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Abstract: Most American lawyers now practice in law firms, ranging from small partnerships to immense multi-national megafirms. In the movies, lawyers in solo practice have often been presented favorably, but when lawyers band together into law firms, the firms are almost always portrayed unfavorably. Recent films involving larger law firms, such as *The Firm*, *The Devil's Advocate*, or *Philadelphia* been venomously negative. Professor Asimow traces the history of law firms in film, concentrating particularly on Orson Welles' noir masterpiece *The Lady from Shanghai*, which he believes invented the idea that law firms are an embodiment of evil. Asimow believes that the explanation for the rash of harshly negative big-firm movies lies both in the public's evident distaste for lawyers in general and law firms in particular and in the traditional anti-business theme in film narrative. He sketches the history of the big law firm and contends that the world of big firm law practice has swung sharply in the direction of a business model rather than the traditional professionalism model. Finally, Asimow contends that in several respects the depiction in contemporary films of large firm life and law practice is fundamentally on target. In particular, the treatment in the movies of lawyer life style, billing improprieties, and hardball litigation tactics appears to be essentially correct.

EMBODIMENT OF EVIL: LAW FIRMS IN THE MOVIES

By Michael Asimow*

A majority of present-day lawyers practice¹ in firms.² Law firms range from intimate two-person partnerships to immense multi-national megafirms. Very large firms have been growing steadily, both in size and in market share.³ Lawyers consider big firms a fact of life, inherently neither good nor bad. The public, however, has a less benign view. Each year the Harris poll asks the public about its confidence in the leadership of various institutions. The respondents give leadership of law firms lower ratings than any other institution.

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¹ In this article, I consider only American lawyers in private practice, not foreign lawyers, in-house lawyers, or those working for institutions such as prosecutors, public defenders, or government.

² In 1995, about 47% of lawyers in private practice were solos, 53% practiced in firms. Clara N. Carson, *The Lawyer Statistical Report: The U. S. Legal Profession* 25 (1995). In 1960, by contrast, 64% of lawyers in private practice were solos. *Id.* at 7.

³ See text at notes 81-90.

Indeed, in 1997 law firms registered the lowest rating of any institution about which the Harris Poll had ever inquired.⁴

The public's dismal opinion of law firms is accurately reflected in the movies. During the seventy or so years of the sound era, filmmakers have often presented lawyers in solo practice as decent human beings and excellent lawyers, although that is much less true in the last thirty years than in the first forty.⁵ Once movie lawyers join together into law firms, however, they are portrayed quite negatively, regardless of the era. In film, lawyers who practice in small law firms are worse than solo lawyers, and big firms are much worse than small firms. Judging by what we're taught in the movies, lawyers in firms (especially large ones) are miserable, bigoted, materialistic people. Despite their wealth and beautiful cars and homes, they have mostly unhappy personal lives and dysfunctional families. As lawyers, they are greedy, heartless, predatory, unethical and often buffoonish or incompetent.

This article addresses the consistently negative portrayals of law firms in film and compares the movie law firms with law firms in the world. It asks whether real law firms, especially big ones, could possibly be as bad as reel law firms.

This article situates itself in the expanding scholarship of law and popular culture. The law and popular culture movement takes seriously works of popular legal culture,⁶ meaning stories about law, lawyers, or the legal system in film, television, or print. It treats

⁴ See text at notes 115-17.

⁵ See Michael Asimow, *Bad Lawyers in the Movies*, 24 Nova L. Rev. 533 (2000) (most lawyers in post-1970 films are bad human beings or bad lawyers or both).

⁶ See Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 Yale L.J. 1579, 1580 (1989), an article of great importance in launching the field of law and popular culture. Friedman observes that the phrase popular legal culture has a double meaning. First, it refers to opinions and information about law held by the general public. Second, it refers to works of imagination about law in print, film, television or other media. I use the term in the latter sense here.

these cultural artifacts as legal texts, as important in their own way as statutes, administrative rules, or judicial precedents. Those who write in this field believe that the public learns most of what it thinks it knows about law, lawyers and the legal system from the works of popular legal culture. They believe that information or misinformation gleaned from popular culture has a significant impact on "law" in the legal realist sense--meaning what judges, jurors, attorneys, legislators, voters, and ordinary consumers or producers actually do in their contracting, fact-finding, law-applying, and law-making functions. They are convinced that popular culture mirrors, often in an exaggerated and caricatured form, actual popular attitudes and beliefs about the institutions and characters that it describes. Finally, they believe that lawyers can benefit from studying the ways they are portrayed in popular culture, since the issues addressed in popular culture media are often serious ones for the profession.

The article opens with a descriptive account of law firms in film and on television (Part I). In Part II, the paper sketches the evolution of big law firms and the steady slide from the professionalism model of law practice to the business model. The balance of the paper asks why big law firms are so negatively presented in film (Part III) and assesses whether any or all of that negative treatment is justified (Part IV). The article concludes that in several respects the negative treatment of law firms in the movies is generally accurate. Movies correctly reflect the marked shift of law practice from a professional model to a business model. The descriptions in current film of the working life of associates, law firm billing improprieties, and hardball litigation tactics seem justified. The article also concludes that the description in the movies of big firm ethical improprieties may be inaccurate, but it is difficult to say for sure.

I. LAW FIRMS IN THE MOVIES

A. Films of the 1930's and 1940's

1. Bad small firms in the old days

During the bitter days of the Depression and the cynical film noir phase of the 1940's and 1950's, countless movies explored the underside of every profession and institution.⁷ Nevertheless, the vast majority of lawyers in film during these decades were favorably portrayed.⁸ Most were decent human beings whom you would want as friends and also competent, ethical attorneys whom you'd want to represent you. Those who were negatively portrayed were often mouthpieces for the mob or overaggressive and unscrupulous prosecutors. A handful were shysters, drunks, simpletons, or outright crooks. During this period, most of the movie lawyers (both good and bad) were sole practitioners--hardly surprising since most of them were criminal defense lawyers who usually practice alone. The few small law firms that appeared in film were usually presented in a bad light.

The classic film *Counsellor at Law* (1933)⁹ is both the first film about law firms and one of the very few to treat law firms in a balanced manner. The New York City law firm of Simon & Tedesco is profitable and successful. In addition to the name partners, the firm employs an associate, an office manager, secretaries (some of whom seem to be functioning as paralegals), and a receptionist. The film is set entirely in the beautiful art-deco offices of Simon & Tedesco. Even though the two partners are litigators, we see them only in the office, never in court.

⁷ Thomas Doherty, *PRE-CODE HOLLYWOOD: SEX, IMMORALITY, AND INSURRECTION IN AMERICAN CINEMA 1930-1934* p. 58-60 (1999).

⁸ See Asimow, note 5 at 569-75, 587-91.

⁹ The film adheres closely to a stage play by Elmer Rice, himself a lawyer. I believe *Counsellor at Law* is one of the finest movies ever made about law and lawyers. Unfortunately, this film has never been released on video and is difficult to access.

George Simon (John Barrymore) is an up-from-the-gutter Jew who has achieved high social standing, a prestigious uptown law practice, and a snooty gentile wife. Yet he still has one foot in the lower east side. During the course of the film, we meet a broad array of Simon & Tedesco's clients and learn about a multitude of legal problems, both criminal and civil. Simon is a talented and tenacious lawyer and a loyal friend. His personal life, however, is a shambles. On several occasions, Simon shades ethical rules and one such lapse gets him in deep trouble. Notably for this article, there is nothing evil about Simon & Tedesco. The lawyers treat their employees well. The partners are not cutting each other's throats and they are not ripping off their clients (well, not too much anyway). Instead, they are mutually supportive.

A more typical example of a bad law firm during the 1930's and 1940's was Cedar, Cedar, Cedar & Budington, the heavies in the delicious Frank Capra comedy *Mr. Deeds Goes to Town* (1936). The firm had stolen about half a million bucks from the estate of Mr. Deeds' deceased uncle. One of the Cedars attempts to have Deeds (Gary Cooper) declared incompetent, so he can't interfere. Deeds, of course, outwits them. The story is played for laughs, but there's no doubt that the law firm consisted of a bunch of crooks.

A common pattern in films of this era involved young lawyers who were associates in law firms and wished to defend criminal cases or take on other discreditable matters. The partners decide this kind of work is bad for their upscale image and dump the associate.¹⁰ Generally law firms seem very focused on making money and dislike

¹⁰ See *Knock on Any Door* (1949), *Society Lawyer* (1939), *Penthouse* (1933), *Lawyer Man* (1932).

taking pro bono work.¹¹ Honest lawyers can be corrupted once they join with other lawyers and start a firm.¹² On the whole, filmmakers presented the small law firms of the 1930's and 40's in a quite negative manner.¹³ These harsh portrayals of law firms contrasted sharply with the overall treatment of movie lawyers which was, on balance, quite favorable.

2. *The Lady from Shanghai*

The law firm as a metaphor for evil was largely an invention of Orson Welles in his surrealistic noir classic *The Lady From Shanghai* (1948). Welles adapted the screenplay from a novel¹⁴ and directed and starred in the film. The screenplay and direction were heavily influenced by the theories of Bertolt Brecht.¹⁵

Welles plays Michael O'Hara, a strong but rather gullible merchant seaman of liberal sympathies who falls for the bewitching Elsa Bannister (Rita Hayworth). Elsa's husband, Arthur Bannister (Everett Sloane) is said to be the best criminal lawyer in America. Bannister's law partner is George Grisby (Glenn Anders). In typical noir style, O'Hara is sucked into a complex conspiracy in which Grisby as well as Elsa and Arthur Bannister are all apparently trying to deceive and kill

¹¹ In *Daisy Kenyon* (1947), an older racist partner is furious when a younger partner spends 18 days in trial of a pro bono case for a Nisei deprived of his farm during the Japanese internment.

¹² *I Want a Divorce* (1940).

¹³ In *Cass Timberlane* (1947), a law firm relies on its connections with the judge to stave off litigation that would threaten a big client. In *Force of Evil* (1948), a law firm consists of an ethical lawyer and his partner who turns from doing borderline legal work for gamblers into an illegal gambler himself. The ethical lawyer turns him in. In *The Law In Her Hands* (1936), the two partners (female--a rarity for the time) are shysters who use cheap tricks to win acquittals for mobsters. In *Slightly Honorable* (1940), a two-man firm is engaged in highway construction fraud; the associate turns out to be the killer and he tries to do in the partner. An exception to the generally negative tone of movies about law firms is *That Certain Woman* (1937) in which a lawyer was presented favorably and his firm portrayed neutrally.

¹⁴ Welles desperately needed money to keep a Broadway play (*Around the World*) afloat. He agreed with Harry Cohn to make a film for Columbia. Cohn invited him to write a screenplay for a project already in development based on the novel *If I Die Before I Wake* by Sherwood King. Welles holed up at a hotel on Catalina Island and ground out a treatment within a couple of days. Welles had in mind a low-budget film noir shot in New York. Cohn converted it into a big-budget film set mostly on a yacht cruise in the Caribbean and designed to showcase Rita Hayworth. See Frank Brody, *Citizen Welles* 394 (1989); James Naremore, *The Magic World of Orson Welles* 151 (1978).

each other. This remarkable film ends with one of the most famous scenes in film history--the legendary shootout in the hall of mirrors at the funhouse. Our concern here, however, is the portrayal of lawyers Arthur Bannister and George Grisby.¹⁶

While the plot of *The Lady from Shanghai* is rather obscure,¹⁷ there is nothing obscure about the way the lawyers are portrayed. They are two of the most disgusting, reptilian lawyer characters ever put on film. Bannister is crippled; he walks with two canes and is supported by leg braces. Welles obviously intended this disability to make Bannister seem repellent.¹⁸ Both Bannister and Grisby dress inappropriately; they wear business suits and sweat copiously while cruising the Caribbean in boiling weather. Again, this makes them seem weird and alien. Both are often drunk. There are strong hints that Bannister is impotent and Grisby is gay, which would cause a 1948 audience to despise them. Both have creepy, whiny voices.

Throughout the film, Bannister abuses everyone around him. He is invariably cynical, condescending, and cruel. He mercilessly taunts his helpless maid Bessie and loses no opportunity to ridicule O'Hara, Elsa, and Grisby. He makes it clear that he cares little for anything except money and power. The character of Bannister may well have been

¹⁵ Barbara Leaming, *Orson Welles* 336-39 (1985).

¹⁶ The film was a nightmare for all concerned. During production, the weather was terrible and the locations were unsuitable. Welles went far over budget. Many scenes were shot in Mexico on Errol Flynn's yacht, *Zara*, with Flynn at the helm; however, Flynn was usually drunk, often absent, got into brawls, and brought a local woman on board after his pregnant wife had left for Los Angeles. Production was delayed several times by strikes. Harry Cohn had a tantrum because Welles had Hayworth cut off her long hair. The film was sliced to ribbons by an editor who particularly disliked Welles. The studio added a new musical score that Welles despised. Welles and Hayworth were still married while the picture was made but were in the process of breaking up. Both were sick throughout the production. Cohn held up release of the picture for several years and the film was a disaster at the box office. All that said, the film is a masterpiece. See Leaming, *supra* note 15 at 331-44 (1985); Andre Bazin, *Orson Welles: A Critical View* 92-95 (1972); Brody, *supra* note 14 at 394-404; Naremore, *supra* note 14 at 151-63; Charles Higham, *Orson Welles: The Rise and Fall of an American Genius* 238-45 (1985).

¹⁷ When he saw the rushes, Cohn detested the picture; he couldn't figure out what it was about and offered \$1000 to anyone who could explain it to him. Welles later admitted that he was incapable of explaining the plot.

¹⁸ Recall that FDR felt compelled to conceal his similar disability from the public; he always appeared seated in photographs.

inspired by Orson Head, Welles' great-grandfather and namesake.¹⁹ Orson Head was a notorious prosecutor in mid-19th Century Wisconsin. Head had an extremely aggressive demeanor and terrified everyone he knew, including his own family. He was vengeful and bigoted and is said to have forced sexual advances on black women over whom he had power. The presence of this monster in his family tree may well have caused Welles to acquire an aversion to successful, domineering lawyers.²⁰ In addition, Welles was perennially doing battle with producers and studios; no doubt, Welles' antagonists in these struggles were the lawyers who represented his adversaries.

Grisby is no better. He is a voyeur and is every bit as abusive as Bannister to everybody around him.²¹ He's busily engaged in a plot to fake his own murder so he can somehow collect the life insurance and supposedly disappear to the South Seas to get rid of his non-existent wife and avoid the upcoming nuclear holocaust. He hates Arthur and Elsa Bannister just as much as they hate him. Worst of all, from Welles' perspective, he's pro-Franco.

Late in the film, O'Hara goes on trial for the murders of Grisby and a private detective. He is represented by Bannister. Welles seizes the opportunity to parody traditional courtroom movies. A juror keeps sneezing. The prosecutor (Galloway) is as snarly and nasty as Bannister himself and the judge is an utter nitwit. Bannister and

¹⁹ Higham, note 16 at 4-5, 23-24, 235 (1985).

²⁰ In other films, Welles displays contempt for rich, powerful lawyers. Most notably, Welles adapted *The Trial* (1963) from Kafka's novel and directed and acted in the film. The surrealistic story portrays the criminal justice system as a nightmarish maze. Welles plays the role of Hassler, a corrupt and vicious lawyer who humiliates his clients and his mistress. In *Crack in the Mirror* (1960), Welles played a repellent French lawyer who free rode on the work of his associates and betrayed his co-counsel. This film showed the French equivalent of a law firm in a very negative light. The exception is *Compulsion* (1959), in which Welles played a character based on Clarence Darrow. The lawyer's eloquent summation attacking the death penalty saves characters based on Leopold and Loeb from the electric chair. Welles was quite liberal politically and admired Darrow as much as he loathed rich lawyers like Bannister and Grisby.

²¹ Grisby's character is said to be based on Welles' old antagonist Nelson Rockefeller. Grisby addresses everybody as "fella" as Rockefeller did. Higham, note 16 at 235; Leaming, note 15 at 340-41.

Galloway constantly scream at each other. Galloway calls Bannister as a witness and Bannister then cross examines himself to the amusement of all.

