



**Investigative Report of  
Ethical Violations and Misconduct  
by  
Bureau of Land Management Officials**

*cited in Bundy v. USDC-NVL, No. 17-70700 archived on April 4, 2017*  
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This is a version of the report prepared for public release.

## SYNOPSIS

We initiated an investigation in October 2015, after receiving two anonymous complaints concerning a Supervisory Agent, Bureau of Land Management (BLM) Office of Law Enforcement and Security (OLES), Salt Lake City, UT.

The first complaint, received in September 2015, concerned the 2015 Burning Man event held annually in northwestern Nevada. The complaint alleged that—

- the Supervisory Agent used his official position to provide preferential treatment to his family members while attending the event;
- the Supervisory Agent directed five on-duty BLM law enforcement officers to escort his family and provide security for them at the event;
- the Supervisory Agent's family received unauthorized access to the Incident Command Post (ICP); and
- the Supervisory Agent's family received overnight lodging in BLM-leased facilities.

The second complaint, also received in September 2015, alleged that the Supervisory Agent improperly intervened in the April 2015 hiring process for a BLM special agent position after he learned that a friend did not make the initial list of candidates to be interviewed.

During our investigation, we received an additional complaint in September 2016, alleging that the Supervisory Agent drove around with his girlfriend in his BLM vehicle while working at the 2015 Burning Man event. The employees who provided details of the misuse stated that they had not fully disclosed this in prior interviews because they feared reprisal from the Supervisory Agent.

We substantiated all but one of the allegations associated with the 2015 Burning Man event.

We found that the Supervisory Agent violated Federal ethics rules when he used his influence with Burning Man officials to obtain three sold-out tickets and special passes for his father, girlfriend, and a family friend. In addition, we confirmed that he directed on-duty BLM law enforcement employees to drive and escort his family during the event with BLM-procured, all-terrain and utility type vehicles (ATVs/UTVs). Regarding the allegation of improper access to ICP by the Supervisory Agent's family, we found that was not against BLM policy. We confirmed that the Supervisory Agent's girlfriend stayed overnight with him in his BLM assigned trailer, contrary to restrictions in the operations plan for the event. The Supervisory Agent also violated Federal ethics regulations by having a subordinate employee make a hotel reservation for his guests. On at least one occasion, he misused his BLM official vehicle when he transported his girlfriend while at the event.

We interviewed BLM OLES Director Salvatore Lauro who stated that he took no action when he saw the Supervisory Agent use ATVs and BLM personnel to transport his (the Supervisory Agent's) family. In addition, Lauro knew the Supervisory Agent allowed his girlfriend to share his BLM overnight lodging accommodations during the event.

We also confirmed that the Supervisory Agent intervened in the hiring process by increasing the number of candidates that would be interviewed. As a result, the Supervisory Agent's friend, who had worked with the Supervisory Agent as a Federal air marshal received an interview and was ultimately hired as a BLM special agent.

During our investigation, the Supervisory Agent displayed a lack of candor when interviewed and tried to influence an employee's comments prior to an interview.

### **BACKGROUND**

Burning Man, an annual gathering attended by thousands of people on BLM-managed Black Rock Desert, is organized by the Burning Man Project, a nonprofit organization, and its for-profit subsidiary, Black Rock City LLC (BRC). The permit issued by BLM to BRC showed the event was held from August 30 to September 7, 2015, and was limited to 70,000 paid participants. Interviewees stated that event attendees actually totaled about 80,000 individuals when vendors and support personnel were also counted.

OLES Director Salvatore Lauro identified OLES' major concern at Burning Man as potential mass casualty from fire-related artwork. He also referred to past BLM enforcement actions that resulted in crowd behavior and the need for tasers. The BLM OLES Official said that Burning Man had a history of illegal drugs, assaults, violence, and other criminal activity, in spite of its largely peaceful reputation. As a result, approximately 70 BLM law enforcement officers were assigned to the event. The BLM OLES Official also said that the Supervisory Agent prepared the operational plan, then briefed the BLM OLES Official and Lauro. He also said that the Supervisory Agent remained in command of operations, although Lauro attended the event.

### **DETAILS OF INVESTIGATION**

On October 7, 2015, we initiated this investigation after receiving two anonymous complaints.

The first complaint, sent by email to BLM Director Neil Kornze on September 9, 2015, and copying the Office of Inspector General (OIG), came from the private email address of an unidentified BLM employee. The complaint stated that a Supervisory Agent had engaged in misconduct and ethical violations at the 2015 Burning Man event. Specifically, the Supervisory Agent used his influence to obtain tickets to the event for family members; he also permitted his family members to visit the ICP and receive overnight lodging at BLM-leased facilities. The complaint also alleged that he directed five BLM law enforcement personnel to provide his family members with an escort and tour through BRC, using BLM-procured all-terrain and utility type vehicles while the officers were on official duty at the event.

The second complaint, also submitted on September 9, 2015, alleged that the Supervisory Agent committed an unfair hiring practice in April 2015 when he intervened on behalf of a friend applying for a BLM special agent position.

A third complaint, received in September 2016 near the end of our investigation, alleged that the Supervisory Agent misused his Government vehicle when he used it to drive around with his girlfriend during the 2015 Burning Man event.

## Supervisory Agent's Misconduct at Burning Man

### *Supervisory Agent Seeks Favor from Prohibited Source*

During our investigation, we found that the Supervisory Agent obtained three full-event Burning Man tickets for "family" members identified as his father, a family friend, and the Supervisory Agent's girlfriend. At the time he bought the tickets, those available to the public had been sold out. The Supervisory Agent used his contacts and relationships with Burning Man officials to obtain the tickets. Federal ethics regulations prohibit soliciting gifts from a prohibited source. See 5 C.F.R. § 2635.202(a). Ethics regulations also prohibit Federal employees from using any authority associated with their public position for the private gain of friends and relatives. See 5 C.F.R. § 2635.702.

As part of our email review, we found that, as early as February 27, 2015, the Supervisory Agent told a BRC Attorney that he was considering bringing his parents to the 2015 event to honor a relative's passing at the Burning Man temple ceremony. He wrote that he might bring his parents with the BRC Attorney's help and approval.

We also found that the Supervisory Agent had discussed obtaining tickets with a former BLM Special Agent serving as a current reemployed annuitant hired as a special project manager for the event. The former BLM Special Agent reported three conversations with the Supervisory Agent:

- The Supervisory Agent asked if he could purchase tickets for \$50 each through a program offered to locals, but the former BLM Special Agent informed him that his family members did not qualify.
- The Supervisory Agent then informed him that he intended to purchase the tickets from BRC officials at a discount; the former BLM Special Agent urged him not to do this because of the Supervisory Agent's bad publicity concerning demands for expensive items purchased by BRC for BLM's use at the event.

*Agent's Note:* In 2015, a newspaper published an article stating that a letter [went] to Secretary Jewell, expressing concerns with "providing outlandishly unnecessary facilities for BLM and its guests" at the 2015 event. The article also stated that the Supervisory Agent had been cited multiple times as the person behind many of the BLM requests, and further stated that BLM wanted Burning Man to provide a \$1 million luxury compound.

- During his third conversation with the Supervisory Agent, the Supervisory Agent informed the former BLM Special Agent that he had purchased full price tickets from the BRC Attorney, with whom the Supervisory Agent had a good relationship.

A September 3, 2015 email from the BRC Attorney to the Supervisory Agent at the time of the event cited the BRC Attorney's willingness to offer four regularly priced tickets as a courtesy to the Supervisory Agent's family. The BRC Attorney further stated that BRC held tickets at the Box Office for unique situations that arose after tickets were sold out and that he was happy to offer the tickets to the Supervisory Agent.

During his interview, the BRC Attorney said that the Supervisory Agent had either telephoned or sent him a text message asking for three tickets for his family members just before he sent the Supervisory Agent the September 3, 2015 email. The Supervisory Agent knew that regular tickets for the event were sold out but that BRC also held back about 100 tickets for special requests and needs. The Supervisory Agent approached the BRC Attorney to purchase tickets for his family, but wanted the tickets at the regular price because of scrutiny surrounding his role in BLM's request for the luxury compound. The BRC Attorney forwarded OIG investigators an email dated September 5, 2015, showing three tickets charged to the Supervisory Agent's personal credit card at \$390 each, with a processing fee of \$19 each, for a total of \$1,227.

