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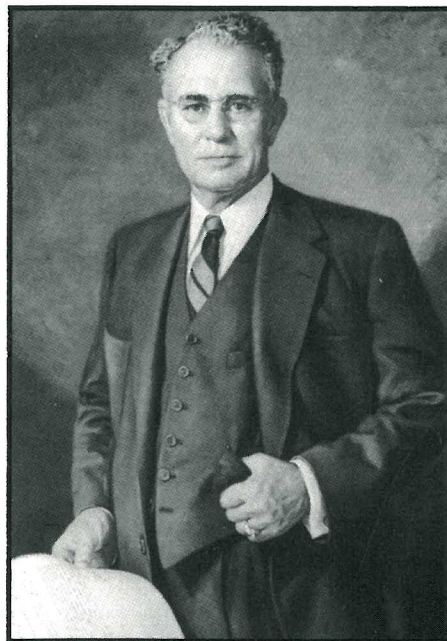
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# NOVA LAW REVIEW

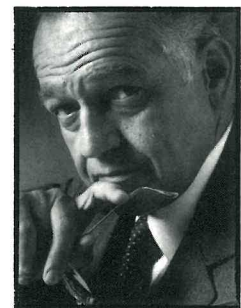


**The Leo Goodwin Sr.  
Chair in Law**  
*1999 Visiting Professors*

**Law and Popular Culture**



**Leo Goodwin Sr.**



**VOLUME 24**

**WINTER 2000**

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# NOVA LAW REVIEW

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## Introduction

Paul Joseph

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Most of us will never meet a cowboy, or an atomic scientist, or a private detective, yet we feel that we know how such persons think and act because we have seen them, or their caricatures, in countless television shows. By the same token, most of us have only limited experience with the legal system, yet we feel we know what lawyers and judges do, and how they do it, because we have "appeared" in court with Perry Mason, "attended" a deposition with Arnie Becker, "investigated" a case with Ben Matlock, and "counseled" a client with Ally McBeal.<sup>1</sup>

The relationship between law and popular culture is interesting and complex. On one hand, popular culture may be taken by some as a source of knowledge about the actual workings of the legal system and its main players including lawyers and judges. Yet, an image of law and lawyers which departs too dramatically from that which is already accepted in the popular mind would not be "believable" or "credible" enough to serve the dramatic or comedic purpose of the presenters. Thus, popular culture reflects the already existing perception of law even as it helps to mold and reinforce it.

In recent years, law in popular culture has become a subject of study by lawyers and law professors.<sup>2</sup> For example, a number of books on the subject

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1. PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE at vii (Robert M. Jarvis & Paul R. Joseph eds. 1998).

2. Several law review symposia issues helped to increase interest in the areas. Among these are: *Symposium: Popular Legal Culture*, 98 YALE L.J. (1989); *Symposium: Picturing Justice: Images of Law and Lawyers in the Visual Media*, 30 U.S.F. L. REV. (1996); *A Symposium on Film and Law*, 22 OKLA. CITY U. L. REV. (1997) and *Symposia: Law and Popular Culture*, 22 LEGAL STUD. F. (1998). Also worth noting is THE LAWYER AND POPULAR CULTURE: PROCEEDINGS OF A CONFERENCE (David L. Gunn ed. 1993). A non-exhaustive list of individually placed (not part of larger symposia) law review articles includes Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 WIS. L. REV. 527 (1986); Steven D. Stark, *Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes*, 42 U. MIAMI L. REV. 229 (1987); Paul Joseph and Sharon Carton, *The Law of the Federation: Images of Law, Lawyers, and the Legal System in "Star Trek: The Next Generation"*, 24 U. TOL. L. REV. 43 (1992); Michael P. Scharf and Lawrence D. Roberts, *The Interstellar Relations of the Federation: International Law and "Star Trek: The Next Generation"*, 25 U. TOLEDO L. REV. 577 (1993); Christine Alice Corcos, *Columbo Goes to*



have recently been published.<sup>3</sup> The web has also addressed the topic.<sup>4</sup> Increasingly we are taking law and popular culture seriously.

A number of interesting questions emerge. What does it mean to speak of "accuracy" in relation to a popular culture presentation of law? What effect, if any, does popular culture have on popular perceptions of law? Is the behavior of real lawyers affected at all by how the subject is presented in popular culture media such as film, television and popular fiction? Can popular culture portrayals of law be used to teach about real law to lawyers, judges, law students and others? What should be the response of the bar and the academy to portrayals of law in popular culture?

This symposium issue reflects another addition to the growing body of work considering law and popular culture issues. It grows out of the 1999 Goodwin Program in which I was privileged to participate.

As the Goodwin Professor for 1999, I was allowed to teach a special seminar on Law and Popular Culture and to invite four very special guests from outside NSU to visit with us at the Shepard Broad Law Center.<sup>5</sup> These very special visitors, Michael Asimow, Richard Dysart, Charles Rosenberg, and Lisa Scottoline brought diverse perspectives to the issue and enriched the seminar experience beyond measure. In addition, the students immersed themselves in the topic with enthusiasm and insight. I am very pleased that three of their seminar papers have been chosen for inclusion in this symposium issue. I hope you find this symposium issue as interesting, informative and thought provoking as I do.

*Law Schools: Or, Some Thoughts on the Uses of Television in the Teaching of Law*, 13 LOY. L.A. ENT. L.J. 499 (1993); F. Patrick Hubbard, *Justice, Creativity, and Popular Culture: The "Jurisprudence" of Mary Chapin Carpenter*, 27 PAC. L.J. 1139 (1996); Walter A. Effross, *High-Tech Heroes, Virtual Villains, and Jacked-In Justice: Visions of Law and Lawyers in Cyberpunk Science Fiction*, 45 BUFF. L. REV. 931 (1997); Robert M. Jarvis, *Legal Tales from Gilligan's Island*, 39 SANTA CLARA L. REV. 185 (1998).

3. For example, two books focusing on law in film have been published recently. PAUL BERGMAN & MICHAEL ASIMOW, *REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES* (1996); LEGAL REELISM: *MOVIES AS LEGAL TEXTS* (John Denver ed. 1996). A book focusing on law in television is PRIME TIME LAW: *FICTIONAL TELEVISION AS LEGAL NARRATIVE* (Robert M. Jarvis & Paul R. Joseph eds. 1998).

4. For example, the web site *Picturing Justice*, edited by John Denver, Rob Waring and Paul Joseph, publish essays up to 2000 words on all aspects of law and justice in popular culture. The site is hosted on the servers of the University of San Francisco School of Law. <<http://www.usfca.edu/pj>>.

5. I also want to recognize the outstanding contributions of my colleagues, law professors Joel Mintz and Michael Richmond, and Farquhar Center for Undergraduate Studies professor Steven Alford, who made special presentations and conducted class sessions during the seminar.

In any teaching career, there are high points which stand out as special and precious moments. The Goodwin Professorship is such a moment for me. The opportunity to focus intensively on this topic, to teach it, to write about it, to share ideas with our visitors and our students has been an experience that I shall always remember with great fondness and pleasure. I want to thank Dean Joseph Harbaugh who took a chance on an unusual topic. My deepest thanks, however, are reserved for the Goodwin Trustees for making this program possible.



Michael Asimow is a professor of law at UCLA School of Law. He specializes in administrative law and also teaches income tax and contracts. Mr. Asimow co-authored *Reel Justice: The Courtroom Goes to the Movies* with his colleague Paul Bergman. Mr. Asimow and Mr. Bergman teach a seminar in law and popular culture at UCLA School of Law. Mr. Asimow recently published the second edition of his casebook *State and Federal Administrative Law* (with Arthur Bonfield and Ronald Levin) and has written numerous articles about administrative law and tax. He received a B.S. from UCLA and a J.D. from Boalt Hall. After practicing law in Los Angeles, he joined the faculty of UCLA in 1967. He plays tennis, jogs, and sees movies at every opportunity. Mr. Asimow and his wife Bobbi Asimow have five children.

# Bad Lawyers In The Movies

Michael Asimow\*

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## I. INTRODUCTION

Seen any lawyer films recently? Chances are, most of the lawyers in those films were bad. They were unpleasant or unhappy human beings you wouldn't want as friends. And they were bad professionals you wouldn't admire or want as your lawyer.<sup>1</sup> In the majority of films involving law,

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\* Professor of Law, UCLA School of Law. Copyright, 1999, Michael Asimow. The author's email address is asimow@law.ucla.edu. Earlier versions of this paper were presented at faculty symposia at UCLA and Nova Law Schools and at the annual meeting of the National Conference of Bar Presidents. I gratefully acknowledge the help of my research assistants Jessica Lyman and Deborah Zolla. I also want to thank Richard Abel, Paul Bergman, Gary Blasi, Barbara Brudno, Anthony Chase, Carol Clover, Rafael Cohen-Almagor, John Denvir, Terry Diggs, Teresa B. Ditton, Jennifer Factor, Jennifer Friesen, James and Marlene Henerson, Chuck Hurewitz, Paul Joseph, Laura Kay, Steven Lippman, Julian Mann, Carrie Menkel-Meadow, Albert Moore, Francis M. Nevins, Elayne Rapping, Charles Rosenberg, Stan Ross, Caryl Lynn

lawyers and the legal system since the 1970s, the lawyer characters and their law firms were pretty bad.<sup>2</sup> This generalization holds whether the film fits the standard lawyer/courtroom genre, whether it involves legal issues, whether the film is a comedy (black or otherwise) or a drama, or whether it falls into other genres such as romances, mystery stories, or thrillers that just happen to have lawyer roles.

Consider this rogues' gallery of recent film lawyers:

- *Body Heat*<sup>3</sup> is a landmark in the modern development of extremely negative lawyer depictions. Ned Racine is lazy, greedy, incompetent, and easily persuaded by the alluring Matty Walker to help do away with Matty's husband.
- Dave Kleinfeld in *Carlito's Way*<sup>4</sup> is an utter scumbag. A cocaine addict, Kleinfeld steals from his clients and betrays his best friend. He seems to be involved in numerous criminal activities. He is rude, crude, and wholly disgusting.
- In *The Firm*,<sup>5</sup> a respected tax law firm turns out to be a front for the mob. The partners are vicious killers.

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Segal, L. J. Shrum, Lucas Soi, Rob Waring, Richard Weisberg, Glenn Weissenberger, Dolf Zillman, and a long list of friends and family members, too numerous to mention here, who commented on the ideas in this paper. None of them bear any responsibility for the final product. The author is grateful to the Margaret Herrick Library of the Academy of Motion Picture Arts and Sciences for making its files available. I would also like to thank Eddie Brandt's Saturday Matinee, North Hollywood, California, the world's finest video store for unearthing oldies and goodies.

1. For discussion of the criteria I used in classifying film lawyers as "good" or "bad," see *infra* notes 137-46.

2. Many of the recent films that portray lawyers favorably claim to be based on true stories. See *infra* notes 158-60 and accompanying text. Even in fictitious movies, a small counter trend may be emerging. Several movies released during late 1998 and early 1999 include favorable portrayals of American lawyers. Most of these films were non-law stories in which a character could have been a member of almost any profession but just happened to be a lawyer. See *STEPMOM*, Tristar Pictures (1998); *COOKIE'S FORTUNE*, Moonstone Entertainment (1999); *DOWN IN THE DELTA*, Chris Rose Productions (1998); *ENEMY OF THE STATE*, Jerry Bruckheimer Films (1998); *THE SIEGE*, Bedford Falls Productions (1998); *THE THIN RED LINE*, Geisler-Roberdeau (1998). In *Stepmom*, for example, the film concerns the bitter rivalry between a mother and stepmother for the loyalty of the children. *STEPMOM*, Tristar Pictures (1998). Luke, the man caught in between, is a decent, caring, compassionate person who is an excellent father. Luke is a lawyer, but this is irrelevant to the story. The filmmakers could have chosen any profession for Luke so long as it provided an affluent lifestyle. Their decision to make him a lawyer is both surprising and welcome.

3. *The Ladd Company* (1981).
4. *Universal Pictures* (1993).
5. *Paramount Pictures* (1993).

- In *Liar Liar*,<sup>6</sup> Fletcher Reede is pathologically incapable of telling the truth either in court or in his personal life. He thinks nothing of putting on perjured testimony. His supervising partner is a female shark who practices sexual harassment and the rest of the firm is little better.
- Kevin Lomax, the “hero” of *The Devil’s Advocate*,<sup>7</sup> is an arrogant young attorney who has never lost a case. He joins a big New York firm that specializes in sleazy transnational clients and document shredding. Worst of all, John Milton, the managing partner, is The Devil. That’s right, Satan himself has figured out that being top gun in a Wall Street firm is the “ultimate backstage pass. It’s the new priesthood.” *The Devil’s Advocate*<sup>8</sup> takes anti-lawyer movies to a new level by literally demonizing the profession.

These are well-made movies with prominent actors, writers and directors. It would be hard to find five recent stereotypical films on any subject that exceed the viciousness of the attorney stereotypes in these films.

This article examines two phenomena. First, it documents the precipitous drop in the public’s perception of the character, prestige and ethics of lawyers that began during the 1980s and continues to the present. Second, it traces the history of lawyer portrayals in film, concentrating on the sharp turn toward the negative during the 1970s and 1980s that continues to the present.<sup>9</sup>

The article asks whether there is any connection between these phenomena. It asserts that one connection is clear and obvious: the trend in filmed portrayals of lawyers accurately reflects public opinion. But the article also speculates that negative filmed images can lead public opinion as well as follow it. My hope is that this article will cause its readers to treat lawyer portrayals in film seriously and critically, both because such portrayals are an important social datum and because they have real world consequences.<sup>10</sup>

6. Universal Pictures (1997).

7. Kopelson Entertainment (1997).

8. *Id.*

9. For other studies focussing on the personalities of lawyers in popular culture, see Anthony Chase, *Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys*, AM. B. FOUND. RES. J. 281 (1986); Carolyn Lisa Muller, “What a Waste. Beautiful, Sexy Gal, Hell of a Lawyer”: *Film and the Female Attorney*, 4 COLUM. J. GENDER & L. 203 (1994); Steven D. Stark, *Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes*, 42 U. MIAMI L. REV. 229 (1987); Ralph Berets, *Lawyers in Film: 1996*, 22 LEGAL STUD. F. 99 (1998) (surveying eight negative lawyer films).

10. In his famous study and thick description of Balinese cockfights, Clifford Geertz observed that works of culture are texts from which consumers endlessly learn about their society and themselves. Clifford Geertz, *Deep Play: Notes on the Balinese Cockfight*, in RETHINKING POPULAR CULTURE 239, 266–69 (Chandra Mukerji & Michael Schudson eds., 1991).

## II. THE POPULAR PERCEPTION OF LAWYERS

Polling data demonstrates clearly that the popular perception of the character and the ethics of American lawyers, and the prestige of the profession, have plunged precipitously since the 1970s. Granted, the image of lawyers<sup>11</sup> never approached that of pharmacists, the clergy, or algebra teachers.<sup>12</sup> Lawyers will always be distrusted, in part because their assigned task is to play whatever role and manipulate whatever law a client's interest demands.<sup>13</sup> Lawyers tend to represent the rich and powerful; naturally everyone else who can't afford lawyers resent that.

Even more significant, lawyers are doomed to be unloved because criminal practice is their most public function.<sup>14</sup> As lawyers see it, justice requires that an accused person have the benefit of appropriate process, such as the reasonable doubt rule or the privilege against self incrimination.<sup>15</sup> This perspective is not shared by most members of the public, especially when it comes to criminal law.<sup>16</sup> Most people think that justice means finding the truth regardless of the adversarial system, procedural technicalities, statutory loopholes, police or prosecutorial misconduct, or lawyers' tricks.<sup>17</sup>

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Douglas Kellner, speaking of *Rambo* and other works about Vietnam, observes: "When individuals learn to perceive how media culture transmits oppressive representations of class, race, gender, sexuality and so on that influence thought and behavior, they are able to develop critical distance from the works of media culture and thus gain power over their culture." DOUGLAS KELLNER, *MEDIA CULTURE: CULTURAL STUDIES, IDENTITY, AND POLITICS BETWEEN THE MODERN AND POST MODERN* 60 (1995). I believe we should strive to achieve that kind of media literacy with respect to the ways that law, lawyers and the legal system are depicted in popular culture.

11. See Leonard E. Gross, *The Public Hates Lawyers: Why Should We Care*, 29 SETON HALL L. REV. 1405, 1407-16 (1999); Marc Galanter, *The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes, & Political Discourse*, 66 U. CINN. L. REV. 805, 810-16 (1998) (noting the comparison period of the 1960s and 1970s was a period of high public esteem of lawyers); Robert C. Post, *On the Popular Image of the Lawyer: Reflections in a Dark Glass*, 75 CAL. L. REV. 379 (1987).

12. Strangely, pharmacists seem to be consistently the most popular of all professions, as documented in the studies cited at *infra* notes 21-38.

13. See Post, *supra* note 11, at 386 (arguing that public distrusts lawyers who find ways to circumvent law for clients and likening public's distrust of lawyers to their traditional distrust of actors).

14. See generally Gross, *supra* note 11.

15. See Christine Corcos, *Presuming Innocence: Alan Pakula and Scott Turow Take on the Great American Legal Fiction*, 22 OKLA. CITY U. L. REV. 129, 137 (1997).

16. *Id.* at 135-36.

17. See Gross, *supra* note 11, at 1421; Corcos, *supra* note 15, at 135 (general public and lawyers differ about whether justice means truth or justice means process).



The general public will always associate lawyers with some of life's worst moments. We don't fondly recall our divorce or divorces, the probate of our parents' estates, our dispute with the IRS, our credit problems or bankruptcy, or our brush with the juvenile court. Dwelling on the time we got sued by somebody who slipped on the sidewalk or we needed an attorney to sue an insurance company doesn't evoke warm and fuzzy memories. Lawyers were present at those events.<sup>18</sup> Probably, we resented the opposing lawyer. While we may have liked and trusted our own lawyer, we resented being involved in a situation where lawyers were needed and we were probably shocked at the size of the bill. In all likelihood, whether we won or lost, we weren't really pleased by the outcome.

Thus, our profession has never been loved, but in years past it was at least respected and sometimes admired.<sup>19</sup> Today lawyers are more despised than they have ever been before. This is something we probably knew already from the prevalence of nasty lawyer jokes<sup>20</sup> or talk shows, or from social and professional interactions with lay persons. The polling data proves that this dismal intuition is all too accurate.<sup>21</sup>

In its introduction to polling data released in 1997, the Harris Poll wrote:<sup>22</sup>

Recent Harris Polls have found that public attitudes to lawyers and law firms, which were already low, continue to get worse. Lawyers have seen a dramatic decline in their "prestige" which has fallen faster than that of any other occupation, over the last twenty years. Fewer people have confidence in law firms than in any of the major institutions measured by Harris including the Congress, organized labor, or the federal government. It is not a pretty picture.

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18. Of course, doctors are also present at some of life's worst moments, but the public perception of doctors has held up quite well despite widespread public resentment of health maintenance organizations. Presumably the public does not blame doctors for causing disease, whereas they do blame lawyers for exacerbating disputes or thwarting the search for truth.

19. Thus survey data from 1973-74 indicates that only 13% of respondents strongly agreed with the statement that "most lawyers would engage in unethical or illegal activities to help a client . . ." An additional 23% agreed slightly. In contrast, 57% of respondents disagreed slightly or strongly. The survey attempted to measure whether Watergate (which occurred about a year before the survey was taken) had any effect on these responses and found little effect. BARBARA A. CURRAN, *THE LEGAL NEEDS OF THE PUBLIC: THE FINAL REPORT OF A NATIONAL SURVEY* 232, 255 (1977).

20. See the excellent analysis of lawyer jokes in Galanter, *supra* note 11, at 816-45.

21. Harris Poll #37, Aug. 11, 1997.

22. *Id.*

In 1977 over a third of the public (36%) believed that lawyers had "very great prestige." Today, twenty years later, that has fallen to 19%.<sup>23</sup> In other words, almost half of the people who accorded lawyers great prestige then do not do so today. No other occupation has fallen so sharply. . . .<sup>24</sup>

For the last thirty years Harris has been tracking the confidence people have in the leaders of various institutions. In the most recent survey, only 7% of the public said they had a great deal of confidence in the people running law firms. This places law firms at the bottom of the institutions on the list. The 7% figure is not only the lowest number recorded for law firms over thirty years, it is *actually the lowest number recorded for any institution over thirty years*.<sup>25</sup>

In the early 1990s, the American Bar Association commissioned a public opinion poll from the Peter D. Hart Research Organization.<sup>26</sup> It indicated that overall, respondents gave lawyers a 40% favorability rating, while 34% of respondents gave them an unfavorable rating.<sup>27</sup> This placed lawyers far below other professions, since the favorability rating for teachers

23. This figure stepped down from 36% in 1977 to 30% in 1982, 25% in 1992, and 19% in 1997. It improved to 23% in 1998. Harris Poll #31, June 17, 1998. In that 1998 poll, doctors rose to the top of the list with their highest score since 1977 (61% state that doctors have "very great prestige."). *Id.*

24. According to the Harris Poll, in 1977, almost 75% of respondents believed the legal profession had either very great or considerable prestige. Twenty years later, things had changed dramatically. A near majority (47%) of respondents in April 1997 ranked the legal profession as either having some or hardly any prestige at all. See Amy E. Black & Stanley Rothman, *Shall We Kill All the Lawyers First: Insider and Outsider Views of the Legal Profession*, 21 HARV. J.L. & PUB. POL'Y 835, 850 (1998).

25. It seems unlikely that the general public knows much about law firms or their leadership, so it is unclear how it acquired such a negative opinion. However the opinion was acquired, it is clearly worsening. The public had more confidence in some other normally suspect professions than law firm leaders. As compared to the 7% figure for law firm leaders, 17% of respondents "had great confidence" in leaders on Wall Street, 15% in the White House, 15% in the press, 11% in Congress, and 9% in organized labor. Harris Poll #37, Aug. 11, 1997. The dismal 7% figure just referred to in the Harris Poll rose to 11% in 1998, part of an across-the-board improvement in people's confidence in all institutions, but lawyers remained at the bottom of the heap. Harris Poll #8, Feb. 11, 1998. For comparison, 24% of the public had confidence in law firm leadership back in 1973, ahead of most institutions of government. *Id.*

26. Gary A. Hengstler, *Vox Populi—The Public Perception of Lawyers: ABA Poll, 79 A.B.A. J.* 60 (Sept. 1993).

27. *Id.* at 61–62.

was 84%, pharmacists 81%, police officers 79%, doctors 71%, and bankers 56%.<sup>28</sup> Only stockbrokers at 28%, and politicians at 21% were lower.<sup>29</sup>

In 1999, the ABA published results of a follow-up poll from M/A/R/C Research.<sup>30</sup> It revealed that while 30% of respondents were extremely or very confident of the United States justice system, only 14% were extremely or very confident of lawyers.<sup>31</sup> In contrast, 27% had slight or no confidence in the justice system but 42% had little or no confidence in lawyers. Lawyers were soundly beaten by state legislatures, prison systems, and the United States Congress; only the media came in behind lawyers.<sup>32</sup> Thus, the public seems to have moderate confidence in its justice system but almost none in the lawyers who make that system function. The same survey also asked about public satisfaction with particular lawyer services they had purchased in the last five years.<sup>33</sup> The satisfaction levels with transactional attorneys (real estate, contracts, or estate planning) were much higher than the satisfaction levels with litigating attorneys (family law, civil, or criminal disputes).

According to the Gallup Poll, high percentages of respondents give pharmacists, clergy, dentists and doctors high or very high ratings for honesty and ethics.<sup>34</sup> Between 1976 and 1985, 25–27% of respondents gave lawyers high or very high ratings. Then the figure started to slide, falling to 18% in 1988. After a bump upwards in 1989–1991, it fell back to 18% in

28. *Id.* at 62.

29. *Id.*

30. A.B.A., PERCEPTIONS OF THE U.S. JUSTICE SYSTEM (1999) [hereinafter M/A/R/C survey].

31. *Id.* at 50.

32. The earlier Hart survey concluded that the more contact a person had with lawyers, the lower the individual's opinion of them. Hengstler, *supra* note 26, at 62. The M/A/R/C survey concluded that respondents who had more knowledge about the justice system had lower opinions of lawyers than those with less knowledge. M/A/R/C survey, *supra* note 30, at 54. Respondents with recent active court experiences had almost equally dismal levels of confidence in lawyers whether their court experience was positive or negative. *Id.* at 56 (15% of those with positive experiences were extremely or very confident in lawyers; 13% of those with negative experiences were extremely or very confident in lawyers).

33. M/A/R/C survey, *supra* note 30, at 45.

34. Gallup Poll (Dec. 1997), Survey #GO120249 [hereinafter Gallup Poll]. For other Gallup polling data, see Richard J. Cebula, *Does Lawyer Advertising Adversely Influence the Image of Lawyers in the United States? An Alternative Perspective and New Empirical Evidence*, 27 J. LEGAL STUD. 503, 506–08 (1998) [hereinafter Cebula I]; Richard J. Cebula, *Historical and Economic Perspectives on Lawyer Advertising and Lawyer Image*, 15 GA. ST. U. L. REV. 315 (1998) [hereinafter Cebula II]. Gallup found that lawyers were much more popular with African Americans (35% high or very high, 27% low or very low) than with Caucasians (14% high or very high, 48% low or very low). Gallup Poll Nov. 11, 1995, Survey #GO105362.

1992, 16% in 1993–1995, and 14% in 1998.<sup>35</sup> The public opinion of lawyers is inversely proportional to education; the more education people have, the more unethical they think lawyers are.<sup>36</sup> A study by the Media Studies Center of the University of Connecticut asked whether the respondent trusts members of various professions to tell the truth.<sup>37</sup> As to lawyers, 24% of respondents trusted “a lawyer” to tell the truth all or most of the time; this came close to the bottom of the list behind newspaper reporters (30%), your Congressional representative (30%), and network television news anchors (42%). Only the president (21%)<sup>38</sup> and radio talk show hosts (14%) came in below lawyers.

To go out on a limb: I think lawyers are getting a bad rap.<sup>39</sup> I believe that most lawyers (not all of them, of course) are decent, socially responsible people<sup>40</sup> who work hard for their clients, successfully check government overreaching, take a lot of undeserved abuse, are pretty ethical most of the time, and do not earn inordinate amounts of money.<sup>41</sup> Instead, they hew out a living in an extremely tough, competitive environment.

In general, I believe (although I cannot prove) that most legal services, whether oriented to transactions, personal planning, or dispute-settlement, add value and that most of the things lawyers do are good for society. It may

35. Gallup/CNN/USA Today Poll (Oct. 23–25, 1998).

36. 1995 Gallup Poll, *supra* note 34, at 854. The 1999 M/A/R/C survey reached a similar conclusion. People with post-graduate degrees have more confidence in the justice system than people who went to college or have a high school diploma or less education; but people with post-graduate degrees have less confidence in lawyers than people with a high school diploma or less education. People with college degrees have less confidence in lawyers than either of the other two groups. See M/A/R/C survey, *supra* note 30, at 53, 94–98.

37. Study conducted September 25–October 1, 1998.

38. As to the president, this level of distrust is hopefully a transitory phenomenon arising out of the Monica Lewinsky scandal.

39. Thus I disagree with the wag who noted that 99% of lawyers are giving the rest a bad name.

40. Elite lawyers averaged charitable gifts of \$14,485 and donate 15 hours per month to community service. Black & Rothman, *supra* note 24, at 849. Of course, these figures are self-reported and therefore are suspect.

41. According to the Bureau of Labor Statistics, the median income of all lawyers in 1997 was an unspectacular \$72,840; in other words, half of all lawyers made less than that figure. Bureau of Labor Statistics, Occupational Employment Statistics, 1997 National Occupational Employment and Wage Estimates, <[http://stats.bls.gov/oes/national/oes\\_prof.htm](http://stats.bls.gov/oes/national/oes_prof.htm)>. Thus law produced a good but not great living for most of its practitioners. By comparison the figure for accountants was \$40,550, chemists \$47,200, computer programmers \$50,490, teachers \$37,310. However, physicians averaged \$100,920 and dentists \$91,280. Of course, a relatively few lawyers do earn inordinate amounts, particularly partners of elite firms and a few highly successful personal injury lawyers. Black & Rothman, *supra* note 24, at 839 (85% of partners in corporate law firms earned more than \$200,000 in 1995).

be unfashionable to say so, but I think the ABA was right when it concocted the slogan "[f]reedom, justice, equality—without lawyers, they're just words."<sup>42</sup> So, if a normative position is needed from which to criticize popular legal culture over the last twenty years, my position is that film should treat lawyers in a fair and balanced manner.

As to the negative public opinion polls, your attitude may be—who cares? Life for lawyers, judges and law professors goes on regardless of what the public thinks of the profession. Lawyers are accustomed to people not liking them much. It's easy for lawyers to write off the polling data as misguided or inconsequential. However, I think we should care a lot about the venomously negative public perception of the profession.<sup>43</sup>

The harshly negative perception that lawyers or law students encounter constantly in their daily lives ("how can a nice person like you be a lawyer or law student?") undoubtedly lowers self esteem.<sup>44</sup> It causes lawyers to devalue the work they do, and diminishes their satisfaction in doing this work.<sup>45</sup> Surely, it contributes to the widespread feelings of career dissatisfaction and stress among practicing lawyers.<sup>46</sup> More broadly, doesn't

42. See generally American Bar Assoc. Home Page (visited Mar. 22, 2000) <<http://www.abanet.org>>.

43. I am not alone in believing that the falloff in public esteem for lawyers is important; elite lawyers and judges are deeply concerned by the plummeting image of the profession. Asked what was the most important problem facing the profession, elite lawyers ranked litigiousness first and public image second. Judges ranked case load first and public image second. Black & Rothman, *supra* note 24, at 856–57. The ABA leadership is extremely concerned with the problem of public perception, witness its commissioning of the M/A/R/C survey, and numerous references to the problem in the ABA Journal. See M/A/R/C survey, *supra* note 30; see also David A. Harris, *The Appearance of Justice: Court TV, Conventional Television, and Public Understanding of the Criminal Justice System*, 35 ARIZ. L. REV. 785, 788–95 (1993) (arguing that public misperceptions about criminal justice system are an important problem). But see Gross, *supra* note 11, at 1417–20, 1426–29 (what counts is people's attitudes toward their own lawyers, not lawyers in general).

44. In an application to take the seminar in law and popular culture that Paul Bergman and I offer at UCLA Law School, a student wrote: "Every time I tell someone that I am in law school, I am universally greeted with a look of horror and disgust." Gross, *supra* note 11, at 1428–29 questions the argument that low public opinion of lawyers erodes self-esteem.

45. ANTHONY KRONMAN, *THE LOST LAWYER* 2–4 (1993).

46. See Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 871–95 (1999) (giving data on lawyer dissatisfaction with their work and their lives); Susan Daicoff, *Asking Leopards to Change Their Spots: Should Lawyers Change? A Critique of Solutions to Problems with Professionalism by Reference to Empirically-Derived Attorney Personality Attributes*, 11 GEO. J. LEGAL ETHICS 547, 553–57 (1998) (rising attorney dissatisfaction and rising substance abuse among attorneys). But see John P. Heinz et. al., *Lawyers and Their Discontents: Findings from a*

our society suffer when any large group of people are collectively demonized?

If clients and lawyers don't or can't trust other lawyers, the costs of legal services will rise because every informal agreement must be carefully documented and confirmed.<sup>47</sup> In a transaction where there is no mutual trust, the documents must attempt to cover everything that could conceivably go wrong, every possibility for opportunism.

If jurors assume that most of what the lawyers say to them is false or misleading, and if they generally hold the legal system in contempt, the process of dispensing justice through trials cannot function properly. Jurors may be more likely to refuse to serve, or might decide cases on personal whims rather than the evidence. This may be especially harmful to plaintiffs in personal injury cases, as well as to criminal defendants.

The roots of the law and of law practice are deeply imbedded in the social, political, and economic institutions of a given society and a given community.<sup>48</sup> Law is neither autonomous nor unchangeable. If people generally hate law and lawyers, this will be reflected in the laws that legislatures pass and the initiatives that voters enact. Thus, distrust of the judicial system has prompted enactment of draconian mandatory minimum sentencing laws. Distrust of personal injury lawyers resulted in caps on the amount that can be recovered in medical malpractice cases. Ultimately, the public's willingness to use the judicial system and their belief in the rule of law will decline if people hate and distrust the lawyers and judges who administer that law.<sup>49</sup>

Recently, former Governor Pete Wilson's veto of funding legislation caused the California State Bar to suffer a complete meltdown.<sup>50</sup> The programs for which the Bar was responsible collapsed, including lawyer discipline, reimbursement of defrauded clients, and continuing education.<sup>51</sup> Over 500 people (including almost all of the professionals who conducted

*Survey of the Chicago Bar*, 74 IND. L.J. 735 (1999) (survey of Chicago lawyers indicates both men and women practicing lawyers mostly satisfied with their work).

47. I've heard lawyers say that every informal phone agreement with their opponent to delay a deadline or otherwise work out some small problem in litigation must be documented by a confirming letter. In years past, a confirming letter would be sent only if one were dealing with an opponent known to be untrustworthy.

48. DONALD D. LANDON, COUNTRY LAWYERS: THE IMPACT OF CONTEXT ON PROFESSIONAL PRACTICE 3-8, 147-53 (1990).

49. See Tom R. Tyler, *Public Mistrust of the Law: A Political Perspective*, 66 U. CIN. L. REV. 847, 861-64 (1998). To this point, at least, the public seems to be much more positive toward the American justice system and toward judges than toward the lawyers who actually run the system. See M/A/R/C survey, *supra* note 30.

50. Barbara Mahan, *Who Killed the State Bar?*, 18 CAL. LAW. 33 (Oct. 1998).

51. *Id.*

California's exemplary State Bar Court system for disciplining errant lawyers) were laid off.<sup>52</sup> Some people cheered but nobody except for a few lawyers seemed to think it mattered. Wilson said that vetoing the Bar bill was one of the most popular acts he had done as governor.<sup>53</sup>

In American history, lawyers have always played a statesmanlike role. Traditionally, lawyers constituted a substantial percentage of the membership of legislatures or school boards; lawyers often served in important nonlegal policymaking positions.<sup>54</sup> Writing in the 1830s, DeTocqueville said: "[a]s the lawyers form the only enlightened class whom the people do not mistrust, they are naturally called upon to occupy most of the public stations."<sup>55</sup> More recently, Anthony Kronman has pointed out the historic role and responsibility of lawyers to serve as statesmen.<sup>56</sup> Today, the number of lawyers elected to both the federal and state legislatures has plunged.<sup>57</sup> In the present atmosphere, the historic role of lawyers as citizen-statesmen is in serious jeopardy.

Now why has all this happened? What, exactly, has changed during the last two decades or so to cause the public to so detest lawyers? No one knows exactly what has caused the decline and unquestionably there are numerous causal factors. Everyone has his or her own theory about which of these causes is most or least significant. I suggest you raise the question next time you're having dinner with friends and the conversation lags. You'll get some unexpected answers, although the particular answers you get depend a lot on who is answering.

I offer here a menu of causal agents for the declining image phenomenon. Some of these potential causal agents can be backed up with survey data, others are impressionistic. Some are fairly persuasive, some are not very persuasive, but all of them have been suggested (either in print or in discussions I've had) as being part of the public perception problem.

a. Factors relating to the legal profession

i. Rising incomes. Income of lawyers rose during this period.<sup>58</sup> Some extremely high legal fees and law partnership incomes received

52. *Id.*

53. *Id.* at 39.

54. KRONMAN, *supra* note 45, at 3.

55. 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 279 (Bradley ed., 1945). It is unlikely that anyone would pen such a sentence today. See also ROBERT A. FERGUSON, *LAW AND LETTERS IN AMERICAN CULTURE* 11-33 (1984) (chapter concerning the Revolution and early 19th century is entitled "In America The Law is King").

56. KRONMAN, *supra* note 45.

57. Richard Perez-Pena, *Lawyers Abandon Legislatures for Greener Pastures*, N.Y. TIMES, Feb. 21, 1999, at 4.

58. The income of both partners and associates in law firms of all sizes increased steadily during this period (without even considering the massive salary increases for law

considerable publicity. The astounding fees awarded to plaintiffs' lawyers in the cigarette litigation exacerbate the problem. Many people think that lawyers make far too much money compared to their social contribution. Others believe that lawyers pad their bills.<sup>59</sup> As the public and many lawyers see it, a noble profession has been converted into a profit-making business like any other.<sup>60</sup>

ii. Increase in the number of lawyers and in amount of litigation. The number of lawyers increased rapidly during this period.<sup>61</sup> People think that there are far too many lawyers.<sup>62</sup> Moreover, the percentage of women lawyers increased rapidly; some resentment toward lawyers may really be resentment toward women working in what people consider a male profession.

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firms associates that occurred in 1999). Thus, the median compensation for law firm partners rose from \$64,695 in 1977 to \$182,824 in 1997; the median for partners with nine years experience rose from \$50,532 in 1977 to \$131,451 in 1997. The starting salary for new graduates rose from \$18,000 in 1977 to \$50,000 in 1997 (these are before tax figures and do not include fringe benefits). The increases exceeded the increase in the consumer price index. Obviously, the relevant numbers in large urban areas were much higher. Altman Weil Publications, 1998 Survey of Law Firm Economics 1/1. In a different survey, the mean profit per partner, *adjusted for inflation*, rose from \$297,000 in 1987 to \$364,000 in 1997. American Lawyer 6, July-Aug. (1998).

59. See RICHARD ZITRIN & CAROL M. LANGFORD, *THE MORAL COMPASS OF THE AMERICAN LAWYER* 80–86 (1999). The ABA's 1993 poll indicated that 63% of respondents thought lawyers made too much money, 59% said lawyers are greedy, and 55% said that most lawyers "charge excessive fees." Hengstler, *supra* note 26, at 63.

60. ZITRIN & LANGFORD, *supra* note 59; SOL LINOWITZ, *THE BETRAYED PROFESSION* (1994). Kronman observes that lawyers' income used to be a private matter but the information now is in the public domain. He believes that lawyers are more preoccupied with earning the highest possible incomes than in years past. KRONMAN, *supra* note 45, at 294–300.

61. See Deborah L. Rhode, *Too Much Law, Too Little Justice: Too Much Rhetoric, Too Little Reform*, 11 GEO. J. LEGAL ETHICS 989, 990–93 (1998) (number of lawyers has tripled in three decades and now approaches 900,000). According to Cebula, the increased population of lawyers and the increased number of lawsuits might have increased the availability of legal services and thus improved the public's opinion of lawyers. See Cebula I, *supra* note 34, at 513. These conclusions are counter-intuitive, to say the least.

62. See Rhode, *supra* note 61. Songwriter Tom Paxton amusingly articulated the view of many people in his 1985 album "One Million Lawyers and Other Disasters." Referring "to the terrible scourge still to come," Paxton asked: "In ten years, we're gonna have one million lawyers/How much can the poor nation stand?" He continued: "Lawyers around every bend in the road/Lawyers in every tree/Lawyers in restaurants, lawyers in clubs/Lawyers behind every door/Behind windows and potted plants, shade trees and shrubs/Lawyers on pogo sticks, lawyers in politics." Quoted in Lawrence Savell, *Why Are They Picking on Us?* 78 A.B.A. J. 72, 73 (Nov. 1992).



iii. Increased litigation. People perceive that the increased number of lawyers (together with increased litigiousness on the part of the public) triggered an increase in litigation of all sorts,<sup>63</sup> especially frivolous litigation.<sup>64</sup> The lawsuit brought by the woman scalded by McDonald's coffee is endlessly cited as an example.<sup>65</sup> Whether these public beliefs about the litigation explosion are a myth<sup>66</sup> or whether they are based on reality, they are widely held and powerfully influence public opinion about law, lawyers, and the legal system.

b. Highly publicized trials. Particular lawyers did things the public perceived as bad. The culprits may have been the hordes of lawyers embroiled in Watergate.<sup>67</sup> Perhaps it was Johnny Cochran or other lawyers and judges in the O.J. Simpson case or the lawyers in the Menendez, Abner Louima, or William Kennedy Smith cases. Perhaps it was independent counsel Kenneth Starr. Or perhaps it's Judge Judy.<sup>68</sup> Saturation media coverage of sensational trials or investigations, as well as Court TV, brings dubious lawyer behavior directly into millions of living rooms. Irresponsible news analyses of those trials that oversimplifies them and treats them as entertainment or as gladiatorial combat worsens the problem.<sup>69</sup> And the perceived lapses and shortcomings of individual lawyers are generalized onto the profession as a whole.

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63. Galanter has questioned whether the so-called litigation explosion is actually folklore. Marc Galanter, *Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) About Our Allegedly Contentious and Litigious Society*, 31 UCLA L. Rev. 4 (1983). But Galanter's analysis has been questioned by authors who assert that the litigation explosion is not a myth at all. Kenyon D. Bunch & Richard J. Hardy, *A Re-Examination of Litigation Trends in the United States: Galanter Reconsidered*, 1986 MISS. J. DISP. RES. 87, 103.

64. A Roper Poll found 73% of respondents agree with the statement "because there are too many lawyers in our country, many disputes are being taken to court when they shouldn't be." Only 19% disagreed. Roper Poll released Feb. 20, 1984.

65. Chris Klein, *Poll: Lawyers Not Liked*, NAT'L L.J., Aug. 25, 1997, at A6.

66. See Galanter, *supra* note 63; Rhode, *supra* note 61 (sharply and persuasively criticizing public opinion about the plethora of law and lawsuits).

67. However, survey data of the 1970s suggested that Watergate had little immediate effect on the public's perception of the ethical standards of lawyers. CURRAN, *supra* note 19, at 232.

68. See Michael Asimow, *Justice with an Attitude: Judge Judy and the Daytime Television Bench*, 38 JUDGES' J. 24 (1999).

69. See Peter Arenella, *The Perils of TV Legal Punditry*, 1998 U. CHI. LEGAL F. 25, 38-51.

c. Factors relating to changes in society

i. Rise in rates of divorce, crime, bankruptcy. During the last couple of decades, the divorce rate,<sup>70</sup> the crime rate,<sup>71</sup> and the rate of personal bankruptcies<sup>72</sup> all increased. As a result, more people came into contact with lawyers in negative and unhappy situations.

ii. Increase in government regulation. A widespread popular belief is that there are too many laws and regulations and too many meddling regulators. Lawyers write the laws and regulations and help enforce them. Business people tend to make this argument quite vehemently.<sup>73</sup>

iii. People increasingly distrust institutions and power centers,<sup>74</sup> particularly the government<sup>75</sup> and the mass media.<sup>76</sup> Lawyers and the legal profession are just one more big, powerful institution that the speaker

70. The divorce rate (measured as divorces per 1000 population) began to rise in the 1960s and rose sharply in the 1970s. It peaked at 5.3 from 1979 to 1981 and fell slightly after that time. Roderick Phillips, *UNTYING THE KNOT: A SHORT HISTORY OF DIVORCE* 211–13 (1991); *STATISTICAL ABSTRACT OF THE UNITED STATES* 74 (1997) [hereinafter *STATISTICAL ABSTRACT*]. Cebula thinks the increased divorce rate is moderately correlated with declining lawyer image. See Cebula I, *supra* note 34, at 509.

71. The rates of violent crime rose steadily throughout the 1970s, 1980s, and early 1990s. The number of violent crimes per 100,000 inhabitants doubled; it rose from 363 in 1970 to 596.6 by 1980 and to 731.8 by 1990. It peaked at 757.5 in 1992 before falling to 610.8 in 1997. *FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR THE UNITED STATES* 66 (1997). In 1982, the Gallup Poll found that Americans had low confidence in their court system compared with other nations and linked this directly to a rising crime rate and perceived leniency toward criminals. 1982 GALLUP POLL 165.

72. The number of bankruptcies rose sharply during the 1980s and early 1990s. There were 364,000 bankruptcy petitions in 1985, 642,000 in 1989, 972,000 in 1992. *STATISTICAL ABSTRACT*, *supra* note 70, at 549.

73. More government regulation means much higher legal fees. See LINOWITZ, *supra* note 60, at 77–82, 100–01. From 1960 to 1990, American corporations multiplied by five the fraction of their revenues paid for legal services. *Id.* at 187.

74. The Harris Poll has been measuring public confidence in various institutions since 1966. Using the 1966 level of confidence as 100, the overall index of confidence in institutions plunged in the late 1960s and 1970s (for example to 49 in 1980). It stabilized during the 1980s and fell again (to a low of 43 in 1995 and 42 in 1997). Perhaps as a function of the solid economy and rising stock market, it rose from 42 to 54 from 1997 to 1998. The public's confidence in the leadership of law firms plunged more swiftly than the overall index. In 1972 (the earliest year for which a figure is available), 24% of respondents had confidence in law firm leadership. This figure declined steadily and fell to its all-time low of 7% in 1997 before rising to 11% in 1998. Harris Poll #8, Feb. 11, 1998.

75. See *WHY PEOPLE DON'T TRUST GOVERNMENT* (Joseph S. Nye et al. eds., 1997).

76. In the M/A/R/C survey, *supra* note 30, only the media came in lower than lawyers. *Id.* at 52 (only 8% of people are extremely or very confident in the media, compared to 14% for lawyers).

perceives is pushing him around, doing a number on him, or trying to get into his wallet.

iv. Changes in mass communication. Fundamental changes in the media may have something to do with the trend. In particular, commentaries on the internet and radio talk and call-in shows include bitterly negative opinions about almost everything, certainly including lawyers. Then there's the fact that television news has become just one more form of entertainment,<sup>77</sup> often treating court cases the same as sports events.

d. Factors relating to the litigation process

People perceive that the costs, delays, and complexity of litigation have all worsened. They think that attorneys act less ethically than they used to.<sup>78</sup> Discovery seems more costly, unpleasant and intrusive than ever.<sup>79</sup> Lawyers more often act in an uncivil manner toward each other and toward litigants and witnesses, to the discredit of the profession.<sup>80</sup>

e. Lawyer advertising.

Lawyer advertising increased exponentially during the 1980's.<sup>81</sup> Television ads, in particular, seem to encourage people to invent phony personal injury claims, weasel out of their debts through personal

77. See NEAL GABLER, *LIFE THE MOVIE: HOW ENTERTAINMENT CONQUERED REALITY* 53-95 (1998); NEIL POSTMAN, *AMUSING OURSELVES TO DEATH: PUBLIC DISCOURSE IN THE AGE OF SHOW BUSINESS* (1986).

78. In the 1993 ABA survey, 22% of respondents thought lawyers were honest and ethical but 40% said they were not. Of the respondents, 48% said that at least three in ten lawyers lack the ethical standards necessary to serve the public which matches the proportion who say the same thing about auto mechanics. Hengstler, *supra* note 26, at 62. Only 14% of respondents gave lawyers high marks for honesty and ethics in 1998. Gallup Poll, *supra* note 34.

79. ZITRIN & LANGFORD, *supra* note 59, at 53-73.

80. LINOWITZ, *supra* note 60, at 167-71. There is a substantial literature on the incivility problem and what can be done about it. See, e.g., Marvin Aspen, *A Response to the Civility Naysayers*, 28 STETSON L. REV. 253 (1998); Marvin E. Aspen, *The Judiciary—New Issues and New Visions: Promoting Civility in Litigation*, 40 FED. B. NEWS 496 (1993); Susan E. Davis, *Uncivil Behavior*, 19 CAL. LAW. 44 (July 1999); Carolyn E. Demarest, *Civility in the Courtroom From a Judge's Perspective*, 69 N.Y. ST. B.J. 24 (May/June 1997); John Stuart Smith, *Civility in the Courtroom from a Litigator's Perspective*, 69 N.Y. ST. B.J. 28 (May/June 1997); Kara Ann Nagorney, Note, *A Noble Profession? A Discussion of Civility Among Lawyers*, 12 GEO. J. LEGAL ETHICS 815 (1999); Brenda Smith, Comment, *Civility Codes: The Newest Weapons in the "Civil" War over Proper Attorney Conduct Regulations Miss their Mark*, 24 U. DAYTON L. REV. 151 (1998) (citing numerous studies of the problem).

81. See Cebula I, *supra* note 34, at 506; Cebula II, *supra* note 34 at 321 (citing statistics showing the very sharp increase in lawyer television advertising during the 1980s—the very time when the image of lawyers went over the cliff).

bankruptcy, or escape the consequences of drunk driving.<sup>82</sup> This sort of advertising strikes many people as extremely sleazy.

f. Bad public relations

Insurance companies and big business have engaged in a public relations campaign against personal injury lawyers and the pro-plaintiff doctrines of tort law. A number of conservative politicians, such as Dan Quayle, jumped on this issue. Sometimes the argument against plaintiffs' lawyers is generalized into a critique of the effect of products liability and other tort doctrines on economic growth or the formation of new enterprises.

g. Negative stereotypes of lawyers as human beings.

For good measure, lots of people you ask will describe lawyers (often based on their personal experiences or those of friends or family) as dishonest, unethical, greedy, boorish, inconsiderate people who are impossible to deal with.<sup>83</sup>

Each of these hypotheses concerning the declining image of lawyers contains a grain of truth. None of them is completely off base. Unpleasant events at which lawyers were present, such as divorce, bankruptcy, and criminal prosecutions, did increase noticeably during the 1980s. Certainly, *some* lawyers are bad professionals and bad people and *a few* of them have ridiculously large incomes. Law *has* become more of a business and less of a profession. There are some costly and inefficient regulatory systems manned by overzealous lawyers, and there probably are too many lawyers (at least too many lawyers competing for affluent clients) and too much

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82. See *Florida Bar v. Went for It, Inc.*, 515 U.S. 618, 626–29 (1995) (study by Florida Bar of the negative effect on lawyer reputation of lawyer mailings to accident victims). Cebula and Gross are very critical of the methodology employed by the Florida bar. Cebula II, *supra* note 34, at 316–20; Gross, *supra* note 11, at 1430–38. Analysis of comments by participants in focus groups suggested that “lawyer advertising on television may be the most significant contribution to the public derision toward lawyers.” Hengstler, *supra* note 26, at 63. In both articles cited in note 34, Cebula takes the position that advertising either had no effect on the declining public image of lawyers or may even have *enhanced* the profession's image by making legal services more available and bringing down their cost. His findings, based on regression analyses of the correlations between the increase in advertising and the decline in public opinion of lawyers, are counter-intuitive. They are also contrary to the ABA focus group findings cited by Hengstler. I am skeptical of Cebula's results. In part, his conclusions belie the obvious fact that TV advertising was soaring while lawyer image was plummeting. From a common-sense point of view, it is difficult to conclude that advertising was good for lawyer's public image. In addition, there are so many possible causes of the decline in public esteem, all working together, many of them impossible to quantify; Cebula's statistical analysis cannot take account of all these factors.

83. See Savell, *supra* note 62, at 72; Gross, *supra* note 11, at 1425–26 (arguing that the prevalence of nasty lawyer jokes contributes to and reinforces negative stereotypes about lawyers).

litigation. Litigation (particularly the discovery process) has become nastier and more intrusive. Some lawyer television advertising is really awful. Probably each of these factors played a role in the precipitous drop of the profession's public image.

The next section of the paper asks about the relationship of popular legal culture<sup>84</sup> to the plummeting public esteem for lawyers. Is popular culture only a follower of public opinion or could it also be a leader?

### III. DOES POPULAR LEGAL CULTURE FOLLOW OR LEAD PUBLIC OPINION ABOUT LAWYERS?

#### A. *Popular Culture as a Follower of Public Opinion*

Unquestionably, popular culture *reflects* attitudes and myths that are already deeply rooted in the common psyche. People worry a lot about getting cancer or being a crime victim or having their marriages fall apart. Thus, films like *Love Story*<sup>85</sup> (cancer), *Regarding Henry*<sup>86</sup> (random violent crime), or *Kramer vs. Kramer*<sup>87</sup> (divorce and child custody dispute) resonate with film audiences. If lawyers are *already* loathed by the likely consumers of a new film, then the odds of commercial success for a film about loathsome lawyers are better than the odds on films putting down French teachers, rabbis, or grandmothers. As a result, writers tend to write stories that feature negative lawyer portrayals, and producers and investors tend to select such stories from the vast array of choices available to them.<sup>88</sup>

Undoubtedly, then, popular legal culture, *follows* and *mirrors* already existing public opinion. The stories in lawyer films are largely realistic in the sense that they reflect reality (although they often distort or exaggerate)

84. By the term "popular legal culture," I mean works of imagination (whether visual, auditory, or print) concerning law, lawyers, and the legal system which are intended as mass entertainment. See Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L.J. 1579, 1579 (1989). I recognize that some popular culture scholars would prefer to use the term "objects of popular legal culture" for these works, since these scholars define "popular culture" as the whole set of public attitudes and beliefs rather than as specific works. See Chandra Mukerji & Michael Shudson, *Introduction*, to *RETHINKING POPULAR CULTURE* 1, 33 (Chandra Mukerji & Michael Shudson eds., 1991).

85. Paramount Pictures (1970).

86. Paramount Pictures (1991).

87. Columbia Pictures Corp. (1979).

88. Some screenwriters themselves may have endured antagonistic personal encounters with lawyers, especially entertainment lawyers representing studios or producers. Since writers naturally draw on their own lives for material, such negative personal experiences could easily have guided their choice of material and the way they imagine their characters. It would be interesting to explore the personal experiences of writers of negative lawyer movies.

as filmmakers and consumers perceive it.<sup>89</sup> The fact that works of popular culture tend to reflect (at least in distorted form) popular attitudes, misconceptions, and myths is itself important and justifies the study of these works as a barometer of public opinion.<sup>90</sup> Thus, the sharply negative portrayal of lawyers in the film of the last couple of decades is itself a phenomenon that justifies careful study as a form of social history.

### B. *Popular Culture as a Leader of Public Opinion—The Relevant Interpretive Community*

But can popular culture *lead* public opinion? Can it reinforce and intensify attitudes that were already present in weaker form, or create new attitudes that didn't exist before? I think it can and does.<sup>91</sup>

In my opinion, the media of popular culture (particularly movies and television) are the most powerful and persuasive teachers that have ever existed, other than actual personal experience.<sup>92</sup> If this isn't so, advertisers

89. See J. DUDLEY ANDREW, *MAJOR FILM THEORIES* 104–78 (1976) (film theories of Bazin & Kracauer).

90. See KELLNER, *supra* note 10, at 5 (study of popular culture illuminates social environment and provides insight into what is going on in contemporary society); Mukerji & Schudson, *supra* note 84, at 26 (popular culture should be viewed as a society thinking about itself); Louise Everett Graham & Geraldine Maschio, *A False Public Sentiment: Narrative and Visual Images of Women Lawyers in Film*, 84 KY. L.J. 1027, 1028–34 (1995–96) (film narrative and imagery is a window into cultural notions of women's status).

91. Thus I agree with KELLNER, *supra* note 10, at 60:

Such figural analysis [of Rambo movies] is important because the representations of popular cultural texts constitute the political image through which individuals view the world and interpret political processes, events, and personalities. . . . In a mass-mediated image culture, it is representations that help constitute an individual's view of the world, sense of personal identity and gender, playing out of style and lifestyle, and socio-political thought and action.

*Id.* At a later point, Kellner recounts how the film *Top Gun*, Paramount Pictures (1986), caused young men to get in line to become naval aviators. *Id.* at 80. He also discusses the impact of powerful symbols encoded in film on the thoughts and actions of viewers. *Id.* at 106–08. See also Gross, *supra* note 11, at 1422–25 (agreeing that negative image of lawyers in movies may have lowered public's view of lawyers).

92. In the M/A/R/C survey, *supra* note 30, at 94–97, respondents stated that personal experience was the most important source of their knowledge about the legal system. Respondents in the M/A/R/C survey ranked school or college courses as the second most important source of their knowledge. *Id.* at 94–98. I am deeply skeptical of this result. As a thought experiment, ask yourself how much you actually remember from your high school government class about law and the justice system and, if you remember anything at all, whether you draw upon what you learned as a present source of knowledge.

are wasting tens of billions of dollars inserting little stories and resonant images into television commercials, and political candidates are wasting hundreds of millions of dollars selling images in political spot advertisements. I believe we are constantly forming opinions based on material we absorb from the popular culture that surrounds us.<sup>93</sup>

In our theater seats or our family rooms, we consume carefully written, highly entertaining dramatic material, brought to life by gifted directors and dramatized by superb actors. The stories are professionally produced with authentic-looking sets and music and lighting that intensifies the emotional impact of the material. We identify with the sympathetic characters and worry about their troubles, and we detest the unsympathetic ones.<sup>94</sup> The images derived from pop culture are incredibly powerful and durable.<sup>95</sup>

As a thought experiment: were you compelled to endure a course in drivers' education back in the tenth grade? If so, is there one thing you remember from those dreary days? If you're like me (and a number of friends whom I asked about it), you remember the films. You know, the ones in which nice teenagers like yourself get pulped in horrible car crashes. Long after everything else has been forgotten, those images remain in an easily available memory archive.

Or try this one if you're under thirty-five or so: what was it like to fight in Vietnam? You can probably answer that question, but where did you get

93. In the M/A/R/C survey, *supra* note 30, at 94–97, the respondents claimed that they were influenced very little by film or television drama. On the average, only 7% of respondents claimed that television dramas or movies were extremely or very important in forming their opinions. Of those who were quite knowledgeable about the legal system, only 4% claimed that television drama was important and 2% claimed films were extremely or very important. Of those who were least informed, 16% claimed that both television dramas and movies were extremely or very important.

I question these results. When people are asked directly whether they base their opinions on fictitious stories, most people say no. However, the studies discussed in text accompanying notes 103–11 show that television and film stories strongly influence people's attitudes and opinions. In fact, people have forgotten where they got the information that they used in making these so-called heuristic judgments. As a result, they fail to "source discount" for the fact that the information came from fiction. See *infra* note 111 for an argument questioning the validity of the M/A/R/C survey findings.

