



2011

DISTRICT OF ARIZONA

ANNUAL CONFERENCE

Presented by

THE ARIZONA LAWYER REPRESENTATIVES
TO THE NINTH CIRCUIT



Friday, March 11, 2011

WESTWARD LOOK RESORT
245 East Ina Road, Tucson, Arizona 85704



DISTRICT OF ARIZONA ANNUAL CONFERENCE

Friday, March 11, 2011 - *Approximately six (6) hours Continuing Legal Education*

WESTWARD LOOK RESORT
245 East Ina Road, Tucson, Arizona 85704

REGISTRATION: 7:30 a.m. – 8:00 a.m.

BREAKFAST: 8:00 a.m. – 9:00 a.m.

- *The State of the District*, Sr. Circuit Judge Michael D. Hawkins, Chief Judge Roslyn O. Silver, Chief Bankruptcy Judge James M. Marlar

GENERAL SESSION: 9:15 a.m. – 11:45 p.m.

- Ethics Presentation: *Whatever Happened to Atticus Finch*
The Hon. Susan R. Bolton, Gary L. Stuart, James J. Belanger, Georgia A. Staton

LUNCHEON: Noon – 1:15 p.m.

- *Status of Trends on the Southwest Border (1993-2011)*, Border Czar Alan D. Bersin, Commissioner of U.S. Customs and Border Protection, Washington, D.C.

BREAKOUT SESSIONS: 1:30 – 3:45 p.m.

➤ **Civil Law – *Mastering E-Discovery***

1:30 – 3:45 *Practical Issues Encountered in E-Discovery*
Social Media Discovery
Evidence Issues and Spoliation of Evidence

The Hon. David G. Campbell, Paul Burns, Cecil Lynn, George Paul

➤ **Criminal Law – *Hot Topics***

1:30 – 2:30 *The Implications and Complications of “Speedy Trial”*

The Hon. Frank R. Zapata, Robert Miskell, Heather Williams

2:45 – 3:45 *Current Indian Country Issues: Tribal Law and Order Act*

Hon. Cindy K. Jorgenson, Dean Kevin Washburn, University of New Mexico Law School, Chief Assistant Shelley Clemens, U.S. Attorneys’ Office

➤ **Bankruptcy Law – *The Bumpy Road to Relief: Pre-Bankruptcy Planning***,
Moderator Steve Berger

1:30 – 2:15 *Arizona Exemptions and Pre-Bankruptcy Planning*

Hon. Randolph J. Haines, Lawrence Hirsch, Wayne Mortensen, Richard Lorenzen

2:15 – 3:00 *Ways & Means? Pre-Bankruptcy Planning for Individuals –*
Chapter 7, 11, or 13

Hon. Charles G. Case, Edward Bernatavicius, Warren Stapleton, Steven Jerome

3:00 – 3:45 *Pre-Planning for the Corporate or Single Asset Filing*

Hon. Redfield T. Baum, Lori Winkelman, Fred Petersen, Janet Chubb (Reno, NV)

Reception to Honor the Late Chief Judge John McCarthy Roll at 4:00 p.m.

- Remarks by Judges Collins and Teilborg
- Renaming of District Award to The John M. Roll Award for Distinguished Service
- Presentation to the Roll Family



2011
DISTRICT OF ARIZONA
ANNUAL CONFERENCE

PLENARY SESSION

- *The State of the District*
- *Whatever Happened to Atticus Finch*
- *Status of Trends on the Southwest Border (1993-2011)*

Presented by

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TO THE NINTH CIRCUIT



Friday, March 11, 2011

WESTWARD LOOK RESORT
245 East Ina Road, Tucson, Arizona 85704

Gary L. Stuart
U.S. District Court Conference
March 11, 2010

“Whatever Happened to Atticus Finch”

Hollywood, for all its faults, does one thing quite well. It produces lifelike characters. When we see pilots, cooks, cowboys, politicians, and numbskulls in the movies we see them as what they are, not as actors playing a part (at least in “good” movies). Hollywood has mastered the craft of building characters that make the audience think they *really* are doctors, cooks, cowboys, etc. And, sadly enough, it’s true of the made-in-Hollywood lawyers that have given us equal portions of admiration and disgust over the years.

The central question in this presentation poses three simple questions: Did the “old” Hollywood portray lawyers as the good guys they were forty odd years ago? Does the current genre of movies about lawyers depict us as sleazebags for good cause? Did Hollywood change us, or did we change the way it (and everyone else) sees us?

I believe the legal stories that Hollywood spins not only reflect and shape popular attitudes about our profession, they also serve as a thermometer of the current degree of respect our profession engenders. After all, our profession, like no other, depends on respect. Engineers need not be respected; they only have to be good at math and reasonably ambidextrous. Doctors must be grounded in science and soldiers must be fearless. But lawyers cannot serve clients, or the judicial system if we are not respected. I contend that the level of respect we enjoy can be gauged by how we are portrayed in America’s most engaging form of entertainment, the movies.

The movies of the 40’s and 50’s depicted lawyers as heroic if not always heroes. We were seen as instruments of positive change. We were rarely seen as money-grubbing and often portrayed as being indifferent to earning a living. We almost always lived up to our ethical obligations and the best of us represented the underdog, and the undeserving, with both style and success. Television plots in the 50’s and early 60’s bolstered that view. The starring roles of Atticus Finch in *To Kill A Mockingbird* (1962) and Paul Biegler in *Anatomy of A Murder* (1959) were the prize roles of the era and made lawyers look good. It’s been awhile since Hollywood has even made the attempt.

Atticus Finch readily accepted a court appointment to represent a poor black man who was wrongfully accused of a crime. Gregory Peck was a natural and obvious choice for the role of Atticus. He played who he was, a consummate gentleman who was thoughtful and considerate. The audience loved both the character and the actor and readily joined in the adulation and respect shown for both the man, and the lawyer he portrayed

Paul Biegler displayed that rare combination of folksy humor, wit and a smoldering intelligence that many lawyers of the age seemed to have. The producer’s choice of James Stewart in the role was likewise a natural and obvious one. He played the role as though he really were a small-town lawyer trying the best he could to defend against the big-city prosecutor from Lansing (George C Scott). Together they painted a picture of lawyers who, while quite human, nevertheless had heroic qualities to which many aspired, but few were called.

The late fifties and early sixties gave us two other memorable lawyer/courtroom movies: *Compulsion* (1959) and *Inherit The Wind* (1960) In *Compulsion*, Clarence Darrow was the eloquent advocate for the lives of thrill killers Leopold and Loeb. In *Inherit The Wind* the legendary Darrow (aka Spencer Tracy), fought for the right to teach evolution in the Scopes Monkey trial.

But by the late sixties and throughout the seventies the mood in Hollywood changed. The lawyer roles seemed more mendacious, more mercenary, and less respectful. National events played a role (think Watergate). Lawyers started advertising, modestly at first, and then blatantly. We began to be viewed as hustlers, not counselors. As crime rates rose many began to associate lawyers with their clients (at least in criminal cases). Legal fees soared and discovery abuse became common. And, slowly but almost inevitably, litigation became a household name.

The nineties brought us Jake Brigance in *A Time To Kill* and John Milton in *The Devils Advocate*. Matthew McConaughey and Al Pacino played the roles of a small town lawyer (McConaughey) and an international big city attorney (Pacino). The former bumbles his way to success, while the latter menacingly gives evidence to the idea that a lawyer is the devil personified.

This program will offer participants the chance to think about, and perhaps debate, the notion that courtroom movies either are, or are not an accurate reflection of society's view of lawyers.

2011

“Whatever Happened
to Atticus Finch?”
Presented by Judge
Susan R. Bolton, James
J. Belanger and Gary L.
Stuart

CONFERENCE—UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

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Teaser

Since I’m writing about lawyers in the movies, it seems only fair to call this a “teaser” rather than a “preface.” A teaser imitates art and nobody teases like Hollywood. Hollywood may have us pegged right. Or maybe not. Does Hollywood

portray lawyers aptly? The movie industry commits enormous time and money to make a product that moviegoers will happily buy. Hollywood, for all its faults, does one thing quite well. It produces lifelike characters. When we see pilots, cooks, cowboys, politicians, and numbskulls in the movies, we see them as what they are, not as actors playing a part (at least in “good” movies). Hollywood has mastered the craft of building characters that make the audience think they *really are* doctors, cooks, cowboys, etc. And, sadly enough, it’s true that made-in-Hollywood lawyers present an image composed of equal portions of admiration and disgust over the years.

Therein lies the rhetorical question and the post-film debate. Did the “old” Hollywood portray lawyers as the good guys they were fifty years ago? Does the current genre of movies about lawyers depict us as sleazebags for good cause? Did Hollywood change us, or did we change the way it (and everyone else) sees us?