Lauro also reported that the Supervisory Agent showed him a receipt for approximately \$1,200 paid on his personal credit card so that his family could attend the event. Lauro told the Supervisory Agent it was "probably the best \$1,200 you've ever spent because it's going to turn, we know it's going to turn into a complaint." He said the Supervisory Agent was upfront with him regarding his family's attendance, having tried to make sure he did not violate any policies. Lauro knew that the Supervisory Agent had purchased tickets at full price with personal funds, and said that the Supervisory Agent "knows people are looking." We also found that the Supervisory Agent had discussed the ticket purchase with several BLM law enforcement personnel, who each felt that the Supervisory Agent wanted to make them aware that he had paid full price for the tickets.

Lauro and a BLM OLES Official both indicated that no policy prohibited OLES personnel from having family members attend the event. Lauro said that he attended the event and knew that the Supervisory Agent's family also attended. The family specifically visited the temple, which the Supervisory Agent helped to construct. He said that the Supervisory Agent was allowed to cut a piece of wood and place it in the temple in memory of a family member. The BLM OLES Official confirmed that two of the Supervisory Agent's family members, as well as his girlfriend, had attended a portion of the event for which the Supervisory Agent had placed a board in the temple in his family member's memory.

The Supervisory Agent also sent an earlier email to the BRC Attorney on August 26, 2015, in which he attached photographs depicting his significant temple construction efforts. In the photo, the Supervisory Agent wears his law enforcement equipment and firearm, and a shirt identifying him as a Federal agent.

The Supervisory Agent's account of his conversations with the former BLM Special Agent and the BRC Attorney differed from their accounts, however. He said the former Special Agent told him he was an "idiot" to pay full price. The Supervisory Agent said that when he went to the BRC Attorney to find a ticket option that would bring less scrutiny, he generally knew that tickets available for public attendance had been sold out, but he did not know that the BRC Attorney had extra tickets. He said that he told the BRC Attorney he did not want special treatment because of his position.

#### *Supervisory Agent Seeks Favor from BRC for Special Passes to Man Burn*

During our investigation, we learned that the Supervisory Agent had asked a BRC Official for three special passes so that his family could watch the Man Burn, the high point of the Burning

Man event when an effigy is burned at the temple. The passes, which have no face value but which are not available to the public, gave access to the inner perimeter on the night of September 5, 2015. Our interviews of BRC officials revealed that the inner perimeter was considered a privileged location, reserved primarily for BRC, pyrotechnics, and emergency services staff. The BRC Attorney told us that a BRC Official controlled the special passes and that they had never before been provided to a BLM employee's family members.

When interviewed, the BRC Official said that the Supervisory Agent had asked on Saturday afternoon, September 5, for three passes so that his family could attend the 10:00 p.m. Man Burn that night. The BRC Official confirmed that access to the inner perimeter was a special privilege and never previously requested by or given to a BLM official or law enforcement official. When asked if the Supervisory Agent's position had influenced the availability of the passes, the BRC Official said that there had been apprehension at first because it seemed "a little strange." The BRC Official still gave the Supervisory Agent the passes because being gracious was part of the Burning Man culture. Federal ethics regulations prohibit soliciting gifts from a prohibited source. See 5 C.F.R. § 2635.202(a). Ethics regulations also prohibit Federal employees from using any authority associated with their public position for the private gain of friends and relatives. See 5 C.F.R. § 2635.702.

The Supervisory Agent said that the BRC Official had given him special laminated passes so that his family could watch from the inner perimeter, but he did not necessarily consider it a special privilege.

During the interview, the BRC Official indicated that the Supervisory Agent was on official duty while in the inner perimeter with his family, as were all law enforcement officers who were on official business while present at the event. A review of the Supervisory Agent's time and attendance records showed that he was on official duty while at the Man Burn during the night of September 5, 2015. The review showed that he claimed 24 hours of official work time for Saturday, September 5, the day of the Man Burn. He also claimed 24 hours of official work time for Sunday, September 6, and again on Monday, September 7.

#### *Supervisory Agent's Misuse of OLES Personnel and BLM-Procured, All-Terrain and Utility Type Vehicles*

OLES personnel confirmed that the Supervisory Agent directed five on duty BLM law enforcement officials to drive, escort, and provide security for his family at the 2015 Burning Man event. A BLM Subordinate Supervisory Agent said the Supervisory Agent asked him to take the Supervisory Agent's family with him on his daily route around the event's playa. He transported the Supervisory Agent's father, family friend, and girlfriend on a BLM-procured Kubota utility vehicle while also performing his official duties. BLM Special Agents confirmed that they saw a BLM Subordinate Supervisory Agent transporting the Supervisory Agent's family in a utility vehicle at the event.

A BLM OLES Contracting Officer confirmed seeing the Supervisory Agent's father, girlfriend, and another man getting out of a Kubota utility vehicle, which she had procured for OLES to use during the event. A BLM OLES Contracting Officer provided a copy of a

“Solicitation/Contract/Order for Commercial Items,” dated August 8, 2015, confirming the Federal procurement. Federal law prohibits the use of Government owned or leased passenger vehicles for unofficial purposes. See 31 U.S.C. §§ 1344(a) and 1349(b).

A BLM Special Agent further stated that the Supervisory Agent had directed him and another BLM Special Agent, as well as two BLM law enforcement officers to accompany his family around the event. They drove in separate all-terrain vehicles known as Razors. At one point, they all met up with the Supervisory Agent, BLM OLES Director Lauro, and former Department of the Interior OLES Director Harry Humbert.

A BLM Supervisory Law Enforcement Ranger also stated that at about 2:00 p.m. on September 5, 2015, the Supervisory Agent asked him to accompany Lauro, Humbert, and himself on a tour of the event. The four of them met up with another BLM Subordinate Supervisory Agent, who drove a Kubota utility vehicle with the Supervisory Agent’s father, family friend, and girlfriend as passengers. A BLM Supervisory Law Enforcement Ranger said that the vehicles stopped at the temple, then drove around the playa looking at the art. They also went to an area known as the District, where several thousand people gathered to listen to and provide music. He said that the tour lasted 3 to 4 hours.

The BLM Supervisory Law Enforcement Ranger noted that the utility vehicles had been used to transport Government officials (e.g., a U.S. attorney, a BLM Official, and a DOI Solicitor Official), but that the vehicles had never been used to transport BLM OLES family members on a tour with a law enforcement escort. He said a tie to the Government always occurred when the utility vehicles were used for transportation. A BLM Subordinate Supervisory Agent informed us, however, that the former BLM Special Agent’s wife had routinely attended the event and received a tour on a utility vehicle.

A BLM OLES Budget Analyst said the Supervisory Agent’s father, family friend, and girlfriend toured the Burning Man event with Lauro and Humbert. She also said that other law enforcement personnel had their family members visit the event and that it was a common practice; however, the Supervisory Agent’s family were the only non-law enforcement personnel provided a tour that day.

During his interview, the Supervisory Agent confirmed that he oversaw all BLM law enforcement personnel assigned to the event, while also confirming that another BLM Supervisory Agent, a BLM Supervisory Law Enforcement Ranger, a BLM Law Enforcement Officer and BLM Special Agents had been his subordinates during that time. The Supervisory Agent confirmed that he had asked a BLM Subordinate Supervisory Agent and other BLM law enforcement personnel to accompany his family on a tour of the event and that all OLES law enforcement officers were on official duty and in uniform when this occurred. The Supervisory Agent also said that the Kubota utility vehicle had been used routinely to transport the public because it had been rented, rather than owned by BLM.

Contrary to the Supervisory Agent, a BLM Subordinate Supervisory Agent did say that law enforcement officers typically did not escort or transport the public in the utility vehicles. He said that the Supervisory Agent’s family received transportation, as well as preferential

treatment, because of the Supervisory Agent.