94. See Dolf Zillman & Jennings Bryant, *Entertainment as Media Effects*, in *MEDIA EFFECTS: ADVANCES IN THEORY AND RESEARCH* 447–50 (1994). "Good drama, then, relies on positive and negative sentiments toward the parties in conflict and the extent to which a resolution can be accepted by the audience. . . . There need be beloved heroes . . . and there need be villains whom the audience can love to hate." *Id.* at 447–48.

95. See FRANK MCCONNELL, *STORYTELLING AND MYTHMAKING: IMAGES FROM FILM AND LITERATURE* 4 (1979): "But at the end of that discussion [of various critical approaches] we come back, in one way or another, to the fundamental perception that stories teach us—and teach us in ways, at levels, nothing else does. All storytelling is didactic. . . ." *Id.*

your information? Not from live television news like those of us who were old enough to be absorbing information from the news at the time of the Vietnam War. I'll bet you got most of your information, not from some history course you took in high school or college or from friends or family who fought there, but from some of the many movies about Vietnam.<sup>96</sup> Readers who are older should ask themselves the same question about what it was like to fight in World War II. Or ask yourself how you know what you think you know about private detectives, cowboys, or newspaper reporters.

Assume a consumer of popular culture doesn't know any lawyers very well, doesn't read newspapers a lot, and doesn't have much personal experience of the legal system. That person may well consume a substantial number of fictitious lawyer stories in films or television. I believe those stories teach the viewer what lawyers do, what kind of people they are, what they look like, and how the legal system actually functions.

These images and emotional responses persist in memory long after the plot details are forgotten. The portrayals create knowledge and reality. Lawyers are like the kind of people practicing law that you've seen on the screen—in fact, lawyers *are* those people. If many of those portrayals are sharply and vividly negative and constantly repeated, that image becomes the viewer's reality. And if these negative and enduring images are reinforced by radio talk-shows, television news, or by conversations with similarly ill-informed friends or relatives, or by some negative personal experience with a lawyer or the legal system, they become indelible.<sup>97</sup> Even contact with real lawyers is unlikely to cancel them out.<sup>98</sup> If a contact with a real lawyer is unfavorable or unpleasant, the experience fits right into and reinforces the negative image acquired from popular culture.<sup>99</sup> Even if the experience with the real lawyer is positive, it is viewed as exceptional.

In one branch of literary theory, the interpretation of text depends on the reader's response (what he "does" to the text and what the text "does" to him), rather than analysis of the author's intentions or of the text itself.<sup>100</sup> In

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96. See KELLNER, *supra* note 10, at 62–75, 102, 117–21 (concentrating on *Rambo* but observing that a large number of films have articulated other points of view on the Vietnam War).

97. See *infra* text accompanying notes 103–11 on the psychological theory of "cultivation." This theory explains why people would internalize information derived from stories as if it were truthful information.

98. See *id.*

99. See *id.*

100. See STANLEY FISH, *IS THERE A TEXT IN THIS CLASS* (1980), particularly the Introduction, Chapter 1, and Chapters 13–16. See also Janice Radway, *Interpretive Communities and Variable Literacies: The Functions of Romance Reading*, in *RETHINKING POPULAR CULTURE* 465, 468–70 (Chandra Mukerji & Michael Schudson eds., 1991) (interpretive community of romance readers); JANET STAIGER, *INTERPRETING FILMS* (1992), particularly 89–95 (proposing and



other words, interpretation takes place when the reader, for our purposes the viewer of a film or television show, interacts with the text, the film or television show. Under this critical approach, a viewer's response is not completely random or subjective but instead tends to be constrained by the belief systems and experiences of an "interpretive community" of like-minded persons.

The interpretive community that counts, for present purposes, is *not* the community inhabited by the likely consumers of this article—law professors, lawyers, law students, film theorists, or possibly filmmakers. Readers of this article are apt to discount the strongly negative portrayals of lawyers they see in film because the portrayal contradicts what they think they know from their own experience. Such readers can enjoy films like *The Devil's Advocate*<sup>101</sup> as amusing entertainment. Or they can criticize the films as poorly written, implausible or just absurd. But this crowd doesn't take such films as serious accounts of reality.

Instead, the relevant interpretive community is of the vast, and not so silent, majority—people who have only fragmentary, mostly erroneous, knowledge of what law is all about, of what lawyers are like and what they do, and of how the legal system actually works. These are people who are prepared to accept radically negative statements about law and lawyers when served up along with a good story. Thus, I believe, their likely interpretation of negative films about lawyers is that what a film has to say about the personalities and professional behaviors of the lawyers pictured in the film is basically truthful.<sup>102</sup>

### C. *The Cultivation Effect*

Psychologists have produced a large body of research concerning the so-called "cultivation effect." This work assesses the influence of exposure to media on a consumer's conception of social reality—the viewer's store of information, beliefs and attitudes. Cultivation theorists contend that heavy television viewers entertain beliefs about the social world that are quite

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illustrating context-dependent viewer response film theory); Peter J. Rabinovitz, *Whirl Without End: Audience-Oriented Criticism*, in CONTEMPORARY LITERARY THEORY 88 (G. Douglas Atkins & Laura Morrow eds., 1989); TERRY EAGLETON, LITERARY THEORY: AN INTRODUCTION 74–90 (1983); David Ray Papke, *Myth and Meaning: Francis Ford Coppola and the Popular Response to the Godfather Trilogy*, in LEGAL REELISM: MOVIES AS LEGAL TEXTS (John Denvir ed., 1996) (audience's interpretation of Godfather films completely different from director's intention).

101. Kopelson Entertainment (1997).

102. Friedman, *supra* note 84, at 1580–87 (popular legal culture is essential in formulating social theory of law); Radway, *supra* note 100, at 474–75 (romance readers believe that the details of historical and physical background of the stories are true).

different from the beliefs of light viewers.<sup>103</sup> Cultivation theory is vulnerable to the confounding argument that it confuses causality with correlation; it may be that people who watch a lot of television just happen to be the same people who entertain the beliefs in question. However, many of the newer studies are carefully designed to minimize the risk of this sort of error. I believe they sustain their hypotheses convincingly.

Heavy television viewers believe in a "meaner" world than light viewers;<sup>104</sup> heavy viewers believe there is a higher crime rate and there are far more police officers, lawyers, or prostitutes, and far more alcoholism or drug abuse, than do light viewers of television. Heavy viewers believe that people have more possessions and engage more frequently in behaviors associated with an affluent lifestyle than do light television watchers.<sup>105</sup> Heavy viewers are more likely than light viewers to self-identify as politically "moderate" as opposed to liberal or conservative.<sup>106</sup>

Cognitive psychology researchers believe that there is a causal relationship, not merely a correlation, between belief formation and heavy television watching. Their explanation is derived from what they call a "heuristic processing model."<sup>107</sup> Heuristic reasoning consists of snap judgments based on rules of thumb, such as "lawyers are sleaze." People tend to make this type of snap judgment when their involvement with making the judgment is relatively low or when they must decide quickly.<sup>108</sup>

103. Thomas C. O'Guinn & C. J. Shrum, *The Role of Television in the Construction of Consumer Reality*, 23 J. CONSUMER RES. 278, 280 (1996); George Gerbner et. al., *Growing Up with Television: The Cultivation Perspective*, in MEDIA EFFECTS: ADVANCE IN THEORY AND RESEARCH 17 (Jennings Bryant & Dolf Zillman eds., 1994). Gerbner, who is one of the pioneers of cultivation theory, asserts that television neither simply "creates" nor simply "reflects" images, opinions, and beliefs. Cumulative exposure to television develops in some viewers and maintains in others a particular set of outlooks. The attitudes once created are very resistant to change. *Id.* at 23-25.

104. *Id.* at 30; L. J. Shrum, *Effects of Television Portrayals of Crime and Violence on Viewers' Perceptions of Reality: A Psychological Process Perspective*, 22 LEGAL STUD. F. 257, 261 (1998).

105. O'Guinn & Shrum, *supra* note 103, at 289-90 (1997). These studies were controlled for income, education, and personal experience.

106. Gerbner et. al., *supra* note 103, at 31-32 (finding that the actual opinions of heavy viewers tend to be quite conservative).

107. See L. J. Shrum & Thomas C. O'Guinn, *Process and Effects in the Construction of Social Reality*, 20 COMM. RES. 436, 440-45 (1993) (studies involved the effects of watching both television and war movies) (on file with author); Shrum, *supra* note 104, at 262-66 (citing numerous studies).

108. L. J. Shrum, *Assessing the Social Influence of Television: A Social Cognition Perspective on Cultivation Effects*, 22 COMM. RES. 402, 407-08 (1995).

Another body of cognitive psychology research seems consistent with the analysis in the text. This analytic approach explains how people explain reality and make judgments by relating

For example, the process of answering a pollster's questions calls for heuristic reasoning, since there is no penalty for giving a wrong answer.<sup>109</sup>

The authors of these studies sometimes use as an explanatory device the idea that the mind contains various bins in which items are deposited as they are learned. When people need to make a heuristic judgment, they extract the necessary information from these bins. Generally, the bins are accessed from the top down. As a result, the likelihood that a particular item will be pulled from the bins depends on both the frequency and recency of exposure. The more recent and the more frequent the exposure to a bit of information, the more likely that the item will be pulled up when needed. In addition, the more vivid a particular exposure to information, the more likely that the material will be accessed in making heuristic judgments—and well-edited television or film drama is likely to be very vivid. Information and attitudes gained from actual personal experience, even though that experience may have been random and untypical, is also likely to be accessed.

In many cases people aren't aware of how they acquired the information they've packaged into a heuristic judgment; thus they fail to consider that the information was drawn from fictitious material.<sup>110</sup> In other words, people typically don't "source discount" information derived from television for the fact that the information was derived from fiction, even though they are aware that televised drama does not necessarily supply reliable information.<sup>111</sup>

While most of the research on cultivation theory relates to television, it seems a fair assumption that the same psychological dynamics should apply

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new perceptions and data to previously established schema (or mental files). Schema can include both general propositions ("lawyers are scum") and specific ones ("I've decided that lawyer A is scum"). Either proposition helps a person make a decision about new data ("lawyer B who I just met is scum") by relating it back to a schema. Schema could easily be derived or supplemented by exposure to fictitious popular culture materials. Once established, schema resist alteration; people work hard to interpret data in accordance with their schema rather than remake them to explain the data. Whether a particular schema will be accessed or applied depends in part on the intensity and recency of the experience that created the schema. See generally Albert J. Moore, *Trial by Schema: Cognitive Filters in the Courtroom*, 37 UCLA L. REV. 273 (1989) (extensive citations to literature).

109. Shrum, *supra* note 108, at 407.

110. Shrum & O'Guinn, *supra* note 107, at 461; Shrum, *supra* note 108, at 410–12.

111. This important finding explains why respondents in the M/A/R/C survey, discussed *supra* note 30, at 18, claimed that film or television drama was not important in furnishing the information that allowed them to form their opinions about lawyers and the justice system. According to Shrum, *supra* note 108, at 412, when people are "primed" by the suggestion that questions about their information or attitudes might be based on televised stories, the cultivation effect disappears. This tends to occur if respondents are first asked about their television viewing habits, then asked questions about their opinions or attitudes.

to film as well. I believe that cultivation theory supports the hypothesis that frequent and recent exposure to vividly negative films about lawyers should increase the number of people who will make negative heuristic judgments about lawyers.

#### D. *Lawyer Portrayals on Television as Compared to Movies*

This article concentrates on lawyers in the movies, not those in dramatic television series. However, the way that lawyers are portrayed on television has implications for the hypothesis I've advanced. After all, far more people see lawyers on television series than see them in film; those who consume both television and film spend much more time watching television than going to the movies. And the portrayal of lawyers on television is, in general, more favorable than in film.<sup>112</sup> *Perry Mason* and his modern-day clone *Matlock* continue to run in syndication in many major markets. These shows glorify lawyers to an absurd degree.<sup>113</sup> *L.A. Law* was probably the most heavily watched recent lawyer series. The majority of the lawyers on that show were favorably portrayed,<sup>114</sup> although some lawyers were quite negative.

On current television, shows like *The Practice*, *Judging Amy*, and *Law and Order* present nuanced and, on balance, favorable portrayals of lawyers. Lawyers on these shows seem to be dedicated, competent professionals; sometimes they go overboard ethically and some of them seem to have fairly miserable personal lives. Relationship shows about lawyers such as *Ally*

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112. Thom Weidlich, *A Cynical Age Sees Few Heroes in Its Lawyers*, NAT'L L.J., Nov. 29, 1993, at S26, (1993) (reviewing early 1990s television, there were 10 favorable lawyer portrayals on television for each unfavorable one, an improvement from the 6:1 ratio of the mid-70s to the late 80s). See also Diane Klein, *Ally McBeal and Her Sisters: A Quantitative and Qualitative Analysis of Representations of Women Lawyers on Prime-Time Television*, 18 LOY. L.A. ENT. L.J. 259, 268-72 (1998); Rod Carveth, *Soap Operas*, in PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE 181 (Robert M. Jarvis & Paul R. Joseph, eds., 1998) (discussing favorable treatment of lawyer characters in soap operas). But see Cheryl Smith-Khan, *African American Attorneys in Television and Film: Compounding Stereotypes*, 22 LEGAL STUD. F. 119, 123-26 (1998). Smith-Khan argues that television series like *Law and Order*, *L.A. Law*, and *Murder One* contribute to the negative image of lawyers. To me, these series are rather well balanced with more favorable than unfavorable pictures of lawyers.

113. Asked to name a lawyer they admired, 52% of respondents to a 1993 *National Law Journal* poll couldn't name one. The few respected lawyers cited more than once included Perry Mason and Matlock along with Thurgood Marshall, Janet Reno, Abraham Lincoln, and F. Lee Bailey. See Randall Samborn, *Who's Most Admired Lawyer?*, NAT'L L.J., Aug. 1993, at 1, 24.

114. See Horace Newcomb, *The Lawyer in the History of American Television—An Overview*, in THE LAWYER AND POPULAR CULTURE 45 (David Gunn ed., 1993); Gerald J. Clark, *The Lawyer As Hero?*, in THE LAWYER AND POPULAR CULTURE 179 (David Gunn ed., 1993) (show has a whole stable of lawyer-heroes).

*McBeal*<sup>115</sup> also portray some of the lawyers in a sympathetic light. *Law and Order* shows prosecutors favorably but often shows defense lawyers unfavorably.

One well-controlled study of the effect of heavy watching of television shows about lawyers (mostly *L.A. Law*) assessed the opinions of television viewers about various dimensions of the attorney persona such as character, composure, physical attractiveness, power, presence, and sociability.<sup>116</sup> It then contrasted the opinions of the *L.A. Law* viewers with those of attorneys and of the general public. For most of the dimensions, the television watchers' opinion was much more favorable than that of the general public or of the attorneys.<sup>117</sup> In short, watching *L.A. Law* made viewers like lawyers better than the general public likes them and better than lawyers like themselves.

The same study concluded that heavy television watchers estimated the percentage of attorneys who are female and young as much higher than the estimates made by attorneys or by the general public and much higher than the actual proportions in the profession.<sup>118</sup> In all cases, the results correlated positively with the amount of lawyer shows that people had watched.<sup>119</sup> A different survey found that, of those who get information from television rather than newspapers, 46% gave lawyers a favorable rating and 28% unfavorable—considerably more favorable than the poll results generally.<sup>120</sup>

It is interesting to speculate why commercial television depicts lawyers more favorably than the majority of current commercial movies. In my view, a television series (as opposed to a feature film or a one-shot made for television movie) needs to feature at least some sympathetic characters that

115. *Ally McBeal* is a successful show on the Fox Network that debuted in 1997. The show was created and mostly written by David Kelley who also created *The Practice*. Its eponymous star is a lawyer in a small firm. Most of the stories relate to Ally McBeal's fantasies and her personal problems. Although the show is set in a law firm and some of the stories relate to the firm's clients and cases, the law stories are usually comedic and rather silly. I believe that the show is much more a relationship or buddy-type show than a law series. The show had to be set somewhere so it happened to be in a law office, probably because this is the milieu that David Kelley knows best.

116. See Michael Pfau et. al., *Television Viewing and Public Perceptions of Attorneys*, 21 HUM. COMM. RES. 307 (1995). The study controlled for viewer education, gender and age. This study is open to the criticism that it confuses causation with correlation; it is impossible to remove the confounding variable that the people who watched *L.A. Law* are the same people who already liked lawyers. However, the authors constructed the study to at least minimize the risk that this error was present.

117. *Id.* at 321.

118. *Id.* at 322.

119. *Id.*

120. Overall, 40% of those polled had favorable feelings while 34% had negative feelings. Hengstler, *supra* note 26, at 61–62.

the audience can relate to and empathize with; otherwise, they won't keep tuning in and won't buy the products being advertised.<sup>121</sup> That's certainly the case with relationship shows like *Ally McBeal*, a character whom vast numbers of young professional women find empathetic. In short, I believe that dramatic television tends to be character-driven and requires at least some characters with whom mass audiences can empathize. In contrast, film tends to be more plot-driven and has less need for empathetic and positive characters.<sup>122</sup>

Current television shows about lawyers avoid goody-goody characterizations like that of *Perry Mason*. They attempt to strike a realistic note about the economics of law practice or the politics of the district attorney's office. They depict the toll that law practice can take on the lives of lawyers and their friends or families. The shows try to face up to some of the moral and ethical dilemmas necessarily inherent in law practice (whether prosecution, criminal defense, or general practice). On the whole, however, these shows are not stridently negative.

It seems likely that the negative impact of film on the public perception of lawyers is more than cancelled out by the positive portrayals of lawyers on television, given that the average popular culture consumer spends much more time watching dramatic television series than going to the movies (or seeing movies on television or on videotape). Moreover, people who do go to the movies are more likely to see blockbuster films, or action/adventure films or youth-oriented fare, as opposed to the relatively more serious (and less commercially successful) films in which lawyers typically play significant roles.

Nevertheless, I do not believe that the impact of television versus film can be measured exclusively by comparing the amount of time spent in consuming the respective products. A couple of hours watching a movie in the theater has, I believe, a much greater impact than a couple of hours watching television. The reason is that the film experience is far more vivid; vividness, along with frequency and recency, is an important indicia of the cultivation effect.<sup>123</sup> Ask yourself: Is the emotional experience of watching

121. See TODD GITLIN, *INSIDE PRIME TIME* 64-67 (1983) (noting the likeability of characters is key determinant of whether series will be picked up); Klein, *supra* note 112, at 270 (sponsors want viewers to identify closely with characters in television shows).

122. Another factor may be that television shows need to bring back the same characters every week; this precludes the use of plots in which important characters get killed off. In a typical tragic plot, someone comes to a bad end as retribution for having behaved badly or having serious character flaws. Since characters must live on week after week (and hopefully year after year), the writers of television series can't ascribe too many negative characteristics to them. See GITLIN, *supra* note 121, at 158 (arguing that it is more feasible to use tragic plots in movies made for television or docudramas than in television series).

123. See *supra* notes 107-11.

a film more intense when you see it in the theater or when you see the same film on television or on your VCR? Most people would say, I believe, that the emotional impact of seeing a film in the theater, on the big screen, is much greater than seeing it on television. And ask yourself this: If you saw a film six months ago that you liked or disliked, can you remember the story now? And how does that compare with the recall of a program that you saw on a dramatic television series six months ago and happened to like or dislike? Most people, I venture to say, recall the movie better.

Comparing the movie and television experiences: You make a conscious and planned decision when you leave your home to go see a film in the theater; you pay attention to the schedule so you won't arrive in the middle. In contrast, the choice of a television program is often impulsive and dictated by one's mood or the amount of leisure time that happens to be available.<sup>124</sup> Unless you're a real movie fanatic, you go to the movies less frequently than you watch television, so a trip to the theater may become a memorable rather than a routine event. There are no distractions while seeing a movie (assuming the people around you keep quiet and you've turned off your cell phone); distractions abound while watching television, particularly phone calls and the constant interruption of commercials. You part with a significant amount of money to buy a movie ticket (and perhaps hire a babysitter and pay to park the car); the marginal cost of watching television is zero. Film-going is for most people a social experience that's done with friends and family; that alone makes it a more memorable event than routinely watching television. In addition, one sees a film as part of a large audience, all reacting emotionally to the same material. We laugh harder at comedies or cry more at tear jerkers when the room is full of other people laughing or weeping than when we see the same material on television by ourselves.<sup>125</sup> All this is likely to enhance the vividness of seeing a film in the theater.<sup>126</sup> This dose of vividness makes the film easier to recall, and thus more accessible for purposes of making heuristic judgments, than a television show.

A number of studies in the psychology and communications literature validate these intuitions. For example, it is well established that the intensity of response to material presented on larger television screens is greater than material presented on smaller television screens.<sup>127</sup> Viewers perceive that

124. Zillman & Bryant, *supra* note 94, at 441–47.

125. *Id.* at 453–57 (referring to this phenomenon as the social conditions of consumption).

126. *See id.*

127. Maria Elizabeth Grabe et. al., *The Role of Screen Size in Viewer Experiences of Media Content*, VISUAL COMM. Q. (forthcoming 1999). The studies reviewed by Grabe et. al. also indicated that quality of the image made a difference in the intensity of arousal, the feelings of “reality,” and in recall of the images. Hence it seems fairly obvious from these studies that the psychological impact of seeing a story presented in a well-produced and well-photographed

what they see on big screens is more likely to be realistic and truthful than what they see on small screens.<sup>128</sup> They also feel more like they are actual participants in events, rather than mere passive observers, as screen size is increased and as the proportion of the viewer's visual field taken up by the image increases.<sup>129</sup> Although these studies are mostly confined to television, it should follow that the vividness of seeing material on a movie screen (even a shrunken one in the local multiplex) is vastly greater than that of seeing it on a television screen.<sup>130</sup>

Some studies indicate that *negative* material is more arousing and better recalled than positive material, which should also enhance the effect of the negative lawyer portrayals film *vis a vis* the positive ones on television.<sup>131</sup> Sadly, it seems clear that a political candidate gets more bang for the buck from a nasty, negative television commercial about the opponent than a positive piece about him or herself. It has also been suggested that images are more likely to be recalled if they are distinctive, that is different from the information the viewer is accustomed to receiving.<sup>132</sup> Thus a few negative images of lawyers in the movies might be perceived quite intensely when viewers are accustomed to seeing more positive images of lawyers on television.

For these reasons, I believe that the positive images of lawyers on television do not swamp the negative images of lawyers in dramatic film. Film is an extraordinarily powerful tool for influencing heuristic reasoning, considerably stronger than televised dramatic series. Thus, film and

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movie on a very large screen would be vastly greater than seeing the same story on a home television set.

128. *Id.*

129. In more technical language, when material is presented on a larger screen, viewers seem less aware that their experience is a "mediated" event (meaning seen in an artificial medium like film or television), as opposed to an observation of reality where the viewers are present (as if they are viewing it through an open window). See Matthew Lombard & Theresa Ditton, *At The Heart of it All: The Concept of Presence*, 3 J. COMPUTER MEDIATED-COMM. 2 (Sept. 1997) <<http://www.ascusc.org/jcmc/>>. This article contains an extensive and very helpful bibliography.

130. Granted, one could watch a television show on a very large home television screen; someone else could see a movie video on a small television screen. The arguments for the vividness of movies over television based on screen size or on the dynamics of a trip to the movie theater don't apply to movies consumed in the form of rented videos or seen on cable.

131. See Annie Lang et.al., *Negative Video as Structure: Emotion, Attention, Capacity, and Memory*, 40 J. BROADCASTING & ELECTRONIC MEDIA 460 (1996) (introduction of negative material in news broadcast increases memory capacity the viewer allocates to that material and ability to recall that material); John Newhagen & Byron Reeves, *The Evening's Bad News: Effects of Compelling Negative Television News Images on Memory*, 42 J. COMM. 25 (1992) (negative news video enhances memory and improves speed of recall of material presented after the negative video).

132. Shrum, *supra* note 108, at 408.



television have worked at cross purposes during the last two decades, with television casting a positive influence on public opinion of lawyers, and movies casting a negative influence. Probably, the net effect was positive, given that people consume so much more television than film; but it also seems likely that the negative films partly cancelled out that positive impact. If the negative films had not been made, public opinion might not have turned as sharply negative toward lawyers as it did. And a final, perhaps unnecessary caution: As previously noted, there were many factors at work during the last two decades that tended to depress the public's perception of lawyers.<sup>133</sup> Probably separately, and certainly together, these factors were more powerful than the effect of either film or television in affecting public opinion.

#### IV. PORTRAYALS OF LAWYERS IN THE MOVIES

This section documents my assertion that the portrayal of lawyers in film took a sharp turn toward the negative during the 1970s.<sup>134</sup> Particularly during the 1950s and 1960s, lawyers in film tended to be decent people and ethical, competent professionals. Starting in the 1970s, lawyers were just the opposite. I first address some serious methodological issues. I then offer a statistical summary of films with important lawyer characters, focusing on positive films of the past and negative ones of the present. I then discuss in greater detail some of the negative characteristics of lawyers painted in recent films. A detailed list of the films comprising that summary is contained in the Appendix.<sup>135</sup>

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133. See *supra* notes 58–83 and accompanying text.

134. For a similar effort to analyze the personalities of lawyers in literature, see RICHARD WEISBERG, *POETHICS: AND OTHER STRATEGIES OF LAW AND LITERATURE* 35 (1992). Weisberg's book focuses on how a lawyer communicates, how a lawyer treats people and groups outside the power structure, how a lawyer reasons, and how a lawyer feels. While my typology is necessarily different from Weisberg's, I acknowledge my debt to his analytic method.

135. This article is like a film genre study in the sense that it surveys a large body of films produced over a long period of time that are connected by a common theme: lawyers as significant characters. However, this array of films fits no recognized genre. It includes a large number of courtroom films (which I do consider to be a film genre), but it also includes representation from numerous other genres (such as comedies, melodrama, gangster films, or comedies). See *generally* REFIGURING AMERICAN FILM GENRES (Nick Browne ed., 1998); ANDREW, *supra* note 89, at 5; DAVID A. BLACK, *LAW IN FILM: RESONANCE AND REPRESENTATION* (1999) (treating all films about law as "reflexive," meaning they are story-telling about story-telling).

### A. *Methodological Issues*

This project presents some serious methodological problems that I would like to address here. My assertions are based on critical judgments about the personal and professional characteristics of lawyers in film.<sup>136</sup> I have classified a character as negative if information furnished about the character in the film suggests to me that *I would not want this individual as a friend or as my lawyer*.

Ideally, at least, I'd like my friends to be warm, loyal, considerate, reasonably cheerful people who treat their families and coworkers well and have no major character flaws, major bad habits, or bad personal ethics. I want my lawyer to be competent, ethical, and devoted to assisting me with my legal problems.<sup>137</sup> If I wanted a character *both* as my friend and as my lawyer, I classified the character as positive. When films had several lawyers, more or less balanced between positive and negative, I classified the film as mixed.

This analytical method is problematic for many reasons. The challenge was to come up with a measuring scale that enabled me to make a binary judgment about lawyers in an array of hundreds of films united only by the fact that they contain one or more significant lawyer roles. Some of these movies are about law and the legal system, such as courtroom films. These films often furnish little information about what the lawyer is like as a human being. Other films are not about law at all but simply include lawyers as dramatic characters. These films often furnish little information about what the lawyer is like as a professional. Some films did not offer enough personal or professional information to make a judgment and I excluded those films from the survey. Asking the friend/lawyer question permits me to test and classify both law and non-law films that have lawyer characters. It also permits me to grapple with the fundamental question to which this article is addressed: How would a member of the general public view lawyers if his or her only source of information on the subject came from the movies?

The subjectivity of the standard is a serious methodological problem because it is wholly a function of my personal critical judgment.<sup>138</sup> Obviously,

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136. See BLACK, *supra* note 135, at ch. 3 (discussing necessity to critically analyze large body of films about law).

137. See Charles Fried, *The Lawyer As Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L.J. 1060 (1976) (noting lawyer's obligation to clients is same as to a friend).

138. From a critical point of view, I am associating myself here with reader-reception theory. See *supra* note 100 and accompanying text. The "meaning" of the films is not necessarily the meaning the author intended to convey, nor any fixed meaning that might be

these are judgments based on my personal opinions and experiences.<sup>139</sup> You have a different set of opinions and life experiences and you probably represent a different generation than mine (and possibly different education, gender, race, or class). Moreover, each of us is imposing our current personal and professional standard on films made many years ago, when people might have held views about the appropriate conduct of lawyers, or about personal morality, that are different than those held today. In short, I situate this work within the broader category of narrative scholarship in which the author draws on his or her own experiences or other anecdotal data in formulating or testing hypotheses.<sup>140</sup>

Even if we have the same standards for picking our friends and lawyers,<sup>141</sup> you may well strike a balance of the good and bad points of a

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derived from an analysis of the film, but instead is the meaning generated by the personal reaction to the film of a particular viewer—me.

139. I was particularly inspired in pursuing this approach by the work of Janice Radway. Radway is an eminent professor of literature at Duke University. See JANICE RADWAY, *A FEELING FOR BOOKS: THE BOOK-OF-THE-MONTH CLUB, LITERARY TASTE, AND MIDDLE-CLASS DESIRE* (1997). Radway's book is a moving account of her love affair with books and a fascinating ethnographic and historical exploration of the Book-of-the-Month Club. It is unapologetically informed by her personal and pleasurable experiences with "middle-brow" books and her personal reactions to the data she accumulated and the people she met. Just to select one of many such passages, Radway writes, after appreciatively quoting a Club editor's report on the book *BELOVED*:

I loved the way the Book-of-the-Month Club editors talked about books and about reading. Once again, their talk conjured my past. The editors reminded me of the librarian at the Edward H. Bryan elementary school, a cheerful, helpful woman whose name I had forgotten but whose animated way of describing books I recalled with surprise and great pleasure. . . She had a way of drawing pictures with her words, of painting the vista that promised to open from within the pages of a book. The . . . Club editors sounded just as she did . . . Books at the . . . Club, like books in that secret space of my grade school library, appeared before me as magical objects. In both places, reading seemed to exist as an uncanny pleasure, an act that was weirdly private but deeply social as well. I felt intense satisfaction at encountering this view of reading again.

*Id.* at 115–16.

140. See generally Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971, 1012–17 (1991) (defending narrative scholarship); Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993) (questioning value of narrative scholarship); Edward L. Rubin, *The Practice and Discourse of Legal Scholarship*, 86 MICH. L. REV. 1835 (1988) (describing inherent subjectivity of all legal scholarship, whether normative or descriptive).

141. In the case of lawyers who are prosecutors, I substituted the question "would I want to hire this individual to work for me if I was the district attorney?" As district attorney, I want lawyers who are loyal, dedicated, tenacious, and competent but also ethical and professional.

nuanced character that is different from mine. Necessarily, forcing a nuanced character into a positive/negative slot is arbitrary.<sup>142</sup> A particular problem is presented by characters who describe an arc, changing from bad to good in the course of the film; I tend to classify these characters as bad,<sup>143</sup> but you may disagree. Indeed, you might argue that most heroic characters are required by the conventions of narrative to overcome some personal flaw. Certainly, it's true that most of the "good" lawyers in my array have at least some negative character traits or else they would be rather uninteresting as dramatic characters. The difference is obviously one of degree and, once again, we may well disagree about where the line should be drawn.

You might come up with an entirely different response to the question of whether you'd like the movie lawyer as your friend, since you may look for different personality characteristics in your friends than I do. Or you might come up with a different response to the question of whether you'd want to be a client of the lawyer in question. You may be either more or less sensitive than I am to a lawyer's ethical flaws or behavior foibles. Indeed, my criteria for selecting a lawyer (that the individual be at least moderately respectful of ethical constraints) is probably different from most people's. Most clients are indifferent to their lawyer's ethics, except insofar as the

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142. As a thought experiment, let's take the two most important lawyers in *A Civil Action*, a film most readers of this article will have seen (or at least will have read the book, which the film follows quite closely). Paramount Pictures/Touchstone Pictures (1998). I classified the lawyers as "negative." Do you want plaintiffs' lawyer Jan Schlichtmann as your lawyer and friend? I say no because of his poor judgment at many points in the litigation process as well as his materialism and obsession with work. He clearly has no time or energy for his friends. But you might say yes because of his loyalty, warmth, and zeal. How about defense attorney Jerome Facher as attorney and friend? I say no, because I found his personality as portrayed in the film off-putting. You might say yes, because there was nothing terribly wrong with his personality and he did a good job representing his client. Facher recently complained that his personality is much better than described in the book or a book review to which he took exception. *A Civil Response*, 19 CAL. LAW. 15 (Mar. 1999).

143. For examples, in *The Verdict*, Frank Galvin starts out as an alcoholic ambulance chaser who completely neglects his clients. Trimark (1982) After an epiphany, he turns into a zealous and successful advocate. In *The Mighty Ducks*, Gordon Bombay is a thoroughly repellent lawyer—an arrogant, misogynistic, materialistic, work-obsessed, drunk-driving creep. Walt Disney (1992). He is assigned to coach a peewee hockey team as community service and experiences a miraculous personality transformation. In *Curly Sue*, lawyer Grey Ellison starts out as a cold-hearted, materialistic bitch; after she takes a homeless man and a cute little girl into her home, she becomes sweet and cuddly. Warner Home Video (1991). In *Regarding Henry*, Henry Turner is a cold, rude, unethical lawyer who morphs into a saintly, lovable creature after a near death experience. Paramount Pictures (1991). I am more persuaded by the before than the after and classify Galvin, Bombay, Ellison and Turner as negative. To me, the before part is the filmmaker's statement about what lawyers are really like, except in the unlikely event that fate gives them a personality transplant.

ethical issue impacts them, such as the lawyer having a conflict of interest or charging unreasonable fees. A lot of people want their attorneys to act like junkyard dogs.<sup>144</sup>

The question about whether I'd want the person as my lawyer is really designed to give some purchase on the broader question of how this film portrayal would make an ordinary viewer (who, of course, is not a client) feel about lawyers as professionals. But here there is a further problem: I regard lawyers who betray their clients as bad lawyers and lawyers who capably and ethically represent unpleasant or disgusting clients as good lawyers. In all likelihood most viewers would disagree with me on both counts. The average person probably applauds lawyers who betray repellent clients<sup>145</sup> or who break ethical rules right and left for attractive clients. However, the public probably dislikes lawyers who capably and ethically represent repellent clients.

I can only hope that you will share enough of my critical judgments to make this project meaningful.<sup>146</sup> Even if you reject the attempt to count

144. See Post, *supra* note 11, at 380 (claiming that people want their own lawyers to manipulate the system even though they condemn lawyers who do it for others).

145. There is little doubt that the audience empathizes with lawyers who act unethically or break the law to achieve justice, as in *...And Justice for All*, Columbia Tristar (1979) or the remake of *Cape Fear*, Universal Studios (1991). See Post, *supra* note 11, at 381–82 (referring to this theme in older films such as *Talk of the Town*).

146. UCLA Law School's law and popular culture seminar viewed *Counsellor at Law*, discussed in *text infra* note 173. Universal Pictures (1933). Without telling them why I wanted to know, I asked them in their pre-class homework whether they would want the lead character, George Simon, to be their friend or their lawyer; I also asked for reasons. Since my co-teacher Paul Bergman and I find Simon to be positively portrayed as a human being and as a lawyer, I was unprepared for the class' reaction: they felt just the opposite. Only four people wanted him as a friend; 14 did not. And only four people wanted him as their lawyer (not the same four); 13 did not. The class members who didn't want Simon as a friend gave as their reasons that he was too wrapped up in work, too selfish, too much of a social climber, or spoke to people too abruptly. On the "lawyer" question, most class members cited his dubious ethics (in one case Simon increased a client's bill because he had just made a probably uncollectable loan to a friend of his wife).

This little experiment underlines the extreme subjectivity of the critical project in this article—many readers will not share my critical judgments. On the other hand, this experiment suggests a way by which my hypotheses about lawyers in film can be tested and falsified. People might wish to perform more extensive survey experiments in order to find out what viewers thought about film lawyers and to correlate views about lawyers with the films the respondents have seen.

*Counsellor at Law* was the first law movie that students in the seminar viewed critically, so they tended to make absolute judgments; I have seen hundreds of them and tend to make more comparative judgments. Also it may be that law students in their 20s can't really imagine having a powerhouse lawyer in his late 40s or early 50s as their friend. Law students may also be

positive and negative portrayals as an exercise that is meaningless, excessively subjective, or reductionist, I hope you will share my perception that there has been a sea change in the way lawyers are portrayed in films of the last twenty years or so. The narrative accounts in Parts B, C and D may help to persuade you.

Another set of methodological issues concerns the choice of films. My conclusions are based on the study of 284 films,<sup>147</sup> which either my research assistants or I were able to view.<sup>148</sup> Simply generating a list of films with significant lawyer characters is itself a challenging project which I tried to address as systematically as possible.<sup>149</sup> The sample is far from complete, because I have surely failed to identify many films with lawyer characters. Readers of this article are likely to be film fans and will undoubtedly come up with some I've overlooked.<sup>150</sup> Many of the films I did identify were unavailable to be viewed (given reasonable constraints on time and resources) because they have never been released on video or shown on cable during the time frame of this research. Another criticism is that the films are equally weighted, regardless of whether they were smashes or disasters at the box office, classic cinema or instantly forgettable trash.<sup>151</sup>

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insufficiently sympathetic to the fact that lawyers cannot be saints; they constantly have to make close calls with respect to ethical dilemmas.

147. This project furthers the goal of accumulating data on popular legal culture for purposes of further analysis. See Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 WISC. L. REV. 527, 549–63 (1986). My approach meets Chase's criticism that our study of legal popular culture should not be limited to courtroom films. *Id.* at 565. On the other hand, I make no claim that there is any genre classification broad enough to include all of the films I studied since many of them have little or nothing to do with law. See *supra* note 135, and accompanying text.

148. My research assistants wrote up detailed summaries of the plot and lawyer portrayals in the films they viewed; they applied the same binary standards as I did. My judgments were based on their summaries and my discussions with them. If I was in doubt, I saw the film myself.

149. To assemble this array of films, I started with the 106 courtroom films discussed in the text and appendix of PAUL BERGMAN & MICHAEL ASIMOW, *REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES* (1996), plus the numerous courtroom films that have been released since we completed work on that book in 1995. I added all of the non-courtroom films with significant lawyer characters that I could find or that the experts I consulted could think of. I also did a database search for the words "lawyer," "attorney" and "courtroom" in the plot summaries and Maltin summaries in the invaluable Internet Movie database which contains data on 170,000 films. The URL is <<http://us.imdb.com/>>. This search turned up references to hundreds of additional films, many of which were unavailable.

150. If you're in that category, I'd welcome your email calling my attention to films not mentioned in the Appendix that meet my criteria. My email address is \* and the criteria are in text at notes 152–57. I'd also welcome disagreeing opinions on my classification of the films.

151. Financial information is difficult to come up with for older films and time constraints prevented me from attempting to obtain it. Others who wish to follow up my research might

With all that said, I nevertheless feel confident that I evaluated enough films to make defensible judgments about the way that lawyers have been portrayed in film from 1929 to date.

Moreover, my methodology can be challenged because I excluded quite a few pictures that have lawyer characters. I excluded law students and law professors in their academic roles.<sup>152</sup> I avoided films with plots set before the 20th Century<sup>153</sup> and films set in foreign legal systems.<sup>154</sup> As a concession to the shortness of life, I excluded films made before 1929,<sup>155</sup> documentaries, and films made for television. I didn't study westerns (where crooked lawyers often appear). Some gangster pictures (which often feature the traditional mouthpiece for the mob) and musicals or dance films are included, but my coverage of these genres is undoubtedly incomplete.<sup>156</sup>

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assemble this data and weight the films by the number of people who actually saw them in the theater, on video, or on cable. Pre-1980 films that were box office duds or which are considered utter trash are unlikely to be available on video or shown on cable so most of them are not included in the array.

152. Examples of pictures excluded for this reason: *Paper Chase*, Trimark (1973); *The Pelican Brief*, Warner (1993); *Frisco Lil*, Universal Pictures (1942); *Soul Man*, Balcort Film Investors (1986); *Witness to Murder*, Universal Pictures (1954).

153. Examples of pictures omitted for this reason: *Young Mr. Lincoln*, Trimark (1939) or *Sommersby*, Warner (1993).

154. Most films set in foreign legal systems were seen by few Americans; those that were seen would be unlikely to influence or reflect American public opinion about the images of American lawyers. Thus I omitted films like: *Scenes From A Marriage*, Cinematograph (1973); *Z*, Facets (1969); *Breaker Morant*, Columbia Tristar (1979); *The Letter*, Paramount Famous Lasky Corporation (1929); or *A Question of Silence*, Newline (1983). Perhaps arbitrarily, I left Canadian lawyers in (on the theory that audiences would not differentiate Canadian and American lawyers given the similarity in procedures) but took English or Australian lawyers out (the wigs and all that). It was painful, but I had to exclude: *The Paradine Case*, Trimark (1947); *Libel*, MGM (1951); *The Winslow Boy*, Thorn EMI (1949) (both the original and remake); and *Witness for the Prosecution*, CBS/FOX (1957). Other pictures omitted both because they were set in foreign legal systems and too far back in history: *The Advocate*, Buena Vista (1994); *The Life of Emile Zola*, Facets (1937); and *A Man for All Seasons*, Movies Unltd. (1988).

155. Numerous lawyer and courtroom films pre-date the sound era, many of them quite negative in tone. See Carol J. Clover, "God Bless Juries," in REFIGURING AMERICAN FILM GENRES, *supra* note 135, at 257-59. A more complete account of the phenomenon discussed in this article would certainly include silent film.

156. These exclusions and omissions occurred partly because of time limitations and partly because I believe that viewers would be unlikely to make general judgments about the character of lawyers in American society from seeing lawyers functioning as gangsters or cutting crooked land deals in the old west.

Finally, I didn't count films that provided too little information about the lawyer characters or films where lawyers were very minor characters.<sup>157</sup>

I also counted separately films that purport to be based on true stories.<sup>158</sup> The reason for doing so is that quite a few such films were made in the 1980s and 1990s (far more than in previous decades).<sup>159</sup> True stories are at least somewhat constrained by the actual historical facts and in many cases the true story was worth telling largely because some lawyers acted in a brave or noble fashion. By separating out the true stories, the trend toward negativity of lawyer portrayals in the fictitious stories stands out more clearly.<sup>160</sup>

So, after all this preliminary throat clearing, here is a summary of my critical evaluations of the lawyer character in 284 films arranged by decade.<sup>161</sup>

YEARS	POS	NEG	MIXED	TOTAL	% POS.	% NEG.	% MIXED
1990-99	34	38	9	81	42	47	11
1980-89	14	18	8	40	35	45	20
1970-79	7	11	1	19	37	58	5
1960-69	16	4	1	21	76	19	5
1950-59	34	11	2	47	72	23	4
1940-49	26	11	4	41	63	27	10
1930-39	25	14	1	40	63	35	2

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157. Examples of pictures excluded under this criterion are: *Serial Mom*, Pioneer Entertainment (1994); *Irreconcilable Differences*, Warner Bros. (1984); *Fried Green Tomatoes*, Universal Pictures (1991); *The Great Lil*, (1941); and *The Awful Truth*, Columbia Pictures Corp. (1937).

158. This category does not include films that are in fact based on true stories but are not so identified. *Philadelphia* is an example of a film based on actual events but not identified as a true story in the film. Columbia-Tristar (1993).

159. It is possible that true stories may be considered more authoritative than fictitious stories by viewers who use information gleaned from the films to form opinions. As a result, the primarily favorable true lawyer stories in the last couple of decades may counteract the primarily negative tone in fictitious stories.

160. Film theorists have traditionally differentiated fictitious films and films based on true stories. See ANDREW, *supra* note 89, at 115.

161. A detailed list of the films summarized in this table is contained in the Appendix. This may seem like a large number of films, but it is only a tiny fraction of the total number of films out there. The Internet Movie Data Base, *supra* note 149, includes reference to 190,727 films of which 157,120 were released theatrically.



However, if the true stories are excluded, the relative weighting of positive and negative, especially in the 1980 and 1990 lawyer films, are considerably more negative.

YEARS	POS	NEG.	MIXED	TOTAL	% POS.	% NEG.	% MIXED
1990-99	25	37	9	71	35	52	13
1980-89	12	18	8	38	32	47	21
1970-79	7	11	1	19	37	58	5
1960-69	14	4	1	19	74	21	5
1950-59	29	9	2	40	73	23	5
1940-49	24	12	4	40	60	30	10
1930-39	24	14	1	39	62	36	3

These evaluations constitute my support for the basic assertions of this article. The benign treatment of lawyers from the beginning of the sound era until the 1960s began to change during the 1970s. During that decade, as well as the 1980s—and 1990s, typical lawyer portraits turned strongly and consistently negative. Thus, of the 71 fictitious lawyer films of the 1990s, the lawyer or lawyers in 37 of the films were bad; in an additional 9 films, there were one or more bad lawyers along with some good ones (the “mixed” category). Thus, 65% of the films of the 1990s had at least one bad lawyer. Similarly for the 1980s—in 38 fictitious lawyer films, the lawyer or lawyers in 18 were bad; in an additional 8 films, there were one or more bad lawyers along with some good ones. Thus 68% of the movies of the 1980s had at least one bad lawyer. In short, in about two-thirds of the fictitious lawyer films of the 1980s and 1990s, there is at least one negatively portrayed lawyer.

Parts B, C, and D contain a narrative treatment of lawyer portrayals in film history. Part B considers pre-1970 films along with Hollywood self-censorship. Part C takes up the films of the 1970s. Part D considers the films of the 1980s and 1990s. I hope that readers who reject the methodology embodied in my binary positive/negative classification will nevertheless be persuaded of my basic thesis by the narratives that follow.

#### B. *Movie lawyers: 1929-1969*

Filmmakers have produced countless movies about lawyers, dating back to the earliest days of film. Especially during the 1950s and 1960s, these images were seldom negative. In the Depression-era films of the 1930s and the cynical, film noir era of the 1940s, a significant number of negative

portrayals appeared<sup>162</sup> but positive portrayals easily predominated. In this section, I comment first on Hollywood's self-censorship through the Production Code. I then select a couple of typical movies from each decade to serve as hopefully representative examples of the ways in which lawyers were portrayed during that decade.

1. The Production Code. For many decades, beginning in the 1920s and continuing until 1968, American films were subject to a regime of self-censorship.<sup>163</sup> The industry reluctantly embraced self-censorship in order to head off federal, state and local regulation of movie content (a serious threat, since during most of this period films were not accorded First Amendment protection).<sup>164</sup> Self-censorship also appeased various vocal critics such as the Catholic Church. The Hays Code was adopted in 1930; it sprouted teeth in 1934 when the Production Code Administration (PCA) acquired censorship powers over every film. Joseph I. Breen presided over the PCA for many years with great skill and zeal. No film could be distributed without a PCA seal.<sup>165</sup> One possible explanation for the relatively benign treatment of lawyers from the 1930s to the 1960s is that the censors blocked the production of negative lawyer films.

One of the precepts of the Hays Code was that "law—natural, divine, or human—shall not be ridiculed, nor shall sympathy be created for its violation." Moreover, "special care" was to be exercised with respect to "titles or scenes having to do with law enforcement or law-enforcing

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162. See THOMAS DOHERTY, *PRE-CODE HOLLYWOOD: SEX, IMMORTALITY, AND INSURRECTION IN AMERICAN CINEMA 1930–1934*, 58–67 (1999) (depression-era films targeted greed of all professions that had profited from the 1920s including lawyers).

163. See Michael Asimow, *Divorce in the Movies: From the Hays Code to Kramer vs. Kramer*, 24 *LEGAL STUD. F.* (forthcoming 2000).

164. *Mutual Film Corp. v. Industrial Comm'n of Chicago*, 236 U.S. 230 (1915), held that the free speech and press provisions in the Ohio constitution did not apply to films; they could be regulated like any other business. At that time, the First Amendment did not apply to the states. *Mutual Film* was not overruled until 1952. *Joseph Burstyn Inc. v. Wilson*, 343 U.S. 495 (1952).

165. For discussion of state and local government censorship, the Hays Code of 1930, and the Production Code Administration of 1934, see ROBERT SKLAR, *MOVIE-MADE AMERICA: A CULTURAL HISTORY OF AMERICAN MOVIES* 30–32, 126–32, 171–74, 295–97 (1994); THOMAS DOHERTY, *supra* note 162, at 319–46 (1999); MARK A. VIEIRA, *SIN IN SOFT FOCUS: PRE-CODE HOLLYWOOD* 6–18, 162–93 (1999); JACK VIZZARD, *SEE NO EVIL: LIFE INSIDE A HOLLYWOOD CENSOR* (1970); GERALD GARDNER, *THE CENSORSHIP PAPERS: MOVIE CENSORSHIP LETTERS FROM THE HAYS OFFICE 1934 TO 1968* (1987); RICHARD S. RANDALL, *CENSORSHIP OF THE MOVIES: THE SOCIAL AND POLITICAL CONTROL OF A MASS MEDIUM* (1968); RAYMOND MOLEY, *THE HAYS OFFICE* (1971).

officers.”<sup>166</sup> Because of the latter provision, it is likely that the Code caused prosecutors to be portrayed more favorably than they would otherwise have been.<sup>167</sup>

Most lawyer movies produced while the Code was in effect contained positive portrayals of lawyers. It is hard to say whether the Code had anything to do with that fact. One chronicler of the Code, writing in 1945, states that the PCA always tried to apply its principle of “compensating values”<sup>168</sup> to the portrayal of lawyers: bad or unethical lawyers had to be punished so that the audience would believe that “the wrong lawyer was wrong and the right lawyer was right.”<sup>169</sup> This guideline did not require that films show good lawyers, however; it merely required that bad lawyers (like criminals or loose women) be appropriately punished in the end.<sup>170</sup> In several instances of post-1934 negative lawyer movies, the Code Office objected to numerous aspects of the film but did not mention the negative attorney portrayals.<sup>171</sup> Of the eleven negative lawyer movies in the 1930s, six

166. The Hays Code is reproduced at DOHERTY, *supra* note 162, at 347–59; VIEIRA, *supra* note 165, at 214–18. One of Breen’s guidelines states: “The judiciary and the machinery of criminal law must not be presented in such a way as to undermine faith in justice. An individual judge, or district attorney, or jail warden may be shown to be corrupt; but there must be no reflection on the law in general, and the offender must be punished.” MOLEY, *supra* note 165, at 103; VIEIRA, *supra* note 165, at 219.

167. See GARDNER, *supra* note 165, at 39 (letter requiring that the script for *The Maltese Falcon* delete Sam Spade’s negative references to the district attorney “to get away from characterizing most district attorneys as men who will do anything to further their careers”).

168. “Compensating values” meant that stories must contain at least sufficient good to compensate for any evil they relate, so that in the end the audience feels that evil is wrong and good is right. See Breen’s guidelines, VIEIRA, *supra* note 165, at 219.

169. MOLEY, *supra* note 165, at 115.

170. The Code Office complained about the negative lawyer portrayals in *Roxie Hart*, discussed *infra* note 191. The Office objected to the fact that the prosecutor and the judge were held up to ridicule. The PCA also complained that defense lawyer Billy Flynn suborned perjury and seemed to get away with it. The concern was more the lack of compensating values than the fact that Flynn was shown negatively. Letter from the PCA to Jason Joy, April 25, 1941. This letter is on file in the Herrick Library. See *supra* note \*.

171. For example, the Office was critical of *Angels with Dirty Faces* on several grounds but did not mention the very negative portrayal of attorney James Frazier (Humphrey Bogart). GARDNER, *supra* note 165 at 48–49. The classic film *The Letter* (1940) deals with a successful lawyer-client conspiracy to bury critical evidence and put on perjured testimony. The client (Leslie Crosby, played by Bette Davis) comes to a bad end. In contrast, Leslie gets away with it in Somerset Maugham’s short story (from which the film was derived), a difference that could be attributed to the Office’s insistence that crime must not pay. However, nothing bad happens to the lawyer. Apparently the lawyer’s behavior presented no problem

postdated the creation of the PCA in 1934, two were made in 1934, and three predated 1934.

On the other hand, several pre-Code negative lawyer films were remade after the Code came into effect. The negative lawyer portrayals are toned down.<sup>172</sup> This suggests that the PCA may have pushed filmmakers in the direction of less negative lawyer portrayals. On the whole, however, I don't believe that the Production Code had much to do with the largely benign treatment of lawyers in film from the 1930s to the 1960s (other than the treatment of prosecutors).

2. The 1930s. One of the finest lawyer films ever made, *Counsellor at Law*,<sup>173</sup> effectively captures the harsh and stressful nature of law practice. Lawyer George Simon (John Barrymore) came from a poverty-stricken background on the lower east side. Through brains, ambition and energy, he achieves a successful law practice and relative affluence. He has one foot in the immigrant Jewish culture he came from and the other foot in upper-class New York society. Simon cares deeply about his family, his clients, and his co-workers (both staff and lawyers). Yet Simon is no saint. He commits the occasional ethical lapse, and gets in trouble for it. He's a complicated and enigmatic character; on balance I would like him to be my friend and my lawyer.

Despite the general hostility toward professionals in Depression-era films,<sup>174</sup> the majority of 1930s films present lawyers in a warm, benign way.<sup>175</sup> Most of the exceptions occur in gangster films where lawyers sometimes appear as mouthpieces for the mob. At the end of the decade, the superb gangster epic *The Roaring Twenties*<sup>176</sup> foregrounded a lawyer any mother would be proud of. The film follows the careers of a trio of World

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for the Code Office, but many other elements of the story gave rise to intense concern and had to be rewritten. *Id.* at 78–79. (*The Letter* is set in Malaya so is excluded from the films summarized in the Appendix). I examined the files at the Herrick Library, see *supra* note \*, on *The Lady from Shanghai*, Columbia Pictures Corp. (1948), *Mr. Deeds Goes to Town*, Columbia Pictures Corp. (1936), and *The Strange Love of Martha Ivers*, Paramount Pictures (1946), all sharply negative lawyer movies of the 1930s and 1940s, and found no criticism of the negative lawyer roles.

172. Compare *THE GIRL WHO HAD EVERYTHING*, Metro-Goldwyn-Mayer (1953), with *A FREE SOUL*, Metro-Goldwyn-Mayer (1931); *THE MAN WHO TALKED TOO MUCH*, Warner Bros. (1940), with *THE MOUTHPIECE* (1932).

173. *COUNSELLOR AT LAW*, Universal Pictures (1933). Unfortunately, this wonderful film has never been released on video. It is based on a famous stageplay by Elmer Rice.

174. See *supra* note 162.

175. Thus in *Lady by Choice*, Columbia Pictures Corp. (1934), attorney Johnny Mills performs admirable pro bono work for a homeless woman. If anything, this decent fellow is a bit of a goodie-two-shoes.

176. Warner Bros. (1939).

War I survivors. Lloyd Hart (played by Jeffrey Lynn) becomes a lawyer. The other two, Eddie Bartlett (James Cagney) and George Hally (Humphrey Bogart) are partners in a bootlegging business and clients of Hart. Hart knows that his clients and war buddies are bootleggers, but his legal work strictly concerns the legitimate side of their business (running a taxicab fleet). When he finds out how violent the bootlegging business has become, he bails out. Ultimately he becomes a crusading district attorney and starts prosecuting gangsters, including Hally. Hart also rescues Bartlett's ingenue girlfriend Jean from a life of sin. This was the typical way lawyers were shown in the old days—honest, brave, and noble.

3. The 1940s. Many films of the 1940s cast lawyers in a favorable light. One of the best is the great comedy *Adam's Rib*,<sup>177</sup> which contains subtle and nuanced lawyer personalities. Adam and Amanda Bonner are a married couple who oppose each other in court in a criminal case presenting interesting feminist issues. Adam (Spencer Tracy), the prosecutor, is a lovable curmudgeon who can't quite handle the situation. He feels that Amanda is mocking the law that he reveres. Katherine Hepburn plays Amanda, the defense lawyer. She emerges as a wonderful character—a skillful, dedicated lawyer in a pro bono case, a loyal friend, a loving wife. Who wouldn't like and respect lawyers if they were anything like the Bonners?

In the 1940s, numerous movies in the film noir genre portrayed lawyers negatively. For example, in the noir classic *Force of Evil*,<sup>178</sup> the protagonist is Joe Morse (John Garfield), a Wall Street lawyer who represents thugs involved in the numbers racket. Morse has crossed over from legally proper representation into deep involvement in his clients' criminal and fraudulent activity. Yet Morse's portrayal is rich and very complex; he takes tremendous risks to protect his downtrodden brother (who has a small time numbers business) and in the end he turns away from crime.

4. The 1950s. The classic film *Anatomy of a Murder*<sup>179</sup> features small town lawyer Paul Biegler (James Stewart) who is largely unconcerned with money and does an outstanding job in representing his client in a murder case.<sup>180</sup> He pushes the ethics envelope on client coaching a bit, but, at least in the eyes of most criminal lawyers, he stays within accepted limits. Biegler is a good friend and a fine employer (though a bit shaky on meeting his payroll). His opponent, the icy prosecutor Claude Dancer (George C. Scott),

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177. Metro-Goldwyn-Mayer (1949).

