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Silver Tongues on the Silver Screen: Legal Ethics in the Movies

Tonja Haddad*

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I. INTRODUCTION

“A Man with no ethics is a free Man.”¹

Lawyers and their courses of action, both ethically and morally, have been under assault from as far back as the 1920s.² The ethical conduct of

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1. Jake McKenna (Nick Nolte), *U-TURN*, Sony Pictures Entertainment (1997).

2. *LAWYERS: A CRITICAL READER* 193 (Richard L. Abel ed., 1997). In 1927, the Chicago Bar Association, concerned with the public's view of the legal profession, “formed a Committee on Publicity and Public Relations . . . to create ‘a more favorable attitude on the part of the public toward the bar.’” *Id.* (citing TERENCE D. HALLIDAY, *BEYOND MONOPOLY* 89–91

lawyers has been discussed in a plethora of articles, books, and television shows, movies, and even songs, and is generally viewed with discontent, by both lawyers and the public.³ There is somewhat of a controversy surrounding the foundation for society's negative image of lawyers. Some opine that the reason for this unfavorable image is the fact that the public has more exposure to "real" lawyers than ever before;⁴ while others postulate that it is television, fiction writings, and movies that occasion this disheartening outlook.⁵ This article focuses upon the latter school of thought, and discusses specifically lawyers' roles in movies, the ethical quandaries that are presented to the attorneys, and how they comported themselves in the past when faced with them. Additionally, this article will discuss the applicable Rules of Professional Conduct as stated by both the American Bar Association and the Florida Bar Association, Ethics Opinions in which real attorneys have acted in the same manner as the movie lawyers, and the sanctions imposed upon them for this behavior. This article concludes with a discussion of whether "life imitates art," or whether the converse is true, as well as whether lawyers have themselves to blame for this negative portrayal.

II. INEFFECTIVE ASSISTANCE OF COUNSEL OR A COMEDY OF ERRORS?

A lawyer's obligation to represent a client both competently and diligently is at the forefront of Professional Responsibility.⁶ Failure to provide such representation carries grave sanctions for a lawyer, and exposes the

(1987)). See also Leslie E. Gerber, *Can Lawyers be Saved? The Theological Legal Ethics of Thomas Shaffer*, 10 J.L. & RELIGION 347 (1994).

3. Stacy Pittman & Jonathan Portis, *The Fourth Estate: The Impact the Media Has on the Image of Lawyers*, 33 ARK. L. REV. 14 (1998) (discussing the 1997 Gallup Poll which ranked professions on both their honesty and ethics, finding that "[l]awyers' negative numbers in 1997 put them at No. 25 (just above car salesman) with 41 percent of respondents rating lawyers' standings as 'low' or 'very low.'"). For a more detailed comparison on Lawyers' ratings in the public view, visit the Gallup Poll website at <<http://www.gallup.com/poll/releases/pr971213.asp>>.

4. Pittman & Portis, *supra* note 3, at 14 (stating that "the media has taken the great mass of Americans deeper inside the legal system than ever before. And what the people have seen is not pretty.").

5. See generally PAUL BERGMAN & MICHAEL ASIMOW, REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES (1996); David S. Machlowitz, *Public Image of Lawyers: Lawyers on TV*, 74 A.B.A. J. 52 (Nov. 1988); Norman Rosenberg, *Hollywood on Trials: Courts and Film*, 12 L. & HIST. REV. 341 (1994).

6. See generally MODEL RULES OF PROFESSIONAL CONDUCT (1999) [hereinafter MRPC]; Preamble to FLORIDA RULES OF PROFESSIONAL CONDUCT (1999) [hereinafter RPC].

profession in its entirety to contempt and ridicule by both the aggrieved party and society overall. Unfortunately for lawyers everywhere, one bad apple really does spoil the bunch, and it is the profession as a whole that suffers.⁷ When these acts are presented to the public via entertainment, such as movies and television shows, these negative attitudes are aggravated. This issue was eloquently stated by Charles B. Rosenberg as follows: “[d]oes television [or a movie] create attitudes and perceptions about lawyers or simply deliver and embellish attitudes and perceptions that already exist? Put more broadly, does television [or a movie] create culture or is it simply created by the culture around it?”⁸ These questions become harder to answer when the movie is a comedy, where the depiction of all characters is presented for merriment and to appeal to the audience’s sense of humor; rather than a dramatic movie, which appeals to the audience’s emotions. This section examines comedic roles by “lawyers” and the ethical violations they commit along the way. Specifically, this section discusses why the lack of competence and diligence exhibited by these movie lawyers makes for good entertainment, and does not adversely affect the public’s image of lawyers.

A. *My Cousin Vinny*

In the movie *My Cousin Vinny*,⁹ Vincent LaGuardia Gambini (Joe Pesci) is a lawyer who has never tried a case in his entire career, which is only six weeks long.¹⁰ Instead, he had spent the past six years “studying for the bar,” which it took him six times to pass.¹¹ Vinny’s cousin, William Gambini (Ralph Macchio), and his friend Stan Rothenstein (Mitchell Whitfield), were driving through Alabama on their way to college and made the mistake of stopping at a convenience store for some supplies.¹² The clerk at the store was murdered, and Bill and Stan were charged with the murder.¹³ Vinny and his

7. This problem has become so adverse that there is now a “Naughty Lawyer” website that reports ethical violations committed by attorneys in the form of “Naughty Lawyer Reports,” complete with commentary. This site is visited by hundreds of people a day, thus adding more fuel to the fire. The March 29, 1999 “Naughty Lawyer Report #3” discussed sanctions imposed on an attorney who violated both the competent representation rule and the diligence rule. See D.E. Cupples, *Naughty Lawyers*, (visited Mar. 29, 1999) <<http://www.naughtylawyers.com>>.

8. CHARLES B. ROSENBERG, *Foreword* to PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE xi (Robert M. Jarvis & Paul R. Joseph eds., 1998).

9. 20th Century Fox (1992).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

girlfriend, Mona Lisa Vito (Marisa Tomei) drive down from New York so that the inexperienced Vinny can defend the young men.¹⁴ Vinny's naïveté and lack of knowledge land him in "hot water" with the judge, to say the least,¹⁵ and it is his girlfriend, Mona Lisa Vito, who bails him out, on more than one occasion.¹⁶ Ultimately, Vinny uncovers who really killed the clerk and gets the case dismissed, but he commits flagrant, yet hysterical, ethical violations along the way.¹⁷

The first, and perhaps the most serious violation of the *Rules of Professional Responsibility* lies in Vinny's agreeing to take the case in the first place, as he has never tried any case before, much less one where his clients could receive the death penalty.¹⁸ In the real legal world, this would be prohibited. For example, Rule 4-1.1 of the *Florida Rules of Professional Conduct* provides that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."¹⁹ The *ABA Model Rules of Professional Conduct* ("MRPC") Rule 1.1 contains the exact same provision.²⁰ Competent representation is at the forefront of importance in assistance of counsel; especially where, as here, the defendant's life is in the attorney's hands. This rule was recently labeled as one of the "Ten . . . Easiest Ethical Violations for Honest Lawyers,"²¹ and failure to

14. MY COUSIN VINNY, *supra* note 9.

15. *Id.* Vinny finds himself in Contempt of court from day one, mainly because he does not know what he is doing. He botches the arraignment, and shows up for it to defend his clients in a leather jacket and boots—no tie. *Id.*

16. *Id.* The first instance occurs when Vinny spends the day deer hunting with the District Attorney on the case, Jim Trotter, III (Lane Smith), to "finesse" him into letting him see the evidence he has against his clients. Mona Lisa opts to stay behind and read the rules of court, whereupon she uncovers the rule on discovery. Upon Vinny's return from the hunt, he tells Mona Lisa of his "brilliant finessing" of the District Attorney, and that he got Trotter's files. She tells him, "[y]ou're entitled, he has to give you everything he's got—its called disclosure." *Id.*

