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CHARACTER OR CODE:
WHAT MAKES A GOOD AND ETHICAL LAWYER*

Donald H.J. Hermann**

The objective of this Article is to explore what it means to say a person is a good lawyer as well as what makes a lawyer ethical. By a good lawyer, I mean a professionally competent and effective lawyer. By an ethical lawyer, I mean a moral person, a person of praiseworthy character. This question of what it means to be a good and ethical lawyer seems all the more compelling when it is recognized that our society today has a rather dismal view of lawyers and the legal establishment. Jokes about lawyers abound and provide a window into social attitudes about lawyers.1 As one joke goes, “How can you tell when your lawyer is lying to you? [When] [h]is lips move.”2

But how should one go about exploring lawyers’ behavior and conduct in relation to ethical standards or the shared values of society? It is difficult to discern much of relevance on this question by examining legal materials. Legal opinions seldom discuss the lawyer as a moral agent, even when reviewing specific conduct found to violate professional ethical norms.3 To understand

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* An earlier version of this article was presented as a paper to the Chicago Literary Club on April 4, 2011, at The Cliff Dwellers Club in Chicago, Illinois.


2. Thomas W. Overton, Lawyers, Light Bulbs, and Dead Snakes: The Lawyer Joke as Societal Text, 42 UCLA L. REV. 1069, 1070 (1995). According to Michael Asimow, “[t]oday lawyers are more despised than they have ever been before. This is something we probably knew already from the prevalence of nasty lawyer jokes or talk shows, or from social and professional interactions with lay persons.” Michael Asimow, Bad Lawyers in the Movies, 24 NOVA L. REV. 533, 537 (2000) (footnote omitted).

3. Compare the limited value of legal opinions for understanding how ethical considerations and questions of character are related to the issue of the good or ethical lawyer, to the need to supplement legal opinions in law school to provide a more developed understanding of the law and legal system. See Philip N. Meyer with Stephen L. Cusick, Using Non-Fiction Films as Visual Texts in the First-Year Criminal Law Course, 28 VT. L. REV. 895, 895–96 (2004). Meyer and Cusick observe the following issues for first-year students:

[M]any students find the constant diet of appellate opinions served up in the first year, the density and impenetrability of many opinions, and the decontextualized nature of these fragments severed from the full text of the opinion, often unsatisfying and unfulfilling. The legal texts raise questions that cannot possibly be fully anticipated and answered by the supplemental materials in the casebook.

... [M]any first-year students desire and manifest a psychological readiness for narrative understandings of criminal law that can be readily “rationalized” and justified pedagogically in terms of developing their lawyering skills. Film provides a marvelous
what makes a lawyer ethical, we need more than desiccated references in legal opinions to the action taken by plaintiff’s or defendant’s counsel. We need the basis for an assessment of the whole person that can provide insight into the personality and character of the individual lawyer. There are written texts that provide a rich source of material for addressing the question of what makes a lawyer ethical. These include autobiographical works by lawyers and judges, biographies of legal professionals, and novels portraying the life or activities of these individuals. The value of these works is that they provide an insight into the full life of the individuals who are the subjects of these works. In these works, we are given accounts of fully developed people, not simply the designation—plaintiff’s or defendant’s lawyer. These works also provide aspects of personality and character that give insight into the subject’s motivations and conduct, not simply descriptions of conduct or activity in the courtroom or law office. Therefore, the accounts of such activities provided in these works often are significant for understanding what it means to be a good and ethical lawyer.

Movies can also provide the kind of insight needed to understand what makes a lawyer ethical. Films not only reflect the attitudes of film makers about the law and lawyers, they often portray lawyers as fully developed individuals whose character and personality are presented in such a way that the viewer can gain insight into the character’s beliefs, motivations, and conduct. Recent academic study has taken seriously the depiction in films of lawyers and the legal system. Much of what the public learns or believes about lawyers and the legal system is based on depictions and portrayals in film and media. But it is

vehicle and opportunity to go beyond doctrinal analysis and to understand the law in some fuller, deeper and more complete context.

4. See, e.g., JAMES GOULD COZZENS, BY LOVE POSSESSED (1957) (a novel following a small town attorney through 49 hours of his life); CLARENCE DARROW, THE STORY OF MY LIFE (1960) (an autobiography of a trailblazing lawyer); WILLIAM O. DOUGLAS, GO EAST, YOUNG MAN (1974) (an autobiography of a U.S. Supreme Court Justice); JOHN GRISHAM, THE SUMMONS (2002) (a novel about a lawyer who finds a huge sum of money and investigates where it came from); LEWIS J. PAPER, BRANDEIS (1983) (a biography of a U.S. Supreme Court Justice); SCOTT TUROW, PRESUMED INNOCENT (1987) (a novel about a prosecutor charged with the murder of his colleague).


In lawyer films, we find lawyers pursuing justice (or standing in the way of it) as they deal with clients, judges, other lawyers, and people in the community. We identify, if we have any sense of humanity and empathy, in a deep, fundamental way with those who have suffered injustice and with those who work to see justice done.

Id. at 828.

6. See, e.g., STEVE GREENFIELD ET AL., FILM AND THE LAW 11 (2001) (“Apart from the interests of those intimately involved in legal education, other scholars have homed in on broadly legal issues as part of wider academic goals. These have included situating lawyers within the culture within which they operate.”).

also significant that those who make films (producers, directors, screenwriters) involving lawyers and judges base their depictions and appraisals of lawyers not only on their own observations, but also on reported experiences of litigants and others operating within the legal system. 8

The professional standards for appropriate performance, derived from the expectations developed within the legal profession itself, are a significant influence on lawyers’ own self-perception of what it takes to be a good lawyer and on their understanding of the role of lawyers and judges. 9 The profession has developed over time an understanding of what it means to be a good and ethical lawyer. 10 It is important to understand that both notions of professional responsibility as well as societal expectations of what it means to be a good and ethical lawyer have changed and evolved over time. 11 An important contribution that films provide for the study of law and lawyers is the depiction of these changing understandings of the status, role, and function of the lawyer in American society. 12

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8. See id. at 1592–93. Films as a product of popular culture reflect the attitudes, beliefs, and social mores of those making the film, as well as being representative of the attitude of society or culture at a particular time. 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, 248 (1987).


10. See id.


The self-image of American lawyers has undergone a major transformation. As recently as the early 1960s, Erwin Smigel’s renowned study of Wall Street lawyers declared them to be guardians of the law. While serving their clients’ interests, they maintained a higher commitment to the public good which permitted them to manage the relationship between law and power that was essential to the continued stability of, and rule of law in, a democratic society. Twenty years later, a number of distinguished scholars reconsidered the role of elite lawyers at a conference at Stanford Law School. They painted an entirely different picture. Far from being guardians of the law, most corporate lawyers were hired guns who provided their clients with little independent judgment or counsel. Concern for the public good was not important to their work.

12. See Michael Asimow, Embodiment of Evil: Law Firms in the Movies, 48 UCLA L. REV. 1339, 1370–71 (2001) (citing Asimow, supra note 2). Asimow notes a change in the depiction of lawyers in film over several decades reflecting a change in public opinion about lawyers:

[From] 1930 to the end of the 1960s, the great majority of lawyers in film were good human beings and good lawyers. Indeed, many of the most prominent film lawyers and
A valuable source for beginning our examination of the role of the lawyer in American society during much of the nineteenth and twentieth century is the writings of Anthony Kronman, a former dean of the Yale Law School, who wrote the monograph, The Lost Lawyer, published in 1993. While the Kronman wrote about the embodiment of professional excellence for lawyers in the early Republic as an idealized figure captured in the concept of the lawyer-statesman. While these lawyers were certainly engaged in the mundane business of earning a living in their law office with little likelihood of engaging in grand exercises of statesmanship, these attorneys engaged in practice with this model of the lawyer-statesman in mind. The lawyer-statesman was a source of inspiration as the attorney engaged in advising and representing individuals who were viewed as having all the limitations and faults of human beings.

judges were bathed in a sort of hazy golden light. They were wonderful human beings, faithful friends, family men, and highly competent, ethical and zealous attorneys.

Somewhere around the 1970s, 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. The reasons why this happened are not difficult to discover. During the exact same time, the public's image of lawyers collapsed. Lawyers had never been particularly popular, but they used to be 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.

Id. at 1370-71 (footnotes omitted).


14. See id. at 11-14. Kronman acknowledged that his development of the concept of the "lawyer-statesman" was in part inspired by a lecture Chief Justice William Rehnquist presented at the University of Chicago Law School. See id. (citing William H. Rehnquist, THE LAWYER-STATESMAN IN AMERICAN HISTORY, 9 HARV. J. L. & PUB. POL'Y 537 (1986)).

15. Id. at 12. Kronman acknowledged that prominent achievements by lawyer-statesmen were not in the grasp of many practitioners; nevertheless, the ideals of character and excellence inspired and infused the daily work of the ordinary lawyer. See id. According to Kronman:

[T]his ideal affirmed that a lawyer can achieve a level of real excellence in his work only by acquiring certain valued traits of character. Though linking professional achievement to character—virtue in this way undoubtedly made the first seem more remote and harder to attain, it also gave it greater value. It put the heroes of the bar high up beyond the point that most practitioners could reach, but at the same time endowed their achievements with a dignity and stature that no amount of technical know-how can confer.

Id. at 16.

