

# Michigan Law Review

---

Volume 114 | Issue 6

---

2016

## It's a Sin to Kill a Mockingbird: The Need for Idealism in the Legal Profession

Jonathan A. Rapping  
*Atlanta's John Marshall Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Civil Rights and Discrimination Commons](#), [Criminal Law Commons](#), [Legal Ethics and Professional Responsibility Commons](#), and the [Legal Profession Commons](#)

---

### Recommended Citation

Jonathan A. Rapping, *It's a Sin to Kill a Mockingbird: The Need for Idealism in the Legal Profession*, 114 MICH. L. REV. 847 (2016).

Available at: <https://repository.law.umich.edu/mlr/vol114/iss6/2>

This Classic Revisited is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

## CLASSIC REVISITED

### IT'S A SIN TO KILL A MOCKINGBIRD: THE NEED FOR IDEALISM IN THE LEGAL PROFESSION

*Jonathan A. Rapping\**

GO SET A WATCHMAN. BY *Harper Lee*. New York: HarperCollins.  
2015. P. 278. \$27.99.

“A Lawyer is either a social engineer or . . . a parasite on society . . . .”<sup>1</sup>  
Charles Hamilton Houston

#### INTRODUCTION

“[T]he first thing I lost in law school was the reason that I came.”<sup>2</sup>

This prescient quote by an unnamed law student defines, in a single sentence, our growing problem in training lawyers. From the moment he or she steps foot in a law school classroom, the future lawyer feels a strong pull to pursue a career that has nothing to do with justice. The law school experience will discourage the future lawyer from pursuing a career advocating for those in society who most need a voice. Once graduated, the young lawyer will enter a world where he or she is rewarded for billing the most hours at the highest rate, rather than for serving those with the least access to justice. As a result, most lawyers will experience a sense of purposelessness in their careers,<sup>3</sup> and most low-income Americans will not have access to a lawyer when important interests are at stake.<sup>4</sup>

---

\* Professor of Law, Atlanta’s John Marshall Law School (AJMLS), Director of Honors Program in Criminal Justice. The author is the founder and president of Gideon’s Promise, an organization dedicated to creating a generation of public defenders to drive a transformation in criminal justice. Special thanks to Elayne Rapping for her editorial advice, Stacey Burke for her research assistance, the faculty of AJMLS for its commitment to the Honors Program in Criminal Justice, and the staff, faculty, and public defenders of Gideon’s Promise for working to change the culture of criminal justice in our nation’s most broken systems.

1. ALISON STEWART, *FIRST CLASS: THE LEGACY OF DUNBAR, AMERICA’S FIRST BLACK PUBLIC HIGH SCHOOL* 139 (2013).

2. William P. Quigley, *Letter to a Law Student Interested in Social Justice*, 1 DEPAUL J. FOR SOC. JUST. 7, 8 (2007).

3. See Joe Patrice, *Unhappiest Job in America? Take a Guess*, ABOVE THE L. (Mar. 28, 2013, 1:40 PM), <http://abovethelaw.com/2013/03/unhappiest-job-in-america-take-a-guess/> [<https://perma.cc/TL6N-MMT5>] (citing a job satisfaction survey that ranks associate attorney as the worst job in America).

4. Editorial, *Addressing the Justice Gap*, N.Y. TIMES (Aug. 23, 2011), <http://www.nytimes.com/2011/08/24/opinion/addressing-the-justice-gap.html> [<https://perma.cc/4Q5V-RRML>].

The legal profession is in need of heroes—idealistic role models who will inspire today’s lawyers—both to eschew the values that drive the dominant legal profession, and to address the justice gap. No person, either fictional or real, has done this for more current and future lawyers than Atticus Finch, the hero of Harper Lee’s *To Kill a Mockingbird*.<sup>5</sup> The book tells the story of one lawyer in one case. His heroism lies in his willingness to valiantly represent a black man accused of raping a white woman in small-town 1930s Alabama, despite the derision and hatred he and his family receive from members of the community. The book was made into an Academy Award-winning film featuring Gregory Peck, one of the nation’s biggest Hollywood stars. Together, the book and the movie captured the public imagination, presenting a model of what a lawyer should be: a vehicle through which we can realize our most noble ideals, even in the face of great opposition. *Mockingbird* inspired the nation to believe in its system of justice and to revere the role of the lawyer at its foundation.

But even though he has been enshrined among the nation’s greatest folk heroes, Atticus is not without detractors. There have been critics who, despite Atticus’s dedicated representation of Tom Robinson, fault him for doing little to challenge the racist structure of Maycomb, Alabama, the fictional setting of *Mockingbird*. And recently, the publication of *Go Set a Watchman*—Lee’s second novel, written before *Mockingbird* but discovered decades later<sup>6</sup>—in which an older Atticus harbors racist ideas, has led many to renounce the Atticus of *Mockingbird*, characterizing him as a lawyer and a person not worthy of admiration.

As a law professor and the president of a non-profit organization that trains and supports public defenders in some of our nation’s most broken criminal justice systems, I regularly work with current and future lawyers. Many of these lawyers struggle to maintain their idealism in arenas—both academic and professional—that frequently promote values inconsistent with the principles they strive to embrace. From this perspective, I appreciate having a popular culture symbol, like Atticus, that both reminds us of the noble role a lawyer can play in addressing injustice and inspires our profession to be better.

One can certainly look beyond the story of *Mockingbird* to paint a less flattering picture of Atticus—whether by arguing that he did not do enough to promote the cause of justice, or by claiming that the Atticus of *Watchman* is the same as the Atticus of *Mockingbird*. But doing so is not necessary. Atticus is a fictional character. In an effort to destroy the hero, we can always speculate about who Atticus is beyond his representation of Tom Robinson. But we can also choose to look to the story of *Mockingbird* as one that stands alone—a story about one lawyer in one case doing what is righteous and

---

5. HARPER LEE, *TO KILL A MOCKINGBIRD* (Grand Cent. Publ’g, 50th Anniversary ed. 2015) (1960).

6. See W. Ralph Eubanks, *Atticus Finch Confronted What the South Couldn’t*, TIME (July 20, 2015), <http://time.com/3962991/harper-lee-atticus-finch-essay/> [<https://perma.cc/CGZ5-7AKP>].

noble. The latter approach allows us to retain an important symbol in the American quest for justice. Given how desperately we need such symbols, this is the view I recommend.

In this essay, I seek to demonstrate that, despite the many reasons others have found for criticism, we should continue to hold Atticus Finch up as a role model for our profession. While he is certainly not the only role model for the next generation of lawyers, as a profession we have not arrived at a point where we can afford to discard a symbol that has the potential to inspire young lawyers to make the world a little more just. Atticus certainly fits that bill.

