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From Hero to Villain: The Corresponding Evolutions of Model Ethical Codes and the Portrayal of Lawyers in Film

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I. INTRODUCTION

It should come as no surprise that lawyers and courtrooms are frequent topics on the silver screen. The adversarial nature of trials is inherently dramatic, and that nature—pitting one side against another in an effort to expose or obfuscate the truth—means that trials are equally suited to both “morality plays,” in which the righteous prevail and the guilty are punished, and more complex dramas, in which the nature of truth itself is under as much scrutiny as the evidence before the court. Lawyers, too, are easy targets for the screenwriter’s and director’s commentary due to the multifaceted roles they can play in the legal system: devoted advocate (for good or ill), passionate activist, and reluctant hero.

The portrayal of lawyers in film has changed over time, a transition that has not gone unnoticed by scholars.¹ Lawyers in Hollywood movies (“movie-lawyers”) made in the 1950s and 1960s were almost universally just and moral men,² even when they were on the losing end of their courtroom battle.³ In movies made in the 1990s, the lawyer-hero was a much rarer character, and lawyers were much more often depicted as either comic buffoons⁴ or incompetent or corrupt hired guns selling their services to the highest bidder, regardless of ethical concerns.⁵

There are undoubtedly a number of causes for this evolution, and pinpointing the particular reasons is beyond the scope of this article. However, an interesting correlation appears when samples of movies from the middle and end of the twentieth century are examined in conjunction with the model code of ethics endorsed by the American Bar Association (ABA) in effect at the time those movies were made. Specifically, as lawyers in film became less admirable, the ABA’s model codes of ethics were likewise becoming less aspirational. For scholars interested in examining the portrayal of lawyers in film or the evolution of legal ethics, this correlation presents an interesting, new area of study.

This article is intended to begin an exploration of this correlation. In Part II, selected movies from the 1950s and 1960s are compared with the Canons of Legal Ethics. In Part III, selected movies from the 1990s are compared with the Model Rules of Professional Responsibility. The movies were selected based on the emphasis

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1. See, e.g., PAUL BERGMAN & MICHAEL ASIMOW, REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES (2d ed. 2006); Michael Asimow, *Lawyers and Popular Culture: Bad Lawyers in the Movies*, 24 NOVA L. REV. 533 (2000); Carrie Menkel-Meadow, *Can They Do That? Legal Ethics in Popular Culture: Of Characters and Acts*, 48 U.C.L.A. L. REV. 1305 (2001).
 2. The gender-specific noun is appropriate here, as most, if not all, lawyers in movies of the 1950s and 1960s were male.
 3. See, e.g., CAPE FEAR (Melville-Talbot Productions 1962); COMPULSION (20th Century Fox 1959); JUDGMENT AT NUREMBERG (Roxlom Films Inc. 1961); TO KILL A MOCKINGBIRD (Universal Pictures 1962).
 4. See, e.g., LIAR LIAR (Universal Pictures 1997); MY COUSIN VINNY (20th Century Fox 1992).
 5. See, e.g., CAPE FEAR, *supra* note 3; SLEEPERS (Warner Bros. Pictures 1996); THE DEVIL’S ADVOCATE (Warner Bros. Pictures 1997).

of the law and attorneys in the plot, box office performance, and critical acclaim.⁶ While the sample size of movies surveyed in this article is limited, the correlation between the respectability of the lawyers portrayed in films and the aspirational nature of model ethical code in effect at the time is nonetheless clear.⁷

II. THE 1950s AND 1960s: THE CANONS OF LEGAL ETHICS AND THE HEROIC MOVIE-LAWYER

The ABA established its first code of conduct, called the Canons of Legal Ethics (the “Canons”), in 1908. With only a few amendments, the Canons remained in place until 1969.⁸ Prior to the passage of the Canons, some commentators suggested that the administration of justice was too contentious. In 1905, for example, President Theodore Roosevelt called lawyers “hired cunning” and disparaged them for thwarting the public interest in favor of lucrative representations of the wealthy.⁹ At an ABA convention the next year, then-dean of University of Nebraska College of Law, Roscoe Pound, advocating for reform, said:

The idea that procedure must of necessity be wholly contentious disfigures our judicial administration at every point. . . . It leads counsel to forget that they are officers of the court and to deal with the rules of law and procedure exactly as the professional football coach deals with the rules of the sport. It leads to exertion to “get error into the record” rather than to dispose of the controversy finally and upon its merits. It turns witnesses, and especially expert witnesses, into partisans pure and simple. It leads to sensational cross-examination “to affect credit,” which have made the witness stand “the slaughterhouse of reputations.” It prevents the trial court from restraining the bullying of witnesses and creates a general dislike, if not fear, of the witness function which impairs the administration of justice The effect of our exaggerated contentious procedure is not only to irritate parties, witnesses and jurors in particular cases, but to give the whole community a false notion of the purpose and end of law.¹⁰

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6. Box office information was received from VARIETY.COM, www.variety.com (last visited Mar. 23, 2011) and WORLD BOX OFF., www.worldboxoffice.com (last visited Mar. 23, 2011) on October 7, 2002. However, according to variety.com, domestic box office totals are not complete prior to 1994. Therefore, this study only considered box office information for the films of the 1990s. Critical acclaim was measured by the number of Academy Award nominations and wins a film had; this information was received from PAUL BERGMAN & MICHAEL ASIMOW, REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES (2d ed. 2006) and from *Academy Awards, The Oscars, Introduction*, FILMSITE.ORG, <http://www.filmsite.org/oscars.html#history> (last visited Mar. 23, 2011).
 7. Please note that, although lawyers in movies of the earlier period were not universally admirable, neither were lawyers in movies of the later period universally deplorable.
 8. MODEL RULES OF PROF'L CONDUCT preface, at ix-x (2009).
 9. See James M. Altman, *Considering the A.B.A.'s 1908 Canons of Ethics*, 71 *FORDHAM L. REV.* 2395, 2399 (2003).
 10. Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 *A.B.A. REP.* 395 (1906), *quoted in* John M. Barkett, *From Canons to Cannon*, in *A CENTURY OF LEGAL ETHICS*:

FROM HERO TO VILLAIN

The preamble of the Canons states that “[t]he future of the Republic, to a great extent, depends upon our maintenance of Justice pure and unsullied. . . . It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.”¹¹ The preamble’s lofty language suggests that at least one purpose of the Canons was to combat the “disfiguring” of the judicial process to which Pound had referred.¹²

From the preamble to the final canon, the Canons emphasize integrity and honor. Instead of imposing specific requirements on lawyers, the Canons are infused with aspirational language of respect,¹³ fairness,¹⁴ restraint,¹⁵ and above all, duty.¹⁶ They warn lawyers against “unprofessional,” “dishonorable,” or “disreputable” conduct¹⁷ and counsel lawyers to aspire to uphold the honor of the legal profession and act according to conscience rather than blindly follow a client’s wishes.¹⁸ Even where lawyers were advised to avoid particular conduct, the Canons recommended rather than proscribed.¹⁹ The Canons were thus a kind of honor code rather than a rigid set of rules, charging each lawyer to “find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.”²⁰

So many lawyers in the movies of the 1950s and 1960s embodied the Canons’ aspirations so perfectly that it is easy to imagine that moviemakers had those ideals in mind when creating these characters. There is no evidence filmmakers were influenced by the Canons, however, and it is much more likely that the lawyer-hero ideal of films produced in this period was due, at least in part, to Hollywood’s Production Code of 1930, sometimes referred to as the Hays Code.²¹ In addition to containing numerous rules governing the portrayal of sex, nudity, and the use of liquor or harsh language, the Production Code required filmmakers to portray courts and law enforcement as just and to refrain from showing sympathy for crime or

TRIAL LAWYERS AND THE ABA CANONS OF PROFESSIONAL ETHICS 161, 164–65 (Lawrence J. Fox et al. eds., 2009).

11. CANONS OF PROF’L. ETHICS pmbl. (1908).

12. *Supra* note 10.

13. *See, e.g.*, CANONS OF PROF’L. ETHICS Canons 3, 17, 18 (1908).

14. *See, e.g., id.* Canons 18, 22.

15. *See, e.g., id.* Canons 15, 16, 23.

16. *See, e.g., id.* Canons 1–2, 5–6, 8–9, 11, 21, 28, 30, 32.

17. *See, e.g., id.* Canons 22–23, 25–28.

18. *See, e.g., id.* Canons 15–16, 29, 31–32.

19. *Compare, e.g., id.* Canon 10 (stating that a lawyer “should not” acquire an interest in the subject matter of a litigation), *with* MODEL RULES OF PROF’L CONDUCT R. 1.8(a) (2009) (“A lawyer *shall not* enter into a business transaction with a client or knowingly acquire an ownership . . . interest adverse to a client . . .” (emphasis added)).

20. CANONS OF PROF’L ETHICS Canon 32 (1908).

21. BERGMAN & ASIMOW, *supra* note 1, at 69–71.

ridiculing the law.²² These provisions of the Production Code may have influenced the portrayal of lawyers in film by encouraging filmmakers to portray professionally admirable and morally upright lawyers or, if the filmmakers' projects featured bad lawyers, also showing appropriate punishment.²³

The Production Code had its roots in a 1915 U.S. Supreme Court decision holding that motion pictures were not an art form and thus not entitled to the free speech protections that other media, such as books, enjoyed.²⁴ As a result, executives in the movie industry, seeking to derail state and federal attempts to regulate or censor films, formed a trade association²⁵ and implemented the Production Code, which required all films shown in U.S. theaters to have the trade association's certificate of approval.²⁶ Although compliance with the Production Code was supposedly voluntary, it was strictly enforced for many years, meaning that no film could be shown in the United States without trade association approval.²⁷ Enforcement began to wane in the 1950s after the Supreme Court held that movies were, in fact, entitled to free speech protections,²⁸ and filmmakers and theaters became more willing to make and exhibit films without trade association approval.²⁹ Despite the reduction in enforcement, the Production Code still influenced films up until 1968, when it was replaced by the ratings system that is still in use today.³⁰ However, even if filmmakers were not aware of, or influenced by, the Canons, a survey of films from the period suggests that, whether moviemakers were aware of the Canons or not, their movies' lawyers tended to abide by the Canons' ethical guidelines.

Atticus Finch of 1962's *To Kill a Mockingbird*³¹ is so nearly the archetype of the just and honest lawyer that he could have been emblazoned on the Canons' cover. Finch, a liked and respected small-town lawyer in 1930s Alabama, was defense counsel to a black man, Tom Robinson, who was accused of raping Mayella Ewell, a white woman.³² Finch's energetic defense of Robinson calls to mind Canon 4, which reminds lawyers who serve as counsel for the indigent to "always exert [their] best

22. Matt Bynum, *The Motion Picture Production Code of 1930 (Hays Code)*, ARTSREFORMATION.COM (Apr. 12, 2006), <http://www.artsreformation.com/a001/hays-code.html>.

23. BERGMAN & ASIMOW, *supra* note 1, at 570–71.

24. *Mut. Film Corp. v. Indus. Comm. of Ohio*, 236 U.S. 230 (1915), *overruled by* *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952).

25. Then known as Motion Pictures Producers and Distributors Association; now called the Motion Picture Association of America.

26. See BERGMAN & ASIMOW, *supra* note 1, at 69; Bob Mondello, *Remembering Hollywood's Hays Code, 40 Years On*, NAT'L PUB. RADIO (Aug. 8, 2008), <http://www.npr.org/templates/story/story.php?storyId=93301189>.

27. Mondello, *supra* note 26.

28. *Joseph Burstyn*, 343 U.S. 495.

29. Mondello, *supra* note 26.

30. See BERGMAN & ASIMOW, *supra* note 1, at 70.

31. *TO KILL A MOCKINGBIRD*, *supra* note 3.

