

CHOOSING OUR HEROES: SKELLY WRIGHT AND ATTICUS FINCH

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After serving as a law clerk first for Skelly Wright and then—with the assistance of Judge Wright I am sure—for Justice Thurgood Marshall, I worked for four years as a public defender before joining the legal academy. In that role, I found that I shared with many other public defenders (at least with other white public defenders) a childhood fascination with Atticus Finch, the white lawyer hero of Harper Lee's classic novel *To Kill a Mockingbird*, immortalized in the film version by Gregory Peck, who won an Oscar for his performance. Atticus was a good man, honest and kind; he was a good father, loving and forthright; and he was a good lawyer, who courageously and skillfully represented a black man falsely accused of raping a white woman in a small Alabama town in the 1930s. We public defenders were hardly idiosyncratic in our admiration for Atticus Finch: in 2003, the American Film Institute named him the greatest movie hero of all time.¹

Thus you may be surprised to learn, as I was, that Professor and former law school Dean Monroe Freedman, one of the country's leading legal ethicists until his recent death, questioned whether Atticus Finch deserves to be venerated as a role model for lawyers.² Indeed, one of Freedman's pieces is provocatively titled *Atticus Finch, Esq., R.I.P.* In past years, I have presented

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1. See *AFI's 100 Years . . . 100 Heroes & Villains: AFI's 100 Greatest Heroes & Villains*, AM. FILM INST., <http://www.afi.com/100Years/handv.aspx> (last visited Feb. 21, 2015).

2. See Monroe H. Freedman, *Atticus Finch—Right and Wrong*, 45 ALA. L. REV. 473 (1994) [hereinafter *Right and Wrong*]; Monroe Freedman, *Finch: The Lawyer Mythologized*, LEGAL TIMES, May 18, 1992, at 25; Monroe Freedman, *Atticus Finch, Esq., R.I.P.*, LEGAL TIMES, Feb. 24, 1992, at 20.

Freedman's indictment of Atticus during orientation for new Harvard law students to provoke thinking and discussion about what lawyers should aspire to do and to be. In preparing for this event in Judge Wright's honor today, however, I realized that Freedman's criticism of Atticus Finch's shortcomings offers a roadmap for celebrating some of Skelly Wright's extraordinary virtues. Thus, I will consider the three most significant charges that Freedman levels against Atticus in order to illuminate Judge Wright's special qualities and accomplishments.

First, Freedman claims that Atticus just doesn't get it. In Freedman's view, Atticus fails to follow his own wise advice that to understand another's point of view, you've got to "climb into his skin and walk around in it."³ Freedman thinks that Atticus fails to fully appreciate "the grinding, ever-present humiliation and degradation" of the black citizens of his town; indeed, Freedman argues that Atticus sometimes "even trivializes and condones it."⁴ He points out that Atticus downplays the danger of the Ku Klux Klan when he tells his son Jem, "Way back about nineteen-twenty there was a Klan, but it was a political organization more than anything."⁵ Freedman also takes Atticus to task for insisting that the leader of the lynch mob that nearly murdered his client was "basically a good man" who just happened to have "blind spots along with the rest of us."⁶ Freedman excoriates Atticus for whitewashing as a mere "blind spot" the lynch mob's "homicidal hatred of black people."⁷ Malcolm Gladwell joins in Freedman's critique in a *New Yorker* article in which he recounts an exchange in which Atticus's daughter Scout asks him if it is okay to hate Hitler. Atticus answers firmly that it is not okay to hate anyone. "Really?" queries Gladwell, "Not even Hitler?"⁸ Gladwell observes that if Atticus were truly a "civil-rights hero," he would be "brimming with rage" when the jury unjustly convicts the innocent Tom Robinson. "But he isn't."⁹ Rather, it is the children who react with indignation and grief to the injustice

3. HARPER LEE, *TO KILL A MOCKINGBIRD* 33 (40th Anniversary ed. 1999) [hereinafter TKM].

4. *Right and Wrong*, *supra* note 2, at 479.

5. TKM, *supra* note 3, at 167.

6. *Id.* at 180.

7. *Right and Wrong*, *supra* note 2, at 476.

8. Malcolm Gladwell, *The Courthouse Ring: Atticus Finch and the Limits of Southern Liberalism*, *NEW YORKER*, Aug. 10, 2009, at 26, 28.

