



# *To Kill A Mockingbird* Perspectives

I must have seen the movie version of *To Kill a Mockingbird* four or five times before I read the novel in my eighth grade English class at Junior High School 218. By then I'd already decided I would one day be a civil rights lawyer, inspired by documentaries about the civil rights movement which, in those days, used to air regularly on TV in New York. I knew Scout and Jem and Atticus and the tragic story of Tom Robinson like the back of my hand.

When our eighth grade teacher announced that she'd select several

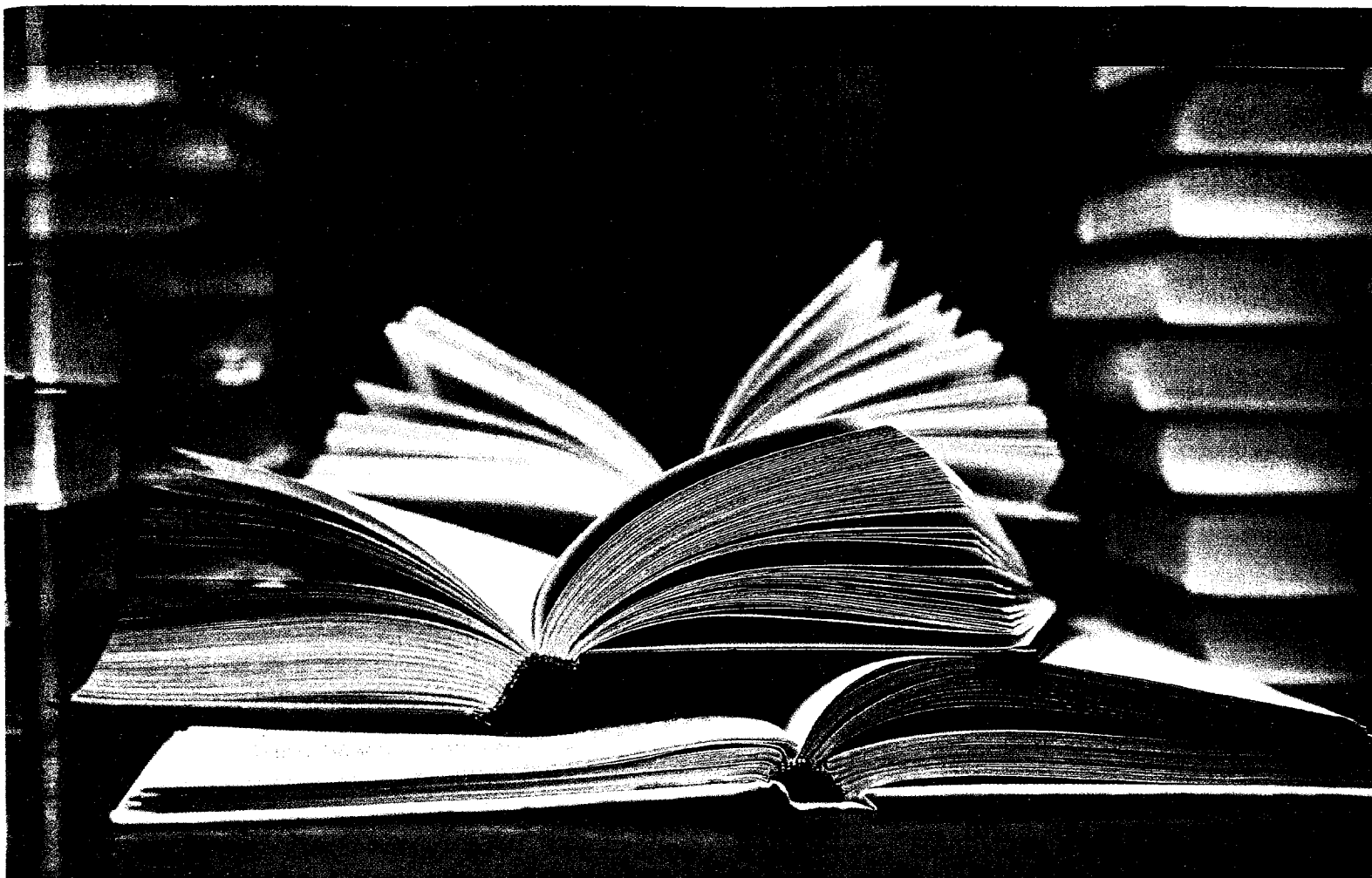
students to play out the dramatic courtroom scene in class, I knew I should play Atticus. And indeed our teacher picked me to play the brilliant southern lawyer. I was oblivious to the implications and meaning of this "non-traditional" casting decision.

