

**PROFESSIONALISM: LAWYERS AS
HEROES, VILLAINS AND FOOLS**

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presented at

End of the Year CLE By-the-Hour Seminar
and Fundraiser for The Legal Aid Bureau

December 30, 1998

New Orleans, Louisiana

Sponsored by

The Legal Aid Bureau

and

The Federal Bar Association
New Orleans Chapter

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Heroes: J. Skelly Wright & Atticus Finch

One of the most courageous lawyers to ever grace the bench in Louisiana was Judge J. Skelly Wright. The son of poor working-class parents, Skelly became a high school English teacher and attended Loyola Law School at night. With the help of an uncle, he got a job with the U.S. attorney in New Orleans and quickly established a reputation as a tough and effective prosecutor. Skelly Wright commanded a subchaser during World War II in the North Atlantic, then returned after the war to New Orleans as senior assistant to U.S. Attorney Herbert Christenberry. In 1948, after President Harry Truman named Christenberry a federal district judge, Wright became U.S. attorney. In 1949, he became a federal judge at the age of 38, then the youngest district judge in the country.

It fell to Judge Wright to carry out the mandate in *Brown v. Board of Education* (U.S. 1954) to bring an end to racial segregation in the public schools. In May 1960, he ordered that African American children entering the first grade be allowed to transfer to the previously all-white schools nearest their homes. By the end of the year, Judge Wright became the most hated man in New Orleans. Federal marshalls guarded his home around the clock, threatening letters and phone calls came at all hours of the day and night, a cross was burned on his lawn, and a group of public school parents staged a mock funeral of Judge Wright, carrying his miniature coffin onto the floor of the Louisiana House of Representatives. Perhaps most painfully, Judge Wright was ostracized by his peers and neighbors. Even old friends would walk across the street to avoid speaking with him.

But his tormentors and detractors were not successful. Judge Wright persevered and upheld his

duty to carry out the law and the Constitution, at whatever cost to himself and his family. Almost single-handedly, he broke the back of segregation in the public schools of Louisiana. Although denied a place on the U.S. 5th Circuit Court of Appeals, Judge Wright was appointed to the D.C. Circuit in 1962 and became one of its most respected judges.

What is most interesting in the story of Skelly Wright is that he had no wish to become a reformer. He was a conventional man who shared the conservative views of the community in which he grew up. According to Judge Wright, his personal Epiphany came about as a result of a seemingly minor incident that occurred on Christmas Eve of 1945. Looking out of his office window, he saw that a party was being held in the building across the street, the House for the Blind. As the blind people were led into the building, they were separated by race into two rooms. "And here it was

Christmas," he thought, "it was all so empty and futile." The injustice and inhumanity of segregation were revealed to him on that night before Christmas, his newly found faith like a gift from the Magi who traveled to Bethlehem to worship Christ. Years later Judge Wright would recall, "The blind couldn't segregate themselves. They couldn't see. There was somebody else doing it for them."

The lonely and courageous journey of Skelly Wright on the road to freedom for black school children resembles the heroic struggle of lawyer-hero Atticus Finch to defend a poor black man (Thomas Robinson) against an uneducated, dirt-poor white girl (Mayella Violet Ewell) who falsely accused him of rape. Finch no more wanted to fight a moral crusade against hopeless odds than did Skelly Wright. But having been appointed to defend the accused, and believing in the courts as the one human institution where all men are "created

equal," he relentlessly exposed the lies, hypocrisy and racism upon which the prosecution was based.

Atticus Finch knew he would lose the case and that the rural community in which he was born and reared, the town of Macomb, Alabama, would turn against him and his family. But this was the price he had to pay as a lawyer and a man who strove to always tell the truth to his children and fellow townspeople, by word and deed. As Atticus explained to his daughter, Scout, through whom the story of this Alabama country lawyer is told:

" . . . This case, Tom Robinson's case, is something that goes to the essence of a man's conscience -- Scout, I couldn't go to church and worship God if I didn't try to help that man . . . before I can live with other folks I've got to live with myself. The one thing that doesn't abide by majority rule is a person's conscience."

Harper Lee, *To Kill a Mockingbird* (1960). Atticus saw the case through to its tragic conclusion: Tom Robinson was convicted of capital rape and thereafter killed in a prison escape; Atticus's

son, Jem, was almost murdered by Maryella Ewell's crazed father.

The people of Macomb County, Alabama continued to hold Atticus Finch in high regard and returned him to another term in the state legislature. As Miss Maudie explained to Jem Finch (who was shattered by the jury's guilty verdict):

. . . I simply want to tell you that there are some men in this world who were born to do our unpleasant jobs for us. Your father's one of them.

The same may be said of J. Skelly Wright, another lawyer-hero with the gift of telling the truth in the community, bearing moral witness to what is right and just.