17. MY COUSIN VINNY, *supra* note 9.

18. *Id.* Interestingly enough, William and Stan discuss this between themselves, and Stan decides to obtain a public defender (whose effectiveness is also questionable, at the least), while William discusses this with Vinny. After Vinny's plea of "all I am asking for is a chance—I think you should give it to me," William decides to let him continue with his representation. After the public defender cross-examines the first witness and blotches it terribly, and Vinny renders an ample cross-examination, Stan stands up and says, "[y]ou're fired. I want him [Vinny]." *Id.*

19. RPC 4-1.1.

20. MRPC 1.1 (1998).

21. Forrest W. Lewis, *Ten of the Easiest Ethics Violations for Honest Lawyers*, 27 COLO. LAW. 75 (Aug. 1998).

comply with this rule has carried a ninety day suspension from the practice of law.²² When faced with a situation such as the one presented to Vinny, an attorney is to consider "the relative complexity and specialized nature of the matter, the attorney's general experience, the attorney's training and experience in the field in question," among other factors.²³ Otherwise, the attorney is to withdraw as counsel, decline to take the case, or associate with another attorney who is competent to handle the particular case.²⁴

When an attorney is shown, as in *My Cousin Vinny*, as being inexperienced and wholly lacking in competence to handle a case, and further "associating" with his unemployed hairdresser girlfriend to win a murder trial, it does create some pessimistic views of lawyers and how well they handle representation of a client. What is more disparaging is the fact that there are complaints filed more often than the public may think concerning ineffective assistance of counsel, and these are based upon the actions of real lawyers.²⁵ If lawyers are acting in this manner, perhaps it is they who have caused this disapproving image for themselves, not popular culture.

However, *My Cousin Vinny* is a comedy, and is far less likely to be taken as truth by its viewing audience. Although the public perception of lawyers may be that they are incompetent in handling cases, no reasonable person would believe that such incompetence would ever rise to the level of Vinny's behavior. It is, therefore, not likely to devastate the public's opinion of lawyers; to think otherwise would undermine the intelligence of most Americans and assume that an audience cannot differentiate between humorous fiction and reality.

Vinny's unethical behavior proceeds as he decides to lie to Judge Chamberlain Haller (Fred Gwynne) about his courtroom experience.²⁶ Vinny has no trial experience, and knows he would not be permitted to stay on the case, so he gives the judge the name of another lawyer in New York, not his

22. *Id.* at 75. See also *Colorado v. Pooley*, 774 P.2d 239 (Colo. 1989).

23. Lewis, *supra* note 21, at 75. See also RPC 4-1.1 cmts. 1 & 2.

24. Lewis, *supra* note 21, at 75.

25. See D.E. Cupples, *Naughty Lawyer*, (visited Mar. 3, 1999) <<http://www.naughtylawyers.com>>; *In re Pincham*, Ill. Disp. Op. 92 (1995) (where an attorney was charged with twenty-two counts of misconduct, most of which were failure to provide competent representation and failure to act with reasonable diligence); Henry Fitzgerald, *24 Attorneys are Disciplined*, SUN-SENTINEL (BROWARD ED.), Apr. 8, 1999, at 3B (naming four South Florida attorneys who were sanctioned for "fail[ing] to competently represent [a] client . . . fail[ing] to provide diligent, prompt representation [and] fail[ing] to properly handle a matter for [a] client."). For additional sanctions imposed upon Florida Lawyers, see *The Florida Bar* (visited Feb. 16, 1999 & Apr. 2, 1999) <<http://www.flabar.org/memberservice/Ethics>>.

26. MY COUSIN VINNY, *supra* note 9.

own, thinking that when the judge checks his credentials he will be impressed and allow him to appear before the court and defend his clients.²⁷ Lying to a judge is not taken lightly by the Bar. For example, Rule 4-3.3 of the *Florida Rules of Professional Conduct* states that "[a] lawyer shall not knowingly: (1) make a false statement of law or material fact to the tribunal."²⁸ The MRPC contains the same provision.²⁹ Although this issue generally arises where the attorney would be putting on false testimony from a witness,³⁰ offering inaccurate or deceptive information to the court is strictly prohibited, and this includes statements made directly to the judge.³¹ Vinny's statements to Judge Haller concerning his vast trial experience, and even his name, were blatant untruths.³² Happily, there are no reported disciplinary opinions in which a licensed attorney has lied to a judge about his credentials.³³ In reality, it is far more conceivable that an attorney would be "puffing his credentials" to clients or potential clients, not to a judge. This act, however, can also lead to affliction for a lawyer.³⁴ Vinny, in a rare display of ethics, tells his clients of his lack of experience in the courtroom setting before proceeding with the case.³⁵

Finally, the most precarious, yet humorous, action taken by Vinny is having his hairdresser girlfriend, Mona Lisa, declared as a hostile expert witness in auto mechanics.³⁶ She ultimately saves the day, but this lies on the verge of being absurd.³⁷ An expert is presumed to be trained and have vast

27. *Id.* The name Vinny gives the judge is Jerry Callo—a big time lawyer in New York, who also happens to be dead. Vinny then gives the judge another false name, and Mona Lisa bails Vinny out yet again by telephoning a Judge who was Vinny's mentor while he was in law school and asking the judge to lie to judge Haller so that Vinny may continue on the case. The actions of the judge in New York by lying also raise ethical considerations for the Judicial Qualifications Committee. *Id.*

28. RPC 4-3.3(a)(1).

29. MRPC 3.3.

30. Lewis, *supra* note 21, at 77.

31. See MRPC 3.3.

32. MY COUSIN VINNY, *supra* note 9.

33. Unfortunately, there have been cases where violations have occurred of practicing law without a license, including in South Florida. See Fitzgerald, *supra* note 25, at 3B (discussing an attorney who continued to practice law after being disbarred in 1997). See *infra* Part II.B. and accompanying text for a full discussion on the unlicensed practice of law.

34. See Lewis, *supra* note 21, at 75 (stating that "[o]verstating or exaggerating experience or track record may seem harmless at the time, but it leads to angry clients and problems down the road").

35. MY COUSIN VINNY, *supra* note 9.

36. *Id.*

37. *Id.*

experience in a particular area, and perhaps an out of work hairdresser who has previously worked as an auto mechanic could be an expert, but Vinny should have, nevertheless, discussed Mona Lisa's "expert" opinion with her before putting her on the stand.³⁸ This brings up the "Eleventh Commandment" of Trial Advocacy: never ask a question to a witness in court when you do not know the answer.³⁹ In reality, it is possible that a lawyer who put an expert witness on the stand without discerning his or her opinion beforehand could wind up with a witness who not only disagrees with the defense's case, but also considerably damages the defendant's chances for a favorable outcome. This could subject a lawyer to a complaint to the bar for incompetence, as well as lack of diligence.⁴⁰

This defiant act by Vinny, however, "saves the day," and likely improves the image of lawyers in the minds of the audience, as it allowed justice to prevail.⁴¹ Moreover, it is not realistic that this feat, or any of the antics committed by Vinny would ever happen in a court of law, although some come uncomfortably close.⁴² In sum, *My Cousin Vinny* is not likely viewed by an audience as a realistic representation of a murder trial any more than *The Naked Gun*⁴³ is viewed as a realistic representation of a police department. *My Cousin Vinny* is a lighthearted comedy which does no more to the image of lawyers than *Airplane*⁴⁴ did to the airlines.

B. *Trial and Error*

In *Trial and Error*,⁴⁵ Charles Tuttle (Jeff Daniels) is a big time, big city lawyer who is sent to a small town in Nevada to defend a con artist (Rip Torn), who happens to be related to the head partner in Tuttle's firm.⁴⁶ Tuttle is supposed to go to Nevada and get a continuance of the trial date.⁴⁷ Tuttle is reluctant to go because he is engaged to the managing partner's daughter and

38. *Id.* See also BERGMAN & ASIMOW, *supra* note 5, at 105-06.

39. Mark Dobson, Professor of Trial Advocacy, Nova Southeastern University (Feb. 2, 1999). See also BERGMAN & ASIMOW, *supra* note 5, at 105-06.

40. See Lewis, *supra* note 21, at 77; Fitzgerald, *supra* note 25, at 3B.

41. MY COUSIN VINNY, *supra* note 9.

42. *Id.* See Fitzgerald, *supra* note 25, at 3B.