#### I. ATTICUS FINCH: INSPIRING A NATION

In 1960, when she published *Mockingbird*, Harper Lee introduced the world to a man who instantly became a symbol of what justice means in America and of the important role that lawyers play in promoting it. Two years later, the book was made into a much-loved Academy Award–winning movie. The movie significantly expanded the influence of *Mockingbird* as a vehicle through which our nation came to understand the role that lawyers play in protecting and promoting justice. For anyone concerned about justice, it is impossible to overstate the movie's impact on the American consciousness.

To appreciate the importance of *Mockingbird*, and of Atticus Finch as a role model, one must consider what was happening in America at the time. The nation was grappling with the fact that many Americans were being denied basic civil rights simply because of their skin color. Slavery had been abolished for nearly one hundred years,<sup>7</sup> yet in so many walks of life, black people were experiencing intense discrimination. Six years earlier, the Supreme Court had declared segregation in public schools unconstitutional,<sup>8</sup> yet there was strong resistance to any efforts to integrate schools. The same year that *Mockingbird* was published, demonstrators organized highly publicized sit-ins at lunch counters to protest ongoing racial segregation.<sup>9</sup> Civil rights demonstrators were preparing Freedom Rides for the following year to challenge the continued practice of segregation in interstate bus travel. And the battle to ensure voting rights would soon lead young people from across the country to join civil rights activists in Mississippi for Freedom Summer.<sup>10</sup>

Not only were we as Americans struggling to realize basic civil rights in areas of education, public accommodations, and voting rights, we had also come to understand that discrimination in the criminal justice system was driving outcomes that were patently inconsistent with who we claimed to

---

7. See U.S. CONST. amend. XIII.

8. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 495 (1954).

9. See, e.g., *Garner v. Louisiana*, 368 U.S. 157 (1961).

10. For excellent discussions of the Freedom Riders, see BRUCE WATSON, *FREEDOM SUMMER* (2010); *FREEDOM RIDERS* (Firelight Media 2010).

be—and wanted to be—as a nation. The most famous example, the trial of the Scottsboro Boys, was still fresh in the minds of most Americans.

In 1931, nine black teenagers were on a train passing through Alabama when two young white women accused them of rape.<sup>11</sup> Deputies in Scottsboro, Alabama pulled the nine young men from the train and charged them. They were rushed to trial twelve days later.<sup>12</sup> Only on the morning of trial were they appointed counsel—two lawyers who were not qualified to try criminal cases.<sup>13</sup> As expected, the nine boys were convicted, and eight were sentenced to death (the ninth, who was only thirteen at the time, was sentenced to life in prison).<sup>14</sup>

This obvious injustice seemed to awaken America's moral outrage. The case became a cause célèbre. Across the nation and the world, voices decried the obvious unfairness of the system that sought to execute these children.<sup>15</sup> The case dramatically tested who we believed ourselves to be as Americans. It forced us to look into the mirror, and what we saw was odious. The public outrage about this case reminded us of the core values of American democracy: we root for the underdog, and we don't like bullies. The Scottsboro Boys case brought into focus the fact that the accused are the underdogs of the criminal justice system and that their public defenders are the ones standing up to the bullies—the ones who symbolize those American ideals. The case also highlighted the extent to which race shaped our views about justice.

No institution in America serves as a greater barometer of our commitment to our ideals than the criminal justice system.<sup>16</sup> It is this arena where our commitment to our most democratic values—due process, equal justice, respect for the dignity of the individual regardless of status—is tested. In 1960, the operation of our criminal justice system fell far short of this rhetoric.<sup>17</sup> *Mockingbird* was written at a time when we were engaged in deep, national soul-searching, when we were more and more open to the arrival of a hero to rescue us from our hypocrisy. In this sense, Atticus was an important cultural figure who spoke to the nation with a message that could not have been timelier.

The impact of *Mockingbird*, however, was not only in the relevance of its message, but also in the way it was delivered. First, Lee wrote in a style that

---

11. For a discussion of the Scottsboro Boys and the era of “legal lynchings,” see Michael J. Klarman, *Powell v. Alabama: The Supreme Court Confronts “Legal Lynchings”*, in *CRIMINAL PROCEDURE STORIES* 1, 1 (Carol S. Steiker ed., 2006).

12. *Id.* at 1–3.

13. *See id.* at 3–4.

14. *Id.* at 4–5.

15. *See id.* at 5–6, 8.

16. *See* Jonathan A. Rapping, *Grooming Tomorrow's Change Agents: The Role of Law Schools in Helping to Create a Just Society*, 12 *OHIO ST. J. CRIM. L.* 465, 467 (2015) (“There is no better gauge of the health of American democracy than the way human beings are treated in our criminal justice system.”).

17. *See* Heather Ann Thompson, *Lessons from Attica: From Prisoner Rebellion to Mass Incarceration and Back*, *SOCIALISM & DEMOCRACY*, Nov. 2014, at 153, 156–57.

made the novel accessible to a broad audience. As one scholar has noted, “the simplicity of the storytelling allowed Atticus’s message of racial justice to reach a broader audience” than other writers who were more complex in their discussion of race.<sup>18</sup> *Mockingbird*’s narrative style allowed Lee “to reveal holes in the myth of equality in the South, but in a way that both Southerners and Northerners could understand.”<sup>19</sup> Lee’s attempt to move the public succeeded. *Mockingbird* won numerous awards, including the Pulitzer Prize for Fiction.<sup>20</sup> It has sold more than 40 million copies,<sup>21</sup> and it universally appears in eighth grade curricula.<sup>22</sup>

Second, in choosing Scout, Atticus’s nine-year-old daughter, as the narrator, Lee emphasized the obviousness of the book’s message. Through this young and innocent narrator, the reader is reminded of basic principles of right and wrong, which are so clear that even a child understands them. The impact of these teachings is reinforced by the reactions of two other children central to the story—Scout’s brother, Jem, and his friend Dill. Through the treatment of Tom Robinson and the children’s subsequent struggle to come to terms with the racist views of their neighbors, the reader is reminded of how easily one’s views can be shaped by culture and how important good role models can be.

Third, in Atticus, Lee created a hero whose qualities were admirable, yet not beyond what the reader could aspire to. He did not live a life that others praised but could never hope to emulate. He was an everyday man who abided by a strong moral code—a moral code that drove him to act decently and courageously in his defense of a single, appointed client. He was a respected member of Maycomb, a devoted father, and a conscientious lawyer. He lived a principled life in a world that was fraught with injustice. He primarily handled civil matters,<sup>23</sup> but he was so committed to ensuring that everyone—including his less well-to-do neighbors—had access to the legal system, that he occasionally represented those who were unable to pay.<sup>24</sup> And while he did not set out to take on all of the problems of the world, when asked to represent Tom Robinson, he did so valiantly. In that singular

18. Eubanks, *supra* note 6.

19. *Id.*

20. 1961 Pulitzer Prizes, PULITZER PRIZES (2016), <http://www.pulitzer.org/awards/1961> [<https://perma.cc/A6SB-XUV8>].