16. See id. at 16-17. The lawyer-statesman model or ideal was:

[An] ennobling thought, even for those who fell short of the ideal or found they had only limited opportunities in their own work to exercise the deliberative virtues that the lawyer-statesman exhibited to an exemplary degree. The ideal of the lawyer-statesman encouraged this thought, and by so doing affirmed the self-worth of lawyers as a group in a way that makes the durability of this ideal as a model of professional excellence easier to understand.
According to Kronman, the paradigm of the lawyer–statesman embodied an ideal of character. In this view, the lawyer aimed not only to be an accomplished technician, but at the same time sought to be a distinctive and praiseworthy type of person, a person of practical wisdom. In addition, the lawyer–statesman was to be a devoted citizen who cared about the public good and sought to secure it in his work. When the lawyer–statesman acted as an advocate of private interests or as a counselor in matters of state, he provided advice and guidance to help his client deliberate and come to an informed understanding of the client’s own ambitions, interests, and goals. But, as

17. Id. at 15. Kronman defines what he means by “a trait of character” as “an ensemble of settled dispositions—of habitual feelings and desires.” Id. at 15. He elaborates on this character: To have a character of a certain sort is to possess a set of such dispositions that is identifiable and distinct. . . . Thus in addition to whatever intellectual abilities he might possess, the lawyer–statesman was pictured by writers of the period as having certain temperamental qualities as well: as being, for example, more calm or cautious than most people and better able to sympathize with a wide range of conflicting points of view.

18. See id. at 15–16. Kronman maintained that “the trait of prudence or practical wisdom” involved more than intelligence and knowledge:

When we attribute good judgment to a person, we imply more than that he has broad knowledge and a quick intelligence. We mean also to suggest that he shows a certain calmness in his deliberations, together with a balanced sympathy toward the various concerns of which his situation (or the situation of his client) requires that he take account. These are qualities as much of feeling as of thought. They are qualities of character, and the role they play in the trait we call good judgment is an essentially important one.

19. See id. at 14–15. Kronman designated this aspect of the lawyer–statesman as “a devoted citizen,” which in part explains why for much of American history the lawyer was a respected member of the community whose advice was sought on matters of community concern. See id.

According to Kronman, an element of devoted citizenship is critical to the lawyer–statesman model:

The outstanding lawyer, as this ideal [of lawyer–statesman] presents him, is, to begin with, a devoted citizen. He cares about the public good and is prepared to sacrifice his own well-being for it, unlike those who use the law merely to advance their private ends. The spirit of citizenship that sets the lawyer–statesman apart from the purely self-interested practitioner of law can to that extent be understood in motivational terms. But it is not only his motives that make him a better citizen than most. He is distinguished, too, by his special talent for discovering where the public good lies and for fashioning those arrangements needed to secure it. The lawyer–statesman is a leader in the realm of public life, and other citizens look to him for guidance and advice, as do his private clients.

20. Id. at 15. It is important to understand that the lawyer–statesman sees his role not merely as instrumental but also as deliberative:

Whether acting as the representative of private interests or as a counselor in matters of state, one important part of what he does is to offer advice about ends. An essential aspect of his work, as he and others see it, is to help those on whose behalf he is deliberating come to a better understanding of their own ambitions, interests, and ideals and to guide their choice among alternative goals.
significant, the lawyer–statesman sought to guide the client’s decision in the
direction of the common good.21

The lawyer–statesman is distinguished by his qualities of character so that he
is defined by who he is as much as by what he knows and by what he does.22
According to Kronman, “[T]he lawyer–statesman[,] possessed of great practical
wisdom and exceptional persuasive powers, [is] devoted to the public good but
keenly aware of the limitations of human beings and their political
arrangements . . . .”23 Kronman concludes that the ideal of the lawyer–statesman
meant that a person could achieve a level of real excellence in his work only by
acquiring certain traits of character.24 The goal of the lawyer–statesman was not
merely to be an accomplished technician but also an estimable type of human
being, a person of good character.25

Two films portraying this ideal of the lawyer–statesman involve partly
fictional depictions of Clarence Darrow, a lawyer of distinction associated with
controversial cases.26 The first film, Inherit the Wind (directed by Stanley

22. See id. at 16–17. Kronman emphasizes a strong connection between character and
judgment. See id. at 16. It is certain qualities of character that are a distinctive aspect of the
lawyer–statesman ideal: “Excellence, leadership, judgment, wisdom, [and] character [are] essential
terms in defining the lawyer–statesman’s role . . . .” Id. at 49.
23. Id. at 12.
24. Id. at 16.
25. See id. Kronman cites Aristotle’s Nicomachean Ethics for an understanding of the
formation of character and the quality of practical wisdom essential to deliberation. Id. at 41.
These qualities are the result of habit and education. See id. (citing ARISTOTLE, NICOMACHEAN
ETHICS bk. X, at 254–58 (Christopher Rowe trans., Oxford Univ. Press 2002) (c. 384 B.C.E.);
Hackett Publ’y Co. 1998) (c. 384 B.C.E.)). Kronman draws on Aristotle’s Nicomachean Ethics:
In the Ethics Aristotle stresses that deliberation is not an activity at which everyone does
equally well. . . . Those who deliberate well, Aristotle says, we call practically wise,
practical wisdom being the excellence appropriate to the activity of deliberation, in the
same way, for example, that temperance is appropriate to eating, drinking, and sex, or
courage to physical combat.

. . . .
Practical wisdom—the excellence of the person who deliberates well about personal
or political affairs—Aristotle repeatedly describes as a virtue of character, a dispositional
habit shaped by training or education. The practically wise person is more than merely
clever. He also has “the right kind of likes and dislikes.” His affects are in order; he
knows what he ought to care about and actually cares about it. Hence the education he
receives must be a training in sentiment as well as in belief.
Id. at 41 (emphasis added) (footnotes omitted) (citing ARISTOTLE, NICOMACHEAN ETHICS, supra).
26. Clarence Darrow has been the subject of a number of biographies including: IRVING
STONE, CLARENCE DARROW: FOR THE DEFENSE (1941), KEN TIERNEY, DARROW: A BIOGRAPHY
(1979), ARTHUR & LILA WEINBERG, CLARENCE DARROW: A SENTIMENTAL REBEL (1980). Two
recent biographies of Darrow are ANDREW E. KERSTEN, CLARENCE DARROW: AMERICAN
ICONOCLAST (2011), and JOHN A. FARRELL, CLARENCE DARROW: ATTORNEY FOR THE DAMNED
(2011). While the films discussed in this Article depict Darrow as a lawyer–statesman, a critical
view of Darrow is presented in GEOFFREY COWAN, THE PEOPLE V. CLARENCE DARROW: THE

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Kramer and released in 1960), was based on the Scopes Trial which involved a prosecution of a high school teacher for teaching the theory of evolution in violation of Tennessee law.\footnote{27} The second film, Compulsion (directed by Richard Fleischer and released in 1959), was based on the Loeb–Leopold case, which involved the thrill-killing of a fourteen-year-old boy in 1924 by two young men, one eighteen and one nineteen.\footnote{28}

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BRIBERY TRIAL OF AMERICA’S GREATEST LAWYER (1993), in which the author examines two cases. The first is the murder trial of two labor union activists accused of blowing up the Los Angeles Times building and defended by Darrow, and the second is Darrow’s own trial for bribery. The attorney’s autobiography is CLARENCE DARROW, THE STORY OF MY LIFE (1932). A collection of Darrow’s speeches and arguments in court is presented by ATTORNEY FOR THE DAMNED (Arthur Weinberg ed., 1957). In a foreword to the latter book, Justice William O. Douglas offers an assessment of Darrow which maintained that Darrow merits recognition as a lawyer–statesman. See William O. Douglas, Foreword to ATTORNEY FOR THE DAMNED (Arthur Weinberg ed., 1957). Douglas wrote of Darrow:

[I]n his prime he certainly was a fearless liberal, representing many lost causes. Darrow represented both the poor and the rich. There was no class line among his clientele. But he never, I think, represented the strong against the weak, the mighty against the masses. When those lines were drawn, he was always on the side of the underdog fighting for equal protection, due process, and a fair trial.

... Darrow was widely read and well versed in the humanities. His addresses sparkle with analogies, with historic examples, with figures of speech taken from the masters. But his intellectual achievements were not the secret of his success. Darrow knew people. He ran the gamut of emotions in his jury speeches. His arguments are a full orchestration, carrying great power even in cold print. They must have been overwhelming as they came from his tongue. Yet he was not the flamboyant type. His words were the simple discourse of ordinary conversation. They had the power of deep conviction, the strength of any plea for fair play, the pull of every protest against grinding down the faces of the poor, the appeal of humanity against forces of greed and exploitation.

Darrow used the law to promote social justice as he saw it. ... Darrow, working through the law, brought prestige and honor to it during a long era of intolerance.

\textit{Id.} at vii–ix.


