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### Dressed for Excess: How Hollywood Affects the Professional Behavior of Lawyers

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# DRESSED FOR EXCESS: HOW HOLLYWOOD AFFECTS THE PROFESSIONAL BEHAVIOR OF LAWYERS

NANCY B. RAPOPORT\*

I remember sitting in a cineplex a couple of years ago, watching *The Devil's Advocate*,<sup>1</sup> both fascinated and horrified by the plot, in which a lawyer is recruited by the devil to do the devil's work. After the movie was over and the crowd was filing out, I kept hearing people say things like "they sure told the truth about lawyers." Part of me wanted to shout out, "We're not like that! Most of us are good, caring, and ethical people!"<sup>2</sup> Part of me knew, though, that *The Devil's Advocate* was just another image in the relatively recent montage of negative images of lawyers.

It seems to me that the public used to view lawyers more as heroes.<sup>3</sup> Now, though, we're more likely to be viewed as villains

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\* Dean and Professor of Law at the University of Nebraska College of Law. The views expressed in this essay are mine alone, and not those of any other faculty or administrators at the University of Nebraska. Many thanks to Jack Ayer, Kathryn Bellman, Walter Effross, Catherine Glaze, Ted Janger, Steve Kalish, Craig Lawson, Deborah Lindberg, Karen Lyons, Nancy Mitchell, Morris and Shirley Rapoport, Gene Smith, Mike Stajduhar, Kim Turek, Catherine Vance, Jeff Van Niel, Cassandra Volanges, and Robert Warren.

1. *THE DEVIL'S ADVOCATE* (Warner Bros. 1997).

2. I agree with Michael Asimow, who points out that there are "stor[ies] that deserve[ ] to be told" about good, caring lawyers. Michael Asimow, *When Lawyers Were Heroes*, 30 U.S.F. L. REV. 1131, 1133-34 (1996). This particular issue of the *University of San Francisco Law Review*, by the way, presents several good articles about lawyers and film.

3. See, e.g., Anthony T. Kronman, *The Fault in Legal Ethics*, 100 DICK. L. REV. 489, 494 (1996) (discussing the historical portrayal of lawyers as public-spirited and concerned with the public good); *INHERIT THE WIND* (CBS/Fox Video 1960); *TO KILL A MOCKINGBIRD* (Universal Studios Home Video 1962); *infra* notes 35-58 and accompanying text. Cf. Kronman, *supra*, at 495 (contractarian view sees lawyers not as protecting the public good, but as protecting their clients' interests). One of my research assistants, Cassandra Volanges, has crafted a decent argument that lawyers have always been unpopular. See email from Cassandra Volanges to Nancy Rapoport (Aug. 14, 1999) [hereinafter Volanges] (on file with the author) (citing Robert Burton, *Democritus Junior to the Reader*, in 1 *THE ANATOMY OF MELANCHOLY* 1621 (Thomas C. Faulkner et al. eds., 1989) ("Our wrangling lawyers . . . are so litigious and busy here on earth . . . that I think they will plead their clients' causes hereafter—some of them in hell.")).

or buffoons.<sup>4</sup> It's safe to say that the general public doesn't think much of us.<sup>5</sup> Maybe the general public doesn't really know us, or maybe we really *are* different, not just in training, but in charac-

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4. In addition to *The Devil's Advocate*, other examples of our purported villainy include *BATMAN FOREVER* (Warner Bros. 1995) (one of the villains is a former district attorney); *JOHN GRISHAM'S THE RAINMAKER* (Paramount 1997) (ambulance-chasing lawyer beats nasty insurance company); *REGARDING HENRY* (Paramount 1991) (nasty lawyer turns nice after being shot in the head); *THE GODFATHER* (Paramount 1972) (Robert Duvall's portrayal of Tom Hagen, the Corleone family's lawyer). As for our being buffoons, see, for example, *A FISH CALLED WANDA* (Metro Goldwyn Mayer 1988) (John Cleese plays beleaguered barrister); *BANANAS* (Metro Goldwyn Mayer 1971) (lawyer cross-examines self); *BODY HEAT* (Warner Bros. 1981) (gullible lawyer conspires to kill love interest's husband; also has a serious problem understanding the rule against perpetuities); *FEAR AND LOATHING IN LAS VEGAS* (Universal Pictures 1998) (wild lawyer with substance abuse issues represents even wilder client); *HOUSEGUEST* (Buena Vista Home Video 1995) (depicting gullible lawyer); *SEEMS LIKE OLD TIMES* (Columbia Tristar Home Video 1980) (Goldie Hawn and Charles Grodin in a comedy that highlights Hawn's charming foibles as a defense attorney); *THE LIFE AND TIMES OF JUDGE ROY BEAN* (Warner Bros. 1972) (renegade judge dispenses frontier justice).

My dad thinks that the image of lawyers hasn't been helped by some of the more outrageous advertisements for legal services in the *Yellow Pages* or by the colossal verdicts in lawsuits that might not be completely meritorious. See email from Morris Rapoport to Nancy Rapoport (Aug. 15, 1999) (on file with author). I think he's right.

Lawyers aren't the only ones who are pained by the ways in which they're portrayed. I was talking with my massage therapist about this essay, and she pointed out that Hollywood routinely portrays massage therapists as ditzy losers or, worse yet, prostitutes. If I find Hollywood's image of lawyers frustrating, imagine how *she* feels about Hollywood's take on *her* career.

5. See Carl T. Bogus, *The Death of an Honorable Profession*, 71 IND. L.J. 911, 912 (1996) ("The percentage of Americans who give lawyers high ratings for honesty and ethical standards has fallen from an already unimpressive 27% in 1985 to 17% in 1994.") (footnote omitted); Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1340 (1997) ("In the last ten to fifteen years, three related crises have emerged with respect to the legal profession: 'professionalism' has declined, public opinion of attorneys and the legal profession has plummeted, and lawyer dissatisfaction and dysfunction have increased.") (footnote omitted); Douglas E. Litowitz, *Young Lawyers and Alienation: A Look at Legal Proletariat*, 84 ILL. B.J. 144, 145 (Mar. 1996) ("Public perception of lawyers is at an all-time low . . ."); Roger E. Schechter, *Changing Law Schools to Make Less Nasty Lawyers*, 10 GEO. J. LEGAL ETHICS 367, 367-68 (1996) ("One such poll revealed that 95% of Americans would not recommend that their sons or daughters enter the legal profession.") (footnote omitted). Ted Janger thinks that, maybe, the television shows about lawyers—shows like *Matlock* and *The Practice*—are kinder to lawyers. See email from Ted Janger to Nancy Rapoport (Aug. 13, 1999) [hereinafter Janger] (on file with author). Could it be that television writers like us more than movie writers do?

ter or personality type.<sup>6</sup> On the other hand, maybe we just have an image problem.<sup>7</sup>

The image of lawyers and law in today's society is extremely important. On that image may rest part of the public's willingness to be governed by laws.<sup>8</sup> On that image, too, may rest the

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6. Several people have studied the personality traits of law students and lawyers. Susan Daicoff, for example, has found real differences between those inclined toward the law as a profession and those not so inclined:

The lack of public esteem for lawyers may be directly related to the notion that lawyers think and value things differently than does the general population. What lawyers consider to be important, proper, and moral may be considerably different from their clients. These differences are likely to cause a gap in understanding, even a difference in morality, which could cause lawyers to be perceived negatively as cold, dispassionate, uncaring, overly logical, fact-driven, aggressive, competitive, ruthless, and even amoral. Lawyers do appear to be more competitive and aggressive, to need more dominance, and to be driven to succeed more than most adults. Clients may perceive lawyers as cold, uncaring, uncommunicative, disinterested in anything but the "relevant facts," overly rule-oriented, aggressive, competitive, and hard-driving because they actually are more that way than the norm. Further, lawyers' use of Thinking [on the Myers-Briggs scale] and tendency towards conventional, Stage 4 or 5A moral reasoning may well appear odd, rigid, and even amoral to a public who uses both Thinking and Feeling and who reason at Kohlberg's Stages 3, 4, and 5 (including post-conventional reasoning).

Daicoff, *supra* note 5, at 1411 (footnote omitted).

7. Ted Janger made a nice point in one of our email exchanges about this essay:

Our profession is in the midst of an identity crisis, and Hollywood reinforces it, both by presenting bad images [about] lawyers . . . and by presenting images of good lawyers that are unattainable by most law students or young professionals. On the one hand, we go to law school because we believe in Atticus Finch, and we believe that a degree in law will be a path to self[-]realization. . . . The lawyer hero is an autonomous actor, able to use the law to vindicate his/her own principles. Similarly, the lawyer villain is also an autonomous actor, either venal or slothful, but in either case, actually evil. The problem, as I see it, is that people go to law school to be Atticus, and find that they cannot, and feel that they therefore must be Al Pacino [in *The Devil's Advocate*], when what they really are is something much less sinister, and much less romantic. . . . Worse yet, however, Hollywood doesn't give us an image for [the average lawyer] other than Al Pacino. If you're not Atticus, you must be Al, and that's really problematic.

Janger, *supra* note 5.

