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PREFACE

Over the last forty years the law and literature movement has emerged as one of the most fruitful examples of interdisciplinary study. Courses in law and literature are now taught in both law schools and in departments of literature across the country, books and articles on varied aspects of the field continue to increase, and journals such as *Law and Literature* (formerly *Cardozo Studies in Law and Literature*) and the *Yale Journal of Law and Humanities* attest to its importance.

Midwesterners have been prominent in law and literature studies from the beginning. The uncompromisingly naturalistic treatment of human institutions, such as law and finance in novels by Midwesterners Theodore Dreiser and Frank Norris, broke new ground, so much so that these novels remain relevant today. The book that more than any other initiated the contemporary law and literature movement, *The Legal Imagination* (1973), was written by John Voelker (under his pen name of Robert Traver) before he became a justice of the Michigan Supreme Court. Scott Turow, of course, is himself a Midwesterner, and the Kindle County that is the setting for many of his novels bears a close resemblance to Cook County, Illinois. The legendary Midwestern lawyer Clarence Darrow was both an author himself and the model for the fictional lawyers of many successful novels and plays, as was his famous adversary, William Jennings Bryan—born, raised, and educated in Illinois.

The essays selected for this issue of *Midwestern Miscellany* draw on this rich heritage. Two contributions explore the life and achievements of Michigan's best-selling author, Supreme Court justice, and fly fisherman extraordinaire John D. Voelker. Philip Greasley interprets *Anatomy of a Murder* as a wise comedy, dramatizing Voelker's complex, ironic view of the law and human life. Frederick Baker, Jr., a Commissioner of the Michigan Supreme Court where Voelker was once a justice, offers a portrait of Voelker that only a longtime personal friend and fellow lawyer could provide. His thoughtful reminiscence will surely serve as an invaluable resource for all future scholars and critics writing about John Voelker. Nancy Bunge makes a case for Scott Turow as not only a writer of bestsellers but also an author whose insights into both law and human life make his work permanently valuable, while James Seaton contends that at least one Turow novel, *Presumed Innocent*, conveys a mixed message about the principle of equality before the law, as does Harper Lee's novel set in the American South, *To Kill a Mockingbird*. Charles Palmer, a professor at Cooley Law School in Lansing, examines the difference between the historical Scopes trial, where Darrow confronted Bryan, and its portrayal in *Inherit the Wind*. Mae Kuykendall, a professor in the Michigan State University College of Law specializing in corporate law, argues that the depictions of the working of the stock market and the commodity exchange by Dreiser and Norris help us understand why the contemporary turmoil in financial markets is so difficult to grasp and thus to control through legal regulation.

CONTENTS

Preface		4
Irony, Comedy, and Ethical Ambiguity in <i>Anatomy of a Murder</i>	Philip A. Greasley	6
Document: An Anatomy of <i>Anatomy of a Murder</i>	Frederick M. Baker, Jr.	27
Equality before the Law in <i>Presumed Innocent</i> and <i>To Kill a Mockingbird</i>	James Seaton	42
The Legal Thriller's Socially Redeeming Value: Scott Turow's <i>Reversible Errors</i>	Nancy Bunge	52
<i>State of Tennessee vs. John Thomas Scopes:</i> Competing Narratives and Metanarratives	Charles Palmer	59
Early Midwestern Writers on Financial Panic: Contemporary Implications	Mae Kuykendall	70

IRONY, COMEDY, AND ETHICAL AMBIGUITY IN *ANATOMY OF A MURDER*

PHILIP A. GREASLEY

In *Anatomy of a Murder* (1958), John Donaldson Voelker, writing as Robert Traver, presents the struggles of Paul Biegler, an introspective man confronting a world in which knowledge is always incomplete and imperfect and people are driven by motives of personal gain and self-preservation rather than the selfless pursuit of truth and justice.¹ Our protagonist's dilemma is made more difficult by his role as an attorney in a judicial system where opposing lawyers seek not to uncover the full, unvarnished truth, but only those elements that advance their positions. In such a world, cynicism and irony are to be expected as the claims of logic, truth, and justice clash with individual and social interests.

This essay considers the novel's protagonist and his environment in three sections. The first follows Biegler's ongoing confrontation with community moral and ethical lapses, including his own, and moves from isolation to social integration. The second views this movement in terms of dramatic and comic structures. Section three reasserts the larger enveloping ironies and uncertainties encompassing life in the novel—and perhaps beyond—from the author's perspective. For John Donaldson Voelker, the courtroom was his professional home, his literary platform, and a microcosm in which right and wrong confronted each other. In *Anatomy of a Murder*, he portrays life in its full complexity and ambiguity through the lens of one trial.

That Michigan Upper Peninsula murder trial allows Voelker, through his narrator-protagonist, Paul Biegler, to probe the discontinuities between the court's idealistic striving for fair and impartial justice and the self-serving motivations operating in the novel and in

our lives: the urge to save face; settle scores; gain recognition, vindication, or advantage; achieve healing; and advance personal hopes and dreams, whether for sex, power, control, or escape. The novel makes clear the absence of candor and certainty in criminal trials. More centrally, it recounts Biegler's thoughts, actions, and experiences as he attempts to overcome his own social alienation and to confront the moral and ethical morass surrounding him. The novel chronicles his circuitous path toward successful social reintegration.

Voelker's literary protagonist borrows heavily from the author's experience as a multiterm elected Marquette County prosecutor in Michigan's Upper Peninsula, as well as from his subsequent work as a defense attorney. The novel's plot, too, bears great resemblance to a case—*People v. Peterson*—that Voelker defended in 1952.² His experience with the Michigan court system was extensive; in fact, Voelker was a sitting associate justice of the Michigan Supreme Court when *Anatomy of a Murder* was published. The novel explores Paul Biegler's personal efforts to endure and prevail with honor and dignity in a world of cynical self-interest, ironic outcomes, personal loss, multilayered ethical complexity, and moral ambiguity. The book captures his idealism and its converse, cynicism, regarding people and events around him, as well as his sense of irony in a multiply framed narrative. Ultimately, the author moves his protagonist from ironic isolation to a belated comic resolution that reaffirms the court, democratic forms, the natural order, and the Divine plan.

Biegler's cynical early view of Michigan's political hierarchy is clear from the novel's single-page prologue onward. There he refers ironically to the historical events and political posturing surrounding the inclusion of the UP in Michigan rather in Wisconsin or Canada:

Nobody had wanted to adopt the remote and raffish U.P. and Michigan was at last persuaded to take in reluctantly, coveting instead, almost to the brink of civil war, a modest parcel of land along the Ohio border known as the "Toledo strip." This wry political fairy tale unfolded in all of its lovely irony when large copper and iron deposits were shortly discovered on the U.P. rivaling in richness any then known on the hemisphere. The unwanted ugly duckling had turned into a fabulous golden-haired princess. The resourceful politicians in lower Michigan were equal to the strain; they quickly congratulated themselves on their wisdom and shrewd foresight. *They'd* wanted the U.P. all the time. Of course they had. (Traver, prologue, n.p.)³

Against this tone of alienated cynicism, imagine a beautiful woman, Laura Manion, the wife of Army lieutenant Frederic Manion, whose rape and brutal beating by a vain older man, bartender Barney Quill, provokes her husband to seek him out in his bar and shoot him to death. The moral and legal cases are clear but diametrically opposed. Morally, Manion is justified in protecting his wife and punishing her rapist and attempted murderer. Legally, Manion is guilty of murder.

This moral-legal dichotomy is only the first ironic perspective in a novel full of the questionable, often contradictory legal, moral, ethical, and political values marking Biegler's world. Complications begin very early. We soon find that Laura, although clearly the victim of rape, may have projected sexual availability to Quill. After first meeting her, Biegler reports that "her femaleness was blatant to the point of flamboyance; there was something steamily tropical about her" (Traver 67). He quotes his lawyer friend, Parnell McCarthy, "Some women radiate sex" (Traver 67). Her ongoing sensual manner while Manion is in jail awaiting trial forces Biegler to direct her sternly to modify her dress and restrain her behavior until after the trial so as not to prejudice the town and jurors against her husband.

Similarly, Laura's previously assumed virtuous avenger, Lieutenant Frederic Manion, is arrogant, self-centered, and massively jealous. Biegler refers to Manion's uncontrolled jealousy as "an open cancer" (81). The lieutenant has a history of assaulting men who have come near his wife, as well as physically and emotionally abusing her, so much so that Laura fears him. The two have discussed separation. In some ways, we sense that she would be happy to be free of him. Adding further to the moral ambiguity, both have been married before, and they maintained a romantic relationship while Laura was still married to Manion's friend and fellow officer. And on the night of the shooting, prior to going out after Laura's assailant, Manion forced his wife to swear on a rosary that her sexual encounter with Quill was not consensual. Had her answer been less convincing, Laura, rather than Quill, might have been Manion's victim.

But this is barely the beginning of the moral and ethical fog permeating the volume and serving as the protagonist's basis for ironic commentary. Biegler is the county's former multiterm prosecuting attorney, whose pneumonia-scarred lungs kept him out of World War II. Two years earlier, at forty, Biegler was defeated for re-election as county prosecutor by Mitch Lodwick, a local football and war hero newly out of law school. On losing, Biegler felt deserted by the com-

munity he had served so effectively. He repeatedly fantasized about avenging his loss to the younger, less-experienced but more socially attractive lawyer.

On Biegler's last day in office as prosecuting attorney, McCarthy, a down-on-his-luck lawyer, told him that he needed to win his first big case to establish his name and become financially successful. Unfortunately, in the two years since losing office, he still hasn't gotten any big cases and has had to scrape by with wills, occasional divorces, and the meager fees they generate. He is so frustrated with his struggling law practice that he has announced his candidacy for Congress, only to find that his nemesis, Lodwick, is running for Congress against him in the district strongly supporting Lodwick's party. Biegler needs a big case, a big win, and a big paycheck. He can't afford the luxury of limiting himself to virtuous clients.

The moral, ethical, legal, and political ambiguity continues. Biegler recognizes Manion's guilt under Michigan statutes and strongly dislikes his arrogant and contemptuous potential client, prompting him to mull over his underlying motivations and confront his moral and ethical dilemmas:

It was . . . sorely tempting for me to let this cool bastard boil in the oil of his own lardy ego. Why should I barter my years of experience to save this Mr. Cool? . . . Was it because I saw a chance to beat this case and at the same time to beat Mitch Lodwick? . . . Or because it was my big chance to win a big tough case and finally knock that garrulous old fraud . . . Amos Crocker from his pedestal as the leading criminal defense attorney of the county? . . . Was it because I was running for Congress against Mitch and this was my opportunity not only to beat him, but to demonstrate by dramatic contrast our relative capabilities? Or . . . because [decades earlier] some character had made a drunken pass at my . . . sister . . . and . . . my father had beaten him within an inch of his life and then dared the authorities to arrest him? Or was it because a 4F could now bask in the reflected glory of defending a genuine military hero . . . And what did any of this have to do with the guilt or innocence of Frederic Manion? Or this elusive thing called Justice? (32-33).

Biegler's strong awareness of the limitations of "legal ethics" adds further to his cynicism as he works with Manion. He considers the legal code that forbids attorneys from assisting their clients in concocting false statements to rebut charges against them but condones and supports their use of devices such as the Lecture:

And what is the Lecture? [Biegler asks himself rhetorically] . . . an ancient device that lawyers use to coach their clients . . . and the lawyer can still preserve the face-saving illusion that he hasn't done any coaching. For coaching clients, like robbing them, is not only frowned upon, it is downright unethical . . . Hence the Lecture, an artful device as old as the law itself, and one used constantly by some of the most ethical lawyers in the land. "Who me? I didn't tell him what to say," the lawyer can later comfort himself. "I merely explained the law . . ." It is a good practice to scowl and shrug here and add virtuously: "That's my duty, isn't it?"(35).

The ironies increase again when Biegler, having overcome his aversion to the defendant and agreeing to take the case, asks for a retainer. His arrogant client responds that he can't pay until after he is acquitted and that Biegler must take the calculated risk that Manion will be acquitted and pay him following the trial. Manion even goes so far as to smirk that, with the defense strategy now devised, he doesn't need Biegler and can retain a less qualified, less expensive lawyer. In this atmosphere of moral and ethical fog, Biegler begins his preparation to defend for mixed and ethically imperfect reasons a man he detests and believes to be guilty. He will invest weeks seeking Manion's acquittal and remain uncompensated unless Manion wins.

Politics enters the ethical matrix as well. The county sheriff, Max Battsfore, has a jail office available for Biegler's use in conferring with Manion because Battsfore is constantly out on highway patrol, yet he never arrests anyone or writes a ticket. Why not? The sheriff is compensated by the mile for highway patrols, and the sheriff's position is elected; catching criminals and writing tickets would alienate the guilty, their families, and friends. In time, those inevitably rising negative numbers would undermine the sheriff in his recurrent quest for re-election.

In speech and manner, Battsfore is a consummate politician, joking with and courting each individual he encounters, Biegler included, although the two men are of opposing political parties. In hearing Battsfore's banter, Biegler thinks: "The sheriff . . . had developed a boisterous and irresistible gift for camaraderie; he made one feel . . . so terribly wanted. We might belong to opposite political parties, his attitude seemed to say, but real friendship was something bigger, finer, than mere party"(56).

Yet political Battsfore remains morally and ethically complicated. He offers the defense repeated accommodations prior to and during Manion's trial, based partly on personal friendship and partly on his calculation of the political cost to Biegler if his client were to escape while in his recognizance. These acts of generosity to the defense also reflect Battsfore's unconscious attunement to community opinion, which at many stages of the proceedings sees the case against Manion as uncertain because of Laura's rape and the ill feeling of many community members for Quill. Yet when we're almost ready to write off the sheriff as an amoral, vote-counting automaton, he offers himself unsolicited to the defense as a witness to rebut prosecution claims and substantiate Manion's distraught emotional state in the days surrounding Quill's death. Battsfore does so out of distaste at the truth twisting being done by the prosecutorial hired gun, Claude Dancer. The fact that Dancer has come from Lansing, the distant, disliked center of state political control, probably makes Battsfore's moral act easier, but on the other hand, Biegler reminds us that a guilty verdict achieved by Dancer, working with Lodwick, would do much to ensure the congressional seat for Lodwick, a member of Battsfore's party and Biegler's legal and political opponent.

Further issues of uncertain justice and questionable ethics continue to arise. Biegler sees a jury trial as an uncertain instrument of truth and justice. He explains his views to Manion in language reflecting his socially detached cynicism:

"Juries, in common with women drivers, are apt to do the damndest things. Gambling on what a jury will do is like playing the horses. The notorious undependability of juries, the chance involved, is one of the absorbing features of the law. That's what makes the practice of law, like prostitution, one of the last of the unpredictable professions—both employ the seductive arts, both try to display their wares to the best advantage, and both must pretend enthusiastically to woo total strangers. And that's why most successful trial lawyers are helpless showmen; that's why they are about nine-tenths ham actor and one-tenth lawyer. But as things now stand in your case, all the law would be against you. The judge would be virtually forced to instruct the jury to convict you . . . A jury would find it tough to let you go; they'd have to really work at it. Legally your situation presents a classic one of premeditated murder" (39-40).

Biegler's instruction of his client continues to diverge from the realm of truth and justice as he explains something potentially much more important than law and justice to jurors:

"One of the mute unspoken reasons you are being prosecuted is to save face, community face Even jurors have to save face . . . The jury . . . might simply be dying to let you go on your own story, or because they have fallen for your wife, or have learned to hate Barney Quill's guts, or all of those things and more. But if the judge—who's got nice big legal face to save, too—must under the law virtually tell the jurors to convict you, as I think he must now surely do, then the only way they can possibly let you go is by flying in the face of the judge's instructions—that is, by losing, not saving face You and I would be in there asking twelve citizens, twelve total strangers, to publicly lose their precious face to save yours. It's asking a lot and I hope you don't have to risk it"

"You mean you want to find a way to give the jurors some decently plausible legal peg to hang their verdict on so that they might let me go—and still save face" (42-43).

Ironies and cynicism continue to multiply. Since Manion's only possible exculpatory and face-saving defense is insanity, Biegler and Manion, unsupported by any psychiatrist's diagnosis, prepare an insanity defense. Biegler tells him: "I think maybe we're finding a way to save somebody some face. You see, saving face is one of the most important and least spoken of 'defenses' known to criminal law I'll add only this: if the jury really wants to find you insane, wants to let you go, all hell won't stop 'em" (48).

The subsequent diagnosis provided by an Army psychiatrist, Dr. Matthew Smith, adds to rather than dispels the ironies and issues of morality. Smith examines Manion and finds him insane on the basis of "irresistible impulse" (338). Yet the dilemma of divergent medical and legal standards for insanity parallels the earlier dichotomy between moral and legal justification. Biegler finds the doctrine of irresistible impulse described in long discredited, century-old legal sources: "If the defendant was not capable of knowing he was doing wrong in the particular act, or if he had not the power to resist the impulse to do the act . . . that would be an unsound mind (201). An annotation on irresistible impulse provides further ironic support to their position: "Since then the 'right and wrong' test enunciated by that case, through condemned as being unscientific and based on fal-

lacious principles by the overwhelming weight of medical authority, has nevertheless been tenaciously adhered to by a great many courts" (201). The annotation establishes the still current though long discredited legal position in Michigan: "[T]he fact that one accused of committing a crime may have been able to comprehend the nature and consequences of his act, and to know that it was wrong, nevertheless if he was forced to its execution by an impulse which he was powerless to control . . . he will be excused [ellipses in original]"

(202). Therefore, in Michigan, Captain Smith's expert medical diagnosis can serve as a legal defense.

As the trial begins, areas of moral and ethical ambiguity continue to pile up. Biegler strongly and cynically conjectures about the assignment of Dancer to assist Lodwick. Is it because of Lodwick's inexperience and the seriousness of the case? Or is it because Lodwick is running for Congress under the state's attorney general of the same party, the one opposing Biegler in his run for Congress? Was the intervention undertaken because an acquittal would reflect badly on Lodwick and, therefore, diminish his party's vote and political power? Whatever the reason, it quickly becomes clear that Dancer, not Lodwick, is in charge of the prosecution. The opposing lead attorneys, Biegler and Dancer, rapidly size each other up and turn the legal case into a contest of personal wills and egos rather than a full, logical presentation of evidence supporting guilt or innocence.