32. *Id.*

efforts in [the client's] behalf."³³ Finch may have saved his best work on behalf of his client for the courtroom, but he also invested his personal time in (and risked his own safety for) his client as well, something best demonstrated by his willingness to stand guard outside the town jail in order to protect Robinson from a lynch mob.³⁴

Finch, however, never took his defense of Robinson too far. His cross-examination of the prosecution's witnesses was polite, in accordance with Canon 18, which recommended that lawyers "always treat adverse witnesses and suitors with fairness and due consideration."³⁵ Finch also did not allow his zealous representation of Robinson to color his interactions with the prosecution, as he continually treated opposing counsel with courtesy.³⁶ As Canon 17 advised, Finch did not let any feelings he may have had toward opposing counsel influence his conduct or demeanor.³⁷

While criminal defense was not Finch's usual work, he brought to his defense the "warm zeal" that Canon 15 admonished lawyers to use in the maintenance and defense of the client's rights.³⁸ His closing statement was a moment of soaring oratory, pleading for justice on Robinson's behalf.

Now, gentlemen, in this country, our courts are the great levelers In our courts, all men are created equal. I'm no idealist to believe firmly in the integrity of our courts and of our jury system—that's no ideal to me. That is a living, working reality! Now I am confident that you gentlemen will review, without passion, the evidence that you have heard, come to a decision and restore this man to his family. In the name of God, do your duty. In the name of God, believe Tom Robinson.³⁹

While Finch undoubtedly brought the "warm zeal" to his fight for Robinson that the Canons recommended,⁴⁰ his battle was not for Robinson alone, but for the principles of equality and justice, the ability to hold his head up before his family and his town—in short, it was a battle for the "honor of his profession" and his own "reputation for fidelity . . . as an honest man," just as the Canons envisioned.⁴¹

It must be noted, however, that Finch does commit at least one serious ethical violation, albeit one that goes relatively unnoticed in scholarly commentary on the case. Under Canon 32, no lawyer should render "any service or advice involving disloyalty to the law whose ministers we are."⁴² Yet Finch does exactly that when he agrees to cover up the identity of Bob Ewell's killer in order to protect a local recluse

33. CANONS OF PROF'L ETHICS Canon 4 (1908).

34. TO KILL A MOCKINGBIRD, *supra* note 3, at 1:02:00.

35. CANONS OF PROF'L ETHICS Canon 18 (1908).

36. TO KILL A MOCKINGBIRD, *supra* note 3.

37. CANONS OF PROF'L ETHICS Canon 17 (1908); TO KILL A MOCKINGBIRD, *supra* note 3.

38. CANONS OF PROF'L ETHICS Canon 15 (1908).

39. TO KILL A MOCKINGBIRD, *supra* note 3, at 1:37:07.

40. CANONS OF PROF'L ETHICS Canon 15 (1908).

41. *Id.* Canon 32.

42. *Id.*

from unwanted publicity as a hero.⁴³ Articles referencing Finch are much more likely to describe Finch as a “good, virtuous lawyer,”⁴⁴ “highly ethical, devoted, and talented,”⁴⁵ or “heroic,”⁴⁶ rather than to mention this transgression. Even when the cover-up is mentioned, scholars are quick to leap to Finch’s defense.⁴⁷ Perhaps because the cover-up was done to protect a helpless hermit, or perhaps because he otherwise so perfectly embodies the ideal of an ethical lawyer, it seems Finch can do no wrong in the eyes of most of his true-life colleagues.

While Atticus Finch might be among the more popular movie-lawyers of the 1960s,⁴⁸ he was not the only lawyer hero fighting for “[j]ustice, pure and unsullied” on the silver screen.⁴⁹ Defense attorney Jonathan Wilk in 1959’s *Compulsion* is another such character.⁵⁰ Wilk, hired by the families of two young law students who were accused of murder, was not liked by anyone: not his clients, who believed him to be intellectually inferior to them; not their families (who were paying for the boys’ defense), who refer to Wilk as “that atheist,” “a skeptic who makes a mockery of religion,” a charlatan, and a lying drunk; and not the townspeople, who dress up in Ku Klux Klan uniforms and burn a cross outside his residence.⁵¹ If the townspeople sought to terrorize Wilk, however, they failed, as his only response to the burning cross was to comment dryly that “it’s much too warm for an open fire” and that he was not worried about people whose response to an emotional situation “is to pull a sheet over their heads.”⁵²

At least in his clients’ families’ view, Wilk may not be the man of “highest honor” as described in Canon 32, though they do seem to find him to be the lawyer described in the Canons’ preamble, a lawyer with motives “such as to merit the approval of all just men.”⁵³ He is, as the father of one of the defendants put it, “the best trial lawyer in the country, . . . and he’s fought capital punishment all his life.”⁵⁴ Wilk was as

43. TO KILL A MOCKINGBIRD, *supra* note 3, at 2:06:00.

44. Lea B. Vaughn, *A Few Inconvenient Truths About Michael Crichton’s State of Fear: Lawyers, Causes and Science*, 20 SETON HALL J. SPORTS & ENT. L. 49, 69 n.107 (2010).

45. Michael Moffitt, *Three Things to Be Against (“Settlement” Not Included)*, 78 FORDHAM L. REV. 1203, 1236 (2009).

46. *See, e.g.*, Harper Estes, *Texas Legal Legends: My Heroes Have Always Been Lawyers*, 72 TEX. B.J. 556, 556 (2009).

47. *See, e.g.*, Bill Haltom, *But Seriously Folks: The Trial of Atticus Finch*, 45 TENN. B.J. 34, 35 (2009); Orit Kamir, *Michael Clayton, Hollywood’s Contemporary Hero-Lawyer: Beyond Outsider Within and Insider Without*, 42 SUFFOLK U. L. REV. 829, 837 (2009).

48. A Westlaw search for “Atticus Finch” in all law reviews and journals, run May 11, 2010, returned 704 articles; a search with the same parameters for “To Kill a Mockingbird” returned 782.

49. CANONS OF PROF’L ETHICS pmbl. (1908).

50. COMPULSION, *supra* note 3.

51. *Id.* at 1:05:22, 1:14:22.

52. *Id.* at 1:14:56.

53. *Id.* at 1:05:22; CANONS OF ETHICS pmbl., Canon 32 (1908).