\footnote{28} COMPULSION (Twentieth Century Fox Film Corp. 1959); HARRIS, \textit{supra} note 27, at 54–57. The film, directed by Richard Fleischer, stars Orson Welles as Jonathan Wilk; Dean Stockwell as Judd Steiner, one of the murderers; Bradford Dillman as Artie Straus, the other murderer; and E. G. Marshall as D.A. Horn, the prosecutor. HARRIS, \textit{supra} note 27, at 54. The film is based on the novel by MEYER LEVIN, COMPULSION (1956). \textit{Id.} at 55–56. This trial has been examined in a number of books including: FRANCIS X. BUSCH, PRISONERS AT THE BAR 145–99 (1952); MAUREEN MCKERNAN, THE AMAZING CRIME AND TRIAL OF LEOPOLD AND LOEB (Gaunt 1996) (1924); HAL HIGDON, THE CRIME OF THE CENTURY: THE LEOPOLD AND LOEB CASE (1975), and most recently,
In *Inherit the Wind*, a principal character, Henry Drummond, is played by Spencer Tracey and is based on Clarence Darrow.\textsuperscript{29} Another character, Matthew Harrison Brady, played by Fredric March, is based on the lawyer and three-time presidential candidate William Jennings Bryan.\textsuperscript{30} These two arguably lawyer-statesmen served respectively as defense counsel and prosecutor in the trial of a high school teacher for the violation of a state law prohibiting the teaching of evolution.\textsuperscript{31} The film presents the case as involving the clash of Fundamentalism, involving a set of fixed views based on a literal understanding of Christian scripture, against the claims of intellectual freedom to teach new ways of thinking. Both lawyers are drawn to the case by their views of the deep social significance of the issues at stake. At one point, Drummond (Darrow) declares that he did not come to defend the teacher for the purpose of attacking Fundamentalism but rather to defend the teacher’s right to be different and to exercise academic freedom. Brady (Bryan) is no less committed to defending more than Fundamentalist religious belief. In a private discussion with Drummond, Brady admits that, although the two were once political allies, they have drifted apart as Brady has come to see his duty to defend a community and its shared values, reflected in a deep commitment of the townspeople to a simple faith, which provides them with a sense of social solidarity and an assurance about what is right. It is Brady’s view that the community should be permitted to ensure that what they think is right is taught in their schools. Drummond counters with the view that the right to think is on trial; that a man is on trial because he chose to speak what he believed. Brady asks Drummond whether

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SIMON BAATZ, FOR THE THRILL OF IT: LEOPOLD, LOEB, AND THE MURDER THAT SHOCKED CHICAGO (2008). One of the defendants published an autobiography which provides the defendant’s view of Darrow’s defense in the case. NATHAN F. LEOPOLD, JR., LIFE PLUS 99 YEARS (1957). Leopold’s comment on Darrow’s closing argument in the case suggests his own view that Clarence Darrow conformed to the ideal of the lawyer-statesman. See id. at 72. Leopold writes of his admiration of Darrow’s speech:

It is a temptation—a great temptation—to reproduce here that speech of Clarence Darrow’s in Dick Loeb’s defense and mine. It is a masterpiece of English prose. It is much more. It is a deep treatise on philosophy, yet so simply told that a child can understand it. It is moving oratory, moving because the man who delivered the oration was moved, deeply moved. That address came through Clarence Darrow’s mouth straight from his heart. Into it he distilled a half century’s penetrating observation and a half century’s profound reflection. Mr. Darrow was pleading not so much for Dick and me as he was pleading for the human race. For love, for charity, for understanding. Especially for understanding.

Id.
\end{quote}

\textsuperscript{29} INHERIT THE WIND, supra note 27; HARRIS, supra note 27, at 110, 114. Several authors offer commentary on the film and its significance from a legal perspective. See PAUL BERGMAN & MICHAEL ASIMOW, REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES 74–79 (2006); HARRIS, supra note 27, at 110–28; Nell Minow, “An Idea Is a Greater Monument than a Cathedral”: Deciding How We Know What We Know in Inherit the Wind, 30 U.S.F. L. Rev. 1225 (1996).

\textsuperscript{30} HARRIS, supra note 27, at 110, 112.

\textsuperscript{31} Scopes v. State, 289 S.W. 363, 363 (Tenn. 1927).
“right” has any meaning to him. Drummond responds that “right” has no meaning for him but that only “truth” has significant meaning.³²

In the actual case, as in the film, little is really at stake for the teacher. The teacher faces a small fine if convicted.³³ But in the actual litigation and in the film, the two lawyer–statesmen see much more at stake and struggle to support what they think is important for society—individual intellectual freedom, or social solidarity based on shared values and beliefs.³⁴

The second film, Compulsion, depicts Darrow as the character Jonathan Wilk, played by Orson Welles, who is portrayed as a crusading lawyer who has taken up the cause of opposition to the death penalty.³⁵ Rather than proceeding with a jury trial in a case of senseless thrill-killing to which the public outcry for the death penalty was overwhelming, Wilk enters a plea of guilty, arguing to the judge that the defendants, although not technically insane, were sick and not entirely responsible for their heinous act of senseless killing and, therefore, not properly subject to the death penalty demanded by the state prosecutor.³⁶ In what is often claimed to be the longest speech in film history (the monologue runs for approximately fifteen minutes), Wilk offers an impassioned argument against capital punishment.³⁷ The use of rhetoric and evocation of philosophical and religious values provides a good example of the style of argument used by the lawyer–statesman.³⁸ Wilk declares his opposition to the death penalty:

I’ve been fighting anger and hatred all my life. If there’s one thing I’ve learned, it’s that cruelty only breeds cruelty. If there’s any way of destroying hatred, it’s through love, charity and understanding. I’m asking this court to shut these boys in a prison for life. Any cry for more goes back to the hyena . . . . Does anyone here know what justice is? The world has been one long slaughterhouse from the beginning until today. Why not think? Why not read something, instead of blindly shouting for death? If our state is not kinder, more considerate, more intelligent, than the mad act of these two sick boys, then I’m sorry I’ve

³² See INHERIT THE WIND, supra note 27.
³³ Scopes v. State, 289 S.W. 363, 363 (Tenn. 1927). The actual Tennessee law made “it a misdemeanor, punishable by a maximum fine of $500, for a public school teacher 'to teach any theory that denies the story of the Divine Creation of man as taught in the Bible, and to teach instead that man had descended from a lower order of animal.'” LARSON, supra note 27, at 50 (quoting H.R. 185, 64th Gen. Assemb. (Tenn. 1925)).
³⁴ See LARSON, supra note 27, at 71–73, 98; INHERIT THE WIND, supra note 27.
³⁶ HARRIS, supra note 27, at 58.
³⁷ Id. at 58, 60.
³⁸ See KRONMAN, supra note 13, at 14–16.
lived so long... Will killing these boys stop further killings? No. Your honor, if you hang these boys you turn back to the past. I'm pleading for the future. I'm pleading not just for these two boys but for all boys, for all the young. I'm pleading not just for these two lives but for life itself, for a time when we can learn to overcome hatred with love, when we can learn that all life is worth saving, and that mercy is the highest attribute of men. In this court of law, I'm pleading for love.\(^39\)

While the model of professional excellence provided by the lawyer-statesman began to be eroded as the result of social and economic influences by the time of the Great Depression, this model of the professional lawyer continues to influence the conduct of attorneys and is observed in the depiction of lawyers that the film viewing public embraces.\(^40\) Such a lawyer is Atticus Finch, played

\(^39\) HARRIS, supra note 27, at 58, 60. (quoting Richard Murphy, Compulsion (1959) (unpublished screenplay)). An early publication of Darrow’s account of the Loeb-Leopold trial was CLARENCE DARROW’S PLEA IN DEFENSE OF LOEB AND LEOPOLD: (AUGUST 22, 23, AND 25, 1924) (n.d.). A recent reprint of Darrow’s argument along with the transcript of a debate titled “Resolved: That Capital Punishment Is a Wise Public Policy” is provided in CLARENCE DARROW ON THE DEATH PENALTY (Chi. Historical Bookworks 1991) (1924). Nathan Leopold, one of the defendants, commented not only on the impact of Darrow’s argument, but the extensive publication of the text. LEOPOLD, supra note 28, at 72–73. Leopold writes of the utility of Darrow’s address:

Clarence Darrow’s speech in my defense lies before me as I write this. But I am not going to quote it. It has been done so many times. It has been issued separately in a little brochure. It is included in every collection of famous speeches in the courts. The interested reader can easily find it. Perhaps I have a subconscious resistance to putting that majestic piece of prose beside my commonplace narrative.

Suffice it to say that Mr. Darrow made one convert that day. While he was talking, I sat spellbound. He carried me along with the grandiose sweep of his thought. Even I was convinced that I should not be hanged.

\(^40\) Pearce, supra note 11, at 404 (citing RICHARD L. ABEL, AMERICAN LAWYERS 7, 72 (1989); Rayman L. Solomon, Five Crises or One: The Concept of Legal Professionalism, 1925–1960, in LAWYERS’ IDEALS/LAWYERS’ PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION 144, 156–59 (Robert L. Nelson et al. eds., 1992); Robert W. Gordon, The Independence of Lawyers, 68 B.U. L. REV. 1, 3–4 (1988); Harlan F. Stone, The Public Influence of the Bar, 48 HARV. L. REV. 1, 10 (1934)). Pearce cites Justice Harlan Stone as holding the view that changes in the legal profession both led to and were caused by the Great Depression:

[T]he perception that the “overcrowding” of the bar during the Depression led to “excessive competition” and unethical conduct resulted in efforts to strengthen the bar and to tighten admission requirements. Even critics of the bar, such as Justice Harlan Fiske Stone, did not suggest the abandonment of the governing class role” [an alternative formulation of the lawyer-statesman ideal]. Stone believed that the behavior of lawyers as business servants and profit maximizers contributed to the occurrence of the Depression. His response was to call for the bar to recommit itself to serving as “guardian of public interests” and to account for “the way in which our professional activities affect the welfare of society as a whole.”