While debatable, I believe that the legal stories Hollywood spins not only reflect and shape popular attitudes about our profession, they also serve as a thermometer of the current degree of respect our profession engenders. After all our profession, like no other, depends on respect. Engineers need not be respected; they only have to be good at math and be reasonably ambidextrous. Doctors must be grounded in science; soldiers must be fearless. But lawyers cannot serve clients or the judicial system unless we are respected by both. It is in that vein that I contend that the level of respect we are due can be gauged by how we are portrayed in America’s most engaging form of entertainment, the movies.

The movies of the 40’s and 50’s depicted lawyers as heroic if not always heroes. Hollywood’s lawyers were depicted as instruments of positive change. We were rarely seen as money-grubbing; often portrayed as being indifferent to how much money we earned. We usually lived up to our ethical obligations and the best of us represented the underdog, and the undeserving with both style and success. Television plots in the 50’s and early 60’s bolstered that view. The starring roles of Atticus Finch in *To Kill A Mockingbird* (1962) and Paul Biegler in *Anatomy of A Murder* (1959) were the prize roles of the era and made lawyers look good. It’s been awhile since Hollywood has even made the attempt.

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was thoughtful and considerate. The audience loved both the character and the actor and everyone cheered for Atticus even though he lost his case. By respecting him, Hollywood validated us—Atticus the man, and Atticus the lawyer.

Paul Biegler displayed that rare combination of folksy humor, wit and a smoldering intelligence that many lawyers of the age seemed to have. The producer's choice of James Stewart in the role was likewise a natural and obvious one. He played the role as though he really were a small-town lawyer trying the best he could to defend against the big-city prosecutor from Lansing (George C. Scott). Together they painted a picture of lawyers who, while quite human, nevertheless had heroic qualities to which many aspired, but few were called.

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This paper is in a sense a review of the reviews. There have been scores of law review articles published about *Atticus Finch*, or other movie characters. The scholars penning this body of work exhaustively address the notion that courtroom movies either are, or are not a true reflection of society's view of lawyers. It takes a considerable effort to read all of this. But for those interested in the role played by the

film industry in shaping our professional image, the effort will be rewarding. Attaching all of these articles to this paper would make it nearly two inches thick since the articles post a combined page count of 336 pages. Accordingly, out of kindness, and love of trees, I will review each review in a page or two, and give you the legal citation for your easy downloading from www.Lexis.com.

Scene 1—Take 1: “Daddy’s a litigator. That’s the scariest type of lawyer. And Daddy’s so good he gets \$500 to argue with people. But he argues with me for free because I’m his daughter.” *Clueless* (1995)

“THE MARGINS OF MAYCOMB: A REREADING OF TO KILL A MOCKINGBIRD”

45 Ala. L. Rev. 511

Prof. Teresa Goodwin Phelps from the University of Notre Dame Law School waited until 1994 before she dissected *Atticus Finch* and his 1962 portrayal by Gregory Peck. Her article is entitled “The Margins of Maycomb: A Rereading of To Kill A Mockingbird.”¹ She starts her dissection with the opinion that the movie has been widely and justly praised as a great American novel but goes on to explore the suggestion that we might temper our admiration for *Atticus*. She cites but does not entirely agree with Monroe Freedman’s 1992 article proposing that *Atticus* was not a good role model for lawyers.²

Prof. Freedman believed that *Atticus* was complicit in a racist society, made excuses for the Ku Klux Klan, and generally acted out of an “elitist sense of *noblesse oblige*,” rather than true compassion.³ Prof. Phelps, on the other hand, says that the book (and by implication the movie) is about “character.” She sees, as do many of us,

¹ 45 Ala. L. Rev. 511 (Winter 1994).

² Monroe Freedman, *Atticus Finch, Esq. R.I.P.*, *Legal Times*, Feb. 24, 1992, at 20.

³ *Id* at 21.

that reading the book or seeing the movie makes us come away “feeling good about being lawyers.”⁴

This 16-page law review is a serious review of the book; but refers only by reference to the movie. Overall, it is probably more than you really wanted to know about the subtleties in the characters. But she concludes that we see what we want to see, and are blind to anything else. Like *Atticus Finch*, we are implicated in our society’s delusions as long as we read the character and the plot with uncritical admiration. She reminds us how easy it is to misread the book, and by implication “missee” the movie. A character in the movie sagely notes that *Atticus’s* defense of Paul Robinson has been “a baby-step” toward a more tolerant society, but it has far, far to go. From the perspective of our professional image over the last forty years, perhaps we have come far, but in the wrong direction.

Scene 2, Take 2: “The Wheels of Justice Grind Slowly, But They Grind Finely” *Witness For The Prosecution* (1957)

WITHOUT TRADITION AND WITHIN REASON: JUDGE HORTON AND ATTICUS FINCH IN COURT

45 Ala. L. Rev. 483

The “other” law review article about *Atticus Finch* is by an English Professor at the University of Alabama. Her article is entitled “Without Tradition and Within Reason: Judge Horton and Atticus Finch in Court”.⁵ Prof. Johnson teaches English, practices law, and writes books. Her review is based on the research she did for her book (*The Secret Court of Men’s Hearts: Code and Law in Harper Lee’s To Kill A Mockingbird*, 1991). Her thesis posits the notion that the most ardent testimony to the continuing importance of “To Kill A Mockingbird” comes not from students of film, or literature but from law students. She correctly notes that many lawyers over the years have adopted *Atticus* as

⁴ 45 Ala. L. Rev. 511 at 514.

⁵ Prof. Claudia Johnson, 45 Ala. L. Rev. 483 (Winter 1994).

their personal hero, and they model their practice in hopes of being perceived like him by those they serve.

It seems obvious that *Atticus* has resurfaced in our legal consciousness because of attacks on lawyers as callous, greedy, and unethical. David Margolick, legal writer for the *New York Times*, describes *Atticus* as a man “who taught a community and his two young children about justice, decency, and tolerance, and who drove a generation of real-life Jems and Scouts to become lawyers themselves.”⁶

Unlike Prof. Freedman, Prof. Thomas Shaffer of the Notre Dame Law School consistently uses the character of *Atticus* in exploring “legal morality.” Where Prof. Freedman attacks *Atticus*, Prof. Shaffer cites the book as the “most persistently useful textbook . . . he has . . . used in teaching legal ethics.”⁷

Prof. Timothy Hall of the Mississippi School of Law allies himself with Shaffer rather than Freedman. He argues that ethical conduct grows out of character, rather than codes or rules. Prof. Hall defines character by using *Atticus* as an example of “a reservoir of moral faculties and dispositions.” He goes so far as to say that *Atticus*’s courage and ethics “would have to be pulled out of a storehouse” of his past.⁸

Prof. Johnson’s article reminds us of the wisdom of plain people in this quote from the book: “first thing you learn when you’re in a lawin’ family is that there ain’t any definite answers to anything.”⁹ But she goes on to remind us that in a constantly changing world *Atticus* lives by standing on the meeting of two eternities, courageously and humanely bringing reason and the law to bear on the unique circumstances of the moment.

⁶ David Margolick, “Chipping Away At Atticus Finch’s Pedestal” NY Times, Feb. 28, 1992.

⁷ See, Thomas L. Shaffer, *Christian Lawyer Stories and American Legal Ethics*, 33 Mercer L. Rev. 877 at 879 (1982).

⁸ Timothy L. Hall, *Moral Character, The Practice of Law and Legal Education*, 60 Miss. L. J. 511, 525 and 530 (1990).

⁹ Harper Lee, *To Kill A Mockingbird*, Warner Books 1982 at 234.

Scene 3, Take 3: “I’m a lawyer, what we think isn’t supposed to matter.” *Double Jeopardy* (1999)

ATTICUS FINCH—THE END OF HONOR: A DISCUSSION OF TO KILL A MOCKINGBIRD

30 U.S.F.L. Rev. 1139

Needless to say, California lawyers wanted their say in the role that *Atticus Finch* has played in how we are perceived by our not-so-adoring public. One of those is John Osborn, the director of legal writing at the Boalt Hall School of Law, University of California. His short but focused article takes a pragmatic rather than a traditional view.¹⁰ Mr. Johnson’s article takes issue with the more traditional view as expressed by David Guterson:

To Kill A Mockingbird] always got a strong response because students have a strong need for heroes of a particular type, someone who represents a set of values. Atticus Finch embodies those values and kids encounter him with a sense of relief. Atticus is certain of what he believes and that kind of certainty hardly exists today.¹¹

Mr. Johnson argues that *Atticus’s* staying power comes from another source. Although the film is about natural law in confrontation with transactional positivist values, “the genius of the film lies in its willingness to take a traditional natural law figure to the edge, to the point where he must accept transactionalist values in order to succeed.”¹² Get it? If not, you’re probably going to be equally confused by Mr. Johnson’s notion that this film is really about “a man standing up for traditional values to the point of insanity.” Johnson sees Atticus as more deluded and imprisoned, than Boo Radley, the eccentric in the attic. And he labels him as a willing participant in a ritual that he knows to be absurd.

