

# THE CELLULOID ADVOCATE: THE EVOLUTION OF THE TWENTIETH CENTURY CINEMATIC LAWYER

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*I may not know much of law, Mr. Felder, but I know what's right and what's wrong! And I know what you're asking that's wrong!*

—Abraham Lincoln, *Young Mr. Lincoln* (1939).

*. . . [T]he first rule of being a lawyer—what we think doesn't matter.*

—Bobby, *Double Jeopardy* (1999).

## I. INTRODUCTION

Vincent Gambini.<sup>1</sup> Elle Woods.<sup>2</sup> Harvey Dent.<sup>3</sup> Tom Hagen.<sup>4</sup> Atticus Finch.<sup>5</sup> Cinematic lawyers, with their dichotomous displays of honorable intentions and moral turpitude, have arrested audiences for nearly a century. From the nickelodeons and movie palaces that boomed during the 1920s and 1930s<sup>6</sup> to cable television in the 1980s and 1990s, screens popped with tales of law and order—captivating viewers with the inherent confrontation and conflict faced by attorneys in their everyday lives.<sup>7</sup> Since nearly everyone

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\* Class of 2018, University of Southern California Gould School of Law; B.A. Critical Studies, University of Southern California School of Cinematic Arts; Managing Editor, Southern California Interdisciplinary Law Journal, Vol. 27. I am indebted to my family for instilling and, most importantly, indulging my movie habit; and, to the Blockbuster clerks who routinely skirted company policy and let an unsupervised eight-year-old rent everything from *Alien* to *Zoolander*. Further, I am grateful to Professor Robert Rasmussen for his guidance and continued encouragement of my idiosyncratic topic and to Dr. Drew Casper for his advice and erudition about the New Hollywood era of American cinema.

<sup>1</sup> *MY COUSIN VINNY* (Twentieth Century Fox 1992).

<sup>2</sup> *LEGALLY BLONDE* (Metro-Goldwyn-Mayer 2001).

<sup>3</sup> *THE DARK KNIGHT* (Warner Bros. 2008).

<sup>4</sup> *THE GODFATHER* (Paramount Pictures 1972).

<sup>5</sup> *TO KILL A MOCKINGBIRD* (Universal Pictures 1962).

<sup>6</sup> KRISTIN THOMPSON & DAVID BORDWELL, *FILM HISTORY: AN INTRODUCTION* 26–28, 301 (3d ed. 2010).

<sup>7</sup> Michael Asimow, *When Lawyers Were Heroes*, 30 U.S.F. L. REV. 1131, 1132 (1995).

has “read or watched multiple trials in the courthouses of popular culture,”<sup>8</sup> legal films and attorney characters play an important societal role in shaping our perception of the law and the profession. For instance, movies such as *In Cold Blood* (1967), and *Philadelphia* (1993) democratized challenging social issues including capital punishment and HIV/AIDS respectively;<sup>9</sup> and, positive role models such as Perry Mason and Atticus Finch who “fought hard but fair in court” and “[sprung] to the defense of the downtrodden, battl[ed] for civil liberties, or single-handedly prevent[ed] injustice”<sup>10</sup> inspired generations of budding lawyers. Due to our institutional reliance on the justice system and fascination with popular culture, Hollywood’s portrayal of the law and legal profession casts a striking, looming influence over our perception of American justice—one that has changed significantly over time.

Akin to the dedicated police detective, the debonair spy, or the femme fatale, the cinematic lawyer has withstood tumultuous shifts in audience tastes, industrial practices, and filmmaking styles during the twentieth century of American film. However, unlike stock characters with prescribed traits and motivations, movie lawyers remained easily amenable to the rampant cultural and artistic changes predominant amongst the studios, filmmakers, and society at large. As a result, on-screen lawyers—throughout a variety of genres including thrillers, comedies, and stalwart courtroom dramas—evolved dramatically over the changing industrial phases of Hollywood and mirror neatly the turbulent production priorities, societal fancies, and cinematic styles prevalent during their respective eras.

This Note will outline the social mores, industrial hallmarks, and filmmaking styles of three distinct phases of American film: (1) the Classical/Studio Age (1927–1945), (2) the Postwar Era (1946–1966), and (3) the New Hollywood Revolution (1967–1980); and, analyze how a movie from each period—*Young Mr. Lincoln* (1939),<sup>11</sup> *Anatomy of a Murder* (1959),<sup>12</sup> and . . . *And Justice for All* (1979)<sup>13</sup>—utilizes the cultural and filmic tenets prevalent during their respective eras to comment on the law and legal profession. These filmic case studies, each released twenty years apart, will showcase Hollywood’s love-hate relationship with the law as the celluloid lawyer devolves from a hallowed role model to a cautionary warning about the entrenched moral corruption and hypocrisy of the law and legal profession in modern society.

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<sup>8</sup> David Ray Papke, *Conventional Wisdom: The Courtroom Trial in American Popular Culture*, 82 MARQ. L. REV. 471, 471 (1998).

<sup>9</sup> IN COLD BLOOD (Columbia Pictures 1967); PHILADELPHIA (TriStar Pictures 1993).

<sup>10</sup> Asimow, *supra* note 7, at 1132.

<sup>11</sup> YOUNG MR. LINCOLN (Twentieth Century Fox 1939).

<sup>12</sup> ANATOMY OF A MURDER (Columbia Pictures 1959).

<sup>13</sup> . . . AND JUSTICE FOR ALL (Columbia Pictures 1979).

## II. THE CLASSICAL/STUDIO ERA: 1927–1945

## A. THE ORIGINS OF CINEMA: PRECONDITIONS FOR THE CLASSICAL/STUDIO ERA

## 1. The Birth of Cinema in the 1890s

Although Thomas Edison pioneered projection of the moving image with the Kinetoscope—a “peephole device” developed in the late-1890s “that ran film through a series of rollers” and projected short excerpts of “vaudeville acts, or performances by dancers or acrobats”—cinema, as we know it today, emerged in 1890s France.<sup>14</sup> In 1896, the Lumière brothers, now regarded as the godfathers of cinema, invented the Cinématographe—a portable motion picture camera and projection device that used “35mm film,” which remains the dominant celluloid format to this day.<sup>15</sup> Due to the Cinématographe’s ease of use and quick and widespread adoption, the production and exhibition of cinema spurred before the start of the twentieth century.

## 2. The Film Industry Begins to Thrive

Moving into the early 1900s, cinema materialized as both an art form and a legitimate business enterprise. Across the world, “theaters were [now] devoted especially to film” and technological advances allowed for the birth of long-form filmmaking.<sup>16</sup> For example, French studios Gaumont and Pathé emerged and produced a series of feature-length literary adaptations; and, in the United States, nickelodeon theaters—smaller movie-houses that charged a nickel per showing—made movie-going an institutional, recreational activity because of their affordability and accessibility.<sup>17</sup> While the United States imported most of its film product during the early 1900s, the American film industry changed dramatically during the 1910s when savvy businessmen—seeking to create and own their own content—made the trek out West to form their own movie studios. By 1920, major studios such as Metro-Goldwyn-Mayer (MGM), Paramount Pictures (Paramount), Twentieth Century Fox (Fox), and Warner Bros.—which all remain in operation today—conquered Hollywood and established the creative and business template for American film.<sup>18</sup> Throughout the 1920s, studio filmmaking expanded significantly: budgets increased, more films were released annually, stars exploded in popularity, and synchronized sound—first used in *The Jazz Singer* (1927)—offered new and exciting possibilities,

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<sup>14</sup> THOMPSON & BORDWELL, *supra* note 6, at 7–8.

<sup>15</sup> *Id.* at 8–9; see ARRIVAL OF A TRAIN AT LA CIOTAT (Société Lumière 1895),

<https://www.youtube.com/watch?v=1dgLEDdFddk> (the Lumière brothers’ groundbreaking, first cinematic recording that shocked Paris audiences on December 28, 1895 and birthed the dawn of film as we know it today).

<sup>16</sup> THOMPSON & BORDWELL, *supra* note 6, at 22.

<sup>17</sup> *Id.* at 22, 26.

<sup>18</sup> *Id.* at 56.

all of which ushered in the much lauded Classical/Studio era of American film.<sup>19</sup>

### B. VERTICAL INTEGRATION IN THE CLASSICAL/STUDIO ERA

The “Big Five” studios—MGM, Paramount, Warner Bros., Fox, and RKO<sup>20</sup>—prioritized movie-making as a business and solidified themselves as well-oiled, money making entities by releasing a steady stream of crowd-pleasing epics and genre vehicles that satiated ever-growing audiences.<sup>21</sup> Importantly, the Big Five maintained overwhelming control over the industry and reaped significant profits due to their adoption of a vertically integrated business model, which afforded them control of each phase of the filmmaking process—production, distribution, and exhibition.<sup>22</sup>

#### 1. Production

Production involves the commission and development of a script, the attachment of above-the-line talent such as actors and directors who contribute creatively to the film, principal photography of the motion picture, and editing the scenes into a coherent, contiguous final product. Production remained a stable and efficient process during the Classical era because of the studios’ consistent and comprehensive involvement in the production process as the producer of all their films—to the point that a film is readily identifiable as an MGM, Paramount, or Fox picture.<sup>23</sup>

The studios preserved control and consistency in three distinct ways. First, any genre of film could be made within the confines of the studios because of their extensive backlots replete with diverse sets—including metropolitan city-scapes, western towns, and waterfront villages—and all necessary production facilities; each studio was essentially a “small, self-contained city.”<sup>24</sup> Next, studios maintained control over the success of their pictures by signing stars, such as Clark Gable, Shirley Temple, and Bing Crosby, and directors, like John Ford and Victor Fleming, to “long-term, exclusive contract[s]” that legally “bound them to a specific studio for a prescribed period of time—usually five or seven years.”<sup>25</sup> By managing the careers of its top stars and directors, studios achieved consistency in their productions—helping ensure healthy returns and satiating audiences for whom stars signified “objects of public fascination.”<sup>26</sup> Lastly, studios

<sup>19</sup> Laura Isabel Serna, Professor, Univ. S. Cal., CTCS 200: History of the International Cinema I: Week Four Lecture (Sept. 17, 2012); Laura Isabel Serna, Professor, Univ. S. Cal., CTCS 200: History of the International Cinema I: Week Eleven Lecture (Nov. 5, 2012); THE JAZZ SINGER (Warner Bros. 1927).

<sup>20</sup> RICHARD B. JEWELL, THE GOLDEN AGE OF CINEMA: HOLLYWOOD 1929–1945, at 51–52 (2007).

<sup>21</sup> See THOMPSON & BORDWELL, *supra* note 6, at 195–218, for a detailed explanation of the blockbusters, biblical epics, comedies, and other genre pictures produced by the major studios.

<sup>22</sup> Jason Squire, Professor, Univ. S. Cal., CTPR 386: Art and Industry of the Theatrical Film: Week Three Lecture (Sept. 9, 2014).

<sup>23</sup> Drew Casper, Professor, Univ. S. Cal., CTCS 503: Revolutionary and Reactionary Hollywood 1963–1976: Week One Lecture (Jan. 11, 2017); BRUCE F. KAWIN, HOW MOVIES WORK 17 (1992).

<sup>24</sup> JEWELL, *supra* note 20, at 69.

<sup>25</sup> *Id.* at 255.

<sup>26</sup> *Id.* at 250.

established a recognizable brand by choosing a signature genre and producing a series of films adhering to that style.<sup>27</sup> For example, Warner Bros. produced swashbucklers such as *Captain Blood* (1935)<sup>28</sup> and *The Sea Hawk* (1940)<sup>29</sup> starring the suave, adventurous Errol Flynn, and Fox released prestige biographies like *Young Mr. Lincoln* (1939)<sup>30</sup> to the delight of critics and audiences alike.

## 2. Distribution and Exhibition

Distribution involves “marketing the studio’s product,” ensuring the film print reaches theaters around the world, and collecting the studio’s proportionate share of ticket sales (the film rental).<sup>31</sup> By maintaining control over the marketing of their pictures, studios secured their production investment and assured audience engagement. Importantly, distribution was a priority for the studios since they owned most of the theaters that showed their films. For example, MGM owned Loews Theaters and Paramount controlled the Publix chain of theaters;<sup>32</sup> thus, with their hands in theater chains worldwide, the major studios also dominated the exhibition business. Even independent theaters remained under the overpowering thumb of the studios due to “controversial” exhibition practices such as “block-booking,” which required autonomously owned movie-houses acquire a studio’s entire slate of films to gain access to the one or two sure-fire prestige or blockbuster films on the calendar;<sup>33</sup> for example, if an independent theater wanted to screen *The Wizard of Oz* (1939)<sup>34</sup> from MGM, it needed to also purchase the remaining nineteen or twenty pictures on MGM’s slate. These strong-arm techniques were eventually outlawed by courts in the mid-1940s,<sup>35</sup> but neatly signal the studios’ deep commitment to boosting their bottom lines.

## C. THE CLASSICAL FILM: NARRATIVE AND STYLISTIC CONTINUITY AND GENRE

### 1. The Classical Narrative

Due to the significant financial investments studios maintained in their films, largely because of the vertically integrated business model, studios stood averse to narrative and stylistic innovation and foregrounded stories that “deliver[ed] narrative information in a clear, concise and dramatically effective fashion.”<sup>36</sup> Studios favored character and the three-act structure, consistently effective in literature and on stage for centuries, to legitimize

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<sup>27</sup> *Id.* at 55–66.

<sup>28</sup> CAPTAIN BLOOD (Warner Bros. 1935).

<sup>29</sup> THE SEA HAWK (Warner Bros. 1940).

<sup>30</sup> YOUNG MR. LINCOLN (Twentieth Century Fox 1939).

<sup>31</sup> JEWELL, *supra* note 20, at 75; see also THE MOVIE BUSINESS BOOK (Jason E. Squire ed., 3d. ed. 2004).

<sup>32</sup> THOMPSON & BORDWELL, *supra* note 6, at 130.

<sup>33</sup> JEWELL, *supra* note 20, at 77–78.

<sup>34</sup> THE WIZARD OF OZ (Metro-Goldwyn-Mayer 1939).

<sup>35</sup> JEWELL, *supra* note 20, at 77–78; United States v. Paramount Pictures, Inc., 334 U.S. 131 (1948).

<sup>36</sup> JEWELL, *supra* note 20, at 151.

film as a similar art form and “immerse spectators so completely in the plot of the movie that they would never think about the totally constructed and artificial nature of the [movie-going] experience.”<sup>37</sup> As a result, Classical movies, irrespective of genre, centered around tales of “providential order” interrupted by a crisis or chaotic force that caused the “just and humane” protagonist to restore order within society.<sup>38</sup> Importantly, the protagonist embodied strong, upstanding moral values and was “a sympathetic, often heroic force” that audiences could idolize innately.<sup>39</sup> Moreover, the protagonist was often contrasted with an antagonist who opposed all the hero stood for and showed viewers the dangers of the villain’s way of life.<sup>40</sup> By foregrounding upstanding moral values and adhering to classical narrative techniques across a variety of genres, studio films consistently conveyed a positive tone and message during the period.