43. Paramount Pictures (1988) (parody on the Los Angeles Police Department and Detectives).

44. Paramount Pictures (1980).

45. New Line Cinema (1997).

46. *Id.*

47. *Id.*

they are to be married in three days.⁴⁸ The problem arises when Tuttle's best friend, Richard (Michael Richards), shows up in Nevada to throw Tuttle a bachelor party the night before the hearing.⁴⁹ The next morning, Tuttle is unable to get out of bed and go to court.⁵⁰ Richard, being the good friend, and the out of work actor that he is, decides to appear before the court in Tuttle's place and procure the continuance.⁵¹ The serious predicament commences when Judge Paul S. Graff denies the continuance and Richard must go forward with the trial; and he does, with the help of Tuttle.⁵²

Trial and Error raises the issues of competent representation, candor toward the tribunal, and practicing law without a license.⁵³ First and foremost, Richard is practicing law without a license, and Tuttle is assisting him in doing so.⁵⁴ Tuttle, as the attorney, is governed by the MRPC, and is not only violating the aforementioned rules of candor toward the tribunal and competent representation,⁵⁵ but also is committing professional misconduct. Rule 8.4 of the MRPC states:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

* * *

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice.⁵⁶

Here, both Tuttle and Richard are behaving unethically, but Richard is not an attorney, so this will presumably land Tuttle in front of the disciplinary board.⁵⁷ Richard will not get off so easy, since he was practicing law without a license and committing a fraud upon the court.⁵⁸ Fortunately, it is not often

48. *Id.*

49. *Id.*

50. TRIAL AND ERROR, *supra* note 45.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. See discussion *supra* Part II.A. and accompanying text.

56. MRPC 8.4; RPC 4-8.4.

57. MRPC 5.5 (discussing the unauthorized practice of law and assisting others in doing so).

58. TRIAL AND ERROR, *supra* note 45.

that a nonlawyer engages in such a blatant act of practicing law without a license.⁵⁹ Rather, it is disbarred lawyers or law school graduates that more often violate this rule.⁶⁰ Furthermore, this violation is more often seen in fiction than in reality.⁶¹

As far as the consequences of the representation of lawyers in movies such as *Trial and Error*, there is seemingly not much damage done by a comedic representation such as this. The audience can likely see the amusement in this depiction, and further appreciate the exasperation shown by Tuttle because the case is proceeding with Richard as the lawyer.⁶² Moreover, since the "bad guy" is going to jail, even a nonlawyer has served the cause of "justice."

The plight that causes more critical affliction, however, arises from real lawyers creating characters that behave in this manner. A case in point is John Grisham's *The Rainmaker*,⁶³ in which Deck Shifflet (Danny DeVito) is an unlicensed lawyer who not only commits the unethical act of practicing law without a license, but also actually solicits clients for his firm.⁶⁴ When a lawyer writes a character in this manner, it is more likely that the audience will take the lawyer's representation as accurate, which can cause more damage to the reputation of the legal profession. Again, this is a situation where lawyers themselves are creating the problem. Although there is a fictional lawyer committing the unethical violations, there is a real lawyer creating the unethical characters. If a lawyer cannot respect the profession enough to show its members in a positive light, then lawyers cannot expect fiction creators to portray them in an ethical manner.

Accordingly, lawyers appear to have created the negative portrayal of their careers, both because of their professional actions, and how they themselves have depicted the legal profession. If lawyers do not act as though they respect themselves, then how can they expect others to?

59. These cases are extremely rare, but unfortunately occur in the context of "do it yourself" wills, divorces, contracts, or leases that are placed in form books written by non-lawyers who are then giving "legal" advice.

60. See Fitzgerald, *supra* note 25, at 3B (discussing an attorney who was practicing after being disbarred in 1997).

61. See *THE RAINMAKER*, Paramount Pictures (1997).

62. *TRIAL AND ERROR*, *supra* note 45.

63. *Supra* note 61.

64. *Id.*

C. *Liar Liar*

In *Liar Liar*,⁶⁵ Fletcher Reede (Jim Carrey) is an attorney whose ethics are controvertible, to say the least.⁶⁶ The opening scene, showing his son, Max (Justin Cooper), indicates this.⁶⁷ In that scene, Max's kindergarten class is discussing what his or her father does for a living.⁶⁸ Max stands up and says, "[m]y dad's a liar."⁶⁹ The teacher states, "I'm sure you don't mean that your dad's a *liar*."⁷⁰ Max responds, "[w]ell, he wears a suit, goes to court, and talks to the judge."⁷¹ The teacher breathes a sigh of relief and says, "[o]h, you mean a *lawyer*," and Max just shrugs.⁷²

Reede's unscrupulous behavior has affected his family to such a point that when Reede misses his son's birthday party (because he is having sexual relations with a partner in his firm),⁷³ Max blows out his birthday candles and wishes that his father cannot tell a lie for a whole day. Max's wish comes true, and Reede cannot function.⁷⁴ He appears in court for the Cole divorce trial and asks the Judge for a continuance.⁷⁵ The Judge asks him why he needs a continuance, and Reede responds, "I can't lie!"⁷⁶ He goes so far as to beat himself up in the bathroom to get a continuance, but the trial commences nonetheless.⁷⁷ Ultimately, Reede wins by finding the truth, namely that his client was underage when she entered into her marriage and thus the prenuptial

65. Universal Pictures (1997).

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *LIAR LIAR*, *supra* note 65.

71. *Id.*

72. *Id.*

73. *Id.* This is a powerful scene for lawyers ethics. Miranda (Amanda Donohoe) has a dirty divorce case that another associate will not take because she wants him to lie to the court. Miranda responds, "[w]ell, if you won't lie, we'll get someone who will." In comes Reede, who makes such a powerful impact upon the client, Samantha Cole (Jennifer Tilly) with his distortion of the truth, she is convinced she is the victim, despite her seven adulterous affairs. She says to Reede, "[i]t's good, but its not true, does that matter?" Reede laughs. Miranda is so impressed that she states, "[i]f you win, I guarantee you'll make partner." She then seductively states, "[h]ow'd you like to make a partner right now?" Reede, thinking it will advance his career, sleeps with her. *Id.*

74. *LIAR LIAR*, *supra* note 65.

75. *Id.*

76. *Id.*

77. *Id.*

agreement she signed was void.⁷⁸ He likely would have never discovered the truth had he been able to lie because he would have never bothered investigating the facts.⁷⁹ Instead, he would have put on perjured testimony, as he had originally planned.⁸⁰

Although this movie allows "justice" to prevail, it nevertheless raises grave ethical issues which are not so readily apparent. This comedy, unlike *My Cousin Vinny* and *Trial and Error*, portrays a blatantly unethical lawyer. Not only is Fletcher Reede proud of his unethical ways, others are aware of them, and hire him as a lawyer because of them.⁸¹ He fails to return phone calls, lies to opposing counsel and judges,⁸² and smiles about it. His arrogance and nonchalance, coupled with his feigned amiability toward those whom he thinks can get him ahead, are far closer to what most people perceive lawyers to be like⁸³ than any other lawyer character in a comedy. This movie, although a comedy, takes a stab at lawyers that leaves a sting. It also likely leaves a lot of heads in the audience nodding affirmatively.

III. SLEEPING WITH THE ENEMY

"Maintaining the integrity and improving the competence of the bar . . . is the ethical responsibility of every lawyer."⁸⁴ Sexual relations with clients has been a controversial issue facing the American Bar Association and state ethics committees for a long time.⁸⁵ According to the American Bar Association, "[t]he roles of lover and lawyer are potentially conflicting ones as the emotional involvement that is fostered by a sexual relationship has the potential to undercut the objective detachment that is often demanded for adequate representation."⁸⁶ This has prompted several state bar associations,

78. *Id.*

79. *LIAR LIAR*, *supra* note 65.

80. *Id.*

81. *Id.*

82. When Reede returns to the office, his secretary is reading him his phone messages and tells him that a judge and opposing counsel are looking for a motion he was supposed to send. Reede tells his secretary to tell them "it's in the mail." She responds, "[r]ight, you'll do it next week."

