecution then opened its case against John Scopes.

Stewart began the prosecution of *Tennessee v. Scopes* with a two-sentence declaration. John Scopes had broken the law by teaching that “mankind is





In his opening statement, Dudley Malone (standing at far right with paper in hand) claimed that Scopes had not violated the Butler Act because it was possible to reconcile evolutionary theory with the Biblical story of creation.

descended from a lower order of animals.” This teaching, Stewart said, directly violated the Butler Act of 1925. Stewart estimated that the prosecution would need one hour to prove its case.

Malone opened the case for the defense with a longer speech. Setting aside the question of whether the Butler Act was constitutional for the moment, Malone claimed that Scopes had actually never broken the law. The defense would make its case by producing experts from the realms of science and theology who believed in both evolution *and* the workings of God in humankind. “We believe there is no conflict between evolution and Christianity,” Malone stated.



Local prosecutor Tom Stewart maintained throughout the trial that the paramount issue was not the validity of evolutionary theory, but whether John Scopes had broken a legal statute.

Dudley Field Malone had known William Jennings Bryan for many years and had even worked for Bryan as an undersecretary of state. Now Malone turned his former colleague’s words against him by quoting from an article Bryan had written twenty years earlier that took a much broader view of religious belief and condemned any measure that might favor one particular belief over another. “We of the defense appeal from [Bryan’s] fundamentalist views of today to his philosophical views of yesterday, when he was a modernist, to our point of view,” Malone said.

When Malone continued to single Bryan out as the person behind the fundamentalist legislation, Stewart finally objected. Bryan then rose to his own defense. “I ask no protection from the court,” he states, “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 opening blast from “The Great Commoner” drew such lengthy and enthusiastic applause from the spectators that Judge Raulston worried out loud that the courthouse floor might collapse.

### Simple Questions

Stewart called four witnesses. The first was Rhea County School Superintendent Walter White, one of the instigators of the charges. Under Stewart’s questioning, White told the jury that Scopes admitted teaching evolutionary theory from the pages of Hunter’s *A Civic Biology*.

During cross-examination, Darrow read the passages from Hunter’s textbook that mentioned Darwin and the relationship between man and mammals. He asked White if those were the passages in question, and White said yes. Darrow then asked White if the textbook had been approved by the state for use in Tennessee high schools. White said yes.

Stewart then called two of Scopes's students, a freshman named Howard Morgan and a senior named Harry Shelton. Both stated that Scopes had taught about evolution. During cross-examination by Darrow, both boys were clearly nervous and uncomfortable with all the attention. Both youths, though, declared that they had not been harmed by the instruction. Shelton, in fact, testified that he still attended church regularly and believed in God.

The prosecution's last witness was Frank "Doc" Robinson, the drugstore owner who had helped convince Scopes to challenge the law. During his testimony Robinson recalled how Scopes had taken the copy of Hunter's *A Civic Biology* from the drugstore shelf and stated that no Tennessee teacher could teach biology without teaching evolution. Darrow enjoyed cross-examining Robinson, who was a member of the Rhea County school board. When the druggist admitted that he sold Hunter's textbook in his store, Darrow even insinuated that the board member might be a Butler Act violator himself for keeping the textbook on sale.

When Robinson stepped down from the stand, Stewart rested the state's case. The hour had come to defend John T. Scopes.

**John T. Raulston (1868-1956)**

*Presiding Judge in the Scopes “Monkey Trial”*

**J**ohn Tate Raulston was born September 22, 1868, in rural Marion County, Tennessee. His father, William Doran Raulston, and mother, Comfort Matilda Tate Raulston, supported their family through farming. He was one of seven siblings, all schooled in the Bible by their mother and local Methodist ministers.

Raulston earned a degree from U. S. Grant University (now Tennessee Wesleyan College) and completed his law studies at the University of Chattanooga while working in the law offices of William D. Spear. Raulston was admitted to the bar in 1896. He spent the next several years teaching school before finally opening his own law practice in Whitwell, Tennessee, in 1902.

