

FREE EXERCISE, EXPENSIVE GAS

An interview with Jay Wexler



Jay Wexler is Associate Professor at Boston University School of Law. From February to July 2008 he stayed in Poland as a Fulbright Scholar, teaching a course on the U.S. Church-State law at the Jagiellonian University. During that time, he managed to bewitch the students with his extraordinary, slightly surrealistic sense of humor, profound and multi-dimensional knowledge of religious issues, as well as a very open and warm personality.

Prior to pursuing his law education, Jay Wexler studied Chinese philosophy and Japanese history and religion at Harvard University. He has worked at the very top of the United States' justice system by serving as a law clerk to Supreme Court Justice, Ruth Bader Ginsburg (July 1998–July 1999) and by carrying out the functions of an Attorney-Advisor at the U.S. Department of Justice (August 1999–June 2001). Apart from the matters of religion and state, he conducts courses on administrative, environmental and natural resources' law.

He has made several appearances on radio and television and was quoted in numerous American newspapers, including The New York Times and Chicago Tribune. In addition to his passion for the Far East, his broad interests encompass oil painting and writing fiction. So far, he has published over thirty short stories and humor pieces in various online and print journals.

Professor Wexler is now working on his first book which will concern the ongoing clashes between Church and State in the USA and will be based on interviews with participants of the most famous and influential Supreme Court cases from the First Amendment area.

You can find more information about Jay Wexler, together with a full list of his academic publications, broadcasts and a gallery of his paintings at www.jaywex.com.

Joanna Śliwa: *Have you ever read Harry Potter?*

Jay Wexler: No, I'm waiting for my son to start to read them, then I can keep up-to-date with him.

JŚ: *Do you know that the Catholic Church criticized the books? It seemed strange to me as the series actually promotes very Christian values.*

JW: Maybe the criticism explains its success. Probably, though, the funny round glasses had more to do with it.

JŚ: *You served as a Supreme Court law clerk to Ruth Bader Ginsburg. We've heard from our American Law School Professors she's got, quote, "these huge brains" but had to work twice as hard as the others trying to get on the bench, being both female and Jewish. What sort of person is she?*

JW: She certainly is unique! She's very quiet and... not always easy to understand because of the particular way in which she speaks: she makes a lot of long pauses so there's no way of telling whether she's finished. The pauses in the middle of the sentence can last up to two minutes so it's really strange to have an interview with her. I remember, once, there were these two cases with almost the same names: Agiular and Aguillard. Justice Ginsburg asked what I thought of the Aguilar case while I thought she wants to discuss Aguillard. Consequently, I talked about the latter for at least ten minutes. She never interrupted and only after I had finished my speech did she politely indicate that that was not what she meant. I think this gives a good idea about her personality.

Apart from that, she has her heart in the right place and, as far as I'm concerned, she makes correct decisions about most of the moral issues. She's very smart and doesn't really need the help of her law clerks – which is partially why the job there is so good. Of course, she reads thoroughly the opinions and memos given to her but she's very determined and usually knows upfront what she is going to do. She can be tough, too, when there is a need for it and gets annoyed by people who try to push their views through aggressively. Some judges like it when you tell them: "you're wrong" or "we shouldn't do it". Justice Ginsburg is not like that. You could certainly tell her your side and she would listen to you even if she didn't agree with you but you really could do that only once. While other judges would go down to their clerks and yell at them or argue some points, she would rather stay quietly in her room, talk to us over the phone and stay a bit remote.

JŚ: *What do you actually do as a law clerk?*

JW: In the Supreme Court, each Justice has four clerks, who divide among themselves the cases admitted throughout the year. Respectively, you get to work on twenty cases by way of writing a bench memo, about ten to twenty pages long, in which you research the issues, form your opinion and set forth your recommendations as to how the matters should be dealt with. You may also write some questions to be asked at the oral argument. At that point the Justice would scare you by buzzing you on the phone and asking you questions about the case.

The second thing to be done is drafting the opinion after the Justice has heard the case and provided you with an outline of his or her position. The draft travels back and forth between the clerk and the Justice, who makes some remarks and respective adjustments.

Additionally, the clerks work for the court as a whole. They get to sort out the petitions that come from people who plead for their case to be heard. The Supreme Court gets about seven thousand of those, out of which usually eighty to a hundred are accepted.

