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Symposium

When a Lawyer Stood Tall: Sharing and Understanding Stories of Lawyer Heroe

IN THE SHADOW OF ATTICUS FINCH: CONSTRUCTING A HEROIC LAWYER

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“[A] society with no other scale but the legal one is ... less than worthy of man.”

~Aleksandr I. Solzhenitsyn¹

“What is all this to my soul? How can the laborious study of a dry and technical system, the greedy watch for clients and practice of shopkeepers’ arts, the mannerless conflicts over often sordid interests, make out a life?”

~Oliver Wendell Holmes, Jr.²

I. WHAT MAKES A LAWYER HEROIC?

Jackie Robinson. Sally Ride. Wolfgang Amadeus Mozart. Rosa Parks. Mohandas Gandhi. Susan B. Anthony. Leonardo da Vinci. Helen Keller. Martin Luther King, Jr. Mother Theresa. Albert Einstein. These are among our heroes. Each has excelled beyond the norm to accomplish something extraordinary. Whether through exceptional bravery, wisdom, imagination, fortitude, athleticism, creativity, perseverance, compassion, or intelligence, each has made an extraordinary contribution to humanity. For this, we consider these people to be heroes.

*124 A hero, then, is someone who exceeds the norm, someone whose efforts or accomplishments are extraordinary. But, what makes a lawyer heroic?

It is not easy for a lawyer to be a hero. Lawyers work with, work against, and work for good lawyers and bad lawyers. Lawyers have good clients and bad clients. Sometimes bad causes win and good causes lose. Lawyers are constantly tempted to do wrong and challenged to do good. In addition, there are many divergent interests pulling at the lawyer’s sleeve. The lawyer must be loyal to the client and vigorously advocate on the client’s behalf no matter how sympathetic the adversary or despicable the client might be in personality and behavior.³ The lawyer must not compromise confidentiality no matter how great the pressure to reveal information.⁴ These obligations are imposed in order to create the proper relationship between the lawyer and client and to facilitate the smooth and effective functioning of the adversarial system. Yet, these obligations sometimes make it difficult for a lawyer to be a hero or, at least, to be perceived as a hero.

In *To Kill a Mockingbird*,⁵ Harper Lee constructed a heroic lawyer character--Atticus Finch. Using Atticus Finch as a model, this paper will explore three qualities that are essential in the heroic lawyer: courage, honesty, and compassion. Although Atticus is not perfect, he is a heroic role model for lawyers because he displayed all three of these qualities in his professional life. *125 Above all, *To Kill a Mockingbird* explores the devastating impact of hatred, prejudice, and ignorance on the human soul, and how the impact of these evils may be overcome only by the heroic capacity for courage, honesty, and compassion.

It was this juxtaposition of good and evil that enabled Atticus to emerge as an extraordinary lawyer and, thus, a hero.

Part II introduces the heroic character, Atticus Finch. Next, Part III examines three qualities--courage, honesty, and compassion--and explains why these qualities are essential in the heroic lawyer, using Atticus as an example. Finally, Part IV provides some concluding thoughts about using a flawed individual as a heroic role model.

II. ATTICUS FINCH AS A HEROIC LAWYER

Through the eyes of Atticus's nine-year-old daughter Scout, *To Kill a Mockingbird* confronts the engrained racism in Alabama in 1935 that prevented a plainly innocent man from receiving a fair trial. As Professor Bryan Fair has pointed out, Lee explores this theme from many perspectives:

how children learn racial bias or racial tolerance through family and environment, how boys and girls are socialized differently, how men frequently (but not always) consciously and unconsciously dominate women, the customary and pervasive second-class citizenship of Blacks, the intersectionality of race, class, and gender hierarchies, and how racial attitudes influence the meaning and application of legal canons such as the presumption that a defendant is innocent until proven guilty beyond a reasonable doubt through judicial proceedings.⁶

The novel also explores Atticus's willingness to do his job despite the apparent futility of the representation and the impact the representation would surely have on his children's lives and on his own career. Atticus represented Tom Robinson, a black man accused on scant evidence of raping a white woman. Tom was *126 tried before a jury comprised of all white men who ignored convincing evidence of innocence to convict Tom and sentence him to death.

Atticus was a single parent,⁷ a lawyer, and a member of the state legislature.⁸ Upon his admission to the bar, Atticus had begun his practice in the fictional small town of Maycomb, the county seat of Maycomb County, Alabama, and about twenty miles from the rural home where he was born and raised. He had a small office in the courthouse, which was walking distance from his home where he lived with his two children, Jem, who was twelve years old during the summer of 1935, and Scout, who was nine. A housekeeper, Calpurnia, cared for the children while Atticus was at work.⁹

Aside from the Robinson case, Atticus's law practice consisted mainly of civil matters, such as drawing up wills and assisting clients with real estate matters. Like many other small-town, Depression-era professionals, Atticus did not always receive his payment in cash. For example, Scout tells of finding a load of stovewood, a sack of hickory nuts, a crate of smilax and holly, and a sack of turnip greens, all to compensate Atticus for legal services rendered on behalf of Walter Cunningham, a poor farmer who had no other means to pay.¹⁰

*127 Atticus had some experience in criminal defense work. In particular, Atticus's first two clients had been convicted of first-degree murder upon the testimony of three eyewitnesses. Aware of the evidence against his clients and their obvious guilt, Atticus had urged them to plead guilty to second-degree murder to avoid execution. However, the clients had refused and were convicted and hanged, leaving Atticus to develop a "profound distaste for the practice of criminal law."¹¹

Despite Atticus's general preference for avoiding criminal defense representation and an initial reluctance to take Tom Robinson's case in particular,¹² Judge John Taylor appointed Atticus to represent Tom, who was accused of capital rape of nineteen-year-old Mayella Ewell. Having been appointed, Atticus recognized and faithfully carried out his duty to vigorously represent Tom.¹³ He put on a strong defense that left little doubt that Tom was innocent of the crime charged.¹⁴

*128 In particular, Atticus effectively marshaled the evidence in Tom's favor and shattered the prosecution's case. Atticus established that there was no medical evidence to support the rape charge, and that Mayella's documented injuries--which included bruises on her arms, a blackened right eye and other bruising on the right side of her face, bruising around her throat, and finger marks on the back of her neck--were caused by someone attacking her from the front using primarily the

left hand. Atticus let the jury know that Tom was physically incapable of committing an attack in the manner that would result in the injuries Mayella suffered because “[h]is left arm was fully twelve inches shorter than his right, and [it] hung dead at his side ... end[ing] in a small shriveled hand ... that ... was of no use to him.”¹⁵ To support his theory that Mayella’s injuries were actually inflicted by her father, Bob Ewell, Atticus established that Bob was left-handed.

Mayella’s testimony and Tom’s testimony conflicted almost entirely, except insofar as both agreed that Tom had been present at Mayella’s residence at the time the alleged rape had occurred. Atticus undermined the credibility of Mayella’s testimony that a rape occurred and that Tom had committed it with a firm, but polite, cross-examination which exposed gaps in Mayella’s memory, inconsistencies in her story, and a description of the events that made it impossible for Tom, with his crippled left arm, to have committed the crime of which he was accused.¹⁶

Finally, in his closing argument, Atticus argued his theory of the case, which was fully supported by Tom’s testimony as well as the physical evidence adduced at trial that no rape occurred but that Mayella had made an amorous pass at Tom, which Tom rejected and which Mayella’s father angrily interrupted. The *129 implication was that Mayella’s father, Bob, had been the one to inflict the injuries on Mayella by severely beating her for having attempted to seduce Tom. Atticus argued: The defendant is not guilty, but somebody in this courtroom is.

....

She has committed no crime, she has merely broken a rigid and time-honored code of our society, a code so severe that whoever breaks it is hounded from our midst as unfit to live with.

....

She was white, and she tempted a Negro. She did something that in our society is unspeakable: she kissed a black man.

....

Her father saw it What did her father do? We don’t know, but there is circumstantial evidence to indicate that Mayella Ewell was beaten savagely by someone who led almost exclusively with his left.¹⁷

Atticus went on to point out that the only support for the prosecution’s case was “the evil assumption--that *all* Negroes lie, that *all* Negroes are basically immoral beings, [and] that *all* Negro men are not to be trusted around our women.”¹⁸ In addition, Atticus’s closing argument made a moving plea for equal treatment under the law:

But there is one way in this country in 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 have their faults, as does any human institution, but in this *130 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.¹⁹

Atticus’s client was convicted and did not live to appeal the conviction.²⁰ After Tom’s conviction and death, Bob Ewell remained angry and humiliated by Atticus’s accusations and insinuations against him, and he vowed revenge. In the months following the trial, Bob taunted Tom’s widow as she walked past his home on her way to and from work. In addition, he

attempted to break into Judge Taylor's home. Finally, he attacked Jem and Scout late one evening as they walked home from a Halloween festival at school. Jem suffered a severely fractured arm, but Boo Radley,²¹ a reclusive neighbor, thwarted the attack by stabbing Bob Ewell, killing him. Although the novel leaves it unclear whether the stabbing was accidental or intended, it was quite clear *131 that the stabbing was in defense of the children, and it likely saved their lives.²²

During the months leading up to the trial, there was significant community pressure on Atticus to thwart his obligation to vigorously represent Tom.²³ Nevertheless, Atticus recognized his duty to effectively represent Tom as both a professional and a personal obligation. Atticus told Scout, "simply by the nature of the work, every lawyer gets at least one case in his lifetime that affects him personally. This one's mine, I guess."²⁴ Atticus explained to Scout the essence of his obligation as follows: [T]here's been some high talk around town to the effect that I shouldn't do much about defending this man.

....

If you shouldn't be defendin' him, then why are you doin' it?

For a number of reasons The main one is, if I didn't I couldn't hold up my head in town, I couldn't represent this county in the legislature, I couldn't even tell you or Jem not to do something again.

You mean if you didn't defend that man, Jem and me wouldn't have to mind you any more?

That's about right.

*132 Why?

Because I could never ask you to mind me again.

....

Atticus, are we going to win it?

No, honey.

Then, why--

Simply because we were licked a hundred years before we started is no reason for us not to try to win²⁵

That Atticus viewed his duty to his client as a personal obligation, as well as a professional obligation, is also illustrated by the fact that Atticus personally sat vigil outside the jail the night before the trial to protect his client from being kidnapped and murdered by a lynch mob.²⁶

Atticus recognized the impact that his representation of Tom would have on his family. He warned his children that they might feel the sting of the community pressure against him, and he frequently reminded them to keep their tempers in check and to remember their connection to their community. For example, Atticus told Scout:

You might hear some ugly talk about it at school, but do one thing for me if you will: you just hold your head high and keep those fists down. No matter what anybody says to you, don't you let 'em get your goat. Try fighting with your head for a change [R]emember this, no matter how bitter things get, they're still our friends and this is still our home.²⁷

Atticus's representation of Tom Robinson was heroic not just because of the way he represented Tom, but also because of the reasons why he represented Tom the way he did. Atticus was seeking neither fame nor fortune. He made no mention of how

*133 much (or how little) he was being paid or even whether he was to be paid at all; he did not represent Tom for the money.²⁸ He did not handle the case as he did to gain personal recognition or to help him expand his practice or even to gain or protect a reputation as a winning trial lawyer. Indeed, he had no hope of winning and he knew that the only publicity he would receive would be negative.²⁹ Atticus was not driven by a hunger for wealth or recognition. Atticus was driven by selfless motives to follow his conscience, rather than selfish motives. 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.