## 2. Technical and Stylistic Characteristics

Technically, movies underwent significant, long-lasting transformations during the Classical period because of the continued injection of sound, both diegetic and non-diegetic, and the arrival of vibrant, arresting color technology like Technicolor.<sup>41</sup> In fact, by the 1940s, the black-and-white, silent films that captivated audiences and loaded the studios’ coffers for twenty years faded into the past. Stylistically, however, studio pictures largely lacked formal innovation in terms of staging, montage, cinematography, and framing to dial-down the inherent self-reflexivity present in filmmaking. As a result, directors framed protagonists toward the center of the screen to maintain viewers’ focus, adhered to continuity editing techniques to represent the linear progression of the story, employed traditional lighting schemes to convey characters’ thoughts and emotions, and limited the use of overt camera techniques, such as zooms, pans, and deep focus, which could remove audiences from the world of the film.<sup>42</sup> Although numerous gorgeous and formally experimental films such as *Citizen Kane* (1941)<sup>43</sup> and pioneering directors like John Ford emerged during the Classical era, on the whole, movies adhered to the classical narrative structure, a traditional cinematic style, genre conventions, and the studio’s brand.

## 3. Genres in Classical Film and the Courtroom Drama

A hallmark of the Classical narrative film remained a strict adherence to genre myths, conventions, and iconography—assuring “selling elements” for the studio in terms of quality and satisfying storytelling expectations for the audience.<sup>44</sup> Specifically, the myths of a genre refer to the comparable

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 152–53.

<sup>39</sup> *Id.* at 156.

<sup>40</sup> *Id.*

<sup>41</sup> THOMPSON & BORDWELL, *supra* note 6, at 201–03.

<sup>42</sup> *Id.* at 201–06.

<sup>43</sup> CITIZEN KANE (RKO Pictures 1941).

<sup>44</sup> DREW CASPER, POSTWAR HOLLYWOOD: 1946–1962, at 157–58 (2007).

characters, conflicts, settings, themes, and messages shared by similar films; conventions involve the “certain ways” that a genre “do[es] things peculiar to itself”—like a guaranteed coupling of the lead characters during the climax of a romantic comedy; and, iconography covers the “set of images and sounds shared by a cluster of films” within a genre.<sup>45</sup>

As genres “crystallized” during the Classical period, the courtroom drama, “a spinoff of the social problem film,”<sup>46</sup> emerged earnestly in films such as *Fury* (1936)<sup>47</sup> and *The Life of Emile Zola* (1937).<sup>48</sup> The overarching myth of the courtroom drama involves a presentation of “negative and harmful societal conditions or attitudes” and uses a liberal-leaning, morally upstanding lawyer to fight against the injustice.<sup>49</sup> Additionally, the courtroom drama employs conventions such as “preparation for the trial,” “the trial itself,” and iconography—including ornate courtroom settings and the drum of the beating gavel—to ultimately convey the uplifting message of right triumphing over wrong.<sup>50</sup> Thus, the stabilization of working within a genre helped affirm the positive filmic representation of lawyers and instill faith in our justice system. Yet, genre posed no competition in assuring a favorable representation of the law to the censorship requirements of the era.

#### D. CENSORSHIP AND THE PRODUCTION CODE ADMINISTRATION (PCA)

##### 1. Pre-Code Hollywood

Surprisingly, Hollywood lacked formal censorship restrictions during the 1920s and early 1930s. The “Pre-Code” era, referring to films produced prior to the official, conscientious institution of the Production Code Administration (PCA) in 1934, contained surprisingly risqué content and subject matter,<sup>51</sup> largely due to the lingering liberal, free-spirited mores of the 1920s Jazz Age. For example, MGM’s *Red-Headed Woman* (1932)—fronted by starlet Jean Harlow—chronicled a licentious woman trying to climb the New York social ladder by sleeping her way to the top.<sup>52</sup> These provocative stories, however, drew the ire of powerful social and religious groups, such as the Catholic Church’s indomitable Legion of Decency, which demanded the film industry stop fostering moral indecency.<sup>53</sup>

##### 2. The Legion of Decency

After the “Payne Fund,” a landmark study documenting the potential detrimental effects “movies have on” the moral consciousness of “young

<sup>45</sup> *Id.* at 157.

<sup>46</sup> *Id.* at 158, 293.

<sup>47</sup> FURY (Metro-Goldwyn-Mayer 1936).

<sup>48</sup> THE LIFE OF EMILE ZOLA (Warner Bros. 1937).

<sup>49</sup> CASPER, *supra* note 44, at 293.

<sup>50</sup> *Id.*

<sup>51</sup> JEWELL, *supra* note 20, at 113; see *id.* at 116 (discussing in-depth other industrial and stylistic tenets of Pre-Code Hollywood).

<sup>52</sup> See RED HEADED WOMAN (Metro-Goldwyn-Mayer 1932), for a taste of the ribald tone prevalent in Pre-Code Hollywood, <http://www.tcm.com/mmediaroom/video/148138/Red-Headed-Woman-Movie-Clip-His-Wife-s-In-Cleveland.html>.

<sup>53</sup> JEWELL, *supra* note 20, at 130.

people,” was released in 1933, the Catholic Church sprung to action.<sup>54</sup> Shortly thereafter, the Church announced the institution of the “Legion of Decency” that would “combat immoral motion pictures.”<sup>55</sup> To monitor pictures and ensure that moviegoers understood which films espoused wholesome values, the Legion of Decency adopted a ratings system: Class A stood for “unobjectionable and suitable for public entertainment,” signifying a film as Church-approved for the entire family; Class B typified films that were “more or less objectionable because of their possible suggestiveness or vulgarity,” and reserved for “adults only;” and, Class C deemed films as “indecent and immoral and unfit for public entertainment,” which amounted to outright condemnation by the Church.<sup>56</sup> Mere months after the Legion of Decency formed and started rating films, the majority of U.S. Catholics agreed not to see any film deemed immoral or indecent by the Legion; and, a number of Jewish and Protestant groups followed course by instituting similar ratings systems for their parishioners.<sup>57</sup> Facing a steep drop in attendance for their films, studios panicked. Since outside censorship of their product stood as the studios’ greatest fear, the studios banded together and agreed to independently censor their films to appease the Legion of Decency and regain the faith (and money) of the movie-going public.<sup>58</sup>

### 3. The PCA: The Content Standards and Censorship in Practice

While the content standards of the PCA—casually known in the industry as the “Don’ts and Be Carefuls”—were adopted by an independent advisory council in 1930, no studio considered the list of recommendations seriously until 1934.<sup>59</sup> But, once the uproar caused by the Legion of Decency threatened the studios’ bottom lines, the studios turned to the PCA to guide the subject matter of their movies.<sup>60</sup>

The PCA guidelines advised studios on how to handle (and ideally eliminate) sensitive subject matter such as sex, violence, and profanity, placed restrictions on costumes, dancing, and portrayals of religion and patriotism, and even went so far as to ban obscure subjects such as “[s]urgical operations” and the “[b]randing of people or animals.”<sup>61</sup> In addition to these detailed procedural requirements, the PCA maintained three, big-picture “General Principles,” which affected the content of every motion picture:

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<sup>54</sup> *Id.* at 129.

<sup>55</sup> *Id.* at 131.

<sup>56</sup> *Id.* at 132.

<sup>57</sup> *Id.* at 131.

<sup>58</sup> <sup>59</sup> Drew Casper, Professor, Univ. S. Cal., CTCS 503: Revolutionary and Reactionary Hollywood 1963–1976: Week Two Lecture (Jan. 18, 2017).

<sup>60</sup> *See JEWELL, supra* note 20, at 117.

<sup>61</sup> *Id.*

<sup>61</sup> *See id.* at 117–20 (providing a complete summary of the Production Code requirements).

1. No picture shall be produced which will lower the moral standards of those who see it. Hence sympathy of the audience should never be thrown to the side of crime, wrongdoing or sin.
2. Correct standards of life, subject only to the requirements of drama and entertainment, shall be presented.
3. Law, natural and human, shall not be ridiculed, nor shall sympathy be created for its violation.<sup>62</sup>

These sweeping, substantive principles undoubtedly affected all films of the Classical era, but especially impacted portrayals of the law and attorneys on-screen. The first principle—guaranteeing that movies would affirm positive moral values—made lawyers ideal protagonists since they stood as heralds of justice and virtue, and they served as ideal role models for the younger generation, whose moral compasses were most susceptible to corrupt content. And, most obviously, the singular requirement that “[l]aw, natural and human, shall not be ridiculed” warranted that the law and legal profession would engender utmost respect on-screen.<sup>63</sup>

By the end of 1934, all studios ascribed to the PCA’s policies. Prior to principal photography, the studios submitted scripts to the PCA advisory board and the PCA returned “lists of problems and suggestions for changes.”<sup>64</sup> After production wrapped and the editing phase concluded, the studios once again presented their films to PCA officials who “would view the final release version to determine if it conformed to the Code” and decide whether the film should be given the “Code’s Seal of Approval,” which signaled to audiences that the movie espoused positive values and lacked overtly corruptible material potentially detrimental to society’s moral consciousness.<sup>65</sup> Importantly, the process to receive a PCA Seal of Approval remained voluntary. However, should the studios forego a PCA seal for one of their films, they would subject themselves to a \$25,000 fine and could not exhibit the movie in any studio-owned movie theater; thus, “economic suicide would likely result from any attempt to evade” PCA-approval due to the studios’ vertical integration structure.<sup>66</sup>

#### E. THE GREAT DEPRESSION: HOLLYWOOD’S REACTION

The Great Depression, one of the most catastrophic, life-altering events of the twentieth century for Americans, greatly influenced the industrial changes adopted by the studios during the 1930s. After the crash in 1929, Hollywood, like “the rest of American commerce,” suffered a devastating blow to the steady-stream of profits it amassed throughout the 1920s; with citizens barely able to provide basic necessities for their families, leisure activities such as movie-going fell by the wayside.<sup>67</sup> Understanding the significant costs associated with attending movies and societal malaise

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<sup>62</sup> *Id.* at 117.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 133.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 29.

festering throughout the country, the studios shifted their focus toward escapist entertainment—such as the Warner Bros. swashbucklers—which offered audiences a release from the trials and tribulations of their daily lives.<sup>68</sup> Additionally, the studios concentrated on realist pictures—including the biographies prevalent at Fox—which provided hope and inspiration during this difficult time with their tales of perseverance in the face of immense adversity.<sup>69</sup> These “uplifting, reassuring motion pictures” in which “heroes triumph, villains are punished, love conquers all, benevolent political leadership is assured and dreams come true” kept studios afloat in the depths of the Depression.<sup>70</sup> Appropriately, studios therefore felt amenable to the sweeping changes prescribed by the Code since the PCA essentially codified the subject matter prevalent during the Depression-era.

F. YOUNG MR. LINCOLN (1939)—DIRECTOR: JOHN FORD, STAR: HENRY FONDA, STUDIO: FOX

#### 1. Production History: Development and Attaching Talent

During the 1930s, Fox—motivated by fervent audience demand—specialized in the biography genre as it routinely produced true stories of American and international heroes, who embodied the upstanding moral pedigree required by the Code.<sup>71</sup> Fox greenlit *Young Mr. Lincoln* in late-1938 due to its genre specialty and, according to the editors of *Cahiers du Cinéma* in their seminal essay on *Young Mr. Lincoln*, producer Darryl Zanuck’s deep ties to the Republican Party.<sup>72</sup> Additionally, Abraham Lincoln—one of the most popular and universally celebrated American presidents from any party, revered for his role in abolishing slavery and respected for his well-earned reputation as one of the most honest and dignified individuals in history—possessed universal appeal and exhibited all the upstanding, virtuous qualities required in a Classical-era protagonist.<sup>73</sup> Attaching John Ford, the legendary and stalwart Fox-contracted director of “thirty-eight movies between 1920 and 1935,” to direct *Young Mr. Lincoln* guaranteed an aura of quality and prestige to the project; and, signing the rising, respectable Henry Fonda—coined the sixth Greatest Male Film Star of all time by the American Film Institute—ensured that a talented actor would embody Lincoln and effortlessly convey the sixteenth president’s sense of integrity and justice.<sup>74</sup>

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<sup>68</sup> See *id.* at 29–31.

<sup>69</sup> See *id.*

<sup>70</sup> *Id.* at 30.

<sup>71</sup> *Id.* at 56.

<sup>72</sup> A Collective Text by the Editors of *Cahiers du Cinéma*, John Ford’s *Young Mr. Lincoln*, 13 SCREEN 5 (1972), reprinted in FILM THEORY AND CRITICISM: INTRODUCTORY READINGS 778–831 (Gerald Mast & Marshall Cohen eds., Oxford Univ. Press 2d ed. 1979), <http://openclass.panteion.gr/modules/document/file.php/TMF226/Young%20Mister%20Lincoln.pdf> [hereinafter *Cahiers*].

<sup>73</sup> See *id.* at 778.

<sup>74</sup> *Id.* at 789; AFI’s 100 Years . . . 100 Stars, AM. FILM INST. (June 16, 1999), <http://www.afi.com/100Years/stars.aspx>.

## 2. Plot Summary

*Young Mr. Lincoln*, a fictionalized biography of the formative years of our sixteenth president, chronicles Abraham Lincoln's (Henry Fonda) initial fascination with the law and his early days as a budding lawyer in Springfield, Illinois. After opening a small law practice and mediating local disputes, Lincoln achieves civic renown after he takes the case of the Clay brothers (Richard Cromwell and Eddie Quillan), two young farmers accused of murder, and saves them from a threatening lynch mob. Thanks to Lincoln's deep respect for the rule of law and commitment to his profession, Lincoln ensures that these men receive the competent legal representation entitled to them under the Constitution and justice prevails. Lincoln's adept command of the law and sense of honor attract the eye of future wife Mary Todd (Marjorie Weaver), ire of rival Stephen Douglas (Milburn Stone), and presages the probity and keen leadership that Lincoln would bring to the Presidency.

## 3. Lincoln: The Ideal Protagonist to Represent the Legal Profession

Even 150 years after Lincoln's presidency, honest Abraham Lincoln stands as the authoritative representation of the virtuous, upstanding, and "idealized mythic hero."<sup>75</sup> *Young Mr. Lincoln*, released only seventy-four years after Lincoln's untimely death when the legend of his "heroicized Civil War administration" resonated strongly, capitalizes on Lincoln's reputation as the quintessential, upstanding American, and personifies this reputation in the legal profession.<sup>76</sup> While *Young Mr. Lincoln* avoids any direct mention of Lincoln's presidency, his stellar achievements as president and legendary reputation as "Honest Abe" remain ingrained in our minds as the skillful, learned Lincoln graces the silver screen. Thus, while watching this fabled American icon preach the merits of our judicial system and wield his sharp, scholarly legal intellect to ensure justice is served, the law and legal profession embody a transcendent quality. Other than the incomparable Atticus Finch in *To Kill a Mockingbird* (1962),<sup>77</sup> the young Abraham Lincoln stands as a leading pillar of the legal profession and, emboldened by Ford's keen direction, valorizes our American legal system.