54. COMPULSION, *supra* note 3, at 1:05:26.

unconcerned about his clients' actual guilt or innocence as he was about their personal disdain for him; perhaps even more than Finch, Wilk's concern was for justice.⁵⁵ Believing that his clients had no chance at being found not guilty, he entered guilty pleas on their behalf to move the proceeding straight to sentencing (which would be handled solely by the judge, rather than a jury) and attempted to save his clients from the gallows.⁵⁶ In his powerful closing statement to the judge, Wilk demands:

Isn't a lifetime behind prison bars enough for this mad act? Must this great public be regaled with a hanging? For the last three weeks I've heard nothing but the cry of blood in this room . . . Your Honor, if you hang these boys, you turn back to the past. I'm pleading for the future . . . when we can learn that all life is worth saving, and that mercy is the highest attribute of man. Yes, I'm pleading for the future. In this court of law, I'm pleading for love.⁵⁷

Wilk took to heart Canon 5's principle that lawyers have the right to defend the accused and use all fair and honorable means to present all legal defenses, regardless of the lawyer's opinion on their guilt or innocence.⁵⁸ Additionally, like Finch, Wilk also personified Canon 15's standard that lawyers owe their "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability."⁵⁹

Ethically speaking, Wilk was not perfect. Under Canon 8, Wilk was "bound to give a candid opinion on the merits and probable results" to his clients about the trial, and he was permitted to advise his clients to avoid the trial by pleading guilty.⁶⁰ However, the decision whether or not to do so was his clients' decision, not his.⁶¹ Wilk ignored this ethical principle and made the decision on his own, substituting his own judgment for that of his clients. He also spoke to the press about the case, in violation of Canon 20—although this violation was, if not excusable, at least understandable, as Wilk arrived in town to take the case only to discover the prosecutor giving a press conference about it. Wilk was a flawed character, much more so than Finch, but the net result is, like Finch, a movie-lawyer embodying Canon 32 and its provisions that a lawyer "advances the honor of his profession" when he undertakes "exact compliance with the strictest principles of moral law."⁶² No doubt Wilk, with his career-long fight against the death penalty on moral grounds, would agree he acted out of devotion to public duty.

55. *Id.* at 1:05:26.

56. *Id.*

57. *Id.*

58. CANONS OF PROF'L ETHICS Canon 5 (1908).

59. *Id.* Canon 15.

60. *Id.* Canon 8.

61. *See id.* (stating that, whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation).

62. *Id.* Canon 32.

The character Henry Drummond in 1960's *Inherit the Wind* was, like Wilk, more interested in a moral cause than in any one individual case.⁶³ Drummond was hired to represent Bert Cates, a small-town schoolteacher in the South charged with violating state law by teaching the theory of evolution.⁶⁴ Also like Wilk, Drummond was disliked by his own client, who resented his situation and was not shy about expressing it; at one point he shouted at a reporter: "To you, I'm a headline! To him [Drummond], I'm a cause!"⁶⁵

Drummond was indeed involved with Cates's case out of principle: he saw Cates's case as an opportunity to challenge a state law that, as he put it, circumscribed peoples' right to think.⁶⁶ He waxed idealistic in court, insisting that "[f]anaticism and ignorance is [sic] forever busy and needs feeding."⁶⁷ Soon, he said, they would be marching backwards to the sixteenth century where bigots burned men for disagreeing with the mob.⁶⁸ Like Finch and Wilk, Drummond embraced the "warm zeal" of Canon 15.⁶⁹

Drummond's opposition, Matthew Brady, was more of a central character than the opposing counsel in *To Kill a Mockingbird* or *Compulsion* and, interestingly, unlike many other movie-lawyers of the 1950s and 1960s, he was not portrayed positively.⁷⁰ One character described Brady as "the only man I know who can strut sitting down,"⁷¹ and during a direct examination, he browbeat one of his own witnesses until she cried.⁷² Brady clearly took the "warm zeal" prescript of Canon 15 too far.

Movie-lawyers of the 1950s and 1960s may not have been in perfect compliance with the Canons, but they did tend to be virtuous and admirable. Further, their conduct was usually consistent with the recommendations of the Canons. Between this period and the 1990s, however, the portrayal of lawyers in movies became increasingly negative. The contrast between these honorable men of justice and the movie-lawyers of the 1990s, as well as the contrast between their levels of compliance with ethical codes, is stark.

63. *INHERIT THE WIND* (Stanley Kramer Productions 1960).

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *CANONS OF PROF'L ETHICS* Canon 15 (1908).

70. In addition to the films discussed herein, see *COUNT THE HOURS* (RKO Radio Pictures 1953); *WITNESS FOR THE PROSECUTION* (Edward Small Productions 1957); *THE YOUNG PHILADELPHIANS* (Warner Bros. Pictures 1959); *CAPE FEAR*, *supra* note 3; *JUDGMENT AT NUREMBERG*, *supra* note 3.

71. *INHERIT THE WIND*, *supra* note 63.

72. *Id.*

III. THE 1990s: THE MODEL CODE OF LEGAL ETHICS AND THE DESPICABLE MOVIE-LAWYER

The Canons were superseded by the ABA's Model Code of Professional Responsibility (the "Model Code") in 1969.⁷³ As the ABA's Commission on Professionalism put it, the message of the Canons "was lofty, but hard to enforce. . . . [B]oth more formal disciplinary procedures and more precise statements of professional standards were required."⁷⁴ The Model Code was in turn replaced by the Model Rules of Professional Responsibility (the "Model Rules") in 1983.⁷⁵ While the Model Rules and the Canons address many of the same topics, such as conflicts of interest and setting fees, the Model Rules are, unlike the Canons, a system of detailed rules that prescribe certain types of conduct and proscribe others. The ABA intended the Model Rules to be more easily understood, followed, and enforced than the more aspirational, but less specific, principles of the Canons.⁷⁶ For example, the Canons state only that it is the lawyer's duty to disclose conflicts to the client, that it is "unprofessional" to represent parties with conflicting interests without their informed consent, and that lawyers are obligated not to represent parties with adverse interests.⁷⁷ In contrast, the Model Rules specifically define the circumstances under which a concurrent conflict of interest will exist, as well as when and under what circumstances the lawyer can seek the client's informed consent to waive the conflict; the Model Rules provide over a dozen pages of comments further explaining the rules that address conflicts of interest.⁷⁸