O'Hara, of course, is innocent of the crime. Grisby killed the detective and Grisby was killed by Elsa with Bannister as a witness (or possibly the other way around). Needless to say, Bannister never discloses his personal knowledge of the critical events. The undisclosed information would clearly exculpate O'Hara, while it would incriminate Bannister and Elsa. Thus Bannister has the ultimate conflict of interest--he seeks to have his client convicted to cover up his own involvement in the crime. As they wait for the verdict, Bannister tells O'Hara that this is one trial he'd like to lose--and he's done everything possible to insure that result. He wishes O'Hara a long life on death row before he's executed. O'Hara then escapes from the courtroom and flees, setting up the denouement in which Elsa and Arthur kill each other in the hall of mirrors.

O'Hara summarizes his feelings toward lawyers after listening to Bannister and Grisby taunt each other. He remarks that he'd once seen a pack of sharks so crazed by blood that they started devouring each other. After this spasm of insane violence, all of the sharks were dead. However, he'd never before seen people act that way.²²

Most of the essential plot elements in the film are also in the novel; indeed, the novel's narrative is much clearer. The differences, however, are quite revealing. Welles renamed the book's protagonist, Laurence Painter, as Michael O'Hara. He gave O'Hara a thick Irish brogue and a set of political views that resemble those of Welles himself but which are wholly absent in the novel. The lawyers in the

²² This famous speech is quoted in Bret Wood, Orson Welles: A Bio-Bibliography 210-11 (1990).

film are much more vicious than in the novel. In the book, Bannister is crippled, but he is mostly on the level. He does not have a conflict of interest when he represents Painter in the murder trial and he is not trying to throw the case. Grisby indeed wants to fake his own murder so he can run off with Elsa, but aside from manipulating Painter into taking part in the ill-fated scheme, he doesn't appear to be personally repulsive. There are no scenes in which the lawyers sit around and taunt people or carve each other up. Elsa (who doesn't come from Shanghai) is, of course, every bit as vicious in the book as in the film. Thus, in adapting the novel, Welles made a conscious decision to intensify the negative portrayals of the lawyers, making both of them into unethical creeps. *The Lady from Shanghai* established the law firm in Hollywood iconography as the embodiment of evil. Law firms, it seems, consist of lawyers who are personally repulsive and completely lacking in any kind of human virtue. They are greedy and manipulative, they hate each other, they drink too much, and are generally seeking to cheat or even to murder their partners. Although most of the law firms in films preceding *The Lady From Shanghai* are presented negatively,²³ there is nothing that approaches the venom with which Welles portrays the firm of Bannister & Grisby.

C. Films of the 1950's and 1960's

During the 1950's and 1960's, the vast majority of the lawyers in film were favorably portrayed,²⁴ but law firms were usually portrayed more negatively than solo lawyers.²⁵ Even at their best, the movie law

²³ See text at notes 9-13.

²⁴ See discussion at notes xx .

²⁵ *Two for the Seesaw* (1962) is an exception; the New York law firm in the film treats a depressed Nebraska lawyer very decently by hiring him as a law clerk and encouraging him to take the New York Bar; we learn nothing about the firm beyond that. In *The Young Philadelphians* (1959), the story centers on two law firms. The firms are portrayed in a mostly neutral light, competing with one another in a way that seems quite genteel by modern standards. One of the firms does not try to prevent Tony Lawrence (Paul Newman), a respected tax partner, from taking on a big criminal case for his old friend. Still, the two senior partners are not very empathetic. Dickinson is a snob; he maneuvers to

firms of these decades consist of a bunch of fuddy-duddy old partners who try to prevent younger lawyers from engaging in any sort of unconventional behavior.²⁶ For example:

1. In *By Love Possessed* (1961), Arthur Winner is a fine lawyer and family man but one of his partners is a nasty fellow who is both crippled and impotent (shades of Arthur Bannister). The other partner, who is the respected patriarch of the firm, is concealing a huge theft from a trust of which he is the trustee.

2. In *The Big Hangover* (1950), the partners of a small firm humiliate an associate; worse, they are highly unethical and racist. Having promised the City Attorney that they will not interfere with a Chinese doctor becoming a tenant in a client's real estate development, they scheme to move another tenant into the property "by mistake" so the doctor will have no place to go.

3. In *Young Man With Ideas* (1952), a young associate receives no recognition for his outstanding work in preparing for a major trial. The partners hog the glory. The partners and their wives are snooty and condescending. The associate is fired after he asks to be made a partner.

D. Films of the 1970's, 1980's and 1990's

During the past three decades, the vast majority of movie lawyers were portrayed in a negative light.²⁷ When those lawyers practiced in firms, the negative treatment sometimes became quite vicious. As in previous decades, small firms continued to take a bad rap; the lawyers

prevent his daughter from marrying a man who he thinks isn't her social equal; Wharton is kindly but cannot satisfy his much younger wife.

²⁶ In *Athena* (1954), a stuffy young partner named Adam Shaw is running for Congress and is engaged to a niece of one of the older partners who are as dull and conservative as dishwater. When Shaw threatens to fall in love with a non-conformist and actually shows some spunk, they do everything possible to bring him back into line.

²⁷ Asimow, note 5 at 576-82, 584-87.

are unpleasant and greedy.²⁸ Small firm lawyers treat their associates and staff badly²⁹ and some are total buffoons.³⁰ A few films treated small firms in a neutral manner, neither positive nor negative.³¹

The only half-way decent law firms we encounter in films of the last thirty years are small ones that oppose much bigger firms.³² Even filmmakers can understand that a solo lawyer cannot possibly muster the resources to fight big firm scorched-earth litigation tactics. Even in these small firms, lawyers' ethics are sometimes dubious³³ and the lawyers sometimes treat their clients badly.³⁴ Aside from these Davids in combat with Goliath, just about the only good lawyers we see in this period are the ones who practice by themselves.

²⁸ In *The Rainmaker* (1997), Bruiser Stone's small firm is definitely into criminality as well as traditional ambulance chasing. In *Grand Canyon* (1991), the protagonist lawyer Mack is a very decent human being, but his partner in a two-person immigration firm is described as an asshole. Neither Mack nor his wife can explain why Mack remains his partner. In *The Mighty Ducks* (1992), a senior partner appropriately compels an obnoxious and overly aggressive associate to take a leave. During the leave, the associate finds his soul as a peewee hockey coach. At that point, the senior partner unjustly fires the associate because the latter won't budge in a dispute over the eligibility of a hockey player. In *Narrow Margin* (1990), a law firm partner steals large sums from a client. In *Sex, Lies and Videotape* (1989), a young partner with a gorgeous office cares only for his affair with his wife's sister and totally neglects his most important client. In the remake of *Cape Fear* (1991), one lawyer sells out a client and cheats on his wife; his partner tries to suborn perjury. None of this occurred in the original *Cape Fear* (1961). See Francis M. Nevins, *Cape Fear Dead Ahead: Transforming a Thrice-Told Tale of Lawyers and Law*, 24 Legal Studies Forum 611, 633 n.22 (2000).

A particularly notable example of the bad small firm appears in *And Justice for All* (1979). This film effectively lampoons the criminal justice system and all of the players in it. The judges, the prosecutors, the prison guards, and the disciplinary board are all lowlifes of one sort or another. The film condemns the system of frantic plea-bargaining and contends that the decisions taken by judges and prosecutors are random, inhuman, and wildly arbitrary. While the protagonist Arthur Kirkland (Al Pacino) cares deeply about his clients and does his best for them within a chaotic and corrupt system, his partners are worthless as human beings and as lawyers. They are uncaring and contemptuous of their criminal clients. Their carelessness, for example, gets a transvestite client killed in prison.

²⁹ See *The Gingerbread Man* (1998) (arrogant attorney is abusive to staff and associate; ignores conflicts of interest); *Primal Fear* (1996) (attorney is materialistic publicity hound and is abusive to associates and staff).

³⁰ In *All of Me* (1991), one partner is a liar and a lecherous buffoon. In the trashy Madonna vehicle *Who's That Girl* (1987), the idiotic senior partner turns out to be an embezzler and killer.

³¹ The law firm in *Fatal Attraction* (1987) is presented in a neutral manner. Instead, the film demonizes career women. A lawyer is treated favorably in *Midnight in the Garden of Good and Evil* (1997); he is a partner in a small firm but we learn nothing about the firm.

³² The best examples are the small firms representing plaintiffs in *Erin Brockovich* (2000), *A Civil Action* (1998), and *Class Action* (1990).

³³ In *A Civil Action* (1998), plaintiff's lawyer Jan Schlichtmann commits several ethical lapses, including the rejection of a settlement offer without consulting his clients. He also displays poor judgment and poor financial management skills on numerous occasions.

During the last three decades a fundamental change emerged in law firm movies: the firms got much bigger. It dawned on filmmakers that law firms were increasing in size and power and presented an alluring target. In almost all cases,³⁵ movie megafirms resemble the school of self-devouring sharks described in *The Lady From Shanghai*.³⁶ Some or all of the lawyers in large law firms are miserable human beings and greedy, unethical, and uncaring lawyers.³⁷ Big firms are money machines run by greedy old men that eat their young and are horrible places to work if you're a half-way decent human being. In conducting litigation, big firms always deploy their superior resources to unfairly thwart righteous claims brought by their adversaries. Big firms are always on the wrong side--generally that of the vicious corporation rather than the deserving plaintiff. Some big firm lawyers are utter fools. Let's look at some of the more interesting law firm-trashing films of the last thirty years.

1. *The Verdict* (1982)

The Verdict is about a medical malpractice case. The client entered a hospital operated by the Archdiocese of Boston to have a baby. Something terrible happened during anesthesia, and she left the hospital in a vegetative state. Plaintiff's attorney Frank Galvin (a

³⁴ In *Class Action* (1990), the small plaintiff's law firm is favorably portrayed, but lead partner Jedediah Ward forgets about his former clients and has often been unfaithful to his wife.

³⁵ I note two exceptions, both based closely on true stories. Since the real firms are named or identifiable, the filmmakers may have pulled their punches. In *A Civil Action* (1998), the big Boston defense firms play litigation hardball but they play fair. In this respect the movie is more favorable to the defense lawyers than the book which accuses the lawyers of misconduct. See note 162, *infra*. The big firm defense lawyers in *Erin Brockovich* (2000) are portrayed in a neutral manner; they appear to be doing their jobs competently and ethically. In both films, the clients concealed critical evidence but their law firms are not blamed.

³⁶ See text at note 22.

³⁷ In addition to the films discussed in the text, large firms and their lawyers are effectively trashed in *Jagged Edge* (1985) (associate has affair with client and loses all judgment); *Legal Deceit* (1997) (brutal firm downsizing and ridiculous ethics); *Curly Sue* (1991) (partners nasty and unethical); *Trial & Error* (1997) (senior partner is gruff, nasty, and inconsiderate); *Clueless* (1995) (senior partner bullies other lawyers); *The Big Chill* (1983) (unlike her previous clients when she was public defender, associate's present clients only rape the earth); *The Good Mother* (1988) (big-firm partner is

solo practitioner played by Paul Newman) is certainly no bargain. He's a hopeless alcoholic, an ambulance chaser (he hands out his business card at strangers' funerals), he neglects the case until ten days before trial, he takes no depositions, he turns down a settlement offer without consulting his clients, he blabs about the case to his girl friend, he handles the trial ineptly, and commits various other sins. By virtue of astounding good luck (assisted by breaking into a mailbox) and an eloquent closing, he salvages victory in a case he has done everything humanly possible to lose.

But Galvin, at least, has a good heart. You can't say that for the defense lawyer that represents the Archdiocese. Lawyer Ed Concannon (James Mason) is a partner in a large corporate Boston firm that shares palatial quarters and employs servants in livery. Someone describes Concannon as the devil incarnate and he does everything possible to live up to the description. Concannon pads the client's bill by vastly overstaffing the case; he conducts conferences and witness preparations with every young lawyer in the firm present. He bribes the plaintiff's expert witness to disappear at the last moment so that Galvin has to scavenge for a new expert (who turns out to be incompetent). He employs Laura Fischer, a lawyer who has taken a leave from his firm and wants to return, as a sexual spy. Fischer seduces Galvin and steals all the secrets of the plaintiff's case while sharing Galvin's bed. Concannon somehow has tucked Judge Hoyle in his pocket; Hoyle conducts the settlement negotiations and presides over the case in a blatantly biased fashion.

In a late night conversation, Concannon slips Fischer a check to pay for her work as a lawyer-prostitute. He also articulates his

jealous, vengeful, and puritanical in child custody dispute); *Hook* (1991) (partner has no time for family and believes spotted owls should be a casualty of evolution).

"philosophy" of law practice. He explains that as a young lawyer, he told a partner that he had done his best, but the partner told him that you're paid not to do your best, you're paid to win. Concannon took that advice to heart and ever since he has done whatever it takes to win. Winning, he explains, is what pays for the luxurious offices and the pro bono cases the firm handles, for Fischer's fine clothes and his whiskey. He declares to Fischer: "You wanted to return to the world. Welcome back!" No scene in any film has better encapsulated law as a filthy business rather than as a profession. *The Verdict* was a landmark film that set the agenda for the treatment of big firms during the remaining years of the twentieth century.

2. *Class Action* (1990)

Class Action involves a product liability claim based on an exploding gas tank in the Argo Meridian, a disaster on wheels not unlike the notorious Ford Pinto. We learn that Argo knew that the gas tank would blow up in an accident if the turn signal was clicking, but figured it was cheaper to leave the design alone and pay the occasional damage claim. On the plaintiff side is Jedediah Ward whose small firm specializes in personal injury cases, especially products liability. Jed is pretty tricky, but he basically plays by the rules.

Representing Argo Motors is a San Francisco megafirm that will do just about anything to win. Jed's daughter Maggie Ward is a senior associate at the firm and is heavily involved in the Argo case. Maggie has a miserable personal life. She hates her father. She despises her work and drinks herself to sleep. She's having a secret affair with Michael, a young partner who deviously manipulates her. But the Argo case is the key to partnership, so Maggie does whatever she is told to do. On the instructions of the senior partner, we see her viciously and pointlessly browbeating a deposition witness who suffered horrible

burns from an exploding Meridian and whose entire family had been killed in the fire.

Plaintiffs request a test report on the Argo that shows Argo knew all about the exploding gas tank problem. Again acting under instructions from the senior partner, Maggie and Michael thwart discovery by burying the document in truckloads of extraneous paper. Maggie reluctantly participates in deliberately mis-indexing the document so it can't be located in the paper blizzard. In fact, unknown to Maggie, Michael removed the document entirely from the material sent to plaintiff, just to make sure it wouldn't be found. He also destroys Maggie's copy of it. In the end, Maggie sells out her client by secretly switching sides. In the process, she knowingly causes Michael to give perjured testimony in order to discredit Argo by showing that his testimony was false.

3. John Grisham's view of big law firms: *The Firm* and *The Rainmaker*³⁸

John Grisham has made a very profitable business of trashing law firms.³⁹ Just about the only decent human beings and ethical lawyers to be found in Grisham's books⁴⁰ are law students and professors,⁴¹ legal service lawyers,⁴² lawyers who work for free,⁴³ and young lawyers just entering the profession who have yet to be tainted by it.⁴⁴ Even these worthies sometimes have to resort to skirting or outright breaking the

³⁸ Grisham also wrote the screenplay for *The Gingerbread Man* involving a small law firm and a caring but arrogant, unethical, and impulsive lawyer. See note 29.

³⁹ Grisham sold far more books in the 1990's than any other author. See [Owens article in this symposium]

⁴⁰ Among the few exceptions are Jake Brigance in Grisham's first book *A Time to Kill* (1992; film 1996). Grisham wrote this book before he hit on his magical lawyer-trashing formula for riches. Brigance, a struggling solo practitioner, is a decent person and a skillful lawyer who cares deeply about his clients. Some of his lawyer friends, however, are not so nice.

⁴¹ *The Pelican Brief* (book 1992, film 1993), *A Time to Kill* (book 1992, film 1996), *The Runaway Jury* (1996).

⁴² *The Street Lawyer* (1998), *The Chamber* (book 1994, film 1996).

⁴³ *The Chamber* (book 1994, film 1996), *The Client* (book 1993, film 1994).