*Lauro's Knowledge of the Supervisory Agent's Actions*

We questioned Lauro about the Supervisory Agent's use of BLM's law enforcement officials and Government procured vehicles to transport the Supervisory Agent's family and give them a tour of the Burning Man event. Lauro acknowledged that he saw a BLM Subordinate Supervisory Agent driving the Supervisory Agent's family members during the event and stated that the Supervisory Agent told him his family was coming and that his girlfriend was staying in the trailer. He denied knowing that the BLM law enforcement officers riding nearby were a security escort, as well as whether the vehicle that a BLM Subordinate Supervisory Agent drove was a leased BLM ATV or belonged to the Sheriff's department. He said the use of ATVs and BLM personnel to transport the Supervisory Agent's family, in addition to the use of BLM lodging might be considered "technical" violations, especially since, as the Supervisory Agent's second level supervisor, he did not see anything that led him to tell the Supervisory Agent to stop. He explained the "reality" is we "regularly" drive non-government people. He stated he did not feel that the Supervisory Agent's family received preferential treatment. He also said he would not have let a BLM law enforcement officer's family who had lost a loved one travel around the event on their own. Lauro added, however, that he and the Supervisory Agent had discussed the potential for an IG complaint, saying "in fact we probably could have written it before it happened because he's had like eight anonymous complaints in the last two years."

When interviewed, Humbert said he did not know that the utility vehicles used to transport the Supervisory Agent's family belonged to the Government. He added that, if they did, then Government vehicle use policies applied. When asked if he felt the Supervisory Agent's family members had received preferential treatment because of the Supervisory Agent's position, Humbert said, "I don't think there is any other way you can look at it."

*Supervisory Agent's Disregard for the Accommodations Directive and Allegations of Meals at BLM's Expense*

The "Law Enforcement Operations Plan - Duties, Procedures, Protocols, and Rules Specific to the 2015 Burning Man Event, dated August 11, 2015," signed and approved by the Supervisory Agent, stated: "Since many law enforcement officers will be sharing a room with another officer during the Burning Man event, rooms are only for those persons assigned to the event."

*Agent's Note: The operations plan is not provided as an attachment due to its sensitivity.*

A BLM Subordinate Supervisory Agent had been assigned to a BLM lodging trailer with the Supervisory Agent. He confirmed that the Supervisory Agent's girlfriend stayed 1 or 2 nights with the Supervisory Agent in the trailer. She also shared meals prepared with food he and the Supervisory Agent had purchased for the trailer. The BLM Subordinate Supervisory Agent did not know if the Supervisory Agent's girlfriend received meals from the dining facility provided for BLM employees.

When interviewed, the Supervisory Agent stated that his girlfriend stayed overnight with him in



his assigned lodging trailer, and that his father stayed the first night at a Marriott in Reno. He said that on the second night his father stayed with his family's friend. Regarding the lodging rules cited in the Law Enforcement Operations Plan, the Supervisory Agent said ". . . it's to keep people from jumping rooms or moving rooms or trading rooms."

During Lauro's interview, he stated that the Supervisory Agent informed him his (the Supervisory Agent's) girlfriend would stay the night with him in the trailer. The Supervisory Agent told him that he had checked with contracting and travel personnel and that there was no violation since it was the same as staying in a hotel room together.

#### *The Supervisory Agent's Misuse of a Government-owned Vehicle*

A BLM OLES Budget Analyst and a BLM OLES Contracting Officer contacted OIG near the completion of our investigation to request additional interviews regarding information they had not provided due to fear of retaliation.

Both provided details regarding the Supervisory Agent's misuse of his assigned Government vehicle, a silver Chevrolet Tahoe, while at the 2015 Burning Man event. According to an OLES Budget Analyst, she and a Contracting Officer learned from the Supervisory Agent that his girlfriend needed directions to the event. The Supervisory Agent told them that he might meet her in his Government vehicle at a nearby community, then transport her to the event. The OLES Budget Analyst and the OLES Contracting Officer warned the Supervisory Agent against his plan, but the Supervisory Agent only appeared frustrated when he left.

Later that night, according to the OLES Budget Analyst and the OLES Contracting Officer, the Supervisory Agent drove up to them in the Government Tahoe when they were near a mobile substation. They observed the Supervisory Agent's girlfriend in the Tahoe's front passenger seat, when the Supervisory Agent told them to get into his vehicle. They refused. The Supervisory Agent drove away when he saw someone approaching and became concerned that he would be seen.

The next day, the Contracting Officer asked the Supervisory Agent why he had driven his girlfriend in his Government vehicle. He responded to her, "You will forget that you saw that."

During our investigation, we learned that a retired police officer and paramedic assigned to the event had transported the Supervisory Agent's family from the nearby community, although we could not confirm the date or time. The retired police officer told us that, based upon a request from the Supervisory Agent, he had met the Supervisory Agent's family, then transported them in his personal vehicle. He took them through the main entrance where he thought their tickets were scanned, then dropped them off at the ICP where the Supervisory Agent waited for them.

During his interview on May 24, 2016, we asked the Supervisory Agent if he had transported his girlfriend or other family members in his Government vehicle while at the event. He said he had not, and that he had given orders not to transport his family in a Government vehicle.

*Additional Statements by OLES Employees Regarding Lodging for the Supervisory Agent's Family*

The BLM OLES Budget Analyst and the BLM OLES Contracting Officer provided additional details about the Supervisory Agent's intent to secure BLM lodging for his family. The BLM OLES Budget Analyst stated that she had observed a phone conversation in which the Supervisory Agent asked the former BLM Special Agent to reserve a travel trailer for overnight use by his father and family friend. The conversation occurred while she, the Supervisory Agent, and the BLM OLES Contracting Officer were outside the BLM State Office before they left for Burning Man. The BLM OLES Budget Analyst did not know if the Supervisory Agent's father and family friend stayed overnight in the trailer, but the BLM OLES Contracting Officer said that she used the Supervisory Agent's Marriott rewards number to reserve a hotel room for his father and family friend. The BLM OLES Contracting Officer did not know if they stayed overnight in one of the lodging trailers. Federal ethics regulations prohibit supervisors from encouraging or requesting subordinates to use their official time to perform unofficial duties such as personal errands. See 5 C.F.R. § 2635.705(b).

**Supervisory Agent's Improper Influence in a Hiring Process**

According to the second complaint, the Supervisory Agent increased the number of candidates interviewed for a hiring action, which enabled a friend to be interviewed and later selected for the job instead of other more qualified candidates. The complaint further stated that the interviews were short, that the Supervisory Agent's friend who had applied for the position apparently received the questions in advance, and that he was hired immediately after the interviews concluded.

We found that the BLM OLES vacancy announcement resulted in two applicants being hired: a BLM Special Agent, formerly employed as a special agent for the U.S. Secret Service, and the Supervisory Agent's friend, formerly employed as an air marshal for the Supervisory Agent's previous employer, the Federal Air Marshals Service (FAMS).

*Hiring for a BLM Special Agent Position*

The BLM OLES Official said he had little involvement in the hiring process for the BLM special agent position. He said the Supervisory Agent would have handled the hiring locally from a single announcement that filled two positions in the Supervisory Agent's office. He subsequently discussed the hiring with the Supervisory Agent, who identified a "natural break" of 5 percent in the resume scores at the 32<sup>nd</sup> candidate, which meant that a gap greater than one or two percentage points between the scores occurred at this point. He said he was not concerned if a friend of the Supervisory Agent applied for the position, as long as the Supervisory Agent followed the human resources process.

The BLM OLES Official further stated that, while gathering documents for OIG's investigation, he learned from the Supervisory Agent that the Supervisory Agent's friend had worked previously with him as a Federal air marshal. The Supervisory Agent told him that their working relationship had occurred years earlier, that he had not had contact with his friend (and special agent job applicant) since they worked together, and that the two of them were not friends.

Our review of documents gathered by the BLM OLES Official revealed a schedule titled “Resume Summary,” signed by the Supervisory Agent and dated April 16, 2015, showing the combined scores of 121 unnamed applicants. This schedule also contained a handwritten notation, citing a 5-percent break at the 32<sup>nd</sup> applicant. A separate schedule, also titled “Resume Summary” but containing the names of the 121 applicants and their combined scores and ranking, showed that the Supervisory Agent’s friend ranked 23<sup>rd</sup> out of 121 applicants.

Lauro stated that he did not know if the Supervisory Agent and the individual hired as a BLM Special Agent were friends when the man was hired, but he assumed that the Supervisory Agent probably knew the applicant since both worked for FAMS. He also did not know if the Supervisory Agent halted the hiring process so that the individual would receive an interview. When shown the Resume Summary and the various other hiring documents that the BLM OLES Official provided, Lauro said that he would never interview 30 people for a position and hoped that the Supervisory Agent had a good reason for his decision.

