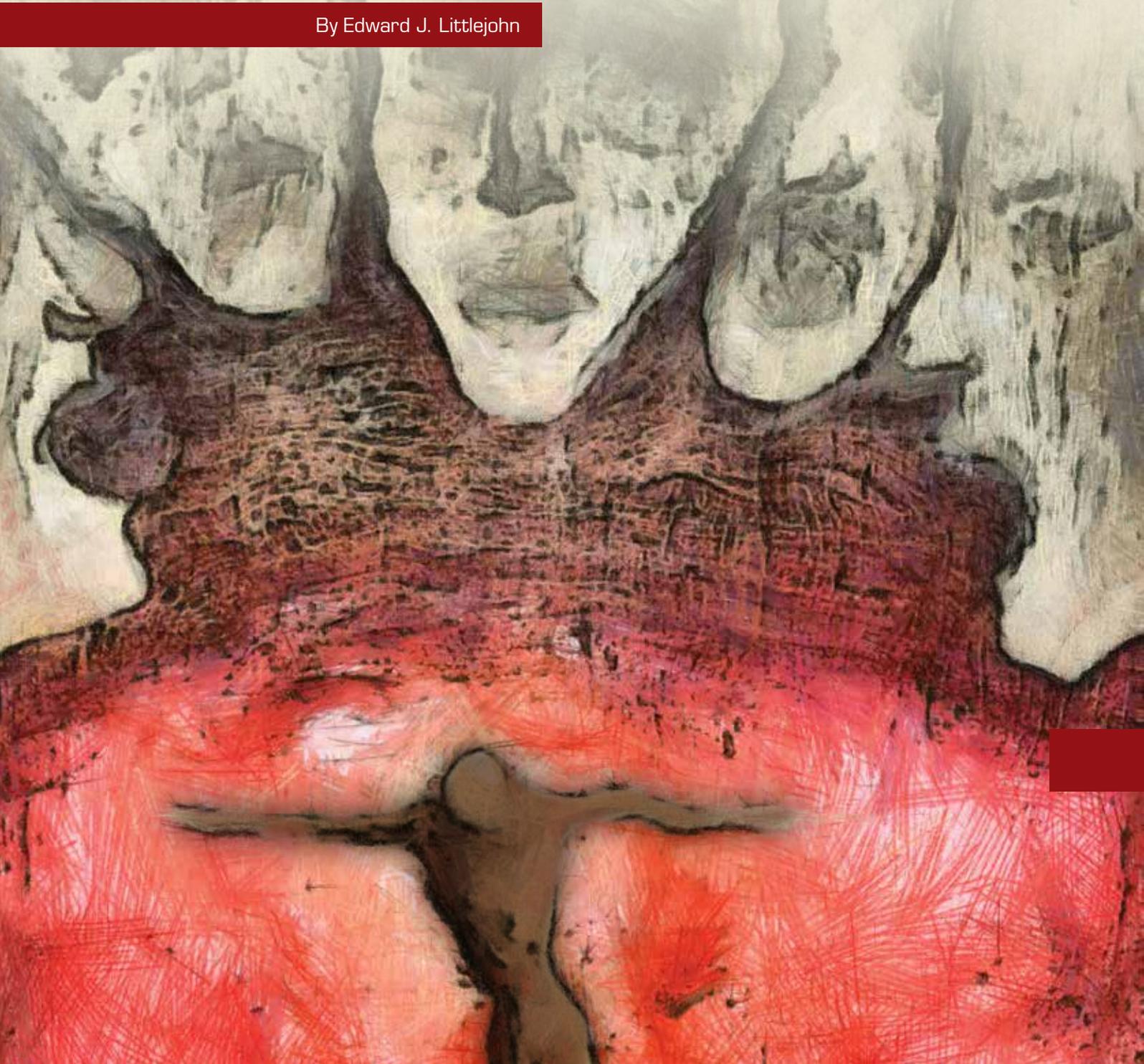


The *Henderson* Case

# Southern “Justice” in a Michigan Court

By Edward J. Littlejohn



## “Swift justice demands more than just swiftness.”

—Justice Potter Stewart<sup>1</sup>

*Author’s note: At no time during his so-called trial was James Henderson represented by counsel. Later, famed civil rights attorney Ernest Goodman became his post-trial attorney.<sup>2</sup> Goodman described Henderson’s trial as a scandalous example of how justice functions in the United States in the face of interracial sexuality. He knew of no case that had been disposed of “as quickly... outside of lynch justice.”<sup>3</sup> It reminded him of two notorious prosecutions: Alabama’s “Scottsboro Boys”<sup>4</sup> case and Mississippi’s trial and execution of Willie McGee.<sup>5</sup> These cases, like Henderson’s, involved black men accused of violating white society’s most stringent and explosive racial taboo: sex with white women. Black men who did so—or were merely accused of it—often galvanized white communities into quick and decisive summary “justice” inside and outside of courts of law.*