Atticus was intelligent, insightful, and conscientious. He was a moral leader in the community, and he worked to instill the virtues of courage, honesty, and compassion in his children. He treated his children with the same respect he treated others. He taught them to think for themselves by honestly answering their questions,³⁰ and he taught them to be compassionate, respectful, and tolerant of others by encouraging them to consider things from others' perspectives. For example, he told Scout, "if you can learn a simple trick, Scout, you'll get along a lot better with all kinds of folks. You never really understand a person until you consider things from his point of view ... until you climb into his skin and walk around in it."³¹

*134 Despite advocating a position which many people disagreed with, and which drew the scorn of many of his neighbors, Atticus remained a part of the community at every turn.³² Atticus reminded the children that the people of the community were friends and that the Finch family would still be part of the Maycomb community after the trial was over, irrespective of the outcome. For example, Atticus told Scout: "[t]his time we aren't fighting the Yankees, we're fighting our friends. But remember this, no matter how bitter things get, they're still our friends and this is still our home."³³ In addition, as a member of the community, Atticus took responsibility for the very community views that he was attempting to overcome. For example, in justifying his acquiescence in the children's attending Tom's trial despite the emotional impact it might have on them, Atticus said to his sister: "This is their home We've made it this way for them, they might as well learn to cope with it It's just as much Maycomb County as missionary teas."³⁴

*135 Although Atticus considered himself part of the community, he was not content to allow community views to go unchallenged when they subverted the justice he sought for his client.³⁵ He explained to Scout that he must follow his own conscience and do what he believed was right and advocate the truth in representing Tom despite community views to the contrary.³⁶ Thus, he courageously stood up for truth and against injustice despite the inevitability of adverse consequences.

Yet, Atticus was not perfect. Despite his commitment to honesty, he did not always tell the truth.³⁷ Despite his insistence on compassion for others, he seemed unconcerned and even disdainful about the horrid circumstances of Mayella's life.³⁸ Despite the principles of fairness and equality under the law articulated in his closing argument in the Robinson case, Atticus was not a vigorous advocate of complete racial or gender equality, and he arguably held views that are plainly repugnant to principles of social equality. For example, during his closing argument in defense of Mr. Robinson, Atticus said, "Thomas Jefferson once said that all men are created equal, a phrase that the Yankees and the distaff side of the Executive branch in Washington are fond of hurling at us."³⁹ This statement implies that Washington's version of equality *136 was stricter than the version of equality Atticus would have his Southern community embrace.⁴⁰

Moreover, despite ample opportunities as a lawyer, community leader, and state legislator, there is no indication that Atticus did anything beyond his representation of Tom to advocate change in the judicial or social structures which he recognized to be corrupt.⁴¹ Indeed, Calpurnia--the housekeeper whom Atticus considered to be a member of his family⁴²--was apparently not welcome at the family dinner table. In addition, in discussing the exclusion of women from serving on Alabama juries, Atticus said, "I guess it's to protect our frail ladies from sordid cases like Tom's. Besides, ... I doubt if we'd ever get a complete case tried--the ladies'd be interrupting to ask questions."⁴³ Although this statement was made almost in jest, with a grin, it reflects a view that women are gossipy and incapable of considering evidence to reach reasoned conclusions. Rather than condemning the systematic exclusion of women from juries (the reaction one would expect--or hope for-- from someone who expressed a sincere commitment to equality and fairness), the statement offers a stereotypical justification for excluding women from jury service and preventing them from participating equally in the administration of the justice system.⁴⁴

*137 Although we should not excuse his shortcomings, we must respect Atticus's basic human right to hold opinions,

whether those opinions are right or wrong and whether we agree or disagree with those opinions. Atticus teaches tolerance of others' views by explaining to Scout that his fellow Maycomb citizens are "certainly entitled to [their views,] and they're entitled to full respect for their opinions."⁴⁵ This reflects a basic principle underlying our understanding of freedom of thought and speech. All people are entitled to hold and espouse their own views, and only through the articulation of various views may the truth emerge. Atticus seemed to embrace this principle. By saying that others' views, however wrong, are entitled to respect, Atticus seems to mean that others' views must not be silenced. He clearly does not mean that to respect someone's view, one must adopt that view. Just after he says that others' views are entitled to respect, Atticus makes the point that one must act according to one's own conscience and not the majority view: "before I can live with other folks, I've got to live with myself. The one thing that doesn't abide by majority rule is a person's conscience."⁴⁶

Although we might disagree with Atticus on some matters, this does not mean that he is less than worthy of our respect and even our admiration. In fact, Atticus empowers us to disagree with him and to formulate our own views and act in accordance with our own consciences. Among Atticus's most important statements is that "[t]he one thing that doesn't abide by majority rule is a person's conscience."⁴⁷ The message is that we must each find our own conscience, and have the courage to abide by it. Atticus did know his conscience and he did abide by it in representing Tom *138 Robinson and in all other aspects of his life. Atticus is a hero because he had the courage to follow his conscience.

The novel began and ended with a depiction of Atticus being in high regard in Maycomb.⁴⁸ Even though many of his neighbors disapproved of his handling of the Robinson case, Atticus maintained the respect of his neighbors throughout the story. He was reelected to the state legislature that year without opposition.⁴⁹ Atticus's stature in the community was not based on wealth⁵⁰ or the outcome of his cases, but rather on his commitment to doing the right thing: to fulfill his obligations to his client and to his profession, and in so doing, to serve his community. Atticus's neighbor, Maudie Atkinson, explained Atticus's role in the community this way: "Whether Maycomb knows it or not, we're paying the highest tribute we can pay a man. We trust him to do right. It's that simple."⁵¹

*139 III. THE HEROIC QUALITIES: COURAGE, HONESTY, AND COMPASSION

A. Courage

"There are all kinds of courage It takes a great deal of bravery to stand up to our enemies, but just as much to stand up to our friends."

~J.K. Rowling⁵²

Courage requires both the wisdom to know what is the right thing to do and the will to do the right thing under adverse circumstances. The dictionary defines "courage" as being synonymous with "mettle, spirit, resolution, and tenacity," and meaning "mental or moral strength to resist opposition, danger, or hardship".⁵³

Courage implies firmness of mind and will in the face of danger or extreme difficulty; *mettle* suggests an ingrained capacity for meeting strain or difficulty with fortitude and resilience; *spirit* also suggests a quality of temperament enabling one to hold one's own or keep up one's morale when opposed or threatened; *resolution* stresses firm determination to achieve one's ends; *tenacity* adds to *resolution* implications of stubborn persistence and unwillingness to admit defeat.⁵⁴

Courage is often associated with the bravery of a soldier going into battle to valiantly fight off an enemy,⁵⁵ and it is the quality that is perhaps most closely associated with heroism.⁵⁶

To be heroic, lawyers must be courageous. They must have the courage to follow their consciences. This, of course, includes the courage to stand up to one's adversaries, to judges, and to *140 others to loyally represent the clients' interests and advocate on behalf of the client.⁵⁷ Perhaps even more challenging, however, is that lawyers must have the courage to stand up

to friends, colleagues, employers, partners, and even the general public and act according to their own consciences in representing their clients.⁵⁸

Consider the courage Atticus displayed in his representation of Tom Robinson. It is hard to imagine a case that would have engendered more controversy than this one in which a black man was accused of raping a white woman in Alabama in 1935.⁵⁹ It is ***141** hard to imagine an attorney in a more difficult situation than the situation in which Atticus found himself. Atticus was a white man from a socially distinguished Southern family in a community in which social status meant everything. He was a single parent of two young children. He had a political career and a law practice. His sister expressed her disapproval of the representation, as did many of his neighbors.⁶⁰ Atticus must have worried that, as a consequence of his representation of Tom, he and his children would be ostracized from Maycomb society⁶¹ and that his children would be taunted or, worse, physically attacked and injured.⁶² He must have worried that his law practice would suffer and that he would lose his seat in the legislature. Atticus's neighbors implored him to consider the personal and professional risks of the representation and suggested that these risks justified a less-than-vigorous defense or no defense at all.⁶³ Moreover, Atticus knew there was virtually no hope of winning at trial and saving Tom's life.⁶⁴ Thus, the enormous risks were not offset by any realistic chance of a positive outcome for Tom.

***142** Yet, there was no question in Atticus's mind about whether he would give Tom the same vigorous defense he would give any other client. Atticus explained that courage does not depend on the likelihood of success: "[s]imply because we were licked a hundred years before we started is no reason for us not to try to win."⁶⁵

Similarly, Atticus taught that courage does not depend on the ability to assert power over another to achieve a desired result: "I wanted you to see what real courage is, instead of getting the idea that courage is a man with a gun in his hand. It's when you know you're licked before you begin but you begin anyway and see it through no matter what."⁶⁶ In making this statement, Atticus was referring to an elderly neighbor's courageous and victorious battle to overcome morphine addiction, and distinguishing his own shooting of a rabid dog in the street in front of the Finch home. Knowing that his sharpshooting had impressed the children as being courageous, Atticus wanted the children to understand that courage was not the assertion of power simply because one had power to assert, but rather that real courage consisted of demonstrating fortitude in the face of adversity. Atticus demonstrated this fortitude in his representation of Tom: "[s]imply because [he was] licked a hundred years before [he] started [was] no reason for [him] not to try to win."⁶⁷

Atticus displayed great courage in standing up to his neighbors, to his relatives, and to all of Maycomb County, and in risking everything--his children's and his own safety, his career, his friendships--to act in accordance with his own conscience.⁶⁸ Atticus believed that it was his personal and professional obligation to vigorously defend Tom to reveal him as an honest man who was unjustly accused and to reveal that a conviction would prove racist corruption of the system.⁶⁹ In so doing, Atticus ***143** teaches that we must, as lawyers and as people, act in accordance with our own consciences--even when so doing does not comport with the majority view and even when our friends and colleagues disagree with us.⁷⁰

In addition, Atticus teaches that courage involves relying on reason, rather than resorting to power or force. On the eve of Tom's trial, Atticus physically defended Tom from an angry mob determined to save the county the expense of a trial. Yet, he did so, not by the use or display of force, even though he was a superior marksman⁷¹ who was surely capable of and probably justified in defending himself and his client with force. Atticus simply sat outside the jail, creating a human barrier between the mob and Tom, planning to reason with the angry mob to convince them to let the legal system take its course. Ultimately, it was Scout who drove the mob away, by, as Atticus put it, "mak [ing one of them] stand in [Atticus's] shoes for a minute."⁷² She talked to one member of the mob, Walter Cunningham, as an individual and made him understand that he--a father concerned about his children--was no different than Atticus--a father concerned about his children. Simply by talking to Walter Cunningham, Scout reminded each member of the mob of his individual humanity, thus ***144** destroying their collective desire to act like "animals."⁷³ Scout reached Walter Cunningham at a human level--a level where reason overcame impulse.