### *The Supervisory Agent’s Influence On the Hiring Process*

A BLM Subordinate Supervisory Agent said that he was designated as the selecting official for the two BLM special agent positions, for which more than 200 applicants applied. The Supervisory Agent had told him that an identified applicant’s skills, as well as his personality, would fit well with the team and that he would like to give him a chance at the job. The BLM Subordinate Supervisory Agent said that the applicant should not have been hired because he was not as qualified as the top candidates.

A BLM Special Agent who was on both the resume review and interview panels said the Supervisory Agent tasked him to oversee the hiring process for the BLM special agent positions. He also said that the identified applicant had been discussed long before the applicant resumes had been ranked. The Supervisory Agent previously asked him to speak with the identified applicant on the telephone to discuss the hiring process, and the Supervisory Agent brought him into the office to meet with the BLM Special Agent to discuss the job.

The BLM Special Agent said that when he and a BLM State Ranger scored the applicant resumes, the identified applicant had ranked low, somewhere “in the forties” or lower. He further stated that, although the BLM Subordinate Supervisory Agent had intended to include only the top 10 to 15 candidates in the interview cut-off, the Supervisory Agent intervened, moving the cut-off to about the 30<sup>th</sup> applicant, which gave his friend, the identified applicant, an interview and made it clear to the BLM Special Agent that the Supervisory Agent had moved the cut-off for that purpose. He had concerns about the identified applicant’s law enforcement qualifications, which did not match those of most criminal investigators.

The BLM State Ranger said that, while on assignment with other OLES employees, he and the BLM Special Agent scored and ranked the applicant resumes, finding a natural break at a 3- to 5-percent difference in the scoring after about the 13<sup>th</sup> applicant. He said that the identified applicant ranked at about 30 among approximately 120 resumes. Since he and other OLES employees had discussed the identified applicant, he knew the Supervisory Agent would not be happy if the identified applicant did not receive an interview. He said the BLM Subordinate

Supervisory Agent later told him that the Supervisory Agent had interfered with and suspended the process to ensure interviews for the top 30 candidates.

We also found that a BLM OLES Budget Analyst was assigned to handle certain administrative tasks pertaining to the hiring process. These included preparing spreadsheets to reflect applicant scores and rankings, and contacting applicants to arrange interviews. The BLM OLES Budget Analyst confirmed that the Supervisory Agent had discussed his friend, the identified applicant, with her and the other OLES employees many times to sell his qualifications. The Supervisory Agent's friend had visited the OLES office on several occasions, and the Supervisory Agent required her and other OLES employees to accompany them to lunch. The Supervisory Agent also told employees that everyone would like his friend, mentioning common interests his friend shared with OLES employees. The BLM OLES Contracting Officer reported that, in March 2015, the Supervisory Agent sent a text saying that his friend would be visiting the office that day. The Supervisory Agent wanted them all to go to lunch together. The BLM OLES Contracting Officer complied because the Supervisory Agent was her immediate supervisor and she feared he might retaliate if she refused.

The BLM Subordinate Supervisory Agent felt that a definitive interview cut-off occurred about the 12<sup>th</sup> or 13<sup>th</sup> applicant. He had several conversations with the Supervisory Agent about his friend, the identified applicant; he said the Supervisory Agent knew that his friend did not rank among the top 13. The BLM Subordinate Supervisory Agent told the Supervisory Agent that his friend was not the best candidate, but the Supervisory Agent disagreed. Eventually, the Supervisory Agent suspended the hiring process because the BLM Subordinate Supervisory Agent believed, the Supervisory Agent wanted his friend hired. The BLM Subordinate Supervisory Agent provided a series of emails, dated April 13, 2015, in which the Supervisory Agent said he was going to suspend the hiring process until he could conduct a review. BLM's Subordinate Supervisory Agent said the Supervisory Agent suspended the process because he wanted to hire his friend.

During our second interview with the BLM OLES Budget Analyst, she denied she told the Supervisory Agent his friend's rank in the resume scoring. She told us during her final interview, however, that she met with the Supervisory Agent after returning from the Las Vegas assignment, and he looked at the rankings list without any names attached. The Supervisory Agent marked and signed the list, establishing the interview cut-off. He then told the BLM OLES Budget Analyst to let him know before proceeding with the interviews if the cut-off was not low enough. The BLM OLES Budget Analyst said she understood that he wanted to know if his friend did not make the cut-off because the Supervisory Agent had previously told her that he wanted his friend to be interviewed.

The Supervisory Agent acknowledged his role as the approving official for the hiring process. He said he stopped the process so that he could evaluate the rationale for selecting interview candidates. He expressed concern because only 12 applicants had been selected out of a pool of 130, using only their scored resumes as justification.

The Supervisory Agent further stated that he increased the number of candidates because the 32<sup>nd</sup> candidate marked the first 5-percent difference in scores and was the first natural break in the

list. He denied knowing where his friend ranked and that increasing the number of candidates meant his friend received an interview.

### *Interviews of Applicants*

The documents that the BLM OLES Official provided included one titled “First Round Interview Schedule – Monday, April 20.” It showed that 28 applicants had been scheduled for interviews at 20-minute intervals. The document also included each applicant’s scores in response to four questions asked during interviews with the BLM Special Agent and the Special Agent Panel Member for Interviews. An interview rating summary showed that the Supervisory Agent’s friend ranked fourth.

The BLM Subordinate Supervisory Agent said that the Supervisory Agent had wanted short applicant interviews with a definitive number of questions asked of all the candidates so that they could demonstrate their verbal skills.

The BLM Special Agent and the Special Agent Panel Member for Interviews conducted the interviews by telephone. Both indicated that the Supervisory Agent’s friend appeared to know the questions in advance. When interviewed, the BLM Special Agent said that he, the Supervisory Agent, and the Special Agent Panel Member for Interviews had developed the questions, but that he no longer had them. The Special Agent Panel Member for Interviews said the same.

The Special Agent Panel Member for Interviews further stated that the Supervisory Agent’s friend interviewed well and correctly answered the “zinger” question, which asked what percentage of the state was public land. She sensed that the Supervisory Agent’s friend had been given the questions ahead of time, based on the way he responded. She also said that everyone knew the Supervisory Agent and the applicant he had identified for the position previously had worked together.

The Supervisory Agent said that 10 questions had always been asked during previous interviews. He did not know why only 4 questions were asked or if they were sufficient to consider hiring an applicant. He denied that he provided the questions to his friend for his interview. When interviewed, the Supervisory Agent’s friend said he had not received interview questions beforehand.

### *Reference Checks for the Supervisory Agent’s Friend*

The BLM Subordinate Supervisory Agent said that he had contacted two individuals not listed as references on the resume of the Supervisory Agent’s friend, both of whom had worked with the friend on a Joint Terrorism Task Force (JTTF) assignment. After speaking with them, the BLM Subordinate Supervisory Agent reported to the Supervisory Agent that he had received unfavorable feedback. The Supervisory Agent then contacted a FAM supervisor, who gave his friend a favorable recommendation.

An intelligence analyst who had worked with the Supervisory Agent's friend at JTTF told the BLM Subordinate Supervisory Agent that the Supervisory Agent's friend did not respond to requests for assistance or carry through with assigned tasks. A Federal Bureau of Investigation special agent also assigned to JTTF did not recall being contacted by the BLM Subordinate Supervisory Agent, but had talked with the Supervisory Agent's friend about the Supervisory Agent, whom she had known at JTTF. She also had seen both of them together. She said that they appeared to be good friends.

A FAMS Special Agent reported that the Supervisory Agent had contacted him during his friend's reference check. He gave the Supervisory Agent's friend a favorable recommendation. He also said that the Supervisory Agent's friend was a good employee with great character. He said being a good employee had been required for the Supervisory Agent's friend to be considered for the JTTF assignment.

When interviewed, the Supervisory Agent's friend said that he had known the Supervisory Agent since April or May 2002 and that they had worked together at FAMS. At that time, he and the Supervisory Agent also socialized periodically after business hours and on weekends with a group of friends. This continued until the Supervisory Agent transferred to JTTF. He said that the Supervisory Agent eventually transferred to BLM OLES in 2005 or 2006 and that they had no further contact until the Supervisory Agent's friend transferred to JTTF in 2012.

