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**TO OUTGROW A MOCKINGBIRD:
CONFRONTING OUR HISTORY—AS WELL AS
OUR FICTIONS—ABOUT INDIGENT
DEFENSE IN THE DEEP SOUTH**

*Sarah Gerwig-Moore**

To Kill a Mockingbird occupies a beloved space in law school classrooms and curricula, especially in its portrayal of Atticus Finch. Frequently held up as the model or “hero-lawyer,” Atticus’s character is powerful in fiction, but problematic in practice. His work is lauded, rather than scrutinized, despite his questionable ability to represent his client in life-or-death circumstances—specifically, a racially charged sexual assault case in the Deep South. Through considering examples of historical lawyers and texts which explore similar themes without the lens of fiction, those engaged in legal education and legal practice can and should look to others to study and emulate rather than continuing to promote the narrative that Atticus Finch is the very best of us.

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Like many others who came up through the Georgia public school system,¹ I was assigned to read *To Kill a Mockingbird*² in the seventh grade. I thrilled at the eloquence of Gregory Peck's courtroom monologue in the film adaptation.³ I hoped those in my class who were still "prejudiced" were listening up. The book and film made such an impression that when I graduated from law school and took a job as an appellate public defender, I named my Australian Shepherd puppy Scout and my next puppy, rescued a few years later, Atticus.

This connection *To Kill a Mockingbird* places me squarely within the demographic of Americans generally, Southern Americans in particular, and White Southern American criminal defense lawyers in *very, very* particular—for whom this novel has been significant.⁴ It has been important to me when examining the pervasive racism of the world in which I live and now raise my children, and it has been important when considering all of the challenges facing my clients. It is also a simply magnificent novel. What I have come to reconsider—and what I now teach my students—is that the novel is *not* as important in shaping how law students think about questions of professional and ethical development, practical skills, and even the historical context in which they will practice. This may seem both sacrilegious and self-contradictory. Let me explain.

For decades, Atticus Finch has been posited as a "hero lawyer" in law school courses,⁵ law review articles,⁶ continuing legal education

¹ While literature curricula and text selections vary by county, *To Kill a Mockingbird* remains an exceptionally popular choice in English classes. Currently, it is listed as an exemplar text for grades 9–12 according to Common Core Standards. COMMON CORE STANDARDS FOR ENGLISH LANGUAGE ARTS & LITERACY IN HISTORY/SOCIAL STUDIES, SCIENCE, AND TECHNICAL SUBJECTS, APPENDIX B: TEXT EXEMPLARS AND SAMPLE PERFORMANCE TASKS 107 (2010), http://www.corestandards.org/assets/Appendix_B.pdf.

² HARPER LEE, *TO KILL A MOCKINGBIRD* (2002).

³ *TO KILL A MOCKINGBIRD* (Universal Pictures 1962) (starring actor Gregory Peck as Atticus Finch).

⁴ *To Kill a Mockingbird* has sold over forty million copies worldwide and has been translated into forty different languages. In 2016, more than fifty years after its publication, it was reported that the novel still sells 750,000 copies a year. Christina Austin, *The Bittersweet Story Behind Harry Lee's Success*, FORTUNE (Feb. 19, 2016, 5:02 PM), <https://fortune.com/2016/02/19/harper-lee-to-kill-a-mockingbird/>.

⁵ Cynthia D. Bond, *To Kill a Lawyer-Hero: Atticus Finch in the Law School Classroom*, 45 RUTGERS L. REC. 191, 207 (2017).

⁶ See, e.g., Bill Haltom, *Atticus Remains My Hero*, 51 TENN. B.J. 34, 35 (2015); *Atticus Finch: A Role Model*, 2 HAW. B.J. 39, 39 (1998) (describing Atticus as a role model to the legal community).

programs,⁷ and even awards recognizing attorneys for their dedication to justice.⁸ But for a number of reasons, *To Kill a Mockingbird* is problematic as an instructional text for lawyers and law students. There are far better texts to help encourage the values of zealous advocacy and selfless devotion to a cause, and to highlight the truth of racial bias in the criminal courts, particularly those in the Deep South. Recognizing these limitations of a beloved novel may be difficult, but it is necessary.⁹ Like Scout, we must “grow up” to painful realizations, and we might just be mature enough to confront them.