Dancer, perhaps the best prosecutor in the state, opposes seasoned prosecutor turned defense attorney Biegler, quietly assisted by McCarthy. The prosecution attempts to keep all reference to Laura's rape and beating out of the trial, along with her successful polygraph test and the photos taken by the police photographer showing her bruised and beaten on the night of her rape and Quill's death. On the other side, the defense successfully keeps the prosecution psychiatrist from examining Manion and plays to strong UP prejudice against downstate control by repeatedly emphasizing Dancer's role as an outsider from Lansing. Local politics and in-state rivalries take center stage. Even more important, Biegler works throughout the trial to shift the focus from defending the acknowledged shooter, Manion, to prosecuting the dead man, Quill, for rape. In reacting against Dancer's excesses in attempting to limit the focus of the case, Biegler shows great candor in recognizing and admitting his own tendency toward ethical opportunism at trial:

"[A] lawyer in court trying to win a big case is like a newspaper man sitting on top of a big scoop—he's not to be trusted. Never. At such times a lawyer would betray his own grandmother. So help me, I've done it myself. In fact I used to be quite a little bearcat at the business. . . . We lawyers quickly develop a protective scar tissue to take care of that . . . It's all rather simple. It is our lofty conviction, hugged so dearly to our hearts, that our cause is basically just and right and that those on the other side are just a pack of lying and guilty knaves It's merely the same old dilemma of man in a new guise: that supposed noble ends can never justify shabby means" (93-94).

As the trial proceeds, the prosecution introduces its own psychiatrist, who categorically rejects the insanity diagnosis, reinforcing Biegler's own privately expressed frustration at the absence of clear-cut scientific psychiatric standards. Clearly, Biegler's life and work in the absence of clear, undisputed facts weigh heavily upon him. Just as the case is nearing its conclusion, with Manion appearing not too seriously damaged by the prosecution, Dancer calls a surprise witness, Duane Miller, Manion's fellow inmate at the county jail. Miller's testimony completely undercuts Manion's testimony that he went to Quill's Thunder Bay Inn to "grab . . . and hold" him, as well as Manion's amnesia surrounding the killing (345). More importantly, Miller completely negates Biegler's continuing efforts to establish a likeable defendant and give the jury a legal pretext upon which to save face while acquitting him. Miller testifies that Manion told him: "'You've got yourself a bet, Buster. I've already fooled my lawyer an' my psy—; I can't say it but he meant his brain doctor—'an' I'll bet you my pet lüger against this awful swill they call coffee here that I'll fool that bumpkin jury too an' beat this rap all the way'" (385). Miller's testimony undercuts everything Biegler has worked for throughout the trial.

The effect on Biegler, and on the jury, is devastating. Muttering to himself as he prepares to cross-examine Miller, Biegler thinks: "'Oh Lord, oh Lord Can this egotistic bastard of a soldier man of ours have possibly been so stupid?'" I choked back a sudden impulse to retch and again closed my eyes. Were all Parnell's and my weeks of work and worry to be in vain? Was our case shooting straight up through the shattered courtroom skylight?" (389).

Biegler cannot disprove Miller's devastating testimony, so his only possible recourse is to destroy Miller's credibility by attacking his previous criminal record. If Miller's testimony, true or false, is

believed, the jurors and the court will see Manion as a murderer who has added significantly to his crime by arrogantly ridiculing and insulting them. The case will be lost. So with this pivotal issue of truth inescapably uncertain, Biegler attacks Miller's credibility with his fullest force and hints at unethical acts by outsider Dancer to subvert the truth with a purchased Judas-like witness. Sheriff Battisfore and Detective Sergeant Julian Durgo voluntarily assist Biegler in rebutting Miller's devastating testimony. They take the stand for the defense, the former supporting Manion's emotionally confused, devastated state in the first week following the shooting; the latter testifying to the prosecution's effort to suppress critical evidence helpful to the defense.

Ultimately on a Friday evening in late September, the trial ends. The jury finds the defendant innocent. The sought-after outcome has been achieved. All sides shake hands. The opposing attorneys, at Judge Weaver's suggestion, prepare and sign papers to allow Manion's release despite Michigan state law requiring those found innocent due to insanity to be confined in a mental hospital. Manion asks Biegler to prepare a promissory note for payment due to Paul Biegler for his defense. They agree to meet at the Manions' trailer between ten and eleven the next morning to sign the papers.

Victory now in hand, many ironies and ambiguities remain. Late in the trial, Dr. Smith had talked with Biegler, describing what he called Manion's "dissociative reaction":

It is quite possible that the Lieutenant remembers more about the shooting than he admits. He may in fact remember all about it, have clearly known right from wrong that night, and think he is pulling the wool over your eyes and mine by now saying he doesn't . . . It wouldn't make any difference—in my opinion he still couldn't help himself; he was nevertheless irresistibly impelled to do what he did and was therefore medically insane" (337).

Based on Dr. Smith's statement, it is likely that Miller's account of Manion's mocking statements in the jail was entirely true; that Manion himself felt he was totally sane and was fooling his attorney, the jurors, and the community—yet according to Dr. Smith, Manion was nonetheless insane, with an insanity permanently rooted in his personality. The ironies are all the stronger because the attorneys, at the suggestion of Judge Weaver, release Manion on the grounds that he is now sane and should not be confined in a mental hospital.

Although Biegler has relied on Dr. Smith's diagnosis for the defense, he now ignores that same medical expertise in concurring with Manion's release. The moral, ethical, and legal fog grows even thicker the next morning as Biegler and McCarthy arrive at the Manions' trailer and are greeted by the trailer park owner, who relays to them a disturbing report:

"[T]hey pulled out last night about three A.M. Seems like they was in a kind of a hurry . . . the man leaned out an' tole me if anyone comes lookin' for him to tell 'em he'd had an ire—what the hell—irresistible impulse to get the hell out of here. Said you'd understand . . . [T]he woman called back for me not to deliver the message I jest now delivered. Said that was too cruel, I think she said. I kinda think mebbe she was bawlin' some . . . Oh, yes—he was a kind of a sassy fella—he also called me Buster" (434).

Manion's use of the term "Buster" underscores his coldly cynical derision of Biegler, the jurors, and the entire community. Manion remains hostile, jealous, and perhaps insane, and he's now at large in the community.

After many dark musings by Biegler, McCarthy asserts the moral equivalence of Manion's and Biegler's motives and the true justice that was delivered, saying, "In a way, boy— . . . the Lieutenant used you and you used him. He got his freedom and you got whatever it is you've got . . . Maybe . . . in a certain sense you two are just about square. Maybe . . . this is a kind of poetic justice" (435). McCarthy continues to assert a larger moral outcome with his view of Manion being inescapably tortured inside himself: "Don't you see?— he's gone to prison anyway, locked away forever in the squalid prison of himself" (435). And Laura, as marked by her tears as the couple left the trailer park, appears to have begun to reap the harvest of Manion's insanity. She, too, will remain a prisoner of her husband's jealous rages and her own sexuality.

The truth and justice delivered by this jury remain massively uncertain. Manion has been acquitted. Did that verdict reflect his temporary insanity induced by Laura's rape? Or was it the jury's sense of the relative guilt of Manion and Quill? Or was it the inescapable, enduring insanity that Dr. Smith posited? To what extent was Manion's acquittal an index of local sectionalism, lust, or sympathy for rape victim Laura, or of its more deep-seated hatred of Quill? Was the verdict driven by Biegler's inspired "prosecution" of

the shooting victim? Or by local distaste for downstate control of UP courts? Or was there some larger force that governed the jury's verdict? We will never know the answers.

Anatomy of a Murder—a strong reflection on the moral and ethical ambiguity of law, justice, human nature, and community—can also be viewed as a dramatic literary work. This consideration must begin with a look at the author's consciousness of the dramatic forms inherent in legal proceedings, particularly in murder trials. More centrally, it will consider the dramatic situation, action, and movement of Paul Biegler, as the protagonist of a *literary*, rather than legal, work and consider the novel in light of established forms and elements of the comic genre.

Repeated references to drama and dramatic forms throughout the novel make it clear that Voelker, a literary artist as well as a lawyer and judge, sees the trial and its impact not only from a legal perspective, but from the perspective of classic drama. References range from repeated low-level statements like Biegler's comments on getting the "grease paint" on (231) to Battisfore's call to Biegler to get ready to return to court for "the second act" (296). More central and extended references further establish consciousness of the dramatic focus. Among these are Biegler's statement that "[l]awyers were something like actors . . . their range was limited by the play; they had to take the script as they found it; they dared not change the words or tinker with the dialogue. When they did, they became either ham actors . . . or . . . shysters" (90). Similarly, Biegler asserts that people like trials because of the elements of drama they contain:

[C]riminal trials . . . are the exact opposite of detached scientific determinations . . . that's one of the reasons why in this wonderful laboratory age when everything we touch or buy is pumped full of science and little else—people are so drawn to the hurly burly of a criminal trial. They're starved for real drama and raw emotion, for the purging catharsis of knowing the chips are really down; they recognize that a criminal trial is the real McCoy (159-60).

Voelker has Biegler allude to the literary parallel of the court's attempt to impose ritual, customary and accepted forms. Like the structures of the court, dramatic structures encase raw human experience and emotion and give them form and larger meaning. Biegler makes the literary-legal comparison explicit:

[T]he trial itself was like a well-rehearsed play, a play that was to be played but one night and then carted off forever to storage. But then again, in another and more disturbing sense, it wasn't like a well-rehearsed play at all: inevitably some character would forget his lines or worse yet, someone might sneak in some surprise new dialogue that might change the whole course of the drama (229).

Even Judge Weaver reflects on murder trials as quintessential dramatic pieces and asserts the parallels between the two: "I am endlessly fascinated by the raw drama of a murder trial. . . . It so far supercedes and renders inconsequential both stage and screen productions, and the best products of the novelists" (246).

Beyond Voelker's conscious articulation of the dramatic parallels to legal action, he also structures Biegler's personal situation and movement through the novel to reflect the movement from the ironic mode to a comic resolution. Typical components of comic form present in *Anatomy of a Murder* include the following:

1. Successful action by the protagonist in confronting and overcoming unacceptable social norms in place at the beginning of the drama.
2. Movement by the protagonist toward enhanced status and recognition by social leaders and stakeholders.
3. Movement by the protagonist from social alienation to integration.
4. Affirmation by social stakeholders of the new, more morally acceptable social order.
5. Movement of the protagonist to a larger, more dominant adult (romance) phase of life by the comedy's end.
6. The presence, actual or implied, of a romantic relationship and of a consummated, impending, or implied wedding marking achievement of the protagonist's goals and movement from a phase of alienated youthful rebellion to integrated adult stakeholder status in the community.
7. A closing call to all in society to accept the change in the social order and the protagonist's newly enhanced standing, as symbolically marked by the (wedding) feast in which participants in the drama as well as the audience are invited to participate. (Frye 43-52 and 164-186).

Most broadly, in *Anatomy of a Murder*, the movement for Paul Biegler—and to a lesser extent for Frederic Manion—is from the

ironic mode—marked by alienation, low status, lack of control, defensive stance, and desire to escape—to comic acceptance of and by society and successful re-integration in it. A corollary of the comic movement is enhanced societal recognition and affirmation of the victors: the novel achieves acquittal for Manion and vindication for Biegler.

Biegler starts the novel angry and alienated, deep in the ironic mode, the results of years of negativity brought on by personal and professional reversals. Indeed, Biegler's main reason for defending Manion, whom he hates and considers guilty of murder, is, as he himself realizes, an effort to even his personal score, defeat Lodwick and the town, vindicate his own name, and reprise his father's defiance of legal authority, decades earlier, in beating the man who'd made a drunken pass at Biegler's sister and daring the local authorities to try to take him into custody. In literary terms, Biegler seeks to overturn an unacceptable social order and gain vindication and recognition.

Biegler's life in the ironic mode is marked by his having been voted out of office despite an extremely successful prosecutorial record. He is poor and held in low esteem. His secretary Maida has at times gone unpaid, and even with that, his legal practice can't cover his costs. The leading defense attorney is Amos Crocker, whom Biegler considers a charlatan. Even Biegler's sole friend and confidant, Parnell McCarthy, is an ironic reminder of his former self; McCarthy's wife's death and his resulting alcoholism have destroyed his legal career and reduced him to legal scutwork. And Biegler is ironically alone in another way commonly associated with the early phases of comedy, the youthful phase of life typically marking it. At forty-two, Biegler has still not found a woman to love and share his life with. As such, he remains in unnaturally extended adolescence. In his alienation from Michigan's power centers, Biegler makes ironic references to his "committee to bomb the new bridge over the straits of Mackinac" (335) and more generally to the lack of communication, in the absence of which "our world seems to be running down and dying" (313). In literary terms, if he is unsuccessful in gaining the markers of recognized, dominant adult status in the community, with the prospect of a wife and children for future generations, he will be relegated to a perpetual ironic, isolated state throughout the remainder of his life.

Biegler's only escape and relief from his ironic mode of life and his equally ironic view of the alienating human realm come through

his psychological escape from society and his retreat to the beautiful and fertile "green world" of trout fishing and natural beauty. His early description of Thunder Bay makes clear both his attachment to the natural, nonhuman world as well as his social alienation. He describes the beautiful natural area as having "possessed the simple but incomparable attributes of rural, quiet, fresh sea-washed air . . . and great natural beauty, a beauty *as yet unmarred by man*" [italics mine] (114).

Early in the novel, Biegler reflects strong ironic or precomic alienation from the judicial system and from his own role as an attorney. He undercuts naïve assumptions that jury trials will uncover truth and deliver justice and looks instead to other motivations for jury decisions. Over the course of the novel, however, his opinions change incrementally toward successful comic social integration and fuller awareness of the critically valuable role of law in society, as seen when he discourses on the social function of the law:

"[F]or all its lurching and shambling imbecilities, the law—and only the law—is what keeps our society from bursting apart at the seams, from becoming a snarling jungle. While the law is not perfect, God knows, no other system has yet been found for governing men except violence. The law is society's safety valve, its most painless way to achieve social catharsis; any other way lies anarchy . . . The law is the busy fireman that puts out society's brush fires; that gives people a nonphysical method to discharge hostile feelings and settle violent differences; that substitutes orderly ritual for the rule of tooth and claw. The very slowness of the law, its massive impersonality, its insistence upon proceeding according to settled and ancient rules—all this tends to cool and bank the fires of passion and violence and replace them with order and reason. This is a tremendous accomplishment in itself, however a particular case may turn out. As someone has well said, 'The difference between an alley-fight and a debate is law.' . . . What's more, all our fine Magna Chartas and constitutions and bills of right and all the rest would be nothing but a lot of archaic and high-flown rhetoric if we could not and did not at all times have the law to buttress them, to interpret them, to breathe meaning and force and life into them. Lofty abstractions about individual liberty and justice do not enforce themselves. These things must be reformed in men's hearts every day. And they are reformed by the law, for every jury trial in the land is a small daily miracle of democracy in action" (63).

Ultimately Manion's acquittal has less to do with truth and law than with the achievement of community consensus, symbolized by the jury verdict, about the relative guilt of Quill and Manion and the view that the UP should regulate its own affairs without outside interference. For whatever reason, the verdict reflects community consensus in favor of Biegler's position. In support of that consensus, Manion is freed and allowed to resume his life. Community catharsis, a central attribute of the comic mode, has been achieved. In the process, Biegler's prospects are significantly enhanced, as are those of his friend McCarthy, who himself had found mercy years earlier at the hands of prosecutor Biegler.

The face-saving that Biegler earlier emphasized as so central in criminal trials is, in fact, equally central to comedy. In *Anatomy of a Murder's* comic movement, the jury, characters, and audience are given a basis for putting aside their early negative feelings and accepting the new consensus and revised social order. This consensus includes recognition of Manion as a free man; of Biegler as the champion of community values, the victor in the trial, and the dominant defense lawyer in the county; of McCarthy as a recovered alcoholic, reconstituted lawyer, and partner in a law firm modified to reflect his enhanced stature; and even of Mary Pilant and Biegler as prospective marriage partners who will live together as respected members of society. This achievement of positive social catharsis is the single most central tenet of comedy.

The comically transformative moment for Biegler comes with the announcement of the verdict. In that moment, which seems to continue breathlessly for an eternity, personal vindication, victory, integration with society, a changed social order, and a full comic movement come simultaneously. True to the comic mode, with the announcement of the verdict, all come together to recognize and signal their acceptance of the changed social order:

The dikes of tension had finally broken Laura threw her arms around the Lieutenant and wept. The flushed Lieutenant held out his hand behind her back and I took it Claude Dancer was the first to reach me. He pumped my aching hand and cupped his free hand to my ear. "Congratulations, Bieglers!" he shouted. "You're a worthy opponent, damn you" (428).

Biegler has vindicated himself as a lawyer and established the basis for his future success. And he has found Mary Pilant. McCarthy, has,

through his passion for the Manion case, weaned himself from alcohol and regained his full powers. He is a new man. His personal, legal, and social resurrection is reflected in his achievements in the Manion case and his new role as a fully functioning, socially accepted lawyer.

Biegler's social reintegration, central to a successful comic movement, continues as he is commended by Judge Weaver, reflecting affirmation by the legal order and suggestive of a much larger approbation. Biegler repeatedly expresses admiration of Weaver's integrity, head, and heart. As the trial has moved forward, Biegler has been increasingly won over by Weaver. Despite Biegler's initial concern over the absence of his revered Judge Maitland, he comes to respect and admire Weaver. By trial's end Biegler sees him as "a granite personification of Law" (431). Following the trial, Weaver compliments Biegler's legal strategy: "Congratulations on winning one of the strangest and most oddly brilliant criminal prosecutions I've ever witnessed . . . I've known for years . . . as you doubtless have, that murder juries inevitably 'try' the victim as well as the killer. Did the rascal deserve to be slain? Should we exalt the killer . . . ? But this is the first time in my legal career that I've seen a dead man successfully prosecuted for rape . . ." (431). Weaver's positive remarks reflect the social recognition indicative of a comic movement. This enhanced recognition extends also to McCarthy for his role in the trial, his jury instructions, and his new legal partnership.