While with JTTF, the Supervisory Agent's friend reached out to the Supervisory Agent to discuss schools and homes in the area. He later pursued the BLM special agent position as his JTTF assignment neared an end and as his wife chose to remain in the area with their son. The Supervisory Agent contacted him 3 1/2 weeks after his BLM interview to inform him that he had been selected for the position.

In a May 5, 2015, email, the BLM Subordinate Supervisory Agent notified the BLM OLES Official that he and the Supervisory Agent had selected the Supervisory Agent's friend for the position. The email reflected that the BLM OLES Official subsequently notified OLES Director Lauro of the selection.

The Supervisory Agent said that the BLM Subordinate Supervisory Agent never told him that his friend should not be hired or that he had concerns about his friend. The BLM Subordinate Supervisory Agent also never told him why his friend was not the best person for the job. He said the BLM Subordinate Supervisory Agent also had every opportunity to tell the BLM OLES Official if he thought hiring his friend was inappropriate.

The BLM Subordinate Supervisory Agent said that although he disagreed with the Supervisory Agent over hiring his friend, he ultimately selected the Supervisory Agent's friend for the position because "that's how life is and... it's his program."

*The Supervisory Agent's Attempts to Influence Employee Testimony and Employee Concerns of Retaliation*

Several employees informed us that the Supervisory Agent had contacted them prior to and after their interviews with OIG to influence them and to learn interview details. These employees feared the Supervisory Agent would retaliate because of information they had provided.

A BLM State Ranger and a BLM Subordinate Supervisory Agent both stated that the Supervisory Agent contacted them before their interviews with OIG. The BLM State Ranger said that the Supervisory Agent told him that saying "I don't recall" was a valid answer when responding to OIG's questions. The BLM State Ranger said that the Supervisory Agent contacted him after his interview. The Supervisory Agent asked him, "So do I still have a job or did you get me fired?" He said the Supervisory Agent's comments made him uncomfortable and were an attempt to influence his testimony.

The BLM Subordinate Supervisory Agent said that the Supervisory Agent gave him "stuff" to say. For instance, he said that the Supervisory Agent told him to tell OIG investigators that wives of sheriff's department officers had also attended the Burning Man event and eaten at the commissary, and that they had entered the event without paying. He further said that the Supervisory Agent told him to tell OIG about ticket types that could be purchased and that the former BLM Special Agent's wife attended the event.

Following his interview, the Supervisory Agent sent the BLM Subordinate Supervisory Agent a text message concerning a news article about a local sheriff transporting his wife and son by helicopter to the Burning Man event. In his text, the Supervisory Agent wrote, "Email that [article] to [OIG]! . . . Jesus! look like a choir boy!"

When interviewed, the Supervisory Agent acknowledged that he had conversations with the BLM State Ranger, the former BLM Special Agent, the BLM Subordinate Supervisory Agent, and another BLM State Ranger about OIG's interview, but he denied that he attempted to influence anyone's testimony.

During her final interview, the BLM OLES Contracting Officer said that when she returned from the Burning Man event, the Supervisory Agent informed her that two complaints had been filed with OIG against him. She said the Supervisory Agent blamed her for the complaints and told her that she needed to do damage control. She said he threatened to ruin her career if she did anything against him.

The BLM OLES Contracting Officer also stated that during the return trip from Burning Man, the Supervisory Agent had a copy of a complaint sent to OIG. She said that he accused another BLM State Ranger of filing the complaint, and threatened to retaliate against the BLM Supervisory Law Enforcement Ranger, as well as an additional BLM State Ranger for providing OIG with information. She also stated that the Supervisory Agent later told her, "If you're not on my ship, you're going to sink . . . So I suggest you get on my ship." As a result, she feared the Supervisory Agent and kept her office door locked.

The BLM OLES Budget Analyst said the Supervisory Agent told her that he was going to ruin the BLM Law Enforcement Ranger's career. He bragged about ruining a BLM State Ranger's reputation with BLM State Directors and other managers. She said that shortly after the Supervisory Agent changed positions, he had bragged to her that "he owned" Lauro and the BLM OLES Official and that, as a result, no action could be taken against him.

The BLM OLES Budget Analyst further stated that a few weeks after the Supervisory Agent's removal from his position in the office, he sensed that she no longer wanted to interact with him. She said he had called her into his office. The Supervisory Agent said, "You know, if you don't side with me, grenades are going to go off and you'll get hit."

**SUBJECT(S)**

1. Supervisory Agent, BLM OLES
2. Salvatore Lauro, Director, BLM OLES

**DISPOSITION**

We are forwarding our report of investigation to the Assistant Secretary for Land and Minerals Management for any action deemed appropriate.

*cited in Bundy v. USDC-NVL, No. 17-70700 archived on April 4, 2017*





3rd

## Bret Whipple

Partner at Justice Law Center

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As a native of rural Nevada, Bret Whipple has a deep and personal knowledge of the unique issues related to providing legal representation to the smaller communities. Having lived in Las Vegas for a number of years, he is well-versed in the legal landscape of the state. [See more](#)

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### Experience



#### Partner

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### Education



University of Arizona

JD, Law

1992 – 1995

Activities and Societies: Moot Court

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In the course of working with Bret Whipple at various Federal Trials

 **P Fisher**  
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 **DAISY FROMETA**  
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### German Santanilla

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Depositions | Attorney /  
Client Interviews | Discovery  
Translation | Document  
Translation

August 16, 2013, German worked  
with Bret but at different  
companies

In the course of working with Bret Whipple at various Federal Trials at the US Federal Court, I've come to know him as thorough and compassionate, with an unparalleled understanding of the law. He's a very experienced trial attorney who knows how to build a coherent defense strategy. Bret is a pleasure to work with, and I recommend him wholeheartedly.

## Accomplishments

2

### Languages

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# Las Vegas Nevada Attorney Bret Whipple

As a native of rural Nevada, Bret has a deep and personal knowledge of the unique issues related to providing legal



representation to the smaller communities. Having lived in Las Vegas for a number of years, he is also acutely aware of the issues present in the big cities. Bret has actively practiced in White Pine County, Lincoln County, Washoe County, and Clark County.

Bret's experience includes three years with the Clark County Public Defender Office, and an additional three years with the Clark County Special Public Defender Office, which is restricted to murder and death-penalty cases.

In addition to his legal practice, Bret is also a Certified Public Accountant, and has served as Chairman of the Tax Section of the Nevada State Bar. Recognizing the importance of education for future generations, Bret welcomed the opportunity to serve as University Regent for five years.



At the age of 18, Bret left Nevada searching for his path in life, and what he discovered is that the best route to a good life is through education. As a Nevada state officer of the Future Farmers of America, Bret Whipple learned to cultivate crops at a young age. Today, as a member of the Board of Regents, he's adapted that knowledge to fit the needs of Nevada's growing system of higher education. "The growth in our state puts tremendous pressure on higher education," says Whipple. "My intent is to make sure

the Board changes with that growth in a positive manner, and that we continue to improve the quality of instruction at our institutions." Long before he pondered the question of how higher education can most effectively meet the demands of a booming state, Whipple focused on completing his chores and making it to school. Growing up on a ranch in Hiko, Nevada, Whipple fed cattle and milked cows by hand every morning and every night, and laced up his boots during school weeks and walked a quarter mile to reach his school's bus stop. From there, "it was a five-mile ride to Alamo, where I attended both elementary and high school." After graduating from high school, Whipple took a brief hiatus from traditional education and traveled around the world. Three days after graduation he packed his bags and set off for Western Europe. Although his mother provided most of the funding for his trip, he earned the rest from agricultural employers. "Through the Future Farmers of America's Work Experience Abroad program, I had the names and numbers of families in Germany and Australia." After spending five months working on a family farm in Germany, Whipple traveled for a couple of months through other countries, eventually making his way to Australia. Unlike the farm work in Germany, Whipple's host family in Australia required him

to do much “hairier” work to earn his keep.

“I worked about five months on a sheep station in the Australian outback sheering sheep.” Well traveled and more knowledgeable in the areas of farming and related industries, Whipple was ready to return to the states a worldly man after his 13-month overseas odyssey.

