

Did Atticus Finch Commit Malpractice?

BY JASON A. MCGRATH, Esquire

On November 21, 1935, Tom Robinson raped 19-year-old Mayella Violet Ewell. So said the Maycomb County, Alabama jury, as written by Harper Lee in the classic novel *To Kill a Mockingbird*. Despite an admirable defense by court-appointed attorney Atticus Finch, Tom Robinson was convicted and sentenced to death by a jury which was most definitely not made up of his peers.

The book strongly implies that Mr. Robinson was innocent, that the primary prosecution witnesses lied throughout the trial, and that it was only Mr. Finch's valiant efforts and relationship with the community which caused the jury to hesitate at all before the unfair conviction. What if, however, Atticus in fact made a terrible mistake during trial which eliminated any small chance his client had of acquittal, any chance of avoiding death?

Although I'm a fairly voracious reader for pleasure, I'd never gotten around to reading *To Kill a Mockingbird*. However, one recent weekend, desperately in need of a break from contract review and liability analysis, I grabbed it from the coffee table where my wife had deposited it a few days earlier. I'd never read a review or summary of the book (nor have I yet), but was still vaguely aware that it featured a lawyer named Atticus, a rape or murder, and a racial controversy. This makes it even more unlikely that I ended up reading the book, as I tend to avoid stories about lawyers, who in books and movies are almost always far too perfectly successful, far too naive, or far too evil to be realistic.

I grew up in an environment very dissimilar to Maycomb; nobody would confuse south Florida with south Alabama. Now that I've moved to North Carolina, however, explorations of southern culture seem more appropriate. Plus at least half of those running for judgeships and other positions within the justice system here seem to claim *To Kill a Mockingbird* as their favorite book. Thus I came to read it, in three different sittings within 36 hours. I enjoyed it, but I was at first puzzled, and then dismayed at the way the trial went, and not just due to the unjust outcome. I've tried many cases, including sex crimes, violent felonies, and wrongful death cases, and I just couldn't fathom what happened — or rather didn't happen. What went wrong, Atticus?

Toward the end of the trial, the father of the alleged victim, a disreputable white man named Bob Ewell, took the stand after being called by the prosecution. He described what he witnessed the night of November 21, 1935 as he returned home from the woods. "[J]ust as I got to the fence I heard Mayella screamin' like a stuck hog inside the house—." Mr. Ewell went on to point to the defendant, Tom Robinson, who was seated next to his attorney, Atticus Finch, and to exclaim, "I run up to th' window and I seen...I seen that black nigger yonder ruttin' on my Mayella!" The language used and the events described caused a disturbance in the packed courtroom.

Minutes later, Mr. Ewell's testimony continued with a question by the prosecutor. "Mr. Ewell, did you see the defendant having sexual intercourse with your daughter?" The witness

answered with certainty, "Yes I did," and then stated that he had a clear view of the room as his daughter was being raped by the defendant. Finally, the angry father confirmed, "I sawed who he was, all right."

Upon cross-examination, Atticus Finch established several points, the key being that Mr. Ewell was left-handed. This was potentially relevant, as other evidence showed or implied that Mr. Ewell was a mean and perhaps abusive drunk, and that his daughter's injuries were largely on her right side — and thus arguably inflicted by a left-handed attacker.

The next witness to be called was the alleged victim herself, Mayella Violet Ewell. Other than being a member of the unpopular Ewell family, there was no indication in the book that Mayella herself was particularly disliked. Rather, she was presented as a young woman born into an unfortunate situation; into a family with no means, no motivation, and no role models.

Mayella agreed that she'd peripherally known the defendant for years, as they were neighbors. She testified that on November 21, Tom Robinson had been walking by her home when she asked him to assist her in chopping an old piece of furniture up to be used as firewood. Instead of helping her as asked, however, he attacked and raped her. "[A]n 'fore I knew it he was on me....He got me round the neck, cussin' me an' sayin' dirt—I fought'n'hollered, but he had me round the neck. He hit me agin an' agin—." "Then what happened?" the young Ms. Ewell was asked. She replied, "I don't remember too good, but the next thing I know Papa was in the room a'standin' over me hollerin' who done it, who done it? Then I sorta fainted an' the next thing I knew Mr. Tate was pullin' me up offa the floor and leadin' me to the water bucket." (Mr. Tate was the sheriff.)