In comic terms, Weaver's comments about "Smoky" Madigan following the close of the trial suggest that the judicial wisdom exercised in this case will be generalized to others, marking society's adoption of new and better norms. Early in the novel, at the call of the court calendar at which Manion's murder trial was scheduled, Clarence "Smoky" Madigan had pled guilty to having stolen and drunk a case of whisky from a local saloon keeper while drunk on the Fourth of July. During the trial Biegler had suggested to Weaver the possibility of extending another chance to Madigan. In the aftermath of Manion's acquittal, Weaver indicates that he will adopt Biegler's recommendation: Madigan will get another chance, just as Biegler, as county prosecutor, had given McCarthy many years before. The positive implications of the comic movement will continue to extend.

As the novel nears its close, the comic movement is completed. Biegler, McCarthy, and Maida drive to the celebratory dinner with Mary at the Thunder Bay Inn. As they travel, McCarthy remarks on

the natural beauty, which correlates with his own personal elation at their victory: "Sometimes, lad— sometimes when I behold a sight like this I—I just want to stretch out my arms an' soar like a bird. . ." (436). Biegler catches the same mood, and expands McCarthy's euphoria to a larger statement of cosmic affirmation: "'The unfettered spirit,' I thought . . . the soaring words of William Blake came surging back to me, so Saxonly muscular and bleeding: 'The pure soul shall mount on native winds, disdaining little sport, and cut a path into the heaven of glory, leaving a track of light for men to wonder at'" (436-37).

These final words capture more than release from the alienation that has marked Biegler's recent life and the promise of a celebratory feast commonly marking the completion of the comic mode. They also allude to the promise of renewed purity, resurrection, and the divine ordering of human affairs. Biegler, the man who sought clear meanings and guiding moral light, has found them in this moment. He has surmounted the realms of moral and ethical gray and found a path to pure moral light. Just as the Bible ends in a comic movement with the marriage feast in heaven, *Anatomy of a Murder* presents the possibility of a fuller, better life to come.

Voelker's comic movement takes the protagonist and the community to higher levels of success and happiness than existed earlier in the novel. There remain, however, larger ironies surrounding the case and reflecting the author's more complex view of life. First among these larger ironies is the possibility that Laura and Frederic Manion may in the larger sense have been innocent victims who happened to be at the wrong place at exactly the wrong moment. As vulnerable as Laura was to her sexuality and despite her husband's blind jealous rages, they may ultimately have been completely innocent victims. In the narrator-protagonist's words, "the Manions wandered onto the stage of a Greek drama in which they had no part, indeed a drama upon which the curtain had already nearly fallen . . . innocently casual pawns in some bigger, more mysterious game" (139).

Barney Quill had been the town's leading fighter, shooter, and all-around Alpha male, much to the distaste of the many he never tired of regaling with his prowess and exploits. However, as the years passed, he grew older and more vulnerable to challenge. The arrival of young, vigorous soldiers in the area, particularly the officers, challenged his formerly unquestioned dominance in ways he was increasingly unable to counter. The age difference between Quill and his

beloved hostess, Mary Pilant, and her apparent dating of a young officer in Manion's unit brought Quill's frustration to a head and significantly increased his drinking. His rape of Laura, otherwise incomprehensible because Quill was established and well known in town, made sense only in one of two ways. Either it was a desperate irrational act of retribution against the Army that had robbed him of his local pre-eminence, or it was a conscious act advancing his planned suicide. Within weeks of his death, Quill had taken out a life insurance policy naming his daughter and Mary as beneficiaries. This act suggests contemplation of death and desire to provide for those he loved thereafter. Quill's choice of Laura as his rape victim may have been an irrational choice based on her blatant sexuality, but given Quill's knowledge of Manion's irresistible urge to rapid, violent response to any apparent sexual act toward Laura, she might have been logically and consciously selected.

Second, Quill maintained pistols below and behind the bar. Even Manion, a relative newcomer, was aware of that. After the rape and Laura's escape, rather than hiding or leaving town, Quill chose to remain at his bar, buying drinks for all. He had to have known that Manion would come for him. Quill stood behind the bar, his left arm leaning on it, his right arm behind the bar at the gun port. Either he was awaiting the suicide he sought as delivered by Manion, or he hoped to shoot Manion in "self-defense" when Manion confronted him at the crowded bar, reclaiming by this mortal single combat his earlier dominance. If Quill's intent was the latter, he was tracking Manion's wrong arm in anticipation of his shooting. Manion was left-handed.

Adding to the irony of the situation, late that summer, Quill had come upon Mary with her officer friend on the beach at night. They had been swimming and Mary had gone to change her clothes. Quill had come upon her partially naked and incorrectly inferred sexual activity. Mary, however, later reported to Biegler that the young officer, Sonny Loftus, was terribly homesick for his fiancée back home and spent all his time talking about her. Quill actually had no reason for anger, frustration, excessive drink, rape, or intended suicide.

Finally, one wonders at writer-jurist Voelker's own sense of irony—or something darker—about his own role in successfully defending and freeing Peterson in the real-life murder trial that became the basis for *Anatomy of a Murder*. The very title of the novel, *Anatomy of a Murder*, suggests the author's sense of the correct ver-

dict. If so, did he, like Biegler, take comfort in the law's role as an alternative to never-ending feuds and anarchy? Did he see his role in freeing a man he felt to be a murderer as morally and ethically sound? And what of the further irony that the jurist-author wrote the novel based on his uncompensated defense, that it became spectacularly successful as a book and a movie, and that Voelker successfully withstood a suit by Peterson seeking the profits generated by the novel based in his story? And what would Voelker have thought of the fact that he would have been the prosecuting attorney rather than the defense attorney had he not been voted out of office and thus would probably never have written the book that brought him fame and fortune? All these ironies suggest that Voelker did not consider the trial reflected in *Anatomy of a Murder* a world unto itself but rather a reflection of the moral, ethical, legal, and social ambiguities of life.

Voelker's final literary comment in the novel is both prophetic and amusingly ironic. He provides his own humorous pronouncement on mid-twentieth-century literature and film with a wink and a nod. At mid-novel, Biegler's secretary, Maida, ties the trial to literature one more time, saying, "Let's sell the plot to the movies . . . and all take a trip on the proceeds" (174). Her comment leads Biegler to denounce contemporary literature and movies, saying, "A trip to the monkey house . . . Plot these days is anti-intellectual and verboten, the mark of the Philistine, the huckster with a pen. There mustn't be too much story and that should be fog-bound and shrouded in heavy symbolism, including the phallic, like a sort of convoluted literary charade. Symbolism now carries the day. It's the one true ladder to literary heaven" (174).

Heaven or hell, *Anatomy of a Murder* reflects the incessant uncertainties, ambiguities, and imperfections encountered in court and life. Through his writing and his connection to nature and trout fishing, Voelker has found ways to surmount in moments the inescapable ironies of the human condition. In doing so, he has fulfilled the comic movement and affirmed law, society, and life.

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NOTES

¹See also John C. Helper's "Penman for the People: Justice Voelker (Robert Traver)" *MidAmerica: The Yearbook of the Society for the Study of Midwestern Literature* 6 (1979): 127-40; James Seaton's "Law and Literature: The Case of *Anatomy of a Murder*." *MidAmerica: the Yearbook of the Society for the Study of Midwestern Literature* 30

(2003): 123-33; and William H. Volz's "An Anatomy of the Judicial Writing of Justice John D. Voelker." *Michigan Academician* 36.2 (2004): 129-45.

²For an account of this trial see Frederick M. Baker, Jr. and Rich Vander Veen III. "Michigan Lawyers in History—John D. Voelker: Michigan Literary Justice." *Michigan Bar Journal* 79.5 (2000): 530-33. Web. 24 Feb. 2010. <<http://www.michbar.org/publications>>.

³All subsequent quotations used in this paper are from the 2000 edition of *Anatomy of a Murder* and will be referred to by page number only.

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AN ANATOMY OF ANATOMY OF A MURDER

FREDERICK M. BAKER, JR.

This article was first delivered as a speech to the National Conference of State Supreme Court Chief Justices, on Mackinac Island, in 2008, the fiftieth year after *Anatomy's* publication.¹ In addition to the chief justices, in attendance were members of the Voelker family, Gracie Voelker Wood, John's son-in-law, Ernest Wood, John's grandson, Adam Tsaloff, and his lovely wife, Mary, and of the Voelker Foundation, President Richard F. VanderVeen. It was a privilege to speak in their presence about John Voelker and his best seller, *Anatomy of a Murder*. It also was a privilege to be introduced by former Michigan State Bar and American Bar Association President Wallace Riley, a man who sat beside Joseph Welch at the Army McCarthy hearings when Welch said, "Sir, have you no decency, after all, have you no decency?" John deeply admired Joseph Welch, and, with Otto Preminger, chose him to portray Judge Weaver in the movie of *Anatomy*. The book contains more than one reference to the excesses of the McCarthy era, such as Parnell's admiring assessment, at page 199, of Judge Weaver's careful observation of traditional constitutional processes, "the present day zeal for which can scarcely be said to be reaching epidemic proportions."²

It was my good fortune to know John, and, through him, to meet some remarkable people, including Charles Kuralt, who described John as the "closest thing to a great man [he had] ever known."

The startling success of *Anatomy* played a literally pivotal role in the trajectory of John's life. The Grand Hotel, where John often stayed when he presided over meetings of the Prosecutors' Association, and where a room has been set aside in his honor, was a fitting place to talk about it.

We in Michigan were then observing two fiftieth anniversaries. The first was that of the publication of *Anatomy*, and the second was that of the completion of the Mackinac Bridge, which, at five miles in length, reigned briefly as the longest suspension bridge in the world. Like Polly [protagonist Paul Biegler], John had little love for the bridge. As Polly put it for him, at page 335 (in a slight anachronism, since the bridge was not built when the actual case of *People v Peterson* was tried in 1952), "for years the straits stood as our English channel against invasion from the south. And now this goddam bridge, which our gleeful chamber of commerce sturdies (sic) have added to their nightly prayers."

John loved his UP. He lived here all but a few years of his life. His grandfather came first to Houghton-Hancock during the copper boom and was a brewer and saloonkeeper. He brought his family to Ishpeming by oxcart and established a saloon, where John spent a fair amount of time as a youth. Though he spent much of his free time at the Carnegie Library, a block from his Ishpeming home, John also waited tables at the saloon, in the process absorbing the rich dialects of the French-Canadians, Finns, Italians, Cornishmen, and Swedes who worked in the UP's forests and mines. We hear the dialects he mastered most clearly in "Danny and the Boys" and in his short stories, but Sulo, the sleepy Finnish jailer in *Anatomy*, provides an echo of one of John's favorite UP dialects.

John's schoolteacher mother instilled in him the love for words and reading that so profoundly shaped his life and character. He played endlessly with words, and loved nothing better than punning and compressing humor into them. After several readings, I still chuckle when, in response to Judge Weaver's inquiry whether counsel have any jury requests for him to consider, John writes on page 196, "'Not quite yet, Your Honor,' I lied whitely." And Polly's rueful comment on page 296, when Mary Pilant's bartender proves uncooperative, that "'I wish I had been sweeter to him when I was little,'" is, for my money, laugh-out-loud funny.

John graduated from Northern Michigan University and then the University of Michigan Law School, where he met his future wife, Grace. He graduated from law school in 1928, and then returned to Marquette for a couple of years to work as an assistant prosecutor. But he and Grace tired of trying to maintain a long-distance relationship, so he followed her to Chicago, where they married in 1930. He spent the first three of their sixty-one years of marriage as what

he called a "law looker" for a large Chicago firm, buried in the bowels of the library and miserable in the big city. You find that expression, "looking law," at several places in the book. It was in Chicago that John began writing, mostly stories about the UP, as therapy for his homesickness and unhappiness. He remarked that he started writing at the "height of the depression," referring not only to the great economic Depression of the 1930s, but also to his own unhappiness in Chicago. He told documentary filmmaker Sue Marx that he believed that "the very anonymity of city life is dangerous to the human animal." He hated the city. He loved his UP, where he found "solitude without loneliness."

At last, he persuaded Grace to try life in the Upper Peninsula. Within three years, he was elected prosecutor, "the first Democrat to hold the office in Marquette County," he remarked, "since the time of the Flood."

He continued to write, using the pen name Robert Traver, combining his mother's maiden name with his deceased brother's first name. When I asked him why he did not publish under his own name, he said he did not want the voters of Marquette County to think he was "spinning yarns on company time." But that is probably only a partial truth, because he used the pen name before he was elected prosecutor. I think he was just naturally a very private man and liked the camouflage of a pen name.

His first book, *Troubleshooter*, was published in 1943. It was one of the series of two collections of stories that he called his "DA books," based on his experiences as a prosecutor. It also happens to be the first of his books that I encountered. My father, who wanted to be a lawyer, had read it during his final illness, and, as a boy, I came across it among his things and read it. Years later, when I met John, I told him that my father had read and enjoyed *Troubleshooter* and had aspired to the law, which was my grandfather's profession. John obligingly inscribed my copy of *Troubleshooter* with typical irreverence: To Fred Baker Jr, whose granddaddy was a judge while my daddy had a saloon with the longest bar in Ishpeming."

John served for fourteen years as Marquette County Prosecutor. It was a part-time office, and if he had not spent so much of his time fishing, he probably could have prospered more than he did. But he loved to be on the stream and disappeared often, sometimes for days, into the wilds, leaving little love notes to his family on the kitchen table that Gracie has recalled fondly to me.

John's respect for law enforcement is probably the one conservative aspect of his legal outlook reflected in his opinions — very seldom did he write to expand the rights of the criminal accused. But, like Polly Biegler, who would have settled for a jail term for Smoky Madigan, the guilty-pleading whiskey thief in *Anatomy*, John had a profound sense of the importance of compassion in the administration of justice.

The early stories John crafted from his DA experiences are fascinating, and almost always funny. One good example is his story about the gentle and very practical solution he devised to the persistent problem posed by a house of prostitution. He simply instructed the sheriff to post a deputy outside the ill-famed house with instructions to write down conspicuously the name of each patron as he entered, for later publication in the local newspaper. The unwonted publicity soon prompted the proprietress to move on when her customer base collapsed.

The stories in his DA books are wonderful bedtime reading, but his consistent success as a prosecutor also explains why he found himself out of a job after fourteen years, after losing the 1950 election by thirty-six votes: "Sooner or later," he observed ruefully, "if you are any good at the job, you will have annoyed enough of your constituents and their friends and relatives that they will combine to throw you out of office. And that's what they did."

So there was John, like his fictional character Polly Biegler, at the age of forty-six, with a wife and three young daughters to support. He had no job, and practically no private practice to sustain his family, having spent his spare time fishing and writing fiction.

He did some harebrained things to make money, including prospecting for uranium. It was the early 1950s and the height of the nuclear arms race. Uranium was much sought after, so John bought a Geiger counter and went prospecting. He thought his fortune was made when the Geiger counter started clicking crazily. He had already planned how he would spend his millions when his claim assay returned with the single word "thorium," a radioactive substance common throughout the UP, but worthless for building atomic bombs. He alludes to this episode in his introduction to *Anatomy* and he wrote a wonderfully funny story about it. But the fact was that, if an unlikely sequence of events had not ensued, John probably would have passed his life in genteel obscurity, practicing law and fishing in the remoteness of the UP.

It was at about this time, in 1952, that he defended the case of *People v Peterson*, which, as he put it, "some say was the basis for a book I wrote called *Anatomy of a Murder*." After being sued by Mr. Peterson (or, as you know him, Lieutenant Manion), the client he successfully defended on a murder charge, for a piece of *Anatomy's* profits, John was careful to distance the book from the actual case. Peterson's suit was unsuccessful, to John's infinite satisfaction, since, like Lt. Manion, Peterson absconded after his acquittal without paying John's fee. After Peterson sued, John always carefully maintained that *Laughing Whitefish* was his "only historical novel."

Like Polly Biegler, John went on to run and lose a race for Congress. Polly's description, on page 11, of "the feeling of utter forlornness and emptiness that sweeps over a man when he is finally beaten at the polls," is one that came from the heart. Having lost two elections in a row, John was pretty downcast. His mood did not improve when, after a winter spent writing the story that John crafted from the Peterson trial, *Anatomy* was rejected by several publishers.

By this time, in 1957, John was hard pressed to meet his family's needs. He and I agreed that daughters are an especially expensive hobby. His three previous books, the two DA story collections and *Danny and the Boys*, were small sellers, and his practice was not exactly thriving. He once remarked that if he could have fished all year round, he probably never would have written any books. But fishing also stole time from his practice. At that critical juncture in his life, John felt as if he was a failure, much like his humiliated alter ego, Polly Biegler, in *Anatomy*. But just at his darkest hour, an amazing confluence of events combined to elevate this obscure northwoods ex-DA from obscurity to worldwide fame and acclaim.

"Soapy" Williams (so called because of his connection to the Mennen toiletry family) was Michigan's governor. It was pointed out to him that the tradition of having at least one seat on the Michigan Supreme Court filled by someone from the UP had fallen into disuse.

Tom Downs, who practically invented election law, the seasonal work of itinerant lawyers that is now practiced across the nation, was active in Michigan Democratic party politics and close to Governor Williams. With Gus Scholl, a labor leader also close to the governor, he was sent to interview the two final candidates for the appointment to the UP seat, John and an Escanaba lawyer, Wheaton Strom, whose twin sons, Peter and Paul, were students of mine in law school, and now serve on the Voelker Foundation board. They hold no grudge

that John, rather than their father, was selected and have together worked hard with John's dear friend Gigs Gagliardi to honor John by coordinating the Voelker Foundation's trout habitat projects.