¹⁰ John Jay Osborn, Jr. *Atticus Finch—The End of Honor: A Discussion of To Kill A Mockingbird*. 30 U.S.F.L. Rev. 1139 (1996).

¹¹ David Guterson, *Amid The Cedars, Serenity and Success*, NY Times, Feb. 29, 1996.

¹² See Osborn, *ibid* at 1140.

This California lawyer sees the issues presented by the film as not merely the heroic struggle of a man of values in a valueless society. The film's real power, he claims, comes from posing the more difficult question—When does holding onto traditional values in a valueless world become not heroic but absurd. Lastly, Mr. Johnson sees the only real value in “To Kill A Mockingbird” as a film depicting “the South poised to fall headlong into the Civil Rights Movement.”

I guess that puts Mr. Johnson squarely in the Monroe Freedman camp and likely makes him unwelcome at the University of Alabama.

Scene 4, Take 3: “I am not a pirate! It so happens I am a lawyer.” Hook, (1991)

“ESSAY: A PERSON OR A LAWYER”

72 Notre Dame L. Rev. 1723

There is an obvious tension in the practice of law between how you act “as a person” and how you act “as a lawyer.” Prof. Shafer described it as “the legal ethics of gentlemen meeting the ethical demands of practice.”¹³ Posed differently, can one be a good lawyer by simply being a good person?

Benjamin Allison was a student of Prof. Shafer and used much of what he learned in writing his essay, intriguingly titled “A Person Or A Lawyer.”¹⁴ His title reveals his thesis, which analyzes one of the more prevalent ethical issues facing American lawyers: separating professional from personal morality. Mr. Allison uses *To Kill A Mockingbird* and other novels to explore his thesis.

Lawyers like to compartmentalize things and prefer a world with strict doctrinal structures. But, as the author notes, “fiction doesn’t indulge those tendencies, but accumulates insights about life and law that can’t be pinned within an outline.”¹⁵ While my personal view of the relationship between novelists and lawyers is quite different, I

¹³ Thomas L. Shaffer, *American Legal Ethics* xxiv-xxvii (1985).

¹⁴ 72 Notre Dame L. Rev. 1723 (1997).

¹⁵ *Id.* at 1723.

take his point. Fiction is a traditional way to understand ethical cultures. Fiction, like culture, is not primarily about ideas, but about how people carry individual ideas into action in their lives, or don't.

Mr. Allison sees the role of *Atticus* as largely bottomed in his relationship with his children, and how they must learn to live in a world in which justice does not always prevail. He also sees it as a type of courage; how it is that when you know you're licked before you begin, but you go about your job anyway and see it through to the end. And he sees it the way his teacher did: *Atticus* is both a good person and an American lawyer because he believes in truth telling. *Atticus* is insistent on truth, not only in the larger matters of community and culture, but also in the smallest wrinkle of everyday living.

The moral of his 23-page essay is that the good lawyer cannot exist outside the good person. The question of the day remains. Was that what Hollywood was telling us in 1962? If so, what has changed to make some no longer believe it? If it as simple as being a good person, why do we have lawyers who are incompetent but trustworthy?

Fiction, it is said, has the capacity to teach the young that they don't have to repeat the mistakes of their elders. *Atticus* was the same downtown as he was at home. Maybe we ought to make watching the movie a law school entrance requirement, along with a decent LSAT score.

Scene 5, Take 9: "Emotions . . . there ought to be a law against them." Judge Dredd (1995)

"LAW, LAWYERS, FILM & TELEVISION"

24 Legal Studies Forum 279

If one thinks of the law as socially enforced rules and conventions, which actually determine the quality of our lives, then Professor Denvir's article entitled "Law, Lawyers, Film & Television"¹⁶ is dead on point. He sees a commonalty in legal education and Hollywood that is rarely observed. One weakness of modern legal education is that it

¹⁶ John Denvir, 24 Legal Stud. Forum 279 (2000)

teaches students to view the law as a simple application of rules to particular facts. Films adopt a similar microcosmic perspective by limiting “law” to what happens in a courtroom. Prof. Denvir notes that law is actually much more and invades most of our daily activity. It presupposes a political space in which the ‘rule of law’ reigns, and a society, not perfect, but perfectible.¹⁷

Prof. Denvir observes that many of us chose the study of law because we saw it as an instrument of justice. He then takes this one-step further by noting that those who made that choice were also influenced by *To Kill A Mockingbird* and by *Anatomy of a Murder*. Actually he says that we were influenced by the “film lawyers” Gregory Peck and James Stewart.¹⁸ But he sees the connection between law and justice as much more problematic. He sees both films as holding out the possibility that justice might be found by way of law, whereas most modern films about lawyers present law as an obstacle to justice. By way of example he notes that Harry Callahan (occasionally known as Clint Eastwood) frequently elicits a confession from a guilty man by what might be called “extra-legal” persuasion. These are not exactly the kind of films that motivate people to take up the study of law.

Films, particularly courtroom-based movies, give us a glimpse of the human psychology in law breaking, and law making. Prof. Denvir says we are attracted to film narratives because in some sense we identify with the character’s emotions. I might add that we are also attracted to the actor’s character. There is an obvious element, or emotion in lawyer films, that fits a corresponding psychic curiosity. Watching lawyer films should likely convince us, notwithstanding what my Torts professor told me, that there is no such thing as the “reasonable person.”

This 14-page review covers many films and television programs. Prof. Denvir compares two by-gone TV lawyer shows, *The Practice* and *Ally McBeal*. Like every lawyer I know, he sees the former as a worthwhile successor to *LA Law* and *The Defenders*. He’s also in the vast majority of lawyers who see the latter as a relationship show in the *Friends* vein, with little legal redeeming value.

The ethical and moral high ground in *The Practice* lies in its consistent theme that the American legal system does a pretty fair job when both sides have equal access

¹⁷ *Id.* at 281

¹⁸ *Id.* at 289.

to economic resources and are represented by competent lawyers. While full of lawyer angst, it still provides a positive influence to those aspiring to the law.

On the other hand *Ally McBeal* is portrayed as easily resigned to the “fact” that she has entered a profession dedicated to greed. She is comfortable arguing cases she doesn’t believe in. Her lack of idealism is attributed to the greed and sexism she finds pervasive in her profession. She chattily notes after smiling at a potential client, “after three years of law school what matters most are my teeth.” Fortunately the law plays a relatively small role in *Ally McBeal*, and few confuse it with the past (i.e., *To Kill A Mockingbird*) or the present (i.e., *The Practice*).

Scene 6, Take 2: “I don’t need tough guys. I need more lawyers.” *The Godfather III* (1990)

“The Courtroom Goes To The Movies”

73 N. Dak. L. Rev 389 (1997)

This is a review of Bruce Quick’s review of Paul Bergman and Michael Asimow’s book which, in turn, reviews sixty-nine “trial movies” produced by Hollywood in the last half-century or so. So if you get lost in the pronouns you have three choices: (1) you can read the original book (*Reel Justice*),¹⁹ (2) you can read Mr. Quick’s law review article about the book²⁰, or (3) you can unduly limit your knowledge by sticking to this little paper.²¹

Bergman and Asimow are law professors at UCLA. They claim to have scoured the “great classics of the genre” as well as some “not-so-great trial movies” that present interesting legal and ethical issues.²² They rank the movies by giving them little gavels (as opposed to little thumbs) and wryly note that a one-gavel rating means ask for a new trial. Four gavels is a classic and, of course, *To Kill A Mockingbird* and *Anatomy of A Murder* rate four gavels. Their most important contribution to the genre as well as to

¹⁹ *Reel Justice—The Courtroom Goes To The Movies*, Paul Bergman & Michael Asimow, Universal Press Syndicate Company, Kansas City, 1996.

²⁰ 73 N. Dak. L. Rev. 389 (1997).

²¹ Of course no footnote is needed here but it seems only fair since the other guys got one.

²² *Reel Justice* at xviii.

lawyers who like movies is their “trial brief” on each movie. They advise the reader when Hollywood is bending the rules “to inject drama or humor into trial movies.”²³

Of the sixty-nine movies reviewed, fifty-eight are based on criminal trials, which proves the wisdom of John Mortimer who ascribed the following to *Rumpole of the Bailey*:

When I was called to the Bar, too long ago now for me to remember with any degree of comfort, I may have had high-flown ideas about general practice of a more or less lush variety—divorcing duchesses, defending stars of stage and screen from imputations of unchastity, getting shipping companies out of scrapes. But I soon found that it’s crime which not only pays moderately well, but which is also by far the greatest fun.²⁴

Of the thirteen four-gavel winners, all but one either was nominated for or received Academy Awards. Of the remaining fifty-eight, twenty-four also received Academy Awards (or nominations). If nothing else, this list proves that Hollywood recognizes the obsession that America has with lawyers and courtrooms.

