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PRESIDENT'S PERSPECTIVE

Confidence in jury system declining What hath 'Scopes' wrought?



Bill Haltom
President

Eighty years ago this summer, one of the biggest jury trials in American history occurred in Dayton. Not Dayton, Ohio, but rather the county seat of Rhea County, Tenn. The trial, *State of Tennessee v. John Scopes*, attracted a worldwide audience as it was broadcast over a national radio network. For both good and bad, Scopes placed the American legal system and us lawyers on center stage, and we've been there ever since.

It was all a legal charade. John Thomas Scopes was a 24-year-old football coach who agreed to be indicted for violating a Tennessee law that banned the teaching of evolution. Never mind that Coach Scopes, was simply a substitute teacher who couldn't recall ever teaching evolution. That was beside the point. Like football, it was all just a game to Coach Scopes, who was recruited by the American Civil Liberties Union and several "progressive" town leaders in Dayton to set up a heavyweight legal battle between legendary trial lawyer Clarence Darrow and world-famous orator William Jennings Bryan.

"We have to help educate the public that while the American jury system is not perfect, it is the greatest system ever devised for fairly and equitably resolving conflicts."

There was no "Court TV" in 1925. No camera in the courtroom. But there was a microphone in the courtroom, and a mighty big one at that. It was set up by WGN Radio out of Chicago to broadcast gavel-to-gavel coverage to millions of Americans.

Nancy Grace wasn't around in those days to provide commentary. But H. L. Mencken was. He was a cynical newspaper columnist from Baltimore who covered the trial with all the objectivity of Larry Munson broadcasting a Georgia football game. Mencken was clearly rooting for Darrow, and to the chagrin of all the good progressive people of Rhea County, he referred to the citizens of Dayton as "the yokels in Monkey Town."

The trial began on July 10, 1925, with Judge John Ralston asking a local preacher to open the proceedings with a prayer. Darrow objected. "Overruled," said Judge Ralston, pointing out to Mr. Darrow that local ministers would be opening the proceedings each day with prayer, but would make no reference to the issues involved in the case. Judge Ralston also denied Darrow's request that a large banner that read, "Read Your Bible Daily" be removed from the entrance of the courthouse. These two rulings should have been an indication to Darrow that he had an uphill legal battle on his hands. To say the least, it was a road game.

In the second week of trial, Judge Ralston moved the proceedings outdoors. The Rhea County courthouse wasn't air conditioned, and those funeral home hand fans just weren't doing the job.

It is an understatement to say that it was an unusual trial. William Jennings
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Bryan not only served as the prosecutor. He also testified as an expert witness on the Bible.

Not to be outdone, Darrow, in his closing argument, asked the jury to find Coach Scopes guilty.

The jury deliberated for nine minutes, which is actually about eight minutes too long considering that the defense counsel had just asked them to find the defendant guilty. The jury then returned and announced it was granting Darrow's request and finding Coach Scopes guilty. Judge Ralston accepted the verdict and fined Scopes \$100. Williams Jennings Bryan promptly agreed to pay it!

Two years later, the Tennessee Supreme Court overturned the Scopes verdict on the technicality that the fine should have been set by the jury rather than by Judge Ralston.

This two-week trial some 80 years ago inspired a Broadway play, a motion picture, the creation of a college (William

Jennings Bryan Memorial University in Dayton), and scores of books and documentaries. But its most significant impact was that it heightened public awareness and interest in the American legal system, particularly in jury trials.

Thanks to the radio broadcast of the Scopes trial, millions of Americans became a part of a large national jury. They discussed and debated the case in barbershops and at lunch counters and in bars. Suddenly, American lawyers, judges and juries no longer worked in obscurity. They were high-profile players in a brand new arena.

It is now clear what Scopes has wrought. We lawyers have inherited the wind of a profession and a system that is now scrutinized 24/7, 365 days a year. Over the past 10 years, the American people have spent countless evenings watching extensive TV coverage of high profile cases such as the William Kennedy Smith trial, the first O. J. trial, the second O. J. trial, the sentencing

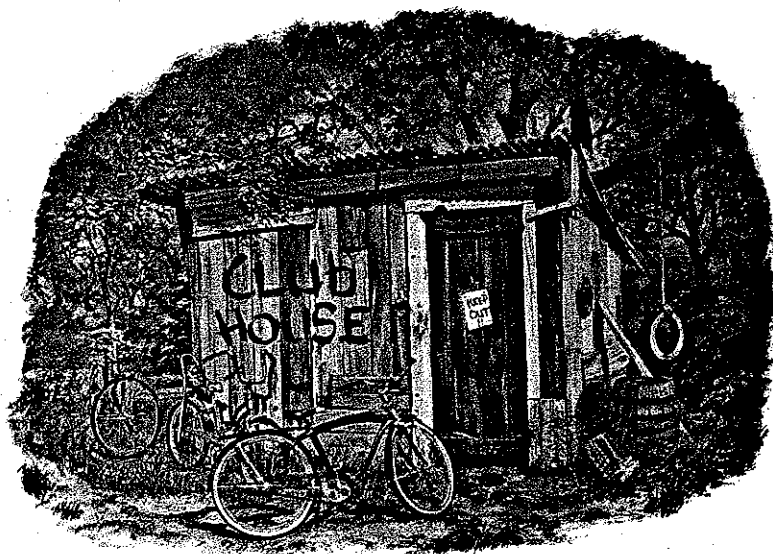
of Martha Stewart, and more recently the Michael Jackson trial. There is now a 24-hour-a-day nationwide cable TV channel that is devoted exclusively to the coverage of trials. In fact, I wouldn't be at all surprised if this fall, millions of Americans will tune in to ABC's *Monday Night Jury Trial*, with Al Michaels doing the play-by-play, Nina Totenberg providing the color commentary, and Hank Williams Jr. crooning, "Are You Ready for Some Lawsuits?"

But all this exposure raises a serious issue. Ironically, as more people watch high-profile cases on TV, the more confidence in the American legal system declines. The problem is that the nationwide jury-watching on TV often disagrees with the real jury that is sitting in the courtroom.

This raises a mighty big responsibility for America's lawyers. We have to help educate the public that while the

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