9. *Id.* at 27.

that they witness. Dill, a nine-year-old version of Harper Lee's childhood friend Truman Capote, runs out of the trial physically sickened by the racist treatment of Tom Robinson, crying "[i]t ain't right . . . it ain't right to do 'em that way."¹⁰ Twelve-year-old Jem rebukes his father for calling the lynch mob's attitude a "blind spot" and reacts with "angry tears" at the jury's verdict.¹¹ The contrast between Atticus and the children is clearly intended by the author; after all, she begins the book with the epigraph: "Lawyers, I suppose, were children once."¹²

Like Atticus Finch, Skelly Wright was not a hater, nor did he completely escape the racial blinders of his time and place. However, in contrast to Atticus, Wright came to feel quite keenly the suffering caused by racial injustice. Wright started out, by his own description, as "just another Southern boy"¹³ acculturated and indifferent to the rigid racial codes of Southern society.¹⁴ But as he matured, Wright began to respond in a personal way to the injustice around him. As he described the experience, "It just began to eat at me. And it eats at me now. It began to make me think more of the injustice of it, of the whole system that I had taken for granted."¹⁵ Wright-the-man's own evolution allowed him to recognize both how deeply rooted racial prejudice was and how important it was to address, leading Wright-the-judge to pen one of the most eloquent statements in the annals of American law in ordering the desegregation of the New Orleans schools in 1956, a quote that was encased in glass on his desk in chambers when I worked for him:

The problem of changing a people's mores, particularly those with an emotional overlay, is not to be taken lightly. It is a problem which will require the utmost patience, understanding, generosity and forbearance from all of us, of whatever race.

But the magnitude of the problem may not nullify the principle. And that principle is that we are, all of us,

10. TKM, *supra* note 3, at 227.

11. *Id.* at 180, 243.

12. TKM, *supra* note 3, at front matter (quoting Charles Lamb).

13. LIVA BAKER, *THE SECOND BATTLE OF NEW ORLEANS: THE HUNDRED-YEAR STRUGGLE TO INTEGRATE THE SCHOOLS* 92 (1996).

14. *Id.* at 94 ("Blacks were something apart. The injustice was lost on me basically. I took it like everybody else took it.").

15. JACK BASS, *UNLIKELY HEROES* 113 (1981).

freeborn Americans, with a right to make our way, unfettered by sanctions imposed by man because of the work of God.¹⁶

Only someone who had grappled himself with overcoming the racial mores that surrounded him could have written so generously about “forbearance.” And only someone who had reached a more transcendent place could speak not of “our poor Negro brethren” or some such condescending locution, but rather of “all of us, freeborn Americans”—invoking an identification and solidarity with the victims of racial discrimination that was exceedingly rare for a white man of his time and place.

Judge Wright’s 1956 decision provoked years of legal wrangling and outright defiance by the governments of New Orleans and Louisiana, as well as public outrage and violence, but it eventually led to its own D-Day—Desegregation Day, November 14, 1960, when Ruby Bridges matriculated at William Frantz elementary school. This day has been immortalized both in photography and in Norman Rockwell’s iconic painting, entitled *The Problem We All Live With*, portraying six-year-old Ruby being escorted into the school flanked by federal marshals.¹⁷ At the height of the school desegregation crisis in New Orleans, Judge Wright gave an interview in which he described a powerful turning point for himself regarding racial justice. On Christmas Eve in 1945, shortly after returning from the war, he observed a party at the House for the Blind that was located across the street from his law office. Attendants led the blind people into two different rooms in the house, separated by race. He was struck by the vision of segregation being imposed even on the blind, who could not possibly do it for themselves—by how “empty and futile” it all was.¹⁸ Indeed, the interviewer noted that in recounting this decades-old experience, Judge Wright “was so

16. *Bush v. Orleans Parish Sch. Bd.*, 138 F. Supp. 337, 342 (E.D. La. 1956).

17. See David Grunfield, *Ruby Bridges*, NOLA.COM (Jan. 18, 2009, 7:31 PM), http://photos.nola.com/tpphotos/2009/01/ruby_bridges_4.html (showing the photograph of U.S. Marshalls escorting six-year-old Ruby Bridges from William Frantz Elementary School); Norman Rockwell, *The Problem We All Live With*, LOOK, Jan. 14, 1964, at 23-24; see also Norman Rockwell’s “*The Problem We All Live With*” to be Exhibited at the White House, NORMAN ROCKWELL MUSEUM, <http://www.nrm.org/2011/05/norman-rockwells-the-problem-we-all-live-with-to-be-exhibited-at-the-white-house/> (last visited Feb. 1, 2015) (showing Norman Rockwell’s iconic painting).

18. Michael S. Bernick, *The Unusual Odyssey of J. Skelly Wright*, 7 HASTINGS CONST. L.Q. 971, 984 (1980) (quoting Judge Wright).

moved that he could not complete the story for several minutes.”¹⁹ Skelly Wright’s transformation from “just another Southern boy” in his own words to “unlikely hero” in the words of author Jack Bass in his group biography of heroic Southern judges²⁰ was an odyssey that took him deeper emotionally into the sheer horror of American apartheid than Atticus Finch ever travelled.

