

Chapter One

Mockingbird Players

The temporary receptionist was an elegant African American woman wearing a dark, expensive business suit—a well-dressed exception to the usual crowd at the Southern Prisoners Defense Committee (SPDC) in Atlanta, where I had returned after graduation to work full time. On her first day, I'd rambled over to her in my regular uniform of jeans and sneakers and offered to answer any questions she might have to help her get acclimated. She looked at me coolly and waved me away after reminding me that she was, in fact, an experienced legal secretary. The next morning, when I arrived at work in another jeans and sneakers ensemble, she seemed startled, as if some strange vagrant had made a wrong turn into the office. She took a beat to compose herself, then summoned me over to confide that she was leaving in a week to work at a "real law office." I wished her luck. An hour later, she called my office to tell me that "Robert E. Lee" was on the phone. I smiled, pleased that I'd misjudged her; she clearly had a sense of humor.

"That's really funny."

"I'm not joking. That's what he said," she said, sounding bored, not playful. "Line two."

I picked up the line.

"Hello, this is Bryan Stevenson. May I help you?"

"Bryan, this is Robert E. Lee Key. Why in the hell would you want to represent someone like Walter McMillian? Do you know he's reputed to be one of the biggest drug dealers in all of South Alabama? I got your notice entering an appearance, but you don't want anything to do with this case."

"Sir?"

"This is Judge Key, and you don't want to have anything to do with this McMillian case. No one really understands how depraved this situation truly is, including me, but I know it's ugly. These men might even be Dixie Mafia."

The lecturing tone and bewildering phrases from a judge I'd never met left me completely confused. "*Dixie Mafia*"? I'd met Walter McMillian two weeks earlier, after spending a day on death row to begin work on five capital cases. I hadn't reviewed the trial transcript yet, but I did remember that the judge's last name was Key. No one had told me the Robert E. Lee part. I struggled for an image of "Dixie Mafia" that would fit Walter McMillian.

"'Dixie Mafia'?"

“Yes, and there’s no telling what else. Now, son, I’m just not going to appoint some out-of-state lawyer who’s not a member of the Alabama bar to take on one of these death penalty cases, so you just go ahead and withdraw.”

“I’m a member of the Alabama bar.”

I lived in Atlanta, Georgia, but I had been admitted to the Alabama bar a year earlier after working on some cases in Alabama concerning jail and prison conditions.

“Well, I’m now sitting in Mobile. I’m not up in Monroeville anymore. If we have a hearing on your motion, you’re going to have to come all the way from Atlanta to Mobile. I’m not going to accommodate you no kind of way.”

“I understand, sir. I can come to Mobile, if necessary.”

“Well, I’m also not going to appoint you because I don’t think he’s indigent. He’s reported to have money buried all over Monroe County.”

“Judge, I’m not seeking appointment. I’ve told Mr. McMillian that we would—” The dial tone interrupted my first affirmative statement of the phone call. I spent several minutes thinking we’d been accidentally disconnected before finally realizing that a judge had just hung up on me.

I was in my late twenties and about to start my fourth year at the SPDC when I met Walter McMillian. His case was one of the flood of cases I’d found myself frantically working on after learning of a growing crisis in Alabama. The state had nearly a hundred people on death row as well as the fastest-growing condemned population in the country, but it also had no public defender system, which meant that large numbers of death row prisoners had no legal representation of any kind. My friend Eva Ansley ran the Alabama Prison Project, which tracked cases and matched lawyers with the condemned men. In 1988, we discovered an opportunity to get federal funding to create a legal center that could represent people on death row. The plan was to use that funding to start a new nonprofit. We hoped to open it in Tuscaloosa and begin working on cases in the next year. I’d already worked on lots of death penalty cases in several Southern states, sometimes winning a stay of execution just minutes before an electrocution was scheduled. But I didn’t think I was ready to take on the responsibilities of running a nonprofit law office. I planned to help get the organization off the ground, find a director, and then return to Atlanta.

When I’d visited death row a few weeks before that call from Robert E. Lee Key, I met with five desperate condemned men: Willie Tabb, Vernon Madison, Jesse Morrison, Harry Nicks, and Walter McMillian. It was an exhausting, emotionally taxing day, and the cases and clients had merged together in my mind on the long drive back to Atlanta. But I remembered Walter. He was at least fifteen years older than me, not particularly well educated, and he hailed from a small rural community. The memorable thing about him was how insistent he was that he’d been wrongly convicted.

“Mr. Bryan, I know it may not matter to you, but it’s important to me that you know that I’m innocent and didn’t do what they said I did, not no kinda way,” he told me in the meeting room. His voice was level but laced with emotion. I nodded to him. I had learned to accept what clients tell me until the facts suggest something else.

“Sure, of course I understand. When I review the record I’ll have a better sense of what evidence they have, and we can talk about it.”

“But . . . look, I’m sure I’m not the first person on death row to tell you that they’re innocent, but I really need you to believe me. My life has been ruined! This lie they put on me is more than I can bear, and if I don’t get help from someone who believes me—”

His lip began to quiver, and he clenched his fists to stop himself from crying. I sat quietly while he forced himself back into composure.