8. See Alex M. Johnson, Jr., *The Underrepresentation of Minorities in the Legal Profession: A Critical Race Theorist's Perspective*, 95 MICH. L. REV. 1005, 1021-22 (1997) (footnote omitted), where he explains:

How lawyers and the legal profession are perceived by the public is important for two reasons, one external, the other internal. The public's perception of lawyers and the legal system they produce and regu-

willingness of law students to become lawyers, and for lawyers to stay lawyers. Many of us who went to law school went, at least in part, because of books we read about lawyers or films and television shows that we saw about lawyers.<sup>9</sup> What images are the law students of tomorrow seeing?<sup>10</sup>

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late is important for common sense reasons having to do with the legitimacy that will be afforded to the system. My thesis is quite simple: Law and the legal system will not be respected or obeyed if the proponents of such a system are viewed as less than capable, honest, forthright, and intelligent individuals. If those producing the laws—be it the legislature or the judges—and those most intimately familiar with its day to day machinations—lawyers—are viewed as knaves or fools by those external to the system, the power and force of the law likewise will be diminished.

9. See Asimow, *supra* note 2, at 1132 (footnotes omitted):

In older trial movies, lawyers were often described in glowing terms. Although there were a few scoundrels or mouthpieces for the mob, most film attorneys seemed oblivious to the need to make a living. Untroubled by ethical conflicts, they fought hard but fair in court. We find them springing to the defense of the downtrodden, battling for civil liberties, or single-handedly preventing injustice. These stories reflect the popular culture of the time in which attorneys were widely respected. Attorneys were never all that wonderful, but no doubt they loved to watch themselves pictured as heroes up on the screen. And surely this benign treatment in film enhanced the image of lawyers in the public's mind.

Robert Creo writes:

While in elementary school I decided to become a lawyer, although I never actually met one until after my acceptance to law school. As a youngster maturing in the 1960s, my view of lawyers could only have been molded by popular culture, particularly the long-running television series, *Perry Mason*, and the mandatory text *To Kill a Mockingbird* in high school. . . .

Robert A. Creo, *An Essay on Professionalism: The Portrayal of Lawyers in Popular Fiction*, PITTSBURGH LEGAL J., Jan. 1998, at 7, 7; cf. Bogus, *supra* note 5, at 915. But see email from Kathryn Bellman to Nancy Rapoport (Aug. 13, 1999) (on file with author) (suggesting that movies don't influence the choice of career as much as does "family, culture, mentors or advisors at the undergraduate level, a desire to make a difference in the world, a desperate yearning to find something to do when your only talent is using words").

I don't want to paint the historical image of lawyers as overly rosy. There were plenty of depictions of lawyers as sleazy or greedy, even at the time that there were plenty of depictions of lawyers as heroes. See, e.g., David Ray Papke, *Conventional Wisdom: The Courtroom Trial in American Popular Culture*, 82 MARQ. L. REV. 471, 473 (1999) ("After the turn of the century, 'social justice' writers often cast lawyers as shysters and tools of big business.").

10. Contemporary movies sometimes present attorneys in the traditional heroic style. But more often, lawyers today are presented in courtroom movies as money-hungry, boozed-out, burned-out, incompetent, unethical sleazebags. Just as the old movies unrealistically painted lawyers in glowing terms, the current ones are too negative. Yet they accurately reflect and no doubt reinforce the popular culture

I'm not so worried about whether people become or stay lawyers; there are plenty of other good careers. I'm more worried about what kind of lawyers people become—specifically, whether the images of lawyers on the silver screen<sup>11</sup> change the way that lawyers view ethical dilemmas.<sup>12</sup> I believe that what we see in movies may affect our decisions when we are faced with tough ethical choices. What we see can ultimately affect who we are.

How lawyers behave is, after all, partly dependent on how lawyers are socialized, both in law school and, afterwards, in practice.<sup>13</sup> One of my favorite illustrations of this principle is Larry Hellman's study on how practicing lawyers affect the ethics decisions of law students.<sup>14</sup> Hellman studied journals kept by students in his professional responsibility class. The students recorded in their journals actual ethics issues that they noticed at work and how the practicing attorneys resolved those issues.<sup>15</sup> Hellman found:

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in which attorneys have about the same public approval rating as the criminals they represent.

Asimow, *supra* note 2, at 1133 (footnotes omitted); see also Papke, *supra* note 9, at 475.

11. Obviously, images of lawyers are also present in everything from books and television shows to newspaper articles. In this essay, though, I'm going to limit my discussion to images in film. If I were going to discuss television shows, of course, I'd touch on such classics as *Perry Mason*, *L.A. Law*, and *Matlock*, and I'd probably mention *The Practice* and *Ally McBeal*. See Janger, *supra* note 5. In addition, I'd probably find myself obsessing about why shows like *Judge Judy* are so popular, when I find her so annoying. See email from Catherine Vance to Nancy Rapoport (Aug. 14, 1999) (on file with author).

12. It certainly affects how we feel about our chosen career.

13. See Robert A. Kagan & Robert Eli Rosen, *On the Social Significance of Large Law Firm Practice*, 37 STAN. L. REV. 399, 429-30 (1985) (many lawyers in large firms are socialized to serve clients rather than to guide them); Tanina Rostain, *The Company We Keep: Kronman's The Lost Lawyer and the Development of Moral Imagination in the Practice of Law*, 21 LAW & SOC. INQUIRY 1017, 1035-37 (1996) (law practice, even more than law school, will, over time, shape a lawyer's development); cf. Catherine Therese Clarke, *Missed Manners in Courtroom Decorum*, 50 MD. L. REV. 945, 949 (1991) (more bars are creating professionalism codes that spell out how lawyers should behave toward each other); Andrew R. Herron, Comment, *Collegiality, Justice, and the Public Image: Why One Lawyer's Pleasure Is Another's Poison*, 44 U. MIAMI L. REV. 807, 838 (1990) (unprofessional conduct by lawyers isn't cured by the existence of codes of professional conduct; possibly, more explicit codes of professional conduct will help to revive professionalism).

14. See Lawrence K. Hellman, *The Effects of Law Office Work on the Formation of Law Students' Professional Values: Observation, Explanation, Optimization*, 4 GEO. J. LEGAL ETHICS 537 (1991); see also FRANCES K. ZEMANS & VICTOR G. ROSENBLUM, *THE MAKING OF A PUBLIC PROFESSION* 123-64 (1981).

15. See Hellman, *supra* note 14, at 557-70.

[T]he overall effect of students' law office work is indeed often counterproductive to the bar's desire to enhance the professional values of lawyers. In their practice environments, many students are exposed to unprofessional conduct by attorneys that shocks them in terms of its frequency and seriousness. . . . Many students, feeling quite vulnerable in terms of their future careers, tend quickly to develop an unfortunate level of tolerance for the unprofessional conduct of others, and that tolerance threatens even the students' own devotion to some of the more important professional ideals that the law schools are being asked to instill in their charges. The lessons of the workplace tend to be much more powerful than those of the classroom.<sup>16</sup>

Even the simple act of billing time creates stress on a lawyer's decision to act ethically.<sup>17</sup> How can a lawyer, measuring time in tenths (or quarters) of hours, accumulate enough billable time to satisfy the law firm in which she works? What sorts of decisions will she have to make about which time "counts" as billable, and which doesn't? What sorts of temptations will she have?<sup>18</sup>

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16. *Id.* at 543-44; *see also* Daicoff, *supra* note 5, at 1398 ("Wagner Thielens in 1969 found that law students' responses to professional ethical dilemmas became more ethical by the end of law school, but became less ethical after graduation[, which] suggests a regression in legal ethics as a result of practice.") (footnotes omitted); Hellman, *supra* note 14, at 601-08. "The lessons of the workplace" are often ugly ones. *Id.* at 544. Hellman noted:

[T]he most frequently reported types of [ethical] violations involved some of the rankest forms of professional misconduct: dishonesty . . . , breaches of confidentiality . . . , excessive fees . . . , and neglect . . . . Disregard for the conflict of interest rules was surprisingly widespread . . . . Though fewer in number, the frequency of some other categories of gross misconduct is also alarming: frivolous claims and defenses . . . , abuse of prosecutorial discretion . . . , candor to tribunal . . . , bribery . . . , and destruction of evidence . . . .

*Id.* at 603-05.

17. I have a theory that law changed almost irrevocably from a profession to a business the moment that Cravath, Swaine & Moore raised the salary for first-year associates in the mid-1980s. *See, e.g., National Firms Target of Cravath Bonus*, *LEGAL TIMES*, Apr. 21, 1986, at P1. A friend of mine, Bob Warren, recalls a similar shift in Cravath's salary structure around 1967, effective in 1968. Large law firms all over the country matched those salaries, and soon each firm had to devise a way to pay for those salaries. Increased billing rates, even for first-year associates who knew very little about practicing law, and decreased training time for novice lawyers emphasized the business of running the firm. Bottom lines have always been important. But the moment when partners sacrificed training for dollars, the profession lost its way.