Once home, Whipple picked up where he left off with traditional education. “I decided to attend a junior college on the coast of California. While I was there, I went to school, played football and worked in a feedlot in the evenings.” After a year and a half of junior college, Whipple knew he wanted to attend an Ivy League school on the east coast. To that end, he took a bold step: He flew to Boston, where he met with an official at one of the most prestigious schools in the state. “I walked into the football coach’s office at Harvard University and told him I wanted to attend the school.” Armed with only his transcripts and footage from a few of his football games, Whipple won over the coach. “He told me, ‘I’m not sure if I can get you in, but I’ll see what I can do,’ “ Whipple recalls. Following the coach’s advice, Whipple visited some of the neighboring Ivy League schools, and was able to meet his goal. “I interviewed at Princeton, Brown, Yale, and the University of Pennsylvania. Penn accepted me first.”

In addition to the time he devoted to his studies, Whipple was a member of the Penn football team that won two Ivy League championships in football. He also spent considerable time in the ring, perfecting his boxing skills by training under Joe Frazier in north Philadelphia. After three years, he graduated from Wharton School of Business with a bachelor of arts in economics/ accounting. But he wasn’t ready to return to Nevada just yet. Instead, he spent some time boxing on the east coast, and then returned to Europe. Once there, he worked as a tax accountant during the day, and spent his leisure time representing Hanover, Germany on the city’s amateur boxing team.



So far, Whipple’s life has been a fascinating journey. He’s gone from a farmer, to an athlete, to a CPA — all while maintaining one belief. “I believe education is the one route all Americans have equal access to in order to benefit their lives.” That belief has not only kept him grounded, but was no doubt part of the reason he earned his juris doctorate for the University of Arizona’s College of Law. Despite his tough schedule, the husband and father of two finds time to work on the family ranch in central Nevada. He feels his experience as an attorney and as certified public accountant helps the Board make informed decisions regarding specialized issues. And he knows he’s not alone in his fervor for education. “Everyone on the Board of Regents firmly believes in higher education; it’s a common theme for us, and something we all enjoy,” he says. “It’s not only nice to know that everyone is interested in higher education, but it also provides the basis for some strong friendships as well.”

Contact Las Vegas Nevada attorney Bret Whipple today at (702) 731-0000.

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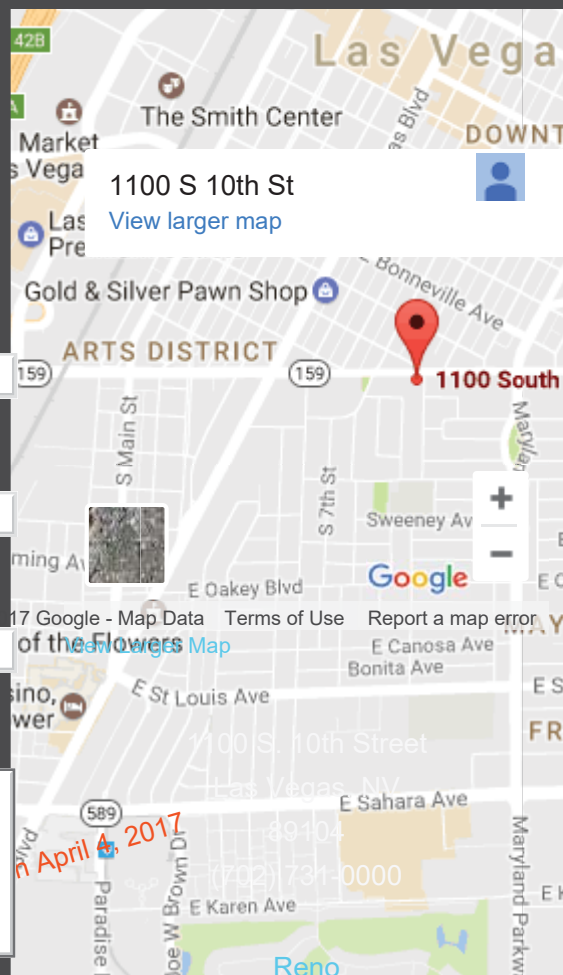
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## Scopes Trial



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**BY J. KINGSTON PIERCE**

6/12/2006 • AMERICAN HISTORY

**Scopes Trial Summary:** *The Scopes Trial, commonly referred to as the Scopes Evolution Trial or the Scopes Monkey trial, began on July 10th, 1925. The defendant, John Thomas Scopes, was a high school coach and substitute teacher who had been charged with violating the Butler Act by teaching the theory of evolution in his classes. The Butler Act forbid the teaching of any theory that denied the biblical story of Creationism. By teaching that man had descended from apes, the theory of evolution, Scopes was charged with breaking the law.*

*The trial took place in Dayton, Tennessee, and was the result of a carefully orchestrated series of events that were intended to bring publicity, and therefore money, into the town by a group of local businessmen. In reality, Scopes was unsure of whether he had ever technically taught the theory of evolution, but he had reviewed the chapter in the evolution chapter in the textbook with students, and he agreed to incriminate himself so that the Butler Act could be challenged by the ACLU (American Civil Liberties Union). Several students were encouraged to testify against Scopes at the trial.*

*The Scopes Trial brought in hundreds of reporters from all over the country, and it was the first trial to be broadcast on radio. Both the prosecuting attorney and Scopes' defense attorney were charismatic men and drew significant attention to the case, which for the defense was more about defeating the Butler Act than about defending Scopes. Scopes was found guilty and charged a fine of \$100, but the verdict was thrown out on a technicality on an appeal. For the next few years, textbooks in Tennessee had all mention of evolution removed. The Butler Act was repealed in 1967.*

Travelers wandering through Dayton, Tennessee, in mid-July 1925 might have been excused for thinking that the tiny hill town was holding a carnival or perhaps a religious revival. The street leading to the local courthouse was busy with vendors peddling sandwiches, watermelon, calico, and books on biology. Evangelists had erected an open-air tabernacle, and nearby buildings were covered with posters exhorting people to 'read your Bible' and avoid eternal damnation.

If there was a consistent theme to the garish exhibits and most of the gossip in Dayton it was, of all things, monkeys. Monkey jokes

were faddish. Monkey toys and souvenirs were ubiquitous. A soda fountain advertised something called a ‘monkey fizz,’ and the town’s butcher shop featured a sign reading, ‘We handle all kinds of meat except monkey.’

As comical as this scene sounds, its background was anything but amusing. Sixty-six years after Charles Darwin published his controversial *Origin of Species*, the debate he’d engendered over humankind’s evolution from primates had suddenly reached a fever pitch in this hamlet on the Tennessee River. Efforts to enforce a new state statute against the teaching of evolution in public schools had precipitated the arrest of Dayton educator John T. Scopes. His subsequent prosecution drew international press attention as well as the involvement of the American Civil Liberties Union (ACLU). It also attracted two headliners of that era—Chicago criminal attorney Clarence Darrow and former presidential candidate William Jennings Bryan—to act as opposing counsel.

Bryan characterized the coming courtroom battle as a ‘duel to the death’—one that would pit religious fundamentalists against others who trusted in scientific conclusions, and would finally determine the right of citizens to dictate the curricula of the schools their tax dollars supported. The case rapidly took on a farcical edge, however, as attorneys shouted at each other and outsiders strove to capitalize on the extraordinary publicity surrounding this litigation. (At one point, for instance, a black man with a cone-shaped head who worked New York’s Coney Island sideshows as Zip, the ‘humanoid ape,’ was offered to the defense as the ‘missing link’ necessary to prove Darwin’s scientific claims.) The ‘Scopes Monkey Trial,’ as history would come to know it, also included a personal dimension, becoming a hard-fought contest not just between rival ideas, but between Bryan and Darrow, former allies whose political differences had turned them into fierce adversaries.

Crusades to purge Darwinism from American public education began as early as 1917 and were most successful in the South, where Fundamentalists controlled the big Protestant denominations. In 1923, the Oklahoma Legislature passed a bill banning the use of all school texts that included evolutionist instruction. Later that same year, the Florida Legislature approved a joint resolution declaring it ‘improper and subversive for any teacher in a public school to teach Atheism or Agnosticism, or to teach as true, Darwinism, or any other hypothesis that links man in blood relationship to any other form of life.’