83. See Pittman & Portis, *supra* note 3, at 15.

84. MODEL CODE OF PROFESSIONAL CONDUCT EC 1.1 (1997).

85. Linda Fitts Mischler, *Reconciling Rapture, Representation, and Responsibility: An Argument Against Per Se Bans on Attorney-Client Sex*, 10 GEO. J. LEGAL ETHICS 209 (1996).

86. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992) (discussing sexual relations with clients).

including Florida, to create provisions in their rules to prohibit sexual relations with clients.⁸⁷

Interestingly, when sexual relations between an attorney and client are portrayed in the movies, the destruction of the "objective detachment" has actually worked in the client's favor. Moreover, it is often the client, and not the lawyer, who has initiated the sexual relationship, and it seems as though the client has done so to further his or her own interests.

A. *Body of Evidence*

In *Body of Evidence*,⁸⁸ Frank Delaney (Willem Dafoe) is a defense attorney representing Rebecca Carlson (Madonna), a young and beautiful woman who is accused of killing her lover.⁸⁹ Delaney, who is married, becomes attracted to Carlson and curious about her eccentric sexual behavior.⁹⁰ On the first day of trial, Delaney drives Carlson home and engages in sexual relations with her.⁹¹ When his wife finds out about the affair, Delaney wants to end it, so he hides behind ethics and declares, "[n]o more, you're my client."⁹² Ultimately, Carlson is acquitted, and Delaney discovers that she was, in fact, guilty.⁹³ Carlson tells him that it was her plan all along for Delaney to sleep with her because she believed that he would defend her better if he were emotionally involved.⁹⁴ She was right; the relationship worked in his client's favor.⁹⁵

As previously stated, sexual relations with a client are prohibited by both the American Bar Association and The Florida Bar.⁹⁶ This type of relationship raises several ethical issues. First, it undermines the emotional detachment that is essential for the attorney to deliver competent representation.⁹⁷ Next, a

87. See, e.g., RPC 4-8.4(i). Unfortunately, there is a lawyer joke stating another reason: "Why is there an ethical rule prohibiting lawyers from sleeping with their clients? So that the client is not billed twice for what is essentially the same service."

88. DeLaurentiis (1993).

89. *Id.* The deceased was found tied up to his bed watching a video of himself and Carlson engaging in explicit sexual behavior. *Id.*

90. *Id.*

91. *Id.*

92. BODY OF EVIDENCE, *supra* note 88.

93. *Id.*

94. *Id.*

95. *Id.*

96. See *supra* notes 86-87 and accompanying text.

97. See MRPC 2.1 (providing that "a lawyer shall exercise independent professional judgment and render candid advice").

sexual relationship may create a conflict of interest.⁹⁸ Finally, it may also create danger regarding attorney-client confidences.⁹⁹ While a sexual relation with a client remains a serious problem concerning lawyers and clients in reality,¹⁰⁰ in this movie it was the client who seduced the lawyer and manipulated the relationship to her advantage.¹⁰¹ Moreover, Delaney procured a favorable outcome for his client, and Carlson suffered none of the misfortunes that the Rules were enacted to prevent.¹⁰²

As for the consequences this type of portrayal has on the public's image of lawyers, it appears that because the client was taking advantage of the lawyer, not the antithetical, there is no pessimistic figuration of an attorney. It may seem as though Carlson, the client, was wiser than Delaney, the lawyer, because it was she who manipulated the entire course of events. Perhaps this would create a negative image of the male attorney in that he cannot control his sexual desires and allows himself to be seduced by a female client, but a male attorney's incapacity to control his desires eventuates often in the real legal world,¹⁰³ so there is no new "damage" being done to the image of the male lawyer.

Ironically, it was television's own Arnie Becker (Corbin Bernsen) from *L.A. Law*¹⁰⁴ who made the male attorney sleeping with his client (or at least making passes at her) a common occurrence in the eyes of the public.¹⁰⁵ Nevertheless, there were cases built against attorneys for this behavior long

98. See MRPC 1.7(b) (stating that a lawyer shall not represent a client if his or her ability to represent the client would be limited by the attorney's own interests); RPC 4-1.7 (1998) (containing the same provision); MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 5-101(A) (1998) (containing a similar provision).

99. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992).

100. This is especially true in domestic relations law. See *id.* at n.2; see also Lawrence Dubin, *Sex and the Divorce Lawyer: Is the Client off Limits?*, 1 GEO. J. LEGAL ETHICS 585 (1987) (proposing an express prohibition on sexual relations between divorce lawyers and their clients).

101. BODY OF EVIDENCE, *supra* note 88.

102. *Id.*

103. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992). See also Linda Mabus Jorgensen & Pamela K. Sutherland, *Fiduciary Theory Applied to Personal Dealings: Attorney-Client Sexual Contact*, 45 ARK. L. REV. 459 (1992); Dubin, *supra* note 100; *In re Weaver*, Va. Disp. Op. 97-010-0846 (Nov. 17, 1997); Oregon State Bar Ass'n Bd. of Governors, Formal Op. 1995-140 (1995) (discussing the propriety of sexual relationships between attorneys and their clients).

104. *L.A. Law* originally aired on NBC.

105. See Robert Eli Rosen, *Ethical Soap: L.A. Law and the Privileging of Character*, 43 U. MIAMI L. REV. 1229 (1989). For a full discussion of the unethical behavior of television characters and its effect on society's image of lawyers, see Machlowitz, *supra* note 5, at 55.

before *L.A. Law* ever aired.¹⁰⁶ This leads to the conclusion that if lawyers are behaving in this manner in the "real" legal world, then it is they whom have created this unfavorable opinion for themselves, not popular culture; it seems as though it is art that is imitating life. Moreover, it is more often the lawyers that are disgruntled by these portrayals rather than the public.¹⁰⁷ "While professional misconduct of a sexual nature does exist within the legal profession, the issue has doubtlessly been exaggerated by media portrayals of fictional attorneys with questionable sexual ethics."¹⁰⁸

B. *Jagged Edge*

In *Jagged Edge*,¹⁰⁹ Teddy Barnes (Glenn Close) is a former prosecutor who became disgusted with criminal work and decided to advance into civil litigation with a private firm.¹¹⁰ She is asked by the head partner of her firm to represent a big client, Jack Forrester (Jeff Bridges), who has been accused of murdering his wife.¹¹¹ The prosecuting attorney, Tom Krasny (Peter Coyote), is Barnes's former boss, and the unease between them is discernible.¹¹² Barnes left the District Attorney's office because of the unethical practices that occurred there under the guise of Krasny.¹¹³ At the time of the Forrester trial, the disconcertment between Krasny and Barnes is heightened because of the death of an inmate whom they convicted when they knew he was innocent.¹¹⁴ Barnes, unable to control her feelings of guilt, decides to reveal this information to the press at the end of the Forrester trial.¹¹⁵ By the time the trial starts, Barnes is intimately involved with Forrester.¹¹⁶ Although she ultimately gets an acquittal, Barnes makes unethical moves and decisions along the way that put her client's case, as well as her own career, at risk.¹¹⁷

The two main ethical issues raised by this movie, namely failing to disclose evidence that would prove the innocence of a defendant and engaging

106. See generally Jorgensen & Sutherland, *supra* note 103; Dubin, *supra* note 100.

107. Machlowitz, *supra* note 5, at 55 (stating that lawyers are "hostile to . . . [portrayals of] sleazy conduct . . . [and] adversaries [that] are dishonest or unethical").

108. Mischler, *supra* note 85, at 209-10 (citations omitted).

109. Columbia Pictures (1985).

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *JAGGED EDGE*, *supra* note 109.