\(\textit{Id.}\) (footnotes omitted) (quoting Solomon, supra; Stone, supra) (citing ABEL, supra, Gordon, supra).
by Gregory Peck, in the film To Kill a Mockingbird (directed by Robert Mulligan and released in 1962).\footnote{To Kill a Mockingbird (Universal Pictures 1962). The film is based on the novel by Harper Lee, To Kill a Mockingbird (1960). Bergman & Asimow, supra note 29, at 20. The film directed by Robert Mulligan stars Gregory Peck as Atticus Finch; Mary Badham as Scout Finch; Phillip Alford as Jem Finch; and Brock Peters as Tom Robinson, the African–American defendant charged with sexual assault. To Kill a Mockingbird, supra.}

To Kill a Mockingbird takes place during the Depression in the fictitious town of Maycomb, Alabama, where segregation and racism have a dominant influence.\footnote{See Bergman & Asimow, supra note 29, at 17. Some authors have commented on the film and its significance from a legal perspective. See id. at 17–21; Taunya Lovell Banks, To Kill a Mockingbird (1962): Lawyering in an Unjust Society, in Screening Justice, supra note 35, at 239–52. Some commentators have been critical of the judgment and quality of representation provided by Atticus Finch in his defense of Tom Robinson. See Monroe H. Freedman, Atticus Finch – Right and Wrong, 45 Ala. L. Rev. 473, 482 (1994); see also Michael Asimow & Shannon Mader, Law and Popular Culture: A Course Book 43–44 (2004) (outlining several litigation strategies that Finch should have employed); John Jay Osborn, Jr., Atticus Finch – The End of Honor: A Discussion of To Kill a Mockingbird, 30 U.S.F. L. Rev. 1139, 1141 (1996) (challenging the view that Atticus is a heroic character). Osborn argues that Finch really was a passive character: Atticus cannot see beyond his law books. Indeed, he seems scared to do so, as if it would unleash the real demons in the town. He plays along with the system. Atticus is a willing participant in a ritual that he knows to be absurd. … Atticus Finch is as childlike as his daughter Scout. His vision of the law is unrealistic. \ldots Id. at 1141–42. Most law review commentary has praised Atticus Finch as a model lawyer pursuing justice and embodying the virtue of decency and tolerance. See Claudia Johnson, Without Tradition and Within: Reason Judge Horton and Atticus Finch in Court, 45 Ala. L. Rev. 483, 509 (1994). Johnson argues that a combination of praiseworthy features of Atticus’s personality and behavior make him a model lawyer: “It is finally not [only] Atticus’s ingrained and illusive ‘character’ alone, nor a respect for the religious values of his community, nor staunch principle which makes him a hero; it is his application of reason, expediency, and the written word that is honored by this author.” Id.}

Atticus Finch is a widower who is raising two children and struggling to make a living in a small-town law practice. A judge asks Finch to represent a black man accused of beating and raping a young white woman. Finch’s cross examination of the woman and her father makes it clear that their accusations against the defendant are lies. The defendant testifies that the woman often asked him for assistance when he passed her house. He said he did so because he felt sorry for the young woman. On the day on which the trial is focused, the defendant testified the woman grabbed and kissed him. This behavior was observed through a window by the young woman’s father. Finch establishes that the woman’s physical injuries were inflicted by a left-handed man and that the defendant was incapable of inflicting those injuries because he had lost the use of his left arm in an accident some time before the incident involved in this case. The girl’s father was left-handed.\footnote{To Kill a Mockingbird, supra note 41.}
The film portrays Atticus Finch as a man who is seeking to teach his “community and his two young children about justice, decency and tolerance.”\textsuperscript{44} We get a good sense of the quality of Atticus Finch’s character by the way he is raising his children to be honest, empathetic, and kind.\textsuperscript{45} Atticus himself embodies a devotion to the truth and gentlemanliness.\textsuperscript{46} The film is a demonstration of one of the theses of this paper, that ethical behavior is the product of long ingrained character, which is developed from what a person absorbs from observing moral behavior in others and by incorporating the moral teachings of church, community, and school—not from legal codes.\textsuperscript{47} We see Atticus providing his children, by his example, instruction on ethical behavior and, by his teaching the children, explicit moral lessons about proper behavior.\textsuperscript{48} By putting on a forceful defense of his client, Atticus confronted the malignant practices of his racially segregated society.\textsuperscript{49} He provided an example of courage in the face of prejudice; he advocated equal justice in the law for a black man in a segregated community.\textsuperscript{50} As has been said by one commentator:

Atticus Finch is the quintessential lawyer-statesman. He sees the law as a noble calling and he practices law with nobility. He uses the

\begin{footnotes}
\footnote{44. Johnson, supra note 42, at 483 (quoting David Margolick, To Attack a Lawyer in ‘To Kill a Mockingbird’: An Iconoclast Takes Aim at a Hero, N.Y. TIMES, Feb. 28, 1992, at B7).
\footnote{45. See To KILL A MOCKINGBIRD, supra note 41.
\footnote{46. See Thomas L. Shaffer, Christian Lawyer Stories and American Legal Ethics, 33 MERCER L. REV. 877, 879–80, 900 (1982). Asimow and Mader observe: “In addition to being a courtroom drama, To Kill a Mockingbird is also about a father-child relationship. In fact, trial sequences take up less than half of the film. The rest focuses on the childhood exploits and experiences of Jem and Scout, Atticus Finch’s children.” ASIMOW & MADER, supra note 42, at 32. Johnson also points out some examples of Atticus Finch providing his children with moral lessons by teaching and example: That Atticus has reached a higher level of civilization [embodifying the ideal of the lawyer–statesman] is shown in the benevolence and intelligence with which he runs his household. He reasons with his children that they should try to walk in the shoes of other people to understand them. He is a peace-maker, reasoning that he will no longer hunt or carry arms, telling his children that violence begets violence. Johnson, supra note 42, at 496 (footnotes omitted) (citing HARPER LEE, TO KILL A MOCKINGBIRD 30, 76, 98 (Warner Books 1982).
\footnote{47. Professor Thomas L. Shaffer, of the University of Notre Dame Law School, argued for the significance of the process of character development and the significance of character over code regulation of conduct for explaining why an individual becomes an ethical lawyer. See Shaffer, supra note 46, at 877–79. According to Shaffer, the example of Atticus Finch as a character who embodies the values of Christianity, morality, and gentlemanliness is to be contrasted with a code of ethics as the basis for inspiring lawyers. See id. at 878–79. Shaffer argues that morality comes from long ingrained character, from what we absorb over the years, from narratives of morality, and from our own moral relations with family and others, rather than from legal codes. See id. at 893–96.
\footnote{48. See Johnson, supra note 42, at 496 (quoting LEE, supra note 46, at 30, 76, 98).
\footnote{49. See Banks, supra note 42, at 240–41.
\footnote{50. See id.}
skills he has acquired in his profession—among them the capacity for clear thinking and good judgment—[for the benefit of his clients and] for the benefit of the community . . . 51

The ideal of the lawyer—statesman was challenged early on by an alternative view of the proper role of the lawyer which I will call the lawyer—advocate.52 The lawyer—advocate model is based on the assertion that the lawyer’s pursuit of a client’s goals often, but not necessarily, prevents the lawyer from pursuing the common good.53 One of the earliest and most forceful arguments in support of the lawyer—advocate model was provided by Lord Henry Brougham in 1820.54 Brougham was the leader of a group in the House of Lords who was defending Queen Caroline against King George IV’s charges of adultery.55 This group had learned that the King had secretly married a Roman Catholic before assuming the throne and was, therefore, not eligible to rule.56 Brougham threatened to reveal this information, which would have produced chaos in the realm, if the King did not reach a settlement with Queen Caroline.57 Brougham made it clear that he would take this action in defense of his cause no matter the effect on the community.58 Brougham stated his view of the duties of an advocate:

[A]n advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client by all means

52. Kronman draws a distinction between the lawyer’s role in advocacy and counseling that provides a starting point for understanding the lawyer—advocate as distinguished from the lawyer—statesman. KRONMAN, supra note 13, at 146. Kronman writes of the duties and limitations of an advocate:
   As an advocate, a lawyer speaks to others on his client’s behalf and does not—cannot—
   show any of the ambivalence or uncertainty about the client’s position that a counselor
   must acknowledge to do his own job well.
   ... [W]hen he acts as an advocate, speaking to others on the client’s behalf, a lawyer
   must accept the client’s goals as fixed and pursue them unswervingly. An advocate thus
   appears to have no need for the wisdom in deliberating about as-yet unsettled ends that
   counseling requires.
Id. at 146-47.
53. See id. at 147.
54. See MONROE H. FREEDMAN, UNDERSTANDING LAWYERS’ ETHICS 65 (1990). Freedman
   maintains that the advocacy role is the historical source of modern legal ethics and that Lord
   Brougham provides the classic example of the lawyer—advocate. See id. at 65–66.
56. Id. at 188.
57. Id. (citing J. NIGHTINGALE, 2 REPORT OF THE PROCEEDINGS BEFORE THE HOUSE OF
   LORDS, ON A BILL OF PAINS AND PENALTIES AGAINST HER MAJESTY, CAROLINE AMELIA
   ELIZABETH, QUEEN OF GREAT BRITAIN, AND CONSORT OF KING GEORGE THE FOURTH 7–8 (1821)
   [hereinafter TRIAL OF QUEEN CAROLINE]).
58. See id. at 189 (quoting TRIAL OF QUEEN CAROLINE, supra note 57, at 8).
and expedients, and at all hazards and costs to other persons, and, among them, to himself, is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others. Separating the duty of a patriot from that of an advocate, he must go on reckless of consequences, though it should be his unhappy fate to involve his country in confusion.  

While notions of professionalism and the constraints of personal character may result in a more benign understanding of the lawyer–advocate, it should be clear that the lawyer–advocate does not identify with the pursuit of the common good. Rather, the lawyer–advocate knows and pursues only the interest of “one person in all the world, and that person is his client.”