Perhaps the most significant contribution of the book is that the “true” facts of the real crime or trial depicted in the movie are detailed in the book. Many of the movies, maybe even a majority, are loosely based on real crimes, real cases, and real lawyers. Reading about the true facts and comparing them to the Hollywood version is illuminating, to say the least.

²³ *Id.*

²⁴ John Mortimer, *The Trials of Rumpole*, 1988.

Scene 7, Take 15: “First of all, I should like to say that I think the arguments advanced by the counsel for the defense were sound MERE sound.” *Adam’s Rib* (1949)

“A Symposium on Film and The Law”

22 Okla. City. U. L. Rev. 129

The film *Presumed Innocent*²⁵ is the subject of a 25-page law review article by Prof. Christine Alice Corcos of the Louisiana State University Law Center.²⁶ This law review article is one of the few that thoroughly assesses the irony and tension in the film, while also examining how lawyers see trial movies in a entirely different way from laypersons. The film is almost entirely predicated on the presumption of innocence that accounts for the release of a truly innocent man. But it also injects the real worldview that many presumed innocent under the law are presumed guilty in the press (and therefore by much of the public whose opinions are grounded on what the media feeds them).

Prof. Corcos notes that the official reason for dismissing the charges (the presumption of innocence) is difficult for non-lawyers to grasp since it seems to be a “legal technicality” that allows the defendant to “get away with murder.” She explores the question of whether the dismissal is portrayed as one accomplished solely through the skill of the defense lawyer, or the product of procedural safeguards that protect both the guilty and the innocent. The layperson’s view of truth and falsity always usually conflicts with the lawyer’s world of innocence and guilt. Thus, there is real tension in both movies about the presumption of innocence and real trials, where it makes a difference (think O.J).

Non-lawyers often feel that the goal of the law is to achieve justice. Conversely most lawyers, particularly those who actually try cases, see the goal of the law as one that preserves the process of fairness. The legal presumption of innocence doesn’t fit

²⁵ Mirage Productions, 1990, directed by Alan Pakula from the novel by Scott Turow.

²⁶ *Presuming Innocence: Alan Pakula and Scott Turow Take On The Great American Legal Fiction*, 22 Okla. City U.L. Rev. 129 (Spring, 1997),

into the layperson's emotional reaction nearly as well as it does the reasoned intellectual inquiry of the lawyer. Lawyers, according to Prof. Corcos, measure the success of the legal process by its ability to preserve the rights of the individual against the tyranny of the government. Laypersons, on the other hand, see the law as a monolith and justice as its desired result. So in those rare cases, or rare movies where process wins, many see justice as the loser.

Prof. Corcos compares *Presumed Innocence* with the earlier courtroom dramas *Anatomy Of A Murder* and *To Kill A Mockingbird*. Through their onscreen trials, these films give us two resolutions of the question of guilt or innocence: the filmic trial and the off-screen trial. These resolutions translate into public and private "truths" about guilt and innocence. In *Anatomy* the jury finds the defendant "innocent" although the movie audience knows he's "guilty." In *Mockingbird*, the reverse is true. In *Presumed Innocent*, the jury's decision is aborted by the procedural and substantive intrusion of the judge who frees an innocent man before the audience really knows he's innocent.

At the end of the day, or the movie, these trial movies send two vastly different messages. Lawyers see that anyone (including the innocent) can be accused; laypersons are more trusting and tend to believe the accusation always has merit. Legal safeguards like the presumption of innocence are seen as sound process by lawyers and technicalities by laypersons. But the larger message of all three movies is that sometimes procedure triumphs over substance. That makes non-lawyers cynical.

Scene 8, Take 5: "The truth? I thought we were talking about a court of law. Come on, you've been around long enough to know that a courtroom isn't a place to look for the truth." *A Civil Action* (1998)

“Picturing Justice: Images of Law and Lawyers in the Visual Media”

30 U.S.F.L. 991

Suzzane Shale, Fellow and Lecturer in Law, begins her symposium article²⁷ with:

The advocate no longer plays the part in our public life that he once did. The fashionable divorce suit, the sensational libel action, the great murder trial—they are no longer the dramatic events that once occupied public attention to the exclusion of almost everything else. The television star and the film actor, idolized by millions, now take pride of place.”²⁸

One may doubt that film stars have taken the “pride of place” away from lawyers. But there is no doubt that they (the lawyer and the film star) share their audience, their need for applause and some of their training. No wonder then that the latter has the power to alter the image of the former. Ms. Shale’s philosophical 31-page tome is a bit off the point of how Hollywood shapes the image of the American lawyer but she makes thoughtful suggestions on the larger issues. She speculates that it may be that the pursuit of human truth and dramatic truth in celluloid law results in “real law” being understood not as daily realities, but in epic terms and at mythic levels of understanding. That may be true of *A Man For All Seasons* (1966) but it’s doubtful that *My Cousin Vinny* was thought by anyone to be epic. Although come to think of it, there is a certain mythic level of understanding that Vinny reaches in all of us.

Hollywood’s version of a legal story (real or imagined) centers on interesting characters making hard choices. But Ms. Shale notes that they all reflect in some way the screenwriter’s own personal beliefs. That suggests that the “image” issue with lawyers might be different if lawyers, rather than screenwriters were crafting the scripts. Hollywood misrepresents the facts of the legal system routinely but, so argues Ms. Shale, it misrepresents its values rather less. Dramatic need drives Hollywood to distortions of fact but that same dramatic need draws it towards the very real conflicts that lie at the core of the law. For example, why do advocates defend guilty men? Do legal rules displace justice? Is justice just a matter of who has the deepest purse? She

²⁷ *The Conflicts of Law and the Character of Men: Writing Reversal of Fortune and Judgment at Nuremberg*, 30 U.S.F.L. Rev. 991 (Summer 1996).

²⁸ Interview with Abby Mann, Screenwriter, in Los Angeles, CA (October 5, 1995).

answers some of the questions by noting that it's quite unusual for a lawyer "to actually embrace such ethical conundra" in daily legal life.²⁹ She believes that these questions concern audiences because they emerge from the awesome combination of human fallibility and institutional power. If we are lucky, matters like the presumption of innocence, prosecutorial malpractice, or illegal search and seizure will never impinge on us as individuals. If they ever do, the great constitutional debates will become immediate and very compelling.

In her detailed analysis of movie scripts for *Reversal of Fortune* and *Judgment At Nuremberg* Ms. Shale saw much in common with the legal briefs in the real trials portrayed on the screen. She notes that in general terms the contemporary trial reflects contemporary belief systems. And she notes that real trials stage the resolution of legal problems. Although not noted by her it occurs to me that she was on the way to positing a partial answer to the question of why Hollywood alters the image of lawyers every generation or so. Maybe the contemporary lawyer (like the contemporary trial) is a product of his or her own belief system. Maybe we relate to clients, judges and the legal system in that context more than in accordance with the rules and standards set *by* our profession. If that's the case then Hollywood is really just reflecting our image, not shaping it.

Scene 9, Take 22: "Oh a counter-offer. That's what we lawyers, I'm a lawyer . . . we call that a counter-offer. This is a tough decision you give me here. Get my ass kicked or collect two hundred dollars. I could use a good ass-kickin', I'll be perfectly honest with you . . . no I think I'll just go with the two hundred." *My Cousin Vinney* (1992)

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

14 ND J. L. Ethics & Pub Policy 49

²⁹ 30 U.S.F.L. Rev at 1011.

Nancy Rapoport is the Dean of the University of Nebraska College of Law. She begins her law review article³⁰ on Hollywood's impact on how lawyers dress by recalling her viewing of *The Devil's Advocate* in 1998. As she came out of the theater she overheard people say things like "they sure told the truth about lawyers." The quote above is from *My Cousin Vinny* and I guess we can all be glad that Vinney's courtroom attire didn't catch on.

Dean Rapoport is no doubt one of the tens of thousands who saw *The Devil's Advocate* as yet another flick in montage of negative images of lawyers. While there has always been some negative views of lawyers we were more often portrayed in the public media in a positive light until the seventies.³¹ *The Devil's Advocate* is listed in film indexes under the genre "horror" for good reason. It's portrayal of lawyers ethics is indeed horrific and is exceeded only by the portrayal of us as disgustingly rich (although many would argue that there's nothing disgusting about being rich). In addition to *The Devil's Advocate* other examples of our villainy include *Batman Forever* (where the chief villain is a former district attorney), *The Rainmaker* (ambulance-chasing lawyer beats nasty insurance company but still loses the case), *Regarding Henry* (nasty lawyer turns nice after being shot in the head), *Body Heat* (gullible lawyer conspires to kill his lover's husband and can't quite understand the rule against perpetuities).³²

There is a chicken-and-egg conundrum here—Do filmmakers make movies about trials because the public thinks of lawyers only as litigators, or does the public think of lawyers only as litigators because that's what filmmakers portray. Dean Rapoport leans toward the latter. She says the fact is that, whenever people think about "law movies," they're extremely likely to think about trials, trial scenes, and juries.³³ Accordingly all the supposed traits of litigators—contentiousness, aggression, zealotry, gets center stage in lawyer films, thereby reinforcing the public's sense of lawyers as soulless Rambo's with briefcases. Hollywood gets a lot of things wrong but this may be their biggest error. The best of America's trial lawyers are consummate gentlemen and ladies; they have good manners, good taste, polished jury skills, and never lose their temper, or their composure (in or out of court). They teach rather than rant and show deference and respect rather than contempt for the court and their opponents.