“I’m sorry, I know you’ll do everything you can to help me,” he said, his voice quieter. My instinct was to comfort him; his pain seemed so sincere. But there wasn’t much I could do, and after several hours on the row talking to so many people, I could muster only enough energy to reassure him that I would look at everything carefully.

I had several transcripts piled up in my small Atlanta office ready to move to Tuscaloosa once the office opened. With Judge Robert E. Lee Key’s peculiar comments still running through my head, I went through the mound of records until I found the transcripts from Walter McMillian’s trial. There were only four volumes of trial proceedings, which meant that the trial had been short. The judge’s dramatic warnings now made Mr. McMillian’s emotional claim of innocence too intriguing to put off any longer. I started reading.

Even though he had lived in Monroe County his whole life, Walter McMillian had never heard of Harper Lee or *To Kill a Mockingbird*. Monroeville, Alabama, celebrated its native daughter Lee shamelessly after her award-winning book became a national bestseller in the 1960s. She returned to Monroe County but secluded herself and was rarely seen in public. Her reclusiveness proved no barrier to the county’s continued efforts to market her literary classic—or to market itself by using the book’s celebrity. Production of the film adaptation brought Gregory Peck to town for the infamous courtroom scenes; his performance won him an Academy Award. Local leaders later turned the old courthouse into a “Mockingbird” museum. A group of locals formed “The Mockingbird Players of Monroeville” to present a stage version of the story. The production was so popular that national and international tours were organized to provide an authentic presentation of the fictional story to audiences everywhere.

Sentimentality about Lee’s story grew even as the harder truths of the book took no root. The story of an innocent black man bravely defended by a white lawyer in the 1930s fascinated millions of readers, despite its uncomfortable exploration of false accusations of rape involving a white woman. Lee’s endearing characters, Atticus Finch and his precocious daughter Scout, captivated readers while confronting them with some of the realities of race and justice in the South. A generation of future lawyers grew up hoping to become the courageous Atticus, who at

one point arms himself to protect the defenseless black suspect from an angry mob of white men looking to lynch him.

Today, dozens of legal organizations hand out awards in the fictional lawyer's name to celebrate the model of advocacy described in Lee's novel. What is often overlooked is that the black man falsely accused in the story was not *successfully* defended by Atticus. Tom Robinson, the wrongly accused black defendant, is found guilty. Later he dies when, full of despair, he makes a desperate attempt to escape from prison. He is shot seventeen times in the back by his captors, dying ingloriously but not unlawfully.

Walter McMillian, like Tom Robinson, grew up in one of several poor black settlements outside of Monroeville, where he worked the fields with his family before he was old enough to attend school. The children of sharecroppers in southern Alabama were introduced to "plowin', plantin', and pickin'" as soon as they were old enough to be useful in the fields. Educational opportunities for black children in the 1950s were limited, but Walter's mother got him to the dilapidated "colored school" for a couple of years when he was young. By the time Walter was eight or nine, he became too valuable for picking cotton to justify the remote advantages of going to school. By the age of eleven, Walter could run a plow as well as any of his older siblings.

Times were changing—for better and for worse. Monroe County had been developed by plantation owners in the nineteenth century for the production of cotton. Situated in the coastal plain of southwest Alabama, the fertile, rich black soil of the area attracted white settlers from the Carolinas who amassed very successful plantations and a huge slave population. For decades after the Civil War, the large African American population toiled in the fields of the "Black Belt" as sharecroppers and tenant farmers, dependent on white landowners for survival. In the 1940s, thousands of African Americans left the region as part of the Great Migration and headed mostly to the Midwest and West Coast for jobs. Those who remained continued to work the land, but the out-migration of African Americans combined with other factors to make traditional agriculture less sustainable as the economic base of the region.

By the 1950s, small cotton farming was becoming increasingly less profitable, even with the low-wage labor provided by black sharecroppers and tenants. The State of Alabama agreed to help white landowners in the region transition to timber farming and forest products by providing extraordinary tax incentives for pulp and paper mills. Thirteen of the state's sixteen pulp and paper mills were opened during this period. Across the Black Belt, more and more acres were converted to growing pine trees for paper mills and industrial uses. African Americans, largely excluded from this new industry, found themselves confronting new economic challenges even as they won basic civil rights. The brutal era of sharecropping and Jim Crow was ending, but what followed was persistent unemployment and worsening poverty. The region's counties remained some of the poorest in America.

Walter was smart enough to see the trend. He started his own pulpwood business that evolved with the timber industry in the 1970s. He astutely—and bravely—borrowed money to buy his own power saw, tractor, and pulpwood truck. By the 1980s, he had developed a solid business that didn't generate a lot of extra money but afforded him a gratifying degree of independence. If

he had worked at the mill or the factory or had had some other unskilled job—the kind that most poor black people in South Alabama worked—it would invariably mean working for white business owners and dealing with all the racial stress that that implied in Alabama in the 1970s and 1980s. Walter couldn't escape the reality of racism, but having his own business in a growing sector of the economy gave him a latitude that many African Americans did not enjoy.