First—and this is odd to have to emphasize—Atticus Finch was a fictional character. It is true and fairly well-documented that Harper Lee based the character loosely on the life of her father, who was a lawyer. Her father, Amasa Coleman Lee, founded his own practice in Alabama with other partners and filled a variety of civic roles in his community, including serving as a state representative.¹⁰ Harper Lee’s sister followed in their father’s footsteps and became a prominent Alabama lawyer.¹¹ Lee herself even studied law at the University of Alabama School of Law, although she withdrew from school just a few months before graduation.¹² Instead of becoming a lawyer in Alabama, Lee moved to New York City to become a writer.¹³ It bears repeating at this point that Lee, despite imbuing her writing with her experiences from the legal world, never completed her own legal education, sat

⁷ See, e.g., *Becoming Atticus Finch: Representing the Wrongfully Accused in Sexual Assault Cases*, N.C. ADVOCS. FOR JUST., <http://ncaj.fastcle.com/store/seminar/seminar.php?seminar=97860> (last visited Jan. 28, 2020); *Representing the Unpopular Client Panel and Summation of Atticus Finch*, ATLANTA BAR ASS’N, <https://www.atlantabar.org/events/EventDetails.aspx?id=621835&group=> (last visited Jan. 29, 2020).

⁸ See *Atticus Finch Award*, MO. ASS’N CRIM. DEF. LAW., <http://macdl.net/AtticusFinchAward.aspx> (last visited Jan. 30, 2020) (listing previous recipients of the award that were recognized for defending unpopular defendants or cases).

⁹ For a number of reasons, this Essay does not engage with *Go Set a Watchman*—a recently published draft of an earlier Harper Lee novel in which Atticus is an apologist for the Ku Klux Klan and a strong critic of the National Association for the Advancement of Colored People (the NAACP). See generally HARPER LEE, *GO SET A WATCHMAN* (2015). Plenty of interesting work has examined that novel—as well as the ethics of its publication—but the Atticus of *To Kill a Mockingbird* is the focus of the concerns discussed here.

¹⁰ Wayne Flynt, *Nelle Harper Lee on Law*, 69 ALA. L. REV. 629, 632 (2018).

¹¹ See *id.* at 633–34 (discussing Alice Lee’s career as a successful Alabama tax attorney).

¹² See *id.* at 631 (“Lee dropped out of law school in 1949[,] a year short of graduation . . .”).

¹³ *Id.*

for the Bar, or practiced law—she was a layperson.¹⁴ And of course, Atticus Finch himself was neither alive *nor* an actual lawyer.¹⁵

Of course, laypeople frequently offer thoughtful insights into legal systems, and I do not mean to suggest that reading fiction has no benefit in students' moral development or legal education. In my Law & Literature seminar, students read Martha Nussbaum and others on the need for law students to study the humanities to help build both empathy and understanding.¹⁶ We should not, however, confuse fictionalized history with our collective past, nor should we mistake its characters for an ideal lawyer.

To Kill a Mockingbird is a coming-of-age novel—not a how-to manual for young lawyers—and to read it otherwise is perilous. Reading fiction as history creates a false narrative that white volunteer lawyers in the Deep South were broadly and zealously advocating for African American defendants in the 1930s.¹⁷ While local attorneys may have accepted the occasional unpopular pro bono case, it was certainly not the norm.¹⁸ Recall that the right to counsel was not guaranteed in death penalty cases until *Powell v. Alabama*¹⁹ in 1932 or in felony cases until *Gideon v. Wainwright* in 1963.²⁰ Until relatively recently, it was not uncommon for defendants of color to face judges and juries alone.²¹ When lawyers were involved, they were far more likely to be cause lawyers from Northern legal organizations—most notably the NAACP Legal

¹⁴ *See id.*

¹⁵ *See id.* at 638 (describing “Atticus Finch as one of literature’s greatest, purest, [and] best” lawyers).

¹⁶ *See* Martha C. Nussbaum, *Cultivating Humanity in Legal Education*, 70 U. CHI. L. REV. 265, 271 (2003).

¹⁷ *See, e.g.*, Soraya Nadia McDonald, ‘Just Mercy’ Shows that Atticus Finch Was Fiction, but Bryan Stevenson Is Real, UNDEFEATED (Jan. 10, 2020), <https://theundefeated.com/features/just-mercy-shows-that-atticus-finch-was-fiction-but-bryan-stevenson-is-real/>.

¹⁸ *Id.*

¹⁹ 287 U.S. 45, 71 (1932).

²⁰ 372 U.S. 335, 345 (1963).

²¹ *See Indigent Criminal Defense Research Guide: The Law Before Gideon*, GEO. L., <https://guides.ll.georgetown.edu/c.php?g=363469&p=2455701> (last updated Mar. 27, 2018, 9:19 AM) (“For most of U.S. history, the vast majority of state criminal defendants did not have the right to a court-appointed attorney.”). The Equal Justice Initiative website is replete with facts about inequality in the legal system. *A History of Racial Injustice*, EJI, <https://calendar.eji.org/racial-injustice/jan/31> (last visited Jan. 31, 2020).