Anyway, Tom Downs told me this story, and swears it is true: After Downs and Scholl finished the standard interview, they asked John one last question, "Why do you want the job?" Tom says that John laid his finger beside his nose for a minute to consider the question, and then replied, "Because I have spent my life on fiction and fishing, and I need the money." According to Tom, John's candor so delighted Governor Williams that he chose him to fill the vacant UP seat on the Court.

Amazingly, on the very same weekend that John received word that Governor Williams had chosen him for the Court, John also learned from St. Martins that it had accepted *Anatomy* for publication. An editor at St. Martins, Sherman Baker, who had worked with John on some of the DA books, took the enormous manuscript and whittled it down to publishable length.

As a result, just after he joined the Court, *Anatomy* was published and began to climb the best seller list, where it remained among the top ten for over a year. Suddenly, John was prosperous and, as he once wryly remarked, found himself "a promising young author at the age of fifty-two."

His comment in a *Free Press* interview that the career of either Voelker or Traver would have to give proved to be prescient. The book's success took him on a wild ride to national prominence and twenty-nine weeks — a record at the time — as number one on the best seller list.

I believe that the prosperity he enjoyed after the startling success of *Anatomy* accounts for some of the whimsical aspects of the way John campaigned for reelection, and for some of the sheer joy of writing reflected in many of the over one hundred opinions he crafted in his less than three years on the Court. That output, by the way, would now be pretty close to the current Court's entire output for a similar period. Though we do not have the time to study his opinions today, an example or two are worth noting.

At their best, his opinions were a stark contrast with most judicial writing. As he put it, "the average judicial opinion is among the dullest and murkiest writing in the world . . . For every Holmes or Cardozo, who at their best wrote a kind of luminous legal poetry, there are a thousand judges who appear to write with their feet, whose

main discernible aim seems to be to impress and project a Socratic image rather than to illuminate . . ."

John's opinions were often a refreshing change from that diet of murk. One example is *People v Hildabridge*, the famous nudist colony case, in which he dissented so eloquently that one justice switched his vote to give John's dissent a majority. The police had raided the Sunshine Gardens Nudist Colony on a warrant for indecent exposure sworn out by officers who had visited the place without a warrant so that they could claim to have been offended by what they saw. Though John disclaimed any support for the cult of nudism, "whose presumed enchantments totally elude me," he nevertheless concluded that the convictions should not stand, observing: "Private fanaticism or even bad taste is not yet grounds for police interference. If eccentricity were a crime, then all of us were felons" (353 Mich at 579).

Probably my favorite passage, though, and one that finds an echo in Polly's observation at page 244 that the experience of being in trial is "like nightmare and ecstasy all stirred up together," is this little vignette from his opinion in *Huffman v First Baptist Church*, 355 Mich 437, 446 (1959):

We are so often compelled to repeat this elementary proposition that we are moved to observe that it is probable that few trial judges, however experienced or learned, if given more time for meditation and research, would again give precisely the same jury instructions that they actually gave. Upon further reflection their instructions would doubtless be less halting and redundant, infinitely clearer and more cogent and more on target — much like the compelling jury arguments most lawyers make to their bedroom ceilings the night after the trial is over.

That opinion reflects John's experience as both a practitioner and as a judge, and his sympathy for the frailties and failings of both.

His notoriety as a famous author gave him great freedom to campaign as he liked. He told me that one of his favorite campaign techniques was to set up a small ring in a parking lot outside a busy store and put on a demonstration of precision fly casting. Try to imagine anyone campaigning for a seat on the high court today using such a campaign technique! Wherever he went, he drew a crowd. And I can vouch for his incredible ability to put a fly exactly where he wanted it. Even as an old man, fishing in the difficult tamarack and alder

thickets that surrounded his fabled Frenchman's Pond, he could put a roll-cast fly exactly where the rise was occurring.

On one occasion, John was campaigning with Sixth Circuit Judge Damon Keith, who was then a young man running for a seat on the Wayne Circuit bench. It was 1960, and Michigan had not yet really begun to overcome the heritage of racial discrimination and segregation that would ignite seven years later in the Detroit riots, whose fortieth anniversary we lately mourned. It was John's second campaign in three years. He and Keith hit it off and they decided to go to lunch. One of John's supporters had given John the use of his membership at a prestigious Detroit club, so John took Judge Keith there and presented himself to the maitre de. The man was in a terrible pickle: on one hand, he had a sitting Supreme Court Justice requesting a table, but on the other hand, the club was restricted, "no Negroes allowed," and this Justice had a black man with him. He asked John and Judge Keith to wait for a moment and quickly had a table placed behind a palm tree, in a remote corner of the dining room. He returned and led John and Judge Keith to the table and seated them there, screened from the view of other diners. When John realized what had happened, he said that he looked at Judge Keith, and Judge Keith looked at him, and together the two of them got up and stalked out without a word. That was the beginning of a lifelong friendship, and one of the germinal events that percolated in John's creative subconscious to become his next book, *Hornstein's Boy*, of which just a little more later.

By the time John was re-elected to the Court for a second time, in 1960, this time for an eight-year term of his own, Otto Preminger had called, asking for the rights to *Anatomy* and promising to film the movie on location in Marquette. John was now not merely prosperous but—by the standards of the day and certainly by the standards of the UP—suddenly freed of all financial concerns. That is what *Anatomy* did for John: suddenly, in the span of about two years, he was transformed from a necessitous, if respected, small-town attorney, into a figure on the world stage whose future, and that of his family, suddenly was secure.

And it seemed that suddenly half of Hollywood had descended upon Marquette: Jimmy Stewart, Otto Preminger, Lee Remick, Ben Gazzara, Eve Arden, George C. Scott, Arthur O'Connell (who portrayed Parnell), Joseph Welch, and, not least, Duke Ellington, who composed the score for the *Anatomy* soundtrack in Marquette. All

became fixtures on the local scene while the movie was being filmed. And they especially enjoyed inscribing the wall in the basement of Gigs Gagliardi's Roosevelt Bar when the film wrapped.

It seems as if everyone then living in the Marquette area has a story about that amazing time. I will illustrate with an example, one of dozens I could cite, involving a lovely woman named Celee Batisfore, who lives in Lansing and who has for the past several years kept the books for the Voelker Foundation. We were exchanging emails about some question in connection with the Foundation's annual report, and I said, "You know, Celee, if I were crazy, I would ask you if you are related to the sheriff in *Anatomy of a Murder*, because you share his last name, which is fairly uncommon." Her matter-of-fact response was that her husband is from Marquette and he had told her a story about how John Voelker had named the sheriff in *Anatomy* after her father-in-law.

John resigned from the Court, as I mentioned, after serving only a week of his third term. Unlike the political geniuses who counseled Michigan's Governor Milliken and who thought Wallace Riley's late wife, Justice Dorothy Comstock Riley, could be appointed to fill a term to which a deceased justice had been elected but had not yet begun to serve when he passed away, Voelker realized that he had to both win his election and begin to serve his new term, so that Governor Williams could appoint another Democrat to replace him. Once he fulfilled that political obligation, he resigned. He wrote to Governor Williams that he was "pregnant with book," and that, "while others may write my opinions, they cannot write my books."

The collision between his career as a justice, as John Voelker, and his career as an author, as Robert Traver, had, as he had foreseen, resulted in a clear winner: John returned to Ishpeming and the house he had built on Deer Lake with some of the royalties from *Anatomy* and he never really left the UP after that.

The first of the books with which John was "pregnant" when he left the Court was a novel of political intrigue, *Hornstein's Boy*, in which a character based on Damon Keith played a part, as well as one based on Bill Ellman, who was the model for Hornstein's Boy. My friend Rich Vander Veen and I had the great honor to meet the two of them in Judge Keith's chambers, and I treasure my first edition of *Hornstein's Boy* inscribed by John and each of them.

John published several other books in the years that followed his resignation from the Court, including *Trout Madness*, *Jealous*

Mistress, Laughing Whitefish, Anatomy of a Fisherman, Trout Magic, and People v Kirk.

Hornstein's Boy contains a pithy epigram that I have never forgotten: "In a democracy those most gifted to govern are all too frequently those least gifted in the dark arts of getting to govern." How many times have we seen the truth of that observation demonstrated in the recent past? Dark arts indeed!

John declined most speaking invitations after he retreated to the UP to write and fish. He even refused to attend the commemoration of the bust that occupied the foyer outside the Supreme Court's old Law Building courtroom. When Rich and I were asked to try to persuade him to attend, he wrote back to decline politely, observing that "I doubt that these old eyes will ever see a city again." And so far as I know, they did not.

The first time I met John, he had invited Rich and me to come meet him at a place called Paulie's Rainbow Bar. I have always wondered if perhaps that was the source of the "Polly" nickname for Paul Biegler in *Anatomy*. It was across from the old Mather Inn in Ishpeming and had no sign. You had to know it was there. Paulie sold beer and shots — no food. If anyone dared to inquire if a burger was to be had, he would reply, "What do you think this is, Burger King?" It was peopled by regulars, and we waited for John's arrival humbly, acutely conscious that we were outsiders, flatlanders, trolls from below the bridge. And, what's worst, like Claude Dancer, we were from Lansing!

John ambled in and we introduced ourselves. He invited us to make ourselves comfortable, because he had a cribbage match to play. Just then a fellow came in, still dusted with red ore from his shift at the mine, and they sat down to play. John fell behind badly and had barely rounded the corner onto fourth street when the miner pegged to within five holes of home. The last hand was dealt, and things looked bleak for the self-proclaimed UP cribbage champ, but John played gamely, as it were, and he had the first count. He pegged masterfully and flopped a 26-point hand on the table, leaving his defeated opponent sputtering in disbelief.

It has been said of John that he was so beloved in his community because he took each person as he came and treated everyone with dignity and respect. And when Polly says, in *Anatomy*, "When in doubt, tell the truth," you are hearing John.

But he was not a simple man — it would be a mistake to think so. He was unpretentious. But when you hear him mock literary pretension, as when he writes that "plot these days is anti-intellectual and verboten . . . Symbolism now carries the day, and it is the one true ladder to literary heaven," do not suppose that he did not concern himself with the great and important literary themes (174). Though he spoke modestly of his work as "spinning yarns," he explored the human soul just as surely as did Dostoevsky. What is *Anatomy* if it is not a study, an anatomy lesson, as it were, of the truth-seeking process and of the elusiveness of truth itself?

John's one great and overriding theme was the importance of the law itself and of the role it plays in society. The passage in which Polly ruminates on the role of the law as "the fireman that extinguishes society's brushfires, substituting orderly ritual for the rule of tooth and claw," finds its fullest exposition in his later work, *Laughing Whitefish*, in Dean Lassiter's lecture to the graduating class of the University of Michigan, which included Willy Poe, the lawyer who took on the mining interests on behalf of a little Indian woman. In that story, which is based on actual decisions of the Michigan Supreme Court, as he did in *Anatomy*, at page 63, John wrote his response to Dickens's Mr. Bumble, who so famously called the law an ass: "The very slowness of the law, its massive impersonality, its insistence upon proceeding according to settled and ancient rules — all this tends to cool and bank the fires of passion and violence and replace them with order and reason."

And consider "the lecture," at pages 32 to 47, in which Polly tells his man the law so that Manion could tell him the facts that might possibly sustain an insanity defense. It is such a deft example of how a lawyer can walk the fine ethical line between coaching a client and counseling the client on what testimony might offer salvation that it is included in Ladd and Carlson's evidence text, which is where I first encountered *Anatomy of a Murder* while studying evidence with Ronald Carlson.

John literally created a new genre when he published *Anatomy*. Before then, no novel had so truly depicted the actual preparation and trial of a case. The Grishams and Turows who have followed all owe a debt to John, who wrote a novel that was both true to life and true to himself.

So, as I was saying, after the cribbage game was won, John turned to us and said, "Boys, would you like to come out to the pond?" We

were stunned and delighted. We would have been happy with five minutes of the great man's time. He spent the day with us, showing us little oddities and stopping to pick sugarplums, blueberries, and mushrooms, all of which can be found simultaneously in the compressed growing season of the UP. Then we fished at his fabled pond and cooked the little trout we caught with the mushrooms we had picked, accompanied by Old Fashioneds, a wonderful drink that sadly has fallen out of vogue, but which, with the two dollar bill, I have taken to promoting in a personal crusade.

He told us about the time he was interviewed on television by Fred Friendly, along with Justice William O. Douglas and "some Lord or other from England." Friendly asked each of the other esteemed judges if they cooked. After Friendly finished with Lord Whoosis, who went on at some length about some flaming French dish he adored, he turned to John and said, "What about you, Justice Voelker, do you cook?" To which John replied simply, on national television, "After an Old Fashioned."

It was a wonderful day, the first of many to come. As we parted at the intersection north of Hands, he waved to us and said, "Come back lads, but not too soon." From then on, if we got a postcard saying the morels are in season or the *boletus edulus* look like hamburger buns strewn across the forest floor, we would drop what we were doing and go see John.

Eventually, we talked with him about starting the Voelker Foundation. John thought about it for a couple of years and finally said that, although it made him feel "a wee bit embalmed" to have a Foundation named for him, it might be all right to do a few good things using his name. He joined in the incorporating and donated to the Foundation the right to reprint a few of his books, which he signed over and over, toward the end vowing that in his next life his name was going to be much shorter.

With the proceeds from the sale of those limited editions and donations from those who loved John, we have raised and spent over \$100,000, assisting fourteen Native American students to attend law school. Not all Indians have lots of money now that casino gambling has made some tribes more prosperous. The Foundation's help has sometimes made the difference, and that is a difference that John wanted to make for reasons that will be obvious if you know the story of *Laughing Whitefish*, one of the books we reprinted with his permission.

We have also awarded nine Robert Traver Flyfishing Fiction awards, which Charles Kuralt called the most prestigious outdoor fiction prize in America, and we recently published an anthology of the best submissions, *In Hemingway's Meadow*, in partnership with *Fly Rod & Reel*, where the winning stories are published each year. We have assisted in establishing new trout habitats and developed the renamed Voelker Lake as a youth fishery.

We also recovered the rights to five of John's books, which he had signed over to an unscrupulous publisher who took advantage of his trust and his failing vision, only a month before he passed away. Then we posthumously published John's twelfth book, *Traver on Fishing*, a Lyons Press companion to *Hemingway on Fishing*, both edited by board member Nick Lyons and assembled from stories we found in his papers and from the books we got back for his wife, Grace. Rich and I contributed a chapter to that book and I took the cover photo on the softbound edition. We are proud of it.

On what proved to be our last visit to the pond with John, he took us to a favorite spot nearby, where two birch trees had grown intertwined like lovers. He told us that some people look at trees and see lumber, but for himself, he saw the beauty of the forest. A timber company had bought this stand and intended to clear-cut it for pulp. "I'm not much of a lawyer anymore," he said, "but I've filed suit, and I figure if I file a motion every month, I can keep these two alive as long as I am." And he did.

It was fun to know John. And I shall never forget him. I shall also never forget the day I heard that he had passed away. I was at the office when a friend called with the news. I called Rich and we arranged to meet and drive up to Ishpeming for the funeral. I went home first and, for some reason, I checked the mail. And there was a letter from John, mailed the day he died. Here is what it said:

Thanks for your enclosures and the sweet note from ol' Luigi's relatives. I must be feeling better as I'm working on my first real story in years, tra la. The old eyes seem to be slowly improving and I recently made that Watson, Cornell, Rock Back Road run all alone. Deer, more deer, and even crows. Pretty soon fishing, morels, and the magic of spring, and I've already picked a few pussy willow buds that expand in a non-bourbon vase. Got to go get the mail and mail this to a downstate friend. Sprig is cubbing.

His great heart stopped on the drive home from the post office after mailing that letter and his fish car coasted to a stop in a snow bank not far from his home on Deer Lake.

Strange as it may sound, John's funeral was the most enjoyable I have ever attended, because it was just an assemblage of his friends who fell still when it was time and then took turns saying something about him. When my turn came, I said, "John did not suffer fools gladly, but he was always very kind to me."

So it is that I think we are all lucky that *Anatomy* liberated John to live life as he believed it should be lived, on his own terms. When asked if he was a religious man, John replied that he was, but he practiced his religion in the woods. Once, when a priest kept asking to visit him when he was in the hospital, John finally relented and let him drop by, because he "thought it might make the priest feel better."

I think that you get the best sense of his spiritual side if you read his "Testament of a Fisherman":

I fish because I love to; because I love the environs where trout are found, which are invariably beautiful, and hate the environs where crowds of people are found, which are invariably ugly; because of all the television commercials, cocktail parties, and assorted social posturing I thus escape; because, in a world where most men seem to spend their lives doing things they hate, my fishing is at once an endless source of delight and an act of small rebellion; because trout do not lie or cheat and cannot be bought or bribed or impressed by power, but respond only to quietude and humility and endless patience; because I suspect that men are going this way for the last time, and I for one don't want to waste the trip; because mercifully there are no telephones on trout waters; because only in the woods can I find solitude without loneliness; because bourbon out of an old tin cup always tastes better out there; because maybe I will catch a mermaid; and, finally, not because I regard fishing as being so terribly important but because I suspect that so many of the other concerns of men are equally unimportant—and not nearly so much fun.

John was a funny, generous, wise, just, and thoughtful man. And he believed in the four classifications of judges he described in *Anatomy* on pages 313 and 314: "Judges, like people, may be divided roughly into four classes: judges with neither head nor heart — they are to be avoided at all costs; judges with head but no heart — they are almost as bad; then judges with heart but no head — risky but bet-

ter than the first two; and finally, those rare judges who possess both head and a heart."

May all here, for having read the book, aspire with greater success to belong to the fourth category. And now, with my apologies for having waxed perhaps too long on a subject who is dear to me, I will acknowledge the arrival of the cocktail hour with Maida's toast on page 187 to you all:

All animals are strictly dry
They sinless live and swiftly die
But sinful, ginful, rum-soaked men
Survive for three score years and ten.

Cheers, and thank you for your gracious attention.

Commissioner, Michigan Supreme Court
Lansing, Michigan

NOTES

¹This talk was subsequently given as part of a law and literature panel convened at the thirty-eighth annual meeting of the Society for the Study of Midwestern Literature (May 8-10, 2008, Michigan State University, East Lansing, Michigan).

