

## JUSTICE JAMES L. ROBERTSON AND THE INTERSECTION OF LAW AND LITERATURE

*Luke Dove\**

Jimmy Robertson was passionate about Law. He was also passionate about American Literature. And if not exactly passionate, Jimmy was very enthusiastic about dill relish on hot dogs at Boston's Fenway Park. (rather than sweet relish, but that story is for another day).

I first encountered Jimmy in the summer of 1972 when I began my new job as law clerk for U. S. District Judge O. R. Smith. Jimmy was a recent Harvard law graduate practicing in Greenville with the Campbell DeLong firm. Because William Keady, the other judge serving the Northern District of Mississippi, had been a partner in the same firm, all of Jimmy's many federal cases were assigned to Judge Smith. And thus, to me.

Our professional relationship began on a Saturday morning when I ambled from Judge Smith's chambers to the modest post office in Corinth, Ms. to pick up the mail. In pre-electronic filing days, the mail contained numerous briefs, including a very hefty brief from Jimmy. But my job did not end there. I also had to read and summarize briefs. And Jimmy's briefs were always mini treatises on law, on literature and on the human condition. They supplemented my uneven legal education.

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I entered law school with several other Vietnam veterans who quickly concluded that trudging through jungles with weapons was not an optimal career path. I signed up to take the LSAT in Saigon after learning you got two days leave from combat in order to take the exam. I studied for the LSAT by drinking a six pack of Red Stripe beer the night before. It must have worked. After three fitful years, I graduated and was duly admitted to the bar as a tabula rasa.

Jimmy's erudite briefs helped round out my legal education by exposing me to arcane principles of employment discrimination law, admiralty jurisprudence, negotiable instruments, futures contracts, and the vagaries of Mississippi tort law among other disciplines. More importantly, they introduced me to the intersection of Literature and Law.

Jimmy was appointed to the Mississippi Supreme Court in 1983 and was thus transformed into Justice Robertson. He promptly began to incorporate the narratives and characters of Mississippi authors into his judicial opinions. He began this journey with William Faulkner's Snopes and McCaslin clans.

In *Pharr v. State*,<sup>1</sup> the majority opinion, written by Justice Robertson, succinctly notes in the first paragraph: "Headlighting deer is a sorry form of human behavior...the deer, usually a doe, hit with the blinding light, stands stupefied and is slaughtered...the poacher operates at night...He is of Snopesean genre."<sup>2</sup>

The Snopes family of Yoknapatawpha County slowly but steadily emerged from Faulkner's dense prose like "nests of rats or termites" to displace the established blood lines of Frenchmen's Bend and Jefferson. They proliferated and, in the person of Flem Snopes, malignly prospered until murdered by their own kin.

The saga of the McCaslin clan (both black and white) is depicted as more honorable, at least as regards hunting ethics. The *Pharr* opinion cites Faulkner's intense stories, "*The Bear*"<sup>3</sup> and "*Go Down, Moses*"<sup>4</sup> to posit that for Ike McCaslin and other right-thinking sportsmen it was "the thrill of the chase, the fair and

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<sup>1</sup> 465 So. 2d 294 (1984).

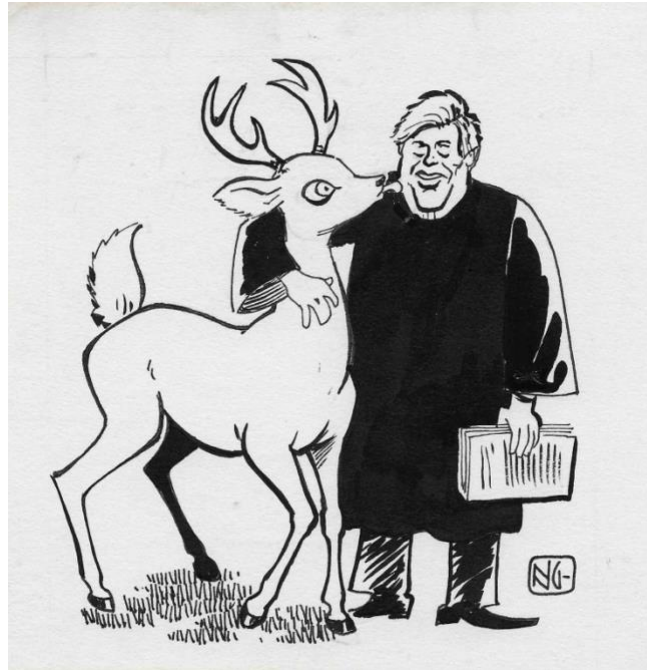
<sup>2</sup> *Id.* at 296.