Defense Fund (LDF)²² or the International Labor Defense (ILD), the Chicago-based “legal arm” of the Communist Party.²³

Certainly, Lee makes no claim about the regularity of local lawyers stepping up to accept unpopular court appointments,²⁴ but there is a risk of becoming so starstruck with Atticus’s character that we forget the dire historical context in which the novel was set.²⁵ Consider the Scottsboro case, for example, which took place not far from where *To Kill a Mockingbird* was set and about which Lee would surely have known.²⁶ In that case, the defendants were capitally charged in the purported rape of two white women.²⁷ The local judge “appointed all members of the local bar to represent them[,]” but no one stepped forward to do so in spite of the judge’s lackluster directive.²⁸ The defendants—all young teenagers facing the death penalty—remained unrepresented until the ILD entered the case.²⁹ ILD lawyers, primarily trained and based north of the Mason-Dixon line, were “actively involved in civil rights and anti-lynching activities, mindful of opportunities to help recruit Party supporters.”³⁰

²² NAACP *Legal History*, NAACP, <https://www.naacp.org/naacp-legal-team/naacp-legal-history/> (last visited Jan. 31, 2020); *History*, LDF, <https://www.naacpldf.org/about-us/history> (last visited Jan. 31, 2020).

²³ *The International Labor Defense*, PBS, <https://www.pbs.org/wgbh/americanexperience/features/scottsboro-international-labor-defense/> (last visited Feb. 9, 2020).

²⁴ LEE, *supra* note 2, at 186.

²⁵ *See Alabama*, U.S. C.R. TRAIL, <https://civilrightstrail.com/state/alabama/> (last visited Jan. 31, 2020) (describing racial injustice and the Civil Rights Movement in Alabama).

²⁶ *Scottsboro Boys*, HIST., <https://www.history.com/topics/great-depression/scottsboro-boys> (last updated Jan. 16, 2020).

²⁷ *Id.*

²⁸ JAMES R. ACKER, SCOTTSBORO AND ITS LEGACY: THE CASES THAT CHALLENGED THE AMERICAN LEGAL AND SOCIAL JUSTICE 6 (2008) (internal quotation marks omitted) (“The accused stood before Judge Hawkins, indigent and without legal representation. A day earlier, a Chattanooga lawyer, Stephen Roddy, who had been retained with offerings collected by a church group from that same city, had driven to Scottsboro with a promise to resist any efforts that might be made to railroad the youths. However, Roddy had already returned to Tennessee before the indictments were delivered and did not appear in court for the arraignment. Peering down at the nine young men who now stood charged with rape, Judge Hawkins appointed all members of the local bar to represent them for the limited purpose of arraigning the defendants. Seven lawyers comprised the local bar. None stepped forward in the ensuing days to act on the [defendants]’ behalf, and three were soon hired to assist the prosecution.” (internal quotation marks omitted)).

²⁹ *See id.* (noting that the defendants did not have legal representation at the time of their arraignment).

³⁰ *Id.*

Add to that the concern that Atticus exemplifies a problematic white savior trope.³¹ The figure of a local lawyer, embedded in the local culture but nevertheless rising to the occasion of representing an unpopular defendant, is not only problematic but unsupported by the legal history, which was driven by those historic social movements.³² In her thoughtful piece examining this trope, Cynthia Bond notes, “[*To Kill a Mockingbird*] focuses on the radical individual as hero, essentially invisibilizing social movements that existed both during the 1930s, when the novel takes place, and the 1960s, when it was published.”³³

The presence in our world of actual hero-lawyers makes it especially curious that lawyers should select its icon from a novel. There are countless real-life lawyers who exemplify the values attributed to Atticus in *To Kill a Mockingbird*: devotion to principles of justice, willingness to accept worthy cases at the expense of his reputation or comfort, and concern for those otherwise unable to secure counsel. What is it that leads us to seek our heroes in fiction when figures like Ruth Bader Ginsburg,³⁴ Abraham Lincoln,³⁵ and Arabella Mansfield³⁶ have graced our nation’s courtrooms? To be

³¹ See, e.g., Osamudia R. James, *Now We Can Finally Say Goodbye to the White Savior Myth of Atticus*, N.Y. TIMES (July 15, 2015, 11:31 AM), <https://www.nytimes.com/roomfordebate/2015/07/15/how-should-schools-deal-with-the-new-atticus-finch/now-we-can-finally-say-goodbye-to-the-white-savior-myth-of-atticus> (discussing the misplaced regard in which the legal academy holds Atticus Finch).

³² *Id.*

³³ Bond, *supra* note 5, at 198.