18. Even more dramatic are the startlingly high numbers of billable hours recorded by a significant segment of the bar. According to one study, 30% of both partners and associates regularly bill more than

Not only do we have to worry about how real lawyers handle the ethical dilemmas that they face (and from the sound of things, a great many of them are handling the dilemmas none too well), but we have the reinforcing images of fictional lawyers to worry about as well.<sup>19</sup>

When I began to research how images of lawyers affect their behavior, I discovered—to my surprise—the vast array of legal scholarship about what Donald Hermann terms the “Popular Culture” movement.<sup>20</sup> Far from being disassociated from the “real” world of lawyering, popular culture informs and affects that “real” world.<sup>21</sup> And popular culture keeps me wondering: where have all the heroes gone?

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2000 hours. Among associates alone, 48% bill at least 2000 hours, 20% bill more than 2400 hours, and 4% bill more than 3000 hours. In some firms, partners and associates both average more than 2000 billable hours a year. Some firms require associates to produce 2200 billable hours; some have maximum billable hours set at 2400. A few lawyers publicly boast of recording 3000 billable hours a year. Numbers above a certain level, however, are, quite literally, incredible.

Bogus, *supra* note 5, at 924-25 (footnotes omitted); see also RICHARD ZITRIN & CAROL M. LANGFORD, *THE MORAL COMPASS OF THE AMERICAN LAWYER: TRUTH, JUSTICE, POWER, AND GREED* 80-87 (1999) (discussing the ethical issues stemming from billable hours requirements); Bogus, *supra* note 5, at 926 (quoting Chief Justice Rehnquist's observation that “if one is expected to bill more than two thousand hours per year, there are bound to be temptations to exaggerate the hours actually put in”).

19. See Creo, *supra* note 9, at 7 (“It is common for working class families not to know any lawyers since they rarely have personal contact with the legal system. The lawyers I then knew best were fictional.”).

20. See Donald H. J. Hermann, *The Law in Cinema: An Emerging Field of Study*, 42 N.Y. L. SCH. L. REV. 305, 306 (1998) (book review).

21. For just the tip of the iceberg on the law-and-film part of the popular culture oeuvre, see, for example, PAUL BERGMAN & MICHAEL ASIMOW, *REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES* (1996); *LEGAL REELISM: MOVIES AS LEGAL TEXTS* (John Denvir ed., 1996); Asimow, *supra* note 2, at 1138; Carol J. Clover, *Movie Juries*, 48 DEPAUL L. REV. 389 (1998); Louise Everett Graham & Geraldine Maschio, *A False Public Sentiment: Narrative and Visual Images of Women Lawyers in Film*, 84 KY. L.J. 1027 (1996); Hermann, *supra* note 20; John Jay Osborn, Jr., *Atticus Finch—The End of Honor: A Discussion of To Kill a Mockingbird*, 30 U.S.F. L. REV. 1139, 1140-41 (1996); Papke, *supra* note 9; Margaret M. Russell, *Foreword: Law In Living Color*, 5 ASIAN L.J. 1 (1998); Suzanne Shale, *The Conflicts of Law and the Character of Men: Writing Reversal of Fortune and Judgment at Nuremberg*, 30 U.S.F. L. REV. 991 (1996); Shapiro, *infra* note 33, at 975-76. One of the most useful sites on the Web is University of Texas's Tarlton Law Library, *Law in Popular Culture Collection—Feature Films* (visited Feb 5, 2000) <<http://tarlton.law.utexas.edu/lpop/alphaf.htm>>.



## I. SOCIALIZATION THROUGH THE DISCOURSE OF FILMS

Constant bombardment by repeated images will take its toll. An easy example is the body image problem that affects many young women. There are countless examples of adolescent and preadolescent girls whose body images are distorted by Barbie dolls and fashion magazines.<sup>22</sup> Even though law students and lawyers are presumably at a higher stage of cognitive development than children and adolescents,<sup>23</sup> they're not immune from the bombardment of images of lawyers. It is important, then, to see how these images work with lawyers' own traits to shape their professional development. Films are a kind of discourse among the movie-makers and the movie-watchers: a way of knowing about lawyers.

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22. See Jeffery L. Bineham, *The Media is Full of Messages: No One's Free From Influence of Pop Culture*, MINNEAPOLIS-ST. PAUL STAR-TRIB., Oct. 1, 1994, at 13A; Maureen Downey, *Feeling Pressure To Be Pretty: Little Girls Pick Up Message Very Early*, S.F. CHRON., Aug. 27, 1992, at B3; Christine Ferron, *Body Image in Adolescence: Cross-Cultural Research—Results of the Preliminary Phase of a Quantitative Survey*, 32 ADOLESCENCE 505, 735 (1997); Suzanne Martinson, *Love Yourself Through Thick and Thin—If Our Girls Could Choose, Most of Them Would Mold Themselves into a Cookie-Cutter Image of Perfection, 120 Pounds, Very Long Legs and Long Blond Hair*, PITTSBURGH POST-GAZETTE, Dec. 13, 1998, at G1; Melissa A. Milkie, *Social Comparisons, Reflected Appraisals, and Mass Media: The Impact of Pervasive Beauty Images on Black and White Girls' Self-Concepts*, 62 SOC. PSYCHOL. Q. 97, 190 (1999); Paula Span, *It's a Girl's World; They Can Do Anything, They've Been Told and They Believe It. How Else Is Life Different for Young Women Today?*, WASHINGTON POST, June 22, 1997, at W7; Jeannine Stein, *Why Girls as Young as 9 Fear Fat and Go on Diets to Lose Weight*, L.A. TIMES, Oct. 29, 1986 at View 5; Heather B. Stout, *Editorial & Comment: Girls Get Wrong Message About Bodies, Brains*, COLUMBUS DISPATCH, Mar. 14, 1998, at 9A; Sherry L. Turner et al., *The Influence of Fashion Magazines on the Body Image Satisfaction of College Women: An Exploratory Analysis*, 32 ADOLESCENCE 505, 603 (1997); Lexie Verdon, *The Cutting Edge: Fashion Mags Connected to Girls' Body Image*, WASHINGTON POST, Mar. 16, 1999, at Z05.

23. Chronological age doesn't necessarily predict cognitive development, and lawyers are not guaranteed a high level of cognitive functioning just by virtue of being lawyers. See ROBERT KEGAN, *IN OVER OUR HEADS: THE MENTAL DEMANDS OF MODERN LIFE* 157 (1994) ("What if, for many [lawyers], the failure to adhere to this code [of professional conduct] is not about the suspension of a perfectly performable skill in favor of a baser motive (say, financial gain) but about the incapacity actually to understand what is really being required in the code?"). Kegan's hypothesis is borne out by studies showing that many lawyers are at a lower stage of psychological reasoning skills than one might expect. See Daicoff, *supra* note 5, at 1396-97 (lawyers tend to be "overwhelmingly clustered at Kohlberg's Stage 4 (Law and Order) morality, which was different from a more scattered distribution across the stages found in the general population and in similarly educated adults") (footnote omitted); *id.* at 1397-98 ("Law students' morality was consistently more 'conventional' [rule-based] (as opposed to 'postconventional').").

Just as films create a discourse between movie-makers and movie-watchers, the interaction between experienced lawyers and novice lawyers creates a discourse as well. It is, in many respects, still the apprenticeship of old. Newer lawyers learn their habits and develop their lawyering styles first by mimicking and then by adopting the habits and styles of their more senior counterparts—and, probably, by mimicking those actor-lawyers that they see in the movies and on television. The behavior of the real lawyers and the actor-lawyers can help newer lawyers form their understanding about the conventions that lawyers follow.

Those legal conventions are numerous. Lawyers understand the shorthand of legal terminology, even when that terminology is mangled by mispronunciation<sup>24</sup> or twisted by abbreviations.<sup>25</sup> We understand the order of who does what in trials—everything from where each side sits to who speaks at which time. We understand the nuances of feigned anger during a negotiation. We understand, usually much better than do our clients, how we can fight the lawyer on the opposing side so vehemently in court or during negotiations, and then go out to dinner with her.

Movies have their own conventions, too. As Suzanne Shale explains:

[T]he principles of the conventional Hollywood narrative are not unique to the cinematic medium, but are, rather, the specific application of a “canonic” story form in American filmmaking. Research into story comprehension has identified a story structure widely used in western culture. This “canonical” story format embraces six elements: introduction of setting and characters, explanation of a state of affairs, complicating action, ensuing events, outcome, and ending. This is not so different from the three-part narrative structure embraced by Hollywood: the set up, complication, and resolution. . . .<sup>26</sup>

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24. As a native Texan, I can get away with the following statement: You haven’t lived until you’ve heard a Texas litigator pronounce “voir dire.” The best transliteration I can attempt barely hits the mark: *voirr DAHH-er*.

25. See THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (16th ed. 1996).

26. Shale, *supra* note 21, at 998-99. Shale also writes:

Human lives and, perhaps even more so, movie lives, are littered with incompatible goals and incommensurate values. In the movies, it is the task of “character” to resolve the human conflicts that our goals and values create. It is always a character who takes steps, a character who makes choices, a character’s responses that drive the story forward or spin it around in new directions. It is a character who overcomes, a character who changes or learns.