JS: *That's called the Cert pool, isn't it?*

JW: Exactly. A clerk needs to write five or six memos every week summarizing what the cases are about, what the parties say and, finally, recommending whether the court should take on a particular case or not.

JS: *So, it's not the clerks who get to decide on the acceptance of the cases? That would be a grave responsibility, wouldn't it?*

JW: Luckily, they just make recommendations. Obviously, a great number of cases will get rejected, as the Supreme Court only hears cases of a specific nature, for instance, those where the lower court are split on an issue or a where a federal statute gets into question.

JS: *How difficult is it to qualify a case for acceptance?*

JW: Most of the issues are obvious denials, very few are obvious accepts. I say the worst thing that can happen to a clerk is to recommend a case, have it accepted by the Supreme Court and then have the Court realize there is a small procedural issue that dismantles the whole business so that, in turn, the Supreme Court procedures need to be interrupted and the case has to be dismissed on the grounds of being improvidently granted, i.e., DIGging a case – Dismiss-Improvidently-Granted. Every year, the Court DIGgs a few cases and the thing you really don't want is to have your case handled this way.

JS: *A sort of a vocational death?*

JW: Within the Court's community, yes, it is quite embarrassing. Therefore, the safest practice is to deny every single case, which is what I mostly did, of course after reading each of them thoroughly. Deny, deny... *(Laughter)* The worst scenario then is that the case is granted hearing after all. When it was a close one, I would just say: "probably denied".

JŚ: *I read your unique New York Times article about the sense of humor in the Supreme Court and what I have learned is that Justice Scalia is sixteen times funnier than Justice Ginsburg. Despite that fact, or maybe because of it, they seem to like each other.*

JW: They really do! Their families even spend some holidays together. However, the point of that article was that none of the Justices is really funny!

JŚ: *That's not true! I think Justice Scalia is funny, much as I don't like his views.*

JW: Is he? Well, I don't really know... He certainly thinks he's funny. And he is probably the funniest of them all but I'm not sure that this means he's actually funny.

JŚ: *I loved the piece about Justice Thomas... How was it that you described him? Good, but... conservative?*

JW: I think I might have compared some of his ideas to those descending from the Dark Ages. But he is a good guy although his views on law are terrible. All the clerks consider him a very nice person and a really kind man. Due to the fact that he never talks at the oral arguments, some people think he's stupid but that's certainly not true. He just happens to have the wrong views, that's all. *(Laughter)*

JŚ: *Actually, his silence has become legendary by now.*

JW: When I was a clerk, he spoke once. We were all sitting there, during an argument and, suddenly, someone spoke. At first we were extremely confused as we didn't know who the voice belongs to; we've never heard it before! And not only did Justice Thomas ask a question but he started drilling the lawyer for about fifteen minutes. Something simply interested him very much.

JŚ: *You also worked as an Attorney-Advisor at the Department of Justice. Is it the closest you ever got to politics?*

JW: I suppose so... Except for the time in 2003 when I volunteered to make phone calls for John Kerry, trying to persuade people from Iowa to vote for him, but I don't suppose that that really counts.

I worked in the Department of Justice at the time when Clinton was leaving and Bush administration came in. The very first thing they set their minds and hearts to was undoing all the small things significant for their predecessors, such as, in particular, all the issued pardons and national monuments' building. So, you may just as well say that I saw some sides of politics. The funniest thing about it that I can remember was the meeting of the incoming Attorney General, one of the most important people of the United States at the time, John Ashcroft. We were all lined up to greet him and, when he came up to me, I introduced myself saying simply, "Jay Wexler". He shook my hand and said "Thank you!". It made no sense at all.

JŚ: *Am I correct in saying that you are also anti-George W. Bush? I got the idea from the fact that you moderated a Cambridge Forum discussion on impeaching him.*

JW: Well, I don't think we should really impeach George Bush, but I am certainly no fan of him and I can't wait until November to see him leave. It will be glorious.

JŚ: *Who do you think will win in the elections?*

JW: It's too early to make predictions. Let's just hope America doesn't turn out to be more racist than we think it is.

JŚ: *Surprisingly, these are almost exactly the same words Eric Hirschhorn used when I asked him about the elections' outcome.¹ I though the USA had left those days far behind.*

JW: The people who will probably decide on the ultimate result of November will be blue-collar workers from the middle of the country: Ohio, Pennsylvania, Missouri, who always tend to vote democrat because of their unions' position but who might be more racially biased than one wants to expect. I don't think they will vote for McCain but they simply might not vote at all. I would be really glad if they proved me wrong, though.