An early depiction of an lawyer–advocate in film occurs in Counsellor at Law (directed by William Wyler and released in 1933), which portrays the stressful nature of law practice. The film centers on George Simon, played by John Barrymore. Simon is a lawyer in a successful small, but prominent, firm in New York. Simon is a Jew who has risen from the immigrant ghetto of New York’s lower east side. He has married a socialite who shows very little regard for him and is disdainful of the practice of law. Simon is a strong advocate and a determined fighter for the clients whom he represents. The film centers on Simon’s threatened disbarment for having allowed a client to assert a fraudulent alibi to save himself from prison. This professional ethical lapse is presented as an understandable action by an advocate who believes fiercely that his client is being unfairly prosecuted. Moreover, the film takes the view that the use of this ethical lapse in a disbarment proceeding by a leader of the organized bar is no more than an expression of anti-Semitism and elitism.

The film makes it clear that George Simon is a gifted lawyer–advocate. At the beginning of the film, Simon is celebrating the acquittal of a woman who was almost certainly guilty of murdering her husband. Simon is presented as an effective advocate who can marshal evidence, use legal precedent, and manipulate juries in the effective representation of his clients.
Simon is loyal to his clients and able to obtain their trust. He is an extremely skillful lawyer who is engaged in a hectic and stressful practice. While loyal and skillful, he is also manipulative and greedy. His entire sense of self and source of satisfaction is his profession as a lawyer. When faced with the possibility of disbarment, he tells his partner:

I'd go nuts in six months. How am I going to spend the rest of my life? I'm no golf player, and I don't know an ace from a king. I don't even know how to get drunk. All I know is work. Take work away from me and what am I? . . . a living corpse.

In the end, Simon successfully avoids disbarment by threatening to reveal incriminating evidence about the leader of the bar who has obtained the evidence that Simon suborned perjury. In a strikingly similar situation to Lord Brougham, Simon threatens to reveal that his accuser entered into a bigamous marriage unless the disbarment matter is dropped.

The lawyer–advocate is perhaps best presented in Anatomy of a Murder (directed by Otto Preminger and released in 1950). The film centers on the

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65. See id.

66. ASIMOW & MADER, supra note 42, at 72 (omission in original) (quoting COUNSELLOR AT LAW, supra note 61.) The portrayal of Simon is as a person who is totally absorbed by the practice of law. See id. His view of the profession is largely as a business involving the representation of clients with difficult problems, which generates significant fees, distinguishes him from the lawyer–statesman who brings a broad interest and commitment to intellectual pursuits beyond the law, including philosophy and history. See id. at 70; KRONMAN, supra note 13, at 14. The fact that Simon is a Jew who grew up in an urban ghetto casts him in the role of a lawyer whom the organized bar of the 1920s and 1930s saw as threatening the identity of the profession and the source of unethical practices. See id. at 74. Anti-immigrant attitudes and anti-Semitism were widespread in the legal profession at the time of the making of Counselor at Law. See id. Asimow and Mader discuss issues of religion and ethnicity in law practice when the film was made:

Simon remains an outsider to the Wall Street legal establishment, which is controlled by people like Baird [who threatens Simon with disbarment]. Even though married to the socially prominent Cora, Simon remains a social interloper, and the power structure is delighted to seize on the Breitstein case [involving an alleged perjury] in order to get rid of the upstart Jew.

Indeed, in the 1930s, and for many years thereafter, anti-Semitism was taken for granted in the world of legal education and law practice . . . . Law schools had Jewish quotas. Jewish lawyers were respected for their skills and tolerated in areas like personal injury practice but were never hired by big city firms (on Wall St. or elsewhere) or by wealthy business clients.

Id.

67. COUNSELLOR AT LAW, supra note 61.

68. ANATOMY OF A MURDER (Columbia Pictures 1959). The film is based on the novel by ROBERT TRAVER, ANATOMY OF A MURDER (1958). ASIMOW & MADER, supra note 42, at 17. Robert Traver is the pseudonym for the author of the novel, Michigan Supreme Court Justice John D. Voelker. Id. The film, directed by Otto Preminger, stars James Stewart as Paul Biegler, a criminal defense attorney; George C. Scott as Claude Dancer, a prosecutor; Ben Gazzara as Lieutenant Frederick Manion, the defendant; Lee Remick as Laura Manion, the alleged victim of
lawyer-advocate, Paul Biegler, played by James “Jimmy” Stewart, who agrees to represent an Army-Lieutenant.69 Lieutenant Manion is accused of murdering a bar-owner, Barney Quill, who allegedly beat and raped the lieutenant’s wife. Early in the film, Biegler tells the lieutenant that he will defend him but needs a defense that will avoid the conclusion that the killing was murder.70 In effect, Biegler pushes the defendant to construct a defense of temporary insanity by portraying himself as a loving and outraged husband who has been made temporarily “mad” or insane by the vicious attack on his wife.71

The prosecution is aided by the participation of a state prosecutor, Claude Dancer, played by George C. Scott, who provides a strong contrast in approach to advocacy than that taken by Biegler.72 Dancer is slick, arrogant, and sophisticated in contrast to Biegler’s easy going, backwoods demeanor. Dancer argues that Manion’s motive was not a noble defense of his wife, who some in

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sexual assault; Joseph N. Welch as Judge Weaver, the presiding judge; and Orson Bean as Dr. Smith, one of the psychiatrists testifying at the trial. ANATOMY OF A MURDER, supra.

69. ANATOMY OF A MURDER, supra note 68. Several authors provide commentary on the film and its significance from a legal perspective. See ASIMOW & MADER, supra note 42, at 17-29; BERGMAN & ASIMOW, supra note 29, at 64-68; HARRIS, supra note 27, at 68-109.

70. ANATOMY OF A MURDER, supra note 68; see also BERGMAN & ASIMOW, supra note 29, at 64-65.

71. ANATOMY OF A MURDER, supra note 68; see also BERGMAN & ASIMOW, supra note 29, at 64-65. Much has been made of the unethical nature of Biegler’s “lecture” to his client which may be seen as leading the client to fabricate a defense. See BERGMAN & ASIMOW, supra note 29, at 66-67. Bergman and Asimow discuss this aspect of the film:

Before asking Manion to tell him what happened, Biegler lectures him about the “letter of the law.” It’s fine for Biegler to tell Manion about the possible defenses to murder. After all, if lawyers couldn’t inform clients of relevant legal principles, sophisticated clients would have an advantage over those without experience.

After concluding the lecture, however, Biegler doesn’t ask Manion what happened, but rather asks Manion, “What’s your excuse for killing Quill?”—suggesting that Manion must have one. When Manion asks whether he’s getting warmer when he says he must have been crazy, Biegler surely should realize that his client is lying.

Yet Biegler doesn’t respond with another lecture about the need for truth-telling. . . . Instead he tells Manion to think about how crazy he really was. While many criminal-defense and other lawyers defend Biegler’s tactics, most legal ethicists believe that he slid over the line and suborned perjury.

Id. Professor Harry I. Subin presents an argument that supports Biegler’s conduct:

[When I realized my client was lying] I did not pause very long to ponder the problem . . . because I concluded that knowing the truth in fact did not make a difference to my defense strategy, other than to put me on notice as to when I might be suborning perjury. Because the mission of the defense attorney was to defeat the prosecution’s case, what I knew actually happened was not important otherwise. What did matter was whether a version of the “facts” could be presented that would make the jury doubt the client’s guilt.


72. ANATOMY OF A MURDER, supra note 68; see also HARRIS, supra note 27, at 86.
the community viewed as sexually provocative. According to Dancer, Manion acted as a result of jealous rage, not an irresistible impulse.  

Biegler is a small town lawyer who was recently defeated for re-election as public prosecutor in the county of Iron Cliffs. Biegler had all but abandoned the practice of law in order to pursue his passions of fishing and listening to jazz. However, at the urging of a lawyer named Parnell McCarthy, Biegler is encouraged to consider defending Manion. Biegler visits Manion in his jail cell, where Manion gives an account of the evening of the killing. Manion says that after he was confronted with his wife's condition, he immediately proceeded to Barney Quill's bar, where he shot Quill three times in the chest. Manion believes he should be acquitted because he was justified in killing Quill under the "unwritten law" that allows retribution for violating a man's wife. Biegler quickly informs Manion that "the unwritten law is a myth—it doesn't exist—and anyone who commits a murder on the theory that it does exist has just bought himself room and board in the state penitentiary—probably for life." Biegler goes on to tell Manion that his situation does not fit into any of the four methods for defending murder: "1) It was suicide or accidental; 2) It was self-defense; 3) The killing was excusable; 4) The killing was legally justified." A defense based on provocation is not available in this case because a full hour elapsed between when his wife told Manion the story of the attack on her and when Manion shot Quill. Ultimately, Manion concludes that he must have been "mad," that he must have gone "insane" when faced with his brutalized wife.  