I memorized Atticus' closing argument – I think I still have large portions of it committed to memory – barely able to contain my excitement on the day the scene was to be acted out in class. But on the day designated for the presentation of our mini-drama, the other students – Mayella

Ewell, Tom Robinson and Mr. Gilmer, the prosecutor – hadn't memorized their lines. And so the teacher conceded that we would just sit in our seats and read excerpts from the trial straight from the book. I was asked to read two lines from Atticus' closing.

To this day I can still feel the intense disappointment of having my first closing argument cut. I hadn't just memorized it; I had practiced *performing* it. The argument had to be read whole. It had a beginning, a middle, and boy did it have an ending! I wanted to deliver this piece, to mesmerize

By Sherrilyn A. Ifill



my class with my oration, and to silence their middle school tittering with the power of my voice and righteousness of Atticus' argument.

As a young black girl reading the book, I loved Atticus not only because he was decent, but because he was a craftsman. I loved his cross-examination of Robert Ewell, the abusive father of Mayella Ewell, because it was textbook perfect, clever, understated and devastating. I loved Atticus' closing argument because it adhered to the facts that had been presented, pointed out the contradictions

in the defense's case, but also explicitly and directly challenged the jurors to confront their prejudices.

I didn't really notice that Atticus Finch was white or a man, nor did I think for a moment that these qualities had anything to do with being a lawyer. I knew that I could and would one day do what he had done in that fictional courtroom in Maycomb. Just as I knew when I saw old newsreels of Thurgood Marshall, confidently drawing on his cigarette and answering questions during a press conference after one of his cases, that I

would one day feel that sure, that confident, that right in advancing the cause of my clients.

Since eighth grade I've seen the movie version of *To Kill a Mockingbird* (Warner Books 1960) [hereafter "TKM"] perhaps a dozen more times. I've read the book, with each of my two eldest daughters when they read it in middle school, and again last year when the book was selected by the National Endowment for the Arts community reading program, "The Big Read." I never tire of it.

But several years ago a colleague of

mine—an expert on law and film—offered a trenchant critique of the novel and particularly the film’s success. She argued that Atticus Finch’s zealous defense of black defendant Tom Robinson, offered a distorted historical portrait. Atticus was the exception and not the rule. After Charles Hamilton Houston broke the color barrier in southern courtrooms when he defended a black man named George Crawford in a Loudoun County, Virginia courthouse in 1934, it was increasingly courageous black lawyers who risked their lives to vigorously defend black defendants accused of violent crimes against whites, rather than fair-minded, white southern lawyers like Atticus.

The conditions for black lawyers trying these cases were often life-threatening at worst, and challenging and uncomfortable at best. When Houston litigated the *Crawford* case, he couldn’t even find a black family that would permit him and his legal team to stay the night in their homes. The black legal team ate lunch in the back of a black barbershop. See Richard Kluger, *Simple Justice* at p. 149-150.

It’s true that local white lawyers were appointed as defense counsel for black defendants accused of violent crimes against whites in cases throughout the South in the 1930s. In too many cases these lawyers never had to provide a defense of any kind for their clients, for the simple reason that black defendants accused of violent crimes against whites were lynched with astonishing regularity in a number of jurisdictions in the South, including several here in Maryland.