⁴⁴ *The Firm* (book 1991, film 1993), *The Rainmaker* (book 1995, film 1997).

rules of ethics (as well as the criminal law) to defeat their adversaries.⁴⁵ But when it comes to law firms Grisham never lets up. Invariably, lawyers in law firms are scum-sucking sharks; their clients are cold-blooded profiteers and white-collar criminals. Two of the best examples, *The Firm* and *The Rainmaker*, have been filmed and will be discussed presently. But in books that have yet to be adapted into films, Grisham trashes law firms (both big and small) every time. Consider these examples:

- The wholly evil firm that represents big tobacco in *The Runaway Jury* (1996)
- The money-grubbing poor-people-evicting firm in *The Street Lawyer* (1998)
- The pack of thieves in *The Partner* (1997) who think nothing of cheating the government and one another
- The extraordinarily greedy and crooked probate lawyers in *The Testament* (1999).

In the filmed versions of Grisham's books, big law firms are absolute pits of evil.⁴⁶ In *The Firm* (1993), Mitch McDeere (Tom Cruise) graduates from Harvard deeply in debt with a wife to support. Who could resist the nice guys from the Memphis firm of Bendini, Lambert & Locke who aggressively recruit him? It's a tax law firm, just what McDeere was hoping for, and they are unbelievably generous when it comes to money and other perks. True, you have to work long hours, it's difficult to get home from work before your wife hits the sack, some of the tax shelters look awfully aggressive, and associates are encouraged to pad the bills. But so what?

⁴⁵William Simon, *Moral Pluck*, 101 Colum. L. Rev. 421, 425-29 (2000).

⁴⁶ In *The Client* (1994) and *A Time to Kill* (1996), two other films based on Grisham's books, the prosecutors are ambitious and unscrupulous. Unethical prosecutors are beyond

What is that the firm turns out to be a well-concealed subsidiary of the Mafia, up to its ears in every sort of white-collar criminality as well as the blue-collar variety. The partners employ hired killers. Associates who catch on and try to leave are murdered. Confronted with proof of all this, McDeere joins forces with the Justice Department. The message is quite clear: law firms are criminal enterprises, even though they have beautiful offices and the partners dress nicely.

In *The Rainmaker* (1997), Rudy Baylor (Matt Damon) graduates from Memphis State law school. A big law firm offers him a job, but it cruelly and unethically reneges at the last minute. The only job he can find is with Bruiser Stone. Bruiser also employs para-lawyer Deck Shifflet (Danny DeVito).⁴⁷ The firm is obviously engaged in a range of illegal activity. Deck teaches Rudy the fine points of ambulance chasing and Bruiser vanishes to the Caribbean just ahead of the Justice Department.

Hoping to continue eating after his job evaporates, Rudy and Deck pursue a case that Rudy turned up in the law school's clinic. It's a bad faith claim against a health insurance company that refused to pay for a bone marrow transplant for a dying young man. In fact, as Rudy finally learns, the company never pays benefits to any of its insureds; it just collects premiums and stonewalls.⁴⁸

Implausibly, Rudy and Deck manage to take this case to trial and, with the help of a sympathetic judge and some exceptionally aggressive investigative work and good luck, they win it big time. Unfortunately, the insiders have looted the insurance company which files for

the scope of this article, however. See generally Peter Robson, *Adapting the Modern Law Novel: Filming John Grisham*, 28 J. of Law & Society 147 (2001).

⁴⁷ A para-lawyer is a law school graduate who can't pass the bar.

⁴⁸ Grisham appears to hate insurance companies as much as law firms and prosecutors.

bankruptcy, so neither the lawyer nor the client will collect anything. At that point, Rudy disappears into the sunset with a young woman he'd been sleeping with while also representing. Incidentally, Rudy killed her ex-husband with a baseball bat, but he lies to the police about what happens and lets her take the rap. He's leaving because he's already fed up with law practice; after all, "each time you try a case, you step over the line. You do it enough times and you forget where the line is."

Rudy is up against a big firm representing the insurance company led by Leo Drummond (Jon Voight). In typical Grisham style, Drummond's firm will do anything to win. Various tactics include stalling the case in the hope that the plaintiff will die, tapping the phones in Rudy's office, causing employees to disappear on the eve of their deposition, and turning over the claims manual with the key pages removed (the ones about how employees should give claimants the old run around and always deny their claims). Some of these sins might be attributable to the client rather than the lawyer; it is never clear how much the big firm lawyers actually know. Just for good measure, the film tosses in a couple of rather nasty lawyer jokes.

4. *Regarding Henry* (1991)

We meet Henry Turner (Harrison Ford), an arrogant, philandering type-A partner of a large defense firm, as he delivers a killer closing argument in *Mitchell v. East Shore Hospital*, a medical malpractice case. The plaintiff says he told the hospital he had diabetes; the hospital staff denies it. Just his word against theirs, Turner assures the jury--and then there's the plaintiff's alcoholism. The lawyers celebrate their great victory back at the firm.

Turner is shot in a convenience store, suffers terrible brain damage and memory loss, and goes into a prolonged rehab. Ultimately he

gets back his speech and tries to return to work at the firm. He examines his own file of the Mitchell case and discovers evidence that Mitchell did inform the hospital staff of his diabetes. Obviously, Turner knew this and suppressed the evidence in discovery and trial. When he calls it to the attention of his fellow partners, they scoff. Big deal, they say, that's what's paying for our lunch. Just another set of big firm sharks routinely engaging in dirty litigation tactics. And they won't let Turner go near any more of his old case files. Who knows what he'll turn up next?

5. *Philadelphia* (1992)

This film involves a big Philadelphia law firm that discharges a senior associate named Andrew Beckett (Tom Hanks). Beckett says it's because he has AIDS--a violation of federal anti-discrimination law. The firm says they fired him because of sloppy work--even though they had just assigned the vitally important High-Line case to him before discovering his affliction. To justify the discharge, they concoct a phony story in which Beckett is charged with losing the complaint in the High-Line case, almost causing the firm to miss a critical filing deadline. It's clear that senior partner Charles Wheeler (Jason Robards), once Beckett's mentor, is very uncomfortable being around someone who is gay and especially someone with full-blown AIDS. Therefore, he orchestrates the nonsense with the lost complaint and fires Beckett. The firing scene shows law firms at their hypocritical worst.

Beckett can't find anybody in Philadelphia to take on the powerful firm in a discrimination lawsuit. Finally he persuades solo practitioner Joe Miller (Denzel Washington) to overcome his homophobia and take the case. Throughout the trial, the law firm is shown in the worst possible light. On the stand, the partners falsely deny that

they ever suspected that Beckett had AIDS and they lie about the quality of his work. Their lawyer, Belinda Conine (Mary Steenburgen), adopts a condescending manner and she criticizes Beckett's lifestyle choices--just the wrong approach in a case where the jury's sympathy is bound to lie with the plaintiff. Thus we learn that big firms are viciously homophobic, even turning against their best lawyers when they're found to be gay or to have a fatal disease. Naturally, they don't hesitate to lie to cover their tracks.

6. *From the Hip* (1987)

Because he is desperate to get trial experience instead of library assignments, associate Stormy Weathers uses trickery to get an assault case assigned to him instead of a partner. He and opposing counsel cooperate in putting on a ridiculous charade at the trial. Weathers' firm wants to fire him as an incompetent buffoon. Instead, they make him a partner one year out of law school because his antics brought in so much business that it increased partner profit shares by \$28,000. The firm assigns him a death penalty case they are sure he will lose so they can get rid of him. Grudgingly they admire him when he destroys the courtroom furniture during his opening statement. Because he decides his client is guilty, he provokes the client to an enraged outburst in court so he will be convicted. This film shows that the work done by associates is unbearably tedious, that big firm lawyers are highly unethical, and that the partners are greedy, stupid buffoons.⁴⁹

7. *Liar Liar* (1997)

Big firm associate Fletcher Reade (Jim Carrey) is a pathological liar. He simply cannot tell the truth either to his family or in his

⁴⁹ The film was co-written by David E. Kelley--creator of *The Practice* and *Ally McBeal*. Thus the film was far from Kelley's last word on the subject of law firms.

practice. His law firm represents Mrs. Cole who signed a pre-nuptial agreement promising to remain faithful to her husband. She has breached this promise on numerous occasions and is in danger of being cut off with nothing in her pending divorce. The law firm is desperate to salvage something for her (and for themselves) and the only way is by introducing perjured testimony in court. Miranda, the supervising partner, asks a young associate to do it and is turned down. But no problem--Reade is more than happy to do the job. Lying is his middle name. In a brilliant scene, he assures the client that the perjured testimony he has prepared for her is perfectly legitimate; in fact she's really the victim. After the client leaves, Miranda sexually harasses Reade.

Reade's little boy casts a spell on his father which requires him to tell the truth. This is a serious professional setback. In one humorous scene, Reade (unable to lie) goes around the table at a partners' meeting and tells each of the partners what he really thinks of them. As he truthfully ridicules each of them, they break up in laughter. But as viewers we're left with the impression that Reade's firm consists (with the exception of one honest associate) of a greedy pack of liars and thieves.

8. *The Devil's Advocate* (1997)

This film carries the idea of law firms as the embodiment of evil to its absolute limit. The anti-hero is an arrogant young Florida lawyer named Kevin Lomax (Keanu Reeves) who strangely never loses a case. At the beginning, Lomax is a prosecutor, then a defense lawyer who manages to win acquittal for a disgusting child molester (whom Lomax knows is guilty).⁵⁰

⁵⁰ At several points in the film, the filmmakers send a strong message that criminal defense lawyers who do their job properly are doing something very wrong. In the

A New York megafirm hires Lomax, first as a jury consultant, then as a litigator. Again, Lomax appears to have almost supernatural powers. He quickly begins to ignore his wife Mary Ann by working inhuman hours. While she has a nervous breakdown, Lomax keeps winning cases through dubious tactics. Meanwhile, we swiftly learn what kind of firm he's working for and the type of clients it represents. It specializes in sleazy trans-national deals, weapons smuggling, drug conspiracies, and document shredding. A partner who threatens to rat the firm out to the Justice Department is mysteriously assassinated.

John Milton (Al Pacino), the managing partner of the firm, turns out to be the Devil himself. Why would Satan return to earth as a big firm lawyer? As Milton explains, law practice is "the new priesthood." It's the "ultimate backstage pass" to every sort of disgusting human behavior. Milton, we discover, is Lomax's father. Thus Lomax's miraculous success rate at trial is attributable to his satanic powers. Milton's plan is to mate Lomax to his half-sister to produce a whole new breed of lawyer-devils who will win "acquittal after acquittal, until the whole world stinks to high heaven."

Here we arrive at the end of the trail that Orson Welles blazed in *The Lady from Shanghai*: solo lawyers may be good or bad, but lawyers in law firms, and the firms themselves, are inherently evil. Law firms lie, cheat, steal and kill to make money and protect themselves. Their young lawyers toil 'round the clock to make money for the partners. As viewed through the lens of the movies, law firms are, indeed, instruments of the devil.

F. Law firms on television

denouement of the film, Lomax is given another chance to try the same child molesting case. This time he withdraws in the middle of the trial right in front of the jury, insuring that his client will be disbelieved and convicted. The filmmakers make their point unmistakably clear: no moral person could represent a criminal defendant he thinks is guilty.

Surprisingly, the portrayal of law firms on television is totally different from their treatment in film. The most important of the early television law firms consisted of Lawrence and Kenneth Preston, the father and son team on *The Defenders*. This series ran from 1961-65 and is fondly remembered by the generation of people of which this writer is a member.⁵¹ Each week, the Prestons tackled another major social problem, such as abortion, mercy-killing, the anti-Communist blacklist, censorship, or racial discrimination. The series also explored a whole range of criminal procedure issues, including the insanity defense and search and seizure. The show maintained an unabashed liberal sensibility. The Prestons didn't solve all the problems, and the shows often left major issues unsettled. However, the Prestons were paragons of personal virtue and ethical commitment as lawyers. How they got paid, if at all, was never discussed.⁵²

Law firms returned to the small screen⁵³ with the highly successful series *L. A. Law* which ran from 1986 to 1994 and continues to run in syndication in many cities.⁵⁴ *L. A. Law* concerned a mid-size law firm with partners and associates, a staff of non-lawyers, a varied clientele, civil as well as criminal cases, a beautiful office, and a managing partner who always worried about the bottom line. The show was the first to explore the economic aspects of law practice and the interpersonal dynamics of law firm life. It tackled thorny legal

⁵¹ See David Ray Papke, *The Defenders*, in Robert M. Jarvis and Paul R. Joseph, *PRIME TIME LAW* 3-15 (1998).

⁵² *Picket Fences* was a worthy successor to *The Defenders* in using the courtroom format to explore social issues. The show involved a solo lawyer, not a law firm. See Douglas E. Abrams, *Picket Fences*, id. at 129-44. Some other short-lived shows involving idealized law firms include *The Associates* (1979-80) and *Storefront Lawyers* (1970-71). See Steven D. Stark, *Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes*, 42 U. Miami L. Rev. 229, 256-57, 277 (1987).

⁵³ *Matlock*, which ran from 1986 to 1993, focussed mostly on the heroic character of Ben Matlock, an attorney/detective in the *Perry Mason* mold. Unlike Mason, Matlock had an associate attorney, usually one of his daughters. See Gail Richmond, *Matlock*, in Jarvis & Joseph note 51 at 55-64.

⁵⁴ See Stephen Gillers, *Taking L.A. Law More Seriously*, 98 Yale L.J. 1607 (1989); Charles B. Rosenberg, *An L. A. Lawyer Replies*, 98 Yale L.J. 1625 (1989); John Brigham, *L. A. Law*, in *PRIME TIME LAW*, note 51 at 21-32.

issues and often confronted difficult ethical problems.⁵⁵ While some of the lawyers were negatively portrayed, particularly managing partner Douglas Brackman and family law specialist Arnold Becker, most of the lawyers were very favorably portrayed. On the whole, *L. A. Law* sent a message to viewers that you could make a lot of money and have a wonderful life style while working as a team on fascinating legal problems and doing lots of good along the way.⁵⁶ This benign view of law firms and law practice undoubtedly attracted many young people to law school.

More recently, *The Practice*⁵⁷ again focused on a law firm, this time a bottom-feeding, scrappy Boston firm. This firm defends a lot of sleazy criminals and often cuts ethical corners. Many times, the show has dealt with the economic realities of small-firm practice--who will make partner, partnership profit shares for rainmakers, collecting fees, escaping from judicial sanctions, whether unattractive clients should be turned away, autocratic decisionmaking by the senior partner, and so on. The lawyers have personal problems such as finding suitable partners or reconciling their law practices and their personal lives. Their work lives and their personal lives are hopelessly intertwined.⁵⁸ Yet all of the lawyers and staff members are attractive and sympathetic as they struggle with the sometimes harsh realities and ethical

⁵⁵ Many times the lawyers exercised situational ethics--what Simon calls "moral pluck." Simon, *supra* note 45 at 429-35. Typically, senior partner McKenzie argued for applying mechanical black letter rules of ethics, while managing partner Brackman cared little for ethics and thought only about the economic bottom line. Many of the other lawyers of McKenzie, Brackman were prepared to stretch the rules of ethics when necessary to pursue a just cause.

⁵⁶ As Simon wrote, "Subject to preliminary and episodic struggles, the heroes enjoy abundant wealth, stylish consumption, good looks, sex, and above all, exciting work." *Id.* at 429-30. See also Marc Galanter & Thomas Palay, *Tournament of Lawyers* ix to xi (1991). One well-controlled study concluded that heavy watchers of *L. A. Law* had much more favorable opinions about attorney persona, such as character, composure, physical attractiveness, power, presence, and sociability, than did non-watchers of the show. See Michael Pfau et. al., *Television Viewing and Public Perceptions of Attorneys*, 21 Hum. Comm. Res. 307 (1995), discussed in Asimow, *Nova*, note 5 at 557.

⁵⁷ See Simon, note 45 at 435-40; Brett Kitei, *The Enduring Appeal of The Practice and Ally McBeal*, 7 UCLA Ent. L. Rev. 169 (1999).

⁵⁸ See Christine Alice Corcos, *Woman Lawyers*, in *Prime Time Law*, note 51 at 219, 233.

conundrums of small firm practice. These are people we like, and wish we could be like.⁵⁹

Ally McBeal is another highly successful show based on a small law firm. However, *McBeal* is more a situation comedy or buddy-type show that could be set in any sort of office environment. The legal content of the shows is usually silly. Mostly the show is about personal relationships and the lack thereof, sexual fantasies, and the bizarre behavior of the various people who work at the law firm. To the extent that it is about a law firm and law practice, *McBeal* probably makes it seem fun and attractive.⁶⁰

It is a striking phenomenon that law firms are portrayed much more favorably on dramatic television series than in film. Like other team enterprises such as hospitals, schools, television stations, or police departments, law firms provide a great platform for ensemble casting and for story lines and character development that continue for numerous episodes. My guess is that a series needs to be based primarily on a range of characters with whom the audience can empathize. A few unsympathetic or even nasty characters among the regular cast may be acceptable, but we really don't want to invite sleazy people into our living rooms every week.

