CITING MOCKINGBIRD

A REVIEW OF JUDICIAL REFERENCES TO AMERICA'S BEST-LOVED NOVEL

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IN EARLY 2017, a long and bitterly fought battle between former business partners Joshua Kilgore and Robert Mullenax arrived on the doorstep of the Arkansas Supreme Court, which had been asked by Kilgore to overturn an arbitration award for Mullenax of over $140,000. The award, which included attorney's and expert witness fees, and related to Kilgore's departure from the business and violation of non-competition and non-disparagement clauses, was easily upheld by the Court, which cited its limited review of and deference to arbitration awards. Justice Josephine Linker Hart, however, strenuously disagreed with her fellow justices and felt compelled to write separately in dissent to criticize what she viewed as an oppressive alternative dispute resolution system that was too often imposed on the weak. Hart felt that the alternative dispute resolution process, as evidenced by the clash between Kilgore and Mullenax, was usurping the role of courts and "eroding the cornerstone of our democracy."[1] To sufficiently illustrate her feelings about the sanctity of the judicial process, Justice Hart devoted two full paragraphs of her dissent to a quotation from Harper Lee's *To Kill a Mockingbird*. The

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[1] Kilgore v. Mullenax, 2017 Ark. 204, 520 S.W.3d 670, 676 (Hart, J. dissenting).

quotation came from Atticus Finch's dramatic closing statement to the jury in which he refers to courts as "the great levelers" of society.[2]

That Justice Hart looked to a literary reference to fully express herself will not surprise those who have spent time reading judicial opinions. Judges are, after all, still people whose perceptions, vocabularies, and worldviews have been shaped by the books that they have read, and they sometimes turn to these books in writing their opinions.[3] Some research on the topic suggests that William Shakespeare is the most widely cited author in judicial opinions (929 citations) with Charles Dickens a distant second (662 citations). Among American novelists, Nathaniel Hawthorne (106), Ernest Hemingway (90), and Herman Melville (69) seem to be the most cited.

However, *To Kill a Mockingbird*, Harper Lee's 1960 Pulitzer-Prize-winning novel, has been perhaps more widely read and highly regarded than any other work of American fiction.[4] Indeed, beyond the popularity of the book itself, the story's exploration of the meaning of justice and its depiction of the principled and courageous attorney Atticus Finch further make the novel a likely favorite of American judges and a prime candidate for judicial citation. So how does it fare with judges?

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[2] HARPER LEE, TO KILL A MOCKINGBIRD (Harper 1995) at 234 ("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.").

[3] *See generally*, Jules Gleicher, *The Bard at the Bar: Some Citations of Shakespeare by the United States Supreme Court*, 26 OKLA. CITY U. L. REV. 327 (2001); Scott Dodson & Amy Dodson, *Literary Justice*, 18 GREEN BAG 2D 429 (Summer 2015); John M. DeStefano, Note, *On Literature as Legal Authority*, 49 ARIZ. L. REV. 521 (2007); Matthew H. Birkhold, *Why Do So Many Judges Cite Jane Austen in Legal Decisions?*, Electric Literature.com, electricliterature.com/why-do-so-many-judges-cite-jane-austen-in-legal-decisions/ (last visited Sept. 20, 2019); *Why Lawyers Love Shakespeare*, THE ECONOMIST (Online) (Jan. 8, 2016), www.economist.com/prospero/2016/01/08/why-lawyers-love-shakespeare (last visited Sept. 20, 2019).

[4] *See e.g.*, *Librarians Choose a Century of Good Books*, LIB. J. (Nov. 15, 1998) at 34 (voting *Mockingbird* the best novel of the 20th Century); Michelle Pauli, *Harper Lee Tops Librarians' Must-Read List*, GUARDIAN (Mar. 2, 2006), www.theguardian.com/books/2006/mar/02/news.michellepauli (last visited Sept. 20, 2019) (listing *Mockingbird* as the number-one ranked book that every adult should read before they die); Urmee Khan, *To Kill a Mockingbird Voted Greatest Novel of All Time*, TELEGRAPH (June 16, 2008), www.telegraph.co.uk/news/2138827/To-Kill-a-Mockingbird-voted-Greatest-Novel-Of-All-Time.html (last visited Sept. 20, 2019).

