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A Different Ethical Issue In Anatomy of a
Murder: Friendly Fire from the Cowboy/Hero

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Abstract

The article uses the methodologies associated with law, film, and culture to explore how one of the most famous hero/lawyers allows his personal honor and ego to compel him to engage in unethical and unprofessional conduct. ANATOMY OF A MURDER is frequently used as a vehicle to discuss whether a lawyer violates professional ethics rules when he or she gives a client a hint of the law before getting the facts. The hero/lawyer is played by James Stewart who remains as an icon of the cowboy/lawyer who must defend honor to obtain justice. This article examines a different scene through a modern lens to uncover domestic abuse, inflated egos, and professional missteps.

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A Different Ethical Issue in Anatomy of a Murder: Friendly Fire from the Cowboy/Hero

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ABSTRACT

Film provides a vehicle for examining the cultural construction of lawyers as heroes, and when viewed through a modern lens, helps us understand how the hero lawyer's heightened sense of personal honor can result in unethical, unprofessional, or strategic mistakes. One of the most popular cinematic moments for teaching Professional Responsibility is in the 1959 film, Anatomy of a Murder, when the lawyer/hero Paul Biegler (played by James Stewart) struggles to balance his duty to the court and his duty to his client as he interviews his client for the first time. The scene serves as a useful vehicle for exploring how far a lawyer may go to explain a defense and then ask for the facts without stepping over the line of soliciting perjury on the part of the client/witness.

This article discusses another scene in the film that raises the painful issue of how lawyers, even those who are seen as heroes, can lose sight of professionalism and ethical conduct when their own egos and sense of honor become besieged. The article begins by discussing some of the theories of how to interpret law and film that explain how Biegler emerges as the cowboy/lawyer hero who is responsible for defending men's honor when it has been violated by women's sexual activity- whether consensual or non-consensual. Biegler is defending Frederick Manion who is accused of killing the man who allegedly raped his wife. A modern perspective on the film uncovers strong evidence Biegler knew or should have known that Laura Manion was the victim of her husband's domestic violence. Whether or not Frederick Manion "beat" his wife becomes the focus of a fierce battle between Biegler and Dancer as Biegler feels increasingly cornered. Biegler's personal honor is at stake. By this time, Biegler knows or reasonably should know that Manion has hit his wife the night of the incident or before because credible evidence has been presented. Biegler's ego drives him to ignore the evidence and he insists that he redirect Manion answer "straight out" whether he ever "beat his wife" on that night or at any other time. Manion is thereby forced by his own lawyer to choose between admitting he is a wife beater and hurting his case or lying. He lies.

The article examines the application of the American Bar Association Rules of Professional Conduct to Biegler's conduct and then explores whether there is any acceptable rationale for his behavior. The final section addresses questions of whether changing Biegler's gender or race would have altered his behavior. The article concludes that Anatomy of Murder should continue to be one of the most dominantly used films for examining public and professional expectations about lawyer's ethics and conduct. The lawyer/hero who zealously represents his disagreeable client in the courtroom and is ultimately vindicated with an acquittal

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is one of the great icons, and myths, of the legal profession. Looking at from its own time in history and through a modern lens helps us understand the genesis of the complexity of the lawyers' images and dilemmas as they reconcile duty to the court, client, profession and their own needs to succeed.

DRAFT OF ARTICLE

One of the most popular cinematic moments for teaching Professional Responsibility is in the 1959 film, *Anatomy of a Murder*, when the lawyer/hero Paul Biegler (played by James Stewart) struggles to balance his duty to the court and his duty to his client, Frederick Manion (played by Ben Gazzara) as Biegler interviews Manion for the first time.² Biegler's inclination is to hear all the facts without prompting his client on any defenses, but his sidekick Parnell (played by Arthur O'Connell) presses Biegler that he might owe his client an opportunity to know how to defend himself. The interview scene serves as a useful vehicle for exploring how far a lawyer may go to explain a defense and then ask for the facts without stepping over the line of soliciting perjury on the part of the client/witness.³ Those who use the film only for this limited, albeit terrific purpose, are missing an opportunity to discuss another ethically charged moment when Biegler ultimately forces his own client to lie on the stand.⁴ Biegler's conduct, and the motivations that seem to drive him, provide rich material for