Just as the law-and-literature movement gave us a better understanding of the texts and subtexts of law, so does the law-and-film movement help us to understand how the conventions of movies interact with the conventions of law.<sup>27</sup> By viewing that interaction through the lens of how particular types of lawyers—for example, trial lawyers, business lawyers, male and female lawyers, lawyers of color, gay and lesbian lawyers—are portrayed, you can get a sense of the potential power (and possible distortion) of these images.<sup>28</sup>

#### A. What Does Hollywood "Know" About Lawyers?

The discourse of film is based on many things, but it is most decidedly *not* based on Hollywood's deep understanding of law and lawyers. In fact, Hollywood knows very little about lawyers or lawyering. That's not surprising: the business of Hollywood is film, not law (or medicine or history or science fiction). All that Hollywood needs to know about law, in order to go about its business, is how law can fit into the conventions that make up the world of movies. Those conventions force the discourse of film to filter most of "real" law out, leaving only the most cinematically interesting parts. Those parts include the drama of the trial, the compelling image of the lawyer-hero, and the equally compelling image of the lawyer-devil.

##### 1. Trial by "Trial"

Even outside the world of movies, the art of the trial has been described by a variety of metaphors.<sup>29</sup> So it's not surprising that, inside the world of movies, those same metaphors appear, interwoven into the conventions of the trial movie genre.

*Id.* at 999; *cf.* Rostain, *supra* note 13, at 1033 ("Scholarship in the law and narrative movement, for example, describes legal practice as a form of collaborative storytelling in which the lawyer's role is 'that of a translator who serves to shape her client's experiences into claims, arguments and remedies that both the client and the judge can understand.'") (footnote omitted).

27. See Graham & Maschio, *supra* note 21, at 1028-29 (describing how such interaction works); Russell, *supra* note 21, at 2 ("Despite differences across lines of age, class, race, ethnicity and gender, the common 'language' we speak is the medium [of film] itself—in all of its exhilarating and vexing visuality, viscosity, and distortion.").

28. See, e.g., Graham & Maschio, *supra* note 21 (analyzing ADAM'S RIB (Metro Goldwyn Mayer 1949), CLASS ACTION (Fox/Lorber Home Video 1991), MUSIC BOX (Carolco Home Video 1989), THE ACCUSED (Paramount 1988), and THE CLIENT (Warner Bros. 1994)).

29. See, e.g., Elizabeth G. Thornburg, *Metaphors Matter: How Images of Battle, Sports, and Sex Shape the Adversary System*, 10 WIS. WOMEN'S L.J. 225, 231-32 (1995).

I'm not even going to attempt to resolve the chicken-and-egg problem of whether filmmakers make movies about trials because the public thinks of lawyers only as litigators or whether the public thinks of lawyers only as litigators because that's what the filmmakers portray. Movies about trials are so pervasive in the law-movie genre that few people can avoid shaping their perceptions of movie trials and real trials without an overlapping reference to both.<sup>30</sup> The fact is that, whenever people think about "law movies," they are extremely likely to think about trials, trial scenes, and juries.<sup>31</sup> That link means that all of the traits of litigators—contentiousness, aggression, zealousness, and the like—will get significant attention in films about law or lawyers, thereby reinforcing the public's sense of lawyers as soulless Rambos<sup>32</sup>

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30. See Papke, *supra* note 9, at 472 ("The courtroom trial in American literature, film, and television is a bit like the new pop song described by critic and scholar Fredric Jameson [, which] can never really be heard for the 'first' time [but only by] reference to countless similar songs.") (footnote omitted). Rochelle Siegel has a lovely explanation of why trial movies are so popular:

Movies and television shows face common dilemmas in their attempts to portray the legal system accurately. First, the legal process is interminably slow. Years drag by before a case gets to court, then a single trial can last months. Yet prime time demands resolution in a 22-minute segment.

Second, substantive and procedural complexities often can't be explained quickly or entertainingly (which, I suppose, is why law school remains a god-awful ordeal).

Third, a lot of legal work—especially the stuff that pays big bucks—isn't terribly dramatic. Think you'll ever see an episode of *L.A. Law* spotlighting a municipal bond issue? Or a mini-series focusing on document requests in an antitrust case?

Finally, the media has ironclad requirements of its own; for pace, for action, for suspense and denouement. When these necessities go head-to-head with legal accuracy—and the forum is 20th Century Fox—the law gives way. The trial is by combat.

Rochelle Siegel, *Presumed Accurate: When the Law Goes to the Movies*, A.B.A. J., Aug. 1990, at 42, 45-46.

31. See Clover, *supra* note 21, at 389-90, 399 (describing the filmic conventions of portraying juries in movies about trials); see also Papke, *supra* note 9, at 474 ("Rennard Strickland had argued that trials were ideal for the early film industry because the courtroom converted easily into a comparable set and also because this set afforded the particular points of light and sound which were desirable given limited technology.") (citing Rennard Strickland, *Bringing Bogie Out of the Closet: Law and Lawyers in Film*, in GARGOYLE (University of Wisconsin Law School alumni magazine), Spr. 1994, at 4); cf. Clover, *supra* note 21, at 403 (contrasting the portrayal of juries in the movie *12 Angry Men*, which is not so much a movie about a trial as it is a movie about a jury itself).

32. The Rambo character first appeared in the movie *FIRST BLOOD* (Artisan Entertainment 1982).

with briefcases.<sup>33</sup> The metaphors about litigation in general also play out in movies about litigation. You don't see too many movies about lawyers who think that their clients should settle the case.<sup>34</sup> And you see still fewer where the lawyers decide that it's in everyone's best interest to walk away from a lawsuit entirely.

## 2. Atticus the Icon and Milton the Devil

The most popular heroic fictional lawyer of all,<sup>35</sup> Atticus Finch,<sup>36</sup> reinforces conventions about lawyers (although these conventions are nicer than most). To many, Atticus represents the best in criminal defense lawyers: someone willing to take on an unpopular cause, even at great personal risk, in order to guard against juries not disposed to ruling based on the evidence.<sup>37</sup> To others, most notably Monroe Freedman, Atticus doesn't fight hard enough against the prejudices of the day.<sup>38</sup> Should Atticus have done more for his client? Should he have fought against a system that made the fate of his client a foregone conclusion? For me, Atticus represents someone who is brave enough to take a public stand for justice. By failing to rage

33. *But see infra* notes 35-58 and accompanying text; *cf.* Carol Shapiro, *Women Lawyers in Celluloid: Why Hollywood Skirts the Truth*, 25 U. TOL. L. REV. 955, 975-76 (1995) (women lawyers portrayed mostly as litigators, probably because Hollywood is most comfortable with the structure of trials).

34. Although there is at least one, *see* JOHN GRISHAM'S *THE RAINMAKER*, *supra* note 4. My colleague, Craig Lawson, has pointed out, quite correctly, that movies involving settlement would probably be (1) too short and (2) less cinematically interesting.

35. Not everyone agrees that Atticus Finch is a hero. *See* Monroe H. Freedman, *Atticus Finch—Right and Wrong*, 45 ALA. L. REV. 473 (1994) (pointing out some very real flaws in Atticus); Teresa Godwin Phelps, *The Margins of Maycomb: A Rereading of To Kill a Mockingbird*, 45 ALA. L. REV. 511, 514 (1994) (one of Atticus's flaws is that he doesn't really understand the harm in seeing the world as "us" (the majority) versus "them" (minorities and the disenfranchised)); *but see* Asimow, *supra* note 2, at 1138 ("To all of the lawyers who decide to use their precious time and skills in ways that don't go straight to the bottom line, Atticus Finch is the patron saint. He is a mythic character. He is everything we lawyers wish we were and hope we will become."); Creo, *supra* note 9, at 9, 13; Phelps, *supra*, at 512 ("We read *To Kill a Mockingbird* as lawyers and legal academics for what Louise Rosenblatt would call an 'efferent transaction'; that is, we are motivated to read it not for purely aesthetic reasons but rather for a lesson, for something to carry away.").

36. *See* HARPER LEE, *TO KILL A MOCKINGBIRD* (1960); *TO KILL A MOCKINGBIRD*, *supra* note 3.

37. *See supra* note 35. Nancy Mitchell, another colleague, suggests that we may have lost our notion of lawyers as heroes at roughly the same time that we started equating heroes with those who have great athletic ability. *See* email from Nancy Mitchell to Nancy Rapoport (Oct. 1999) (on file with author).

38. *See supra* note 35.

against racism, he may not be a full-fledged hero, but he's a good sight better than most.

Of course, few lawyers in today's movies are eligible for "hero" status.<sup>39</sup> Carl Bogus nicely contrasts Atticus Finch with the more modern character Mitch McDeere of John Grisham's *The Firm*.<sup>40</sup>

*To Kill a Mockingbird*—and other stories from the same period—tell us that, at least as of 1960, the lawyer-statesman was not only a plausible image, but a powerful one. *The Firm*—and other stories of the 1980's and 1990's—tell us something else. . . .

. . . .