## 4. Discovering the Law: Reading *Blackstone's* and Choosing His Destiny

At the start of *Young Mr. Lincoln*, Abraham Lincoln owns and operates a small shop in rural Illinois. While Lincoln first appears on-screen in rustic casual "shirtsleeves" and "heavy boots,"<sup>78</sup> which convey an everyman sensibility, Ford immediately signifies Lincoln's exalted rank through staging and framing. Ford positions Lincoln atop the porch of his shop addressing the crowd beneath him on behalf of a Whig Party congressman

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<sup>75</sup> J. Smyth, *Young Mr. Lincoln: Between Myth and History in 1939*, 7 RETHINKING HIST. 193, 199 (2003).

<sup>76</sup> *Id.* at 204.

<sup>77</sup> TO KILL A MOCKINGBIRD (Universal Pictures 1962).

<sup>78</sup> *Cahiers*, *supra* note 72, at 793.

seeking reelection and shoots Lincoln in a low-angle close-up, which allows Fonda's strapping visage to fill the screen and tower over the audience—neatly capturing Lincoln's commanding, eminent persona. Once Lincoln steps off the porch and joins his fellow townsfolk, Lincoln maintains his higher social and moral status thanks to Fonda's towering height, which places Lincoln a full head above the rest of the locals. Although Lincoln's superiority stands obvious to us because of our extrinsic knowledge of the Lincoln legend, Fonda's striking eyes, sincere smile, and hearty laugh paint Lincoln as a genial, man-of-the-people—someone worthy of the respect and admiration we imbue upon him.

Moreover, Lincoln's magnanimity and innate sense of equity—prerequisites for a career in the legal profession—shine during his fateful interaction with a family unable to pay for provisions purchased from Lincoln's store. The family offers to barter books from a barrel for the goods, a deal the erudite Lincoln kindly accepts. After placing his hand in the barrel, Lincoln pulls out his destiny: *Blackstone's Commentaries on the Law*, the seminal legal textbook of the time. As Lincoln delicately opens the pages, Fonda's body movements slow and his face exudes awe, which aptly signal Lincoln's respect for the power of the law; and, Lincoln remains “delighted that the book is in good condition” despite its age, conveying that the “law is indestructible” in any form.<sup>79</sup> During this fabled discovery, Ford keeps Lincoln in the center of the frame as he beams with inquisitive joy—commanding our attention as this formative moment in the life of one of our country's greatest lawyers and presidents unfolds before our eyes.

Ford sustains the mythic quality of the *Blackstone*'s discovery with a lyrical dissolve that takes us from the street outside of Lincoln's shop to a “pastoral” waterfront where Lincoln reads the text “under the protective shade of a tree” in a gorgeous shot “evoking the spirit of nineteenth-century landscape painting.”<sup>80</sup> Unlike the opening scenes where Lincoln towered over his fellow citizens, Lincoln lays underneath the tree holding *Blackstone*'s above his head—affording law the elevated status it deserves. As Lincoln reads and analyzes the book, he intuitively distills the layered intricacies of our laws with pith: “[Law] . . . all there is to it is right and wrong.”<sup>81</sup> To Lincoln, *Blackstone*'s merely codifies the “unwritten laws and unwritten rights” that “are part of an objectively valid moral order . . . universally binding on all people everywhere.”<sup>82</sup> While perhaps simplistic to modern scholars<sup>83</sup> and legal positivists who believe that only “some authoritative body” like a court or legislature can create laws,<sup>84</sup> Lincoln's adoption of the “[n]atural law”<sup>85</sup> ethic clicks with a general audience's

<sup>79</sup> *Id.* at 799.

<sup>80</sup> Norman Rosenberg, *Young Mr. Lincoln: The Lawyer as Super-Hero*, 15 LEGAL STUD. F. 215, 216 (1991).

<sup>81</sup> YOUNG MR. LINCOLN (Twentieth Century Fox 1939).

<sup>82</sup> TIMOTHY O. LENZ, CHANGING IMAGES OF LAW IN FILM & TELEVISION CRIME STORIES 37 (2003);

<sup>83</sup> But see Virginia Wright Wexman, “Right and Wrong; That's [Not] All There Is to It!”: *Young Mr. Lincoln and American Law*, 44 CINEMA J., Spring 2005, at 24 (2005).

<sup>84</sup> LENZ, *supra* note 82, at 37.

<sup>85</sup> Cahiers, *supra* note 72, at 799.

understanding and idealistic expectations of our American legal system and aligns with the PCA's mandate to present the law as fair and just. Driven by a sense of moral righteousness and a generous passion to serve the public, Lincoln leaves his store and sets off to join the legal profession.

##### 5. Ensuring Adequate Representation: Preventing Injustice and Mob Rule

After setting up a small law practice in Springfield, Illinois, Lincoln settles a few minor disputes, but fails to capture the attention of the city until a fateful Fourth of July evening. After participating in several parade events like the log roll and tug of war, which solidify Lincoln's reputation as an everyman, the community finally observes Lincoln's unmatched prowess as a legal professional when he steps up to offer the two accused Clay brothers legal and physical protection from a lynch mob.

Amidst the booming fireworks and communal celebration, the Clay brothers engage in a dogged, prolonged brawl with a mysterious man. Ford conveys the sheer chaos of the fight by abruptly changing camera angles, playing with distance, and varying shot lengths.<sup>86</sup> The fight draws the attention of the Clays' mother, Mrs. Clay (Alice Brady), and a passerby, John Palmer Cass (Ward Bond)—who approaches the victim, hovers over him suspiciously for an oddly prolonged period, and then calls for others to aid as the victim is now dead. Gradually, a large crowd gathers around the scene and demands the sheriff allow them to follow the Clay brothers to the jail; soon, the crowd overwhelms the frame—heightening the frenetic nature of the situation. Initially, Ford conspicuously keeps Lincoln out of view to foreground his distance from this mob. As the mob disperses and exits to the right of the frame, Lincoln enters the shot and walks in the opposite direction of the crowd toward the distraught Mrs. Clay—further emphasizing Lincoln's singular character. When Lincoln reaches Mrs. Clay, Ford slows down the action to allow us to process the sacred attorney-client relationship about to form; and, after initial pleasantries, Lincoln adopts a super-heroic quality as he calmly announces to Mrs. Clay that he is her lawyer and quickly exits the frame like a comic-book savior off to stop a crime in progress.

When Ford cuts to the mob forming outside the jail hoping to lynch the Clay brothers for murder, the chaos has magnified as hordes of townsmen—armed with torches and pitchforks—hurl rocks through the jail's windows and pummel a log into the jail's door. The mob rule appears to succeed after the overwhelmed sheriff tosses his badge—a betrayal of his oath to protect law and order—and prepares to allow the mob to enter the jail and gain access to the brothers until Lincoln's distinctive stovepipe hat eclipses the crowd. Suddenly, Lincoln pushes his way through the rabble—paving a path that evokes the religious imagery of Moses parting the Red Sea—and takes his place on the stoop of the jail. As Lincoln steps up, Ford cuts to a wide-shot of Lincoln that displays his physical and moral superiority over this mob rule. Bathed in a soft light that paints him as a mythical figure and shot in a close-up that fills the screen, Lincoln convinces the crowd in an extended,

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<sup>86</sup> *Id.* at 807.

“cunning speech,”<sup>87</sup> which highlights his honorable and adroit nature, to abandon their lynching plans and bestow him the favor of representing the Clays for his first trial. Lincoln’s heroism in single-handedly stopping the lynchers and assuring the Clays adequate legal representation emboldens the Lincoln mythos by demonstrating his “courage and physical strength”<sup>88</sup> and ably presents him as a staunch defender of the natural law ethic he so admires.

#### 6. Lincoln at Trial: Defending the Innocent and Achieving Justice

During the climactic trial of *Young Mr. Lincoln*, Ford cements Lincoln’s status as the ideal lawyer and presages astutely Lincoln’s ascendance into iconic status as our sixteenth president. Unshaken by the mounting case against his clients, which includes unfavorable public sentiment toward the Clays and the ostensibly damaging testimony of Cass who claims to have seen the murder under the moonlight, Lincoln perseveres because it remains his legal and moral duty to uncover the truth. As a proponent of the natural law ethic, truth equates to law for Lincoln;<sup>89</sup> and, by exposing the truth in court, Lincoln believes he offers the Clays the well-rounded, competent legal representation to which they are lawfully entitled. Lincoln’s quest to unlock the truth results in some unorthodox legal practices, such as “interrupt[ing] the prosecutor’s cross-examination”<sup>90</sup> of Mrs. Clay, and keeping a seemingly incapacitated juror during *voir dire* because he appears to have the heart of a sincere, honest man; but, the poise, stamina, wit, and determination Lincoln displays during the first part of the trial portray Lincoln as the top-notch lawyer anyone would want on his or her side.

Lincoln’s superior legal skill and honorable character shine during Ford’s staging of Lincoln’s re-examination of Cass, the supposed eyewitness whom both Lincoln and the audience innately perceive as a liar. Ford begins the questioning in a wide-shot that pushes Lincoln to the side of the frame as he interrogates Cass to allow us to contemplate Cass’s purported story of the murder and resent his indignant attitude. After Cass once again claims that he witnessed the murder due to the bright moonlight, Lincoln turns toward the camera and Ford shifts to a medium close-up; in this relatively quick shot, Fonda’s thoughtful eyes and pensive visage convey implicitly that Lincoln has unlocked the truth. While the judge excuses Cass under the presumption that Lincoln’s questioning proved fruitless, Lincoln stops Cass in his tracks as he tries to exit into the gallery with one last question and trick up his sleeve. Lincoln pushes his way into the center of the screen, grabs a booklet from his trusty hat, and places it in Cass’s hands. In a powerful, prolonged shot that allows Fonda’s masterful performance to excel, Lincoln recounts the actual events of the murder from the center of the frame as the courtroom crowd begins to fill the sides of the frame and engulf Cass; a *Farmer’s Almanac* proves that no bright moonlight existed on the night of

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<sup>87</sup> *Id.* at 811.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 817.

<sup>90</sup> *Id.*

the crime—decimating Cass's story and leading Cass to confess to committing the homicide just after he stumbled upon the fight. In the end, Mother Nature, who never lies since she stands immune from human fallacy, ensures that justice triumphs; and, Lincoln's perception of the law as defending what is right and punishing what is wrong prevails—restoring the moral order required by the Classical narrative structure.

#### 7. The Legacy of *Young Mr. Lincoln*

John Ford's *Young Mr. Lincoln*, with its innovative direction and commanding lead performance by Henry Fonda, earns its numerous critical accolades. But, the film retains legendary status within the legal and filmic communities since it codified the Lincoln legend on-screen and established the framework for the “heroic [movie] lawyer” most famously embodied by Atticus Finch in *To Kill a Mockingbird*.<sup>91</sup> Further, as will be discussed below, *Young Mr. Lincoln* remains one of the few, truly idealistic portrayals of lawyers on film as it paints the law as a mythical higher calling reserved for the morally upstanding.

### III. THE POSTWAR ERA: 1946–1966

#### A. TELEVISION: THE ULTIMATE INDUSTRIAL THREAT IN POSTWAR HOLLYWOOD

Just as the current Internet streaming phenomenon rocked the television industry, the rise of television in the 1950s shocked the major studios, who single-handedly controlled audiovisual entertainment for decades. Before World War II, television remained an upper-class phenomenon thanks to the high-cost of television sets; for instance, “a 10-inch RCA Victor black-and-white (b/w), open-face console retailed at \$375 in 1946.”<sup>92</sup> After the War, however, the American economy surged to unseen heights—wages increased, consumer demand for goods skyrocketed, low-interest loans standardized, and credit cards started lining wallets.<sup>93</sup> With more money available to purchase goods, and Americans clamoring to “Keep up with the Joneses” in acquisition and consumption,<sup>94</sup> televisions became a must-have commodity in every household; by 1954, “55.7%” of American households owned a television set.<sup>95</sup>

The television industry largely kept pace with the rapid growth and demand for television content. Throughout the 1950s, access to television grew as “cable TV, first available in 1949, brought TV to homes outside the reach of” metropolitan antennae, and the Federal Communications Commission “permitted an increase in the number of stations” available

<sup>91</sup> See STEVE GREENFIELD, GUY OSBORN & PETER ROBSON, FILM AND THE LAW: THE CINEMA OF JUSTICE 94–110 (2d ed. 2010) (explaining the direct connection between Abraham Lincoln and Atticus Finch).

<sup>92</sup> CASPER, *supra* note 44, at 23.

<sup>93</sup> *Id.* at 11.

<sup>94</sup> *Id.* at 11, 14.

<sup>95</sup> *Id.* at 23.

across the country to over one thousand.<sup>96</sup> And, television programming on free, over-the-air networks such as CBS and NBC ballooned as “[b]roadcast hours expanded.”<sup>97</sup> As a result, audiences spent their mornings learning the news from *The Today Show* (1952) and their evenings laughing with Lucy and Desi on *I Love Lucy* (1951–57)<sup>98</sup> or answering trivia along with contestants on *The \$64,000 Question* (1955–58), a popular game show that attracted 47.5 million viewers for each broadcast in 1955.<sup>99</sup> In addition to situational comedies and episodic dramas like *The Honeymooners* (1955–66) and *Dragnet* (1952–59), the television networks directly competed with the movie studios by creating made-for-television films of popular literary works such as *Dial M for Murder* and *Wuthering Heights*—each recently adapted as major motion pictures—on anthology series like *Kraft Television Theater* (1947–58).<sup>100</sup>

Television quickly became “*the mass medium*” in the mid-1950s as close to fifty million Americans regularly watched primetime television, which contributed overwhelmingly to the dwindling attendance rates at movie theaters across the country.<sup>101</sup> In 1946, before most Americans had a television set, over “[ninety] million Americans attended the movies every week”; in 1956, during the height of the television boom, only “46,530,000” saw movies weekly.<sup>102</sup> The staggering attendance drop forced the studios to change their tune. Always out to bolster their bottom lines, the studios capitulated to television in the mid-1950s by licensing their pre-1948 content to television networks and dabbling in production.<sup>103</sup> But, despite the harm television caused the studios economically, it opened their eyes to the full artistic potential of cinema and inspired them to look outward for cutting-edge and innovative content, which television lacked.

