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ETHICS

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by Jennifer Bryon Owen

THE
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Claiming the number one spot in the American Film Institute's "Top 50 Movie Heroes of All Time" is a lawyer—Atticus Finch. That is, Atticus Finch as played by Gregory Peck in the film version of *To Kill a Mockingbird*.

Although possibly enhanced by the movie version, it was the book that influenced untold numbers to enter the legal profession. The aura cast by the fictional Atticus—a commitment to justice, especially for the downtrodden; ethical behavior; wise counsel; consistent example; and courage—provided inspiration worthy of a career.

Even though last year's release of a second book, *Go Set a Watchman*, reveals an unsavory side of the Atticus who has inhabited the literary world for almost 60 years, his reputation seems unsullied. He remains an example of ethical conduct. While attorneys may be talking about the controversy surrounding the new book, they don't seem to have it in their nightstand reading-stack.



Christine Koehler

Christine Koehler (J.D. '95), who has read *To Kill a Mockingbird* numerous times, said the book helped her decide she wanted to be a lawyer for the underdog: a criminal defense attorney who goes up against great odds.

Along with a partner, Koehler has a firm in Gwinnett County, Georgia. A significant part of her practice stems from the eight years she served on the state bar's investigative panel, with one of those years as its chair.

The aura cast by the fictional Atticus—a commitment to justice, ethical behavior, wise counsel, consistent example, and courage—provided inspiration worthy of a career.

"I am no longer on the panel, but I represent lawyers who are accused of ethics violations by the state bar or who have complaints filed against them," Koehler said.

Her cases include everything from lack of diligence on a case, to dishonesty to the tribunal, to violation of escrow accounts by mingling personal funds with escrow funds.

She has represented lawyers who have disgruntled clients. In many cases, those unhappy clients are using social media to air their grievances.

In Koehler's view, the impact of social media can create huge ethical issues, both for attorneys and clients. For example, an attorney runs the risk of breaching confidentiality when using social media as a self-promotion tool.

"It's tempting to post about our successes and interesting cases we've had, especially if you're in private practice and part of your job is a little bit of self-promotion," Koehler said. "One of the hardest things to do is strike a balance between letting folks know you do a good job and maintaining the privacy or confidences of your client."

Conversely, when a client uses social media to let the public know they're dissatisfied with their attorney, it is natural for the

Watchman: was Harper Lee "humbled and amazed" or exploited? by Mary Radford

In February 2015, Nelle Harper Lee stunned the literary world by announcing that she would be releasing for publication a second novel, *Go Set a Watchman*. The author stated in a press release that she was "humbled and amazed that this will now be published after all these years." Almost immediately, speculation began as to whether the decision had been an attempt by her lawyer and others to exploit the reputation of a vulnerable older woman who was in ill health and resided in an assisted living facility.

When *Watchman* was published in July 2015, the speculation turned to certainty in the minds of those who believe the novel portrays the iconic Atticus Finch not as the progressive lawyer who had eloquently defended a black man accused of rape in *To Kill a Mockingbird* but rather as a segregationist and, in the minds of many, a racist. Many were convinced that Harper Lee

would not, of her own free will, publish a book that would so shatter the heroic status that Atticus Finch (who was modeled after her own father) enjoyed among most of the readers of *To Kill a Mockingbird*.

Those who suspect that Lee was one of the many older Americans who are exploited by their families, caregivers and trusted advi-



sors question why the author would release this novel after refusing to publish anything for 55 years. During most of those years, Lee's business affairs had been handled by her sister and lawyer, Alice Lee. In 2007, Harper Lee suffered a stroke that left her nearly blind and nearly deaf, and she moved to an assisted living facility.

In 2011, Alice Lee retired (at age 100), and Tonja Carter, a young lawyer in Alice Lee's firm, took over the handling of Harper Lee's estate. Soon after this "transfer of power," the usually reclusive Lee became involved in a series of lawsuits and disputes that were spearheaded by Carter. Many who knew the author opined that such actions were not characteristic of her, particularly the suit in which she accused the small museum in her hometown of Monroeville, Alabama, of exploiting her name and fame without paying her compensation.



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attorney to want to defend the handling of the case.