Atticus's commitment to reason as the way to resolve disputes, rather than violence or show of force--even though he clearly had the ability and even the justification to use force--provides a powerful lesson for how lawyers should conduct themselves

in the practice of law. Lawyers should have the courage to advocate based on reason, not force or power, to advance their clients' interests. Lawyers should not attempt to obtain a strategic advantage over opponents by asserting power (real or imagined) or by engaging in obnoxious behavior, but rather should have the courage to rely on reason to accomplish their objectives.⁷⁴

B. Honesty

“There is a ... popular belief that lawyers are necessarily dishonest [T]he impression is common, almost universal. Let no [person] choosing the law for a calling for a moment yield to the popular belief--resolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer.”

~Abraham Lincoln⁷⁵

Lawyers have a lousy reputation with the public. This poor reputation is primarily based on the public's perception of lawyers as being untrustworthy.⁷⁶ If not outright liars, lawyers are thought *145 to be crafty, greedy, deceptive, and manipulative.⁷⁷ The public views lawyers as being experts at twisting reality and finding “loopholes” in the law that will thwart justice and create results that, in the end, will only line the pockets of the lawyers themselves⁷⁸ at the expense of the public and sometimes even at the expense of their own clients.⁷⁹ This reputation relates to the *146 public's perception of lawyers as basically dishonest people, unworthy of trust, who are comfortable with manipulating the truth to reach unjust results that satisfy their own selfish goals.

Yet, honesty and trustworthiness are central to the lawyer's role as a fiduciary.⁸⁰ The lawyer-client relationship depends on the client's confidence that the lawyer is honest and can be trusted to loyally represent the client's interests. Moreover, a lawyer's integrity affects not only the lawyer's reputation with one particular client, but it also affects the lawyer's ability to effectively represent other clients.⁸¹ For example, a lawyer with a reputation for dishonesty lacks credibility with judges and other lawyers, thus making judges and other lawyers less likely to rely on the lawyer's word. This lack of credibility undermines the lawyer's ability to effectively represent all of the lawyer's clients by making all of the lawyer's statements and representations suspect and untrustworthy. On the other hand, a lawyer who has a good reputation for honesty will have the trust of judges and others. Consequently, the honest lawyer will get the benefit of the doubt in many instances, and this benefit will enure to the benefit of all of the lawyers' clients.

A lawyer's professional integrity depends on the lawyer's reputation for honesty. Of course, to be honest, a lawyer must tell *147 the truth. But, honesty is more than simply telling the truth. Honesty also means being intellectually honest. Intellectual honesty requires wisdom, intelligence, the exercise of good judgment, and adherence to professional standards of conduct.

The lawyer's integrity is reflected in the lawyer's communications. The lawyer's words are the lawyer's product. Lawyers assess, persuade, and inform using words. A lawyer's words, and the thoughts and ideas the words convey, form the basis upon which other people judge the lawyer. The lawyer develops a reputation for honesty by being consistently truthful in all aspects of the lawyer's dealings with clients and others.

Atticus was an honest person and an honest lawyer.⁸² He insisted on telling the truth at nearly every turn.⁸³ His personal honesty is reflected in his relationships with his children and his neighbors. Atticus was usually honest with his children, answering their questions, and encouraging others to do the same. In addition, Atticus had an honest character that was based on solid moral principles. His neighbor, Maudie, said, “Atticus Finch is the same in his house as he is on the public streets,”⁸⁴ suggesting that Atticus presented himself honestly both publicly and privately. His professional honesty is reflected in the manner in which he represented Tom, insisting that the truth be told despite the inevitable result⁸⁵ and loyally fulfilling his professional obligations. In addition, Atticus was careful not to make false *148 assurances to his clients. In particular, Atticus told Tom and his family that he believed they had a good chance for success on appeal, but he was careful not to promise freedom for his client.⁸⁶

As a result of Atticus's reputation for personal and professional honesty, he could be trusted to effectively represent Tom. Judge Taylor likely appointed Atticus because he knew Atticus would carry out his professional obligation to effectively represent Tom.⁸⁷ Atticus's neighbor, Maudie, noted that a "handful of [Maycomb] people" trusted Atticus to properly represent Tom.⁸⁸ Significantly, Atticus was reelected, without opposition, to the state legislature after representing Tom, a demonstration of the voting public's trust in Atticus's integrity.⁸⁹

Despite the importance of honesty in a lawyer, it is not an absolute. Honesty "may on occasion be subordinated to even *149 higher values."⁹⁰ This is true in the law as well as in everyday life. For example, our sense of polite social behavior keeps us from telling someone that they have an unattractive hairstyle or that we think their clothes are ugly. We know that when no good will come from the absolute truth and feelings will be hurt as a result of the truth, the truth need not always be told. Our compassion for the feelings of others sometimes subordinates our need to tell the truth.

So it is with the legal system: we have agreed that certain values are more important than truth. For example, in a criminal case, defense counsel's obligation is not solely to ensure that truth emerges:

[D]efense counsel has no ... obligation to ascertain or present the truth. Our system assigns him a different mission ... that he defend his client whether he is innocent or guilty Defense counsel need present nothing, even if he knows what the truth is If he can confuse a witness, even a truthful one, or make him appear at a disadvantage, unsure or indecisive, that will be his normal course. Our interest in not convicting the innocent permits counsel to put the State to its proof, to put the State's case in the worst possible light, regardless of what he thinks or knows to be the truth [A]s part of our ... adversary system and as part of the duty imposed on the most honorable defense counsel, we countenance or require conduct which in many instances has little, if any, relation to the search for truth.⁹¹

*150 In addition, the evidentiary privileges, such as the attorney-client privilege, illustrate a value judgment that subordinates truth to other values, such as facilitating the attorney-client relationship.⁹²

Of course, truth remains a central goal of the adversary system and there are limits to the extent that other values supersede the search for truth. For example, the United States Supreme Court has held that a criminal defendant does not have a right to present perjured testimony and that defense counsel did not violate the defendant's right to counsel by refusing to assist in the presentation of perjured testimony.⁹³

Atticus recognized that the need for honesty is, in some circumstances, overcome by other important values. For example, Atticus acquiesced in Sheriff Heck Tate's decision to cover-up the truth that Boo Radley stabbed Bob Ewell by Tate's reporting that Bob fell on his knife.⁹⁴ In addition, just before leaving home to protect his jailed client from being kidnapped and murdered by a mob, Atticus told Jem "we don't have mobs and that nonsense in Maycomb. I've never heard of a gang in Maycomb."⁹⁵ Another situation which puts into question Atticus's commitment to absolute honesty occurred when Atticus made a deal with Scout whereby he would continue to read with her--despite her teacher's admonition to the contrary--in exchange for Scout's promise to "concede the necessity of going to school."⁹⁶ Once the deal was made, Atticus suggested to Scout that she had better not tell her teacher that they were reading together because her teacher might disapprove.⁹⁷

*151 Significantly, all these instances of Atticus's dishonesty occurred outside his professional capacity. Moreover, all but one of these instances involved withholding information, rather than outright lying.⁹⁸ In all the instances in which Atticus withheld the truth, Atticus recognized that harm would potentially result from telling the truth, that no offsetting good would result from telling the truth, and that no harm would result from not telling the truth. In other words, Atticus exercised good judgment in determining when withholding the truth was justified. For example, by telling the truth about Boo's role in Bob Ewell's death, Atticus would potentially harm Boo by exposing him to unwanted publicity and by making him the subject of the town's benevolence.⁹⁹ This harm *152 to Boo would not be offset by a corresponding public or private benefit; charges would never have been filed against Boo because he acted in defense of the Finch children and himself,¹⁰⁰ and Boo would not have appreciated being the focus of the town's attention. Consequently, Atticus thought that no real harm would come from not telling the truth.¹⁰¹ Thus, in Atticus's mind, the truth did not need to be told for justice to be achieved.¹⁰²

In contrast, Atticus had initially refused to go along with Sheriff Tate's "cover up" of the circumstances of Bob Ewell's death when Atticus thought his own son Jem had stabbed Bob Ewell.¹⁰³ Atticus was determined that Jem could be exonerated only through full public judicial proceedings which would reveal the truth that Jem acted in self-defense.¹⁰⁴ Atticus said, *153 I don't want my boy starting out with something like this over his head. Best way to clear the air is to have it all out in the open. Let the county come and bring sandwiches. I don't want him growing up with a whisper about him, I don't want anybody saying, "Jem Finch ... his daddy paid a mint to get him out of that."

....

If this thing's hushed up it'll be a simple denial to Jem of the way I've tried to raise him. Sometimes I think I'm a total failure as a parent, but I'm all they've got. Before Jem looks at anyone else he looks at me, and I've tried to live so I can look squarely back at him ... if I connived at something like this, frankly I couldn't meet his eye, and the day I can't do that I'll know I've lost him. I don't want to lose him and Scout, because they're all I've got.¹⁰⁵

In other words, although the lie would have benefited Jem by enabling him to avoid the embarrassment and stigma associated with being arrested and tried for the killing, Atticus thought that the serious harm that would have resulted from the lie would have outweighed the value of this benefit. Jem would have lost respect for his father's integrity, and Jem's own integrity would have been impugned by the public's perception that Atticus had made a deal with the authorities to spare Jem the shame of criminal prosecution. Jem would have been viewed as the beneficiary of preferential treatment due to his father's social and political status. These harms, Atticus thought, far exceeded the harm Jem would suffer from having to undergo criminal prosecution. Atticus did not have these same concerns once he realized that Boo had stabbed Bob. Atticus did not have to protect Boo from public scorn resulting from preferential treatment, and he did not worry that Boo would lose respect for his integrity because he was doing the right thing.

Atticus remained somewhat uncomfortable with his decision to go along with Sheriff Tate's lie. Scout tells us that after Sheriff *154 Tate left the Finch house on the night of Bob Ewell's death, "Atticus sat looking at the floor for a long time. Finally he raised his head. 'Scout,' he said, 'Mr. Ewell fell on his knife. Can you possibly understand?'"¹⁰⁶ Scout understood better than Atticus, it seems. She said, "Mr. Tate was right [I]t'd be sort of like shootin' a mockingbird, wouldn't it?"¹⁰⁷

The other examples of Atticus's lack of truthfulness were "harmless lies" in the sense that no harm resulted from the lack of truthfulness. For example, no significant harm came from telling Jem that there were no gangs in Maycomb, and in fact, Atticus might have been trying to keep Jem from becoming frightened about the possibility that the family or their home would be in danger. Indeed, Jem was frightened;¹⁰⁸ Atticus surely sensed this and was trying to calm Jem's fears. Maybe Atticus was trying to avert the situation that occurred late in the evening on the night before the trial: Jem, worried about Atticus's safety, followed him to the jail where Atticus was protecting his client from an angry gang of men who intended to kidnap and murder Tom Robinson before the trial.¹⁰⁹ In other words, the good Atticus was trying to achieve--assuaging Jem's fears--was more important than telling the truth at that moment.