³⁴ Ruth Bader Ginsburg, an Associate Justice for the U.S. Supreme Court, is only the second woman to serve on the Court. Throughout her career, she has been an advocate for women’s rights and has contributed largely to the issue of gender discrimination. Elizabeth E. Gillman & Joseph M. Micheletti, *Justice Ruth Bader Ginsburg*, 3 SETON HALL CONST. L.J. 657, 657, 659 (1993). In recent years, she has taken on a significant position in contemporary culture, as demonstrated by recent tributes to her legacy, as well as the moniker, “Notorious RBG.” See generally Gillian H. Clow, *Notorious RBG: The Life and Times of Ruth Bader Ginsburg*, 41 L.A. LAW. 32 (2019).

³⁵ Abraham Lincoln is well-known as the sixteenth President of the United States, but prior to taking office, he was a self-taught attorney. Talmage Boston, *The Ultimate Role Model: What Lawyers Can Learn from Lincoln*, 72 TEX. B.J. 106, 107–08 (2009). He spent most of his time handling bankruptcies after the new Bankruptcy Act went into effect in 1842. Joel M. Aresty, *President Abraham Lincoln: Bankruptcy Lawyer*, 34 AM. BANKR. INST. J. 44, 44–46 (2015). Then in 1846, Lincoln was elected to the U.S. Congress, and at the end of his appointment, he returned to his law practice. *Id.* His earnest professionalism throughout his life earned him the ever-persistent nickname, “Honest Abe.” *Id.* at 44.

³⁶ Arabella Mansfield was America’s first female lawyer. She was admitted to the Iowa bar in 1869 when the bar was restricted to white men aged twenty-one and older. Marlene Coir, *Women in the Law—A History of Endurance*, 95 MICH. B.J. 40, 40 (2016). After she challenged the court for admission, Iowa became the first state to accept women and

fair, a number of programs (and courses) do just this,³⁷ but we cannot ignore an Atticus-fixation even amongst the decades of heroes (and heroines) who have helped make the world safer and more just for the powerless and voiceless.

At the top of every list of non-fiction hero lawyer should be Justice Thurgood Marshall, who was not only the first African American Justice to serve on the U.S. Supreme Court,³⁸ but also spent the early decades of his career in small town courtrooms standing between his clients and manifest injustice (and frequently, a death sentence).³⁹ There are a number of reasons to read about Justice Marshall's work, but among them is the point that several of his cases are remarkably similar to the prosecution described in *To Kill a Mockingbird*. If professors and mentors believe it is important for law students to read about innocent African American defendants charged with rape by an unjust system and wholly victimized despite an utter lack of physical evidence of any crime (much less that they were the perpetrators), let them look no further than Gilbert King's Pulitzer Prize-winning *Devil in the Grove*.⁴⁰

Devil in the Grove tells the story of *Shepherd v. Florida*.⁴¹ In that case, Thomas Charles Greenlee (who was sixteen years old at the time), Samuel Shepherd, and Walter Irvin—collectively known as the Groveland defendants—were charged with the rape of Norma Rae Padgett (whose medical examination revealed no evidence of a

minorities to the bar. *Id.* She never practiced law, opting for a career in academia instead. *Id.* She maintained a lifelong support for equal rights for women.

³⁷ See Irin Carmon, *Author of "Notorious RBG: The Life and Times of Ruth Bader Ginsburg,"* YALE L. SCH., <https://law.yale.edu/yls-today/yale-law-school-events/irin-carmon-author-notorious-rbg-life-and-times-ruth-bader-ginsburg> (last visited Jan. 31, 2020) (inviting members of the Yale Law community to listen to Irin Carmon discuss her newly released book on Ruth Bader Ginsburg); see also *The Notorious RBG*, RUTGERS, <https://www.sashonors.rutgers.edu/academics/curriculum/interdisciplinary-seminars/3608-the-notorious-rbg> (last visited Jan. 31, 2020) (describing a course that focuses on the life and cases of Justice Ginsburg).

³⁸ In 1967, President Lyndon Johnson appointed Thurgood Marshall to the U.S. Supreme Court. *Thurgood Marshall 1940–1961*, LDF, <https://www.naacpldf.org/about-us/history/thurgood-marshall> (last visited Jan. 31, 2020) [hereinafter *Thurgood Marshall*].

³⁹ A letter Justice Marshall wrote to the NAACP during the *Lyons v. Oklahoma* trial captures the common milieu: "Jury is lousy. State investigator and County prosecutor busy around town stirring up prejudice, etc. No chance of winning here. Will keep record straight for appeal." Anna Hemingway et al., *Thurgood Marshall: The Writer*, 47 WILLAMETTE L. REV. 211, 218 (2011).

⁴⁰ See generally GILBERT KING, *DEVIL IN THE GROVE* (2012).