² See e.g., Richard C. Wydick, *The Ethics of Witness Coaching*, 17 *Cardozo L. Rev.* 1, 25-26 (1995) where the author explains:

'Rare is the legal ethics student who is not familiar with "the Lecture scene" from the novel and movie *Anatomy of a Murder*. That scene can best be understood as an example of Grade Two witness coaching. Lawyer Biegler is defending client Manion against a charge of murdering a man who allegedly raped Manion's wife. At their first interview, Manion tells Biegler that he killed the man, and that he did it an hour or so after learning of the rape. When Biegler hears about the time lapse, he stops the interview, knowing that "a few wrong answers to a few right questions" could mean first degree murder and life in prison for his client. At the outset of their next meeting, Biegler gives Manion "the Lecture," meaning in this case a step by step explanation of the law of murder and the possible defenses. As Biegler leads Manion through the explanation, Manion begins to understand that his only possible defense is a type of insanity. Being thus enlightened about his self-interest, Manion then describes his mental state at the time of the crime in a way that allows Biegler to invoke the insanity defense. In an aside directed to any reader who might miss the point, Biegler explains:

' The Lecture is an ancient device that lawyers use to coach their clients so that the client won't quite know he has been coached and his lawyer can still preserve the face-saving illusion that he hasn't done any coaching. For coaching clients, like robbing them, is not only frowned upon, it is downright unethical ... Hence the Lecture, an artful device as old as the law itself, and one used constantly by some of the nicest and most ethical lawyers in the land. "Who, me? I didn't tell him what to say," the lawyer can later comfort himself. "I merely explained the law, see." It is a good practice to scowl and shrug here and add virtuously: "That's my duty, isn't it?"

³Even the non-legal academic descriptions of the film treat it as iconography for "witness coaching". See e.g. http://en.wikipedia.org/wiki/Anatomy_of_a_Murder; Edward Dunn, "Have You No Decency Jimmy" *Sacramento News*; <http://www.newsreview.com/sacramento/Content?oid=oid%3A250650>; Vivian M. Baulch, "When Hollywood came to the UP", *Vivian M. Baulch, Detroit News*, <http://info.detnews.com/history/story/index.cfm?id=71&category=events>.

⁴ See, also J. Thomas Sullivan, *Symposium: Imagining the Criminal Law: When Client and Lawyer meet in the Movies*, 25 *U. Ark. Little Rock L. Rev.* 665, 667-668 (2003) in which the author addresses the development of trust in the early stages of attorney/client relationship in a criminal case.

examining historic, fictional, portrayals of lawyers that inform modern assumptions about a lawyer's professional responsibility. As with the more often discussed scene at the beginning of the movie, the action that is the focus of this article is a dramatization of unresolvable nuances and conflicts. Seen from a modern perspective, Biegler, who has been considered by some as the cultural icon of the hero/lawyer,⁵ loses control of his professional self because of a sense his personal honor is being violated.

The popular perception of the narrative of *Anatomy of a Murder* is the story of men's honor being violated by either a rape or voluntary adulterous sexual activity of a woman, a revenge killing, and then the symbolic struggle in the courtroom to restore all of the men's honor. The movie is based on the 1958 novel, *Anatomy of a Murder*,⁶ that was written by John D. Voelker under the pen name of Robert Traver. The novel was inspired by the 1952 Big Bay Lumberjack Tavern murder that took place in the Upper Peninsula of Michigan.⁷ Voelker was from the Michigan Upper Peninsula, and after graduating from the University of Michigan Law School, first practiced in Chicago and then returned to the Upper Peninsula where he was in private practice. Voelker was the defense lawyer in the Big Bay Lumberjack Tavern murder and thus the novel and subsequent movie are somewhat autobiographical.⁸ Voelker was eventually elected as county prosecutor, and by the time *Anatomy of a Murder* was published, he was sitting on the Michigan Supreme Court where he served between 1956-1960.⁹ Interestingly, the film was the basis of a libel suit brought by the wife of the deceased victim in the Big Bay Lumberjack murder, but the case was dismissed.¹⁰

⁵ Orit Kamir, *Anatomy of Hollywood's Honorable Hero-Lawyer: A Law-and Film Study of the Western Motifs, Honor-Based Values and Gender Politics Underlying Anatomy of a Murder's Construction of the Lawyer Image*. 35 *Studies in Law, Politics & Society* 67, 75 (2005). (hereinafter, Kamir 2005).