³⁰ "Dressed For Excess: How Hollywood Affects the Professional Behavior of Lawyers" 14 Notre Dame Journal of Law, Ethics and Public Policy, Vol. 14, page 49 (2000).

³¹ 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.

³² See footnote 4, 14 ND L.J. Ethics & Public Policy 49 (2000).

³³ *Id.* at 60.

Like almost all reviewers (with the exception of Prof. Freedman) Dean Rapoport identifies *Atticus Finch* as the most popular heroic fictional lawyer of all and *John Milton* (the role played by Al Pacino in *The Devil's Advocate*) as the least popular and least credible. She contrasts *Atticus* with the more modern character *Mitch McDeere* (the lawyer in John Grisham's *The Firm*).³⁴

Just as movies disdain complexity (they are really short stories, not novels), Hollywood never dwells on ethical issues that lawyers get right. You won't see movies where the lawyer decides she cannot represent the client because she's sleeping with him. Or one where the lawyer refuses to try the case in the media. But that doesn't mean they get the ethical issues wrong on purpose. The fact is that Hollywood gets these issues wrong it sees legal ethics as unfilmworthy.³⁵

Dean Rapoport poses the not-so-rhetorical question of whether films portray lawyers as venal because they are venal. She doesn't believe that; none of us do. We all know thousands of lawyers who are the opposite of venal (would that be scrupulous?). But Hollywood's interaction with disciplined, respected lawyers is a bit more limited. That said, there is a body of research indicating that lawyers are, in fact, demonstrably different from the general population.³⁶ Much of that research validates the so-called lawyer "stereotype": intelligent, dominant, aggressive, ambitious, competitive people who are not particularly 'warm and fuzzy,' and who crave attention and have the ability to lead others.

The conclusion reached in this article is both uplifting and ominous. Movies in the eighties and nineties are not the sole cause of lawyer misbehavior. It is our own misbehavior that makes us look bad. And, of course, what makes us bad, or good, is due to a variety of causes. Movies may not even be all that high on the list. But a significant point of the article is that *if* movies are even a minor contributing cause of behavior, and do in fact influence how we are perceived, *then* we ought to take them more seriously. While most of America loves movies, there is no love lost for Hollywood itself (Malibu

³⁴ See also Carl T. Bogus, *The Death of An Honorable Profession*, 71 Ind. L.J. 911 (1966)

³⁵ Dean Rapoport wonders whether lawyers who serve as advisors on films have too little power to force Hollywood to get the ethics right or whether they simply don't think about ethics in terms of plot. See also, Claudia Eller & James Bates, *In Hollywood, More Business Than Show*, L.A. Times, Aug. 13, 1999, at A1.

³⁶ See Bogus, *ibid.* See also Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 *Am. U.L. Rev.* 1337 (1997); Douglas E. Litowitz, *Young Lawyers and Alienation: A Look at Legal Proletariat*, 84 Ill. B.J. 144 (March 1996).

maybe, but not Hollywood). The same can be said for lawyers. America may not love us as a group, but at least we are not as far down the ladder as those that actually practice law *in* Hollywood.

Scene 10, Take 9: “Why don’t you go play in the office for a minute? Sue someone for everything they got.” *Liar, Liar* (1997)

“Does Lawyer Advertising Adversely Influence The Image of Lawyers In The United States?”

27 J. Legal Studies 503

As our image deteriorates, we search for causes. Hollywood and lawyer advertising are the two most common causes (or scapegoats considering one’s vantage point). Advertising became legal in the mid-seventies, popular in the early eighties and profitable in the nineties. Hollywood treated lawyers kindly in the fifties, bashed us a bit in the sixties, and somewhere between then and now started pummeling the profession. All I’ve said heretofore pokes a little fun at Hollywood; but now we ought to turn our attention to culprit number two in the name-the-blame game for the image of lawyers.

Many of the commentators and reviewers cited in this paper mention legal advertising, along with movies, when psychoanalyzing us. But Prof. Richard Cebula limits his analysis to lawyer advertising. His law review article³⁷ explores what he calls “an alternate perspective” and looks at the “new empirical evidence.” Of course, as you might guess, Prof. Cebula is a professor of economics, not law. Accordingly his jargon is somewhat foreign to those trained in the obscurity of the law. His abstract notes:

Using multiple regression analysis, this study investigates the impact of lawyer advertising on the public’s image of

³⁷ 27 J. Legal Studies 502 (University of Chicago) 1998

the law profession. The analysis, which includes variables to reflect per capita real outlays on lawyer advertising, the public's image of politicians, long-term trends in the image of lawyers, the per capita number of lawyers, the per capita number of civil suits commenced in the U.S. district courts, and the divorce rate, finds that lawyer advertising **raises** the public esteem for the law profession. Moreover, causality tests supplementing the regression estimation reinforce this conclusion while revealing a bi-directional relationship between advertising and lawyer image.³⁸

Since an economist wrote this article and because it reaches the counter-intuitive conclusion that all those yellow pages have actually *raised* our esteem in the eyes of the public, the age-old cliché about economists comes to mind.³⁹ On a more positive note, since Arizona can take credit for the elimination of the historic ban on lawyer ads⁴⁰ maybe we should simply declare Prof. Cebula's thesis correct. That way the Arizona bar can proclaim to the nation that we've done our part; now it's up to California to do the right thing. The so-called nation can weigh in, lean on Hollywood, and make them quit picking on us. Then, legal advertising and Hollywood making nice, will collectively restore lawyers to their proper place in society (about where we were in the fifties). That way if things don't pick up, and our image continues to slide, we will know for sure it's Hollywood.

Some of the increase in image attributed to lawyer ads is vested in the data suggesting that prices for legal services have reduced because of the competition created by ads.⁴¹ At the risk of cynicism, it may be that the reduction in prices correlates more with the reduction in quality than it does with the increase in image. Lawyer ads are also said to raise the image of the legal profession by helping it to shed its "elitist" image.⁴² This study also recommends that if lawyers perceive themselves as having a bad image, they should advertise (or advertise more). If this is the case, the possibility exists that the causality between lawyer image and lawyer advertising might be "bi-directional."⁴³

³⁸ *Id.* at 503.

³⁹ Economists care little about whether or not something actually works in the real world. What they think really matters is whether it works in *theory*.

⁴⁰ *Bates v State Bar of Arizona* 433 US 350 (1977).

⁴¹ 27 *J. Legal Studies* at 504.

⁴² *Id.* at 505.

⁴³ *Ibid.*

One must take this study with a pound or two of salt. Hopefully no lawyer or bar association will adopt the study as “valuable” without questioning the study’s methodology. It is based entirely on the use of market surveys, generally using nonprobability convenience sampling, otherwise known as *mall intercept studies*. There are lots of ways to study one’s image and to try to determine the cause of a decrease on image, but parking lot surveys do not instantly come to my mind.

In 1976, and until 1993, the Gallup Organization routinely queried the U.S. public on their perceptions of honesty and ethical standards for a variety of professions, including lawyers. The percentage of adults who rated lawyers as having high or very high standards of honesty and professional ethics dropped from 25.0% in 1976 to 16% in 1993.⁴⁴ The image of most other professions was relatively stable over the same period.

Prof. Cebula justifies his view that lawyer ads raise our image by saying: “This finding may reflect, among other things, the effect that such advertising has in terms of lowering the prices of legal services and increasing the access of some segments of the population, especially the poor, less educated, and younger segments, to legal representation, while apparently not leading to a diminution in the quality of lawyer services.”⁴⁵

Needless to say, I have no empirical information, no regression analysis, no equation estimates, and no polling data. But I do practice law and I interact with the rest of society. From that perspective, I’d have to stick my tongue all the way through my cheek and wrap it around my neck like a noose before I’d argue that TV lawyer ads during the commercial break in *Ally McBeal* actually improved our image. But on the other hand, no one with a clipboard has ever asked me about such things as I came out of Home Depot either.