*While the two cases from the South came to represent enormous injustices, the defendants had the trappings of fair trials; they had lawyers in public trials and the opportunity, although futile, to confront their accusers. In Michigan, Henderson did not.*

*On August 5, 1942, Henderson was arrested, transported to jail, booked, fingerprinted, photographed, interrogated (he confessed to the crime), arraigned, appeared in court, received a natural life sentence, and dispatched to prison—all within a three-and-a-half-hour span in a special nighttime session without a lawyer present.*

### The arrest and a rush to “justice”

The Henderson story began on July 29, 1942.<sup>6</sup> Henderson, a 25-year-old black resident of Mount Clemens, was hired to work in a local tavern. Because the position required him to live on the premises, his employer asked a white waitress to drive him home for his belongings. The ride to Henderson’s place was uneventful. On the return leg, however, the woman claimed she was raped. Henderson admitted that sexual intercourse occurred but, except for the statements he made following a controversial police interrogation, he steadfastly maintained it was consensual. Neither Henderson nor the woman returned to the tavern. Instead, they drove to downtown Detroit where they parted at approximately 4 a.m. The woman drove back to Mount Clemens and did not call the police, seek medical attention, or otherwise ask for help.

The next day, however, she filed a complaint charging Henderson with rape.

Henderson said after they drove to Detroit, she gave him some money and he left for Chicago. He later explained why he left town: “Well, after having relations with this girl she got afraid she would talk to her husband or somebody...and she didn’t think I should stay around, so having concern for herself and myself also I decided the best thing maybe was to leave...”<sup>7</sup>

News reports describing the rape as “brutal” created a stir in Mount Clemens’ white community. Threats against Henderson followed. On July 31, 1942, a local newspaper ran a front-page report of an interview with the Mount Clemens chief of police: “Rosso said that a half-dozen irate...men—neighbors of the woman—visited the jail last night where they threatened to avenge the crime [saying], ‘If you’ve got that...we want him.’”<sup>8</sup>

### FAST FACTS

*Henderson shows that swift and perfunctory “race justice” existed in Michigan through the 1940s. The case’s record speed ranks it among the nation’s most odious in states lacking the death penalty.*

*Henderson is also a tribute to the cadre of so-called radical lawyers such as Ernest Goodman, who at great personal and professional risks confronted the status quo to represent unpopular, outcast clients.*

Henderson returned to Michigan on August 5, 1942. On his way to Mount Clemens, he visited friends in Ypsilanti who told him the police were looking for him. Immediately, he went to the Ypsilanti post of the Michigan State Police, identified himself, and asked about an outstanding warrant. By 7:30 p.m., Henderson was in police custody headed to a Mount Clemens jail. During the approximately one-hour drive, he was questioned by police officers. Around 8:30 p.m., he was jailed. During the next hour, he was booked, fingerprinted, photographed, and questioned by various law enforcement officials including the chief assistant prosecuting attorney. By approximately 9:30 p.m., Henderson had signed a typewritten confession—one that clearly had been drafted by someone else. It contained words well beyond his abilities: “I attacked... with force and violence... while she said... was in fear of her life... She resisted my advances to her utmost under the circumstances which confronted her.”

### Swift “justice” in a rare night court

Immediately after the confession was signed, a justice of the peace was summoned to the jail for an arraignment. Henderson was charged with rape in a hastily prepared report; in it, the prosecution endorsed five state witnesses. During his arraignment, Henderson asked if he could have a lawyer or call his brother. The justice responded: “There is nothing I can do; my hands are tied.”<sup>9</sup> A half-hour later, around 10 p.m., Henderson was in a courtroom. Judge James E. Spier arrived at approximately 10:20 p.m. He had been called as soon as the confession was in hand to convene a special night court for Henderson’s “trial.”

The only parties present in the courtroom in addition to the judge and the court stenographer were police and county prosecutors. At no time was Henderson represented by a lawyer or advised of a right to counsel. The only questions came from the judge and the prosecutor. During the session, not a single witness—not the

complainant nor any of the five witnesses endorsed on the report—was in court. No other evidence, not even Henderson’s signed confession, was offered. Henderson’s testimony, which consisted entirely of answers to leading questions from the prosecutor, was the only evidence used to convict him. He later said that even though he was innocent, he pled guilty out of fear.