⁶Dell, 1958.

⁷See, David A. Anderson, *Symposium: Defamation in Fiction: Avoiding Defamation Problems in Fiction*, 51 *Brooklyn L. Rev* 383,413 (1985) which discusses the libel suit brought by the widow of the victim in the actual murder. In *Wheeler v. Dell Publishing Co.*, 300 F.2d 372 (7th Cir. 1962) the court granted summary judgement and dismissed the suits. See further discussion *infra*.

⁸*Wheeler v. Dell Publishing Co.*, 300 F.2d 372, 375 (7th Cir. 1962).

⁹ Eileen Kavanagh, *Robert Traver as Justice Voelker— the Novelist as Judge*, 10 *Scribes J. Legal Writing* 91, 91(2005-2006).

¹⁰ David A. Anderson, *Symposium: Defamation in Fiction: Avoiding Defamation Problems in Fiction*, 51 *Brooklyn L. Rev* 383,413 (1985) which discusses the libel suit brought by the widow of the victim in the actual murder. In *Wheeler v. Dell Publishing Co.*, 300 F.2d 372 (7th Cir. 1962) the court granted summary judgement and dismissed the suits. In the novel, Barney Quill's wife is a shrill woman and both the novel and film imply that she gave birth to her daughter out of wedlock. The wife and daughter of the victim in the real Big Bay Lumberjack murder case were so offended the book and movie that they sued Dell. The 7th Circuit affirmed the lower court's dismissal of their cases on summary judgement *Wheeler v. Dell Publishing Co.*, 300 F.2d 372, 375 (7th Cir. 1962) on the grounds that the real people are not "identifiable" as the fictional characters and their privacy had not been invaded.

The opinion reads at 375-376 :

"The libel suit against Dell is based on allegations that Hazel Wheeler has been defamed because in the locale, trial, and characters presented in 'Anatomy of a Murder' she is identified with the fictional Janice Quill.

'Anatomy of a Murder' is a study through fiction of an actual murder trial. The fictional locale is fairly identifiable with the actual. The Peterson trial was in Marquette, in the Upper Peninsula of Michigan. The fictional trial is in Iron Bay, in the Upper Peninsula. Certainly those who knew of the Peterson trial would identify it with the fictional

The movie tells the story of a talented lawyer who is loyal to his friends, but a loner, much like the lawyer/hero character that was familiar and marketable to movie goers.¹¹ This paper will focus on the film through a modern lens to examine what can be learned about our constructed culture of lawyering and professionalism. As was so aptly captured by Professor Patricia Williams when she explained that critical race theory is the story of *Pierson v. Post* from the fox's perspective,¹² this article will tell part of the story through Laura Manion's eyes and through the filters of a twenty first century female law professor who has spent twenty odd years teaching and studying professionalism, lawyering, litigation skills, evidence, and domestic violence.¹³ The synopsis of the film that appears in most of the literature captures Biegler as the virtuous, admirable, fighter for justice that the film's creators intended and most audiences experience.¹⁴ But there is a flaw with the lawyer/cowboy who is pre-occupied with his own honor that provides lessons for the twenty first century lawyer.

This article begins with a brief description of the law, literature, film, and culture movement and show how one theorist has analyzed Biegler in *Anatomy of a Murder*. The next section focuses on the scene in the movie during which Biegler confronts his client so that the defendant has no choice but to lie on the stand. The final section examines the professional responsibility consequences of Biegler's conduct.¹⁵

Film, Law, and Culture

trial of Lieutenant Manion. Admittedly Barney Quill represents Maurice Chenoweth. And those who knew John Voelker as defense attorney for Peterson would identify Paul Biegler, the fictional defense attorney, with Voelker.