Raulston served one term in the Tennessee state legislature, from 1902 to 1904. Thereafter he worked in a firm in South Pittsburgh, Tennessee, until 1918, when he was elected judge of Tennessee’s eighteenth district. He spent the next several years as a circuit-riding judge, traveling through seven counties on a regular rotating schedule. When he arrived in each county seat, he would hear all the cases that had accumulated since his last visit.

Raulston’s quiet judicial career came to an end in 1925, when John T. Scopes was arrested for teaching evolution in a public school in Dayton, Tennessee, in clear violation of the state’s Butler Act. As famous lawyers such as William Jennings Bryan and Clarence Darrow lined up for the prosecution and the defense, respectively, Raulston adjusted his circuit-riding schedule so that the Scopes trial could proceed quickly. Raulston saw the case as a way to increase his own local popularity and possibly even capture nationwide attention. As Edward J. Larson noted in *Summer for the Gods*, Raulston “apparently felt called by God to preside over this trial and would not let the opportunity slip through his hands.”



### **Sympathetic to the Prosecution**

On a personal level, Raulston approved of the state’s anti-evolution law and saw the Scopes case as a clear violation of that law. His views were evident from the outset of the legal proceedings. At the preliminary hearing against Scopes on May 25, 1925, Raulston convened a grand jury, read the anti-evolution statute, and then read the first chapter of Genesis from the Bible. The grand jury indicted Scopes in a matter of hours.

During the actual trial in Dayton, Raulston ruled against the defense on several important issues. For example, he refused to allow the defense to call expert witnesses to the stand to testify on the science of evolution or ways in which the theory could be reconciled with Christian religious beliefs. Instead, he only allowed the defense to submit written testimony from these experts that could be used in appeals to the state Supreme Court. Raulston also denied defense requests that he halt the state-sanctioned prayers that began each session of court, even though some of them were clearly biased against evolutionary science.

By the sixth day of the Scopes trial, Clarence Darrow had become so frustrated by the judicial rulings that he leveled an insulting reference to Raulston’s lack of impartiality. This insult earned Darrow a contempt of court citation. When court next convened, Darrow apologized for his remark, and Raulston accepted the apology and withdrew the contempt citation. This exchange paved the way for Darrow’s famous showdown with Bryan on July 20, 1925, the final day of testimony in the trial.

Raulston ordered the trial proceedings to be held outside on that day because of concerns about the heat and the courthouse floor’s ability to support the weight of the assembled legal teams, jurors, and spectators. He allowed Darrow to call Bryan to the stand as an “expert witness” on the Bible and then looked on quietly as Darrow grilled Bryan mercilessly on Biblical miracles and ancient history. Finally, as the argument grew heated, Raulston halted Darrow’s questions and adjourned court for the day.

### **A Fateful Legal Misstep**

The following morning, Raulston ordered Bryan’s testimony from the previous day stricken from the court record. Darrow then asked that the jury retire and come back with a guilty verdict against Scopes. This legal maneuver prevented Bryan from calling Darrow to the stand (as they had previously agreed),

and it also paved the way for an appeal of the verdict to a higher court. Raulston instructed the jury, and in nine minutes the jurors returned with a guilty verdict. Raulston set Scopes's fine at the minimum amount of \$100.

The fact that Raulston imposed the fine later gave Tennessee's Supreme Court a technicality upon which it could throw out the case. It was the *jury*, and not *Raulston*, who should have set the level of fine, according to the high court. The high court reversed Scopes's conviction. This "victory" was actually a bitter disappointment to Scopes, Darrow, and the rest of the defense team, for it meant that the state Supreme Court had avoided addressing the constitutionality of the Butler Act—and the legality of teaching evolution in public schools. One legal error on Raulston's part thus allowed the anti-evolution Butler Act to remain in the Tennessee statute books, uncontested, for the next 40 years.