The real subject of Anatomy of a Murder is the lawyer—advocate and his relationship with the adversarial system. The film suggests that the adversary system depends on the participation of vigorous advocates who bring their technical skills to bear through the effective representation of their clients. The film presents the viewer with a depiction of what lawyers actually do in representing their clients. The adversary system assumes that the best way to  

73. ANATOMY OF A MURDER, supra note 68; see also HARRIS, supra note 27, at 81, 86, 92.  
74. ANATOMY OF A MURDER, supra note 68; see also HARRIS, supra note 27, at 79. Paul Biegler can be contrasted to George Simon in that Biegler is a well-rounded individual with broad interests that go beyond an involvement in law practice to the exclusion of other interests. See ANATOMY OF A MURDER, supra note 68; supra text accompanying notes 65–66; see also HARRIS, supra note 27, at 79. Biegler displays features of the lawyer-statesman in his exhibition of practical wisdom and an understanding of other people, particularly as he interacts with the defendant and his wife. See ANATOMY OF A MURDER, supra note 68; see also HARRIS, supra note 27, at 80–82.  
75. HARRIS, supra note 27, at 80 (quoting ANATOMY OF A MURDER, supra note 68) (internal quotation marks omitted).  
76. Id. at 80–81.  
77. Id. at 80–81.  
78. See ASIMOW & MADER, supra note 42, at 17. The authors title their chapter dealing with Anatomy of A Murder, "The Adversary System and the Courtroom Genre." Id.  
79. See id.; see also ROBERT A. KAGAN, ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LAW (2001) (discussing the origins and consequences of the American legal system).
resolve a dispute is to have two skilled and committed lawyers engaged in a courtroom conflict governed by appropriate rules of evidence and procedure.\textsuperscript{80} The lawyer for each side of the dispute weaves the evidence and testimony into a narrative that each hopes the jury will accept.\textsuperscript{81} Biegler and Dancer play the central roles in the adversarial proceeding portrayed in \textit{Anatomy of a Murder}. Dancer’s narrative is that Manion murdered Quill in a cold-blooded, jealous rage. Biegler’s version is that Manion was overcome by an irresistible impulse when he learned that his wife had been raped.\textsuperscript{82} When the proper procedures are followed, the jury’s verdict is as close to justice as humans can come. The role of the lawyer–advocate is central to the adversary system. One commentator noted this centrality:

The central precept of the adversary process is that out of the sharp clash of proofs presented by [lawyer–advocates] in a highly structured forensic setting is most likely to come the information upon which a neutral and passive decision maker can base the resolution of a litigated dispute acceptable to both the parties and society.\textsuperscript{83}

The most recent conceptual model of the ideal lawyer involves the transformation of the lawyer–advocate into what has been called the lawyer–technician.\textsuperscript{84} This reformulation of what it means to be a lawyer is one that views the lawyer as serving the client by assisting the client to achieve the client’s objective within the bounds of the law.\textsuperscript{85} Kronman categorized this model as the “narrow view” of law practice:

The narrow view insists that a lawyer is merely a specialized tool for effecting his client’s desires. It assumes that the client comes to his lawyer with a fixed objective in mind. The lawyer then has two, and only two, responsibilities: first, to supply his client with information

\textsuperscript{80} See \textsc{Asimow} \& \textsc{Mader}, \textit{supra} note 42, at 26.
\textsuperscript{81} \textit{Id.}
\textsuperscript{82} See \textsc{Stephan Landsman}, \textsc{The Adversary System: A Description and Defense} 2 (1984).
\textsuperscript{83} \textit{Id.}
\textsuperscript{84} See \textsc{Bogus}, \textit{supra} note 51, at 921. Bogus presents a formulation of the lawyer–technician model:

The “lawyer–technician” may be a better label for this professional model. Lawyer–technicians see themselves as sellers of expertise. A client desires a particular objective; the lawyer–technician advises him how to reach that objective and provides services to help him do so. In this respect, the lawyer–technician is no different from any other seller of services.

\textit{Id.}
\textsuperscript{85} \textit{Id.} (quoting \textsc{Kronman}, \textit{supra} note 13, at 123).
concerning the legal consequences of his actions, and second, to implement whatever decision the client makes, so long as it is lawful.\textsuperscript{86}

The lawyer–technician must assess his client’s objectives, develop a strategy or provide advice on how to reach those objectives, and provide his service in negotiating with his client’s adversaries or by representing the client before a court or official body.\textsuperscript{87} This approach to professional responsibility was recognized by the \textit{Model Rules of Professional Conduct}, which was adopted by the American Bar Association in 1983: “A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value.”\textsuperscript{88}

According to this view, the lawyer plays a small role in formulating the client’s objectives and merely serves as the means for the client to realize his goals.

Early Hollywood films recognized this type of lawyer, often referred to as “a hired gun” or “a mouthpiece.”\textsuperscript{89} However, early depictions of this type of lawyer were presented as deviant characters who failed to live up to the ideal of the lawyer–statesman or the lawyer–advocate. Often, these early lawyer–

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86. \textbf{KRONMAN}, supra note 13, at 123. Kronman identifies the instrumental role of the lawyer–technician:

\begin{quote}
The instrumental help that the narrow view [of the lawyer’s role] implies is the only sort that lawyers give their clients takes many different forms. It includes advising clients about the lawfulness of contemplated actions; describing the legal formalities that must be satisfied once an action is begun; seeing to it that these formalities are observed; suing on behalf of clients; and defending them in suits and prosecutions others bring. . . . In all these cases, however, it is the same thing that makes the lawyer’s help of value to his client, namely, his expert knowledge of the law.
\end{quote}

\textit{Id.}

87. \textit{See id.} at 123. The narrow view of the lawyer equates the practice of law with providing the client information about the law not judgment. \textit{See id.}

88. \textbf{MODEL RULES OF PROF’L CONDUCT} R. 2.1 cmt. 3 (1995). Contrast this formulation with the ABA’s first promulgated code of ethics in the \textit{Model Code of Professional Responsibility}, adopted in 1969 and revised in 1980, which referenced notions of morality and ethics outside the rules or canons themselves. This earlier formulation stated: “[I]t is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible.” \textbf{MODEL CODE OF PROF’L RESPONSIBILITY} EC 7-8 (1982). Thus, the ethical rules developed by the legal profession itself reflect the shift from the lawyer–statesman ideal to the lawyer–technician model.

89. \textit{See Asimow, supra} note 12, at 1342. Asimow suggests only a minority of lawyers in early films were portrayed as “evil”:

\begin{quote}
During the bitter days of the Depression and the cynical film noir phase of the 1940s and 1950s, countless movies explored the underside of every profession and institution. . . . The minority of film lawyers who were negatively portrayed were often mouthpieces for the mob or were overaggressive and unscrupulous prosecutors.
\end{quote}

\textit{Id.} (footnote omitted); \textit{see also} Robert L. Nelson, \textit{Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm}, 37 \textit{STAN. L. REV.} 503, 538 (1985) (concluding that on the basis of his empirical work most lawyers today serve as hired guns: “The notion that lawyers struggle with clients over fundamental questions of the common good is simply wrong.”).

technicians were portrayed as representing members of the mob or assisting others in acts of political or business corruption. More recent films, however, depict lawyer–technicians as members of prominent law firms representing the most respected institutions and members of society. Nevertheless, these contemporary films continue to contrast the lawyer–technician to the lawyer–statesman or lawyer–advocate, who are now presented as outsiders or more marginal members of the legal establishment. In these films, the real lawyer, the lawyer–technician, often is posed in opposition to the main character who is a throw-back to an earlier time and depicted as idealistic but naïve. 

The Verdict (directed by Sidney Lumet and released in 1982) involved Frank Galvin, played by Paul Newman, a once idealistic, prominent lawyer who has been reduced to no more than a drunken ambulance-chaser visiting funeral homes in the hope of enlisting a client related to the deceased. Galvin is referred a simple malpractice suit involving a dying patient who was anesthetized improperly during childbirth. The suit is against the treating physicians and a hospital owned by the Archdiocese of Boston, which wants to settle the suit because of possible embarrassment. Galvin’s opponent, representing the physicians and hospital, is supreme lawyer–technician Ed Concannon, portrayed by James Mason. Concannon is shrewd and skilled in the technicalities of law and effective in the representation of clients in and out of the courtroom. Concannon is shown coaching one of his clients in how to

90. See, e.g., ANGELS WITH DIRTY FACES (Warner Bros. Pictures 1938) (starring Humphrey Bogart as a crooked mouthpiece lawyer who represents the gangster Rocky Sullivan, played by James Cagney); FORCE OF EVIL (MGM 1948) (starring John Garfield as Joe Morse, an ambitious and crooked attorney who represents a racketeer).
91. See, e.g., CLASS ACTION (Twentieth Century Fox Film Corp. 1991) (starring Gene Hackman as career civil rights lawyer Jedediah Ward, who brings a class action suit against an automobile manufacturer, and Mary Elizabeth Mastrantonio as Maggie Ward, a corporate lawyer in a large San Francisco firm who will employ any tactic necessary to ensure victory for her client, the manufacturer in this products liability litigation).
92. See Asimow, supra note 12, at 1349.
93. See id.
94. THE VERDICT (Twentieth Century Fox Film Corp. 1982). The film (directed by Sidney Lumet, screenplay by David Mamet) is based on the novel by BARRY REED, THE VERDICT (1980). HARRIS, supra note 27, at 150. The film stars Paul Newman as an attorney, Frank Galvin, representing a client in a medical malpractice suit; James Mason as Ed Concannon, the attorney representing the defendant physician and hospital; Jack Warden as Mickey Morrissey, a friend of Galvin who directs Galvin to take this case; and Milo O’Shea as Judge Hoyle, the presiding judge in the medical malpractice case. THE VERDICT, supra. The film centers on a case involving a malpractice suit against a Roman Catholic hospital in Boston. Id. Several authors provide commentary on the film and its significance from a legal perspective. See ASIMOW & MADER, supra note 42, at 47–63; BERGMAN & ASIMOW, supra note 29, at 195–99; HARRIS, supra note 27, at 150–67; Richard D. Parker, The Good Lawyer: The Verdict (1982), in SCREENING JUSTICE, supra note 35, at 455–63.
95. THE VERDICT, supra note 94; see also HARRIS, supra note 27, at 156. Asimow and Mader present a further contrast implicit in the lawyer–technician and the lawyer–statesman models
properly answer questions he may be asked at trial in order to ensure a positive jury response by having the witness appear dignified, authoritative, and as an effective communicator. When one of the physicians who will be on trial offers a complicated medical explanation of what happened to the plaintiff–patient, saying she aspirated during surgery, Concannon interrupts and insists on a clear answer: “Cut the bullshit, please. Just say it—she threw up in her mask.”96 The film shows Concannon conspiring with the trial judge to force a settlement; there is even a suggestion that Concannon arranged the lack of availability of a physician–witness who was expected to provide testimony in support of the plaintiff’s claim.97