⁴¹ 341 U.S. 50 (1951).

sexual assault) in Lake County, Florida.⁴² *Devil in the Grove* is an extraordinary book (and extraordinarily difficult to read), covering not only the bizarre and terrible history of the Groveland case but also other cases Justice Marshall worked on during his time with the LDF.⁴³ It chronicles an era of racial terror—including times when Justice Marshall and his colleagues were nearly lynched themselves⁴⁴—and details the many challenges of representing capital defendants in the South, including trying to locate and persuade local counsel to join the cases.⁴⁵

King spent four years researching the book,⁴⁶ during which he was granted exclusive access to the LDF's files, which included a history of the Groveland case, among others.⁴⁷ Some of the primary sources consulted in the preparation for the book include “unredacted FBI files, the LDF files, and even audio recordings of the defendants’ illegal interrogations.”⁴⁸

Another work of nonfiction that offers readers a hero lawyer with qualities often attributed to Atticus Finch is Bryan Stevenson’s *Just Mercy*⁴⁹ (now also a well-received film).⁵⁰ *Just Mercy*, like *Devil in the Grove*, weaves together a number of stories of infuriating injustice (along with the interplay of race and class) but focuses on more recent cases. For example, Walter McMillian, a primary figure in the text, was wrongfully convicted of murder and spent six years on Alabama’s death row until his eventual exoneration.⁵¹ Unlike *Devil in the Grove*, the stories are told by the lawyer who was the primary advocate in those cases. Far from holding himself out as a

⁴² “If I were asked if the woman was raped, I would have to answer, ‘I don’t know.’” See KING, *supra* note 40, at 150–52; see also *Groveland*, PBS, <https://www.pbs.org/harrymoore/terror/groveland.html> (last visited Feb. 17, 2020).

⁴³ At one point, he oversaw as many as 450 simultaneous cases. *Thurgood Marshall*, *supra* note 38.

⁴⁴ Justice Marshall usually navigated through the south alone, despite the number of death threats he received daily. KING, *supra* note 40, at 4; see also JUAN WILLIAMS, *THURGOOD MARSHALL: AMERICAN REVOLUTIONARY 138–41* (1998) (describing a time when Justice Marshall, after winning twenty-three acquittals for twenty-five defendants, was almost a victim of assassination by a local officer).

⁴⁵ KING, *supra* note 40, at 143.

⁴⁶ Labarre Blackman, “*Devil in the Grove*”: *Must-Read Pulitzer Prize Winner*, PEOPLE’S WORLD (May 30, 2013, 2:12 PM), <https://www.peoplesworld.org/article/devil-in-the-grove-must-read-pulitzer-prize-winner/>.

⁴⁷ See KING, *supra* note 40, at 367 (noting sources used by the author).

⁴⁸ See *id.* (mentioning some of the key sources used by the author).

⁴⁹ BRYAN STEVENSON, *JUST MERCY* (2014).

⁵⁰ See *Just Mercy*, PARTICIPANT, <https://participant.com/film/just-mercy> (last visited Feb. 3, 2020) (providing a trailer and a synopsis of the film).

⁵¹ See STEVENSON, *supra* note 49, at 220.

hero lawyer, Stevenson is exceptionally humble in describing his work and role in his client's successes.

Just Mercy also offers commentary and background on systemic and cultural barriers to fair trials for indigent defendants, and Stevenson and the staff of the Equal Justice Initiative (EJI) have dedicated a large part of their work to educating the public on these barriers.

Over a half-century after the publication of *To Kill a Mockingbird*, readers of *Just Mercy* note the irony of Alabama court staff proudly inviting Stevenson to visit the “Mockingbird Museum” as he labors to represent his client:⁵²

“Have you read the book? It’s a wonderful story. This is a famous place. They made the old courthouse a museum, and when they made the movie Gregory Peck came here. You should go over there and stand where Mr. Peck stood—I mean, where Atticus stood.” . . . She continued talking enthusiastically about the story until I promised to visit the museum as soon as I could. I refrained from explaining that I was too busy working on the case of an innocent black man the community was trying to execute after a racially biased prosecution.⁵³

As the work of EJI urges, more honestly facing our history will help us face modern challenges more successfully.⁵⁴ The American South does not have a proud history of pro bono lawyers standing in the gap for vulnerable criminal defendants, and nationally, public defender offices struggle to meet the needs of their clients.⁵⁵

⁵² *Id.* at 108–09.

⁵³ *Id.*

⁵⁴ EQUAL JUST. INITIATIVE, <https://eji.org> (last visited Jan. 31, 2020).