178. Metro-Goldwyn-Mayer (1948).

179. Columbia Pictures Corp. (1959).

180. See WEISBERG, *supra* note 134, at 54–55 (listing the characteristics of the great literary lawyers as verbal manipulation, apartness, distrustfulness, professional ethical relativism, frugality (and bachelorhood), and placement on the fringes rather than the center of life). Biegler fits this list of attributes like a glove.

is equally committed and skillful—though he blunders in the end. And the judge is a dream.<sup>181</sup>

5. The 1960s. In this decade, some inspiring films like *To Kill a Mockingbird*<sup>182</sup> or *Inherit the Wind*<sup>183</sup> came close to nominating lawyers for sainthood. More realistic, but still highly positive, were numerous films like *Cape Fear*.<sup>184</sup> In this film, Sam Bowden (Gregory Peck) is a fine lawyer and loving family man. Bowden is unjustly tormented by Max Cady (Robert Mitchum) against whom Bowden had testified as a witness many years before. The remake of *Cape Fear*<sup>185</sup> contrasts sharply with its predecessor. In the remake, Bowden (Nick Nolte) had represented Cady (Robert DeNiro) in a rape case years before. Wanting to see his vicious client be convicted, Bowden unethically tanked the case by burying a report about the victim's promiscuity. Moreover, in the remake, Bowden had been unfaithful to his wife on numerous occasions and was preparing to have another affair (or perhaps had already started it). The contrast between the two versions of the story speaks volumes about the way film lawyers were portrayed in the past and present.<sup>186</sup>

Another typical and noteworthy 1960s lawyer film is *Town Without Pity*,<sup>187</sup> probably the best film about a rape trial ever made. Colonel Pakenham (E. G. Marshall) prosecutes four American soldiers accused of gang raping a German girl; Major Steve Garrett (Kirk Douglas) defends them. Garrett tries desperately to plea bargain the case, partly because rape is a capital offense, but also because he dreads the ordeal of a rape trial. Yet he does his job; his cross-examination of the victim demolishes her credibility. As in many rape prosecutions, the victim is put on trial and revictimized. Both attorneys seem to me to be good people, each doing what he is ethically obligated to do, however unpleasant the task.

If one had to reduce the film lawyers from 1929 through the 1960s to a single prototype, that person would be a bit stuffy, emotionally shallow, perhaps a bit eccentric, but basically loyal and quite decent.<sup>188</sup> Although the

181. Many other 1950s films treated lawyers as heroic characters. See e.g. *THE CAINE MUTINY*, Columbia Pictures Corp. (1954); *TRIAL*, Metro-Goldwyn-Mayer (1955). The latter film features Law Professor David Blake (Glenn Ford) saving his client from a murder rap despite a Communist conspiracy.

182. Universal Studios (1962).

183. Metro-Goldwyn-Mayer (1960).

184. Universal Studios (1961).

185. TriBeCa Productions (1991).

186. Similarly, in the remake of *The Postman Always Rings Twice*, the lawyers are much more negative than in the original. Metro-Goldwyn-Mayer (1946); Lorimar (1981).

187. United Artists (1961).

188. As a noteworthy example of a pre-1970s non-courtroom lawyer film, see *My Favorite Wife*, an honored member of the great club of Depression-era romantic comedies.

prototypical film lawyer didn't lack normal human frailties, you'd probably want him<sup>189</sup> as your friend. Professionally, the prototypical pre-1970 lawyer was skillful, devoted to his clients, and ethical.

6. Bad lawyers in pre-1970 films. A viewer of pre-1970 lawyer films encounters a few shysters and crooks along with the solid citizens, especially in film noirs of the 1940s or 1950s such as *Force of Evil*.<sup>190</sup> My favorite is the notorious Billy Flynn in *Roxie Hart*,<sup>191</sup> the exquisitely cynical comedy which inspired the immortal Kander and Ebb musical *Chicago*.<sup>192</sup> Flynn (Adolph Menjou) specializes in representing women who have killed their husbands or lovers. He's greedy, slippery, dishonest, and a complete phony. *The Fortune Cookie*<sup>193</sup> features shyster personal injury lawyer Willie Gingrich (Walter Matthau). A few films portrayed venal or politically motivated prosecutors<sup>194</sup> and a fair number included mouthpieces for the mob.<sup>195</sup> Infrequently, some lawyers came along who were just plain disgusting human beings.<sup>196</sup> But these were atypical.

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Malofilm (1940). Ellen Arden (Irene Dunne) was shipwrecked and disappeared for seven years. Her husband, lawyer Nick Arden (Cary Grant), finally has her declared dead and marries Bianca. Of course, on that very day Ellen returns and campaigns to get Nick back. Nick meanwhile has raised two fine children and has to deal with a terrible fix. While he has trouble confronting the issues and is slightly prone to jealousy, he is wholly decent and honorable and compassionate toward the unfortunate Bianca. Nick didn't need to be a lawyer for this story to work; he could have been most anything. But in those simple days, lawyers were assumed to be decent, honorable people. Cf. *BY LOVE POSSESSED*, United Artists (1961) (emotionally shallow lawyers are pillars of the community); *BAREFOOT IN THE PARK*, Paramount Pictures (1967) (stuffy but likeable lawyer); *BOB AND CAROL AND TED AND ALICE*, Columbia Pictures Corp. (1969) (Ted is good husband and friend as he struggles with changes in mores during the 1960s); *I LOVE YOU ALICE B. TOKLAS*, Warner Bros. (1968) (stuffy personal injury lawyer becomes a hippie).

189. With the exception of *Adam's Rib*, almost all of the lawyers in pre-1980s films were male.

190. Metro-Goldwyn-Mayer (1948), discussed in text at *supra* note 178.

191. 20th Century Fox (1942).

192. *CHICAGO*, opened at the 46th St. Theatre on June 3, 1975.

193. Metro-Goldwyn-Mayer (1966).

194. *THEY WON'T FORGET*, Warner Bros. (1937); *THE STRANGE LOVE OF MARTHA IVERS*, Paramount Pictures (1946).

195. *MARKED WOMAN*, Metro-Goldwyn-Mayer (1937); *ANGELS WITH DIRTY FACES*, Metro-Goldwyn-Mayer (1938); *ASPHALT JUNGLE*, Metro-Goldwyn-Mayer (1950); *THE GODFATHER*, Paramount Pictures (1972); *THE GODFATHER II*, Paramount Pictures (1974). The crooked lawyer was also a staple in westerns which I have not included in this study.

196. For example, Bannister and Grisby in *The Lady from Shanghai*, are the rare example of pre-1970 lawyers who are personally repellent although they are apparently pretty good lawyers. Columbia-Tristar (1948).

### C. *Movie lawyers: the 1970s*<sup>197</sup>

In the transitional decade of the 1970s, some lawyer portrayals were favorable, but a negative trend began to emerge. In *The Candidate*,<sup>198</sup> for example, Bill McKay (Robert Redford) is a hardworking legal service lawyer who is dragooned into running for the Senate. Since he is given no chance to beat the incumbent, he's allowed to say exactly what he thinks. Of course, the voters love it. A number of other early 1970s films also presented likeable, competent attorneys whom you'd want for friends despite their personal eccentricities. Recall *Where's Poppa*<sup>199</sup> featuring Gordon Hocheiser (George Segal) trying to get a life despite his psychotic mother, or *Blume in Love*<sup>200</sup> in which Stephen Blume (Segal again), a caring Beverly Hills divorce lawyer, is trying to get his wife back.

But negative lawyer portraits began to appear in the 1970s. In *Carnal Knowledge*<sup>201</sup> Jack Nicholson plays Jonathan, a repulsive, misogynistic tax lawyer. A prominent character in the *Godfather* films (1972 and 1974)<sup>202</sup> was Tom Hagen (Robert Duvall), a wily and wholly criminalized consigliere. In the late 1970s, films like *...And Justice for All*<sup>203</sup> pointed the way toward the negativism that continues to the present day.

### D. *Movie lawyers: 1980s and 1990s*

During the last two decades, a great many attorneys on the big screen have been bad people and bad professionals.<sup>204</sup> They tend to be rude, crass,

197. I identified fewer lawyer films in the 1970s than in other decades. I don't know the reason why the subject was less appealing to filmmakers than in the years before and after that decade.

198. Warner (1972).

199. Metro-Goldwyn-Mayer (1970).

200. Warner, Ltd. (1973).

201. Avco Embassy Pictures (1971).

202. *GODFATHER*, Paramount Pictures (1972); *GODFATHER II*, Paramount Pictures (1974).

203. Columbia Tristar (1979).

204. I acknowledge the criticism that lawyer films are not distinctive. Perhaps the portrayal of *all* professionals was positive before 1980 and turned sharply negative after 1980, given the prevailing cynicism about powerful people of all persuasions. See PETER E. DANS, *DOCTORS IN THE MOVIES* (2000) (observing negative turn in doctor movies); Thomas Doherty, *The Acceptable Bigotry Movies*, LOS ANGELES TIMES, Oct. 12, 1999, at B9 (denying negative portrayal of priests and Catholic doctrine); Lee Margulies, *Government Workers Have Prime-Time Image Problem*, LOS ANGELES TIMES, May 4, 1999, at F2 (noting study showing public officials, other than teachers or policeman, are negatively portrayed in prime-time television). I have not attempted to compare lawyer films to all films; trying to assess lawyer films has been a



selfish, and greedy. They exercise poor judgment in sexual matters. Even if they are basically decent people, their personal lives are miserable; they drink too much and some are thoroughly burned out. If you're looking for an honest, hard-working lawyer, look elsewhere; many of the post-1970 attorneys are unethical, disloyal, or incompetent.

In addition, modern films consistently portray lawyers living in sumptuous homes and working in lavishly decorated offices. While I didn't consider these displays of affluence and economic power as negative in themselves (presumably we don't mind if our friends are rich and our lawyers are successful), many viewers cannot help but resent these reminders of the very high incomes many lawyers earn.

I hasten to add that not every lawyer character of the past two decades is negative. Quite a few films presented favorable portraits.<sup>205</sup> The majority of these were either true stories or issue-oriented films.<sup>206</sup> True stories, obviously, are at least somewhat constrained by historic facts, and these films have mostly involved positive lawyer stories.<sup>207</sup> In issue-oriented films, many of which are based on true stories, law and lawyers are used to make a social or political point,<sup>208</sup> a traditional function of courtroom movies. In issue films, at least some of the lawyers must be favorably presented since their words and deeds are the vehicles for transmitting the message that the filmmaker wishes to convey. It is in the fictitious, non-issue, entertainment-oriented films, that lawyers take their biggest hits.

big enough task by itself. I simply report my intuition that recent films single out lawyers for negative and nasty portrayals.

205. Recently, a few films have gone out of their way to present lawyers favorably, even though the characters did not have to be lawyers at all. See *supra* note 2. This development is most welcome.

206. Unlike true stories, I did not count issue-oriented films as a category separate from entertainment-oriented films because the category was just too mushy. All issue-oriented films must entertain, and all entertainment-oriented films can be analyzed so that they convey an explicit or implicit political message.

207. For discussion of the true story category, see *supra* notes 158–60 and accompanying text. Not all of the lawyers in true stories are favorable, however. In *Prince of the City*, a true story about police corruption, a key character is a very crooked lawyer. Warner (1981)

208. Examples: *People v. Larry Flynt*, Sony (1996) (Alan Isaacman as warrior for First Amendment); *In the Name of the Father*, Universal Pictures (1993) (Gareth Peirce is crusader for wrongly convicted Guilford Four); *Ghosts of Mississippi*, Castle Rock Entertainment (1996) (Bobby DeLaughter prosecutes Byron de la Beckwith, the killer of Medgar Evers); *The Chamber*, Universal Pictures (1996) (Adam Hall fights the death penalty); *Philadelphia*, Columbia Tristar (1993) (Joe Miller represents victim of AIDS discrimination); *The Music Box*, Carolco Pictures (1990) (Ann Talbot uncovers war crimes); *Last Dance*, Touchstone Pictures (1996) (Rick Hayes fights for woman on death row); *The Accused*, Paramount Pictures (1988) (Kathryn Murphy prosecutes gang rapists); *Losing Isaiah*, Paramount Pictures (1998) (capable attorneys litigate trans-racial adoption).

So what's wrong with these post-1980 lawyers we've called "bad people" or "bad professionals?"

## 1. Lawyers as Bad People

a. Crudeness and bad manners. Martin Vail (Richard Gere) in *Primal Fear*<sup>209</sup> is a good example of the sort of person you might not want as a friend. He is rude to the people who work for him, and is pushy and arrogant both in personal relationships and toward his clients.<sup>210</sup>

b. Miserable personal life. Kathleen Riley (Cher), the burned out public defender in *Suspect*,<sup>211</sup> tells her boss that she has no personal life whatsoever. She'd like a baby but has no boyfriend. Hoodlums break her car window and snatch her jewelry. She hangs out with murderers and rapists and has come to like them. Worst of all, she hasn't seen a movie in months.

c. Bad spouse or parent. Walter Bridge (Paul Newman), in *Mr. and Mrs. Bridge*,<sup>212</sup> is a typically insufferable lawyer who treats his wife with cruelty and condescension. Over the years, he manages to stamp out any signs of any independence or individuality. He is unable to express emotions.<sup>213</sup> Other lawyers cannot find the time or incentive to be even half-way decent parents<sup>214</sup> or regularly cheat on their spouses.<sup>215</sup>

d. Substance abusers. Nowadays a lot of lawyers in film have serious substance abuse problems. Obviously Frank Galvin (Paul Newman) in *The Verdict*<sup>216</sup> is the poster child for lawyerly alcoholism but he has plenty of

209. Malofilm (1996).

210. As other examples of unpleasant lawyer personalities, see *CARLITO'S WAY*, Universal Pictures (1993); *THE MIGHTY DUCKS*, Walt Disney (1992); *CURLY SUE*, Warner (1991); or *THE GINGERBREAD MAN*, Polygram (1998). The behavior of Oliver Rose toward his ex-wife in *War of the Roses* is unpardonable. Trimark (1989). In *Clueless*, Cher's father Mel Horowitz is rude to everyone, including an associate in his law firm. Malofilm (1995).

211. Columbia Tristar (1987).

212. Cineplex Odeon Films (1990).

213. Similar portrayals occur in *Beaches*, Buena Vista (1988) and *Compromising Positions*, Malofilm (1985).

214. For example, the attorneys in *Liar Liar*, Universal (1997), *Hook*, Columbia Tristar (1981), and *Jagged Edge*, Columbia Tristar (1985) do a poor job as parents. An uptight and jealous attorney in *The Good Mother* wrests custody of a child from his ex-wife even though he knows it is not in the child's best interest. Buena Vista (1988). This is a character that did not need to be an attorney at all.

215. Examples include: *Sex, Lies and Videotape*, Virsin (1989) (attorney having affair with his wife's sister); *Class Action*, Trimark (1991) (married attorney having affair with law partner); *Regarding Henry*, Paramount Pictures (1991) (affair with law partner; poor parent).

216. 20th Century Fox (1982).

company with Danny Snyder (Dustin Hoffman) in *Sleepers*<sup>217</sup> or Lucien Wilbank (Donald Sutherland) in *A Time to Kill*.<sup>218</sup> Dave Kleinfeld (Sean Penn) in *Carlito's Way*<sup>219</sup> is a heavy-duty cocaine addict.<sup>220</sup>

e. Bad judgment in choice of sexual partners. Modern-day lawyers in film, particularly women, seem to have terrible judgment in choosing lovers. Teddy Barnes (Glenn Close) in *Jagged Edge*<sup>221</sup> is one of the worst offenders, leaping into bed with her client right in the middle of the case, but her colleagues are little better.<sup>222</sup> Maggie Ward (Mary Elizabeth Mastrantonio) gets into trouble when she has an affair with her supervising partner in *Class Action*. Laura Fischer (Charlotte Rampling) in *The Verdict*<sup>223</sup> works as a sexual spy on her firm's opponent Frank Galvin. In *...And Justice for All*,<sup>224</sup> Gail Packer (Christine Lahti) has an affair with Arthur Kirkland (Al Pacino), even though she's a member of the state bar ethics committee which is investigating Kirkland.

## 2. Lawyers as Bad Professionals

a. All around badness. In *Body Heat*,<sup>225</sup> attorney Ned Racine (William Hurt) is stupid, lazy, and greedy. He drinks too much. On the professional side, he's been sued for malpractice a couple of times, is indifferent to his clients, and doesn't care about ethics.<sup>226</sup> He's easily seduced by the sultry Matty Walker (Kathleen Turner) and quickly enlisted in Matty's plot to do away with her husband. Certainly, John Milton (Al Pacino) in *The Devil's Advocate*<sup>227</sup> is a competitor: he is bad in just about every way possible, as a lawyer and as a person—appropriately so since he's The Devil.

217. Polygram Filmed Entertainment (1996).

218. Regency Enterprises (1996).

219. Universal Pictures (1993).

220. Dr. Gonzo, an attorney in *Fear and Loathing in Las Vegas*, Rhino Films (1998), is an over-the-top substance abuser.

221. Columbia Pictures (1985).

222. Examples: *Presumed Innocent*, Mirage (1990); *Defenseless*, New Vision Pictures (1991); *Gingerbread Man*, Polygram (1998); *Body of Evidence*, MGM (1993).

223. 20th Century Fox (1982).

224. Columbia Pictures Corporation (1979).

225. The Ladd Company (1981).

226. See John M. Burkoff, *If God Wanted Lawyers to Fly, She Would have Given Them Wings: Life, Lust and Legal Ethics in Body Heat*, 22 OKLA. CITY U. L. REV. 187 (1997). One reader of this paper focussed on *Body Heat*, arguing that many of the bad movie lawyers could just as easily have been private detectives and thus classified as part of the rich detective story genre. Like private eyes, negative film lawyers typically have miserable personal lives and borderline professional ethics. Nevertheless, I believe that people who see lawyer films evaluate them and recall them as lawyer films, not detective films.

227. Kopelson Entertainment (1987).

b. Complete crooks. In *The Firm*,<sup>228</sup> an apparently respectable (though perhaps slightly over-aggressive) tax law firm turns out to be a bunch of vicious killers and a front for the mob.<sup>229</sup> Dave Kleinfeld in *Carlito's Way*<sup>230</sup> is heavily engaged in money laundering, theft and murder.<sup>231</sup>

c. Disloyalty to clients. Film lawyers these days often sell out their clients. Maggie Ward goes over to the opposition in *Class Action*<sup>232</sup> and Arthur Kirkland denounces his own client in his opening statement in *...And Justice for All*.<sup>233</sup> Ann Talbot (Jessica Lange) betrays her client in *The Music Box*,<sup>234</sup> while prosecutor Michael Sullivan (Brad Pitt) deliberately throws his own case in *Sleepers*.<sup>235</sup> Sam Bowden (Nick Nolte) betrayed his rapist client in the remake of *Cape Fear*<sup>236</sup> by burying a report about the victim's promiscuity. Granted, each of these lawyers had pretty good reasons for turning on their own clients, but you just don't do that. Dave Kleinfeld in *Carlito's Way*<sup>237</sup> steals a cool million from one of his clients, but he just needed the money to buy cocaine; an equal opportunity betrayer, Kleinfeld sells out his friends as well.

d. Not caring about clients. In *...And Justice For All*,<sup>238</sup> most of the attorneys (other than Arthur Kirkland) couldn't care less about their criminal law clients, whom they regard as vermin. In *The Verdict*,<sup>239</sup> Frank Galvin ignored his big medical malpractice case until ten days before trial. In *Sex, Lies and Videotape*,<sup>240</sup> John (Peter Gallagher) persistently ignores his most important client in order to meet his lover.

e. Win at all costs. Big firm lawyers in *The Verdict*<sup>241</sup> (James Mason), *The Rainmaker*<sup>242</sup> (Jon Voight), *Class Action*<sup>243</sup> (Donald Moffat), and *Regarding Henry*<sup>244</sup> (Harrison Ford and his partners) stop at nothing to win,

228. Paramount Pictures (1993).

229. The firm in *The Devil's Advocate* seems equally sleazy although it is more diversified in practice areas. Kopelson Entertainment (1987).

230. Universal Pictures (1993).

231. Bruiser Stone in *The Rainmaker* also turns out to be a big-time crook. Constellation Films (1997).

232. 20th Century Fox (1991).

233. Columbia Pictures Corporation (1979).

234. Carolco Pictures (1990).

235. PolyGram Filmed Entertainment (1996).

236. Tribeca Productions (1991).

237. Universal Pictures (1993).

238. Columbia Pictures Corporation (1979).

239. 20th Century Fox (1982).

240. Virgin (1989).

241. 20th Century Fox (1982).

242. Constellation Films (1997).

243. 20th Century Fox (1991).

244. Paramount Pictures (1991).

including destroying evidence, bugging opponents' offices, or cheating in discovery. In a classic scene in *The Verdict*,<sup>245</sup> defense lawyer Ed Concannon (Mason) explains that he's not paid to do his best, he's paid to win. No kidding: he pulls off a series of really dirty tricks, such as planting a sexual spy in the opposition's camp and bribing plaintiff's expert to disappear.<sup>246</sup>

f. Incompetence. Many of the post-1980 lawyers are just plain incompetent. Recall Frank Galvin in *The Verdict*<sup>247</sup> who is helpless in dealing with evidence problems or Rudy Baylor (Matt Damon) in *The Rainmaker*<sup>248</sup> who has no clue about how to introduce direct testimony. Vinny Gambini (Joe Pesci) in *My Cousin Vinny*<sup>249</sup> is sadly misinformed about criminal procedure and Ned Racine in *Body Heat*<sup>250</sup> has been sued for malpractice several times.

g. Ambulance chasers. Modern day film lawyers have developed creative ways to get business. Frank Galvin in *The Verdict*<sup>251</sup> solicits clients at strangers' funerals. Mitchell Stephens (Ian Holm) in *The Sweet Hereafter*<sup>252</sup> turns up in town to personally solicit grieving plaintiffs right after a school bus accident has killed many of their children. *The Rainmaker*<sup>253</sup> (Danny DeVito) is a primer on how to sign up accident victims in traction.

h. Rude or disloyal toward own staff. Many modern movie lawyers treat their associates and staff members inconsiderately and downright rudely. In *The Gingerbread Man*,<sup>254</sup> for example, Rick Magruder (Kenneth Branagh) berates his staff unfairly.<sup>255</sup> In *Philadelphia*,<sup>256</sup> a big firm fires an associate because he has AIDS. The lawyers in *The Firm*<sup>257</sup> kill lawyers who want to depart.

i. Perjured testimony. Modern film lawyers don't see any problem putting on knowingly perjured testimony as long as they don't get caught. In

245. 20th Century Fox (1982).

246. See Judith S. Kaye and Stephen R. Kaye, *Lawyers' Verdict on The Verdict*, N.Y. L.J., Feb. 14, 1983, at 2. In *From the Hip*, De Laurentiis Entertainment Group (1987), Stormy Weathers pulls off a series of silly tricks to impress his law firm and win jury verdicts.

247. 20th Century Fox (1982).

248. Constellation Films (1997).

249. 20th Century Fox (1992).

250. The Ladd Company (1981).

251. 20th Century Fox (1982).

252. The Harold Greenberg Fund (1997).

253. Constellation Films (1997).

254. Enchanter Entertainment (1998).

255. Martin Vail in *Primal Fear*, Malofilm (1996), and Henry Turner in *Regarding Henry*, Paramount Pictures (1991), have this bad habit as well.

256. Tristar Pictures (1993).

257. Paramount Pictures (1993).

*Liar Liar*,<sup>258</sup> Fletcher Reede (Jim Carrey) is perfectly prepared to use knowingly perjured testimony, with the enthusiastic approbation of his superiors, until he is prevented from lying by a spell cast by his little boy.<sup>259</sup>

j. Bad prosecutors. Prosecutors are a particularly rum lot. District Attorney Abraham Weiss (F. Murray Abraham) in *Bonfire of the Vanities*<sup>260</sup> cares only about politics; his assistant Jed Kramer (Saul Rubinek) focusses on career advancement and sex with a juror, not the irrelevant question of whether a defendant is guilty.<sup>261</sup>

k. Bad judges. The judges in *Suspect*<sup>262</sup> (John Mahoney) and in *...And Justice For All*<sup>263</sup> (John Forsythe) turn out to be the real criminals. A group of judges in *Star Chamber*<sup>264</sup> organize an assassination squad to do in perps who got off on technicalities. Other judges seem crooked, as in *Presumed Innocent*<sup>265</sup> (Paul Winfield); incredibly rude, as in *Body of Evidence*<sup>266</sup> (Lillian Lehman); biased, as in *A Civil Action*<sup>267</sup> (John Lithgow) or *The Verdict* (Milo O'Shea); or just downright nuts as in *... And Justice for All*<sup>268</sup> (Jack Warden).

## V. CONCLUSION

Within the last two decades, lawyers have gone over the cliff as far as public esteem for the profession is concerned. Legal popular culture reflects this dismal phenomenon quite accurately, presenting most lawyers in a strongly negative manner. There are many plausible reasons why the public despises our profession, but it's just possible that negative lawyer films of the 1980s and 1990s reinforced and deepened those feelings. For these

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258. Universal Pictures (1997).

259. See also *SLEEPERS*, Polygram Filmed Entertainment (1996); *REGARDING HENRY*, Paramount Pictures (1991).

260. Warner Bros. (1990).

261. Prosecutors in *The Client* are indifferent to the safety of a child witness. Alcor Films (1994). In *Absence of Malice*, a prosecutor destroys an innocent man's reputation. Columbia Pictures (1981). A prosecutor frames an innocent man in *True Believer*. Columbia Pictures Corporation (1989). The prosecutor in *Jagged Edge* is ethically reckless. Columbia Tristar (1985). The prosecutors in *Q&A* are utter crooks. Odyssey (1990). The prosecutors in *A Time to Kill* and *Presumed Innocent* are negatively portrayed. Regency Enterprises (1996); Mirage (1990). A prosecutor in *Legal Eagles* sleeps with someone he's investigating. Universal Pictures (1986).

262. Columbia Tristar (1987).

263. Columbia Pictures Corporations (1979).

264. 20th Century Fox (1983).

265. Mirage (1990).

266. De Laurentiis (1993).

267. Paramount Pictures (1998).

268. Columbia Pictures Corporation (1979).

reasons, we should pay attention to and care about the way lawyers are shown in film.

Besides its function in both following and perhaps leading the general public's attitudes about law and lawyers, legal popular culture is important to lawyers for another reason: it teaches us as well as the public. In years past, film and television presented us with a set of lawyers who were decent people and honest, competent professionals—sometimes even heroes. In film, Atticus Finch, Paul Biegler, Clarence Darrow, Amanda Bonner, or Judge Dan Haywood served as wonderful role models for everyone in the profession from law students up to grizzled veterans.

Today, it's just the opposite. Most film lawyers are bad role models. Lawyers on the big screen are teaching lawyers and law students that uncivil and unethical behavior is rewarded in law practice.<sup>269</sup> Law students are taught that they must be Rambo with a briefcase to be successful;<sup>270</sup> perhaps young people who find that model attractive are disproportionately choosing legal careers.

While there is little or nothing that we can do to alter the way lawyers are portrayed in popular culture,<sup>271</sup> we can make use of film and television to better understand the fundamental problems besetting our profession. Do a lot of lawyers have alcohol or drug problems?<sup>272</sup> Do many of them act in a rude, uncivil manner? Do they chase ambulances? Do they treat associates and staff members exploitatively? Do lawyers work too many hours, thus wrecking personal relationships? Are many of them deeply dissatisfied with their career choices?<sup>273</sup> Is there a big firm, win-at-all-costs mentality?<sup>274</sup> Yes, to all these questions. These are the realities of law practice at the millenium. We need to seriously address all of these problems and invest in finding solutions to them, whether or not we ever succeed in improving our

269. An anecdote: I was told about some young lawyers who formed a small litigation firm. Each morning the partners met and discussed their respective cases. They learned this was an appropriate law office management technique from watching *L.A. Law*. Of course, the meetings were a total waste of time. Another: A clinical law professor reports that third year students simply cannot be persuaded that it is inappropriate during cross examination to address remarks or rhetorical questions to the jury. After all, Daniel Kaffee did it in *A Few Good Men*. Castle Rock Entertainment (1992).

270. Nagorney, *supra* note 80, at 821 (citing the effects of fierce behavior in *A Few Good Men* on molding lawyer aspirations).

271. Some have suggested that Bar Associations offer to assist writers and producers of film or television shows about law and lawyers by furnishing free consulting services to help them get details of law and law practice a little more correct than they get it now. This approach works for the military and it might just be a worthwhile experiment for our profession as well.

272. Daicoff, *supra* note 46, at 555–57.

273. *Id.* at 553–55.

274. See ZITRIN & LANGFORD, *supra* note 59, at 53–73.

public image. Thinking about the way that we're portrayed in film can teach us a lot about ourselves.

## VI. APPENDIX

This appendix lists the films with significant lawyer or judge characters that are the basis for the compilation in the text.<sup>275</sup> The films are arranged by decade, beginning with the 1990s. The selection criteria are described in the text.<sup>276</sup>

In this array, POS means that the lawyer characterization was viewed as positive while NEG means it was viewed as negative.<sup>277</sup> MIXED means there were several lawyers in the film, some positive, some negative. TRUE means that the film was explicitly billed as based on real events and real people.<sup>278</sup>

### 1990–1999

Addams Family, The (1991)	NEG
Angie (1994)	NEG
Big Daddy (1999)	NEG
Body of Evidence (1992)	NEG
Bonfire of the Vanities, The (1990)	NEG
Cape Fear (1991)	NEG
Carlito's Way (1993)	NEG
Chamber, The (1996)	POS
Civil Action, A (1998)	TRUE-NEG
Class Action (1990)	NEG
Client, The (1994)	MIXED
Clueless (1995)	NEG
Cookie's Fortune (1999)	POS
Cool, Dry Place, A (1999)	POS
Confession, The (1999)	NEG
Curly Sue (1991)	NEG
Death Benefit (1997)	TRUE-POS
Defenseless (1991)	NEG
Devil's Advocate, The (1997)	NEG
Disclosure (1994)	POS
Down in the Delta (1998)	POS

275. See the summary following note 161.

276. See text at notes 147–57.

277. For criteria for making this judgment, see *supra* notes 136–37 and accompanying text.

278. See *supra* notes 129–31 and accompanying text.



Enemy of the State (1998)	POS
Everyone Says I Love You (1996)	POS
Fear and Loathing in Las Vegas (1998)	NEG
Female Perversions (1996)	NEG
Few Good Men, A (1992)	POS
Firm, The (1993)	MIXED
Ghosts of Mississippi (1996)	TRUE-POS
Gingerbread Man, The (1998)	NEG
Grand Canyon (1991)	POS
Guilty as Sin (1993)	NEG
Heart Condition (1990)	NEG
Hook (1991)	NEG
Impulse (1996)	POS
In the Name of the Father (1993)	TRUE-POS
Indecent Proposal (1993)	POS
Insider, The (1999)	TRUE POS
It Could Happen to You (1994)	POS
JFK (1991)	TRUE-POS
Jurassic Park (1993)	NEG
Jury Duty (1995)	NEG
Just Cause (1995)	POS
Last Dance (1996)	POS
Legal Deceit (1997)	NEG
Liar Liar (1997)	NEG
Losing Isaiah (1995)	POS
Love Crimes (1991)	NEG
Midnight in the Garden of Good & Evil (1997)	POS
Mighty Ducks, The (1992)	NEG
Mr. & Mrs. Bridge (1990)	NEG
Murder in the First (1994)	TRUE-POS
My Cousin Vinny (1992)	POS
Night Falls on Manhattan (1997)	MIXED
Other People's Money (1991)	POS
People vs. Larry Flynt, The (1996)	TRUE-POS
Philadelphia (1992)	MIXED
Physical Evidence (1992)	POS
Presumed Innocent (1990)	MIXED
Primal Fear (1996)	NEG
Q&A (1990)	MIXED
Quiz Show (1994)	POS
Rainmaker, The (1997)	NEG
Red Corner (1997)	POS
Regarding Henry (1991)	NEG

Reversal of Fortune (1990)	TRUE-POS
Scenes from a Mall (1991)	NEG
Shadow of a Doubt (1998)	NEG
Siege, The (1998)	POS
Sleepers (1996)	NEG
Snow Falling on Cedars (1999)	POS
Stepmom (1997)	POS
Sweet Hereafter, The (1997)	NEG
Thin Red Line, The (1998)	POS
Time to Kill, A (1996)	MIXED
Trial & Error (1997)	MIXED
Trial by Jury (1994)	MIXED
True Crime (1999)	NEG
Why Do Fools Fall in Love (1998)	TRUE-POS
Wild Things (1998)	NEG

1980-1989

Absence of Malice (1981)	NEG
Accused, The (1988)	TRUE-POS
All of Me (1984)	MIXED
April Fools, The (1969)	NEG
Armed and Dangerous (1986)	NEG
Beaches (1988)	NEG
Big Chill, The (1983)	POS
Big Easy, The (1987)	POS
Body Heat (1981)	NEG
Compromising Positions (1985)	NEG
Criminal Law (1988)	NEG
Daniel (1983)	TRUE-POS
Fatal Attraction (1987)	POS
First Monday in October (1981)	POS
From the Hip (1987)	NEG
Good Mother, The (1988)	MIXED
House on Carroll St. (1988)	POS
Jagged Edge (1985)	NEG
Legal Eagles (1986)	NEG
Milagro Beanfield War (1988)	POS
Money Pit, The (1986)	MIXED
Music Box (1989)	POS
Nuts (1987)	MIXED
Physical Evidence (1988)	POS
Postman Always Rings Twice, The (1981)	NEG

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Prince of the City (1981)	TRUE-MIXED
Seems Like Old Times (1980)	POS
Sex, Lies, and Videotape (1989)	NEG
Shakedown (1988)	NEG
Shoot the Moon (1982)	NEG
A Soldier's Story (1984)	POS
Star Chamber (1983)	MIXED
Suspect (1987)	MIXED
Table for Five 91983)	POS
True Believer (1989)	NEG
Verdict, The (1982)	NEG
War of the Roses (1989)	MIXED
Wall St. (1987)	NEG
Who's that Girl? (1987)	NEG
Whose Life is it anyway (1981)	POS

# 1970-79

...And Justice for All (1979)	NEG
Blume in Love (1973)	POS
Brannigan (1975)	NEG
Candidate, The 1972)	POS
Carnal Knowledge (1971)	NEG
Godfather I (1972)	NEG
Godfather II (1974)	NEG
I will, I will . . . For Now (1976)	NEG
Interiors (1978)	POS
Kramer vs. Kramer (1979)	POS
Lipstick (1976)	POS
Mean Dog Blues (1978)	NEG
New Leaf, A (1971)	NEG
Nickelodeon (1976)	NEG
Onion Field (1979)	MIXED
Rich Kids (1979)	NEG
Seduction of Joe Tynan, The (1979)	POS
U-Turn (1973)	NEG
Where's Poppa? (1970)	POS

# 1960-69

Birds, The (1963)	POS
Bob & Carol & Ted & Alice (1969)	POS
By Love Possessed (1961)	POS
Cape Fear (1962)	POS
Divorce American Style (1967)	NEG

Easy Rider (1969)	POS
Family Jewels, The (1965)	POS
Fortune Cookie (1966)	NEG
How to Murder your wife (1964)	NEG
I Love You Alice B. Toklas (1968)	POS
Inherit the Wind (1960)	TRUE-POS
It Started in Naples (1960)	POS
Judgment at Nuremberg (1961)	TRUE-POS
Madame X (1966)	POS
Marriage on the Rocks (1965)	POS
Move Over Darling (1963)	NEG
Paranoic (1963)	MIXED
To Kill a Mockingbird (1962)	POS
Town Without Pity (1961)	POS
Two for the Seesaw (1962)	POS
Valley of the Dolls (1967)	POS

1950-59

Anatomy of a Murder (1959)	POS
Asphalt Jungle, The (1950)	NEG
Athena (1954)	POS
Beyond a Reasonable Doubt (1956)	POS
Big Hangover, The (1950)	MIXED
Bigamist, The (1953)	POS
Breaking Point, The (1950)	NEG
Bridges at Toko-Ri, The (1954)	POS
Bottom of the Bottle, The (1956)	POS
Caine Mutiny, The (1954)	POS
Chicago Confidential (1957)	POS
City that Never Sleeps (1953)	NEG
Compulsion (1959)	TRUE-POS
Count the Hours (1952)	POS
Court Martial of Billy Mitchell (1955)	TRUE-POS
Girl Who Had Everything, The (1953)	POS
Helen Morgan Story (1957)	TRUE/NEG
Houseboat (1958)	POS
I Want to Live (1958)	TRUE-NEG
Illegal (1955)	NEG
It Happened to Jane (1959)	POS
Magnificent Yankee, The (1950)	TRUE-POS
Marrying Kind, The (1952)	POS
Never Steal Anything Small (1959)	POS
No Questions Asked (1951)	NEG

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Party Girl (1958)	POS
Payment on Demand (1951)	POS
People against O'Hara, The (1951)	POS
Peyton Place (1957)	POS
Pffft! (1954)	POS
Phenix City Story, The (1955)	TRUE-POS
Phone Call from a Stranger (1952)	POS
Place in the Sun, A (1951)	POS
Rack, The (1956)	POS
Reformer and the Redhead, The (1950)	NEG
Slaughter on Tenth Ave. (1957)	POS
Storm Warnings (1950)	POS
Tattered Dress (1957)	NEG
Three Brave Men (1957)	POS
Trap, The (1959)	POS
Trial (1955)	MIXED
Underworld Story, The (1950)	NEG
Unknown Man (1951)	POS
Wrong Man (1956)	TRUE-POS
Yellow Cab Man (1950)	NEG
Young Man with Ideas (1952)	POS
Young Philadelphians (1959)	POS

1940-49

Accused, The (1949)	POS
Act of Murder (1948)	MIXED
Adam's Rib (1949)	POS
Boomerang (1947)	POS
Cass Timberlane (1947)	MIXED
Cracked Nuts (1941)	POS
Criminal Court (1946)	NEG
Cry of the City (1948)	NEG
Daisy Kenyon (1947)	POS
Dark Corner (1946)	NEG
Force of Evil (1948)	NEG
Having Wonderful Crime (1945)	POS
He Married His Wife (1940)	POS
I Want A Divorce (1940)	POS
Intruder in the Dust (1949)	POS
Kiss of Death (1947)	MIXED
Knock on Any Door (1949)	POS
Lady from Louisiana (1941)	POS
Lady from Shanghai (1948)	NEG

Love Crazy (1941)	POS
Man Betrayed, A (1941)	POS
Man Who Talked Too Much, The (1940)	NEG
Meanest Man in the World (1943)	POS
Meet Me in St. Louis (1944)	POS
Miracle on 34th St. (1947)	POS
My Favorite Wife (1940)	POS
Night of Adventure, A (1944)	NEG
Nora Prentiss (1947)	POS
People vs. Dr Kildare (1941)	POS
Postman Always Rings Twice, The (1946)	POS
Reed Petite & Gone (1947)	NEG
Roxie Hart (1941)	NEG
She Couldn't Say No (1941)	POS
Smart Woman (1948)	POS
Strange love of Martha Ivers, The (1946)	NEG
Stranger in Town, A (1943)	MIXED
Stranger on the Third Floor, The (1940)	NEG
Talk of the Town, The (1942)	POS
Unfaithful, The (1947)	POS
Web, The (1947)	POS
Woman in the Window, The (1944)	POS

1929-39

Bordertown (1935)	NEG
Call It Murder (aka Midnight) (1934)	POS
Case Against Mrs. Ames, The (1936)	NEG
Case of the Howling Dog, The (1934)	POS
Crime Without Passion (1934)	NEG
Criminal Lawyer (1937)	POS
Evelyn Prentice (1934)	POS
Free Soul, A (1931)	NEG
Fury (1936)	POS
G Men (1935)	POS
Give Me Your Heart (1936)	POS
Good Fairy, The (1935)	POS
Hat, Coat and Glove (1934)	NEG
Judge Priest (1934)	POS
Lady by Choice (1934)	POS
Law In Her Hands, The (1936)	POS
Lawyer Man (1932)	POS
Manhattan Melodrama (1934)	POS

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Marked Woman (1937)	MIXED
Mr. Deeds Goes to Town (1936)	NEG
Mountain Justice (1937)	POS
Mouthpiece, The (1932)	NEG
On Trial (1939)	POS
Paid (1930)	NEG
Penthouse (1933)	POS
Platinum Blonde (1931)	NEG
Possessed (1931)	POS
Roaring Twenties, The (1939)	POS
Romance in Manhattan (1935)	NEG
Sadie McKee (1934)	POS
Smart Money (1931)	NEG
Society Lawyer (1939)	POS
State's Attorney (1932)	NEG
Star Witness (1931)	POS
Story of Temple Drake, The (1933)	POS
Stronger than Desire (1939)	POS
That Certain Woman (1937)	POS
They Won't Forget (1937)	NEG
Trial of Mary Dugan (1929)	NEG
Unashamed, The (1932)	POS

Born in Boston and raised in Maine's Kennebec Valley, Richard Dysart graduated from Emerson College and served in the U.S. Air Force during the Korean War. After the war, he earned a master's degree in theatre arts. His first acting break came with an off-Broadway role in Jose Quintero's revival of Wilder's *Our Town*. After that, he began appearing regularly on the New York stage. His Broadway debut was in *All in Good Time*. Other Broadway credits include *That Championship Season*, which ran for 800 performances and won the Pulitzer Prize and N.Y. Drama Critics Award, and *The Little Foxes*.

During the '70s, his interest shifted to feature films and he starred in such notable films as *The Hospital*, *The Hindenburg*, *Pale Rider*, *The Day of the Locust*, *The Falcon and the Snowman*, *Mask*, *The Thing*, *Wall Street*, *Back to the Future III*, *An Enemy of the People*, and *Being There*.

A partial list of his films for television includes *Churchill and the Generals*, *The Last Days of General Patton*, *Day One*, and *War and Remembrance*. Mr. Dysart has also lent his talents to notable programs such as *Blood and Orchids*, *Malice in Wonderland*, *The Autobiography of Miss Jane Pittman*, *Bitter Harvest*, *Sandburg's Lincoln*, *First You Cry*, and *Concealed Enemies*.

Today, Mr. Dysart is a premier stage and film star who starred for seven seasons as Leland McKenzie on *L.A. Law*. He received an Emmy Award for Best Supporting Actor in a Drama Series and was nominated on four other occasions. He is on the Board of Trustees of Gallaudet University, is a board member of the American Judicature Society, and has been a member of the National Support Committee for The Native American Rights Fund for more than twenty years. Mr. Dysart's free time is spent in Santa Monica with his wife, artist and illustrator Kathryn Jacobi Dysart. Their son, Arie Jacobi, is a sculptor in New York City.



## A Conservation With Mr. Dysart\*

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**Paul Joseph:** For many Americans, your *L.A. Law*<sup>1</sup> character, Leland McKenzie, is the prime example of what a lawyer, and especially a senior partner, ought to be. How did you develop the character of Leland McKenzie? Did you pattern him after any real lawyers? Is it important or necessary for an actor to have a real role model to work with when developing a character?

**Richard Dysart:** Leland McKenzie was quite an assignment. I had played a lawyer previously in a major PBS program<sup>2</sup> and I was able to approach that character from a historical point of view and check with people who knew the deceased attorney. That was a lot of fun. I had also played lawyers here and there on some network shows and in old plays.<sup>3</sup> But none of these characters required the intimacy that I wanted to establish with Leland McKenzie. Also, the intimacy had to be established within the demands of the scripts of the series. I read the pilot several times. I extracted what we learned about McKenzie, which was very little, and I had an appointment with Steven Bochco, the Executive Producer and writer, which was very interesting. Of course, he knew what I was interested in and gave me a little thumbnail sketch of the character, not even a thumbnail sketch.

**Joseph:** What did he say?

**Dysart:** Well, he went right into it. He said, "Leland is the senior person here and there's no doubt about it." He said, in effect, "don't be surprised if we don't know or learn as much about Leland as we know about the other characters," and I said, "well, I guess my function is different than theirs." And he said, "yes. Your function is to the script." He used the term "authority figure," but he changed that later and I don't recall what it was. It's not a good phrase. "Authority figure" sounds like "you shall not," and that's not what we wanted to achieve from Leland.

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\* On February 9, 1999, distinguished visiting Goodwin Professor, Richard Dysart, sat down for a conversation with 1999 Goodwin Professor, Associate Dean Paul Joseph.

1. *L.A. Law* originally aired on NBC.  
2. *CONCEALED ENEMIES*, Comworld Productions (1984).  
3. See, e.g., *BLOOD AND ORCHIDS* (1986); *THE PEOPLE VS. JEAN HARRIS*, RKO Television (1981) (playing Judge Russell R. Leggett).

Later, I thought how glad I was that I had spoken to him because on series television you have the same format of people all the time within all episodes. And characters don't change much on series television, because the audience doesn't want them to. It was nice to have all that concise information from my Executive Producer before we started so if I had to deal with individual directors down the line, I knew that I would be on good, safe ground if they wanted to say, "maybe he could juggle here" [laughs], not that they would. But, at least, to maintain the sovereignty of the character.

**Joseph:** It sounds like you are drawing on what kind of person Leland is, rather than specific traits that are lawyer traits.

**Dysart:** Oh, yes. Definitely. I wasn't even thinking of character at the time, Paul. I was thinking: "What are the demands of the show? What are the demands of the script? Who is Leland McKenzie in relation to the other characters and in relation to what he was going to be called to do?" That was my first duty. Then, that having turned out pretty much the way I thought it should, I was free to think of real lawyers I knew or knew of and I didn't have to go very far for that, so I felt comfortable within the framework of the pilot script and what I thought would be coming.

I think I may have mentioned to you—I know I mentioned to you—that I was so pleased to be part of the project because I loved the court battles that I assumed Leland McKenzie was going to have, you know, every week involved in different situations and different intensities, different colorations and it was going to be a tremendous challenge as an actor, as an individual, and as a television series lawyer. So time went by. We did five episodes and I hadn't been to court. So I saw Mr. Bochco one day and I said, in effect, "when am I going to court?" And he said, "do you want to go to court?" And I said, "yeah." He said, "well, senior partners very seldom go to court." I hadn't known that.

**Joseph:** He hadn't mentioned that to you?

**Dysart:** No, I had not done my homework. And I felt bad about that. Then, as the rigors of the assignment mounted up through the week after week, episode after episode, and I would see my fellow actors, my fellow attorneys, working deep into the night to go over these long summations that were no longer in their heads because of fatigue, I felt, "ok, that's good" [laughs]. Keep me away from court. Even so, I did go to court several times.

**Joseph:** One of the things that you are talking about in the development of the character was finding a *person* more than a lawyer, and my guess is that the writers were more interested in finding the *drama* than in necessarily finding the law. Did you have a sense of that? Do they pay any attention to portraying law accurately? Was that something on their minds?

**Dysart:** It was something very much on their minds. They sent us collectively in a bus down to the court house in Los Angeles. We were expected and ushered into several court rooms that were in session on different levels of the justice system.

**Joseph:** No wonder you thought you were going to court.

**Dysart:** Yes [laugh]. And that was just the physical thing of going to a court room and seeing the actual lawyers moving around within the system. But, beyond that, they didn't speak to me at all about the law and I don't know if they did to the other characters.

**Joseph:** Would concern over "getting the law right" have been something that went on more with the writers and producers and the legal consultant [Distinguished visiting Goodwin Professor Charles Rosenberg] than with the actors?

**Dysart:** Yes. And Chuck Rosenberg was indeed the consultant for the entire eight year run with the exception of the two-hour pilot.

**Joseph:** So if there were any ethical gaps in the pilot, he can disclaim responsibility?

**Dysart:** Yes, and he is not shy about coming forward and [laughs] disclaiming. But, that's true. And that's partly why they got Chuck.

**Joseph:** Do you know how Chuck worked with the writers? I think that people who are not involved in the industry probably imagine that writers write a complete script, send it over to a legal consultant and he says, "you have to do this or say that." When Chuck was here he suggested that it was a much more organic process, and I wonder whether you saw that at all?

**Dysart:** It was very fortunate that it was so organic. It was a great give and take. Some of those involved with writing the show were lawyers too. It was

not a situation where Chuck was working against the writers. Very seldom, early on, he did have to set things straight. The few times I think that happened involved California law and a writer who was not schooled that much in California law. Later on, when the good people left throughout the years, the good writers, who got promoted, Chuck was working with people that were more interested in fiction, and actually had no idea or very little idea of the law, despite what they said on their interviews.

**Joseph:** And it hurt the show?

**Dysart:** Oh, yeah.

**Joseph:** I think the critics had a sense that something important about the show had gone off-center.

**Dysart:** There were several changes in *L.A. Law* through the course of it. Major little jolts. And that was one—when the legal brains left and the fiction writers came in. And at that time, Chuck had to really get to work on those people. And he did very effectively by citing to them why [they could or couldn't do something] and also by saying, "what if?" And he gave them just a little idea of how they could accomplish what they wanted in a different way.

They knew of his knowledge, not in a power play way because it didn't work that way, but they were a little skeptical of him, but he won them over by suggesting to them how they could probably achieve what they wanted in a different way. Very unusual man.

**Joseph:** And, in fact, he was here last week.

**Dysart:** Yes.

**Joseph:** And he has another article in this very symposium.

**Dysart:** And he was the intermediary who called me first and checked out my interest in visiting Nova. That was very nice of him. And he probably told all my stories because he got here first [laughs.] Chuck's a fine man.

Now you asked if it was important and necessary for an actor to have a real role model to work from as he develops a character. I don't think so. Because you can trust the character isn't going to change too much, that the producers and writers aren't going to change an individual too much, you can trust that

and go with it. Of course in the first episodes you really don't know and a good producer who has enough faith in himself and his writers and concept, won't tell you, won't step on the actor's prerogative, won't implant in their minds the idea that, well, you have to do this or you have to do that. Trust keeps it more organic.

**Joseph:** I guess if the producer were saying to you, you know, "be like him," some real lawyer, it becomes just mimicry.

**Dysart:** Exactly. And if something goes wrong early on, and they look at the dailies of the work done that day, they just go to the actor and say, you know, try it this way. We'll shoot again. No problem. And they will guide that way.

I had several people that I knew in mind, but I didn't think in any way of imitating or copying anything physical or psychological about the folks. One was an old lawyer up in Maine who's been a good friend of my dad and is no longer with us. Another was a great Supreme Court [Justice], William O. Douglas. But I didn't copy them. They were just in my mind and that's the extent of using any other real individual.

**Joseph:** But I think the plots were sometimes taken from real cases and real trials.

**Dysart:** Oh, many times. In fact, just about all the plots or the court cases definitely were from files. West Publishing was extremely helpful in that regard. The backgrounds of the lawyers themselves, the writer-lawyers, were extremely helpful. And they would have sessions when they would just come in and bat ideas around, saying, "yeah, I remember this case." And then somebody would go look it up and take some of that or if it's a good story that could be modified into the demands of the show. So they had plenty of ideas. They always were there with ideas for stories. The difficulty there, and the genius there, I'd say, is the meld of the various stories that would be in each episode, usually three court cases, on different subjects, and the way of presenting those three cases so at the end of the program it wouldn't necessarily be the "A" story that is dominant. The others are there not just to fill up time. And it's the feeling that was left with the audience that the juxtaposition of those three cases fit. That was difficult to do.

**Joseph:** There was some sort of larger theme that each of the cases fit into?

**Dysart:** Yes.

**Joseph:** How much do you think television shows influence audiences as far as their perceptions of reality? Do viewers think that lawyers are like *L.A. Law* lawyers?

**Dysart:** My guess is that there isn't too much influence. The influence is probably more visible than just how the process of the law works or how a trial works. I've heard people say that they had to go to court for such and such a reason and they walk in and there are no glamorous people around. Where is Grace Van Owen (Susan Dey), where are these blouses, where are all the snappy witnesses in there?

**Joseph:** And the quick summations—as they whittle a case down to just a few sentences.

**Dysart:** That's right.

**Joseph:** And in real life the lawyers lay foundations forever.

**Dysart:** Yes. Well, judges all over the country were forever remarking on the competency of the people who wrote the summations and the judges themselves would see it in terms of a full case, saying, in effect, "gee, I wish lawyers in my court would do that."

But of course, finding the essentials and the dramatic areas of any story, any court case, and putting them into a crucible where it is melted down into its essence, you have to leave out a lot of the smaller points of the law that you do have to mention in your actual summations, you do have to tie up your strings and all that. But it was also possible to come up with summations and work backwards as a writer, and to build your story so that later in your summation you could emphasize.

**Joseph:** Lead up to that.

**Dysart:** Right. Exactly. So that there was a good meld of what the viewer had seen and heard in connection to the summation.

**Joseph:** There is a great debate right now, which Dan Quayle may have kicked off in a somewhat simplistic way, about the degree to which television viewing shapes attitudes and about whether writers, producers, actors and

networks should be held responsible for that. The debate raises issues of free speech, but also issues of personal restraint. What is your take on that? Is that something you have to worry about or is that something you leave viewers to sort out?

**Dysart:** Well, that is a very important area. I'll just say first off that Mr. Quayle, of course, has brought it up several times for no other reason except to get people riled up.

**Joseph:** As with the *Murphy Brown*<sup>4</sup> controversy?

**Dysart:** Yes. He had to retreat on that. If you work within the framework of the First Amendment,<sup>5</sup> you can express yourself without fear, or one would hope without fear, that people who don't like the story, who don't want to see whatever or hear whatever is necessary to tell that story are going to get angry with the network or with the producer for expressing that story just because they don't like it, and because it might not fit with their religious beliefs. Those people are constantly worried about what their children may learn: "Oh my God, my children may hear this, my children may see this." And therefore they don't want it on television. They seem to be unaware that it's their responsibility to look after what their children see and hear up until a certain area in that child's life. And to come down on anyone else's privacy or anybody else's choices on what they want to see or hear is really none of their business. You just can't take away people's rights just because you don't want to watch your children.

**Joseph:** If you could have changed something about *L.A. Law* or about your character, what would it have been? As producer for the day, what would you have done?

**Dysart:** As producer for the day, I would do very little. Let me just say I think they did a beautiful job. They knew that I understood the parameters of the character and his function. Not only on that episode and why it had to be maintained—contained—because of future episodes.

You know, something in acting applies in law as well. Actors and lawyers are very similar in some ways. One important thing is not to give yourself away by raising your voice if you are angered or if someone is really trying to push a

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4. *Murphy Brown* originally aired on CBS.

5. U.S. CONST. amend. I.

button. Because, if you lose your strength, you lose the power that you are trying to use to build your case or your character as a lawyer, and once it's gone, it's very difficult to get back. And it always seems to me, as an actor, as I'm sure it does for a lawyer, that less is best.

As far as being the producer for a day, well, I suppose I could tell you all kinds of marvelous plots that should have involved Leland McKenzie.

**Joseph:** Leland gets to go to court?

**Dysart:** Leland did get to go to court several times and Leland was a great believer in and fosterer of alternative dispute resolution. We had several alternative dispute cases and Leland served as the, I don't want to say judge, served as the central character there, in relation to decisions. But the ones that they selected to do were all very funny and a bit preposterous. And that worried me because I thought, well, that alternative dispute resolution is very serious stuff and it's going to play a big role in the profession in times to come and by making the cases a little silly are you not denigrating the process, you know, to build up in the audience's mind the fact that, oh yeah, that's the way of doing things, to laugh it off. That's not a big point at all. I am sure alternative dispute resolution is doing whatever it's going to do as a process now, whether *L.A. Law* handled it one way or the other.

The thing is you do get a little ingrown when you play these television characters for the long run. You live with that person a long time.

**Joseph:** You are protective.

**Dysart:** Exactly, thank you, very protective. And sometimes overly protective, and you go and split a hair about, well, that person, I don't think I'd do that. This is never the way to express it because anybody could do anything. Yes, very protective.

**Joseph:** Is there anything that is technically difficult about playing a lawyer as opposed to some other character?

**Dysart:** Talking heads.

**Joseph:** Talking heads?



**Dysart:** Well, you are sometimes limited. If you are in court, there are limitations on the way you can go, the speed that you use to get there. Court cases are more of a head trip in nature than physical action, for the most part. Then there is the question of the actor's memory. Say, an actor is shooting three scenes in a day, or rather, he's going to be working very heavily during a day in the same courtroom in front of the same cameras, the same story, but the final scene that's going to be shot is the summation. Well the actor has diligently prepared, has learned all this information prior to showing up for work. He has done it in such a way that he's sure that it's in his head—her head. But after being there for twelve to fourteen hours and that scene is coming up, and if there is legal language involved, that one may not be too familiar with, though we did familiarize ourselves with terminology, it's very difficult. And sometimes they have to do quite a lot of takes before you get it just right with the intended energy and the smoothness. But such is an actor's job anyway.

**Joseph:** Did *L.A. Law* care whether the legal community liked what you were doing?

**Dysart:** Oh, Paul, let me tell you, yes indeed. That was one of the foremost desires of everyone connected with Mr. Bochco's show. We wanted to make sure of the clarity of things so that nobody could take the show apart later for not being truthful to the process or the laws that were going down.

After we had been on awhile the public was giving accolades mostly to the actors. Many people in the public really believe that the actors go to work in the morning and they say these things, they just come down from heaven somehow, and these lovely words happen. That the words just come to them, just like that. They don't usually think of what the writers have done. But the lawyers around the country understood and rallied to *L.A. Law*, right off. There were a number of reasons for that but one was that the writers followed the law, because they knew the law, because they were able to integrate the stories and the characters into the court case without stepping on the law.

**Joseph:** You know there are a number of legal shows on the air today. Some of them are written by David Kelley who was a writer for *L.A. Law*. I am wondering whether you watch any of the recent shows like *Ally McBeal*<sup>6</sup> and

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6. *Ally McBeal* originally aired on FOX.

*The Practice*,<sup>7</sup> which are David Kelley shows, or *Law and Order*<sup>8</sup> by Dick Wolf. If you do, what do you think of them in comparison to *L.A. Law*? And if you don't watch them, why not?

**Dysart:** [laughs] Well, you saved me a long process. I love David Kelley. David Kelley was with *L.A. Law* from the very beginning. He became a brilliant writer with *L.A. Law* and guided the fifth season himself; guided, wrote, produced the entire fifth year himself and wrote, I must say, very well for Leland McKenzie. He enabled me to pick up an Emmy for my work that year. To answer your question, I just don't watch television. I watch, well, I shouldn't say that. I watch one show, I watch *NYPD Blue*,<sup>9</sup> because it's a Bochco show and because I had quite a number of friends who were in it, some are still there. But I have sort of fallen away from that. I like things that are live. Anything that isn't going on pretty close to being live I don't care anything about. I watch C-Span, sports, much less than previously in my life, sports don't interest me much anymore. And that's pretty much it. Oh, Julia Child's reruns—they hold my attention.