## B. THE AGE OF INDEPENDENCE: LOSING EXHIBITION AND THE RISE OF INDEPENDENT PRODUCTION

### 1. The *Paramount* Antitrust Decision

The studios’ monopolistic practice of controlling the production, distribution, and exhibition phases of the filmmaking process and icing out “the small-fry independent exhibitor” finally drew the ire of the Department of Justice (DOJ) in the early 1940s.<sup>104</sup> *United States v. Paramount*, the long-winded antitrust suit filed by the DOJ against the Big Five studios, reached the Supreme Court in 1948 following “a complex series of decisions, appeals, and legal maneuvers.”<sup>105</sup> The Court found the Big Five “guilty of

<sup>96</sup> *Id.* at 24.

<sup>97</sup> *Id.* at 23–24.

<sup>98</sup> *Id.*

<sup>99</sup> See MICHAEL CURTIN & JANE SHATTUC, THE AMERICAN TELEVISION INDUSTRY 34 (2009).

<sup>100</sup> *Id.* at 89; CASPER, *supra* note 44, at 25.

<sup>101</sup> CASPER, *supra* note 44, at 23, 43.

<sup>102</sup> *Id.* at 43.

<sup>103</sup> CURTIN & SHATTUC, *supra* note 99, at 92.

<sup>104</sup> CASPER, *supra* note 44, at 39.

<sup>105</sup> See *United States v. Paramount Pictures, Inc.*, 334 U.S. 131 (1948); see also THOMPSON & BORDWELL, *supra* note 6, at 300.

monopolistic practices” and the studios agreed to abide by a series of consent decrees, which mandated they divest themselves of their theater chains.<sup>106</sup> Along with the divesture mandate, the Court banned aggressive booking practices like block-booking, which prevented the studios from strong-arming independent exhibitors into screening their annual slate of movies.<sup>107</sup>

## 2. The Rise of the Independent Spirit in Hollywood

*United States v. Paramount* ushered an independent spirit throughout the American film industry. First, exhibitors finally possessed the freedom to curate their own content. Released from the shackles of studio ownership, exhibitors—especially smaller movie-houses—no longer felt “the fear of retaliation” if they refused to license a film from a studio’s massive slate or booked a foreign or independent picture lacking a PCA seal.<sup>108</sup> While the overwhelming majority of pictures still came from the studios and bore a PCA seal, many theaters looked outward for fresh, inventive content.<sup>109</sup> Imports of stylistically groundbreaking and thematically provocative international movies like *Bicycle Thieves* (1948),<sup>110</sup> *Rashomon* (1950),<sup>111</sup> and *The Seventh Seal* (1957)<sup>112</sup> gained traction among cineastes and other young intellectuals who were tired of generic studio fare and craved thought-provoking, introspective stories.<sup>113</sup> And, most importantly, these foreign movies hinted at the artistic potential of cinema when unhindered by censorial and economic considerations.

Next, because the increased “access to exhibitors” virtually guaranteed a theatrical release, independent productions flourished as “stars and directors broke away” from the studios to attain more creative control over their product.<sup>114</sup> But, the studios stood surprisingly amenable to this tremendous industrial shift and “increasingly welcomed” independent productions.<sup>115</sup> Well-aware they lost a significant revenue stream after divesting their exhibition holdings and concerned about the growing threat of television to their bottom lines, the studios embraced their status as distribution firms—which entailed marketing independent productions and arranging the delivery of the celluloid print to theaters in exchange for a cut of the gross profits.<sup>116</sup> Since studios lacked total control over the final product, more formally and thematically daring films like *The Night of the Hunter* (1955)—starring Robert Mitchum as “a greedy, murdering preacher”—began to captivate audiences and push the limits of the PCA,

<sup>106</sup> THOMPSON & BORDWELL, *supra* note 6, at 300.

<sup>107</sup> *Id.*; see CASPER, *supra* note 44, at 43.

<sup>108</sup> CASPER, *supra* note 44, at 122.

<sup>109</sup> See TINO BALIO, THE FOREIGN FILM RENAISSANCE ON AMERICAN SCREENS 1946–1973, at 79–84 (2010).

<sup>110</sup> BICYCLE THIEVES (The Criterion Collection 1948).

<sup>111</sup> RASHOMON (The Criterion Collection 1950).

<sup>112</sup> THE SEVENTH SEAL (The Criterion Collection 1957).

<sup>113</sup> Tom Kemper, Professor, Univ. S. Cal., CTCS 201: History of the International Cinema II: Week One Lecture (Jan. 14, 2013).

<sup>114</sup> THOMPSON & BORDWELL, *supra* note 6, at 300.

<sup>115</sup> CASPER, *supra* note 44, at 47.

<sup>116</sup> See *id.* at 47–48.

which still reviewed every major studio release.<sup>117</sup> Finally, with television ensconced as the reigning mass medium and unsealed foreign and minor independent pictures flooding theaters, the major studios began to take more risks and create content that departed from the Classical narratives of yesteryear.

### C. THE ART-HOUSE MOVEMENT: FRESH STYLES, DARING CONTENT, AND A NEW AUDIENCE

The budding international import trend, which started after the *Paramount* decision as independent exhibitors gained the freedom to book their own slates, bloomed into a full-fledged movement during the 1950s.<sup>118</sup> Art-houses—individually owned theaters that showed niche, bold, and usually foreign movies—became cultural institutions during the postwar era and helped establish film's reputation as a legitimate, groundbreaking art form.<sup>119</sup> Predominately housed in metropolitan hubs such as New York City, Chicago, and Los Angeles, art-houses bucked the downward attendance trends plaguing the major theater chains because they embraced innovative films and appealed directly to avowed cineastes, unmoved by the studios' insistence to target "most of [their] product at the lowest level."<sup>120</sup>

#### 1. The Origins of the Art-House Movement

The art-house movement birthed out of the social rehabilitation efforts sweeping across Europe after World War II.<sup>121</sup> Looking to rebuild their cultures and establish national cinemas, countries such as France and Italy instituted import caps on American films and offered endowments to promising directors; with a subsidized budget and theater screens exclusively dedicated to national product, filmmakers created art cinema: fresh, innovative movies representative of the mores and milieu prevalent during the postwar era.<sup>122</sup>

#### 2. The Art Cinema Style

Taking their cues from the modernist movement of the 1920s, which embraced "experimentation and innovation," directors such as Italy's Roberto Rossellini and Britain's Tony Richardson created movies narratively and stylistically distinct from standard Hollywood fare.<sup>123</sup> In terms of story, art cinema foregrounded thought-provoking, realist narratives that showed "the unpleasant realities" of postwar life and abandoned Hollywood's "tight plots" in favor of episodic, "slice-of-life narratives" that followed complex characters and cultivated ambiguity—forcing viewers to fill narrative gaps

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<sup>117</sup> *Id.* at 48; *THE NIGHT OF THE HUNTER* (United Artists 1955).

<sup>118</sup> BALIO, *supra* note 109, at 79.

<sup>119</sup> See Kemper, *supra* note 113.

<sup>120</sup> BALIO, *supra* note 109, at 81.

<sup>121</sup> See Kemper, *supra* note 113.

<sup>122</sup> BALIO, *supra* note 109, at 6; see Tom Kemper, Professor, Univ. S. Cal, CTCS 201: History of the International Cinema II: Week Three Lecture (Jan. 28, 2013) (discussing the Italian import laws set by Giulio Andreotti, government film supervisor).

<sup>123</sup> THOMPSON & BORDWELL, *supra* note 6, at 328.

and ultimately “speculate on what might otherwise have happened” to the characters due to the films’ open-endings.<sup>124</sup> Further, by concentrating on the realities of everyday life, art cinema introduced daring subject matter like sex and vulgar language in a frank, uninhibited fashion unseen in Classical pictures.<sup>125</sup> Formally, art cinema adopted cutting-edge techniques such as on-location shooting to intensify reality, non-linear montage to capture the idiosyncrasy of human behavior, and a more liberal authorial expressivity in framing, staging, and lighting that pushed a director’s social commentary upon audiences.<sup>126</sup> For example, the gorgeously stark Italian Neorealism movement (1945–51) typified the unique style of art cinema burgeoning out of Europe. Neorealism embraced and heightened verisimilitude to democratize cinema—on-location shooting highlighted the barren, decimated Italian streets, non-actors replaced trained stars to foster a “documentary” effect, the episodic stories eschewed plots to capture the non-diegetic sensation of everyday life, and long takes increased scenic durations to heighten empathy with the characters and their world.<sup>127</sup>

### 3. The Art-House Audience

As national cinemas in France, Sweden, Britain, and Italy grew during the early 1950s, so did a cultural appreciation for film as an art form. Film clubs and magazines, such as the seminal French journal *Cahiers du Cinéma* founded by trailblazing critic André Bazin and filmmaker François Truffaut, legitimized movies among scholars and intellectuals.<sup>128</sup> With the growing number of imports hitting American art-houses, the erudite appreciation for film moved across the pond too. Sophisticated, metropolitan, cultured American audiences devoured art cinema because it directly appealed to their high-brow, intellectual tastes.<sup>129</sup> This “Lost Audience,” who felt abandoned by the studio’s insistence on appealing to the masses with “conventional Hollywood movies,” consisted of “mature, adult, sophisticated people who read good books and magazines, who attend[ed] lectures and concerts, [and] who [were] politically and socially aware and alert.”<sup>130</sup> These educated cineastes valued that art cinema frankly portrayed mature themes like sex, infidelity, substance abuse, and mental illness, offered insight into the minds and motives of morally ambiguous characters, explored unfamiliar cultures and situations in sheer realism, and introduced formalistic innovations in framing and cutting that advanced the artistic potential of cinema—all unseen in Classical Hollywood.<sup>131</sup>

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<sup>124</sup> *Id.* at 328–29.

<sup>125</sup> See . . . AND GOD CREATED WOMAN (The Criterion Collection 1956) (starring international sex symbol and cultural icon Brigitte Bardot and providing a taste of the uninhibited sexuality common in art films).

<sup>126</sup> See Kemper, *supra* note 113; see also THOMPSON & BORDWELL, *supra* note 6, at 328–30.

<sup>127</sup> See Balio, *supra* note 109, at 40–57; see also Kemper, *supra* note 122; see generally ANDRÉ BAZIN, WHAT IS CINEMA? VOL II (Hugh Gray trans., Univ. Cal. Press 2004) (1971).

<sup>128</sup> See Tom Kemper, Professor, Univ. S. Cal., CTCS 201: History of the International Cinema II: Week Four Lecture (Feb. 4, 2013).

<sup>129</sup> BALIO, *supra* note 109, at 80–81.

<sup>130</sup> *Id.* at 81.

<sup>131</sup> *Id.* at 80; see also Kemper, *supra* note 113.

#### 4. Hollywood Responds to the Art-House Movement

After a few years of watching the art-house movement gain traction, Hollywood decided to enter the fray in the late-1950s.<sup>132</sup> In tandem with their commitment to independent production, the studios began offering distribution to art cinema through subsidiary corporations to rebuild their reputation among young adult audiences as purveyors of quality film and capture a share of the burgeoning market; and, by using subsidiaries, the studios could “circumvent[]” the industry rule forbidding studios from releasing films “that lacked a Production Code seal or carried a C [Condemned] rating by the Legion of Decency.”<sup>133</sup> Further, the success of art cinema—in the face of television and dwindling audiences for Classical-style movies—emboldened the studios to take risks on more daring, realistic, artistic, and experimental films themselves, which led to an influx of critically acclaimed, groundbreaking movies such as *All That Heaven Allows* (1955),<sup>134</sup> *Giant* (1956),<sup>135</sup> and *Anatomy of a Murder* (1959).<sup>136</sup>

D. *ANATOMY OF A MURDER* (1959) – DIRECTOR: OTTO PREMINGER; STAR: JIMMY STEWART; STUDIO: COLUMBIA PICTURES

#### 1. Plot Summary

*Anatomy of a Murder*—an adaptation of the critically acclaimed, overwhelmingly popular bestselling novel by former Michigan Supreme Court Justice John D. Voelker (writing under the pseudonym Robert Traver)<sup>137</sup>—follows Paul Biegler (Jimmy Stewart), a former district attorney who returns to the courtroom as a defense lawyer in a sensational murder trial. Laura Manion (Lee Remick) approaches Biegler to represent her husband, Army Lieutenant Frederick Manion (Ben Gazzara), who allegedly shot and killed local saloonkeeper Barney Quill after learning that Quill raped Laura. Knowing the case offers both a return to the spotlight and the profession he loves, Biegler agrees to defend Fred and relies on a provocation defense as justification for Quill’s death. During the shocking and stirring trial, in which Biegler goes toe-to-toe with the capable Assistant State Attorney Claude Dancer (George C. Scott), Laura’s rape takes center stage and becomes scrupulously and bluntly dissected by both sides as Fred’s defense pivots around the event. Thanks to a last-minute witness and canny lawyering, Biegler establishes proof of Laura’s sexual assault and Fred receives an acquittal by reason of insanity. But, a day later when Biegler returns to the Manions’ trailer to finalize payment, Biegler finds a snide note from Fred stating he possessed “an irresistible impulse” to leave and learns from the landlord that Fred dragged a crying, distraught Laura along with

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<sup>132</sup> BALIO, *supra* note 109, at 229.

<sup>133</sup> *Id.*

<sup>134</sup> ALL THAT HEAVEN ALLOWS (Universal Pictures 1955).

<sup>135</sup> GIANT (Warner Bros. 1956).

<sup>136</sup> ANATOMY OF A MURDER (Columbia Pictures 1959).

<sup>137</sup> MICHAEL ASIMOW & SHANNON MADER, LAW AND POPULAR CULTURE: A COURSE BOOK 17 (2004).

him; and, assessing the whole situation as essentially a fruitless cause, Biegler forgets the Manions and moves on to his next case.<sup>138</sup>

## 2. *Anatomy of a Murder* as Commercial, Art Cinema: Otto Preminger's Unique Influence

Due to *Anatomy of a Murder*'s critical and commercial success as a novel, Columbia Pictures (Columbia) saw built-in audience appeal and greenlit an adaptation.<sup>139</sup> Seeking to position *Anatomy of a Murder* as a prestige picture, Columbia attached critically acclaimed, cineaste approved European émigré auteur Otto Preminger as director. Preminger's status as an uncompromising artistic force was solidified in the industry and among audiences only a few years earlier with the release of the controversial and gloriously realistic *The Man with the Golden Arm* (1955), which starred Frank Sinatra as a struggling heroin addict.<sup>140</sup> The PCA balked at the candid depiction of substance abuse and refused to offer *The Man with a Golden Arm* a seal, but United Artists—the studio behind the film—stood behind Preminger and insisted on releasing the movie without a seal to preserve his artistic vision.<sup>141</sup> Preminger's deft handling of controversial material and iconic auteur status amongst audiences and critics established him as the ideal director to handle the sensitive and bluntly depicted rape-murder trial at the center of *Anatomy of a Murder*.

