

# *Nova Law Review*

---

*Volume 24, Issue 2*

2000

*Article 10*

---

## 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\*

\*

Copyright ©2000 by the authors. *Nova Law Review* is produced by The Berkeley Electronic Press (bepress). <http://nsuworks.nova.edu/nlr>

# 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 \*

---

## TABLE OF CONTENTS

I. INTRODUCTION .....	725
II. POPULAR CULTURE CHANGES OVER TIME .....	729
III. THE EFFECT OF FICTIONAL PORTRAYALS ON THE HUMAN SUBCONSCIOUS .....	735
IV. A GOOD LAWYER MUST BE A GREAT LIAR .....	736
V. THE POSITIVE ASPECTS OF FICTIONAL PORTRAYALS .....	739
VI. LAWYERS IN CONFLICT: MORAL STRUGGLES VS. ETHICAL DILEMMAS .....	741
VII. ...AND JUSTICE FOR ALL .....	743
VIII. THE VERDICT .....	745
IX. THE STAR CHAMBER .....	748
X. CONCLUSION .....	749

## 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

---

\* The author is currently practicing insurance defense with the firm of Dracos & Associates, P.A. as in-house counsel for the United Automobile Insurance Company in North Miami Beach, Florida. Born and raised in New York, David completed his undergraduate studies at the State University of New York at Geneseo, graduating with a B.A. in English in 1979. He received his J.D. in 1999 from Nova Southeastern University, Shepard Broad Law Center. While serving as President during 1996-97, he was instrumental in reorganizing the Entertainment and Sports Law Society, successfully raising the consciousness of both the law student body and the faculty in regards to this emerging field of law in southern Florida. Prior to attending law school, the author achieved major success as a professional bass guitarist composing, recording, and touring the world with legendary platinum artists such as Black Sabbath, White Lion, and Great White. His instructional teaching video, "Bass Fundamentals with Dave 'The Beast' Spitz," has sold thousands of copies throughout the world. His unique background also includes over 25 years of disciplined training and instruction in traditional martial arts, and he is currently ranked as a 2nd Degree Black Belt in Goju-Ryu Karatedo, having trained under Masters Morio Higaonna, Mel Pralgo, and Chuck Merriman.

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

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. I 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

---

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

---

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

---

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

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 *Dagnet*,<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

---

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. *Dagnet* 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>

---

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.

---

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

---

59. See *McCullum 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.

---

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>

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

---

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.

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

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:

---

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

---

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

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

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

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

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,

---

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.

---

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.*