From another perspective, the treatment of law firms in contemporary movies and television may not be so inconsistent. Note

⁵⁹ The same is true of the small domestic relations firm in *Family Law*.

⁶⁰ See Kitei, note 57. As this article was completed, *The First Year* debuted on NBC and was cancelled after a few episodes. The show concerned five housemates who were first year associates at a big San Francisco firm. The life of first year associates as depicted on the show was ludicrously unrealistic. They had plenty of time to pursue their lifestyles and hyperactive sex lives, they had their own interesting clients and matters to work on, and they suffered no long and boring assignments to be completed under deadline pressure. As in *Ally McBeal*, the show was more about the relationships among the five housemates than about their life at work. If there was any message, however, it was that young associates in big firms have lots of fun, receive high salaries, and enjoy pleasant and fulfilling work. *Sparks*, a cancelled show that ran on BET, was another sit-com based on a family firm of African-American attorneys.

that the television series about law firms⁶¹ (other than *The First Year*) are based on *small firms*. McKenzie, Brackman had a modest number of partners (around six to eight) and a handful of associates. The matters that McKenzie, Brackman handled, such as estate planning, criminal law and family law, were much more typical of small firms than large ones. The firms in *The Defenders*, *The Practice*, and *Ally McBeal* were and are much smaller than McKenzie, Brackman.⁶² In contrast, many of the truly ugly law firms in contemporary movies are quite large; indeed, virtually the only law firms that are favorably portrayed in contemporary film are small firms that oppose big firms.

II. PROFESSIONALISM, PROFIT SEEKING, AND THE EVOLUTION OF BIG LAW FIRMS

A. Two ways to think about the practice of law: professionalism and business

The world of law practice can be viewed through two different prisms: the professional prism and the business prism.⁶³ Historically, law has been considered a *profession*. The actual meaning of the words "profession" and "professionalism" vary considerably, depending on who is using them and for what purpose.⁶⁴ At a minimum, legal professionalism includes at least these core elements: specialized training, knowledge that is inaccessible to a lay person, protection against competition under state law, an obligation to place the interest of the client ahead of the interests of the lawyer, a binding code of ethics, and self-regulation. Professionalism is generally

⁶¹ Other than the failed *The First Year*. See note 59.

⁶² Occasionally, as in several episodes involving tobacco litigation, the lawyers of *The Practice* went up against big firms. The big firms were negatively presented.

⁶³ See generally Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U.L.Rev. 1229 (1995).

⁶⁴ Id. at 1237-40 (citing many works that define and explain professionalism); ABA Commission on Professionalism, *"In the Spirit of Public Service:" A Blueprint for the Rekindling of Lawyer Professionalism*, 112 F.R.D. 243, 261-63 (1986) (hereinafter *Blueprint*); Ysaiah Ross, *Ethics in Law* 54-72 (2001); Rayman L. Solomon, *Five Crises or One: The Concept of Legal Professionalism, 1925-1960*, in Robert L. Nelson, David M. Trubek, and Rayman L. Solomon, *Lawyers' Ideals/Lawyers' Practices* 144-54 (1992).

understood to include a certain degree of autonomy and independence both from government and from clients. As to relationships with clients, a lawyer is expected to exercise independent judgment with respect to tactical decisions and to influence clients in the direction of more prudent, moral and responsible behavior.⁶⁵ Finally, professionalism includes some form of public responsibility.⁶⁶ What "public responsibility" entails is disputed, but it probably includes at least some obligation (mandatory or aspirational) to provide services to those in need⁶⁷ and a set of obligations of cooperation and respect toward justice-dispensing institutions such as courts, arbitrators, or administrative agencies. It probably includes responsibilities toward the profession itself such as serving on bar committees or assisting in continuing legal education.

The second way to think about private law practice is that it is a highly competitive, profit-maximizing business like any other.⁶⁸ It consists of big businesses (large firms) and small businesses (solos or small firms). All competitors in the market aim to deliver services efficiently in order to earn as much money as possible. Under this model, lawyers can and do seek profit by any means short of violating positive criminal or civil laws. In this sense, the codes of ethics that bind lawyers are just one more regulatory law that must be adhered to (but which can often be skirted). Competition between firms for clients and for desirable associates or partners is and should be ruthless and unbridled.

⁶⁵ See, e.g., Anthony T. Kronman, *The Lost Lawyer* 128-46 (1993); Sol Linowitz & Martin Mayer, *The Betrayed Profession* 4, 12-14, 21-46 (1994); Erwin O. Smigel, *The Wall Street Lawyer* 6, 343-44 (1969); Robert W. Gordon, *Corporate Law Practice as a Public Calling*, 49 Md. L. Rev. 255 (1990) (lawyers should counsel clients not to subvert regulatory schemes); William H. Simon, *Babbitt v. Brandeis: The Decline of the Professional Ideal*, 37 Stanf. L. Rev. 565, 565-571 (1985) (summarizing approach of Brandeis and Parsons); Blueprint, note 63 at 278-80.

⁶⁶ See Smigel, note 64 at 8-12.

⁶⁷ Blueprint, note 63 at 296-99.

Under the business model, lawyers owe no public responsibilities and have no autonomy from their clients. A lawyer earns the maximum profit by assisting clients to do what they want to do. The lawyer should do so without any concern for morality, for the interests of third parties, the interests of the general public, or even the long-run interests of the client. The lawyer is expected to extract the maximum possible return from clients and has no responsibility to charge reasonable fees or to work for clients who cannot pay fees. Nor does the lawyer owe any obligation to the profession or to the institutions of justice. Under the profit-maximizing model, a lawyer is expected only to pursue economic self interest and to adhere to positive law including binding (but not aspirational) rules of ethics.

Both of these models, of course, are oversimplified and reductionist, and law practice has never conformed entirely with either of them. Law practice has always contained a strong professional element and a strong business element and it always will. The evolution of present-day megafirms can be explained by economic factors,⁶⁹ but it can also be understood as a perceptible shifting of the pendulum toward the business model and away from the professionalism model.⁷⁰ The business v. professional antinomy is helpful not only in understanding the world of present-day law practice but also in interpreting the films that tell stories about that world.

B. The evolution of big law firms⁷¹

⁶⁸ Pearce, note 62 at 1241-46. See Robert W. Gordon, *Why Lawyers Can't Just be Hired Guns*, in Deborah L. Rhode, *Ethics in Practice* 42-55 (2000) (attacking the business model).

⁶⁹ See text at notes 81-83.

⁷⁰ Of course, from time immemorial, lawyers have been bemoaning the fact that the once-great profession has turned into a business. Pearce, note 62 at 1241-63; Deborah L. Rhode, *In the Interests of Justice* 1-22 (2000). However, in our times the pendulum seems to have swung further toward the business side of the clock than ever before.

⁷¹ This necessarily brief treatment of the remarkable evolution of the large law firm is based on Rhode, note 69; Galanter & Palay, note 56; Kim Isaac Eisler, *The Shark Tank* (1990); Robert L. Nelson, *Partners with Power* (1988) (hereinafter Nelson); Walt Bachman, *Law v. Life* (1995); Lincoln Caplan, Skadden (1993); Macklin Fleming, *Lawyers, Money and Success* (1997); Mary Ann Glendon, *A Nation Under Lawyers* (1994); Michael H. Trotter,

Sizeable law firms began to emerge in New York City around the turn of the twentieth century to represent large institutions such as corporations or government entities.⁷² The economic rationale of big firms remain the same today as a century ago. Large firms exist to take advantage of `specialization, economies of scale, and leverage.

Law firms employ a large number of highly specialized lawyers. Thus the firms can offer clients quick access to sophisticated, experienced lawyers over the entire range of the client's needs. Specialization is also advantageous to individual lawyers since it enables them to maximize their human capital and create a competitive advantage over other lawyers.⁷³

Bigness affords such economies of scale as the ability to purchase costly cutting-edge technology. It allows the firms to employ a large corps of non-lawyer staff members (such as office managers, word processors, technology experts, or paralegals) or providers of ancillary services (such as lobbying). Bigness creates a fluid labor pool of lawyers that can be immediately deployed to meet unpredictable staffing demands, such as complex, high-stakes litigation or a hostile takeover; smaller firms must hire contract lawyers or associate with other firms to meet such crises. Large size also permits synergies to occur between lawyers with different skills and client bases, so that the firm can market new services to existing clients.

Profit and the Practice of Law (1997); Richard Abel, *American Lawyers* (1989); Peter Megargee Brown, *Rascals: The Selling of the Legal Profession* (1989); Randall S. Thomas, Stuart J. Schwab & Robert G. Hansen, *Megafirms* (unpublished draft of March 14, 2001); Symposium, *The Law and Economics of Lawyering*, 84 Va. L. Rev. 1411-1797 (1998); Deborah K. Holmes, *Learning from Corporate America: Addressing Dysfunction in the Large Law Firm*, 31 Gonzaga L. Rev. 373 (1995-96); Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 Stanf. L. Rev. 313 (1985).

⁷² Galanter & Palay, note 56 at 4-19.

⁷³ By the same token, the big firm structure allows lawyers to reduce the risk that their income will fall as their particular specialization wanes or their clients leave the firm or fail. See Gilson & Mnookin, note 70.

Leverage is based on paying an hourly wage to legal workers such as associates and paralegals but billing them to clients at a much higher rate.⁷⁴ This process generates a surplus in the form of partnership profits. If a firm wishes to continue to exploit its ability to extract a surplus from the associates, it must grow by hiring more associates to replace those who have left and those who have made partner, thus maintaining the associate to partner ratio.⁷⁵

On the downside, of course, largeness, especially if accompanied by multi-office or multi-national branching, may create significant diseconomies of scale. Largeness generates serious management complexity.⁷⁶ It generates a constant need to recruit hordes of new associates to replace those who either leave or make partner. It is likely to increase the difficulty of reaching consensus among partners and create problems of intra-firm communication. It requires that management decisions be made by elite groups of partners, effectively disempowering the remaining partners. Largeness and dispersion also magnify the difficulties of monitoring paralegals, associates, and even partners to prevent poor quality work or slacking off. Largeness also magnifies the problem of conflicts of interest; the more clients a firm has, the more likely the firm is to find itself on both sides.

The big firm economic model worked very well, and firms grew modestly but steadily through the 1960's, spreading from New York to other large cities.⁷⁷ Firms grew slowly in size. They farmed out most of the litigation business,⁷⁸ believing that transactional and

⁷⁴ Associates who generally have few clients of their own willingly trade their labor for a salary to partners who have more work than they can do. See Galanter & Palay, note 56 at 89-98 for systematic treatment of this exchange transaction.

⁷⁵ *Id.* at 98-108.

⁷⁶ See Caplan, note 70, recounting at many points the turmoil over management at Skadden, Arps. For example, see 233-35 (struggle by younger partners to gain management roles), 249-56 (struggle over who makes partner during recessionary period).

⁷⁷ See Galanter & Palay, note 56 at 20-36.

⁷⁸ Caplan, note 70 at 139-40; Linowitz & Mayer, note 70 at 96-100; Fleming, note 70 at 5-6.

counseling work was more profitable and more dignified. During this era, big law firms did not function altogether like other profit-maximizing service businesses such as advertising agencies, television networks, or weight-reduction salons. Instead, they were characterized (or at least claimed they were characterized) more by the professionalism model than the business model.⁷⁹

For example, advertising of firm services was unthinkable and, in fact, was prohibited by binding ethics codes. Even permissible forms of marketing, such as encouraging clients to switch law firms, were considered bad form.⁸⁰ Generally, big clients turned over all their legal work to a particular firm and stayed with that firm for generations. Clients seldom questioned bills or took significant legal work in-house. Firms allowed their lawyers to continue practicing in departments that yielded less profit than other departments.⁸¹ Lawyers mostly acted in a civil fashion toward their opponents and there was an atmosphere of trust among practicing lawyers.

On the personnel side, there was minimal turnover of lawyers. Young associates were recruited from elite law schools. Partners and senior associates took the time to provide excellent training in professional skills and in mentoring. Associates could tag along to meetings and learn the nuts-and-bolts skills of client management or negotiation. Many associates progressed smoothly to partnership. Those who failed to make partner were graciously eased into jobs at lesser firms or in corporate in-house legal staffs. From there, hopefully, they would continue to refer business to their former employer. Lateral hiring of partners (or even senior associates) was quite rare. Partners could remain with the firm as long as they wished

⁷⁹ See Smigel, note 64 at 1-14 (1969).

⁸⁰ Linowitz & Mayer, note 70 at 104-05

and often practiced part time into extreme old age. Most firms compensated partners in lockstep, by seniority. Members of the public (or even law firm associates) had no information about the details of law firm economics, particularly the size of partner profit shares.

Starting in the 1970's and continuing to the end of the century, the institution of big law firms was radically transformed. The law firm world swung steadily in the direction of the business model and away from the professionalism model.⁸²

During this era, client corporations grew much larger and increasingly wanted their law firm to provide one-stop shopping for all legal needs. Corporations felt themselves under siege from rapidly increasing government regulation and predatory tort or class action litigation. Increasingly, business became subject to aggressive competitive behavior, such as hostile takeovers, that called for massive legal defense and ever-larger aggregations of lawyers to fight the battles.⁸³ Many clients became convinced that they receive higher quality work product from big firms that recruit only high-ranking lawyers from elite schools; others hired big firms to intimidate the opposition. As a result, law firms became much bigger in both absolute and relative terms.⁸⁴ By 1995, 23% of the lawyers in private practice (other than solos) worked for firms having 101 or more lawyers, as

⁸¹ Nelson, note 70 at 78-79.

⁸² For skeptical accounts of whether law practice prior to 1970 (sometimes referred to as the "golden age" of law firms) was really more professional and less business-oriented than today, see Rhode, note 69 at 11-13; Marc Galanter, *Lawyers in the Mist: The Golden Age of Legal Nostalgia*, 100 Dick. L. Rev. 549 (1996).

⁸³ See Thomas et.al., note 70 at 17-39. Thomas and his co-authors develop a demand-side explanation for rapid growth of big firms. Formerly, law firms tended to share the work ("syndicate") with other firms when clients presented them with very large projects such as major litigation, a cross-border business venture, or a takeover. Today clients want this type of business handled by a single firm and there are enough very large projects to make it economical for firms to staff themselves up to satisfy this demand.

⁸⁴ See Galanter & Palay, note 56 at 37-45 (between 1972 and 1986 the market share of the fifty largest law firms doubled); Thomas, note 70 at Table 2 (immense increase in size and number of branches of largest law firms); Trotter, note 70 at 1-60 (vast increase in size and profitability of Atlanta firms from 1960 to 1990s); Abel, note 70 at 9-10 (between 1975 and 1987, the number of firms with at least 100 lawyers multiplied from 47 to 245).

opposed to 7% in 1980, and the megafirms have continued to grow since then.⁸⁵ Lawyers in firms became more specialized and the firms became more departmentalized and were managed in more formalized, bureaucratic fashion. As firms expanded and became more bureaucratized, the relations between lawyers became more impersonal, less bonded by ties of mutually supportive collegiality and community. Trying to keep up with the competition and satisfy client demands, big firms branched into other cities and countries. They employed professional business managers and marketing firms. They employed ever more sophisticated technology.

Information about law firm economics and clientele became broadly available.⁸⁶ Using this information, young lawyers and partners alike were quick to leave firms for better opportunities. Firms began to aggressively prune partners who failed to bring in enough business.⁸⁷ As partners grew older and less productive, firms have "de-equitized" them or subjected them to ever-earlier mandatory retirement.⁸⁸ Lockstep compensation systems became relatively unusual. Instead, under "eat what you kill" compensation schemes, rainmakers earned much higher compensation than lawyers who did excellent work but brought in little business.⁸⁹ Power flowed to the lawyers who control the clients.⁹⁰

⁸⁵ Carson, note 2 at 8 (Carson's 1995 figures are the most recent definitive information available). The post-1995 growth of megafirms is reflected in a less methodologically rigorous manner in a 2000 survey by the ABA's Young Lawyer Division. The YLD survey indicated that of the 600 respondents, 19.3% were in firms of 51-200 lawyers and 20.8% were in firms of more than 200 lawyers. ABA Young Lawyers Division, Survey: Career Satisfaction 9-10 (2000) (hereinafter YLD study). This represented a considerable move in the direction of larger firms from YLD's 1995 survey. In 1983, the average size of the 250 largest firms was 138 lawyers; by 1991, that figure almost doubled to 273. It became 305 by 1998. See Marc Galanter, "Old and in the Way:" *The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services*, 1999 Wisc. L. Rev. 1081, 1093.

