

## CHAPTER SIX

# The Noble Lawyer Paradigm

Nobility is the paradigm that got the best lawyers into the profession to begin with. For many, there is someone in their past who served as a role model and drew them to the profession. This is true of all the traditional professions: doctors, lawyers, and clergy. Perhaps the best lawyer example is Atticus Finch, the character out of *To Kill a Mockingbird*, who so clearly encapsulates author Harper Lee's reverence for her own father, a small town progressive southern lawyer.

Atticus Finch is by no means unique, however. History and literature are full of noble lawyers and perhaps from studying them the profession can distill and recapture the characteristics that made them noble and that positively insinuated them within their respective contemporary cultures.

One of the first lawyers was the ancient Roman Marcus Tullius Cicero. When Marc Antony and Julius Caesar's heir Octavian seized power in Rome on Caesar's assassination, they began a reign of terror that resulted in the murder of several hundred republican inclined citizens. Cicero had fled from Rome to an estate in Greece, until his good friend and fellow Roman, Atticus, wrote him and convinced him that it was his duty to return home and defend the republic from tyranny. Cicero did return, finally decided to speak up, and did so at the cost of his own life. Cicero was willing to speak out against tyranny in behalf of the Roman republic and in behalf of his countrymen even at the cost of his own life. He was a patriot, a noble Roman, and a noble lawyer.

Reference to another early lawyer can be found in the pages of the gospel of John, chapter 7, verse 51. This is one of three references in the Bible to St. Nicodemus, who made the famous statement: "Our law does not judge people without first giving them a hearing to find out what they are doing, does it?"<sup>i</sup>

In 1502, Bartolomé de las Casas, an ambitious young Spaniard with enough of a gentleman's legal education to be called *licenciado*, made his first trip to the new world.<sup>ii</sup> He spent a few years there occupied in government service as both a soldier and a missionary. For his service to the governor of Cuba, he was awarded a number of native slaves. A decade later, influenced by a particularly rousing sermon, he took as his life's work the liberation of the oppressed native peoples of the Americas, and he began to petition the crown for a new society in which Spaniard and Indian would live together in peace and equality.

It is important to remember that many if not most monks and clergymen like de las Casas, including Martin Luther and Jean Calvin, possessed legal training. In addition, the notion of lawyers' "practicing law" and representing clients was almost unknown. Rather, lawyers provided legal advice to barons, kings, bishops, and town councils, or they taught those who did. Each of these theologians, partially as a result of their legal training, sought social justice.

An American not often associated with the law is Sam Houston. Houston was a lawyer, and, together with David Crockett, he may have been the preeminent political defender of the American Indian before the Civil War. Historical figures must be judged against their times, and Houston, in the white America of his time, attempted as best he could to protect native Americans from state and federal treachery. He was also one of few southerners to aggressively fight secession. He refused to accept the notion that southern states, and particularly Texas, should secede from the Union over the question of slavery. He thought anything was better than a bloody civil war. What makes Houston's loyalty to the Union so remarkable is that he was governor of Texas at the time.

Abraham Lincoln, of course, was also a noble lawyer. Lincoln, for most of his career, actually represented big corporations against the little guy, and yet he was still effective because he treated jurors with respect. He understood the value of common sense, common ways, and common people. Lawyers are the primary guardians and defenders not only of law but of democracy and thus must be crusaders for the value of common people, common sense, and common judgment.

In the early twentieth century, the inquirer will encounter William Jennings Bryan and Clarence Darrow. Bryan, thrice nominated for the presidency, was known as the Great Commoner due to his advocacy for working Americans. Although he was primarily a politician, one of his most famous endeavors involved the trial of an important case, *The State of Tennessee v. John Thomas Scopes*. This was the famous "Scopes Monkey Trial" of 1925. Bryan argued the case for the state that Scopes, a schoolteacher, should be convicted of violating the state's recently passed law prohibiting the teaching of evolution. His opponent, the most famous defender of the lost cause, was the legendary Chicago trial lawyer Clarence Darrow.