But even if a black defendant was not lynched before trial, there are very few examples of local white lawyers presenting the kind of vigorous, courageous defense that Atticus Finch provided Tom Robinson. One of them was Harper Lee’s own father, who defended a black man and his son accused of murder. Both the defendants were convicted and hanged, and this case likely became Lee’s inspiration for the case of Tom Robinson in *TKM*. See *About the Author, National Endowment for the Arts, The Big Read*, at <http://www.neabi-gread.org/books/mockingbird>.

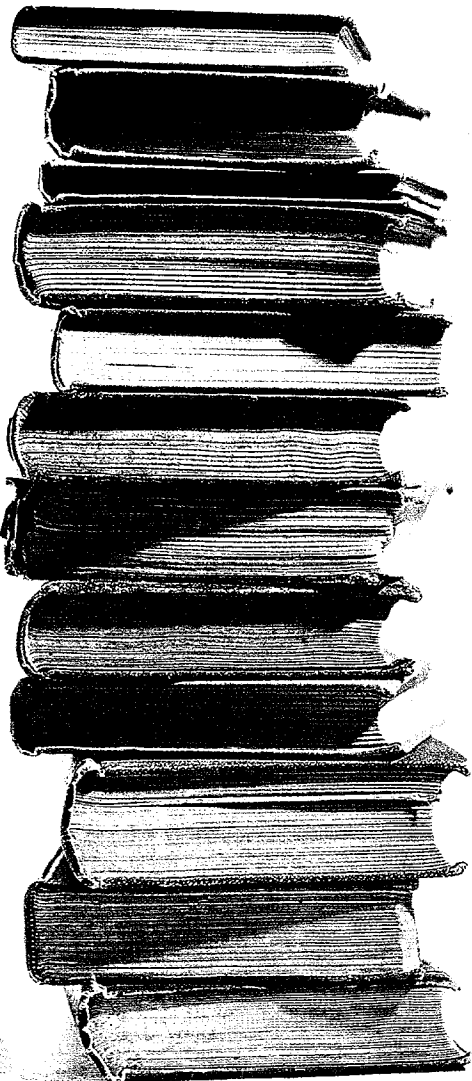
Maryland’s history includes some of the most powerful instances in which white lawyers vigorously defended black men accused of violent crimes against whites. In 1919, for example, Eugene O’Dunne defended a man named Isaiah Fountain, who was accused of raping a 14-year-old white girl in Talbot County. When a mob of 2,000 formed outside the courthouse in Easton at the end of the first day of trial, Fountain fled.

After a 3-day manhunt he was found and returned. His trial resumed, and Fountain was convicted. O’Dunne challenged the verdict on appeal as unconstitutional because the trial was held in an atmosphere of mob violence. The Maryland Court of Appeals agreed and overturned the verdict. This was 21 years before the Supreme Court’s decision in *Powell v. Alabama*, one of the Scottsboro Boys cases, which reversed the conviction of young black men accused of raping women amidst an atmosphere of mob violence. I describe the dramatic Isaiah Fountain case in my book *On the Courthouse Lawn: Confronting the Legacy of Lynching in the 21st Century* (Beacon Books 2007) at pp. 9-15 [hereafter “OTCL”].

Eugene O’Dunne later distinguished himself as the judge who heard the case presented by Thurgood Marshall and Charles Hamilton Houston challenging the exclusion of blacks from admission at the University of Maryland School of Law. O’Dunne ordered the law school to admit black students giving Thurgood Marshall his first major civil rights victory. O’Dunne’s order was affirmed by the Maryland Court of Appeals. See *Pearson v. Murray*, 182 A. 590, 169 Md. 478 (1936).

Another Maryland case from this period involved two court-appointed attorneys, R. Hynson Rogers and J.H.C. Legg, who defended a man named George Davis, a black farmhand accused of “attempted criminal assault” in 1931 in Kent County. Davis was alleged to have tried to assault Mrs. Elizabeth Lusby, the wife of his former white employer, when he came to her room to ask if she would intercede with her husband and advocate that he re-hire Mr. Davis. Mrs. Lusby testified that Davis grabbed her and tore her gown. She screamed and he ran off.