“I was not guilty. I pleaded guilty because I had made this signed statement of guilt over in the jail through fear,” Henderson said. “I don’t know what I thought because I was too afraid to think anything. Upon reaching there [the Mount Clemens jail] they begin to tell me I had better sign the statement for guilty because there was a crowd gathering and they [the police] were not going to lose their lives defending a no good skunk like me. I ask them to get in touch with my brother. They would not. After the police keep coming to my cell every little while telling me to hurry and sign for the mob was getting out of hand and they would leave me to them. So I signed.”<sup>10</sup>

Within minutes of the plea, Judge Spier sentenced Henderson to prison for his natural life. By 11 p.m., Michigan’s newest “lifer” was hustled into a sheriff’s car and driven to the county jail in Pontiac for safekeeping because of an apparent fear of mob violence in Mount Clemens.

Although Mount Clemens authorities later denied they were influenced by threats against Henderson, it appears they were. The day after the “trial,” the city’s police chief told the press that “rumblings indicated possible violence from incensed...acquaintances of the outraged white woman [which] had prompted them to rush through arraignment and sentence of a confessed attacker.”<sup>11</sup> *The Detroit News* ran a similar story in which the chief assistant prosecutor said “the *extraordinary* procedure was invoked to avert any possibility of violence.”<sup>12</sup> Judge Spier denied he had reacted to mob threats. Instead, he gave an equally questionable explanation for the court’s special night session. He said it was used to prevent a suspect who had confessed from being advised by other,

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more experienced prisoners to get a court-appointed lawyer, and for the taxpayers' benefit "to dispose of it, before he changed his mind..."<sup>13</sup>

The press quoted a public official, who described the rape as particularly brutal. Henderson, who was also charged with armed robbery, never had a real weapon; at no time did he injure the complainant in any way that could characterize the rape, if it had occurred, as "brutal." The prosecutor, however, carefully guided Henderson through the technical legal elements of rape and armed robbery—two crimes that carried life sentences. Henderson cooperated. His plea, unlike the stilted confession, was in his own words and added damning details and gratuitous corrections. For example, Judge Spier questioned Henderson about an alleged weapon and the brutality supposedly associated with the rape.

Judge Spier: You threatened her there?

Henderson: Yes, sir. No, I didn't threaten her—just had the intercourse with her.

Judge Spier: You still had the knife?

Henderson: Yes, it was laying on the seat beside me. It wasn't a knife; it was a—(cut off by the judge).

Judge Spier: You claim that she voluntarily had intercourse or you scared her?

Henderson: Well, not the second time, I didn't threaten her, but I guess she was still scared from the first time from seeing it....

Judge Spier (to the prosecutor): You want to ask him on the things that her story shows?

After the prompt from the court, the prosecutor, as surrogate for the absent complainant, proceeded to elicit Henderson's opinion of the complainant's state of mind.

Prosecutor: Before you had sexual intercourse with her... did you force her to take your privates in her mouth?

Henderson: No, sir, I didn't.

Prosecutor: *If she says that, would she be wrong?* (emphasis supplied)

Henderson: Yes, she would be wrong.<sup>14</sup>

As to the so-called brutal armed robbery, Henderson, at worst, took a total of \$2.90 from the woman's purse. In a move uncharacteristic of a brutal robber, he apparently returned some of the money because she needed gas for the drive home. The prosecutor, however, turned this questionable episode into a life sentence with a single technical question to which Henderson once again replied, "Yes, sir."



Prosecutor: How much you give her? (for gasoline)

Henderson: I don't know; I think 50 cents in change.

Prosecutor: Where did the money originally come from?

Henderson: I got it from her.

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Prosecutor: And out of her purse?

Henderson: Yes.

Prosecutor: Where was her purse?

Henderson: On the seat beside me.

Prosecutor: And that was also taken from her while she was in fear of her life?

Henderson: Yes, sir.<sup>15</sup>

After the examination ended, the judge asked the prosecuting attorney what he wanted to do. The seasoned prosecutor moved for immediate sentencing, telling the court with incredible exaggeration “that this is about the worst case I have ever seen since I have been in the prosecutor’s office.”<sup>16</sup> He reminded the court that both rape and armed robbery carried life terms, and moved for maximum terms on both counts, saying, “I don’t believe he...should ever be allowed to mingle with society again because we have to protect womanhood in this country.”<sup>17</sup>

In an assertion as remarkable as the prosecutor’s, Judge Spier said on the record that there was no reason for doubting the woman’s story. She, of course, never testified. Immediately thereafter, the judge, in the case’s final entry, said, “It is the sentence of this court that you be confined to the State Prison...for the rest of your natural life. I guess that is all.”<sup>18</sup>

### Not-so-swift appeals

Henderson studied some law while in prison. As a result, in 1947, he filed on his own a motion for a new trial. The motion, which dealt only with the right-to-counsel issue, was denied by Judge Spier.