Freedman’s second criticism of Atticus Finch flows from the first. In addition to his inadequate empathy, Freedman charges that Atticus was an overly passive and reluctant champion of justice. Although Atticus accepts the court appointment to represent Tom Robinson, he does not affirmatively choose it; as Atticus admits, “You know, I’d hoped to get through life without a case of this kind, but [the judge] pointed at me and said ‘You’re It.’” There is no question that Atticus goes above and beyond the call of duty in defending Tom Robinson—he singlehandedly faces down an angry lynch mob outside of Robinson’s jail cell, putting his own life at risk. But prior to the Robinson case, there is no indication that Atticus ever used his legal skills to represent unpopular clients or his power as a state representative to seek to change the racial order either in his town or beyond.

Skelly Wright may have started the way Atticus did, as a local lawyer with his head down, intent on developing his career and taking care of his family. But even as a young lawyer in his 30s, pursuing the practice of maritime law in the small firm of Ingoldsby, Coles, and Wright, Skelly Wright took on two Supreme Court cases on behalf of indigent criminal defendants. The first was the famous Willie Francis case, in which Wright represented pro bono a black teenager sentenced to death by electrocution for the murder of a white pharmacist during a robbery. However, Louisiana’s electric chair—nicknamed “Gruesome Gertie”²¹—malfunctioned, failing to kill Francis even after twice running current through his body. Wright argued that the Constitution’s bans on double jeopardy and cruel and unusual punishment constitutionally barred the state of Louisiana from yet another attempt to execute Willie Francis, though he lost the case in an

19. ADAM FAIRCLOUGH, *RACE & DEMOCRACY: THE CIVIL RIGHTS STRUGGLE IN LOUISIANA, 1915-1972*, at 245 (1995) (quoting interviewer W.J. Weatherby).

20. See BASS, *supra* note 15.

21. Deborah W. Denno, *When Willie Francis Died: The “Disturbing” Story Behind One of the Eighth Amendment’s Most Enduring Standards of Risk*, in *DEATH PENALTY STORIES* 17, 42 (John H. Blume & Jordan M. Steiker eds., 2009).

agonizing 5–4 decision.²² The following year, Wright also argued a Fourth Amendment case on behalf of a defendant who had been convicted of opium charges after a warrantless home search. This time, Wright won his case, creating important precedent that limited warrantless home searches to situations involving exigent circumstances and that famously warned against placing too much trust in police officers who are engaged “in the often competitive enterprise of ferreting out crime.”²³

Moreover, after assuming the power and privilege of the federal bench, Judge Wright consistently, conscientiously, and courageously ordered that formal racial segregation in state institutions be dismantled, both before and after the Supreme Court’s decision in *Brown v. Board of Education*.²⁴ This project was no single case; rather, it was a lengthy battle against entrenched opposition. Between the years of 1956 and 1962 alone, Judge Wright “threw out more than 100 segregation statutes passed almost unanimously by the state legislature.”²⁵ In addition to invalidating the legislature’s unconstitutional statutes, Judge Wright on many occasions had to enjoin various public officials from enforcing such statutes. At one point, Judge Wright issued a breathtaking injunction against the Governor, attorney general, state police, National Guard, state superintendent, and “all those persons acting in concert with them” from enforcing segregationist statutes passed by the legislature—in essence, “facing down the full force and power of the entire state of Louisiana.”²⁶ Unlike Atticus Finch, Skelly Wright took on unpopular cases involving vulnerable defendants—including a capital case involving a black defendant convicted of killing a white man in 1940s Louisiana—without waiting for a judge to implore him to do so. And once Judge Wright had the power of the federal bench in his hands, he did not shrink from addressing the explosive issue of desegregation in New Orleans and beyond, despite the fact that many others with similar powers failed to join him.

22. Louisiana *ex rel.* Francis v. Resweber, 329 U.S. 459 (1947).

23. Johnson v. United States, 333 U.S. 10, 14 (1948).

24. Brown v. Bd. of Educ., 347 U.S. 483 (1954). Judge Wright’s decisions ordering the desegregation of Louisiana State University Law School and its undergraduate program preceded *Brown*. See BASS, *supra* note 15, at 114.