One can no more imagine Atticus Finch dedicating his career to helping high-rollers avoid taxes than one can imagine Mitch McDeere asking a client to consider the moral dimensions of setting up off-shore trusts in order to avoid U.S. taxes. The vision of the lawyer-statesman is dimming, and as with Mitch McDeere, lawyers are increasingly acculturated in the role of lawyer-technician. *The Firm* is a parable about the consequences of this shift.<sup>41</sup>

Taking the transition from hero to technician one step farther, *The Devil's Advocate*<sup>42</sup> takes the image of lawyers all the way to Hades. Al Pacino plays John Milton,<sup>43</sup> the head of a multinational and very successful law firm. Pacino recruits Kevin Lomax, played by Keanu Reeves, to join his firm and, ultimately, to strengthen Pacino's family ties.<sup>44</sup> Pacino's family is, literally, the devil's spawn. At one point in the movie, Pacino explains why he decided to use the medium of law to do his dirty work, saying

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39. AMISTAD (Universal Studios Home Video 1997) is a nice counterexample.

40. JOHN GRISHAM, *THE FIRM* (1991); *THE FIRM* (Paramount 1993).

41. Bogus, *supra* note 5, at 920-22 (footnotes omitted) (Bogus terms this the "lawyer-technician" view). McDeere's firm engages not only in money-laundering but also overbilling, and the overbilling provides the way for McDeere to bring the firm down. Thanks to Walter Effross for reminding me about that. See email from Walter Effross to Nancy Rapoport (Aug. 13, 1999) [hereinafter Effross] (on file with author). In my professional responsibility class, I focus on another aspect of McDeere's lawyering: his ability to evade almost certain death by reminding his mobster clients about how far the duty of confidentiality goes. By swearing that his clients' confidences will remain secret until he (McDeere) dies, McDeere lives.

42. *THE DEVIL'S ADVOCATE*, *supra* note 1.

43. No, I'm not making this up. Subtle, it ain't.

44. Pacino wants Reeves to sleep with Pacino's daughter, who also happens to be Reeves's half-sister. The result of such a union would be, I presume, the antichrist.

something like "being a lawyer is the ultimate backstage pass. There are more people in law school now than there are practicing lawyers—and we're comin' out, baby!"<sup>45</sup> The clear implication is that lawyers are devils, and their work is the devil's work.

### 3. Are Lawyers as a Group Really Lawyers "as a Group"?

Even though Hollywood tends to see lawyers as members of a single group, calling us a "group" of lawyers doesn't begin to do justice to who we are. We are members of many overlapping (and sometimes conflicting) groups, and our ways of behaving in any one of our groups may differ radically from how we behave in a different group.<sup>46</sup> Yet Hollywood is compelled to simplify us all into a single group. Although I might wish that we were portrayed in more complexity, the reality of the movie business is that only parts of law are interesting to non-lawyers. Hollywood may well have to distort the behavior of lawyers in order to achieve the proper level of cinematic tension. The next part of this essay examines how Hollywood's iconic portrayal of lawyers serves to distort what lawyers absorb from the movies.

#### B. What Does Hollywood "Teach" About Lawyers?

##### 1. General Lessons

Movies about lawyers focus on litigators, rather than on, say, transactional lawyers or lawyers who work in non-legal fields. Based on Hollywood's narrow focus, both the general public and people who might be inclined to become lawyers may assume (if

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45. Effross, *supra* note 41. Walter also has pointed out that the law firms in *The Firm* and *The Devil's Advocate* both act to eliminate all vestiges of family love and support that might otherwise help the lawyer-protagonist act ethically. *See id.*

46. [W]hen the actor who is a member of multiple subgroups is faced with these conflicting principles [that are held by each of the groups to which the actor belongs], I likewise hypothesize that because it is more difficult to do and not do the same act simultaneously, that although principles and ideals may be articulated, those principles and ideals may not be acted upon if that action causes a greater loss in esteem in one group—white males—than a gain in another group—lawyers.

Johnson, *supra* note 8, at 1039; *see also* Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) (describing the issues facing a member of at least two groups: female and African-American); Nancy B. Rapoport, *Living "Top-Down" in a "Bottom-Up" World: Musings on the Relationship Between Jewish Ethics and Legal Ethics*, 78 NEB. L. REV. 18 (1999).

they have no information to the contrary) that lawyers are litigators, period.<sup>47</sup>

Take this possibility a step further. If movies generally depict women as powerless or as needing men in order to "complete" themselves, then movies about women lawyers are more likely to depict women lawyers as powerless or incomplete.<sup>48</sup> What kind of impression, then, is the public likely to form about women lawyers? And what will the public do about "invisible" lawyers? There are precious few movies portraying African-American lawyers or judges,<sup>49</sup> or gay lawyers,<sup>50</sup> or Native American lawyers,<sup>51</sup> or Asian-American lawyers,<sup>52</sup> or Hispanic lawyers.<sup>53</sup>

Let's take, for our example, the way that Hollywood portrays women lawyers. In "real life," we know that women lawyers run

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47. Cf. Papke, *supra* note 9, at 479-80 (describing the "courtroom convention" in filmmaking). Even if members of an audience can see themselves (or people who look like them and act like them) on the silver screen, there's still a disconnect between what they're seeing on the screen and what they see in real life. See Litowitz, *supra* note 5, at 146 (on-screen lawyers seem "confident, established lawyers who find personal fulfillment in the law"; their real-life counterparts often aren't).

48. See, e.g., BERGMAN & ASIMOW, *supra* note 21, at 90-93 (summarizing some of the more obviously misogynistic portrayals of women lawyers); Graham & Maschio, *supra* note 21, at 1067-72; A FEW GOOD MEN (Columbia Tristar Home Video 1992) (portraying Demi Moore as a particularly useless second-chair lawyer).

49. See A SOLDIER'S STORY (Columbia Tristar Home Video 1984) (Howard Rollins as a military attorney); HEART CONDITION (New Line Cinema 1989) (Denzel Washington plays an attorney whose heart is transplanted into the body of a bigoted police officer); JOHN GRISHAM'S THE RAINMAKER, *supra* note 4 (Danny Glover plays a judge); PHILADELPHIA (Columbia Tristar Home Video 1993) (Denzel Washington represents HIV-positive plaintiff in wrongful discharge case); PRESUMED INNOCENT (Warner Bros. 1990) (Paul Winfield plays the judge); PRIMAL FEAR (Paramount Pictures 1996) (Alfre Woodard plays the judge); RICOCHET (Home Box Office 1991) (Denzel Washington plays a former police officer turned prosecutor); SEPARATE BUT EQUAL (Republic Pictures Home Video 1991) (story of Thurgood Marshall's fight for a single school bus for a black school); SOMMERSBY (Warner Bros. 1993) (James Earl Jones plays the judge); THE BONFIRE OF THE VANITIES (Warner Bros. 1990) (Morgan Freeman plays the judge).

50. See PHILADELPHIA, *supra* note 49.

51. I can't think of any.

52. I can't think of any here either, although RED CORNER (Metro Goldwyn Mayer 1997) and RETURN TO PARADISE (Polygram Filmed Entertainment 1998) are two examples of films that portray Asian lawyers.

53. In PRESUMED INNOCENT, *supra* note 49, Raul Julia plays Sandy Stern. Even though "[o]nly 1 in 25 lawyers is African American, Latino, Asian American, or Native American," surely Hollywood could try a little harder to make its movies more representative of the full spectrum of lawyers. Law School Admission Council, *Minorities Interested in Legal Education* (visited Feb. 1, 2000) <<http://www.lsac.org/minorityaffair/intro.htm>>.



the gamut from litigators to business lawyers, from inside counsel to non-practicing lawyers, from good to bad to mediocre. Women lawyers come in all ages, shapes, colors, and personalities.<sup>54</sup> But you wouldn't know that from watching some of the major motion pictures that feature women lawyers. Carole Shapiro has grouped the genre of "films with women lawyers" as falling into two sub-genres: frigid but brilliant technicians with troubled lives, and lawyers who blossom under the care of a man.<sup>55</sup>

Now, I'm not saying that there aren't women lawyers with troubled lives or those who prefer to blossom in the company of a love interest. I'm just saying that we're not all like that, although you couldn't tell it from the movies.<sup>56</sup> The insidious way in which movies collapse the infinite variety of lawyers—and women—does justice to neither group.<sup>57</sup>

What, then, of the movies that show the good side of lawyering?<sup>58</sup> In addition to *To Kill a Mockingbird*, which is trotted out every time we need an example of a good lawyer, there are count-

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54. According to the Census Bureau, women lawyers represented 26.6 percent of the population of lawyers, African-American lawyers represented 2.7 percent of the population of lawyers, and Hispanic lawyers represented 3.8 percent of the population (although the statistics on Hispanic lawyers may be a bit shaky). See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE U. S. (118th ed. 1998).

55. Shapiro, *supra* note 33, at 955-56.

56. See *id.* at 967-68.

57. Hollywood movies, along with advertising, have been one of the major purveyors of visual images in twentieth-century American society. Like the latter, they too have had a major impact in the shaping of traditional gender roles. While movies are not designed to sell objects like advertising, for them the "image is the object of consumption," and the ticket purchased is the product equivalent. While a commodity prompts the visual representation in advertising, film by definition has no need to attach the picture to an object; indeed, there is nothing other than the moving image. This representation is the product the moviegoer is buying. As with advertising, it also always carries a coded communication that, as much as the visuals, creates a sense of yearning. This feeling of wanting more is critical in bringing the viewer back to the movie theater. In commercial terms, this means the sale of more tickets, the ultimate goal of the movie industry. Shapiro, *supra* note 33, at 959-60 (footnotes omitted).