Scene 11, Take 4: “Realizing that I may prejudice the case of my client, I must tell you that right has no meaning to me whatsoever—but truth has meaning, as a direction.” *“Inherit The Wind” (1960)*

⁴⁴ Id. at 506.

⁴⁵ Id. at 515.

“On the Social Significance of Large Law Firm Practice—the Nostalgic View of Lawyer’s Role. 37 Stan. L. Rev. 445 (1985).

Atticus Finch, Paul Biegler and Jake Briggance were not exactly big time lawyers. They practiced in small firms, in small towns and did not see themselves as “corporate” attorneys. But there is an occasional reference in the literature to the emergence of the BIG corporate law firm in the 70’s and 80’s as though it explained, at least partially, the decline in professionalism in modern law practice. Maybe it wasn’t Hollywood or legal advertising or the general decline in morals after all—maybe it was the emergence of the national law firms with their vaguely insidious hold on corporate America. To that tangential end, Law Professors Kagen and Rosen wrote a lengthy law review article entitled *On the Social Significance of Large Law Firm Practice*⁴⁶ in the Stanford Law Review. Their article interested a noted sociologist, Magli Sarfatti Larson, who then reviewed the work of Kagen and Rosen by writing the *Comment on Kagan and Rosen’s On the Social Significance of Large Law Firm Practice*.⁴⁷ It is this latter review that merits some small reference on the relationship between Hollywood and the image of lawyers.

The “social significance” of large law firms stems from the normative concern that the “best and brightest” students, on their way to the “best” law schools will, quite naturally, follow the Yellow Brick road of employment in the “best” corporate law firms.⁴⁸ Prof. Larson takes issue with Professors Kagen and Rosen’s thesis that a substantial proportion, at least of elite law school recruits, look beyond high salaries, job security and prestige toward a nobler image of professionalism, made of intellectual excitement, and varied opportunities for serving society through the advice they give, and the influence they can gain, with powerful corporate clients.

“Big time lawyering” is the goal of entrants to elite law schools. There is a sort of magnetism, which draws many to the law and to big time lawyering based on the two traditional dimensions of professionalism: autonomy and influence. The role of independent counsel, which the authors assume is a motivating image for students as well as a popular stereotype, is high in both influence and autonomous professionalism.⁴⁹ Its polar opposite is obviously the “gun for hire,” the lawyer who is just a mouthpiece for his client. Social scientists often sees the latter as a small firm lawyer and the former as a big time, i.e., big firm lawyer. The average College Board scores of

⁴⁶ 37 Stanford Law Review 399 (1985).

⁴⁷ 37 Stanford Law Review 445 (1985).

⁴⁸ *Id.* at 446.

⁴⁹ *Ibid.*

the top 2000 law students easily exceed those of their counterparts entering other graduate schools and occupations, with the possible exception of medicine.⁵⁰ But law, unlike engineering, is a vocation that develops late in life and does not require assiduous training in mathematics, or a taste for the technical detail associated with engineering. The large law firm was born in the last third of the nineteenth century in a period of institutional reorganization dominated by the rise of the giant business corporation. This is attributed to a combination of factors: (a) the passing of the normative (Whig-Federalist) interpretation of the lawyer's role, with its sense of *noblesse oblige*; (2) the increasing reduction of ethical behavior, professional or otherwise, to what is legally permitted; (c) the concentration on the individual case, to the neglect of the broader context; and, (d) the gradual deepening of a legal "doxa" that makes all of the above, as well as the concentration on craftsmanship and narrow technicality, not only possible, but desirable.⁵¹

In reality, many large law firm lawyers decline to make moral judgments for their clients. They tend to deny that ethical conflicts are an inevitable component of corporate practice, and accept the reduction of ethics to legality because they know that the clients hire them precisely to "keep them out of trouble."

The authors all agree (and I with them) that it is unquestionable in the large law firm that the professional ethics of corporate lawyers—narrow as they may be—have their best anchor and support, not because large law firms are in any mysterious way more "professional" than middle-sized or smaller ones, and not only because they can afford to be ethical, but because one of the main services they sell is validation. This simply cannot be made available to the clients if the firm's reputation is not unassailable.

Consequently, it seems to follow that the big-time lawyer's role in society, and his or her image in the corporate world, varies with the general public's image of corporate business. If Hollywood sees the corporate world as beneficial (or benign), the image is a positive one (at least on film). But if the corporate world is portrayed as the evil robber baron, then the corporate lawyer is likewise negatively portrayed. BP, anyone?

⁵⁰ Id. at 447.

⁵¹ Id. at 455.

Scene 12, Take 11: “You’re gonna fit right in. Everyone here is innocent. Heywood, what’re you in here for?” *Shawshank Redemption (1994)*

Judicial Performance Review in Arizona. 30 Ariz. St. L. J. 643

Hollywood, lawyer advertising and declining civility in the general population are all said to play some role in the decline of the lawyer’s image in America. But what about our judges? They are, after all, lawyers before they assume the bench. They take judicial status, but retain their bar licenses and attitudes, after they step up (so to speak). What is their role in how America perceives lawyers? Is their role also tarnished by Hollywood, lawyer ads, etc.?” Do they add to the tarnish or buff it off?

When Justice John Pelander was on the Arizona Court of Appeals,⁵² he wrote an 82-page law review article,⁵³ which was actually shorter than the thesis he submitted in partial fulfillment of the requirements for his degree of Master of Laws in Judicial Process at the University of Virginia School of Law. Judge Pelander’s comprehensive analysis is a wonderful dissection of the larger issue of merit selection and retention in Arizona. But it also contains a few gems that can be extracted to examine the tangential questions posed above.

Judges obviously play a crucial role in our system of justice. Judge Pelander correctly notes the quality of judicial performance heavily influences the judicial system’s operation and the public’s *perception* of it.⁵⁴ The not-so-obvious question this raises is what does this have to do with the image of lawyers? The JPR publicity campaign included audiotapes, an 800-hotline telephone number commercials (or infomercials as they are now called) in movie theaters, on television screens, and over radio stations. These were, for the most part, public service announcements.⁵⁵ The less-than-obvious answer might be public service announcements by the Bar Association, the Bar Foundation, or other well-intentioned entities that might serve the legal profession in the same way JPR’s publicity campaign served the judiciary.

⁵² He is now an Arizona Supreme Court Justice.

⁵³ *Judicial Performance Review in Arizona: Goals, Practical Effects, and Concerns*. A. John Pelander, 30 Ariz. St. L. J. 643 (Fall 1998).

⁵⁴ *Id.* at 645.

⁵⁵ See, 1994 Judicial Commission Report at 2.

There is a common thread here. The concept of judicial independence is deeply rooted in this nation's constitutional system of government. It is an essential component of the separation of powers doctrine. But judges, like lawyers, have been subject to increasing and blatant attack at both the federal and state levels. Judge Pelander cites numerous examples including the widely reported incident in New York where a federal district judge was soundly criticized for initially suppressing evidence in a criminal case due to an unconstitutional search and seizure.⁵⁶ Vitriolic calls for his resignation or impeachment ensued. President Clinton questioned the judge's ruling and fitness to serve on the federal bench. On motion for rehearing, the judge subsequently reversed his ruling, creating the distinct impression that he had succumbed to public outcry and political pressure over his initial ruling.⁵⁷

The goal of Arizona's JPR program is "to protect judicial independence while fostering public accountability of the judiciary."⁵⁸ But Judge Pelander carefully documents the inevitable tension between these two goals.⁵⁹ That tension leads one to question whether the goals of judicial independence and accountability are compatible, and whether JPR can accomplish the latter without undermining the former.⁶⁰

For lawyers, there is a comparable tension. We do not, by merely accepting a retainer, endorse the client's political, economic, social, or moral views or activities.⁶¹ Any other standard would deny representation to people or entities whose cause was controversial, or subject to popular disapproval. There was a time when our rules required "warm zeal" in our representation of clients.⁶² That was upgraded to an encouragement that we be "zealous advocates,"⁶³ which in time was downgraded to the current requirement that we be "reasonably diligent" in representing our clients.⁶⁴

⁵⁶ See, 30 Ariz. St. L. J. at 696 citing Stephen B. Bright, *Political Attacks on the Judiciary*, 80 *Judicature* 165 at 172 (1997).

⁵⁷ See, Bright, *supra* at 415.

⁵⁸ R.P. Jud. Perf. Ariz. 1.

⁵⁹ See, 30 Ariz. St. L. J. at 699.

⁶⁰ *Id.* at 700.

⁶¹ Ethical Rule 1.2((b).

⁶² See, Canon 15 of the 1908 Canons of Professional Responsibility.

⁶³ See, Canon 7 of the 1969 Model Code of Professional Responsibility.