**Joseph:** Some members of the Law Review commented that you seem to have an affinity for the legal system. It goes beyond the character. Do you think that's accurate or is that just people connecting you with the character?

**Dysart:** It's probably both. I have never had any desire to be connected with the law [as a lawyer]. A lot of my friends back in the fifties wanted to be lawyers or dentists, it sort of broke down that way. Neither craft [n]or profession appealed to me at all.

But some things have appealed about the law. I got involved twenty years ago with an organization called Native American Rights Fund ("NARF")<sup>10</sup> which is really not a fund. It is a Native American law firm, centered in Boulder, which has done amazing things within the law system of the United States. It's introduced tribal laws, revised tribal laws for people, helped various tribes establish tribal government and done a lot of things in native rights and

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7. *The Practice* originally aired on ABC.

8. *Law & Order* originally aired on NBC.

9. *NYPD Blue* originally aired on ABC.

10. The Native American Rights Fund is a not for profit organization that provides legal representation to Indian tribes and organizations. For further information on the organization, see *Native American Rights Fund* (visited Feb. 6, 2000) <<http://www.narf.org>>.

particularly with treaties, discovering old treaties that were not kept, such as that. And their work appealed to me for a number of reasons, I guess, primarily because I liked the people who were doing it, John Echohawk and the whole group there. Just wonderful people and dedicated way back to getting young Native Americans into the law schools of the United States. Getting them out into helping the people on the reservations and to join NARF as well. I've always liked the way they went about their work. Still do.

**Joseph:** You are also on the board of the American Judicature Society.<sup>11</sup> Did that come out of *L.A. Law*?

**Dysart:** That sort of came out of *L.A. Law*. One time on the set, waiting to film in my own office on my own desk I was just sort of sitting there mumbling my lines or whatever I was doing. And I looked over and the set dressers had decorated my desk and there was a copy of this magazine so I picked it up and read it and it was called *Judicature*.<sup>12</sup> And it was the magazine of that organization and there were some interesting articles in there. Later, I joined so I could get the magazine. That was the start of my membership with the association. Now I serve on the Executive Committee of the Board.

Years later, just before the second Simpson trial, I was with a group of people and someone said, "you know, this second case, I don't know how they are going to find enough people to make up a jury of people who have no opinions on this." And another individual broke in and said, "well, you know we don't need juries anymore in this country. We have polls now."

Well, that sent a shiver up my back because there was an example of popular culture selling out the justice system and that's a fear of mine, actually. But it was that remark that said, oops, maybe there is something more I can do here. That is when I got more active in the society.

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11. The American Judicature Society is an organization established to maintain the independence and the integrity of the courts, while increasing the public awareness and understanding of the judicial system. For further information on the organization, see <<http://www.ajs.org>>. *American Judicature Society* (visited Feb. 6, 2000).

12. See *American Judicature Society* (visited Feb. 6, 2000) <<http://www.ajs.org/judicature1.html>>. The publication is indexed in the Index to Legal Periodicals, the Current Law Index, the Legal Resources Index, the Criminal Justice Periodical Index, and the PAIS Bulletin. *Id.*

Years before that, early in *L.A. Law*, I had my own pro bono campaign that I did around the United States attempting to persuade lawyers to give more of their time and their energies and their minds to helping the confused and the disadvantaged. And I like to think that I contributed something.

**Joseph:** The agency that did the campaign must have thought that lawyers would respond to “Leland McKenzie” telling them to go out and do pro bono.

**Dysart:** There really wasn't an agency involved, just me. I am very proud of that. I sort of conducted it that way. I was the one who ran it because I did it myself. I made all the contacts with the various law organizations in the United States and said that I would do thirty second promotional spots for pro bono law and at the same time I would speak at their associational meetings and this was all pro bono on my part but I would maintain control over what I said, of what the content would be. Organizations have a tendency to blow their own horns, so to speak, but with only thirty seconds there is not enough time to blow their horns and get the message out. So my message was aimed at the lawyers themselves and also at their clients who might just say, “by the way, counselors, do you do any pro bono law?” At least it would require an answer. So I hoped it had something to do with that. I covered about thirty states and twenty-five to thirty bar associations. I spent one whole summer going around and doing that. They just had to supply me with coach transportation and a place to sleep and a little grub and I'd fold my tent and move on to the next state. I enjoyed doing that.

**Joseph:** Even though you were doing the ads as Richard Dysart were you doing them in Leland's voice?

**Dysart:** Well, Leland's voice is pretty much the same as mine. I realize that I had to establish a voice for him, different than mine, quite subtle, not very different. I got to the point where I didn't have to think about it. You know, you put on the clothes and everything else. I actually did choose a specific voice but I didn't copy it. I developed the quality of the voice and the crispness of delivery of General Dwight Eisenhower and that in itself lent a certain authoritarian command to Leland.

**Joseph:** Do you miss that character or once you've been a character are you are happy to let him go?

**Dysart:** Well, no, I didn't let him go. He's around. I like Leland very much. I had a little difference of opinion with the producers, at the end of *L.A. Law*. They wanted to symbolize the death of McKenzie Brackman, the death of the firm, with the death of the senior partner. I didn't want to die. I did not want that to happen. I also thought it was a lousy dramatic treatment, just a very easy way out of something. But also if they were to have any reunion shows, I wanted to be there. So they said, we'll make him very sick. They did and put him in a sort of dying mood but he wasn't dead and he didn't die.

**Joseph:** I wanted to ask you that question because there is this tendency now of making movies out of former television shows. I am thinking of *The X-Files*,<sup>13</sup> *The Brady Bunch*,<sup>14</sup> and *Star Trek*,<sup>15</sup> so if they ever decided to make an *L.A. Law* movie are you ready to go? Would you be interested in that?

**Dysart:** You are talking about a movie. I am thinking about a made for television film of whoever is left from the cast. I guess everybody is. I don't think they'd make a regular feature film.

Well, I don't know why not. I don't know why not. I'd feel very bad if they did one without me, let me put it that way. Sure, I'm ready.

**Joseph:** I can also imagine that it would be very interesting to have Leland pop up on *Ally McBeal* and read Ally the Riot Act because she is so out of control. I can see Leland saying, "you've got to get hold of yourself, you know, you've got clients here and you are not serving them well."

**Dysart:** That's fine for *Ally McBeal's* point of view. And it would be sort of using McKenzie Brackman. The producers of *Ally McBeal* don't own Leland and I don't know what the legal thing would be of just having him float out. I am saying this defensively Paul, because I don't want to do series television. Particularly I don't want to be a guest star dropping in. It just doesn't interest me.

**Joseph:** It sounds like there's also a little bit of protecting the character of Leland McKenzie.

**Dysart:** I am very protective. Very protective.

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13. 20th Century Fox (1998).

14. Paramount Pictures (1995).

15. DesiLu Productions (1991).

**Joseph:** You feel that with *L.A. Law* there is a body of work that stands on its own?

**Dysart:** Exactly.

**Joseph:** What was your favorite *L.A. Law* story line?

**Dysart:** There were any number of them. There is one involving Leland that I liked very much. In fact it involved Leland going to court. Usually the first scene of an episode was the conference room scene and that served a marvelous purpose because it told the audience what was going to happen during the hour, who was going to be doing what, and the audience felt very comfortable with that.

Well, in this particular episode, in the conference room scene, we discover that an attorney is ill, cannot go to court for a case that he has that day, an age discrimination case, so somebody had to go.<sup>16</sup> No one else was available, so they said, "it's up to you, Leland. You are the only lawyer around." And Leland said, "no, no. I couldn't do that." Later on, I guess Kusak (Harry Hamlin) says, in McKenzie's office, "Leland, you got to do it. You're the only one." And Leland says, "no. I'll tell you very frankly. I'm afraid I'd blow it. My hearing is not good and I'm afraid I wouldn't hear something." And Kusak said, "didn't you get some hearing aids?" And Leland says, "yeah. They are right here in my drawer." And Kusak says, "well, shove them in your ear, Leland. Go to court." Leland did and won for his client an age discrimination case that involved his client being fired because he was coming to a certain age where he was going to be collecting various pensions from various health plans and it was going to raise their rates and all that kind of stuff. Well, Leland won for him, and in so doing won a great battle for himself.

**Joseph:** There is a crossover between the court case involving age discrimination and having the senior partner, who doubted his own ability due to his age, going out and winning.

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16. *L.A. Law* (NBC television broadcast).

To change the subject, I guess I have to ask you, because I am sure everyone asks you, about the Rosalind Shays (Diana Muldaur) elevator episode.<sup>17</sup> Did you like that episode?

**Dysart:** [laugh] Well, I don't have an attorney here to represent me at this interview. Yeah, I did. I liked the drama of it.

The character of Rosalind Shays was brought in to provide conflict within the firm. And that fell on Leland McKenzie's shoulders, even though he did not invite it and was not the type of administrator or personality who would. But the character of Rosalind Shays was something else again. She was what you call a lightning rod. She attracted business. She had a lot of business follow her when she came. She wanted to become senior partner of the firm. McKenzie found himself in a position where he had to defend himself and defend the firm. He stepped aside and after stepping aside started a campaign to win the firm back. And that he did. He won the support of his partners again. In the process of that, he and Rosalind had an affair that the audience didn't know about until the Christmas show, in the fifth season, where Rosalind and Leland were discovered in bed.<sup>18</sup> Well, it had happened several hundreds of times in the show previously, but not to Leland. And the outcry from the audience around the country was really something. They said, "enough!"

**Joseph:** You were going to bed with a viper.

**Dysart:** Yes, a viper. Great viper! What has she done? She's trapped him into bed. Well, it wasn't long after that the famous elevator scene took place, in which Leland and Rosalind left the office together, talking, waiting for the elevator. The elevator door opens, Rosalind stepped in and there's no elevator. Well, that doesn't happen every day in contemporary well-built skyscrapers. But it did in that one and Rosalind got the shaft.

**Joseph:** How did the viewers respond to that? Were they happy to see her go?

**Dysart:** Yes, they were. But I don't think they gave thought to the idea that she was a character who was supporting the drama at the time. I thought she had more play in it. I was called in by the producers, incidentally, before that

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17. *L.A. Law* (NBC television broadcast).

18. *L.A. Law* (NBC television broadcast).

storyline started and told that this whole big disruption was coming to the firm. But don't worry about it. [laughs] I judged from that that I wasn't going down an elevator shaft. But anyway. No. I was just aware that . . .

**Joseph:** Did Leland push her?

**Dysart:** [laughs]

**Joseph:** There are rumors.

**Dysart:** Oh, Mr. Joseph. I'll tell you. Yes, there are rumors. They've been circling around and any number of people have asked me that. I said to the director of the episode when we came to film the elevator scene. I said, please, show both my hands at all times. Well, of course we couldn't do that. I wasn't serious about that anyway. But I did feel the obligation [laughs]. No, Leland didn't push her. But, my goodness, there are so many cynical people in this world that judge straight up and swear that he had.

**Joseph:** Let me ask you a harder question. Since you know Leland McKenzie better than anybody, how did Leland feel about her going when she fell down? Was there any part of him that was just happy to see her go?

**Dysart:** Yes. The way Leland phrased his description in the conference room scene in the following episode was a giveaway to his true feelings. His description of the horrible event, although said in great sorrow and shock, was rather bloody and coldly dramatic.

Anyway, for Leland it's solved a lot of problems. He didn't push her. I didn't push her. And there is no fault there. The firm probably had quite a legal case with the owners of the building and Rosalind's family and such. And I believe she left some money to Leland.

**Joseph:** But also remember Leland had just told her it was not going to work out romantically.

**Dysart:** That's right.

**Joseph:** Seconds before she turns and falls.

**Dysart:** That was the content that led us to going out to the elevator. There is something else in relation to Rosalind that was very important. She was a



secondary character written in, in the middle of the run to fulfill a function for a few episodes. Diana Muldaur acted so well, she had the whole country talking. Well, that's good. And then her demise, the need for the character was over. Job completed.

When the show went off the air, *Newsday* ran a big article on the show.<sup>19</sup> And they graphed out the history of *L.A. Law*.<sup>20</sup> I am sure it's in some archives somewhere. High-points and low-points. The high point of the eight years was the elevator shaft. From there on the graph slowly descends. Such is the nature of episodic television.

**Joseph:** Was that a David Kelley creation?

**Dysart:** Yes, that was on David's watch. I never did look at what they call the bible, the bible being kept in a safe somewhere, the bible being the overall story line that Mr. Bochco had devised long before.

**Joseph:** And it contained summaries of the characters, things that the writers could use to see what the basic relationships were.

**Dysart:** Yes. And to keep the drama flowing. He probably, I don't know, I didn't see it. But I imagine that Bochco had called for conflict within the firm. Everything is based on conflict.

**Joseph:** I think if I am not mistaken that you are good friends with Diana Muldaur.

**Dysart:** Yes, for many years.

**Joseph:** And you mentioned that she did not know she was going down the elevator shaft until she saw the script for that episode. Is that a normal way to do that? Why was that the way it was done?

**Dysart:** My public feeling is that you have to realize that rejection is the most difficult thing for an actor to encounter. It comes along particularly early in the career, as it does for most people in their careers. But for actors it's a personal judgment and the actor has to take it as that. Although the fact may

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19. Gene Seymour, 'L.A. Law: The Final Verdict After Eight Years; Guilty of Overstaying its Welcome, *NEWSDAY*, May 15, 1994, at 20.

20. *Id.*

be that the actor is not tall enough, the star is shorter than they are or for whatever reason. But it is a rejection. So, in a sense, Rosalind was being rejected. Her task within the project had been completed.

**Joseph:** Thank you very much and so long.

**Dysart:** And so long. And it was done in a dramatic way so that it would really grab the American public.

**Joseph:** Did you think maybe an actor would feel that this was a high point—to go out in a way that everybody remembers?

**Dysart:** I would think so. I know of a little opposite story. I know of an actor who was working in a television series who lived in another part of the country far from Southern California. And they had to fly this actor to the set and when the actor didn't work for a week or so, they had to fly him home again. And it was expensive and it was also a pain because the actor was not physically there to talk to and so on. And finally this actor decided he wanted to do something else and they said, "it's too bad, but it's alright with us." And he died on the show. The character died and they showed him on the gurney being taken out of the house in a bag with a zipper. He was laying there. All the cast members took a look and then an extra came along and zipped him and then sent the bag home. That's heavy.

What happened with Diana Muldaur was quite different. But it was terribly shocking, I am sure, when she read that in the script. I was shocked to read it. What Diana welcomed was the opportunity to go home and complete her new house on Martha's Vineyard. See? Rosalind was rejected—shafted—and Diana was freed.

**Joseph:** Nothing that would have prepared you for that. It was such a moment.

**Dysart:** And it was filmed in such a way that it became a shock for the audience.

**Joseph:** She turns and goes.

**Dysart:** Yes.

**Joseph:** Do people ask you for legal advice?

**Dysart:** Yes, it has happened once, and that's once too often, I must say. That happened in my own neighborhood in Santa Monica. I was walking my dog and a woman that I would often meet walking her own little dog, an elderly lady who owned an apartment house stopped me one day and said "I am having an awfully difficult time with one of my tenants." And asked me for advice on how to deal with it from a legal point of view! What were her rights? What were her tenants' rights? And I said, I don't know, Lady. You better get yourself a lawyer.

**Joseph:** "I thought I did!" She said, "I thought I did! I am talking to you!"

**Dysart:** [laughs] She didn't say that but that was her thrust.

**Joseph:** You are also invited to speak before lawyers' groups around the country.

**Dysart:** There is a very close relationship between the two professions, the two crafts. Both actors and lawyers are involved in role playing. Everyone's involved in role playing. But actors and lawyers do it within their work, they do it everyday and lawyers I think, even more than actors, are aware there is an affinity. Many lawyers I've spoken with over the years said, "you know, I used to do theater work in college." There is a performance. A lawyer is performing.

**Joseph:** Would it make sense in law schools to teach an acting course for lawyers?

**Dysart:** An acting course for lawyers. Yes, to a degree.

**Joseph:** To become more intentional about what they are doing . . . .

**Dysart:** To become aware of themselves doing it. And I intend to speak to that tonight to your class. The ability to get up on your feet and talk and express yourself is invaluable to a lawyer. And the easier that they can do it the easier it is on the jury. And the more simpatico would be the jury. Oh, I think it would be invaluable. You'd be surprised at the number of actors who cannot walk and speak memorized lines at the same time!

**Joseph:** The Law Review has done some research and I think found a series of court cases in which the appellate judges had actually cited *L.A. Law* for

some proposition.<sup>21</sup> Does that please you? Do you think it would please Steven Bochco?

**Dysart:** [laughs] One in particular really gets me. I forget his name, Frozen Foot, he had a very odd name.<sup>22</sup> And he was in all kinds of trouble, petty crimes.<sup>23</sup> And he had gotten on a plane and flew to Los Angeles with some stolen property.<sup>24</sup> He was sent back with the property.<sup>25</sup> And somebody said, "why did you go to Los Angeles?" He said, "[I was going] to act in *L.A. Law!*"<sup>26</sup>

**Joseph:** In his mind.

**Dysart:** In his mind he probably was.

**Joseph:** If you were given the opportunity to play either a doctor or a lawyer on television, which one would you choose? Which one is the more interesting character?

**Dysart:** Oh, I think the lawyer, by far.

**Joseph:** Why? Because there is so much in these medical shows today are very, do this and that?

**Dysart:** Yes, that. Electrocute him! Put those things on the chest so the audience can see him jump involuntarily! That's part of the problem, incidentally, medical shows have created problems for themselves. With the fast cutting of these emergency cases. They can't let down. The energy's there. And any medical show that comes along in the future that doesn't do the same razzmatazz is going to have a difficult time. People don't listen anymore, it's all visual. Besides, who wants to spend their career with a mask over their face?

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21. See, e.g., *Utah v. Holland*, 876 P.2d 357, 362 (Utah 1994); *Fast Horse v. Class*, 87 F.3d 1026 (8th Cir. 1996).

22. *Fast Horse*, 87 F.3d at 1026.

23. *Id.*

24. *Id.* at 1028.

25. *Id.*

26. *Id.* at 1029.

I'd rather play a lawyer than a doctor and I have played some interesting doctors in films. I think a lawyer is more available than a doctor. I think there are more areas of the human condition which a lawyer can address.

**Joseph:** Doctors have this distance from their patients.

**Dysart:** There is a distance from the patient, distance from the patient's relatives and such that has to be. And doctors are involved with people who are ill. That's a given. And lawyers are involved, not necessarily, with people who are ill.

**Joseph:** When you look at all the roles that you've done, I'll be very curious to know what your favorite role is. Of all the different things that you've done which one do you look back on and say, "that's the one I had the most fun with?"

**Dysart:** Of course I had a lot of fun with Leland McKenzie, but that was an eight-year series, 178 episodes. I was always looking for variant ways to be Leland. It's a hard question to answer because I always think of the story, not necessarily the character. Most actors, I guess would look at it the other way around. Well, *Being There*<sup>27</sup> was my favorite. But, you know Paul, there was a time when I would have answered a question about my favorite role by saying, "the next one."

I enjoyed playing Dr. Robert Allenby in Jerzy Kosinski's *Being There*,<sup>28</sup> with Peter Sellers. To this day that it's a brilliant, brilliant film. It got squashed a bit at the time. It was made, what, in 1979, we made it 78-79. It was a dark comedy that was so against television, or at least the people who ran television thought so, thought it to be a great threat, and within the film industry as well. They did not give it fair shift. Didn't treat it to its best advantage. Because, we know why. Also the writer, Jerzy Kosinski created a troubling situation for himself by agreeing to have an additional writer brought in to put some humor into the script. Then, after the production was finished and the film was being put together, he demanded that only his name appear in the credits as the writer. He won, money, of course, being the factor. And the other individual, who did marvelous things for that script, withdrew. Of course all the writers in town, in the industry, were aware of what had happened, and they were not

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27. Lorimar Film Entertainment (1979).

28. *Id.*

about to vote Kosinski for best screenplay. Mr. Kosinski's ego would not allow him to think ahead.

**Joseph:** It was certainly one of the more individualistic films, not like other films.

**Dysart:** It's true. And Kosinski himself did not think it could be filmed. Sellers talked him into it. Persuaded him. Followed him three years almost. Anytime they were in the same city, Paris or London or wherever, Sellers would find out if he was there. He'd send him a small gift and say, "hi, anytime you say!" I enjoyed working on that film. I enjoyed creating that character because it was only mentioned in the novella. He was made pivotal to the film. They realized that the audience, the viewing audience in the movie theater, might not accept this "black comedy." They needed somebody present in the story that the audience could trust and go along with. And Dr. Allenby, you know, let the audience know that it was okay to laugh at this. Just a little smile can release them, to say, "this is funny," and to go with it. I enjoyed that challenge very much.

**Joseph:** In *L.A. Law*, rumor has it that in order to shoot the conference room in *L.A. Law* they cut the conference table in half. Is that accurate?

**Dysart:** Well, that's very accurate. The table was how long, I don't know, twenty feet?

**Joseph:** It was big.

**Dysart:** It was huge. And at its widest point it was probably not quite five feet wide. The side of that room made it impossible for more than one camera to be there. It was an extremely tedious all day job to shoot those few pages. They cut the table in half, so that they could separate it when they wanted to. It would allow two cameras to come in right there at the base of the cut. Two cameras saved much time. It was done to suit the capital, as most things are in television.

**Joseph:** Finally, I want to ask you. What have I not asked you that you wished I had asked you? Is there anything?

**Dysart:** Well. Right offhand my mind doesn't register that. But can I take a rain check?

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*Dysart*

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**Joseph:** Absolutely. Thank you very much.

**Dysart:** Yes, Sir. Thank you.

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## *Pleasantville*: An Essay on Law, Power, and Transcendence in Our Cultural Mythological Past<sup>\*</sup>

Paul R Joseph

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### I. INTRODUCTION

It will be recorded that, in the waning decades of the twentieth century, in that part of the globe called the United States of America, a segment of the population labeled "baby boomers" and its offspring were hit by a wave of nostalgia for that period known, somewhat inaccurately, as "The Fifties."

It mattered not that many of those hit by the wave of nostalgia were too young to remember "The Fifties" with any degree of accuracy (or in some cases at all), because the nostalgia was not for the real time period but rather for "the fifties of the *mind*," a period which runs roughly from the end of World War II until the coming of the Beatles.

In the imaginative nostalgia which believes that popular culture images are true, "the fifties of the *mind*" is "remembered" as a golden age of simplicity, peace, prosperity, and community. It is a time before the activism of "the sixties of the *mind*,"<sup>1</sup> a time when America was still one country, indivisible, under God, when men and women approached each other secure and accepting of their assigned roles as daughter, wife, mother, son, husband, and father. Life was simple because the problems which plague us now were, in our imagination, absent.<sup>2</sup> Conflicts regarding race,<sup>3</sup> gender, sexual orientation, age, religion, and class lines simply did not exist.<sup>3</sup>

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<sup>\*</sup> This essay was originally written for the upcoming book, *Screening Justice*. Permission for first publication is gratefully acknowledged.

1. For Americans, the "the sixties of the *mind*" is, itself, not synonymous with the calendar decade, but rather is a period that extends roughly from the arrival of the Beatles in the United States through the early 1970s.

2. This point is made in the movie, *The American President*. Columbia Pictures (1995). In the film, a liberal President (Michael Douglas) becomes the target of personal

Life in “the fifties of the *mind*” mirrors, to a large extent, images from popular culture, including movies and television such as situation comedies.<sup>4</sup> The picture of life in that era presented in popular media is centered around stable, two-parent, suburban families in which divorce was unknown, sex was confined to the marital bed or, indeed, two well-separated twin beds, and was a private matter about which it was unnecessary to speak.<sup>5</sup> Of course, a healthy interest in the opposite sex was assumed and even expressed in wholesome ways. When a handsome boy walked a pretty girl in her poodle skirt home from the prom, “it” was there, but so muted that it appeared as romance alone—without any expectation of actual consummation, if for no other reason than the certainty that the girl could be counted on to say “no.”

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attacks by a conservative opponent (Richard Dreyfuss). *Id.* Eventually, the President responds at a news briefing:

I've known Bob Rumson for years and I've been operating under the assumption that the reason Bob devotes so much time and energy shouting at the rain was that he simply didn't get it. Well, I was wrong. Bob's problem isn't that he doesn't get it, Bob's problem is that he can't sell it. We have serious problems to solve and we need serious people to solve them. And whatever your particular problem is, I promise you Bob Rumson is not the least bit interested in solving it. He is interested in two things and two things only. Making you afraid of it and telling you who's to blame for it. That, ladies and gentlemen, is how you win elections. *You gather a group of middle-age, middle-class, middle-income voters who remember with longing an easier time, and you talk to them about family and American values and character and you wave an old photo of the president's girlfriend and you scream about patriotism you tell them she is to blame for their lot in life and you go on television and you call her a whore.*

*Id.* (emphasis added).

3. DAVID HALBERSTAM, *Preface* to *THE FIFTIES* x (1993). “Three decades later, the fifties appear to be an orderly era, one with a minimum of social dissent. Photographs from the period tend to show people who dressed carefully: men in suits, ties, and—when outdoors—hats; the women with their hair in modified page-boys, pert and upbeat.” *Id.*

4. STEPHANIE COONTZ, *THE WAY WE NEVER WERE: AMERICAN FAMILIES AND THE NOSTALGIA TRAP* 23 (1992) “Our most powerful visions of traditional families derive from images that are still delivered to our homes in countless reruns of 1950s television sit-coms.” *Id.*

5. HALBERSTAM, *supra* note 3, at 140. “The original version of *The Invasion of the Body Snatchers*, noted writer Ron Rosenbaum, was ‘about the horror of being in the ’burbs. About neighbors whose lives had so lost their individual distinctiveness they could be taken over by alien vegetable pods—and no one would know the difference.’” *Id.*

There were rules back then, carefully handed down from wise elders to the young.<sup>6</sup> There was comfort in knowing “what was what” and how things were. People were as they were “supposed” to be. Indeed, this feeling of contentedness came from more than rules. Those in authority were secure in their unquestioned *right* to set the rules. The sixties slogan, “Question Authority,” would have seemed out of place and strange. People were comfortable with the ease of mind which comes from knowing one’s place in the world. Everyone was satisfied and everyone “got along.”

## II. COMMUNITY AND “THE OTHER”

“The fifties of the *mind*” was a time and place where people lived in harmony with each other, in which each person had a place in the social order and was happy with that place. It was a place without strife or social conflict. It was a homogeneous community.

Community can be a benevolent force. Community “brings people together.” The sense of being a part of something and of sharing commonality with others can be powerful and good. Yet, there is another potential side of community which is far more troubling. If community offers its members social interaction as a part of something larger, it also offers protection, security, and safety. But it must be asked, safety from what?

Communities generally define themselves by what they have in common.<sup>7</sup> Shared values and ideas or shared customs may be part of that mix.<sup>8</sup> Sometimes the community’s definition includes a shared religion or perhaps a shared race.<sup>9</sup> By the nature of definition, defining a community by what is shared and common, by what is homogeneous, requires the identification, the naming and labeling of what is not part of the community.<sup>10</sup> Perhaps inevitably, that which is “us,” the community, will be seen as good, and perhaps better than, what is not “us.”<sup>11</sup> There is the

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6. Messages of “right living” were also promulgated through the schools, especially in films shown to school children. In *Mental Hygiene: Classroom Films 1945–70*, author Ken Smith examines films such as *Dating Do’s and Don’ts* which taught school children how they were supposed to behave. See KEN SMITH, *MENTAL HYGIENE: CLASSROOM FILMS 1945–70* (1999).

7. See generally Iris Marion Young, *The Ideal of Community and the Politics of Difference* in FEMINISM/ POSTMODERNISM 300 (Linda J. Nicholson ed. 1990); Paul Joseph, ‘Our Town’ or ‘Twin Peaks’: *The Dark Side of Community*, in VI *Focus on Law Studies Teaching about Law in the Liberal Arts* 1 A.B.A. (Fall 1990), at 5.

8. See Young, *supra* note 7, at 311.

9. See *id.*

10. See *id.*

11. See *id.*

community and there is the "other."<sup>12</sup> This process of identifying what or who is or is not the community may not always be a benign process.<sup>13</sup> In fact, it can manifest itself in hostility to and aggression against the "other."

Racism, ethnic chauvinism, and class devaluation . . . grow partly from a desire for community, that is, from the desire to understand others as they understand themselves and from the desire to be understood as I understand myself. Practically speaking, such mutual understanding can be approximated only within a homogeneous group that defines itself by common attributes. . . . Such common identification, however, entails reference also to those excluded. In the dynamics of racism and ethnic chauvinism in the United States today, the positive identification of some groups is often achieved by first defining other groups as the other, the devalued semihuman.<sup>14</sup>

While some communities define their sameness broadly enough to include and therefore to accept, or at least tolerate, a large measure of deviance, others do not. To the extent that a community defines itself by perceived shared traits among its members, and to the extent that these traits are very narrowly defined, even relatively small deviations from the norm may be perceived as endangering the stability, and indeed the survival, of the community itself. In the face of such a perceived threat the most extreme measures may seem to be justified.

The "threat" of deviance may be perceived to be particularly serious when the "deviant" claims to be part of the community itself. The threat is perceived to be so high because, if the "deviant's" claim is accepted, then one of the defining aspects of the community itself must be abandoned. The community must either change, or bring the deviant back into conformity, or expel the deviant from membership in the community.

### III. THE POLITICS OF "THE FIFTIES OF THE MIND"

This general description of the community versus the "other" explains the emotional power of defining a person as being part of the group as opposed to being an outsider. The power may be particularly strong, and particularly dangerous, when images of community and the "other" become part of the political discourse, that is, when politicians heighten awareness

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12. *See id.*

13. *See Young, supra* note 7, at 312.

14. *Id.* at 311–12.

and tension between those who they identify as part of the political and social community and those who are identified as the "others." The "others" are often a minority lacking economic or political power. Yet, as they are identified as alien to the community, the powerful majority comes to fear and then to hate them. This can lead to repression, violence, and genocide.<sup>15</sup>

Even where the results are not so extreme, they can be very serious. In the United States, as well as in other countries, waves of anti-immigrant sentiment have periodically been a part of the political landscape. White politicians in the South routinely played whites off against blacks.<sup>16</sup> John Kennedy's Catholicism was an issue in his 1960 presidential campaign. George Wallace, David Duke, and Patrick Buchanan are examples of modern age politicians who practiced politics of division and whose views raised both anger and fear among minority communities.

The same dynamic can sometimes be seen in our mainstream political discourse. It comes as no surprise that clashes of cultural values which seek to identify the good American from "the other" have occupied a significant, some might even say preeminent, place in American politics of late. Some have labeled recent political differences as "culture wars." What is striking is the anger expressed and the personal demonization of one's political opponents. Whether the issue is abortion or affirmative action or free trade, there seems to be a tendency to identify one's opponents as evil, as alien, as "the other." The two sides present sharply contrasting visions of America's past and its present. Each vision seeks to define the "true" American community and each, in the process, seeks to define the other as "out of the mainstream," as "the other."

The "liberal" or "Democratic" vision suggests that the United States, for all its excellent aspirations and economic strength is still, to an extent, captive to its history, leaving it as a partially fulfilled dream that is deeply flawed. Racism, sexism, poverty, religious bigotry, homophobia, and class conflict serve to marginalize many segments of the American community while centralizing power in the hands of a few.

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15. The Nazi holocaust proceeded in stages. Jews were identified as an alien and destructive presence which needed to be cleansed from Aryan Germany. See UNITED STATES HOLOCAUST MEMORIAL MUSEUM, *THE HOLOCAUST: A HISTORICAL SUMMARY* at 3. After Jews were identified as the "other" they were dehumanized in the German mind and isolated from mainstream life. See *id.* The process set the stage for popular acceptance of mass murder. More recent examples of demonization, isolation, and elimination can be seen in the former Yugoslavia, Rwanda, and even in our own past where it was said that "the only good Indian is a dead Indian." Wolfgang Mieder, "The Only Good Indian is a Dead Indian" *History and Meaning of Proverbial Stereotype*, 1 ELECTRONIC J. INT'L PROVERB STUD. 1 (1995) <<http://www.utas.edu.au/docs/flonta/DP,1,1,95/index.html>>.

16. See HAROLD M. HYMAN, *A MORE PERFECT UNION: THE IMPACT OF THE CIVIL WAR AND RECONSTRUCTION ON THE CONSTITUTION* 519 (1973).

Yet, this liberal vision is also progressive. People organize and demand change, fairness, and equality. In this vision, government is a powerful tool which responds to these demands and helps to level the playing field. Government programs protect the poorest and least powerful from oppression while giving them the means to progress into the great middle class. Laws are passed which ban discrimination.<sup>17</sup> In this vision, the law is a powerful engine of social change, equality, opportunity, and the full realization of the American dream. By its nature, the vision embraces change and the social disruptions which can come with change.

The competing "conservative" or "Republican" vision has been quite different. It sees the United States as having achieved its dream at some point in the past. It sees the country as having drifted away from that perfection by falling away from our guiding principles of freedom, religion, and "traditional" family values.

In this vision, government is generally an evil, except when it is enforcing fundamentalist supported social norms. Taxes destroy individual liberty by shifting power to Washington. Government programs are ill-advised experiments in social engineering by those least qualified to know what is right. Social disruption is caused by turning away from correct values which, in turn, leads to social disintegration of the community.

Of course, these two visions are presented here in very broad strokes—in fact, almost in caricature. Neither vision is wholly consistent and each contains textures and nuance beyond simplistic labels and tag-lines. Yet, if the visions appear cartoon-like as presented here, they are often presented in the public forum in no less outlandish guise.

Think, for example, of how very complicated subjects, changing patterns of family, pregnancy and child-rearing, came to be capsulized in one popular culture issue—whether or not fictional television newswoman, Murphy Brown,<sup>18</sup> was a good role model in having and raising a baby without the benefit of a husband. In a world where political ideas are debated in thirty-second television ads and evening news sound-bites, such gross oversimplification becomes the norm rather than the exception. The simplistic world of television comedies comes to embody "real" alternatives which are serious subjects of debate.<sup>19</sup>

17. See, e.g., Civil Rights Act of 1964, 42 U.S.C.A. §§ 2000e–2000e-17 (1995 & Supp. 1999); Americans with Disabilities Act, 42 U.S.C.A. §§ 12101–12213 (1995 & Supp. 1999).

18. *Murphy Brown* originally aired on CBS.

19. "When liberals and conservatives debate family policy, for example, the issue is often framed in terms of how many 'Ozzie and Harriet' families are left in America." COONTZ, *supra* note 4, at 23.

Since everyone admits that nontraditional families are now a majority, why this obsessive concern to establish a higher or lower figure? Liberals seem to think that unless they can prove the "Leave It to Beaver" family is on an irreversible slide toward extinction, they cannot justify introducing new family definitions and social policies. Conservatives believe that if they can demonstrate the traditional family is alive and well, although endangered by policies that reward two-earner families and single parents, they can pass measures to revive the seeming placidity and prosperity of the 1950s, associated in many people's minds with the relative stability of marriage, gender roles, and family life in that decade. If the 1950s family existed today, both sides seem to assume, we would not have the contemporary social dilemmas that cause such debate.<sup>20</sup>

The argument that we, as a nation, have lost our way must, of necessity, suggest that there was a time when we were on the right path. The most obvious point of reference, of course, is "the fifties of the *mind*." Whether it is born of rosy nostalgia or mythic imagination, it stands as an idyllic period of certainty, stability, harmony, and community.

#### IV. PLEASANTVILLE

*Pleasantville*<sup>21</sup> was released on October 23, 1998, less than a month before the election of 1998. The campaign leading up to this election had been one in which culture wars were prominent. *Pleasantville* is a fable<sup>22</sup> where two 1990s teens are magically sucked into their television set to the black-and-white situation comedy *Pleasantville*. David (Tobey Maguire) is a sensitive misfit, out of step with the sophisticated, jaded, trouble-plagued modern world. At school, he is unsuccessful with women because he does not have the half-hood, half-blase style of his peers. His parents are divorced and in early scenes we see his mother on the phone with his father. She has made plans to go away with her boyfriend for a mud bath and is very

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20. *Id.* at 23–24.

21. New Line Cinema (1998).

22. A fable is defined as a "usually short narrative making an edifying or cautionary point . . . ." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 652 (3d ed. 1992). While the film, at 124 minutes, may not be short, it is a cautionary tale. Because the premise of the film, that two modern children can be sucked into a television show, is presented without a clear explanation, the film is also something of a fairy tale, defined as a "fictitious, highly fanciful story or explanation." *Id.* at 656. The filmmaker goes so far as to use a title screen with the words "once upon a time," between an introductory sequence and the rest of the film.

put out that the father has unexpectedly canceled when he is supposed to have a custodial weekend. It is easy, from David's point of view, to feel that neither parent really wants him.

To retreat from a world in which he does not fit, he becomes lost in one where he thinks he does. The object of his obsession is *Pleasantville*, a black-and-white situation comedy set in the 1950s and broadcast on "TV Time," a cable network broadcasting "lots of old stuff in nothing but black-and-white."<sup>23</sup> *Pleasantville* is the "fifties of the imagination," where role-defined two-parent families raise loving and respectful children in neighborhoods of single-family homes, each one with its white picket fence.<sup>24</sup> As the promo for the upcoming *Pleasantville* marathon says, it is "chock full of pure family values. . . . Flash back to kinder, gentler times."

David's sister, Jennifer (Reese Witherspoon), appears to be his opposite in almost every way. She is sexy, sophisticated, and popular. She is knowledgeable beyond her years and appears always to be in control. She's cool with an attitude, living in high school's fast lane.

As David prepares to watch the *Pleasantville* marathon on the family's big-screen television, Jennifer is at home in front of the television, preparing for her hot date with her latest flame. Her outfit, she explains, isn't "slutty"—it's "fun." As the teens struggle for the television remote, it is smashed beyond repair. Suddenly, a mysterious television repairman, (Don Knotts), shows up and, after quizzing David on various questions of *Pleasantville* trivia, suggests that he takes a special remote control that will "put him in the picture." This magical trickster "watches" from his truck as the siblings, again struggling over the remote, are magically sucked into the television and right into the world of the *Pleasantville* marathon.

Now seen by all in the show as "Bud" and "Mary Sue," the siblings find themselves inside the show with no way to get home. That they even want to leave so upsets the repairman, who talks to them through the television set in the *Pleasantville* house, that he leaves in a huff. The kids, now in "living black-and-white" like the rest of the *Pleasantville* world, are ushered into the kitchen for a huge cholesterol-laden breakfast made by mom before being sent off to school.

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23. Flashes of opening credits from real situation comedies such as *I Married Joan*, (originally aired on NBC) *I Love Lucy*, (originally aired on CBS), *The Honeymooners*, (originally aired on CBS) *The Adventures of Ozzie and Harriet*, (originally aired on ABC), and *Make Room for Daddy*, (originally aired on ABC).

24. "By the mid-fifties television portrayed a wonderfully antiseptic world of idealized homes in an idealized, unflawed America. There were no economic crises, no class divisions or resentments, no ethnic tensions, few if any hyphenated Americans, few if any minority characters. Indeed there were no intrusions from other cultures." HALBERSTAM, *supra* note 3, at 508.



The *Pleasantville* world is indeed “pleasant,” or, as Jennifer complains, like being “stuck in Nerdville.” In the world of *Pleasantville*, fire departments have no other job but to save cats from trees, the basketball team sinks every shot, and everyone is wholesome, friendly, and smiling. Although both David and Jennifer want to get home, David says they have to play along and even Jennifer, once she meets Skip Martin, decides that perhaps she will stick around awhile.

To be sure, there are some disquieting facets of life in *Pleasantville*. The school curriculum consists of nothing besides studying the difference between the two main streets in town, there are no toilets in the bathrooms, and all the books are blank. Indeed, the townspeople have no capacity for original thought. A question from Jennifer about what is outside Pleasantville is met with stunned silence. Mr. Johnson, at the soda shop, wipes a hole in his countertop because “Bud” wasn’t there to set out the napkins and glasses as is their routine. A momentary thought that “Mary Sue” might not go out with him causes basketball star Skip Martin to miss a shot, something which has never happened before and which causes consternation in their ordered world. The rebel, Jennifer, moves from questioning her teacher about what exists outside of the town to introducing her date, Skip, to sex.

Here is the central crux of *Pleasantville*. The situation comedy represents the “fifties of the *mind*.” Now, however, we go behind the myth. First, we encounter the stultifying limits and narrowness of this world. Second, we see the effect of introducing change into this setting. And then, we see the reaction of the town and its inhabitants to change.

Mr. Johnson, the soda shop owner, discovers to his delight that he can close the shop on his own and can even change the order of his chores. “Bud’s” mother, Betty, begins to look differently at Mr. Johnson. The basketball team does not automatically make baskets and a rose, in full color, blooms in *Pleasantville*.

As the pace of change continues, Jennifer explains sex to her *Pleasantville* mother, Betty. Betty puts her new knowledge to work. Although she is sure that her husband would never do such a thing, she tries out masturbation, which causes a tree outside the house to spontaneously combust. There is finally a need for firefighters in *Pleasantville*. When they arrive, they are too stunned to know what to do—David has to grab the hose to extinguish the flames.

Mr. Johnson discovers his true passions, for art and for Bud’s mother. The music of Dave Brubeck fills the air. The young people have discovered sex and they have started to ask questions like, “what’s outside of *Pleasantville*?” David reluctantly tells them that “there are some places where the road doesn’t go in a circle. There are some places where the road

keeps going.” And the books are no longer blank.<sup>25</sup> Another amazing thing happens—the colors start to spread. Not only are roses, fires, playing cards, and bubble gum in color, but, so too, are some of the people.

If the *Pleasantville* series represents the “fifties of the *mind*” (the calendar reads 1958), the town is now feeling the winds of change. The young, and young at heart, are discovering sex, the wives are not paying attention to traditional wifely duties,<sup>26</sup> kids are quitting their jobs and some, especially, but not exclusively the kids, are learning new ideas and questioning old ones.<sup>27</sup> The town is not a homogeneous community anymore. Some people are in black-and-white but others are in color.

The powers that be in the town, including the Mayor, the barbershop crowd, civic leaders, and Bud’s dad, a wannabe insider whose dream is to be asked to join the Chamber of Commerce, are alarmed by what they see. As one of them notes, “going up to that lake all the time is one thing but now they’re going to a library. What’s next?” “You’re right,” says another. “Somebody ought to do something about that—soon.” The power structure, white, male, black-and-white, is confronted with change, and the townspeople see it as a threat to everything they hold dear.<sup>28</sup> As Bob says, “if George here doesn’t get his dinner, any one of us could be next. . . . Something is happening to our town and I think we can all see where it’s coming from.”

The Mayor neatly sums up the situation:

My friends, this isn’t about George’s dinner. It isn’t about Roy’s shirt. It’s a question of values, the question of whether we want to hold on to those values that made this place great. So, a time has

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25. Initially, books “fill in” as David or Jennifer tell their stories. Jennifer has explained part of *Huckleberry Finn*, but since she hasn’t finished it, the book remains half blank. The kids in the soda shop ask David to tell the ending. He says, “they were running away, Huck and the slave. They were going up the river trying to get free, and in trying to get free, they see that they’re sort of free already.” And the rest of the book fills in.

26. A scene in which all the husbands come home from work, dressed identically and in black-and-white, is particularly effective. “Bud’s” father enters, puts his hat on the hat rack, sets down his briefcase, and calls, “honey, I’m home,” only to discover that Betty is absent and his world is altered forever. Another man, Roy, shamefully shows his burned shirt. When he asked his wife what she was doing, she said that she was “thinking.”

27. Jennifer is going through her own voyage of discovery. She has started to read books but wonders why she is still in black-and-white when she has had so much more sex than many girls that are in color. Only after she declines to go to lover’s lane and stays home to study does she turn from black-and-white to color.

28. “Bud’s” mother has even covered her colored face in black-and-white make-up in order to “pass,” but when she visits Mr. Johnson and starts to cry he sees what she has done, tells her she’s beautiful, and wipes away the make-up to reveal the color underneath.

come to make a decision. Are we in this thing alone or are we in it together?

"Together!" they shout, and the battle lines are drawn. Notices go up calling for a town meeting for all *true* citizens of Pleasantville.

George, in the flush of solidarity, goes home to confront Betty, who has spent the night with Mr. Johnson. He tells her to come with him to the meeting but she says the meeting is not for her. George says she can wear make-up, that her color will go away, but she says she does not want it to. Finally, George demands that Betty put on black-and-white make-up, come to the meeting, and make his dinner. She gently tells him "no" and leaves.

David, who wanted to stay in the *Pleasantville* television world, has remained in black-and-white, but he, too, is changing as he finds that Margaret, a girl in his class, is interested in him. She, of course, has turned color and is taunted by two black-and-white boys who behave as leering thugs. Why isn't "Bud" at the meeting, they ask? Could it be that he's too busy with his "colored" girlfriend?

At the town meeting, the Mayor explains that things have always been pleasant but are not now. He declares, "we must separate out the things that are pleasant from the things that are unpleasant." As the next day dawns, we see the result of the civic authorities' handiwork. The hardware store sports a sign reading "no colored." And the rule of the mob begins. Mr. Johnson's painting of a nude Betty is smashed as are the rest of his artwork and his shop. The mob destroys the book of fine art paintings and burns the books in the library. Several black-and-white youths corner "Bud's" mother in what appears to be a rape in the making. David intervenes and punches one of the boys. David has finally taken a moral stand and now he also turns color.

The colored citizens take temporary refuge in the destroyed soda shop. Meanwhile, at a second town meeting, the black-and-white citizens adopt a code of conduct which, among other things, closes lovers lane and the library, forbids all music except "temperate and pleasant" music, and limits acceptable paint colors to black, white, and gray.<sup>29</sup> School curricula are required to teach the "non-changeist view of history, emphasizing continuity over alteration."

David refuses to obey the new code. In acts of civil disobedience, he plays prohibited music,<sup>30</sup> and with Mr. Johnson, who says, "I don't know what I'd do if I couldn't paint anymore," paints a beautiful new mural recounting the recent violence and other events in vibrant, forbidden colors.

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29. The only allowable music is Johnny Mathis, Perry Como, the marches of John Phillip Sousa, and "The Star Spangled Banner."

30. The music of Buddy Holly.

The two are arrested and put on trial. Prior to the trial, George visits David in jail and asks what went wrong. David gently explains, "people change."

The trial takes place in a courtroom which is deeply reminiscent of the one from the film, *To Kill a Mockingbird*,<sup>31</sup> including its segregated seating, with the "colored" confined to the balcony. David asks for a lawyer but is refused on the grounds that the proceeding will be more "pleasant" without one.

David makes an impassioned statement asserting that the colored and non-colored people are the same—that the same qualities are in all people. The Mayor refuses to accept this explanation and tries to stop him from speaking but David persists, asking his father whether he really wants Betty the way she was. "Doesn't she look wonderful? Don't you wish you could tell her that?" George nods, cries, and changes to color himself. As the Mayor tries to stop the proceeding, as he protests that he isn't like that, the Mayor becomes enraged and turns color himself. The Mayor runs out and the rest of the people turn color, as does the whole town. The television store even has color television. Change has come to Pleasantville.

Jennifer decides to stay in the new Pleasantville to go to college. She has dropped her posturing and attitude. She is more of a real person. David goes home too, but he is changed. He has stood up for an ideal. He has fought a battle and is ready to return to live in his complex, difficult world, where he finds his real mother crying. She has dumped her younger boyfriend and is struggling to figure out answers about herself and her life. She cries, "it's not supposed to be like this." Bud explains that "it's not *supposed* to be anything." Back in Pleasantville, Betty is a woman in transition. She is torn between her husband and Mr. Johnson, and although we are left in doubt as to her final direction in life, it is clear that she is ready to face the responsibility of deciding.

*Pleasantville* ends with the message that no set of predefined rules can govern life's uncertainties, that each person must struggle to find their own answer, and that this responsibility is a good rather than a bad thing.

## V. LAW AND JUSTICE IN *PLEASANTVILLE*

On the surface, Pleasantville is a harmonious community where life is good. Yet, when we look closer we realize that the tranquility of Pleasantville is purchased at a terrible price. Life is "pleasant" because the residents do not think or grow. They are locked into a stifling routine in which homogeneity is exulted and difference rigidly suppressed. And the first sign of change, rebellion, or growth results in both a violent and a legal response by the power structure attempting to maintain the status quo. The

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31. Universal International Pictures (1962).

filmmaker suggests that the 1950s of our imagination also conceals a grimmer reality of repression hidden just below the surface of fond remembrance. Pleasantville is repressive in a number of different ways which mirror elements of the historical 1950s.

Pleasantville is racist. The power structure is clearly white, although the key point in the film is that its members are "in" black-and-white, and react to oppress those who are not. The "no coloreds" sign in the hardware store reminds us that the real fifties was the last decade of legal segregation in which the repression and disenfranchisement of African-Americans was all too real.<sup>32</sup>

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32. Today, the young may think of civil rights in the 1950s as a time of triumph. Many may know only about *Brown v. Board of Educ.*, 347 U.S. 483 (1954). But *Brown* did not end segregation, even in schools. The historic decision merely began a process which played itself out not only in courts but in the streets, in which significant segments of American society fought an all-out rear-guard action to undermine the process of integration and the assertion of rights by African-Americans. The reality of life at a time before federal anti-discrimination and voting rights acts is probably hard to imagine for most who were too young to experience it. The reality of life for African-Americans of that period is symbolized as much by the murder of Emmett Till as it is by the decision in *Brown*.

The same Constitution which required desegregation entitled a defendant to a trial before a jury of his peers. His peers, in large areas of the South, were likely to acquit him. This happened. The first such incident occurred in Greenwood, Mississippi, in August 1955. Emmett Till, a fourteen-year-old black youth from Chicago, was visiting relatives there. Rumor spread that he had insulted a white woman, and three white men dragged him from his relatives' home and drowned him. Witnesses identified two of the three killers to federal agents, but an all-white jury acquitted them. The two . . . were then charged with kidnapping by a U.S. attorney, but a grand jury refused to indict them, and the FBI, which had painstakingly assembled irrefutable evidence, reluctantly closed its file.

WILLIAM MANCHESTER, *THE GLORY AND THE DREAM: A NARRATIVE HISTORY OF AMERICA, 1932-1972* 738 (Bantam ed., 1975).

African-Americans in the South faced systematic, legally sanctioned segregation and pervasive brutality, and those in the North were excluded by restrictive covenants and redlining from many benefits of the economic expansion that their labor helped sustain. Whites resisted, with harassment and violence, the attempts of blacks to participate in the American family dream. When Harvey Clark tried to move into Cicero, Illinois, in 1951, a mob of 4,000 whites spent four days tearing his apartment apart while police stood by and joked with them. In 1953, the first black family moved into Chicago's Trumbull Park public housing project; neighbors "hurled stones and tomatoes" and trashed stores that sold groceries to the new residents. In Detroit, *Life Magazine* reported in 1957, "10,000 Negroes work at the Ford plant in nearby Dearborn, [but] not one Negro can live in Dearborn itself."

COONTZ, *supra* note 4, at 30-31 (footnote omitted).

Pleasantville is sexist. The power structure is male. Women are confined to the traditional realm of the home. As Pleasantville begins to change, the men react against the loss of traditional male privilege by trying to force women back into their prior role. This mirrors the post-war reality, during which women who had been encouraged to work in war industries during World War II were pushed back into the home.<sup>33</sup> Women's growing frustration was labeled as mental aberration and treated with tranquilizers. Dissatisfaction was treated as a mental disease.<sup>34</sup>

Pleasantville is sexually repressive. There is no sex in Pleasantville and even married people sleep separately in single beds. The discovery of sex is a major engine of change among the people of Pleasantville and the power structure understands the threat that it poses to the stability of its town, just as the pill and the sexual revolution of the sixties were part of the rebellion against the double standard of the fifties.<sup>35</sup>

33.

After the war, however, writes one recent student of postwar reconstruction, "management went to extraordinary lengths to purge women workers from the auto plants," as well as from other high-paying and nontraditional jobs. As it turned out, in most cases women were not permanently expelled from the labor force but were merely downgraded to lower-paid, "female" jobs. Even at the end of the purge, there were more women working than before the war, and by 1952 there were two million more wives at work than at the peak of wartime production. The jobs available to these women, however, lacked the pay and the challenges that had made wartime work so satisfying, encouraging women to define themselves in terms of home and family even when they were working.

*Id.* at 31.

34.

Women who could not walk the fine line between nurturing motherhood and castrating "momism," or who had trouble adjusting to "creative homemaking," were labeled neurotic, perverted, or schizophrenic. A recent study of hospitalized "schizophrenic" women in the San Francisco Bay Area during the 1950s concludes that institutionalization and sometimes electric shock treatments were used to force women to accept their domestic roles and their husbands' dictates. Shock treatments were recommended for women who sought abortion, on the assumption that failure to want a baby signified dangerous emotional disturbance.

*Id.* at 32 (footnote omitted).

35.

The success of sexual containment depended on sexual inequality. Men no longer bore the responsibility of "saving themselves for marriage"; this was now exclusively a woman's job. In sharp contrast to the nineteenth century, when "oversexed" or demanding men were considered to have serious problems, it was now considered "normal" or "natural" for men to be sexually aggressive. The "average man," advice writers for women

Pleasantville is intellectually repressive. There is no freedom of thought in Pleasantville. The books are blank and the school curriculum is limited to a study of the streets in the town. As things begin to change, the books are filled in, questions are asked, new forms of art are discovered and explored. The power structure responds by closing the library and requiring that schools teach only orthodoxy. The real 1950s also occasioned intellectual, artistic, and political repression.<sup>36</sup> For example, the cold war fueled McCarthyism's witch hunts.<sup>37</sup> In addition, enforced political

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commented indulgently, "will go as far as you let him go." When women succeeded in "holding out" (a phrase charged with moral ambiguity), they sometimes experienced problems "letting go," even after marriage; when they failed, they were often reproached later by their husbands for having "given in." The contradictions of this double standard could not long withstand the period's pressures for companionate romance: By 1959, a more liberal single standard had already gained ground among older teenagers across America.

*Id.* at 40.

36.

In March of 1947, President Truman issued an executive order establishing a sweeping federal-employee loyalty program designed to exclude persons disloyal to the United States. It was pursuant to this executive order that the infamous 'Attorney General's list' of subversive organizations, first published in December 1947 came into being. Membership in organizations designated by the Attorney General as 'totalitarian, fascist, communist, or subversive' was among 'the activities and associations of an applicant or employee which may be considered in connection with [a] determination of disloyalty.'"

...

But the most comprehensive and detailed piece of federal legislation directed against the CPUSA was the Internal Security Act of 1950, also known as the McCarran Act, that was enacted over President Truman's veto. The heart of the Act was a registration requirement applicable to 'Communist-action' and 'Communist-front' organizations, as defined by the Act; such organizations were subject to serious penalties if they failed to register. The Act also created a Subversive Activities Control Board (SACB) to determine which organizations were subject to the Act. Registration was to be accompanied by disclosure of the names and addresses of officers, and in the case of a 'Communist-action' organization such as the CPUSA, of its members as well. Serious disabilities befell the members of organizations required to register, including prohibitions on federal employment, public communications, and access to passports.

Marc Rohr, *Communists and the First Amendment: The Shaping of Freedom of Advocacy in the Cold War Era*, 28 SAN DIEGO L. REV. 12-14 (1991) (footnotes omitted).

37.

World events right after the war made it easier to build up public support for the anti-Communist crusade at home. In 1948, the Communist

orthodoxy made artistic or literary experimentation suspect and created a climate of fear.<sup>38</sup>

One of the most interesting aspects of the movie, *Pleasantville*, is the role of law. While many of us see the law as a progressive tool for social change, law is also power and can be wielded for good or for ill. In *Pleasantville*, the law is a repressive force.

When they are faced with the changes in *Pleasantville*, the city fathers (and they all are) call a town meeting to which only those who are still in black-and-white are invited. The enfranchised pass a code of conduct that has the force of law. The code has previously been referred to: it outlaws the double bed, the library, colors in art, free thought in education, and most music. It is law made by one group to control another. The "colored" are disenfranchised and have no part in making the laws which bind them.

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party in Czechoslovakia ousted non-Communists from the government and established their own rule. The Soviet Union that year blockaded Berlin . . . In 1949, there was the Communist victory in China, and in that year also, the Soviet Union exploded its first atomic bomb. In 1950 the Korean war began. These were all portrayed to the public as signs of a world Communist conspiracy. . . .

...

So it was not just Soviet expansionism that was threatening to the United States government and to American business interests. In fact, China, Korea, Indochina, and the Philippines represented local Communist movements, not Russian fomentation. It was a general wave of anti-imperialist insurrection, which the United States wanted to defeat. This would require national unity, for militarization of the budget, for the suppression of domestic opposition to such a foreign policy. . . .

In this atmosphere, Senator Joseph McCarthy of Wisconsin could go even further than Truman. As chairman of the Permanent Investigations Subcommittee of the Senate Committee on Government Operations, he claimed that the State Department employed hundreds of Communists, a claim for which he had no evidence. He investigated the State Department's information program, its Voice of America, and its overseas libraries, which included books by people whom McCarthy considered Communists.

HOWARD ZINN, *A PEOPLE'S HISTORY OF THE UNITED STATES: TEACHING EDITION* 313-14 (1997).

38. "On May 20, 1947, the F.B.I. began stalking 'disloyal and subversive persons' by conducting a 'name check' of the two million people on federal payrolls, from mailmen to cabinet members." MANCHESTER, *supra* note 32, at 494. When any accusations were made against a person, or when any "derogatory information" was given to the bureau, there ensued a "full field investigation" into every aspect of the life and background of the accused individual. *Id.* "Accumulated data were weighed by a regional loyalty board which would either dismiss charges or hold a hearing and reach a verdict. Adverse decisions could be appealed to the National Loyalty Review Board in Washington, whose rulings were final." *Id.*



When David and Mr. Johnson violate the code by painting a colorful and sensual mural, they are brought to trial before the Mayor and the city fathers. The accused are forbidden access to legal representation and the Mayor acts as both prosecutor and judge. The courtroom is rigidly segregated.