Both men made careers arguing against wealth and power, Bryan as a progressive politician and Darrow as a criminal defense lawyer representing some of the most unpopular figures of his day. Darrow, in his professional life, was a man who opposed narrow-mindedness and narrow minds, thus his defense of Scopes. He also opposed the death penalty and believed that even the most heinous of criminals deserved a defense; thus he defended the murderers Leopold and Loeb solely in an effort to obtain for them sentences of life in prison rather than death. Darrow was an irascible and maverick figure. Any lawyer in the South can probably describe a similar maverick trial lawyer of the late twentieth century. They come in different shapes and sizes, but many of them are close to being knock-offs of Clarence Darrow. Like Darrow's, their dress is disheveled, and they wear their brilliant irreverence on their sleeves. They are fearless, they defy authority, they flout convention, they're hip-shooters, and they are modeled after Clarence Darrow.

Mohandas K. Gandhi was one of the world's greatest prophets of nonviolent resistance to injustice. He was also a lawyer. Gandhi began his career in civil disobedience in South Africa as a British-trained lawyer. He became active in organizations that were designed to liberate people of

color, whether South Asian or black, from the system of apartheid. He ultimately was able to negotiate some very minor improvements in that system and then decided to return to his original home of India; it was there that he became much more famous as a religiously grounded advocate for tolerance. His philosophy was to be (that is to say, epitomize) the change one seeks in the world. In simple terms, that means to have integrity and avoid hypocrisy. Not only lawyers but everyone tends to lose sight of the fact that we are all “on stage” all the time. Most lawyers get as many questions about law at places like Little League baseball games and church picnics as they do at the office. So what kind of Little League baseball coach is a particular lawyer? Is he the kind who’s going to get in a fight with the parents in the stands who are heckling him? Is he the kind who’s going to win at any cost? Is he the kind who’s going to teach sportsmanship and democratic values? It makes a huge difference because these are the ways in which lawyers and others interact with those who are judging them.

Given the traps and pitfalls of rising rates of depression and substance abuse, lawyers and other professionals simply cannot get through work life without some grounding in some higher value, some paradigm that brought one to the profession to begin with and that continues to sustain. For most lawyers, these higher values are illustrated best not by noble lawyers from real history, but by a uniquely American fictional character, Atticus Finch. There is an odd sort of coincidence, or perhaps not a coincidence, about the name Harper Lee chose for her hero, Atticus Finch. Atticus is the Latin version of the word for “Athenian,” a citizen of ancient democratic Athens. So as a name Atticus carries with it the implicit reference to the very cradle of democracy; the very name Atticus, then, stands for democratic values.

In what did the nobility of Atticus Finch consist? With reference to the entire pantheon of real noble lawyers from history, what can be said by way of a shorthand rendition of their identifying characteristics? Such lawyers valued common people and common wisdom. They publicly opposed evil, fraud, and injustice, even those of their clients. They were scrupulously honest and dedicated themselves to some form of public service, and they were committed to American democratic values and taught them to others. Noble lawyers are true to the dictates of conscience in the face of convention. They shun hypocrisy and live the change they wish to see in the world. Like Atticus Finch in the vignette where, to the astonishment of his son, he shoots a rabid dog, they are modest and humble about their abilities. And like Finch, they aren’t in it for the money.

If enough lawyers internalize these values and exemplify them, if there are enough noble lawyers to recall the image of Atticus Finch that persists deep in popular consciousness, the American schizophrenia over law and lawyers will have to be faced squarely. Americans will be made to confront their insatiable demand for law and rules and their simultaneous disdain for its ministers: lawyers and judges. As with any other psychological conflict, the only remedy is decision.

All Americans should have confidence in the eventual result of the fight over jury trial, the Constitution, and the rule of law. Victory requires only that each of us decide, as Congresswoman

Barbara Jordan did, that “[m]y faith in the Constitution is whole; it is complete; it is total. And I am not going to sit here and be an idle spectator to the diminution, the subversion, the destruction, of the Constitution.”<sup>iii</sup>

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<sup>i</sup> *John* 7:51 (New Revised Standard Version).

<sup>ii</sup> Louis Anthony Dutto, *The Life of Bartoleme ´ de las Casas and the First Leaves of American Ecclesiastical History* (St. Louis: B. Herder, 1902) 11–16.

<sup>iii</sup> Barbara Jordan, Statement on the Articles of Impeachment (House Judiciary Committee, July 25, 1974) as recorded by American Rhetoric at <http://222.americanrhetoric.com/speeches/barbarajordanjudiciarystatement.htm> [accessed 11 October 2088].