58. See, e.g., *A FEW GOOD MEN*, *supra* note 48 (formerly unmotivated lawyer is driven to convict high-ranking officer for death of enlisted man); *ANGEL ON MY SHOULDER* (Moore Video 1946) (soul of good judge conquers soul of evil gangster); *GANDHI* (Columbia Tristar Home Video 1982) (Ben Kingsley's portrayal of Mahatma Gandhi); *INHERIT THE WIND*, *supra* note 3 (two of the all-time great lawyers in the Scopes Monkey Trial); *JOHNNY DANGEROUSLY* (CBS/Fox Video 1984) (lawyer encourages brother to give up life of crime). Even *John Grisham's The Rainmaker* involves a David-like attorney battling a Goliath-like

less other films portraying the nobility of law and lawyers.<sup>59</sup> Consider *Philadelphia*, where Denzel Washington's character grudgingly takes on the representation of an HIV-positive lawyer-client even though Denzel's character is extremely uncomfortable with his client's sexuality.<sup>60</sup> Other films that depict lawyers as fighting for important causes include *Amistad*,<sup>61</sup> *Judgment at Nuremberg*,<sup>62</sup> *A Civil Action*,<sup>63</sup> and *Murder in the First*.<sup>64</sup> Movie lawyers have been known to fight hard for lost causes.<sup>65</sup> These movies could easily inspire lawyers and budding law students. Why, then, do people tend to remember more of those movies that show lawyers in the worst possible light?

My gut reaction is that the movies portraying lawyers as evil or incompetent simply resonate more than the movies portraying lawyers as good.<sup>66</sup> The accumulation of other media representations of lawyering (everything from news articles to novels) reinforces, and gets reinforcement from, the strong negative portrayal of lawyers in the movies. That itself is problematic. In

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insurance company. It's too bad that the film balances heroics with ambulance-chasing.

59. See *TO KILL A MOCKINGBIRD*, *supra* note 3.

60. See *PHILADELPHIA*, *supra* note 49.

61. *AMISTAD*, *supra* note 39 (clever lawyering beats the system of slavery).

62. *JUDGMENT AT NUREMBERG* (Metro Goldwyn Mayer 1961) (prosecuting Nazis for war crimes).

63. *A CIVIL ACTION* (Buena Vista Pictures 1998) (lawyer fights battle against environmental nightmare).

64. *MURDER IN THE FIRST* (Warner Bros. 1995) (defense lawyer attacks conditions at Alcatraz).

65. In addition to *To Kill a Mockingbird*, there's *BREAKER MORANT* (Columbia Tristar Home Video 1980) (defense lawyer fights a lost cause); *PATHS OF GLORY* (Metro Goldwyn Mayer 1957) (same sort of *fait accompli*).

66. Another point of view from Mike Stajduhar:

I have an alternate hypothesis. Lawyers have fallen into ill repute with the public because [the public's] real life contact with them . . . is almost always negative—either they are charged with a crime, being sued, [becoming] divorced, or whatever. . . .

In previous times, much of this odium could be ignored (because regular people had little, if any, contact with lawyers) and popular media focused on "noble lawyering" (e.g., *The Devil and Daniel Webster*, *To Kill a Mockingbird*, *Mr. Deeds Goes to Town*, etc.). As our society has become more litigious and, more important[ ], regulated over time, it has become more common for ordinary people to have contact with lawyers. The contacts have seldom been pleasant.

Finally, beginning in the 60's, Hollywood began to more accurately portray public perceptions and reflect popular frustrations with the legal system. Hollywood is merely a mirror (though distorted like a funhouse) of existing public perceptions, thoughts[,] and ideas.

Volanges, *supra* note 3.

my mind, though, what's worse is what movies "teach" about legal ethics.

## 2. Lessons About Legal Ethics

Movies don't dwell on ethics issues that lawyers get right.<sup>67</sup> Imagine a scene where a lawyer decides that her representation of one client precludes her from representing another potential client with adverse interests,<sup>68</sup> or a scene where a lawyer refuses to try her case in the media.<sup>69</sup> But it would be ridiculous to say that movies get ethics issues wrong on purpose. Instead, movies are likely to get ethics issues wrong because Hollywood doesn't really understand legal ethics.<sup>70</sup>

My two favorite examples of ethics issues "gone wrong" are *My Cousin Vinny*<sup>71</sup> and *The Verdict*.<sup>72</sup> *My Cousin Vinny* is a delightful movie, but Joe Pesci's character makes blunder after blunder. His outright incompetence<sup>73</sup> as a defense lawyer is obvious: among other things, he doesn't understand criminal procedure, he doesn't understand the rules of evidence, and he lies to the judge about his qualifications.<sup>74</sup> He certainly agrees to represent both criminal defendants (one of whom is his relative) before

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67. Well, they don't dwell on getting the legal issue right, either. If you want to see a group of bankruptcy lawyers burst into laughter, tell them the ending to *John Grisham's The Rainmaker*.

68. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7 (1997) [hereinafter MODEL RULES]; MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 5-105 (1981) [hereinafter MODEL CODE].

69. See MODEL RULES Rule 3.6; MODEL CODE DR 7-107.

70. I wonder, though, whether the lawyers who serve as advisors on films have too little power to force Hollywood to get the ethics issues right, or whether they simply don't think about ethics in terms of plot. It's not as if there are no lawyers in Hollywood. See, e.g., Claudia Eller & James Bates, *In Hollywood, More Business Than Show*, L.A. TIMES, Aug. 13, 1999, at A1.

71. MY COUSIN VINNY (Movies Unlimited 1992).

72. THE VERDICT (CBS/Fox Video 1982).

73. Lawyers are required to "provide competent representation to a client." MODEL RULES Rule 1.1; see also MODEL CODE DR 6-101. For other examples of lawyer incompetence, see, for example, BANANAS, *supra* note 4 (showing lawyer cross-examining self); BODY HEAT, *supra* note 4 (depicting lawyer with problem understanding the Rule Against Perpetuities).

74. A lawyer owes a duty of candor to the court. See MODEL RULES Rule 3.3; MODEL CODE DR 7-102. For lawyers presenting false evidence, see, for example, CLASS ACTION, *supra* note 28; GUILTY AS SIN (Buena Vista Pictures 1993). For lying to the court, see, for example, ANATOMY OF A MURDER (Columbia Tristar Home Video 1959). On threatening the judge, see, for example, PRESUMED INNOCENT, *supra* note 49; PRIMAL FEAR, *supra* note 49. Even the venerable MR. DEEDS GOES TO TOWN (Columbia Tristar Home Video 1936) involved not only the allegation of baseless claims but also the misuse of client funds.

thinking about whether conflicts of interest prohibit him from doing so.<sup>75</sup> Luckily for him and his clients, Vinny's natural skepticism and eloquence, not to mention the expert testimony of his girlfriend, eventually overcome his legal ineptitude, and he carries the day.

Even though I winced whenever Vinny stumbled through his representation of the two "youths," at least *My Cousin Vinny* was fun. I can't say the same for *The Verdict*, which is a "veritable buffet"<sup>76</sup> of ethics violations. There's witness coaching,<sup>77</sup> ambulance chasing,<sup>78</sup> and fee padding.<sup>79</sup> In addition, Paul Newman's character (the down-and-out lawyer representing the plaintiff) fails to take a settlement offer to his client. Moreover, his character has substance abuse problems that affect his competency to practice law.<sup>80</sup> The lawyers on the other side are no angels, either: they plant a lawyer, played by Charlotte Rampling, to spy on Newman's character. It would be hard to say which aspect of *The Verdict* moves me more: the storyline involving the underlying ethics of both sides or the storyline about how Paul Newman's character—originally bottomed out in an alcoholic haze—eventually redeems himself while achieving victory for his client.<sup>81</sup> I like the lawyer that Paul Newman becomes at the end, but the lawyering on both sides still leaves a bad taste in my mouth.

These movies are but two of the numerous examples of lawyering "gone bad." Other movies have featured lawyers who browbeat witnesses,<sup>82</sup> lawyers who are too closely involved with

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75. See MODEL RULES Rule 1.7; MODEL CODE DR 5-105.

76. This phrase comes from a scene in *PRETTY WOMAN* (Touchstone Pictures 1990) and has stuck in my mind for years.

77. See MODEL RULES Rule 3.3; MODEL CODE DR 7-102; see also *ANATOMY OF A MURDER*, *supra* note 74.

78. See MODEL RULES Rule 7.3; MODEL CODE DR 2-104; see also JOHN GRISHAM'S *THE RAINMAKER*, *supra* note 4 (portraying ambulance-chasing lawyer beating nasty insurance company).