Similarly, no harm came from Atticus telling Scout to refrain from telling her teacher that she and Atticus were continuing to read together. Despite the teacher's views to the contrary, Atticus knew that his reading with Scout would not harm her education, and the reading sessions were important to their relationship. Thus, Scout's refraining from telling her teacher about the reading did not cause harm, avoided the potential harm that would have resulted if Scout had told (the wrath of an angry teacher), and resulted in a good thing: the chance for Scout and Atticus to continue reading together.

The message is not that it is acceptable to lie. Rather, the message is that honesty, like nearly all other virtues, is not absolute. Significantly, when the harm that will result from failure *155 to tell the truth supersedes the benefit that will result from not telling the truth, the truth must be told. Good judgment is necessary to determine when other values subordinate the need for truth. Good judgment requires a sincere commitment to honesty that will require the truth except when not telling the truth provides a significant benefit that is not outweighed by a harm that will result from not telling the truth or by a benefit that

would result from revealing the truth.¹¹⁰ The law sets the outer limits of the judgment a lawyer must exercise when deciding when the truth is required. For example, a lawyer must not commit or assist perjury¹¹¹ and must keep the client's secrets when the professional conduct rules require confidentiality.¹¹² However, at the margins--in the gray areas--each lawyer must find his or her own conscience and follow it.

C. Compassion

"Compassion without law is just complacency. Law without compassion would be cruelty."
~Elie Wiesel¹¹³

"Unlike politics, religion, or the arts--other fields that regulate, critique, or analyze human behavior--the law is uncomfortable with feelings."¹¹⁴ There has long been the perception of tension between passion and reason in the law. This *156 tension is reflected in Atticus's closing argument in the Robinson case in which Atticus condemned passion and advocated that only through the application of reason could justice be achieved: "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."¹¹⁵ The implication is that to be fair, the law must be based solely on reason free from passion. Indeed, prejudicial passions that cloud reason--like the ones that pervaded the Robinson jury--thwart the realization of justice and are properly condemned.

However, prejudicial passion must be distinguished from compassion. Compassion aids, rather than thwarts, the realization of justice. Compassion is empathy; it is the kind understanding of another's feelings or circumstances. Atticus taught compassion by reminding us that "you never really *know* a man until you stand in his shoes and walk around in them."¹¹⁶ "You never really *understand* a person until you consider things from his point of view-- until you climb into his skin and walk around in it."¹¹⁷ Compassion encompasses sympathy for the suffering of others and a desire to help alleviate others' suffering, but it is broader than this. It involves tolerance, respect, understanding, and kindness as well.¹¹⁸

So defined, the positive virtue of compassion is inherent in the concept of justice and, thus, should be embraced by lawyers. This was the message urged by Justice Blackmun in his powerful dissent in *DeShaney v. Winnebago County Department of Social Services*.¹¹⁹ The *DeShaney* majority held that the county had no constitutional duty to protect four-year-old Joshua DeShaney from *157 his abusive father, despite county officials' knowledge of Joshua's father's propensity to abuse Joshua and their knowledge that Joshua's father had violated the terms of his child custody agreement.¹²⁰ Justice Blackmun criticized the majority as "retreat[ing] into a sterile formalism which prevent[ed] it from recognizing either the facts of the case before it or the legal norms that should apply to those facts."¹²¹ Not only would a sympathetic understanding of the facts have led the Court to a different outcome under the legal principles articulated by the majority, Justice Blackmun argued, but, in addition, the applicable law was not settled as the majority opinion suggested. Instead, Justice Blackmun argued, the case presented an open question that could have been answered with either a broader or narrower interpretation of Fourteenth Amendment precedent. "Faced with this choice, [Justice Blackmun] would adopt a 'sympathetic' reading, one which comports with dictates of fundamental justice and recognizes that compassion need not be exiled from the province of judging."¹²²

It is important to recognize that Justice Blackmun was not urging the abandonment of legal principle in favor of sympathetic passion. Instead, Justice Blackmun's point was that true justice can be realized only when compassion is integral in our thinking about legal issues.¹²³ Professor Robin West makes this same point when *158 she argues that "the 'ethic of justice' and the 'ethic of care' are in fact much more interrelated and interdependent than this widely accepted dualism suggests."¹²⁴ Moreover, Professor West posits that "the zealous pursuit of justice, if neglectful of the ethic of care, will fail not just as a matter of overall virtue, but more specifically, it will fail *as a matter of justice*."¹²⁵

A central function of the lawyer is to seek and promote justice for the lawyer's client as well as for society in general.¹²⁶ Justice is accomplished by incorporating compassion into the lawyer's thinking about legal problems. Compassion enables the lawyer to see the depth of the issues facing the client, fully understand the client's needs, and explore creative solutions that will best serve the client's interests.

*159 Thus, to be heroic--to be extraordinary participants in the search for justice--lawyers must be compassionate. Compassion elevates a competent lawyer into a heroic lawyer:

Good lawyers must have the skills required for professional competence. But this is not enough They must know of pain, and how to help heal it. Lawyers can be healers. Like physicians, ministers, and other healers, lawyers are persons to whom people open up their innermost secrets when they have suffered or are threatened with serious injury. People go to them to be healed, to be made whole, and to regain control over their lives. These are large and important tasks, and they require all that we have to offer. They require both good minds and good hearts--not only mental acuity and professional skill, but also compassion, righteousness, mercy, and strength to suffer and carry pain. That is what it takes to be a truly good lawyer. And the world desperately needs truly good lawyers.¹²⁷

Lawyers who treat others, including clients and adversaries, with respect are compassionate. Lawyers who, on top of their already busy practices, make time to do pro bono work, represent unpopular causes, or provide services to the disadvantaged are compassionate. Lawyers who listen and try to understand a client's problem--not only from the client's perspective, but from the adversary's perspective as well--are compassionate. Compassionate lawyers should serve as role models for all lawyers who strive to make their careers not only productive, but also meaningful.

Atticus was compassionate. He showed great respect and tolerance for others, including those who disagreed with him. He accepted the court appointment to represent Tom even though he knew that he would receive little or no pay for his work, and that he would be representing a cause that would be very unpopular in his community. He continued to treat his neighbors with respect even though he knew that they had criticized him and insulted his children. For example, Atticus insisted that Jem read to an elderly *160 neighbor each day, even though Atticus knew that the neighbor had criticized Atticus.¹²⁸

Atticus's compassion for Tom enabled him to more effectively advocate on Tom's behalf. Because Atticus empathized with his client, he was able to learn the truth about what happened and articulate a compelling argument that, although not successful, at least made the jurors stop and think.¹²⁹ A less compassionate lawyer might never have listened to Tom's story and might never have insisted that it be told.

Atticus treated Mayella and Bob Ewell with respect at all times, including during the trial.¹³⁰ As a matter of advocacy, the respectful demeanor with which Atticus addressed the witnesses effectively conveyed to jurors that Atticus was interested in getting at the truth, and that he would let the jury judge for itself the veracity of the witnesses. Indeed, it was likely Atticus's demeanor at the trial and his reputation for honesty that made at least one juror consider acquitting Tom.¹³¹ Of course, Atticus did not treat adverse witnesses with respect simply as an advocacy strategy to obtain favor with the jury; he did it because he was a kind person who treated everyone--including adversaries--with respect.¹³² Atticus's trial demeanor demonstrated how a lawyer can zealously represent the client and still be respectful to the adversary.

The prosecutor did not extend this same respect to Tom. In fact, the prosecutor's treatment of Tom on the witness stand was so disrespectful that it made one of the children cry and feel sick.¹³³ The prosecutor's disrespectful approach to examining Tom was an ineffective advocacy technique. The lack of respect shown by the *161 prosecutor did not strengthen the prosecutor's case or undercut the apparent veracity of Tom's testimony in any way; it merely revealed the prosecutor's efforts to invoke racist passions to subvert the principle of equal justice. Plainly, the prosecutor's victory in the Robinson case was not attributable to effective advocacy, but rather, it was attributable to the racism that was prevalent in Maycomb. Some might argue that a lawyer might have strategic reasons for treating a witness with disrespect. However, a more effective strategy is to treat all witnesses with respect and use reason, rather than disrespect, to reveal the flaws in their testimony.

Very troubling, however, is the fact that while Atticus was well aware of-- indeed, based his defense of Tom Robinson on--the tragic circumstances of Mayella's life, he did not seem to extend to her the same compassion he showed others.

Atticus did not attempt to try on Mayella's shoes, much less walk around in them. Indeed, Scout noted that the Ewells did not even have shoes,¹³⁴ metaphorically making the point that the Ewells were not even worth attempting to understand.¹³⁵ Scout described the Ewells as "absolute trash," and said she had "never heard Atticus talk about folks the way he talked about the Ewells."¹³⁶ Mayella was a poor¹³⁷ and lonely¹³⁸ victim of her father's physical¹³⁹ and *162 sexual¹⁴⁰ abuse. Yet, Atticus not only did nothing to help her, but he failed to even give thoughtful consideration to the tragedy of her life. Everyone in Maycomb, including Atticus, apparently was content to allow the Ewells to avoid enforcement of school truancy laws even though the Ewell children only attended one day of school each year.¹⁴¹ Far from being compassionate, allowing the Ewell children to avoid school all but guaranteed that they would remain illiterate and would never have an opportunity to improve their social situation. Atticus's refusal to extend his pity for Mayella to allow her to take Tom's life to ease her own misery¹⁴² is understandable and commendable. However, Atticus's tolerance of the circumstances in which Mayella and her brothers and sisters were forced to live was wrong. Atticus's primary flaw was that he was too tolerant. He tolerated the intolerable.

Conceivably, if Atticus and others had intervened on Mayella's behalf and helped her obtain relief from her abusive father, Tom's life might have been saved. If Mayella had not been so thoroughly ostracized from Maycomb society, she might have been able to tell the truth. If the sheriff had been able to hear the truth from Mayella, he might have recognized that the evidence did not warrant arresting Tom.¹⁴³ Most significantly, Maycomb's *163 gender and social class conventions had placed Mayella in the position of being virtually powerless. Her only power--or at least the only power she perceived she had--was her power as a white woman over Tom, a black man. Mayella's lack of power over the horrid circumstances of her own life made her hopeless and desperate, and she thus abused her power over Tom. Mayella was intimidated, humiliated, and objectified¹⁴⁴ by the process in which she could not tell her real story. She told the only story she thought people would hear--the story about the rape--but she was unable to tell her real story--the story of how she was forgotten and abused. It was this true story--the story that no one would hear and so she could not tell--that could have saved Tom's life.¹⁴⁵

Thus, while Atticus was flawed as a compassionate person, we can learn an important lesson from him about compassion. Atticus's failure--Maycomb's failure--to extend compassion to Mayella provides a reminder that we should strive to extend *164 compassion to all people.¹⁴⁶ For lawyers, this means that we must be generous with our compassion. We must be respectful, tolerant, understanding, kind, and empathetic to clients, colleagues, adversaries, judges, administrators, and others with whom we come into contact in all aspects of our work. We must make compassion a central component in our thinking about justice. Being generous with our compassion will enrich our professional lives and enable us to become heroic lawyers. Perhaps most importantly, it will enable us to fully understand our clients' problems and, thus, will enhance our ability to effectively serve our clients' needs and promote justice.