Four years later, Judge Spier once again had the case before him. This time, the motion for a new trial was filed by Ernest Goodman. Unlike the earlier argument, Goodman attacked Henderson’s conviction on several constitutional bases: a coerced confession; undue haste in a private night-court session rather than a public trial; and a general flouting of due process, particularly with regard to the denial of his client’s right to counsel.<sup>19</sup>

Goodman’s motion for a new trial was denied by Judge Spier, and in June 1953, the Michigan Supreme Court denied leave to appeal. Goodman then filed a writ of certiorari in the United States Supreme Court. Before

a decision was made on the writ, however, the Michigan Supreme Court—acting on a very unusual motion from the state attorney general—ordered the case back to the circuit court for the purpose of taking testimony. Apparently, the state did not want to defend the case before the Supreme Court without at least having an evidentiary hearing.

During the remand proceedings, Goodman adduced from the state’s witnesses that the special night court was held because the police chief feared mob violence, and they knew of no other case that had been handled in the same way.<sup>20</sup> Judge Spier, however, once again refused to order a new trial.

Goodman’s second appeal to the Michigan Supreme Court was accepted, but on October 3, 1955, a unanimous bench affirmed the trial court.<sup>21</sup> The justices, it seemed, had the same problem with Henderson’s appeal that Judge Spier did: they had concluded he was guilty. Their focus was clearly Henderson’s guilty plea rather than the constitutional arguments that challenged it. Ultimately, the Court showed some disconcertment over Henderson’s quickie trial: “[W]hile we are not in sympathy with the course followed in the trial court, we entertain no doubt as to the defendant’s guilt,” adding that “the haste obviously sought by or concurred in by the defendant” did not require a new trial.<sup>22</sup>

After his petition for habeas corpus was denied in federal district court, Goodman appealed to the U.S. Court of Appeals for the Sixth Circuit. In a 2–1 decision with future Supreme Court Associate Justice Potter Stewart strongly dissenting, the court affirmed the district court. The majority, similar to that in the Michigan Supreme Court, showed it was influenced significantly by a belief in Henderson’s guilt. In his dissent, Judge Stewart wrote, “A suggestion which seems to pervade the majority opinion...is that even if counsel had been provided, Henderson would after all probably have been convicted anyway.”<sup>23</sup> Stewart concluded that the failure to advise Henderson of his right to counsel was sufficient to grant the writ: “When a defendant has been denied due process, his guilt or innocence is irrelevant. He has not been tried by civilized standards, and cannot be punished until he has been.”<sup>24</sup>

The Supreme Court refused an appeal, ending whatever lingering hope Henderson had for legal relief after 14 years in confinement. Goodman, however, persisted. His records contain letters to the governor and the Michigan Parole Board showing he never stopped seeking Henderson’s release. From the tenor of the responses he received, it was clear that neither the governor nor the parole board was inclined to go beyond the judicial findings that Henderson was guilty. A letter Goodman received from the

Michigan Parole Board chair in 1959 showed, with particular candor, that the case's racialism was still preemptive: "I recall our interview in Detroit a few months ago, during which time we discussed the various elements of this case. *While I do not have a complete recollection of all the details we touched upon, I am sure we discussed the miscegenetic aspects of this case.*"<sup>25</sup>

Also in Goodman's records is a letter to Henderson dated August 17, 1962, asking if he had any word since they last appeared before the Michigan Parole Board. The letter was returned marked "unclaimed" and stamped on the envelope in bold letters was: "MOVED NO ORDER."

After 20 years in confinement, Henderson was freed.

"So they finally gave him a parole," Goodman said in a 1996 interview. "He had a wonderful record in prison. This is a wonderful man in every respect. He didn't deserve the dubious speed record for Michigan or perhaps a peacetime world record for the quickest, quick justice case—three hours from arrest to a life sentence"<sup>26</sup>

## Conclusion

The *Henderson* trial occurred during a dark period of American history. Black men accused of rape across the race-sex barrier faced horrific consequences. Lynching was a common punishment in the South and often included ritual tortures and unthinkable barbarisms such as genital mutilation, dismemberment, skinning, and burning.<sup>27</sup> And "[a]s many if not more blacks were victims of legal lynchings (speedy trials and executions)..."<sup>28</sup> *Henderson* shows that such swift and perfunctory "race justice" existed in Michigan through the 1940s. The case's record speed certainly ranks it among the nation's most odious in states lacking the death penalty.