²All quotations from *Anatomy of a Murder* are taken from the Gramercy Books Cinema Classics edition (2000).

EQUALITY BEFORE THE LAW IN *PRESUMED INNOCENT* AND *TO KILL A MOCKINGBIRD*

JAMES SEATON

Scott Turow has written a series of best-selling novels that began with *Presumed Innocent* and includes *Ultimate Punishment*, *Reversible Errors* and *Limitations*. Although these works are sometimes described as courtroom thrillers or mystery suspense novels, Turow clearly intends them to be taken as much more than mere entertainments, and the critical response indicates that his intention has been realized. His books have won awards signifying their acceptance as works of literature transcending the genre of courtroom thrillers, including the Heartland Prize in 2003 for *Reversible Errors* and the Robert F. Kennedy Book Award in 2004 for *Ultimate Punishment* and *Time's* Best Work of Fiction in 1999 for *Personal Injuries*. Turow's fiction is frequently compared with that of John Grisham, often with the suggestion that Turow is interested in confronting moral issues while Grisham confines himself to exciting plots. Turow's *Ultimate Punishment* is a well-received nonfiction study of the moral and legal issues around capital punishment. Turow currently serves on the state of Illinois's Executive Ethics Commission.¹

Given the reputation of Scott Turow himself as well as that of his novels, it seems counterintuitive that the novel that began his chain of best-sellers, *Presumed Innocent*, owes its success in large part to a plot twist the troubling moral implications of which are not confronted but ignored. The ending of *Presumed Innocent* seems to tell the reader that it is perfectly all right for a man to allow a murder to go unpunished and a murderer to go free if the killer happens to be his wife and the mother of his child. One doubts that Turow himself would argue that this message would pass the test the philosopher Immanuel Kant pro-

posed in considering moral issues: would you be willing to make what you do in your particular case a universal law to be followed by everybody else? Yet Turow's novel suggests that such a decision is not morally problematic, not troubling, or not even worthy of second thoughts. Perhaps, though, one should not be so surprised that Scott Turow and *Presumed Innocent* allow such an implication to stand when one remembers that a not entirely dissimilar decision—to keep a killer from legal scrutiny—occurs in the courtroom novel renowned above all others for its inspiring moral affirmation, *To Kill a Mockingbird*. In the earlier novel, indeed, the reader is encouraged not merely to accept but to applaud the decision.

Rusty Sabich is not the moral paragon that Atticus Finch is, but from the opening of *Presumed Innocent* the reader is encouraged to trust its narrator as a man of deep moral convictions, someone who cares about ethical questions and who, with one major exception, lives up to his own exacting moral standards. In the short "Opening Statement" in which the reader becomes acquainted with Rusty, he tells us that even after years as a prosecuting attorney, after years of "making charges, trying cases, watching defendants come and go," he has not "grown uncaring." Although he might have grown cynical or indifferent, allowing it all to "become a jumble," he has not. His words as he faces a jury seem to affirm the creed by which he lives and works: "There was a real crime There was a real victim. Real pain you must, at least, try to determine what actually occurred If we cannot find the truth, what is our hope of justice?" (2-3)

Rusty Sabich has been around long enough to know that justice is often elusive and truth hard to find, but he still believes in both truth and justice. He knows that the human beings who make up the court system are often flawed, but his comments to the reader as he narrates the events of the novel make it clear that he has not grown cynical, that he is still ready to make moral judgments. Nico Della Guardia, he tells us early in the novel, "has been base and exploitative" (9) in commenting on the murder of Carolyn Polhemus. It bothers Rusty that Della Guardia takes advantage of the murder for political ends; it seems "base" to him to exploit a murder in that way. One would not expect a lawyer in Kindle County, Turow's fictional version of Cook County, Illinois, to include "base" in his moral vocabulary, but for Rusty the notion of "baseness" is part of his moral compass. Later he worries about the moral confusion caused by "the junkie whose base sincerity gets to you" (94). He can recognize "the

baseness of my nature" (29) as well as that of others. He thinks in moral and even spiritual terms. The worst thing he can say about Nico Della Guardia is that he is "a pygmy in his soul" (16). Even after years as a prosecutor, he is still disturbed by the thought that "politics is dirty. And the police department is dirtier" (94).

When Rusty is himself accused of murdering his colleague, Carolyn Polhemus, and put on trial, his moral standards are put to an unexpected and demanding test. He passes with flying colors. Although his attorney, Sandy Stern, skillfully keeps out of court any evidence that Carolyn and Rusty were having an affair, and although knowledge of the affair would throw additional suspicion on Rusty, he tells his lawyer that if called to the stand he will tell the truth, whatever the consequences: "I won't deny it, you know," he declares (340). The trial ends not with an acquittal from the jury but because Judge Larren Lyttle refuses to let it proceed, telling the jurors, "I cannot let you deliberate on evidence like this, which is so clearly inadequate. It would be unfair to you and—most importantly—to Mr. Sabich" (366). The prosecuting attorney, Nico Della Guardia, is displeased but nevertheless accepts the judge's verdict as justifiable and moves to dismiss the case, explaining with unexpected magnanimity to Judge Lyttle, "For Mr. Sabich's sake, I don't think there should be any question about whether this was a proper legal decision on your part or not. I disagree with you. We do disagree. But I don't think it's fair to pretend that I think you're outside the law" (367).

Mr. Sabich himself, however, is not so easily satisfied. Even though he has been freed and is no longer in danger of being convicted of murder, he is not satisfied. He suspects, with good reason it turns out, that Judge Lyttle stopped the trial at least in part to prevent evidence in a "B file" revealing that Lyttle had once taken bribes from becoming public. Rusty accuses his lawyer of managing the case so as to signal Judge Lyttle that if the trial proceeded, evidence that would destroy the judge's reputation would emerge: "Larren Lyttle's career was over if the circumstances of the B file were fully explored. And you used every opportunity to tell him that you intended to do just that . . . You wanted Larren to believe that we were hell-bent on turning that file inside out in public . . ." (378-9).

In response Sandy Stern argues that Rusty's doubts about Larren Lyttle's integrity as a judge are misplaced, whatever scandal there might be in Larren Lyttle's past: "But what happened, happened in the past. Long in the past. Judge Lyttle, I tell you, would rather die—

I mean this sincerely—die rather than corrupt his office in the Superior Court. This judgment is heartfelt and not merely a lawyer's sanctimony about a judge" (375). Stern points out to Rusty that Della Guardia's acquiescence in the judge's decision demonstrates its basis in the law: "Even Della Guardia, disappointed as he was, conceded that Larren's decision today was within the realm of the judge's legitimate discretion. Do you think Nico would have made that handsome gesture of dismissing the case if he believed Larren's assessment was unfounded?" (381). But Rusty isn't buying, even though the outcome is so fortunate for him personally and even though the legal validity of the judge's decision seems established: "I know I sound like a world-class ingrate, but I have to tell you I don't approve" (380). Rusty's moral standards are so high, and his commitment to them so unyielding, that he is deeply troubled rather than immensely relieved at the possibility that he himself has been set free, just because the motives for doing so may not be entirely disinterested.

The novel, then, establishes Rusty Sabich as a morally authoritative figure, someone the reader can trust to uphold the highest moral standards in regard to the law. There is one important exception, however, to Rusty's ability to maintain the high moral standards in which he believes. He did have an adulterous affair with Carolyn Polhemus. Rusty does not try to explain away or rationalize his affair by, for example, blaming it on his wife, although he does tell the reader in an early aside that, "with her abrupt social mannerisms, her general aversion to most human beings, her dark taciturn side, and her virtual armory of private and largely uncommunicated passions, [she] could be described only as weird" (38). Rusty does not offer any reasons at all for his affair; instead, he attributes it to a kind of madness that seems unrelated to the rest of his character. He describes his feeling for Carolyn several times throughout the novel, always in remarkably similar terms. It is a "raging, mad obsession" (25), a "wild love. Desperate and obsessive and willfully blind" (60), a "dizzy, mad hunger" (103), a "desire" that was "insistent, obsessive, and, because of that, somehow debased" (105). The cumulative effect of these characterizations is to encourage the reader to feel that Rusty Sabich is one thing, and his "raging, mad obsession" something else. It is something that happened to him, something he couldn't control. When Rusty thinks to himself before the trial that he wants things "to be as they were before, before I allowed my life to be ransacked by Carolyn" (152), readers are unlikely to question the

suggestion that it is somehow all Carolyn's fault, especially since we know that Carolyn has had many affairs, while Rusty has been otherwise faithful to his wife.

It comes as a surprise when, at the end of the first section of the novel, Rusty Sabich himself, already established as a figure of moral authority and legal excellence, is accused of the murder of Carolyn Polhemus. The great success of the novel, however, surely derives from an even more surprising plot twist that occurs in the last few chapters. Rusty Sabich and the reader discover that the real murderer of Carolyn Polhemus is Barbara Sabich, Rusty's wife, about whom we know little except what Rusty has told us, that she "could be described only as weird" (38). She has killed Carolyn Polhemus because of Rusty's affair with Carolyn. Rusty works it out this way: "When the wife's rage is at a peak, she's ready to abandon her husband, head for the open spaces. But there would be no satisfaction in that if the other woman is alive, because the husband, helpless slob that he is, will just go crawling back to her and end up with what his wife thinks he wants. The wife can get even only if the other woman is gone"(410).

The novel ends with a short "Closing Argument" written in italics, paralleling the brief, italicized "Opening Statement" that begins the novel. Rusty tells us that "*The murder of Carolyn Polhemus, of course, remains unsolved*" (420). In the last paragraphs of the novel Rusty Sabich reveals his final thoughts about all that has happened. He tells us "*At times, I admit, I still think of Carolyn*" (421). He does not, however, think very much about whether Carolyn deserved to die and whether her murderer deserves punishment. Instead, he ponders the sources of his attraction to her: "*What was it, I still think. What was it I wanted with her? What seemed so imperative about it all?*" (421) The novel ends with a kind of purple passage in which Rusty seems to be reliving and even reaffirming his passion, suggesting that it was indeed mad but somehow noble rather than base: "*But I wanted with wild, wild abandon, with a surging, defiant emboldened desire, I wanted the extreme—the exultation, the passion and the moment, the fire, the light. I reached for Carolyn. In hope. Hope. Everlasting hope.*"(421). Surely a passion whose essence is hope could not have been entirely wrong and may indeed have been something sublimely wonderful, something spiritually if not morally superior to ordinary respectable married love, the passage seems to suggest. And there is no room for qualifications or reservations, since these are the last words of the novel.

So Rusty Sabich, who throughout the novel is presented as a morally authoritative figure whose judgments, even where he himself is concerned, are unsparing, is revealed in the last pages to be willing to allow a murderer to go free without, apparently, any second thoughts or troubling doubts. He will let her go free because to put her on trial would be bad for their son, who loves his mother (415). He tells Barbara that he will not turn her in and indeed will stay married to her because "I do not want that mad act to have had no decent consequence" (400). Thus Rusty Sabich, who introduced himself to the reader in his "Opening Statement" emphasizing the reality of crime, victimhood and pain in calling for truth and justice, ends by ignoring the reality of crime, victimhood and pain in the murder of Carolyn Polhemus. Crucially, the implied author clearly expects the reader to accept Rusty's decision. The prose draws our attention to the question of the source of his attraction to Carolyn Polhemus rather than to the question of what gives an individual the right to decide without reference to any law that one murderer deserves punishment and another does not. Scott Turow's treatment of the novel's last-minute plot twist intimates that allowing the murderer of Carolyn Polhemus to go free does not create any great moral problem, does not violate any important moral standards. We are apparently supposed to think that because Rusty Sabich is a good guy and Carolyn Polhemus, was, after all, a bit of a slut, her murder poses no serious moral issues at all. Justice, it appears, is not for everybody at all times but only for most people most of the time.

Spreading such moral confusion seems a high price to pay for the pleasure to be derived from an unexpected plot twist, but in Scott Turow's defense it should be pointed out that a not wholly different message is presented by a novel assigned to high school students all over the country because of its uplifting moral affirmation, Harper Lee's *To Kill a Mockingbird*.²

Atticus Finch, unlike Rusty Sabich, is guilty of no affairs with anybody, and unlike Rusty Sabich, he confronts injustice head on by insisting on the ideal of equality before the law.³ Human beings are not equal in every way, he tells the jury in the speech that proclaims the novel's central message — "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" — but he makes these concessions only to emphasize all the more strongly that "there is one way in this country in which all men are cre-

ated 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, gentleman, is a court . . . in this country our courts are the great levelers, and in our courts all men are created equal” (205).⁴

Atticus Finch fails, of course, in his attempt to convince the jury to treat alleged rapist Tom Robinson as the equal before the law of his white accusers, Mayella Ewell and her father Bob Ewell. Atticus demonstrates the sincerity and, ultimately, the limitations of his own commitment to equality before the law in the last episode of the novel. Unlike Rusty Sabich, he demands that a member of his own family be treated just as anybody else in the same situation would be treated, insisting to Sheriff Heck Tate that his own son Jem be brought before a court to answer for the killing of Bob Ewell, even though the killing was done to save the life of Jem’s sister and Atticus’s daughter Scout Finch: “but nobody’s hushing this up. I don’t live that way . . . If this thing’s hushed up, it’ll be a simple denial to Jem of the way I’ve tried to raise him,” he continues (273). Ultimately, however, Atticus agrees with Heck Tate to “hush it up” after Tate explains to him that it is not Jem who would have to go to court and be questioned but instead the recluse Boo Radley. Sheriff Tate argues that it would be wrong to go “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” (276).

So Atticus Finch’s great message of equality before the law for everybody is diluted in the last pages of the novel to the notion of equality for most people most of the time.⁵ Ordinarily when a man is killed, even if the victim is considered a bad man, there must be an inquest to determine whether a murder was committed. Not, however, in this case. In *Presumed Innocent* a murderer goes free, and the reader is encouraged to think it’s all right or at least not worth worrying about. In *To Kill a Mockingbird* a killing occurs—probably a justifiable homicide—and we are encouraged to applaud when the killing is “hushed up.” A higher moral standard that human law is invoked: Heck Tate says it would be “a sin” to bring Boo Radley to court. The only other time “sin” is mentioned in this novel concerned with moral issues occurs when Atticus Finch tells Jem “it’s a sin to kill a mockingbird” (90), and indeed when Atticus wonders if Scout could “possibly understand” the decision to report the “Mr. Ewell fell

on his knife,” she demonstrates that she does understand the moral issues involved in bringing Boo Radley before a court by asking a rhetorical question: “Well, it’d be sort of like shootin’ a mockingbird, wouldn’t it?” (276). Scout’s invocation of the title of the novel puts the moral weight of the entire work on the side of “hushing it up,” leaving the reader confusedly feeling as though it would somehow be a sign of the racial prejudice the novel condemns so powerfully to insist that Boo appear before a court, even though Boo Radley is not only white but a ghostly shade of pale.

Both novels end with a decision to prevent a killing from having any legal consequences for the killer. In both cases a decision is made to circumvent the law in this special case for the particular individual, even though in any other case the law is to be obeyed. In *Presumed Innocent* no real argument is made on behalf of the circumvention. Readers are encouraged instead to turn their attention to the sexual attraction between Rusty and Carolyn and simply ignore the moral issues involved in letting Carolyn’s killer go free. In *To Kill a Mockingbird*, on the other hand, the reader is encouraged to applaud actively the decision to keep Boo Radley out of the court system. The novel offers the reader a happy ending—Bob Ewell is dead, and Boo Radley has emerged from hiding to become a hero—that makes up in part for Atticus Finch’s failure to convince the jury to treat Tom Robinson as the equal of his accusers and for Tom Robinson’s death as he attempts to escape from prison. In Scott Turow’s novel, moral confusion is the price of an exciting twist of the plot. In Harper Lee’s, the moral standard of equality before the law is blurred in order to achieve a happy ending.

It could be argued that confusion and blurring are small prices to pay for the entertainment and insight into legal procedures provided by *Presumed Innocent* and the inspirational affirmation of *To Kill a Mockingbird*. Before that idea is accepted, however, it would be well to consider exactly what that price might amount to in each case. In *Presumed Innocent* the reader is asked to allow a murderer to go free because her son needs her and because the narrator does not want any further disruption in his life. In *To Kill a Mockingbird* the reader is encouraged to let a killer avoid a legal inquiry because he has “shy ways” and an inquiry would lead to him being dragged “into the limelight” (276). Neither novel encourages the reader to consider to what extent the willingness to make exceptions such as these weakens the moral force and authority of the ideal of equality before the

law. That ideal is central to the American legal system, and to the extent that it is realized one supposes it is because Americans do believe in it as the basis for the moral and legal legitimacy of our courts. If this supposition is right, then we do well to consider the cultural impact when widely read novels, especially novels claiming to affirm high moral standards, suggest that there is nothing really wrong with making exceptions when particular individuals whom we know are involved.

The moral imagination of novelists can provide insights about law and justice that abstract treatises cannot reach, but novels can also mislead and confuse. Students of law and literature have an obligation to distinguish between the former and the latter, between insight and confusion. If we are going to make exceptions to the rule of equality before the law, it is at least important that we do so with seriousness and with the awareness that such exceptions are likely to encourage further dilution of an ideal that both novels explicitly endorse but implicitly undermine.

Michigan State University

NOTES

¹The biographical information in this paragraph is taken from the "Biography" section on Scott Turow's home page.

²Richard Posner suggests, with some condescension, that "The appeal of Lee's novel lies in the fact that it provides a safe vehicle for talking about race at a high school level of reading comprehension. . ." (53). Later in his comprehensive discussion of the law and literature movement, Posner opines that "too much attention is being paid to *Billy Budd*, *The Merchant of Venice*, and *To Kill a Mockingbird*. The first two are great works of literature and deserve attention" (547). The clear implication is that Lee's novel, in contrast to the first two works, is not great and has no particular claim on our attention. Critics seem to have at least tacitly endorsed Posner's estimate of the work's literary merit. Claudia Johnson observes, "On the literary side, this novel, which has sold close to 20,000,000 copies, and which is one of the best selling books of the last hundred years, has received scant attention" (487).