Once at the helm of the picture, Preminger committed himself to presenting *Anatomy of a Murder* as an art cinema spin on the courtroom drama—a far cry from the close-ended, virtuous *Perry Mason* (1957–66) episodes audiences loved on television.<sup>142</sup> Narratively, Preminger foregrounds authenticity by staging most of “the film’s running time” within “the courtroom,” casting a real-life justice as the presiding judge, embracing the frank, explicit language pertinent to the rape-murder, and highlighting the moral ambiguities and ethical consequences lawyers face in their professions every day; stylistically, the on-location shooting in upper Michigan, gritty black-and-white photography, and long, uninterrupted takes allow audiences to absorb the grim nature of the circumstances and appreciate the arduous trial experience for victims, witnesses, jurors, and lawyers.<sup>143</sup> Further, Preminger’s shrewd decision to cast everyman Jimmy Stewart—an Oscar winner for his amiable performance as a tabloid reporter in *The Philadelphia Story* (1940)<sup>144</sup> and popular star thanks to his numerous collaborations with Alfred Hitchcock in films like *Rear Window* (1954)<sup>145</sup>

<sup>138</sup> See ANATOMY OF A MURDER (Columbia Pictures 1959); Orit Kamir, *Anatomy of Hollywood's Hero-Lawyer: A Law-and-Film Study of the Western Motifs, Honor-Based Values and Gender Politics Underlying Anatomy of a Murder's Construction of the Lawyer Image*, 35 STUD. L., POL., & SOC'Y 67, 72–73 (2005).

<sup>139</sup> CASPER, *supra* note 44, at 148.

<sup>140</sup> THE MAN WITH THE GOLDEN ARM (United Artists 1955).

<sup>141</sup> See CASPER, *supra* note 44, at 192; see also ASIMOW & MADER, *supra* note 137, at 23.

<sup>142</sup> See generally *Perry Mason* (CBS Television 1957–66).

<sup>143</sup> ASIMOW & MADER, *supra* note 137, at 21.

<sup>144</sup> THE PHILADELPHIA STORY (Metro-Goldwyn-Mayer 1940).

<sup>145</sup> REAR WINDOW (Paramount Pictures 1954).

and *The Man Who Knew Too Much* (1956)<sup>146</sup>—as the stalwart, yet cunning defense attorney Paul Biegler helped assure box-office and Oscar clout.

### 3. *Anatomy of a Murder*: A More Complicated Portrayal of the Legal Profession

While numerous film critics and legal scholars justifiably laud *Anatomy of a Murder* as one of the finest trial films of all time,<sup>147</sup> the equally celebratory hailing of Paul Biegler—who some claim represents the ultimate Hollywood “hero-lawyer”<sup>148</sup>—and inclusion of *Anatomy of a Murder* at the top of films that “speak positively of law, lawyers, and legal institutions”<sup>149</sup> appears hyperbolic upon further inspection. *Anatomy of a Murder* actually presents a darker, complicated depiction of the legal profession and trial process, largely due to Preminger’s reliance on art cinema themes and techniques. Although the movie recognizes the dedication and rigor attorneys possess, it ends highlighting the ethical ambiguities inherent in the profession and forces us to reevaluate the moral implications of Biegler’s choices and the legal profession overall—a significant departure from the lofty and aspirational portrayal of the law in *Young Mr. Lincoln* twenty years earlier.

### 4. Law as a Calling or Warning? The Lawyer out of the Courtroom

*Anatomy of a Murder* foregrounds its dichotomous view of the legal profession as a natural calling and cautionary tale through two attorneys: Paul Biegler and Parnell McCarthy (Arthur O’Connell). Preminger stages the first shot of Biegler from a distance as he drives his convertible filled with fishing equipment along a barren rural highway, which establishes a tenuous connection between Biegler and the audience; and, when Preminger eventually moves the camera in for a standard medium shot, Biegler appears dirty, haggard, and sullen—more “a man of nature, silence, and seclusion” than a professional.<sup>150</sup> Suddenly, Preminger employs a cross-cut—a parallel editing structure used to shift between concurrent scenes in different spaces<sup>151</sup>—to introduce us to a drunk, slovenly man, whom the bartender soon identifies as Parnell, downing another glass of whiskey at a dingy saloon. As Parnell explains he cannot pay his tab, Preminger holds the camera on Parnell’s grizzled, haggard visage to emphasize the physical toll the alcohol has ravaged on his appearance and force us to question what drove Parnell to this state.

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<sup>146</sup> THE MAN WHO KNEW TOO MUCH (Paramount Pictures 1956).

<sup>147</sup> ASIMOW & MADER, *supra* note 137, at 17.

<sup>148</sup> Kamir, *supra* note 138, at 69.

<sup>149</sup> David Ray Papke, *Law, Cinema, and Ideology: Hollywood Legal Films of the 1950s*, 48 UCLA L. REV. 1473, 1475 (2001).

<sup>150</sup> Kamir, *supra* note 138, at 75.

<sup>151</sup> DAVID BORDWELL & KRISTIN THOMPSON, FILM ART: AN INTRODUCTION 232 (9th ed. 2010); DREW CASPER & RICHARD L. EDWARDS, INTRODUCTION TO FILM READER 157–74 (4th ed. 2007).

As Parnell leaves the bar, Preminger shifts the action back to Biegler as he exits his car and walks into his home carrying buckets of fresh fish. While an ostensibly menial scene, Preminger keenly uses lighting and *mise-en-scène* to hint at the void in Biegler's life; as Biegler passes toward his front door, Preminger lingers on a half-lit sign reading, "Paul Biegler: Attorney at Law," blowing back and forth in the wind—suggesting that the legal spark within Biegler still flickers, albeit feebly.<sup>152</sup> However, as Biegler settles back into his home after his fishing expedition, Stewart exudes disenchantment as he walks listlessly amidst the dark house until Parnell suddenly arrives. Parnell—bathed in ominous shadows, which hint at the degraded state of his life—stumbles into Biegler's home for a daily nightcap, a tradition that began after Biegler lost his position as the local district attorney "to a populist, fashionable, lesser man."<sup>153</sup> Parnell's deleterious presence—augmented by his immediate decision to drown himself in more liquor—foreshadows the dark path awaiting Biegler away from the legal profession, while also once again suggesting that the law and hardships of the profession turned Parnell into a sot.

However, that lingering spark inside Biegler ignites after he discovers a note from his dutiful secretary explaining he missed a call from a prospective client, Laura Manion. After reading the note, Biegler moves quickly into a pitch-black room and switches on the lamps along the sides of the walls—illuminating a proper office and bookshelves filled with pristine volumes of case law, and the light inside Biegler. Once the lights are on, Preminger switches to a series of medium close-up shots of Biegler and positions him in the center of the frame, which demonstrate that Biegler has found an opportunity to reposition his life. Further, once Biegler returns Laura's call and sets a meeting for the next day, Stewart widens his eyes, enhances his diction, and laces his signature, booming voice with a glimmer of hope and excitement about returning to the law and escaping the fate of his good friend Parnell as he agrees to represent Laura's husband Fred Manion in his murder trial.

##### 5. Zealously Representing the Client v. Maintaining Moral Integrity: How Far Will Biegler Go?

The collision between skillful lawyering and upholding honorable moral and ethical values explodes during Biegler's initial defense strategy sessions with Fred. Keeping Parnell's advice to stay on the side of the "natural impurities of the law" in mind,<sup>154</sup> Biegler skates the edges of ethical responsibility by coaching Fred "into coming up with the insanity defense"—legally justifying the premediated revenge killing of Laura's rapist.<sup>155</sup> Given Biegler's professional duty to zealously represent his client, quest for societal redemption, and implicit approval of Fred's arguably "honorable, chivalrous defense of" his wife, Biegler justifies the decision

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<sup>152</sup> ANATOMY OF A MURDER (Columbia Pictures 1959).

<sup>153</sup> Kamir, *supra* note 138, at 74.

<sup>154</sup> ANATOMY OF A MURDER (Columbia Pictures 1959).

<sup>155</sup> ASIMOW & MADER, *supra* note 137, at 28–29.

with himself; and, at this early point in the story, many viewers want Biegler to use his “outstanding” legal and “professional skills” to absolve Fred of legal guilt and uphold an “unwritten law, acknowledging a husband’s right to” defend his wife’s honor.<sup>156</sup> However, Preminger’s use of staging, lighting, and framing question deeply the moral implications of Biegler’s unethical decision. While explaining to Fred the legal defenses available to him (most of which would involve a significant prison sentence), Biegler straddles the outer edge of the frame; and, as Biegler leads Fred toward an insanity defense, Preminger moves the camera horizontally and pushes Biegler further out of the frame to highlight that Biegler now operates outside the boundaries of the profession. Further, as Fred processes Biegler’s thinly veiled advice and asks questions, Preminger bathes Biegler in baleful shadows and shoots him from an imposing low angle that reinforces his status as a cunning, forceful figure. The inherent tension of the scene finally breaks when Fred—sporting a pensive expression evident in Gazzara’s piercing eyes—rises from his chair and moves toward the window of the jail, which emanates bright, natural light. In a mirror to the earlier scene in Biegler’s home-office, Fred’s mind clicks when he sees the sunlight and quips that he was “crazy” to Biegler’s smug delight.<sup>157</sup>

During trial preparation, Biegler’s fierce desire to show that “a good lawyer is more significant in winning a case, than [whether] the client’s innocent” allows his deft legal skills to shine, but also continually clouds his moral judgment.<sup>158</sup> Convinced that shining the spotlight on Laura’s rape and using it to implicitly justify Fred’s crime offers the savviest litigation strategy, Biegler myopically views Laura as a pawn—not a victim. In a prolonged scene, which embodies the bold realism established by art cinema and unseen on television, Laura recounts the details of her rape in graphic, technical detail to Biegler. Preminger holds the camera on Laura in a medium close-up as she spouts temporally shocking words like “panties,” “climax,” and “army slut.”<sup>159</sup> While Laura appears composed, she continues to wear sunglasses that shield her from reality and Remick permeates her speech with slight hesitations and stirs in her seat—hinting at the cracks in Laura’s façade and her underlying emotional trauma. But, instead of trading in compassion, Biegler zeroes in on Laura’s missing “panties” as key to the case.<sup>160</sup>

Later, shortly before Fred’s trial starts, Preminger uses Laura to demonstrate Biegler’s transformation into the savvy, cutthroat lawyer for which any culpable defendant would yearn. While parked under Fred’s jail cell window before a routine visit, Biegler and Laura appear in a stunning deep-focus shot—an art cinema hallmark that positions someone in a close-up, while keeping the background in focus.<sup>161</sup> Preminger positions Biegler in the close-up, but Laura commands our attention from the background as she

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<sup>156</sup> Kimir, *supra* note 138, at 84–86.

<sup>157</sup> ANATOMY OF A MURDER (Columbia Pictures 1959).

<sup>158</sup> Ralph Berets, *Changing Images of Justice in American Films*, 20 LEGAL STUD. F. 473, 473 (1996).

<sup>159</sup> CASPER, *supra* note 44, at 148–49.

<sup>160</sup> *Id*; ANATOMY OF A MURDER (Columbia Pictures 1959).

<sup>161</sup> See BORDWELL & THOMPSON, *supra* note 151, at 178–79.

discloses that she lives in fear of Fred especially since Fred becomes “furious” whenever she attempts to leave him.<sup>162</sup> When Laura finally removes her sunglasses and reveals a black eye, which Fred ostensibly inflicted, Preminger racks focus; as a result, Biegler’s contemplative, yet expressionless stare overtakes the frame as he processes the moral consequences of representing not only a murderer, but a wife-beater. However, knowing his professional ethics dictate a responsibility toward only his client, Biegler leaves Laura to meet Fred; and, with this telling action, Preminger neatly draws our attention to the “inherent, unbridgeable disparity between the general rules” of the legal profession and what stands as morally “just” in any given situation.<sup>163</sup>

#### 6. Biegler at Trial: The “Hero-Lawyer” at Work

The extended trial sequences—starkly realistic because of Preminger’s reliance on uninterrupted takes and long and medium shots, which allow “the various characters” to “simultaneously” share the “filmic frame”<sup>164</sup> and the audience to wholly absorb the intricacies of the trial process—solidify Biegler’s status as both a shrewd attorney and morally flexible counsel. Although Preminger allows Dancer substantial time to introduce evidence and question witnesses, our focus continually diverts to Biegler, largely due to Stewart’s boisterous voice and animated performance. Biegler’s legal acumen and vehement drive to win the case shine through with every objection raised, argumentative question asked on cross-examination, and out-of-order comment on a ruling. For instance, while conducting his cross-examination of the caretaker who runs the Manions’ trailer park, Biegler barrages the caretaker—over sustained objections—with inadmissible questions regarding Laura’s rape and passionately posits that anyone who viewed her bruised body would be driven to insanity. Despite these aggressive tactics, Biegler keeps the courtroom’s sympathy thanks to Stewart’s signature boyish charm, aw-shucks humor, and placating disposition, which bolster Biegler’s persona as a simple, relatable everyman. But, disinclined to allow us to fall under the spell of Stewart’s persona, Preminger stresses Biegler’s deceitful legal tactics and unscrupulous morals by moving in for a close-up—removing us from a string of long and medium shots and unbroken takes—of Biegler telling Fred that no jury can ably follow the judge’s instructions to disregard Biegler’s off-hand, brash commentary about Laura’s rape in support of Fred’s insanity claim.

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<sup>162</sup> ANATOMY OF A MURDER (Columbia Pictures 1959).

<sup>163</sup> Kamir, *supra* note 138, at 81.

<sup>164</sup> ASIMOW & MADER, *supra* note 137, at 19.