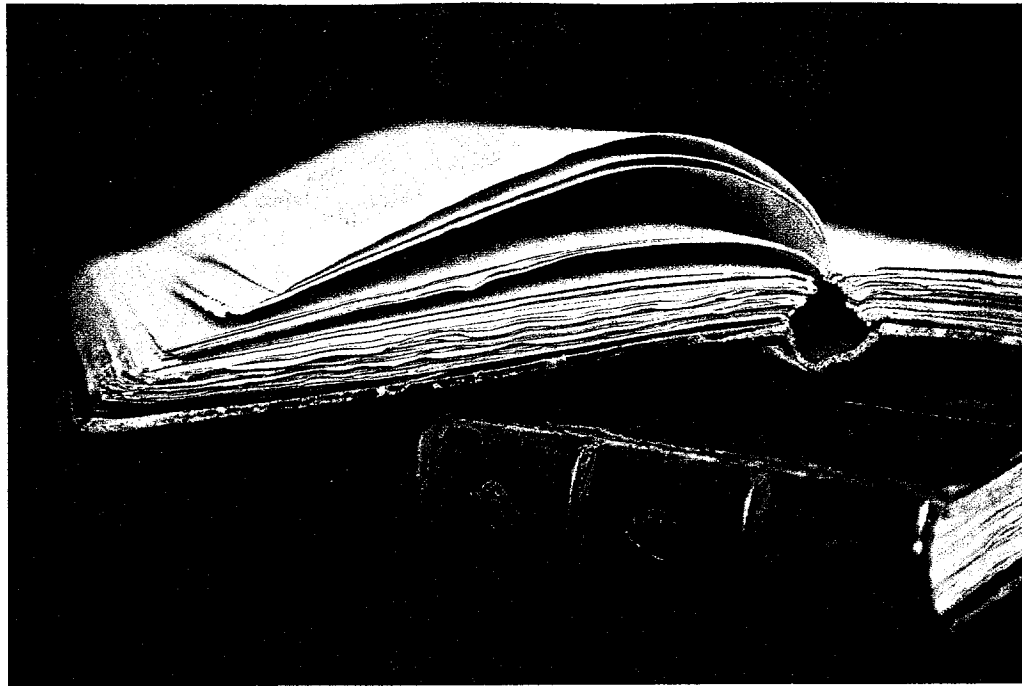
Mr. Lusby claimed that he returned from the farm to find his wife in hys-



terics. After Davis was arrested, the Kent County prosecutor, Stephen Collins, sought the death penalty. Davis' lawyers Legg and Hynson wisely chose to try the case to a judge, rather than a jury. Lynch mobs had traveled across four counties on the Eastern Shore looking for Davis after his arrest, and the likelihood of finding an impartial jury on the Shore was slim. A young black man, Matthew Williams, had been lynched in Wicomico County, after being accused of killing his white employer.

But even a change of venue couldn't guarantee a fair trial for a black defendant. That same year, the Maryland Court of Appeals would overturn the conviction of Euel Lee, a black farmhand accused of murdering a white family on the grounds that his trial—moved to Towson, Maryland from Worcester County to avoid the prejudice of Eastern shore residents—had been tainted by a constitutional violation. The court found that although the U.S. Supreme Court had held 50 years earlier that the exclusion of blacks from the jury venire violates the due process rights of black defendants, *see Strauder v. West Virginia* 100 U.S. 303 (1880), Baltimore County had been consistently excluding blacks from jury service. Not a single black person had been included on the jury list in the county for at least the prior 25 years. *See Lee v. State*, 163 Md. 56 (1932).

Neither Legg nor Hynson was Atticus Finch. Newspaper accounts suggest they pandered to the judges, and appeared to concede the guilt of their client Davis despite contradictions in the witnesses' accounts of what occurred, choosing to plead for leniency in Davis' sentence, rather than vigorously assert his innocence. But their actions most likely saved George Davis' life. In a rare move during this period, the court convicted Davis on a split decision, with one courageous judge, Thomas J. Keating,



issuing a dissent. Even the majority opinion, written by Judge William Adkins, seemed to throw into doubt Mrs. Lusby's account of the events. The court refused to grant the request for the death penalty, imposing instead a 16 year prison term on Mr. Davis. The Davis case is detailed in *OTCL* at pp. 54-55;98-101.