³Rusty Sabich, thought admirable by comparison to other characters in his world, has some obvious flaws, while for most readers Atticus Finch "stands as a supreme example of the moral life," as Carolyn Jones puts it (53).

⁴Atticus Finch's emphasis on the principle of equality before the law does not seem to imply a condemnation of segregation. One would not expect him to bring up such a contentious issue in the courtroom where his primary professional responsibility was to defend his client. Atticus, however, never objects to segregation anywhere in the novel, though, after telling Jem and Scout that "The one place where a man ought to get a square deal is in a courtroom," he emphasizes that any white man who cheats a black man "no matter who he is, how rich he is, or how fine a family he comes from, that white man is trash" (220). Atticus Finch's defense of equality before the law without condemning segregation seems very close to the position of Robert Penn Warren in "The Briar Patch," his contribution

to the 1930 manifesto *I'll Take My Stand: The South and the Agrarian Condition*. In "the Briar Patch" Warren declared that "At present the negro [sic] frequently fails to get justice, and justice from the law is the least that he can demand for himself or others can demand for him" (252), while also accepting segregation, saying, "Let the negro [sic] sit beneath his own vine and fig tree" (264). Robert Penn Warren eventually realized that the principle of equality before the law could not be reconciled with segregation, and by the 1950s he had become an outspoken opponent of segregation. For Warren's later views on racial issues, see especially his books *Segregation* (1956) and *Who Speaks for the Negro?* (1965). In contrast Atticus Finch never confronts the impossibility of reconciling the two in *To Kill a Mockingbird*.

⁵For another view, see Claudia Johnson's "Without Tradition and Within Reason: Judge Horton and Atticus Finch in Court." Johnson justifies the ending on the ground that the key notion we are to take away from *To Kill a Mockingbird* is not belief in the "rigid principle" of equality before the law but rather a commitment to what she calls a notion of "reasonable expediency" exemplified throughout the novel: "Despite Atticus's respect for law, he believes that reason must prevail when law violates reason. His reasonable expediency is in evidence when he explains his toleration of Bob Ewell's breaking of the law by hunting out of season Another examples that [sic] Atticus acts from reasonable expediency rather than rigid principle can be seen in his decision to shoot the mad dog." In Johnson's reading, the decision made at the end of the novel confirms rather than dilutes the overall moral point: "In the case of Boo Radley's killing of Bob Ewell, law is proven inadequate, because on occasion reason dictates that laws and boundaries must be overridden for justice to be done" (409). But, one might ask, wasn't segregation itself seen as a "reasonable expediency by its supporters?"

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THE LEGAL THRILLER'S SOCIALLY
REDEEMING VALUE: SCOTT TUROW'S
REVERSIBLE ERRORS

NANCY BUNGE

That Scott Turow's career as a novelist consists of his producing one best-seller after another invites the assumption that he carefully coordinates every move with market demands. One interviewer even asked Turow if he went to Harvard Law because he planned to create the genre of legal thriller. In fact, calculation plays very little role in Scott Turow's fiction writing. On the contrary, he sees producing novels as a way to keep his emotional life vibrant; as a result, he reports, "writing for me, when it's best, is conducted at a remove from my cerebral life" (*Ultimate Punishment* 106). Appropriately, Turow's writing career developed in a somewhat random way.

Intending to build a life as a novelist, Turow attended the creative writing program at Stanford as a Mirrielees Fellow and stayed at Stanford for a few years after receiving his MFA, teaching as an E.H. Jones Lecturer and completing a novel, "*The Way Things Were.*" When no publisher accepted the manuscript, Turow decided to attend law school because he had developed an interest in the law while doing research for his novel and felt that he would betray himself if he did not pursue this new fascination. Life at Harvard Law validated this guess: Turow could find himself so excited by the legal arguments taking place in a class that he'd dance around in his chair. Although he disliked the arrogance at Harvard, he relished the pressure to do his best because it encouraged him to use himself fully.

When he wrote his agent to explain his decision to become a lawyer, he mentioned that someone should write a book about law school; in response, his agent surprised him with a contract to write what would turn out to be a best-selling memoir about his first year

at Harvard Law, *One L.* Despite the book's enormous success, when Turow began his famous practice of writing in notebooks as he commuted to his job as a lawyer in Chicago, he wrote fiction. Just as he believed that if he did not go to law school he would deny part of himself, he thought that if he did not continue to write fiction, he would turn his back on another important dimension of his personality. After Turow accumulated multiple spiral notebooks full of novel fragments, his wife suggested that he spend the summer between leaving his job in the Chicago US Attorney's office and beginning his new career, in the firm of Sonnenschein, Nath and Rosenthal, finishing his book. As a result, Turow spent that summer writing *Presumed Innocent*, carefully leaving enough time to paint the porch before joining his law firm so that he would not later regret wasting his summer.

Turow's writing process reflects his determination to keep his fiction writing as close to his emotional life as possible: every day he gets up and writes whatever occurs to him. After a while, he reports, the various pieces come together, like patches of a quilt, and a novel emerges. His legal practice, on the other hand, requires him to be detached and logical. Comparing Turow's two books on the death penalty, the nonfiction book, *Ultimate Punishment: A Lawyer's Reflections on Dealing with the Death Penalty* and the novel, *Reversible Errors*, shows why he needs both law and literature and why the rest of us need both from him.

Ultimate Punishment offers a logical exposition of various arguments for and against the death penalty. The book grew from Turow's appointment to the twelve-member Governor's Commission that studied capital punishment in Illinois; participating in this group gave him a unique opportunity to consider seriously the death penalty along with distinguished and knowledgeable colleagues. This book reveals his deliberations and his conclusions.

Turow systematically and even-handedly considers the many variables that necessarily enter into a decision about the death penalty, including the unreliability of confessions and eye witnesses, the victim's family's longing for resolution, and statistics about capital punishment as a deterrent. He finally concludes that he is against the death penalty because it is impossible to administer fairly: the more horrendous the crime, the more the jury is inclined to convict because they feel someone must pay for this outrageous violation of the community's safety. As Turow puts it: "There will always be

cases that cry out to me for ultimate punishment. That is not the true issue. The pivotal question instead is whether a system of justice can be constructed that reaches only the rare, right cases, without also occasionally condemning the innocent or the undeserving" (*Ultimate Punishment* 114). His final decision rests on the notion that the jury's emotional involvement makes consistently fair verdicts in capital punishment cases impossible; as Turow puts it, "Our horror and revulsion undermine our capacity to reason—and prove that justice alone will not make us whole" (*Ultimate Punishment* 109).

Turow's novel, *Reversible Errors*, also emphasizes the role that emotion plays in the justice system, but says nothing about the jury. The novel's central characters are police and lawyers, who, despite aspirations to and attempts at professionalism, find their actions shaped by their feelings. The novel grew from Turow's experience successfully defending Alex Hernandez, who had been twice convicted of murder and put on death row. When urged by a friend to study the Hernandez case, Turow did not expect that he would find compelling reasons to take it up; he had too much faith in the justice system to believe that an innocent man could be condemned to death twice. But after he had read the relevant documents, Turow declared that he either had to defend Hernandez or stop practicing law—the evidence for Hernandez's innocence seemed that strong. Turow's concern that he would fail to free someone he believed innocent caused him such anxiety that he knew the experience would find its way into his fiction, but he felt that the clear injustice of the Hernandez case was too great for fiction to sustain. So he waited for more complex characters to take residence in his imagination.

These are the people who populate *Reversible Errors*, a novel about a lawyer, Arthur Raven, who successfully argues for the release of Rommy Gandolph, a man wrongfully sentenced to death for a murder he didn't commit. Raven's law firm assigns him to this pro bono work, which he approaches with the same cynicism Turow felt when he picked up the Hernandez documents. But a young, attractive female associate named Pamela Towns, whom he would like to ask to lunch, accompanies Raven when he goes to interview Gandolph for the first time. Towns thinks that Gandolph may be innocent and Raven entertains the idea, presumably because he must if he hopes for a relationship with her. While pursuing the possibility of Gandolph's innocence, Raven meets Gillian Sullivan, the disgraced judge who sentenced Gandolph to death. Arthur and Gillian

fall in love and she helps him figure out a strong defense, for she comes to associate Gandolph's liberation from the mistakes of her past with her own.

Gandolph was prosecuted by Muriel Wynn, an ambitious woman who goes to the crime scene with Larry Starczek, a policeman with whom she has had a long-term affair. She has just told Larry that she plans to marry Talmadge Lorman, someone far more distinguished and powerful than he. Larry hopes that if he comes up with the evidence she needs for a conviction, Muriel will understand his importance to her and call off the marriage; he manages to wring a confession from Gandolph.

Although the reader learns a great deal about the social lives of the various characters prosecuting and defending Gandolph, what little information offered about Gandolph makes him seem, at best, foolish; thus, the novel does not make its argument by generating sympathy for the obvious candidate, the innocent man who has spent years on death row. Aside from some consideration given to the victims' families, all sympathy and interest focus on the emotional lives of the various law enforcement officials involved in prosecuting or defending Gandolph.

Of course, their passions hopelessly compromise the objectivity of these lawyers and policemen, but the readers of *Reversible Errors* wouldn't have it any other way. Because these trials matter so much to Muriel's ambition, to Arthur's self-confidence, and to Gillian's redemption, the rise and fall of the courtroom proceedings have enormous resonance for readers. And readers want desperately to learn whether these people will eventually pair up in what seems a desirable way. In other words, the murder itself and the man sitting on death row because he has been falsely convicted of it serve as background for the struggles of the novel's central characters, compellingly making the point that feelings play a central role in all legal prosecutions, just as they do in every other important human experience.

Turow encourages involvement with his characters' emotional lives by populating his fiction with complicated human beings, not stereotypes. Arthur Raven, for instance, has foolish hopes, excessive humility, a tendency to cry about his father's death, a devotion to a troubled sister that at once protects and limits him, and great decency. Perhaps Turow can achieve this complexity because he loves the people populating this novel: "As their creator, I felt a divine love for

all of these characters, which included an appreciation of their foibles and their heroic aspects" (*Ultimate Punishment* 103).

Turow's characters seem so realistic that we can even see ourselves in them. Who hasn't felt a failure like Gillian Sullivan and, like her, yearned only for redemption? Who hasn't felt the kind of ambition that separates Muriel from Larry, the only man she has ever loved? Who hasn't used imagined obligations to others to short circuit the richness of his or her own life the way Arthur Raven uses his sister's problems as his justification for not pursuing his own happiness full throttle? As we understand and forgive Turow's characters, we understand and forgive each other and ourselves. Far from turning our attention away from important legal issues to trivial human dramas, Turow directs our attention to what really matters: the problems all of us have realizing ourselves fully, even when we function free of criminal interference. And by engaging readers in the complexity of those who people it, Turow's novel reminds us why laws exist, why they always must fall short of pure justice and what they strive to protect: acts become criminal because they brutally intrude upon the process of every human being becoming as fully himself or herself as possible.

By directing our attention away from the battle of legalisms and towards the human struggles behind it, Turow prevents us from losing ourselves in abstract conflicts that have little connection to our lives. Instead of hovering over the psychological flaws of the accused and the guilty, Turow devotes himself to elaborating the conflicts of ordinary human beings like ourselves who sabotage themselves with overweening pride or excessive modesty or false hopes.

The law finally exists to protect and respect the richness of ordinary lives. Turow takes us to the source when he writes fiction populated with believable characters who extend themselves beyond the boundaries of obvious labels so far that they remind us of the best and worst parts of ourselves, and we can judge them no more than we can ourselves. By taking us beyond stereotypes and awakening our appreciation of and identification with the complications of other human beings, Turow not only shows why legal proceedings inevitably share the frailty of the people who orchestrate them, but he also makes faulty legal proceedings more endurable by reminding readers that they finally matter less than our connections to other human beings. It is entirely appropriate that in *Reversible Errors* the actual legal proceedings recede into the background as his readers

and Turow focus on whether or not his characters will heal themselves and each other. In real life, as in Turow's novel, the law plays a relatively minor role in people's struggles to become the most complete and decent versions of themselves possible.

What most concerns the readers of *Reversible Errors* is whether the various couples engaged in the legal proceedings get together in the ways in which they would like to see. Rather than faulting Muriel for the ambition that helped put Gandolph in jail unfairly, readers hope that she overcomes her pride enough to leave her equally ambitious husband for Larry. Rather than faulting Gillian for sitting on the bench and sending Gandolph to death row instead of admitting that her heroin addiction made her an unfit judge, readers hope she and Arthur will live happily ever after. Readers have these hopes, not because they yearn for a Hollywood ending, but because legal decisions are attempts to prevent human beings from hurting each other. As a result, our relationships to each other matter far more than the legal codes that attempt to make us treat each other decently.

Thus, in *Reversible Errors*, Turow's focus on human beings and emotions rather than on the legal system shows that the involvement of emotionally driven human beings in the legal system means that it never works flawlessly. But *Reversible Errors* also reminds the reader that the legal system is nothing but a necessarily imperfect attempt to codify the respect and affection for others that a good novelist can remind readers of and even evoke. In *Ultimate Punishment*, Turow reflects on the meaning of *Reversible Errors*:

I have always suspected that what we want most from punishment, beginning with the moments when we first hit someone back as young children, is restoration. The pain will leave us and go instead into the person we hurt . . . Even to state these goals is to recognize their impossibility. The legal process will never fully heal us . . . Only the attachments we have to each other, the antipodal experience of what goes on in the moment a murderer kills, can accomplish that. In the fact of the cruelties we visit upon one another, murder being the gravest wrong among them, a sense of meaning and connection must come from outside the law. (108-109)

Reversible Errors helps establish this sense of human connection with its plot and its rich characters whose flaws so closely resemble our own. Turow turns to fiction in order to give air and light to his own emotional life. What he achieves through this process reminds

his readers of their connections to other human beings, exposing them to cruelty and then healing them, and probably himself, in a manner beyond the law's capacity.

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*STATE OF TENNESSEE VS. JOHN THOMAS SCOPES:
COMPETING NARRATIVES AND METANARRATIVES*

CHARLES PALMER

When I began the practice of law, a friend who had too much experience with great trial lawyers—because many of them had defended him—told me that the facts of a trial are like noise. Noise alone doesn't make sense; we don't remember it, unless that noise fits together as music. By themselves, facts are like a random hodgepodge of dots on a screen. We don't remember them, just as we don't remember noise. We understand and remember facts only when they fit together as a story. A trial is usually a struggle over whose story best explains the facts. This same principle explains the place of each individual trial in the overall pattern of the common law.

The Scopes Trial (*State of Tennessee vs. John Thomas Scopes*) is an important part of the narrative of our law.¹ Each young trial lawyer who goes forth to slay the lying witness through clever cross-examination is influenced by the events in Dayton, Tennessee. But there is the Scopes Trial, the facts of that case, and the two competing narratives of those facts crafted by Midwesterners Clarence Darrow and William Jennings Bryan—and then there is the story of the Scopes trial as told in our culture, specifically in the play and film versions of *Inherit the Wind*. All of these narratives are important, and all of them were shaped in part by the cultural context in which they were developed.

THE FACTS

The world emerged from the First World War with cynical disillusion. A worldwide event, led by trusted world leaders, had caused young men to die in a disastrous, pointless war. Rural and Southern America turned to the comforting clarity of fundamentalist religion.

The nature of a confusing and sometimes evil world was literally revealed to these fundamentalists in the Bible. But the fundamentalist concepts of the creation of the world were being challenged by Darwin's theory of evolution. Darwin thought that species were not immutable, that they changed over time, and that man was not unique but part of the evolution of animals. These beliefs comprised an issue that was tailor-made for Williams Jennings Bryan. The "Great Commoner" was a Democratic populist and a charismatic speaker who had served in the US Congress, run for President three times, and was appointed Secretary of State under President Wilson. He gave over two hundred speeches per year, wrote a regular newspaper column, and helped to secure the ratification of four constitutional amendments: the direct election of senators, a progressive federal income tax, Prohibition, and female suffrage (Larson 38). Bryan, who always stood for the little man, had serious religious and social objections to Darwinian evolution. Social Darwinists extrapolated unscientifically from evolutionary theory to assert that survival of the fittest implied that those who succeeded were, in fact, superior. Carnegie and Rockefeller took great comfort in the notion that they were wealthy because they were the fittest (Larson 27). The implicit premise that survival or success proved one's fitness and possibly superiority infuriated the "Great Commoner" and the people he spoke for. And there were even more nefarious implications of the theory of evolution.

Darwin's cousin, Francis Galton, proposed an extension of Darwinism called eugenics. If animals improved by survival of the fittest, then humans would also (Larson 27). Eugenics was the pseudoscience of improving humans by improving inherited characteristics. The public campaign to improve humans by eugenic restrictions on reproduction reached its zenith at the time of the Scopes trials. More than half of the states passed laws to segregate and sterilize "unfit" humans such as the mentally ill, the retarded, criminals and epileptics. Bryan abhorred eugenics and the theory of evolution that was used to justify it. So Bryan brought his considerable public influence to bear in opposing the theory of evolution and its teaching in public schools. He opposed evolution, not only because it conflicted with the literal words of Genesis, but also because it justified arrogance toward the little man, which Bryan found abhorrent.

States across the South followed Bryan's pleas to ban the teaching of evolution. But there was a new way of thinking about funda-

mental liberty that was developing in America. Bryan believed, or assumed as most Americans of his time, that the majority of citizens were entitled to govern with few restrictions. The premise undergirding this assumption was that the United States is a democracy and in a democracy, the majority's wishes govern. Since most of the citizens of Tennessee had spoken through their elected representatives to ban the teaching of evolution, the matter was settled: the majority will should prevail with few restrictions from the rights of individuals. This concept of a majoritarian democracy would change in the near future, especially during the Warren Court years, but this change had not yet come about. An elite organization of New Yorkers, the American Civil Liberties Union (ACLU), was working for such change. The ACLU and Clarence Darrow had been unsuccessful at the time of the Scopes trial with their arguments that the will of the majority was limited by the rights of the minority. The courts were resolute in holding that the Bill of Rights limited only the federal government, not the state government. The incorporation doctrine, which held that the Bill of Rights applied to the States through the due process clause of the Fourteenth Amendment, was first used in dissent in the year of the Scopes trial (*Gitlow v. New York*). But the ACLU was seeking to challenge the ban on teaching evolution, so they ran an advertisement in several Tennessee newspapers asking for someone to challenge the new law prohibiting its teaching (Moran 24). In one of the colorful vignettes of the Scopes trial, they found their man where they least expected.