While Preminger maintains the dichotomous portrait of Biegler as savvy, yet unethical throughout the trial, he allows Biegler's keen legal prowess to take center stage in the closing moments of the proceeding. Fresh off his expert's far-fetched, yet legally sound testimony that Fred was insane at the time of the crime since he acted under an "irresistible impulse,"<sup>165</sup> Biegler pulls a final trick out of his arsenal with his final witness: Mary Pilant (Kathryn Crosby). Pilant, up to this point only known as the manager of the victim's bar, arrives as a surprise last-minute witness for the defense; Preminger showcases her importance to the story by switching to a wide-shot of the gallery—a new camera set-up—that captures Pilant's long, unobstructed walk to the stand and the surprised faces of the entire courtroom. On the stand, Pilant produces Laura's missing, tattered underwear—conclusive evidence supporting Laura's version of events—which she discovered in the residence she shared with the victim, Barney Quill. However, in his sharpest move, Biegler forgets to lay a foundation substantiating Pilant's claim and lays a trap for Dancer. To evince the ruse, Preminger bathes Dancer in an ominous shadow and shoots him from an elevated angle that signals his subordinate position to Biegler; so, when Dancer finally asks why the jury should believe her story, Pilant reveals she was the victim's daughter and possesses no motivation to lie. Dancer's defeated expression effectively conveys that he lost the case and the jury swiftly returns a not guilty verdict—painting Biegler as the "elite professional lawyer" and ostensibly a "model-hero" aligned with the PCA's mandate to respect the law and profession.<sup>166</sup>

#### 7. Biegler as Hero? An Ambiguous Ending Challenges Perceptions

Unwilling to leave us with a solely heroic representation of Biegler and the legal profession that is more reminiscent of Classical Hollywood cinema, Preminger employs an art cinema inspired ambiguous ending to muddle our interpretations. After arriving at the Manions' trailer park to receive payment for his services, Biegler encounters a deserted trailer and an overfilled trash bin stuffed with Laura's possessions, including a single, torn high-heeled shoe—imprinting negative, melancholic thoughts about Laura in our minds. The trailer park's caretaker quickly arrives to greet Biegler, hands him a note from Fred, and remarks that the Manions left the park hurriedly as Laura cried and screamed, which furthers our "strong suspicion . . . that Laura was a battered wife."<sup>167</sup> The situation festers further when Biegler reads Fred's letter that smugly declares he possessed "an irresistible impulse to leave town"—mirroring the technical language Biegler used to establish Fred's insanity defense.<sup>168</sup> Unexpectedly, instead of acting perturbed since Fred stiffed him or disgusted because he acquitted a murderer and returned a domestic abuse victim to her violent relationship, Biegler lets out a smirk, as if he appreciates Fred's ploy. As Biegler leaves the park and quickly moves

<sup>165</sup> ANATOMY OF A MURDER (Columbia Pictures 1959).

<sup>166</sup> Kamir, *supra* note 138, at 81.

<sup>167</sup> *Id.* at 73.

<sup>168</sup> ANATOMY OF A MURDER (Columbia Pictures 1959).

on to handle his next case settling Pilant's estate, Preminger zooms in toward the trashcan and closes on a shot of Laura's lone, tattered shoe—forcing us to ponder her fate and confront the moral consequences of Biegler's actions and the legal profession, which mandates zealous representation for both innocent and guilty clients.

#### 8. Legacy of *Anatomy of a Murder*

In addition to Preminger's deft direction, Stewart's multi-faceted performance, and boundary pushing subject-matter, *Anatomy of a Murder* earns its legendary status appreciably to its stark, realistic portrayal of the trial process and frank presentation of the innate, longstanding conflict between professional legal ethics and moral justice. Thus, moving forward, *Anatomy of a Murder* presages neatly Hollywood's growing exhaustion—even distaste—for Classical, principled portrayals of the law and legal profession.

### IV. NEW HOLLYWOOD ERA: 1967–1980

#### A. SOCIAL UPHEAVAL OF THE 1960S AND 1970S: THE COUNTERCULTURAL YOUTH MOVEMENT AND ANTI-ESTABLISHMENT ETHOS

Historians easily agree “that the decade of the 1960s transformed American life” forever thanks to the wide-spread acceptance of the rebellious, countercultural ethos—led by the baby-boomer generation’s “quest for personal authenticity” and “social liberation.”<sup>169</sup> After coming of age in cookie-cutter suburbia where their lives were strictly dictated by conservative, middle-class values, baby-boomers widely embraced the counterculture that truly “blossomed in 1967” and echoed throughout the 1970s.<sup>170</sup> The countercultural hippies obviously enjoyed and brought “sex, drugs, and rock’n’roll” to the societal forefront; but, their fierce commitment to individualism, “anti-establishmentarianism, [and] questioning of authority” stands as their lasting cultural impact.<sup>171</sup>

While the Age of Aquarius never realized, the countercultural attitude spread throughout the 1970s. First, formerly idiosyncratic values like “open, promiscuous relationships,” recreational drug use, and life on the road gained social approval and envy amongst the youths.<sup>172</sup> But, most importantly, the hippies’ “anoint[ment]” of our “imagination” as “the mind’s highest faculty” and personality as an individualistic hallmark gained widespread acceptance.<sup>173</sup> Soon, to combat the hippies’ stance that mothers and fathers epitomized the authoritarian establishment, parents raised their children as “equal, individually distinct member[s]” of the family—which fostered a

<sup>169</sup> PHILIP JENKINS, DECADE OF NIGHTMARES: THE END OF THE SIXTIES AND THE MAKING OF EIGHTIES AMERICA 3 (2006).

<sup>170</sup> DREW CASPER, HOLLYWOOD FILM 1963–1976: YEARS OF REVOLUTION AND REACTION 14–15, 23 (2011).

<sup>171</sup> *Id.* at 15–16.

<sup>172</sup> *Id.* at 15.

<sup>173</sup> *Id.*

disrespect for social structures and instilled the hippies' signature anti-authoritarian attitude within a generation.<sup>174</sup> The baby-boomers, once of working age, even carried an anti-establishmentarianism sentiment into the professional work-force; by prioritizing a “[w]hat's best for me” attitude and believing that “[w]ork at whatever level . . . must be fulfilling,” individuality and personal preferences trumped professional responsibility.<sup>175</sup> Eventually, the power of the baby-boomers’ independent spirit and regular “questioning of authority spread logically to a questioning of the entire social structure that validated it”<sup>176</sup>—leading to a 1970s America fueled by maverick ideals and values.

#### B. CHAOS, THE RISE OF CRIME, AND ACROSS-THE-AISLE DISRESPECT FOR LAW AND ORDER

##### 1. Breeding Chaos and Fear: Vietnam, Assassinations, and Crime Rates

The turbulent late-1960s and equally tense 1970s—marked by the ravages of the Vietnam War, the looming threat of nuclear annihilation posed by the Cold War, the political assassinations of Martin Luther King, Jr. and Bobby Kennedy, and rise of violent militant groups such as the Black Panthers—stirred widespread fear, anger, and unrest amidst the populace and bred a “crisis [of] . . . confidence” in our social system.<sup>177</sup> Further, as “homicide rates . . . tripled”<sup>178</sup> and crime waves swept across cities throughout the period, citizens tangibly experienced a threat to their “personal safety” and confidence in law and order and our justice system dwindled.<sup>179</sup> Soon, after a series of significant legal and political events, both conservatives and liberals united in their distrust of and distaste for law and order and the legal profession.

##### 2. Victimizing the Criminal: The Dawn of Criminal Rights and Conservative Backlash

Increased rights for criminal defendants and widespread legal and social efforts to transmute criminals into victims of injustice angered conservatives and sparked a backlash against attorneys and the American legal system.<sup>180</sup> Rather than pass laws “protecting . . . victims of crime, police, and/or prosecutors” and instituting efforts to combat the overwhelming rise of crime, courts—albeit justifiably—bestowed a plethora of constitutional guarantees upon criminal defendants: the exclusion of confessions obtained without requested counsel in *Escobedo v. Illinois*; banning of illegally seized evidence in *Mapp v. Ohio*; and requirement that criminals be informed of the right to counsel and against self-incrimination prior to interrogation in

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<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 23.

<sup>176</sup> ROBIN WOOD, HOLLYWOOD FROM VIETNAM TO REAGAN . . . AND BEYOND 44–45 (2003).

<sup>177</sup> *Id.*; LENZ, *supra* note 82, at 77–80; THOMPSON & BORDWELL, *supra* note 6, at 470–71.

<sup>178</sup> CASPER, *supra* note 170, at 24.

<sup>179</sup> LENZ, *supra* note 82, at 78.

<sup>180</sup> CASPER, *supra* note 170, at 4–5.

*Miranda v. Arizona.*<sup>181</sup> A host of conservatives viewed these decisions as antithetical to natural law concepts of right and wrong since legal technicalities now determined justice; and, attorneys who fought for these criminals' rights and judges who created them were complicit in allowing these suspects to evade punishment and return to wreak havoc on the streets.<sup>182</sup> Further, institutional and administrative efforts such as President Lyndon Johnson's "Commission on Law Enforcement and the Administration of Justice" extolled the notion that criminals stood as victims of "economic and social injustice" and earmarked tax dollars to remedy systematic class and racial unfairness and foster rehabilitation.<sup>183</sup> The Democratic government's ostensibly softening stance on crime contrasted with traditional, conservative notions of justice and led to Richard Nixon's decision to run (successfully) on a platform of restoring law and order to society in 1968.<sup>184</sup>

### 3. The Left Joins the Backlash: Watergate and the Rise of Institutional Distrust

While many liberals appreciated the rehabilitative approach to justice championed by President Johnson and the additional constitutional protections afforded by the Supreme Court throughout the late-1960s, President Nixon and the Watergate Scandal engendered "distrust . . . and cynicism" in our legal system.<sup>185</sup> When five aides working for Nixon's 1972 re-election campaign were arrested after breaking into Democratic National Convention Headquarters "to repair a defective bugging device," officials in-charge of the operation engaged in a massive cover-up spearheaded by White House counsel, John Dean.<sup>186</sup> Dean, acting in his capacity as a lawyer, "monitored the Watergate investigation to guarantee that no one was implicated beyond the five burglars," and the rest of the White House legal team and staff routinely obstructed justice to cover-up the crime.<sup>187</sup> In 1974, once the scandal was exposed and Nixon hid behind the presidential and attorney-client privileges—prior to the landmark ruling in *United States v. Nixon* nixing an absolute executive privilege<sup>188</sup>—faith in the legal system shattered. And, as the scandal ballooned into the largest political crisis in history and Nixon received a pardon from President Gerald Ford for any wrongdoing he may have committed, "lawyers"—complicit in the cover-up—became "suspect in the eyes of the public."<sup>189</sup>

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<sup>181</sup> *Id.*; *Miranda v. Arizona*, 384 U.S. 436 (1966); *Escobedo v. Illinois*, 378 U.S. 478 (1964); *Mapp v. Ohio*, 367 U.S. 643 (1961).

<sup>182</sup> LENZ, *supra* note 82, at 78–79.

<sup>183</sup> CASPER, *supra* note 170, at 24; Drew Casper, Professor, Univ. S. Cal., CTCS 503: Revolutionary and Reactionary Hollywood 1963–1976: Week Six Lecture (Feb. 15, 2017).

<sup>184</sup> Allen Rostron, *The Law and Order Theme in Political and Popular Culture*, 37 OKLA. CITY U. L. REV. 323, 331–37 (2012).

<sup>185</sup> William G. Hyland, Jr., *Creative Malpractice: The Cinematic Lawyer*, 9 TEX. REV. ENT. & SPORTS L. 231, 245 (2008).

<sup>186</sup> *Id.* at 245–46.

<sup>187</sup> *Id.*

<sup>188</sup> *United States v. Nixon*, 418 U.S. 683, 713 (1974).

<sup>189</sup> Hyland, *supra* note 185, at 247.

Lawyers, once heroic harbingers of justice, attained reputations as self-serving, criminal-friendly professionals—devoid of the moral compass and respect for natural law that guided Abraham Lincoln.

### C. REVOLUTIONARY HOLLYWOOD: BUSINESS SHAKE-UPS AND EMBRACE OF ORIGINALITY

#### 1. Conglomerization of Hollywood Studios

The sustained rise of television, overall drop in ticket sales, and a string of big-budget failures—Fox’s ostentatious, four-hour bore *Cleopatra* (1963)<sup>190</sup> cost the studio \$40 million (about \$320 million when adjusting for inflation)<sup>191</sup> and Paramount’s indescribable musical-spy thriller *Darling Lili* (1970)<sup>192</sup> only earned \$3 million against its \$25 million budget (a nearly \$140 million loss when adjusting for inflation)—sent studios’ financials into the red.<sup>193</sup> Increasingly unable to produce a profitable picture<sup>194</sup> or sustain large overhead costs—Fox sold its New York offices and Paramount auctioned off its famous Malibu ranch<sup>195</sup>—studios, “at their weakest point since World War II, were ripe for absorption into healthier companies” throughout the 1960s.<sup>196</sup> After Gulf+Western Industries—an amalgam of the chemical, paper, auto, and financial industries—acquired Paramount as the crux of its “leisure activities sphere” in 1966, “conglomerate fever” swept Hollywood.<sup>197</sup> By the 1970s, Warner Bros. was absorbed by Canadian music company Seven-Arts, which was subsequently acquired by Kinney National Service Corp. that counted “rental-car services, funeral parlors, and parking lots” on its books; life insurance powerhouse Transamerica, along with twenty-five “other service-related enterprises” bought United Artists; further, Columbia and Fox, brought in Wall Street firms to curb spending and make production decisions.<sup>198</sup> While the taken-over studios breathed a collective sigh of relief since they now possessed greater financial assurance, they faced a new reality: a boss who expected their product to bolster “the company’s profits and stock values.”<sup>199</sup>

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<sup>190</sup> CLEOPATRA (Twentieth Century Fox 1963).

<sup>191</sup> See THOMPSON & BORDWELL, *supra* note 6, at 474; see also John Patterson, *Cleopatra, the Film that Killed Off Big-Budget Epics*, THE GUARDIAN (July 15, 2013, 1:00 EDT), <https://www.theguardian.com/film/2013/jul/15/cleopatra-killed-big-budget-epics?INTCMP=SRCH>.

<sup>192</sup> DARLING LILI (Paramount Pictures 1970).

<sup>193</sup> Drew Casper, Professor, Univ. S. Cal., CTCS 503: Revolutionary and Reactionary Hollywood 1963–1976: Week Six Lecture (Feb. 15, 2017).

<sup>194</sup> THOMPSON & BORDWELL, *supra* note 6, at 474.

<sup>195</sup> See Casper, *supra* note 193; see also *Paramount Ranch*, NAT’L PARK SERV., <https://www.nps.gov/samo/planyourvisit/paramountranch.htm>. (last visited Feb. 15, 2017).

<sup>196</sup> THOMPSON & BORDWELL, *supra* note 6, at 474.

<sup>197</sup> CASPER, *supra* note 170, at 32.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* at 33; see THOMPSON & BORDWELL, *supra* note 6, at 474.