"Again," said Koehler, "you have to be careful to do that in a way that doesn't violate bar rules or compromise the client's privacy." She recommends that attorneys not respond directly to a negative posting but try, instead, to make numerous positive ones available.

Before social media, controlling client communication with the public was easier because the attorney was the go-between in releasing news.

"Now they control their own exposure," Koehler said. "It's important early on to make sure you're both on the same page about posting information about the case on social media. Ultimately, it is the client's decision, but if they are doing it in my cases, usually it is against legal advice."

Noting how tight-knit the legal community can be, Koehler believes that with modern technology, the discovery of ex parte communications, in particular those between judges and prosecutors, have come to light, and significant fall-out from that is being seen.

"It is important to remember how inappropriate a casual conversation can become when one of the parties isn't present," she said. "I don't know that the ex parte conversations are happening more frequently; in fact, I doubt it. But the discovery of them is happening more frequently, and we are seeing other members of the legal community take it very seriously."

"I remind folks that they are working within a community, and it is important to try to get along with your peers, but it cannot be at the expense of the client and of the bar rules,"

Koehler continued. "It's hard to remember sometimes, especially if you are going back with that same prosecutor and judge on the next case."

Similarly, the client must remain the sole focus of accountability courts. Previously, a team environment designed for the benefit of the client did not exist.

"Good and bad come with accountability courts," Koehler said. "It's good that everybody is working toward a common goal. It's bad in that sometimes folks forget they remain an advocate for the defendant."

Koehler foresees the ethics of government attorneys and prosecutors coming under a microscope, a move aided by media coverage of exonerations of people wrongly convicted. "There's been a shift," she said. "People want to know if this is a win-at-all-costs prosecutor. Behavior of unethical prosecutors will not be ignored."

Change within the system will come much quicker if those on the inside take action, Koehler said.

"Nobody wants to file that unpopular motion or file to recuse that judge, but sometimes that's what is appropriate," said Koehler. "You're sick to your stomach doing it, but you do it."

A quote from Atticus Finch in *Mockingbird* helps her through the difficult times: "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 you see it through no matter what. You rarely win, but sometimes you do."

Alice Lee died in 2014. Less than three months later, Carter announced on behalf of Harper Lee that Carter had "found" the *Watchman* manuscript in a safe deposit box and that her client wished for the book to be published. Competing accounts indicated that the manuscript had not been fortuitously "found" in 2014 but rather discovered by Carter and two others in 2011. Some speculated that Carter had purposely delayed acting on the manuscript until after Alice Lee's death. The Alabama Securities Commission and Department of Human Resources received an anonymous report that Harper Lee was the victim of "elder abuse," but upon investigation, it closed the case without taking any action.

HarperCollins Publishers sold over one million copies of *Watchman* in the first week of publication. Apparently no one at the publishing house ever spoke directly to Lee

about her desire to have the manuscript published, but rather worked through Carter.

The mystery surrounding the publication of *Watchman* is a vivid example of the difficulty our society faces in discerning whether an individual of advancing age and decreasing mental and physical abilities is acting according to her own free will or is being exploited by others for their own profit.

There may be an entirely different side to the *Watchman* publication story. Supporters of Carter claim that she was Lee's truest friend and would never do anything to hurt her. One of the author's literary agents, Andrew Nurnberg, recounted that he had spoken to Lee about the book and reported that "she is both delighted and enthused that it will now be published." In an interview with the *New York Times*, Carter reported that Lee was "hurt and humiliated" that

she was being forced "to defend her own credibility and decision making." Through her publisher, Lee issued a statement that she was "happy as hell with the reactions to *Watchman*."

The true story behind Lee's decision to publish *Watchman* may never be discovered. She died in February. Ten days after her death, at the request of Carter, who had become the executor of Lee's estate, the probate judge sealed the probate records so that the contents of her will cannot be publicly disclosed. We will never be able to "climb into the skin" of Harper Lee, which, according to Atticus Finch, is the only way "to really understand a person."

Professor Mary Radford teaches in the areas of Wills, Trusts and Estates, and Elder Law. She has written numerous articles and books, including Georgia Guardianship and Conservatorship.