The ABA believed the Canons—and later the Model Code—needed significant revision and updating because of the dramatic changes the legal profession underwent in the second half of the twentieth century.⁷⁹ Indeed, the profession changed radically during the second half of the twentieth century. First, the number of practitioners increased substantially. In 1960, there were 286,000 people employed in the legal profession in the United States.⁸⁰ By 1999, the profession employed 946,000 people.⁸¹ Second, salaries rose exponentially during that time. In 1953, lawyers starting at large, prominent firms could expect to make \$4000 per year;⁸² in 1994, starting salaries at large law firms could top \$70,000 per year, and reached almost \$100,000

73. MODEL RULES OF PROF'L CONDUCT preface, at x (2009).

74. ABA, COMM'N ON PROFESSIONALISM, REPORT TO THE HOUSE OF DELEGATES, 112 F.R.D. 243, 258 (1986) [hereinafter ABA REPORT ON PROFESSIONALISM].

75. MODEL RULES OF PROF'L CONDUCT preface at ix–x (2009).

76. Barkett, *supra* note 10, at 206 n.141 (citing ABA REPORT ON PROFESSIONALISM, *supra* note 74).

77. CANONS OF PROF'L ETHICS Canon 6 (1908).

78. MODEL RULES OF PROF'L CONDUCT R. 1.7 cmts. 1–35, 1.8 cmts. 1–20 (2009).

79. ABA REPORT ON PROFESSIONALISM, *supra* note 74, at 254–55.

80. LAWRENCE BAUM, AMERICAN COURTS: PROCESS AND POLICY 60 (5th ed. 2001).

81. *Id.*

82. MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 24 (1991).

by the end of the decade.⁸³ Third, large law firms grew and multiplied during the second half of the twentieth century.⁸⁴ This changed the practice of law by emphasizing advice over oratory and encouraging lawyers to be primarily business advisors instead of courtroom advocates.⁸⁵ Law firms encouraged different values in attorneys; their best attorneys “devote themselves to study of the interests of particular clients Their interest centers wholly in an individual client or set of clients, not in the general administration of justice.”⁸⁶

These changes in the legal profession, which contributed to the demise of the Canons and the implementation of the Model Code, coincidentally overlapped with the demise of Hollywood’s Production Code, which was replaced with the modern movie rating system in 1968.⁸⁷ No longer under the restraints of the Production Code, moviemakers were free to portray lawyers in whatever way that suited the needs of the stories they wished to tell. By the 1990s, lawyers in movies were often villains, antiheroes, or the butt of jokes.⁸⁸ “They tend to be rude, crass, selfish, and greedy,” wrote one scholar.⁸⁹ “If you’re looking for an honest, hard-working lawyer, look elsewhere; many of the post-1970 attorneys are unethical, disloyal, or incompetent.”⁹⁰ Because 1990s movie-lawyers are much more likely than their 1950s and 1960s counterparts to play a negative character,⁹¹ they had no trouble finding their way around—or blasting holes right through—the ethical requirements of the Model Rules.

Vincent Gambini in 1992’s *My Cousin Vinny* is one prominent example of an unethical lawyer played for laughs. Gambini was a Brooklyn lawyer who traveled to Alabama to defend two young men, one of whom is his cousin, on trial for murder.⁹² While much of the comedy derives from Gambini’s initial incompetence and near-miraculous turnaround, Gambini did commit two egregious ethical violations during the course of his representation of the boys.

83. *What Do New Lawyers Earn? A 15-Year Retrospective 1994–2008*, NAT’L ASS’N FOR LAW PLACEMENT, INC., <http://www.nalp.org/aug09newlawyersal> (last visited Feb. 25, 2011).

84. GALANTER & PALAY, *supra* note 82, at 46–47.

85. *Id.* at 5–6.

86. *Id.* at 6–7.

87. BERGMAN & ASIMOW, *supra* note 1, at 69–70.

88. See, e.g., CAPE FEAR, *supra* note 3; THE DEVIL’S ADVOCATE, *supra* note 5; SLEEPERS, *supra* note 5; LIAR LIAR, *supra* note 4; MY COUSIN VINNY, *supra* note 4.

89. Asimow, *supra* note 1, 576–77.

90. *Id.* at 577.

91. Compare LIAR LIAR, *supra* note 4, MY COUSIN VINNY, *supra* note 4, CAPE FEAR, *supra* note 3, THE DEVIL’S ADVOCATE, *supra* note 5, SLEEPERS, *supra* note 5, and THE FIRM (Paramount Pictures 1993), with TO KILL A MOCKINGBIRD, *supra* note 3, COMPULSION, *supra* note 3, and JUDGMENT AT NUREMBERG, *supra* note 3. See also A FEW GOOD MEN (Columbia Pictures 1992) (portraying lawyers as, at best, mixed); PHILADELPHIA (TriStar Pictures 1993).

92. MY COUSIN VINNY, *supra* note 4.

First, Gambini was not remotely qualified to represent two criminal defendants facing the death penalty. Gambini, who passed the bar after his sixth try, was an automobile mechanic who planned to specialize in personal injury law and who had yet to try a case at all, much less a capital murder case.⁹³ Model Rule 1.1 requires lawyers to provide *competent* representation, which means the lawyer possesses the “legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”⁹⁴ Gambini’s ineptitude caused him to take serious missteps that, if taken by a real-life lawyer, could conceivably result in sanctions or disbarment. For example, he asked no questions at the arraignment and had no idea he was entitled to receive discovery from the prosecution.⁹⁵

Gambini was also not admitted to practice in Alabama. But instead of properly seeking admission *pro hac vice*—which he probably did not do because he knew that a personal injury lawyer with no trial experience would not be admitted *pro hac vice* for a capital case—he impersonated a prominent New York trial lawyer.⁹⁶ In so doing, he violated both Model Rule 3.3(a), which prohibits lawyers from making false statements to the tribunal, and Model Rule 5.5(a), which prohibits the unauthorized practice of law.⁹⁷ Gambini may have genuinely cared for his clients and sought the best result for them, but there is no doubt he did so in an unethical and impermissible manner.