21. Thane Rosenbaum, *Atticus Finch Is My Law Students’ Hero*, SLATE (Feb. 9, 2015, 11:44 AM), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2015/02/atticus\\_finch\\_hero\\_worship\\_law\\_students\\_love\\_to\\_kill\\_a\\_mockingbird\\_anticipate.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2015/02/atticus_finch_hero_worship_law_students_love_to_kill_a_mockingbird_anticipate.html) [<https://perma.cc/FPD6-LZTK>].

22. Adam Gopnick, *Sweet Home Alabama: Harper Lee’s “Go Set a Watchmen”*, NEW YORKER (July 27, 2015), <http://www.newyorker.com/magazine/2015/07/27/sweet-home-alabama> [<https://perma.cc/JL8S-AZNG>].

23. See LEE, *supra* note 5, at 5.

24. In *Mockingbird*, Scout describes how Atticus represented Walter Cunningham despite the fact that Mr. Cunningham could not afford to pay. In return for Atticus’s legal services, Mr. Cunningham would bring the Finches hickory nuts, smilax, holly, and turnip greens, which Atticus said was more than sufficient. *Id.* at 23–27.

representation, he risked his reputation, his career, and even his life.<sup>25</sup> Atticus is accessible because he is not a superhero, living his life in a way none could imagine; he is a person we can identify with, simply doing the right thing when the opportunity is presented. In this way, he becomes a role model for all of us. Moreover, Lee created a story that not only compelled the reader to consider injustice in his or her own community but that also provided an example of how individual readers could hope to respond.

The relevance, power, and simplicity of its message made *Mockingbird* an ideal story for the silver screen. Its release as a movie in 1962—with Gregory Peck playing Atticus—cemented Atticus’s place as a popular culture icon.<sup>26</sup>

Atticus’s impact was not only immediate—Peck won an Academy Award for Best Actor in a Leading Role, and the film itself was nominated for the Best Picture award—but it has also been lasting. In 2003, the prestigious American Film Institute named Atticus the greatest movie hero of all time.<sup>27</sup>

In 2010, the American Bar Association named Atticus America’s favorite fictional lawyer.<sup>28</sup> Those who have studied Atticus have said such things as: “If there were a Mount Rushmore for American fiction, Atticus Finch would surely be on it,”<sup>29</sup> and “Atticus is not just a lawyer; he is justice in the flesh.”<sup>30</sup> And in the state where *Mockingbird* is set, which is often held up as a symbol of racial injustice in the Deep South,<sup>31</sup> there are numerous celebrations of Atticus. The Alabama State Bar erected a monument dedicated to “Atticus Finch: Lawyer-Hero” in Lee’s hometown of Monroeville, and the Alabama Law Foundation established the Atticus Finch Society “to make access to justice a reality for all Alabama citizens.”<sup>32</sup> In short, Atticus has

---

25. When Atticus learns that a lynch mob is planning to hang Tom Robinson before trial, he waits for the mob at the jail and—with the unexpected help of Scout—talks the mob into leaving Robinson unharmed. *Id.* at 172–77.

26. The film won several Academy Awards, including Peck’s award for Best Actor in a Leading Role. *To Kill a Mockingbird Awards*, IMDB, <http://www.imdb.com/title/tt0056592/awards> [https://perma.cc/CW55-UEHF].

27. *AFI’s 100 Greatest Heroes and Villains*, AM. FILM INST., <http://www.afi.com/100Years/handv.aspx> [https://perma.cc/U93E-RZYR].

28. Rosenbaum, *supra* note 21.

29. *Id.*

30. Lance McMillian, *Atticus Finch as Racial Accommodator: Answering Malcolm Gladwell*, 77 TENN. L. REV. 701, 701 (2010).

31. In fact, as I am writing this article, Alabama has come under fire for its latest attempt to keep African Americans from voting. Alabama has closed Department of Motor Vehicle offices that service predominantly black districts, presumably in an attempt to make it harder for African Americans to obtain identification necessary to vote. Larry Rubin, *New Attacks on Voting Rights in Alabama*, PEOPLE’S WORLD (Oct. 14, 2015), <http://peoplesworld.org/new-attacks-on-voting-rights-in-alabama/> [https://perma.cc/F8X8-DJRB].

32. Cliff Collins, *Atticus Finch: In Your Own Words*, OR. ST. BAR (Aug./Sept. 2010), <https://www.osbar.org/publications/bulletin/10augsep/finch.html> [https://perma.cc/7BPY-LTSA].

been a dominant force in our popular culture—a vehicle through which Americans have come to understand the concept of justice.<sup>33</sup>

It is no overstatement to say that Atticus has been a critical force in helping our nation understand the relationship between race and justice. He has also highlighted the important role of the defense lawyer who fights to ensure that justice is colorblind in our courtrooms. In a world where popular culture has embraced “tough on crime” political rhetoric, which reinforces values inconsistent with procedural fairness and equal justice,<sup>34</sup> Atticus remains an important symbol of an alternative and equally powerful version of true justice.

## II. QUESTIONING ATTICUS FINCH’S ROLE MODEL STATUS

But as important as Atticus Finch has been as an American icon generally, there are some who believe his status as a role model is undeserved. The primary critique is that in *Mockingbird*, Atticus was unwilling to further challenge the racist structure that defined 1930s Maycomb, Alabama.<sup>35</sup> Perhaps the most well-known proponent of this critique is Professor Monroe

---

33. See generally Jonathan A. Rapping, *The Revolution Will Be Televised: Popular Culture and the American Criminal Justice Narrative*, 41 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 5 (2015).

34. *Id.* at 12–14 (arguing that the “tough on crime” narrative that has developed in American politics and media has fostered societal acceptance of a criminal justice system unmoored from our foundational values).

