

THE RULE OF LAW



BY ORRIN JOHNSON, ESQ.

POPULAR MOBS V. THE RULE OF LAW



If criminal defense attorneys could, like the fictional witches and wizards of Harry Potter's universe, each produce a patronus, I think that for many attorneys it would take the form of *To Kill a Mockingbird's* Atticus Finch. In fact, I daresay pretty much every attorney or law student has read Harper Lee's classic novel (or at least watched Gregory Peck's Academy Award-winning performance in the film based on the book) and thought, with pride: "This is why I do what I do. This is my profession at its bravest and most noble."

Finch is fictional, of course, but sadly the world he inhabited was not, not in the early 1930s, when the story is set; nor were things much improved for people in certain parts of the country in 1960, when the book was first published. Had there been hashtags at the time, #believewhitewomen would likely have been trending.

Atticus Finch is a hero because he stood against the overwhelmingly popular public opinion of his day, even in the face of threats to himself, his professional reputation and his own family. He demanded to be heard when demonstrating that evidence outweighs accusations, that skin color has no bearing on guilt or innocence and that the accused is always cloaked in the presumption of innocence until proven otherwise. That Finch's client Tom Robinson was convicted in spite of his factual innocence, and then killed shortly after, is the central tragedy—and the call to arms—of the story. It is a plea for the rule of law to triumph over the howl of the mob and a tale of the tragic consequences that ensue when it does not.

In this age of social media, in which the howls of the mobs are so easily amplified, the rule of law needs protection and promotion more than ever. We, as lawyers, have an obligation to stand against the mob mentality, to demand that the rules and protections of our society are applied with equal force to *everyone*, no matter their social class or demographic check-box.

Whenever one invokes the rule of law these days, you can count on some ridiculous "wit" saying (or typing), "Oh, YEAH? You know the NAZIS had laws about KILLING JEWS!" or something along those lines. This response is

absurd on its face; the fact that historical despots made laws to justify evil acts doesn't consequentially obligate us to live in a society where laws are merely suggestions. And I'm not just saying that because there isn't much money to be made by lawyers living in anarchy.

But sometimes injustice doesn't originate from despots, but from the people themselves, in the form of popular legislation; and, in this small way, the Nazi-invokers have a small point. Finch's doomed client, Tom Robinson, could easily have cited a few examples, as his friends and family watched his trial from the "colored balcony." A democracy is two wolves and a sheep voting on dinner, as the old saying goes; this is perhaps why we prefer to live in a republic, where the sheep is armed and contesting the election.

And that's why "the law" must be supported by solid foundations of fundamental principles—principles that our laws, legal procedures and (this is the critical part) our own conduct as attorneys must respect and continually reinforce. Every human being facing similar situations must be treated the same way by their government officials, regardless of their genetic makeup. When one is accused of wrongdoing, whether facing criminal penalties, or merely a loss of public or professional reputation, one's accuser always, always has the burden of proof.

As guardians of the rule of law, our obligation as attorneys goes further than merely applying technical rules in a dogmatic way. It's about creating and nurturing a culture in which our principles of justice and fairness are granted real force. It's about not misrepresenting case law, or making ridiculous arguments that undermine the obvious intent of our statutes (even when we think a judge might just let us get away with it). It's about treating colleagues with respect, integrity and civility, even if our clients are at odds or if we disagree with their politics. It's about being the kind of lawyers our legal heroes (fictional or otherwise) have always been in our own minds. **NL**

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