IV. ATTICUS AS A FLAWED HERO

As I considered Atticus Finch's heroic qualities for this article, I found myself in a constant dialogue with myself. I went around and around with myself (and some patient colleagues and family members¹⁴⁷) about whether and to what extent we can use a flawed individual as a heroic role model. I was particularly troubled by Atticus's failure to take affirmative steps beyond Tom's trial to eliminate the racism, sexism, and classism that permeated the society in which he was living and raising his children, and by Atticus's failure to extend compassion to Mayella and her brothers and sisters. Atticus's tolerance of intolerable circumstances is a serious flaw that I would not encourage lawyers to emulate.¹⁴⁸

Yet, if Atticus had been perfect, he would not have been a realistically human character. The adage "nobody's perfect" is quite true.

*165 Despite Atticus's flaws, we can learn much from him about how to live our lives and conduct our careers. In particular, the message of Atticus is that we each must find our conscience and follow it in our personal and professional lives, and that this is how we will find fulfillment as lawyers and as people. Moreover, for a lawyer to emerge as a hero, the lawyer must be courageous, honest, and compassionate. Atticus embodies each of these characteristics and, thus, provides a powerful role model for lawyers. Our ability to see his flaws enables us to avoid making his mistakes; however, it does not diminish him as a heroic role model who courageously stood for honesty and compassion. His efforts on behalf of Tom Robinson were

extraordinary. Thus, he was a hero.

Of course, Harper Lee is the *real* hero. She not only created Atticus, but she created the story that gave him his virtues and his flaws. She humanized Mayella by giving her the sensitivity to care for flowers.¹⁴⁹ She revealed the illogic and the evil of the racist, classist, and sexist attitudes prevalent in Maycomb and elsewhere. She knew when Atticus needed to be honest and when he did not. She created an extraordinary story so rich that we are still, forty-three years later, exploring its depths as both an exposé of the evils of racism and classism and a lesson for us as we attempt to create a just society and achieve professional fulfillment.

Footnotes

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- ¹ Aleksandr I. Solzhenitsyn, *A World Split Apart*, in SOLZHENITSYN AT HARVARD 8 (Ronald Berman, ed., 1980) (commencement address at Harvard University June 8, 1978).
- ² Oliver Wendell Holmes, Jr., *The Profession of the Law: Conclusion of a Lecture Delivered to Undergraduates of Harvard University, on February 17, 1886*, in COLLECTED LEGAL PAPERS 29 (1920).
- ³ MODEL RULES OF PROFESSIONAL CONDUCT R. 1.7-1.11, 1.18 (2003) (together establishing the lawyer's duty of loyalty).
- ⁴ *Id.* at R. 1.6 (imposing a duty of confidentiality). See generally Harry I. Subin, *The Lawyer as Superego: Disclosure of Client Confidences to Prevent Harm*, 70 IOWA L. REV. 1091 (1985) (discussing ethical dilemmas that arise from the lawyer's duty of confidentiality).
- ⁵ HARPER LEE, *TO KILL A MOCKINGBIRD* (40th Anniversary ed. 1999) (1960). Throughout this article, citations are to the 40th edition of Harper Lee's *To Kill a Mockingbird*, which was published in 1999 by HarperCollins Publishers. *To Kill a Mockingbird* was originally published in 1960, and was awarded the Pulitzer Prize in 1961. Librarians selected the book as the best novel of the twentieth century. Gregory Peck won the Best Actor Oscar for his portrayal of Atticus Finch in the 1962 movie. Recently, the character Atticus Finch was named the "greatest movie hero of all time" by the American Film Institute, beating out pop icons like Indiana Jones and James Bond.
- ⁶ Bryan K. Fair, *Using Parrots to Kill Mockingbirds: Yet Another Racial Prosecution and Wrongful Conviction in Maycomb*, 45 ALA. L. REV. 403, 410-11 (1994).
- ⁷ Atticus's wife died in 1928 (when Scout was two years old). LEE, *supra* note 5, at 6. As a single parent, Atticus faced the day-to-day challenges of raising two young children while working at a demanding job in a town filled with people who were eager to pass judgment on the success of his parenting efforts and second-guess his methods. For example, Scout had no interest in or patience for the conventions of Southern womanhood, and Atticus was tolerant, if not supportive, of her individuality. Some of the neighborhood women and Atticus's sister, Alexandra, however, found this to be a serious parental flaw and seemed determined to make up for the absence of a mother's influence in Scout's life, which influence, they were sure, would have made all the difference.

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- ⁸ Atticus had served at least thirteen years in the state legislature by 1935. We know this because he met his then-future wife in Montgomery when he was “first elected to the state legislature,” and, by 1935, their first-born child was twelve years old. LEE, *supra* note 5, at 6.
- ⁹ In addition, during the busy time just before and during Tom’s trial, Atticus’s sister, Alexandra, came and stayed with the family to help.
- ¹⁰ LEE, *supra* note 5, at 23. Atticus has been criticized as having an insufficient commitment to pro bono representation because his carrying out the court-ordered representation of Tom Robinson, and reluctantly at that, only complied with his pro bono obligation “in a technical sense,” but fell short of the commitment to volunteer legal services that is necessary if the promise of equal access to justice is to be fully realized by poor and middle-income Americans. *See, e.g.*, Monroe H. Freedman, *Atticus Finch--Right and Wrong*, 45 ALA. L. REV. 473, 482 (1994). However, the fact that Atticus provided representation for Walter Cunningham without regard to whether or what Walter would be able to pay, suggests a willingness to assist his clients without regard for whether he would ever be paid. This suggests a sincere commitment to the full spirit of pro bono: the idea that high quality legal services should be available regardless of the client’s ability to pay. Atticus did not carve out a particular number of hours and limit his pro bono representation to that number of hours. Rather, Atticus accepted and represented clients irrespective of their ability to pay cash for his services. Of course, he needed to earn a living so that he could support his family and pay his employee. However, his professional focus was on providing services for his clients, not on whether or how much he would be paid for those services.
- ¹¹ LEE, *supra* note 5, at 5.
- ¹² In talking with his brother about the case, Atticus said, “I’d hoped to get through life without a case of this kind, but John Taylor pointed at me and said, ‘You’re It.’” LEE, *supra* note 5, at 100. By “a case of this kind,” Atticus surely meant a case that raised the racial tensions that percolated beneath the surface of everyday life in Maycomb--a case that would require him to follow his conscience in defiance of his friends, relatives, and neighbors.
- ¹³ The Supreme Court recently held that an indigent defendant has a right to competent counsel. *Powell v. Alabama*, 287 U.S. 45 (1932). Many parallels exist between the real-life Scottsboro cases, which produced the *Powell* opinion, and the fictional story told in *To Kill a Mockingbird*. *See generally* Claudia Johnson, *Without Tradition and Within Reason: Judge Horton and Atticus Finch in Court*, 45 ALA. L. REV. 483 (1994) (exploring similarities between the fictional Robinson case and the real Scottsboro cases).
- ¹⁴ *But see* Steven Lubet, *Reconstructing Atticus Finch*, 97 MICH. L. REV. 1339, 1347 (1999) (discussing gaps in Tom’s case).
- ¹⁵ LEE, *supra* note 5, at 212. Tom had earlier suffered an injury to his left hand and arm in a cotton gin accident.
- ¹⁶ *See* Lubet, *supra* note 14, at 1347 & n.13 (considering the evidence in support of Mayella’s story and suggesting the possibility that Tom raped Mayella and Bob beat Mayella upon discovering the rape).
- ¹⁷ LEE, *supra* note 5, at 232-33.
- ¹⁸ *Id.* at 233.
- ¹⁹ *Id.* at 234.

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- 20 Shortly after his arrival at prison, Tom was shot and killed by guards who reported that during the exercise period, Tom “broke into a blind raving charge at the fence and started climbing over.” *Id.* at 269. Although Atticus appeared to believe the guards’ story (or, at least, he did not express doubts about the story if he had them), Scout realized, as Tom himself likely did, that “Tom was a dead man ... the minute Mayella Ewell opened her mouth and screamed.” *See* Freedman, *supra* note 10, at 479 (citation omitted).
- 21 Besides the Robinson case, the story centers on Scout’s exploits with her brother, Jem, and their friend, Dill, and their attempts to lure their reclusive neighbor, Boo Radley, from his home. At the outset, the children imagine Boo to be evil and they are very frightened of him. Through a series of events, the children realize that Boo is shy and kind, rather than monstrous and evil.
- 22 In order to protect Boo’s privacy, and because no criminal charges were appropriate (since the killing was in defense of the children), Sheriff Tate decided to report that Bob Ewell fell on his knife and to refrain from publicly disclosing Boo’s role in Bob’s death. LEE, *supra* note 5, at 316-17. Atticus went along with Sheriff Tate’s lie. *See infra* notes 99-105 and accompanying text (discussing Atticus’s truthfulness in light of the dishonest report about Bob Ewell’s death).
- 23 For example, in acknowledging that Atticus had been appointed to represent Tom, one Macomb citizen said, “Yeah, but Atticus aims to defend him. That’s what I don’t like about it.” LEE, *supra* note 5, at 186. A neighbor told Atticus, “You’ve got everything to lose from this, Atticus. I mean everything.” *Id.* at 166. In addition, various people—even adults—chose to express their negative opinions about Atticus’s representation of Tom by leveling insults at Atticus’s children. For example, Mrs. Dubois, an elderly neighbor, said to the children, “Your father’s no better than the ... trash he works for.” *Id.* at 117.
- 24 *Id.* at 86.
- 25 *Id.* at 86-87.
- 26 *Id.* at 170-77. Ultimately, it was Scout’s friendly conversation with Walter Cunningham, the father of one of her classmates, that broke up the mob.
- 27 *Id.* at 86-87.
- 28 *But see id.* at 166. “Atticus said ... ‘I don’t think anybody in Maycomb’ll begrudge me a client, with times this hard.’” Atticus made this statement in trying to calm Sheriff Heck Tate’s fears that a lynch mob would try to kidnap Mr. Robinson from the jail and murder him before the trial. The statement was not made to suggest that Atticus was committed to protecting Tom to protect Atticus’s paycheck, but, rather, the statement was made simply to suggest that the people of the town ought to leave Tom alone for one night before trial out of respect for Atticus.
- 29 *See infra* notes 59-64 and accompanying text.
- 30 For example, Atticus said to his brother, “Jack! When a child asks you something, answer him, for goodness’ sake. But don’t make a production of it. Children are children, but they can spot an evasion quicker than adults, and evasion simply muddles ‘em.” LEE, *supra* note 5, at 99.
- 31 *Id.* at 33. Professor Monroe Freedman has criticized Atticus for not practicing what he preached about considering others’ points of view. *See generally*, Freedman, *supra* note 10, at 474-78. In particular, Professor Freedman argued that Atticus failed to consider the true impact of segregation on black families in Maycomb, who were forced “to live in a ghetto near the town garbage dump.” *Id.* at 478. In addition, although Atticus recognized the sad circumstances of Mayella’s life, particularly the fact that Mayella was

trying to raise several brothers and sisters in a household with an irresponsible and abusive father, he did nothing to help her beyond acknowledging his own pity for her and publicly exposing her father in his closing argument. LEE, *supra* note 5, at 232-33. *See infra* notes 134-45 and accompanying text. Perhaps Atticus's fault was that he was willing to tolerate the intolerable, and was unmoved to act to right wrongs that occurred outside the boundaries of his professional obligation to his client. The exception to his tolerance was when the wrong affected his client, and thus implicated his professional duty--and his conscience--to act.