35. A second critique, leveled by Steven Lubet in his essay *Reconstructing Atticus Finch*, suggests that Finch might be an unworthy role model because he resorted to the use of class and gender stereotypes in his defense of Tom Robinson—a strategy which, while perhaps consistent with his professional obligation, is immoral. See Steven Lubet, *Reconstructing Atticus Finch*, 97 MICH. L. REV. 1339, 1359 (1999) (book review). Lubet further hypothesizes that Tom Robinson may be guilty in order to argue that the integrity of Atticus’s tactic may depend on the innocence of the accused. *Id.* at 1348–49, 1361. This view disrespects one of our nation’s guiding principles—the presumption of innocence—which demands that defense counsel not allow his or her individual assessment of guilt to impact the quality of the representation provided. While I do not disparage lawyers like Lubet who understand that personal moral codes may make it impossible to use all tools legally and ethically available in representing a client who may not be innocent, see *id.* at 1362, those lawyers should not take on criminal cases (or at least not without being certain of their client’s innocence, however one achieves such a level of certainty). Whatever the individual lawyer’s moral code is, the accused deserves to have a lawyer who makes use of all legal and ethical avenues in forcing the State to prove its case. Anything less would mean the quality of defense afforded to those forced to rely on court-appointed counsel would vary with the extent to which the lawyer morally approved of otherwise-lawful tactics. This is particularly troubling when applied to poor people who do not have the option of selecting a lawyer. While a wealthy person can choose a lawyer whose morals would allow him or her to use a defense strategy most likely to result in acquittal, the poor person’s life would depend on the values embraced by the appointed lawyer. Whether one finds Lubet’s critique to trigger an interesting academic discussion, it is a troubling position to introduce into the practice of criminal law. My decision not to address it in this essay is threefold: 1) how public defenders who care very much about racial and economic justice deal with the issues of enabling a classist and racist system is, in my mind, a far more important issue to address; 2) while client-centered public defenders—the audience with which this essay is concerned—may struggle with similar issues, they do not question their obligations to each

Freedman.<sup>36</sup> Freedman is critical of Atticus for too easily accepting the racist norms of small-town 1930s Alabama. In an effort to diminish Atticus's impact, Freedman looks beyond the story of *Mockingbird* and Atticus's representation of Tom Robinson,<sup>37</sup> and draws assumptions about Atticus's commitment to social justice more generally. Based on these suppositions, Freedman judges Atticus an unworthy role model.<sup>38</sup>

Freedman begins by pointing out that Atticus lives in Jim Crow Alabama, where the seats and the restrooms inside the courthouse are segregated—as are the town's water fountains, restaurants, and buses.<sup>39</sup> The people of the town, who Atticus has accepted as neighbors, harbor racist views, and some clearly do not believe a black man accused of raping a white woman deserves the due process the Constitution affords. Freedman accuses Atticus of never attempting to change the structural inequities of Maycomb and of being a “passive participant in that pervasive injustice.”<sup>40</sup>

Freedman then questions the courageousness of Atticus's representation by highlighting the fact that he did not offer to take on Robinson's case, but was instead “compelled by the court” to do so.<sup>41</sup> Freedman faults Atticus more broadly for never volunteering to represent a person facing the death penalty and for admitting he “hoped to get through life without a case of this kind.”<sup>42</sup> He then concludes that Atticus “does not voluntarily use his legal training and skills—not once, ever—to make the slightest change in the pervasive social injustice of his own town.”<sup>43</sup> The coup de grace for Freedman is the claim that as a state legislator, Atticus failed to “introduce one bill to mitigate the evils of segregation.”<sup>44</sup>

Freedman's criticism is fueled by assumptions about Atticus, the accuracy of which we will never be able to test, because they focus on aspects of Atticus's life that are beyond the context of Harper Lee's story. We know

---

client, and they understand how to resolve this struggle far better than does Professor Lubet; and 3) several scholars have already responded to Lubet's argument at least as well as I could. See, e.g., William H. Simon, *Moral Icons: A Comment on Steven Lubet's Reconstructing Atticus Finch*, 97 MICH. L. REV. 1376 (1999); Randolph N. Stone, *Atticus Finch, in Context*, 97 MICH. L. REV. 1378 (1999).

36. Professor Freedman, who sadly died in 2015, was a lawyer and teacher who I admired greatly and whose scholarship has helped shape my view of what it means to be a client-centered lawyer. See Monroe H. Freedman, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 MICH. L. REV. 1469 (1966).

37. See Monroe Freedman, Opinion, *Atticus Finch, Esq., R.I.P.*, LEGAL TIMES, Feb. 24, 1992, at 20, 21 (“Atticus Finch does, indeed, act heroically in his representation of Robinson.”).

38. See *id.* (“Is Atticus Finch, then, a role model for lawyers? I think not.”); see also Monroe H. Freedman, *Atticus Finch—Right and Wrong*, 45 ALA. L. REV. 473, 480–82 (1994).

39. Freedman, *supra* note 37, at 20.

40. *Id.* at 21.

41. *Id.*

42. Freedman, *supra* note 38, at 481 (quoting LEE, *supra* note 5, at 100).

43. *Id.*; see also Freedman, *supra* note 37 (accusing Finch of never volunteering his “time and skills to advance social justice”).

44. Freedman, *supra* note 38, at 481.

very little about Atticus's work as a lawyer outside of the context of Tom Robinson, and we know nothing about the positions he took as a state legislator. Yet Atticus's imagined conduct in these realms is at the heart of Freedman's criticism.

Freedman assumes that Atticus never introduced a bill to mitigate the evils of segregation, but his position is pure conjecture. And, more to the point, Atticus's role as a legislator is hardly relevant to the story of *Mockingbird*. This is why there is no discussion of the bills he may have introduced or the votes he may have cast.

Similarly, Freedman accuses Atticus of never volunteering his time to advance social justice. But again, we are not privy to a comprehensive examination of Atticus's pro bono work. We do know that he does do some, because he agreed to represent Walter Cunningham in a civil matter despite Cunningham's inability to pay.<sup>45</sup> One could just as easily assume Atticus frequently took on pro bono cases. In fact, his pro bono representation of Cunningham is presented as very much a part of Atticus's everyday practice, as his conversation with his children reflects his view that serving poor people in exchange for whatever they can afford is part of one's moral, if not professional, obligation.

And as for the critique that he did not seek out a death penalty case on a voluntary basis, this sets a litmus test for heroic lawyering that is far too narrow to be useful. It is the rare lawyer who seeks out a capital case, especially if his or her practice area is civil law. A lawyer's preference to not handle a case in which the result might be the execution of his or her client should not preclude that lawyer from being seen as a role model. Capital cases are the most challenging cases in our court system, and a lawyer should have the experience, skill, training, and inclination before taking one on. There is nothing heroic about taking on a death penalty case without the commitment and competency to do so. In fact, death rows across the county are filled with victims of such "lawyer-heroes."<sup>46</sup>

There is also no support for the suggestion that, although he did not seek out appointment in Tom Robinson's case, Atticus was reticent to take on the representation. Given Atticus's standing in the community, one would assume he could have gotten out of the representation if he were so inclined. Despite the fact that Atticus did not actively seek out capital appointments, there is no evidence that he was reluctant to take on what he saw as a professional commitment, nor that he approached his representation of Tom Robinson with anything less than passion, zeal, thoroughness, and a total commitment to Tom's defense. In fact, the storyline reveals otherwise.