115. *Id.*

116. *Id.*

117. *Id.*

in sexual relations with a client, are both prohibited by the MRPC.¹¹⁸ First, a prosecutor has a legal duty to disclose exculpatory material.¹¹⁹ Failure to disclose is perhaps the most flagrant violation a prosecutor can make, as there are supplementary ethical rules that govern prosecutors.¹²⁰ Ultimately, Barnes comes clean (albeit to the press) concerning their failure to disclose the exculpatory evidence, and likely got herself, and her former boss, into a precarious situation.¹²¹

Second, Barnes, as the defense attorney, should not have had a sexual relationship with Forrester, her client.¹²² Here, as in *Body of Evidence*, it was the client who manipulated the attorney into the sexual relationship, thinking that this would make the attorney a more zealous advocate on his behalf and procure him an acquittal.¹²³ However, here it was a female attorney who was manipulated by her male client, so the effect this unethical act has on the image of lawyers may be altered in that it effects the representation of female lawyers.¹²⁴

Women lawyers are often portrayed as “‘intellectually sharp and professionally successful,’ but ‘exhibit[ing] poor judgment in connection with their work and reject[ing] good advice from men.’”¹²⁵ Additionally, women lawyers are traditionally portrayed as “sex objects without brains” or “as incapable, either in their professional or personal spheres.”¹²⁶ Here, Barnes’s investigator, Sam Ransom (Robert Loggia), warned her that her client might be

118. MRPC 3.8; ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992).

119. Lewis, *supra* note 21, at 78. See also *Lewis v. Lane*, 832 F.2d 1446 (7th Cir. 1987) (sanctioning the prosecutor for a failure to disclose materials beneficial to the defense); RPC 4-3.8; MRPC 3.8 (stating that “[t]he prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause; . . . (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused . . .”).

120. Lewis, *supra* note 21, at 78. See also *Brady v. Maryland*, 373 U.S. 83 (1963) (stating it is a denial of due process for a prosecutor not to turn over any information known to the prosecutor that may be exculpatory evidence).

121. JAGGED EDGE, *supra* note 109.

122. *Id.*

123. *Id.*

124. *Id.*

125. Diane Klein, *Ally McBeal and Her Sisters: A Quantitative and Qualitative Analysis of Representations of Women Lawyers on Prime-Time Television*, 18 LOY. L.A. ENT. L.J. 259, 267 (1998) (quoting Carole Shapiro, *Women Lawyers in Celluloid: Why Hollywood Skirts the Truth*, 25 U. TOL. L. REV. 955, 1001 (1995)).

126. Christine Alice Corcos, *Women Lawyers*, in PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE 219, 221 (Robert M. Jarvis & Paul R. Joseph eds., 1998).

guilty; he further warned her not to become involved with Forrester.¹²⁷ Barnes disregarded this advice and continued with both representing Forrester and having a sexual relationship with him.¹²⁸ This behavior is stereotypical of women lawyers on television and in the movies, yet it is not an accurate depiction of reality.¹²⁹

Although women lawyers are guilty of committing ethical violations, there are fewer complaints filed against female attorneys than male attorneys.¹³⁰ Moreover, women are still a minority in the legal arena, so they came into a profession that was already suffering from a bad reputation, and have not likely added anything to its demise, except the portrayal of women attorneys being just as negative as the portrayals of male attorneys.¹³¹ Such portrayals do add to the disapproving representation of the legal profession, especially concerning women lawyers, but these acts by women lawyers in the movies are often mixed with other acts that counter the negative effect.

For instance, although Barnes was irresponsible in her actions by becoming intimately involved with Forrester, which affected her performance as a lawyer,¹³² she nevertheless achieved "justice" in the end for both legal and nonlegal audiences.¹³³ For the lawyers, she gained an acquittal for her client; and for the nonlegal community, Barnes killed Forrester when she found out he was guilty, and turned in Krasny for convicting an innocent man.¹³⁴ Therefore, both lawyers and nonlawyers can feel that "justice" has been served. In sum, because the client was not taken advantage of, and because "justice" prevailed in the end, this movie, in all probability, does not degrade the reputation of lawyers overall.

127. JAGGED EDGE, *supra* note 109.

128. *Id.*

129. Corcos, *supra* note 126, at 221.

130. See <<http://www.flabar.org/memberservices/Ethics>> (visited Feb. 19, 1999); Fitzgerald, *supra* note 25, at 3B (naming 11 South Florida attorneys who were cited by the Florida Supreme Court for committing ethical violations, only three being women).

131. For a full discussion of the portrayals of women lawyers and ethics, see Diane M. Glass, *Portia in Primetime: Women Lawyers, Television, and L.A. Law*, 2 YALE J.L. & FEMINISM 371 (1989); Rosen, *supra* note 105.

132. See BERGMAN & ASIMOW, *supra* note 5, at 160 (discussing how Barnes turns from "a self-assured professional into an emotionally unbalanced stereotype of a betrayed woman," and further that she allowed her personal feelings to interfere with her representation of her client "in a highly unethical but not unsurprising way.").

133. JAGGED EDGE, *supra* note 109.

134. *Id.*

C. ...And Justice for All

In ...*And Justice for All*,¹³⁵ Arthur Kirkland (Al Pacino) is a defense attorney surrounded by conflict.¹³⁶ Kirkland is having a sexual relationship with an attorney on the Ethics Committee, Gail Packer (Christine Lahti), while there is an ongoing investigation of both Kirkland and his colleagues.¹³⁷ Here, both Packer and Kirkland are violating the MRPC. Packer discusses the investigation of Kirkland's partner with Kirkland, and Kirkland discusses with Packer his knowledge of a client's guilt.¹³⁸ Moreover, Kirkland's aversion for the Ethics Committee and its goals is apparent.¹³⁹ When Kirkland is called before the Ethics Committee to testify, he walks out.¹⁴⁰ He later tells Packer that the committee is a "dangerous farce" and then says, "[w]hat you are doing is good in theory, but in practice, it sucks."¹⁴¹

Although this is not a situation where an attorney is having sexual relations with a client, it presents an ominous conflict of interest, which is prohibited by both the MRPC and the *Florida Rules of Professional Conduct*.¹⁴² Because it is Packer's duty to investigate the ethical behavior of lawyers, she owes her first duty to the Ethics Committee, which is undermined by her relationship with Kirkland. Additionally, she should not be discussing the Committee's investigations with Kirkland, particularly when he is a part of the investigation.

Whether this relationship occasions a pessimistic view toward lawyer's ethical behavior is questionable. This situation is not as grave as one between a lawyer and a client, nor is there a lessened ability to represent one's client. But, there is a sentiment of hypocrisy created by the relationship in that the Ethics Committee lawyer, Packer, is violating the very rules of conduct that she is responsible for enforcing. Conversely, Kirkland is viewed as the "good guy," who fights for justice and cares about his clients and their cases.¹⁴³

135. Columbia Pictures (1979).

136. *Id.*

137. *Id.* The main plot of the movie involves Kirkland representing Judge Fleming (John Forsythe), who he knows is guilty and announces that fact to the court during his opening statement to the court. *Id.* This ethical issue is discussed at great length in Part V *infra* and accompanying text.

138. *Id.*

139. ...AND JUSTICE FOR ALL, *supra* note 135.

140. *Id.*

141. *Id.*

142. MRPC 1.6; RPC 4-1.6.

143. ...AND JUSTICE FOR ALL, *supra* note 135.

Ironically, it is the Ethics Committee that is conceivably viewed here as the "enemy" who is interfering with lawyers who are trying to help their clients.¹⁴⁴

As far as Kirkland's personal ethics, there are two forceful scenes in the movie. In the first, Kirkland is in a nursing home visiting his grandfather, who asks him if he is an honest lawyer.¹⁴⁵ Kirkland responds, "[b]eing honest doesn't have much to do with being a lawyer."¹⁴⁶ In the second scene, Kirkland approaches Judge Fleming to discuss a client, Jeff McCullogh, who is in jail, although Kirkland has evidence of his innocence.¹⁴⁷ Kirkland pleads with the judge to admit the evidence (although Kirkland discovered it three days too late) and Judge Fleming responds, "I don't give a shit about your client."¹⁴⁸ The messages that are sent to the audience by these two scenes are contradictory. By the comment to his grandfather, Kirkland seems to be saying that honesty plays no part in being a good lawyer, while in the latter scene, Kirkland is being a zealous advocate for his client and trying to show the truth to the judge, who does not care.¹⁴⁹

These scenes, although in a dramatic movie, are not unlike those discussed in *Liar Liar* in that both Fletcher Reede and Arthur Kirkland do not think honesty has much to do with being a good lawyer, and both wind up finding "truth" to win for their clients, but somehow still "lose" in the end. The stark contrast arises in the fact that in ...*And Justice for All*, the wrongfully accused client winds up dead after Kirkland has diligently and zealously attempted to have justice prevail.¹⁵⁰ This creates a negative image of the justice system, rather than the lawyer. There are court rules preventing the admission of newly discovered evidence, even if it is exculpatory,¹⁵¹ and when the rules are shown to have the effect of allowing an innocent person to remain in jail, the perception of the American legal system is under attack. However, these rules do exist and innocent people remain in jail because of them, and the audience is likely to find the lawyer who is fighting for the innocent client to be a hero, and the justice system the enemy, because it prevents an innocent man from being freed. Lawyers "make" the law, be it through precedent or

144. *Id.*

145. *Id.*

146. *Id.* Judge Fleming's ethics are less than desirable, as evidenced by his actions throughout the movie. This is discussed fully in Part V *infra*.