⁶⁴ See, ER 1.3 of the 1984 Model Rules of Professional Responsibility and specifically the Comment to the rule, which notes: "Rule 1.3 substitutes reasonable diligence and promptness for zeal. The Comment is less neutrally worded, requiring 'commitment and dedication to the interests of the client' and 'zeal in advocacy upon the client's behalf'. As a officer of the court, however, a trial lawyer cannot be a zealot. *State v Richardson*, 514 N.W.2D 573 (Minn. Ct. App. 1994).

The inherent tension comes from our clients' expectations of us. They often want the junkyard dog on their side. They interview us to find out how "aggressive" we will be in asserting their position. And they fire us when they sense civility. And it is clearly the case that our rules, and our culture, call for independence and adherence to standards that clients often reject. In Hollywood, the lawyers who fail the test are portrayed as the client's over-the-line mouthpiece (i.e., the 'star'); those who toe the line and act professionally are portrayed as losing the case, the client, and often, the admiration of the audience. Which brings me back to the question that prompted this entire monologue: "Whatever happened to *Atticus Finch*?"

Scene 13, Take 327, Closing Act: "You came in here with a head full of mush and you leave thinking like federal lawyer." *The Paper Chase*, 1973

I never cease to be amazed at how utterly incapable Hollywood is in depicting the complexity of the decisions that lawyers make every day. I'm likewise amazed at how close they get to the simplicity of the popular culture about lawyers. The reality is that movies and television have served as the primary source of information about lawyers for millions of people for the last half century. That reality will continue to dominate. But is it reality or is it perception? Does the distinction matter?

What may matter most is that popular entertainment also influences **our** understanding and **our** attitude toward the courts and **our** profession. By belaboring and bolding the word "*our*" I'm trying to emphasize that lawyers are just as susceptible as the rest of the public to the influence of Hollywood. One of the principles of quantum mechanics is that everything is connected. The butterfly that flaps its tiny wings in Hong Kong does in fact affect the weather in New York. But since there is no science labeled 'quantum law' or quantum ethics' maybe lawyers need to seize the moment and *use* Hollywood. Movies and television don't merely convey images, they create them. If we are unhappy with the image they create for us, maybe lawyers ought to become as involved in Hollywood as we are in Washington D.C. We have become pretty good at promoting our cause in the nation's capitol. Are we overlooking something? Maybe we ought to promote our image along with our pocketbooks. That would of course be a *pro bono* undertaking.

Gary L. Stuart

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Gary Stuart spent 32 years as a partner in Jennings, Strouss & Salmon and now practices part time as Gary L. Stuart, P.C. He has been profiled in *Who's Who in American Law* (First Edition), Martindale-Hubbell's *Premier American Lawyers*, *Best Lawyers in America*, and *Arizona's Finest Lawyers*. He was inducted into the Maricopa County Bar *Hall of Fame* in October 2010. The *National Institute of Trial Advocacy* honored him with its *Distinguished Faculty* designation in 1994. Stuart completed an eight-year term on the *Arizona Board of Regents*, and served as its President in 2004-2005. He taught as Adjunct Faculty at the University of Arizona James E. Rogers College of Law (2000-2005). He has been on the Adjunct Faculty at the Sandra Day O'Connor College of Law since 1994, where he continues to teach Legal Ethics, Legal Writing, and Appellate Advocacy. He also serves as *Senior Policy Advisor* to the Dean at the ASU College of Law.

He has published numerous law review and journal articles, op-ed pieces, essays, stories, over fifty CLE booklets, and six books including: *"The Ethical Trial Lawyer,"* State Bar of Arizona, 1994; *"Litigation Ethics,"* Lexis-Nexis Publishing, 1998; *"The Gallup 14,"* a novel, University of New Mexico Press, 2000; *"Miranda—The Story of America's Right to Remain Silent,"* University of Arizona Press, 2004, *"AIM For The Mayor—Echoes from Wounded Knee,"* a novel, Xlibris Publishing, 2008, and *"Innocent Until Interrogated—The Story of the Buddhist Temple Massacre and the Tucson Four."* University of Arizona Press, September 2010.

He is a graduate of the Eller College of Management and the James E. Rogers College of Law at the University of Arizona, where he served as Notes Editor of the *Arizona Law Review*. He is the President and CEO of two law-related entities—Keyed Communications, LLC, and Arizona's Finest Lawyers, LLC, and continues to serve on many civic non-profit boards, and commissions.

GEORGIA A. STATON

Ms. Staton is a partner at Jones, Skelton & Hochuli, a Phoenix, Arizona firm. She has practiced law for 36 years, chiefly as a trial attorney defending governmental entities in catastrophic personal injury claims; civil rights and employment matters. She is licensed to practice before the United States Supreme Court and all Arizona, Kansas and Illinois courts. She is certified before the Arizona State Bar Association as a Specialist in Personal Injury and Wrongful Death and is a fellow in the American College of Trial Lawyers..

Ms. Staton is an experienced teacher of trial litigation skills. She has been a faculty member of the Arizona Trial College since 1991 and was an adjunct faculty member of the Arizona State University College of Law (1994-96). Ms. Staton has also authored numerous articles regarding the defense of sexual harassment claims, the Americans with Disabilities Act and other employment claims. She is also a sought-after speaker at national conferences having spoken on employment law issues at the International Association of Defense Counsel conference in Mexico and since 1996 has been a featured speaker on many government and employment law national conferences for the Defense Research Institute. Additionally, she was the Editor for the 1998-99 American Bar Association TIPS Governmental Liability Committee Newsletter and the 1998-99 Editor of the Employment Law Newsletter for the International Association of Defense Counsel. Ms. Staton also served as the Chairperson of the Government and Administrative Law Committee for the IADC.

Jim Belanger

Jim Belanger represents individuals and companies in a broad range of white collar criminal and civil litigation and in government investigations. His cases have involved alleged violations of the False Claims Act, federal and state securities laws, state and federal banking laws, consumer fraud and deceptive trade practices, professional misconduct including State Bar charges, public corruption, mortgage and real estate fraud, sexual misconduct, RICO, first-degree capital murder, and forfeiture and money laundering. He also has a high level of commercial litigation and bankruptcy experience particularly in the areas of real estate related fraud and in recovery actions on behalf of Chapter 11 debtors and trustees.

Jim has been an Adjunct Professor of Law at Arizona State University since 1991 and currently teaches a seminar on Government Investigations and White Collar Process. He is a frequent presenter for the State Bar on white collar and ethical issues, including *Leadership, Ethics and Honor*, a course on leadership he created for lawyers, government officials and business leaders. His pro bono work focuses on professionalism and ethical issues and the defense of death penalty cases where he has successfully defended against the death penalty in over a dozen cases since 1991.



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EDUCATION AND BAR ADMISSIONS

- J.D., Arizona State University, with honors, 1987
- B.A., Anthropology, Brandeis University, with honors, 1981
- Admitted in Arizona, 1987

REPRESENTATIVE MATTERS

- Representation of an international bank against civil and administrative allegations of consumer fraud and predatory lending in which the state sought civil penalties in excess of \$38 million
- Representation of senior management in an SEC investigation involving a mortgage bank with \$1 billion in assets
- Representation of a national title company in a False Claims Act case involving a national lender and alleged violations of federal housing laws
- Representation of the Arizona Department of Financial Institutions as outside counsel in a complex mortgage license revocation
- Representation of public official and private company alleged to have filed false election documents
- Representation of several lawyers in State Bar investigations against allegations of professional misconduct
- Representation of tribal executive against federal allegations of money laundering and theft of honest services
- Representation of physicians in False Claims Act cases
- Representation of national marketing company and officer against allegations of consumer fraud and deceptive trade practices
- Representation of trustee in Chapter 11 bankruptcy cases of Boston Chicken, Nelson and Herbert Hunt, and Kaiser Steel.