In an effort to demonstrate that his standard for what constitutes a role model is not too high, Freedman says he does not expect future lawyers to emulate "those truly admirable lawyers who, at great personal sacrifice, have

---

45. LEE, *supra* note 5, at 22–23.

46. See Stephen B. Bright, *Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer*, 103 YALE L.J. 1835, 1837–41 (1994).

dedicated their entire professional lives to fighting for social justice.”<sup>47</sup> Freedman acknowledges that would be “too easy to preach and too hard to practice.”<sup>48</sup> He claims that all he asks of a lawyer and role model is that he or she “volunteer a small but significant amount of their time and skills to advance social justice.”<sup>49</sup> Freedman accuses Atticus of failing in this regard.<sup>50</sup> I see no evidence to believe that Atticus does not meet this standard—only that the sum total of Atticus’s legal accomplishments are beyond the purview of *Mockingbird*.

But whether one wishes to entertain Freedman’s assumptions or not, the heart of his critique remains that Atticus was too accepting of the racist status quo. He dined in restaurants that would not serve blacks while simultaneously understanding the injustice of segregation. He urged his children to see the humanity in even his most hateful, racist neighbors. He practiced in a courthouse where he knew black citizens could never receive a fair shake.<sup>51</sup> In short, regardless of how admirably he acted in his representation of Tom Robinson and, quite frankly, the extent to which he offered pro bono services to other community members, Freedman will never see Finch as a role model because of the extent to which he accommodates the racist social and political structure of Maycomb, Alabama.

Several years after Freedman launched his criticism of Atticus, social commentator Malcolm Gladwell added a similar perspective. In an article in *The New Yorker*, Gladwell paints a picture of Atticus as a man who does far too little to address the racial inequities of the time.<sup>52</sup> Gladwell argues that, in contrast to true civil rights heroes like Justice Thurgood Marshall,<sup>53</sup> Atticus “is about accommodation, not reform.”<sup>54</sup> In Gladwell’s view, Atticus is too unfazed by the unjust verdict in Tom Robinson’s case, he is too forgiving of racist townsfolk who consider him a “nigger-lover,” and he is too satisfied with continuing to appeal to the “hearts and minds” of his racist neighbors

---

47. Freedman, *supra* note 37, at 21.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. Malcolm Gladwell, *The Courthouse Ring: Atticus Finch and the Limits of Southern Liberalism*, *NEW YORKER* (Aug. 10, 2009), <http://www.newyorker.com/magazine/2009/08/10/the-courthouse-ring> [<https://perma.cc/3DX4-CQ9R>].

53. Undeniably, Justice Thurgood Marshall is one of the greatest legal heroes of all time. He performed his most heroic work, which is the subject of a wonderful book by Gilbert King called *Devil in the Grove*, before he became a Supreme Court Justice. See GILBERT KING, *DEVIL IN THE GROVE* (2012). Unlike Atticus, Marshall travelled to communities in the Deep South where he was not at all welcome to represent blacks accused of crimes in the most racist criminal justice systems. And he risked his life to do so. See *generally id.* He was the kind of hero that lawyers can admire greatly, yet never hope to emulate. Although Marshall was a real-life hero who did much to affect change, the story of his life as a lawyer is not nearly as well known as the fictional account of *Mockingbird*. This illustrates the power of popular culture to convey important values to the general public.

54. Gladwell, *supra* note 52.

rather than working to dismantle the town's structural racism.<sup>55</sup> For Gladwell, the lawyer who works within the system—in an effort to challenge the assumptions of jurors, judges, prosecutors, and the public—is engaged in an exercise of appeasement. True civil rights activists, according to Gladwell, work to dismantle the system at a macro level. Thus, Gladwell believes that a lawyer merely engaged in changing “hearts and minds” is not truly invested in reform.<sup>56</sup>

The problem with both Freedman and Gladwell is that their critiques suggest that a lawyer who valiantly stands up for a client in an unjust system—a system that prefers to abandon constitutional protections in an effort to process the accused into a prison cell or electric chair—cannot be a role model, at least absent some evidence of a broader commitment to fighting for social justice.

We do not know enough to make an informed judgement about Atticus's conduct as a state legislator or the degree of his volunteer work as a lawyer. But we do not need to know about these factors to evaluate Atticus's heroism. *Mockingbird* is the story of a lawyer who behaves heroically in his representation of a single client. He does so against intense pressure to abandon this endeavor. He behaves courageously, exceeding what anyone could expect of an individual lawyer. As I argue above, Lee's focus on a singular instance of injustice helped make *Mockingbird* digestible to a public socialized in a racist world. But not only did Atticus's courageous representation of Tom Robinson prove to be an important vehicle through which to promote democratic values, for me—as someone who trains lawyers to work in environments where injustice is the norm and racist values still have enormous power—this narrowly focused story is enough to qualify Atticus as a role model for lawyers. And given the state of the legal profession, why would we want to bring down a lawyer-hero who inspires so many lawyers to strive to serve those without a voice?

### III. IT IS HARD TO DO WHAT IS RIGHT

#### A. *Maintaining Idealism in the Legal Profession*

Lawyers certainly need inspiration. While many come to law school seeing a legal career as a noble pursuit, their academic experience often leaves them disillusioned.<sup>57</sup> Many leave law school to embark on careers that have little purpose. As Thane Rosenbaum, Senior Fellow at New York University School of Law, observes, “[t]he inspiration that once hailed personal honor and the public good as fundamental values of the bar disappears in a haze of student debt and the allure of financial reward.”<sup>58</sup> As a result, many lawyers

---

55. *Id.*

56. *Id.*

57. See Rosenbaum, *supra* note 21 (“Apparently, upon graduation, most law students lose their inner Atticus Finch.”).

58. *Id.*

leave the profession.<sup>59</sup> Those that remain suffer unusually high rates of alcoholism<sup>60</sup> and depression.<sup>61</sup>

So it is no surprise that in his essay *Letter to a Law Student Interested in Social Justice*, William Quigley argues that “the experience of law school and the legal profession often dilute the commitment to social justice lawyering.”<sup>62</sup> Having taught, mentored, and supervised countless law students and young lawyers over the past two decades, my experience is certainly consistent with Professor Quigley’s.

With respect to legal academia, I have watched countless new students come to law school intent on pursuing a career where they can have a positive impact on society, only to emerge three years later on a very different path. For some, the law school experience strips them of their idealism. In the process of learning to “think like a lawyer,” they lose sight of why they came to law school in the first place.<sup>63</sup> Others are very cognizant of the fact that they are embarking on a career path that is inconsistent with the lawyer they set out to become. They bemoan the fact that they have accepted a job that is of little interest to them but feel they cannot afford to do otherwise.<sup>64</sup> And while law schools get a boost in rankings by helping graduates secure legal employment, they have no incentives to help students discover meaningful careers.<sup>65</sup> So, two thirds of the students who enter law school intending to work in a government or public interest job do not actually end up in those roles.<sup>66</sup>

---

59. See Donald Patrick Harris, *Let's Make Lawyers Happy: Advocating Mandatory Pro Bono*, 19 N. ILL. U. L. REV. 287, 307–08 (1999).

60. *Id.* at 309.