As *Mockingbird* celebrates its 60th anniversary, there have been 65 citations to it in American court opinions, and citations to the novel have increased over time. It was not cited for a decade after its publication, and over 60% have occurred since 2010 as judges who grew up reading the book have ascended to the bench. Although the novel's popularity has been widespread, it is interesting to note that *Mockingbird* has still most often been cited in the Southeastern United States, the home of its fictional setting of Maycomb, Alabama. 40.8% of *Mockingbird*'s citations are from courts located in the Southeastern United States, followed by 22.5% from the Midwest, 19.7% from the West, 11.3% from the Northeast, and 5.6% from the Southwest. And perhaps unsurprisingly given federal antidiscrimination law, *Mockingbird* is also more likely to be cited by federal rather than state court judges. 63% of *Mockingbird*'s citations are from federal courts, 37% from state courts.

Beyond these superficialities, though, what can we learn from these citations? What seems worthy of citation to the judges who have read *Mockingbird*, and which portion of the novel is cited most often? In a review of all of its citing opinions, it becomes clear that *Mockingbird* inspires different reactions in those who read it, and that some aspect of the novel seems relevant to nearly any case that has reached an appellate court.

A few themes do emerge, however. First, as might be expected, *Mockingbird* is clearly on the minds of judges when the case before them involves racial discrimination. For instance, in *Renfro v. California Dept. of Corrections and Rehabilitation,*[5] a prison psychologist sued the state prison system because she alleged that she had been terminated as a result of racial discrimination. The California Court of Appeals, after wading through and commenting on the "murky" facts of the case, upheld the jury's finding in her favor. The court, pointing to Tom Robinson's fate in *Mockingbird* as an obvious instance of racial discrimination, observed that such discrimination in real life does not typically present itself in the stark terms portrayed in the novel.[6]

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[5] Renfro v. California Dep't of Corr. & Rehab., No. CO70371, 2014 WL 4942320 (Cal. Ct. App. Oct. 2, 2014).

[6] *Id*. at *8.

Mockingbird was perhaps most notably invoked in *Ayissi-Etoh v. Fannie Mae*[7] by United States Supreme Court Justice Brett Kavanaugh in 2013 while he was sitting on the District of Columbia Circuit Court of Appeals. In that case, an African-American man sued his employer, Fannie Mae, under federal anti-discrimination laws after he was passed over for promotion and allegedly told by a Fannie Mae vice president to "get out of my office N——." The District Court granted summary judgment for Fannie Mae, holding that a single utterance of the N-word was insufficient to establish a hostile work environment under federal law.[8] The D.C. Circuit Court of Appeals, however, reversed the lower court, and then-Judge Kavanaugh wrote an impassioned separate concurrence. Citing *Mockingbird* for the proposition that the N-word was "probably the most offensive word" in the English language, he emphasized that even a single use of this word in the workplace by an employer could create a hostile work environment.[9] This concurrence has since been cited in a string of federal cases[10] alleging a hostile work environment under 42 U.S.C. § 1981.[11]

Because of its popularity, *Mockingbird* also serves as a touchstone for both judges and other participants in the court system, and plot details from the novel are often referred to by those who find either uncanny or convenient parallels between the book and real life. For instance, judges and defense attorneys alike have drawn upon Mayella Ewell's testimony against Tom Robinson in *Mockingbird* as a shorthand for communicating the

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[7] Ayissi Etoh v. Fannie Mae, 712 F.3d 572 (D.C. Cir. 2013).

[8] Etoh v. Fannie Mae, 883 F. Supp. 2d 17, 37 (D.D.C. 2011)

[9] 712 F.3d at 579-80 (Kavanaugh, J., Concurring).