But by the time of the Davis trial and the trial of the fictional Tom Robinson in *TKM*, white northern lawyers, often Jewish, many associated with the International Labor Defense (ILD) or other communist-affiliated groups, had emerged as zealous defenders of black men accused of violent crimes against whites in a number of southern jurisdictions. In fact it was lawyers from the ILD that first went south to defend the "Scottsboro Boys" in that infamous Alabama case. The participation of the ILD in the Scottsboro case, and the willingness of ILD lawyers to directly challenge racism in the justice system in Alabama embarrassed the NAACP, which had initially been reticent about taking up the cause of the young men. By the time the first cases were on appeal, the NAACP had taken on a leading role in the

Scottsboro cases. *See* Richard Kluger, *Simple Justice* (Vintage Books 1975) at pp. 145-147.

Even Atticus Finch didn't offer the kind of defense of his client that real lawyers like Charles Hamilton Houston of the NAACP or Bernard Ades of the International Labor Defense provided to southern black defendants who were being railroaded. Houston, Ades, and the lawyers for the Scottsboro boys challenged the most obvious constitutional infirmity in the trials of so many black defendants accused of crimes against whites in the South – the absence of blacks on juries. Ades was successful in his argument in the Euel Lee case in Maryland – resulting in the reversal of Lee's conviction.

Lee had been arrested and convicted of murdering a white farm family. Fears that Lee would be killed at the hands of a lynch mob led local law enforcement to bring Lee to the Baltimore City jail for safekeeping. Bernard Ades met Lee at the Baltimore jail and took up his defense. His first plan was to seek a change of venue given the atmosphere in Worcester County, where the gruesome murders had taken place.

When Ades went to Snow Hill with his assistants to begin work on the case, he was surrounded by a mob and saved by the intervention of the local sheriff and judge, who put him in the local jail for his protection, until transportation could be arranged to get him out of town. Ades vowed never to return to the Shore, and was successful in having the case moved to Towson, Maryland. After Lee's conviction was thrown out on due process grounds, he stood trial again in Towson and was convicted in a second trial in which two blacks were included on the list of veniremen, but were not selected for the jury. The Lee case and Bernard Ades' participation in Lee's defense is examined at length in OTCL at pp. 50-54 and in Joseph Moore, *Murder of Maryland's Eastern Shore: Race, Politics and the Case of Orphan Jones* (Charleston, SC: History Press, 2006).

Charles Hamilton Houston lost his challenge to the exclusion of blacks from juries in Loudoun County, Virginia in the murder trial of George Crawford. Houston tried the case before an all-white jury and Crawford was convicted of the brutal murder of two white women. But Crawford received a life sentence rather than the death penalty for the murder of the two white women, and Houston's excellent performance in the courtroom was lauded in both the white and black press. See *Simple Justice* at 147-154.

The issue of the exclusion of blacks from the jury never comes up in *To Kill a Mockingbird*. In one of the most evocative scenes in the book, black townspeople stand in the balcony to watch Tom Robinson's trial, and to watch Atticus Finch's skilled, brilliant defense. After the jury renders a guilty verdict, despite clear evidence of Robinson's innocence, the black spectators honor Atticus by standing as

Atticus leaves the courtroom. Rev. Sykes, the local black preacher, tells Jem and Scout who watch the trial from the balcony with the black adult spectators, "stand up, your father's passin.'" TKM at p. 211.

The injustice and barbarity of the black spectators being relegated to the crowded balcony of the courtroom dominates the scene. But given the advocacy of Houston in *Crawford* and Ades in the Lee case, it's equally ominous that Rev. Sykes is a spectator at all. He should have been seated in the jury box. Rev. Sykes, Calpurnia (the Finch family's domestic helper), and any number of the other blacks who sat crammed in the limited balcony space, should have been eligible for jury service.