The image of law in *Pleasantville* is that of a tool of repression, of power wielded against the powerless, as a form of violence. The law does not, in this film, have any corrective or transformative power. The system is rotten beyond repair.

David does not play the game. He does not “win” his case by using the law. Rather, he moves first his father and then the Mayor to experience their deepest emotions and they are transformed by that experience into “coloreds” themselves. The trial ends because the system it supported has simply ceased to exist.

## VI. THE LESSONS OF *PLEASANTVILLE*

If the “fifties of the *mind*” has been used to create in the American political psyche an image of a perfect past based on a venerated but narrow set of social mores and values, *Pleasantville* reminds us that this pastoral vision is incomplete, that it hides a dark repression under a thin veneer of normalcy. Racial segregation, repression of women, and suppression of alternative ideas and lifestyles are all central to sustaining traditional power structures. Enforced conformity produces an illusionary stability and a false happiness by denying expression to any but the accepted orthodoxy.

The real fifties were not only a time of repression but also a time when the seeds of social change were planted. The civil rights struggle had begun and was starting to win legal victories such as *Brown v. Board of Education*<sup>39</sup> and the subsequent integration of Central High School in Little Rock, Arkansas. Perhaps as importantly, the ordinary people such as Rosa Parks began to find their voice and so encouraged others to engage in direct confrontations of racism.<sup>40</sup>

McCarthyism, the Hollywood blacklists, and the prosecutions of Communists eventually led to a more enlightened climate in which First Amendment advocates won significant legal victories for freedom of speech and students and others demanded freedom of speech on campuses and in

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39. 347 U.S. 483 (1954).

40. On December 1, 1955, Rosa Parks refused to obey a Montgomery, Alabama bus driver's order to vacate her seat. “At that moment, Eldridge Cleaver later wrote, ‘somewhere in the universe a gear in the machinery had shifted.’” MANCHESTER, *supra* note 32, at 740.

society generally.<sup>41</sup> The enforced gender roles of the post-war years led to dissatisfaction with those roles, which resulted in the modern feminist movement.<sup>42</sup>

Inevitably, freedom allows us to question existing power structures and leads to societal change. Change, by its nature, can be frightening. People feel at sea because, in a sense, they are. As experienced by Betty, George, and Mr. Johnson in *Pleasantville*, the change is obvious but the eventual new stability may not be as apparent. It is probably normal to find that, as the worst aspects of a given time fade from memory, what remains is nostalgia for that era's stability and peace. To the extent that a false image of the "fifties of the *mind*" has been used for political gain, *Pleasantville* seeks to remind us that the image is false.

It has been said that democracy is a terrible system, but better than all the others. So, too, freedom of thought and expression are terrible, leading to dislocation and social upheaval. But lack of such freedom is even worse. This is the message of *Pleasantville*—a cautionary tale for all who would, unthinkingly, adopt a false image of our past as the blueprint for our present and future.

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41. *Compare*, *Dennis v. United States*, 341 U.S. 494 (1951), *with* *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

42. "The reemergence of a women's rights movement occurred some time between the publication of *The Feminine Mystique* in 1963 and the founding convention of the National Organization for Women in 1966." COONTZ, *supra* note 4, at 165–66.

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## The Myth of Perfection

Charles B. Rosenberg

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The borderland between fiction and reality is always contested territory. Novels are supposed to be made-up stories, but historical novels parade as real and the roman a clef is as almost as old as the novel itself.<sup>1</sup> Histories and biographies claim to be better, but they have recently borrowed techniques from the novel and, as only one example, regularly fill the mouths of historical characters with words they never spoke.<sup>2</sup> These techniques have rescued many histories and biographies from the dryness of dust, but at the cost of accuracy, whatever “accuracy” may mean in the art of telling the past.<sup>3</sup>

Yet, in the end, most of us think that we know where the border between fact and fiction is *supposed* to lie, particularly when the border wanders across the printed page. And that border is well-guarded. When troops of one print army cross the line, there are always warriors on the other side ready to ride and spread the alarm—witness the intellectual stink that Edmund Morris created when he placed a fictional narrator in his biography of Ronald Reagan.<sup>4</sup>

Perhaps our relative comfort in believing that we can identify the proper border between fact and fiction in print stems from our long acquaintance with the landscape of the borderland. Books and their conventions are very old, and we are used to them. Despite the advent of the Internet, and despite the ways that books have changed over the years, the act of reading a printed book in 1999 is not profoundly different than it was in 1799. If time travel could be invented, Thomas Jefferson and William Clinton, born two hundred

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1. See generally GORE VIDAL, *LINCOLN* (1993) (providing a “fictional” account of the Lincoln administration, but based loosely on the diary of Lincoln’s young secretary, John Hay); ALEXSANDR I. SOLZHENITSYN, *THE FIRST CIRCLE* (1968) (fictionalizing an account in which Solzhenitsyn purports to tell us exactly what Stalin said to Beria).

2. SOLZHENITSYN, *supra* note 1. This is a particular issue with journalistic accounts of recent history. See generally BOB WOODWARD, *SHADOW* (1999) (providing an account of the handling of corruption investigations during four presidencies).

3. For a nuanced view of the biographer’s art, see LEON EDEL ET AL., *TELLING LIVES* (Marc Pachter ed., 1979), which contains a collection of essays by eminent biographers.

4. See, e.g., Joan Didion, *The Day Was Hot and Still*, N.Y. TIMES, Nov. 4, 1999 (New York Review of Books), at 4 (reviewing EDMUND MORRIS, *DUTCH: A MEMOIR OF RONALD REAGAN* (1999)).

years apart, could easily read the same book and discuss it as members of the same book club.<sup>5</sup>

By contrast, our current level of comfort with visual imagery is much lower. Perhaps that is so because, putting painting aside, the manipulation of visual imagery is so new compared to the manipulation of letters on a page. Photography—a relatively mild manipulative visual art—is only about one hundred and fifty years old.<sup>6</sup> Movies—a much more powerful visual image generator—have only recently turned one hundred.<sup>7</sup> Television—the true mass medium—is still in its early fifties.<sup>8</sup>

The current discomfort with visual images—to the point of keening complaint in some quarters—may be driven by something other than the mere unease of something new.<sup>9</sup> There is at least an argument that the impact of widespread visual images is both quantitatively and qualitatively different from the impact of print, and that they have a potentially disruptive impact that needs to be taken seriously.<sup>10</sup>

The first of those differences is arguably quantitative and lies in ease of access.<sup>11</sup> You do not have to know how to read and write to watch a movie or a television program. This fact alone tends to make people whose status in life is based on being able to read and write “real good” rather nervous.<sup>12</sup> After all, with visual imagery, the unwashed can have access to information without first being taught to read and write—a year-long instructional exercise that is rarely content neutral.<sup>13</sup> Indeed, the recent movement by the printnescenti to “teach” people how to “read” media, however dubious and based on an outdated model that that effort may be, grows out of the fear that visual images require no teachers.<sup>14</sup>

The second difference is arguably qualitative and lies in the widespread assumption that the visual image is more powerful than print—a greater God—and in the end it is going to drive out both print and the more careful

5. They might have a great deal to discuss in addition to books.

6. HELMUT GERNSEIM, *A CONCISE HISTORY OF PHOTOGRAPHY* 116–19 (3d ed., 1986).

7. ROBERT SKLAR, *MOVIE-MADE AMERICA: A CULTURAL HISTORY OF AMERICAN MOVIES* 3 (Vintage Books Revised ed., 1994).

8. Charles B. Rosenberg, *Foreword*, in *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE* ix (Robert Jarvis & Paul Joseph eds., 1998).

9. MITCHELL STEPHENS, *THE RISE OF THE IMAGE THE FALL OF THE WORD* 4–12 (1998).

10. *Id.*

11. *Id.*

12. *Id.*

13. See Bernard J. Hibbitts, “Coming to Our Senses”: *Communication and Legal Expression in Performance Cultures*, 41 EMORY L.J. 873, 887 (1992). Indeed, such people have taken to putting forth the rather curious and dubious argument that reading is better for the brain than watching moving images. *Id.*

14. *Id.*

thought that print supposedly engenders.<sup>15</sup> Closely allied to this concept is the idea that visual images are a goad to imitative action—that a watcher who sees something will soon go out and do that very something, usually bad.<sup>16</sup> Books are, these days, seen by the worriers as a very weak print Baal to the new and all-powerful visual Yahweh.<sup>17</sup>

The third, and perhaps most important, difference between print and visual images lies in the subtlety with which fact and fiction can be merged in a visual medium.<sup>18</sup> If we listen to Stalin talking in *The First Circle*, we know that the dialogue is not real—that however entrancing, the words on the page never tumbled from Stalin's lips.<sup>19</sup> We know that Solzhenitsyn made it all up, and that he did it to make a dramatic point.<sup>20</sup>

If, by contrast, you go to visit the D-day museum at Arromanches and view the heroic film about the Normandy invasion, you may have some difficulty in distinguishing the real footage of the landing from the footage that is borrowed from *The Longest Day*.<sup>21</sup> The two types of footage—the real and the fake—are mixed seamlessly together. The result is an arguable seduction of the mind into not knowing or caring what is real and what is not.

The cultural impact of these perceived differences has become a matter of debate, most of it in print. Some take the view that the changes are pernicious and particularly harmful to the young.<sup>22</sup> Indeed, some seem to feel that the young need to be “educated” before they are allowed to see visual images lest they go directly to some cultural hell.<sup>23</sup> Others take a

15. Doris A. Graber, *Say It With Pictures*, 546 ANNALS AM. ACAD. POL. & SOC. SCI. 85, 89–90 (1996). Why this should be so is something of a mystery. Some of the worst goads to action in human history have been books (e.g., MEIN KAMPF which was involved in engendering the Holocaust) and in the 1950s people even worried a lot about the supposed corrupting effect of comic books. Kevin W. Saunders, *Media Violence & The Obscenity Exceptions to the First Amendment*, 3 WM. & MARY BILL RTS. J. 107, 132 (1994).

16. Emily Campbell, *Television Violence: Social Science vs. The Law*, 10 LOY. ENT. L.J. 413, 415 (1990).

17. On the other hand, when books were new, people tended to worry about their impact. According to Mitchell Stephens in *The Rise of the Image The Fall of the Word*, the ancient Greeks worried that the advent of books would allow people to have access to information without the needed intercession of wiser “teachers.” STEPHENS, *supra* note 9, at 23.

18. Richard K. Sherwin, *Picturing Justice: Images of Law and Lawyers in the Visual Media*, 30 U.S.F. L. REV. 891, 896–97 (1996).

19. See SOLZHENITSYN, *supra* note 1.

20. *Id.*

21. Trimark (1962).

22. STEPHENS, *supra* note 9, at 36.

23. *Id.* at 230. Mitchell Stephens argues that the word being supplanted by the image will eventually result in a better society. *Id.*

more benign view that might be summed up as "change is inevitable and in the long run, neither the medium nor the message matters, it all comes out in the cultural wash."<sup>24</sup>

In the last fifteen years, the legal profession itself has been subjected to two mega-visual events: the television program *L.A. Law*<sup>25</sup> and the national telecast of the O.J. Simpson criminal trial. Both of these have generated comment and controversy within the profession—comment and controversy that have in some ways mirrored the polarization of public views about more general visual topics.<sup>26</sup>

The first mega-visual event to be visited on the legal world came in the Fall of 1986, with the advent of *L.A. Law*.<sup>27</sup> There had, of course, been legal shows and movies before, some of them quite popular.<sup>28</sup> *L.A. Law* was, however, arguably different from those that had come before, both qualitatively and quantitatively.<sup>29</sup>

It was qualitatively different in that it focused on the ethical and personal lives of lawyers.<sup>30</sup> Where Perry Mason had been a detective hero, always seeing to it that the innocent were acquitted, *L.A. Law* showed lawyers at times working hard to acquit the guilty, at all times working hard to make lots of money, and rarely working hard to follow strict legal ethics.<sup>31</sup> And, oh yes, occasionally "dating" secretaries, clients, and assorted others.<sup>32</sup>

The public loved the mix of the personal and the substantive, and its love of the show also made it qualitatively different from the legal shows that had come before. *L.A. Law* became the first true "blockbuster" legal show, watched some weeks by as many as forty million people.<sup>33</sup> It ran for eight years and, at least anecdotally, caused an entire generation of young college graduates to turn to law as a profession.<sup>34</sup>

24. *Id.*

25. *L.A. Law* originally aired on NBC.

26. Paul Gewirtz, *Victims And Voyeurs At The Criminal Trial*, 90 NW. U. L. REV. 863, 883 (1996).

27. John Brigham, *L.A. Law*, in *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE* 21 (Robert Jarvis & Paul Joseph eds., 1998).

28. See generally *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE* (Robert Jarvis & Paul Joseph eds., 1998) (providing a detailed description of the most important episodic legal television dramas of the past 50 years).

29. Brigham, *supra* note 27.

30. Rosenberg, *supra* note 8, at ix–xii.

31. Brigham, *supra* note 27.

32. *Id.*

33. *Id.*

34. *Id.* at 21. The assertion that *L.A. Law* caused a marked increase in law school applications is often asserted, but sound statistical proof of this cause and effect phenomenon is lacking. It may simply be an example of the *post hoc ergo propter hoc* fallacy.

The legal profession, at least initially, did not fall immediately in love with *L.A. Law*.<sup>35</sup> The criticisms tended to be of several varieties. Interestingly, a lot of the criticism tended to focus on the trial scenes in the show, as well as lawyer behavior.<sup>36</sup> The criticisms were:

- 1) The trials (and cases in general) were too short.<sup>37</sup>
- 2) Judges were not in adequate control of their courtrooms.<sup>38</sup>
- 3) The rules of evidence were applied sloppily, if at all.<sup>39</sup>
- 4) Lawyers were often unethical.<sup>40</sup>
- 5) The jury verdicts seem to have little to do with the evidence.<sup>41</sup>

The Simpson criminal trial had, at times, even larger audiences than *L.A. Law*.<sup>42</sup> Although the "show" lasted only one season, it ran most weekdays for more than ten months.<sup>43</sup> Its "viewership" was enormous.<sup>44</sup> Yet, even though (or perhaps because) what people were seeing was real and not fiction, the legal profession tended, on average, to be very critical of the Simpson trial. The criticisms might be summed up this way:

- 1) The trial was too long.<sup>45</sup>
- 2) The judge was not in adequate control of his courtroom.<sup>46</sup>

35. *Id.*

36. Lawrence M. Friedman, *Law, Lawyers and Popular Culture*, 98 YALE L.J. 1579, 1600 (1989).

37. David A. Harris, *The Appearance of Justice: Court TV Conventional Television, and Public Understanding of the Criminal Justice System*, 35 ARIZ. L. REV. 785, 809–10 (1993).

38. Charles B. Rosenberg, *Inside L.A. Law*, 74 A.B.A. J. 56, 56 (1988).

39. Stephen Gillers, *Taking L.A. Law More Seriously*, 98 YALE L.J. 1607, 1611 (1989).

40. See, e.g., Marc Galanter, *The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes, and Political Discourse*, 66 U. CIN. L. REV. 805, 814–16 (1998) (describing *L.A. Law* lawyers and other modern television lawyers, as well as those in post-1980 print fiction, as "the occupant of a crucial but morally ambiguous and precarious role"). Galanter's comments, of course, are not really a criticism in the negative sense but a depiction of the ways in which modern fiction has described lawyers as morally ambiguous rather than heroic. *Id.* at 815.

41. Angelique M. Paul, *Turning the Cameras on Court TV: Does Televising Trials Teach Us Anything About the Real Law?* 58 OHIO ST. L.J. 655, 662 (1997).

42. *Id.* at 674.

43. *Id.* at 647–94 (providing a good survey of the post-O.J. Simpson trial arguments, pro and con, concerning cameras in courtrooms, and a survey of the alleged "bad" effects on the public of watching real trials via broadcast media).

44. *Id.* at 663.

45. HAROLD J. ROTHWAX, *GUILTY: THE COLLAPSE OF CRIMINAL JUSTICE* 24 (1996).

46. See, e.g., JOSEPH BOSCO, *A PROBLEM OF EVIDENCE: HOW THE PROSECUTION FREED O.J. SIMPSON*, 32–33 (1996) (quoting an anonymous colleague of Judge Ito's as saying,



- 3) The rules of evidence were applied sloppily, if at all.<sup>47</sup>
- 4) The lawyers were often unethical.<sup>48</sup>
- 5) The jury verdict seemed to have little to do with the evidence.<sup>49</sup>

The convergence of the profession's criticism of fake trials and a very real trial is rather eerie.

One possible inference from this double x-ray of the profession's insides is that the profession has simply succumbed to the same angst as many others concerning the rise of the moving image as a way for people to access the world beyond their personal borders. Indeed, many of those who argue, in the wake of the mass watching of the Simpson criminal trial, that television cameras should be banned from real courtrooms,<sup>50</sup> often sound themes similar to the themes sounded by those who argue for restrictions on children's access to violent or sexual moving images.<sup>51</sup> The core of both arguments is that the audience is not really able to understand what it is looking at, and, as a result, will be badly influenced or misinformed by the experience.<sup>52</sup>

A different inference that can be drawn is that there is, somewhere in the profession's collective unconscious, an image of the mythical perfect trial to which all trials—fictional and real—are compared and found

"Ito lost control of his courtroom and never got it back . . ."). I do not mean, by quoting this statement, to suggest that Judge Ito was not in fact in control of his courtroom. The Judge has, in my view, generally gotten a bum rap from the bar, his colleagues, and the press on this point. I have set forth my detailed views as to why this is so elsewhere. Charles B. Rosenberg, *The Law After O.J.*, 81 A.B.A. J. 72, 74-75 (1995). See also MARCIA CLARK, WITHOUT A DOUBT 134 (1997) (calling Judge Ito "indecisive").

47. See VINCENT BUGLIOSI, OUTRAGE: THE FIVE REASONS WHY O.J. SIMPSON GOT AWAY WITH MURDER 65-90 (1996) (providing a pointed criticism of several of Judge Ito's evidentiary rulings). Bugliosi also mirrors others' criticism of Ito's general stewardship of the trial. Although he does not agree that Ito lost control of his courtroom, he criticizes his demeanor and decisions, saying "Ito did several things at the trial I can only characterize as irrational, almost goofy . . ." *Id.* at 80.

48. See, e.g., JEFFREY TOOBIN, THE RUN OF HIS LIFE: THE PEOPLE v. O.J. SIMPSON 438-39 (1996) (commenting on defense lawyer Robert Shapiro's post-trial comment "Not only did we play the race card, we dealt it from the bottom of the deck." Toobin calls Shapiro's comment "shameful on several levels" and suggests, among other things, that Shapiro's post-trial behavior put his own interests ahead of those of his client).

49. Benjamin Z. Rice, Note, *A Voice From People v. Simpson: Reconsidering the Propensity Rule in Spousal Homicide Cases*, 29 LOY. L.A. L. REV. 939, 966-67 (1996).

50. Leonard E. Gross, *The Public Hates Lawyers: Why Should We Care?*, 29 SETON HALL L. REV. 1405, 1448 (1999).

51. STEPHENS, *supra* note 9, at 36.

52. See Paul, *supra* note 41.

wanting. It would not be surprising if this interpretation were correct. Our culture, after all, has a penchant for thinking that everything comes ultimately in a perfect form, from truth to beauty.<sup>53</sup>

Is there a perfect trial somewhere? Perhaps there is on rare occasion. But the truth is that trials which do not match the myth of perfection are commonplace. Many trials are too short or too long. Every day, in courtrooms all over the United States, judges with egg timers or their metaphorical equivalent make trials shorter than at least what the parties think they should be. Long trials—no doubt often too long—are also common.

The rules of evidence are often applied in courtrooms more as a vague gestalt rather than as a series of uniform rules.<sup>54</sup> As a result, reversals for evidentiary violations are rare, due in part to the robust development of the appellate concept of “harmless error.”<sup>55</sup>

Courtrooms are hardly the uniformly decorous spaces that the myth suggests. Anger, outbursts, and short tempers are common place. As for ethics, lawyers being disciplined for ethical violations is a regular occurrence.

Perhaps most important—and most at odds with the myth of perfection—the outcomes of a substantial number of trials are badly flawed. In the criminal justice system alone, for example, we know that the guilty are at times acquitted or released for lack of a unanimous verdict,<sup>56</sup> and the innocent at times convicted.<sup>57</sup> Injustice is thus a constant companion to the trial system.<sup>58</sup>

53. For this we supposedly have the ancient Greeks to thank. *See generally* DEMOCRACY: THE UNFINISHED JOURNEY, 508 BC TO AD 1993 (John Dunn ed., 1992) (analyzing the creation and development of democratic institutions through the present day).

54. *See generally* Thomas M. Mengler, *The Theory of Discretion in the Federal Rules of Evidence*, 74 IOWA L. REV. 413, 456–57 (1989).

55. *See generally* Bruce A. McGovern, *Invalid Waivers of Counsel as Harmless Error: Judicial Economy or a Return to Betts v. Brady*, 56 FORDHAM L. REV. 431, 438–41 (1987).

56. *See, e.g.*, Daniel Givelber, *Meaningless Acquittals, Meaningful Convictions: Do We Reliably Acquit the Innocent*, 49 RUTGERS L. REV. 1317, 1325 (1997).

57. *See* EDWARD CONNORS, ET AL., U.S. DEP'T OF JUSTICE, NAT'L INS. OF JUSTICE, CONVICTED BY JURIES, EXONERATED BY SCIENCE: CASE STUDIES IN THE USE OF DNA EVIDENCE TO ESTABLISH INNOCENCE AFTER TRIAL 12 (1996) (the study involved 28 defendants convicted of crimes who were ultimately set free as a result post-conviction DNA testing which proved actual innocence). Additionally, as of 1997, 32 death row inmates have been released, through the efforts of the Innocence Project headed by Peter Neufeld and Barry Scheck, where actual innocence has been proved through DNA testing. Naftali Bendavid, *For Innocent, DNA Proving Sturdy Ally in Five Years, The Innocence Project Has Freed 32 Convicts Through DNA Testing*, CHICAGO TRIBUNE, Oct. 27, 1997, at A4.

58. *See, e.g.*, Givelber, *supra* note 56, at 1318–22 (arguing that the criminal justice system in the United States has created a significant risk that innocent men and women will be systematically convicted).

Does the difference between the myth of perfection and the reality of imperfection make any difference? One could argue that it does not. Indeed, one could argue that holding out a model of perfection as a goal is a good thing. On the other hand, the attitude that the system is near to perfect can get very much in the way of needed reforms.

As only one example, consider how difficult it is to get a criminal conviction reversed, or even seriously considered for reversal, once it is final, even in the face of important new evidence. The working assumption behind the policies that make revisiting convictions difficult is that the system works well.<sup>59</sup> Although the system may work well on average—indeed, may work perhaps even at a high average level of accuracy—the ingrained myth of perfection now gets in the way of revisiting flawed convictions, particularly when they are old convictions.<sup>60</sup>

Were the legal profession—both judges and lawyers—to embrace the idea that the system is far from perfect, it might pave the way for what every complex system needs: constant adjustment to the realities of the world.<sup>61</sup> That is the way that systems are made better and, ultimately, more just. Instead, the profession, when it observes depictions of the system that are flawed—whether fictional or real—seems to retreat into an odd form of denial, followed by admonitions that if everyone would just be nicer to one another, it would all be better.<sup>62</sup>

For example, criticism of the supposedly flawed and atypical behavior of lawyers and judges during the Simpson criminal trial was one of the goads to the creation of the National Action Plan On Lawyer Conduct And Professionalism, adopted in early 1999 by the Conference of Chief Justices.<sup>63</sup> On the whole, the report is a thoughtful, comprehensive, earnest work that acknowledges the flaws in lawyer ethics and conduct, and makes

59. See *Herrera v. Collins*, 506 U.S. 390, 427 (1993) (O'Connor, J., concurring) (stating that the Supreme Court has "no reason to pass on . . . the question whether federal courts may entertain convincing claims of actual innocence. That difficult question remains open. If the Constitution's guarantees of fair procedure and the safeguards of clemency and pardon fulfill their historical mission, it may never require resolution at all.").

60. See Givelber, *supra* note 56, at 1325–28.

61. For example, Daniel Givelber argues that [t]he presumption of guilt, not the presumption of innocence, permeates the criminal adjudicatory system. There are no formal events or pronouncements to contradict this view. All results, including acquittals and dismissals, can be rationalized on the grounds that a guilty defendant 'beat' the charge rather than that an innocent person was vindicated.

Givelber, *supra* note 56, at 1326.

62. *Id.*

63. A NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM (1999) [hereinafter NATIONAL ACTION PLAN].

concrete proposals for achieving better results.<sup>64</sup> But the thick report, with the ghosts of the Simpson criminal trial lurking as invisible marginalia on every page, assumes that the current system needs only to be improved, not scrapped and rebuilt.<sup>65</sup>

Thus, the report's suggestions are largely hortatory rather than profoundly reformist. The report suggests that law professors, judges, mentors, and "good lawyers" should more effectively teach law students, new lawyers, strung-out lawyers, and "bad lawyers" how to behave, with more effective discipline applied if teaching by example does not work.<sup>66</sup> Nowhere does the Report analyze the underlying problems of the system—for example, that it is built on principles of combat and that it is hard to make combatants behave.<sup>67</sup> Nor does it suggest that the public be told the truth—that no perfect system is able to be achieved because the system is too large and too complicated for perfection or anything even close to it.<sup>68</sup> The report is also at times rather thin-skinned in regards to true criticism. For example, the Report states:

[L]aw faculty should always be mindful of their own status as role models. Law students who are consistently exposed to faculty who disparage legal practice and courts will assume these views themselves and translate them into disrespect and unprofessional conduct towards their legal colleagues and judges. Even when critiquing particular judicial opinions or legal practices, faculty should instill in their students respect for the justice system and for the individuals who work in it.<sup>69</sup>

This comment, of course, comes from individuals who, deep down, think that the problems of the judicial system come from what people—in this case future lawyers—see and hear about the system. The authors of this report think that if everyone is just polite and respectful, it will all work out in the end.

Unfortunately for the structures of the judicial system, "respect" is likely to prove ever more illusive, as the system comes under

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64. *Id.*

65. *See id.*

66. *Id.*

67. *See id.*

68. *See* NATIONAL ACTION PLAN, *supra* note 63.

69. *Id.* at 24. The odd thing about this concept is that it seems to fly in the face of what might really work—teaching law students about the realities of the system—its flaws and imperfections—including the occasional bad, surly, or less than thoughtful judge, so that students do not become deeply cynical when they confront the realities of practice.

increasing scrutiny from the public.<sup>70</sup> Nor is the increased criticism likely to come through the very narrow-cast medium of critical law professors or even from the broader-cast media of television and radio, whether fictional or real.<sup>71</sup> Rather, the scrutiny will come more and more from the Internet, which has only begun to write its writ on our culture.<sup>72</sup>

David Weinberger, the editor of the Journal of the Hyperlinked Organization, recently wrote:

Businesses frequently—usually—make the mistake of thinking that the Web is a marketing medium and the intranet is a communications medium. It's not. The Web is a world . . . a world that is in the process of swallowing the business world whole. The rumbling you hear is the sound of digestion.<sup>73</sup>

If Weinberger is right about what will happen to businesses, then the justice system will in time also be swallowed by the world of the Internet. Right now, the inhabitants of the system do not see that coming. Far from being worried about being eaten by the Internet, courts, and other public institutions associated with the justice system are embracing the Internet. Courts are putting up their opinions for all to read. States are making their statutes available. Entire law libraries are being made accessible to the public. But all of this has the feel of marketing, of courts saying to potential "users," "look at us and like what you see."

What has not yet really begun, however, but is likely coming, is the flipside of the marketing phenomenon: people are going to talk back to and about the courts. Individuals and small groups—people with no connections, no professional training, and certainly no sense of respect—will be able to tell everyone, with the click of a mouse, when they *do not* like what they see. One individual, sitting in the back of a courtroom, will be able to take her notebook computer out in the hallway and tell the world what she thinks she sees going on in a trial. It may be accurate; it may be inaccurate. It may be respectful; it may be disrespectful. What it will not be, however, is mediated by professional journalists, lawyers, or anyone else.

There may be political ramifications as well. Judicial elections or retention elections, still held in many states, are often thinly funded and ill-

70. Kelly L. Cripe, *Empowering The Audience: Television's Role In The Diminishing Respect For The American Judicial System*, 6 UCLA ENT. L. REV. 235, 281 (1999).

71. Carl E. Stewart, *Contemporary Challenges To Judicial Independence*, 43 LOY. L. REV. 293 (1997).

72. *Id.*

73. David Weinberger, *The Web is a World*, J. HYPERLINKED ORG. 7, 8 (July 8, 1999) <<http://www.hyperorg.com/backissues/joho-july8-99.html>>.

covered by the press. Come election day, most voters have never heard of the candidates, including the incumbents. A well orchestrated Internet campaign, attacking a sitting judge, could change all of that rather quickly.

In the end, how the Internet will eat and digest the justice system is a matter of speculation. Perhaps it will only eat part of it. The question, of course, is which part. If we want it to spare the truly good parts, we as a profession need to get away from worrying about the frumpy worry of projecting an image of perfection for our institutions and worry more about letting people in on the reality—a bumpy system that tries its best to get it right, but sometimes fails.

Otherwise, we should prepare to be digested.

Lisa Scottoline, who has been called “the female John Grisham” by *People* magazine, writes legal thrillers that draw on her experience as a trial lawyer at a prestigious Philadelphia law firm and her clerkships in the state and federal systems of justice. Ms. Scottoline won the Edgar Award for excellence in suspense fiction for her second legal thriller, *Final Appeal*, and her first, *Everywhere That Mary Went*, was nominated for the same high honor. Subsequent novels, *Running From the Law*, *Legal Tender*, and *Rough Justice* were national best sellers and received critical acclaim. In addition, *Publisher’s Weekly* said that Ms. Scottoline’s books may change the way people think about lawyers, and her novels have been used in law schools and continuing legal education courses for the ethical issues that they present.

Ms. Scottoline is a magna cum laude graduate of the University of Pennsylvania and a cum laude graduate of its law school, where she was an associate editor of the *University of Pennsylvania Law Review*, had her student comment published, and won the Loughlin Prize for Legal Ethics. Her novels have been translated into more than twenty languages, including Chinese. A native Philadelphian, Ms. Scottoline lives with her family in the Philadelphia area and welcomes email through her Web sight, [www.scottoline.com](http://www.scottoline.com).

## Get Off the Screen<sup>\*</sup>

Lisa Scottoline

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Thank you to Nova Law Center, to Dean Harbaugh, to Professor Paul Joseph for having me, and to all of you for coming tonight. I am thrilled and honored to be speaking to you as part of this Symposium on Law and Popular Culture. Special “kudos” should go to the Law Center for holding such a seminar, on a subject that I think has vital implications for all of us. Nova is the law school in the forefront of examining this issue, and *Prime Time Law*, edited by Professors Robert Jarvis and Paul Joseph of this law school, is the hornbook on the subject.<sup>1</sup> So thanks to Nova—and thanks for letting me play, too.

While I’m thanking people, I want to thank the school especially for inviting me to address you as the Leo Goodwin, Sr. Professor of Law. I can’t tell you what an honor and a thrill this is for me, personally.

In my experience, by the time they turn forty, everybody decides that everybody else has a cooler life than they do, does cooler things, has a cooler job. I was a lawyer before I became a writer (I once was lost but now am found), and lots of people think that being a writer is a very cool job. Though I like it, it’s not.

There is one job that is, as my daughter would say, way cooler. I’m forty-three and I know. The coolest job in the world is being a law professor. I have always thought this and always will. In fact, I wish I was a law professor—truly—and so when Dean Harbaugh asked me to come here and make like a law professor, I accepted immediately. I even get a chair! I feel smarter already.

But though I am professor for a day, I will not test you or put you through the grinder that is law school. Tonight you don’t have to learn anything, you just have to listen, and if you don’t mind, explore with me a thoroughly entertaining topic, which concerns law as entertainment in popular culture, or as I have entitled this talk, *Get Off the Screen*. You’ll see why later.

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<sup>\*</sup> Lisa Scottoline delivered this speech at Nova Southeastern University’s annual Goodwin Alumni Banquet on March 9, 1999, as part of the Leo Goodwin Sr. Distinguished Lecture Series. The Editorial Board of the Nova Law Review has added citations for the convenience of the reader.

1. *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE* (Robert M. Jarvis & Paul R. Joseph eds., 1998).



I'll talk first about the problem—or the issue—that I see developing. For those of you who remember the sixties, and those of you who read it as history, there was a line from a song: "There's something happening here. What it is ain't exactly clear."<sup>2</sup> The line applies as much to the revolution of politics in the sixties as the revolution in entertainment of the nineties. It is telling that, in the nineties, politics doesn't interest us half as much as entertainment does, if the impeachment hearing ratings are an example. Now there's a phrase. Impeachment hearing ratings. Did you ever think you'd hear that? There's something happening here, and that's what I mean.

Part one. What is happening? That's my first section of this speech. It's not very law "professor-y", but neither am I.

What is happening? Well, in my view, the line between the reality of lawyering and its fictional representation on television and in books has gone well beyond blurred. It isn't really a question anymore of how lawyers and law are portrayed on television and in books, because that depiction is merging daily with reality.

It's a symbiotic relationship at this point between fiction and reality, not a separate relationship that can be compared and contrasted, like a law school exam. At this point, the wall between fiction and reality is as thin and porous as a cell membrane, with reality passing through it to fiction and fiction flowing backwards to reality, in constant flux.

Almost everywhere we look, right now in the popular culture, there is an almost complete merger of fiction and reality when it comes to the law. Law has become entertainment, and entertainment law. Before we discuss whether this matters, let's talk more specifically about what is happening here. This is what I mean.

Let's take television for an example, though later I want to talk about books. At one end of the spectrum are shows about the law that are not fictional, and they are a whole new breed. Does anybody remember the original *Divorce Court*?<sup>3</sup> In that show, there were actors that pretended to have real-life conflict over divorces. Now we have real conflicts on *Judge Judy*.<sup>4</sup>

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2. BUFFALO SPRINGFIELD, *For What It's Worth*, on RETROSPECTIVE: THE BEST OF BUFFALO SPRINGFIELD (WEA/Atlantic Records 1969).

3. *Divorce Court* is currently a syndicated show. Listings may be found on the World Wide Web at <[www.divorcecourttv.com](http://www.divorcecourttv.com)>.

4. *Judge Judy* is currently a syndicated show. The *Judge Judy* official website may be found on the World Wide Web at <[www.judgejudy.com](http://www.judgejudy.com)>.

We all know Judge Judy, the uber mother-in-law who lectures, cajoles, and ultimately rules from the bench. The litigants are real, the facts are real, and so is the law. Judge Judy is the new Judge Wapner, who used to preside over *The People's Court*.<sup>5</sup> You remember that show, it was the same format as *Judge Judy*. Its motto was, "Don't take the law into your own hands, take it to court."<sup>6</sup>

Now, Judge Wapner is still on television handing down rulings, but he does it on *Animal Court* on the cable channel Animal Planet. The jurisdiction of animal court is not as clearly defined as federal jurisdiction, but you get the idea. The conflicts involve animals. Horses, potbellied pigs, cute little kittens; the cuter they are, the higher the ratings. And Judge Wapner rules from the bench, with a bailiff who looks a lot like his sidekick on *The People's Court*.

In addition to Judges Judy and Wapner, there is *Judge Joe Brown*, *Judge and Jury*, with former Judge Burton Katz, *Judge Mills Lane*<sup>7</sup>—yes, the boxing referee, but let's not go there. If Jesse Ventura can be a governor, then Mills Lane can be a judge. There is even a new version of *The People's Court* with former New York Mayor Ed Koch, who proves daily that you don't even have to be a judge to be a judge, not where your jurisdiction is television.

What is our fascination with The Honorable Judy and Wapner? Why do we watch these shows in record numbers? Why do we find the law in this form so entertaining? I do not pretend to have the right answers, though I do have a few thoughts.

People like to learn about the legal process, but they like their law local. Almost Emanuel on television. It's got to be handed to them in easily digested stories, in which the conflict is clear, and black and white, and the resolution is swift and certain. Judges Judy, Brown, and Wapner are the instant gratification of judicial process. Television provides the only example of a speedy trial in the United States. The rush to judgment is to finish before the credits roll.

Not that I criticize these shows, mind you. On the contrary, I find them highly entertaining. I love television, and no lawyer is immune to the charm of speed. Is there a lawyer who doesn't get some measure of satisfaction when a judge rules from the bench? Ironically, in my experience, the only

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5. *The People's Court* is currently a syndicated show. Listings may be found on the World Wide Web at <[www.peoplescourt.com/cmp/station.html](http://www.peoplescourt.com/cmp/station.html)>.

6. *The People's Court* (Ralph Edwards/Stu Billet Productions 1981–93).

7. *Judge Mills Lane* originally aired on the WB Network.

thing better than a ruling from the bench, in your favor of course, is an extension of time. Go figure.

And there is something else to our television judges, which explains why *Judge Judy* is currently beating out *Oprah*<sup>8</sup> in the ratings.<sup>9</sup> To a nation treated to a steady diet of Jerry Springer, Judge Judy and Wapner are a welcome respite, and contrast.

Consider these two types of shows. On the *Jerry Springer Show*,<sup>10</sup> there is plenty of conflict, to be sure. The episodes have titles like "You Stole My Best Friend!" and "You Cheated on my Brother!". Conflict equals ratings.

But conflict on the Springer show creates disorder and even violence. People shout at each other, curse each other, and ridicule each other. The audience insults the guests and the guests flip the bird to the audience. The conflict goes unresolved, or worse, the person who shouts the loudest—or hits the hardest—wins. Might makes right. And Jerry Springer, who has to be the wimpiest lawyer on the planet, cannot hope to keep order, nor does he try. He wants the fighting, even the violence, so that the black-shirted bouncers can hurry onstage a minute or two late.

Jerry Springer is Geraldo before he stopped wearing his contacts. And like Jerry Springer's show, Geraldo's show often had people hitting each other and screaming at each other. Geraldo was proud of the time his nose was broken when he put a white supremacist and an African American on the same stage.<sup>11</sup> The ratings went through the roof and so did chairs and tables.

When you think about it, Jerry Springer and Geraldo Rivera are the direct opposite of Judges Judy and Wapner. Jerry Springer is a world without law; he is the "anti-Wapner." In fact, the *Jerry Springer Show*, where might makes right, is everything a system of laws are designed to prevent. I don't think I'm making too much of this. I actually think I'm onto something.

8. *Oprah* is currently a syndicated show. Listings may be found on the World Wide Web at <[www.oprah.com/tows/program/tows\\_prog\\_whenwhere.html](http://www.oprah.com/tows/program/tows_prog_whenwhere.html)>.

9. See Joe Schlosser, *Another Benchmark for 'Judge Judy'*, BROADCASTING & CABLE, Mar. 29, 1999, at 15; Joe Schlosser, *'Judge Judy' Lifts the Bar*, BROADCASTING & CABLE, Mar. 22, 1999, at 16.

10. The *Jerry Springer Show* is currently a syndicated show. Listings may be found on the World Wide Web at <[www.universalstudios.com/tv/jerryspringer/listings.html](http://www.universalstudios.com/tv/jerryspringer/listings.html)>.

11. *Geraldo!: Young Hate Mongers* (Tribune Entertainment television broadcast, 1988).

There's even something to the fact that Judge Judy and Wapner are clearly from an older, and clearly wiser generation. They behave as authority figures, and they resonate. It's true of all of the television judges. And then there's Ed Koch, who ran New York City. The television judges are, in a sense, the parents, while Jerry and Geraldo are the kids. The judges are the daddies and mommies who set the curfew and pay the bills; the kids borrow the car and crack it up.

Not only in their age and experience, but also in their manner, Judge Judy and Wapner remind us that there are still values and decorum, that by the way, have nothing to do with courtrooms or law. I have watched these shows, and it is fascinating how frequently these television judges admonish and lecture on manners. The law is secondary to good behavior.

Judge Judy is legendary for her insistence on civility between the parties, and she has been known to correct the English of more than a few litigants. Judge Wapner hates it when litigants interrupt him or each other. He stops them if they simply tell their story. They have to answer his questions to elicit it. No one is permitted to talk out of turn. Wapner shouts "Take turns!" as if to toddlers. The parties cannot call names or roll their eyes when the other litigant speaks.

Even the pets have to pay attention. Last week, a toy poodle that was standing there as "Exhibit A" in a dispute over a grooming bill barked out of turn. Judge Wapner said, "If that dog barks one more time, he's outta here!" And this is *Animal Court*! I'm not kidding!

I watch Judge Wapner. I love Judge Wapner. He reminds me that we live in a world not only of laws, but of taking turns. On the criminal courts building in New York it says, "Where law ends, tyranny begins." That may be right. They're smart in New York, and they know a lot of stuff. But to me, where law ends, Jerry Springer begins.

Let's move to the next step in our examination, cable television's own convergence of law as entertainment—Court TV. We begin with the name Court TV, the perfect blend of fiction and reality. It hints at what is to come.

I watch Court TV all day, every day. It's on when I work. I understand firmly the difference between fiction and reality, most of the time. But to most viewers, Court TV is simply the real Judge Judy and Wapner, and sometimes, even I get confused.

The cases on Court TV aren't called by their case names—I guess on the assumption that it is too "law-y" and not "entertainment-y" enough—so they're given catchy names like television episodes: *Murdered Neighbor*

*Trial*;<sup>12</sup> *Texas Dragging Death*;<sup>13</sup> *Florida Strangulation Trial*,<sup>14</sup> which was *Florida v. McIntyre* out of Vero Beach. There was also *Potato Gun: Toy or Weapon?* and *The Drug Dealer Murder Trial*.<sup>15</sup> I like that last one. We show that trial in Philly too—every week.

Everyday Court TV runs actual court cases back to back, as if they were fictional television shows. They run one after the other and sometimes the juxtaposition seems, well, as odd as an episode of *Friends*<sup>16</sup> segueing into *20/20*.<sup>17</sup>

Sometimes it is worse than odd, it's downright horrific. Two weeks ago, Court TV was running the trial of that awful dragging death in Texas,<sup>18</sup> but when the Texas trial was in recess they shifted back to a case in which a woman shot her neighbor over a small shrub that was growing unpruned onto her property line.

Now both of these cases involve murders, but one is so different in kind from the other, not only in the horror of its fact situation but also in its implications for race and justice in this country, that they are simply worlds apart. To alternate between them, ten minutes here and ten there, is to trivialize the dragging death and magnify the neighbor dispute, or at least it feels strange when you watch it.

The Court TV people didn't make any remarks about the irony. From a strictly programming point of view, the trial shows were equal. Both trials became shows that would interest the viewer, and from the programmer's point of view, alternating between them made sense. But it didn't. Maybe it did in fiction, but not in reality.

12. *Murdered Neighbor Trial* (Court TV television broadcast, 1996) (covering California v. Palm, in which a retired Navy commander was tried for murdering a neighborhood bully) <<http://www.courtstv.com/casefiles/verdicts/palm.html>>.

13. *Dragging Death Trial* (Court TV television broadcast, 1999) (covering Texas v. Brewer, the capital murder trial of one of three individuals charged with the brutal dragging death of James Byrd, Jr.) <[http://www.courtstv.com/trials/brewer/091799\\_am\\_ctv.html](http://www.courtstv.com/trials/brewer/091799_am_ctv.html)>.

14. *Florida Strangulation Trial* (Court TV television broadcast, 1999) (covering Florida v. McIntyre, a case in which a police officer procured her son's confession to a murder without formally reading him his rights) visited Apr. 7, 2000 <<http://www.courtstv.com/trials/mcintyre/index.html>>.

15. *Drug Dealer Murder Trial* (Court TV television broadcast, 1999) (covering Michigan v. Taylor, a case in which a young man was accused of killing his mother's drug dealing boyfriend) <<http://www.courtstv.com/verdicts/dtaylor.html>>.

16. *Friends* originally aired on NBC.

17. *20/20* originally aired on ABC.

18. See *supra* note 13.

By the way, in between the trial, on breaks and such, legal commentary is offered by a variety of television lawyers, television shrinks, television social workers, and Dr. Judy. Dr. Judy is not to be confused with Judge Judy, who has the same last name. During the breaks, real people—viewers—call in with questions and comments. It's telling. Sometimes they comment on the case and the story, as if it could be changed to suit. "This forensic witness is boring," they say. They chirp up about which witnesses they like. They review them as if they were actors. "He did a good job," they say. Sometimes they forget and review the lawyers. One woman called in and said, "I think that lawyer is flat-out lying." Nobody reminded her that it doesn't matter when the lawyers lie, only the witnesses.

When court is not in session, on holidays and such, Court TV shows its other law programming, and that's where the fiction and reality begin to blend in the same show. When court is closed or at night, Court TV runs shows called *Trial Story* and *Prime Time Justice*. I love these titles.

In these shows, a fiction-like story is made out of the reality of the trial and the underlying case. The shows dispense with the trial footage, which can be so dull that people may start turning their dials (query—does anyone turn dials anymore?). Instead of trial footage, there are reenactments. Actors who look like the actual defendants play the bad guy, tracing his steps while he stalks a woman he would later be convicted of killing. Other actors play the witnesses, who stand by open-mouthed.

Now follow this, what is happening here is that reality (the trial) has been transformed to fiction (using actors in a story) and all of it is shown on television, as a "crime story." Is it fiction or reality? Crime or crime story? You tell me.

It gets worse. On January 8, 1999, Court TV ran a miniseries on the making of the movie *A Civil Action*,<sup>19</sup> entitled *A Civil Action: In Pursuit of Justice*, which, as you know is a movie about a real lawsuit.<sup>20</sup> Court TV interposed scenes of the movie actors with scenes of the real lawyers and judge. The interviews shifted seamlessly back and forth. If you left the room for a snack and came back, you didn't know who was real and who was fiction. What was happening—Television was broadcasting a show about a movie from a book about a real lawsuit. Still with me? See what I mean?

Where's the line? There isn't one. It's all the same. It flows back and forth. You could poke a hole through the wall and have it close up behind

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19. Paramount Pictures (1998).

20. *A Civil Action: In Pursuit of Justice* (Court TV television broadcast, Jan. 8, 1999); see also *Anderson v. W.R. Grace & Co.*, 628 F. Supp. 1219 (D.Mass. 1986).

you, like the little girl in the movie *Poltergeist*<sup>21</sup>—who disappeared into the television by the way.

But back to *A Civil Action*.<sup>22</sup> It was a great miniseries about the movie from the book about the case, because a noted legal scholar, John Travolta, was in it.<sup>23</sup> In fact, the show, like the movie, became a vehicle for John Travolta. Soon all toxic waste cases will attract big stars. We can only hope. But in the particular show, John Travolta was interviewed talking about the real lawsuit.<sup>24</sup> Get this—John Travolta on Court TV interviewed by a lawyer about his views about a lawsuit. John Travolta, a Scientologist, has blurred his line.

Here's a slightly different example, and for those of you paying very close attention, you'll see that we get closer and closer to actual fiction. Court TV has bought the rights to broadcast the series *Homicide*<sup>25</sup> every night. *Homicide* is the television show about homicide detectives in Baltimore. It is a great show. The stories are realistic. The characters are almost human, and ugly so you know they're real people. The camera bumps around so you know it's really happening.

Sometimes Court TV sandwiches its *COPS*<sup>26</sup> show between episodes of *Homicide*, as in *Homicide*, then *COPS*, and then another *Homicide*. The *COPS* show, if you haven't seen it, is a show about real homicide detectives. The stories are so realistic. The camera bumps around so you know it's real. By the way, real homicide detectives are much better looking than the actors who play them on television, who are ugly to seem more real. But to my point—if you watch these shows together, you are liable to forget which is the fiction and which the reality. They look identical, talk identical, and both have credits and theme music at the end. How do you know? You need a law degree.

Just to push the point, Court TV also did a special documentary on the real murder cases that *Homicide* fictionalizes. Get it? Start with reality, turn it to fiction, make it real again and put it on television. A real show about a fake show about reality—on television.

Has all of this escaped anyone's attention? Not quite. Some people are concerned about this, but predictably, for all the wrong reasons. The head of Court TV, Henry Schlieff, said of the purchase of *Homicide*, "As 'Homicide'

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21. Amblin Entertainment/MGM (1982).

22. *A Civil Action: In Pursuit of Justice*, *supra* note 22.

23. *Id.*

24. *Id.*

25. *Homicide* originally aired on NBC.

26. *COPS* originally aired on FOX.

shows, life is a balancing act, and on balance, this is a perfect compliment to the schedule because it will draw a more diversified audience to our reality programming."<sup>27</sup>

I know what he means. An almost real show will make people like the real shows. We need weaning from fictional television. We need a bridge of broadcasting to reality to make the transition go down easier. It just might. Schlieff added that, according to research, Court TV's adult viewers are fifty-nine percent more likely than average to watch *Homicide*.<sup>28</sup> It's true, it has to be. The shows look and feel identical. Only problem is, one is completely fictional and one is about real crime—and real crime victims. Are we all thoroughly confused? Now you see why I wasn't a law professor.

Court TV's founder and former president, Steven Brill, criticized the Court TV's purchase of *Homicide*, but for a very interesting reason. By the way, the quote here is from *Variety*, the entertainment newspaper (which is also perfect). "'Homicide' is a terrific show but I think it's crazy to do it on Court TV," said Brill, the CEO of publisher Brill Media Ventures.<sup>29</sup> Why did he say that? Because it might confuse people? Because it trivializes real crime? No. Brill said, "It dilutes the brand. [They're] making Court TV indiscriminate from all of its competition."<sup>30</sup>

Hear that? The problem is the brand, that the marketability of the Court TV name may be diluted. But what about the fact that the *reality* gets diluted, too? That some viewers may even be confused by the programming? Or that it lends false credibility to a fictional program if it is sandwiched between true shows, like *Homicide* put between two *COPS* episodes. Conversely, isn't it possible that fiction, which encases a true show, makes the true shows more fictional?

Think about it. Marshall McLuhan was right of course, the medium really is the message. If an event, even a real murder trial is run on television long enough, it becomes entertainment. Doesn't broadcasting something on television affect our perceptions of it? Of course.

It does in many other circumstances. Run the same article in the *N.Y. Times* and *The National Enquirer*. The *Times* gets greater weight. Dress a law student in a suit or a pair of shorts and a T-shirt. Which one gets the job? Put a lousy cover on a great book and see if it sells. I can tell you it

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27. Richard Katz, *Court TV Sees Fresh Life in 'Homicide,'* VARIETY, Nov. 9, 1998, at 25.

28. *Id.*

29. Richard Katz, *Court TV to Serve Up 'Homicide,'* Nov. 6, 1998, at 4.

30. *Id.*



won't. Because I think the principle is roughly the same, I think I'm not half-wrong, which is the best I ever hope for.

"Something's happening here. What it is ain't exactly clear."<sup>31</sup> Which brings me to Johnnie Cochran.

Johnnie Cochran appears daily in courtrooms around the country, in Armani suits and, if need be, knit caps. He also appears nightly on Court TV, on his own show, *Johnnie Cochran Tonight*. You know what Mr. Johnnie does in courtrooms, and I'll say outright that I like him. I have nothing against him. He's very smart and he communicates with juries like nobody else. He's a great trial lawyer, which is why he makes a great television host.

You may not have seen his show on Court TV, *Johnnie Cochran Tonight*. It is an interview show in which Johnnie questions witnesses—I mean, interviews guests—and they usually end up agreeing with him, laughing with him, or telling him he is great. Johnnie wins every show.

Of particular interest for our purposes is the *Johnnie Cochran Tonight* show which aired on October 27, 1998.<sup>32</sup> On that show, Johnnie hosted the cast and head writer for the television soap opera *All My Children*.<sup>33</sup> His reference was particularly the legal aspects of the show, so *Johnnie Cochran Tonight* would have some tenuous tie into the law; but to be frank, watching it I had the distinct sense that Johnnie knew way too much about Pine Valley.<sup>34</sup> Way too much. But I digress.

The show was a real lawyer on television interviewing actors about a fake law show. Johnnie spoke first to the head writer of *All My Children*.<sup>35</sup> The television writer told him "you're our prototype" for a trial lawyer.<sup>36</sup> Eeeeek! Johnnie smiled his big Johnnie smile and asked her what the hardest part of writing scripts for the lawyers in the show was.<sup>37</sup> She answered, "Characterization. Johnnie, there are real-life people who have to go home and have real lives" in response to her lawyer characters.<sup>38</sup> I confess I do not know what she meant. She's only a writer and can't be expected to communicate with any clarity.

31. BUFFALO SPRINGFIELD, *supra* note 2.

32. *Johnnie Cochran Tonight: All My Children* (Court TV television broadcast, Oct. 27, 1998).

33. *Id.*

34. Pine Valley is a fictional setting of the daytime soap opera *All My Children*.

35. *Johnnie Cochran Tonight*, *supra* note 36. *All My Children* originally aired on ABC.

36. *Johnnie Cochran Tonight*, *supra* note 36.

37. *Id.*

38. *Id.*

Johnnie then moved on to talk with the actor who plays a lawyer in the show.<sup>39</sup> The actor was tall, blond, muscular, and extremely good-looking. Every inch the lawyer, right? In contrast to the real detectives, who are better looking than television detectives, real lawyers . . . no. The soap actor on *Johnnie Cochran Tonight* talked about how he enjoyed being a lawyer on television and he sounded a good deal cheerier about it than most lawyers I have met. The actor said that he gets mistaken for a real lawyer all the time.<sup>40</sup> Are you surprised? I'm not a lawyer, I just play one on television.

At the end of the show, for the punch line, Johnnie looked at the camera and said that he was thinking about opening a new law office in Pine Valley.<sup>41</sup> Johnnie has evidently been consulting with John Travolta on the fiction/reality distinction. But it is not news that our favorite television lawyer manifests a fundamental confusion between fiction and reality. He defended O.J.

By the way, at the end of his show, Johnnie announced, "Tune in to the next *Johnnie Cochran Tonight*, I'll interview comedian Chris Rock on life, politics, and the law."<sup>42</sup> Now what's next? Eddie Murphy on ancillary jurisdiction? Sandra Bernhardt on the abstention doctrine? Robert DeNiro on RICO?

Well enough already. We get it. Courts can be on television. But can television be the court? Yes, in Philadelphia.

Pretend for a minute you are a criminal in Philadelphia. Not a lawyer. You are picked up for, let's say, a drug dealer murder. Here's what happens. You are cuffed and put in a holding cell to wait for your preliminary arraignment hearing, which comes only an hour to two after you are arrested.

As you know, the preliminary arraignment hearing is the first time you are formally charged with a crime and the determination is made of whether you will get bail or not.

When it's time for your hearing, they take you out, still cuffed, and for some reason give you a cheese sandwich. You don't accept. Who likes cheese with nothing to drink? Plus it's hard to eat in handcuffs. Then you go to your hearing. It's not like any hearing you have ever seen.

You are led to a steel chair in a small cell and you are handcuffed to the chair. Directly across from you is a large television monitor on a rickety television table. You are three feet from the television, owing to the size of the cell. On the wall is a black phone, but the cell is otherwise empty, like

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39. *Id.*

40. *Id.*

41. *Johnnie Cochran Tonight*, *supra* note 36.

42. *Id.*

the one you came from. Nothing is in the cell but you facing the television, and since you're cuffed to the chair, it's as if you're being forced to watch bad television. *Ally McBeal*<sup>43</sup> for example.

But there is no television show on. Gray static blankets the television screen, which emits an electrical crackling noise so loud that you wince. You are still dressed in whatever you were arrested in. The sheriff tells you to sit still so you won't move out of frame. The camera is above the television, but the television is so huge that you don't notice it at first.

Suddenly, the static noise ceases, the gray blanket vanishes, and a full-color picture pops onto the screen, divided into four boxes; the upper right box shows a courtroom made miniature, to fit into the box. The tiny spec at the dais is a bail commissioner. Inside the upper left box is a close-up of the bail commissioner, who, now that you can see him, wears a sweater instead of a robe and looks a lot like Mills Lane. In the lower left box is a lawyer sitting at a desk behind a sign that reads "Commonwealth." In the box next to it is a lawyer sitting at a desk behind a "Public Defender" sign. This is your courtroom for your preliminary arraignment hearing. It's on the television screen. If it weren't your freedom on the line, you'd laugh. It's the *Hollywood Squares*<sup>44</sup> of justice.

What's it like from the lawyer's side? Located in the basement of the criminal justice center, the courtroom for arraignment hearings looks like the set of a television show for good reason. It is.

The courtroom is the size and shape of a stage, half as large as a standard courtroom. A bulletproof divider protects the gallery behind the bar of court from the public, which sits in black modern pews like an audience. On the day I went nobody was watching the arraignment court show. It is not a successful show. I think because it is too real and you can't call in. Also, there are no reenactments.

The studio courtroom is arranged conventionally—from left to right is defense table, judge's dais, and prosecutor's table—but the scene is dominated by the unusual touch of a large camera affixed to the dais and aimed at the studio audience. Next to the camera sits a massive television screen divided into four boxes, the same view as the defendant sees: judge, courtroom scene, district attorney, and public defender.

If you sit in the gallery behind the divider, you cannot help but keep looking from the real courtroom scene to its doll-sized version on the television. The large brass seal of the Commonwealth of Pennsylvania, that

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43. *Ally McBeal* originally aired on FOX.

44. *Hollywood Squares* is currently a syndicated show. Listings may be found on the World Wide Web at <<http://www.hollywoodsquares.com/stations/index.html>>.

looks so dignified as it hangs behind the dais, becomes a copper penny on the television screen. It is odd; reduced and remote; smaller and behind glass.