George W. Rappleyea was a New Yorker who moved to Dayton, Tennessee, to manage the mines there. Rappleyea read the ACLU advertisement in the *Chattanooga Times* and saw an opportunity for the small Tennessee town (De Camp 7). Rappleyea hurried down to Frank E. Robinson's drugstore. Robinson was the chairman of the local school board and his drugstore was the principal gathering place of the town's businessmen. Rappleyea and Robinson sent for the city's two young city attorneys, Herbert and Sue Hicks, who was named after his mother, who died at his birth. The attorneys agreed to prosecute if anyone had taught evolution. The group then summoned the school's football coach and general science teacher, John Thomas Scopes. Scopes was playing tennis but went immediately to the drugstore. Scopes hadn't been teaching the biology course in the Dayton school but had filled in for the biology teacher and school principal while the principal was ill. Rappleyea pulled the biology

textbook off the shelf of Robinson's Drugstore, where the book was sold, and asked Scopes whether he had used the book. Scopes said he had for a part of his review of the course (Chapman 69). That was it; Scopes must have taught evolution since the textbook contained a section on evolution. Scopes was shy and cooperative and agreed that he must have taught the subject if it was in the book. In order to satisfy the city fathers, he would agree to be prosecuted. Scopes's good friend, Sue Hicks, agreed to prosecute him. Rappleyea summoned the local justice of the peace to swear out a warrant. One of the greatest trials of the century was underway.

But it wouldn't have been one of the great trials of the century without well-known Midwestern personalities as lawyers. Bryan, born and raised in Illinois, was valedictorian of his class at Illinois College prior to earning a law degree at Union College in Chicago. Clarence Darrow was born and raised in northern Ohio; after college, he spent three years teaching school in Ohio and then studied law for one year at the University of Michigan before being admitted to the Ohio bar at the age of twenty-one. Darrow had a modest practice in northern Ohio until he moved to Chicago, where he rose to national prominence following a life-changing case. He was an attorney for the Chicago and Northwestern Railway when a bitter labor strike was called against the railroad. The strike culminated in violence between the strikers and National Guardsmen. Nearly a dozen strikers were killed when the Guardsmen opened fire on the crowd. The leader of the strike, Eugene Debs, was arrested and thrown in jail. Darrow, outraged by the railroad's actions, quit his job with the railroad and agreed to represent Debs. This action began a period of seventeen years during which Darrow rose to national prominence representing the unpopular in sensational trials.

Darrow had been a friend and admirer of William Jennings Bryan (Driemen 91). The attorney for labor and the unpopular certainly had great affinity for the "Great Commoner." But Darrow did not agree with Bryan's religious views and, especially, his condemnation of evolution, believing that Bryan and his religion were a threat to scientific research and advancement. So, when Darrow was contacted about the trial in Dayton, he readily agreed to represent Scopes for free, the only time he did so in his career. But the ACLU was not sure (Johnson 30). They had advertised for someone to challenge the law but they did not want an openly anticlerical Darrow. The ACLU was interested in minority rights, such as academic freedom and freedom

of speech; Darrow was more opposed to what he perceived to be fundamentalist religious demagoguery. But Scopes wanted a national figure to counter the presence of William Jennings Bryan (Johnson 30). Only Darrow could do that. So Bryan and Darrow headed to Dayton: Bryan with a simple story that the majority of citizens should be able to control what was taught in their schools and Darrow with an equally simple story that science and reason had shown that the literal interpretation of Genesis was incorrect and that only the truth should be taught in the public schools. As in most trials, the question would be whose story would best explain the facts. But with this trial the question was not merely whose story would prevail in a minor misdemeanor trial in a Tennessee courtroom, but whose narrative would carry the day to a nation that was listening.

The prosecution's position was that the case was simple: Scopes had taught evolution and the teaching of evolution was prohibited by Tennessee law. Some of Scopes's students were called to testify that evolution had, in fact, been taught in their classes in school. And that was it. The prosecution rested its case. Bryan rarely spoke.

The defense story was a little more complicated. The law of Tennessee, called the Butler Act, provided "[t]hat it shall be unlawful for any teacher in any of the Universities, Normals and all other public schools of the State which are supported in whole or part by the public school funds of the State, to teach any theory that denies the Story of the Divine Creation of man as taught in the bible, and to teach instead that man has descended from a lower order of animals" (*Butler Act*).

Darrow's theory was that the statute only prohibited instruction that both denied the Divine Creation and taught instead that man descended from animals. Although he had to admit that evolution taught that man descended from a lower order of animals, his theory was that evolution did not deny or even concern itself with the Divine Creation. Thus, Darrow called experts on evolution and religion to testify that there was nothing inconsistent between Divine Creation and evolution (*The World's Most Famous Court Trial* 146). That issue would determine whose story would be told. But the defense also had a dilemma. They weren't terribly concerned about whether Scopes would be convicted; they were looking to establish a precedent that would influence the prosecution of other cases. If Scopes was acquitted in Dayton, there would be little precedent. Trial courts do not make precedent; appellate courts do. So the defense did not

necessarily want Scopes to be found not guilty, which would deny him an appeal. Instead, they wanted to tell their story to the listening public and then win on appeal. So when the trial judge denied the defense the right to present their experts on the grounds that these experts were irrelevant to the issue of whether the statute had been violated, Darrow saw another chance to tell his story. He called Bryan to testify as an expert on the Bible (*The World's Most Famous Court Trial* 248).

The prosecution, with the help of a friendly judge, had done a masterful job of controlling the narrative up to this point. The statute prohibited the teaching of evolution and Scopes taught evolution. Lawyers don't call other lawyers to testify because lawyer witnesses do not have personal knowledge of the facts. But Bryan must have known that he might be questioned. Darrow had been writing letters to the editor of the *Chicago Tribune* about Bryan's criticism of evolution and outlining the questions that he would like to ask Bryan (Darrow 266). The prosecuting attorneys objected to calling an attorney as a witness, but Bryan could not back down from the challenge. Bryan's only condition was that if he testified, then Darrow should also be required to take the stand. Everyone agreed. So on the lawn of the Rhea County Courthouse—because there were so many people in the courtroom that the judge moved the trial to the lawn to prevent the floor from cracking—one of the most famous and odd confrontations in the history of American trials took place.

Darrow's strategy in cross-examining Bryan was relatively straightforward. Bryan insisted the Bible was literally true, that the stories in the Bible were not allegories, that they actually happened. Bryan believed the world was created exactly as set forth in Genesis. Thus, evolution could not be true. If, however, the Bible were subject to interpretation, not literally true but true in its meaning, then evolution might not be inconsistent with the Bible and, thus, Scopes did not violate the law.

Darrow intended to show that the miracles of the Bible could not be literally true but were merely stories illustrating a moral imperative. He asked whether there was actually a big fish that swallowed Jonah. Bryan said yes. Darrow asked whether God actually made the sun stand still. Bryan said yes. But Darrow insisted that if the earth stood still, it would turn into a molten mass. Didn't Bryan realize that? Bryan said that the God who stopped the earth could certainly stop any harmful consequences from his act (*The World's Most*

Famous Court Trial 287). The inference of the audience was that Darrow had cleverly foiled the ignorant Bryan. Every inexperienced trial attorney is looking for the clever Clarence Darrow retort that proves the witness is mistaken.

Darrow's reasoning was that God or a superior force could not have stopped the earth in the sky because if that had happened, the earth would have heated to a molten mass. Since we know that the earth did not turn into a molten mass, then the earth could not have been stopped in the sky. Darrow also asked Bryan about the age of the earth (*The World's Most Famous Court Trial* 296). Many of the fundamental Bibles of the day contained the timeline for the age of the earth developed by Bishop James Ussher. Ussher calculated the age of the earth by adding the ages given to Adam and his descendants in Genesis to the time of King Nebucadnezzar. Ussher was a sophisticated man and had to reason from the age of Nebucadnezzar to contemporary times using not the Bible, but the historical timelines of the day. Ussher's calculations computed the age of the earth as 4004 BC. In fact, Ussher believed that the earth was created on October 23 of 4004 BC (Ussher 892).

Darrow asked about the length of the first day. If the earth was formed in seven days, did Bryan know the length of those days? Ussher had assumed that the first day was twenty-four hours. At the trial, Bryan said that he did not know the length of the first day (*The World's Most Famous Court Trial* 296). If Bryan had any regrets about his testimony, it was for his answer to this question. Bryan's fundamentalist followers were upset with that answer. It is interesting, then, that the Bryan character in *Inherit the Wind*, contrary to the trial testimony, insisted that the first day was twenty-four hours. The next day, Darrow admitted in court that Scopes was guilty. There would be no further trial. Darrow would not take the witness stand as he agreed. The judge struck Bryan's testimony.

INHERIT THE WIND

The reality of the Scopes trial differs considerably from the way that we understand the trial today. The story of the trial has been told at different times. There was the simultaneous account of the trial in 1925 in all the national newspapers, newsreels shown in movie theaters, and radio broadcasts on WGN in Chicago. But in 1955 the

story was told again, as a play, and in four subsequent film versions. *Inherit the Wind*, as its co-authors Jerome Lawrence and Robert E. Lee stated, is not history, but theatre (Lawrence and Lee 3). However, the play was so clearly based upon the Scopes trial that it has replaced the reality of the actual trial in the American imagination.

Inherit the Wind opened on Broadway in 1955 to lukewarm reviews (Johnson 101). Nevertheless, the play ran for three years in New York and then for many more on the road. High school drama teachers across the United States staged it, and then, in 1960, it was adapted as a film that starred Spencer Tracy.² Most Americans believe that *Inherit the Wind* accurately portrays the events of the famous trial. But *Inherit the Wind* was written during a different era, and this different cultural context changed the story.

Inherit the Wind was written while Senator Joseph McCarthy's House Un-American Activities Committee (HUAC) was holding its hearings. Viewed within this cultural context, the play implies that the intellectual bullying of McCarthy was similar to Bryan's crusade against evolution. It was dangerous to speak out directly against McCarthy and his followers; many authors were blacklisted for opposing them. However, one could write a play about a person they believed was a similar bully from a bygone era. The Scopes trial was portrayed as a confrontation between an ignorant and dogmatic politician like McCarthy and the clever liberal trial lawyer. What was a fascinating clash between two cultures and two legitimate points of view in 1925 became nothing more than a struggle between comic book characters, good guys and bad guys, in 1955, the era of Roy Rogers, Hopalong Cassidy and John Wayne, whose audiences preferred clear-cut character delineation.

The citizens of Dayton, Tennessee, were demonized in the film, in which the minister and the sheriff walk resolutely—to the singing of "Give Me That Old-Time Religion"—to the school where Bertram Cates is arrested in his classroom. The play begins with Cates in jail explaining to his girlfriend why he did it. But, as we have seen, these versions of the story are entirely inaccurate. Scopes was charged but never arrested or put in jail. In fact, Scopes would never have been charged by his friend, Sue Hicks, if Scopes had not consented to being charged. The stage directions further reveal the emphasis of the play: "It is important to the concept of the play that the town is visible always, looming there, as much on trial as the individual defendant" (Lawrence and Lee 7-8). Later, the people of

Hillsboro (Dayton) were portrayed as a near mob outside the jail. The play and movie had little sympathy for small-town Southern America.

William Jennings Bryan was also unfairly demonized. In the film, his incessant eating of chicken in the courtroom depicts him, inaccurately, as an unsophisticated bumpkin. In the play and in the movie, Brady (Bryan) objected to the small one-hundred-dollar fine imposed on the defendant. In fact, Bryan did not want to have any punishment imposed by the statute when it was drafted and said nothing when the judge imposed the minimum fine. But Brady's objections to the sentence in the play and movie make him the loser in the drama even though Scopes was convicted. In Bryan's speech at the end of the trial—his last speech in a courtroom because he died five days after the trial—he said: "Here has been fought out a little case of little consequence as a case, but the world is interested because it raises an issue, and that issue will some day be settled right, whether it is settled on our side or the other side" (*The World's Most Famous Court Trial* 316).

And, finally, at the end of the trial, Bryan was portrayed as a dithering, defeated man who still wanted to argue the case after the defendant was tried and sentenced. There is little indication in the historical record that Bryan felt defeated after the trial. In the few days he had after the trial, Bryan continued to make speeches about the evils of the theory of evolution (Johnson 90). And, perhaps most unfairly, the play and subsequent accounts of the trial have failed to point out what was essentially a dirty trick by Darrow. When Bryan was called to the witness stand, he agreed to testify on the condition that he could call Darrow as a witness (*The World's Most Famous Court Trial* 284). After Bryan's testimony, which was ultimately struck from the record by the judge, Darrow said: "I think to save time we will ask the court to bring in the jury and instruct the jury to find the defendant guilty" (*The World's Most Famous Court Trial* 306). The defense gave up the fight before Darrow would have to testify and before Bryan could give his final argument. If Bryan was quibbling at the end of the trial about his prepared remarks, it was because he didn't get to present his side of the controversy. He never got to tell his story because Clarence Darrow had agreed that his client was guilty.

Inherit the Wind has demonstrated enduring appeal: Spencer Tracy, Gene Kelly, George C. Scott, Christopher Plummer, Jason

Robards, Kirk Douglas, Darren McGavin, Jack Lemmon, Beau Bridges and high school thespians too numerous to mention have all starred in the play and film versions. Perhaps it is the allure of a small Tennessee town hosting bigger-than-life Midwestern characters in a debate about the intersection of faith and reason that is its most redeeming value. Then, again, it may be just a good story, regardless of how it is told. But that confrontation of Bryan and Darrow on the witness stand as portrayed in *Inherit the Wind* has established a paradigm for cross-examination. Never mind that Darrow's questions were open-ended, allowing the witness to answer as he pleased, a mistake that no experienced cross-examiner would make. The dramatic cross-examination of the Scopes trial, in which the witness is led down a path to a glaring inconsistency, is the paradigm that most new lawyers must learn to disregard. Nevertheless, the narratives and metanarratives of the Scopes trial, along with other legal classics, such as *To Kill a Mockingbird*, have functioned to establish the trial lawyer as one of the enduring intellectual heroes of our culture.

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NOTES

¹For an excellent discussion of this point, see Larson 503.

²See Lawrence, Jerome and Robert E. Lee. *Inherit the Wind*. New York: Dramatists Play Service, 1958. The play inspired four film versions. The original film was nominated for four Oscars, including "Best Actor" for Spencer Tracy's portrayal of Henry Drummond (Clarence Darrow), *Inherit the Wind*. Dir. Stanley Kramer. Perf. Spencer Tracy, Frederic March, and Gene Kelly. Stanley Kramer Productions, 1960. Two made-for-television film versions based on the play were nominated for several Emmy awards, *Inherit the Wind*. Dir. George Schaefer. Perf. Melvyn Douglas and Ed Begley. Hallmark Hall of Fame Productions, 1965, and *Inherit the Wind*. Dir. David Greene. Perf. Kirk Douglas and Jason Robards. Vincent Pictures, 1988. A later made-for-television version, also based on the play, won a Golden Globe Award, *Inherit the Wind*. Dir. Daniel Petrie. Perf. Jack Lemmon and George C. Scott. MGM Television, 1999.

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EARLY MIDWESTERN WRITERS ON FINANCIAL PANIC: CONTEMPORARY IMPLICATIONS

MAE KUYKENDALL

The connection of words to finance is, at first glance, fairly thin. Finance is about numbers. Its basic expression arrives in numbers and graphs. The financial press began as mainly sheets filled with numbers. The readers for financial news demand speed in delivery and want to know the bottom line. What did the market do today?

Talk concerning finance is often imagined as hidden or secret. The domination of financial news by numbers leaves a gap in coverage, imagined in periods of reaction to bad numbers to be the result of the suppression by a small group of a secret but knowable story (Cohan). When money disappears, there is a search for an agency account. Journalists' reports of financial events become suspect as incomplete. Hypotheses abound about private motives and deals among the leaders in finance and government. Concern with destroyed documents turns alarm about lost investments into suspicion that conspirators have destroyed all the traces of a private understanding and frustrated public accountability. The money is gone, and so is the story.

The complication in connecting words to finance lies in the tenuous connection of people to the medium by which markets speak. The market can sink in a day. Linking the change in the market price in one day to the conduct of individuals or groups is well beyond the capacity of the word. The velocity is too great, and, in the words of the economist, the market price impounds all available information. The information is there, but its sign is close to mute: one number.

That makes interpretation about the human element of the market a matter of reconstruction, reinterpretation, and imagination. A

question that fascinates me is the capacity of imagination to provide anything remotely useable for comprehension. By comprehension, I intimate a connection between the product of the imagination and something real that has occurred and is meant by a specific writing to be rendered through the mechanism of a shared human imagination. Products of imagination without connection to "the real" tell us only about the human imagination, and perhaps about the reaction of the human to information that speaks and yet is mute.

Yet suspicion and interpretation require an outlet. Words search for characters to describe and for a connection to reality. Different eras offer different outlets, different types of readers, and greater or lesser intensity of reaction. The word is called to the fray for popular consumption and for deeper insight. The current financial meltdown that began in 2007 will be described and redescribed in trade books, novels, movies, blogs, magazines, business journals, newspapers, politicians' speeches, television, conversations, private correspondence, and gossip. It isn't clear whether any medium in particular will gain a dominating or even influential voice in the din of interpretations.