To Fundamentalists, for whom literal interpretation of the Bible was central to their faith, there was no room for compromise between the story of God’s unilateral creation of man and Darwin’s eons-long development of the species. Moreover, these critics deemed evolutionist theories a threat not only to the belief in God but to the very structure of a Christian society. ‘To hell with science if it is going to damn souls,’ was how one Fundamentalist framed the debate.

John Washington Butler couldn’t have agreed more. In January 1925, this second-term member of the Tennessee House of Representatives introduced a bill that would make it unlawful for teachers working in schools financed wholly or in part by the state to ‘teach any theory that denies the story of the divine creation of man as taught in the Bible.’ Violation of the statute would constitute a misdemeanor punishable by a fine of not less than \$100 or more than \$500 for each offense.

Butler’s bill flummoxed government observers but delighted its predominately Baptist backers, and it sailed through the Tennessee House on a lopsided 71 to 5 vote. It went on to the state Senate, where objections were more numerous, and where one member tried to kill the legislation by proposing an amendment to also ‘prohibit the teaching that the earth is round.’ Yet senators ultimately sanctioned the measure 24 to 6. As the story goes, many Tennessee lawmakers thought they were safe in voting for this ‘absurd’ bill because Governor Austin Peay, a well-recognized progressive, was bound to veto it. However, Peay—in a prickly political trade-off that won him the support of rural representatives he needed in order to pass educational and infrastructural reforms—signed the Butler Act into law. As he did so, though, he noted that he had no intention of enforcing it. ‘Probably,’ the governor said in a special message to his Legislature, ‘the law will never be applied.’

Peay’s prediction might have come true, had not the ACLU chosen to make the statute a cause célèbre. Worried that other states would follow Tennessee’s lead, the ACLU agreed in late April 1925 to guarantee legal and financial assistance to any teacher who would test

the law.

John Scopes wasn't the obvious candidate. A gawky, 24-year-old Illinois native, he was still new to his job as a general science teacher and football coach at Rhea County Central High School. Yet his views on evolution were unequivocal. 'I don't see how a teacher can teach biology without teaching evolution,' Scopes insisted, adding that the state-approved science textbook included lessons in evolution. And he was a vocal supporter of academic freedom and freedom of thought. Yet Scopes was reluctant to participate in the ACLU's efforts until talked into it by Dayton neighbors who hoped that a prominent local trial would stimulate prosperity in their sleepy southeastern Tennessee town.

On May 7, Scopes was officially arrested for violating Tennessee's anti-evolution statute. Less than a week later, William Jennings Bryan accepted an invitation from the World's Christian Fundamentals Association to assist in Scopes' prosecution.

No one who knew the 65-year-old Bryan well should have been surprised by his involvement in the case. Bryan had been trained in the law before being elected as a congressman from Nebraska, and he made three spirited but unsuccessful runs at the presidency on the Democratic ticket. He had served as secretary of state during President Woodrow Wilson's first term but had spent the last decade writing and lecturing more often about theology than politics. With the same silver tongue he'd once used to excoriate Republican office seekers and decry U.S. involvement in World War I, Bryan had since promoted religious ethics over man's exaltation of science. 'It is better to trust in the Rock of Ages than to know the ages of the rocks,' Bryan pronounced; 'It is better for one to know that he is close to the Heavenly Father than to know how far the stars in the heavens are apart.' Ever the rural populist—'the Great Commoner'—Bryan saw religion as the crucial backbone of agrarian America, and he reserved special enmity for accommodationists who struggled to reconcile Christianity and evolution. Such modernism, he wrote, 'permits one to believe in a God, but puts the creative act so far away that reverence for the Creator is likely to be lost.'

Bryan's role elevated the Scopes trial from a backwoods event into a national story. Clarence Darrow's agreement to act in the teacher's defense guaranteed the story would be sensational. A courtroom firebrand and a political and social reformer, the 68-year-old Darrow was still riding high from his success of the year before, when his eloquent insanity defense of Chicago teenagers Nathan Leopold and Richard Loeb, who had kidnapped and murdered a younger neighbor, had won them life imprisonment instead of the electric chair. The ACLU would have preferred a less controversial and more religiously conservative counsel than Darrow, an agnostic who characterized Christianity as a 'slave religion' that encouraged complacency and acquiescence toward injustices. According to biographer Kevin Tierney, the Chicago attorney 'believed that religion was a sanctifier of bigotry, of narrowness, of ignorance and the status quo.' The ACLU feared that with Darrow taking part, the case would, to quote Scopes, 'become a carnival and any possible dignity in the fight for liberties would be lost.' In the end, Darrow took part in the Dayton trial only after offering his services free of charge—'for the first, the last, and the only time in my life,' the attorney later remarked.

After spending the previous Friday impaneling a jury (most members of which turned out to be churchgoing farmers), all parties gathered for the start of the real legal drama on Monday, July 13, 1925. Approximately 600 spectators—including newspaper and radio reporters, along with a substantial percentage of Dayton's 1,700 residents—elbowed their way into the Eighteenth Tennessee Circuit Court. Presiding was Judge John T. Raulston, who liked to call himself 'jest a reg'lar mountin'er jedge.' The crowded courtroom made the week's stifling heat even more unbearable. Advocates on both sides of the case quickly resorted to shirtsleeves. The prosecution included Bryan, Circuit Attorney General Arthur Thomas Stewart, and Bryan's son, William Jennings Bryan, Jr., a Los Angeles lawyer. For the defense were Darrow, New York lawyer and co-counsel Dudley Field Malone, ACLU attorney Arthur Garfield Hays, and Scopes' local lawyer, John Randolph Neal.

The prosecution's strategy was straightforward. It wasn't interested in debating the value or wisdom of the Butler Law, only in proving that John Scopes had broken it. 'While I am perfectly willing to go into the question of evolution,' Bryan had told an acquaintance, 'I am not sure that it is involved. The right of the people speaking through the legislature, to control the schools which they create and

support is the real issue as I see it.' With this direction in mind, Bryan and his fellow attorneys took two days to call four witnesses. All of them confirmed that Scopes had lectured his biology classes on evolution, with two students adding that these lessons hadn't seemed to hurt them. The prosecution then rested its case.

Scopes' defense was more problematic. Once a plea of innocence had been lodged, Darrow moved to quash the indictment against his client by arguing that the Butler Law was a 'foolish, mischievous, and wicked act . . . as brazen and bold an attempt to destroy liberty as ever was seen in the Middle Ages.' Neal went on to point out how the Tennessee constitution held that 'no preference shall be given, by law, to any religious establishment or mode of worship.' Since the anti-evolution law gave preference to the Bible over other religious books, he concluded, it was thus unconstitutional. Raulston rejected these challenges.

From the outset, defense attorneys focused their arguments on issues related to religion and the influences of a fundamentalist morality. Early in the proceedings, Darrow objected to the fact that Judge Raulston's court opened, as was customary, with a prayer, saying that it could prejudice the jury against his client. The judge overruled Darrow's objection. Later the defense examined the first of what were to be 12 expert witnesses—scientists and clergymen both—to show that the Butler Law was unreasonable and represented an improper exercise of Tennessee's authority over education. When the state took exception, however, Raulston declared such testimony inadmissible (though he allowed affidavits to be entered into the record for appeal purposes).

With the defense's entire case resting on those 12 experts, veteran courtroom watchers figured that this decision effectively ended the trial. 'All that remains of the great case of the State of Tennessee against the infidel Scopes is the formal business of bumping off the defendant . . . ' harrumphed journalist H.L. Mencken after the sixth day of litigation. '[T]he main battle is over, with Genesis completely triumphant.' So sure were they of a swift summation that Mencken and others in the press corps simply packed their bags and left town. Yet Darrow had a surprise up his sleeve. When the court reconvened on Monday, July 20, the ACLU's Arthur Hays rose to summon one more witness—William Jennings Bryan. 'Hell is going to pop now,' attorney Malone whispered to John Scopes.