If Raulston thought the Scopes trial would increase his popularity with his constituents in Tennessee, he was proven wrong. In 1926 he failed in his bid for re-election to his circuit judge post. He never served in a public office again, although he once tried to run for governor of Tennessee.

Raulston worked for the remainder of his life as a partner in the firm of Raulston, Raulston & Swafford. He accumulated a sizable fortune representing corporate clients from the coal and railroad industries. Occasionally he lectured on the topic of law as it related to the teaching of evolution. His *New York Times* obituary suggests that in the wake of the Scopes trial Raulston "moderated his views of fundamentalism and education," taking the position that science classes might not corrupt the morals of young students.

Raulston married twice. His first wife, Estelle Otto Faller, died in 1916, and he later married Eva Davis. He suffered a nervous breakdown in 1950 and then fractured his hip in a fall. He was seldom seen in public after that, and he died in South Pittsburgh, Tennessee, on July 11, 1956. He was survived by Davis and two daughters.

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## H. L. Mencken Describes Jury Selection in Dayton

*This editorial by Baltimore journalist H. L. Mencken deeply angered Dayton's citizens when it was reprinted in Chattanooga newspapers. The nominal subject of Mencken's column was the jury selection process for the Scopes "Monkey Trial," but the journalist devoted most of his column to insulting remarks about the religious beliefs and local culture of the people of Dayton. Mencken's comments were driven by a profound and lifelong disgust toward what he perceived as ignorance and superstition, but this disdain revealed his own bigotry toward rural people in general. The individuals he mentions in the first paragraph of his column are prominent community leaders in the Baltimore area.*

**C**hattanooga, Tenn., July 11. — Life down here in the Cumberland mountains realizes almost perfectly the ideal of those righteous and devoted men, Dr. Howard A. Kelly, the Rev. Dr. W. W. Davis, the Hon. Richard H. Edmonds and the Hon. Henry S. Dulaney. That is to say, evangelical Christianity is one hundred per cent triumphant. There is, of course, a certain subterranean heresy, but it is so cowed that it is almost inarticulate, and at its worst it would pass for the strictest orthodoxy in such Sodoms of infidelity as Baltimore. It may seem fabulous, but it is a sober fact that a sound Episcopalian or even a Northern Methodist would be regarded as virtually an atheist in Dayton. Here the only genuine conflict is between true believers. Of a given text in Holy Writ one faction may say this thing and another that, but both agree unreservedly that the text itself is impeccable, and neither in the midst of the most violent disputation would venture to accuse the other of doubt.

To call a man a doubter in these parts is equal to accusing him of cannibalism. Even the infidel Scopes himself is not charged with any such infamy. What they say of him, at worst, is that he permitted himself to be used as a cat's paw by scoundrels eager to destroy the anti-evolution law for their own dark and hellish ends. There is, it appears, a conspiracy of scientists afoot. Their purpose is to break down religion, propagate immorality, and so reduce mankind to the level of the brutes. They are the sworn and sinister agents of Beelzebub, who yearns to conquer the world, and has his eye especially upon Tennessee. Scopes is thus an agent of Beelzebub once removed, but that is as far as any fair man goes in condemning him. He is young and yet full of folly. When the secular arm has done execution upon him, the pastors will tackle him and he will be saved.

The selection of a jury to try him, which went on all yesterday afternoon in the atmosphere of a blast furnace, showed to what extreme lengths the salvation of the local primates has been pushed. 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. The slightest sign of anything further brought forth a peremptory challenge from the State. Once a man was challenged without examination for simply admitting that he did not belong formally to any church. Another time a panel man who confessed that he was prejudiced against evolution got a hearty round of applause from the crowd.

The whole process quickly took on an air of strange unreality, at least to a stranger from heathen parts. The desire of the judge to be fair to the defense, and even polite and helpful, was obvious enough—in fact, he more than once stretched the local rules of procedure in order to give Darrow a hand. But it was equally obvious that the whole thing was resolving itself into the trial of a man by his sworn enemies. A local pastor led off with a prayer calling on God to put down heresy; the judge himself charged the grand jury to protect the schools against subversive ideas. And when the candidates for the petit jury came up Darrow had to pass fundamentalist after fundamentalist into the box—some of them glaring at him as if they expected him to go off with a sulphurous bang every time he mopped his bald head.