According to David Zimmerman's book, *Panic! Markets, Crises and Crowds in American Fiction*, both writers and reformers were part of an era grasping for accountability to slow the transformation of the country by industrialization and the agglomeration of capital in trusts. Many novels were written about financial panic, many by hack writers or Wall Street players, and many with melodramatic plots and arch villains. These novels had competing plot lines, some to vindicate corporate America as the engine of progress and some to indict capital and capitalists as conspiratorial plotters to ruin and steal from the average citizen. Some novels portrayed corporate America as the engine of development and progress, turning America from a rural backwater into a modern civilization producing wealth and new knowledge and guided by great men. Other novels portrayed the ruin of the Republican idyll that pre-Industrial America was felt to have been. Both these themes can still be found in popular writings. Yet, in my view, none of these deploy the word to connect to an underlying reality of finance or business. They cast about for traction to explain and advocate but, in my view, they are not effective or persuasive but merely cultural pastiche, readily forgotten.

According to Zimmerman, at the turn of the century, there was recognition that markets set in motion a mass and intense readership.

The notion was that the market mesmerized a mass of followers, who obsessively read the ticker and sheets of business news, tips, and gossip, as well as melodramatic fiction that he calls panic novels. In Zimmerman's account, leaders of business thought such mass readership in connection with investing and in the aftermath of panics was dangerous (20, 26-7). Those who produced the texts had the capacity to move markets to disastrous effect. They could undermine capitalism and the attendant stability. Reformers could produce mass effects on markets, perhaps, but so could manipulators and charlatans.

Here I question what we might call writing and readership relating to investment. Shards of information do not rise, in my view, to the status of writing and reading. The modern theory of markets has been that they impound all the available public information and incorporate it into prices. They do this daily. The form the impoundment takes is the collective input of every market participant into price, based on the part of the whole set of information to which they respond. The absorption of information occurs by processes that imbed complex data into price movement that becomes new information. But, as I suggested early on, price is not expansive. Price is simple. Price speaks for itself and then falls silent. Hence, much writing about finance goes begging for readers, fails as word, and in truth only uses business as a setting for perennial themes. According to the emerging field of the sociology of finance, facts in finance become facts only if their connection to an author disappears (MacKenzie 9). Market price is such a fact.

The writings of Theodore Dreiser and Frank Norris have contemporary implications for the recurring project by which the public seeks accountability for financial ruin. These might be seen paradoxically as successful literary treatments of the incapacity of the word to capture the events that drive markets. At best, novelists can evoke the velocity of markets, the dwarfing by markets of individual human agency, the factor of male energy in finance, and pieces of the human drama influenced by involvement in markets. But they cannot render an accounting, the theme that Zimmerman maintains is the message of the naturalist novels of both Theodore Dreiser and Frank Norris. Zimmerman indicates that there is something he sees as mass, intense readership, both for the daily reports of market activity and for interpretations in political melodramas of the early twentieth century.

But significant writers at the time, such as Dreiser and Norris, created a portrait of incomprehensibility. That portrait is the best that literature can tell us about business. Hence, the writings about business oscillate between efforts to give an avalanche of meaningful details that might reveal to readers the direction of markets or the human agency that controls markets, and writings that, upon financial disaster, respond to the collective failure of readership and "authorship" to keep markets functioning predictably or rationally. When markets fail, those vying to explain the events struggle to select from the almost limitless wealth of details on transactions and the players involved in them to create a socially accessible account around which a public consensus about characters and plot and causation can emerge.

When markets seem to function normally, complexity abounds. Readers use strategies to penetrate the complexity, but the strategies lack coherence. The writers of the material lack the narrative techniques to make the materials memorable or consistently appealing. Writers providing statements for businesses write to occlude and not to reveal. Most readers lack the stamina to read past a surface to the complex details comprehended only in part even by a handful of experts in particular types of writing and readership. When markets become erratic, there may be a brief spike in reading, but the texts offered are inadequate to form a common understanding. They veer off in a thousand attempts at narrative control.

In any given era, the thrashing about within complexity may have differing tropes but the overall grasping at straws of meaning repeats with the business cycle. In portraying the Chicago trading market for wheat in *The Pit*, Norris portrayed a whirlwind of activity with a speed, volume, and roar that presented a physical force that dwarfed any individual and overpowered any but the strongest of males. He also presented a picture of a flood of information with a velocity and uncontrollability that was like his image of wheat pouring into the markets from the plains of the West—both were a "Maelstrom" with a "primeval energy" (Norris 63):

You can spend half a million a year in leased wires and special service and subscriptions to news agencies, and you get the first smell of news like this right here on the floor. Remember that time when the Northwestern millers sold a hundred and fifty thousand barrels at one lick? The floor was talking of it three hours before the news slips

were sent 'round, or a single wire was in. Suppose we had waited for the Associated people or the Commercial people then? (72)

The sources for information have a physical manifestation and make a sort of musical din:

The official reporter climbed to his perch in the little cage on the edge of the Pit, shutting the door after him. By now the chanting of the messenger boys was an uninterrupted chorus. From all sides of the building, and in every direction they crossed and recrossed each other, always running, their hands full of yellow envelopes. From the telephone alcoves came the prolonged, musical rasp of the call bells. In the Western Union booths the keys of the multitude of instruments raged incessantly. Bare-handed young men hurried up to one another, conferred an instant comparing dispatches, then separated, darting away at top speed. Men called to each other half-way across the building. Over by the bulletin boards clerks and agents made careful memoranda of primary receipts, and noted down the amount of wheat on passage, the exports and the imports.

And all these sounds, the chatter of the telegraph, the intoning of the messenger boys, the shouts and cries of clerks and traders, the shuffle and trampling of hundreds of feet, the whirring of telephone signals rose into the troubled air, and mingled overhead to form a vast note, prolonged, sustained, that reverberated from vault to vault to the airy roof, and issued from every doorway, every opened window in one long roll of uninterrupted thunder. In the Wheat Pit, the bids, no longer obedient of restraint, began one by one to burst out, like the first isolated shots of a skirmish line. (Norris 74-75)

Zimmerman explains that in describing the trading pit, Norris made use of a newspaper report he had written of a visit to the interior of an organ where he experienced its overwhelming power: it is a machine that is larger in its effect than his capacity to comprehend its mechanism (127). Zimmerman explains the aesthetic concepts that Norris pursues relating to the "mesmeric sublime," but for my purposes the larger point is that he imagines the market as something no single person's hand can control except temporarily, as is the case with his protagonist Jadwin (123). Zimmerman describes Norris's sense of the organ: "Norris's experience of the organ offers an exemplary expression of the sublime: the terror, the inability of the single mind to master and recuperate such sensory excess in language, the engulfment and absorption, the contagion of rhetorical effects"

(127). Among the striking features of the experience of being inside the organ, perceiving one's own "miniaturization," and being unable to fully perceive the components of the sound, such as its tune or its source in the organ's physical operation, is the incapacity to draw upon a physical location to attain "spectatorial mastery" or to convey a representation (Zimmerman 127). The market presents a similar experience "when it violently defies interpretation" (Zimmerman 126).

Norris creates a word portrait of the ungovernability and private character of information affecting the pricing of commodities in a trading market. It is not a portrait for a reformer's efforts but a description of a large force comprising so many disparate parts that it defies human agency or control.

In contrast, another Midwestern writer depicts discourse in connection with markets with a wry tone of amusement. This commentator, combining expert knowledge of economics with a partly literary tone of a kind that has largely disappeared, draws on a tradition of writing about financial affairs as a knowledgeable observer with an amused detachment and a note of the absurd. This commentator is John Kenneth Galbraith, with roots in wheat-growing regions in the Canadian Midwest and a finish provided by long residence in Cambridge. He portrays discourse before the great crash as a form of collective fantasy or delusion rather than as the sum total of a cacophonous crashing of voices and information in a central trading pit:

Between human beings there is a type of intercourse which proceeds not from knowledge, or even from lack of knowledge, but from failure to know what isn't known. This was true of much of the discourse on the market. At luncheon in downtown Scranton, the knowledgeable physician spoke of the impending split-up in the stock of Western Utility Investors and the effect on prices. Neither the doctor nor his listeners knew why there should be a split-up, why it should increase values, or even why Western Utility Investors should have any value. But neither the doctor nor his audience knew that he did not know. Wisdom, itself, is often an abstraction associated not with fact or reality but with the man who asserts it and the manner of its assertion. (75)

This is a type of writing about economics and markets that adopts a tone of superior amusement and, if it has import for either regula-

tory action or the alteration of investing behavior, largely suggests that delusional behavior is inevitable in investing and suitable for an ironic tone. The irony may have some possibilities for correcting the worst misapprehensions in any given era, but the tone suggests a certain inevitability to delusional periods in markets. The knowledgeable writer about folly in markets tends to deploy a form of light mockery, perhaps in contrast to the anger expressed by Anthony Trollope in *The Way We Live Now*, his jeremiad against the moral values of a prosperous England. To quote Galbraith again, “the values of a society totally preoccupied with making money are not altogether reassuring” (76). Galbraith goes on to describe an advertisement urging investors to invest long in water in the hope that New York City would experience a water crisis and the investor who owns the only remaining well “would own the wealth of the city” (76). The tone is fundamentally a wry and superior portrait of human folly and aimless conventional thought, not a circumstance amenable to all that much reform. Galbraith provides an almost literary portrait of foolish characters in a particular culture, resembling a nineteenth-century English novel of manners. By contrast, Norris simply strives to show the contact between a powerful market force and human actors attempting to comprehend parts of it and assert small moments of temporary mastery. There is no reason in the naturalistic depiction of this large force to undertake ironic commentary on self-important and delusional claims by individuals to understand markets. One does not mock human beings confronting powerful natural forces. Norris presents unreadability, which renders his characters powerless, whereas Galbraith depicts willful pretenses to readership.

Interpretations by experts in finance and law of the repeated market disasters of recent years, starting with Long Term Capital Management and going on to Enron and now to the mortgage securitization bubble, emphasize that complexity has overtaken the capacity for comprehension of the principal market players, the hapless and the clever. Frank Partnoy, a law professor and former trader, explains the fictional features of the financial era following the 1990s in *Infectious Greed* (2005):

Companies’ reported earnings were a fiction, and financial reports were chock-full of disclosures that would shock the average investor if she ever glanced at them, not that anyone—including financial journalists and analysts—ever did. Trading volatilities were sky

high, with historically unrelated markets moving in lockstep, increasing the risk of systemic collapse.

In just a few years, regulators had lost what limited control they had over market intermediaries, market intermediaries had lost what limited control they had over corporate managers, and corporate managers had lost what limited control they had over employees. This loss-of-control daisy chain had led to exponential risk-taking at many companies, largely hidden from public view. Simply put, the appearance of control in financial markets was a fiction. (4)

Partnoy treats the occlusion and the complexity of the recent era as a development. He sees the 1980s, with leveraged buyouts fueled by debt, as an era of simplicity and transparency. Yet most eras of financial acceleration in the growth of wealth involved innovations, the logic of which challenged earlier understandings of economic exchange. Harold James’s treatment of “The Literary Financier” points out that financial power is about “transformation and change,” a force that disrupts the old order but over which its protagonists always lose control (253). In the early twentieth century, naturalist writers such as Theodore Dreiser and Frank Norris depicted a naturalistic financial universe in which the financier uses secrecy and personal force to create wealth but is eventually overcome by powerful forces unleashed by his own capacity to change the vectors of the world. Hence the recurring interpretation in literature and in financial writing on unexpected catastrophes is the unleashing of complexities and forces that overpower the previous understandings and exceed the ability of any person or group—either of the old order or the new realm of finance geniuses—to tame. New figures appear to play the financial game in a cunning way and enjoy a run of success, rendering irrelevant older understandings and players from the preceding era. And then comes the storm.

Efforts to explain the complexity either take the tack of Dreiser and Norris of trying to evoke the nature of the forces that overwhelm human agency, using naturalism to avoid moral assessment, or attempt to give an account that brings agency out of the chaos for description and critique. But the effort to construct the maelstrom and account for individual actions is on the whole doomed and at best gives few glimpses of the characters novelists like Dreiser and Norris might have used if they were here to write about new business settings and primitive forces. A recently published book called *The*

Quants offers a dramatic account of the catastrophic impact in 2007 on markets of esoteric computer-driven trading. As in *The Pit*, the machinery of the market that pours information into trading rooms becomes chaos, something unreadable by those who “spend half a million a year in leased wires and special service and subscriptions to news agencies” but lack the smell of the trading floor described by Norris (Norris 63). Such smell as there is for the quants is the smell of their own internal knowledge that the machine is out of control, a knowledge not brought to the trading floor in 2007: “Mom-and-Pop investors watching the market make wild swings wondered what was going on. They had no way of knowing about the massive computer power and decades of quant strategies that were behind the chaos making a hash of their 401(k)s and mutual funds” (Patterson 230).

Candidates for formats of narration that identify agents, characters, and malefactors propose cause and effect and suggest reforms that target the characteristic actions and bad consequences in finance are presented by political history. Today there is nostalgia for an inquiry that attains the retrospective idealization of the one after the Great Crash called the Pecora Commission.

The New York Times summarized the hopes for accounting that led to the creation of the Financial Crisis Inquiry Commission:

Representative John Larson, the chairman of the House Democratic caucus who is from Connecticut, has been among those advocating an independent commission that would conduct a long look-back and make recommendations across the spectrum of markets and financial institutions. (The House approved an independent panel, included in a broader legislative proposal, by a vote of 367 to 59 on Wednesday afternoon.)

In an interview, Mr. Larson suggested that not only the public, but members of Congress, still need to have the complex factors that caused the financial collapse “demystified.”

“I really believe the most important thing is that we level with the American people, that we have a narrative that’s explained to them,” Mr. Larson said. An independent panel, armed with subpoena power, would, he added in paraphrasing Pecora, “shed a fierce light of public scrutiny on the dark markets, on the schemes, on the negligence and the unintended consequences that have been perpetrated on our financial systems.”

(One historical reference quotes Pecora this way: “Had there been full disclosure of what was being done in furtherance of these

schemes, they could not long have survived the fierce light of publicity and criticism. Legal chicanery and pitch darkness were the banker’s stoutest allies.”) (Phillips)

The Financial Crisis Inquiry Commission, chaired by Phil Angelides, former California state treasurer and unsuccessful gubernatorial challenger, has begun its hearings. Even so, the sense that secrets remain in the possession of those who designed and operated the organ of contemporary finance, with its overpowering force, hidden mechanics, and ultimate mystery, is as hardy as ever. The quest for narrative, for comprehensibility, and, most of all, for revelation is unslaked:

We need to get beyond the amusing political theater of the recent Financial Crisis Inquiry Commission hearings featuring tight-lipped Wall Street chief executives like Lloyd Blankfein of Goldman, John Mack of Morgan Stanley and Jamie Dimon of JPMorgan Chase—and the artfully crafted statements they compiled with the help of \$1,000-an-hour Wall Street lawyers. We need to hear the nitty-gritty of what caused the crisis from the people who know why things happened the way they did but haven’t yet been asked to speak up by someone with subpoena power. (Cohan)

And then there is the special inspector general for the TARP, Neil Barosky. Mr. Barosky lacks a mandate to bring a case to trial, but the *New York Times* reported that he envisions his role as that of a trial lawyer “building a case for a trial” (qtd. in Walsh). He sees the public and the taxpayer as the jury. Barosky says it is his job “to pursue every lead, every bit of evidence, everything to persuade the jury” (qtd. in Walsh). Though there are other official groups pursuing a balancing of the public ledgers for the bailout, “Mr. Barosky is the only one backed by federal agents who carry guns and badges and, if necessary, can break the locks off file cabinets” (Walsh).

In *The Financier*, the jury attempts to interpret as crime or not the conventional, though unofficial, arrangements used in financing a city’s debt and thus to assign responsibility for the results of the Philadelphia panic caused by the Great Chicago Fire. Dreiser presents a picture of impersonal forces of nature, including the amoral force created by contending motives among city insiders to cast blame for practices that were common but subject to exposure because of the panic started by the Chicago Fire. Among the forces are components of the legal structure, including judges who under-

stand and are prepared to serve the motives of the political insiders, and a jury that is influenced by random group dynamics:

Men in a jury-room, like those scientifically demonstrated atoms of a crystal which scientists and philosophers love to speculate upon, love finally to arrange themselves into an orderly and artistic whole, to present a compact, intellectual front, to be whatever they have set out to be, properly and rightly—a compact, sensible jury. One sees this same instinct magnificently displayed in every other phase of nature—in the drifting of sea-wood to the Sargasso Sea, in the geometric interrelation of air-bubbles on the surface of still water, in the marvelous unreasoned architecture of so many insects and atomic forms which make up the substance and the texture of this world. (Dreiser 324-25)

Zimmerman explains how cross-cutting narratives, not ones told by Dreiser but ones that can be glimpsed within his treatment of his protagonist, Frank Cowperwood, intersect the plans by the financier to control a complex network of investments into the future, disrupt them, and by their multiplicity render accountings never final or stable (212). The attempt to provide a public accounting of a ledger brought about by the forces of “amoral license” represented by self-interested players is doomed to fail, whether the agency of such an accounting is a newspaper with a mission to be a “moral and civic auditor” or the law with an internal replication of the plotting and randomness that drive a Cowperwood’s efforts to attain financial “survival” (Zimmerman 206, 205, 195). There may be the outline of a plot discernible in the plans of financiers to dominate an imagined future with a path to an ending point. The public may hope to capture an accounting through the construction of a new plot with an ending point. For Dreiser, all these plots are incomplete, thwarted by new plots, intervening events, and internal subversions in the counter plots (Zimmerman 213).

To return to contemporary implications, we are still listening for the voices that will predominate in the public understanding of our recent financial folly. I incline to the view that the results will resemble Norris’s portrait of the avalanche of rumor and gossip pouring into the trading pit in Chicago or Dreiser’s portrait of the forces of nature involved in financial maneuvers and in a façade of accounting and incomplete plot lines.

The consumers of these efforts will collect bits and pieces, but no coherent account will emerge. The public wants to know who did what and how it all works, and what money needs to be restored to taxpayers or shareholders. We may find a new Pecora, a new Galbraith (unlikely), new Norrises or Dreisers (perhaps more unlikely), but we will not possess a predominant interpretation or a socially shared understanding.

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