[10] *See* Renfroe v. IAC Greencastle, LLC, 385 F. Supp. 3d 692, 705 (S.D. Ind. 2019); Nuness v. Simon & Schuster, 325 F. Supp. 3d 535, 547 n.4 (D.N.J. 2018); Rogers v. City of New Britain, 189 F. Supp. 3d 345, 355 n.9 (D. Conn. 2016). Not surprisingly the use of the N-word in *Mockingbird* has itself been the source of court action, particularly in the public-school setting. *See* Brown v. Board of Educ. of City of Chicago, 84 F. Supp. 3d 784, 789 (N.D. Ill. 2015); Stallworth v. Okaloosa Cty Sch. Dist., No. 3:09cv404/MCR/CJK, 2011 WL 4552187 (N.D. Fla. Sept. 30, 2011).

[11] "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

dangers of relying on a victim's uncorroborated testimony in rape trials.[12] *Kansas v. Thomas,*[13] one such case, involved the conviction for aggravated human trafficking of a 16-year-old runaway who reported having been raped and sodomized. The defendant's attorney, arguing that the victim was manipulative and had fabricated her testimony, compared the facts of that case to Mayella Ewell's false rape claim in *Mockingbird*, urging jurors not to "let it happen again."[14]

Attorneys and judges also invoke and debate Atticus Finch's selfless acceptance of his appointment to an unpopular case. The best example arises in *Hagopian v. Justice Administrative Commission,*[15] in which a solo practitioner had been appointed to represent an indigent defendant charged under Florida's RICO statute, and was not permitted to withdraw. The Florida Court of Appeals, focusing on the complexity of the RICO case and the "devastating" economic impact it would have on the appointed attorney's small practice, observed that:

> For many people, lawyers and nonlawyers alike, the appointment of a lawyer from the private bar to represent an unpopular defendant accused of a serious crime brings to mind the image of Atticus Finch, the hero of Harper Lee's Pulitzer Prize-winning novel, *To Kill a Mockingbird* . . . Atticus Finch defended Tom Robinson, an

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[12] *See* Johnson v. Georgia, 760 S.E.2d 682, 689 (Ga. Ct. App. 2014) (Rape conviction upheld on appeal; defense attorney not permitted to reference specific well-known, recent false rape conviction during closing statement, but was permitted to analogize the defendant's case to *Mockingbird*, arguing that the victim had falsely accused the defendant based on the shame and guilt she felt following consensual sexual activity with her mother's boyfriend); In re Sam F. and Bobby S., 327 N.Y.S.2d 237, 240-41 (N.Y. Fam. Ct. 1971) (Court, in dismissing rape charges against defendants, explained New York's corroboration requirement for sexual offenses, referencing *Mockingbird*: "Lawyers and psychologists have argued that sexual cases are particularly subject to the danger of false charges – resulting from sexual neurosis, fantasy, jealousy, spite, or simply a girl's or woman's refusal to admit she consented to an act of which she is now ashamed. The latter was the theme of a haunting book by Harper Lee . . .").

[13] Kansas v. Thomas, No. 111621, 2015 WL 4094260 (Kan. Ct. App. Dec. 14, 2015).

[14] *Id.* at *7 (perhaps forgetting that *Mockingbird* is a work of fiction). Mayella Ewell's testimony was also cited in a separate case for the proposition that "sexual objectification and racism may go hand in hand." Barrow v. Church, No. 3:15-cv-341, 2016 WL 3964605 (S.D. Ohio July 25, 2016) at *2.

[15] 18 So. 3d 625 (Fla. Dist. Ct. App. 2009).

> indigent man charged with rape, "without mention of a fee, perpetuating in the eyes of readers everywhere the noble image of the lawyer dedicated to justice with no thought of . . . 'lucre.'" . . . But the practice of law has changed dramatically since the 1930s when the fictional Atticus Finch practiced law.[16]

A Rule 11 case drew similar parallels. The lawyer, appealing the sanctions levied against him for failing to inquire adequately into his client's affidavits, argued that the trial court's decision had been motivated by an "animus" toward "activist practitioners" who aggressively represented unpopular clients.[17] The lower court, in rebuffing this argument, agreed that "an attorney who assumes or is assigned the defense of an unpopular case (such as the fictional attorney Atticus Finch in Harper Lee's 'To Kill a Mockingbird') is entitled to some consideration."[18] However, the judge explained, "an attorney who aggressively and repeatedly seeks to represent unpopular causes or questionable clients for personal reasons of his own is not deserving of any particular consideration. And an attorney who places himself and his causes above the interests of justice is entitled to none."[19]