That independence won Walter some measure of respect and admiration, but it also cultivated contempt and suspicion, especially outside of Monroeville's black community. Walter's freedom was, for some of the white people in town, well beyond what African Americans with limited education were able to achieve through legitimate means. Still, he was pleasant, respectful, generous, and accommodating, which made him well liked by the people with whom he did business, whether black or white.

Walter was not without his flaws. He had long been known as a ladies' man. Even though he had married young and had three children with his wife, Minnie, it was well known that he was romantically involved with other women. "Tree work" is notoriously demanding and dangerous. With few ordinary comforts in his life, the attention of women was something Walter did not easily resist. There was something about his rough exterior—his bushy long hair and uneven beard—combined with his generous and charming nature that attracted the attention of some women.

Walter grew up understanding how forbidden it was for a black man to be intimate with a white woman, but by the 1980s he had allowed himself to imagine that such matters might be changing. Perhaps if he hadn't been successful enough to live off his own business he would have more consistently kept in mind those racial lines that could never be crossed. As it was, Walter didn't initially think much of the flirtations of Karen Kelly, a young white woman he'd met at the Waffle House where he ate breakfast. She was attractive, but he didn't take her too seriously. When her flirtations became more explicit, Walter hesitated, and then persuaded himself that no one would ever know.

After a few weeks, it became clear that his relationship with Karen was trouble. At twenty-five, Karen was eighteen years younger than Walter, and she was married. As word got around that the two were "friends," she seemed to take a titillating pride in her intimacy with Walter. When her husband found out, things quickly turned ugly. Karen and her husband, Joe, had long been unhappy and were already planning to divorce, but her scandalous involvement with a black man outraged Karen's husband and his entire family. He initiated legal proceedings to gain custody of their children and became intent on publicly disgracing his wife by exposing her infidelity and revealing her relationship with a black man.

For his part, Walter had always stayed clear of the courts and far away from the law. Years earlier, he had been drawn into a bar fight that resulted in a misdemeanor conviction and a night in jail. It was the first and only time he had ever been in trouble. From that point on, he had no exposure to the criminal justice system.

When Walter received a subpoena from Karen Kelly's husband to testify at a hearing where the Kellys would be fighting over their children's custody, he knew it was going to cause him

serious problems. Unable to consult with his wife, Minnie, who had a better head for these kinds of crises, he nervously went to the courthouse. The lawyer for Kelly's husband called Walter to the stand. Walter had decided to acknowledge being a "friend" of Karen. Her lawyer objected to the crude questions posed to Walter by the husband's attorney about the nature of his friendship, sparing him from providing any details, but when he left the courtroom the anger and animosity toward him were palpable. Walter wanted to forget about the whole ordeal, but word spread quickly, and his reputation shifted. No longer the hard-working pulpwood man, known to white people almost exclusively for what he could do with a saw in the pine trees, Walter now represented something more worrisome.

Fears of interracial sex and marriage have deep roots in the United States. The confluence of race and sex was a powerful force in dismantling Reconstruction after the Civil War, sustaining Jim Crow laws for a century and fueling divisive racial politics throughout the twentieth century. In the aftermath of slavery, the creation of a system of racial hierarchy and segregation was largely designed to prevent intimate relationships like Walter and Karen's—relationships that were, in fact, legally prohibited by "anti-miscegenation statutes" (the word *miscegenation* came into use in the 1860s, when supporters of slavery coined the term to promote the fear of interracial sex and marriage and the race mixing that would result if slavery were abolished). For over a century, law enforcement officials in many Southern communities absolutely saw it as part of their duty to investigate and punish black men who had been intimate with white women.

Although the federal government had promised racial equality for freed former slaves during the short period of Reconstruction, the return of white supremacy and racial subordination came quickly after federal troops left Alabama in the 1870s. Voting rights were taken away from African Americans, and a series of racially restrictive laws enforced the racial hierarchy. "Racial integrity" laws were part of a plan to replicate slavery's racial hierarchy and reestablish the subordination of African Americans. Having criminalized interracial sex and marriage, states throughout the South would use the laws to justify the forced sterilization of poor and minority women. Forbidding sex between white women and black men became an intense preoccupation throughout the South.

In the 1880s, a few years before lynching became the standard response to interracial romance and a century before Walter and Karen Kelly began their affair, Tony Pace, an African American man, and Mary Cox, a white woman, fell in love in Alabama. They were arrested and convicted, and both were sentenced to two years in prison for violating Alabama's racial integrity laws. John Tompkins, a lawyer and part of a small minority of white professionals who considered the racial integrity laws to be unconstitutional, agreed to represent Tony and Mary to appeal their convictions. The Alabama Supreme Court reviewed the case in 1882. With rhetoric that would be quoted frequently over the next several decades, Alabama's highest court affirmed the convictions, using language that dripped with contempt for the idea of interracial romance:

The evil tendency of the crime [of adultery or fornication] is greater when committed between persons of the two races. . . . Its result may be the amalgamation of the two races, producing a mongrel population and a degraded civilization, the prevention of which is dictated by a sound policy affecting the highest interests of society and government.