ACTIVITIES AND RECOGNITIONS

- Listed in *Best Lawyers in America* for White Collar Criminal Defense, Commercial Litigation, and Non-White Collar Criminal Defense; *Best Lawyers* 2011 Lawyer of the Year: Phoenix, Non-White-Collar Criminal Defense
- Listed in top band *Chambers USA Guide to America's Leading Lawyers for Business* for Government Investigations and White Collar Criminal Defense
- Listed in *Super Lawyers (Southwest)* for White Collar Criminal Defense, Professional Liability and Ethics Defense, and Commercial Litigation
- Adjunct Professor of Law, Arizona State University Sandra Day O'Connor College of Law (1991 to present)(Government Investigations and White Collar Criminal Process; the Jurisprudence of the Death Penalty)
- Arizona Attorneys for Criminal Justice: Board of Governors (2004 to present)(President 2008)
- Arizona Foundation for Legal Services Pro Bono Award (2009)
- Member, Arizona Supreme Court Commission on Victims in the Courts (2008 to present)
- Member, Arizona State Bar Indigent Defense Task Force (2006 to present)
- Board of Directors, Special Olympics Arizona (2006-2008); State Director, Arizona Special Olympics Soccer (1983-2000)
- All New England Soccer Selection 1979, 1980; two-time inductee into Brandeis University Athletics Hall of Fame

REPRESENTATIVE PUBLICATIONS AND PRESENTATIONS

- "The Continued Expansion of the False Claims Act," *Journal of Health & Life Sciences Law* (October 2010, co-authored with Scott Bennett)
- "Leadership, Ethic and Honor," (first presented in 2006)
- "Compliance Plans and Criminal Law Issues in Medicare Billing," Billing and Reimbursement Summit, Las Vegas, Nevada, June 2000
- "A Practical Guide to Remediation, Disclosure and Cooperation in the Context of Corporate Misconduct," American Bar Association - Section of Litigation, Summer 2005
- "Ephemeral Letters of Transit: Responding to Government Requests for Electronically Stored Information," American Bar Association - Section on Litigation, Winter 2007
- "Trail Dog and the Tao Te Ching (Honor, Ethical Rules and a Way of Life)," *The Defender*, Fall 2007
- "ETHICS: A Capital Case Conundrum," *The Defender*, Spring 2007
- "Seeking Attorney's Fees in Criminal Cases," *Arizona Attorney*, April 2001 (co-author)

Alan D. Bersin
Commissioner, U.S. Customs and Border Protection
Department of Homeland Security

Commissioner Alan Bersin was appointed by President Barack Obama on March 27th, 2010 to serve as Commissioner of U.S. Customs and Border Protection (CBP). As Commissioner, Mr. Bersin oversees the operations of CBP's 57,000-employee workforce and manages an operating budget of more than \$11 billion. Commissioner Bersin is responsible for leading CBP's mission of protecting our Nation's borders from all threats while supporting legitimate travel and trade. Previously, Commissioner Bersin served as Assistant Secretary for International Affairs and Special Representative for Border Affairs in the Department of Homeland Security (DHS). In that capacity, he served as Homeland Security Secretary Janet Napolitano's lead representative on Border Affairs and to Mexico, responsible for coordinating DHS strategy regarding security, immigration, narcotics, and trade matters affecting Mexico and for implementing the Secretary's security initiatives on the nation's borders.

Prior to his current service, Bersin served as Chairman of the San Diego County Regional Airport Authority, appointed by San Diego Mayor Jerry Sanders in December 2006, and confirmed by the San Diego City Council. Previously, Mr. Bersin served as California's Secretary of Education between July 2005 and December 2006 in the Administration of Governor Arnold Schwarzenegger. Governor Schwarzenegger also appointed Mr. Bersin to the State Board of Education where he served until 2009 as a member confirmed by the California State Senate. Between 1998 and 2005, he served as Superintendent of Public Education in San Diego where he launched a major reorganization of the district to focus its resources strategically on instruction and to modernize its business infrastructure in order to support teaching and learning in the classroom. In a related capacity statewide, Mr. Bersin served between 2000 and 2003 as a member and then as Chairman of the California Commission on Teacher Credentialing. Prior to becoming the leader of the nation's eighth largest urban school district, he was appointed by President Bill Clinton as the United States Attorney for the Southern District of California and confirmed in that capacity by the U.S. Senate. Mr. Bersin served as U.S. Attorney for nearly five years and as the Attorney General's Southwest Border Representative responsible for coordinating federal law enforcement on the border from South Texas to Southern California.

Mr. Bersin previously was a senior partner in the Los Angeles law firm of Munger, Tolles & Olson, where he served on the firm's policy and compensation committees, chaired the committee overseeing the firm's extensive program of *pro bono* legal services, and was principally responsible for developing the firm's innovative paralegal program. At Munger, Tolles & Olson, Mr. Bersin specialized in complex RICO, securities, commercial and insurance litigation before state and federal trial and appellate courts. He is a member of the California and Alaska bars.

Other professional experience includes employment as Special Counsel to the Los Angeles Police Commission, as Visiting Professor of Law at the University of San Diego School of Law, as an adjunct professor of law at Boalt Hall, University of California, Berkeley, and at the University of Southern California Law Center and as a Lecturer at the Stanford University Graduate School of Education. Mr. Bersin serves as a member of the Board of Overseers for Harvard University (2004-2010) and is a member of the Council on Foreign Relations and the Pacific Council on International Policy.

In 1968, Mr. Bersin received his A.B. in Government from Harvard University (*magna cum laude*). He was elected to the Phi Beta Kappa National Honor Society and awarded post-graduate scholarships by the National Collegiate Athletic Association and the National Football Hall of Fame. While at Harvard, Mr. Bersin was selected as a member of the All-Ivy, All-New England and All-East Football Teams and was inducted in 1995 into the Harvard Varsity Club Hall of Fame. From 1969 to 1971, Mr. Bersin attended Balliol College at Oxford University as a Rhodes Scholar. In 1974, he received his J.D. degree from the Yale Law School. Mr. Bersin was awarded the degree of Doctor of Laws (Honorary) by the University of San Diego in 1994, by California Western School of Law in 1996, and by the Thomas Jefferson School of Law in 2000. He is fluent in Spanish.

Mr. Bersin was born in Brooklyn, New York, and attended public schools in New York City. He is married to Judge Lisa Foster and is the father of three daughters: Alissa, Madeleine and Amalia Rose.

Honorable James M. Marlar

United States Bankruptcy Court

38 S. Scott Ave. Room 100

Tucson, AZ 85701

Phone:

Fax:

Email:

Biography/CV:

Honorable James Marlar was appointed U.S. Bankruptcy Judge for the District of Arizona in December 1993, with his primary duty station in Tucson, Arizona. In December 2007 he was reappointed for a second 14-year term. He travels within the District of Arizona, also hearing cases in Phoenix and Yuma, Arizona. Judge Marlar served a seven-year term on the Ninth Circuit's Bankruptcy Appellate Panel from 1999 to 2006, and continues to serve on the Panel as a Judge Pro Tempore.

Judge Marlar graduated from Stanford University in 1967 with a bachelor's degree in history and from the University of Arizona College of Law in 1970, where he was a member of the Arizona Law Review.

Prior to his appointment he practiced in the areas of bankruptcy and commercial litigation in Phoenix, Arizona for 23 years and served as a Judge Pro Tempore on the Arizona Court of Appeals.



The Honorable Michael D. Hawkins

Born 1945 in Winslow, AZ

Federal Judicial Service:

Judge, U. S. Court of Appeals for the Ninth Circuit
Nominated by William J. Clinton on July 13, 1994, to a seat vacated by Thomas Tang; Confirmed by the Senate on September 14, 1994, and received commission on September 15, 1994. Assumed senior status on February 12, 2010.

Education:

Arizona State University, B.A., 1967
Arizona State University College of Law, J.D., 1970
University of Virginia School of Law, LL.M., 1998

Professional Career:

U.S. Marine Corps Special Courts Martial Military Judge, 1970-1973
Private practice, Phoenix, Arizona, 1973-1976
U.S. Attorney for the District of Arizona, 1977-1980
Private practice, Phoenix, Arizona, 1980-1994
Special prosecutor, The Navajo Nation, 1985-1989

The Honorable Roslyn O. Silver

Born 1946 in Phoenix, AZ

Federal Judicial Service:

Judge, U. S. District Court, District of Arizona

Nominated by William J. Clinton on September 14, 1994, to a seat vacated by Earl H. Carroll; Confirmed by the Senate on October 7, 1994, and received commission on October 11, 1994. Served as chief judge, 2011-present.

Education:

University of California at Santa Barbara, B.A., 1968

Arizona State University College of Law, J.D., 1971

Professional Career:

Law clerk, Hon. Lorna Lockwood, Supreme Court of Arizona, 1971-1972

Private practice, Phoenix, Arizona, 1972-1974

Advisor and litigator, Education Division, Native American Rights Fund, Navajo Nation, 1974-76

In house labor counsel, Greyhound Corporation, 1976-1978

Private practice, Phoenix, Arizona, 1978-1979

Trial attorney, Equal Opportunity Commission, 1979-1980

Assistant state attorney general, Arizona, 1984-1986

Assistant U.S. attorney, District of Arizona, 1980-1984, 1986-1994

Chief of criminal division, 1989-1994

Appointed as Roslyn Moore-Silver

The Honorable Susan R. Bolton

Born 1951 in Philadelphia, PA

Federal Judicial Service:

Judge, U. S. District Court, District of Arizona

Nominated by William J. Clinton on July 21, 2000, to a seat vacated by Robert C. Broomfield; Confirmed by the Senate on October 3, 2000, and received commission on October 13, 2000.

Education:

University of Iowa, B.A., 1973

University of Iowa College of Law, J.D., 1975

Professional Career:

Law clerk, Hon. Laurance T. Wren, Arizona Court of Appeals, 1975-1977

Private practice, Phoenix, Arizona, 1977-1989

Judge, Arizona Superior Court for Maricopa County, 1989-2000