In brief this is a strictly Christian community, and such is its notion of fairness, justice and due process of law. Try to picture a town made up wholly of Dr. Crabbes and Dr. Kellys, and you will have a reasonably accurate image of it. Its people are simply unable to imagine a man who rejects the literal authority of the Bible. The most they can conjure up, straining until they are red in the face, is a man who is in error about the meaning of this or that text. Thus one accused of heresy among them is like one accused of boiling his grandmother to make soap in Maryland. He must resign himself to being tried by a jury wholly innocent of any suspicion of the crime he is charged with and unanimously convinced that it is infamous. Such a jury, in the legal sense, may be fair. That is, it may be willing to hear the evidence against him before bumping him off. But it would certainly be spitting into the eye of reason to call it impartial.

The trial, indeed, takes on, for all its legal forms, something of the air of a religious orgy. The applause of the crowd I have already mentioned. Judge



Raulston rapped it down and threatened to clear the room if it was repeated, but he was quite unable to still its echoes under his very windows. The courthouse is surrounded by a large lawn, and it is peppered day and night with evangelists. One and all they are fundamentalists and their yells and bawlings fill the air with orthodoxy. I have listened to twenty of them and had private discourse with a dozen, and I have yet to find one who doubted so much as the typographical errors in Holy Writ. They dispute raucously and far into the night, but they begin and end on the common ground of complete faith. One of these holy men wears a sign on his back announcing that he is the Bible champion of the world. He told me today that he had studied the Bible four hours a day for thirty-three years, and that he had devised a plan of salvation that would save the worst sinner ever heard of, even a scientist, a theater actor or a pirate on the high seas, in forty days. This gentleman denounced the hard-shell Baptists as swindlers. He admitted freely that their sorcerers were powerful preachers and could save any ordinary man from sin, but he said that they were impotent against iniquity. The distinction is unknown to city theologians, but is as real down here as that between sanctification and salvation. The local experts, in fact, debate it daily. The Bible champion, just as I left him, was challenged by one such professor, and the two were still hard at it an hour later.

Most of the participants in such recondite combats, of course, are yokels from the hills, where no sound is heard after sundown save the roar of the catamount and the wailing of departed spirits, and a man thus has time to ponder the divine mysteries. But it is an amazing thing that the more polished classes also participate actively. The professor who challenged the Bible champion was indistinguishable, to the eye, from a bond salesman or city bootlegger. He had on a natty palm beach suit and a fashionable soft collar and he used excellent English. Obviously, he was one who had been through the local high school and perhaps a country college. Yet he was so far uncontaminated by infidelity that he stood in the hot sun for a whole hour debating a point that even bishops might be excused for dodging, winter as well as summer.

The Bible champion is matched and rivaled by whole herds of other metaphysicians, and all of them attract good houses and have to defend themselves against constant attack. The Seventh Day Adventists, the Campbellites, the Holy Rollers and a dozen other occult sects have field agents on the ground. They follow the traveling judges through all this country. Everywhere they go, I am told, they find the natives ready to hear them and dispute with them. They find highly accomplished theologians in every village, but

even in the county towns they never encounter a genuine skeptic. If a man has doubts in this immensely pious country, he keeps them to himself.

Dr. Kelly should come down here and see his dreams made real. He will find a people who not only accept the Bible as an infallible handbook of history, geology, biology and celestial physics, but who also practice its moral precepts—at all events, up to the limit of human capacity. It would be hard to imagine a more moral town than Dayton. If it has any bootleggers, no visitor has heard of them. Ten minutes after I arrived a leading citizen offered me a drink made up half of white mule and half of coca cola, but he seems to have been simply indulging himself in a naughty gesture. No fancy woman has been seen in the town since the end of the McKinley administration. There is no gambling. There is no place to dance. The relatively wicked, when they would indulge themselves, go to Robinson’s drug store and debate theology.