Interestingly, however, the Gambini character was in some ways a throwback to movie-lawyers of the 1950s and 1960s. He was an “everyman” hero, a down-to-earth, blue-collar man who happened to be a lawyer, a character reminiscent of Atticus Finch and wholly unlike many other 1990s movie-lawyers whose interest in the law stemmed from the massive incomes they could earn.⁹⁸ Gambini was, indeed, a hero, despite his egregious ethical violations and total lack of trial experience, because he rescued his innocent clients from death row. Like Finch, Gambini is hailed as a positive portrayal of lawyers on film, his ethical violations ignored in favor of the fair and just outcome he was able to achieve.⁹⁹

Unethical behavior was at the forefront of the comedy in 1997’s *Liar Liar*. In that movie, attorney Fletcher Reede found himself suddenly unable to lie after his son’s birthday wish—that Reede stop lying—came true, right on the eve of an important case that could be won only if Reede and his client, Samantha Cole, lied during the trial.¹⁰⁰ The film plays on the assumption that lawyers are liars, willing to do or say

93. *Id.*

94. MODEL RULES OF PROF’L CONDUCT R. 1.1 (2009).

95. MY COUSIN VINNY, *supra* note 4.

96. *Id.*

97. MODEL RULES OF PROF’L CONDUCT R. 3.3(a), 5.5(a) (2009).

98. See, for example, the discussion of Martin Vail, *infra* notes 108–29 and accompanying text, and the discussion of Kevin Lomax, *infra* notes 131–50 and accompanying text.

99. BERGMAN & ASIMOW, *supra* note 1, at 101, 111.

100. LIAR LIAR, *supra* note 4.

anything to win a case for their clients. However, Reede's constant lying to his clients and to third parties, in court and out of it, violated a number of the Model Rules. Reede's trial strategy was based on convincing his client that her infidelity was not a violation of her prenuptial agreement, something he accomplishes in the film.¹⁰¹ Under Model Rule 3.1, however, lawyers are prohibited from advancing claims or defenses with no good-faith basis in law and fact, and Reede's actions violate this rule.¹⁰² Reede's plan to have Cole lie about her infidelity also violated Model Rule 3.3, which prohibits lawyers from making false statements to the court or proffering evidence they know to be false.¹⁰³ In fact, simply by knowing that his client intended to lie on the stand and failing to take action to prevent her from doing so, Reede violated Model Rule 3.3(b).¹⁰⁴

Not only is Reede an inveterate liar, his twenty-four hours of forced truth telling failed to elicit a shred of remorse or desire to change. The crisis of conscience he suffered at the end of the film occurred not because of his dishonesty, but because his client then decided to seek full custody of her children, a situation Reede was facing in his personal life.¹⁰⁵ Reede expressed no remorse about any ethical breaches, nor does the film suggest that he had reformed and was newly committed to honesty. When his son asks if Reede can lie again, Reede replied, "Yes, but not to you. I always want to be honest with you,"¹⁰⁶ implying Reede will return to his dishonest ways when back at work. Reede is arguably as negative a portrayal of an attorney as Kevin Lomax in *The Devil's Advocate* (discussed later), as both characters act without regard for ethical rules, apparently without even minimal knowledge of what standards those rules impart and, ultimately, without remorse.

Lawyers in dramas made during the 1990s were no more ethical than their comedic counterparts. Lawyer Martin Vail in 1996's *Primal Fear* was a defense attorney involved in two cases, the first a civil suit in the process of being settled between his client, Joey Pinero, and the city for police brutality, and the second a criminal case in which his client, Allen Stampler, was accused of murdering Archbishop Rushman.¹⁰⁷ Vail was not portrayed as a one-dimensional, wholly unpleasant, unlikeable, or unethical character; he was more complex, clearly motivated by money and yet still idealistic about his role as an attorney. Although he did occasionally abide by the Model Rules, when Vail decided to ignore his ethical obligations, he did so without compunction.

The filmmakers went to extraordinary lengths to emphasize Vail's income and the other characters' belief that Vail's primary motivation was money. Vail was shown

101. *Id.*

102. MODEL RULES OF PROF'L CONDUCT R. 3.1 (2009); LIAR LIAR, *supra* note 4.

103. MODEL RULES OF PROF'L CONDUCT R. 3.3(a) (2009).

104. *Id.* R. 3.3(b).

105. LIAR LIAR, *supra* note 4.

106. *Id.* at 1:18:00.

107. PRIMAL FEAR (Paramount Pictures 1996).

numerous times driving a Mercedes; District Attorney Shaughnessy referred to Vail's "commission" rather than "contingency fee" when discussing settlement of the civil suit; and Assistant District Attorney Janet Venable told Vail that she was still working at the District Attorney's office because, as she put it, "I don't need a Mercedes."¹⁰⁸

Vail admitted that "the money is nice," but he did embrace at least some remnants of the standards of honor and justice found in the now-defunct Canons, particularly Canon 5.¹⁰⁹ His true motivation was not pecuniary, but philosophical, rooted in constitutional law and ideals of justice. When speaking to a reporter, he explained:

I believe in the notion that people are innocent until proven guilty. I believe in that notion because I choose to believe in the basic goodness of people. I choose to believe that not all crimes are committed by bad people. And I try to understand that some very, very good people do some very bad things.¹¹⁰

Like Wilk in *Compulsion*, Vail did not care if his clients were guilty or innocent because he understood and embraced the principle that everyone deserves a defense.