Tom Robinson later testified, denied that he had committed any type of crime or improper action, and reluctantly explained that it was he who had fended off Mayella's sudden advances. Atticus Finch demonstrated to the jury that Mr. Robinson had a particular physical impairment of his left arm and hand, which made it less likely that he could have carried out the attack as described. During closing arguments, Mr. Finch emphasized to the jury that the evidence of guilt was unreliable, and implored the jurors not to assume guilt merely because of the color of the defendant's skin. He also commented, "Her father saw it, and the defendant has testified as to his remarks. 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." Despite Mr. Finch's efforts, Tom Robinson was found guilty after perhaps six hours of jury deliberations.

At first, I expected Atticus to pounce on it during cross-examination of Mayella, for that would be what most lawyers would do. However, some lawyers (this writer being one of them) prefer not to emphasize such "gotcha!" testimony during cross, but rather save it for closing argument. (Why bring it up during cross, which only gives the opposition the opportunity to try to completely correct the problem or at least minimize the damage with additional evidence?) Thus, I thought "Ahhh, the wise Atticus Finch will keep this nugget in his pocket, polishing and savoring it until the moment is absolutely right, until the jury is hanging on his every word, his every motion. Of course!" Although it was one o'clock a.m. when I read this part of the book, I folded page 206 in order to mark it, the way I'd have asked a court

reporter to mark a piece of testimony during a real trial. I then read through closing arguments before going to sleep, a sleep literally troubled by what turned out to be missing from Atticus' closing argument.

The next morning, I explained my thinking to my wife. She looked at me, trying to determine if I was actually being clever (for a change) or if I mistakenly thought I was being clever. Eventually she nodded in agreement, and her face took an expression of slightly puzzled thoughtfulness as she subconsciously continued to nod her head ever so slightly up and down.

Perhaps some of you reading this knew where I was going before you read more than a sentence or two of this commentary. Others may have picked up on it a few hundred words ago, while some of you, appreciated readers, are still waiting to hear what, to me, seems a blatant and damning error by the esteemed Atticus Finch. Well, let's get to it.

Bob Ewell testified very clearly that he saw Tom Robinson attacking and raping his daughter. Further, he then watched as Mr. Robinson, his long-time neighbor, exited the Ewell house and ran off. We have Mr. Ewell's own words that he "sawed who it was" and we know that he pointed to the defendant when he exclaimed, from the witness stand, "I seen that black nigger yonder ruttin' on my Mayella!" That's a perfectly straight forward and positive, first person, eyewitness identification, offensive language notwithstanding.

However, what did Mayella Ewell testify regarding her father and his words and actions at the time of the alleged crime? She made a general statement that she didn't "remember too good" what happened immediately after the rape, but then testified with specificity as to what she did remember. "[B]ut the next thing I know Papa was in the room a'standin' over me hollerin' who done it, who done it?" (emphasis added)

That question mark means everything here. The father, who testified so emphatically that he was an eyewitness to the defendant's rape of his daughter, was reportedly yelling and asking that very daughter who had raped her. This could have been, should have been, *the moment*, or at least should have led to *the moment* of the trial. The "gotcha" moment, the "now we all know you're a liar" moment, the "not even you, ever-suspect jurors, can now mess this up" moment. Yet somehow, it was not. Atticus Finch missed the key bit of testimony and its significance. The otherwise competent, even inspiring, country lawyer let his client down and, we may even feel, let us down.

The Finch's neighbor, Miss Maudie, reflected that it was impressive that Atticus had at least given the all-white, biased jury reason to pause on its way to unfairly convicting the defendant. "And I thought to myself, well, we're making a step - it's just a baby step, but it's a step." Well said, but under further consideration, we may be left to wonder if that baby step could have or should have been a leap.

I still can't decide if I like Atticus Finch more now than I would had he been better, had he pulled off the miracle. At least he wasn't perfect, as we surely are not. I dare say we are no better than Mr. Finch was, and we should remain thankful for him, stunning error and all.

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