*But none who knew Hazel Wheeler could reasonably identify her with Janice Quill, 'that dame with the dyed red hair and livid scar on her right cheek who had sworn at him in everything but Arabian * * *. Who'd ever forget such a noisy foul-mouthed harridan? * * *' Hazel Wheeler's counter-affidavit, in opposition to Dell's motion for summary judgment, states that she had scratched her face and had used a 'henna rinse' during the time of the trial. Even so, those who knew she was Chenoweth's widow and mother of Terry Ann could not reasonably identify her with Janice Quill, for Hazel Wheeler denies having any of the 'unsavory characteristics' of Janice Quill....*

Bernadine Quill, Barney's daughter, also plays an 'inconspicuous part' in the novel. She is sixteen at the time of the fictional trial; Terry Ann Chenoweth was nine at the time of the actual Peterson trial. This age differential and the inconspicuous role of Bernadine Quill impel us to conclude that no cause of action was stated as to Terry Ann Chenoweth."

¹¹Orit Kamir, *Anatomy of Hollywood's Honorable Hero-Lawyer: A Law-and Film Study of the Western Motifs, Honor-Based Values and Gender Politics Underlying Anatomy of a Murder's Construction of the Lawyer Image*. 35 *Studies in Law, Politics & Society* 67, 75 (2005). (hereinafter, Kamir 2005).

¹²Patricia J. Williams, *THE ALCHEMY OF RACE AND RIGHTS* 146-65 (1991) (chapter entitled "The Pain of Word Bondage") discussing *Pierson v. Post*, 3 *Cai.R.* 175 (N.Y. 1805).

¹³See e.g., Kathryn Abrams, *Hearing the Call of Stories*, 79 *Cal.L.Rev* 971,1049 - 1050 (1991) where she discusses the risks of what is lost in translation and telling of another's story.

¹⁴See e.g. Marc Galanter, *The Faces of Mistrust: the Image of Lawyers in Public Opinion, Jokes and Political Discourse*, 66 *U.Cin.L.Rev.* 805, 811 & 812 (1998) in which the author explains that during the 1960s lawyers were held in higher regard than other times in history and as evidenced by their portrayal as heroes in movies such as *Anatomy of a Murder*.

¹⁵ See e.g. Carrie Menkel-Meadow, *Can They Do That? Legal Ethics in Popular Culture: of Characters and Acts*, 48 *UCLA L. Rev.* 1305, 1308 (2001) where she describes the value of popular culture for teaching ethics; James R. Elkins, *Law in Film/Film in Law: Reading/Teaching Lawyer Films*, 28 *Vt. L. Rev.* 813 825-830(2004).

A number of analytical theories regarding the role of popular culture and perceptions of law and lawyers. The “Frankfort School” as been described as suggesting

*that the primary role of popular culture in our society is to communicate, promote and perpetuate the "dominant ideology," that worldview which provides a conceptual framework and foundation for a particular social order and which tends to serve the interests of the prevailing power structure. This theory follows a Marxist model and views popular culture as a means of convincing the masses that their interests are aligned with the broader capitalist political and economic agenda. According to this theory, the ideology communicated by popular culture encompasses "distinct biases, interests, and embedded values, reproducing the point of view of their producers and often the values of the dominant social groups," and consequently serves to "reproduce social domination, ... legitimate rule by the prevailing groups over subordinate ones, and help replicate the existing inequalities and hierarchies of power and control."*¹⁶

In their article comparing law and lawyers as depicted in film and television, Naomi Mezey and Mark Miles distinguish between the Frankfurt School and the Birmingham School.¹⁷ They suggest the Frankfort School, which essentially explains the “top down” role of popular culture¹⁸, is an apt theory for examining television. However, because of the nuances and complexity of film, they argue that the Birmingham School of analysis which they describe as a “ more complex version of a legal ideology [that] understands the law as fallible, as either ineffective at reaching justice, or worse, standing in the way of it. But this more complex view still understands the law as fundamentally legitimate and authoritative, situated within a coherent moral universe.”¹⁹

¹⁶Naomi Mezey, Mark C. Miles, Screening the Law: Ideology and Law in American Popular Culture, 28 Colum. J. L. & Arts 91, 95 & 96 (2005). For their fuller discussion of the Frankfort School, See also pages 101-105 of the article.

¹⁷ Mezey & Miles at 97.