⁸⁶ Galanter & Palay, note 56 at 68-73; Caplan, note 70 at 79-82; Eisler, note 70 at 115-23 (impact of Brill's American Lawyer on lawyer mobility).

⁸⁷ Glendon, note 70 at 23-27 (1994).

⁸⁸ See Galanter, Wisc., note 84 at 1094-1097.

⁸⁹ See Caplan, note 70 at 179-90 (division of Skadden profit shares--ruthless competition between partners); Boston Bar Assoc., Facing the Grail: Confronting the Cost of Work-Family Imbalance (1999) (almost all large firms base partner profit shares on productivity); T. Z. Parsa, The Drudge Report, 32 New York 24, 28 (only handful of N.Y. firms retain lockstep compensation for partners). The Boston Bar Study also pointed out

Management committees consisting of elite client-controlling partners, not the partners at large, made the critical policy decisions for most large firms. Lateral hiring of both partners and senior associates became commonplace.⁹¹ Entire departments defected to other firms. Law firms often merged, shedding less desirable personnel in the process,⁹² and quite a few law firms disintegrated entirely.⁹³

Complex business litigation became a profitable specialty, employing droves of attorneys in work that involves very high-stakes and is extremely stressful. This litigation involves not only defense against tort actions and government regulation but also mammoth fights between corporations. During this period, scorched-earth litigation tactics emerged and became routine in many locales, especially in high stakes cases. Such tactics include unnecessarily protracted discovery and discovery abuse, frivolous and endless motions, and various delaying tactics.⁹⁴ There was a steady slide toward incivility and distrust of other lawyers.⁹⁵ Clients became much less loyal than in years past; their relationships with law firms became more like a bargained-for purchase of services rather than a personal relationship.

that big-firm partners have an economic incentive to inflate firm expenses. Since partners are concerned primarily with their own gross billings, they tend to encourage overstaffing and otherwise increase firm costs so as to assure their own ability to generate as large a revenue stream as possible. The extra expenses are borne by all of the partners collectively rather than any one of them, but the increased gross revenue benefits the partner to whom it is credited.

⁹⁰ This is the central finding of Robert Nelson's pioneering sociological study of large law firms. See Nelson, note 70, particularly at 224-28 (1988).

⁹¹ Parsa, note 88 at 28 (more than 1100 big-firm partners in New York have defected to other firms in the last ten years).

⁹² Id. at 26-27.

⁹³ The hyper-aggressive Finley, Kumble was emblematic of this sort of growth; the firm collapsed miserably because of overexpansion, poor management, and intra-partnership rivalries. See Eisler, note 70.

⁹⁴ See e.g. Richard Zitrin & Carol M. Langford, *The Moral Compass of the American Lawyer* 53-73 (1999) (adversariness run amok); Rhode, note 69 at 82-96.

⁹⁵ See the many articles on the subject of incivility cited in Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, The Elite Law School, and the Moral Formation of the Novice Attorney*, 82 Minn. L. Rev. 705, 726 n. 63 (1998); Asimow, Nova, note 5 at 547 n. 80.

Clients often switched firms,⁹⁶ employed a firm for only a single matter or a single specialty, maintained a stable of several firms to do their work, took as much work in-house as possible, required firms to bid for their work, and closely audited the bills.

During this period, law firms enhanced their leverage, increasing the ratio of associates to partners, stretching out the time until partnership consideration, and admitting fewer partners. The firms made extensive use of paralegals, senior associates, of-counsels, non-partnership track associates, contract lawyers, and non-equity partners, all to magnify the returns of equity partners. Firms became much more aggressive in seeking business, routinely attempting to attract existing clients of other firms.⁹⁷ The comfortable world of the 1960's law firms was gone forever.

All this was the business model, writ large. To an ever increasing extent, the bottom line has become the bottom line: law firms are unabashedly profit-maximizing businesses and virtually any form of competitive behavior has become not only acceptable but necessary.⁹⁸ Returns to partners increased sharply during this period, with some partners taking home over a million dollars per year. Salaries paid to associates soared, causing compensation levels to rise all along the line.⁹⁹ Billable hour requirements continued to increase, in part to pay the ever-inflating salaries of associates, in part to further maximize the benefits of leverage.¹⁰⁰ Feelings of community and inchoate norms of professionalism could no longer be allowed to

⁹⁶ See, e.g., Jen Nielsen, *What Makes GCs Mad: Unresponsiveness*, Legal Intelligencer (Feb. 12, 2001) (63% of corporate general counsels report they changed law firms in 2000).

⁹⁷ See Caplan, note 70 at 153-75 (aggressive marketing by Skadden, Arps).

⁹⁸ Id. at 129 (in large firms, more than in any other legal institution, the overriding goal is to make money; as a result large firms are more stressful to work at than ever before); Rhode, note 69 at 31-38; Boston Bar Assn. study, note 88 (law firms now focus almost exclusively on the bottom line to exclusion of other ways of measuring success).

⁹⁹ See Peter Allen, *Valley Fever*, 20 Calif. Lwyr. 37 (July 2000) (subsequent articles in this issue view the inflation of salaries from different perspectives).

¹⁰⁰ See text at notes 73-74.

interfere with the imperative that partnership profit shares must be ever-increasing.¹⁰¹

Traditionally, the idea of professionalism entailed the notion of lawyer autonomy--that lawyers play a mediating role, that lawyers exercise judgment to dissuade a client from doing something that the lawyer sees as detrimental to the client's long-term interests, even that lawyers might nudge clients toward more socially or morally acceptable behavior.¹⁰² Whether many lawyers ever truly acted in this way can certainly be questioned, but autonomy was at least part of the widely shared professional ideology. Today, however, the evidence indicates that even the ideology has become outdated. Unless asked for their opinion, lawyers are reluctant to offer it. They see their role as helping to carry out the client's wishes, not telling the client that it's a bad idea. Most lawyers believe that they cannot risk antagonizing their clients by interjecting their own judgment, provided that the actions in question do not actually violate the law or mandatory ethical rules.¹⁰³

Another traditional fundamental of professionalism is that law practice should be imbued with obligations of public service and pro

¹⁰¹ Some say that law firm partners now believe they should be making as much money as investment bankers or the top management of the large corporations they represent.

¹⁰² See text at note 64; Robert W. Gordon & William H. Simon, *The Redemption of Professionalism?* in Nelson et. al., note 63 at 248-57 (suggesting ways to revive lawyers' function of counseling non-subversion of regulatory functions); Robert W. Gordon, *The Independence of Lawyers*, 68 Bost.Univ. L. Rev. 1 (1988) (discussing reasons for the decline in lawyer autonomy and the reasons why it should be preserved).

¹⁰³ See Nelson, note 70 at 231-69. Nelson's careful study showed that most lawyers' agenda for social change matches the interests of their corporate clients. It also indicated that individual lawyers tend to spend a large percentage of their time on the affairs of particular clients, thus diminishing the lawyer's ability to tell the client what the client did not want to hear. It indicated that when the lawyer gives non-legal advice to clients, it is almost never normative in nature. Finally, it indicated that lawyers almost never turned down work because it was contrary to their personal values. See also Rhode, note 69 at 9, 17-18; Robert L. Nelson, *Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm*, 37 Stanf. L Rev 503 (1985); Robert A. Kagan & Robert Eli Rosen, *On the Social Significance of Large Law Firm Practice*, 37 Stanf L Rev 399 (1985) (casting doubt on the autonomy of corporate lawyers).

bono work; again, by all accounts, these ideas are dying out.¹⁰⁴ Even if some partners wish to sacrifice the highest possible returns in order to achieve other values such as fewer billable hours, serious commitments to pro bono, or sabbaticals, they could not achieve consensus on these objectives; more money is the one thing that everybody could agree on. Indeed, a decision to pay or accept less than the highest possible associate compensation or per-partner profit shares could easily result in an inability to recruit associates and an exodus of rainmaking partners to higher-earning firms. This could trigger a death spiral in the firm.

III. Why are law firms portrayed so negatively in the movies?

Today, large law firms have become highly efficient, profit-maximizing businesses, little different from other service-delivering businesses and little different from the large corporations that serve as their bread and butter clientele. Why are law firms, particularly large ones, portrayed with such intense venom in the movies? Do law firms deserve the caricatured and hideously negative treatment they consistently receive in recent films as *The Firm*, *The Verdict*, *The Rainmaker* or *The Devil's Advocate*? Clearly not. Say what you will about big firms, they are unlikely to be composed of human beings with repulsive personalities, thieves, killers, evidence spoliators, international criminals, devils, perjurers, or buffoons. Quite the

¹⁰⁴ See Rhode, *Interests of Justice*, note 69 at 37-38 (absence of support for pro bono in large firms); Deborah Rhode, *Squeezing the Public Good*, 86 A.B.A.J. 120 (2000) (average pro bono hours at 100 largest firms declined by one-third in 1990s); Greg Winter, *Legal Firms Cutting Back on Free Services for Poor*, New York Times August 17, 2000, p.A1 (the 50,000 lawyers at the nation's 100 highest grossing firms average 8 minutes a day on pro bono work in 1999, a severe decline from 1992); Nelson, note 70 at 260 (level of pro bono in 1980's far below that of the 1960's and 1970's). Much of the pro bono work that does occur is on behalf of high-profile non-profits like museums or opera companies rather than for poor clients. But see Caplan, note 70 at 191-206 (serious commitment to pro bono by Skadden, Arps); Renee Deger, *Latham's Pro Bono Figures Show It's Not All About Money*, The Recorder (Feb. 12, 2001) (Latham & Watkins ups its annual per-lawyer pro bono contribution). A minority of law firms are increasing their pro bono commitments, and encouraging associates to engage in pro bono activities, partly as a mechanism to improve associate satisfaction and decrease attrition.

contrary, most big firm lawyers are decent human beings and their firms deliver services that their clients value highly.¹⁰⁵

I suggest that the harshly negative treatment of law firms in recent film results from the convergence of three separate factors:

i) the sharply increased negativity of the portraits of all lawyers (including solos as well as big and small firms) in films of the last thirty years;

ii) a reflection of the public's current belief that big firms are engaged in an ugly business rather than a noble profession; and

iii) the historically negative treatment of business entities in film. From the earliest days of the movies, business has been a handy narrative antagonist. Given that even smaller law firms are likely to represent mostly business clients, it is hardly surprising that small law firms were persistently shown more negatively than solo lawyers from 1930 to 1970. In today's environment, the anti-business animus is a double whammy for big law firms: big law firms earn their living by representing big business and they themselves have become big business.

A. The increased negativity of lawyer portraits in film

In my article *Bad Lawyers in the Movies*,¹⁰⁶ I surveyed almost 300 feature films in which American lawyers played significant roles. That survey showed that from 1930 to the end of the 1960's, the great majority of the lawyers in film were good human beings and good lawyers.¹⁰⁷ Indeed, many of the most prominent film lawyers and judges were bathed in a sort of hazy golden light. They were wonderful human beings, faithful friends and family men, and highly competent, ethical, and zealous attorneys. Most lawyers, in film or real life, were never

¹⁰⁵ For a detailed argument that these services are good for society, see Charles Silver and Frank R. Cross, *What's Not to Like About Being a Lawyer*, 109 Yale L.J. 1443, 1449-77 (2000).

¹⁰⁶ Asimow, Nova, note 5.

¹⁰⁷ Id. at 569-76, 587-91.

as noble or skilled as Atticus Finch, Paul Biegler, Abraham Lincoln, or Henry Drummond (actually Clarence Darrow), but such characters provided inspiring role models.

Somewhere around the 1970's, film portrayals of lawyers turned sharply negative. During the last thirty years, most of the lawyers in film have been either bad human beings or bad lawyers or both.¹⁰⁸ The reasons why this happened are not difficult to discover. During the exact same time, the public's image of lawyers collapsed.¹⁰⁹ Lawyers had never been particularly popular, but they were respected and trusted. During the last thirty years, however, lawyers plunged to the lowest levels of public confidence of almost any profession or occupation, and they have remained there to this day.

Popular culture is usually a mirror of the society that consumes it;¹¹⁰ a society that hates lawyers will produce and consume films containing hateful lawyers.¹¹¹ In this respect, negative movies about law firms are simply part of the broader trend of negative movies about lawyers. Still, this analysis fails to explain why *law firms* in both the good lawyer and bad lawyer eras have been consistently portrayed more negatively than solo lawyers or why big firms in the movies are worse than small firms.

B. The public's low opinion of big law firms

As already discussed,¹¹² in the last quarter of the twentieth century, law firms evolved gradually from moderately sized aggregations of lawyers taking advantage of specialization, leverage, and economies of scale into something quite different: immensely profitable, country-

¹⁰⁸ Id. at 576-82, 584-87.

¹⁰⁹ Id. at 536-50.

¹¹⁰ Id. at 549-50; Michael Asimow, *Divorce in the Movies: From the Hays Code to Kramer vs. Kramer*, 24 Leg. Stud. F. 221, 221-22 (2000).

¹¹¹ To some undefined extent, negative popular culture portrayals of lawyers reinforce the negative stereotypes; the films change the culture as well as reflect it. See Asimow, *Nova*, note 5 at 550-56.

and world-wide megafirms. Large firms tend to specialize in the sort of hardball litigation tactics that have come to characterize law today.¹¹³ Often, the victims of such tactics are plaintiffs in tort litigation being represented by small firms or solo practitioners. Moreover, some large firms have been caught in well-publicized unethical behavior that has proved both costly and embarrassing.¹¹⁴

As refracted by the news media into sensationalized news nuggets, this kind of negative information has apparently been absorbed into the consciousness of the general public. Today, many people have become aware of how much money big firm partners make; this information used to be a carefully guarded secret.¹¹⁵ John Grisham's best-selling novels which almost always caricature law firms have driven the point home,¹¹⁶ and the many negative law firm movies have only reinforced such beliefs. It's no accident that the Harris Poll reports that law firm leadership has the lowest public approval rating of any institution in the country, well below government, the military, big business, and labor union leadership.¹¹⁷

In its introduction to polling data released in 1997, the Harris Poll wrote:¹¹⁸

Recent Harris Polls have found that public attitudes to lawyers and law firms, which were already low, continue to get worse. Lawyers have seen a dramatic decline in their "prestige" which has fallen faster than that of any other occupation, over the last twenty years. Fewer people have confidence in law firms than in any of the major institutions measured by Harris

¹¹² See text at notes 70-100.

¹¹³ See text at notes 164-67. .

¹¹⁴ See note 163.

¹¹⁵ See note 85.

¹¹⁶ See text at notes 38-48.

¹¹⁷ This finding poses an interesting contrast with lawyers' notions of the prestige of different sorts of law practice. Lawyers tend to rank the prestige of fields of law typically practiced by big firms for big business (securities, tax, antitrust defense, general corporate) far ahead of the fields typically practiced by small firms or solos (criminal defense, personal injury plaintiffs work, debtor representation, landlord-tenant, or divorce). John P. Heinz & Edward O. Laumann, *Chicago Lawyers: The Social Structure of the Bar* 84-134 (1982).

¹¹⁸ Harris Poll #37, August 11, 1997. Italics in original.

including the Congress, organized labor, or the federal government. It is not a pretty picture...

For the last thirty years Harris has been tracking the confidence people have in the leaders of various institutions. In the most recent survey, only 7% of the public said they had a great deal of confidence in the people running law firms. This places law firms at the bottom of the institutions on the list. The 7% figure is not only the lowest number recorded for law firms over thirty years, it is *actually the lowest number recorded for any institution over thirty years*.¹¹⁹

By 1999, the confidence of people in institutions had risen across the board. The number of people having confidence in law firms rose from 7% to 10%, but that was still by far the lowest percentage of any institution. Law firms remained well below such commonly despised institutions as Congress, organized labor, and the press.¹²⁰ It's no wonder that such a despised institution is vilified in the movies.