25. KIM LACY ROGERS, *RIGHTEOUS LIVES: NARRATIVES OF THE NEW ORLEANS CIVIL RIGHTS MOVEMENT* 63 (1993).

26. BASS, *supra* note 15, at 129, 135.

Freedman's third attempt to de-mythologize Atticus Finch minimizes the degree of sacrifice that Atticus makes in his representation of Tom Robinson. Although Atticus is reviled by many of his fellow townspeople, Freedman points out that all of the people whose opinions Atticus values admire him for taking the case—including Judge John Taylor, Sheriff Heck Tate, newspaper editor Braxton Underwood, property owner Link Deas, and neighbor Maudie Atkinson, who says, "We're so rarely called on to be Christians, but when we are, we've got men like Atticus to go for us."²⁷ It is true that Atticus heroically faces down the lynch mob, and he unwittingly puts his children at risk at the hands of angry Bob Ewell. However, by the end of the book, Ewell is dead, Sheriff Tate is insisting on protecting both Jem and Boo Radley from legal proceedings stemming from Ewell's death, and Atticus is reconciled with the Cunningham clan—whose members switched in a matter of days from leading the lynch mob to arguing for acquittal on Tom Robinson's jury. In short, Atticus pays no significant ongoing price for his high-minded heroism.

Skelly Wright's story is different. His judicial decisions ordering the desegregation of the New Orleans public schools and other state institutions made him a lightning rod for public anger and abuse. It is easy today, as we celebrate his bravery and his legacy, to imagine that he must have known that he would win respect and adulation for his actions. But at the time, he faced ostracism and vilification not only from the public but also from many of his peers—from the equivalents of Judge Taylor, Sheriff Tate, and Editor Underwood in his own life. As Liva Baker writes, "There would be no testimonial dinners, no flattering newspaper editorials, perhaps no promotion when his time came, only calumny and abuse."²⁸ He was publicly denounced as "Judas Scalawag Wright" and hung in effigy on numerous occasions.²⁹ When angry citizens paraded through the Louisiana state capitol carrying a coffin bearing a life-like figure designated "Smelly Wright," the state legislators stood up en masse and cheered.³⁰ His wife Helen suffered acutely from their social isolation as friends abandoned them and people in their church switched

27. TKM, *supra* note 3, at 247.

28. BAKER, *supra* note 13, at 123.

29. Bernick, *supra* note 18, at 972.

30. *Id.*

pews to avoid sitting near them.³¹ Let us not forget that the abuse that Judge Wright and his family suffered included threats of violence. A cross was burned on their front lawn, and U.S. Marshals escorted the judge to and from work and lived with his family twenty-four hours a day.³² The way in which the judge's work touched the life of his young family is illustrated in a story that was shared by Justice Ruth Bader Ginsburg here at Loyola more than a decade ago in a lecture entitled *Four Louisiana Giants in the Law*;³³ the story was recounted to her by Martha Scallon, Judge Wright's loyal secretary in both Louisiana and Washington.

One evening [during the New Orleans school crisis], when Judge Wright and his wife were out, a caller from the White Citizens Council rang. (Though the phone number was unlisted, it was found out.) The Wrights' son, James, then age thirteen, answered. "Let me speak to that dirty nigger-loving Communist," the voice demanded. Son James replied: "He's not at home. May I take a message?"³⁴

This story captures how ordinary the vitriol spewed at Judge Wright became in the life of his family—and how coolly and matter-of-factly he, and they, accepted such a difficult daily existence. Although history has vindicated him, and he lived long enough to be celebrated for the choices that were so reviled by so many at the time, Skelly Wright paid a far higher price for his heroism, and for a far longer time, than did Atticus Finch.

There is so much in our lives that we cannot choose—our race and biological sex, when in history, where geographically, and into what family of what status and means we are born, what kind of education we receive, among many other givens. These things shaped Skelly Wright's life, as they shape all of ours. But one thing that we *can* choose is our heroes. This choice cannot change the past, but it can shape our futures—as individuals, and as societies. I feel lucky in my early career to have had the opportunity to clerk for Skelly Wright and for another of my heroes, Thurgood Marshall, and to absorb the exemplar of

31. ROGERS, *supra* note 25, at 100.

32. Elbert P. Tuttle, *Chief Judge Skelly Wright: Some Words of Appreciation*, 7 HASTINGS CONST. L.Q. 869, 871 (1980).

33. Ruth Bader Ginsburg, *Four Louisiana Giants in the Law*, 61 LOY. L. REV. 1 (2015).

34. *Id.* at 260.

2015]

Skelly Wright and Atticus Finch

133

heroism that both Wright and Marshall embodied—moral courage in the pursuit of justice, physical courage in the face of danger, and personal courage to meet with fortitude whatever consequences might follow. Yes, Atticus Finch still has his attractions, I suppose, but he was a hero of my adolescence, while Skelly Wright is a hero of my maturity. They say that truth is stranger than fiction—and a corollary may well be that, notwithstanding the flourishes of literary style, true heroes may be greater than fictional ones.