¹⁸ Mezey & Miles at 98-100. Relying on Philosophy of Art scholar Noel Carroll, Mezey and Miles explain that there is a difference between “mass art” and “popular culture.”

“Like the mass manufacture of automobiles, mass art is a form of mass production and distribution, designed to deliver a multiplicity of tokens of a particular artwork to frequently geographically remote mass consuming audiences. Mass art is the art of mass society, predicated on addressing mass audiences by means of the opportunities afforded by mass technologies. Mass art is produced and delivered by mass media. These media are called mass because they make products available to relatively large audiences simultaneously.”

They then turn to John Fiske who suggests that “Popular culture is made by the people at the interface between the products of the culture industries and everyday life. Popular culture is made by the people, not imposed on them; it stems from within, from below, not from above. Popular culture is the art of making do with what the system provides.”

Mezey and Miles explain that popular culture is what people do with the mass art that is being imposed on them by the dominant culture.

¹⁹Mezey & Miles at 97. See also pages 105-111 for a fuller discussion of the Birmingham School.

As a means of understanding the nuances, Professor Orit Kamir²⁰ has created her own a law-and-film methodology that uses three perspectives.²¹ Her premises are labeled and defined as follows: 1) “film paralleling law” because “some film’s modes of socio-cultural operation parallel that of the law” 2) “film as judgement” because “some films perform viewer-engaging judgment” and 3) “film as jurisprudence” because “some films contain popular jurisprudence.” (Kamir 2) Kamir illustrates her analytic framework by applying all three constructs to *Anatomy of a Murder*. Using “film as law,” Kamir identifies Paul Biegler, the lead protagonist in *Anatomy of a Murder* as one of the best cinematic examples of the “hero-lawyer” who relies on an honor code steeped in the use of honor and shame to show worth and social rank.²² Relying on W.I. Miller, *HUMILIATION: AND OTHER ESSAYS ON HONOR, SOCIAL DISCOMFORT AND VIOLENCE*²³, she explains that honor is a zero-sum game because not only must a man make clear that he will not tolerate his honor being violated, he must hold himself out as someone who is willing to take honor away from another.²⁴ Paul Biegler, exemplifies the hero/lawyer because he is “a dignified, honest, trustworthy, modest man, a perfect honorable gentleman, pure hearted and a loyal friend. A first rate legal professional underrated by his ungrateful community, he is also a man of nature, silence and seclusion- features that resonate with the purity of the American frontier. The sharp contrast with the eloquent, slick, big-city-lawyer, [Dancer played by George C. Scott], sent from Lansing to assist in the prosecution of the case emphasizes Biegler’s endearing country-bumpkin image and underdog position.”²⁵

Biegler, the hero/lawyer, evokes the same character as “professional” hero/cowboys in professional-plot westerns who are “an elite body that wields power, is socially independent and self-contained, yet make use of social institutions that depends on them.”²⁶ Our current concept of the ideal American lawyer is constructed by these fictionalized cowboy/lawyer/heroes. Biegler’s character is positive law progression from the image of cowboys, like the *Virginian*, who embody the concepts of natural law and are never expected to retreat.²⁷ Biegler supposedly brings equity and justice - a civilized “positive law” approach to the natural law conduct of the

²⁰Professor Kamir was a student of James Boyd White at the University of Michigan who is renowned for his work in rhetoric, law, and culture as a means of understanding community, justice and judgement. Kamir, 2006 pg 3 referring to his books, *The Legal Imagination* (Little Brown, 1973), *When Words Lose their Meaning* (University of Chicago Press, 1984) and *From Expectation to Experience* (University of Michigan Press 1999).

²¹Orit Kamir, *Framed: Women in Law and Film*, 1-5, 112-131(Duke University Press 2006) (hereinafter Kamir, 2006); Kamir, 2005, 68 (2005).

²²Kamir, 2005, 69. See also, Kamir 2006, 5-10 for a more general discussion of her theories on honor and dignity and 115-120 on its application to *Anatomy of a Murder*.

²³ Ithaca: Cornell University Press (1993).

²⁴Kamir, 2005, 69.

²⁵Kamir 2005, 75.

²⁶Kamir, 2005, 76- 78 citing W. Wright, *Sixguns and Society: a Structural Study of the Western*, 183 Berkeley. University of California Press (1975).