61. According to a Johns Hopkins study, depression is prevalent among those in the legal profession. Lawyers suffer from depression at a rate 3.6 times higher than employed persons generally. MARTIN E.P. SELIGMAN, *AUTHENTIC HAPPINESS* 177–84 (2002).

62. Quigley, *supra* note 2, at 9.

63. *Id.* (discussing how law school curriculum “can grind down the idealism with which students first arrived”); see also Orrin K. Ames III, *Concerns About the Lack of Professionalism: Root Causes Rather than Symptoms Must Be Addressed*, 28 AM. J. TRIAL ADVOC. 531, 542–43 (2005) (discussing how the law school classroom experience can lead to “value neutralization”); Neil E. Olson, *Leaving the Law*, 29 S.F. ATT’Y 25, 26 (2003) (discussing how thinking like a lawyer leads to a “rational,” “analytical,” and “cold” outlook); Rapping, *supra* note 16, at 490 (“[O]ur [law school] graduates [become] robotic technical workers . . . at the expense of being compassionate and humane.”).

64. See COMM’N ON LOAN REPAYMENT & FORGIVENESS, AM. BAR ASS’N, *LIFTING THE BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUBLIC SERVICE* 10–11 (2003), <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/lrap/lrapfinalreport.authcheckdam.pdf> [<https://perma.cc/EP9E-NXYE>]; Rapping, *supra* note 16, at 490 (discussing my experience polling first year law students about why they came to law school).

65. See Quigley, *supra* note 2, at 10–11 (discussing how the path to finding social justice legal work is more challenging than more traditional, mainstream careers); Jacob Gershman, *Law Schools Face New Rules on Reporting Graduates’ Success*, WALL ST. J. (Mar. 17, 2015, 5:52 PM), <http://www.wsj.com/articles/law-schools-face-new-rules-on-reporting-graduates-success-1426629126> [<https://perma.cc/S5W8-LHDA>].

66. Christa McGill, *Educational Debt and Law Student Failure to Enter Public Service Careers: Bringing Empirical Data to Bear*, 31 LAW & SOC. INQUIRY 677, 699 (2006).

As a result, many lawyers end up in unfulfilling careers; they become part of a professional culture that promotes values inconsistent with the values they had when they entered the profession.<sup>67</sup> As pressure mounts to bill more hours,<sup>68</sup> the focus shifts away from helping people or promoting justice.<sup>69</sup>

As the legal profession becomes further unmoored from its noble ideals, Atticus serves as an important symbol for a profession struggling to live up to its potential. And while symbols are not the solution to a corrupt legal culture, it is important to have beacons to remind us that, at our best, lawyers are vehicles through which equal justice is realized.<sup>70</sup> Atticus serves as such an example. He has inspired countless young men and women to embark on legal careers, and he continues to influence legal practitioners for the better.<sup>71</sup>

### B. *A Special Symbol for Public Defenders*

But Atticus is not only an important role model for the lawyer at risk of becoming resigned to a purposeless career; he also provides a valuable lesson for the social justice lawyer engaged in a meaningful career, who invariably feels powerless in the face of overwhelming injustice.

These are the lawyers I work with every day. I am president of an organization called Gideon's Promise, which is dedicated to building a movement of public defenders committed to driving criminal justice reform where the

---

67. See Harris, *supra* note 59, at 307–09 (observing that as pressure grows to bill more hours, lawyers become increasingly unhappy).

68. *Id.* at 309.

69. I recently received a call from a former student who was practicing in a family law firm. She went into family law to help families navigate challenging times—to minimize the disruption to their lives. She cared about people and wanted to help them during a period when they were most desperate.

When she called she was discouraged. She had had a consultation with a potential client who could only pay five hundred dollars. She explained that given her hourly rate, the money would be used up before she could do anything meaningful to help him. She advised him against retaining her if that was all he had. She felt badly that she could not do more, but he simply did not have enough money to make it worth his while to retain her. She explained that he was better off keeping his money. When a partner in the law firm learned of her conversation, the partner scolded the young lawyer. The partner suggested that she take whatever the client could pay—and that when it ran out, she counsel him about how he might find more money to pay. One suggestion was that the man could mortgage his home.

Squeezing every dollar from a man who had little, rather than helping a person during a time of great need, was not why she became a lawyer. She struggled to keep her spirit in a profession that clearly promoted values she did not embrace.

70. See Jonathan A. Rapping, *Reclaiming Our Rightful Place: Reviving the Hero Image of the Public Defender*, 99 IOWA L. REV. 1893 (2014); Jonathan A. Rapping, *Retuning Gideon's Trumpet: Telling the Story in the Context of Today's Criminal-Justice Crisis*, 92 TEX. L. REV. 1225 (2014)

71. See Collins, *supra* note 32 (compiling testimonials from practicing lawyers about the influence of Atticus on their legal careers).

need is greatest.<sup>72</sup> At the heart of our mission is helping defenders stay inspired as they seek to provide each client with the representation they deserve. We also help them to navigate a system that has come to accept an embarrassingly low standard of justice for poor people.<sup>73</sup> These defenders have already set themselves apart from the majority of our profession: they have maintained their commitment to advocate for people who desperately need a voice through three years of law school; they have withstood continued disrespect from within the very profession to which they devote their lives.<sup>74</sup> And in return, they have the privilege of serving in a role where they never feel unnecessary. But while these lawyers do not suffer from a sense of purposelessness, they can still succumb to a feeling of hopelessness.

Public defenders are engaged in one of the most important civil and human rights battles of the day. At any given time in America, 2.2 million people are incarcerated.<sup>75</sup> These incarcerated people are almost exclusively poor—in fact, roughly 80 percent of those in the criminal justice system are poor enough to qualify for court-appointed counsel.<sup>76</sup> They are disproportionately people of color.<sup>77</sup> And the stakes are far greater than just the excessive prison time that is meted out. Many of these men and women will be released only to be unable to return to their homes or their careers—rendered ineligible to vote, unable to qualify for school loans, and forced to live lives as second class citizens.<sup>78</sup> In fact, there is a good argument to be made that poor people are worse off in today's criminal justice system than they were when the nation was introduced to Atticus.<sup>79</sup>

---

72. For more information about Gideon's Promise, see GIDEON'S PROMISE, <http://www.gideonspromise.org/> [<https://perma.cc/96GX-HM74>].

73. See Jonathan Rapping, *Redefining Success as a Public Defender: A Rallying Cry for Those Most Committed to Gideon's Promise*, THE CHAMPION, June 2012, at 30; see also Jonathan A. Rapping, *You Can't Build on Shaky Ground: Laying the Foundation for Indigent Defense Reform Through Values-Based Recruitment, Training, and Mentoring*, 3 HARV. L. & POL'Y REV. 161 (2009).