JŚ: *I was surprised to learn that, apart from your interest in the Church and State relations, you have also worked with environmental, security and insurance law... Actually, your résumé on the Web is quite impressive; you press the down-button and it goes on for about three minutes!*

JW: Isn't that obnoxious? I should definitely make it shorter. I still teach environmental law, which I find very interesting, although much different from the religious issues. The latter is a very out-of-statute sort of law while the former is strongly codified – it en-

¹ See: "...Building a plane while flying.."An interview with Eric Hirschhorn., p. 78-79.

compasses two hundred and eight statutes! When one gets to talk about environmental law, it's always like this: how does section 43 part 2, little b, little 1 interacts with the other parts of the respective statute? I must secretly admit that this approach also has a special kind of appeal for me.

As far as national security goes, I did some of that when I was working at the Department of Justice. Once, I dealt with a high security matter and, in order to make respective phone calls between the White House and DOJ, I needed to go to this futuristic, behind-giant-lead-door, impervious-to-nuclear-attack places. The door closes behind you making the weirdest sound and you are suddenly surrounded by sparkling TV screens. It was quite amazing. I also worked on an opinion concerning the use of force by the US President in Kosovo despite the lack of Congress's approval. The Executive branch does a lot in terms of reformulating and arguing, even though it doesn't take the outcomes to court that often.

JŚ: *You are the author of an article entitled *The uniqueness or non-uniqueness of environmental law*. Which of the two theses is true?*

JW: Environmental law is a little bit different from other types of law due to its specific topic and there are some people who think that, respectively, it should be treated in a different way. A famous piece of writing from Georgetown Law School embraces this approach. I do not agree with it and my article is a response to that position. When all is said and done, environmental law is just a branch of administrative law. It shouldn't be considered different from the judicial point of view and the means to decide a case from that area should be the same as any others. Of course, the field of law is specific and so would be the policy questions.

JŚ: *The title of yet another article of yours: *Technology and the revenge of unintended consequences* sounds very much Thoreau, would you agree?*

JW: Actually, I, myself, am a little like Thoreau; I don't own a cell phone... or a microwave for that matter. The article, which was written as a review of a book with the same title, describes how undertakings to promote health or regulate sub-healthy environment cause other, unpredictable side-effects. Take cigarette restrictions, a big thing in the US right now. The goal might be to reduce the number of smokers and help them kick the habit but it might just as well result mainly in rendering damage to the respective business entities which would move their activity to other places, e.g. China. Then, you have fifteen million people more smoking because of the enormous market scope at issue. The case is similar with getting rid of cloth diapers, the washing of which consumed much time and energy, in exchange for disposable ones. The latter, however,

damage the environment and take ages to decompose. This is also comparable to removing asbestos, the dangerous substance, from the walls of the buildings, by workers who stirred it and got infected themselves. Risk trade-offs, that's the short name for all those nuances.

JŚ: *Speaking of environmental and society matters, I understand that there was once an idea to slightly change the national parks in the USA by providing gym facilities. Why did you oppose to the idea?*

JW: I was really scared by it! The reason you go to a national park is to escape the city buzz with all its noise and people running about to get ahead in the rat race. You want peace in a park, you contemplate the nature and, I admit, it's nice to get exercise while doing that, but the latter simply isn't the most precious thing. What I thought would be very bad, was to have people go to a national park to run the marathon or try to climb the highest mountain faster than the others, which would change the parks into those competitive places where you do exactly the same things that happen in the city, only in a nicer atmosphere. It's not that I'm opposed to exercises in general or even to exercises in the parks, it's just that I don't think the government should set about pushing people to "get into shape" in places that are primarily designed for something else.

JŚ: *In addition to all your interests, you also write fiction. Did that help you in your law career?*

JW: Actually, it didn't. It was more likely to get me into trouble while I was finishing my law degree.

JŚ: *I notice that you are very media-friendly. I certainly had no difficulty with finding information for the interview. To be frank, you're all over the Internet! You also appear on radio, television and in the press. I consider that a very positive thing. Do you think lawyers should try to "tame the beast" and be on more speaking terms with the media?*

JW: I think that more different lawyers should do that. Only a few people make appearances and these are the same people over and over again; I'm sure it's the same in Poland. This ought to change as, generally, it's beneficial that lawyers explain things from their domain to non-lawyers. I certainly like to do it. I also have this book coming out next spring and I hope to be able to make some publicity for it.