<sup>3</sup> WILLIAM FAULKNER, *The Bear*, in GO DOWN, MOSES 191 (1942).

<sup>4</sup> WILLIAM FAULKNER, *Go Down, Moses*, in GO DOWN, MOSES 335 (1942).

honorable pursuit and not the kill which undergirds the ethics of the hunter.”<sup>5</sup>

The conviction and sentencing of the Snopesean Defendant, Milton Pharr, for headlighting deer was affirmed.<sup>6</sup>



By Neil Grahame, THE CLARION-LEDGER

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<sup>5</sup> *Pharr*, So. 2d at 298.

<sup>6</sup> Tom Brennan, *Court fires Faulkner at deer spotlighters*, THE CLARION-LEDGER, Dec. 6, 1984, Page 1.

In *Dycus v. Sillers*,<sup>7</sup> Justice Robertson shifted the legal and literary milieu to the more languid pursuit of fishing. The first 12 pages of the Dycus opinion celebrated “the positive pursuit of the lazy” as described by Willie Morris in *North Toward Home*;<sup>8</sup> Eudora Welty in *Losing Battles*;<sup>9</sup> Ellen Douglas in “*Hold On*”;<sup>10</sup> Walker Percy in *The Moviegoer*;<sup>11</sup> William Faulkner in *The Reivers*;<sup>12</sup> Larry Brown in “*Nightlife*”;<sup>13</sup> Nash Buckingham in “*Jailbreak*”;<sup>14</sup> Barry Hannah in “*Water Liars*”;<sup>15</sup> John Grisham in *A Time to Kill*;<sup>16</sup> James Dickey in “*Remnant Water*”<sup>17</sup> and Mark Twain in *Huckleberry Finn*.<sup>18</sup>

The Appellants, Dycus et al, were determined to cast their lures into the productive piscatorial waters of the Merigold Blue Hole in Bolivar County.<sup>19</sup> The Blue Hole is connected by chutes to Lake Beulah, an oxbow lake and thus a public body of water, and on into the Mississippi River. At higher water levels, fishing boats can navigate to the Blue Hole without anglers setting foot on land. But this unfettered access did not sit well with the Grandees of The Merigold Hunting Club who leased and jealously guarded the land around the Blue Hole for duck hunting and related noble pursuits.<sup>20</sup> In fact, The Merigold Hunting Club brought trespassing charges against people fishing in the Blue Hole, including the Appellants.<sup>21</sup> These prosecutions were no doubt facilitated by the fact that the local prosecuting attorney was himself a club member. But the *Dycus* case was filed by the hunting club as a civil action in Chancery Court to quiet title. The Chancellor ruled in favor of the hunting club.<sup>22</sup>

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<sup>7</sup> 557 So. 2d 486 (1990).

<sup>8</sup> WILLIE MORRIS, *NORTH TOWARD HOME* 75 (1967).

<sup>9</sup> EUDORA WELTY, *LOSING BATTLES* 325 (1970).

<sup>10</sup> ELLEN DOUGLAS, *Hold On*, in *BLACK CLOUD, WHITE CLOUD: TWO NOVELLAS AND TWO STORIES* 166 (1963).

<sup>11</sup> WALKER PERCY, *THE MOVIEGOER* 148 (1961).

<sup>12</sup> WILLIAM FAULKNER, *THE REIVERS* 248 (1962).