However, the problem with the television courtroom goes beyond appearances. For the lawyer, when it comes time to represent his client, it gets even odder. For it may be the only criminal proceeding during which the lawyer is one place and the client is in another. The lawyer is in the studio courtroom and the defendant is in the cell, on television.

How do lawyer and defendant consult? Can you say "right to counsel?" Well, lawyers can use a phone at counsel table and pick it up to speak with their client. If the lawyer presses a red button on the phone, the microphone to the gallery will be cut off and the audience cannot hear what the lawyers is saying to his client. But there is no such button to cut off sound to the studio courtroom, so everyone can hear your advice to your client, including the bail commissioner, the district attorney, and the court officers. That is, your adversary and the ultimate arbiter. The public defenders hate it. How could they not?

I can't imagine that the defendants like it either, because on the client's end of the phone line, the turnkey guarding your client hears everything he says, any question he asks, or any advice he seeks. Wake me up when we get to the justice part.

Odder yet is the show you see unfolding on the television screen. I watched the show the other day for three hours. When the cases are called, the four boxes vanish and the defendant's face appears on the screen, one face after the other. The faces, larger than life on the big screen, float in the black frame above the logo reading "Panasonic."

Each face is different from the last, but the thing they all have in common is that they have just been arrested for a major crime. Aggravated assault, murder, rape, car-jacking. There are white faces, black faces, men and women. There are old, young, and way too young. Some need translators; most do not.

Many of them are crying, bloodied, beaten. One man is completely naked from the waist up; he appears on the television screen, at his own bail hearing, that way. Nobody remarks on it in the studio courtroom.

Many of the faces are still high on the drug they were picked up for dealing. One woman, a mother of three, cannot stop weeping. She is worried that her children were home alone when she was picked up, a seven-year old taking care of two younger children. The bail commissioner told her she should have thought of that before she sold crack. The public

defender, on the phone, cannot get her to stop crying. It is not a good show. It doesn't have a happy ending. No wonder nobody watches it.

Each arraignment lasts about four minutes, and so the faces flip through at a pace that can only be described as cinematic. They are arraigned in groups, so there will be fifteen at a stretch, then none at all for ten minutes, and then it will start up again. The bail commissioner speaks to the defendant through a camera mounted at the back of the courtroom, above a monitor. The bail commissioner's lines are these:

This is your preliminary arraignment hearing. You are charged with aggravated assault. Your next court date is March 10, 1999 in Courtroom 1406 of the Criminal Justice Center. I'm assigning you a public defender. Your bail is set at \$5,000. Do not miss your court date. That concludes your arraignment hearing. Now sign the subpoena and get off the screen.

Get off the screen.

Your client—the face, the defendant—vanishes as abruptly as if someone had grabbed the remote and changed the channel, which of course, someone has.

Why do we do this in Philly? Are we making some absurd and rather obvious point about courts and television? No. Not intentionally. In the old days in Philadelphia, those arrested were brought to one of twenty odd precinct houses and arraigned in real courtrooms. Like you see on television. But that cost a lot of money, so now they are all arraigned by a television judge, without the advice of their lawyer, in a courtroom that consists of a cell and a television.

Get off the screen.

Before I leave this topic, I want to address an article which coincidentally appeared in last Friday's *New York Times*. The *Times* piece is called *Night Court Joins the Theatre That Is New York*, and talks about the arraignment court as being "a tourist attraction and [a] cheap date."<sup>45</sup>

It's no surprise, to those who remember the old *Night Court* show, in which night court was fictionalized as comedy. Part of me, given what I have seen, is repulsed by this notion, part of me understands it. But for our purposes, what is most interesting is a small sidebar to the article called *Where to Watch*.<sup>46</sup> It says, "[f]or those who have an appetite for courtroom

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45. Janny Scott, *Night Court Joins the Theater That Is New York*, N.Y. TIMES, Mar. 5, 1999, at E41.

46. *Id.*

drama but who cannot face leaving the living room sofa, the current television season offers plenty of alternatives to a trip to night court" and there is listed Judge Joe Brown, Judge Judy, Judge Mills Lane and of course, Judge Wapner of Animal Court.<sup>47</sup>

I am not making this up. See (hold up paper)? I wrote my speech before this article appeared—I swear it, but it proves my point. Real live arraignment court is entertainment, and so is *Judge Judy*. They are fungible. If the *New York Times* cannot distinguish between fiction and reality, what hope do any of us mere mortals have? Or John Travolta, for that matter?

Which brings me to my next question, which is, is it bad? Well, is it? Having said what I said, I don't really think so. I'd rather have the shows, all of them . . . as clumsy and strange and even stupid as they are. I wish there were more. I think, sure, there is a danger of confusion, and sure, there is a blending of reality and fiction. It leads the public to think that what they see in fiction is real, there is no doubt about it. And it's not always to the benefit of the legal profession, whether its watching the lawyer shenanigans of the O.J. trial, or even dopey lawyer shows that are fictional.

I don't want to bore you with statistics, but *Ally McBeal* is a hit show. Every Monday, millions of people get a weekly dose of lawyers, miniskirts, and lip liner from that show. As happy as I am that there's a woman lawyer starring on television, it bothers me that her skirts are absurdly short and she does weird stuff with her mouth. I wish television wouldn't show her—us, me—that way.

But I am ultimately a huge fan of the First Amendment, and I borrow that analysis for these purposes. The proliferation of the lawyer shows and the Judge Judy's of the world means that they cancel each other out. They counter each other. For every bad, dopey, or tasteless show, there is a good one.

And there are better lawyer shows. *The Practice*<sup>48</sup> for one, written by David Kelley, the good twin of the guy who writes *Ally McBeal*. I wrote an article on *The Practice* for *TV Guide*—how perfect, huh? The article was called *The Best Show You're Not Watching*.<sup>49</sup> Not everybody watches *The Practice*. The skirts are too short and the mouths too small. And of course, it is far too real.

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47. *Id.*

48. *The Practice* originally aired on ABC.

49. *The Practice – The Courtroom: The Best Show You're Not Watching?* (visited Feb. 19, 2000) <[http://www.sqx.simplenet.com/thepractice/info/tvg\\_bestshow.html](http://www.sqx.simplenet.com/thepractice/info/tvg_bestshow.html)>. Original on file with the Author.

As for the other lawyer shows, as I mentioned at the outset, they are detailed in *Prime Time Law* by Professors Jarvis and Joseph.<sup>50</sup> It's the hornbook here, and on the assumption that most of you are familiar with it, I won't go over the same ground. Suffice it to say there are plenty of these shows, the completely fictional shows and the ones in between, on Court TV and elsewhere on the dial—or bandwidth. We have on television and in books exactly what the First Amendment intended, a robust if implicit debate over what a lawyer really is. That is a good thing, especially in a profession in which lawyer jokes abound.

On balance, I am very glad Court TV is on, and I think there should be more cameras in more courtrooms, even given that they can alter the proceedings somewhat. I wish we had cameras in the Supreme Court, which manages, amazingly, not to even permit audiotapes of arguments that were never intended to be secret or confined to the elite because the courts and the law don't belong to the elite.

The judicial process is our own. The courts belong to the public. They were intended to be and should be public forums. The justice that we have, both civil and criminal, is ours.

In my view, the more familiar all of us are with the law and with courts, the better off we all are. The more involved in our system of justice, the more we understand the world around us, and the more we may exercise even the power to change it.

A perfect example of this is the rape shield laws, now in place in Pennsylvania and so many other jurisdictions.<sup>51</sup> As you may remember, in the old days women who brought rape charges were compelled to undergo a degrading cross-examination in court regarding their past sexual history. While this had gone on for years, it wasn't until television and books began to dramatize what the process was like for rape victims.

I remember in particular a television movie starring Elizabeth Montgomery on the subject.<sup>52</sup> The show was wonderful, and people started talking about the issue. Women's groups raised a ruckus and so did many other people. The public cried out as one. In response, the evidentiary rules, at least in Pennsylvania, were reformed, as a direct result of public perception and continued sentiment that the status quo was unjust. The merger between fiction and reality ultimately did serve the public good. How amazing. And could there be a better result?

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50. *PRIME TIME LAW*, *supra* note 1.

51. *See, e.g.*, 18 PA. CONS. STAT. ANN. § 3104 (West 1999).

52. *A Case of Rape* (television broadcast, 1974).

Finally, of course, I think it is good because I am as much a part of this phenomenon as a commentator on it. Like most authors, I will talk about myself here and for once, it may be instructive. I have no business whining about Johnnie Cochran or Mills Lane. I make my living the same way. And having said that, I'm on Court TV next week.

I was a lawyer, and a longtime reader of legal thrillers from the days of Erle Stanley Gardner's *Perry Mason*,<sup>53</sup> *Anatomy of a Murder*<sup>54</sup> by Robert Traver, all the way through to Scott Turow and finally to John Grisham. *People Magazine* calls me "the female John Grisham."<sup>55</sup> They mean that as a compliment, though it makes me sound like a drag queen.

I quit practicing when my daughter was born and I got divorced, and I saw that there were very few women lawyers writing legal thrillers. All of the books are fictional, though they are set in Philadelphia, which is a very real city. They are thrillers, but they deal with real-life issues of police corruption, legal ethics, and criminal justice.

I use the real buildings in the city and give as much true physical detail as I can to my fictional story. For my new book, *Mistaken Identity*, I took boxing lessons in order to write a realistic boxer.<sup>56</sup> I watched murder trials in order to write a realistic murder trial. I hung with the homicide detectives and went on a ride-along with the Police Commissioner himself, for a day. In short, as a rule, I do everything I can possibly do to make my fiction seem real. Thus, I stand before you completely guilty as charged, as guilty even as Jerry Springer. Well maybe not that guilty.

Sometimes, as in my new book, even the plot is taken from my real life. In *Mistaken Identity*, a woman lawyer goes to prison to meet a new client, a woman inmate accused of the murder of her boyfriend, a Philly detective.<sup>57</sup> The defendant looks a lot like the lawyer and talks a lot like her.<sup>58</sup> The defendant claims, in fact, to be the lawyer's identical twin.<sup>59</sup>

In my life, something very much like this happened to me, not too long ago. I found out that I had a half sister I didn't know about, who was so close to me in age, appearance and manner that she could be my twin. Now I

53. See, e.g., ERLE STANLEY GARDNER, *THE CASE OF THE FOOT-LOOSE DOLL: A PERRY MASON MYSTERY*, VOL. 1 (1999).

54. ROBERT TRAVER, *ANATOMY OF A MURDER* (1983).

55. Lisa Scottoline—*Rough Justice*, (visited Mar. 22, 2000) <<http://scottoline.com/newrpeople.cfm>>.

56. LISA SCOTTOLINE, *MISTAKEN IDENTITY* (1999).

57. *Id.*

58. *Id.*

59. *Id.*



had always wanted a sister, but was surprised to find I actually had one, though we have since become friends, and good ones. But the emotional truth behind my personal experience—being found when you didn't know you were lost—inspired the novel that became *Mistaken Identity*.<sup>60</sup>

So clearly, the truth became fiction. In the novel, the heroine goes on to solve the mystery of the murder as well as of her own identity, and it is, at times, moving.<sup>61</sup> The reviews have been wonderful and if I had to guess, I think my reality makes my fiction truer. That I am a lawyer makes the fiction truer. That I am an Italian American girl from Philly, writing about a heroine who is an Italian American girl from Philly, all of these things make my fiction truer. So who am I to complain about Johnnie Cochran?

Which is why I don't, not really, and not in the end, as they say. Millions of us—maybe not this sophisticated crowd, but the great unwashed—we get ideas about lawyers and the way they conduct themselves, about courts and judges and ultimately about justice in this country from television and books like mine. *Publishers Weekly*, a respected trade magazine, has said that my books “may change the way people feel about lawyers.”<sup>62</sup> I think that's great but more importantly, it acknowledges that this phenomenon is happening.

All of us lawyers who write are aware of our obligation, I know it is always uppermost in my mind. It doesn't mean that I sugarcoat the profession, it means that I humanize it. To simply remind people that lawyers are human, too, capable of wishing and hoping, of being misunderstood, or making mistakes. I draw the characters from how I would feel or how I imagine a character would. I assign a real heart and mind to a fictional person, and that reality—even as imagined as it is—makes the fiction truer.

In the end, it is a good thing. If it isn't, someone will write a book that shows it isn't. It is just what the law intended, and isn't that remarkable?

Thank you.

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60. *Id.*

61. SCOTTOLINE, *supra* note 57.

62. *Legal Tender—Book Review*, PUB. WEEKLY, Sept. 9, 1996, at 62.

# Silver Tongues on the Silver Screen: Legal Ethics in the Movies

Tonja Haddad\*

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## I. INTRODUCTION

“A Man with no ethics is a free Man.”<sup>1</sup>

Lawyers and their courses of action, both ethically and morally, have been under assault from as far back as the 1920s.<sup>2</sup> The ethical conduct of

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1. Jake McKenna (Nick Nolte), *U-TURN*, Sony Pictures Entertainment (1997).

2. *LAWYERS: A CRITICAL READER* 193 (Richard L. Abel ed., 1997). In 1927, the Chicago Bar Association, concerned with the public's view of the legal profession, “formed a Committee on Publicity and Public Relations . . . to create ‘a more favorable attitude on the part of the public toward the bar.’” *Id.* (citing TERENCE D. HALLIDAY, *BEYOND MONOPOLY* 89–91

lawyers has been discussed in a plethora of articles, books, and television shows, movies, and even songs, and is generally viewed with discontent, by both lawyers and the public.<sup>3</sup> There is somewhat of a controversy surrounding the foundation for society's negative image of lawyers. Some opine that the reason for this unfavorable image is the fact that the public has more exposure to "real" lawyers than ever before;<sup>4</sup> while others postulate that it is television, fiction writings, and movies that occasion this disheartening outlook.<sup>5</sup> This article focuses upon the latter school of thought, and discusses specifically lawyers' roles in movies, the ethical quandaries that are presented to the attorneys, and how they comported themselves in the past when faced with them. Additionally, this article will discuss the applicable Rules of Professional Conduct as stated by both the American Bar Association and the Florida Bar Association, Ethics Opinions in which real attorneys have acted in the same manner as the movie lawyers, and the sanctions imposed upon them for this behavior. This article concludes with a discussion of whether "life imitates art," or whether the converse is true, as well as whether lawyers have themselves to blame for this negative portrayal.

## II. INEFFECTIVE ASSISTANCE OF COUNSEL OR A COMEDY OF ERRORS?

A lawyer's obligation to represent a client both competently and diligently is at the forefront of Professional Responsibility.<sup>6</sup> Failure to provide such representation carries grave sanctions for a lawyer, and exposes the

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(1987)). See also Leslie E. Gerber, *Can Lawyers be Saved? The Theological Legal Ethics of Thomas Shaffer*, 10 J.L. & RELIGION 347 (1994).

3. Stacy Pittman & Jonathan Portis, *The Fourth Estate: The Impact the Media Has on the Image of Lawyers*, 33 ARK. L. REV. 14 (1998) (discussing the 1997 Gallup Poll which ranked professions on both their honesty and ethics, finding that "[l]awyers' negative numbers in 1997 put them at No. 25 (just above car salesman) with 41 percent of respondents rating lawyers' standings as 'low' or 'very low.'"). For a more detailed comparison on Lawyers' ratings in the public view, visit the Gallup Poll website at <<http://www.gallup.com/poll/releases/pr971213.asp>>.

4. Pittman & Portis, *supra* note 3, at 14 (stating that "the media has taken the great mass of Americans deeper inside the legal system than ever before. And what the people have seen is not pretty.").

5. See generally PAUL BERGMAN & MICHAEL ASIMOW, REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES (1996); David S. Machlowitz, *Public Image of Lawyers: Lawyers on TV*, 74 A.B.A. J. 52 (Nov. 1988); Norman Rosenberg, *Hollywood on Trials: Courts and Film*, 12 L. & HIST. REV. 341 (1994).

6. See generally MODEL RULES OF PROFESSIONAL CONDUCT (1999) [hereinafter MRPC]; Preamble to FLORIDA RULES OF PROFESSIONAL CONDUCT (1999) [hereinafter RPC].

profession in its entirety to contempt and ridicule by both the aggrieved party and society overall. Unfortunately for lawyers everywhere, one bad apple really does spoil the bunch, and it is the profession as a whole that suffers.<sup>7</sup> When these acts are presented to the public via entertainment, such as movies and television shows, these negative attitudes are aggravated. This issue was eloquently stated by Charles B. Rosenberg as follows: “[d]oes television [or a movie] create attitudes and perceptions about lawyers or simply deliver and embellish attitudes and perceptions that already exist? Put more broadly, does television [or a movie] create culture or is it simply created by the culture around it?”<sup>8</sup> These questions become harder to answer when the movie is a comedy, where the depiction of all characters is presented for merriment and to appeal to the audience’s sense of humor; rather than a dramatic movie, which appeals to the audience’s emotions. This section examines comedic roles by “lawyers” and the ethical violations they commit along the way. Specifically, this section discusses why the lack of competence and diligence exhibited by these movie lawyers makes for good entertainment, and does not adversely affect the public’s image of lawyers.

#### A. *My Cousin Vinny*

In the movie *My Cousin Vinny*,<sup>9</sup> Vincent LaGuardia Gambini (Joe Pesci) is a lawyer who has never tried a case in his entire career, which is only six weeks long.<sup>10</sup> Instead, he had spent the past six years “studying for the bar,” which it took him six times to pass.<sup>11</sup> Vinny’s cousin, William Gambini (Ralph Macchio), and his friend Stan Rothenstein (Mitchell Whitfield), were driving through Alabama on their way to college and made the mistake of stopping at a convenience store for some supplies.<sup>12</sup> The clerk at the store was murdered, and Bill and Stan were charged with the murder.<sup>13</sup> Vinny and his

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7. This problem has become so adverse that there is now a “Naughty Lawyer” website that reports ethical violations committed by attorneys in the form of “Naughty Lawyer Reports,” complete with commentary. This site is visited by hundreds of people a day, thus adding more fuel to the fire. The March 29, 1999 “Naughty Lawyer Report #3” discussed sanctions imposed on an attorney who violated both the competent representation rule and the diligence rule. See D.E. Cupples, *Naughty Lawyers*, (visited Mar. 29, 1999) <<http://www.naughtylawyers.com>>.

8. CHARLES B. ROSENBERG, *Foreword to PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE* xi (Robert M. Jarvis & Paul R. Joseph eds., 1998).

9. 20th Century Fox (1992).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

girlfriend, Mona Lisa Vito (Marisa Tomei) drive down from New York so that the inexperienced Vinny can defend the young men.<sup>14</sup> Vinny's naïveté and lack of knowledge land him in "hot water" with the judge, to say the least,<sup>15</sup> and it is his girlfriend, Mona Lisa Vito, who bails him out, on more than one occasion.<sup>16</sup> Ultimately, Vinny uncovers who really killed the clerk and gets the case dismissed, but he commits flagrant, yet hysterical, ethical violations along the way.<sup>17</sup>

The first, and perhaps the most serious violation of the *Rules of Professional Responsibility* lies in Vinny's agreeing to take the case in the first place, as he has never tried any case before, much less one where his clients could receive the death penalty.<sup>18</sup> In the real legal world, this would be prohibited. For example, Rule 4-1.1 of the *Florida Rules of Professional Conduct* provides that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."<sup>19</sup> The *ABA Model Rules of Professional Conduct* ("MRPC") Rule 1.1 contains the exact same provision.<sup>20</sup> Competent representation is at the forefront of importance in assistance of counsel; especially where, as here, the defendant's life is in the attorney's hands. This rule was recently labeled as one of the "Ten . . . Easiest Ethical Violations for Honest Lawyers,"<sup>21</sup> and failure to

14. MY COUSIN VINNY, *supra* note 9.

15. *Id.* Vinny finds himself in Contempt of court from day one, mainly because he does not know what he is doing. He botches the arraignment, and shows up for it to defend his clients in a leather jacket and boots—no tie. *Id.*

16. *Id.* The first instance occurs when Vinny spends the day deer hunting with the District Attorney on the case, Jim Trotter, III (Lane Smith), to "finesse" him into letting him see the evidence he has against his clients. Mona Lisa opts to stay behind and read the rules of court, whereupon she uncovers the rule on discovery. Upon Vinny's return from the hunt, he tells Mona Lisa of his "brilliant finessing" of the District Attorney, and that he got Trotter's files. She tells him, "[y]ou're entitled, he has to give you everything he's got—its called disclosure." *Id.*

17. MY COUSIN VINNY, *supra* note 9.

18. *Id.* Interestingly enough, William and Stan discuss this between themselves, and Stan decides to obtain a public defender (whose effectiveness is also questionable, at the least), while William discusses this with Vinny. After Vinny's plea of "all I am asking for is a chance—I think you should give it to me," William decides to let him continue with his representation. After the public defender cross-examines the first witness and blotches it terribly, and Vinny renders an ample cross-examination, Stan stands up and says, "[y]ou're fired. I want him [Vinny]." *Id.*

19. RPC 4-1.1.

20. MRPC 1.1 (1998).

21. Forrest W. Lewis, *Ten of the Easiest Ethics Violations for Honest Lawyers*, 27 COLO. LAW. 75 (Aug. 1998).

comply with this rule has carried a ninety day suspension from the practice of law.<sup>22</sup> When faced with a situation such as the one presented to Vinny, an attorney is to consider "the relative complexity and specialized nature of the matter, the attorney's general experience, the attorney's training and experience in the field in question," among other factors.<sup>23</sup> Otherwise, the attorney is to withdraw as counsel, decline to take the case, or associate with another attorney who is competent to handle the particular case.<sup>24</sup>

When an attorney is shown, as in *My Cousin Vinny*, as being inexperienced and wholly lacking in competence to handle a case, and further "associating" with his unemployed hairdresser girlfriend to win a murder trial, it does create some pessimistic views of lawyers and how well they handle representation of a client. What is more disparaging is the fact that there are complaints filed more often than the public may think concerning ineffective assistance of counsel, and these are based upon the actions of real lawyers.<sup>25</sup> If lawyers are acting in this manner, perhaps it is they who have caused this disapproving image for themselves, not popular culture.

However, *My Cousin Vinny* is a comedy, and is far less likely to be taken as truth by its viewing audience. Although the public perception of lawyers may be that they are incompetent in handling cases, no reasonable person would believe that such incompetence would ever rise to the level of Vinny's behavior. It is, therefore, not likely to devastate the public's opinion of lawyers; to think otherwise would undermine the intelligence of most Americans and assume that an audience cannot differentiate between humorous fiction and reality.

Vinny's unethical behavior proceeds as he decides to lie to Judge Chamberlain Haller (Fred Gwynne) about his courtroom experience.<sup>26</sup> Vinny has no trial experience, and knows he would not be permitted to stay on the case, so he gives the judge the name of another lawyer in New York, not his

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22. *Id.* at 75. See also *Colorado v. Pooley*, 774 P.2d 239 (Colo. 1989).

23. Lewis, *supra* note 21, at 75. See also RPC 4-1.1 cmts. 1 & 2.

24. Lewis, *supra* note 21, at 75.

25. See D.E. Cupples, *Naughty Lawyer*, (visited Mar. 3, 1999) <<http://www.naughtylawyers.com>>; *In re Pincham*, Ill. Disp. Op. 92 (1995) (where an attorney was charged with twenty-two counts of misconduct, most of which were failure to provide competent representation and failure to act with reasonable diligence); Henry Fitzgerald, *24 Attorneys are Disciplined*, SUN-SENTINEL (BROWARD ED.), Apr. 8, 1999, at 3B (naming four South Florida attorneys who were sanctioned for "fail[ing] to competently represent [a] client . . . fail[ing] to provide diligent, prompt representation [and] fail[ing] to properly handle a matter for [a] client."). For additional sanctions imposed upon Florida Lawyers, see *The Florida Bar* (visited Feb. 16, 1999 & Apr. 2, 1999) <<http://www.flabar.org/memberservice/Ethics>>.

26. MY COUSIN VINNY, *supra* note 9.

own, thinking that when the judge checks his credentials he will be impressed and allow him to appear before the court and defend his clients.<sup>27</sup> Lying to a judge is not taken lightly by the Bar. For example, Rule 4-3.3 of the *Florida Rules of Professional Conduct* states that “[a] lawyer shall not knowingly: (1) make a false statement of law or material fact to the tribunal.”<sup>28</sup> The MRPC contains the same provision.<sup>29</sup> Although this issue generally arises where the attorney would be putting on false testimony from a witness,<sup>30</sup> offering inaccurate or deceptive information to the court is strictly prohibited, and this includes statements made directly to the judge.<sup>31</sup> Vinny’s statements to Judge Haller concerning his vast trial experience, and even his name, were blatant untruths.<sup>32</sup> Happily, there are no reported disciplinary opinions in which a licensed attorney has lied to a judge about his credentials.<sup>33</sup> In reality, it is far more conceivable that an attorney would be “puffing his credentials” to clients or potential clients, not to a judge. This act, however, can also lead to affliction for a lawyer.<sup>34</sup> Vinny, in a rare display of ethics, tells his clients of his lack of experience in the courtroom setting before proceeding with the case.<sup>35</sup>

Finally, the most precarious, yet humorous, action taken by Vinny is having his hairdresser girlfriend, Mona Lisa, declared as a hostile expert witness in auto mechanics.<sup>36</sup> She ultimately saves the day, but this lies on the verge of being absurd.<sup>37</sup> An expert is presumed to be trained and have vast

27. *Id.* The name Vinny gives the judge is Jerry Callo—a big time lawyer in New York, who also happens to be dead. Vinny then gives the judge another false name, and Mona Lisa bails Vinny out yet again by telephoning a Judge who was Vinny’s mentor while he was in law school and asking the judge to lie to judge Haller so that Vinny may continue on the case. The actions of the judge in New York by lying also raise ethical considerations for the Judicial Qualifications Committee. *Id.*

28. RPC 4-3.3(a)(1).

29. MRPC 3.3.

30. Lewis, *supra* note 21, at 77.

31. See MRPC 3.3.

32. MY COUSIN VINNY, *supra* note 9.

33. Unfortunately, there have been cases where violations have occurred of practicing law without a license, including in South Florida. See Fitzgerald, *supra* note 25, at 3B (discussing an attorney who continued to practice law after being disbarred in 1997). See *infra* Part II.B. and accompanying text for a full discussion on the unlicensed practice of law.

34. See Lewis, *supra* note 21, at 75 (stating that “[o]verstating or exaggerating experience or track record may seem harmless at the time, but it leads to angry clients and problems down the road”).

35. MY COUSIN VINNY, *supra* note 9.

36. *Id.*

37. *Id.*

experience in a particular area, and perhaps an out of work hairdresser who has previously worked as an auto mechanic could be an expert, but Vinny should have, nevertheless, discussed Mona Lisa's "expert" opinion with her before putting her on the stand.<sup>38</sup> This brings up the "Eleventh Commandment" of Trial Advocacy: never ask a question to a witness in court when you do not know the answer.<sup>39</sup> In reality, it is possible that a lawyer who put an expert witness on the stand without discerning his or her opinion beforehand could wind up with a witness who not only disagrees with the defense's case, but also considerably damages the defendant's chances for a favorable outcome. This could subject a lawyer to a complaint to the bar for incompetence, as well as lack of diligence.<sup>40</sup>

This defiant act by Vinny, however, "saves the day," and likely improves the image of lawyers in the minds of the audience, as it allowed justice to prevail.<sup>41</sup> Moreover, it is not realistic that this feat, or any of the antics committed by Vinny would ever happen in a court of law, although some come uncomfortably close.<sup>42</sup> In sum, *My Cousin Vinny* is not likely viewed by an audience as a realistic representation of a murder trial any more than *The Naked Gun*<sup>43</sup> is viewed as a realistic representation of a police department. *My Cousin Vinny* is a lighthearted comedy which does no more to the image of lawyers than *Airplane*<sup>44</sup> did to the airlines.

## B. *Trial and Error*

In *Trial and Error*,<sup>45</sup> Charles Tuttle (Jeff Daniels) is a big time, big city lawyer who is sent to a small town in Nevada to defend a con artist (Rip Torn), who happens to be related to the head partner in Tuttle's firm.<sup>46</sup> Tuttle is supposed to go to Nevada and get a continuance of the trial date.<sup>47</sup> Tuttle is reluctant to go because he is engaged to the managing partner's daughter and

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38. *Id.* See also BERGMAN & ASIMOW, *supra* note 5, at 105-06.

39. Mark Dobson, Professor of Trial Advocacy, Nova Southeastern University (Feb. 2, 1999). See also BERGMAN & ASIMOW, *supra* note 5, at 105-06.

40. See Lewis, *supra* note 21, at 77; Fitzgerald, *supra* note 25, at 3B.

41. MY COUSIN VINNY, *supra* note 9.

42. *Id.* See Fitzgerald, *supra* note 25, at 3B.

43. Paramount Pictures (1988) (parody on the Los Angeles Police Department and Detectives).

44. Paramount Pictures (1980).

45. New Line Cinema (1997).

46. *Id.*

47. *Id.*



they are to be married in three days.<sup>48</sup> The problem arises when Tuttle's best friend, Richard (Michael Richards), shows up in Nevada to throw Tuttle a bachelor party the night before the hearing.<sup>49</sup> The next morning, Tuttle is unable to get out of bed and go to court.<sup>50</sup> Richard, being the good friend, and the out of work actor that he is, decides to appear before the court in Tuttle's place and procure the continuance.<sup>51</sup> The serious predicament commences when Judge Paul S. Graff denies the continuance and Richard must go forward with the trial; and he does, with the help of Tuttle.<sup>52</sup>

*Trial and Error* raises the issues of competent representation, candor toward the tribunal, and practicing law without a license.<sup>53</sup> First and foremost, Richard is practicing law without a license, and Tuttle is assisting him in doing so.<sup>54</sup> Tuttle, as the attorney, is governed by the MRPC, and is not only violating the aforementioned rules of candor toward the tribunal and competent representation,<sup>55</sup> but also is committing professional misconduct. Rule 8.4 of the MRPC states:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

\* \* \*

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice.<sup>56</sup>

Here, both Tuttle and Richard are behaving unethically, but Richard is not an attorney, so this will presumably land Tuttle in front of the disciplinary board.<sup>57</sup> Richard will not get off so easy, since he was practicing law without a license and committing a fraud upon the court.<sup>58</sup> Fortunately, it is not often

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48. *Id.*

49. *Id.*

50. TRIAL AND ERROR, *supra* note 45.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. See discussion *supra* Part II.A. and accompanying text.

56. MRPC 8.4; RPC 4-8.4.

57. MRPC 5.5 (discussing the unauthorized practice of law and assisting others in doing so).

58. TRIAL AND ERROR, *supra* note 45.

that a nonlawyer engages in such a blatant act of practicing law without a license.<sup>59</sup> Rather, it is disbarred lawyers or law school graduates that more often violate this rule.<sup>60</sup> Furthermore, this violation is more often seen in fiction than in reality.<sup>61</sup>

As far as the consequences of the representation of lawyers in movies such as *Trial and Error*, there is seemingly not much damage done by a comedic representation such as this. The audience can likely see the amusement in this depiction, and further appreciate the exasperation shown by Tuttle because the case is proceeding with Richard as the lawyer.<sup>62</sup> Moreover, since the "bad guy" is going to jail, even a nonlawyer has served the cause of "justice."

The plight that causes more critical affliction, however, arises from real lawyers creating characters that behave in this manner. A case in point is John Grisham's *The Rainmaker*,<sup>63</sup> in which Deck Shifflet (Danny DeVito) is an unlicensed lawyer who not only commits the unethical act of practicing law without a license, but also actually solicits clients for his firm.<sup>64</sup> When a lawyer writes a character in this manner, it is more likely that the audience will take the lawyer's representation as accurate, which can cause more damage to the reputation of the legal profession. Again, this is a situation where lawyers themselves are creating the problem. Although there is a fictional lawyer committing the unethical violations, there is a real lawyer creating the unethical characters. If a lawyer cannot respect the profession enough to show its members in a positive light, then lawyers cannot expect fiction creators to portray them in an ethical manner.

Accordingly, lawyers appear to have created the negative portrayal of their careers, both because of their professional actions, and how they themselves have depicted the legal profession. If lawyers do not act as though they respect themselves, then how can they expect others to?

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59. These cases are extremely rare, but unfortunately occur in the context of "do it yourself" wills, divorces, contracts, or leases that are placed in form books written by non-lawyers who are then giving "legal" advice.

60. See Fitzgerald, *supra* note 25, at 3B (discussing an attorney who was practicing after being disbarred in 1997).

61. See *THE RAINMAKER*, Paramount Pictures (1997).

62. *TRIAL AND ERROR*, *supra* note 45.

63. *Supra* note 61.

64. *Id.*

C. *Liar Liar*

In *Liar Liar*,<sup>65</sup> Fletcher Reede (Jim Carrey) is an attorney whose ethics are controvertible, to say the least.<sup>66</sup> The opening scene, showing his son, Max (Justin Cooper), indicates this.<sup>67</sup> In that scene, Max's kindergarten class is discussing what his or her father does for a living.<sup>68</sup> Max stands up and says, "[m]y dad's a liar."<sup>69</sup> The teacher states, "I'm sure you don't mean that your dad's a *liar*."<sup>70</sup> Max responds, "[w]ell, he wears a suit, goes to court, and talks to the judge."<sup>71</sup> The teacher breathes a sigh of relief and says, "[o]h, you mean a *lawyer*," and Max just shrugs.<sup>72</sup>

Reede's unscrupulous behavior has affected his family to such a point that when Reede misses his son's birthday party (because he is having sexual relations with a partner in his firm),<sup>73</sup> Max blows out his birthday candles and wishes that his father cannot tell a lie for a whole day. Max's wish comes true, and Reede cannot function.<sup>74</sup> He appears in court for the Cole divorce trial and asks the Judge for a continuance.<sup>75</sup> The Judge asks him why he needs a continuance, and Reede responds, "I can't lie!"<sup>76</sup> He goes so far as to beat himself up in the bathroom to get a continuance, but the trial commences nonetheless.<sup>77</sup> Ultimately, Reede wins by finding the truth, namely that his client was underage when she entered into her marriage and thus the prenuptial

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65. Universal Pictures (1997).

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *LIAR LIAR*, *supra* note 65.

71. *Id.*

72. *Id.*

73. *Id.* This is a powerful scene for lawyers ethics. Miranda (Amanda Donohoe) has a dirty divorce case that another associate will not take because she wants him to lie to the court. Miranda responds, "[w]ell, if you won't lie, we'll get someone who will." In comes Reede, who makes such a powerful impact upon the client, Samantha Cole (Jennifer Tilly) with his distortion of the truth, she is convinced she is the victim, despite her seven adulterous affairs. She says to Reede, "[i]t's good, but its not true, does that matter?" Reede laughs. Miranda is so impressed that she states, "[i]f you win, I guarantee you'll make partner." She then seductively states, "[h]ow'd you like to make a partner right now?" Reede, thinking it will advance his career, sleeps with her. *Id.*

74. *LIAR LIAR*, *supra* note 65.

75. *Id.*

76. *Id.*

77. *Id.*

agreement she signed was void.<sup>78</sup> He likely would have never discovered the truth had he been able to lie because he would have never bothered investigating the facts.<sup>79</sup> Instead, he would have put on perjured testimony, as he had originally planned.<sup>80</sup>

Although this movie allows “justice” to prevail, it nevertheless raises grave ethical issues which are not so readily apparent. This comedy, unlike *My Cousin Vinny* and *Trial and Error*, portrays a blatantly unethical lawyer. Not only is Fletcher Reede proud of his unethical ways, others are aware of them, and hire him as a lawyer because of them.<sup>81</sup> He fails to return phone calls, lies to opposing counsel and judges,<sup>82</sup> and smiles about it. His arrogance and nonchalance, coupled with his feigned amiability toward those whom he thinks can get him ahead, are far closer to what most people perceive lawyers to be like<sup>83</sup> than any other lawyer character in a comedy. This movie, although a comedy, takes a stab at lawyers that leaves a sting. It also likely leaves a lot of heads in the audience nodding affirmatively.

### III. SLEEPING WITH THE ENEMY

“Maintaining the integrity and improving the competence of the bar . . . is the ethical responsibility of every lawyer.”<sup>84</sup> Sexual relations with clients has been a controversial issue facing the American Bar Association and state ethics committees for a long time.<sup>85</sup> According to the American Bar Association, “[t]he roles of lover and lawyer are potentially conflicting ones as the emotional involvement that is fostered by a sexual relationship has the potential to undercut the objective detachment that is often demanded for adequate representation.”<sup>86</sup> This has prompted several state bar associations,

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78. *Id.*

79. *LIAR LIAR*, *supra* note 65.

80. *Id.*

81. *Id.*

82. When Reede returns to the office, his secretary is reading him his phone messages and tells him that a judge and opposing counsel are looking for a motion he was supposed to send. Reede tells his secretary to tell them “it’s in the mail.” She responds, “[r]ight, you’ll do it next week.”

83. See Pittman & Portis, *supra* note 3, at 15.

84. MODEL CODE OF PROFESSIONAL CONDUCT EC 1.1 (1997).

85. Linda Fitts Mischler, *Reconciling Rapture, Representation, and Responsibility: An Argument Against Per Se Bans on Attorney-Client Sex*, 10 GEO. J. LEGAL ETHICS 209 (1996).

86. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992) (discussing sexual relations with clients).

including Florida, to create provisions in their rules to prohibit sexual relations with clients.<sup>87</sup>

Interestingly, when sexual relations between an attorney and client are portrayed in the movies, the destruction of the "objective detachment" has actually worked in the client's favor. Moreover, it is often the client, and not the lawyer, who has initiated the sexual relationship, and it seems as though the client has done so to further his or her own interests.

### A. *Body of Evidence*

In *Body of Evidence*,<sup>88</sup> Frank Delaney (Willem Dafoe) is a defense attorney representing Rebecca Carlson (Madonna), a young and beautiful woman who is accused of killing her lover.<sup>89</sup> Delaney, who is married, becomes attracted to Carlson and curious about her eccentric sexual behavior.<sup>90</sup> On the first day of trial, Delaney drives Carlson home and engages in sexual relations with her.<sup>91</sup> When his wife finds out about the affair, Delaney wants to end it, so he hides behind ethics and declares, "[n]o more, you're my client."<sup>92</sup> Ultimately, Carlson is acquitted, and Delaney discovers that she was, in fact, guilty.<sup>93</sup> Carlson tells him that it was her plan all along for Delaney to sleep with her because she believed that he would defend her better if he were emotionally involved.<sup>94</sup> She was right; the relationship worked in his client's favor.<sup>95</sup>

As previously stated, sexual relations with a client are prohibited by both the American Bar Association and The Florida Bar.<sup>96</sup> This type of relationship raises several ethical issues. First, it undermines the emotional detachment that is essential for the attorney to deliver competent representation.<sup>97</sup> Next, a

87. See, e.g., RPC 4-8.4(i). Unfortunately, there is a lawyer joke stating another reason: "Why is there an ethical rule prohibiting lawyers from sleeping with their clients? So that the client is not billed twice for what is essentially the same service."

88. DeLaurentiis (1993).

89. *Id.* The deceased was found tied up to his bed watching a video of himself and Carlson engaging in explicit sexual behavior. *Id.*

90. *Id.*

91. *Id.*

92. BODY OF EVIDENCE, *supra* note 88.

93. *Id.*

94. *Id.*

95. *Id.*

96. See *supra* notes 86-87 and accompanying text.

97. See MRPC 2.1 (providing that "a lawyer shall exercise independent professional judgment and render candid advice").

sexual relationship may create a conflict of interest.<sup>98</sup> Finally, it may also create danger regarding attorney-client confidences.<sup>99</sup> While a sexual relation with a client remains a serious problem concerning lawyers and clients in reality,<sup>100</sup> in this movie it was the client who seduced the lawyer and manipulated the relationship to her advantage.<sup>101</sup> Moreover, Delaney procured a favorable outcome for his client, and Carlson suffered none of the misfortunes that the Rules were enacted to prevent.<sup>102</sup>

As for the consequences this type of portrayal has on the public's image of lawyers, it appears that because the client was taking advantage of the lawyer, not the antithetical, there is no pessimistic figuration of an attorney. It may seem as though Carlson, the client, was wiser than Delaney, the lawyer, because it was she who manipulated the entire course of events. Perhaps this would create a negative image of the male attorney in that he cannot control his sexual desires and allows himself to be seduced by a female client, but a male attorney's incapacity to control his desires eventuates often in the real legal world,<sup>103</sup> so there is no new "damage" being done to the image of the male lawyer.

Ironically, it was television's own Arnie Becker (Corbin Bernsen) from *L.A. Law*<sup>104</sup> who made the male attorney sleeping with his client (or at least making passes at her) a common occurrence in the eyes of the public.<sup>105</sup> Nevertheless, there were cases built against attorneys for this behavior long

98. See MRPC 1.7(b) (stating that a lawyer shall not represent a client if his or her ability to represent the client would be limited by the attorney's own interests); RPC 4-1.7 (1998) (containing the same provision); MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 5-101(A) (1998) (containing a similar provision).

99. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992).

100. This is especially true in domestic relations law. See *id.* at n.2; see also Lawrence Dubin, *Sex and the Divorce Lawyer: Is the Client off Limits?*, 1 GEO. J. LEGAL ETHICS 585 (1987) (proposing an express prohibition on sexual relations between divorce lawyers and their clients).

101. BODY OF EVIDENCE, *supra* note 88.

102. *Id.*

103. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992). See also Linda Mabus Jorgensen & Pamela K. Sutherland, *Fiduciary Theory Applied to Personal Dealings: Attorney-Client Sexual Contact*, 45 ARK. L. REV. 459 (1992); Dubin, *supra* note 100; *In re Weaver*, Va. Disp. Op. 97-010-0846 (Nov. 17, 1997); Oregon State Bar Ass'n Bd. of Governors, Formal Op. 1995-140 (1995) (discussing the propriety of sexual relationships between attorneys and their clients).

104. *L.A. Law* originally aired on NBC.

105. See Robert Eli Rosen, *Ethical Soap: L.A. Law and the Privileging of Character*, 43 U. MIAMI L. REV. 1229 (1989). For a full discussion of the unethical behavior of television characters and its effect on society's image of lawyers, see Machlowitz, *supra* note 5, at 55.

before *L.A. Law* ever aired.<sup>106</sup> This leads to the conclusion that if lawyers are behaving in this manner in the “real” legal world, then it is they whom have created this unfavorable opinion for themselves, not popular culture; it seems as though it is art that is imitating life. Moreover, it is more often the lawyers that are disgruntled by these portrayals rather than the public.<sup>107</sup> “While professional misconduct of a sexual nature does exist within the legal profession, the issue has doubtlessly been exaggerated by media portrayals of fictional attorneys with questionable sexual ethics.”<sup>108</sup>

### B. *Jagged Edge*

In *Jagged Edge*,<sup>109</sup> Teddy Barnes (Glenn Close) is a former prosecutor who became disgusted with criminal work and decided to advance into civil litigation with a private firm.<sup>110</sup> She is asked by the head partner of her firm to represent a big client, Jack Forrester (Jeff Bridges), who has been accused of murdering his wife.<sup>111</sup> The prosecuting attorney, Tom Krasny (Peter Coyote), is Barnes’s former boss, and the unease between them is discernible.<sup>112</sup> Barnes left the District Attorney’s office because of the unethical practices that occurred there under the guise of Krasny.<sup>113</sup> At the time of the Forrester trial, the disconcertment between Krasny and Barnes is heightened because of the death of an inmate whom they convicted when they knew he was innocent.<sup>114</sup> Barnes, unable to control her feelings of guilt, decides to reveal this information to the press at the end of the Forrester trial.<sup>115</sup> By the time the trial starts, Barnes is intimately involved with Forrester.<sup>116</sup> Although she ultimately gets an acquittal, Barnes makes unethical moves and decisions along the way that put her client’s case, as well as her own career, at risk.<sup>117</sup>

The two main ethical issues raised by this movie, namely failing to disclose evidence that would prove the innocence of a defendant and engaging

106. See generally Jorgensen & Sutherland, *supra* note 103; Dubin, *supra* note 100.

107. Machlowitz, *supra* note 5, at 55 (stating that lawyers are “hostile to . . . [portrayals of] sleazy conduct . . . [and] adversaries [that] are dishonest or unethical”).

108. Mischler, *supra* note 85, at 209–10 (citations omitted).

109. Columbia Pictures (1985).

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *JAGGED EDGE*, *supra* note 109.

115. *Id.*

116. *Id.*

117. *Id.*

in sexual relations with a client, are both prohibited by the MRPC.<sup>118</sup> First, a prosecutor has a legal duty to disclose exculpatory material.<sup>119</sup> Failure to disclose is perhaps the most flagrant violation a prosecutor can make, as there are supplementary ethical rules that govern prosecutors.<sup>120</sup> Ultimately, Barnes comes clean (albeit to the press) concerning their failure to disclose the exculpatory evidence, and likely got herself, and her former boss, into a precarious situation.<sup>121</sup>

Second, Barnes, as the defense attorney, should not have had a sexual relationship with Forrester, her client.<sup>122</sup> Here, as in *Body of Evidence*, it was the client who manipulated the attorney into the sexual relationship, thinking that this would make the attorney a more zealous advocate on his behalf and procure him an acquittal.<sup>123</sup> However, here it was a female attorney who was manipulated by her male client, so the effect this unethical act has on the image of lawyers may be altered in that it effects the representation of female lawyers.<sup>124</sup>

Women lawyers are often portrayed as “‘intellectually sharp and professionally successful,’ but ‘exhibit[ing] poor judgment in connection with their work and reject[ing] good advice from men.’”<sup>125</sup> Additionally, women lawyers are traditionally portrayed as “sex objects without brains” or “as incapable, either in their professional or personal spheres.”<sup>126</sup> Here, Barnes’s investigator, Sam Ransom (Robert Loggia), warned her that her client might be

118. MRPC 3.8; ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992).

119. Lewis, *supra* note 21, at 78. See also Lewis v. Lane, 832 F.2d 1446 (7th Cir. 1987) (sanctioning the prosecutor for a failure to disclose materials beneficial to the defense); RPC 4-3.8; MRPC 3.8 (stating that “[t]he prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause; . . . (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused . . .”).

120. Lewis, *supra* note 21, at 78. See also Brady v. Maryland, 373 U.S. 83 (1963) (stating it is a denial of due process for a prosecutor not to turn over any information known to the prosecutor that may be exculpatory evidence).

121. JAGGED EDGE, *supra* note 109.

122. *Id.*

123. *Id.*

124. *Id.*

125. Diane Klein, *Ally McBeal and Her Sisters: A Quantitative and Qualitative Analysis of Representations of Women Lawyers on Prime-Time Television*, 18 LOY. L.A. ENT. L.J. 259, 267 (1998) (quoting Carole Shapiro, *Women Lawyers in Celluloid: Why Hollywood Skirts the Truth*, 25 U. TOL. L. REV. 955, 1001 (1995)).

126. Christine Alice Corcos, *Women Lawyers*, in PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE 219, 221 (Robert M. Jarvis & Paul R. Joseph eds., 1998).



guilty; he further warned her not to become involved with Forrester.<sup>127</sup> Barnes disregarded this advice and continued with both representing Forrester and having a sexual relationship with him.<sup>128</sup> This behavior is stereotypical of women lawyers on television and in the movies, yet it is not an accurate depiction of reality.<sup>129</sup>

Although women lawyers are guilty of committing ethical violations, there are fewer complaints filed against female attorneys than male attorneys.<sup>130</sup> Moreover, women are still a minority in the legal arena, so they came into a profession that was already suffering from a bad reputation, and have not likely added anything to its demise, except the portrayal of women attorneys being just as negative as the portrayals of male attorneys.<sup>131</sup> Such portrayals do add to the disapproving representation of the legal profession, especially concerning women lawyers, but these acts by women lawyers in the movies are often mixed with other acts that counter the negative effect.

For instance, although Barnes was irresponsible in her actions by becoming intimately involved with Forrester, which affected her performance as a lawyer,<sup>132</sup> she nevertheless achieved "justice" in the end for both legal and nonlegal audiences.<sup>133</sup> For the lawyers, she gained an acquittal for her client; and for the nonlegal community, Barnes killed Forrester when she found out he was guilty, and turned in Krasny for convicting an innocent man.<sup>134</sup> Therefore, both lawyers and nonlawyers can feel that "justice" has been served. In sum, because the client was not taken advantage of, and because "justice" prevailed in the end, this movie, in all probability, does not degrade the reputation of lawyers overall.

127. JAGGED EDGE, *supra* note 109.

128. *Id.*

129. Corcos, *supra* note 126, at 221.

130. See <<http://www.flabar.org/memberservices/Ethics>> (visited Feb. 19, 1999); Fitzgerald, *supra* note 25, at 3B (naming 11 South Florida attorneys who were cited by the Florida Supreme Court for committing ethical violations, only three being women).

131. For a full discussion of the portrayals of women lawyers and ethics, see Diane M. Glass, *Portia in Primetime: Women Lawyers, Television, and L.A. Law*, 2 YALE J.L. & FEMINISM 371 (1989); Rosen, *supra* note 105.

132. See BERGMAN & ASIMOW, *supra* note 5, at 160 (discussing how Barnes turns from "a self-assured professional into an emotionally unbalanced stereotype of a betrayed woman," and further that she allowed her personal feelings to interfere with her representation of her client "in a highly unethical but not unsurprising way.").

133. JAGGED EDGE, *supra* note 109.

134. *Id.*

### C. ...*And Justice for All*

In ...*And Justice for All*,<sup>135</sup> Arthur Kirkland (Al Pacino) is a defense attorney surrounded by conflict.<sup>136</sup> Kirkland is having a sexual relationship with an attorney on the Ethics Committee, Gail Packer (Christine Lahti), while there is an ongoing investigation of both Kirkland and his colleagues.<sup>137</sup> Here, both Packer and Kirkland are violating the MRPC. Packer discusses the investigation of Kirkland's partner with Kirkland, and Kirkland discusses with Packer his knowledge of a client's guilt.<sup>138</sup> Moreover, Kirkland's aversion for the Ethics Committee and its goals is apparent.<sup>139</sup> When Kirkland is called before the Ethics Committee to testify, he walks out.<sup>140</sup> He later tells Packer that the committee is a "dangerous farce" and then says, "[w]hat you are doing is good in theory, but in practice, it sucks."<sup>141</sup>

Although this is not a situation where an attorney is having sexual relations with a client, it presents an ominous conflict of interest, which is prohibited by both the MRPC and the *Florida Rules of Professional Conduct*.<sup>142</sup> Because it is Packer's duty to investigate the ethical behavior of lawyers, she owes her first duty to the Ethics Committee, which is undermined by her relationship with Kirkland. Additionally, she should not be discussing the Committee's investigations with Kirkland, particularly when he is a part of the investigation.

Whether this relationship occasions a pessimistic view toward lawyer's ethical behavior is questionable. This situation is not as grave as one between a lawyer and a client, nor is there a lessened ability to represent one's client. But, there is a sentiment of hypocrisy created by the relationship in that the Ethics Committee lawyer, Packer, is violating the very rules of conduct that she is responsible for enforcing. Conversely, Kirkland is viewed as the "good guy," who fights for justice and cares about his clients and their cases.<sup>143</sup>

135. Columbia Pictures (1979).

136. *Id.*

137. *Id.* The main plot of the movie involves Kirkland representing Judge Fleming (John Forsythe), who he knows is guilty and announces that fact to the court during his opening statement to the court. *Id.* This ethical issue is discussed at great length in Part V *infra* and accompanying text.

138. *Id.*

139. ...AND JUSTICE FOR ALL, *supra* note 135.

140. *Id.*

141. *Id.*

142. MRPC 1.6; RPC 4-1.6.

143. ...AND JUSTICE FOR ALL, *supra* note 135.

Ironically, it is the Ethics Committee that is conceivably viewed here as the "enemy" who is interfering with lawyers who are trying to help their clients.<sup>144</sup>

As far as Kirkland's personal ethics, there are two forceful scenes in the movie. In the first, Kirkland is in a nursing home visiting his grandfather, who asks him if he is an honest lawyer.<sup>145</sup> Kirkland responds, "[b]eing honest doesn't have much to do with being a lawyer."<sup>146</sup> In the second scene, Kirkland approaches Judge Fleming to discuss a client, Jeff McCullogh, who is in jail, although Kirkland has evidence of his innocence.<sup>147</sup> Kirkland pleads with the judge to admit the evidence (although Kirkland discovered it three days too late) and Judge Fleming responds, "I don't give a shit about your client."<sup>148</sup> The messages that are sent to the audience by these two scenes are contradictory. By the comment to his grandfather, Kirkland seems to be saying that honesty plays no part in being a good lawyer, while in the latter scene, Kirkland is being a zealous advocate for his client and trying to show the truth to the judge, who does not care.<sup>149</sup>

These scenes, although in a dramatic movie, are not unlike those discussed in *Liar Liar* in that both Fletcher Reede and Arthur Kirkland do not think honesty has much to do with being a good lawyer, and both wind up finding "truth" to win for their clients, but somehow still "lose" in the end. The stark contrast arises in the fact that in ...*And Justice for All*, the wrongfully accused client winds up dead after Kirkland has diligently and zealously attempted to have justice prevail.<sup>150</sup> This creates a negative image of the justice system, rather than the lawyer. There are court rules preventing the admission of newly discovered evidence, even if it is exculpatory,<sup>151</sup> and when the rules are shown to have the effect of allowing an innocent person to remain in jail, the perception of the American legal system is under attack. However, these rules do exist and innocent people remain in jail because of them, and the audience is likely to find the lawyer who is fighting for the innocent client to be a hero, and the justice system the enemy, because it prevents an innocent man from being freed. Lawyers "make" the law, be it through precedent or

144. *Id.*

145. *Id.*

146. *Id.* Judge Fleming's ethics are less than desirable, as evidenced by his actions throughout the movie. This is discussed fully in Part V *infra*.

147. *Id.*

148. ...*AND JUSTICE FOR ALL*, *supra* note 135.

149. *Id.* In the opening scene of the movie, Kirkland is in jail for contempt of court because he struck Judge Fleming when he would not allow in the evidence of Jeff's innocence. *Id.* He violated the canon of ethics while trying to uphold his oath of zealous advocacy.

150. *Id.*

151. FLA. R. CRIM. P. 3.850 (1998).

policy, and again the legal profession, via these laws and their implementation, disappoints society and thus diminishes its standing.

#### D. *Suspect*

In *Suspect*,<sup>152</sup> Public Defender Kathleen Riley (Cher) is having a relationship with a juror, Eddie Sanger (Dennis Quaid).<sup>153</sup> Sanger contacts Riley during the trial and then joins forces with her to try and solve the crime.<sup>154</sup> Although there is not a full sexual relationship until after the verdict, this contact with a juror is a flagrant violation of ethics.<sup>155</sup> Although Riley is portrayed as a good attorney, one who works hard and truly cares about her clients and her cases, jury tampering is a grave violation nonetheless, which has become part of plots in several areas of entertainment.<sup>156</sup>

Additionally, her behavior affects the ethical reputation of female attorneys, who are often portrayed by movies as less capable than their male counterparts. Female attorneys becoming romantically involved is often part of the plot in a legal movie, but here it is with a juror, not a client. This unethical act is inconsistent with the character of Riley. She is portrayed as a devoted public defender and good at her job. "Riley would not risk tossing away her career by even talking to Sanger during a trial, let alone meeting him repeatedly in public."<sup>157</sup> However, despite the fact that jury tampering is a grave violation that carries severe consequences, Riley and Sanger solve the crime and "save the day."<sup>158</sup> Justice, once again, has been served in the eyes of the audience. This portrayal of a strong woman attorney who is devoted to her job and cares enough about her clients to go out and solve the crime on her own is likely a positive one, at least to the community as a whole. The exception lies with those who realize the severity of her communication with Sanger, which would be lawyers, and once more it would be lawyers fretting about the movie portrayal of the profession, not the public.<sup>159</sup>

152. Columbia/TriStar Pictures (1987).

153. *Id.*

154. *Id.*

155. *Id.* See MRPC 3.5 (stating that a lawyer "shall not seek to influence . . . a juror"); MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 7-108(B) (1998).

156. See *THE JUROR*, Columbia Pictures (1996); JOHN GRISHAM, *THE RUNAWAY JURY* (1996), *The Practice: Dog Bite* (ABC television broadcast, Oct. 4, 1997); LISA SCOTTLIN, *ROUGH JUSTICE* (1997).

157. BERGMAN & ASIMOW, *supra* note 5, at 257.

158. *SUSPECT*, *supra* note 152.

159. Machlowitz, *supra* note 5, at 55.

## IV. ALL IN THE FAMILY

A. *Class Action*

In *Class Action*,<sup>160</sup> Jedediah Ward (Gene Hackman) is a radical plaintiff's attorney out to get corporate America.<sup>161</sup> His daughter, Maggie Ward (Mary Elizabeth Mastrantonio), is on the other side of the law, often defending the companies her father is pursuing.<sup>162</sup> The Ward's are set to go to trial against each other in a products liability case where the defendant company, Argo, manufactured a vehicle in which the gas tank exploded if the car was involved in an impact while the turn signal was active.<sup>163</sup> The plaintiff, represented by Mr. Ward, lost his wife and children in the accident.<sup>164</sup> The plaintiff contended that the defendant company knew of the defect and put the car on the market anyway.<sup>165</sup> Maggie Ward ultimately uncovers evidence to that effect, namely a written report, and the ethical conflict begins.<sup>166</sup> During discovery, Maggie is instructed to bury the report showing Argo's knowledge of the defect in hundreds of boxes of documents.<sup>167</sup> She later discovers that her boss, Michael Grazier (Colin Friels), with whom she is having an affair,<sup>168</sup> removed the report from the files that were sent to Jed Ward's office.