## 2. New Management, New Audiences, and New Movies

With businessmen firmly in charge of production decisions, the “commerce of picture-making” took center stage.<sup>200</sup> In addition to greenlighting fewer movies—in 1975 the major studios released only ninety-seven films, a precipitous drop from the 355 released annually during the height of the Classical era<sup>201</sup>—and favoring lower budgets—the acclaimed, controversial Best Picture winner *Midnight Cowboy* (1969) cost only \$3 million to produce—the studios viewed the ever-growing, baby-boomer youth market as their financial savior.<sup>202</sup> This “New Audience”—comprised of educated, financially stable, countercultural appreciative young adults—loved the visceral experience of cinema and regularly attended “thematically bold and formally revivifying” movies, akin to the art-cinema audiences in the late-1950s and early-1960s.<sup>203</sup> For instance, young audiences relished the frenetic, anti-establishment aura of the violent and kaleidoscopic *Bonnie and Clyde* (1967)<sup>204</sup> and salivated watching the breakneck, on-location car chase in *The French Connection* (1971)<sup>205</sup>—each of which returned tens of millions in profits for their respective studios on shoestring budgets.<sup>206</sup> Further, given the official elimination of the Production Code in 1966 and institution of the accommodating film ratings system—which used the G, PG, and R to suggest age classifications based on a picture’s content and still reigns today—studios were finally free to conquer sex, nudity, drug use, profanity, and violence without repercussion.<sup>207</sup>

Cognizant that the “New Audience” craved pictures created by directors who appreciated their youthful, bold, and experimental ideology and prioritized film as an art form, the studios offered opportunities to a wealth of young directors such as Francis Ford Coppola, George Lucas, Martin Scorsese, and Brian DePalma, who epitomized the New Hollywood aesthetic.<sup>208</sup> Armed with creative vision and “an intense awareness of film history and its continuing influence on contemporary culture,”<sup>209</sup> New Hollywood directors revolutionized American film. Stylistically, these young, bold directors mainstreamed innovative formal techniques like flash-forwards in *They Shoot Horses, Don’t They?* (1969),<sup>210</sup> multiple time-lines in *The Godfather: Part II* (1974),<sup>211</sup> non-linear editing in *Easy Rider* (1969),<sup>212</sup> and saturated, out-of-focus color schemes in *McCabe & Mrs.*

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<sup>200</sup> CASPER, *supra* note 170, at 33.

<sup>201</sup> *Id.* at 34–35.

<sup>202</sup> THOMPSON & BORDWELL, *supra* note 6, at 474; *MIDNIGHT COWBOY* (United Artists 1969).

<sup>203</sup> CASPER, *supra* note 170, at 59.

<sup>204</sup> *BONNIE AND CLYDE* (Warner Bros. 1967).

<sup>205</sup> *THE FRENCH CONNECTION* (Twentieth Century Fox 1971).

<sup>206</sup> See Drew Casper, Professor, Univ. S. Cal., CTCS 503: Revolutionary and Reactionary Hollywood 1963–1976: Week Five Lecture (Feb. 8, 2017); see also Casper, *supra* note 183.

<sup>207</sup> CASPER, *supra* note 170, at 118.

<sup>208</sup> THOMPSON & BORDWELL, *supra* note 6, at 478–80.

<sup>209</sup> *Id.*

<sup>210</sup> *THEY SHOOT HORSES, DON’T THEY?* (ABC Pictures 1969).

<sup>211</sup> *THE GODFATHER: PART II* (Paramount Pictures 1974).

<sup>212</sup> *EASY RIDER* (Columbia Pictures 1969).

*Miller* (1971).<sup>213</sup> Additionally, New Hollywood auteurs inventively tapped into the cultural consciousness—for example, *M\*A\*S\*H* (1970)<sup>214</sup> espoused the inanity and pointlessness of the Vietnam War by following the hijinks of a group of combat surgeons during the Korean War; *The Conversation* (1974)<sup>215</sup> used a surveillance tale to forewarn us of the dangers of a technologically driven society; and, *Dirty Harry* (1971)<sup>216</sup> celebrated the lawless vigilantism of Detective Harry Callahan (Clint Eastwood) in a potent condemnation of the *Miranda* decision.<sup>217</sup>

D. . . . AND JUSTICE FOR ALL (1979)—DIRECTOR: NORMAN JEWISON;  
STAR: AL PACINO; STUDIO: COLUMBIA

### 1. Resurrecting the Courtroom Drama: Columbia Greenlights . . . *And Justice for All*

As New Hollywood-driven pictures gained continued critical and commercial success, more genres like westerns and musicals underwent modernist transformations<sup>218</sup> and older, established directors such as Norman Jewison and Alan J. Pakula joined the fray.<sup>219</sup> But, given the youth's passion for the visceral, some genres such as the dialogue-heavy courtroom drama—of which *Young Mr. Lincoln* and *Anatomy of a Murder* belong—gained little traction during the period.<sup>220</sup> However, recognizing a chance to put a fresh spin on a supposedly stale genre, the populous disrespect for law and order and the legal profession bred by “post-Watergate cynicism,”<sup>221</sup> and interest from “New Audience” darling Al Pacino—revered for his virtuoso, hyper-realistic, and chameleonic performances in classic, popular New Hollywood films such as *The Godfather* (1972),<sup>222</sup> *Serpico* (1973),<sup>223</sup> and *Dog Day Afternoon* (1975)<sup>224</sup>—Columbia greenlit director Norman Jewison’s maverick, fiery, and challenging . . . *And Justice for All* (1979), a direct “attack [on] the judicial system” that ultimately decimates the myth of the traditional courtroom drama.<sup>225</sup>

### 2. Plot Summary

. . . *And Justice for All*, an impassioned, lively, and caustic courtroom drama, follows embattled defense attorney Arthur Kirkland (Al Pacino) through the chaotic, inequitable Baltimore courts and ultimately posits “the

<sup>213</sup> MCCABE & MRS. MILLER (Warner Bros. 1971); THOMPSON & BORDWELL, *supra* note 6, at 478–80; CASPER, *supra* note 170, at 69.

<sup>214</sup> *M\*A\*S\*H* (Twentieth Century Fox 1970).

<sup>215</sup> THE CONVERSATION (Paramount Pictures 1974).

<sup>216</sup> DIRTY HARRY (Warner Bros. 1971).

<sup>217</sup> See THOMPSON & BORDWELL, *supra* note 6, at 478–80.

<sup>218</sup> See CASPER, *supra* note 170, at 253–70, 328–38.

<sup>219</sup> THOMPSON & BORDWELL, *supra* note 6, at 479.

<sup>220</sup> CASPER, *supra* note 170, at 273–74.

<sup>221</sup> Rostron, *supra* note 184, at 376.

<sup>222</sup> THE GODFATHER (Paramount Pictures 1972).

<sup>223</sup> SERPICO (Paramount Pictures 1973).

<sup>224</sup> DOG DAY AFTERNOON (Warner Bros. 1975).

<sup>225</sup> Paul Haspel, *Arthur on a Quest in Baltimore: Mythic Archetypes, Social Criticism, and Civic Self-Promotion in . . . And Justice for All*, 35 J. POPULAR FILM & TELEVISION 127, 129 (2007).

idea of a legal system disconnected from justice.”<sup>226</sup> Motivated by his encouraging grandfather Sam (Lee Strasberg), Kirkland entered the legal profession with idealistic goals of fighting injustice and protecting the innocent; but, in practice, he encounters a backward system where evil and corruption reign.

Kirkland juggles “three major cases over the course of the film that all relate to the theme of injustice within the justice system.”<sup>227</sup> First, after watching the police humiliate a transgender prisoner, Ralph Agee (Robert Christian), Kirkland quickly agrees to represent Agee, “a reluctant accessory to a robbery attempt” with no prior criminal record.<sup>228</sup> With Agee rightly frightened of potential discrimination and abuse in prison, Kirkland sees probation as the only viable option for his client—much to the chagrin of the state and sentencing judge. Next, Kirkland vigorously fights for Jeff McCullaugh (Thomas Waites)—a young man rotting in prison for over a year because the authorities confused him with an Alabama fugitive of the same name—who endures physical and psychological abuse while incarcerated because Judge Henry Fleming (John Forsyth) refuses to consider potentially exonerating evidence Kirkland unearthed on procedural grounds. Rattled by this grossly unfair situation, Kirkland’s faith in the justice system dwindles. Finally, much to Kirkland’s bewilderment and dismay given their mutual hatred, Judge Fleming—accused of raping, assaulting, and sodomizing a young woman and under the impression the public would buy into his innocence with Kirkland on the case—blackmails Kirkland into becoming his lawyer. Armed with the knowledge Kirkland violated attorney-client privilege years earlier when he—justly in most moviegoers’ minds—anonymously revealed the identity of a wanted, sadistic psychopath to the police, Fleming knows Kirkland must accept his case or face disbarment.<sup>229</sup>

However, Kirkland reaches a personal breaking point and achieves a moral epiphany after a downpour of legal inequity, judicial incompetence, and preventable tragedy rains over him. After learning about Agee’s jailhouse suicide, witnessing McCullaugh’s death, and discovering Judge Fleming’s guilt, Kirkland loses all faith in a justice system that ignores truth, punishes the unfortunate, protects the guilty, and leads to the death of “the wrongfully accused.”<sup>230</sup> Now, “unable to defend a guilty judge in good conscience”<sup>231</sup> and heroically determined to ensure that truth and justice prevail for the first time in the picture, Kirkland realizes he “must destroy himself . . . to preserve the good” and takes the law into his own hands.<sup>232</sup> In

<sup>226</sup> *Id.* at 130.

<sup>227</sup> *Id.* at 128.

<sup>228</sup> David M. Spitz, *Heroes or Villains? Moral Struggles vs. Ethical Dilemmas: An Examination of Dramatic Portrayals of Lawyers and the Legal Profession in Popular Culture*, 24 NOVA L. REV. 725, 743–45 (2000).

<sup>229</sup> *Id.*

<sup>230</sup> Tonja Haddad, *Silver Tongues on the Silver Screen: Legal Ethics in the Movies*, 24 NOVA L. REV. 673, 690 (2000).

<sup>231</sup> Marianne M. Jennings, *Moral Disengagement and Lawyers: Codes, Ethics, Conscience, and Some Great Movies*, 37 DUQ. L. REV. 573, 574 (1999).

<sup>232</sup> Haspel, *supra* note 225, at 129.

a volatile, eccentric, and crowd-pleasing opening statement, Kirkland exposes Judge Fleming's guiltiness—famously exclaiming that the whole justice system is “out of order.”<sup>233</sup> While a wildly unethical and career-ending move, Kirkland “prevent[s] a corrupt man of power from doing further harm,” restores moral order to an unscrupulous judicial system, and becomes an anti-establishment, countercultural hero.<sup>234</sup>

### 3. Welcome to the Chaos: Meeting an Unjust Justice System

In the opening scenes, Jewison relies on contradiction, irony, and shock to capture the chaotic and backward legal system Arthur Kirkland operates within daily. After a discordant disco beat, an idiosyncratic choice for a courtroom drama, underscores the credits, our sense of disorder amplifies when Jewison introduces us to Kirkland—locked in a dark, grimy, and overcrowded jail cell on contempt charges. To augment the striking image of a lawyer behind bars, which encapsulates the inherent mayhem of this world, Jewison shoots Kirkland in a belittling high-angle that establishes his diminished self-worth just as a bright urine stream flows beneath his feet. Following a discomforting scene where Kirkland watches the police force the recently processed Ralph Agee to strip before entering the cell, further emphasizing the inequitable milieu in 1970s Baltimore, Kirkland gains release and retrieves his belongings from a stationed corrections officer. Jewison stages the action from the perspective of the corrections officer, which offers a continued image of Kirkland’s face obscured by iron bars—signifying visually that while physically out of jail, Kirkland remains trapped.

The courthouse—ordinarily a bastion of lawfulness and decorum—houses the disorderly system that vexes and bewilders Kirkland. During a routine bail hearing, Jewison thrusts us into a weirdly “surrealistic scenario” where one of Kirkland’s clients “tries to eat the evidence against him.”<sup>235</sup> This bizarre, farcical event swells after the prosecutor starts a brawl with the defendant as Kirkland and others in the gallery try to break up the madness. Unable to stop the fray with his orotund voice, Judge Francis Rayford (Jack Warden) removes the pistol around his waist and fires a shot into the ceiling; Judge Rayford’s jarring actions insinuate that his court resembles the lawless wild-west where guns hold more authority than the gavel.

Jewison fosters our outrage at this seemingly unprincipled legal system as Kirkland interacts with more judges and lawyers and discusses his clients. After the bail hearing, Kirkland corners Judge Fleming in a hallway with the hope Fleming would reconsider recently unearthed evidence that exonerates Kirkland’s client, Jeff McCullaugh. But, even after appealing to Fleming’s ostensible sense of sympathy and moral justice, Fleming reinforces his sole commitment to black-letter law and smugly retorts, “I don’t give a shit about your client.”<sup>236</sup> Defeated by this revelation, Kirkland soon encounters more

<sup>233</sup> . . . AND JUSTICE FOR ALL (Columbia Pictures 1979).

<sup>234</sup> Haspel, *supra* note 225, at 129.

<sup>235</sup> *Id.* at 130.

<sup>236</sup> . . . AND JUSTICE FOR ALL (Columbia Pictures 1979).

legal incompetence when he sits for questioning by an ethics committee. Routinely “contradicting each other or repeating a question already asked,” the attorney-members appear ridiculously unqualified and their witch-hunt prevents Kirkland from representing clients in actual need.<sup>237</sup> Further, in a clever visual, Jewison hangs “the Maryland state flag” behind the committee “upside down—a traditional sign of distress” that symbolizes the backward nature of the justice system.<sup>238</sup>

Finally, after an arduous day, Kirkland reveals the most morally outrageous legal inequity during dinner with his girlfriend and ethics-committee member Gail Packer (Christine Lahti). McCullaugh, the client Judge Fleming does not “give a shit about,”<sup>239</sup> rots in prison because the police confused him with a fugitive of the same name during a traffic stop for a broken taillight and his incompetent public defender refused to investigate his story of mistaken identity. To make matters worse, the other prisoners rape and beat McCullaugh daily and framed him for the assault of a prison guard. When first retained, Kirkland negotiated a time-served, no-contest plea that assured McCullaugh’s release from prison; but, Judge Fleming rejected the sentencing conditions, imposed a five-year prison term, and now refuses to review previously unavailable exonerating evidence that Kirkland just discovered. To further illustrate the atrocity, Jewison stages the tale by candlelight—evoking an unbelievable, far-fetched, campfire horror story.

#### 4. Blackmailed for “Doing the Right Thing”: Presenting the Ultimate Professional Dilemma

Judge Fleming throws a counterpunch that shakes Kirkland to his core, catalyzes the impending mayhem, and forces us to confront a central hypocrisy of the justice system when he blackmails Kirkland into representing him on rape, assault, and sodomy charges. Given their public row and the implicit assumption that Kirkland would not “defend a man [he] dislike[s] so much unless [Fleming] was truly innocent,”<sup>240</sup> Fleming believes Kirkland offers his best chance at obtaining an acquittal. During Kirkland and Fleming’s initial meeting about the case, Jewison boxes Kirkland into a corner of Judge Fleming’s chambers and gradually shifts from a standard medium shot to a suffocating close-up of Kirkland as it becomes clear that Kirkland, despite his initial refusal, will soon have to accept the case.

Jewison’s portentous staging and camera work culminate when Kirkland learns from Judge Rayford that he must represent Judge Fleming to save his career. Fleming knows Kirkland chose personal honor over professional duty by violating attorney-client privilege years earlier and threatens to reveal the ethical breach to the Maryland State Bar unless Kirkland acts as his defense attorney. Troubled by the notion of “moral disengagement”—which requires “suppressing one’s moral conviction” and personal sense of right and wrong

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<sup>237</sup> Haspel, *supra* note 225, at 130.