JŚ: *I like the title: Free Exercise, Expensive Gas: a Church-State Road Trip.*

JW: The title is gone by now.

JŚ: *Why?!*

JW: The title is not up to me, it's up to the firm which publishes the book. I give them my hints, but still, they can decide otherwise. They are of the opinion that what I've proposed was too technical. While for a lawyer the phrase "free exercise" is common, maybe not everyone knows what it exactly means. The firm might have a point there.²

JŚ: *Have you already visited all those people you meant to interview for the book?*

JW: Yes!

JŚ: *What are your impressions? Who was the most interesting one?*

JW: The two Santaria priests I talked to were very interesting. Their religion requires sacrificing animals and they maintain there's nothing different between that and eating hamburgers, which I think they are right about. However, they get prosecuted, as everybody seems to want to prove them wrong. They've been carrying on this fight for religious freedom for over twenty years.

There was also the Amish guy... The Amish oppose all technology development and put much emphasis on the simplicity of life. We were having a really long and fascinating conversation about the core of the Amish religion and why it should be protected and, suddenly, I heard a familiar sound. "Sorry" said the Amish guy "that'll be my cell phone..."

JŚ: *Will the book be funny?*

JW: It's not written for the sole purpose of providing entertainment but, yes, it is meant to be funny at least at some points. Some of the really funny pieces were taken out by the editor, e.g. my painting of Justice Alito with a little bunny peeping over his shoulder. I'm going to place the painting on the Web, and make a reference in the book, anyway.

JŚ: *Continuing our discussion of religion, what is your position on the relationship between Church and State?*

JW: I believe in giving lots of freedom to religious exercise but I'm also opposed to any endorsing of religion.

JŚ: *Does that make you a conservative or a liberal?*

JW: The same as American Civil Liberties Union, that is, a moderate liberal; Church and State should be separated, but religious expression should not be subject to hostility.

² The book will ultimately be published under a new title: Holy Hullabaloo. A Road Trip to the Battlegrounds of the Church/State Wars.

JŚ: *Isn't the separation of Church and State in the USA going too far in the sense that, if some worshippers cannot publicly acknowledge their religion and if they are not able to get with other people and pray during moments that are important to them, it is the same as if they were not allowed to follow their faith at all?*

JW: But they can follow it! The point is that they just cannot get the State involved in it. People can pray in schools and in front of Washington D.C. state building, if they have the mind to do it; what is forbidden is to make the Government say prayer is good or have it instigate prayer. This is a very common source of confusion.

JŚ: *In the graduation prayer case ³, a certain kind of religious expression was prescribed. It was only Justice Scalia who defended the other side. Do you think the outcome was correctly decided?*

JW: The coercion argument about infringing people's right not to pray by making them stand up and listen to the prayer made no sense to me but, apart from that, I think the result is lawful, as it is unconstitutional to have the government invite a rabbi to conduct a prayer. That's clear endorsement. Still, if the students wanted to organize such a religious event themselves or if the government just introduced a moment of silence to the schedule, it would be perfectly fine.

JŚ: *It's strange that in all those endorsement cases where children or youths were involved, there was no evidentiary material on what the children thought and felt while being put in the questioned situations. Children have constitutional rights as well and when you are fourteen years old you should be well able to evaluate your own reception of certain action. Besides, it's not the age that matters but the capability of assessment.*

JW: The study of the enforcement test⁴ does not involve the children's feelings that much, because the test is meant to be objective and have the same impact on a number of other actors like adults, community and the State. Nevertheless, I fully agree that it would be very interesting to conduct the research you're talking about from the coercion point of view.

³ Lee v. Weisman , 505 U.S. 577 (1992) – a United States Supreme Court decision concerning school prayer. It was held that a prayer conducted by a religious authority during a public high school graduation ceremony violates the Establishment Clause of the First Amendment.

⁴ Endorsement test – proposed by Justice Sandra Day O'Connor, asks whether a particular government action amounts to an endorsement of religion. According to Justice O'Connor, a government action is invalid if it creates a perception in the mind of a reasonable observer that the government is either endorsing or disapproving of religion. This understanding of the establishment clause was expressed by Justice O'Connor in the 1984 case of Lynch v. Donnelly; Source: firstamendmentcenter.org

I mention in my book that I went to a Catholic high school where there were only seven of us Jews. We called ourselves The Jew Crew. (*Laughter*) I never participated in prayers but I also never felt coerced to do so. I knew that I could just stay silent while the others were praying and I never thought that someone else would think I'm praying. I bet most of the other kids felt the same way. But still, even if the majority didn't deem themselves coerced, you would all the same want to protect the few who did.