32 It is too easy today to withdraw from our social and professional relationships when disagreements arise. Atticus shows us how to remain a part of our communities and work from within to accomplish positive change. Ultimately, our social and professional relationships would be stronger, and our careers might be more fulfilling if we would become and remain as committed to our communities as Atticus was.

33 LEE, *supra* note 5, at 87.

34 *Id.* at 243. This doesn't mean that Atticus was condoning the racist society his children were growing up in; he was merely observing reality and making himself part of the collective "we"--meaning white, patriarchal Southern society--that created the evil reality that resulted in the conviction of Tom Robinson. Indeed, just before making the observation about the way things were in Maycomb, Atticus confirmed Jem's feelings that the verdict was not right--that is, that it was morally wrong in addition to being factually wrong. *Id.*

35 Atticus does not appear to have gone beyond his representation of Tom Robinson to advocate change in the social and political structures in Alabama. This does not, however, diminish his stature as a heroic lawyer.

36 LEE, *supra* note 5, at 120 (Atticus said, "[t]he one thing that doesn't abide by majority rule is a person's conscience.").

37 *See infra* text accompanying notes 94-97 for some examples of Atticus being less than fully honest.

38 *See infra* notes 134-45 and accompanying text.

39 LEE, *supra* note 5, at 233. This statement was made as a prelude to a discussion of the lack of absolute equality. For example, Atticus pointed out, "some people are smarter than others, some people have more opportunity because they're born with it, some men make more money than others, some ladies make better cakes than others--some people are born gifted beyond the normal scope of most men." *Id.* at 234. These statements introduced Atticus's plea for equal treatment in the courtroom.

40 Another explanation is that Atticus was using this statement to connect with the jury, and was thus engaging in effective advocacy on behalf of his client. The argument is that Atticus was letting the jurors know that Atticus was still "one of them" and that to treat Tom Robinson fairly in court by returning a true verdict would not upset the entire racially segregated social structure that Atticus knew the jurors supported. This interpretation of Atticus's statement does not mean that Atticus was embracing or advocating a system of racial inequality outside the courtroom, but merely that he was observing the reality of the current social structure and using it to attempt to obtain favor with the jury on behalf of his client.

41 *See* Teresa Godwin Phelps, *Atticus, Thomas, and the Meaning of Justice*, 77 NOTRE DAME L. REV. 925, 925 (2002) (arguing that "Atticus's acceptance of the racist status quo of Maycomb seriously undermines his character").

42 LEE, *supra* note 5, at 155. (Atticus said, "She's a faithful member of this family.").

- 43 *Id.* at 253.
- 44 *See also* Lubet, *supra* note 14, at 1345 (noting that Atticus’s “she wanted it” defense was “demeaning and stereotyped”). *But see* Ann Althouse, *Reconstructing Atticus Finch? A Response to Professor Lubet*, 97 MICH. L. REV. 1363, 1367 (1999) (noting that it is not surprising that Harper “Lee, in 1960, failed to infuse her description of the rape trial with feminist sensibility” in light of the fact that Susan Brownmiller’s groundbreaking work focusing attention on the feminist issues implicated by rape was not published until 1975) (citing SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN, AND RAPE* (1975)). However, perhaps part of Lee’s point was to expose the gender and class stereotypes that contributed to the silencing of Mayella’s true story and to Tom being accused and convicted of rape. *See infra* notes 134-45 and accompanying text.
- 45 LEE, *supra* note 5, at 120.
- 46 *Id.*
- 47 *Id.*
- 48 Query whether Atticus would have so easily maintained his social and political popularity if he had been successful in obtaining a verdict acquitting Tom?
- 49 LEE, *supra* note 5, at 280. This led Scout to the conclusion that “people were just peculiar.” *Id.*
- 50 Atticus’s social stature was attributable in large part to genetics. LEE, *supra* note 5, at 3-4 (describing the Finch family history); *id.* at 151-53 (describing Atticus’s failed attempt to fulfill his sister’s request that he advise the children about their responsibility to act in accordance with their lineage). He was not wealthy, but the family lived comfortably. The following exchange took place between Atticus and his children:
“Are we poor, Atticus?”
Atticus nodded. “We are indeed.”
“Are we as poor as the Cunninghams?”
“Not exactly. The Cunninghams are country folks, farmers, and the crash hit them hardest.”
Atticus said professional people were poor because the farmers were poor. As Maycomb was farm country, nickels and dimes were hard to come by for doctors and dentists and lawyers.
Id. at 23.
- 51 *Id.* at 270-71.
- 52 J.K. ROWLING, *HARRY POTTER AND THE SORCERER’S STONE* 306 (1997).
- 53 WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 299 (1988).
- 54 *Id.* (alteration added).
- 55 But, this is a very narrow view of courage. *See infra* notes 65-67 and accompanying text.

- ⁵⁶ Indeed, the dictionary defines a “hero” as “one that shows great courage.” WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY, *supra* note 53, at 566-67.
- ⁵⁷ To the extent that the adversary process, in which the lawyer operates, is analogous to a battle, the lawyer must have a soldier’s courage to face the adversary.
- ⁵⁸ Sometimes, refusing to accept a representation requires great courage, particularly with increasing pressure on lawyers to bill more and more hours. Professor Erwin Chemerinsky has argued that the legal profession ought to recognize a lawyer’s obligation to avoid advocating positions which contradict the lawyer’s own convictions and beliefs. Erwin Chemerinsky, *Protecting Lawyers From Their Profession: Redefining the Lawyer’s Role*, 5 J. LEGAL PROF. 31, 34 (1980). This would force attorneys to consider the social effects of their actions, and enable attorneys to experience enhanced professional fulfillment. *Id.* at 43. This view is supported by the psychological theory of “counter attitudinal advocacy,” which posits that “if a speaker delivers a message that is at odds with his prior views, the ‘belief discrepant communication behavior will trigger a change in his beliefs or attitudes He will become more favorably disposed toward the position advocated in the message.’” *Id.* at 32 (quoting GERALD MILLER & MICHAEL BURGOON, *NEW TECHNIQUES OF PERSUASION* 59 (1973)). The traditional view, embodied in the *American Bar Association Model Rules of Professional Conduct*, permits a lawyer to represent a client whose interests or position is counter to the lawyer’s own views. For example, Model Rule 1.2(b) provides that “[a] lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.” MODEL RULES OF PROF’L CONDUCT R. 1.2(b) (1983). However, lawyers are generally free to decline representation for whatever reason they like, including because the representation would contradict the lawyer’s personal values and convictions. *See, e.g., id.* at 6.2(c) (allowing a lawyer to avoid court appointed representations when “the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer’s ability to represent the client”).
- ⁵⁹ The level of controversy surrounding the Robinson case would have been similar to that surrounding the Scottsboro rape cases, real cases with many similarities to the fictional Robinson case. The Scottsboro cases garnered national attention due to the controversial circumstances of the case in which two white women falsely accused nine black men of rape. The Scottsboro defendants were repeatedly convicted and sentenced to death, only to have their convictions and sentences set aside again and again. *See generally* DAN T. CARTER, *SCOTTSBORO: A TRAGEDY OF THE AMERICAN SOUTH* (1969). Among the heroes who emerged from the Scottsboro case was Judge James E. Horton, who, recognizing that the alleged victims had given false testimony and that the evidence proved the defendants’ innocence, overturned one of the Scottsboro rape convictions. This took great courage and commitment to honesty; Judge Horton surely knew what would be the inevitable impact on his own career and personal life. Indeed, unlike Atticus, Judge Horton was not reelected after doing the right thing. *See id.*
- ⁶⁰ *See supra* note 23 and accompanying text.
- ⁶¹ *But see* Freedman, *supra* note 10, at 480-81 (suggesting that Atticus’s social standing was never at risk because Macomb’s social elite silently approved of Atticus’s efforts on Tom Robinson’s behalf).
- ⁶² Indeed, the children were taunted by other children and by adults. Moreover, ultimately Bob Ewell physically attacked the children, and Jem was seriously injured. LEE, *supra* note 5, at 300-09.
- ⁶³ For example, one of Atticus’s neighbors said, “[I] don’t see why you touched it in the first place You’ve got everything to lose from this Atticus. I mean everything.” *Id.* at 166.
- ⁶⁴ *See* LEE, *supra* note 5, at 86-87, 166.

65 *Id.* at 87.

66 *Id.* at 128.

67 *Id.* at 87.

68 *See supra* notes 59-64 and accompanying text.

69 In the end, Atticus did make the jurors hesitate. The Robinson jury took longer than Atticus had expected to return the verdict. Atticus said:

That was the one thing that made me think, well, this may be the shadow of a beginning. That jury took a few hours. An inevitable verdict, maybe, but usually it takes 'em just a few minutes. This time ... You might like to know that there was one fellow who took considerable wearing down--in the beginning he was rarin' for an outright acquittal.

LEE, *supra* note 5, at 254. This suggests that Atticus was able to begin the process of social enlightenment that would have to occur before social justice could be achieved. Indeed, Atticus's neighbor, Maudie, said:

as I waited I thought, Atticus Finch won't win, he can't win, but he's the only man in these parts who can keep a jury out so long in a case like that. And I thought to myself, well, we're making a step--it's just a baby-step, but it's a step.

Id. at 247.

70 *Id.* at 120 ("The one thing that doesn't abide by majority rule is a person's conscience.").

71 The Finches' neighbor, Maudie Atkinson, said, "Atticus Finch was the deadest shot in Maycomb County in his time [H]is nickname was Ol' One-Shot when he was a boy[.] Why, down at the Landing when he was coming up, if he shot fifteen times and hit fourteen doves he'd complain about wasting ammunition." *Id.* at 112.

72 *Id.* at 180.

73 *See id.*

74 Thus, lawyers should avoid obnoxious or abusive behavior that is designed to "throw off" the adversary or gain a strategic advantage through means other than effective advocacy based on reason. *See, e.g., Mullaney v. Aude*, 730 A.2d 759, 767 (Md. Ct. Spec. App. 1999) (upholding discovery sanctions against a male attorney who attempted to obtain a strategic advantage over a female attorney by calling her a "babe" and engaging in other "sexual trial tactics").

75 *Notes for Law Lecture, July 1, 1850*, in 11 THE COLLECTED WORKS OF ABRAHAM LINCOLN 81 (Roy P. Basler, ed., 1953).