Atticus himself emphasized the importance of the jury to the integrity of the justice system in his closing argument when he says, "A court is only as sound as its jury, and a jury is only as sound as the men who make it up." TKM at p. 205. And Atticus engages in a fascinating analysis with his son Jem, about why middle-class whites in Maycomb rarely serve on juries. He even explains to Jem that "Miss Maudie" can't serve on a jury because she's a woman.

Perhaps Atticus would have raised the issue of the exclusion of blacks from the jury on appeal, had Tom Robinson not been killed. It seems unlikely. There's no evidence in the novel that Atticus intends to confront structural racism in the legal system in Maycomb.

In the novel, more so than in the film, Atticus is a part of Maycomb, an insider. He doesn't take on the structural dimensions of racism in his town. He accepts that "in our courts, when it's a white man's word against a black man's, the white man always wins. They're ugly, but those are the facts of life." TKM at p. 220.

Atticus defends Tom Robinson for very personal reasons, because, if he

didn't he "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." TKM at p. 75. Atticus later confesses to his brother, "I'd hoped to get through life without a case of this kind, but John Taylor [the local judge] pointed at me and said, 'You're it.'" Atticus is a reluctant hero. And this, of course, is part of his charm. Ultimately he's a decent man living in a world rife with indecency.

I've heard TKM described as a comforting illusion for turbulent times — one that seduced white Americans into believing that it was the quiet dignity of native white southerners like Atticus Finch who stood up for justice in bigoted small towns, not NAACP lawyers, or sit-ins or marches, that offered the better path to justice and equality. Certainly, when the novel was released in 1960 and the film two years later things looked quite different on the ground in towns like the fictional Maycomb.

By the 1960s TKM could have seemed manipulative and nostalgic. It was a huge success as both a book and movie, winning the Pulitzer Prize and several Academy Award nominations. I don't doubt that this was partly due to the fact that it told a quiet, human story, amidst the roiling civil rights movement, and because it told a story about racial injustice in which whites were both villain and hero, and blacks were strong, noble and mostly quiet. TKM provided an alternative story to the one playing out on the streets of Birmingham and Oxford. It elevated the story of the individual's role in the fight for justice and offered, for nervous whites, a respite from the turmoil and confrontation of sit-ins, marches and boycotts.

But to see only this is to deny the power of this story. TKM works so well precisely *because* it's not a histo-

ry book. It makes no claims to absolute accuracy. One must read *TKM* with the understanding of who tells the story.

Ultimately it is a coming of age story, a reflection on a place and time, seen through the eyes of a child – a child trying to make sense of the complicated and often unjust and violent world that adults have made. Scout and Jem's eyes enable us to view the complexity of class among whites in the town. The interplay between the worlds of the Cunninghams, the Finches and Ewells offered a rare and revealing look inside the world of class conflict among white southerners. The haunting story of Boo Radley provided its own lessons about prejudice and difference.

I still get lost in this world of Scout and Jem's. But now I wonder with every reading of the book, with every

viewing of the film, how the same story would play out if told through the eyes of other children in Maycomb – through the eyes of Tom Robinson's son or Calpurnia's children, or even through the eyes of the children of those real lawyers from the period—Houston and Ades and William Hastie and Leon Ransom and Edward Lovett—civil rights lawyers who courageously fought in the 1930s against both individual and structural racism. I hope one day that those stories will be told.

*TKM* remains a great lawyer's novel. Atticus Finch's closing argument in a fictional courtroom in Maycomb stands as one of the greatest speeches on race and the justice system ever delivered. His words underscored the legitimacy and importance of *Brown* and the cases that were still unfolding in the courts in the early

1960s to desegregate the nation's schools. His words reflect the highest aspiration of our legal system and the promise of equality that drives every civil rights lawyer to use the rule of law to achieve racial justice:

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 ... is a court. It can be the Supreme Court of the United States or the humblest J.P. court in the land ... Our courts have their faults, as does any human institution, but in this country our courts are the great levelers, and in our courts all men are created equal. ⚖️