In a word, the new Jerusalem, the ideal of all soul savers and sin exterminators. Nine churches are scarcely enough for the 1,800 inhabitants: many of them go into the hills to shout and roll. A clergyman has the rank and authority of a major-general of artillery. A Sunday-school superintendent is believed to have the gift of prophecy. But what of life here? Is it more agreeable than in Babylon? I regret that I must have to report that it is not. The incessant clashing of theologians grows monotonous in a day and intolerable the day following. One longs for a merry laugh, a burst of happy music, the gurgle of a decent jug. Try a meal in the hotel; it is tasteless and swims in grease. Go to the drug store and call for refreshment: the boy will hand you almost automatically a beaker of coca cola. Look at the magazine counter: a pile of *Saturday Evening Posts* two feet high. Examine the books: melodrama and cheap amour. Talk to a town magnifico; he knows nothing that is not in Genesis.

I propose that Dr. Kelly be sent here for sixty days, preferably in the heat of summer. He will return to Baltimore yelling for a carboy of pilsner and eager to master the saxophone. His soul perhaps will be lost, but he will be a merry and a happy man.

Source: Mencken, H. L. “Mencken Likens Trial to Religious Orgy, with Defendant a Beelzebub.” *Baltimore Evening Sun*, July 11, 1925.

# IMPORTANT PEOPLE, PLACES, AND TERMS

## **18th Amendment**

Ratified in 1919, this amendment outlawed the sale or production of alcoholic beverages throughout America. Better known as Prohibition, the amendment was repealed by the 21st Amendment in 1933.

## **19th Amendment**

This constitutional amendment, ratified in 1920, gave women the right to vote in national elections.

## **Admissible evidence**

Testimony and documents that can be entered into a trial after being deemed relevant to the case. A judge makes the determination of admissibility.

## **Affidavit**

Oral statements put into writing, or written reports, submitted to a court.

## **Agnostic**

A person who believes that it is not possible to know or prove whether God exists.

## **American Civil Liberties Union (ACLU)**

An organization dedicated to defending freedom of speech and minority rights in the United States.

## **Appeal**

An opportunity to have a higher court review a verdict rendered in a lower court. All cases must go through the appeals process before reaching the U.S. Supreme Court.

## **Atheist**

A person who does not believe that God, heaven, or hell exists.

# CHRONOLOGY

1658

Bishop James Ussher publishes *Annals of the World*, in which he dates the origin of creation to October 23, 4004 B.C.E. See p. 7.

1831-36

Charles Darwin sails on the *H.M.S. Beagle*, collecting animal and plant specimens from remote locations in South America and the Pacific Islands. See p. 9.

1857

Workers discover the first remains of Neanderthal Man in Germany. See p. 10.

1859

Darwin publishes *The Origin of Species by Natural Selection; Or, The Preservation of Favoured Races in the Struggle for Life*. See p. 9.

1871

Darwin publishes *The Descent of Man, and Selection in Relation to Sex*, a work that compares humans to other mammals and declares that the human species evolved in Africa from ancestral apes. See p. 9.

1891

Eugène Dubois discovers a fossil pre-human in Java. He names it *Pithecanthropus erectus*. The name is later changed to *Homo erectus*. See p. 10.

1896

July 9 – William Jennings Bryan delivers his famous “Cross of Gold” speech, advocating a silver standard for America’s monetary system. The speech earns him the first of three Democratic presidential nominations. See p. 13.

1907

July 29 – Clarence Darrow wins an acquittal for controversial labor leader William “Big Bill” Haywood in a murder trial in Boise, Idaho. See p. 13.

1912

November – Charles Dawson and Arthur Smith Woodward announce the discovery of “Piltdown Man,” a human-like fossil featuring a skull with an apelike jaw. In 1953 the specimen is found to be a hoax. See p. 11.

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(ill.) denotes illustration

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