Calling Bryan was a highly unusual move, but an extremely popular one. Throughout the trial, the politician-cum-preacher had been the toast of Dayton. Admirers greeted Bryan wherever he went and sat through long, humid hours in court just for the opportunity to hear him speak. He'd generally been silent, listening calmly, cooling himself with a fan that he'd received from a local funeral home, and saving his voice for an hour-and-a-half-long closing argument that he hoped would be 'the mountain peak of my life's effort.' But Bryan didn't put up a fight when asked to testify. In fact, he agreed with some enthusiasm, convinced—as he always had been—of his righteous cause.

Judge Raulston, concerned that the crowd massing to watch this clash of legal titans would prove injurious to the courthouse, ordered that the trial reconvene on the adjacent lawn. There, while slouched back in his chair and pulling now and then on his signature suspenders, Darrow examined Bryan for almost two hours, all but ignoring the specific case against Scopes while he did his best to demonstrate that Fundamentalism—and Bryan, as its representative—were both open to ridicule.

Darrow wanted to know if Bryan really believed, as the Bible asserted, that a whale had swallowed Jonah. Did he believe that Adam and Eve were the first humans on the planet? That all languages dated back to the Tower of Babel? 'I accept the Bible absolutely,' Bryan stated. As Darrow continued his verbal assault, however, it became clear that Bryan's acceptance of the Bible was not as literal as his followers believed. '[S]ome of the Bible is given illustratively,' he observed at one point. 'For instance: 'Ye are the salt of the earth.' I would not insist that man was actually salt, or that he had flesh of salt, but it is used in the sense of salt as saving God's people.' Similarly, when discussing the creation, Bryan conceded that the six days described in the Bible were probably not literal days but periods of time lasting many years.

With this examination dragging on, the two men's tempers became frayed, and humorous banter gave way to insults and fists shaken in anger. Fundamentalists in the audience listened with increasing discomfort as their champion questioned Biblical 'truths,' and Bryan

slowly came to realize that he had stepped into a trap. The sort of faith he represented could not adequately be presented or justly parsed in a court of law. His only recourse was to impugn Darrow's motives for quizzing him, as he sought to do in this exchange:

BRYAN: Your Honor, I think I can shorten this testimony. The only purpose Mr. Darrow has is to slur at the Bible, but I will answer his questions . . . and I have no objection in the world. I want the world to know that this man, who does not believe in God, is trying to use a court in Tennessee—

DARROW: I object to that.

BRYAN: —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.

It was a bleak moment in what had been Bryan's brilliant career. He hoped to regain control of events and the trust of his followers the next day by putting Darrow on the stand. But Attorney General Stewart, who'd opposed Bryan's cross-examination, blocked him and instead convinced the judge to expunge Bryan's testimony from the record.

Before the jury was called to the courtroom the following day, Darrow addressed Judge Raulston. 'I think to save time,' he declared, 'we will ask the court to bring in the jury and instruct the jury to find the defendant guilty.' This final ploy by Darrow would ensure that the defense could appeal the case to a higher court that might overturn the Butler Law. The defense also waived its right to a final address, which, under Tennessee law, deprived the prosecution of a closing statement. Bryan would not get an opportunity to make his last grandiloquent speech.

The jury conferred for only nine minutes before returning a verdict of guilty. Yet Bryan's public embarrassment in Dayton would become legend—one that the prosecutor could never overcome, for he died in his sleep five days after the trial ended.

Following the trial, the school board offered to renew Scopes' contract for another year providing he complied with the anti-evolution law. But a group of scientists arranged a scholarship so he could attend graduate school, and Scopes began his studies at the University of Chicago in September. Mencken's Baltimore Sun agreed to pay the \$100 fine Judge Raulston levied against Scopes. On appeal, the Tennessee Supreme Court ruled that the jury, rather than the judge, should have determined Scopes' fine, but it upheld the Butler Law's constitutionality. Darrow had hoped to take the matter all the way to the U.S. Supreme Court. Any chance of that, though, was foreclosed when Tennessee's chief justice nullified Scopes' indictment and threw what he called 'this bizarre case' out of the courts.

Not until April 1967—42 years after the Butler Law was passed, and 12 years after *Inherit the Wind*, a play based on the Scopes Monkey Trial, became a Broadway hit—did the Tennessee Legislature repeal the anti-evolution law.

Since then, a series of court decisions has barred creationists' efforts to have their beliefs taught in public schools. Yet 75 years after the Scopes trial, debate over evolution still continues to simmer as states and education boards struggle with the subject that pits science against religion.

This article was written by J. Kingston Pierce and originally published in the August 2000 issue of *American History Magazine*. For more great articles, subscribe to *American History* magazine today!

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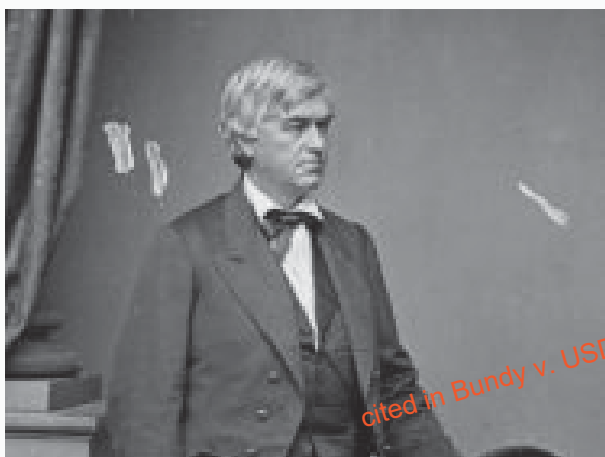




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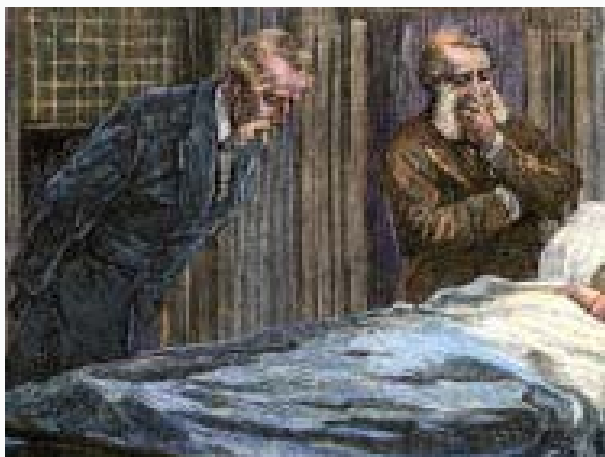


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# LARRY KLAYMAN

ATTORNEY AT LAW



## Biography

Larry Klayman, founder of Judicial Watch and Freedom Watch, is known for his strong public interest advocacy in furtherance of ethics in government and individual freedoms and liberties. During his tenure at Judicial Watch, he obtained a court ruling that Bill Clinton committed a crime, the first lawyer ever to have done so against an American president. Larry became so famous for fighting corruption in the government and the legal profession that the NBC hit drama series "West Wing" created a character after him: [Harry Klaypool of Freedom Watch](#). His character was played by actor John Diehl.

In 2004, Larry ran for the U.S. Senate as a Republican in Florida's primary. After the race ended, he founded Freedom Watch.

Larry graduated from Duke University with honors in political science and French literature. Later, he received a law degree from Emory University. During the administration of President Ronald Reagan, Larry was a Justice Department prosecutor and was on the trial team that succeeded in breaking up the telephone monopoly of AT&T, thereby creating competition in the telecommunications industry.

Between Duke and Emory, Larry worked for U.S. Senator Richard Schweiker (R-Pa.) during the Watergate era. He has also studied abroad and was a stagiaire for the Commission of the European Union in its Competition Directorate in Brussels, Belgium. During law school, Larry also worked for the U.S. International Trade Commission in Washington, D.C.

Larry speaks four languages—English, French, Italian, and Spanish—and is an international lawyer, among his many areas of legal expertise and practice.

The author of two books, *Fatal Neglect* and *Whores: Why and How I Came to Fight the Establishment*, Larry has a third book in the works dealing with the breakdown of our political and legal systems. His current book, *Whores*, is on now sale at WND.com, Amazon.com, BarnesandNoble.com, Borders.com, and all major stores and booksellers.

Larry is a frequent commentator on television and radio, as well as a weekly columnist, on Friday, for WND.com.

Larry has been credited as being the inspiration for the Tea Party movement. (See "[Larry Klayman - The One Man TEA Party](#)," by Dr. Richard Swier.)

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