²⁷Kamir, 2005,80-81.

cowboy.²⁸ Thus, we see Kamir's frame of "film paralleling law" because the socio-culture in the film parallels the socio-culture of the law.

Does Biegler live up to this ideal by defending honor? If so, whose honor? Is this the model of professionalism we want to teach? If not, what does the modern literature on professionalism tell us about his conduct.

The Narrative and the Point of Focus

Women in an honor society are expected to be sexually pure and any violation of her purity dishonors her husband and/or father and other male family members who then must avenge her because the violation is really against the men. She is not a separate being.²⁹ The issue in the trial that is the focus of *Anatomy of a Murder* is whether Frederick Manion is guilty of murdering the man who allegedly had some kind of sexual encounter with Manion's wife, Laura Manion.³⁰ The film resurrects the nineteenth century debate about the "unwritten law" that excused men of murdering men who had unmarried sex - both unconsenting and consenting- with a man's wife, daughter, or sister.³¹ By the twentieth century, it was recognized that women might have consensual sexual relationships outside of marriage, so the "unwritten law" was modernized to only forgive revenge killings in the cases of rape.³² Biegler explains to Frederick Manion that the unwritten law is "not the law," and thus he needs another "legal excuse" why he should not be found guilty.³³ Ostensibly, the jury in the film is asked to decide whether Frederick Manion was operating under an "irresistible impulse" and thus should be excused from criminal liability for the murder. Nevertheless, the trial in the film primarily focused on whether Frederick Manion was justified in murdering Barney Quill because Quill violated Frederick Manion's honor by raping Laura Manion. The jury in the film, and certainly the audience, are thus focused on the "unwritten law" and the men's honor were the critical issue.³⁴ In the end, as is discussed below, Biegler feels the trial is really about his honor which causes him to create a serious ethical issue for himself.

²⁸Kamir, 2005, 76-78.

²⁹Kamir, 2005, 70-71; See also Kamir, 2006, 11-40 where Kamir generally explains her feminist analysis of women, film, and law and then 127-130 when she applies it to *Anatomy of a Murder*.

³⁰In the film and in much of the discussion of the film, Frederick Manion is referred to as "Manion" and all of the men seem to be identified by their last name. Laura Manion is simply referred to as "Laura." For clarification, both names will be used for the Manions and only last names will be used for the rest of the characters.

³¹Kamir, 2006, 117.

³²Kamir, 2006, 117.

³³This exchange constitute the scenes in the film that most professional responsibility texts and scholars have focus on. Manion astutely reads from Biegler's questions that he needs to provide facts that Biegler can use to fit into a legal construct so Manion suggests he is "mad" or "crazy." The ethics issue is whether Biegler induced Manion to manufacture the facts. Biegler finds an old Michigan case that includes the concept of "irresistible impulse" as part of the definition of insanity even though the modern law requires proof that the defendant be incapable of telling right from wrong.

³⁴Kamir, 2006, 117-127.

In the film, Laura Manion is very much a sexual being and has been described as “a voluptuous flirt.”³⁵ Kamir explains, “her vulgar, continuous flirtation with Biegler, as well as with every other man in the film throws her way, begs the suspicion that she may have been just as provocatively inciting in her dealings with Barney Quill, and/or that may be lying about the whole encounter.” In a Detroit News story entitled “When Hollywood came to the UP”, Vivian M. Baulch reports

“.....The story tells of a bartender murdered by an Army Lieutenant (Ben Gazzara) who claims the victim had beaten and raped his wife (Lee Remick). She supports her husband's version but no physical evidence supports the rape incident. The wife was a well known tramp about camp and was accused of lying to protect her husband. The defense (Jimmy Stewart) claimed that both were telling the truth and the husband became temporarily insane and killed during his rage over what happened to his wife.

..... Remick, according to Weitschat, "projects the proper mood and manner of the predatory female, who always seems to have men on her mind, but dissolves into a frightened girl on the stand." ³⁶

Cinematic techniques enhance this image of Laura Manion. For example, the music that is played when she makes an appearance evokes a mood of sexuality. Lighting, costuming, pacing, and camera angles all serve to make Laura Manion a sexual being. As such, she is suspect and thus the story she tells lacks credibility in the eyes of the 1950's movie audience and all the fictional characters in the film including her husband, the lawyers, and the jury. As is explained above, her credibility is critical to the case because only if she was raped was her husband justified in killing Quill.