C. Reflecting the negative treatment of business in films

This article is not the place for an extended survey of the way that business is portrayed in the movies. I am prepared to assert, however, that big business in film is almost always portrayed in a negative or highly negative manner.¹²¹ Money plus power usually equates to evil in the movies, and big business has plenty of each.

In the recent film *The Insider* (1999), for example, both tobacco companies and network television are portrayed as greedy and evil, but there is nothing unique about that. Countless films have portrayed big business and its leadership in a negative fashion. Anti-big business movies were a staple in the 1930's, especially in the years before the Production Code came into effect.¹²² A generation ago, a series of terrific films effectively critiqued the management and practices of

¹¹⁹ For comparison, 24% of the public had confidence in law firm leadership back in 1973, well ahead of organized labor and most institutions of government. Id.

¹²⁰ Harris Poll #9, February 3, 1999.

¹²¹ See Anthony Chase, *Civil Action Cinema*, 1999 L. Rev. of Mich. State U. Detroit C. of Law 945, 952-57 (in film corporate America looks less like a public profession than a specialized branch of organized crime).

¹²² For example, big business was harshly portrayed in *Baby Face* (1933)(banking), *Skyscraper Souls* (1932)(real estate), *The Match King* (1932) (manufacturing) or *Employees'*

big business.¹²³ Closer to our own time, a series of memorable films have attacked big business in particular industries such as stock brokerage,¹²⁴ the nuclear industry,¹²⁵ media and entertainment,¹²⁶ or textiles.¹²⁷ Sometimes, small businesses and small business people receive favorable treatment,¹²⁸ especially when they are being mauled by a larger competitor, but big business very seldom is presented favorably. Big shots in big business are usually greedy, unethical, lecherous creeps. It's more than a little ironic that films produced and distributed by the studios, very big and aggressive businesses themselves, generally portray the rest of big business in such an ugly light.¹²⁹

The anti-big business bias in the movies affects law firm portrayals in two ways. First, big law firms are themselves large profit-oriented business organizations. Like any other big business entity, big law firms are likely to be portrayed in film as greedy and dishonest; we'd expect to see them cheating or squashing ordinary human beings or small businesses.

Second, big law firms exist primarily to represent big business. If big business is evil, its champions must be equally so. The filmmaker who wants to vilify big business needs a human face to serve as the focus for the audience's hatred. It's difficult to show the

Entrance (1933)(department stores). For discussion of the Production Code, see Asimow, *Legal Stud. Forum*, note 107 at 227-34.

¹²³ See, e.g., *The Man in the Grey Flannel Suit* (1956), *Cash McCall* (1959), *The Apartment* (1960), *Patterns* (1956), *Face in the Crowd* (1957), *How to Succeed in Business Without Really Trying* (1967), or *Executive Suite* (1954). These pictures effectively lampooned big corporations and their executives without paying much attention to the particular business the corporation was in.

¹²⁴ *Wall St.* (1987).

¹²⁵ *Silkwood* (1983) and *The China Syndrome* (1979).

¹²⁶ *Broadcast News* (1987), *The Player* (1992), *Absence of Malice* (1981), or *Network* (1976).

¹²⁷ *Norma Rae* (1979).

¹²⁸ In recent films, see, e.g., *Tucker: The Man and his Dream* (1988) (upstart car company); *Other People's Money* (1991) (victim of hostile takeover). In older films, small business was well treated in such films as *It's a Wonderful Life* (savings and loan) (1946); *Imitation of Life* (1934) (pancake business); *Mildred Pierce* (restaurant chain) (1945).

¹²⁹ It may be, of course, that writers and directors have a liberal political bias that is reflected in their choice of subjects and point of view about business.

corporate structure from the inside.¹³⁰ It's far easier to pick on the lawyer who is fronting for the corporation.

Thus law firms are taking the brunt of the consistently anti-business orientation of filmmakers. In many of the films involving big law firms, the big business client is drawn in deeply negative tones. In *Erin Brockovich* (2000), for example, the defendant, a utility that poisoned the groundwater, is caught destroying documents that establish that top management knew about the dumping. In *A Civil Action* (1998), the same thing happens; worse, the corporation gets away with it. In *The Rainmaker* (1997), the client is a medical insurance company that never pays claims and lies, cheats, and steals to cover it up. The insiders loot the company to avoid paying damages to righteous plaintiffs. In *Class Action* (1990), the auto manufacturer balanced loss of life from exploding gas tanks against saving a few bucks in the design of the car. The various wealthy business clients portrayed in *The Devil's Advocate* (1997) were vicious killers and the list goes on.

IV. ARE BIG FIRMS REALLY EMBODIMENTS OF EVIL?

In the filmmakers' world, law firms (especially big ones) are populated with repulsive and greedy human beings. For staff and associates, the firms are dehumanizing sweat shops. The firms conduct scorched earth litigation, laying waste to all before them. In this world, law firm ethics are purely situational; the lawyers do what they have to do to win and reap huge fees but not get caught. How much of this is true? Is art imitating life here? Or is this all a bunch of baloney?

A. The reality of life inside big firms

1. Written accounts of associate life

¹³⁰ See Philip Lopate, *The Corporation as Fantasy Villain*, New York Times 24 (April 9, 2000).

Several recent films paint a grim picture of the lifestyles of big firm lawyers--both associates and partners. In *The Firm* (1993) and *The Devil's Advocate* (1997), we see associates laboring far into the night, leaving their spouses to eat dinner alone and fall asleep before they come home.¹³¹ In *Hook* (1991), a big-firm partner utterly neglects his family.[FN 128a] [Here is the footnote: The partner sends an associate to videotape his son's little league baseball game and takes phone calls during his daughter's play]

There is ample evidence that many big firm associates feel that they work inhuman hours, often performing chores of indescribable tedium. They stick it out because they need the big bucks to pay down their student loans; by the time the loans are paid off, they have become addicted to very high compensation.¹³² In *Double Billing*, Cameron Stracher wrote about his three miserable years of overwhelming workload at a large New York firm.¹³³ He described boring work (such as document searches in a vast warehouse), an absence of training and mentoring, unpleasant interactions with clients, partners and associates, and a total lack of control over his practice or his life. The pseudonymous William Keates also described, in diary form, eighteen months of crushing workload and numbingly tedious work he endured at a big New York law firm before making his escape.¹³⁴

¹³¹ In *Class Action* (1990), an associate carries on a secret affair with her supervising partner and drinks herself to sleep because she detests her work. In *From the Hip* (1987) an associate has to resort to deceiving the partners to get out of the library and into court.

¹³² Deborah Rhode discusses the reasons why both young and older lawyers are deeply dissatisfied with their practices. IN THE INTERESTS OF JUSTICE 23-48 (2000); *The Professionalism Problem*, 39 Wm. & Mary L. Rev. 283, 296-303 (1998). In Rhode's opinion, most of the reasons boil down to the obsession, at both associate and partner levels, with earning ever-larger amounts of money. Rhode cites a *New Yorker* cartoon featuring a limousine conversation in which one lawyer says to another "I may be overcompensated, but I'm not overcompensated enough." In the *Interests of Justice* 31. Surprise: all that money doesn't buy happiness.

¹³³ Cameron Stracher, *DOUBLE BILLING* (1998)

¹³⁴ William R. Keates, *PROCEED WITH CAUTION* (1997). For a hostile review, see Arthur Austin, *One Person's Challenge is Someone Else's Stress*, 3 Texas Rev. Law & Pol. 157 (1998). See also Douglas E. Litowitz, *Young Lawyers and Alienation: A Look at the Legal Proletariat*,

Numerous writers,¹³⁵ most notably Patrick Schiltz,¹³⁶ have forcefully addressed the issues relating to quality of life of young lawyers in big law firms. They chronicle the high rates of depression, alcoholism, divorce, and poor physical health among big firm lawyers.¹³⁷ They focus on numerous statistical studies that have shown that big firm lawyers earn the most money, work the most hours, and are least satisfied with their work.¹³⁸ It should be noted, however, that one

84 Ill. B.J. 144 (1996) (former law firm associate compares life of young lawyers to alienated Marxian proletariat).

¹³⁵ See, e.g., Cynthia Fuchs Epstein et. al, *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 Fordham L. R. 291, 378-92 (1995); American Bar Assoc., At The Breaking Point (1991); National Ass'n of Law Placement, note 136 at 34; Boston Bar Assoc., note 88 (billable hour requirements make private practice incompatible with involvement in family life); Trotter, note 70 at 81-100 (intense stress caused by ever-inflating demands for billable hours); Parsa, The Drudge Report, note xx at 29-31 (associate dissatisfaction in N. Y. firms at every level); Robert Kurson, *Who Is Killing the Great Lawyers of Harvard?* 134 Esquire 84 (August 1, 2000). Even the cautious report of the New York City Bar on associate quality of life stated: "Once at the firm, the associate faces the prospect of being assigned a huge and lengthy matter for which the lawyer can feel little excitement or responsibility. These attorneys are often working more than 2,100 hours annually for paying (and demanding) clients, leaving little time for family or friends, outside activities, pro bono cases, public service activities, or even reading a book or going to the theater. In exchange for these efforts they face a decreasing likelihood of a partnership at the end of eight or nine years." *Report of the Task Force on Lawyers' Quality of Life* 1 (2000). This report is available at <http://www.abcny.org/taskforce.html.xxx>. The Report seems to err by minimizing hourly burdens (2100 billable hours is modest by New York standards) and by equating "billable" hours with total work hours. The 2,100 figure refers only to billable hours. As a result, the actual hours at work is likely to be much more than the 2,100 cited in the City Bar's study.

¹³⁶ Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 Vanderbilt L. Rev. 871 (1999) (hereinafter Schiltz, Vanderbilt); Schiltz, Minnesota, note 92 at 705, 720-46 (1998).

¹³⁷ Schiltz, Vanderbilt at 872-881. See also Susan J. Daicoff, *Asking Leopards to Change their Spots: Should Lawyers Change?*, 11 Geo. J. Legal Ethics 547, 553-57 (1998); Holmes, note 70 at 376-79. The problems of substance abuse and poor health may be as prevalent at small firms as large ones.

¹³⁸ Schiltz, Vanderbilt, note 132 at 881-95. Several other studies support the conclusions of those relied on by Schiltz. See Kenneth G. Dau-Schmidt & Kaushik Mukhopadhyaya, *The Fruits of Our Labors: An Empirical Study of the Distribution of Income and Job Satisfaction Across the Legal Profession*, 49 J. Legal Educ. 342 (1999). The latter study is based on graduates of the University of Michigan Law School who have been out of school five years and fifteen years. The authors conclude that after accounting for differences in income, hours, family satisfaction, and other variables, "practice in a large private firm remains the least satisfying type of practice... Of course, practitioners in large private practices get to console themselves from having a less satisfying job by having a more satisfying income. Nevertheless, the above results suggest that lawyers in all other types of practice find their work intrinsically more satisfying than their counterparts in large private practices--sometimes considerably more satisfying." Id at 362.

Similarly, the YLD survey, note 84 at 24, indicated that only 4.9% of associates at firms of more than 200 lawyers were "very" satisfied with the balance between work and family size. The comparable figures were 36.2% of lawyers in firms of 1-4 lawyers, 31.3% in firms of 5-12 lawyers, 9.7% in firms of 16-50 lawyers, and 10.3% in firms of 51-200 lawyers. Similarly, a considerably higher percentage of associates of firms of more than 200 lawyers said they would strongly consider or might consider changing jobs in the next two years. Id. at 30.

My non-random survey of young associates in big firms tends to confirm these findings. I found that roughly half of the respondents were dissatisfied with their

careful study of Chicago lawyers contradicts these findings and indicates that big firm lawyers are broadly satisfied with their lives.¹³⁹ Another piece of data that suggests that associates are broadly dissatisfied with their work lives is that their attrition rates are staggering.¹⁴⁰

It appears that the biggest culprits are the killing long hours of work combined with arbitrary work demands, a lack of autonomy, and poor inter-personal communications between associates and partners. Many associates feel they are working in nicely decorated sweatshops. Billable hours have become the *raison d'etre* of law firm existence. High numbers of billable hours are essential to maximize the benefits of leverage for equity partners, as well as to pay for the associates' lavish compensation levels. Consequently, associates must bill very high hours in order to receive bonuses and to be considered for advancement to partnership. Even partners (at least non-rainmaking partners) must maintain high rates of billable hours or risk being pruned.

conditions of work. Many of those who were not dissatisfied seemed to say that the conditions were tolerable only because of the high compensation. See text at notes 151-55.

¹³⁹ See Katherine E. Hull, *Cross-Examining the Myth of Lawyers' Misery*, 52 Vanderbilt L. Rev. 971 (1999). Hull's article is based on John P. Heinz, Katherine E. Hull, and Ava A. Harter, *Lawyers and their Discontents: Findings from a Survey of the Chicago Bar*, 74 Indiana L. J. 735 (1999).

Heinz and his collaborators interviewed about 800 Chicago lawyers and asked about their satisfaction with the profession. Overall, 45.2% of the lawyers were "very satisfied" and 38.5% were "satisfied." Only 5.1% were "dissatisfied" and 1.4% "very dissatisfied." Looking only at big firms (meaning more than 30 lawyers), Heinz found 36.6% "very satisfied" and 47.3% "satisfied." Only 2.2% were "dissatisfied" and 0.4% "very dissatisfied." Thus Heinz et al. found that fewer lawyers in big firms are "very satisfied" but more of them are "satisfied" with practice than the lawyers as a whole. Hull's article redefined "large" firms from 30 or more to 100 or more lawyers; the results, however, were about the same. Fewer of the large firm lawyers were "very satisfied" than in smaller firms but more of them were "satisfied." See also Patrick Schiltz, *Provoking Introspection: A Reply to Galanter & Palay*, Hull, Kelly, Lesnick, McLaughlin, Pepper, and Traynor, 52 Vanderbilt L. Rev. 1033, 1045-50 (1999) (taking issue with Hull's arguments).

¹⁴⁰ In the nation's top 250 firms, in and out of New York, the average annual attrition rate in 2000 was 23.84%, up from 18.5% in 1999. In other words, about one-quarter of all of the associates in large firms departed in a single year. Some firms lost over 40% of their associates in a single year. Andrew R. Dunn, *Associate Attrition: Departure Rates Not Always Related to Salary*, 224 N.Y.L.J. 5 (Nov. 28, 2000).

In order to bill 2000 hours a year, most lawyers need to be physically present at the office for close to 3000 hours.¹⁴¹ Given a 30-minute commute each way, a 3000-hour work year requires the lawyer to be out of the house and away from family or friends around 11 hours per day, *six days a week*, fifty weeks a year. That means leaving home at 8, returning at 7:00, Monday to Saturday. Want to work half day on Saturday? Then return home at 8:30 or 9 during the week or work Sundays. In any event, there will be many late-nighters or Sundays at work; time demands are erratic and unpredictable and can change on an hourly basis. If the firm requires associates (or the associates drive themselves) to bill 2400 hours per year, which is not at all unusual,¹⁴² add on at least another two hours per day, six days a week. The destructive consequences on personal health and on family or relationships from working anything like these kinds of hours are painfully obvious. They are particularly unbearable for lawyers (especially women) with child-care responsibilities.¹⁴³ Many lawyers report that they see only their offices, their cars, and their beds. There is little time for a personal life, let alone a lifestyle.

Not every law firm associate feels exploited by the long hours. Many young lawyers in big firms believe that long hours at work are an acceptable tradeoff for the stunningly high compensation they receive, especially given the crushing levels of debt that burden most law

¹⁴¹ By general consensus, most lawyers need to work (or at least be away from home) about three hours to bill two, given the substantial non-billable claims on their time such as client development, associate recruiting, bar association activity, personal calls or errands, keeping up with the law, training, lunch or coffee breaks, shmoozing with colleagues, etc. Rhode, *Interests of Justice*, note 69 at 170-71; Bachman, note 70 at 108-09 (1995) (to bill 40 hours a week one must work 55-60 hours); Fleming, note 70 at 35 (about 3 hours of 9 hour workday is nonbillable). Highly efficient lawyers (or those who shun non-billable activities like law firm recruiting or bar association activity and who avoid engaging in non-billable conversations with colleagues) may be able to trim their non-billable hours while maintaining their billables.

¹⁴² See Deborah Rhode, *Squeezing the Public Good*, 86 A.B.A.J. 120 (criticizing idea that 2400 billable hour requirements is reasonable if "properly managed," especially for women).