The reclusive and mysterious character of Boo Radley has also inspired judges and attorneys in the cases before them. Most famous of these is *Artway v. the Attorney General of New Jersey,*[20] which considered the constitutionality of a sex-offender registration law, in part because of its potential to make the plaintiff a pariah in his own community. The court concluded that it was "beneficial to consider how such badges of shame and their attendant consequences have occurred and been portrayed in a historical context," and used a half-page quotation of Scout's description of Boo

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[16] *Id.* at 642 (quoting Arnold v. Kemp, 306 Ark. 294, 813 S.W.2d 770, 780 (1991) (Newbern, J. concurring)).

[17] Hadges v. Yonkers Racing Corp., 48 F.3d 1320, 1324 (2d Cir. 1995).

[18] *Id.* at 1325.

[19] *Id.* For a similar comparison, see Ramos v. Lamm, 713 F.2d 546 (10th Cir. 1983) (Court rejecting enhanced attorney's fees for a case regarding prison conditions holding that "[s]ituations in which great courage is required to undertake a case, like that confronting the fictional lawyer in *To Kill a Mockingbird*, may still exist. But a bonus for social stigma assumed by a lawyer participating in civil rights litigation should rarely be given"). *Id.* at 558.

[20] 876 F. Supp. 666 (D.N.J. 1995). For an example of a defense attorney invoking Boo Radley, see Harmon v. Alaska, 193 P.3d 1184, 1191 (Ala. 2008).

Radley to illustrate "the potential for hysteria inherent in any castigation by a community of one of its members."[21]

A perhaps surprising detail of *Mockingbird* that has appeared in two court opinions is Mayella Ewell's dramatic revelation in Atticus Finch's unsparing cross-examination, that Tom Robinson could not have committed the rape he was accused of because of his crippled left arm. In one such case, which examined the appeal of a prisoner accused of stabbing another inmate, the Court of Appeals found their case "uncomfortably reminiscent of one of the plot lines in *To Kill a Mockingbird*."[22] It compared the defendant to Tom Robinson and suggested that he, like Robinson, may have been innocent of the crime of which he was accused: "the prison guard who saw Williams stab the other inmate saw him stab the victim with his *right* hand. Williams, however, is *left* handed."[23]

Still another event in *Mockingbird* that has drawn judicial comparison is Scout's exchange with her first-grade teacher Miss Caroline, after Miss Caroline discovered that Scout had learned to read without the benefit of her instruction. In *Mozert v. Hawkins County Board of Education*,[24] a group of plaintiffs in Tennessee objected to a state-mandated critical reading program on religious grounds. On appeal, a concurring Judge Boggs was suspicious of the school board's asserted justification for the state's compelling interest in requiring the critical reading program, as they could not even define critical reading and weren't willing to test whether it was in fact occurring: "[the school board's] view seems to be that if we are teaching it in the state classrooms, critical reading must be happening, but if plaintiffs are learning reading outside that class . . . it must not be happening." Judge Boggs made the direct comparison to Scout's reprimand by Miss Caroline.[25]

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[21] *Artway*, 876 F. Supp. 666 at 686-87. ("Inside the house lived a malevolent phantom. People said he existed, but Jem and I had never seen him . . .").

[22] California v. Williams, No. G053450, 2017 WL 6547098 (Cal. Ct. App. Dec. 22, 2017) at *1.

[23] *Id*. at * 4. *See also* Miller v. United States, 14 A.3d 1094 (D.C. 2011) ("Indeed, as those of us who have reached a certain age are unlikely ever to forget, the fact that the accused was left-handed effectively demonstrated his innocence in two highly successful motion pictures: "In the Heat of the Night " (1961), and "To Kill a Mockingbird" (1962), the latter film being based on Harper Lee's Pulitzer Prize-winning novel."). *Id*. at 1110 n.18.