76 *See generally* Gary A. Hengstler, *The Public Perception of Lawyers: ABA Poll*, 79 A.B.A. J. 60, 62 (1993) (reporting the results of an ABA opinion poll regarding the public's perception of lawyers and noting that only twenty-two percent of respondents believed that the phrase "honest and ethical" provides an accurate description of lawyers); Marc Galanter, *The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes, and Political Discourse*, 66 U. CIN. L. REV. 805, 808-10 (1998) (discussing statistical data regarding public attitudes about lawyers, particularly regarding public trust or lack thereof of lawyers). Professor Galanter notes

that the public's perception of lawyers as being untrustworthy is summed up by the following riddle: "Q: How does a lawyer say '[s]crew you'? A: 'Trust me.'" *Id.* at 823 (citing JEFF ROVIN, 500 GREAT LAWYER JOKES 56 (1992)). *See also* John A. Humbach, *The National Association of Honest Lawyers: An Essay on Honesty, 'Lawyer Honesty' and Public Trust in the Legal System*, 20 PACE L. REV. 93 (1999) (positing that the public's low esteem for lawyers is attributable to lawyers' belief that "the duty of loyalty to clients requires a lawyer to mislead," and arguing that the result of this belief is that "on the questions that uniquely matter, most lawyers do not even purport to present the objective truth").

77 *See* Humbach, *supra* note 76, at 93-98 (providing a scathing critique of lawyers' proclivity for dishonesty). This public perception has provided ample fodder for lawyer jokes. For example, the following joke, which appeared as early as 1941, satirizes the notion that lawyers engage in underhanded trickery, manipulating facts to reach unjust results.

Prisoner: "Before I plead guilty or not guilty I would like to ask the court to appoint a lawyer to defend me."

Judge: "You were caught in the actual commission of a crime, with the merchandise on you, a gun in your hand and your victim on the floor. What could a lawyer possibly say in your defense?"

Prisoner: "That's it--I'm curious also to hear what he could possibly say!"

Galanter, *supra* note 76, at 836 (quoting JOEY ADAMS, SON OF ENCYCLOPEDIA OF HUMOR 92 (1970)).

78 *See* Hengstler, *supra* note 76, at 63 (reporting that fifty-nine percent of public opinion poll respondents believe lawyers are "greedy," sixty-three believe lawyers make too much money, and fifty-five think that most lawyers "charge excessive fees").

79 Yet, the clients themselves appear to be generally satisfied with their own lawyers. *See* Leonard E. Gross, *The Public Hates Lawyers: Why Should We Care?*, 29 SETON HALL L. REV. 1405, 1417 n.60 (1999) ("[P]eople's disparaging attitudes toward lawyers in general has not caused them to lose confidence in their own lawyers."); Galanter, *supra* note 76, at 808 nn.12-19 (discussing the results of various polls showing that more than fifty percent of Americans who had used lawyers had been "very satisfied," while another twenty-five to thirty percent were "somewhat satisfied").

80 The rules of professional conduct forbid dishonesty. *See, e.g.*, MODEL RULES OF PROF'L CONDUCT R. 8.4(c) (2003) ("It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation."); MODEL CODE OF PROF'L RESPONSIBILITY DR 1-102(A)(4) (1980) ("A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."). *See also* MODEL RULES OF PROF'L CONDUCT R. 1.2(d); 3.3(a); 3.4; 4.1; 4.4; 8.1; 8.2; 8.4 (2003).

81 *See* Humbach, *supra* note 76, at 98 (discussing how dishonest advocacy affects a lawyer's credibility with judges, thus impairing the lawyer's overall effectiveness as an advocate for all clients); Peter C. Kostant, *Paradigm Regained: How Competition from Accounting Firms May Help Corporate Attorneys to Recapture the Ethical High Ground*, 20 PACE L. REV. 43, 65 (1999) (arguing that a corporate attorney has a fiduciary obligation to all clients to maintain a reputation for integrity and that dishonest representation of any one client results in a breach of the fiduciary duty to all clients because it reduces the attorney's overall credibility).

82 Most commentators agree that honesty was, perhaps, Atticus's most obvious virtue. *See generally, e.g.*, Thomas L. Shaffer, *On Lying For Clients*, 71 NOTRE DAME L. REV. 195 (1996); Thomas L. Shaffer, *The Moral Theology of Atticus Finch*, 42 U. PITT. L. REV. 181 (1981) (arguing that Atticus was honest and that Atticus's dishonesty in going along with Sheriff Tate's false story about the circumstances of Bob Ewell's death was a human mistake); Phelps, *supra* note 41, at 935 (acknowledging Atticus's truthfulness); Marie A. Failing, *Gentleman as Hero: Atticus Finch and the Lonely Path*, 10 J.L. & RELIGION 303, 305 (1994) (positing that Atticus's role in the courtroom was "to stand as witness to the truth"). *But see* Freedman, *supra* note 10, at 476 (questioning Atticus's honesty).

83 *See* notes 94-97 and accompanying text for a discussion of instances when Atticus did not tell the truth.

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84 LEE, *supra* note 5, at 51.

85 Atticus said, “[Tom] might go to the chair, but he’s not going till the truth’s told.” LEE, *supra* note 5, at 167.

86 In lamenting Tom’s death, Atticus said, “We had such a good chance I told him what I thought, but I couldn’t in truth say that we had more than a good chance.” LEE, *supra* note 5, at 270. In addition, when asked why Atticus hadn’t just told Tom that he would go free to ease his worries, Atticus’s housekeeper, Calpurnia, said, “Mr. Finch couldn’t say somethin’s so when he doesn’t know for sure it’s so.” LEE, *supra* note 5, at 269.

87 Court appointed representations in Maycomb usually went to an inexperienced lawyer, but in this case, Judge Taylor probably recognized the need for a lawyer with a reputation for competence and integrity to represent Tom. *See* LEE, *supra* note 5, at 247. Maudie, Atticus’s neighbor, said, “Judge Taylor might have had his reasons for naming [Atticus],” thus suggesting that Atticus was appointed because he could be trusted to vigorously represent Tom. *Id.* Judge Taylor might have been trying to comply with the recently articulated constitutional requirement that indigent defendants be provided competent legal counsel, *see Powell v. Alabama*, 287 U.S. 45 (1932), or he might have believed that Tom was innocent and deserved an experienced lawyer who could be trusted to pursue a truthful defense. Either way, it was Atticus’s integrity that led to the appointment; Judge Taylor trusted Atticus’s professional integrity.

88 The “handful of people” who trusted Atticus to properly defend Tom included “[t]he handful of people in [Maycomb] who say that fair play is not marked White Only; the handful of people who say a fair trial is for everybody, not just us” LEE, *supra* note 5, at 271. Maudie defined this “handful” as being the people with “background.” *Id.* Thus, Maudie was equating social status with social enlightenment.

89 *But see supra* note 48 (questioning whether Atticus would have been so easily re-elected if he had succeeded in getting Tom acquitted).

90 MONROE H. FREEDMAN, LAWYERS’ ETHICS IN AN ADVERSARY SYSTEM 4 (1975).

91 [United States v. Wade](#), 388 U.S. 218, 256-58 (1967) (White, J., concurring in part and dissenting in part) (citation omitted). *See also* MODEL RULES OF PROF’L CONDUCT R. 3.1 (2003) (“A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may ... so defend the proceeding as to require that every element of the case be established.”); *See generally* John B. Mitchell, *Reasonable Doubts Are Where You Find Them: A Response to Professor Subin’s Position on the Criminal Lawyer’s “Different Mission,”* 1 GEO. J. LEGAL ETHICS 339 (1987). *But see* Harry I. Subin, *The Criminal Lawyer’s “Different Mission”: Reflections on the “Right” to Present a False Case*, 1 GEO. J. LEGAL ETHICS 125 (1987) (arguing that the lawyer’s right to present a false case is tempered by the lawyer’s obligation to seek truth and promote overall justice).

92 *See* FED. R. EVID. 501. *See also* MODEL RULES OF PROF’L CONDUCT R. 1.6 (2003) (requiring lawyers to keep client communications confidential except in particular circumstances).

93 [Nix v. Whiteside](#), 475 U.S. 157, 174-76 (1986).

94 LEE, *supra* note 5, at 318. Bob Ewell had attacked the Finch children on their way home from a Halloween festival. Boo intervened to protect the children and stabbed Bob, killing him. *But see* Fair, *supra* note 6, at 418 (suggesting the possibility that Sheriff Tate might have honestly believed that Bob fell on his knife).

95 LEE, *supra* note 5, at 167, 170-77.

96 *Id.* at 34.

97 *Id.* at 35.

98 The one outright lie (in other words, a lie of commission, rather than omission) Atticus told was when he told Jem that he was unaware of gangs in Maycomb, even though he must have known full well about the presence of groups--formally organized or not--that committed racially motivated crimes throughout the South during the 1930s. *Id.* at 167.

99 As Sheriff Tate explained:

[M]aybe you'll say it's my duty to tell the town all about it and not hush it up. Know what'd happen then? All the ladies in Maycomb includin' my wife'd be knocking on his door bringing angel food cakes. To my way of thinkin', Mr. Finch, taking the one man who's done you and this town a great service an' draggin' him with his shy ways into the limelight--to me, that's a sin. It's a sin and I'm not about to have it on my head. If it was any other man it'd be different. But not this man, Mr. Finch.

LEE, *supra* note 5, at 317-18. Both Sheriff Tate and Atticus recognized that Boo had lived a reclusive life at the hands of an overbearing and probably abusive father, and that it would be akin to torture to subject Boo to publicity, even positive publicity.

Professor Bryan Fair has pointed out that Sheriff Tate did not extend the same consideration to Tom that he did in deciding not to prosecute Boo, even though the sheriff surely recognized reasons for considerable doubt about Tom's guilt. Fair, *supra* note 6, at 419. However, it should be noted that Sheriff Tate believed he was sparing Boo from positive public attention--ladies with cakes--rather than protecting him from a jury's determination of guilt or innocence of a crime. Sheriff Tate had no intention of pressing criminal charges because of his determination that no possible understanding of the facts would permit a conviction. On the other hand, if Mayella had been telling the truth--which, Sheriff Tate thought, only a jury could determine--Tom could have been found guilty. Although Sheriff Tate ultimately recognized Tom's innocence, this understanding came only from Sheriff Tate listening to the evidence at trial. Significantly, whether Sheriff Tate was right to press charges against Tom--which clearly he was not since minimal investigation would have revealed that Mayella's version of events could not possibly have been true--does not impact the determination of whether Atticus was right or wrong to go along with Sheriff Tate's decision to withhold the truth about how Bob Ewell died.

100 See LEE, *supra* note 5, at 317 (Sheriff Tate said, "I never heard tell that it's against the law for a citizen to do his utmost to prevent a crime from being committed, which is exactly what he did").

101 Query, however, whether Mayella's interest in finding out the truth about how her father died would be a benefit that would justify imposing a moral duty on Atticus (and Sheriff Tate) to reveal the true circumstances of Bob's death? Stated a different way, would depriving Mayella of the opportunity to find out the truth about her father's death be an offsetting harm that should have imposed a moral obligation on Atticus to refuse to go along with Sheriff Tate? Or, on the other hand, is it more compassionate to let Mayella think her father's death was an accident caused by his own drunkenness, rather than publicly exposing him as someone who had attempted to kill two children? Certainly the stigma of her father's bad actions would not help Mayella overcome her unfortunate circumstances.