¹⁴³ Boston Bar study, note 88; American Bar Assoc., *The Unfinished Agenda: Women and the Legal Profession* 17-19 (2001).

school graduates. Many believe that young lawyers in smaller firms or young people in other professions (such as medicine) work just as hard but get paid much less.¹⁴⁴

Traditionally, big firms offered additional payoffs beyond generous compensation and lavish fringe benefits. For example, at large law firms, associates can do interesting and challenging work of a sort that small firm lawyers may never encounter. Big firms are supposed to offer excellent training and mentoring. Given that law school furnishes little or no practical training, a young lawyer can accumulate human capital only by gaining practical experience with clients and being trained by more senior lawyers in the ways of law practice.¹⁴⁵ There is the sense that big firm lawyers will work as part of a team; good friends and colleagues will toil together. Those associates who want to depart or who are not made partners could count on the firm to provide them with excellent lateral mobility. They could move to partnership at a smaller firm or an in-house position with the firm's clients.

However, many of these traditional benefits of big firm practice appear to be withering away in the contemporary environment. Where every possible minute of every working day must be translated directly into billable hours and money, partners at many firms don't have time to provide valuable training and mentoring to all or even most of their young associates, even assuming they have the inclination and the

¹⁴⁴ This may be wishful thinking. According to the YLD survey, billable hours at megafirms are much higher than at smaller firms. For example, in firms of 1-4 lawyers, only 5.7% of the lawyers billed more than 2050 hours; the figures were 11.6% for firms of 5-15 lawyers, 19.2% for firms of 16-50 lawyers, 16.8% for firms of 51-200 lawyers, and 36.7% of firms of more than 200 lawyers. YLD survey, note 84 at 11. Similarly, only 16.1% of lawyers in firms of 1-4 worked more than 60 hours a week; the figures were 19.3% for firms of 5-15 lawyers, 19.4% for 16-50 lawyers, 27.2% for firms of 51-200 lawyers, and 46.8% of firms of more than 200 lawyers. Id. at 15. Nevertheless, many lawyers in solo and small firm practice are working very long hours and more of that work may be difficult as opposed to some of the relatively mindless chores done by big firm associates. See Carroll Seron, *The Business of Practicing Law* 31-47 (1996).

skills to do so. Since clients will not pay for time spent on training, mentoring, or tag-alongs, such time becomes non-billable. Training and mentoring may be provided only to those perceived as running on the partnership track.¹⁴⁶ Collegueship seems elusive in the stressful, intensely competitive, totally exhausting environment of the big firms.¹⁴⁷ Some firms clearly are not like that and provide excellent training; they have managed to maintain a more traditional friendly and supportive atmosphere for their associates. Others, concerned with high attrition rates, have tried to improve associate life style with casual dress codes or tolerating work from home. Nevertheless, the accounts available to us indicate that the work life of many associates in big city megafirms is quite miserable.

Another traditional element of associate life in big firms was the tournament of partnership.¹⁴⁸ As described by Galanter and Palay, the rules of this tournament are assumed to be fair and transparent. The winners of the tournament could anticipate a lavishly rewarded and highly secure law firm partnership. The losers would at least understand that they had lost out in a fair competition.

Tournament theory, however, is in need of significant modification.¹⁴⁹ Wilkins and Gulati explain that law firms engage in a system of tracking the most promising associates based on the quality of their work in their early associate years. They also give preference to associates that graduated from the better law schools or

¹⁴⁵ Mary A. McLaughlin, *Beyond the Caricature: The Benefits and Challenges of Large-Firm Practice*, 52 Vanderbilt L. Rev. 1003, 1007-10 (1999).

¹⁴⁶ In a recent study, the New York City Bar identified inadequate training, feedback, and mentoring as factors in the distressing levels of big-firm associate dissatisfaction. Task Force report, note 137 at 12, 16-17 (2000). On the absence of mentoring in the big firm environment, see Schiltz, Minnesota, note 92 at 739-46; Glendon, note 70 at 27-29.

¹⁴⁷ Paul M. Barrett, *The Good Black* (1999) is a revealing account of the total lack of communication between partners and associates, allowing a black associate to fall between the cracks. The dog-eat-dog environment of the firm described in this book is chilling.

¹⁴⁸ Galanter & Palay, note 56 at 77-120.

who have the best connections. Those fortunate enough to be placed on the partnership track receive most of the interesting work. The boring but necessary work is allocated to those identified as probable losers in the partnership competition.¹⁵⁰ Because of such favoritism, associates perceive that the rules of the tournament are opaque; they soon realize that success depends less on hard work and dedication and more on nurturing relationships with senior lawyers.¹⁵¹

2. The Greedy Associates survey

To open a window into the lives of young associates in big firms, I posted a series of questions on internet bulletin boards directed at "Greedy Associates" in big firms.¹⁵² One of the questions I asked concerned the associates' attitudes toward their work and their quality of life. I asked associates who were willing to provide input to do so on the board itself, or by emailing me or by asking me to phone them. I received 95 responses that included at least some information.¹⁵³ Obviously, this exercise doesn't provide anything remotely resembling a random sample of law firm associates.¹⁵⁴ The Greedy Associates are not a

¹⁴⁹ The tournament assumes ever increasing revenue flows; when revenue falls short, painful readjustments must occur. Marc S. Galanter & Thomas M. Palay, *Large Law Firm Misery: It's the Tournament, Not the Money*, 52 Vanderbilt L. Rev. 953, 962-67 (1999).

¹⁵⁰ David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 Va. L. Rev. 1581, 1604-13 (1998); The Good Black, note 145 (associate not on partnership track receives boring, rudimentary assignments)

¹⁵¹ City of NY Quality of Life Study, note 127 at 12-13 (lack of transparency in partnership selection criteria); The Good Black, note 145 (associate mystified by standards for making partner).

¹⁵² www.infirmation.com. This site contains numerous regional bulletin boards; I posted my inquiries on most of these boards. A much less active site is <http://clubs/greedyassociates>. I promised to protect the confidentiality of those who responded and all of the material quoted in this article has been edited to remove any identifying details.

¹⁵³ I am not counting the numerous responses that flamed me without providing any useful information. The postings on these bulletin boards display a great deal of hostility and verbal aggression along with sophomoric humor. They suggest that unhappy associates are taking out their rage by nasty anonymous postings rather than by speaking up at work. Some of the postings aimed at me seem to reflect left-over resentment at law school professors. In general, the postings on these boards display an intense preoccupation with salaries, bonuses, and perks. This isn't surprising, given that the participants are self-identified "greedy associates."

¹⁵⁴ See also Suzanne Nossel and Elizabeth Westfall, *Presumed Equal: What America's Top Women Lawyers Really Think About Their Firms* (1998). This book ranks 77 big law firms according to the quality of women's experience at these firms. It is based on 1200 written survey responses (7700 were mailed out). As the authors acknowledge, their data

random sample of all young associates, and those who took the trouble to respond to my queries may not be a random sample of the Greedy Associates. This exercise did, however, allow a substantial number of associates to speak to me about the quality of their work and life in their own words. Their narratives are interesting and revealing.

Given that the respondents are "greedy associates" (if they were not, they wouldn't be spending precious time reading the postings on these bulletin boards), and that people who are angry are more likely to respond to these kinds of questions, I was surprised that roughly half of those responding were not displeased with their quality of life. These respondents thought their work, on the whole, was interesting and the high billable hour requirements a fair tradeoff for their handsome compensation. They remarked that most jobs are hard and boring, but few pay nearly as well as associate jobs in law firms. Some went out of their way to denounce dissatisfied associates as immature whiners. Several respondents observed that lawyers at small firms work nearly as hard as big firm lawyers, doing less interesting work, for much less money.¹⁵⁵ A typical response from an associate in Texas:

Do I work too much? Yes. Do I work too much for what I am paid? No. Did I choose to take this job and work too much so that my wife could stay home with the kids? Absolutely. Overall, I am satisfied with the balance of work versus lifestyle. Is my work boring? Sometimes, but is sitting in a cube all day crunching numbers even more boring? Absolutely. [40]

About half of the respondents indicated they were quite unhappy in their professional lives. For example, one senior associate wrote:

I and others at my firm have been told that if you do not "naturally" have a year in which you bill at least 2400 hours...the firm will create a workload that will require you to bill at

is personal and anecdotal and reflects the views of a relatively small group of women attorneys at each of the firms. The authors had no way to obtain more empirically comprehensive data. Id. at xiv-xv. Their findings are valuable but the methodological limitations on their research must be kept in mind.

¹⁵⁵ See note 142.

least that many hours in a year, merely so that you can prove that you can... Supervising attorneys rarely have compassion for the personal troubles of associates who work for them, even if these 'personal troubles' include physical health problems... Combined, all of these factors have an unmistakable impact on attorneys' physical and emotional health. Many attorneys are sick for months and cannot seem to recover... It will not come as a surprise to you that I deeply regret my choice of profession, and that I've been unhappy with my firm for years. Why have I stayed? Debt... [15]

Another wrote:

Dissatisfied with life? Outside of professional aspirations, this is an absolute truth for myself and 99% of the other associates I know. I work every weekday 9-11 and generally 10+ hours over the weekend. I am on call 100% of my life. Any aspirations for a personal life are simply a pipe dream. I am either at work, or at home after midnight watching tv from bed. The money is not nice, it is essential. I owe close to 150k. [7]

More tersely:

I can assure you that the life of big firm associates is a terribly dysfunctional one and there is no possible way to be happy--someone should sue for the partners for intentional infliction of emotional distress! And if you think it is terrible for the associates, then double that misery for the wives (or husbands) who have their lives uprooted... [66]

In some, but not all postings, I asked the Greedy Associates about whether they felt that the rules for the partnership competition were fair and transparent. Most of those who answered the question said it was anything but.¹⁵⁶

In short, the various accounts available to us of life at the associate level are consistent. These accounts come in the form of memoirs, survey data, and anecdotal evidence. They describe a miserable professional life for many young people in big law firms. The depictions of that life in movies such as *The Firm*, *The Devil's Advocate*, *Class Action*, or *From the Hip* [FN 155a--see notes 128 and 128a] are not so very far wrong.

¹⁵⁶ One associate described the competition as "an absolute crap shoot...Once you are in with a partner, if they are in with the partnership, you can do no wrong..." [7] Another: "I don't know if the P-ship process is unfair, because I think it is accurate to say that no one has any clue what the criteria are..." [6] Another: "No one knows how the partnership

B. The ethics of big firms

The life of lawyers in big firms is grueling and unglamorous, but what of the moral claims made by the movies? Do lawyers working for big firms lie, cheat, and steal?

1. Ethical problems of small firms

Small firms are more prone to certain kinds of ethical violations than are large ones. The kinds of misbehavior which cause lawyers to be disbarred mostly involve thefts from client trust funds, neglecting or ignoring clients, severe forms of malpractice, or gross forms of ambulance chasing. In many cases, these lapses are traceable to drug or alcohol addiction.¹⁵⁷ At big firms, however, colleagues are likely to realize that a lawyer has a substance abuse problem and take steps to remedy the problem and protect clients.¹⁵⁸ In contrast, a solo practice or very small firm may lack such internal checking mechanisms. Small firms are also more likely to run into cash flow problems that might cause lawyers to raid the trust funds.¹⁵⁹

Big firms have a great deal at stake in maintaining their hard-won reputations for quality work and ethical behavior.¹⁶⁰ They are much less likely than small firms to engage in blatant ambulance chasing or

process works, but it certainly involves a great deal of sticking one's head up the ass of others." [1]

¹⁵⁷ Ted Schneyer, *Professional Discipline for Law Firms?* 77 Cornell L.R. 1, 6 (1991). According to Schneyer, in 1981-82, 80% of disciplined lawyers in California, Illinois and the district of Columbia were solos and none practiced in firms with more than 7 lawyers. See also — Harkness, *Lawyers Helping Lawyers: A Message of Hope*, 73 Florida Bar J. 10 (Dec. 1999) (more than half of grievances filed against Florida lawyers involve addiction or a mental disorder); Abel, note 70 at 145-49. Recent films about small firms or solos have not overlooked the substance abuse issue. See *The Verdict* (1982); *True Believer* (1989), *Sleepers* (1996), *Carlito's Way* (1993), *A Time to Kill* (1996), and *Trial & Error* (1997).

¹⁵⁸ But see Rachel Brash, *A Drinking Life*, American Lwyr Jan. 2000 p. 22 (big firm partner with alcohol problem steals \$50,000 from his firm and fails to pay tax on it).

¹⁵⁹ In addition, small firms often represent a client for only a single matter; big firms tend to represent the same client in many matters. Repeat player clients are much less likely to complain to disciplinary authorities than one-shot clients. Schneyer, note 155 at 8.

¹⁶⁰ See Larry E. Ribstein, *Ethical Rules, Agency Costs, and Law Firm Structure*, 84 Virginia L. Rev. 1707, 1714-20 (1998) (big firms can reduce clients' agency costs through "reputational bonding")

the gross forms of malpractice that cause an attorney to be disbarred.¹⁶¹ Big firms maintain elaborate computer checking systems to protect themselves against becoming accidentally enmeshed in conflicts of interest, to detect billing irregularities, or to prevent lawyers from missing deadlines. Many have ethics committees to which lawyers can confidentially refer thorny ethics problems. Big firms have the luxury of being choosy about accepting new business; they can afford to turn away marginal matters or sleazy clients. Given the surplus of lawyers, however, many small firms or solos are desperate for business; they are more likely to take marginal cases or dubious clients and may feel they have to cheat to survive financially.

2. Ethical problems of big firms

Using the movies as our text, we would assume that big firms cheat big time.¹⁶² In *The Verdict* we find a big firm engaging in numerous forms of creative cheating such as bribing the opponent's expert witness to disappear or planting a sexual spy in the opposition's camp. In *Class Action*, a big defense firm first conceals, then destroys, a critical document. In *The Rainmaker*, the firm plants a bug in its opponent's office and colludes with the client in causing witnesses to disappear; perhaps it also knows that the client has testified falsely and fraudulently altered evidence. In *Regarding Henry* the firm clearly suppressed critical evidence and engaged in discovery fraud.¹⁶³ In *Philadelphia*, the firm engaged in various forms of illegal chicanery to get rid of an associate with AIDS and to cover it up afterwards,

¹⁶¹ However, the pattern of malpractice claims is different from lawyer disciplinary matters. A careful study of malpractice claims in Florida indicated that big firms were as likely as small firms or solos to be sued for malpractice. Similarly, lawyers from elite schools or with high Martindale-Hubbell rankings were as likely to be sued as those from low-ranked schools or those unranked by Martindale-Hubbell. Manuel Ramos, *Legal Malpractice: No Lawyer or Client is Safe*, 47 Fla. L. Rev. 1, 33-43 (1995).

¹⁶² See text at notes 27-50.

¹⁶³ In *A Civil Action*, the movie omits charges levelled by Jonathan Harr's book: one of the defense firms failed to produce relevant evidence during discovery and knowingly put on

including perjury. All of these are clear-cut ethical violations that would surely trigger severe professional discipline if detected; some of them are criminal violations.

How much does this sort of thing actually happen in the big firm environment? The answer is elusive. Lawyers who commit major ethics violations keep quiet about it and pray that nobody will ever find out. In my informal Greedy Associate survey, the vast majority of the respondents said that they had never seen anything of the sort and some were offended that I even asked the question. Some remarked that solo lawyers or small firms, desperate to keep business or to keep a contingent fee case going, are more likely to engage in such cheating. Others remarked that clients frequently try to conceal bad documents but that lawyers insist on disclosing them if the client's fraud is detected. For example, an associate who is thoroughly miserable about his own big firm lifestyle responded to my question about gross ethical violations:

No way, no-how. We chastise clients who ask us to hide bad facts in my practice. Our litigators that I know are good and aggressive but would never cheat or bend rules to suit them. We are way too busy to work with clients who want us to cheat on their behalf and the exposure is far too great. That shit is for desperate lawyers.

A few Greedy Associates did observe gross ethical violations, either in their own firms or in other firms. Some comments:

Yes, I lie to the judges, we all do...

I have seen lawyers asking staff to sign a proof of service for an incorrect date and I have seen lawyers lying to clients about why work did not get done or about what a judge said.

I've heard stories from friends of opposing well-known firms that have destroyed documents or other evidence.

untrue testimony. Jonathan Harr, *A Civil Action* 460-89. For whatever reason, the film ascribes the omission (as well as perjury) to the clients but not to the law firms.