74. Societal lack of respect for public defenders is well known. For example, they are often referred to as "public pretenders." When I was a young public defender, the chief of our trial division displayed a button in her office that read, "Don't tell my mother I'm a public defender; she thinks I play piano in a whorehouse." The head of the San Francisco Public Defender's Office recently wrote of the disrespect shown to public defenders. Jeff Adachi, S.F. Pub. Def. (@sfdefender), *Jami's Ordeal Shows Public Defenders Deserve Respect*, MEDIUM (Oct. 5, 2015), <https://medium.com/@sfdefender/jami-s-ordeal-shows-public-defenders-deserve-respect-655095161cb1> [<https://perma.cc/DY9S-EQLP>].

75. *Incarceration*, SENTENCING PROJECT, <http://www.sentencingproject.org/template/page.cfm?id=107> [<https://perma.cc/7LXR-4NRS>].

76. Paul D. Butler, *Poor People Lose: Gideon and the Critique of Rights*, 122 YALE L.J. 2176, 2181 (2013). A Bureau of Justice Statistics report shows the indigence rate for state felony cases was 43 percent in 1963, and that "[t]oday approximately 80% of people charged with crime are poor." *Id.*

77. See Jonathan A. Rapping, *Implicitly Unjust: How Defenders Can Affect Systemic Racist Assumptions*, 16 N.Y.U. J. LEGIS. & PUB. POL'Y 999, 1003–04 (2013).

78. See *id.* at 1004–05.

79. See Butler, *supra* note 76, at 2179–80 (arguing that poor people and black people are more likely to go to prison today than in 1960).

Many lawyers become public defenders because they want to stand up to an unjust system.<sup>80</sup> But when a lawyer constantly toils in a system that is so patently unfair, the importance of his or her work can get lost in this seemingly intractable injustice. In this environment, lawyers can easily “come to believe that by participating in such a corrupt system they are effectively enabling racism.”<sup>81</sup>

This perspective can drive passionate lawyers away from the very places where they are most needed. In fact, these lawyers represent our best hope of transforming assumptions about the treatment that poor people deserve, and in turn, transforming the culture of injustice that defines it.<sup>82</sup>

But they must be reminded that simply doing the right thing in just one case matters—that refusing to settle for the status quo, even in one case, makes a difference.<sup>83</sup> To the extent that the Freedman and Gladwell critiques suggest that lawyers cannot impact the status quo by representing individual clients, I wholeheartedly disagree;<sup>84</sup> to the extent that these critiques fuel the self-doubt of public defenders by making them feel that they are not doing enough to transform a racist and classist system, they are counterproductive. For when an army of individual lawyers declines to give in to an unfair process in individual cases, collectively those lawyers become a movement for change.<sup>85</sup> Together they start to raise expectations about what poor people deserve, and they empower others to speak up in the face of injustice.

Gideon’s Promise teaches lawyers that the first step in driving a reform movement is to encourage those in the movement not to lose sight of their ideals. In this vein, standing up for what is right, even in one individual case, is a necessary step in mobilizing a movement. But empowering defenders to do this requires us to acknowledge just how much courage it takes to push back against an entire culture that expects lawyers to merely process cases and frowns upon zealous, principled advocacy. It is with this perspective that I evaluate the heroism of Atticus Finch. While I certainly recognize that

---

80. For a wonderful collection of essays about why public defenders choose to do the work they do, see *HOW CAN YOU REPRESENT THOSE PEOPLE?* (Abbe Smith & Monroe H. Freedman eds., 2013).

81. Rapping, *supra* note 77, at 1042.

82. Jon Rapping, *Support Public Defenders / Transform the Culture of Injustice*, FULFILLING THE PROMISE (Oct. 5, 2015), <http://www.jonrapping.com/#!/Support-Public-Defenders-Transform-the-Culture-of-Injustice/c1tye/56126f910cf2f0ed7a3134dc> [<https://perma.cc/58UN-XVZ4>]; see also Jonathan Rapping, *Continuing the March of the Civil Rights Warriors in Selma*, TALKPOVERTY.ORG (Feb. 4, 2015, 12:46 PM), <http://talkpoverty.org/2015/02/04/continuing-march-civil-rights-selma/> [<https://perma.cc/528L-Q8HH>].

83. See Jonathan Rapping, *Building a New Generation of Public Defenders*, TEDx ATLANTA (Apr. 28, 2015), <http://tedxatlanta.com/videos/04282015-bold-moves/jonathan-rapping/> [<http://perma.cc/VYS6-Z6X2>].

84. See *id.*; see also Jon Rapping, *The Limitation of Policy Fixes: Real Criminal Justice Reform Requires That We Change How We Think About Justice*, FULFILLING THE PROMISE (June 3, 2015), <http://www.jonrapping.com/#!/the-limitation-of-policy-fixes-real-criminal-justice-reform-requires-that-we-change-how-we-think-about-justice/c1tye/556f275c0cf24a19837a0fbf> [<https://perma.cc/E6DD-3Y48>].

85. See Rapping, *supra* note 83.

Atticus standing up in one case will have little systemic impact, I also know that hundreds of lawyers following Atticus's example in tens of thousands of cases each year can be transformative. And in this important sense, Atticus is a powerful role model for those hoping to be a part of such judicial transformation.

#### IV. ENTER *GO SET A WATCHMAN*

While Atticus Finch's critics suggest he was too accepting of the racist system he lived in,<sup>86</sup> they have traditionally stopped short of accusing him of bigotry. In their view, he may not have done enough to interrupt injustice, but he was certainly not promoting it. At least that was what they thought until earlier this year, when *Go Set a Watchman* was published.

Although the book was not released until 2015, Harper Lee wrote *Watchman* before reworking it into the acclaimed *Mockingbird*.<sup>87</sup> The two novels both take place in Maycomb, Alabama and share the same characters, but *Watchman* is set some twenty years after *Mockingbird*. Lee finished the manuscript for *Watchman* in 1957, three years before the publication of *Mockingbird*. Lee's editor, Tay Hohoff, did not believe the novel was ready for publication and asked Lee to rework the storyline. After a couple of years and several iterations, Lee came up with *Mockingbird*.<sup>88</sup>

The original version described Atticus as a lawyer in his seventies who served on the town's Macomb County Citizen's Council,<sup>89</sup> a group critical of the NAACP and other civil rights activists,<sup>90</sup> and who harbored bigoted attitudes towards African Americans. That version of the book painted a picture of a very different Atticus. But as the manuscript was revised into the story of *Mockingbird*—a story about a much younger Atticus who embraced a different set of sensibilities and values—the original draft was set aside at the advice of Lee's editor.