Vail did, at least at times, abide by the ethical requirements of the Model Rules. He recognized, for instance, that he could not make decisions whether to settle civil suits or plea bargain in criminal cases without his client's consent, in accordance with Model Rule 1.2(a).¹¹¹ Consistent with the requirements of Model Rule 1.3, which requires that lawyers act "with reasonable diligence and promptness in representing a client,"¹¹² Vail and his investigator carefully looked for evidence to support the story Stampler offered in his defense. Vail also took Stampler's case *pro bono* in accordance with the recommendation of Model Rule 6.1(a), which asks lawyers to devote fifty hours of legal services per year to people unable to pay or causes primarily devoted to meeting the legal services needs of people of limited means.¹¹³

Although Vail never explicitly discussed his motive in taking Stampler's case *pro bono*, the movie provides hints that his motive was less than honorable. After taking the case, Vail mentioned to a reporter that he likes the publicity inherent in his job, and Venable suggested that Vail took the case in order to sell the publishing rights.¹¹⁴ Under Model Rule 1.8(d), Vail is forbidden from negotiating an agreement with Stampler that would give Vail media rights to a portrayal of the case prior to the conclusion of the representation.¹¹⁵ However, the Model Rules do not prohibit Vail from making agreements with media or literary agents for his own story about the

108. *Id.* at 00:30:17.

109. CANONS OF PROF'L ETHICS Canon 5 (1908); PRIMAL FEAR, *supra* note 107, at 01:21:14.

110. PRIMAL FEAR, *supra* note 107, at 01:21:18.

111. MODEL RULES OF PROF'L CONDUCT R. 1.2(a) (2009).

112. *Id.* R. 1.3(a).

113. *Id.* R. 6.1(a).

114. PRIMAL FEAR, *supra* note 107.

115. MODEL RULES OF PROF'L CONDUCT R. 1.8(a), (c) (2009); *see* PRIMAL FEAR, *supra* 107.

case, assuming he could do so without violating Model Rule 1.6(a), which requires lawyers to keep information about the representation confidential.¹¹⁶

The Model Rules do not prohibit Vail from taking Stampler's case even if he was primarily or wholly motivated by money or publicity (although under the Canons, such conduct would be frowned upon),¹¹⁷ but there are nonetheless numerous other ways Vail violated his ethical duties. Although Vail knew he could not accept a settlement or plea offer without consulting his client, he apparently was unaware that it is also the client's decision to decide whether to plead not guilty.¹¹⁸ Instead, when discussing pleas with Stampler, he told Stampler, "I speak. You do not speak. Your job is just to sit there and look innocent."¹¹⁹ When Stampler insisted that Vail enter a plea of not guilty, Vail brushed off his instructions, telling him, "I'll say whatever I say."¹²⁰

Furthermore, Vail's "reasonable diligence" on behalf of his client went far beyond what the Model Rules permit when he stole a videotape from the crime scene, the contents of which showed a possible motive for the Archbishop's murder.¹²¹ Model Rule 3.4 prohibits lawyers from obstructing another party's access to evidence,¹²² which is precisely what Vail did when he stole the tape.¹²³ When he later decided that it would be more advantageous for him if the prosecution had the tape and introduced it into evidence, Vail had his investigator leave the tape on Venable's doorstep, and Vail later lied to Assistant District Attorney Venable about Vail's involvement with getting the tape to Venable.¹²⁴ While anonymously delivering the tape is not conduct specifically prohibited by the Model Rules, lying about his actions constituted a violation of both Model Rule 3.4(a) and Model Rule 4.1, which requires truthfulness in statements to non-clients.¹²⁵ Vail also engaged in *ex parte* communications with the judge in violation of Model Rule 3.5(b), which prohibits such communications, and attempted to provoke a violent outburst from his client during the trial, thereby violating Model Rule 3.5(d), which prohibits conduct "intended to disrupt a tribunal."¹²⁶

While District Attorney Shaughnessy and Assistant District Attorney Venable are not the focus of the movie, the film nonetheless suggests that they, like Vail, would ignore ethical obligations when necessary. Shaughnessy, who had been close to the murdered Archbishop, insisted for purely personal reasons—vengeance—that

116. MODEL RULES OF PROF'L CONDUCT R. 1.6(a) (2009).

117. CANONS OF PROF'L ETHICS Canon 32 (1908).

118. MODEL RULES OF PROF'L CONDUCT R. 1.2(a) (2009).

119. PRIMAL FEAR, *supra* note 107, at 00:32:15.

120. *Id.* at 00:32:46.

121. *Id.*

122. MODEL RULES OF PROF'L CONDUCT R. 3.4(a) (2009).

123. PRIMAL FEAR, *supra* note 107.

124. *Id.*

125. MODEL RULES OF PROF'L CONDUCT R. 4.1 (2009).

126. *Id.* R. 3.5(d); PRIMAL FEAR, *supra* note 107.

Venable seek the death penalty against Stampler before she even reviewed the file.¹²⁷ Venable's acquiescence to Shaughnessy's instructions suggests a violation of the spirit, if not the letter, of Model Rule 3.8, which prohibits prosecutors from knowingly prosecuting charges not supported by probable cause.¹²⁸ Venable, for her part, failed to show proper respect for the decorum of the tribunal, in violation of Model Rule 3.5(d),¹²⁹ by being continually argumentative and belligerent throughout the trial, culminating in a diatribe against Stampler that exemplified the "bullying of witnesses" and the description of a witness stand as the "slaughterhouse of reputations" that Pound warned against in 1906.¹³⁰

However, the most notorious example of the lawyer antihero can be found in 1997's *The Devil's Advocate*, in which small-town defense attorney Kevin Lomax joined a high-powered New York firm literally run by the devil, as personified in attorney John Milton.¹³¹ Lomax, enticed by Milton's job offer, moved to New York to pursue the riches and power a large law firm could offer him.¹³² Lomax and his fellow movie-lawyers had no trouble conceptualizing the law as a "mere money-getting trade," against which Canon 12 had cautioned lawyers of the early twentieth century.¹³³ Lomax admitted he switched from prosecution to defense because defense paid better, and, as one of the partner's wives told Lomax's wife, "If you're never going to see your husband, you might as well have a relationship with his money."¹³⁴ Unlike the Canons, the Model Rules do not admonish attorneys against this kind of attitude.