147. *Id.*

148. ...*AND JUSTICE FOR ALL*, *supra* note 135.

149. *Id.* In the opening scene of the movie, Kirkland is in jail for contempt of court because he struck Judge Fleming when he would not allow in the evidence of Jeff's innocence. *Id.* He violated the canon of ethics while trying to uphold his oath of zealous advocacy.

150. *Id.*

151. FLA. R. CRIM. P. 3.850 (1998).

policy, and again the legal profession, via these laws and their implementation, disappoints society and thus diminishes its standing.

D. *Suspect*

In *Suspect*,¹⁵² Public Defender Kathleen Riley (Cher) is having a relationship with a juror, Eddie Sanger (Dennis Quaid).¹⁵³ Sanger contacts Riley during the trial and then joins forces with her to try and solve the crime.¹⁵⁴ Although there is not a full sexual relationship until after the verdict, this contact with a juror is a flagrant violation of ethics.¹⁵⁵ Although Riley is portrayed as a good attorney, one who works hard and truly cares about her clients and her cases, jury tampering is a grave violation nonetheless, which has become part of plots in several areas of entertainment.¹⁵⁶

Additionally, her behavior affects the ethical reputation of female attorneys, who are often portrayed by movies as less capable than their male counterparts. Female attorneys becoming romantically involved is often part of the plot in a legal movie, but here it is with a juror, not a client. This unethical act is inconsistent with the character of Riley. She is portrayed as a devoted public defender and good at her job. "Riley would not risk tossing away her career by even talking to Sanger during a trial, let alone meeting him repeatedly in public."¹⁵⁷ However, despite the fact that jury tampering is a grave violation that carries severe consequences, Riley and Sanger solve the crime and "save the day."¹⁵⁸ Justice, once again, has been served in the eyes of the audience. This portrayal of a strong woman attorney who is devoted to her job and cares enough about her clients to go out and solve the crime on her own is likely a positive one, at least to the community as a whole. The exception lies with those who realize the severity of her communication with Sanger, which would be lawyers, and once more it would be lawyers fretting about the movie portrayal of the profession, not the public.¹⁵⁹

152. Columbia/TriStar Pictures (1987).

153. *Id.*

154. *Id.*

155. *Id.* See MRPC 3.5 (stating that a lawyer "shall not seek to influence . . . a juror"); MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 7-108(B) (1998).

156. See *THE JUROR*, Columbia Pictures (1996); JOHN GRISHAM, *THE RUNAWAY JURY* (1996), *The Practice: Dog Bite* (ABC television broadcast, Oct. 4, 1997); LISA SCOTTLINE, *ROUGH JUSTICE* (1997).

157. BERGMAN & ASIMOW, *supra* note 5, at 257.

158. *SUSPECT*, *supra* note 152.

159. Machlowitz, *supra* note 5, at 55.

IV. ALL IN THE FAMILY

A. *Class Action*

In *Class Action*,¹⁶⁰ Jedediah Ward (Gene Hackman) is a radical plaintiff's attorney out to get corporate America.¹⁶¹ His daughter, Maggie Ward (Mary Elizabeth Mastrantonio), is on the other side of the law, often defending the companies her father is pursuing.¹⁶² The Ward's are set to go to trial against each other in a products liability case where the defendant company, Argo, manufactured a vehicle in which the gas tank exploded if the car was involved in an impact while the turn signal was active.¹⁶³ The plaintiff, represented by Mr. Ward, lost his wife and children in the accident.¹⁶⁴ The plaintiff contended that the defendant company knew of the defect and put the car on the market anyway.¹⁶⁵ Maggie Ward ultimately uncovers evidence to that effect, namely a written report, and the ethical conflict begins.¹⁶⁶ During discovery, Maggie is instructed to bury the report showing Argo's knowledge of the defect in hundreds of boxes of documents.¹⁶⁷ She later discovers that her boss, Michael Grazier (Colin Friels), with whom she is having an affair,¹⁶⁸ removed the report from the files that were sent to Jed Ward's office.

At trial, Mr. Ward calls the author of the report (Dr. Pavel) to testify, and Maggie destroys him on cross-examination.¹⁶⁹ Maggie then calls Grazier to the stand to testify that there was no report.¹⁷⁰ Mr. Ward then calls a witness who performed the actual research for the report, proving its existence.¹⁷¹ Jed Ward not only wins a verdict for his client, but also shows that Grazier's testimony was untrue.¹⁷² The audience then knows that Maggie Ward and her father had devised the entire course of events.¹⁷³

160. 20th Century Fox (1991).

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. CLASS ACTION, *supra* note 160.

166. *Id.*

167. *Id.*

168. *Id.* Again, a woman attorney is shown to be having a sexual relationship with someone that she should not be. The effect this behavior has on the image of female attorney's ethics is discussed in Part III *supra* and accompanying text.

169. *Id.*

170. CLASS ACTION, *supra* note 160.

171. *Id.*

172. *Id.*

173. *Id.*

There are several ethical issues raised by the behavior of Maggie, her father, and Grazier. First, Maggie violated the Code of Professional Conduct by eliciting false testimony from Grazier.¹⁷⁴ Rule 4-3:3 of the *Florida Rules of Professional Conduct* states that “[a] lawyer shall not knowingly . . . make a false statement of material law or fact to a tribunal.”¹⁷⁵ The MRPC contains the same provision.¹⁷⁶ Presenting false or deceptive evidence to the court is a flagrant violation of ethics, and there have been several cases in which attorneys have been suspended for performing such an act.¹⁷⁷ Unfortunately, this occurrence does happen, eminently in the eyes of the public. For example, in a real criminal case, when the defendant takes the stand and is later found guilty, the general impression presented is that the defendant was lying on the stand, since the jury did not believe the defendant. The unanswered question, however, is whether the perception conveyed is that the lawyer knew that his or her client was lying on the stand. In the movies, generally, the audience knows whether or not the lawyer knew,¹⁷⁸ and can judge the lawyer’s behavior accordingly. Here, Maggie Ward purposefully put her witness on the stand and knowingly elicited false testimony.¹⁷⁹ What makes this course of conduct more problematic is that it is indeterminate whether she violated the Canons of Ethics to help her client or to get even with her boss and former lover.¹⁸⁰ Either way, it leaves a disapproving view of trial tactics used by lawyers.

Additionally, Maggie owed a duty to Argo, and she violated that duty by joining forces with opposing counsel. “It is axiomatic that the attorney-client relationship is a fiduciary one in which the client places his or her trust . . . in the lawyer in return for the lawyer’s undertaking to place the interest of the client ahead of any self-interest of the lawyer.”¹⁸¹ Moreover, Canon 11 of the Canon of Professional Ethics provides: “the lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of

174. *Id.*

175. RPC 4-3.3.

176. MRPC 3.3.

177. See Lewis, *supra* note 21 (discussing *Colorado v. Casey*, 948 P.2d 1014 (Colo. 1997); *Commission v. Rohrback*, 591 A.2d 488 (Md. 1991); *Colorado v. Schultheis*, 638 P.2d 8 (Colo. 1981)).

178. There have been exceptions to this generalization, however. See *PRIMAL FEAR*, Paramount Pictures (1996); *BODY OF EVIDENCE*, *supra* note 88; and *JAGGED EDGE*, *supra* note 109.

179. *CLASS ACTION*, *supra* note 160.