Of course, neither Atticus nor Sheriff Tate considered Mayella's feelings in this circumstance. Indeed, Sheriff Tate suggested, without any consideration of Mayella and her brothers and sisters, that the town was better off being rid of Bob Ewell: "There's a black boy dead for no reason, and the man responsible for it's dead. Let the dead bury the dead this time, Mr. Finch. Let the dead bury the dead." LEE, *supra* note 5, at 317. *But see* notes 134-45 and accompanying text for a discussion of Atticus's failure to view Mayella's circumstances with compassion.

102 *But see* Shaffer, *The Moral Theology of Atticus Finch*, *supra* note 82 (arguing that Atticus's lie was a mistake).

103 LEE, *supra* note 5, at 314-16.

104 *Id.* at 314-15.

105 *Id.* at 314.

106 *Id.* at 318.

107 *Id.*

108 *Id.* at 168 (Jem said, “Scout ... I’m scared Scared about Atticus. Somebody might hurt him.”).

109 *Id.* at 170-74.

110 Applying this to the professional conduct rule requiring confidentiality, for example, the argument is that the benefit that would result from revealing client information--which is that the truth would be revealed--does not outweigh the important benefit of confidentiality--which is the promotion of candid communication between the client and the lawyer. Stated another way, the harm that results from confidentiality--which is the subversion of the truth--does not outweigh the important benefit of confidentiality--which is the promotion of candid lawyer-client communication. *See* MODEL RULES OF PROF’L CONDUCT R. 1.6 (2003).

111 *See id.* R. 3.3.

112 *See id.* R. 1.6.

113 Steven Keeva, *Words Worth Noting*, 82 A.B.A. J. 114, 114 (October 1996) (quoting Nobel laureate Elie Wiesel’s remarks at 1996 ABA Annual Meeting).

114 Samuel H. Pillsbury, *Harlan, Holmes, and the Passions of Justice*, in *THE PASSIONS OF LAW* 330 (Susan A. Bandes ed., 1999).

115 LEE, *supra* note 5, at 234 (emphasis added).

116 *Id.* at 322 (emphasis added).

117 *Id.* at 33 (emphasis added).

118 *See generally* THE DALAI LAMA, *AN OPEN HEART: PRACTICING COMPASSION IN EVERYDAY LIFE* (Nicholas Vreeland ed., 2001); THE DALAI LAMA, *THE HEART OF COMPASSION: A PRACTICAL APPROACH TO A MEANINGFUL LIFE* (2001) (explaining that enlightenment can be achieved only through compassion). *See also* J. Harvie Wilkinson III, *Why Conservative Jurisprudence is Compassionate*, 89 VA. L. REV. 753, 753 (2003) (defining “compassion” as “the extension of empathy, kindness, and concern for one’s fellow human beings”).

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¹¹⁹ 489 U.S. 189, 212-13 (1989) (Blackmun, J., dissenting).

¹²⁰ *Id.* at 197. In particular, the Court held that “[a]s a general matter, ... a State’s failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause,” and that there was no “special relationship” between the state and the plaintiff as would establish grounds for an exception to the general rule. *Id.*

¹²¹ *Id.* at 212 (Blackmun, J., dissenting).

¹²² *Id.* at 213 (Blackmun, J., dissenting). Justice Blackmun exclaimed:
Poor Joshua! Victim of repeated attacks by an irresponsible, bullying, cowardly, and intemperate father, and abandoned by [those] who placed him in a dangerous predicament It is a sad commentary upon American life, and on constitutional principles--so full of late of patriotic fervor and proud proclamations about ‘liberty and justice for all’--that this child ... now is assigned to live out the remainder of his life profoundly retarded, [and without legal redress].
Id.

¹²³ For an excellent defense of Justice Blackmun’s *DeShaney* dissent and explanation of the proper role of compassion in jurisprudence, see generally Benjamin Zipursky, *DeShaney and the Jurisprudence of Compassion*, 65 N.Y.U. L. REV. 1101 (1990).

¹²⁴ ROBIN WEST, CARING FOR JUSTICE 24 (1997).

¹²⁵ *Id.*

¹²⁶ Of course, the goals of serving the client and promoting justice sometimes come into conflict. See William Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 29, 36-37, stating:

A line separates the methods which a lawyer should be willing to use on behalf of a client from those he should not use. Before the lawyer crosses the line, he calls himself a representative; after he crosses it, he calls himself an officer of the Court. Most debates within the Ideology of Advocacy concern the location of [this] line.

Id. See also Subin, *supra* note 91 (exploring the conflict inherent in criminal defense lawyer’s obligation to the client and to the search for truth).

The therapeutic jurisprudence perspective posits that lawyers, judges, and other public policy makers ought to consider the full impact and implications of the law on all the stakeholders involved in the process, and that through this process, everyone--the lawyers, the clients, and the other players--will be more enriched. See, e.g., Dennis P. Stolle & David B. Wexler, *Therapeutic Jurisprudence and Preventive Law: A Combined Concentration to Invigorate the Everyday Practice of Law*, 39 ARIZ. L. REV. 25 (1997); Robert G. Madden & Raymie H. Wayne, *Constructing a Normative Framework for Therapeutic Jurisprudence Using Social Work Principles as a Model*, 18 TOURO L. REV. 487 (2002); Linda L. Murdoch, *Psychological Consequences of Adopting a Therapeutic Lawyering Approach: Pitfalls and Protective Strategies*, 24 SEATTLE U. L. REV. 483 (2000).

¹²⁷ James D. Gordon III, *Law Review and the Modern Mind*, 33 ARIZ. L. REV. 265, 271 (1991) (citation omitted).

¹²⁸ LEE, *supra* note 5, at 121-28.

¹²⁹ *Id.* at 254. See also *supra* note 69 and accompanying text.

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- ¹³⁰ *Id.* at 208. Although they apparently were so accustomed to being treated with disrespect that they did not understand Atticus's respectful attitude toward them. Scout wondered whether Mayella had ever been addressed as "ma'am" or "Miss Mayella" before. *Id.*
- ¹³¹ *See supra* note 69 and accompanying text.
- ¹³² LEE, *supra* note 5, at 227 (In explaining why Atticus treated all witnesses with respect, Scout said, "[h]e's the same in the courtroom as he is on the public streets.").
- ¹³³ *Id.* at 226-27 (In explaining why he had begun to cry, Dill said, "[t]hat old Mr. Gilmer doin' him thataway, talking so hateful to him [I]t made me sick, plain sick.").
- ¹³⁴ LEE, *supra* note 5, at 208-09 (Scout detailing what she had learned from Mayella's testimony, including that "the weather was seldom cold enough to require shoes, but when it was, you could make dandy ones from strips of old tires").
- ¹³⁵ *See* Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990) (The story of how providing her children's Sunday shoes was a necessity to a poor mother of five daughters illustrates the real significance of shoes in one's ability to find one's place in the social strata.).
- ¹³⁶ Lee, *supra* note 5, at 141. *See generally* Althouse, *supra* note 44, at 1367 (noting that Atticus's lack of consideration of Mayella's circumstances is not surprising in light of the lack of understanding, at that time, of feminist issues surrounding rape); Lubet, *supra* note 14 at 1359-61 (discussing "[r]ace, [c]lass, and [g]ender in Maycomb").
- ¹³⁷ *See, e.g., id.* at 194-95, 208-09 (describing the extreme poverty in which the Ewells lived).
- ¹³⁸ *Id.* at 219, stating:
As Tom Robinson gave his testimony, it came to me that Mayella Ewell must have been the loneliest person in the world When Atticus asked had she any friends, she seemed not to know what he meant, then she thought he was making fun of her [W]hite people wouldn't have anything to do with her because she lived among pigs; Negroes wouldn't have anything to do with her because she was white Tom Robinson was probably the only person who was ever decent to her.
Id.
- ¹³⁹ Tom's defense hinged on Atticus's theory that Mayella's father had inflicted her injuries. This theory depended on establishing Bob Ewell as an abusive father.
- ¹⁴⁰ LEE, *supra* note 5, at 222 (Tom testified that "[Mayella] reached up an' kissed me 'side of th' face. She says she never kissed a grown man before She says what her papa do to her don't count.").
- ¹⁴¹ *Id.* at 33-34.
- ¹⁴² *Id.* at 232. In his closing argument, Atticus said, "I have nothing but pity in my heart for the chief witness for the state, but my pity does not extend so far as to her putting a man's life at stake, which she has done in an effort to get rid of her own guilt." *Id.*

- ¹⁴³ Professor Susan Ayres points out the importance of storytelling and narrative to feminist legal theory: So, there are always two sides to a story, voices that are silenced, stories we never hear. This is the power of storytelling, whether in law or in literature--the “distinctive power to challenge and unsettle the legal status quo, because stories give uniquely vivid representation to particular voices, perspectives and experiences of victimization traditionally left out” The power of storytelling is especially effective in feminist re-vision because it provides an alternative discourse for silenced feminine voices and perspectives.
Susan Ayres, *Incest in a Thousand Acres: Cheap Trick or Feminist Revision*, 11 TEX. J. WOMEN & L. 131, 143 (2001) (quoting PAUL GEWIRTZ, NARRATIVE AND RHETORIC IN THE LAW 5 (Peter Brooks & Paul Gewirtz eds., 1996)). See also Robin West, *The Difference in Women’s Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 15 WIS. WOMEN’S L.J. 149 (2000); Malinda L. Seymore, *Attorney-Client Sex: A Feminist Critique of the Absence of Regulation*, 15 YALE J.L. & FEMINISM (forthcoming 2004) (manuscript at 19, on file with author) (explaining that “[s]tory-telling and narrative hold an important place in feminist legal scholarship”); White, *supra* note 135 (discussing the importance of listening to women’s stories and how the systematic failure to listen results in intimidation, humiliation, and objectification of the storyteller).
- ¹⁴⁴ See White, *supra* note 135, at 32-44.
- ¹⁴⁵ This must have been central to Harper Lee’s point in *To Kill a Mockingbird*: the racial, gender, and class hierarchies that dominated life in Maycomb prevented even the best lawyer--Atticus--from saving Tom because no one cared about (or listened to) Mayella.
- ¹⁴⁶ Of course, a lawyer must not violate the duty of loyalty owed the client or thwart conflict of interest rules. See Subin *supra* note 91 (discussing the inherent tension between serving the client and serving justice).
- ¹⁴⁷ See *supra* note *.
- ¹⁴⁸ Rather, I would encourage lawyers to seek out ways to right social wrongs and to promote justice, even beyond particular representations. Although lawyers can have significant opportunities to promote the public good by advocating for just results in particular client’s cases--just as Atticus did in the Robinson case--comprehensive legal reform frequently occurs outside the context of particular cases (such as through legislation), and lawyers are particularly well suited to promote such reform.
- ¹⁴⁹ LEE, *supra* note 5, at 195. This humanizing passage read as follows:
One corner of the [Ewell] yard, though, bewildered Maycomb. Against the fence, in a line, were six chipped-enamel slop jars holding brilliant red geraniums, cared for as tenderly as if they belonged to Miss Maudie Atkinson, had Miss Maudie deigned to permit a geranium on her premises. People said they were Mayella Ewell’s.
Id.