When *Watchman* was released, some read it as a sequel to *Mockingbird*. Although it was written several years earlier, some believed it helped to put Atticus's character into historical context.<sup>91</sup> Reading *Watchman* as *Mockingbird*'s companion, many Atticus admirers saw the new book as proof that Atticus was not the hero they had believed him to be after all, and they bemoaned a fallen hero.<sup>92</sup>

---

86. See *supra* Part 34.

87. Jonathan Mahler, *The Invisible Hand Behind Harper Lee's 'To Kill a Mockingbird'*, N.Y. TIMES (July 12, 2015), <http://www.nytimes.com/2015/07/13/books/the-invisible-hand-behind-harper-lees-to-kill-a-mockingbird.html> [<http://perma.cc/SL78-RQQG>].

88. *Id.*

89. See p. 103.

90. See, e.g., pp. 246–47.

91. See Daniel D'Addario, *Go Set a Watchman Review: Atticus Finch's Racism Makes Scout, and Us, Grow Up*, TIME (July 11, 2015), <http://time.com/3954581/go-set-a-watchman-review/> [<https://perma.cc/72KF-8WAS>]; see also Gopnik, *supra* note 22.

92. See Sam Fullwood III, *Race and Beyond: Atticus Finch and Bill Cosby—Fallen Heroes?*, CTR. FOR AM. PROGRESS (July 15, 2015), <https://www.americanprogress.org/issues/race/news/>

But there is little reason to believe Lee meant for the original manuscript to ever be published as a novel, as it was only serendipitously discovered more than a half century after it was written.<sup>93</sup> In one of the more insightful essays about the two books, W. Ralph Eubanks suggests that *Watchman* was an earlier draft—one that reflects an evolution in Lee's understanding of how to appeal to her southern readership. In Eubanks's view, the Atticus Finch of *Mockingbird* reflects Lee's efforts to rework the earlier version into the “folk hero[ ]” or “mythic figure[ ]” that she ultimately introduced.<sup>94</sup>

This understanding of the relationship between the two novels makes sense. In every creative endeavor, artists rework material to arrive at a finished product, frequently settling on a version that looks nothing like an earlier idea. To refuse to view one's work independent of its earlier iterations is to disregard the creative process. It is at least as likely—in fact it seems more likely—that *Watchman* presents an earlier version of Atticus that Lee abandoned and left in her archives as she reworked him into the iconic hero of *Mockingbird*. She may have meant for the Atticus of *Watchman* to give important context to his younger self in *Mockingbird*. But the fact is that she chose to publish only the later draft, leaving her earlier version unpublished with no plan to ever have it seen.

We will never know how Lee saw the relationship between these two stories. And since this is the case, what is the benefit of using *Watchman* to destroy a symbol that has helped define justice in America for the better? If there is a way to understand these two books that leaves such a badly needed source of inspiration intact, why would we choose to do otherwise?

#### CONCLUSION

In Atticus Finch, Harper Lee provided the nation a vehicle through which it could examine its fidelity to its most fundamental ideals. Not only was Atticus admirable, he was also someone who the audience could hope to emulate. One need not rededicate his or her entire life to fighting for justice in order to follow Atticus's example; he or she need only to do what is right when confronted with the opportunity.

*Mockingbird* illustrates the power of popular culture to illuminate the important issues of the day and to inspire us to act. And current events have reminded us that we have not solved the problems that inspired *Mockingbird*. Police abuses of marginalized populations have led to a movement that demands that we acknowledge that “Black Lives Matter;”<sup>95</sup> America's mass

---

2015/07/15/117465/atticus-finch-and-bill-cosby-fallen-heroes/ [https://perma.cc/X92X-M5PF].

93. See Serge F. Kovaleski & Alexandra Alter, *Harper Lee's 'Go Set a Watchman' May Have Been Found Earlier than Thought*, N.Y. TIMES (July 2, 2015), <http://www.nytimes.com/2015/07/03/books/harper-lee-go-set-a-watchman-may-have-been-found-earlier-than-thought.html> [https://perma.cc/G8JH-WEGB].

94. See Eubanks, *supra* note 6.

95. See *About the Black Lives Matter Network*, BLACK LIVES MATTER, <http://blacklivesmatter.com/about/> [perma.cc/UD6E-W73H].

incarceration crisis has crippled our most vulnerable communities; and lawyers—the vehicle through which justice should be realized in our legal system—have become too disillusioned to join the fight against injustice. The events of the day have forced us to reopen a national dialogue about race and justice, and what it reveals is that we do not all view these problems through the same lens.<sup>96</sup>

These problems seem overwhelming—too great for any single person to make a difference. So, many tune them out and go on about their lives. This is true of the public at large, and it is also true of those of us in the legal profession. We need stories that boil the injustices of the day into a digestible narrative. We need stories that help to make difficult problems obvious and undeniable. We need *Mockingbird* now as much as we did in 1960.

Of course we also need modern heroes to dedicate and risk their lives to realize social justice—to follow the example of Thurgood Marshall, Ella Baker, Fannie Lou Hamer, and John Lewis. But these are people whose example few of us can hope to follow. Atticus Finch, on the other hand, feels like someone whose footsteps even ordinary people could follow in. In this way, through Atticus, *Mockingbird* encourages all of us to resist indifference and to look for opportunities to speak against injustice.

For those of us in the legal profession, *Mockingbird* reminds us of our duty to speak for the voiceless. It encourages us to do so even when the effort seems futile. It inspires us to do what we can and to not allow our inability to individually change the world to harden into a resignation to doing nothing at all.

While one could critique Atticus for not doing enough to drive systemic reform, these critics fail to appreciate the role that a movement of individuals can play in transforming systems. Atticus can inspire individual lawyers to pursue justice in individual cases. When we have inspired enough lawyers, we will have created an army of individuals, all pushing in the same direction—and that army can actually have a broad impact on the criminal justice system itself that no one of the individuals could have had on their own.

I work with hundreds of passionate public defenders. I know that every time these heroic lawyers stand up in court, they challenge our assumptions about the humanity of their clients and how they deserve to be treated. I am equally certain that, collectively, they raise expectations about the standard of justice we must afford the most vulnerable among us.

So I resist any critique that suggests that a lawyer who heroically fights against an unjust system at great personal cost has not done enough. And I reject subjective interpretations of events that seek to destroy a symbol that is important to the values I hold dear. I remain of the view that Atticus is such a symbol and that *Mockingbird* is an important narrative that deserves to be read as a singular story. Harper Lee deserves to be able to rethink

---

96. See Monica Anderson, *Vast Majority of Blacks View the Criminal Justice System as Unfair*, PEW RES. CTR. (Aug. 12, 2014), <http://www.pewresearch.org/fact-tank/2014/08/12/vast-majority-of-blacks-view-the-criminal-justice-system-as-unfair/> [https://perma.cc/G5BB-K6AM].

characters without having her masterpiece sullied by earlier, less compelling, iterations. And, more importantly, narratives that compel us to live up to our most-cherished democratic ideals should not be dismantled if there is a way to preserve them. After all, it's a sin to kill a mockingbird.