In terms of blatant violations, they do happen. I can't go into specifics, this is fairly serious stuff and I can't screw with the confidence of any colleagues or clients.

An associate left the firm because she had been told to destroy a document.

Serious ethical lapses do occur, and both big and small firms occasionally get caught engaging in them.¹⁶⁴ No doubt, for every one of these publicized incidents, countless others have gone undetected or were quietly dealt with by the parties involved. Still, random publicized incidents involving big firms do not prove or even suggest that big firms are prone to bad ethics nor that they are more morally culpable than small firms or solos. Of course, there is no way for an outsider to know the answer. I am inclined to accept the repeated responses to the Greedy Associate survey that big firms have little need to commit clear-cut ethical violations and far too much to lose from taking such chances. Thus the repeated depiction of such violations in big-firm movies appears to convey an erroneous impression that they are widespread.

3. The harsh realities of big firm litigation practice

Numerous films involving law firms have depicted all-out hardball litigation. In these films,¹⁶⁵ big firms seek to exhaust their opponents with overwhelming discovery demands, resist justified discovery

¹⁶⁴ See James B. Stewart, *THE PARTNERS: INSIDE AMERICA'S MOST POWERFUL LAW FIRMS* 327-65 (1983); Eisler, *passim* (recounting numerous ethical lapses at Finley, Kumble including severe conflicts of interest); Brown, note xx at 12-20 (various incidents including Wall St. lawyer engaged in insider trading); Susan P. Shapiro, *Everests of the Mundane: Conflicts of Interest in Real World Law Practice*, 69 *Fordham L. Rev.* 1139, 1166-75 (2000); Lisa Lerman, *Blue Chip Bilking: Regulation of Billing and Expense Fraud by Lawyers*, 12 *Geo. J. Leg. Ethics* 205 (1999) (study of thefts by prominent big firm senior partners); Twichell, *The Ethical Dilemmas of Lawyers on Teams*, 72 *Minnesota L. Rev.* 697, 743-56 (1988); Deborah L. Rhode, *Ethical Perspectives on Legal Practice*, 37 *Stan. L. Rev.* 589, 599 (1985) (69% of antitrust litigators had observed unethical practices in complex cases); Donald C. Langevoort, *Where Were The Lawyers? A Behavioral Inquiry into Lawyers' Responsibility for Clients' Fraud*, 46 *Vanderbilt L. Rev.* 75, 106-09 (1993); Stewart Macaulay, *Control, Influence, and Attitudes: A Comment on Nelson*, 37 *Stanf. L. Rev.* 553, 555-56 (1985); Rhode, *supra* note xx at 628 nn. 129-130.

¹⁶⁵ *Class Action* (burying document in truckload of irrelevant rubbish; reducing deponent to tears); *A Civil Action* (baseless Rule 11 motion, discovery tactics designed to wear out plaintiff's firm, harassing evidentiary objections at trial); *The Verdict* ("you're not

demands, file motions with little merit, and engage in other delaying tactics. Lawyers act uncivilly toward one another and treat deponents harshly.

In this respect, the movies accurately portray the realities of contemporary big firm litigation practice--and a great deal of small firm litigation practice as well.¹⁶⁶ Hardball litigation tactics may or may not lie just on the ethical side of the lines laid out in the Model Rules.¹⁶⁷ They do not, however, contribute to the search for truth or justice in the litigation process. While the great majority of the respondents to my Greedy Associates survey stated that gross ethical improprieties were unthinkable in their firms, they were far more ambivalent about other firm conduct. Numerous responses spoke of behavior that most non-lawyers would think was unethical and immoral. This consists of action designed to conceal the truth or to trick or exhaust the opposing side, but by means that seem to fall just short of ethical violations or which violate unenforced ethical standards.¹⁶⁸ One

paid to do your best, you're paid to win"); *The Rainmaker* (stalling case in hopes plaintiff will die; causing deponents to disappear).

¹⁶⁶ See Zitrin & Langford, note 91 at 53-73; Austin Sarat, *Ethics in Litigation: Rhetoric of Crisis, Realities of Practice*, in Rhode, note 67 at 145-64 (firm culture no longer constrains extreme adversarial behavior. Caplan, note 70 at 134, 139-52, described the bare-knuckled litigation practices of Skadden, Arps and offered this primer: "Lawyers should not commit crimes or help clients to plan crimes. They should obey only such ethical instructions as are clearly expressed in rules and ignore vague standards. Finally, they should not tell outright lies to judges or fabricate evidence. Otherwise they may, and if it will serve their clients' interests must, exploit any gap, ambiguity, technicality, or loophole, any not-obviously-and-totally implausible interpretation of the law or facts."

¹⁶⁷ Model Rule 3.1 states that an attorney shall not "assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous..." Rule 3.2 states that "a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." The comment makes clear that "realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client." Rule 3.3 requires, among other things, that a lawyer shall not knowingly "fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel..." Rule 3.4 states, among other things, that a lawyer shall not "(a) unlawfully obstruct another party's access to evidence... (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party..." Rule 4.1 provides: "In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person..." I think these rules are flat-out marginally violated every day in the modern world of litigation and law practice. Indeed, these rules appear to have evolved from prescription to rather futile aspiration.

¹⁶⁸ [see preceding footnote]

very prevalent hardball tactic is incivility--that is, rude, bullying behavior that is designed to intimidate other lawyers or witnesses. For the most part, the respondents distinguished hardball litigation tactics from serious ethical improprieties. They don't especially like to behave this way, but regard such tactics as all in a day's work. One cannot survive in the big firm environment without engaging in them.

I think the small ethical breaches which are most common contribute most to making the practice of law slimy. [2]

I have been asked to play dumb by partners ("if the other side calls asking where the new draft is, tell them our system crashed or the para made all the wrong changes last night"). [3]

Less obvious ethical breaches occur -- e.g. suggestions that associates lie about who they are ("I'm a college student doing research for a report") or who they represent. [4]

Big firms ...may flood smaller firms with paper knowing that the first-year grunts and temps they put on the deal will probably miss something... [6]

The most common ethical violations I see are: (1) the contortions some firms/partners go through to determine that there is no conflict of interest in taking a case; (2) lawyers who don't consult their clients; (3) fast and loose arguments; and (4) discovery games. [11]

When the imbalance between superior game playing and a fair result is stark, then the system is certainly slimy, and if not slimy themselves, the lawyers who participated at least become slimed in the public's eye. [13]

There are all sorts of sharp litigation practices out there:

- producing documents during a deposition, or late the night before, that were requested and/or subpoenaed many months ago...
- misrepresenting the substance of telephone conversations with opposing counsel
- coaching of witnesses before and during depositions
- excessive and sometimes frivolous motion practice, or unduly burdensome discovery
- obstructionist tactics in "answering" interrogatories, requests to admit, and other legitimate discovery requests;
- egregious mischaracterizations of the facts and law in briefs or in oral arguments before the Court.

[14]

...delaying production of documents until after a motion to compel has been opposed and lost and, sometimes, appealed and lost, all for the purposes of delay and driving up the other side's costs, is immoral. [15]

But that is the game. Make things as difficult as possible for the other side within the bounds of the law. [38]

Do some documents get put on a privileged list that may not be privileged?. Sure, but the other side has an opportunity to challenge that. [40]

There's a lot of unconscious violations--just making blanket exceptions in discovery when you know you will have to disclose, just making trouble for the other side. Lawyers spend time arguing bullshit stuff but they may or may not think it's bad faith. [55]

But I can tell you that we have occasionally buried a document in with others in the hope that it, or its significance, is overlooked. [58]

I think people are obnoxious, and it's true that they spend unbelievable amounts of time writing letters accusing the other side of withholding documents and so forth, but I haven't seen anyone violate the Rules. I do know that lawyers frequently "shade" the facts or law to courts and administrative bodies, so much so that I would consider it deceitful, but again, they are not doing it because they intend to lie; instead they are overzealous in their advocacy. [73]

I think sometimes answers to interrogatories and responses to document production requests place too much emphasis on semantics. An artificially narrow reading of requests allows an attorney to avoid stating or producing something in response to a question...that is perfectly understandable in the context of litigation. I sometimes wonder how stupid an attorney can play without going over the ethical line. Playing dumb is pretty common practice. [91]

In their depiction of slippery or hardball litigation practices by big firms, the filmmakers are right on the money.

4. Billing improprieties

Several movies describe law firm behavior that appears to be aimed at inflating the client's bill. In *The Verdict*, for example, Ed Concannon clearly overstaffs the case. More than a dozen associates sit around a table listening to Concannon prepare a witness. In *The Firm*, a mentor partner tells Mitch McDeere to bill everything, even when he's thinking about client matters in the shower.

Numerous accounts of real-life law firm billing improprieties have appeared.¹⁶⁹ According to Deborah Rhode,

Audits of "legal expenses" have revealed massages during litigation, dry cleaning for a toupee, running shoes labelled "ground transportation," Victoria's Secret lingerie, and men's suits for an out-of-state trial that took longer than expected. Days in which lawyers bill more than twenty-four hours are no longer rare...When heiress Doris Duke died, leaving over a billion dollars to charity, two dozen law firms embarked on what one attorney candidly described as a "feeding frenzy." Some of the nation's leading practitioners, staying at leading hotels, charging at premium rates, managed to duplicate each other's work and keep each other employed, which diverted an estimated \$20 million from charitable causes."¹⁷⁰

About half of the Greedy Associates said that their firms never overbilled clients; indeed, they thought that underbilling was more likely than overbilling. But the other half of the respondents said that bill padding did occur at their firms. According to these respondents, both associates and partners inflate the number of their billable hours. Billable hours are often used to compute bonuses and lawyers must bill minimum number of hours to advance in the firm. As a result, lawyers must inflate their hours on time sheets, either because they cannot physically work that many hours or because there is not enough work to do. Indeed, it is difficult to understand how associates can consistently bill 2400 hours a year or more without cheating on

¹⁶⁹ Lisa G. Lerman, *Lying to Clients*, 138 U.Pa. L. Rev. 659, 705-721 (1990) (nearly every lawyer author interviewed reported some form of deception in billing clients either from personal experience or direct knowledge of the practices of others); Lerman, note 163 (billing theft by senior partners of major law firms); Zitrin & Langford, note 91 at 82-87; Caplan, note 70 at 171 (bill padding at Skadden, Arps); Schiltz, note 132, 52 Vanderbilt at 915-20; Fleming, note 70 at 31-39 (various forms of overcharging such as overstaffing or using overqualified personnel); William G. Ross, *The Ethics of Hourly Billing by Attorneys*, 44 Rutgers L. Rev. 1, 12-22 (1991) (sample of attorneys and corporate counsel believe that lawyers frequently or occasionally pad their hours); Parsa, note 88 at 30 (if I am at firm 15 hours I bill all 15 even though I only work 12); Douglas R. Richmond, *The New Law Firm Economy, Billable Hours, and Professional Responsibility*, 29 Hofstra L. Rev. 207 (2000) (discussing cases involving overbilling); Roy Simon, *Gross Profits? An Introduction to a Program on Legal Fees*, 22 Hofstra L. Rev. 625, 632 (1994) (managing partner of Los Angeles workers' comp firm routinely "bumped" up the time reported by firm's lawyers); John J. Marquess, *Legal Audits and Dishonest Legal Bills*, 22 Hofstra L. Rev. 637 (1994) (giving many examples of improper expense charging and otherwise inflated or dishonest bills); Trotter, note 70 at 97 (attorney billed client for \$66,000 for LEXIS services that cost only \$395), 97-98, 181-82 (pervasive time padding).

¹⁷⁰ Rhode, *In the Interests of Justice*, note 69 at 168-69.

their time sheets if they want any sort of life at all outside the office.

A number of respondents observed that basing everything on billable hours is perverse. It punishes lawyers who are more efficient and it keeps them working past the point of exhaustion when their work product is poor. Others pointed to the assignment of unnecessary or even useless work to "churn" the number of hours billed to a particular matter. A sampling of some of the comments:

...overbilling is very troubling. It occurs in many forms. One of the most common forms is the billing of attorney time for work that clearly should be performed by a staff person, whether by a paralegal, at a lower billing rate, or by a secretary or word processor, at no cost to the client... Unnecessary work often is performed and billed to the client, sometimes even when the client expressly has said that it does not want the work performed... multiple people, even multiple partners, read and revise the same drafts of documents, even when a client directs that this should not occur.. Duplication of work also is a problem. This can occur from client to client, as in when the same research assignment is performed for two or more clients from scratch, rather than using the first project as a basis for updating and billing the subsequent clients only for the work necessary to update. It also can occur in the context of only one client, where a partner simultaneously assigns multiple associates to research the same thing, or assigns one associate to "double check" the entire work product of another associate.

The quality of time billed also can be a problem. If an associate works more than 250, more than 300, more than 400 hours in a month, going without sleep for days at a time, what kind of efficiency and accuracy level is the client being billed for by the end of the month?...

Institutionally, it is difficult for partners to "write off" time from the bill... Seasoned lawyers encourage junior lawyers to bill "loosely." Although none would openly condone overbilling or padding, many tacitly accept and reward padding. Senior associates who are known not to fill out timesheets for weeks at a time, to leave the office frequently to work out or attend to personal errands, and who mysteriously come up with 250 hour months, are held out as role models and rewarded with partnership.... [15]

Unnecessary work is rampant (where I work). It's a combination of the desire to bill and the incompetence of higher-ups. I have spent many hours doing things that are totally pointless. This is often referred to as "churning the file."
[30]

Yes, I pad hours, we all do. [31]

The reality is that if hours determine bonus and especially salary--you have to bill 2400 hours to get the big bonus--people have to cheat and pad. You know who they are, though they never admit it. It's an open secret though not discussed... If you add on an extra .25 here and there, it is a lot of hours. [41]

People say if I am going to be there 14 hours I'm going to bill all 14 hours despite personal phone calls; they just bill all the time they are there at the office... If client insists on cut in hourly rate, you just stick them with more hours. [42]

Overbilling? You bet. Unnecessary work? Absolutely. Overbilling is the dirty little secret that no one wants to talk about. It happens, and the billable hours model along with hours-based bonuses encourage it. Anyone who says differently still thinks the world is flat. But because it's almost impossible to prove, no one (at least in my experience) mentions it. [93]

V. CONCLUSION

Law firms take a big hit in the movies. Indeed, judging from contemporary films, big law firms are among the most evil entities to be found in America. This isn't so surprising, given the fact that the public appears to loathe both lawyers in general and law firms in particular. Moreover, big law firms are themselves a big business and they champion the cause of big business. This insures that law firms will prove to be handy narrative antagonists. It also guarantees that the general public will continue to be taught, and will continue to believe, that law firms are the embodiment of evil.¹⁷¹ The more interesting question is whether the firms are getting a bad rap from their harshly negative film portrayals.

On the issues of overwork and lawyer lifestyle and the single-minded pursuit of profit in big firms, the movies are on the money. They accurately describe the profession's move from the professionalism to the business model as well as the stunning increase in the size of big law firms and their profitability. As to conduct by big firm

¹⁷¹ See Asimow, Nova, note 5 at 550-56 (evidence in psychology literature that people's opinions are heavily influenced by fictional stories from popular culture).

attorneys that offends the ordinary person's moral sensibilities, the movies again are largely accurate. Rude and uncivil behavior is now taken for granted. Big-firm lawyers believe that their jobs require them to engage in dirty but marginally ethical tactics that conceal the truth, cause delay, and generate cost for the sake of wearing out the opposition. Overbilling of various sorts appears to be rampant. I believe that on these issues, filmmakers have spoken the truth.¹⁷²

As to other kinds of clear-cut ethical violations (such as destroying critical documents or outright lying to courts), it's hard to say. Lawyers in big law firms with whom I've discussed these matters pooh pooh the problem. The same is true of the great majority of the "greedy associates" who responded to my bulletin board posting. They claim that a strict culture of ethical behavior in their organizations precludes such behavior and that serious cheating would be too risky for a big firm because it has so much to lose. Yet such things have happened and a minority of the Greedy Associates confirm that they've seen it. Those who have committed such offenses keep quiet about it. There is no way for an outsider to know how often it occurs.

If he were here with us today, and watching the movies about law firms made during the last twenty years or so, Orson Welles would be chuckling with approval.¹⁷³

¹⁷² Compare Simon, *supra* note 55 at 440-47 (popular culture accurately reflects the public's acceptance of situational ethics rather than strict ethical conformism).

¹⁷³ See text at notes 15-23.