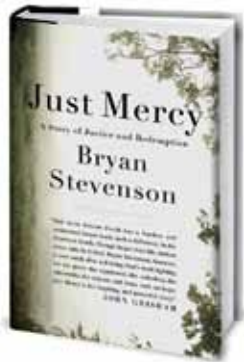


Just Mercy by Bryan Stevenson



JUST MERCY: A Story of Justice and Redemption
By Bryan Stevenson
336 pages, Spiegel & Grau (2014)

Every labor and employment lawyer should read this new book, *Just Mercy*, by Bryan Stevenson, the executive director of the Equal Justice Initiative (EJI) in Montgomery, Alabama. It tells a story of racial justice in modern America. While it has little to say that is directly about labor and employment law, all lawyers, as participants in the justice system, have a heightened obligation to become aware of racial justice issues. In the shadow of Ferguson, these issues play out every day in our country, and now, in our newspapers and on television.

This is the story of one lawyer's extraordinary career fighting the death penalty in Alabama. The main narrative is about winning the release of an innocent African-American death-row convict, Walter McMillian, who was convicted of killing a white teenage girl in Monroeville, Alabama. Monroeville was also the setting for a similar 1930s era story involving the legendary (but fictional) lawyer, Atticus Finch, as recounted by novelist Harper Lee in *To Kill a Mockingbird*. In the novel, Finch loses the jury trial of

Nate Robinson, a poor African American accused of raping a local white woman. Robinson is later killed before his appeal. In *Just Mercy*, McMillian is sent to Alabama's Death Row after the trial before Judge Robert E. Lee Key for the murder of a local white teenage girl. The conviction was based on false testimony obtained by the local prosecution and a failure to disclose tapes of the key prosecution witnesses denying their false testimony before trial. The nearly all-white jury also rejected the testimony of numerous alibi witnesses who testified that McMillian was at his family home during a large community fish fry. McMillian was convicted and sent to death row in 1988. He was exonerated after years of painstaking investigation by Stevenson and a national exposé aired on *60 Minutes*.

But the McMillian story, as compelling as it is, is only the framework for a larger story about racial justice in modern America. It is a very personal and autobiographical story tracing the arc of Stevenson's life and legal career from a boyhood in rural Delaware—his grandmother was born to former slaves in the 1880s—to Harvard Law School to his organizing the Equal Justice Initiative (EJI) in Montgomery, to representing scores of death row prisoners, to arguing five cases before the Supreme Court, to winning a MacArthur Genius Award, and to commuting to NYU Law School, where he works as a law professor. Stevenson's tireless work with death row clients led him to challenge the systemic, draconian sentencing of children (mostly poor and minority children) and of the mentally disabled (mostly poor and minorities). Stevenson exposes the grisly details of "Yellow Mama"

(Alabama's electric chair) and the reasons leading to the ban on death by lethal injection. He writes from close-up and personal interaction with poor women convicted of murder when their children die or are still born. While Stevenson's book is largely anecdotal from his intimate contact with his imprisoned clients, it is also full of statistics about America's campaign of mass incarceration also known as the "war on drugs": 2.3 million prisoners, 6 million Americans subject to supervision through parole or probation, 68 million Americans with criminal records, \$80 billion spent on prison.

The bottom line, as described by Stevenson, is that one in three African-American men can be expected to be incarcerated during their lifetimes. This criminalization of our African-American population "renders them virtually unemployable." These statistics



"Yellow Mama," Alabama's infamous electric chair in use from 1927 to 2002. ASSOCIATED PRESS

are not much different than those reported by the EEOC in its Guidance dated April 25, 2012, *Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, available at 2012 WL 1499883. The EEOC further reports that in one survey, 92 percent of responding employers stated that they subjected all or some of the job candidates to criminal background checks. The Guidance details the potential liability for disparate impact discrimination when an employer's criminal record screening policy or practice disproportionately screens out protected individuals and the employer does not demonstrate job relatedness for the job in question and consistency with business necessity.

This is a powerful but readable book. It is destined to become an instant classic along with Michelle Alexander's *The New Jim Crow*, which also addresses mass incarceration along racial lines. *Just Mercy* takes the lens of the death penalty to focus our insight into a system that long tolerated lynching, incompetent and/or underfunded defense counsel, manufactured evidence, segregated juries, and biased judges. The book illuminates one lawyer's dedication to the most vulnerable—he calls them "broken"—participants in our justice system and how he himself summons the resolve to survive the crushing burden of working within that system. ■

David Borgen (dborgen@gbdhlegal.com) is a partner at Goldstein, Borgen, Dardarian & Ho in Oakland, California, and is the employee co-chair for the LEL Editorial Committee.