180. See Mark Tushnet, *Class Action: One View of Gender and Law in Popular Culture*, in *LEGAL REELISM: MOVIES AS LEGAL TEXTS* 244 (John Denvir ed., 1996).

181. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992).

the confidence reposed in him by his client.”¹⁸² Finally, a lawyer is prohibited from both using client confidences to the client’s disadvantage and representing a client when the “representation of that client may be materially limited . . . by the lawyer’s own interests.”¹⁸³

Before long, Maggie Ward will be incurring the wrath of the Ethics Committee. First, she should have never agreed to go to trial against her father because of the potential conflicts. Next, she should not have joined forces with opposing counsel to help them defeat her client. Finally, it was grossly unethical to use client confidences to destroy her boss, her client, and her case. Although all of these actions allowed “justice” to prevail, and it is not likely that any of her actions caused any character damage to lawyers in the eyes of the community, her actions likely made attorneys everywhere squirm in their seats. Here, as in . . . *And Justice for All*, *My Cousin Vinny*, and *Liar Liar*, justice prevailed, despite the fact that the lawyer behaved unethically. The man who lost his family was compensated and the “evil” company paid, as did the “evil” lawyers. Because movies generally contain conflict, climax, and closure, and audiences prefer to see the “good guys” prevail, the lawyers in these movies, despite their unethical behavior, are the heroes who allow justice to triumph.

B. *The Music Box*

In *The Music Box*,¹⁸⁴ Ann Talbot (Jessica Lange) is a criminal defense attorney who is representing her father, Mike Lazlo (Armin Mueller-Stahl).¹⁸⁵ The United States is trying to revoke his citizenship and deport him to Hungary where he will be tried for heinous war crimes.¹⁸⁶ The government’s contention is that Lazlo was a member of the Arrow Cross, a group accused of committing brutish and inconceivable acts.¹⁸⁷ Talbot is convinced that the Hungarian government has set her father up and that it was not he who committed these unspeakable acts.¹⁸⁸ Talbot performs well at trial and in the end, gets the case dismissed, but she ultimately discovers that her father was guilty.¹⁸⁹ Talbot is

182. *Id.* at 408. (citing MODEL RULES OF PROFESSIONAL RESPONSIBILITY EC-11).

183. MRPC 1.8(b), 1.7(b); MODEL RULES OF PROFESSIONAL RESPONSIBILITY DR 4-101(B)(2); DR5-101.

184. Carolco Pictures (1990).

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *THE MUSIC BOX*, *supra* note 184. She finds out by retrieving a music box from a pawn shop that had belonged to Tibor Zola, her father’s alleged “partner in crime.” *Id.* Inside

enraged and disgusted by the knowledge that her father committed these crimes, and sends the photographic evidence to Jack Burke, the prosecutor on the case.¹⁹⁰ Burke, in turn, sends the photos to the newspaper, where they appear on the front page.¹⁹¹

The first ethical issue raised in the movie is Talbot's representation of her father.¹⁹² Although this is not a sexual relationship with a client, but rather a familial one, the same ethical considerations apply.¹⁹³ First, she was not able to keep the objectivity necessary for a proper representation of her father, and competent representation is ethically required.¹⁹⁴ Additionally, "[e]motional detachment is essential to the lawyer's ability to render competent legal services."¹⁹⁵ When a lawyer is emotionally involved with a client, it may be difficult for the lawyer to provide the "straight" truth and advice concerning the case. This objectivity is necessary for the independent professional judgment that must be exercised by an attorney when representing a client.¹⁹⁶

These ethical rules, promulgated by both the American Bar Association and state bar associations, are designed to protect the client and prevent the exact situation that occurred in *The Music Box*. However, there did not appear to be any concerns arising during the course of representation, as Talbot provided more than competent representation to her father.¹⁹⁷ Although "[i]t's said that the lawyer who represents himself has a fool for a client. The same holds true for getting your kids to do the job."¹⁹⁸

The Music Box is analogous to *Body of Evidence* and *Jagged Edge* in that the client in each movie had a close, personal relationship with his or her

the music box are pictures of her father in the Arrow Cross uniform committing the atrocious crimes that were discussed in the trial. *Id.*

190. *Id.*

191. *Id.*

192. *THE MUSIC BOX*, *supra* note 184.

193. Attorney-client confidentiality is also a difficult issue raised here, as there is no protection for personal confidence, and the line can become blurred when there is a personal and professional relationship. See ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992).

194. Both the *Model Rules of Professional Conduct* and the *Florida Rules of Professional Conduct* provide that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." MRPC 1.1; RPC 4-1.1.

195. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992).

196. BERGMAN & ASIMOW, *supra* note 5, at 180 (stating that Talbot's "ability to represent her client suffered because of her personal involvement with the case.").

197. See *id.* at 177 (discussing the powerful cross-examinations performed by Talbot).

198. BERGMAN & ASIMOW, *supra* note 5, at 180.

attorney. Each client thought it would effectuate a more ardent representation, which in fact it did, as they all were acquitted. Additionally, the lawyers all found out that their clients were guilty. Although Talbot's taking the case and representing her father was unethical according to the *Rules of Professional Conduct*, there is not likely an unfavorable image of lawyers created by Talbot's act of defending her father. In fact, it is more probable that Talbot's character is a positive one for lawyers, especially women lawyers. She provided competent, zealous, and exemplary representation to her father and saved his citizenship.¹⁹⁹ It is only her posttrial course of action, namely turning evidence of her father's guilt over to the prosecutor, which may raise the eyebrows of lawyers and nonlawyers alike.²⁰⁰

This second ethical issue, namely Talbot's turning over the photos of her father to the prosecutor, was a flagrant violation. "The lawyer is not permitted to reveal the client's wrongdoing."²⁰¹ Although Lazlo could not have been tried again, a lawyer's first duty lies with the client, not with her own personal feelings about the client or his acts. This again raises a conflict of interest, which relates back to Talbot's error in taking the case to begin with. Although she denounces her father in her personal life, turning over evidence of his guilt to a prosecutor was a disgraceful act,²⁰² at least ethically, but whether this creates a pessimistic view of lawyers in general is dubious. From a legal standpoint, this act was impermissible, but, because of the feelings this case generates to an audience, many would feel that Lazlo got what he deserved because he was guilty and is now being punished; Talbot, the lawyer, did the "right" thing.²⁰³

In all of these movies, "justice" prevailed, but the attorneys were intensely unethical. Ironically, audiences do not see the acts committed by Talbot or Ward as unethical. Rather, they are viewed as heroes, the good lawyers who achieve truth and justice. These movies only generate a negative image of lawyers as far as other lawyers are concerned; the public is happy

199. THE MUSIC BOX, *supra* note 184.

200. *Id.*

201. Lewis, *supra* note 21, at 76. See also RPC 4-1.6.

202. BERGMAN & ASIMOW, *supra* note 5, at 180 (opining that turning over the photos was "a terrible lapse of judgment and grossly unethical. The most fundamental of all canons of legal ethics is that you must place your client's interest first.").

203. The moral questions raised are often discussed, and more often confused with ethics. Lawyers often struggle with their own personal morals or feelings about a client's acts or the possible ramifications of their actions (e.g. murder and the death penalty), but if a lawyer cannot provide the required representation, then the lawyer is required under the Rules of Professional Responsibility to decline representation. Therefore, if Talbot could not face the possibility that her father was guilty, she should not have taken the case. See MRPC 1.6, 1.7; RPC 4-1.6, 4-1.7.

because justice is done. This is often a problem because legal ethics are customarily confused by society with morals and justice. The public wants to see the guilty pay and the innocent prevail; they do not really care how they get there. There is more of a "means justify the ends" analysis achieved by the audience, and society overall.