Galvin, who was moved by the pathetic condition of his client, became incensed when he realized that a settlement offer was really an effort to buy him off and avoid serious legal liability for what, in fact, was significant malpractice. Galvin, who previously was driven out of a major law firm because he threatened to reveal the firm’s efforts at jury tampering, again finds himself inspired by the ideals of justice that led him early in his career to aspire to be more than a lawyer–technician. Near the conclusion of the trial, Concannon effectively objects to the introduction into evidence of a photocopy of an altered medical record that supports the plaintiff’s theory of mistaken anesthesia. In his closing argument, Galvin argues to the members of the jury that they not be blinded by a technical rule of the law, but to seek to do justice in their verdict. Galvin makes a plea for jury nullification of the law, if that is what it takes to do justice, to disregard the judge’s exclusion of evidence that established the malpractice of the physician and hospital.98 Galvin urges the jury:

The rich win, the poor are powerless... we become victims because we doubt ourselves, our institutions, the law... you are the law, not the lawyers, not some book, not a marble statue—those are only

in what they label the “professionalism” and “business” models of law practices. See ASIMOW & MADER, supra note 42, at 62. The authors view Concannon as having adapted to the business model of the practice of law:

[T]he professionalism model stresses the lawyer’s duty to the client and the justice system. The business model treats law as just another profit-making business in which lawyers do anything legally and ethically possible to maximize profit. The business model is in the ascent and the professionalism model is in decline.... [Concannon] speaks reverently about his mentor, who once told him that he wasn’t paid to do his best; he was paid to win. Winning pays for the firm’s beautiful offices, the lawyers’ fine clothes and whiskey, their pro bono cases. As we see in the film, Concannon’s firm uses its superior resources and total lack of ethics to play every dirty trick in the book in order to win.

Id.

96. HARRIS, supra note 27, at 157 (quoting THE VERDICT, supra note 94).
97. THE VERDICT, supra note 94; see also HARRIS, supra note 27, at 153–57.
98. THE VERDICT, supra note 94; see also HARRIS, supra note 27, at 153, 155, 160–62.
symbols of our desire to be just, a fervent and frightened prayer . . . if we are to have faith in justice we have only to believe in ourselves.99

Galvin can seek to do justice only by abandoning his role as lawyer.100 The jury can provide justice only by ignoring the law.101 Concannon, moreover, is the real lawyer in this film.102 Concannon is the lawyer–technician, whose loss of the case is only to be explained by the screenwriter’s (David Mamet’s) erroneous depiction of the way the law would have actually operated in the case.103 The judge would not have permitted the jury nullification argument in a personal injury case.104 When the evidence of the altered medical record was barred, the plaintiff’s case completely collapsed because Galvin had no evidence to support his case.105 Concannon could have requested a directed verdict from

99. HARRIS, supra note 27, at 162 (omissions in original) (quoting THE VERDICT, supra note 94).
100. See THE VERDICT, supra note 94.
101. See id.; see also HARRIS, supra note 27, at 162.
102. See THE VERDICT, supra note 94.
103. HARRIS, supra note 27, at 164. Various legal aspects of The Verdict have been criticized as erroneously portrayed. Id. at 163 (quoting Aric Press, ‘The Verdict’: A Legal Opinion, NEWSWEEK, Feb. 28, 1983, at 51). For example, the photocopy of the medical record introduced by Galvin to show alterations of the original would have been admissible to show that the original had been altered; moreover, under the current rules of evidence, duplicates are admissible for almost every purpose. Id. at 163 (quoting Press, supra, at 51). However, if the judge did bar the evidence, the plaintiff would have not presented any basis for a jury finding for the defendant, and the defendant would have been granted a directed verdict. Id. (quoting Press, supra, at 51).
104. Id. (quoting Press, supra note 103, at 51). Jury nullification occurs when a jury refuses to apply the law as instructed by the judge in his rulings on admissibility of evidence and his instructions at the conclusion of the lawyers’ presentation of the case. Bennett L. Gershman, Contaminating the Verdict: The Problem of Juror Misconduct, 50 S.D. L. REV. 322, 342 (2005). Professor Gershman noted the dangers of nullification:

The dangers of nullification were described by Judge Simon Sobeloff in an oft-quoted statement: “To encourage individuals to make their own determinations as to which laws they will obey and which they will permit themselves as a matter of conscience to disobey is to invoke chaos. No legal system could long survive if it gave every individual the option of disregarding with impunity any law which by his personal standard was judged morally untenable. Tolerating of such conduct would not be democratic, as appellants claim, but inevitably anarchic.”

It is commonly recognized that juries have the power to nullify the law, although they do not have the right to do so. It has thus been the settled rule in federal courts and virtually all state courts for over a century that the jury’s function is to accept the law that is given to it by the court and to apply that law to the facts, and that no instruction should be given to a jury that it has the power to nullify. Counsel’s invitation to a jury during summation to disregard the law is misconduct and subject to contempt.

Id. at 342–43 (footnotes omitted) (citations omitted) (quoting United States v. Moylan, 417 F.2d 1002, 1009 (4th Cir. 1969)). Thus, in the real world, Galvin would not be praised as an effective advocate but held in contempt by the presiding judge.
105. HARRIS, supra note 27, at 163 (quoting Press, supra note 103, at 51).
the judge, and the judge would have been legally required to grant a directed verdict for the defendants.\(^{106}\)

A more recent film, *The Rainmaker* (directed by Francis Ford Coppola and released in 1997), presents a suit involving an insurance claim by a working class young man in need of bone marrow treatment for leukemia.\(^{107}\) The plaintiff is represented by a young lawyer, Rudy Baylor, portrayed by Matt Damon, who was inspired to attend law school by the civil rights movement.\(^{108}\) Upon graduation from law school, Baylor found his employment prospects limited to working on a commission basis for an ambulance-chasing firm.\(^{109}\)

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106. *Id.* (quoting Press, *supra* note 103 at 51).


109. *Id.* Deck Shifflet, the paralegal who works in the firm led by Bruiser Stone, advises Rudy Baylor that what he was taught about legal ethics in law school should be totally ignored:

Shifflet: “You see, in law school, Rudy, they don’t teach you what you need to know. It’s all theories and lofty notions and big, fat ethics books.”

Baylor: “What’s wrong with ethics?”

Shifflet: “Nothing, I guess. I mean. I believe a lawyer should fight for his client, refrain from stealing money, and try not to lie, you know, the basics.”

Baylor: “That was blatant ambulance chasing.”

Shifflet: “Right. But who cares? There’s a lot of lawyers out there. It’s a marketplace. It’s a competition. What they don’t teach you in law school can get you hurt.”

*Id.* This exchange reflects the contrast between the professionalism and business models of law practice discussed by Asimow and Mader. See ASIMOW & MADER, *supra* note 42, at 62. One function of the rules of professional responsibility and canons of ethics developed by the professional bar associations is the regulation and prohibition of certain practices. For instance, the American Bar Association prohibits unethical client solicitation. MODEL RULES OF PROF'L CONDUCT R. 7.3 (2003). In common parlance, the Rules prohibit ambulance chasing. *Id.* at 7.3(a) (“A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain, unless the person contacted: (1) is a lawyer; or (2) has a family, close personal, or prior professional relationship with the lawyer.”). Thus, the Rules prohibit face-to-face solicitation of strangers, as in the scene from *The Rainmaker* where Baylor and Shifflet approach an accident victim in his hospital room. The *RAINMAKER*, *supra* note 107. Similar prohibited conduct
The injustice of the insurance company’s denial of insurance payments to his client inspires the young lawyer to pursue his case with commitment and zeal. After falling short on his mastery of legal technicalities, particularly with regard to the rules of evidence, Baylor eventually locates a former employee of the insurance company, who is willing to testify about the insurance company’s unethical practices. Unfortunately for Baylor, his witness’s testimony is based on what the defense claims are stolen corporate records. Despite the suppression of this evidence and the disqualification of his witness, Baylor manages to elicit incriminating testimony from the insurance company’s CEO, which leads to a jury verdict in favor of Baylor’s client. However, unfortunately for Baylor and his client, the company has been looted and there are no funds to pay the jury’s sizeable damage award. Thus, Baylor is led to the conclusion that the practice of law is corrupt and any likelihood of obtaining justice is an illusion.\footnote{10}

The real lawyer, the lawyer–technician, in The Rainmaker is Leo Drummond, played by Jon Voight, who is the smooth, condescending but effective attorney representing the insurance company.\footnote{11} The lawyer–technician, Drummond, does not function as any sort of check on his client’s fraudulent, illegal, and unethical behavior. Drummond is the insurance company’s hired gun. He provides Baylor with an altered version of the insurance company’s claims manual, which is meant to prevent discovery of the company’s unethical payment practice. Drummond seeks to maximize his client’s interests by manipulating the settlement procedure, assisted by a judge pre-disposed to favor institutional clients. Drummond manages the trial discovery process by limiting the availability of witnesses hostile to his client’s interests, frustrating Baylor’s efforts to depose the available employees of the insurance company and effectually using the rules of evidence to avoid adverse testimony or evidence.\footnote{12}

Ultimately, Drummond is portrayed as unethical, greedy, and arrogant.\footnote{13} Baylor views the practice of law as necessarily leading to adoption of a professional identity of lawyer–technician as embodied in Drummond.\footnote{14} Baylor says these lawyers are “nothing but another lawyer joke, just another shark in the dirty water.”\footnote{15} Midway in the film, Baylor asks Drummond if “[he] even remember[s] when [he] first sold out?”\footnote{16} Echoing Aristotle’s notion of character and vice, Baylor expressed concern that if he continued to practice

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\footnote{9} occurs in The Verdict when Frank Galvin hands his business card to grieving family members in funeral homes. \textit{See The Verdict, supra} note 94.