79. See MODEL RULES Rule 1.5; MODEL CODE DR 2-106.

80. See also *FEAR AND LOATHING IN LAS VEGAS*, *supra* note 4 (lawyer with substance abuse problems).

81. I know, I know. Some lawyers really *are* that sleazy. But not all of them are. I'm not saying that Hollywood should pretend that all lawyers are heroes. Instead, though, why not show the complexity of facing difficult choices, warts and all? See, e.g., *AND JUSTICE FOR ALL* (Columbia Tristar Home Video 1979). I don't agree with the lawyering in *And Justice For All*, but I like the way that the movie raises tough ethics questions.

82. See, e.g., *CLASS ACTION*, *supra* note 28; *THE DEVIL'S ADVOCATE*, *supra* note 1 (defense lawyer browbeats child witness); cf. ZITRIN & LANGFORD, *supra* note 18, at 38-42 (discussing ethics of attacking credibility of truthful witness). Unnecessarily badgering a witness violates, for example, MODEL RULES Rule 4.4 (respect for rights of third persons) and MODEL CODE DR 7-106.

their clients,<sup>83</sup> and lawyers who plant or tamper with evidence.<sup>84</sup> We see movies with lawyers violating client confidences<sup>85</sup> or disregarding client instructions,<sup>86</sup> taking contingent fees in criminal cases,<sup>87</sup> and having ex parte conferences with judges.<sup>88</sup> Even when we watch a movie like *My Cousin Vinny* for pure enjoyment, there's still a part of us that absorbs the image of lawyers behaving unethically. I'm not saying that movies have the same effect as the culture of practicing lawyers does<sup>89</sup> in terms of affecting attitudes toward ethics. But every little bit counts in terms of chipping away at the perception of the profession.<sup>90</sup> And if the

83. See MODEL RULES Rule 1.7; MODEL CODE DR 5-105. See, e.g., ADAM'S RIB, *supra* note 28 (prosecutor and defense lawyer are married to each other); BANANAS, *supra* note 5 (lawyer cross-examines self); GUILTY AS SIN, *supra* note 74 (lawyer gets romantically involved with client); MUSIC BOX, *supra* note 28 (lawyer represents her father, who has been accused of Nazi war crimes); RETURN TO PARADISE, *supra* note 52 (lawyer tries to persuade two friends to return to prison to reduce another friend's prison sentence; she doesn't reveal that she is the prisoner's sister until late in the proceedings); THE JAGGED EDGE (Columbia Tristar Home Video 1985) (lawyer gets romantically involved with client); cf. BODY HEAT, *supra* note 4 (gullible lawyer conspires to kill love interest's husband).

84. See MODEL RULES Rule 3.3; MODEL CODE DR 7-102. See also ABSENCE OF MALICE (Columbia Tristar Home Video 1981); CLASS ACTION, *supra* note 28 (possible destruction of evidence); GUILTY AS SIN, *supra* note 74; MUSIC BOX, *supra* note 28; PRIMAL FEAR, *supra* note 49.

85. See MODEL RULES Rule 1.6; MODEL CODE DR 4-101. See also GUILTY AS SIN, *supra* note 74; PRETTY WOMAN, *supra* note 76 (lawyer uses client's confidential information regarding Julia Roberts's past to hurt client and attempt to help himself).

86. See MODEL CODE EC 7-7; see also KRAMER VS. KRAMER (Columbia Tristar Home Video 1979) (nasty cross-examination tactics contrary to the instruction of the client).

87. See MODEL RULES Rule 1.5; MODEL CODE DR 2-106; see also ANATOMY OF A MURDER, *supra* note 74.

88. See MODEL RULES Rule 3.5; MODEL CODE DR 7-108; see also PRESUMED INNOCENT, *supra* note 49; THE JAGGED EDGE, *supra* note 83.

89. See Hellman, *supra* note 14 and accompanying text.

90. To Hollywood's credit, at least most of the movies that deal with law and lawyers deal with the fact that lawyers face problems that blend many areas of substantive law. A lawyer may represent a client on an issue that involves contracts and torts and tax and civil procedure and bankruptcy, among other areas of law. We all know this, of course, but if you really want a citation, see, for example, Kronman, *supra* note 3, at 500 (listing the many roles of lawyers). Movies such as *The Firm* and *The Devil's Advocate* show lawyers dealing with multiple layers of legal issues. Only relatively recently, though, have law schools started thinking about blending more than one subject within a single course. To my delight, of course, the most common "blend" is with professional responsibility (ethics by the pervasive method). See, e.g., DEBORAH RHODE, ETHICS BY THE PERVASIVE METHOD (2d ed. 1998); Kronman, *supra* note 3, at 503 (ethics by the pervasive method is "merely a necessity"). Still, it's not as if law schools are that much more realistic about what they show lawyers doing. Most of the time,

members of the profession have a tendency toward aggression or insensitivity, then even that minor chipping away will aggravate the problem.

## II. SOCIALIZATION THROUGH THE PARTICULAR CULTURE OF LAWYERS

Could it be that films portray lawyers as venal because lawyers *are* venal? I'd hate to think that's so (and, in fact, I don't). Nonetheless, there is a lot of research out there indicating that lawyers and law students may be demonstrably different from the general population.<sup>91</sup> Much of that research validates the "lawyer stereotype": intelligent, dominant, aggressive, ambitious, competitive people who are not particularly "warm and fuzzy" types and who crave attention and have the ability to lead others.<sup>92</sup> Susan Daicoff is one of the many academics who has studied the special attributes of lawyers (along with pre-law undergraduates and law students), and I won't rehash much of

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we don't teach what lawyers really do nearly as often as we teach what judges and law professors do. As Jack Ayer has pointed out: "Scholarship is what scholars do. Lawyering is what lawyers do; but for the most part, it is not what law professors do, and so the law academic must find some device for making his way in a divided world." John D. Ayer, *So Near to Cleveland, So Far from God: An Essay on the Ethnography of Bankruptcy*, 61 U. CIN. L. REV. 407 (1992); see also Thomas F. Bergin, *The Law Teacher: A Man Divided against Himself*, 54 VA. L. REV. 637 (1968). I leave the debate about whether that's good or bad for another time.

91. See, e.g., Daicoff, *supra* note 5, at 1342 ("[A]ttorneys and persons choosing to attend law school have specific empirically demonstrable personality characteristics, and . . . these characteristics are partially responsible for the current crisis in the legal profession."); see also *id.* at 1349 (describing law students as being "highly focused on academics, hav[ing] greater needs for dominance, leadership, and attention, and prefer[ring] initiating activity") (footnote omitted); *id.* at 1354 (pre-law students "need[ ] to be leaders" and need "the attention of others").

Luckily, the research isn't all bad news. See, e.g., Janet Taber et al., *Project: Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209, 1259 (1988) [hereinafter *Stanford Study*] (male and female law students "reported, on average, relatively high levels of job satisfaction"). Luckier still, the question of how different lawyers are *from each other* is still open. See, e.g., *id.* at 1212-13 (discussing Carol Gilligan's theories regarding differences between male and female thought); see also Daicoff, *supra* note 5, at 1361 ("One explanation for this is that actual motives for both men and women may not differ substantially, but what is socially acceptable for them to report may differ. The alternative explanation is that female law students are actually more altruistic than male law students."); *Stanford Study*, *supra*, at 1214-15 (discussing Carrie Menkel-Meadows's theories regarding differences between male and female lawyers' approaches to lawyering).

92. See Daicoff, *supra* note 5, at 1349.

her research here.<sup>93</sup> I was struck, though, by an observation that she made regarding the attributes that lawyers would have to change in order to rectify the profession's current problems of morale, incivility, and just plain nasty lawyering:

[T]here are eight empirically-demonstrated lawyer attributes that would have to change in order to implement most of the proposed solutions to the tripartite crisis of professionalism, public opinion of attorneys, and attorney satisfaction and mental health. The eight attributes are: materialism, need for achievement, preference for dominance, competitiveness, tendency to respond to stress by becoming more aggressive and ambitious, insensitivity to interpersonal, emotional, humanistic concerns, the Myers-Briggs dimension of "Thinking" as an approach to decision-making, and a "rights" orientation to moral decision-making (as opposed to an ethic of care). Without changing these inherent characteristics of attorneys, the solutions are likely to fail. Most of these simply would need to be decreased or moderated rather than abandoned entirely. However, in most instances, lawyers are likely to be countermotivated to decrease or moderate these traits, as the traits appear to serve lawyers' needs. In some cases, these attributes were present long before law school, and thus are long-standing, ingrained personality traits that are likely to be very difficult to change.

It is not entirely clear that these eight attributes should be changed. Some of these attributes may be helpful and adaptive in the practice of law, in that they help attorneys succeed as lawyers. Some traits may be psychologically necessary to allow lawyers to represent unpopular clients or causes without experiencing undue psychic conflict. These characteristics may have developed as a result of subtle societal pressures on lawyers to be more instrumental and amoral in their representation of clients. Such traits may allow lawyers to provide equal access to justice, which is an important societal goal and one that should not lightly be discarded. Some attorney attributes are asso-

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93. Her research is thorough and interesting. See 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 (1998); Daicoff, *supra* note 5.

ciated with lawyer career satisfaction; consequently, changing them may actually increase lawyer distress.<sup>94</sup>

I don't know how hard-wired these particular characteristics of lawyers really are, but even if *some* lawyers have *some* of these characteristics, those lawyers will find reinforcement by the way that they see lawyers portrayed in the movies. I get a little nervous when I think about lawyers' ethics being reinforced in "movie" ethics. I get *very* nervous when I think about law students' ethics being similarly affected.