⁵⁵ See generally Stephen B. Bright & Sia M. Sanneh, *Fifty Years of Defiance and Resistance After Gideon v. Wainwright*, 122 YALE L.J. 2150 (2013) (arguing that poor people fare worse in the criminal justice system due to inadequate funding for indigent defense); see also Bennett H. Brummer, *The Banality of Excessive Defender Workload: Managing the Systemic Obstruction of Justice*, 22 ST. THOMAS L. REV. 104, 106 (2009) (noting the impact of public defenders’ excessive caseload on the criminal justice system); Lisa C. Wood, Daniel T. Goyette & Geoffrey T. Burkhart, *Meet-and-Plead: The Inevitable Consequence of Crushing Defender Workloads*, 42 LITIG. 20, 21 (2016).

Admirers of Atticus have noted how courageous it is that he accepted Tom Robinson's case even though the representation would be a challenge.⁵⁶ Surely, this is true; heroic lawyers do not shy from difficult cases. But more than that, Cynthia L. Fountaine writes:

Indeed, [Atticus] had no hope of winning and he knew that the only publicity he would receive would be negative. . . . He acted courageously in order to bring out the truth because he had compassionate respect for Tom Robinson and his family and because he valued the principle of equal justice under the law.⁵⁷

Two points about this. Unlike Thurgood Marshall and other LDF lawyers, Atticus, though at risk of social ostracism, was never at risk of physical harm, and likely not at risk of financial harm.⁵⁸ Second, this sentiment reflects an unfortunate lack of understanding about the need for specialized training and expertise in criminal defense representation.⁵⁹ Although the chances of this case in a small, southern town during the Great Depression were thoroughly grim, they may have been brighter had the attorney tried more than one criminal case (after which the defendants were hanged) in his expansive career.⁶⁰ All of Atticus's moral, yet notably detached, motivations for fulfilling his appointment do nothing to bridge this gap in experience.

Through a number of creative, research-based de-incarceration and criminal justice reform initiatives, advocates are trying to address the problems created by inexperienced lawyers and substandard legal representation generally. Notable among these initiatives is Gideon's Promise, a public defender training and mentorship program, which specifically seeks to ensure that

⁵⁶ Cynthia L. Fountaine, *In the Shadow of Atticus Finch: Constructing a Heroic Lawyer*, 13 WIDENER L.J. 123, 135 (2003).

⁵⁷ *Id.* at 133.

⁵⁸ See *supra* note 31 and accompanying text.

⁵⁹ See, e.g., Stephen B. Bright, *Counsel for the Poor: The Death Penalty Not for the Worst Crime but for the Worst Lawyer*, 103 YALE L.J. 1835 (1994).

⁶⁰ See LEE, *supra* note 2, at 5 ("His first two clients were the last two persons hanged in the Maycomb County jail."). Atticus himself doubted his ability to make a difference in the outcome of the case. See Thomas L. Shaffer, *The Moral Theology of Atticus Finch*, 42 U. PITT. L. REV. 181, 185 (1981) ("Atticus's statements before the Robinson trial indicate that he has little hope of success in the case, although, after the verdict, he indicated that he hoped for success on appeal.").

indigent clients relying on public defenders receive the same competency in representation that paying clients would expect from their lawyers in other circumstances.⁶¹ Gideon’s Promise attorneys represent 200,000 individuals per year, but have training for and support in their work.⁶² Its attorneys are more likely to secure pretrial diversions for their clients, while having lower rates of plea deals, and having fewer clients incarcerated as compared to traditional public defenders who receive less extensive and focused training.⁶³

Yet even amidst progress in the creation of public defender offices, internal and external challenges threaten effective representation for criminal defendants. Georgia’s statewide public defender system, for example, was created in 2003 to oversee indigent defense in the state and initially promulgated performance standards for both public defenders and contract defenders accepting case appointments.⁶⁴ Since that time, however, the agency has removed performance standards from its website and even changed its name from the “Georgia Public Defender Standards Council” to the “Georgia Public Defender Council.”⁶⁵ These changes do not mean that its attorneys have eschewed recommended best practices for criminal defense representation, but it does represent the manifold conflicts and compromises around funding challenges and appropriate staffing and caseloads. And while it is impossible to know the final budget that will pass in the Georgia General Assembly at the time of this writing, Governor Kemp’s proposed budget involves a \$3.5 million cut from the public defender budget for the upcoming year.⁶⁶ Advocates have claimed such a budget cut would significantly limit indigent defense services, which already receive less funding than prosecutors’ offices.⁶⁷

⁶¹ *Impact*, GIDEON’S PROMISE, <https://www.gideonspromise.org/impact/> (last visited Feb. 4, 2020).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ H.B. 770, 147th Gen. Assemb., Reg. Sess. (Ga. 2003).