[24] Mozert v. Hawkins County Bd. of Ed., 827 F.2d 1058 (6th Cir. 1987).

[25] *Id*. at 1077 n.7 (Boggs, J., concurring). "Now you tell your father not to teach you

Other references to *Mockingbird* quote directly from the story. Often these quotations involve two pieces of advice that Atticus gives to Scout. The first is to "hold your head high and keep those fists down," as he explained to Scout that she would likely be subjected to taunts from her schoolmates because of his appointment to Tom Robinson's case.[26] In *Washington v. Riley*, Justice Talmadge of the Washington Supreme Court invoked Atticus's advice in debating with his colleagues whether words alone could cause reasonable apprehension of great bodily harm sufficient to render a potential victim's use of force in self-defense lawful.[27]

Another of Atticus's famous pearls of wisdom – that "[y]ou 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"[28] – has also found favor with judges. In *Markowitz v. United Parcel Service*, the court affirmed a grant of summary judgment to UPS in a disability discrimination suit brought by a plaintiff who claimed to have suffered from depression. Not wanting to appear unsympathetic, though bound by the law to uphold the lower court's judgment, the court invoked that piece of advice in a long quotation before wishing the plaintiff well.[29]

Ironically, one of the most popular quotations attributed to *Mockingbird* does not originate in the story. During Tom Robinson's trial, Atticus asks antagonist Bob Ewell if he knows how to write, and requests that he demonstrate his ability to do so. This makes Scout nervous, she explains, because Atticus had taught her to "[n]ever, never, never, on cross-examination ask a witness a question you don't already know the answer

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anymore. It's best to begin reading with a fresh mind. You tell him I'll take over from here and try to undo the damage." MOCKINGBIRD, *supra* note 2 at 19.

[26] MOCKINGBIRD, *supra* note 2 at 86.

[27] Washington v. Riley, 976 P.2d 624, 630 (1999) (Talmadge, J., concurring). This advice was also invoked in Pueblo v. Garcia Colon I, 182 D.P.R. 129, 194 (P.R. 2011), though as the entire opinion other than this quote is in Spanish, the context of this advice is completely lost on the author.

[28] MOCKINGBIRD, *supra* note 2 at 33.

[29] Markowitz v. United Parcel Service, No. SACV 15-1367, 2016 WL 3598728 (C.D. Cal. Jul. 1, 2016) at *8. *See also* Shay v. Aldrich, 790 N.W.2d 629, 656 (Mich. 2010) (Markman, J. dissenting) ("While one does not have to be Atticus Finch, attuned to walking in another's shoes . . .").

to . . . ."[30] Of course, with the popularity of *Mockingbird*, and the centrality of this tenet to many cases, its first use is widely (and mistakenly) attributed to the novel.[31] However, this legal gem, while its true source may never be known, appeared as advice to new law students as early as 1903, well before *Mockingbird's* publication in 1960.[32]

Some of the connections between *Mockingbird* and the cases that cite it are, however, tenuous at best; perhaps they are little more than an excuse to cite the book by judges eager to do so. For example, one judge referred to young Scout's observation that "I came to the conclusion that people were just peculiar," in a case challenging a city ordinance requiring that exotic dancers wear clothing; another made passing reference to the epigraph of *Mockingbird* that "[l]awyers I suppose, were children once" in an opinion interpreting a state statute involving a racing facility in Macon County, Alabama.[33] Indeed, references to *Mockingbird* often appear in judicial opinions for no other apparent reason than the popularity of the book and its omnipresence in our lives.[34]

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[30] MOCKINGBIRD, *supra* note 2 at 202.

[31] *See* Tabor v. Missouri, 344 S.W.3d 853, 859 n.4 (Mo. Ct. App. 2011) (Defendant-Appellant, appealing his prison sentence for animal cruelty, pleads ineffective assistance of his trial counsel in his cross-examination, citing *Mockingbird* as authority); FRED R. SHAPIRO, THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS 104 (1993).