JŚ: *In one of your writings, you look for the perfectly structured religious law, comparing Title Seven of the Civil Rights Act and the Religious Freedom Restoration Act. Which of them is better?*

JW: Title Seven is definitely not very religion-protective. It states that employers have to accommodate the religious needs of their employees, unless it is unreasonable to do so. The provision might just as well say that they don't have to do it at all. The Religious Freedom Restoration Act, on the other hand, has been very successful.

JŚ: *Knowing that, what does it take to construct a good religious clause?*

JW: You have to be very clear about protecting religion above some other interests that might appear. If you let judges decide about the interest evaluation on a case-by-case basis, religion will often end up being forgotten or devalued.

JŚ: *There have been many voices of criticism with respect to the endorsement test. Do you find any of those arguments persuasive?*

JW: Basically, I consider the endorsement test a good thing. What might cause problems is the fact that it introduces the perspective of a reasonable person (worshipper). A Christian or a Jew will find it very difficult to assess what a reasonable Buddhist or atheist might think about a given problem. Religion is to some extent based on irrationality, how then are we supposed to make the right decisions? Nonetheless, I will be very worried if we lose the test, which will probably happen in future.

JŚ: *I wanted you to compare two lines of cases represented by Yoder ⁵ and Smith ⁶. They are both pretty similar: there is the law that is said to fulfill the neutrality condition from the endorsement test and the parties, who, for some reasons seek an exemption from it. Only the outcome of the cases is totally different, as in Yoder an exemption is granted, in Smith not. Since the cases are so alike, someone must be wrong.*

⁵ Wisconsin v. Yoder, 406 U.S. 205 (1972) – a decision in which the US Supreme Court adjudicated that the Wisconsin Compulsory School Attendance Law infringed the Free Exercise Clause of the First Amendment by rendering school education beyond the 8th grade obligatory for Amish children, contrary to the religious views of their parents.

JW: I think it was the Smith court that erred in its decision. In my opinion, the best way of interpreting the First Amendment is to recognize exemptions from neutral laws that burden religion. People who believe things very deeply should not be penalized for those beliefs by general regulation. Of course, this doesn't mean that there would be no possibility for the government to win such a case, which it should be able to do by showing a compelling interest so that, e.g. people won't be allowed to kill because their religion tells them to do so.

JS: *Where's the borderline then?*

JW: Yes, well, you see how hard it is? Luckily we have the judges to draw the lines. Take polygamy for instance. Why are we so preoccupied by polygamy? I think that, if you have a religious reason to practice it, you should have an exemption from the general law. However, the Supreme Court was worried about the anarchy problem that might subsequently arise because of treating this crime as legitimate behavior in some situations. What is more, Justices like Scalia don't think much not only of anarchy but also of judges' balancing tests and separate, independent solutions in all cases. They like clear, broadly applicable rules. Unfortunately for them, Church and State law is the area where you do need to be explicit but you also have to apply judicial balancing to give people their rights while still maintaining order in the society.

JS: *I notice you have a great interest in East Asia; you did a major in this area and you wrote your thesis about the philosophy of Chuang-Tzu⁷, a man who, shortly speaking, believed in nothing. Was that the moment of your life when you decided to work in the field of religious law?*

JW: I recommend everyone to read Chuang-Tzu. He is absurd but also funny. I find his works appealing especially because he has the same skepticism in rationality as I do. I don't maintain that it is possible to live your life like Chuang-Tzu did, not if you have a kid at any rate...

⁶ Employment Division v. Smith, 494 U.S. (1990) – US Supreme Court decided that “The Free Exercise Clause permits the State to prohibit sacramental peyote use and thus to deny unemployment benefits to persons discharged for such use.”

⁷ Chuang-Tzu or Chuang-tze (c. 369-c. 286 BC) – Chinese Taoist writer. Little is known about his life. The collection of essays attributed to him, called the Chuang-Tzu, is distinguished by its brilliant and original style, with abundant use of satire, paradox, and seemingly nonsensical stories. Chuang-Tzu emphasizes the relativity of all ideas and conventions that are the basis of judgments and distinctions. In his opinion, freedom in identifying with the universal Tao, or principle of Nature, is the solution to the problems of the human condition. Source: The Columbia Encyclopedia, Sixth Edition.