⁶⁵ GA. PUB. DEF. COUNCIL, www.gapubdef.org (last visited Feb. 4, 2020); *see also* H.B. 422, 153d Gen. Assemb., Reg. Sess. (Ga. 2015) (enacting the name change).

⁶⁶ Greg Bluestein & Maya T. Prabhu, *Kemp Pursues a New Criminal Justice Policy, Unnerving Critics*, ATLANTA J. CONST. (Jan. 22, 2020), <https://www.ajc.com/news/state--regional-govt--politics/kemp-pursues-new-criminal-justice-policy-unnerving-critics/kjbvlgLsPWnDE2RrWROM5L/>.

⁶⁷ Within the same budget proposal which reduced the public defender budget by \$3.5 million, Governor Kemp proposed additions totaling over \$3 million to the District Attorney’s

The hero-worship of *To Kill a Mockingbird* may contribute to (or reflect) distractions from the persistent inequities facing criminal defendants even in the modern age. Our admiration for the book (and the film) has become a proxy for disapproving of the racism they portray—without requiring readers to interrogate present concerns around provision of counsel, prosecutorial and judicial misconduct, jury selection (and bias), and other structures that stand between criminal defendants and a fair trial. It would be unfair to lay blame for lack of funding for indigent defense at the feet of hero-worship of Atticus Finch, but a legal culture raised to lionize a volunteer lawyer who did not believe it important to uproot a flawed system is not a culture that fully funds public defender offices. Why would we, if goodhearted pro bono lawyers can handle the cases just as well as those who do the work every day?

Atticus, of course, either is or pretends to be blind to these concerns. To him, justice is not only achievable but a “living, working reality.”⁶⁸ Atticus’s iconic closing argument may have simply been a disingenuous exercise in guilting the jury into truly deliberating the charges against Tom Robinson. Except he tells us that this is what he truly believes:

But there is one way in this country which all men are created equal—there is one human institution that makes a pauper the equal of a Rockefeller, the stupid man the equal of an Einstein, and the ignorant man the equal of any college president. That institution, gentlemen, is a court. It can be the Supreme Court of the United States or the humblest J.P. court in the land, or this honorable court which you serve. Our courts

2021 budget. See GOVERNOR’S BUDGET REPORT: AMENDED FISCAL YEAR 2020 AND FISCAL YEAR 2021, at 65 (2020). Over the years, there have been several reports published which illustrate the significant history of disparity between the funds and compensation provided to public defenders as opposed to prosecutors in Georgia. See, e.g., JUDICIAL, DIST. ATT’Y, & CIRCUIT PUB. DEF. COMP. COMM’N, REPORT 15 (2016) (finding that the state pays district attorneys an annual salary of \$120,072 and pays public defenders an annual salary of \$99,526); NAT’L RIGHT TO COUNSEL COMM., JUSTICE DENIED: AMERICA’S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL 64 (2009) (describing the inadequacy of compensation of assigned counsel); SPANGENBERG GRP., STATUS OF INDIGENT DEFENSE IN GEORGIA: A STUDY FOR THE CHIEF JUSTICE’S COMMISSION ON INDIGENT DEFENSE, PART I 96 (2003) (noting that the low compensation associated with indigent defense work creates a disincentive for defense attorneys to provide “the same level of work on appointed cases as they would in retained cases”).

⁶⁸ LEE, *supra* note 2, at 233.

have their faults, as does any human institution, but in this country our courts are the great levelers, and in our courts all men are created equal.

I'm no idealist to believe firmly in the integrity of our courts and in the jury system—that is no ideal to me, it is a living, working reality. Gentlemen, a court is no better than each man of you sitting before me on this jury. A court is only as sound as its jury, and a jury is only as sound as the men who make it up. I am confident that you gentlemen will review without passion the evidence you have heard, come to a decision, and restore this defendant to his family. In the name of God, do your duty.⁶⁹

Case illustrations described in *Devil in the Grove* and contemporary appellate opinions belie that courts were the great *anything*s for defendants of color.⁷⁰ At the time this fictional speech echoed through its segregated courtroom, *Plessy v. Ferguson* was still the law of the land, empowering a “separate but equal” approach to public facilities—and public schools.⁷¹ Nine African American teenagers were sentenced to death in a nearby Alabama county without having had the benefit of counsel.⁷² In the mid-1940s (after *To Kill a Mockingbird* was set but before it was written), George Stinney, Jr., a fourteen-year-old child, was wrongfully convicted of murder in South Carolina and sentenced to death in the electric chair.⁷³ There is not a transcript of his brief trial, and Stinney was so small that his executioner used a Bible as a booster

⁶⁹ *Id.*

⁷⁰ And of course, the fact that women and people of color were excluded from the jury to whom Atticus makes his passionate plea underscores the concerns about the “soundness” of the jury, its deliberations, and its verdict. *See supra* notes 40–41 and accompanying text (discussing King’s *Devil in the Grove* and a U.S. Supreme Court opinion in which the Court found that the racially discriminatory jury selection warranted reversal).