[32] *See* 11 *Law Student's Helper* 35, 48 (1903) (". . . you ought never ask a question on cross-examination unless you know what the answer must be."). Due to the popularity of *Mockingbird*, the same misattribution has befallen the novel's epigraph, "Lawyers I suppose, were children once." *See* note 33 and accompanying text. This quotation is from Charles Lamb's essay, *The Old Benchers of the Inner Temple*, to whom Harper Lee gave attribution.

[33] *See* Bar & Grill, LLC v. City of San Antonio, 943 F. Supp. 2d 706, 712 n.8 (W.D. Tex. 2013); O'Neal v. Macon County Bd. of Educ., 484 So. 2d 401, 403 n.2 (Ala. 1986).

[34] *See, e.g.*, Mr. and Mrs. G. as Next Friends of S.G. v. Canton Bd. of Ed., No. 3:17-cv-2161, 2019 WL 1118094 (D. Conn. Mar. 11, 2019) at *4 (*Mockingbird* used as a means to assess a student's language skills); Oracle America v. Google Inc., 172 F. Supp. 3d 1100, 1103 (Court, in issuing protective order prohibiting internet searches of jury venire, cites learning that *Mockingbird* was a juror's favorite book as something that could be ascertained); Chaidez v. McDonald, No. CV 11-10335-SJO, 2015 WL 575849 (C.D. Cal. Feb. 11, 2015 at *21 (Prosecutor, at trial, wrongly tells a jury that Atticus Finch's character in *Mockingbird* was based on Clarence Darrow); Couch v. Jabe, 737 F. Supp. 2d 561, 568 n. 7 (*Mockingbird* given as example of a book that could have been banned under an overinclusive prison regulation); Paraskevaides v. Four Seasons Washington, 292 F.3d 886, 894 (D.C. Cir. 2002) (First edition *Mockingbird* given as an example of something of value

As one might expect, one of the most common reasons that courts invoke *Mockingbird* emanates from Harper Lee's portrayal of Atticus Finch as a compassionate, skilled attorney who is held in esteem by Scout's hometown of Maycomb, Alabama and serves as its moral compass. Lee's inspiration for Atticus's character was her own father, Amasa Coleman Lee who, like Atticus, was a lawyer and a state legislator. Lee's reverential portrayal of Atticus in *Mockingbird* no doubt leaves an impression on all readers of the novel, but especially on those who enter the legal profession after having encountered it. Atticus, "perhaps the most revered lawyer in literature," is often held up in legal opinions as a model attorney for others to emulate.[35] The characteristics most cited by courts are his professionalism and high ethical standards, his courage, and his oral advocacy skills. A typical example occurs in *United States v. Downs,*[36] an appeal for a criminal conviction in which the defendant claimed ineffective assistance of counsel. The 7th Circuit, bemoaning the lack of a record upon which to judge this claim, exclaimed that "[f]or all we know, [the defendant's] first attorney was a real-life Atticus Finch."[37] Other cases have referred to Atticus as the "consummate professional,"[38] speculated about what Atticus's real-life billing rate would be as one of the top lawyers in the country,[39] or admitted that a lawyer's poor opening statement "was not one that might have been given by Atticus Finch."[40] Still many others discuss, as previously

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that could be placed in a hotel room safe).

[35] Carrie Menkel-Meadow, *Sense and Sensibilities of Lawyers: Lawyering in Literature, Narratives, Film and Television, and Ethical Choices Regarding Career and Craft*, 31 MCGEORGE L. REV. 1, 12 (1999). Some have been critical of Atticus and his approach to Tom Robinson's defense and his tolerance of Maycomb's "sickness." *See* Steven Lubet, *Reconstructing Atticus Finch*, 97 Mich. L. Rev. 1339 (1999); Malcolm Gladwell, *The Courthouse Ring*, NEW YORKER, (Aug. 3, 2009) www.newyorker.com/magazine/2009/08/10/the-courthouse-ring. His character was subject to fresh criticism following Harper Lee's controversial 2015 publication of GO SET A WATCHMAN. *See e.g.* J. Mark Baggett, *"Tumbling Out of the Beautiful Dream": Go Set a Watchman and Harper Lee's Legacy*, 47 CUMB. L. REV. 3 (2016).