<sup>13</sup> LARRY BROWN, *Nightlife*, in *FACING THE MUSIC* 116 (1988).

<sup>14</sup> NASH BUCKINGHAM, *Jailbreak*, in *GAME BAG* 165 (1943)

<sup>15</sup> BARRY HANNAH, *Water Liars*, in *AIRSHIPS* 5 (1978).

<sup>16</sup> JOHN GRISHAM, *A TIME TO KILL* 23-24 (1978).

<sup>17</sup> JAMES DICKEY, *Remnant Water*, in *THE CENTRAL MOTION: POEMS 1968-79* (1983).

<sup>18</sup> MARK TWAIN, *HUCKLEBERRY FINN* 60 (1885); see also *Dycus*, So. 2d at 487-93.

<sup>19</sup> *Dycus*, So. 2d at 487.

<sup>20</sup> *Id.* at 496.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 497.

Along the winding appellate way, and only after 12 pages of literary references, the reader of the *Dycus* opinion will encounter mini discourses on the Act of Congress creating Mississippi as a state, the public trust of tidelands and navigable waterways, the essence of property rights, the law of avulsion and other riparian rights, the law of prescription, the great floods of 1912 and 1927, and whether the water itself and the wild fish or “ferae naturae” in any public body of water can ever be subject to ownership (as to the water, “no”; as to the fish “yes” but only after they have been caught).<sup>23</sup>

Justice Robertson’s opinion concluded that the evidence supported the finding of the Chancellor that the chute leading to the Blue Hole was not the result of river avulsion but was attributable to dredging by the Corp of Engineers in 1929.<sup>24</sup> Thus, the chute or waterway was artificial and “upon this rock [the] appeal founders.”<sup>25</sup> Judgment affirmed.

But the affirmance of the lower court was not the conclusion of *Dycus*, at least as to the relationship between Law and Literature. The concurring opinion complained:

...the first twelve pages of the majority opinion would best have been left unsaid or relegated to a work of prose or fiction. The Bench and Bar have much law and many opinions to read and digest and should be permitted to choose when and where to read for pleasure.<sup>26</sup>

I demur. Jimmy would have dissented.

Justice Robertson also understood that the Mississippi “Bench and Bar” would greatly benefit by the comparative study of Law and Literature, from Shakespeare and Dickens to Faulkner.<sup>27</sup> Not merely to comprehend how lawyers’ function but learning to appreciate the concepts of justice and morality and the role of law in society.

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<sup>23</sup> See generally *id.*

<sup>24</sup> *Id.* at 504.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 508-09. (Lee, J., concurring).

<sup>27</sup> See generally James L. Robertson, *Practical Benefits of Literature in Law, and Their Limits*, 35 MISS. C. L. REV. 266 (2016).

Many law schools now offer courses in Law and Literature. The Cardozo Law School even publishes a Law and Literature journal.<sup>28</sup> Judge Richard Posner wrote eloquently that law students should be required to study Law and Literature.<sup>29</sup>

The University of Mississippi School of Law catalogue lists “Law 653: Law and Literature” among class offerings. But this course is no longer offered. One of the final professors to teach Law and Literature at Ole Miss Law was my late friend John Hailman. John was a prosecutor, author, Francophile, wine critic and bon vivant. He was also a friend of Jimmy Robertson and a former editor of the *Mississippi Law Journal*.

In another essay about Justice Robertson which appears in this volume, Judge Mike Mills summarizes it briefly but eloquently: “We are living out Jimmy’s belief that lawyers (and all of us for that matter) have a duty to be well read. To think. And to act. Honorably.”

Law students, lawyers and judges will benefit from practicing their profession at the intersection of Law and Literature. Just as Justice Robertson did.

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<sup>28</sup> CARDOZO LAW, *Law & Literature*, <https://cardozo.yu.edu/law-literature> [<https://perma.cc/3DVX-WVX6>] (last visited Mar. 31, 2025).

<sup>29</sup> See generally Richard A. Posner, *Law and Literature: A Relation Reargued*, 72 VA. L. REV. 1351 (1986).