Villains: Roy Grutman

In his book, *Lawyers and Thieves*, Roy Grutman tells the story of his own rise to fame and fortune and, supposedly, what it takes to be a successful lawyer.

Born to a wealthy family in the Bronx, and after attending Yale and Columbia Law School, Grutman went to work for a small but prestigious New York firm, Wellman & Smyth.

After a brief stint with that firm, Grutman decided to move his practice to the Bronx, teaming up with an unscrupulous personal-injury lawyer named Burton Pugach, in 1957. Pugach was the richest personal-injury lawyer in the Bronx and made his money by staging phony accidents and bilking insurance companies. To paraphrase Grutman, he built up a thriving practice on deception.

Why does a well-bred and well-educated lawyer turn his back on the noble aims of the legal profession? To fill his pockets with money? Maybe, but in Grutman's case, he appears to have been motivated by feelings of inferiority and insecurity. He writes,

. . . The first case I ever tried alone was in a courtroom in Brooklyn. My

clients were two brothers whose car had collided with a bus. I arrived for the trial wearing a three-piece suit and a gold watch chain, and while I declaimed on the brothers' behalf, my opponent just smiled at the judge. I was on his turf and it was obvious to everyone but me that I did not blend in.

After the case was settled for much less than it was worth, an elderly Jewish man came over to me and asked, "Counselor, are you, by chance, Ivy League?"

"Yes," I proudly replied. "Yale."

"Vell, dat don't work aroun' here," he warned.

The lawyer I should copy, he told me, was a man named Izzy Halpern, a respected courthouse fixture who wore alligator shoes, monogrammed silk shirts and smoked a cigar the size of a baseball bat.

. . .

"Dat's vat vorks," the old man said. And he was right.

(Grutman 13)

In any event, Grutman became just like his mentor, Burton Pugach, a showman and a faker, whose only ambition was to make money:

. . . [A]ll good lawyers adapt to their environment, taking on the coloration of

their immediate surroundings like chameleons. Their stock-in-trade is their ability to champion anyone or any cause with equal conviction. . . . And, in a courtroom, winning is what counts.

(*Id.* at 14)

Grutman dresses up his rhetoric in respectable garb, claiming that manipulation and deception have a long pedigree in the legal profession:

In less civilized times going to court meant being subjected to an ordeal. The preferred method was grilling the accused party over hot coals. If death resulted, it was considered a sign that justice was done; if not, it meant the authorities had cooked the wrong person. With improvements in the system, defendants were allowed to pay stand-ins, known as champions, to take their place in tests of strength. . . . They were also the first "lawyers," and their talent for manipulating the truth -- and emptying purses -- is part of every attorney's heritage.

(Grutman at 13)

Worst of all, Grutman professes to know what prospective clients should look for when "shopping" for a "good" lawyer:

. . . [S]electing the right lawyer requires a complete reversal of most, if not all, of your normal human impulses. Qualities

like kindness, patience and sensitivity, the first things you look for in a friend, are the last traits you want in an attorney, particularly one whose main function will be to ward off a ruthless enemy or take your arch rival to the cleaners. Good lawyers tend to be just the opposite of good companions. And it helps to remember when you hire one that you are paying for self-preservation, not a warm relationship.

(*Id.* at 14)

**Fools: Plaintiffs' Counsel in the
Woburn Groundwater Contamination Suit**

The last lawyer I want to talk about is the plaintiffs' counsel so ably portrayed in Jonathan Harr's best seller, *A Civil Action* (1995), which tells a true story about a lawsuit over the leukemia deaths of children and contaminated drinking water in the town of Woburn, Massachusetts.

I assume many of you have read the book and therefore will be brief. The lawyer for the Woburn families, a rising star in the plaintiff's personal injury bar, has the opportunity to

represent the families of leukemia victims against two big corporations, W.R. Grace and Beatrice Foods, whose industrial wastes have allegedly poisoned the groundwater in Woburn.

After long travail, plaintiffs' counsel obtains an \$8 million settlement from one of the corporate defendants, W.R. Grace. The other defendant, which had offered \$14 million to settle the case, wins a jury verdict that it is not liable to the plaintiffs.

The plaintiffs' counsel, as depicted in the book, ends up heavily in debt, with his practice in ruins, and is barely able to pay off his creditors with the proceeds from his legal fee.

This is a tragic story of a young and gifted attorney who loses his way by becoming enamored of his own invincibility. He squanders precious resources on experts he does not need and cannot afford, rejects settlement opportunities that are generous and would have satisfied his clients, and

loses all sense of proportion in handling what is admittedly a complex and sensitive case.