V. OPENING STATEMENTS—YOU NEVER GET A SECOND CHANCE TO MAKE A FIRST IMPRESSION

In *Suspect*,²⁰⁴ Carl Wayne Anderson (Liam Neeson) is being tried for murder.²⁰⁵ The prosecutor, Charlie Stella (Joe Mantegna), commits reversible error with the first sentence of his opening statement.²⁰⁶ Stella tells the jury that he has prosecuted over forty murder cases, and "out of the forty-three murder cases [he's] prosecuted, this is the most horrible one."²⁰⁷ The prejudicial effect this statement has is irreversible.²⁰⁸ Stella has "not only inject[ed] his personal experience and credibility as a prosecutor directly into the case, but also he invites the jurors to compare Anderson to forty-three other murderers."²⁰⁹

This is a serious violation, yet it is not likely that anyone in the audience, except a lawyer, would know that this is impermissible commentary. This is because opening and closing statements are nearly always portrayed in television and in the movies as both unrealistic and unethical. The reason for this occurrence is not because lawyers actually commit this violation often, although it does happen,²¹⁰ but rather because of the dramatic effect it has on the audience. The realistic, and often times monotonous, opening statement does not make for good entertainment. However, this inaccurate representation, although not directly correlated to the pessimistic view of lawyers, creates delusions in those who have not experienced a real trial before, and creates a heightened expectation of lawyers' performances.²¹¹

Additionally, in *My Cousin Vinny*, Vincent LaGuardia Gambini delivers a powerful opening statement: "[e]verything that guy just said is bullshit! Thank

204. Columbia/TriStar Pictures (1987).

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. BERGMAN & ASIMOW, *supra* note 5, at 258.

210. See Candice D. Tobin, *Prosecutorial Misconduct During Closing Argument: Florida Case Law*, 22 NOVA L. REV. 485 (1997).

211. Enrique Fernandez, *A Courtroom Drama Follows the Script*, SUN-SENTINEL, Apr. 5, 1999, at 1D.

you.”²¹² Although the odds of a lawyer really saying this in open court are remote, any lawyer who has ever tried a case has likely wanted to open his or her case with those exact words. However, this movie is a comedy and “Vinny often has no clue as to the rules he’s breaking.”²¹³ Vinny’s performance as a trial lawyer would never be considered as authentic; his opening statement was great entertainment and “harmless error.”

Finally, in *...And Justice for All*, there lies the most dramatic, and unethical, opening statement to ever hit the silver screen. Kirkland is representing Judge Fleming on a rape charge.²¹⁴ Kirkland hates Fleming, and is only representing him because Fleming is blackmailing him with an ethical violation he committed years ago.²¹⁵ Kirkland also knows the judge is guilty.²¹⁶ Kirkland addresses the jury and is quite effective in the beginning.²¹⁷ He first comments on the polygraph test his client passes, even though this is inadmissible evidence.²¹⁸ But then Kirkland has an attack of moral, not ethical, conscience and states that the victim is not lying, and then delivers this powerful statement: “[m]y client, the Honorable Judge Fleming, should go straight to fucking jail. The son of a bitch is guilty—he is a slime.”²¹⁹ He then looks at Judge Fleming and says, “[y]ou’re supposed to stand for something . . . you’re supposed to protect people.”²²⁰ Although the audience may be pleased, and feel that justice has been done, Kirkland has committed the mother of all ethical violations.²²¹

This violation, ironically, does not generally give people a negative image of lawyers, except maybe the truly guilty criminals. In fact, most are satisfied that the judge will get what he deserves, and perhaps rightfully so, since Judge Fleming thought he was above the law. Public perception here is that the

212. MY COUSIN VINNY, *supra* note 9.

213. BERGMAN & ASIMOW, *supra* note 5, at 107.

214. *...AND JUSTICE FOR ALL*, *supra* note 135.

215. *Id.* Some years back, Kirkland had a client, Drego, who told Kirkland how he wanted to watch people die by putting firecrackers in their mouths. *Id.* A few months later, there were a series of violent crimes where the assailant was putting cherry bombs in the victims’ mouths. *Id.* Kirkland reported what his client told him, and since he was not preventing a crime from occurring (in the eyes of the ethics committee in the movie), he could be sanctioned, or even disbarred for this revelation. *Id.*

216. *...AND JUSTICE FOR ALL*, *supra* note 135.

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. See BERGMAN & ASIMOW, *supra* note 5, at 111 (stating that “Kirkland is washed up as an attorney after this impulsive decision to shoot his mouth off and betray his client.”); see also RPC 4-1.6 (discussing confidentiality).

"ends justify the means;" the truly guilty will be punished, and they are happy. But this has cost Kirkland his career.

VI. CONCLUSION

The consequences of the negative portrayals of lawyers in the movies are difficult to ascertain.²²² First, for every ethical violation committed by a movie lawyer, there are disciplinary opinions on point from both state bar associations and the American Bar Association. Next, it is more often the lawyers that are complaining about the negative portrayals of their profession, rather than society as a whole. Additionally, in those movies where the lawyer commits the gravest ethical violations, "justice" is attained, and likely gives a more exemplary view to the community. Moreover, lawyers often create, write, and produce the very shows, books, and movies that contain these unethical lawyers. Finally, over eighty percent of people have had their own personal contact with an attorney, and this contact has created their opinion of lawyers.²²³

While it is true that these representations may reinforce already pessimistic views, lawyers may have themselves to blame. One problem is the publicity that coincides with the unethical acts of lawyers, and the fact that the information about these violations is so apparent—even on the Internet.²²⁴ Another somber problem is that the ethical rules that lawyers are to abide by often are incompatible with the morals, senses of "right," or notions of "justice" that most of society holds. People want to see justice prevail, and it seems as though an "ends justify the means" attitude is carried by the majority. Society wants the truth, and the guilty to be punished, no matter what the cost. While lawyers may shudder at the sight of a movie lawyer turning in a guilty client, or joining forces with the opposing side because his or her side was "wrong," most people feel that this is exactly what a lawyer should do. Nobody seems to care about lawyers' ethical responsibilities to provide the best possible defense or keep client confidences—until, of course, they need a lawyer—then it is "win at all costs." Ironically, most people will look for an attorney that displays the very attributes they dislike about lawyers.

222. See Anthony Chase, *Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys*, 1986 AM. B. FOUND. RES. J. 281.

223. Gary A. Hengsher, *The Public Perception of Lawyers: ABA Poll*, 79 A.B.A. J. 60, 61 (Sept. 1993).

224. See *Ethics Opinions* (visited Feb. 19, 1999) <<http://www.flabar.org/memberservices/Ethics/>>; D.E. Cupples, *Naughty Lawyers*, (visited Feb. 19, 1999) <<http://www.naughtylawyers.com>>.

Conversely, the media often reinforces the public's perceptions of the courtroom and trial tactics. Movies and television often create the "acting" and "entertainment" that people expect to see in a real trial.²²⁵ This can create problems for the justice system, and for lawyers everywhere. For example, the following was declared in an editorial written by a reporter who was called to jury duty:

Like most citizens, I get my ideas about courtrooms and trials from the screen. Later, sequestered in the jury deliberation room, some of us will wonder about the details of the trial and ask each other, "Shouldn't the lawyers have done this or that? That's what they do in the movies."... For all the lawyer jokes, for all the cynicism about the system, something fine is accomplished. Justice? One hopes.²²⁶

The author further stated that "[t]he basic procedure and thus the basic drama of trial by jury is more faithfully reproduced in our screen fictions than one would think."²²⁷ Interestingly, he mentioned nothing about the portrayals of lawyers. Lawyers have quite a gripe about this representation: "[d]espite their [movies'] incredible influence, there is no requirement that these fictionalized accounts of lawyering be accurate, or even be held accountable for their consequences."²²⁸ Although this statement is true, the public seems to take pleasure from it, while the lawyers protest about it. Now, "a trial lawyer needs a theme, just like they use in the show[s]."²²⁹ Remarkably, lawyers are not all that different from actors; both are recreating a scene or event, trying to capture the viewer's attention, hoping to be liked and believed, and seeking a favorable review (or verdict). Ironically, real lawyers are more critical of movie lawyers' performances than the public audience. The incompatible factor—the knowledge of legal ethics.

225. Fernandez, *supra* note 211, at 1D.

226. *Id.*

227. *Id.*

228. Carolyn L. Miller, "What a Waste. Beautiful, Sexy Gal. Hell of a Lawyer.": *Film and the Female Attorney*, 4 COLUM. J. GENDER & L. 203, 204-05 (1994).

229. *Id.* at 204.