*Henderson* is also a tribute to the cadre of so-called radical lawyers such as Goodman, who at great personal and professional risks confronted the status quo to represent unpopular, outcast clients. With the passage of time, American society and its laws changed, as did the popular view of radical lawyers. Today, most are regarded as champions of justice<sup>29</sup> or, even more appropriately, as real-life exemplars of Harper Lee's courageous, moral lawyer, Atticus Finch.<sup>30</sup> ■



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## ENDNOTES

1. *Henderson v Bannan*, 256 F2d 363, 390 [CA 6, 1958].
2. See Babson, Riddle & Elsil, *The Color of Law: Ernie Goodman, Detroit, and the Struggle for Labor and Civil Rights* (Detroit: Wayne State Univ Press, 2010).
3. Unless otherwise noted, statements attributed to Goodman throughout the article are from the interview with the author on June 24, 1996. Copies are available at Wayne State University Reuther Archives, Damon J. Keith Law Collection Oral History Project (The W.K. Kellogg Foundation).
4. See *Powell v Alabama*, 287 US 45; 53 S Ct 55; 77 L Ed 158 (1932); *Norris v Alabama*, 294 US 587; 55 S Ct 579; 79 L Ed 1074 (1935). Writings about the case are voluminous. See, e.g., Patterson & Conrad, *Scottsboro Boys* (Garden City: Doubleday, 1950); Carter, *Scottsboro: A Tragedy of the American South* (Baton Rouge: Louisiana St Univ Press, 1979).
5. See *McGee v State*, 200 Miss 350; 26 So 2d 680 (1946); *McGee v State*, 51 So 2d 783 (Miss, 1951); Heard, *The Eyes of Willie McGee: A Tragedy of Race, Sex, and Secrets in the Jim Crow South* (New York: HarperCollins Publishers, 2010).
6. The case facts, unless otherwise noted, are taken from the Statement of the Case that was filed with Henderson's appeal to the United States Supreme Court. This record was agreed upon by both parties and was prepared for his appeal to the Michigan Supreme Court in *People v Henderson*, 343 Mich 465; 72 NW2d 177 (1955). A copy can be found in the Goodman Papers, Box 4, at the Walter P. Reuther Archives, Wayne State University.
7. *17 years ago: Negro given life in mock trial*, National Guardian (November 24, 1958), p 5; *Lifer May Get Chance to Prove Innocence*, Michigan Chronicle (1954), p 1.
8. Statement of the case, n 6 at 4.
9. Transcript of Record, *People v Henderson*, Macomb County Circuit Court (August 5, 1942) (No. 2881).
10. *17 years ago*, n 7.
11. Statement of the Case, n 6 at 8.
12. *Rapist Given Quick Justice: Night Session Held by Macomb Court*, The Detroit News (August 6, 1942) (emphasis added).
13. Statement of the Case, n 6 at 9.
14. Transcript of Record, *People v Henderson*, Macomb County Circuit Court (August 5, 1942, 10:20 p.m.) (No. 2881), pp 4-5.
15. *Id.*
16. *Id.* at 6.
17. *Id.* at 8.
18. *Id.* at 22.
19. *Gideon v Wainwright*, 372 US 335; 83 S Ct 792; 9 L Ed 2d 799 (1963) (holding absolute right to counsel in all serious criminal cases) had not yet been decided.
20. Brief of Appellant, *People v Henderson*, 343 Mich 465; 72 NW2d 177 (1955) (No. 46215).
21. *People v Henderson*, 343 Mich 465; 72 NW2d 177 (1955).
22. *Id.* at 473.
23. *Henderson*, 256 F2d at 388.
24. *Id.*
25. Letter from Roy H. Nelson, chairman, Michigan Parole Board, to Ernest Goodman (March 6, 1959) (emphasis added).
26. Goodman interview, n 3 at 17.
27. Between 1882 and 1968, an estimated 4,742 blacks were lynched. Allen, *Without Sanctuary: Lynching Photography in America* (Santa Fe: Twin Palms Publishers, 2000), p 12.
28. *Id.*
29. Goodman received the State Bar of Michigan Champion of Justice Award in 1992.
30. See Lee, *To Kill a Mockingbird* (New York: J. B. Lippincott, 1960). In 2010, the ABA Journal ranked Atticus Finch #1 among "The 25 Greatest Fictional Lawyers" (August 2010).