JŚ: *It would be hard on the kid...*

JW: Very hard, yes. But, for some time, I was under a strong influence of “chuang-tzunism”; I read a lot on the subject, spent some time in China and liked it immensely.

JŚ: *How was your legal practice in China?*

JW: It wasn't really a practice as it happened before I went to law school. I applied for a job with an American law firm in Shamen. It turned out that it was run by a shady character who disappeared for days and never mentioned what he was doing during that time. Our office didn't have that much work so we just went from door to door introducing ourselves in case anybody needed legal advice...

JŚ: *A lot of doors to cover...*

JW: You're right; there are a lot of doors in China. Still, we worked on a couple of bigger things; once a businessman from Los Angeles wanted to put up hot-dog stands in every part of China so we had to go around with him to see various places in town and talk to the city officials about the zoning and real estate issues. Yet another time, we had to prepare a joint venture agreement but we didn't have any computer at the office so I had to ask the client if I could go and print the thing out at his place. I wasn't paid that much, if at all while on the job.

JŚ: *Coming back to the United States, do you think schools should introduce a separate, voluntary course on different religions and their approach to crucial issues such as the beginnings of the world? In a panel discussion about evolutionism and creationism on the Pew Forum on Religion & Public Life you mentioned that teaching just intelligent design as an alternative to creationism wouldn't suffice and would only blur the picture.⁸*

JW: It is very important to teach about religion at school. In the USA most schools don't do it due to the lack of understanding of the Supreme Court Cases on Church and State matters and due to the idea that every mention of religion in a public school is prohibited. Also, there hasn't been any great material to help the teaching, even if the schools

⁸Evolutionism – scientific theory of biological evolution by natural selection or genetic drift. Creationism – religious belief that humanity, life, the Earth, and the universe were created in their original form by a deity. Creative design – assertion that “certain features of the universe and of living things are best explained by an intelligent cause, not an undirected process such as natural selection.”, a modern form of the traditional theological argument for the existence of God, modified to avoid specifying the nature or identity of the designer. Source: Wikipedia.

wanted to do it. If you graduate from high school without having any idea whatsoever about religion I don't know how you are going to understand anything that's going on in the world.

JS: *The evolutionism-creationism debate is the main theme of the film Inherit the Wind, where Council for the Defense who wanted evolutionism to be taught in schools was presented as an enlightened scientist while the prosecutor who opposed it seemed as if he had come all the way from the Dark Ages. The film is based on true events, namely, the Scopes trial⁹. However, in reality, the topic of the debate is not so black and white, just as the characters appearing in the actual trial were not so easy to judge.*

JW: The film is an oversimplification, that's for sure, although it gets most of the facts right. The prosecutor, William Jennings Bryan was very religious and he, indeed, wanted religion to be taught in schools. The council, Clarence Darrow cross-examined him and, some people thought, made him look a little foolish but that didn't mean that a big victory of science over religion took place. Actually, as an aftermath of the trial, evolutionism was mostly removed from the teaching schedule. What is more, the pro-evolutionism side was not necessarily anti-religious but rather pro-academic freedom, at least some of them, like American Civil Liberties Union. True life is always much more complicated than the film.

JS: *Do you think embracing evolutionism as an idea could have some serious consequences, such as treating Darwin's theory of survival of the fittest as a policy to be followed? Apparently, that was one of the worries of the prosecutor in the Scopes trial.*

JW: I don't really think so. In certain historical circumstances it might have but hopefully not today.

⁹ Scopes Trial or Scopes Monkey Trial (Scopes v. State, 152 Tenn. 424, 278 S.W. 57 [Tenn. 1925]) – a case concerning the problem of teaching evolutionism in schools. It proved very significant for the creationism-evolutionism debate which was going on at that time in the USA. The trial involved two prominent characters: three-time presidential candidate, Congressman and former Secretary of State, William Jennings Bryan, who was the prosecutor, and the renowned trial attorney Clarence Darrow, acting in the capacity of the defense council. As a result of the trial, the defendant John Scope was found guilty of violating the Tennessee state law but the conviction was ultimately set aside by the appellate court due to procedural flaws.