At trial, Mr. Ward calls the author of the report (Dr. Pavel) to testify, and Maggie destroys him on cross-examination.<sup>169</sup> Maggie then calls Grazier to the stand to testify that there was no report.<sup>170</sup> Mr. Ward then calls a witness who performed the actual research for the report, proving its existence.<sup>171</sup> Jed Ward not only wins a verdict for his client, but also shows that Grazier's testimony was untrue.<sup>172</sup> The audience then knows that Maggie Ward and her father had devised the entire course of events.<sup>173</sup>

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160. 20th Century Fox (1991).

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. CLASS ACTION, *supra* note 160.

166. *Id.*

167. *Id.*

168. *Id.* Again, a woman attorney is shown to be having a sexual relationship with someone that she should not be. The effect this behavior has on the image of female attorney's ethics is discussed in Part III *supra* and accompanying text.

169. *Id.*

170. CLASS ACTION, *supra* note 160.

171. *Id.*

172. *Id.*

173. *Id.*

There are several ethical issues raised by the behavior of Maggie, her father, and Grazier. First, Maggie violated the Code of Professional Conduct by eliciting false testimony from Grazier.<sup>174</sup> Rule 4-3.3 of the *Florida Rules of Professional Conduct* states that “[a] lawyer shall not knowingly . . . make a false statement of material law or fact to a tribunal.”<sup>175</sup> The MRPC contains the same provision.<sup>176</sup> Presenting false or deceptive evidence to the court is a flagrant violation of ethics, and there have been several cases in which attorneys have been suspended for performing such an act.<sup>177</sup> Unfortunately, this occurrence does happen, eminently in the eyes of the public. For example, in a real criminal case, when the defendant takes the stand and is later found guilty, the general impression presented is that the defendant was lying on the stand, since the jury did not believe the defendant. The unanswered question, however, is whether the perception conveyed is that the lawyer knew that his or her client was lying on the stand. In the movies, generally, the audience knows whether or not the lawyer knew,<sup>178</sup> and can judge the lawyer’s behavior accordingly. Here, Maggie Ward purposefully put her witness on the stand and knowingly elicited false testimony.<sup>179</sup> What makes this course of conduct more problematic is that it is indeterminate whether she violated the Canons of Ethics to help her client or to get even with her boss and former lover.<sup>180</sup> Either way, it leaves a disapproving view of trial tactics used by lawyers.

Additionally, Maggie owed a duty to Argo, and she violated that duty by joining forces with opposing counsel. “It is axiomatic that the attorney-client relationship is a fiduciary one in which the client places his or her trust . . . in the lawyer in return for the lawyer’s undertaking to place the interest of the client ahead of any self-interest of the lawyer.”<sup>181</sup> Moreover, Canon 11 of the Canon of Professional Ethics provides: “the lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of

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174. *Id.*

175. RPC 4-3.3.

176. MRPC 3.3.

177. See Lewis, *supra* note 21 (discussing *Colorado v. Casey*, 948 P.2d 1014 (Colo. 1997); *Commission v. Rohrback*, 591 A.2d 488 (Md. 1991); *Colorado v. Schultheis*, 638 P.2d 8 (Colo. 1981)).

178. There have been exceptions to this generalization, however. See *PRIMAL FEAR*, Paramount Pictures (1996); *BODY OF EVIDENCE*, *supra* note 88; and *JAGGED EDGE*, *supra* note 109.

179. *CLASS ACTION*, *supra* note 160.

180. See Mark Tushnet, *Class Action: One View of Gender and Law in Popular Culture*, in *LEGAL REELISM: MOVIES AS LEGAL TEXTS* 244 (John Denvir ed., 1996).

181. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992).

the confidence reposed in him by his client.”<sup>182</sup> Finally, a lawyer is prohibited from both using client confidences to the client’s disadvantage and representing a client when the “representation of that client may be materially limited . . . by the lawyer’s own interests.”<sup>183</sup>

Before long, Maggie Ward will be incurring the wrath of the Ethics Committee. First, she should have never agreed to go to trial against her father because of the potential conflicts. Next, she should not have joined forces with opposing counsel to help them defeat her client. Finally, it was grossly unethical to use client confidences to destroy her boss, her client, and her case. Although all of these actions allowed “justice” to prevail, and it is not likely that any of her actions caused any character damage to lawyers in the eyes of the community, her actions likely made attorneys everywhere squirm in their seats. Here, as in . . . *And Justice for All*, *My Cousin Vinny*, and *Liar Liar*, justice prevailed, despite the fact that the lawyer behaved unethically. The man who lost his family was compensated and the “evil” company paid, as did the “evil” lawyers. Because movies generally contain conflict, climax, and closure, and audiences prefer to see the “good guys” prevail, the lawyers in these movies, despite their unethical behavior, are the heroes who allow justice to triumph.

## B. *The Music Box*

In *The Music Box*,<sup>184</sup> Ann Talbot (Jessica Lange) is a criminal defense attorney who is representing her father, Mike Lazlo (Armin Mueller-Stahl).<sup>185</sup> The United States is trying to revoke his citizenship and deport him to Hungary where he will be tried for heinous war crimes.<sup>186</sup> The government’s contention is that Lazlo was a member of the Arrow Cross, a group accused of committing brutish and inconceivable acts.<sup>187</sup> Talbot is convinced that the Hungarian government has set her father up and that it was not he who committed these unspeakable acts.<sup>188</sup> Talbot performs well at trial and in the end, gets the case dismissed, but she ultimately discovers that her father was guilty.<sup>189</sup> Talbot is

182. *Id.* at 408. (citing MODEL RULES OF PROFESSIONAL RESPONSIBILITY EC-11).

183. MRPC 1.8(b), 1.7(b); MODEL RULES OF PROFESSIONAL RESPONSIBILITY DR 4-101(B)(2); DR5-101.

184. Carolco Pictures (1990).

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *THE MUSIC BOX*, *supra* note 184. She finds out by retrieving a music box from a pawn shop that had belonged to Tibor Zola, her father’s alleged “partner in crime.” *Id.* Inside

enraged and disgusted by the knowledge that her father committed these crimes, and sends the photographic evidence to Jack Burke, the prosecutor on the case.<sup>190</sup> Burke, in turn, sends the photos to the newspaper, where they appear on the front page.<sup>191</sup>

The first ethical issue raised in the movie is Talbot's representation of her father.<sup>192</sup> Although this is not a sexual relationship with a client, but rather a familial one, the same ethical considerations apply.<sup>193</sup> First, she was not able to keep the objectivity necessary for a proper representation of her father, and competent representation is ethically required.<sup>194</sup> Additionally, "[e]motional detachment is essential to the lawyer's ability to render competent legal services."<sup>195</sup> When a lawyer is emotionally involved with a client, it may be difficult for the lawyer to provide the "straight" truth and advice concerning the case. This objectivity is necessary for the independent professional judgment that must be exercised by an attorney when representing a client.<sup>196</sup>

These ethical rules, promulgated by both the American Bar Association and state bar associations, are designed to protect the client and prevent the exact situation that occurred in *The Music Box*. However, there did not appear to be any concerns arising during the course of representation, as Talbot provided more than competent representation to her father.<sup>197</sup> Although "[i]t's said that the lawyer who represents himself has a fool for a client. The same holds true for getting your kids to do the job."<sup>198</sup>

*The Music Box* is analogous to *Body of Evidence* and *Jagged Edge* in that the client in each movie had a close, personal relationship with his or her

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the music box are pictures of her father in the Arrow Cross uniform committing the atrocious crimes that were discussed in the trial. *Id.*

190. *Id.*

191. *Id.*

192. *THE MUSIC BOX*, *supra* note 184.

193. Attorney-client confidentiality is also a difficult issue raised here, as there is no protection for personal confidence, and the line can become blurred when there is a personal and professional relationship. See ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992).

194. Both the *Model Rules of Professional Conduct* and the *Florida Rules of Professional Conduct* provide that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." MRPC 1.1; RPC 4-1.1.

195. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992).

196. BERGMAN & ASIMOW, *supra* note 5, at 180 (stating that Talbot's "ability to represent her client suffered because of her personal involvement with the case.").

197. See *id.* at 177 (discussing the powerful cross-examinations performed by Talbot).

198. BERGMAN & ASIMOW, *supra* note 5, at 180.



attorney. Each client thought it would effectuate a more ardent representation, which in fact it did, as they all were acquitted. Additionally, the lawyers all found out that their clients were guilty. Although Talbot's taking the case and representing her father was unethical according to the *Rules of Professional Conduct*, there is not likely an unfavorable image of lawyers created by Talbot's act of defending her father. In fact, it is more probable that Talbot's character is a positive one for lawyers, especially women lawyers. She provided competent, zealous, and exemplary representation to her father and saved his citizenship.<sup>199</sup> It is only her posttrial course of action, namely turning evidence of her father's guilt over to the prosecutor, which may raise the eyebrows of lawyers and nonlawyers alike.<sup>200</sup>

This second ethical issue, namely Talbot's turning over the photos of her father to the prosecutor, was a flagrant violation. "The lawyer is not permitted to reveal the client's wrongdoing."<sup>201</sup> Although Lazlo could not have been tried again, a lawyer's first duty lies with the client, not with her own personal feelings about the client or his acts. This again raises a conflict of interest, which relates back to Talbot's error in taking the case to begin with. Although she denounces her father in her personal life, turning over evidence of his guilt to a prosecutor was a disgraceful act,<sup>202</sup> at least ethically, but whether this creates a pessimistic view of lawyers in general is dubious. From a legal standpoint, this act was impermissible, but, because of the feelings this case generates to an audience, many would feel that Lazlo got what he deserved because he was guilty and is now being punished; Talbot, the lawyer, did the "right" thing.<sup>203</sup>

In all of these movies, "justice" prevailed, but the attorneys were intensely unethical. Ironically, audiences do not see the acts committed by Talbot or Ward as unethical. Rather, they are viewed as heroes, the good lawyers who achieve truth and justice. These movies only generate a negative image of lawyers as far as other lawyers are concerned; the public is happy

199. THE MUSIC BOX, *supra* note 184.

200. *Id.*

201. Lewis, *supra* note 21, at 76. See also RPC 4-1.6.

202. BERGMAN & ASIMOW, *supra* note 5, at 180 (opining that turning over the photos was "a terrible lapse of judgment and grossly unethical. The most fundamental of all canons of legal ethics is that you must place your client's interest first.").

203. The moral questions raised are often discussed, and more often confused with ethics. Lawyers often struggle with their own personal morals or feelings about a client's acts or the possible ramifications of their actions (e.g. murder and the death penalty), but if a lawyer cannot provide the required representation, then the lawyer is required under the Rules of Professional Responsibility to decline representation. Therefore, if Talbot could not face the possibility that her father was guilty, she should not have taken the case. See MRPC 1.6, 1.7; RPC 4-1.6, 4-1.7.

because justice is done. This is often a problem because legal ethics are customarily confused by society with morals and justice. The public wants to see the guilty pay and the innocent prevail; they do not really care how they get there. There is more of a "means justify the ends" analysis achieved by the audience, and society overall.

#### V. OPENING STATEMENTS—YOU NEVER GET A SECOND CHANCE TO MAKE A FIRST IMPRESSION

In *Suspect*,<sup>204</sup> Carl Wayne Anderson (Liam Neeson) is being tried for murder.<sup>205</sup> The prosecutor, Charlie Stella (Joe Mantegna), commits reversible error with the first sentence of his opening statement.<sup>206</sup> Stella tells the jury that he has prosecuted over forty murder cases, and "out of the forty-three murder cases [he's] prosecuted, this is the most horrible one."<sup>207</sup> The prejudicial effect this statement has is irreversible.<sup>208</sup> Stella has "not only inject[ed] his personal experience and credibility as a prosecutor directly into the case, but also he invites the jurors to compare Anderson to forty-three other murderers."<sup>209</sup>

This is a serious violation, yet it is not likely that anyone in the audience, except a lawyer, would know that this is impermissible commentary. This is because opening and closing statements are nearly always portrayed in television and in the movies as both unrealistic and unethical. The reason for this occurrence is not because lawyers actually commit this violation often, although it does happen,<sup>210</sup> but rather because of the dramatic effect it has on the audience. The realistic, and often times monotonous, opening statement does not make for good entertainment. However, this inaccurate representation, although not directly correlated to the pessimistic view of lawyers, creates delusions in those who have not experienced a real trial before, and creates a heightened expectation of lawyers' performances.<sup>211</sup>

Additionally, in *My Cousin Vinny*, Vincent LaGuardia Gambini delivers a powerful opening statement: "[e]verything that guy just said is bullshit! Thank

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204. Columbia/TriStar Pictures (1987).

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. BERGMAN & ASIMOW, *supra* note 5, at 258.

210. See Candice D. Tobin, *Prosecutorial Misconduct During Closing Argument: Florida Case Law*, 22 NOVA L. REV. 485 (1997).

211. Enrique Fernandez, *A Courtroom Drama Follows the Script*, SUN-SENTINEL, Apr. 5, 1999, at 1D.

you.”<sup>212</sup> Although the odds of a lawyer really saying this in open court are remote, any lawyer who has ever tried a case has likely wanted to open his or her case with those exact words. However, this movie is a comedy and “Vinny often has no clue as to the rules he’s breaking.”<sup>213</sup> Vinny’s performance as a trial lawyer would never be considered as authentic; his opening statement was great entertainment and “harmless error.”

Finally, in *...And Justice for All*, there lies the most dramatic, and unethical, opening statement to ever hit the silver screen. Kirkland is representing Judge Fleming on a rape charge.<sup>214</sup> Kirkland hates Fleming, and is only representing him because Fleming is blackmailing him with an ethical violation he committed years ago.<sup>215</sup> Kirkland also knows the judge is guilty.<sup>216</sup> Kirkland addresses the jury and is quite effective in the beginning.<sup>217</sup> He first comments on the polygraph test his client passes, even though this is inadmissible evidence.<sup>218</sup> But then Kirkland has an attack of moral, not ethical, conscience and states that the victim is not lying, and then delivers this powerful statement: “[m]y client, the Honorable Judge Fleming, should go straight to fucking jail. The son of a bitch is guilty—he is a slime.”<sup>219</sup> He then looks at Judge Fleming and says, “[y]ou’re supposed to stand for something . . . you’re supposed to protect people.”<sup>220</sup> Although the audience may be pleased, and feel that justice has been done, Kirkland has committed the mother of all ethical violations.<sup>221</sup>

This violation, ironically, does not generally give people a negative image of lawyers, except maybe the truly guilty criminals. In fact, most are satisfied that the judge will get what he deserves, and perhaps rightfully so, since Judge Fleming thought he was above the law. Public perception here is that the

212. MY COUSIN VINNY, *supra* note 9.

213. BERGMAN & ASIMOW, *supra* note 5, at 107.

214. *...AND JUSTICE FOR ALL*, *supra* note 135.

215. *Id.* Some years back, Kirkland had a client, Drego, who told Kirkland how he wanted to watch people die by putting firecrackers in their mouths. *Id.* A few months later, there were a series of violent crimes where the assailant was putting cherry bombs in the victims’ mouths. *Id.* Kirkland reported what his client told him, and since he was not preventing a crime from occurring (in the eyes of the ethics committee in the movie), he could be sanctioned, or even disbarred for this revelation. *Id.*

216. *...AND JUSTICE FOR ALL*, *supra* note 135.

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. See BERGMAN & ASIMOW, *supra* note 5, at 111 (stating that “Kirkland is washed up as an attorney after this impulsive decision to shoot his mouth off and betray his client.”); see also RPC 4-1.6 (discussing confidentiality).

“ends justify the means;” the truly guilty will be punished, and they are happy. But this has cost Kirkland his career.

## VI. CONCLUSION

The consequences of the negative portrayals of lawyers in the movies are difficult to ascertain.<sup>222</sup> First, for every ethical violation committed by a movie lawyer, there are disciplinary opinions on point from both state bar associations and the American Bar Association. Next, it is more often the lawyers that are complaining about the negative portrayals of their profession, rather than society as a whole. Additionally, in those movies where the lawyer commits the gravest ethical violations, “justice” is attained, and likely gives a more exemplary view to the community. Moreover, lawyers often create, write, and produce the very shows, books, and movies that contain these unethical lawyers. Finally, over eighty percent of people have had their own personal contact with an attorney, and this contact has created their opinion of lawyers.<sup>223</sup>

While it is true that these representations may reinforce already pessimistic views, lawyers may have themselves to blame. One problem is the publicity that coincides with the unethical acts of lawyers, and the fact that the information about these violations is so apparent—even on the Internet.<sup>224</sup> Another somber problem is that the ethical rules that lawyers are to abide by often are incompatible with the morals, senses of “right,” or notions of “justice” that most of society holds. People want to see justice prevail, and it seems as though an “ends justify the means” attitude is carried by the majority. Society wants the truth, and the guilty to be punished, no matter what the cost. While lawyers may shudder at the sight of a movie lawyer turning in a guilty client, or joining forces with the opposing side because his or her side was “wrong,” most people feel that this is exactly what a lawyer should do. Nobody seems to care about lawyers’ ethical responsibilities to provide the best possible defense or keep client confidences—until, of course, they need a lawyer—then it is “win at all costs.” Ironically, most people will look for an attorney that displays the very attributes they dislike about lawyers.

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222. See Anthony Chase, *Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys*, 1986 AM. B. FOUND. RES. J. 281.

223. Gary A. Hengsher, *The Public Perception of Lawyers: ABA Poll*, 79 A.B.A. J. 60, 61 (Sept. 1993).

224. See *Ethics Opinions* (visited Feb. 19, 1999) <<http://www.flabar.org/memberservices/Ethics/>>; D.E. Cupples, *Naughty Lawyers*, (visited Feb. 19, 1999) <<http://www.naughtylawyers.com/>>.

Conversely, the media often reinforces the public's perceptions of the courtroom and trial tactics. Movies and television often create the "acting" and "entertainment" that people expect to see in a real trial.<sup>225</sup> This can create problems for the justice system, and for lawyers everywhere. For example, the following was declared in an editorial written by a reporter who was called to jury duty:

Like most citizens, I get my ideas about courtrooms and trials from the screen. Later, sequestered in the jury deliberation room, some of us will wonder about the details of the trial and ask each other, "Shouldn't the lawyers have done this or that? That's what they do in the movies." . . . For all the lawyer jokes, for all the cynicism about the system, something fine is accomplished. Justice? One hopes.<sup>226</sup>

The author further stated that "[t]he basic procedure and thus the basic drama of trial by jury is more faithfully reproduced in our screen fictions than one would think."<sup>227</sup> Interestingly, he mentioned nothing about the portrayals of lawyers. Lawyers have quite a gripe about this representation: "[d]espite their [movies'] incredible influence, there is no requirement that these fictionalized accounts of lawyering be accurate, or even be held accountable for their consequences."<sup>228</sup> Although this statement is true, the public seems to take pleasure from it, while the lawyers protest about it. Now, "a trial lawyer needs a theme, just like they use in the show[s]."<sup>229</sup> Remarkably, lawyers are not all that different from actors; both are recreating a scene or event, trying to capture the viewer's attention, hoping to be liked and believed, and seeking a favorable review (or verdict). Ironically, real lawyers are more critical of movie lawyers' performances than the public audience. The incompatible factor—the knowledge of legal ethics.

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225. Fernandez, *supra* note 211, at 1D.

226. *Id.*

227. *Id.*

228. Carolyn L. Miller, "What a Waste. Beautiful, Sexy Gal. Hell of a Lawyer.": *Film and the Female Attorney*, 4 COLUM. J. GENDER & L. 203, 204–05 (1994).

229. *Id.* at 204.

## Legal Ethics: Lawyers' Duties to Clients and Clients' Rights and the Media—Teaching Legal Ethics Using a Media Studies Lesson Plan<sup>1</sup>

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### I. LESSON PLAN ONE: OVERVIEW OF TOPIC

**Course:** Legal Ethics: Lawyers' Duties to Clients and Clients' Rights and the Media—Teaching Legal Ethics Using a Media Studies Lesson Plan.

**Subject:** Overview of Topic.

**Overview of Lesson Plan:** This lesson will have students identify and share their own perceptions of lawyers. Students will explore how movies and television can have significant and possibly lasting effects on the viewer.

**Suggested Time Allowance:** Sixty minutes.

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1. The goal of this course is to provide students with assistance in gaining a basic understanding of legal ethics and to be able to explain the benefits to be gained from the laws and rules of our justice system. This course is designed to be an interactive learning experience encouraging friendly debate, discussion, and new ideas. The format will provide students with the opportunity to recognize the rights and responsibilities protected by the *ABA Model Rules of Professional Conduct*.

**Objectives:** Through sharing their individual definitions of a lawyer, listing the characteristics and attributes students think a good lawyer should have, and then discussing modern fictional lawyers from television and movies, students will begin to realize that the media has had some influence on their perceptions.

**Resources/Materials:** 20/20 video clip, which aired on ABC.<sup>2</sup>

### Activities/Procedures:

1. WARM-UP/DO NOW: During the first five minutes of class, ask each student to write his/her definition of a lawyer on a piece of paper.

2. Ask the students to list all of the characteristics or attributes that they think every lawyer should possess (the teacher should write responses on the board). Students should then eliminate those attributes that they believe are not really necessary. Then discuss the following questions:

- How does this list compare with your definition of a lawyer?
- Who are some current fictional lawyers? What do they have in common? How do they represent our society and our standards?
- If we could create a fictional attorney for the twenty-first century, what would his/her attributes and characteristics be (refer to and refine the list of characteristics on the board)?
- What types of problems or issues do you see this twenty-first century lawyer facing?
- How do lawyers in movies and on television represent our society's ethics, values, and problems?

3. Students will watch the clip from the ABC news television program, 20/20, with Hugh Downs and Barbara Walters.<sup>3</sup> The clip is about scary movies and how a new study done by Kristin Harrison, Ph.D. and Joanne Cantor, Ph.D., entitled *Media Psychology, Tales From the Screen: Enduring Fright Reaction in Scary Media*, finds that these films can have lasting effects on a person even into adulthood.<sup>4</sup>

- The segment shows that people have both a mental *and* a physical reaction to these films, as illustrated by the viewer/participant whose

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2. On file with author.

3. *Id.*

4. *Id.*

finger temperature dropped seventeen degrees during an especially scary scene.

- Review the statistics from the study:
  1. Ninety percent said that they had a lasting reaction to scary movies seen as children.
  2. One out of four admitted that the fright stayed with them well into adulthood.
  3. Of those studied, one-half reported that they had problems sleeping and eating.
  4. *Jaws*<sup>5</sup> was voted the scariest movie of all time.
- Discuss what students think of these statistics. For example, “Why do you think *Jaws* was voted the scariest movie of all time when it is not classified as a horror movie?”<sup>6</sup> “Could it be because it seems to be the most realistic and the most believable or that it could happen to you?”
- Based on this theory, how may the media’s portrayal of attorneys affect one’s perception of them?

**Wrap-up:** For the next class, assign each student to write an essay about a movie or television lawyer who impressed them, either positively or negatively. The essay should analyze the character’s ethics, motivations, honor, and professionalism as an attorney. Students can also include how they would have handled the character’s situation differently and why.

**Handout One:** *American Bar Association Model Rules of Professional Conduct, Preamble: A Lawyer’s Responsibilities.*<sup>7</sup> Ask the students to read it for the next class and to bring it with them to each subsequent class for reference.

**Evaluation & Assessment:** Students will be evaluated based on their oral/written definitions and participation in classroom discussions.

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5. Universal Pictures (1975).

6. *Id.*

7. MODEL RULES OF PROFESSIONAL CONDUCT Preamble (1999). All future textual references and citations to the *ABA Model Rules of Professional Conduct* in this lesson plan shall appear as “MRPC” followed by the rule number.



## II. LESSON PLAN TWO: EFFECT OF MOVIES AND TELEVISION ON PUBLIC PERCEPTION

**Course:** Legal Ethics: Lawyers' Duties to Clients and Clients' Rights and the Media—Teaching Legal Ethics Using a Media Studies Lesson Plan.

**Subject:** Effect of Movies and Television on Public Perception.

**Overview of Lesson Plan:** This lesson will be a lecture followed by a discussion on research presented in the lecture. The lecture will focus on theoretical and statistical studies on the effect movies and television have on adults and children. Also, the lesson will cover the relevance and importance of the effects of movies and television.

**Suggested Time Allowance:** Sixty minutes.

**Objectives:** Students will express their impressions of the research and talk about the underlying issues it could raise.

**Resources/Materials:** Lesson Two Lecture: *Effect of Movies and Television on Public Perception: Theories and Statistics*.<sup>8</sup>

**Activities/Procedures:** Lecture and interactive discussion following the lecture.

1. WARM-UP/DO NOW: During the first five minutes of class, ask students if there is a movie or television program that left a strong impression on them. What was it about the movie or television program that had this effect and why do they think it left such a lasting impression?

2. Lecture: *Effect of Movies and Television on Public Perception: Theories and Statistics*.<sup>9</sup>

3. Topics:

- The effect on children—theoretical and statistical studies.
- The effect on adults—theoretical and statistical studies.

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8. See *supra* Appendix A.

9. *Id.*

- The relevance and importance of the effect of television and movies on the public.
4. Students will discuss and review information from the lecture, such as:
- The statistics from the study;
  - Students' opinions; and
  - Based on this theory, how may media portrayal of attorneys and the legal system influence public perception?

**Wrap-up:** For the next class, assign each student to:

1. Read Handout Two: Stephen Gillers, *Taking L.A. Law More Seriously*.<sup>10</sup>
2. Watch the movie *A Civil Action*,<sup>11</sup> directed by Steve Zaillian, starring John Travolta and Robert Duval, based on the true story of attorney Jan Schlichtmann.<sup>12</sup>

**Evaluation & Assessment:** Students will be evaluated based on their oral/written definitions and participation in classroom discussions.

### III. LESSON PLAN THREE: OVERVIEW OF LEGAL ETHICS

**Course:** Legal Ethics: Lawyers' Duties to Clients and Clients' Rights and the Media—Teaching Legal Ethics Using a Media Studies Lesson Plan.

**Subject:** Overview of Legal Ethics: Lawyers' Duties to Clients and Clients' Rights.

- MRPC 1.2, "SCOPE OF REPRESENTATION."<sup>13</sup>
- MRPC 1.4, "COMMUNICATION."<sup>14</sup>

**Suggested Time Allowance:** Sixty minutes.

**Objectives:** Students will attain an awareness and understanding of legal ethics rules and will be able to discuss the pros and cons of the media's portrayal of attorneys.

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10. Stephen Gillers, *Taking L.A. Law More Seriously*, 98 YALE L.J. 1607 (1989).
  11. Paramount Pictures (1998).
  12. *Id.*
  13. MRPC 1.2.
  14. MRPC 1.4.

**Resources/Materials:**

1. Handout Two: Stephen Gillers, *Taking L.A. Law More Seriously*.<sup>15</sup>
2. Students must have already watched the movie *A Civil Action*, directed by Steve Zaillian, starring John Travolta and Robert Duval, based on the true story of attorney Jan Schlichtmann.<sup>16</sup>

**Activities/Procedures:**

1. WARM-UP/DO NOW: During the first five minutes of class, have the students read the brief synopsis of MRPC 1.2 and 1.4 as stated below.
2. Lecture:
  - MRPC 1.2, "SCOPE OF REPRESENTATION," "[a] lawyer shall abide by a client's decisions concerning the objectives of representation . . . [including whether to accept a settlement, or whether to enter a plea or testify in a criminal action], and shall consult with the client as to the means by which they are to be pursued."<sup>17</sup> Even if a client is mentally disabled, the lawyer should still make a reasonable attempt to discuss decisions with them, unless it is an emergency situation.<sup>18</sup>
  - MRPC 1.4, "COMMUNICATION," "[a] lawyer shall keep a client reasonably informed about the status of a matter . . . [and] shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions . . . ."<sup>19</sup> It is a lawyer's duty to provide information sufficient for a client to participate intelligently in decisions concerning his or her representation.<sup>20</sup> A lawyer is not ordinarily required to describe legal tactics and strategies in detail with a client, but should fulfill reasonable client expectations.<sup>21</sup>

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15. Gillers, *supra* note 10.

16. *A CIVIL ACTION*, *supra* note 11.

17. MRPC 1.2(a).

18. MRPC 1.14(a).

19. MRPC 1.4(a)-(b).

20. MRPC 1.4 cmt. 1.

21. MRPC 1.4 cmt. 2.

3. Students will discuss how MRPC 1.2 and 1.4 pertain to the assigned handout, *Taking L.A. Law More Seriously*,<sup>22</sup> and the movie, *A Civil Action*.<sup>23</sup>

In *Taking L.A. Law More Seriously*, Arnie Becker, the firm's divorce attorney, goes against his prospective client's goals and hires a private investigator without her knowledge and consent.<sup>24</sup> Given the final results of this divorce case, was Arnie wrong in:

- Going against his client's instructions? Why or why not?
- Hiring a private investigator without his client's consent? Why or why not?
- Was Arnie acting in the best interest of his client or himself?
- Putting to one side whether or not he violated the rules, do you feel he was right or wrong?
- How would you have reacted as Arnie's client in this case?

In *A Civil Action*, when attorney Jan Schlichtmann, played by John Travolta, was offered twenty million dollars to settle by opposing counsel from Beatrice Foods, played by Robert Duval, he turned it down before asking his clients.<sup>25</sup> This settlement offer would have covered legal costs and left significant amounts of cash for each family and still left them the right to continue their case against W.R. Grace Co.<sup>26</sup> The case against Beatrice was weak and Schlichtmann knew it.<sup>27</sup> Given the final results of the case, discuss the following questions:

- Why did Schlichtmann refuse the offer and not consult his clients?
- Did Schlichtmann violate MRPC 1.2 and/or 1.4?
- Putting to one side whether or not he violated the rules, do you feel he was right or wrong?
- How would you have reacted as one of Schlichtmann's clients in this case?

The segment shows that sometimes lawyers must behave a certain way to be within their ethical legal professional responsibilities.

- Discuss the students' opinions based on this theory, on how the media portrayed these two attorneys. Did you like them better for

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22. Gillers, *supra* note 10, at 1613.

23. A CIVIL ACTION, *supra* note 11.

24. Gillers, *supra* note 10.

25. A CIVIL ACTION, *supra* note 11.

26. *Id.*

27. *Id.*

doing what may have seemed right, even if they violated their code of legal ethics?

- In reality was this behavior really in the best interest of their client?

**Wrap-up:** For the next class, assign the students to review all material covered up to this point.

**Evaluation & Assessment:** Students will be evaluated based on their oral/written definitions and participation in classroom discussions.

#### IV. LESSON PLAN FOUR: CONFLICT OF INTEREST

**Course:** Legal Ethics: Lawyers' Duties to Clients and Clients' Rights and the Media—Teaching Legal Ethics Using a Media Studies Lesson Plan.

**Subject:** MRPC 1.7, "CONFLICT OF INTEREST: GENERAL RULE."<sup>28</sup>

**Suggested Time Allowance:** Sixty minutes.

**Objectives:** Students will attain an awareness and understanding of legal ethics rules and will be able to discuss the pros and cons of the media's portrayal of attorneys.

**Resources/Materials:** Film Clips:

1. *Philadelphia*,<sup>29</sup> 1993, Jonathan Demme and Edward Saxon, producers, Jonathan Demme, director, screenplay by Ron Nyswaner. Cast: Tom Hanks and Denzel Washington. Based on a true story.

2. *Class Action*,<sup>30</sup> 1991, Ted Field, Scott Kroopf, Robert W. Cort, producers, Michale Apted, director, screenplay by Carolyn Shelby, Christopher Ames, and Samantha Shad. Cast: Gene Hackman, Mary Elizabeth Mastrantonio.

#### Activities/Procedures:

1. WARM-UP/DO NOW: During the first five minutes of class, ask the students to list what issues they think could be grounds for an attorney

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28. MRPC 1.7.

29. TriStar Pictures (1993).

30. 20th Century Fox (1991).

conflict of interest. Briefly discuss where they see the conflict in these issues.

## 2. Lecture: MRPC 1.7, "CONFLICT OF INTEREST: GENERAL RULE."

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless . . . the lawyer reasonably believes the representation will not be adversely affected; . . . and the client consents after consultation.<sup>31</sup>

## 3. Examples:

- In *Class Action*, Maggie and Jedediah both have a conflict of interest as father versus daughter attorneys.<sup>32</sup> The story has already shown us the deep conflict and rift in their relationship (play the film clip but stop where the defense's [Maggie's] lead counsel rises and asks the judge to meet in chambers).<sup>33</sup>
- Students will discuss:
  1. The conflict of interest portrayed here and what they believe is the legally ethical course to take.
  2. What would they do if they were the son or daughter of Jedediah? Why?
  3. What could be the effect on the clients?
- In *Philadelphia*, Joe Miller, the attorney that Andrew Beckett has asked to represent him, has a personal dislike for gays and is bothered by being around someone who has AIDS (play the film clip).<sup>34</sup>
- Students will discuss:
  1. Is this a conflict of interest?
  2. Can Joe provide a good prosecution for Andrew? Why or why not?
- At this point, tell those students who have not seen the movie that Joe Miller does take the case and wins it for Beckett.<sup>35</sup> Miller is a great advocate for Andrew and they form a friendship.<sup>36</sup> How does this relate in assessing conflicts of interest if you were an attorney?

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31. MRPC 1.7 (b)(1)–(2).

32. *CLASS ACTION*, *supra* note 30.

33. *Id.*

34. *PHILADELPHIA*, *supra* note 29.

35. *Id.*

36. *Id.*

4. Based on the theories shown in these segments:

- How accurate is the media's portrayal of how these attorneys would act in real life?
- Which would you prefer as a client and why?

**Evaluation & Assessment:** Students will be evaluated based on their oral/written definitions and participation in classroom discussions.

## V. LESSON PLAN FIVE: DILIGENCE

**Course:** Legal Ethics: Lawyers' Duties to Clients and Clients' Rights and the Media—Teaching Legal Ethics Using a Media Studies Lesson Plan.

**Subject:** MRPC 1.3, "DILIGENCE."<sup>37</sup>

**Suggested Time Allowance:** Sixty minutes.

**Objectives:** Students will attain an awareness and understanding of legal ethics rules and will be able to discuss the pros and cons of the media's portrayal of attorneys.

**Resources/Materials:** Film Clips.

### Activities/Procedures:

1. WARM UP/DO NOW: Review MRPC 1.3, "DILIGENCE," "[a] lawyer shall act with reasonable diligence and promptness in representing a client."<sup>38</sup>

2. Example: *Class Action* courtroom scene.<sup>39</sup> It becomes obvious that Maggie omitted evidentiary information to her associates but leaked it to her father, the opposing counsel.<sup>40</sup> This resulted in a victory for the plaintiffs, Jedediah's clients (play film clip).<sup>41</sup>

37. MRPC 1.3.

38. *Id.*

39. CLASS ACTION, *supra* note 30.

40. *Id.*

41. *Id.*

- It seemed that Maggie violated her duty to the Argo Corporation, her client, by secretly joining forces with her father during the trial.<sup>42</sup> According to the rules, Maggie is Argo's attorney and, therefore, owes them a duty of loyalty.<sup>43</sup> When she finds out the case is a loser, she still had no right to "hand it over" to her father.<sup>44</sup>

3. Based on the above, students will discuss their view of Maggie's actions as an ethical attorney.

- Review terms of MRPC 1.3.
- Discuss what students in Maggie's position would have done.
- What other options did Maggie have? Could she have tried to control the situation when she became aware of it, i.e., advise Argo to settle because of the probability of exposure from future accidents and propose that they take action to cure the defect causing the explosions? Would this have been a better procedure?
- Based on this theory, why do you think the media portrayed the issue in the manner presented? Was it for entertainment value?
- What effect could this have on stereotypes of attorneys?

**Evaluation & Assessment:** Students will be evaluated based on their oral/written definitions and participation in classroom discussions.

## VI. LESSON PLAN SIX: CONFIDENTIALITY

**Course:** Legal Ethics: Lawyers' Duties to Clients and Clients' Rights and the Media—Teaching Legal Ethics Using a Media Studies Lesson Plan.

**Subject:** MRPC 1.6, "CONFIDENTIALITY OF INFORMATION."<sup>45</sup>

**Suggested Time Allowance:** Sixty minutes.

**Objectives:** Students will attain an awareness and understanding of legal ethics rules and will be able to discuss the pros and cons of the media's portrayal of attorneys.

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42. *Id.*

43. *See* MRPC 1.7(b).

44. *Id.*

45. MRPC 1.6.



**Resources/Materials:****1. Film Clips:**

- *Class Action*, 1991, Ted Field, Scott Kroopf, Robert W. Cort, producers, Michale Apted, director, screenplay by Carolyn Shelby, Christopher Ames, and Samantha Shad.<sup>46</sup> Cast: Gene Hackman and Mary Elizabeth Mastrantonio.
- *Suspect*,<sup>47</sup> 1987, Daniel A. Sherkow, producer, Peter Yates, director, screenplay by Eric Roth. Cast: Cher, Dennis Quaid, and Liam Neeson.
- *Primal Fear*,<sup>48</sup> 1996, Gary Lucchesi, producer, Gregory Hoblit, director, screenplay by Steve Shagan and Ann Biderman, based on the novel by William Diehl.<sup>49</sup> Cast: Richard Gere, Edward Norton.<sup>50</sup>

**2. Handout Three: Final Monologue from the movie *Primal Fear*, "The Real 'Aaron' Emerges" by Ann Biderman & Steve Shagan., from the novel by William Diehl.<sup>51</sup>**

**Activities/Procedures:**

**1. WARM UP/DO NOW: Review MRPC 1.6, "CONFIDENTIALITY OF INFORMATION."<sup>52</sup>**

A lawyer shall not reveal information relating to representation of a client, unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, . . . except . . . to the extent the lawyer reasonably believes necessary . . . to prevent the client from committing a criminal act that the lawyer believes is likely result in imminent death or substantial bodily harm; or . . . to establish a claim or defense . . . in a controversy between the lawyer and client . . . .<sup>53</sup>

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46. *CLASS ACTION*, *supra* note 30.

47. *Columbia TriStar* (1987).

48. *Malofilm* (1996).

49. *Id.*

50. *Id.*

51. See *infra* Appendix B. Ann Biderman & Steve Shagan, *The Real 'Aaron' Emerges*, (visited Feb. 19, 2000) <<http://www.lclark.edu/~ryono/monos/primal.html>>.

52. MRPC 1.6.

53. *Id.*

## 2. Examples:

- *Class Action* (see Lesson Plan Five above): Discuss how this clip viewed in the last class breaches the duty of confidentiality.<sup>54</sup>
- *Suspect*: Washington D.C. public defender, Kathleen Riley, played by Cher, is assigned to defend a homeless suspect who appears guilty, but cannot communicate because he is deaf and mute.<sup>55</sup> Dennis Quaid plays Eddie Sanger, a lobbyist who is one of the jurors.<sup>56</sup> Sanger discovers crucial evidence and contacts Riley outside of the courtroom (play clip—note, this clip will also be referred to in the next lesson regarding illegally influencing a juror).<sup>57</sup> Eventually Riley succumbs to Sanger's help in solving this case, the two are never found out, and Riley proves her client innocent.<sup>58</sup>
- Discuss:
  1. Given the justice of the outcome, was Riley's conduct acceptable? Why or why not?
  2. Does the fact that Riley told her client what she was doing make it acceptable according to MRPC 1.6?
  3. What, if anything, should Riley have done differently to stay within legal ethical rules?
  4. If that resulted in her client being found guilty was that justice?
- In *Primal Fear*, attorney Marty Vail, played by Richard Gere, is a highly paid hotshot lawyer who takes this case for the publicity.<sup>59</sup> It is about an altar boy, Aaron, played by Edward Norton, who is accused of murdering a prominent Catholic priest.<sup>60</sup> It looks like an open and shut case until the accused tells of blackouts and an examining psychiatrist and Vail become convinced Aaron is actually Aaron/Roy suffering from multiple personality disorder.<sup>61</sup> The hardened Vail feels sorry for Aaron/Roy and is convinced he was not responsible for the priest's death.<sup>62</sup> Marty wins . . . or does he? In this closing scene, Aaron/Roy confesses to the murder after the trial and also admits to the previous murder of his girlfriend.<sup>63</sup> Marty is bound by the duty of

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54. CLASS ACTION, *supra* note 30.

55. SUSPECT, *supra* note 47.

56. *Id.*

57. *Id.*

58. *Id.*

59. PRIMAL FEAR, *supra* note 48.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

confidentiality on both counts under MRPC 1.6 because Aaron/Roy is not likely to commit a criminal act that Marty “believes is likely to result in imminent death or substantial bodily harm.”<sup>64</sup>

- o Discuss:
  1. The pros and cons of this rule.
  2. The effect on victim’s families.
  3. The effect on attorneys.
  4. The relevance and importance of the effect on the judicial system.

**Wrap-up:** Students will list the segments viewed up to this point and discuss what impression of lawyers the media’s portrayal of these various attorneys has made on the students.

**Evaluation & Assessment:** Students will be evaluated based on their oral/written definitions and participation in classroom discussions.

## VII. LESSON PLAN SEVEN: DUTY TO REPORT MISCONDUCT & IMPARTIALITY

**Course:** Legal Ethics: Lawyers’ Duties to Clients and Clients’ Rights and the Media—Teaching Legal Ethics Using a Media Studies Lesson Plan.

**Subject:** MRPC 8.3, “REPORTING PROFESSIONAL MISCONDUCT”<sup>65</sup> and MRPC 3.5, “IMPARTIALITY AND DECORUM OF THE TRIBUNAL.”<sup>66</sup>

**Suggested Time Allowance:** Sixty minutes.

**Objectives:** Students will attain an awareness and understanding of legal ethics rules and will be able to discuss the pros and cons of the media’s portrayal of attorneys.

**Resources/Materials:** Film Clips:

1. *Class Action*, 1991, Ted Field, Scott Kroopf, Robert W. Cort, producers, Michale Apted, director, screenplay by Carolyn Shelby, Christopher Ames and Samantha Shad.<sup>67</sup> Cast: Gene Hackman, Mary Elizabeth Mastrantonio.

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64. PRIMAL FEAR, *supra* note 48; see MRPC 1.6(a)–(b).

65. MRPC 8.3.

66. MRPC 3.5.

2. *Suspect*, 1987, Daniel A. Sherkow, producer, Peter Yates, director, screenplay by Eric Roth.<sup>68</sup> Cast: Cher, Dennis Quaid, Liam Neeson.

3. *A Civil Action*, 1998, Steve Zaillian, director, screenplay and novel by Jonathan Harr.<sup>69</sup> Cast: John Travolta, Robert Duvall. Based on a true story.

### Activities/Procedures:

#### 1. WARM-UP/DO NOW: Review:

- MRPC 8.3, "REPORTING PROFESSIONAL MISCONDUCT," a lawyer who has actual knowledge of a professional conduct violation by another lawyer or judge must report it if the violation raises a substantial question of the lawyer's or judge's fitness to practice or to hold office, unless such information is protected by the confidentiality requirement of MRPC 1.6.<sup>70</sup>
- MRPC 3.5, "IMPARTIALITY AND DECORUM OF THE TRIBUNAL," "[a] lawyer shall not . . . seek to influence a judge, juror, prospective juror or other official by means prohibited by law . . . communicate ex parte with such a person except as permitted by law . . . or engage in conduct intended to disrupt a tribunal."<sup>71</sup>

#### 2. Examples:

- *Class Action*: Maggie does not report her partners in her firm for engaging in conduct involving dishonesty, fraud, or misrepresentation.<sup>72</sup> They falsified evidence in the deletion of the report in the boxes and boxes of documents, which were detrimental evidence against their client.<sup>73</sup>
- (Reshow the film clip from lesson five—stop at the part where the defense's [Maggie's] lead counsel rises and asks the judge to meet in chambers).<sup>74</sup>

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67. CLASS ACTION, *supra* note 30.

68. SUSPECT, *supra* note 47.

69. A CIVIL ACTION, *supra* note 11.

70. MRPC 8.3(a)–(c). *See also* MRPC 1.6.

71. MRPC 3.5.

72. CLASS ACTION, *supra* note 30.

73. *Id.*

74. *Id.*

- Ask the students if they think Maggie has violated MRPC 8.3. Why or why not? If so, what should she have done?
  - After this discussion, start the video again and watch the scene in the judge's chambers between the lead counsel for the defense and the prosecution.<sup>75</sup> In this scene the defense counsel tries to convince the judge that Maggie and Jedediah created a conspiracy and should be sanctioned by the court.<sup>76</sup> Then Jedediah points out the illegalities on the part of Maggie's firm and how, given her position, she acted ethically and upheld the law by her actions.<sup>77</sup>
  - After viewing this short portion continue the discussion by having students discuss their reactions and feelings about this ethical process.
  - *Suspect*: As seen in the film clip from Lesson Six, Kathleen knowingly communicates and works with a juror on the defense of her client.<sup>78</sup> Have students discuss what they think a real attorney in Kathleen Riley's situation would do.
  - *A Civil Action*: The judge is portrayed as influenced and biased in favor of Robert Duval's character, the esteemed lawyer of Beatrice Foods.<sup>79</sup> This seems to be accepted without considering alleging judicial misconduct (class discussion).
3. Students will summarize/discuss:
- In what way has learning the MRPC changed the student's perception of the fictional lawyers?
  - Has learning the MRPC changed the student's perception of real lawyers?
  - Based on this course, what is the relevance and importance of the effect of television and movies on the public?

**Evaluation & Assessment:** Students will be evaluated based on their oral/written definitions and participation in classroom discussions.

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75. *Id.*

76. *Id.*

77. CLASS ACTION, *supra* note 30.

78. SUSPECT, *supra* note 47.

79. A CIVIL ACTION, *supra* note 11.

### VIII. LESSON PLAN EIGHT: FINAL ASSIGNMENT—MOCK TRIAL

**Course:** Legal Ethics: Lawyers' Duties to Clients and Clients' Rights and the Media—Teaching Legal Ethics Using a Media Studies Lesson Plan.

**Subject:** Final Assignment—Mock Trial role-play.

**Overview of Lesson Plan:** As their final assignment each student group will present their own mock trial depicting the malpractice trial of one of the fictional attorneys studied in this class.<sup>80</sup>

**Mock Trial:** The Final Assignment is to be done in groups of 4–6 students.

- One Prosecutor.
- One Defendant (Attorney).
- One Defense Attorney.
- One Judge.
- Witnesses (optional).

**Suggested Time Allowance:** Fifteen to twenty minutes per group.

**Objectives:** Students will attain an increased awareness and understanding of legal ethics rules and will be able to discuss the pros and cons of the media's portrayal of attorneys.

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#### Putting Fictional Attorneys on Trial

A mock trial is a valuable experience in many ways. One purpose is to get students to collect and examine evidence concerning the charge(s) against a fictional attorney. Through role-playing students will experience firsthand how it feels to be a participant in the courtroom and to be bound by the MRPC. Students will also increase their knowledge in specific areas of law, courtroom procedures, roles of courtroom participants, and how conflicts are resolved.

While learning the details of trial process and procedures, students will also have to use:

- strategic thinking;
- problem analysis;

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80. This is based on an idea by Dr. Daniel Chandler, University of West Virginia.

- questioning skills;
- listening skills;
- oral presentation skills;
- preparatory skills; and
- organizational skills.

**Charges:** That the defendant (attorney) did violate one or more of the MRPC. Choose one of the movie or film examples we studied in class. The client's attorney from that particular scene is being charged with malpractice in his/her representation of his/her client.

Group members should begin to collect evidence by the next to last class. The teacher will be available to discuss and advise students on the status of such material as evidence. Use the MRPC handed out in class for additional legal reference.<sup>81</sup>

There will be a formal mock trial after which each of the nonparticipating members of the class will be the jury and vote on the verdict based on the evidence presented during the trial.

The group will consist of the following:

- One Prosecutor;
- One Defendant (Attorney);
- One Defense Attorney; and
- One Judge.

**Witnesses:** Some will be lawyers and others will be potential witnesses. Each group will have a maximum of twenty minutes to present their case. All Trials will proceed in the following order:

- Prosecution—Brief opening statement.
- Defense—Brief opening statement.
- Prosecution calls and examines their witnesses.
- Defense cross-examines Prosecution's witnesses.
- Defense calls and examines their witnesses (which can be the Defendant).
- Prosecution cross-examines Defense's witnesses.
- Prosecution—brief closing statement.
- Defense—brief closing statement.
- Participants leave the room while the jury votes on the verdict.

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81. If you have access to a law library or site for prior relevant case law, suggest that too.

- Participants are called back into the room and told the verdict.
- The jury explains what factors brought them to their verdict.

### **Activities/Procedures:**

1. WARM-UP/DO NOW: During the first five minutes of class, review the order of appearance for the groups and review the above procedural outline.
2. Following the presentations, have a final group discussion/summary on the effect of television and movies on public perception of attorneys. Discuss:
  - Television and movies' effect on children.
  - Television and movies' effect on adults.
  - The relevance and importance of the effect of television and movies on the public.
  - The relevance and importance of the effect of television and movies on lawyers.

**Wrap-up:** Ask the students how this course has affected their view of the media and attorneys.

**Evaluation & Assessment:** Students will be evaluated based on their oral/written definitions and participation in classroom discussions.

## **IX. APPENDIX A: LESSON TWO LECTURE**

### *Effect of Movies and Television on Public Perceptions: Theories and Statistics* by Elaine D. Papas

Many studies have been conducted to prove that movies and television programs, at the very least, influence the public's perception in a variety of ways.<sup>82</sup> In this presentation, we will examine long-term studies done by: Professor George Gerbner, Ph.D., dean of the Annenberg School of Communications at the University of Pennsylvania;<sup>83</sup> the American Psychological Association (the "APA") studies on children and television

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82. See generally NATIONAL INSTITUTE OF MENTAL HEALTH, TELEVISION AND BEHAVIOR: TEN YEARS OF SCIENTIFIC PROGRESS AND IMPLICATIONS FOR THE EIGHTIES, SUMMARY REPORT VOL. 1 (1982) [hereinafter TELEVISION AND BEHAVIOR].

83. See generally GEORGE GERBNER & N. SIGNORIELLI, ANNENBURG SCHOOL OF COMMUNICATION, VIOLENCE PROFILE, 1967 THROUGH 1988-89: ENDURING PATTERNS (1990) (on file with author).



violence;<sup>84</sup> and some brief excerpts from media sources themselves. However, because there are so many outside, uncontrollable and immeasurable influences on each child and adult, it is not yet possible to reach an absolute scientific conclusion one way or another about the media's effect on the viewer.

Writer/director George Lucas seems to have summed up the debate in an analysis that is acceptable to all views, "I've always tried to be aware of what I say in my films, because all of us who make motion pictures are teachers—teachers with very loud voices."<sup>85</sup> Mr. Lucas uses mythology in a futuristic setting to teach children age-old lessons that seem to be disappearing from our culture—the triumph of good over evil, the importance of believing and striving toward what you feel is right, that friendship and caring are important for everyone, that when you step outside yourself to help another you will discover you have found the way to life's greatest treasures—compassion and love.

In our exploration as a society of the various aspects of the psychology and sociology of television viewing, one of our foremost studied concerns is the issue of a correlation between television and violence. The most quoted and referenced is the long-term study done by Professor George Gerbner mentioned above.<sup>86</sup> Dr. Gerbner's studies have shown that children's television shows contain about twenty violent acts each hour and also that children who watch a lot of television are more likely to think the world is a mean and dangerous place.<sup>87</sup> They found that children often behave differently after watching violence on television.<sup>88</sup> Even cartoons seem to have a negative effect if they contain a lot of aggressive and violent acts.<sup>89</sup> Those children who tend to watch the violent action cartoons, regardless if portrayed in a humorous manner, were more likely to "hit out at their playmates, argue, disobey class rules, leave tasks unfinished, and were less willing to wait for things than those who watched the nonviolent programs."<sup>90</sup>

Researchers have been taking these studies out of the controlled and confined laboratory setting and conducting real-life field studies. Leonard Eron, Ph.D. and his associates at the University of Illinois, found that children who watched many hours of violence on television from the ages of four to eleven years old, had a tendency to show a higher level of aggressive behavior

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84. A.C. Huston et al., AMERICAN PSYCHOLOGICAL ASSOCIATION, BIG WORLD, SMALL SCREEN: THE RULE OF TELEVISION IN AMERICAN SOCIETY (1992) (on file with author).

85. George Lucas, Irving Thalberg Award Acceptance Speech (Mar. 30, 1992) (on file with author).

86. GERBNER & SIGNORIELLI, *supra* note 83.

87. *Id.*

88. *Id.*

89. TELEVISION AND BEHAVIOR, *supra* note 82.

90. Huston, *supra* note 84.

when they became teenagers.<sup>91</sup> Dr. Eron observed these children until they reached thirty-years old, and found that those who were arrested and prosecuted for criminal acts as adults had watched a lot of television when they were around eight years old.<sup>92</sup>

The APA and the National Institute of Mental Health have compiled studies on the subject from their own outside researchers that support Professor Gerbner's findings.<sup>93</sup> In summary, the psychological research has shown three major effects of seeing violence on television:

- 1) "Children may become less sensitive to the pain and suffering of others;"<sup>94</sup>
- 2) "Children may become more fearful of the world around them;" and<sup>95</sup>
- 3) "Children may be more likely to behave in aggressive or harmful ways toward others."<sup>96</sup>

It is interesting that another widely accepted study published on June 17, 1996, also comes from the University of Pennsylvania.<sup>97</sup> The difference from Professor Gerbner's study is that this one is from the Annenberg Public Policy Center, where it was conducted by Marle-Louise Mares, Ph.D. under the direction of Kathleen Hall Jamieson.<sup>98</sup> This short-term study, *Positive Effects of Television on Social Behavior: A Meta-Analysis*, was also conducted with children.<sup>99</sup> This research does not try to negate Professor Gerbner's findings, but rather takes a different approach suggesting that if and when it is used to transmit pro-social content, television can have positive effects on children.<sup>100</sup> The study found that children exposed to pro social content have more positive social interactions, show more altruistic behavior and self-control, and have less stereotyped views of others.<sup>101</sup> Dr. Mares went on to state that the effects of pro-social content are often strongest when viewing is combined with

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91. LEONARD ERON & L. HUESMANN, ANNALS OF THE NEW YORK ACADEMY OF SCIENCES, ADOLESCENT AGGRESSION AND TELEVISION, 319-31, 347 (1980) (on file with author).

92. *Id.*

93. TELEVISION AND BEHAVIOR, *supra* note 82. Huston, *supra* note 84.

94. GERBNER & SIGNORIELLI, *supra* note 83.

95. *Id.*

96. *Id.*

97. MARIE-LOUISE MARES, PH.D, ANNENBERG PUBLIC POLICY CENTER, POSITIVE EFFECTS OF TELEVISION ON SOCIAL BEHAVIOR: A META-ANALYSIS (1996).

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at 19.

discussion.<sup>102</sup> The effects were strongest for pre-school and grade school children and diminished in adolescents.<sup>103</sup>

Interestingly, not one of the shows mentioned in the April 1999 *Life Magazine* cover story, *The Shows That Changed America: 60 Years of Network Television*, is about lawyers—no *Perry Mason*,<sup>104</sup> no *Matlock*,<sup>105</sup> and no *L.A. Law*.<sup>106</sup>

And so the debate continues . . . is it art imitating life or life imitating art?

## X. APPENDIX B: HANDOUT 3

### What a debut this was

#### The Real “Aaron” Emerges

written by Ann Biderman & Steve Shagan, from novel by William Diehl

**Aaron/Roy:** Well, good for you, Marty. I was going to let it go, you was lookin’ so happy just now I was thinkin’, mmmm . . . I-but to tell you the truth, I’m glad you figured it ‘cause I have been dying to tell you! Ha! I just didn’t know who you’d want to hear it from, Aaron or Roy or Roy or Aaron . . . well I’ll let you in on a little secret. A sort of client-attorney privilege type of secret, y’know what I mean—it don’t matter who you hear it from—it’s the same story! [Stutters as Aaron did] I-I’d-I-ju-just had to kill Linda, Mr. Vale, tha-that cunt just go what she deserved. But . . . cuttin’ up that son-of-a-bitch Rushman? That was just a fucking work of art. Ahaha.

**Martin Vale (Richard Gere):** You are good, you are really good.

**Aaron/Roy:** Yeah, I did get caught though, didn’t I? Mmm.

**Vale:** So there never w-there was a never a Roy?

**Aaron/Roy:** Jesus Christ, Marty! If that’s what you think I am disappointed in you—I don’t mind telling you. There never was Aaron, Consellor. Come on, Marty! And that whole thing about “Act like a man!” Jessus, I knew exactly what you wanted from me, it was like we was dancing, Marty!

**Vale:** [leaving the cell] Guard.

102. MARES, *supra* note 97, at 17–19.

103. *Id.*

104. *Perry Mason* originally aired on ABC.

105. *Matlock* originally aired on NBC.

106. *L.A. Law* originally aired on NBC. See Todd Brewster, *The Show That Changed America: 60 Years of Network Television*, LIFE MAGAZINE, April 1999, at 71–86.

**Roy:** Oh, come on, don't be like that, Marty. We did it, man we fucking did it! We're a great team you and me. You think I could have done this without you? You're feelin' a little angry here 'cause you're startin' to feel for ol'Aaron, I can understand that. Y'know, love hurts, Marty, what can I say? Hey! I'm just kiddin', bud, didn't mean to hurt your feelings. What else was I supposed to do? **[shouting]** Now you're gonna thank me down the road 'cause this is gonna toughen you right up, Martin Vale! Do you hear me? That's a promise!!

**[Eds note: Thanks to Amy for transcribing this monologue, kudos and immense thanks go to her]**

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*Elaine D. Papas*

# Heroes Or Villains? Moral Struggles Vs. Ethical Dilemmas: An Examination Of Dramatic Portrayals Of Lawyers And The Legal Profession In Popular Culture

David M. Spitz\*

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## I. INTRODUCTION

I vividly remember my first day of law school. The former Chief Justice of the Supreme Court of Florida sent chills down my spine during his powerful speech about lawyers, ethics, and the public's downtrodden view

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of our learned profession. His emotionally charged oration was delivered in a grave manner: "If you are here to become rich, find the door and leave now . . . we only want people who are here for the right reasons—people who will strive to improve the public's view of practitioners, not add fuel to the fire."<sup>1</sup> My mind was racing with thoughts, synapses and nerve endings colliding and bombarding one another, like asteroids in a distant galaxy. I wondered how many students were taking these words to heart, how many students had fathers who had practiced law for forty years, instilling in them a deep respect for the legal profession, and, how many students really were not sure *why* they were here.