<sup>238</sup> *Id.*

<sup>239</sup> . . . AND JUSTICE FOR ALL (Columbia Pictures 1979).

<sup>240</sup> *Id.*

“in the interest of preserving”<sup>241</sup> client confidentiality even in extreme, potentially dangerous circumstances<sup>242</sup>—Kirkland broke attorney-client privilege to remove a sociopath who placed firecrackers in innocents’ mouths from the streets. Undoubtedly, Kirkland’s decision saved many lives; but, the legal system disavows Kirkland’s arguably upstanding behavior and he faces disbarment should Judge Fleming follow through on his threat to rat to the Bar. Now, stuck representing an enemy who very well may have assaulted and raped an innocent young woman, Kirkland’s world begins to unravel; and, we are forced to confront the possibility that the system stands ripe to punish the one attorney trying to ensure justice prevails for listening to his conscience.

### 5. Justice Will Not Prevail: Kirkland Reaches His Breaking Point

The seeds of an iniquitous justice system that favors winning over truth, safety, and reason blooms during two scenes in which Kirkland deals with fellow attorneys. First, to discuss a plea deal for Judge Fleming, Kirkland meets district attorney Frank Bowers (Craig T. Nelson) in a courtroom balcony that overlooks an ongoing assault trial. Bowers, unwilling to bargain, “pushes [Kirkland] against a wall of the courthouse, leans in close,” and remarks that the Fleming case stands as his legal “Super Bowl”—a must-win trial that offers Bowers professional fame and respect, even if that means forcing the victim to endure a painful, revealing trial.<sup>243</sup> Because of the “sports metaphors, Jewison’s thematic focus on the idea that the American judicial system is excessively focused on winning is evident.”<sup>244</sup> But, most tellingly, Jewison cross-cuts between Bowers’s bombastic predictions and the trial below to show how the costs of this winning mentality play out directly. After the defense attorney in the concurrent case secures probation for his client who viciously attacked an elderly woman during a robbery because he “really wanted to take her money,”<sup>245</sup> Jewison leaves the camera on Kirkland—rattled by his interaction with Bowers—as he hears the geriatric victim’s husband, acting as a Greek chorus, exclaim: “This is Justice?! The whole world is crazy!”<sup>246</sup> Using his wide eyes and sporting an exasperated visage, Pacino conveys subtly Kirkland’s evaluation of this stranger’s words; ones that will soon spark a personal revolution. Next, after his interaction with Bowers, Kirkland finds his friend and law partner Jay Porter (Jeffrey Tambor) ranting, raving, and throwing cafeteria plates in a courtroom hallway because he is unable to cope after learning a guilty defendant he cleared on a minor technicality murdered two children upon release—the ultimate fear espoused by critics of the increased defendants’ rights decisions of the 1960s. As Kirkland attempts to subdue Porter, Jewison

<sup>241</sup> Jennings, *supra* note 231, at 573–80.

<sup>242</sup> See CAL. BUS. & PROF. CODE § 6068(e) (2004) (explaining that California attorneys must preserve confidentiality at all costs and only have the *discretion* to breach confidentiality if a client plans on committing a future crime or inflicting substantial bodily harm upon an innocent third-party).

<sup>243</sup> Haspel, *supra* note 225, at 130; . . . AND JUSTICE FOR ALL (Columbia Pictures 1979).

<sup>244</sup> Haspel, *supra* note 225, at 130.

<sup>245</sup> . . . AND JUSTICE FOR ALL (Columbia Pictures 1979).

<sup>246</sup> *Id.*

adopts Kirkland's point of view; thanks to a free-wheeling, hand-held camera that barrels down the hallway and zigzags as Kirkland moves to avoid a plate, Jewison conveys both the pandemonium of the crisis and Porter's instability as he finally realizes the morally deleterious effects of representing criminals and winning at any cost.

After experiencing two immensely, tragic miscarriages of justice, Kirkland pushes closer to his own breaking point and begins to lose all faith in an overwhelmingly unfair legal system. To accompany Porter to the hospital, Kirkland asks another colleague, Warren Fresnell (Larry Bryggman), to cover Agee's sentencing hearing and present Kirkland's edits to the probation report to the court, which should compel the judge to order probation instead of prison. However, Fresnell forgets about the hearing and when he finally shows up late—to the judge's annoyance—he incompetently fails to present Kirkland's edits to the report or advocate for clemency on Agee's behalf, which incites the judge to sentence Agee to three years in prison. Following the hearing, the action shifts to Kirkland confronting Fresnell as he leaves a parking garage. Distraught and armed with a baseball bat, Kirkland smashes the windows of Fresnell's car—which Jewison vividly films from Fresnell's perspective within the vehicle—and breaks into tears as he exclaims that Agee committed suicide thirty minutes after the sentencing to escape the inevitable horrors of prison. Pacino—reliant on his malleable face, labored, yet forceful voice, and impassioned delivery—ably conveys Kirkland's distress and despair and achieves our sympathy. However, Fresnell cultivates our discontent for the legal profession as he shrugs off his incompetence by insinuating that Agee did not deserve his full attention as a “nickel and dime” client.<sup>247</sup>

Disgusted by Fresnell and the viewpoint he represents, Kirkland leaves the scene only to encounter more misfortune. McCullaugh, unnerved by the incessant rapes and beatings inflicted by fellow inmates and dismayed by Judge Fleming's refusal to reconsider his case, triggered a hostage situation after grabbing a corrections officer's gun. Believing he can diffuse the crisis, Kirkland enters the jail to calm McCullaugh; instead, he finds the previously innocent and meek McCullaugh transformed into a criminal “because of the justice system.”<sup>248</sup> Jewison highlights this dramatic transformation by holding on a harried, frenzied McCullaugh—boxed into a gloomy corner of the jail—as he anxiously fumbles with the gun, uncontrollably sways back-and-forth, and raves incomprehensibly; and, this extended, striking medium close-up of McCullaugh makes his trauma palpable and enhances the fatalistic atmosphere. As Kirkland—again overtly distraught and dismayed about possibly losing another client—coaxes McCullaugh to drop the gun and surrender, a series of police snipers barrage McCullaugh with a flurry of gunfire. In a viscerally impactful, violent scene, atypical to the courtroom drama, Jewison—borrowing from the visually disquieting styles of New

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<sup>247</sup> *Id.*

<sup>248</sup> Haspel, *supra* note 225, at 128.

Hollywood directors such as William Friedkin and Martin Scorsese<sup>249</sup>—captures McCullaugh’s death in an overpowering close-up that thrusts us into the violence and allows us to empathize with Kirkland’s overwhelming distress.

#### 6. Out of Order! Kirkland Restores Moral Order and Justice to the Courtroom

Already shaken by an egregious legal system that catalyzed the death of his clients, Kirkland “ultimately forsakes his professional obligations” and allows his “personal sense of justice” to triumph while defending Judge Fleming.<sup>250</sup> After Judge Fleming casually confesses to Kirkland—in a privileged attorney-client discussion—that he raped, assaulted, and sodomized the young woman at the center of his trial and remarks that he would “very much like to see her again,”<sup>251</sup> Kirkland feels disgusted by the legal requirement that he suppress knowledge of Fleming’s guilt<sup>252</sup> and grows unwilling to help deprive another victim of justice within a rigged system. Taking his cues from a classical, Western hero—who always found true justice outside of the bounds of the law—and embracing the maverick, anti-establishmentarian mentality prevalent during the 1970s, Kirkland delivers a fiery, yet legally unethical<sup>253</sup> opening statement condemning both his client, Judge Fleming, and the institutionally corrupt justice system that fostered such inequity, distress, and carnage throughout the movie.

Due to Jewison’s dynamic direction, Valerie Curtin and Barry Levinson’s sharp screenplay, and Pacino’s tour-de-force performance, Kirkland’s opening statement pulsates with unbridled vigor and stands as one of the most strident indictments of the legal system on-screen. At first defeated and cradling his head within his hands as the prosecution presents its opening statement, Kirkland suddenly appears rejuvenated as he rises to deliver his oration; Kirkland pops from his chair, straightens his back, and carefully paces toward the jury with determination—highlighted by Pacino’s use of a calculated, yet pensive expression. Initially, Jewison positions the camera within the jury box, which allows us to share their perspective, and holds on a stagnant medium shot of Kirkland as he rationally and capably pokes holes in the prosecution’s case like a competent defense attorney. However, Pacino hints at the cracks within Kirkland’s façade as he inflicts a subtly sarcastic, cynical tone upon phrases such as “justice is as any reasonable person would tell you, the finding of the truth” and “the intention of justice is to see that the guilty people are proven guilty and that the innocent are freed,”<sup>254</sup> which force us to question his intentions during this opening statement. And, as Kirkland continues, Pacino gradually adopts a

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<sup>249</sup> See *THE EXORCIST* (Warner Bros. 1973) and *TAXI DRIVER* (Columbia Pictures 1976) for a taste of the sensational, visceral filmmaking style that inspired shock and awe among audiences, especially.

<sup>250</sup> Spitz, *supra* note 228, at 744.

<sup>251</sup> . . . AND JUSTICE FOR ALL (Columbia Pictures 1979).

<sup>252</sup> See Jennings, *supra* note 231, at 601.

<sup>253</sup> MODEL RULES PROF’L CONDUCT § 1.6 (AM. BAR ASS’N 1983) (prohibiting attorneys from betraying client confidences and revealing confidential information, even admissions of guilt in the most repugnant, unsolved crimes).

<sup>254</sup> . . . AND JUSTICE FOR ALL (Columbia Pictures 1979).

forceful, exasperated timbre and doleful, yet enraged expression, while Jewison finally breaks from the motionless medium shot and zooms in for a close-up of Kirkland—commanding our attention.

With tears trickling down his face as he recounts the plight of the innocent rape victim, Kirkland “abandon[s] his ethical duties in favor of retaining his own sanity and personal sense of right and wrong”<sup>255</sup> and starts wielding natural justice. Upon vehemently and proudly proclaiming that “the prosecution is not going to get that man today because I’m gonna get him . . . the Honorable Henry T. Fleming, should go right to fucking jail—the son of a bitch is guilty!”<sup>256</sup> to audible gasps and cheers from the audience, Jewison visually mirrors Kirkland’s piss and vinegar by heightening the pace and energy of the scene through a succession of quick cuts among the aghast Fleming, prosecution, and audience and a diversity of camera angles as Kirkland forsakes professional decorum and legally ethical conduct. Despite Judge Rayford’s attempts to contain the situation, Kirkland cannot be tamed. Thanks to Pacino’s aggressive liveliness and ferocious delivery, Kirkland dominates the screen as he issues his—now cinematically famous—attack on the judiciary, trial, and American justice system that he sees as entirely “out of order!”<sup>257</sup> While security finally restrains Kirkland as he squirms and raves that Judge Fleming killed McCullaugh, Jewison preserves Kirkland within the center of the composition as the guards escort him from the courtroom—reinforcing Kirkland’s position as the moral center of the film.

Although Judge Fleming will receive a mistrial due to Kirkland’s revelatory oration and Kirkland faces imminent disbarment due to ethical violations, Kirkland achieves idiosyncratic justice and offers “cinematic catharsis” within a backward legal system.<sup>258</sup> As evinced by the cheers within the courtroom gallery, including the support of his ethically stringent girlfriend Gail Packer, the public celebrates Kirkland as a heroic, maverick martyr—sacrificing his career to ensure justice is served and bettering society in the process. With the knowledge of Judge Fleming’s sordid misdeeds, Baltimore stands poised to convict him in the court of public opinion. However, Jewison tempers our vindication in his closing, freeze-frame shot that depicts Kirkland sitting on the steps outside the courthouse staring into the camera. While Kirkland finds himself in the fresh-air and free from the shackles of a morally suffocating profession, he stares down the barrel of a directionless future and remains fully aware that his actions stand little chance of upending the iniquitous, entrenched justice system or inspiring other lawyers to defy the establishment and follow their own moral compasses.

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<sup>255</sup> Spitz, *supra* note 228, at 744.

<sup>256</sup> . . . AND JUSTICE FOR ALL (Columbia Pictures 1979).

<sup>257</sup> *Id.*

<sup>258</sup> Jennings, *supra* note 231, at 574.

#### V. CODA: HOLLYWOOD SIDES WITH ARTHUR KIRKLAND

Hollywood's distrust of and distaste for the legal profession and American justice system intensified throughout the 1980s and 1990s as morally bankrupt, incompetent, and "unhappy" attorneys proliferated on-screen in a variety of genres, such as courtroom dramas, comedies, and mystery thrillers.<sup>259</sup> For instance, in the sultry neo-noir *Body Heat* (1983)<sup>260</sup>—a smart retread of Billy Wilder's landmark noir *Double Indemnity* (1944)<sup>261</sup>—“lazy, greedy, incompetent” ambulance-chasing attorney Ned Racine (William Hurt) murders his lover Matty Walker's (Kathleen Turner) husband and uses his knowledge of criminal law and procedure to cover up the crime.<sup>262</sup> Moreover, in the gothic horror-thriller *The Devil's Advocate* (1997),<sup>263</sup> Al Pacino—in his first attorney role since . . . *And Justice for All*—portrays John Milton, a vicious, corporate, Wall Street lawyer who is literally the Devil incarnate.<sup>264</sup> In a culture in which “only 14%” of citizens “were extremely or very confident of lawyers,”<sup>265</sup> it stands as no surprise that Hollywood caters to audiences and imbues movies with negative representations of attorneys. While some reasoned, capable lawyers anchored movies such as *The Rainmaker* (1997)<sup>266</sup> and *Michael Clayton* (2007),<sup>267</sup> greedy, ruthless, and morally corrupt attorneys overwhelm the action and drive the protagonists to leave the profession to preserve their sanity and integrity. Overall, “the negativism”<sup>268</sup> catalyzed by . . . *And Justice for All* shows no sign of slowing down as the modern legal movie achieves consistent critical and commercial success. However, Hollywood should consider embracing some Classical and complicated, ambiguous Postwar portrayals of the law and profession—as seen in *Young Mr. Lincoln* and *Anatomy of a Murder*—from a modern lens and offer audiences a fresh perspective.

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<sup>259</sup> See Michael Asimow, *Bad Lawyers in the Movies*, 24 NOVA L. REV. 533, 533 (1999).

<sup>260</sup> BODY HEAT (Warner Bros. 1981).

<sup>261</sup> DOUBLE INDEMNITY (Paramount Pictures 1944).

<sup>262</sup> Asimow, *supra* note 259, at 534.

<sup>263</sup> THE DEVIL'S ADVOCATE (Warner Bros. 1997).

<sup>264</sup> Asimow, *supra* note 259, at 535.

<sup>265</sup> *Id.* at 539.

<sup>266</sup> THE RAINMAKER (Paramount Pictures 1997).

<sup>267</sup> MICHAEL CLAYTON (Warner Bros. 2007).

<sup>268</sup> Asimow, *supra* note 259, at 576.