⁷¹ 163 U.S. 537, 556–57 (1896) (holding that racially segregated public accommodations do not violate the Equal Protection Clause if they are “separate but equal”).

⁷² *See Powell v. Alabama*, 287 U.S. 45, 49–53 (1932) (holding that criminal defendants have the right to counsel in capital cases).

⁷³ Lindsey Bever, *It Took 10 Minutes to Convict 14-Year-Old George Stinney Jr. It Took 70 Years After His Execution to Exonerate Him*, WASH. POST (Dec. 18, 2014, 5:24 AM), <https://www.washingtonpost.com/news/morning-mix/wp/2014/12/18/the-rush-job-conviction-of-14-year-old-george-stinney-exonerated-70-years-after-execution/>.

so that he would fit in the seat.⁷⁴ Stinney, like the Groveland defendants,⁷⁵ received a posthumous pardon⁷⁶—cold comfort indeed for such atrocities. Courtrooms may have been preferable to the racial terror that awaited in town squares—but in light of this history, only just barely. Atticus’s views are eloquent, but with all respect due to him, he is an idealist and either purposefully naïve to the challenges facing his client or willfully ignorant of them.

And finally, Atticus was not even successful.⁷⁷ It seems unsportsmanlike to criticize a fictional lawyer for not winning Tom Robinson’s case—of course, plenty of real-life heroes regularly lose cases to which they gave their heart and talent—but it serves us well to remember the fate of Atticus’s client.⁷⁸ In Atticus, we see no exemplars of brilliant interlocutory appeals, motions for a change of venue, summoning of expert witnesses, or even demonstrative evidence (beyond throwing a cup to his client). We do not need to evaluate his lawyering skills by the outcome of the case, because readers do not see much actual lawyering (attorneys and law students know, of course, that the behind-the-scenes research, writing, and investigation work is the heart of what we do).

Whether we judge Atticus by his advocacy, his idealistic view of the legal system, the outcome of his client’s case, or the chasm between fiction and reality of social justice lawyering in the American South, the novel is left wanting as model for lawyers and law students. It is still one of my favorite-ever books, but I have to be careful not to attribute more meaning than was intended by its author. Atticus is still a fascinating character—as are his children—and the novel still addresses themes of racism and injustice in

⁷⁴ Loulla-Mae Eleftheriou-Smith, *George Stinney Jr: Black 14-year-old Boy Exonerated 70 Years After He Was Executed*, INDEPENDENT (Dec. 18, 2014, 10:23 AM), <https://www.independent.co.uk/news/world/americas/george-stinney-jr-black-14-year-old-boy-exonerated-70-years-after-he-was-executed-9932429.html>.

⁷⁵ See Jacey Fortin, *Florida Pardons the Groveland Four, 70 Years After Jim Crow-Era Rape Case*, N.Y. TIMES (Jan. 11, 2019), <https://www.nytimes.com/2019/01/11/us/groveland-four-pardon-desantis.html> (reporting the pardons of the Groveland Four).

⁷⁶ See Eleftheriou-Smith, *supra* note 74 (“[M]ore than 70 years after [Stinney’s] death[,] his conviction has been overturned.”).

⁷⁷ LEE, *supra* note 2, at 240.

⁷⁸ See STEVENSON, *supra* note 49, at 23 (“Today, dozens of legal organizations hand out awards in the fictional lawyer’s name to celebrate the model of advocacy described in Lee’s novel. What is often overlooked is that the black man falsely accused in the story was not *successfully* defended by Atticus. Tom Robinson, the wrongly accused black defendant, is found guilty.”).

powerful and important ways. But it is also a product of its time, and for all its brilliance, deeply limited.

The truth is that readers who view *To Kill a Mockingbird* as the apex of heroic lawyering are all too often six-year-old Jean Louise Finch in our idolatry of Atticus. We desperately cling to a naïve view of history, but our heroes have clay feet mired in a racist culture; our beloved institutions were dangerous and exclusionary; and our iconic books tell only a piece of a larger and more complicated narrative. And when we grow up and see how the world truly was, and still is today, we don't know how to think or feel about it. It is Scout's loss of innocence and it is ours. And it is good for us. Our idols—even the Pulitzer-Prize-winning ones—are smashed. And we have to decide whether to glue the pieces back together or to fashion a new mosaic with what is real: a troubled history and an opportunity to learn from our past.