Many law students go straight from their undergraduate careers to law school. These students are typically in their early-to-mid 20s. According to Robert Kegan, the ability of people to perceive how they relate to the world around them continues to change well into adulthood.<sup>95</sup> The teenager who truly doesn't understand why he needs to call home when he is out past his curfew isn't being "inconsiderate." He simply is not at a stage of development that allows him to step into his parents' shoes and understand why they might be worried about his being late.<sup>96</sup>

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94. Daicoff, *supra* note 93, at 593-94. Those attributes may, in part, be a factor in the high level of career dissatisfaction that many lawyers report. See Daicoff, *supra* note 92, at 553-54:

Several legal surveys cite statistics to show that lawyers are satisfied, but these same polls show that lawyer dissatisfaction is on the rise. The polls consistently indicate that lawyer dissatisfaction is high (nineteen percent), has been increasing in the past few years, and is highest among new attorneys, and minority and women attorneys. . . .

See also Bogus, *supra* note 5, at 913. Carl Bogus reported on the anomie in the profession:

Although associates of the largest firms are more highly paid than ever before, they too suffer malaise. The zeitgeist is captured by a former associate in a New York firm who said, "We were paid so much because this is work no one really wants to do."

Experts are empaneled to analyze the "identity crisis" in the legal profession. There is general agreement about the core of the problem: the practice of law is suffering from increased commercialization. This is not a new concern; for at least one hundred years, people have worried that the profession was turning into a business. "What is unique about the present," writes Rayman L. Solomon, "is that concern over commercialism has become a crisis."

Bogus, *supra* note 5, at 913 (footnotes omitted); see also Litowitz, *supra* note 5, at 144 ("[L]awyers are no longer members of a special guild, but are disposable employees working in legal firms that have come to resemble factories. In many cases, the young lawyer is now a mechanized worker, an hourly wage-slave struggling to compete in a scarce economy."). Not all lawyers are miserable, though; for example, those who went into law with realistic expectations about the profession seem, on the whole, more satisfied than those who didn't. See Daicoff, *supra* note 5, at 1361-62.

95. See KEGAN, *supra* note 23.

96. See *id.* at 15-36.



That understanding—the stepping into another's shoes—is a cognitive leap away from the teenager's current way of knowing about his world.

What does Kegan's theory of knowing portend for law students? The stages of cognitive development aren't linked solely to age, but there is a correlation between youth and earlier stages of cognition. Susan Daicoff's studies reflect a coldness trait that may be part of an inability to empathize with the client.<sup>97</sup> As law students and lawyers reach higher levels of cognition, perhaps the "lawyerly" traits of coldness, assertiveness, and dominance may manifest themselves less.<sup>98</sup>

The feedback loop of movies' effect on pre-law students, law students, and lawyers may have significant reinforcing effects on behavior. Maybe, though, the feedback loop has only a small effect, causing disappointment when the glamour of movie law clashes with the reality of "real" law.<sup>99</sup> The expectations of lawyers are raised by fictional depictions and often dashed by reality.<sup>100</sup> For those who have no experience with real lawyers and choose law as a career based in part on what they think law will be like, the shock of the mundane is enormous.

Ultimately, though, I think that there's a larger question involved, far beyond the issue of career satisfaction. If, indeed, we admit law students who tend toward a rule-based cognitive stage, then we do them no favors when we fail to take that stage of development into account during their three years of law school. Even if that rule-based cognitive stage is hard-wired (meaning they won't grow into a higher-order cognitive stage

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97. See *supra* notes 91-94 and accompanying text.

98. See Daicoff, *supra* note 93, at 579-80:

Law appears to attract individuals who are more rational, logical, and analytical than individuals in other careers. Legal education appears to amplify these tendencies. The practice of law, then, may continue to encourage individuals to excise their emotions, interpersonal caring, and sensitivity from their daily work so that they may function in their roles as attorneys without experiencing undue psychic conflict.

99. . . . "Nothing could be more boring than an absolutely accurate movie about the law," says Roger Ebert, film critic for the *Chicago Sun-Times* and for CBS TV's *Siskel and Ebert*.

"A fiction movie is not a documentary," he says. "Its purpose is to provide escapist entertainment convincingly. A desire for total accuracy is merely tunnel vision. Do lawyers care about the accuracy of astronaut movies? Or bank robber movies?"

Siegel, *supra* note 30, at 44. Recently, though, I took another look at the comedy *CLUELESS* (Paramount 1995), and I was rather pleased to discover that it portrayed the minutia of discovery (some thing on the order of, "find all of the calls made on September 3rd and highlight them") pretty well.

100. See Papke, *supra* note 9, at 487-88.

later), we should consider structuring some of legal education to tease the highest cognition level that we can out of our students. Lawyers who blindly apply rules scare the heck out of me, and they can do serious damage to their clients' interests.

#### CONCLUSION: THE COGNITIVE DISSONANCE OF MOVIES AND LIFE

I don't want to make the argument that movies are the sole cause of lawyer misbehavior. Obviously, what makes us bad, or good, is due to a variety of causes, and movies are probably not even that high on the list of causes. We are just as full of variation in characteristics as are professionals in any other field, and as malleable by outside influences, *including* movies.<sup>101</sup> If movies are even a minor contributing cause of behavior, though, we should take them more seriously.<sup>102</sup>

The underrepresentation of counter-examples of good lawyers in movies is part of the problem. There are several types of lawyers who don't see many movies made about them: for example, transactional lawyers, inside counsel,<sup>103</sup> or lawyers of color in leadership roles.<sup>104</sup> There are some powerful women in Hollywood,<sup>105</sup> and there are some powerful people of color,<sup>106</sup> but Hollywood is still primarily the bastion of the old establish-

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101. See, e.g., Charles Musser, *Film Truth, Documentary, and The Law: Justice at the Margins*, 30 U.S.F. L. REV. 963, 984 (1996) ("Despite their differences, these three documentaries offer a powerful look at, and condemnation of, the justice system in our country. Truth has lost its way, and if the legal system bears responsibility, then so does the culture industry, as do we . . .").

102. Cf. *supra* note 22 and accompanying text. There is an active debate over whether scenes in movies cause susceptible people to mimic those scenes. See, e.g., David G. Savage, *Researchers Condemn R-Rated Films as Worse Offenders than Pornographic Movies*, L.A. TIMES, June 1, 1985, at Metro, pt. 2, p. 1, col. 2. But see Ray Delgado, *Moviegoers to Dole: Get A Life; Most Agree It's Easy to Separate Fantasy Violence on the Screen from the Real Thing*, S.F. EXAMINER, June 2, 1995, at A19. It wasn't that long ago that THE MANCHURIAN CANDIDATE (United Artists 1962) was pulled from distribution after President Kennedy's assassination, out of fear that the movie might inspire more copycat crimes. See, e.g., Director John Frankenheimer's *The Manchurian Candidate Plays to a Full House After 26 Years*, PEOPLE, May 16, 1988, at 129.

103. But see, e.g., OTHER PEOPLE'S MONEY (Warner Bros. 1991) (inside counsel).

104. But see, e.g., PHILADELPHIA, *supra* note 49 (African-American lawyer willing to take on case of HIV-positive lawyer).

105. See, e.g., Julie Creswell, *Ranking the 50 Most Powerful Women: Fortune's First Annual Look at the Women Who Most Influence Corporate America*, FORTUNE, Oct. 12, 1998, at 83.

106. See *id.*; see also *Herstory: Women and Film*, DALLAS MORNING NEWS, Mar. 18, 1998, at 5C.

ment, and women and minorities aren't a part of that.<sup>107</sup> This lack of movie coverage, especially in the case of lawyers of color, isn't accidental and is every bit as problematic as the distorting coverage of more "traditional" lawyers.<sup>108</sup>

If Hollywood wanted to, it could choose to make movies about the heroes of modern-day lawyering. There are plenty of role models out there,<sup>109</sup> and seeing them on the big screen would do us all a world of good. But will it play in Peoria?

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107. Shapiro, *supra* note 33, at 956-57 (white males are still the status quo in Hollywood, which affects some filmmaking choices).

108. See, e.g., Russell, *supra* note 21, at 3-4.

109. [W]here are the women lawyer characters like Marian Wright Edelman (Children's Defense Fund), Geraldine Ferraro (first woman vice-presidential candidate and former prosecutor), Catherine MacKinnon (feminist scholar and professor), Janet Reno (Dade County prosecutor and Attorney General), Eleanor Holmes Norton (former head of the EEOC, District of Columbia Representative and Georgetown law professor), Judith Kaye (chief judge of the New York Court of Appeals) and Lani Guinier (law professor and Bill Clinton's former nominee for Assistant Attorney General for Civil Rights)?

Why do we not see characters like them, including African-Americans and other women of color, on the screen given how ubiquitous Hollywood women lawyers seem to be these days? Why do recent lady lawyers also remain beholden to the genre's stereotypes? Shapiro, *supra* note 33, at 968 (footnotes omitted).