\footnote{10} See The Rainmaker, supra note 107.

\footnote{11} See id.; \textit{see also} Bergman & Asimow, supra note 29, at 188.

\footnote{12} The Rainmaker, supra note 107; \textit{see also} Bergman & Asimow, supra note 29, at 188.

\footnote{13} See id.

\footnote{14} See id.; \textit{see also} Mashburn & Ware, supra note 107, at 1272.

\footnote{15} Id.

\footnote{16} Id.
law, he would be tempted to step over the line, and there would be repeated temptations and capitulations until at some point, he would be no better than Drummond.\textsuperscript{117} He would become a lawyer-technician. Ultimately, Baylor is estranged from the legal profession and from the legal system. At the end of \textit{The Rainmaker}, Baylor has abandoned all hope of being an ethical lawyer, of being any kind of lawyer at all.\textsuperscript{118}

The ascent and pre-eminence of the lawyer-technician as the contemporary model for the legal profession raises the question of whether there is a possibility of recapturing a sense of idealism, a commitment to service to community or society, or pursuing justice while practicing the profession of law. While one would wish to be optimistic about new sources of inspiration and hopeful about regaining a commitment to development of character and virtue, there may be little to support such optimism and hope.

The film, \textit{Michael Clayton} (directed by Tony Gilroy and released in 2007), captures this sense of pessimism.\textsuperscript{119} Clayton is a lawyer who works for other lawyers. At the beginning of the film, Michael Clayton, played by George Clooney, receives a phone call from a colleague asking him to go to a client’s home to assist with some emergency. The client, who had just been involved in a hit-and-run accident, demands that Clayton arrange for the client’s avoidance of legal consequences by destroying evidence. Clayton refuses, offering only to provide the client with a good lawyer. Clayton will not violate the law or breach

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117. See ARISTOTLE, NICOMACHIAN ETHICS, supra note 25, bk. II, at 111. In Book II of the Ethics, Aristotle asserts his philosophy on the development of character:

\textit{[E]xcellence of character results from habituation . . . . [W]e become just by doing just things, moderate by doing moderate things, and courageous by doing courageous things . . . . This, then, is how it is with the excellences, too; for it is through acting as we do in our dealings with human beings that some of us become just and others unjust . . . .}
\textit{Id.} at 111.

118. See \textit{THE RAINMAKER}, supra note 107; see also BERGMAN & ASIMOW, supra note 29, at 188.

119. MICHAEL CLAYTON (Warner Bros. Pictures 2007). The film, directed by Tony Gilroy, based on an original screenplay written by the director, stars George Clooney as Michael Clayton, a lawyer who works for a large powerful law firm; Sydney Pollack as Marty Bach, the senior partner of the firm; Tom Wilkinson as Arthur Edens, an effective advocate and powerful litigator; and Tilda Swinton as Karen Crowder, the in-house council for a corporation being sued for poisonous pollution. \textit{Id.} Clayton works directly for Marty Bach, who finds the firm faced with a severe problem created by the apparent mental breakdown of one of the firm’s lawyers, Arthur Edens. \textit{Id.} Edens is bipolar and has stopped taking his medication. \textit{Id.} Faced with the discovery that the client corporation knowingly engaged in pollution, Edens becomes mentally unhinged and attempts to sabotage the multi-million dollar settlement of the class action that the law firm was close to bringing to a successful conclusion. \textit{Id.} An interesting commentary on the film is provided by Orit Kamir. Orit Kamir, Michael Clayton, \textit{Hollywood’s Contemporary Hero-Lawyer: Beyond Outsider Within and Insider Without}, 42 SUFFOLK U. L. REV. 829 (2009). Kamir characterizes the film in a way that suggests it provides a good example of the lawyer-technician: “\textit{Michael Clayton} seems to be a ‘professional-plot’ film. Its lawyers run in a pack, and their superior commitment seems to be to assist each other in achieving professional victory for their paying clients. Truth, justice, or liberation of the oppressed seem to have nothing to do with it.” \textit{Id.} at 835.
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the ethical canons of the bar. Clayton “explains that he is merely the ‘firm’s fixer,’ the man who can find the best-qualified lawyer to clean up the mess”; he is the firm’s “janitor.”120

In the film, while Clayton seems to know the law, he never once enters a courtroom; he never opens a law book or cites a case.121 Compared to Rudy Baylor’s revelation,122 one may ask what it means to stop being a lawyer. In a sense, there is no way back for Michael Clayton into a courtroom because in fact, he has not been in a courtroom.123 For the lawyer–technician, the law puts the outer limit on what the lawyer can do in pursuit of the client’s goals.124 The law provides no ideal; it does not provide an occasion for the pursuit of justice. The lawyer himself seeks not to provide service to the community, but to serve his client. The lawyer’s job is to pursue the client’s interest within the limits of the law. Justice Oliver Wendell Holmes once said that if you want to know the law, ask the bad man because the good man has other reasons for his actions.125 The lawyer–technician who aspires to be a good lawyer views as his responsibility, telling his client what the law requires, not what it takes to be an ethical man or to do justice. Anthony Kronman has acknowledged the lack of a basis for optimism about any new lawyer–professional ideal, which would embody an ethical ideal.126 Kronman concludes that the lawyer–statesman model is likely lost for good:

For the most part, I suspect, things will go on much as before, and the profession will drift more and more in the direction it has been moving this past quarter-century. Of course, each generation of lawyers makes its own contribution to the architecture of the law. The contribution mine has made has been to tear down the old system of ideas and institutions that gave the lawyer–statesman ideal its authority and power. The next, perhaps, will begin the work of rebuilding what we have torn apart. That may happen, and I hope it does, though I doubt in fact it will. But even if it does not, those who see the ideal and seize the opportunity to realize it in their own work will win for themselves a

120. MICHAEL CLAYTON, supra note 119; see also Kamir, supra note 119, at 831.
121. MICHAEL CLAYTON, supra note 119; see also Kamir, supra note 119, at 837–38.
122. See supra text accompanying note 118.
123. See MICHAEL CLAYTON, supra note 119; see also Kamir, supra note 119, at 837–38.
124. KRONMAN, supra note 13, at 123.
125. O. W. Holmes, The Path of the Law, 10 HARV. L. REV. 457, 459 (1897). Holmes suggests that law ultimately should be understood in terms of enforcement, judgments, and verdicts. Id. at 458. So to understand what the law requires, he suggests one should take the view of the “bad man” who cares nothing about good, evil, praise, or blame of others, but only about tangible penalties or consequences. Id. at 459. The bad man only wants to know what the courts are likely to do in fact. Id. at 461. Ultimately, Holmes defines law as the prophecies of what the courts will do in fact. Id. at 458.
126. KRONMAN, supra note 13, at 380–81.
prize of infinite value, like the sailor in a storm who manages, somehow, to save himself and his ship's most precious cargo.\footnote{Id.}

From time to time, we may encounter an Atticus Finch, a Henry Drummond, or more likely a Paul Biegler. Perhaps, however, the best we can hope for is a legal profession that includes Rudy Baylors who preserve their ideals and avoid the disillusionment proffered by the lawyer-technician.\footnote{Donald H.J. Hermann is Professor of Law and Philosophy at DePaul University. Before joining the faculty of DePaul, Professor Hermann taught at the law schools of the University of Washington and the University of Kentucky. He is a graduate of Stanford University where he majored in economics and history. He earned law degrees at Columbia University and Harvard University. He received his Ph.D. in philosophy from Northwestern University, a Masters in Art History from the School of the Art Institute of Chicago, and a Masters in Liberal Arts from the University of Chicago. Recently, he received a certificate in film studies from the University of Chicago. Professor Hermann has held a number of positions involving government and public service including Special Assistant Attorney General for the State of Washington and Judicial Fellow at the United States Supreme Court. His active participation in civic, art and social organizations have included such positions as Chair of the Literature and Arts Committee of the University Club of Chicago, Member of the Board of Directors of Howard Brown Health Clinic, Member of the Visiting Committee of the Oriental Institute of the University of Chicago, Member of the Board of Directors of the Chikaming Open Lands Trust in southwest Michigan, and Member of the Board of Directors of the Three Oaks History Museum in Michigan. He also serves on the Vestry Board of the Episcopal Church of the Mediator in Harbert, Michigan. Professor Hermann has published extensively on a range of subjects in law reviews as well as other scholarly and popular publications. His publications include chapters in a number of scholarly books as well as co-authorship of the legal treatise \textit{LEGAL ASPECTS OF AIDS} and \textit{AIDS LAW IN A NUTSHELL}. He is also author of \textit{MENTAL HEALTH AND DISABILITY LAW IN A NUTSHELL}.}
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