It is interesting to note that Harr's book about a lost cause and a flawed plaintiff's lawyer has become required reading in at least 50 law schools, including Harvard and Yale. (See "New York Times," Dec. 26, 1998 at A-1, copy attached). Furthermore, law students reportedly think of plaintiffs' counsel as a hero, apparently identifying with his strengths and ignoring his weaknesses. (*Id.*)

I imagine law students are drawn to the Woburn lawyer because he is willing to risk everything in a contest pitting the townspeople against two giant corporations that are viewed as evil and driven solely by their pursuit of profits. One understands the power of the David and Goliath myth in our culture. But it is important to recognize that the lawyer for the Woburn plaintiffs could have done a much better job.

He had only to communicate honestly with his clients and aim for a realistic outcome containing elements of fairness to all of the parties and the community.

Concluding Remarks

Atticus Finch was an Alabama country lawyer all of his professional life. He did not attend college or law school and was admitted to the Bar after working as an apprentice in a Montgomery law office. In 1935, Finch was appointed to defend Thomas Robinson on a charge of capital rape. Three years before, the Supreme Court of the United States had ruled that the state courts must provide counsel to indigent defendants in capital cases. *Powell v. Alabama*, 287 U.S. 45 (1932). Thomas Robinson was convicted by an all-white, all-male jury in Maycomb County Circuit Court and only escaped the hangman's noose by jumping over a prison fence and being shot in the back.

The question for us today is why has Atticus Finch, a fictional lawyer from the early part of this century who we only know through Harper Lee's 1960 novel, *To Kill a Mockingbird*, become a hero for our times. It has been suggested that Atticus meets our need for a lawyer-hero who knows how to tell the truth and defines himself as a lawyer the same way he does as a man.* J. Skelly Wright was the same kind of judge that Atticus was a lawyer, a truth-teller who was willing to, and did, suffer for the moral shortcomings of the community where he was raised and that he so deeply loved. He is also a hero for our times.

Allow me to shift gears and talk about the rogues and flawed heroes in our gallery of lawyers. What can we hope to learn from reading about the lives of lawyers such as Roy Grutman and the plaintiffs' counsel in a pollution case in Woburn, Massachusetts, Jan Schlichtmann?

* See Thomas L. Shaffer, *The Moral Theology of Atticus Finch*, 42 U. Pitt. L. Rev. 181 (1980).

Grutman tries to impress us with his supposed prowess as a trial lawyer; he appeals to our survival instinct. But in a world far removed from trial by ordeal -- the world of Julius Caesar or Marco Polo -- there is no need to live like an animal in the jungle. Some would say that such behavior is pathological. However, Roy Grutman is not merely a freak or a caricature of a lawyer. He shows us the dark side of our profession, i.e. the growing chorus of prominent lawyers, from Wall Street to Main Street, who proclaim that law is "just another business." The managing partner of a great New York firm rightly told his partners, "We are not a trade or business; we are a profession." Sol M. Linowitz, *The Betrayed Profession* 22 (1994).

The story of Jan Schlichtmann and the Woburn pollution case teaches us the virtues of moderation and balance in our professional lives. Without these virtues (which, like any others,

must be practiced), we become overly confident, convinced of our own infallibility, unwilling to consider another point of view. And when that happens we ultimately fail, come crashing down like Humpty Dumpty, weary, disillusioned and broken.

Each of us must grapple with the human conflicts and ethical problems confronted in our daily practices. Each of us must examine our professional lives for signs of illness and schizophrenia on a daily basis. Each of us must ponder if we are the lawyer we hoped to become on the first day we entered law school.

So where are our heroes? Our heroes are among us and always have been. Those who deliver justice to the people, who care about and learn from their clients as people, those who practice what they preach and preach what they practice. You are the heroes. Each and every one of you.

Suggested Reading

1. Louis Auchincloss, DIARY OF A YUPPIE (1986).
2. Jack Bass, UNLIKELY HEROES (1981).
3. Michael S. Bernick, *The Unusual Odyssey of J. Skelly Wright*, 7 Hastings Const. L. Q. 971 (Summer 1980).
4. John Grisham, THE STREET LAWYER (1998).
5. Michael J. Kelly, LIVES OF LAWYERS: JOURNEYS IN THE ORGANIZATIONS OF PRACTICE (1994).
6. Sol M. Linowitz, THE BETRAYED PROFESSION (1994).
7. Anthony Lewis, GIDEON'S TRUMPET (1964).
8. Louisiana Bar Foundation, IN OUR OWN WORDS: REFLECTIONS ON PROFESSIONALISM IN THE LAW (Roger A. Stetter, ed. 1998).
9. E. Barrett Prettyman, Jr., DEATH IN THE SUPREME COURT 90 (1961) (recounting the story of the Willie Francis electrocution case, *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 374 (1947)).
10. Charles Reich, THE SORCERER OF BOLINAS REEF (1976).
11. John Steinbeck, TRAVELS WITH CHARLEY (1961) (chapter describing the New Orleans school desegregation crisis).