Throughout the film, Lomax felt free to violate ethical rules with impunity. He eavesdropped on jury deliberations, a violation of Model Rules 3.4 and 3.5, which require fairness to the opposing party and decorum of the tribunal.¹³⁵ He knew the witness providing a client's alibi was lying and put her on the stand anyway in violation of Model Rule 3.3, which governs candor toward the tribunal.¹³⁶ His response upon learning that Milton was involved in money laundering, selling weapons, and bribing judges was, "What . . . do you want? He's a lawyer!"¹³⁷ even though such conduct violates Model Rule 8.4(b)¹³⁸ and attorneys are required to report ethical violations

127. PRIMAL FEAR, *supra* note 107.

128. MODEL RULES OF PROF'L CONDUCT R. 6.8(a) (2009); PRIMAL FEAR, *supra* note 107.

129. See MODEL RULES OF PROF'L CONDUCT R. 3.5(d) (2009).

130. Barkett, *supra* note 10, at 164–65 (quoting Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 A.B.A. REP. 395 (1906)).

131. THE DEVIL'S ADVOCATE, *supra* note 5.

132. See *id.*

133. CANONS OF PROF'L ETHICS Canon 12 (1908).

134. THE DEVIL'S ADVOCATE, *supra* note 5, at 00:57:03.

135. MODEL RULES OF PROF'L CONDUCT R. 3.4, 3.5 (2009).

136. *Id.* R. 3.3(a)(3).

137. THE DEVIL'S ADVOCATE, *supra* note 5, at 1:47:03.

138. MODEL RULES OF PROF'L CONDUCT R. 8.4(b) (2009) (prohibiting lawyers from "commit[ing] a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects").

under Model Rule 8.3.¹³⁹ Lomax's job was not to pursue justice. As he saw it, his job as a lawyer was to win, no matter what it takes: "I don't lose!" he shouted at Milton, after Milton suggested Lomax could have lost cases instead of using unethical tactics.¹⁴⁰ "I win! I'm a lawyer! That's my job! That's what I do!"¹⁴¹

At the end of the film, it is revealed that Lomax's New York life was a vivid hallucination, and Lomax found himself in the courthouse where the movie begins. Staring at himself in a bathroom mirror, perhaps debating the ethical implications of his choices, Lomax made a critical decision: instead of returning to the courtroom to defend his client, a man he knew was guilty of sexually assaulting children, he requested to be removed as counsel.¹⁴² It is possible that some viewers (particularly viewers uncomfortable with the idea that defense lawyers vigorously defend guilty clients) interpreted Lomax's decision as noble, even heroic. However, his decision actually revealed yet another ethical failing: Lomax abandoned his client at a critical phase of trial. Under Model Rule 1.16(b)(1), "a lawyer may withdraw from representing a client if . . . withdrawal can be accomplished *without* material adverse effect on the interests of the client."¹⁴³ Withdrawing during trial—assuming the judge even allowed Lomax to do so—would cause substantial delay while the defendant engaged new counsel and the new lawyer familiarized himself with the case, postponing the defendant's ability to have his day in court. Furthermore, as the ABA Comment to Rule 1.2 states, "Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval."¹⁴⁴ Certainly a child molester's defense is a controversial cause and subject to popular disapproval, but the accused nonetheless deserves a defense.¹⁴⁵ By withdrawing his representation in the middle of trial, just before he was to cross-examine an important witness for the prosecution, Lomax placed the effective defense of his client in jeopardy and revealed that he had learned nothing from the vision of his downfall.

These movie-lawyers, like many others of the 1990s,¹⁴⁶ could hardly be called paragons of virtue. If they did not lack competence, as Gambini did,¹⁴⁷ they lacked scruples, like Reede and Lomax.¹⁴⁸ Movies of the early 2000s suggest that this trend will only continue, with movie-lawyers like Elle Woods,¹⁴⁹ who blundered her way

139. MODEL RULES OF PROF'L CONDUCT R. 8.3(a) (2009).

140. THE DEVIL'S ADVOCATE, *supra* note 5, at 2:01:17.

141. *Id.* at 2:01:20.

142. *See id.*

143. MODEL RULES OF PROF'L CONDUCT R. 1.16(b)(1) (2009) (emphasis added).

144. *Id.* R. 1.2 cmt. 5.

145. U.S. CONST. amend. VI.

146. Asimow, *supra* note 1, 576–77.

147. MY COUSIN VINNY, *supra* note 4.

148. LIAR LIAR, *supra* note 4; THE DEVIL'S ADVOCATE, *supra* note 5.

149. LEGALLY BLONDE (Metro-Goldwyn-Mayer 2001).

into an acquittal for her client in a manner reminiscent of Gambini, and the defense lawyers of *The Exorcism of Emily Rose*, who ineptly failed to develop a trial strategy until after the prosecution presented its case.¹⁵⁰

IV. CONCLUSION

Because of the adversarial nature of the U.S. legal system, and of litigation in particular, it is no surprise that lawyers and courtroom dramas so frequently find their way to the big screen. The primary duty of these movie-lawyers is to entertain the audience, a concern real-life attorneys rarely, if ever, face. Legal codes of ethics need not constrain the activities of movie-lawyers, who may be ethical or not, depending on the needs of the stories the filmmakers choose to tell.

This article explored a sampling of films that featured lawyers and were produced in the 1950s and 1960s as well as in the 1990s in order to demonstrate the well-documented shift¹⁵¹ from the usually admirable, heroic lawyers of the mid-twentieth-century movies to the generally unethical, unlikable lawyers of the 1990s. Comparing the films with the model codes of ethics endorsed by the ABA at the time the movies were made demonstrates an interesting correlation between the two. That is, the ABA's aspirational Canons were in effect at a time movie-lawyers were usually portrayed positively and as ethical attorneys; but as the ABA abandoned the Canons for more specific and technical ethical rules, movie-lawyers became less likable and less ethical.

While there is no doubt that a variety of factors have influenced the evolution of both the portrayal of lawyers in movies and the model codes of ethics endorsed by the ABA, and while it is unlikely that one evolution had a direct influence on the other, the simultaneous evolutionary shifts over time present an interesting and, as yet, largely unexplored area of study for legal scholars and sociologists interested in the portrayal of the profession and the profession's evolving ethical responsibilities.

150. THE EXORCISM OF EMILY ROSE (Screen Gems 2005).

151. See, e.g., BERGMAN & ASIMOW, *supra* note 1; Asimow, *supra* note 1; Menkel-Meadow, *supra* note 1.