[36] 123 F.3d 637 (7th Cir. 1997).

[37] *Id.* at 642.

[38] Tajonera v. Black Elk Energy Offshore Operations, LLC, 13-0366, 2015 WL 13533520 (E.D. La. Sept. 30, 2015) at *4.

[39] Turner v. Astrue, 764 F. Supp. 2d 864, 867 (E.D. Ky. 2010).

[40] Burgess v. United States, No. 10-CV-262-J, 2013 WL 12354231 (D. Wyo. May 23,

mentioned, Atticus's admirable willingness to accept appointment to an undesirable case no matter the personal consequences.[41]

Finally, *Mockingbird* is perhaps most poignantly invoked in court opinions for the light it sheds on the American jury system, both good and bad. The jury nullification in Tom Robinson's trial is only one of the unfortunate by-products of the jury system that the novel highlights. In *Ohio v. Toland*[42] a juror, during voir dire, "engaged defense counsel in a discussion concerning reasonable doubt and how jurors can ignore that doubt and still convict the accused, as in . . . *To Kill a Mockingbird*."[43] This same charge, with racial overtones, was the subject of much discussion in *United States v. Robinson*.[44] On appeal, the defendants argued that the jury foreperson had accused two African-American jurors of jury nullification based on the race of the defendants. Though the 6th Circuit affirmed the trial jury's verdict, one dissenting judge made her feelings about the matter plain, quoting *Mockingbird* in observing that

> [a]mong the most crucial requirements for fairness in judicial proceedings is that racial bias not infect a jury's deliberations and decisions. This ideal has been historically difficult to attain; as one of the most compelling literary depictions of the criminal justice system put it, "[t]he one place where a man ought to get a square deal is the courtroom, be he any color of the rainbow, but people have a way of carrying their resentments right into a jury box."[45]

A more uplifting quotation about juries comes from Atticus's closing statement, in which he attempts to inspire the jurors to take their responsibilities seriously. This quotation was central to *Matarranz v. Florida*,[46] in which the defendant was appealing the makeup of the jury because he had

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2013) at *18.

[41] *See supra* note 16 and accompanying text; Carr v. Fort Morgan School Dist., 4 F. Supp. 2d 998, 1004 (D. Colo. 1998); Hagopian v. Justice Admin. Commission, 18 So. 3d 625, 642 (Fla. Dist. Ct. App. 2009); Ramos v. Lamm, 713 F.2d 546, 558 (10th Cir. 1983).

[42] No. 2006-CA-0162, 2007 WL 475338 (Ohio Ct. App. Feb. 12, 2007).

[43] *Id*. at *4.

[44] 872 F.3d 760 (6th Cir. 2017).

[45] *Id*. at 782 (Donald, J. dissenting). *See also* California v. Housh, A138873, 2015 WL 1982695 (Cal. Ct. App. May 1, 2015) at *6.

[46] 133 So. 3d 473 (Fla. 2013).

been forced to use a preemptive challenge to excuse a juror who should have been excused for cause. So relevant was this quotation to this case in the judge's mind, that it formed the opening paragraph of his opinion:

> In his final remarks to the jury, Atticus Finch, the heroic protagonist of Harper Lee's iconic novel, *To Kill a Mockingbird*, proclaims "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." . . . The case before us today addresses the very heart in which Atticus's faith roots – the integrity of our courts, the soundness of our juries, and the men and women who "make [them] up."[47]

Over the years, *Mockingbird* has meant different things to the judges and attorneys who have read it. Different parts of the novel have resonated with judges, who have invoked it for different reasons as a reflection of the varying nature of the cases before them. In citing *Mockingbird*, they have found a way not only to heighten the impact of their writing, but also to tap into a shared experience that will convey their meaning in a deeper way for their readers. Despite the lack of uniformity in the way courts have cited *Mockingbird*, one thing is clear: because of its popularity, it has entered the collective consciousness of those who write the opinions within our system of justice just as much as it has of those who encounter it, and judicial citations to Harper Lee's signature work will not be disappearing anytime soon.

[47] *Id*. at 476.