I knew these were important words, and as an older student leaving a successful career in music behind, I knew that I was embarking on this difficult journey for the "right" reasons. I also remember feeling a tinge of anxiety, fervently anticipating helping to change the public's perception of attorneys and reestablishing the respect this profession deserves. The lyrics of a great Todd Rundgren song also came to mind, "I know in my heart . . . I can change the world, with just this guitar . . . who really knows?"<sup>2</sup> Freshly arriving from the world of rock and roll, I was well-versed in and cognizant of the influence, power, and impact that the media has on society. However, being a novice to this learned discipline, how was I to know what I was really up against? Can one person really make a difference? A moment's reflection must yield a positive response. Why, you may ask? Many years of traditional martial arts training have taught me that one cannot hope to reach the top of the mountain, or "*gokui*,"<sup>3</sup> without initially taking the first step.<sup>4</sup> Nonetheless, such an ambitious quest inevitably conjures up many questions about our "popular culture." In attempting to discern why the

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1. Gerald Kogan, Chief Justice (Ret.) Fla. Sup. Ct., at the Orientation Address at Nova Southeastern University Shepard Broad Law Center (Aug. 1996) (quotation given from best recollection).

2. UTOPIA, *The Martyr, on OOPS! WRONG PLANET* (Bearsville Records 1977).

3. In Goju Ryu, one of the three most traditional styles of karate, one tries to cultivate the ideal human nature of physical and spiritual union through the training of the body and spirit. 1 MORIO HIGAONNA, *TRADITIONAL KARATE-DO OKINAWA GOJU RYU: THE FUNDAMENTAL TECHNIQUES* 13 (2d ed. 1987). Strategically, "the concept is 'to win,' but to win through virtue is the ultimate goal." *Id.* The "*kata*" are prearranged forms which are composed of many difficult techniques, and, similar to ballet, are performed repetitively for the purpose of making the moves and concepts become second nature. *Id.* The *kata* are a crystallization of the essence of a particular style, and it is only through the training of *kata* that one may reach "*gokui*," the essential teaching. *Id.* The ultimate aspirations are to "heighten one's own virtue, master the strategy of winning without fighting, and seek the ultimate secret." *Id.*

4. Although martial arts training dates back to the ancient civilizations of central Asia, Egypt, and Turkey, the advent of Bruce Lee (a world renowned Kung Fu expert and star of numerous films) in the early 1970s truly solidified martial arts as part of America's popular culture.

public's perception of lawyers is so negative, and why lawyer-bashing has become a national pastime, the focus must be on our society's most substantial sources of information: the media—and more specifically, the television and motion picture industries.

In particular, the effect of television on our culture is vast, and its effectual transformation and evolvment has been nothing less than a revolutionary force. In fact, studies have revealed that the average American watches television over twenty-eight hours per week<sup>5</sup> and sees approximately thirty police officers, seven lawyers, and three judges during prime time alone, not including the many lawyers featured on daytime soap operas and syndicated courtroom dramas.<sup>6</sup> In attempting to explain why television is obsessed with crime and the law, one commentator contends that this is so because Americans are obsessed with the two.<sup>7</sup> According to one study, Americans receive ninety-five percent of their information about crime and the law from the mass media, and researchers have shown that viewers take what they see on television to be "the real thing."<sup>8</sup> Moreover, empirical evidence demonstrates that the primary way that most people learn about lawyers is through watching television, and rather than relying upon news, documentaries, or lawyer's commercials, they turn to fictionalized portrayals of lawyers to develop their views and opinions.<sup>9</sup> This article will explore this conclusion using real-life examples, ultimately showing how certain fictional and dramatic portrayals have affected the actual workings of our legal system.

This obsession with crime and the law is not confined to television. The popularity of law-related themes in other mediums is evidenced by the box office receipts and profits generated by the books and movies of world-renowned novelist John Grisham—the gross of their novels and their spin-

5. See Traub, *Who Watches Television—and Why*, CHANNELS, Jan.–Feb. 1985, at 27. See also FRANK MANKIEWICZ & JOEL SWERDLOW, REMOTE CONTROL: TELEVISION AND THE MANIPULATION OF AMERICAN LIFE 254 (1978); Ed Zuckerman, *The Year of the Cop*, ROLLING STONE, Apr. 21, 1977, at 56, 61.

6. Steven D. Stark, *Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes*, 42 U. MIAMI L. REV. 229, 231 (1987) (citing Gerbner, Gross, Morgan & Signorielli, *Charting the Mainstream: Television's Contributions to Political Orientations*, 32 J. COMM. 100 (1982), noted in J. CARLSON, PRIME TIME LAW ENFORCEMENT 29 (1985)).

7. Stark, *supra* note 6, at 233.

8. See *id.* at 231 (citing Graber, *Evaluating Crime-Fighting Policies: Media Images and Public Perspective*, in EVALUATING ALTERNATIVE LAW-ENFORCEMENT POLICIES 188 (R. Baker & F. Meyer eds., 1979); GEORGE COMSTOCK, TELEVISION IN AMERICA 120–21 (1980); George Gerbner, *Trial By Television: Are We at the Point of No Return?*, 63 JUDICATURE 416, 420 (1980)).

9. Ronald D. Rotunda, *Epilogue to PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE* 265 (Robert M. Jarvis & Paul R. Joseph eds., 1998).

offs is reported to be in excess of one billion dollars.<sup>10</sup> This exorbitant sum is reflective of only a single author's works and does not take into account the profits realized from other recent films and books involving depictions of lawyers. Furthermore, the undisputed success of popular television series, such as *Ally McBeal*<sup>11</sup> and *The Practice*,<sup>12</sup> as well as films such as *A Civil Action*,<sup>13</sup> points to the obvious conclusion that people are curious and fascinated by lawyers and crime.

This article primarily deals with fictional lawyers who forsake ethical principles to achieve some desired result, and the effect, if any, that these depictions have on the public's perception of attorneys and the legal profession. So, the glaring question remains: Do these fictional portrayals create attitudes and perceptions about lawyers, or do they simply mirror, embellish, and reinforce attitudes and perceptions that already exist in our culture?<sup>14</sup> While this article examines each of these positions, it also seeks to address other important questions. Can the public, including legal practitioners, separate fictional portrayals and formulaic character development from real life situations? In other words, can they separate "reel life" from real life? Are practicing lawyers swayed by television and film attorneys who "get away with it"? Do certain moral choices serve a higher "good" than cookie-cutter ethical standards imposed by the bar? What effect, if any, do current law firm advertisements have on the public's perception? Why have perceptions and attitudes about lawyers changed over time? Are these changed attitudes a reflection of our popular culture? Each of these questions deserves significant attention in trying to unravel the cause(s) of the public's negative attitude about attorneys.

When any topic or issue is subjected to debate, both proponents and opponents argue their respective positions based on facts, empirical data, opinions, and other authoritative sources with the hope of achieving some desired conclusion or goal. This article concludes that the ongoing controversy and debate over who is to blame for the public's negative perception of attorneys is ultimately incapable of being resolved in any exact or conventional fashion, due to the lack of in-depth studies and the magnitude of differing opinions on the subject. This author concludes that people's attitudes, opinions, and beliefs regarding lawyers are not merely a by-product of simplistic generalizations forced down their throats by sensationalistic writers. The answer cannot be fashioned in such black and white terms. On the contrary, these widespread perceptions are better

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10. Jeff Zaleski, *The Grisham Business*, PUB. WEEKLY, Jan. 19, 1998, at 249.

11. *Ally McBeal* originally aired on Fox.

12. *The Practice* originally aired on ABC.

13. Walt Disney Productions (1998).

14. Charles B. Rosenberg, *Foreword* to PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE xi (Robert M. Jarvis & Paul R. Joseph eds., 1998).



understood and illuminated by imagining a two-way mirror: Artistic fictional portrayals of attorneys are both a reflection of the perceptions of the popular culture at a particular point in time, and are also a reflection of larger-than-life characters that reinforce these perceptions by symbolizing lawyers in a certain manner, albeit for dramatic purposes.<sup>15</sup> In addition, people are not only influenced by fictional portrayals, but they exhume rancor and antipathy toward attorneys based on several other factors as well, including their own real life experiences with attorneys and the experiences of their friends and family.

## II. POPULAR CULTURE CHANGES OVER TIME

In order to penetrate these perceptions, one must first establish a framework from which to proceed. A society's attitudes, opinions, and beliefs are often characterized in terms of being a component of a "popular culture," but what does this mean? It is a fairly recent phrase that may be understood by defining its respective elements. "Popular" means "pertaining to, or representing the people, especially or consisting of the common people."<sup>16</sup> "Culture," in reference to this discussion means the "particular form or stage of civilization, as that of a certain nation."<sup>17</sup> Thus, when speaking of a particular popular culture, reference is being made to a large class of people at a particular point in time or period in that civilization's history. For example, art forms are sometimes characterized as pertaining to "the Renaissance Era," and therefore reflect art from the popular culture at that time. These art forms are distinguished from art or architecture that was created or popular during a different point in history. Just as these art forms have changed over time, attorney portrayals in film and television have undergone significant changes, or shifts, throughout the brief history of the silver screen and its miniaturized counterpart, television.

The term "popular culture" generally refers to the norms and values held by ordinary people, or by nonintellectuals, as opposed to "high culture," meaning the culture of intellectuals and the intelligentsia.<sup>18</sup> Popular culture also embraces "culture" in the sense of books, songs, movies, plays, television shows, and similar mediums, and more specifically to those works

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15. See Michael Asimow, *When Lawyers Were Heroes*, 30 U.S.F. L. REV. 1131, 1132 (1996).

16. RANDOM HOUSE UNABRIDGED DICTIONARY 1505 (2d ed., 1993).

17. *Id.* at 488.

18. Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L.J. 1579, 1579 (1989) (citing Robert Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57, 120 (1984)).

of imagination whose intended audience is the public as a whole.<sup>19</sup> All individuals in a society have ideas and attitudes about a range of subjects, such as education, the economic system, gender relations, and religion.<sup>20</sup> Intertwined with the popular culture of a particular time is a society's "legal culture," meaning the ideas, attitudes, values, and opinions about law held by people in a society.<sup>21</sup> As distinguished from popular culture, legal culture encompasses those ideas and attitudes which are legal in content, including ideas about courts, justice, the police, the Supreme Court, and lawyers.<sup>22</sup> Stanford University law professor Lawrence Friedman explains that the concept of legal culture does not imply that a particular society has a legal culture, or even a dominant one.<sup>23</sup> Friedman contends that "every person has his or her own cluster of attitudes and values; [and that] probably no two are the same."<sup>24</sup> Moreover, there are statistical tendencies which show systematic patterns that people's attitudes run parallel to demographic and other factors.<sup>25</sup> Therefore, Friedman concludes that it is likely that "there are characteristic differences in the distribution of ideas and attitudes as between men and women, or whites and blacks, or young and old, or taxi drivers as opposed to truck drivers."<sup>26</sup>

However, popular legal culture must be understood to exist on two levels. The first level is exhibited by the ideas and attitudes about law which lay people hold, illustrated by what the average investment banker, plumber, or secretary thinks about lawyers and the legal system. These lay attitudes are considerably different from the views adhered to by lawyers, judges, and professors of law.<sup>27</sup> Secondly, a society's legal culture also embodies books, songs, movies, plays, and television shows that involve law or lawyers, and which are aimed at the general public.<sup>28</sup> Although such a legal culture may be said to exist, it is difficult, if not impossible, to determine what effect this subdivision of popular culture may have on a layperson's perceptions of lawyers and the legal system. This is evident predominantly because it is a

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19. *Id.* (citing Anthony Chase, *Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys*, 1986 AM. B. FOUND. RES. J. 281; Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 WIS. L. REV. 527).

20. *Id.*

21. *Id.*

22. *Id.*

23. Friedman, *supra* note 18, at 1579 n.1.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 1580.

28. Friedman, *supra* note 18, at 1580.

relatively new field of inquiry which can only boast a small, but nevertheless growing, body of literature.<sup>29</sup>

Despite the inability to identify any concrete answers regarding the source(s) of lay conceptions, there is some agreement as to the permeable effect of the media and the relationship between the popular culture and the legal culture. American and foreign studies reveal that the majority of the public has never consulted a lawyer, nor experienced the legal system firsthand, and as a result, modern populations know extremely little about law and legal systems.<sup>30</sup> This leads to the conclusion that much of the public's information (and misinformation) is mostly secondhand.<sup>31</sup> It is also a widely accepted belief that media sources are the most powerful carriers and distributors of information, and therefore that of popular culture.<sup>32</sup> In sum, these findings show that people are receiving messages about lawyers that may be distorted, biased, or convoluted, based on fictional characters that are merely being depicted wantonly for dramatic effect.<sup>33</sup> One thing is for certain, a message is being delivered, and each recipient digests it in his or her own individual way. By accepting these conclusions as a starting point, it is safe to say that popular culture has some influence in shaping the public's attitudes about lawyers.

As previously discussed, popular culture can be understood as a snapshot of society at a particular point in time. A brief look at the history of lawyers on television reveals that attorneys were not always depicted and stigmatized in such a deprecatory fashion. Television shows during the 1950s and 1960s, such as *Perry Mason*,<sup>34</sup> *The Defenders*,<sup>35</sup> and *Owen Marshall*,<sup>36</sup> as well as the immortal film "To Kill a Mockingbird,"<sup>37</sup> presented a very positive view of lawyers and the profession. Lawyers were generally depicted as heroes who were either criminal defense attorneys

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29. *Id.* at 1587.

30. *Id.* at 1593.

31. *Id.*

32. The recent shooting tragedy at Columbine High School in Littleton, Colorado provides a clear picture of the impact of the media on popular culture, as law enforcement officials have discovered that the two assailants learned how to create explosive devices from information easily accessed on the Internet. Many people believe that the widespread violence in schools across America is largely due to a shift in the popular culture, created in part by the world of information available on the Internet, and the prevalence of violent video games. Throughout the United States, the rising cost of living has forced both parents to hold down full-time jobs, diminishing the time for adult supervision and allowing young people unlimited access to detrimental and violent activities.

33. See Friedman, *supra* note 18, at 1593.

34. *Perry Mason* originally aired on CBS.

35. *The Defenders* originally aired on CBS.

36. *Owen Marshall* originally aired on ABC.

37. Universal International Pictures (1962).

fighting crime or older, professional, family men who were portrayed as authority figures dealing meaningfully with the pressing political issues facing society at that time.<sup>38</sup> Similar to the effect of *L.A. Law*<sup>39</sup> in the late 1980s, these earlier shows influenced scores of young people to enroll in law school. The following ten years supplied more lawyers than any other generation in history.<sup>40</sup> In addition, a 1964 study published by the American Bar Association revealed that during this period, the ethical and moral practices of lawyers had improved, as did the image of the legal profession.<sup>41</sup>

Interestingly, the positive image of the profession that these lawyer-heroes portrayed evolved at the expense of the public's perception of law enforcement. This condemnation was evident in *Perry Mason* and subsequent series which often ridiculed the police, giving viewers the strong impression that the police were untrustworthy and incapable of doing their jobs.<sup>42</sup> This was a clear shift from earlier, extremely popular shows like *Dragnet*,<sup>43</sup> which single-handedly created the image of the policeman as a hero.<sup>44</sup> It is highly relevant to stop and consider what factors may have caused this reversal in television portrayals. Did writers just suddenly decide to poke fun at the police? Most probably not, as history seems to provide a more intelligible answer. More likely, these negative portrayals of law enforcement were fueled by the civil rights movement and the high crime rate of that era, and ultimately reflected public sentiment during the riotous 1960s.<sup>45</sup> Again, this reversal supports the conclusion that fictional portrayals reflect public perceptions and tend to reinforce prevailing contemporary attitudes.

By the late 1960s and early 1970s, the lawyer-as-hero genre began to fade as a result of changing times, and producers began portraying crusading, activist attorneys who were more representative of the rebellious 1960s.<sup>46</sup> This transformation provides additional evidence that television, like public opinion, is not a static force and that dramatic shows change as ideas and attitudes change.<sup>47</sup> The most important and apropos element to be unearthed from these shifts is the notion that these changes in attitudes do not occur overnight. Just as innovations in technology take years to develop

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38. Stark, *supra* note 6, at 253, 255. See also Asimow, *supra* note 15, at 1135–38.

39. *L.A. Law* originally aired on NBC.

40. Stark, *supra* note 6, at 256.

41. *Id.* at 256 n.104 (citing A.B.A., A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES: Fall 1984 at 66 (1985)).

42. *Id.* at 250.

43. *Dragnet* originally aired on NBC.

44. Stark, *supra* note 6, at 248.

45. *Id.*

46. *Id.*

47. *Id.*

and implement, attitudes and older trends continue until the passage of time (and possibly necessity) paves the way for people to accept newfangled ideas.<sup>48</sup> The “sexual revolution,” a term describing the changes in attitudes about premarital sex,<sup>49</sup> illustrates this notion well: It often takes decades before modern practices and beliefs firmly seat themselves into society. What can we learn from these shifts and how can we utilize this knowledge to enhance the image of the legal profession? The discernible lesson is that effecting changes in attitudes and perceptions will take time, and since popular culture does change, but tends to lag behind real life, we must begin now.

Although television history reveals that during eras when the police are popular, lawyers tend not to be, improving the image of the legal profession may not necessarily require denigrating law enforcement.<sup>50</sup> The enormous popularity of shows such as *NYPD Blue*<sup>51</sup> and *Homicide: Life on the Street*<sup>52</sup> tends to reinforce this pattern, as detectives are shown in a positive light and arrestees and criminal suspects rarely “lawyer up” and inevitably confess to their crimes under interrogation in the “box.” In fact, studies show that in the span of one generation, the police have gone from scapegoats to heroes (again), while the esteem and popularity of lawyers seem to have moved in the opposite direction.<sup>53</sup> However, when the assistant district attorneys make their respective appearances in the *NYPD Blue* and *Homicide* squad rooms, they are depicted as good guys who work closely with the police in helping them bring criminals to justice. These positive portrayals are good indicators that times may be changing, and that lawyers and cops can coexist as members of the same team fighting to achieve the same result.

48. *Id.*

49. Christopher H. Hall, Annotation, *Imputation of Criminal, Abnormal, or Otherwise Offensive Sexual Attitude or Behavior as Defamation—Post New York Times Cases*, 57 A.L.R. 4th 404 (1987 & Supp. 1999).

50. Stark, *supra* note 6, at 276–77.

51. *NYPD Blue* originally aired on ABC.

52. *Homicide: Life on the Street* originally aired on NBC.

53. In a 1985 Gallup Poll:

[F]orty-seven percent of the public rated the honesty and ethical standards of the police as ‘very high’ or ‘high,’ a rise of ten percent in just eight years. Meanwhile, in the same period, those rating lawyers ‘low’ or ‘very low’ rose from twenty-six percent to thirty percent.... This reversal in public sentiment is not surprising in light of the fact that crime shows have portrayed the police as the public’s guardian against criminals, while portraying lawyers—usually public defenders—as criminals’ guardians against the criminal justice system.

Stark, *supra* note 6, at 278–79 (1987) (citing GALLUP REPORT, Aug. 15, 1985, at 191–92; Louis Harris and Associates Telephone Survey, 1986; Roper Center For Public Opinion Research Telephone Survey (Storrs, Connecticut)).

No doubt it will require a combined effort to bring about such change, but the obstacles are not insurmountable. However, this will only come to pass if current fictional lawyers and practitioners do not perpetuate the ambivalence. The newest crop of shows, namely *Ally McBeal* and *The Practice*, have the opportunity to help bring about this change by showing lawyers as caring, hardworking, professional people who do the right thing, which at times they do. But are these positive elements overshadowed by the absurdities around which these episodes revolve? In *Ally McBeal*, for example, these absurdities include a pet frog, dancing-baby hallucinations, four-foot tongues secretly lapping clients, and chain saws whittling away the legs of opposing counsel. David Kelley's characters in these ensemble casts frequently deal with real moral issues and struggle with ethical questions and conflicting loyalties. Sometimes they adhere to the Creed of Professionalism and the aspirational goals of legal practice. But in the end, it may be safe to say that viewers are left with the wrong impression, especially when a criminal defense attorney maintains an ongoing sexual relationship with the opposing prosecutor, his associate sleeps with the judge, an attorney advertises his services as "Jimmy the Grunt," and a partner offers a million dollar settlement in a civil suit to encourage a rape victim to forego a criminal prosecution against a rabbi. It is true that Kelley's characters are portrayed as emotional, insecure, vulnerable people who are truly "human" like the rest of us, and sometimes they even fail, but the lingering question remains: What is the everlasting effect of these depictions?<sup>54</sup> If one can "change the world with just this guitar," is the image of our profession traveling along a path of no return by being in the hands of the most dominant, prolific writer in television? The interplay between television and culture has been analogized to waves on a beach, where over time, the beach clearly changes shape under the impact of the waves.<sup>55</sup> Imagine the influence of television as the waves, and the beach as the image of the profession. If practitioners do not grab the bull by the horns and make a concerted effort to improve the image of attorneys, the shape of the beach may be changed forever. We may not be able to stop the waves, but we surely can transform the beach into hard soil.<sup>56</sup>

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54. Anita Gates, *From Arnie to 'Ally,' Capturing The Insecure Human Condition*, N.Y. TIMES, Dec. 20, 1998, at B39.

55. Rosenberg, *supra* note 14, at xii.

56. Charles B. Rosenberg, *An L.A. Lawyer Replies*, 98 YALE L.J. 1625, 1627 (1989) (stating that "L.A. Law no doubt has some effect on the perception of law and lawyers, but more like that of a river on hard soil, wearing here and there, only gradually modifying a cultural perception that has been building for almost a thousand years.").

### III. THE EFFECT OF FICTIONAL PORTRAYALS ON THE HUMAN SUBCONSCIOUS

Visual images and auditory signals that we experience in life often have some impact on our personhood and individuality. These stimuli may occur as part of an enjoyable or harrowing experience, resulting in an unforgettable incident that is indelibly instilled into our psyche. But even experiences that do not stand out in our everyday memory can implant themselves somewhere deep in our subconscious, having the ability to burst out into the forefront of our thinking process at any point in time. We have all, at one time or another, felt a tinge of *deja vu* upon hearing an old song, as the lyric or melody takes us back in time and conjures up something in our distant past. Our mental decision-making process is a complicated one, and it inevitably feeds upon all that we have seen, learned, been taught by teachers and family, and emotionally experienced for ourselves.

All forms of art are products of the time period in which they were created and disseminated. The popular culture reflects the attitudes, beliefs, and social mores of these artists, as well as being representative of the attitudes of society or culture at a particular time.<sup>57</sup> Artists, whether they be musicians, screen writers, painters, sculptors, or film directors, always have something to say or communicate through their creations. Often these messages are clear, but sometimes they are subliminal or may have several possible interpretations that are intentionally left open for the recipient to select. By creating and developing fictional characters and placing them in certain difficult and compromising situations, writers are essentially asking the viewer to judge that character.<sup>58</sup> But, by what standards are they being judged? The standard is inevitably the viewer's own moral beliefs and attitudes. The viewer is subconsciously asking, "How would I react in this situation? What would I do?" When presented with conflict, we each must judge that character in our own way. Since conflict is an essential element in drama, writers work painstakingly hard to create such situations for their characters, hoping to evoke some type of emotional reaction from the viewer. Human emotions are numerous, and different viewers will feel different things. Whether a person feels empathy, disgust, sadness, or camaraderie, the writer's main objective is to strike a chord. Moreover, a key component of any successful ensemble series, whether it be *L.A. Law*, *Ally McBeal*, or *The Practice*, is to develop the characters in such a way that each viewer discovers one person with whom he or she identifies.

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57. Stark, *supra* note 6, at 248.

58. Robert Eli Rosen, *Ethical Soap: L.A. Law and the Privileging of Character*, 43 U. MIAMI L. REV. 1229, 1244-45 (1989).

However, our own individual moral beliefs come into play during this process. Whether or not a person agrees with a character's choice of conduct is ultimately based upon that individual's attitudes and personal sense of right and wrong. The legal profession cannot blame art for the bad rap lawyers get, because although art may serve as a form of instruction, an integral part of being human involves free choice, and we all bear the burden of our own choices. Even the courts have recognized this distinction, as civil lawsuits have been dismissed against musical superstars such as Ozzy Osbourne and Judas Priest, where parents of teen suicide victims attempted to blame these tragic deaths on modern composers.<sup>59</sup> Nevertheless, this author proposes that the messages conveyed by these characters and fictional portrayals may eventually play a part in our decisionmaking, resulting from certain ideas and perceptions being implanted into the subconscious mind. Manufacturers and advertisers are well aware of the influence and impact that repetitive promotion has on sales of their products. Similarly, when viewers are continually bombarded by characterizations of lawyers who disregard ethical principles, it seems logical that it will have some effect on people's perceptions. Despite the obvious absurdity and unrealistic, preposterous quality of *Ally McBeal*, such as Richard Fish launching into one of his cantankerous courtroom performances, Ally calling the judge a pig after being reprimanded for wearing a ridiculously short skirt, or "The Biscuit" disrupting the court with his squishy shoes, objection-snapper, or talking monkey doll, the embarrassing damage to the profession likely supersedes the intended comic relief.

#### IV. A GOOD LAWYER MUST BE A GREAT LIAR

Though television shows, films, and books about lawyers are presumed to be society's primary source of information about the legal profession, and they may possibly influence public opinion and perceptions, there are other factors that contribute to the public's hostility and distaste towards attorneys. These factors include personal experience, information received from family and friends, and the inherent obligations of legal representation itself.

Results from a National Law Journal survey revealed that participants believed the most positive aspects of lawyers were that "their first priority is to their clients"<sup>60</sup> and that they "know how to cut through bureaucratic red

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59. See *McCollum v. CBS, Inc.*, 249 Cal. Rptr. 2d 187 (Cal. Ct. App. 1988); *Vance v. Judas Priest*, Nos. 86-5844, 86-3939, 1990 WL 130920, at \*1 (Nev. Dist. Ct. Aug. 24, 1990).

60. Robert C. Post, *On the Popular Image of the Lawyer: Reflections in a Dark Glass*, 75 CAL. L. REV. 379, 380 (1987) (citing *What America Really Thinks About Lawyers*, NAT'L L.J., Aug. 18, 1986, at S-3)). See also Rotunda, *supra* note 9, at 265-66.



tape.”<sup>61</sup> Although these responses appear auspicious on their face, in actuality and in practice, this public sentiment serves as a double-edged sword. Specifically, lawyers are applauded for following their client’s wishes and bending the rules to satisfy those wishes, and at the same time, they are condemned for manipulating the legal system, rather than striving to uphold what is right and achieve true justice.<sup>62</sup> In essence, because lawyers are both praised and denounced for fulfilling their obligations, popular attitudes towards attorneys are contradictory.<sup>63</sup> Criminal defense attorneys provide a good illustration of this proclivity, as the public holds lawyers to be censurable and dishonest merely by their association with guilty clients.<sup>64</sup> For example, an attorney who knows that his or her client committed murder, yet zealously defends the client’s innocence in court, is seen as being paid to lie. He or she is not seeking truth or justice, but manipulating the jury as well as the legal system in trying to free a guilty man. Since the general public is unaware of the responsibilities and complexities surrounding the attorney-client privilege, propensity sets in: These lawyers are liars and sleazy; therefore, all lawyers are. Moreover, popular culture tends to perpetuate these real life contradictions, as the notion that “a lawyer must be lawless in order to uphold the law” is a classic characterization which breeds conflict and great dramatic effect.<sup>65</sup>

Furthermore, people’s attitudes and beliefs about attorneys change depending upon on which side a party may be. For example, when a prospective plaintiff hires a lawyer to initiate an action, the client wants counsel to fight with everything possible and be highly proficient at manipulating the law in the client’s favor. The client’s expectation is for the lawyer to win at any cost. Then, if the desired result is attained, the attorney is viewed in a positive way and is ultimately considered a hero. Conversely, when a client is forced to hire a lawyer to defend against an action, he now faces the tough, manipulative attorney in opposition. Here, the tides are turned and the antithetical lawyer is viewed as a corrupt, unethical enemy. This scenario is common in divorce actions, will contests, and child custody litigation. In these circumstances, the reputation of attorneys sustains heavy scarring as the result of clients’ personal experiences with the legal system during highly emotional times. The legal profession incurs further discreditation through the communication of similar painful experiences of an individual’s friends and family.

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61. *Id.*

62. Post, *supra* note 60, at 380.

63. *Id.*

64. The most common complaint by laymen about lawyers is “[h]ow can you defend someone you know is guilty?” David S. Machlowitz, *Public Image of Lawyers: Lawyers On TV*, 74 A.B.A. J. 52, 54 (Nov. 1988).

65. Post, *supra* note 60, at 382.

These contradictory attitudes were prevalent in a 1981 survey conducted by the American Bar Association.<sup>66</sup> The ABA found that although members of the public ordinarily scorn the image of the "shyster," they also indicated that when they do seek a lawyer, they may prefer "one who most fits the shyster image."<sup>67</sup> As a result, this paradoxical anomaly acts as a catalyst in furthering hostility toward attorneys.

However, there is an important distinction in this contradictory view. People do not necessarily believe that all lawyers are actually criminals who literally break the law, but as University of California law professor Robert Post explains, it is the concept of "law" that has assumed a double meaning.<sup>68</sup> On one hand, law is understood as the positive, technical enactments of the state<sup>69</sup> which lawyers generally obey by "ascertaining its 'legal limits' and escaping through its 'loopholes.'"<sup>70</sup> In contrast, by dealing in these slick technicalities, lawyers stand accused of breaking a different kind of law, the law associated with justice and the law upholding our values as a community.<sup>71</sup> The nexus between these two concepts of law is where the actual contradiction lies, and this nexus is the area upon which popular culture feeds.

Professor Post contends that this contradiction is amplified by the fact that our society is not ordered by "a coherent system of values,"<sup>72</sup> but rather by one in which people's values are extremely diverse and "individuals constantly struggle to achieve recognition for the legitimacy"<sup>73</sup> of their own private perspectives.<sup>74</sup> As a result, in litigation, values are pitted against values, and when a lawyer argues for one interpretation of a law rather than another, the lawyer is in essence arguing for his client's ordering of values as opposed to his legal counterpart's.<sup>75</sup> Thus, attorneys are considered nefarious for manipulating the law, and are seen as betraying the legal system in the interests of their particular clients without regard to the common, universal values of right and wrong.<sup>76</sup>

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66. James Podgers, *Public: 'Shyster' OK—If He's on Your Side*, 67 A.B.A. J. 695 (1981).

67. *Id.*

68. Post, *supra* note 60, at 382.

69. *Id.*

70. *Id.* at 383 (citing Engelberg, *Contra Aid: Loose Law?*, N.Y. TIMES, Jan. 15, 1987, at A12; Johnson, *The Arrogance of Power—Again*, WASH. POST, Nov. 26, 1986, at A2).

71. *Id.*

72. *Id.* at 385.

73. Post, *supra* note 60 at 385.

74. *Id.*

75. *Id.* at 385–86.

76. *Id.*

This contradiction creates a snowball effect that echoes throughout our society, as juries are cognizant that a trial lawyer's words do not necessarily represent his own personal views and values. Instead, his exhortations are likely perceived as contrived speeches created to represent the interests of his client. As opposed to actors who lie *tout de suite*, lawyers are considered dishonorable because their job requires them to totally conceal their performance and convince the listener that they are truly sincere.<sup>77</sup> This results in attorneys being viewed as untrustworthy, conniving, and disreputable "hired guns."<sup>78</sup> Consequently, the image of the profession suffers because of practitioners' inherent obligations to their clients, and because people are aptly aware that "a good lawyer must be a great liar."<sup>79</sup>

## V. THE POSITIVE ASPECTS OF FICTIONAL PORTRAYALS

Any critique of Hollywood films or television shows that depict lawyers or involve legal subject matter must begin with a fundamental and crucial understanding that these mediums have one underlying purpose—to entertain. As the world-famous film critic Roger Ebert put it, "Nothing could be more boring than an absolutely accurate movie about the law. . . . A fiction movie is not a documentary. . . . Its purpose is to provide escapist entertainment convincingly."<sup>80</sup> Entertainment, in the dramatic sense, revolves around storytelling and conflict, and these are essential elements for success in the theatrical context.<sup>81</sup> Over four centuries ago, William Shakespeare, generally regarded as one of the greatest authors and playwrights of all time, consistently built his works around conflict and tragedy. In terms of this discussion, "[c]ourtroom plots automatically generate confrontation and conflict" by pitting "attorney vs. witness, attorney vs. opposing counsel, attorney vs. judge, [and] attorney vs. client . . ."<sup>82</sup> Therefore, "trial movies have a built-in suspense factor" that makes them a popular and fascinating vehicle for filmmakers and viewers alike.<sup>83</sup> The countless films and television shows utilizing this theme makes

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77. *Id.* at 388.

78. *See* Rotunda, *supra* note 9, at 265.

79. Post, *supra* note 60, at 388 (citing THE FACTS ON FILE DICTIONARY OF PROVERBS 138, 139 (R. Fergusson ed., 1983)).

80. Rochelle Siegel, *Presumed Accurate: When The Law Goes To The Movies*, 76 A.B.A. J. 42, 44 (Aug. 1990).

81. Rosenberg, *supra* note 56, at 1625–26 (citing Aristotle's "*Poetics*").

82. Asimow, *supra* note 15, at 1131.

83. *Id.*

it indisputable that law is a great stage.<sup>84</sup> In addition, storytelling thrives upon powerful themes such as guilt, innocence, corruption, and the quintessential device in literature, good versus evil.<sup>85</sup>

However, movies and television shows face common dilemmas in their attempts to portray the legal system accurately. As in law, drama has certain rules that must be adhered to in order to accomplish its goals, namely pace, action, suspense, and denouement.<sup>86</sup> Given the limited, strict time demands of these mediums, legal accuracy usually takes a back seat to dramatic effect. But after all, this is entertainment, not real life. Writers have the ability and justification to take liberties with their presentation and to invoke their poetic license to achieve a desired result. Some commentators believe that when writers portray lawyers and the legal system inaccurately, the image of the profession suffers because the nonlawyer observer has no way of knowing that the depictions may be far from reality.<sup>87</sup> This may be true, but when the stories address cutting-edge legal issues and the common ethical dilemmas that lawyers face in real practice, they are actually benefiting the profession by acknowledging the difficulties that are inherent in legal representation, and by attempting to convey these ethical problems in a serious, dramatic way without pretending to solve them.<sup>88</sup> Consequently, even though fictional depictions may be presenting a distorted picture, the spirit of their intent is positive because they are still increasing public awareness of the legal system and exploring the burdens and exigencies of law practice.<sup>89</sup> If this view is accepted, the real questions are how far should writers go in the name of entertainment before they are abusing their dramatic license,<sup>90</sup> and whether the immutable effect of unrealistic depictions and unethical attorney behavior overshadows the writers' good intentions.

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84. See generally Rosenberg, *supra* note 56, at 1625 (stating that *L.A. Law* "is less a conscious attempt by the writers to influence how people feel about the law or lawyers than it is an effort to create interesting drama, with law as its stage.").

85. See PAUL BERGMAN & MICHAEL ASIMOW, *REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES* at xvii-xviii (1996); Asimow, *supra* note 15, at 1133.

86. Siegel, *supra* note 80, at 46.

87. See Asimow, *supra* note 15, at 1133.

88. Stephen Gillers, *Taking L.A. Law More Seriously*, 98 YALE L.J. 1607, 1610, 1615 (1989).

89. *Id.* Discussing *L.A. Law*, Professor Gillers states "[w]e have a right to expect that overall, the show will advance, rather than decrease or leave unchanged, the public's comprehension of legal issues and lawyers' work." *Id.* at 1622.

90. See generally Kyle Pope, *Movies: Media Players Complain that Tobacco Script Is Unreal*, WALL ST. J., July 2, 1998, at 9 (discussing the limits of artistic license in films that tackle real-life events).

## VI. LAWYERS IN CONFLICT: MORAL STRUGGLES VS. ETHICAL DILEMMAS

"Ethical issues in law are not abstract."<sup>91</sup> Each ethical rule must be examined against real situations as well as their dramatic counterparts, as these essential rules will not survive if they consistently lead to resolutions that society cannot accept, or if they oppose society's system of values and morals.<sup>92</sup> The problem is that we live in a highly individualistic society where morals and values are not universally coherent. The philosophical teachings of René Descartes are based on the underlying premise that "I think, therefore I am," and this proffers a method of understanding reality itself, as well as the importance of recognizing one's individuality of self, and place in the universe.<sup>93</sup> Our society embraces this notion to such a degree that people's values and beliefs are as numerous and divergent as the species that inhabit this earth. In addition, we all possess a "conscience," or instinctive, inherent sense of right and wrong, and sometimes our conscience conflicts with established rules or principles of law. When this occurs, we are caught in an enigmatic web of indecisiveness or confusion in deciding how to act or behave.

Lawyers are human too, and they are often confronted with situations requiring them to either adhere to ethical canons or follow their natural instincts. This conflict breeds great drama, as attorneys are torn between the demands of their professional obligations and their own moral conscience. In fiction, lawyers are deliberately placed in these positions to "test their commitments to themselves, their clients, and to the adversary system,"<sup>94</sup> and viewers are ultimately being asked to judge their character.<sup>95</sup> In the imaginary context, development of character is critical to "audience interest in episodic fiction, as most people remember characters (e.g. Superman)"<sup>96</sup> long after plot details have escaped their memory.<sup>97</sup> Steven Bochco, the co-creator of *L.A. Law*, *Hill Street Blues*,<sup>98</sup> and *NYPD Blue*, explains that "the task of a television writer is to create characters who are interesting enough that viewers want to continue to spend time with them."<sup>99</sup>

Law Professor Robert Eli Rosen offers a thoughtful interpretation of the importance of character development in fiction by describing our culture as

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91. *Gillers*, *supra* note 88, at 1617.

92. *Id.*

93. René Descartes (1596–1650), French philosopher and mathematician.

94. Rosen, *supra* note 58, at 1238.

95. *Id.*

96. Rosenberg, *supra* note 56, at 1626.

97. *Id.*

98. *Hill Street Blues* originally aired on NBC.

99. Rosenberg, *supra* note 56, at 1626 (quoting Steven Bochco).

one which "privileges character."<sup>100</sup> He contends that "character" indicates "a psychological, individualistic, and subjectivized account of moral judgment."<sup>101</sup> In other words, the privileging of character "mean[s] that the motivations to express and be recognized by one's character are valued"<sup>102</sup> by each person as well as society.<sup>103</sup> The expression of one's character is a product of an individual's personal moral choices, as these choices "make someone the person he or she is."<sup>104</sup> This can be simply understood as "'to thine own self be true.'"<sup>105</sup>

When a fictional lawyer is faced with an ethical dilemma and makes a decision based upon a moral choice, the viewer may disagree with his ethics but admire his conscience. In the viewer's eyes, this increases the character's moral worth and creates a feeling of empathy. The process of judging that lawyer requires one to judge him first as a person.<sup>106</sup> Through this dramatic interplay, the positive aspect is that the viewer gains insight into the ethics of legal practice, but often the negativity associated with a departure from ethical rules creates a damaging effect on the profession. People may agree with the attorney's choice when it is made in the interests of his client or justice, but if a choice is made on the basis of the lawyer's own financial or selfish interests, his conduct then reinforces the stereotypical view that lawyers are greedy, unethical sleazebags. Granted, the latter situation adds fuel to the fire, but when practitioners are expected to separate their professional lives from their personal ethics, this necessary constraint can backfire and have a detrimental effect on the image of the profession. "To foster responsibility and limit unscrupulous actions, constraints on lawyers' motives need to be justified."<sup>107</sup> In attempting to do so, the *Rules Regulating the Florida Bar* are rules of reason, which recognize that it is virtually impossible to create an unerring, exact set of ethics rules and commands that would rectify or govern every single situation. Nevertheless, the ethics rules are intended as guidelines for a lawyer's responsibilities and conduct.<sup>108</sup> The Preamble to the *Florida Rules of Professional Conduct* explains:

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100. Rosen, *supra* note 58, at 1234.

101. *Id.* at 1233.

102. *Id.*

103. *Id.*

104. *Id.* at 1233 n.16.

105. Rosen, *supra* note 58, at 1233 n.16 (quoting William Shakespeare's *Hamlet*).

106. *See id.* at 1248 (discussing Michael Kuzak's character on *L.A. Law*, Rosen states, "If we want to peer into legal ethics . . . we must first peer into personal ethics. We judge Kuzak as a lawyer by judging him first as a person.").

107. *Id.* at 1235 n.25.

108. *See generally* FLORIDA RULES OF PROFESSIONAL CONDUCT Preamble to Chapter 4 (1999) (hereinafter "RPC").

In the practice of law conflicting responsibilities are often encountered. Difficult ethical problems may arise from a conflict between a lawyer's responsibility to a client and the lawyer's own sense of personal honor, including obligations to society and the legal profession. The Rules of Professional Conduct prescribe terms for resolving such conflicts. Within the framework of these rules many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional moral judgment guided by the basic principles underlying the rules. . . . A lawyer is also guided by personal conscience and the approbation of professional peers. . . . The rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The rules simply provide a framework for the ethical practice of law.<sup>109</sup>

While some of the rules are imperatives that define proper conduct, other rules are permissive and allow attorneys leeway for professional discretion.<sup>110</sup> In the following portrayals, the viewer is left to decide whether some ethical restraints are too constrictive by conflicting with one's personal sense of morality and hindering true justice.

## VII. ...AND JUSTICE FOR ALL<sup>111</sup>

In the classic film, *...And Justice For All*,<sup>112</sup> Al Pacino plays criminal defense attorney Arthur Kirkland, who is forced to defend an arrogant judge charged with rape.<sup>113</sup> Judge Fleming, played by John Forsythe, lures Kirkland into the representation under threat of reporting him to the bar authorities for an ethics violation that occurred years ago when Kirkland betrayed a wretched client's confidence.<sup>114</sup> Since Kirkland is already under scrutiny by the ethics committee on contempt charges for taking a swing at Judge Fleming, he has no choice but to succumb to the blackmail and accept the case.<sup>115</sup> Though Judge Fleming initially denies any involvement in the crime and even passes a polygraph test, he later confesses to Kirkland and pays a witness to perjure himself on the stand in order to substantiate his

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109. *Id.* at 1406.

110. RPC 4.12 "SCOPE OF REPRESENTATION."

111. Columbia/Malton (1979).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

story.<sup>116</sup> Kirkland, hardly the epitome of judiciousness, nevertheless struggles with his conscience and personal sense of moral duty.<sup>117</sup> He ultimately forsakes his professional obligations of attorney-client confidentiality and explodes during his opening statement at trial announcing to the entire courtroom that his client is guilty of the rape.<sup>118</sup> Rule 4-1.6, "Confidentiality of Information," expressly prohibits Kirkland from revealing Judge Fleming's guilt without his consent.<sup>119</sup> A fundamental principle in the client-lawyer relationship requires the attorney to maintain the confidentiality of information relating to the representation, and to uphold his loyalty to the client.<sup>120</sup> Rather, once Kirkland learned that Judge Fleming planned to use perjured testimony of a witness during the trial, his proper course of conduct should have been to request withdrawal from the case, only revealing information to the extent necessary to terminate his representation under Rule 4-1.16(a)(1).<sup>121</sup> This knowledge mandated that Kirkland withdraw because his services would have been used by the client to materially further future criminal and fraudulent conduct, and would constitute false evidence prohibited by Rule 4-3.3(a)(4).<sup>122</sup>

Of all legal thrillers, this may be the most blatant exhibition of an attorney abandoning his ethical duties in favor of retaining his own sanity and personal sense of right and wrong. It is true that the movie denigrates the criminal justice system, the judiciary, and lawyers, but in the process, it attempts to appeal to a higher form of justice. Kirkland may truly hate Judge Fleming with unbridled passion, but his hate is not the motivating factor that pushes him over the edge and causes him to snap. It is his personal sense of justice that forces his hand. In the end, Al Pacino's character, although perniciously unrealistic, is the one lawyer "who cannot stand to play his role anymore."<sup>123</sup>

In this movie, ethical violations by both the judge and Kirkland are filtered throughout the entire plot.<sup>124</sup> As the story unfolds, it loses credibility by subjecting the viewer to one exaggeration after another. However, the movie's despondent view of the entire legal system is aberrational on purpose, as this allows Kirkland to come to grips with his own conscience and to try to rectify his past wrongs by seeking a higher form of justice—the

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116. BERGMAN & ASIMOW, *supra* note 85, at 109–13.

117. ...AND JUSTICE FOR ALL, *supra* note 111.

118. *Id.*

119. RPC 4-1.6.

120. RPC 4-1.6 cmt.

121. RPC 4-1.16(a)(1).

122. RPC. 4-1.6 cmt; RPC 4-3.3(a)(4).

123. Allen K. Rostron, *Lawyers, Law & The Movies: The Hitchcock Cases*, 86 CAL. L. REV. 211, 235 n.145 (1998).

124. ...AND JUSTICE FOR ALL, *supra* note 111.



truth. The viewer may either see him as a hero or as the most unethical character of all. In the film's utilization of the classic fictional battle of good versus evil, Kirkland's character stands for the good in contrast to Judge Fleming, who represents evil for committing rape and completely disregarding professional ethics and the cardinal *Code of Judicial Conduct*. In the final analysis, these portrayals may damage the image of the profession, but Kirkland's quest for truth might be a worthy sacrifice. The following films explore a similar theme, as unethical attorneys and judges try to atone for their dishonorable behavior and the imperfections of the legal system by seeking a higher form of morality and justice.

### VIII. *THE VERDICT*<sup>125</sup>

Another classic, this gritty, suspenseful film features Paul Newman as Frank Galvin, an alcoholic ambulance-chasing attorney, whose personal and professional life is basically in the gutter.<sup>126</sup> The movie begins with Galvin breaking the rules, as he deviously crashes funeral services of complete strangers, intending to solicit cases.<sup>127</sup> This is a clear violation of Rule 4-7.4(a), "Direct Contact with Prospective Clients," which states that "[a] lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain."<sup>128</sup> Although the general public may not be aware of the restriction against solicitation, Galvin's behavior is no doubt considered despicable by most people. Such behavior reinforces the public's view that lawyers are predatory, selfish, and incessantly in search of the almighty buck. These perceptions are intensified by the endless law firm advertisements that bombard viewers day in and day out on television, a practice that is now being strictly regulated by the Florida Bar.<sup>129</sup>

Galvin spends most of his time in bars knocking back hard liquor and playing pinball, until his old friend and mentor Mickey Morrissey, played by the immortal Jack Warden, shows up and tries to bring him back to his senses.<sup>130</sup> Mickey still believes in Galvin and offers him first chair on a high stakes medical malpractice case involving a woman who ended up in a coma after being administered the wrong anesthetic prior to giving birth.<sup>131</sup> Galvin is reluctant at first, but decides to take the case realizing it may be his last

125. Twentieth Century Fox (1982).

126. *Id.*

127. *Id.*

128. RPC 4-7.4.

129. RPC 4-7.

130. *THE VERDICT*, *supra* note 125.

131. *Id.*

chance to redeem himself.<sup>132</sup> The victim's sister and her husband have filed this action against the treating physician, Dr. Towler, and the hospital run by the Archdiocese church, who are inordinately represented by slick defense attorney Ed Concannon and an army of Harvard law associates.<sup>133</sup> The plaintiffs are humble and sincere folks who are only seeking commensurate compensation for the tragedy and an admission of fault by the doctor and hospital, to ensure that this will never happen again.<sup>134</sup> Galvin makes a trip to the hospital, and after seeing the comatose woman, he recognizes the seriousness of the case and miraculously stops drinking.<sup>135</sup> Determined to take the case to trial, he attends a pretrial conference in Judge Hoyle's chambers where opposing counsel shrewdly offers a \$210,000 settlement—a sum that would surely make the plaintiffs jump for joy.<sup>136</sup> Judge Hoyle tries to offer Galvin advice, telling him that, "I, myself would take the money and run like a thief!"<sup>137</sup> Granted, this response hardly approaches the felonious misdeeds of Judge Fleming, but nevertheless, it is a violation of Canon 2 of the *Code of Judicial Conduct*, which requires all judges to avoid any appearance of impropriety.<sup>138</sup> The Code states that "[a] judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."<sup>139</sup> This behavior diminishes respect for judges, and sends a message that judges are just as dishonest as the common thief. However, under Canon 3B(7)(d), judges are encouraged to confer separately with the parties' lawyers in an effort to mediate a settlement in a pending case for the purpose of disposing of matters promptly, efficiently, and fairly.<sup>140</sup> Since the average person would be unaware of this rule, Judge Hoyle's conduct and choice of words comes across as unethical, possibly causing even greater damage to the profession than lawyer misconduct due to the public's reverence of the judiciary.

The opposing firm's tactics are entirely unprincipled, even to a layperson unfamiliar with the law or trial procedure.<sup>141</sup> Committing a compendium of improprieties, defense counsel underhandedly sends Galvin's pivotal witness on a vacation, constituting witness tampering, bribery, and obstruction of evidence in violation of Rule 4-3.4, "Fairness to

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132. *Id.*

133. *Id.*

134. *Id.*

135. *THE VERDICT*, *supra* note 125.

136. *Id.*

137. *Id.*

138. *See* FLORIDA CODE OF JUDICIAL CONDUCT Canon 2A (1997).

139. *Id.*

140. *Id.* Canon 3B(7)(d) (1999).

141. *THE VERDICT*, *supra* note 125.

Opposing Party and Counsel.”<sup>142</sup> In addition, they secretly plant one of their female associates as a sexual spy, who deceitfully infiltrates Galvin’s personal and professional life by having sexual relations with him for the purpose of transmitting confidential information about the case.<sup>143</sup> This sinister scheme violates Rule 4-1.2(d), as an unlawful departure from the limits of a lawyer’s scope of representation.<sup>144</sup> The rule states that “[a] lawyer shall not . . . assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent.”<sup>145</sup> This conduct also violates rules protecting confidentiality and attorney work product, and intrudes upon the principles of maintaining fairness to opposing counsel and to the adversary system.<sup>146</sup> Galvin eventually discovers her duplicity, but not until late in the film when damaging information has already been communicated to the other side.<sup>147</sup>

Bent on taking the case to trial, Galvin firmly and confidently declines the substantial settlement offer without consulting with his clients.<sup>148</sup> Needless to say, they were extremely upset by his unilateral decision to turn down the settlement offer.<sup>149</sup> In a highly emotional and tense scene, the husband knocks Galvin to the ground in the hallway of the courthouse.<sup>150</sup> This cardinal transgression is all too common in films and television portrayals, and is a violation of Rule 4-1.4, requiring attorneys to frequently communicate and inform their clients of the status of the representation.<sup>151</sup> The comment to this rule clearly explains that, “[a] lawyer who receives from opposing counsel an offer of settlement in a civil controversy . . . should promptly inform the client of its substance unless prior discussions with the client have left it clear that the proposal will be unacceptable.”<sup>152</sup> Most people are aware that personal injury lawyers accept these cases on a contingency fee basis, and by fighting for people in their time of need, lawyers tend to gain some respect. But when the client’s interests become secondary to the attorney’s rapacity, people forfeit their feelings of empathy. Settlement decisions must be made by the client, but this ploy is often used by writers to create dramatic effect, as legal stories would be extremely boring if the case never went to trial. Most legal films and shows

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142. RPC 4-3.4.

143. *THE VERDICT*, *supra* note 125.

144. RPC 4-1.2(d).

145. *Id.*

146. RPC 4-1.6, 4-3.4.

147. *THE VERDICT*, *supra* note 125.

148. *Id.*

149. *Id.*

150. *Id.*

151. *See* RPC 4-1.4 (1999).

152. *Id.* cmt.

revolve around the indispensable courtroom scenes. Here, Galvin's narrow-minded quest to win the trial is actually a disguised crusade undertaken to atone for his past failings. Forsaking his duty to his clients, he selfishly forges ahead hoping to find the one surprise witness who can win the case for him, the nurse who was on duty that fateful night.<sup>153</sup> Of course, Nurse Price makes her appearance and testifies that Dr. Towler ordered her to change the admitting form to reflect that the woman had eaten her last meal nine hours before the surgery, rather than one hour.<sup>154</sup> Given these facts, the jury finds the doctor clearly administered the wrong anesthetic, making him criminally negligent.<sup>155</sup>

In the end, the jury members retire from the deliberation room and ask Judge Hoyle if they can award a higher amount than sought by the plaintiffs.<sup>156</sup> Even though Galvin ultimately wins the case and becomes the hero,<sup>157</sup> his risky and unethical conduct leaves an indelible and distasteful impression in the mind of the viewer.

#### IX. *THE STAR CHAMBER*<sup>158</sup>

Featuring a magnificent cast, this film taps into the public's abhorrence of the technicalities of the law. Judges secretly bind together and form a vigilante force of assassins in an effort to carry out true justice by ordering cold-blooded killings of criminals who have escaped conviction through loopholes in the legal system.<sup>159</sup> The movie borrows its title from a fourteenth century English court, which during the reign of Henry VIII, tried criminal cases without juries and instituted cruel "punishments such as the slitting of noses and the severing of ears."<sup>160</sup> "The words 'star chamber' are still used to describe unfair and arbitrary judicial procedures . . . ."<sup>161</sup>

Judge Hardin, played convincingly by Michael Douglas, is forced to dismiss several murder cases based on Fourth Amendment illegal search and seizure rules, and, as a result of glitches in the police computer system.<sup>162</sup> Under the highly technical rules and constitutional protections, Hardin must follow the law and suppress evidence that has been unlawfully obtained by

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153. *THE VERDICT*, *supra* note 125.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. Twentieth Century Fox (1983).

159. *Id.*

160. BERGMAN & ASIMOW, *supra* note 85, at 252.

161. *Id.*

162. *THE STAR CHAMBER*, *supra* note 158.

the police, resulting in violent criminals being set free.<sup>163</sup> Initially reluctant, Judge Hardin cannot stand to live with his guilt any longer, and is soon inducted into the Star Chamber by his former professor, Judge Caulfield, played by Hal Holbrook.<sup>164</sup> At first, he goes along and joins the secret vote to bump off two murder defendants whom he set free.<sup>165</sup> But when he discovers that they were innocent, it is too late to call off the execution.<sup>166</sup> His former guilt is now transformed into anger, and he does everything in his power to dissolve the Star Chamber.<sup>167</sup>

It is interesting to note that the Supreme Court of the United States has changed and expanded the powers of law enforcement in search and seizure law, and, has placed limits on the exclusionary rule in cases such as *California v. Greenwood*,<sup>168</sup> *Arizona v. Evans*,<sup>169</sup> *Maryland v. Garrison*,<sup>170</sup> *Colorado v. Bertine*,<sup>171</sup> and particularly by the *Leon* good faith exception.<sup>172</sup>

Judge Hardin is another example of a character who is torn between his duties and ethical responsibilities, and his moral conscience and principles. Similar to John Grisham's formulaic characters who are innocent at the start, get sucked into unethical and devious practices, and come out heroically at the end, Judge Hardin also goes through a metamorphosis.<sup>173</sup> Time and again in literature, the main character must fall to the lowest depths before rising up to hero status. This common theme is used in each of the previous films, and although these depictions may harm the public's perception of the legal system, they result in interesting and educational entertainment. The question is, can people separate fiction from reality?

## X. CONCLUSION

Sometimes, fictional portrayals do have a detrimental effect on the actual workings of our system. The widespread influence of the O.J. Simpson trial, as well as recent studies, have shown that jurors come to expect the introduction of scientific evidence such as fingerprints and DNA in real cases, and they are preconditioned by their exposure to crime shows,

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163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *THE STAR CHAMBER*, *supra* note 158.

168. 486 U.S. 35 (1988).

169. 514 U.S. 1 (1995).

170. 480 U.S. 79 (1987).

171. 479 U.S. 367 (1987).

172. *United States v. Leon*, 468 U.S. 897 (1989).

173. *THE STAR CHAMBER*, *supra* note 158.

movies, and television.<sup>174</sup> This is also true of witnesses who now come to court expecting to be tricked, ridiculed, and harassed by ruthless, fast-talking attorneys.<sup>175</sup> Real life witnesses become argumentative as a result of their exposure to courtroom drama on the screen, yielding longer trials and making our system less efficient.

Although television and movies may be a pervasive influence, leopards do not change their spots. Hollywood writers and directors are well aware that tragedy and conflict are the seeds of great storytelling, and when a formula works, they stick to it. Culture is a powerful force, and although culture reinforces existing attitudes, it is unfair to place all the blame on the media. Therefore, as legal practitioners, it is our job to work on the problem from the inside. We all have a personal responsibility to help improve the image of the profession, and as the saying goes, it's "better late than never." By pulling together, we can make a difference, ultimately changing the world "with just this guitar." Who knows? If we try hard enough, maybe David Kelley will create the next Atticus Finch and turn Ally McBeal into dust.

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174. Stark, *supra* note 6, at 258 (citing *The Case of the Unhappy DA*, TV GUIDE, Apr. 26, 1958, at 6-7; *A Cop (and a Raincoat) For All Seasons*, TIME, Nov. 26, 1973, at 120; F. MANKIEWICZ & J. SWERDLOW, REMOTE CONTROL 272-73 (1978); J. CARLSON, PRIME-TIME LAW ENFORCEMENT 195 (1985); Lewis, *Witness for the Prosecution—A District Attorney Testifies that TV is Brainwashing Juries*, TV GUIDE, Nov. 30, 1974, at 4)).

175. *Id.*