The trial in the movie becomes a sparring match between the prosecutor and defense lawyer. The early scene in the film, when Biegler is discussing whether to accept the case with his sidekick Parnell, reveal that Biegler feels vulnerable and has a fear of losing:

Parnell: Did you give the lieutenant the well known lecture?

Biegler: If you mean, did I coach him into a phony story, no.

Parnell: Maybe you're too pure, Paul. Too pure for the natural impurities of the law. Could be that you owe the lieutenant the chance to find a defense.

Could also be that you might guide him a little, show him the way... and let him decide if he wants to take it.

Biegler: Anyway, I'm not the right lawyer for this fellow. He's insolent, hostile--

Parnell: You don't have to love him. Just defend him. What's the matter? Don't

³⁵Kamir, 2006, 124 quoting Hoff.

³⁶ Vivian M. Baulch, “When Hollywood came to the UP”, Vivian M. Baulch, Detroit News, <http://info.detnews.com/history/story/index.cfm?id=71&category=events>

you need a fee?

You know something? I think you might be a little bit afraid.

Biegler: Afraid of what?

Parnell: That you might get licked.

Biegler, is the pure, vulnerable, local cowboy/hero attorney who is pitted against a downstate Assistant Attorney General, Claude Dancer played by George C. Scott. Dancer is the slick city lawyer who frequently licks his lips and smirks as he steps too close to witnesses and asks difficult questions. Dancer, the “outsider” engages in courtroom and strategic games such as standing between Biegler and the witness so Biegler cannot see. Biegler makes a fuss so even naive audiences would be aware that Dancer was not “playing fair.” Another despicable act is springing a new witness on the defense without warning. The witness is a cell mate of Frederick Manion’s from the jail who testifies that Manion confessed his guilt, is getting great joy out of duping the unsuspecting Biegler, and is anxious to “kick his wife to kingdom come.” Biegler impeaches the jailbird with a presentation of his long rap sheet and implications he was promised leniency in exchange for his testimony. Biegler then dismisses the witness with disgust that condemns Dancer by association.

Laura Manion becomes a foil for these two lawyers as they attempt to trump each other. Dancer tries to impeach her with classic strategies for attacking the credibility of rape victims. He asks her about her divorce, whether she goes to the bar at night without her husband, takes rides from other men, dances “barelegged,” and leaves her home without wearing panties. The implication is that any or all of these actions show she lacks the character of a “good girl” which means she is not credible. Modern evidence law does not allow for the general impeachment of character to prove veracity, only character for truthfulness or untruthfulness,³⁷ specific acts are not admissible even if character for veracity is attacked,³⁸ and almost all jurisdictions have limitations on the admissibility of prior sexual activity of victims of sexual assault in criminal cases.³⁹ So, Dancer’s line of questions that only go to character but not character for truthfulness or veracity would be inadmissible today.

Dancer’s other theory of impeachment is that Laura Manion is just plain lying and he attempts to show this by exposing the inconsistencies in her and her husband’s stories. If he could tell his version of the story, it would be that she had seduced Quill either that night and maybe at other times as well. She enticed him into giving her a ride home, had consensual sex with him in the car, and when she was confronted by her husband, he flew into a jealous rage, beat her up, and then went to shoot Quill. Dancer’s theory of the case is that Frederick Manion is a violent man who is prone to outbursts of anger so his claim to a one time “irresistible impulse” is a fabrication. The story of the rape was cooked up by both Laura and Frederick Manion as a means of allowing him to escape his guilt.

³⁷See e.g. Federal Rule of Evidence 608.

³⁸See e.g., Federal Rule of Evidence 608.

³⁹ See e.g. Federal Rule of Evidence 615.

Seen through a modern lens, moments in the movie and Dancer's cross examines of Laura Manion expose the story of victim of domestic abuse. When Laura Manion meets Biegler for the first time at the start of the film, she has a black eye and tells him that she has bruises in more intimate parts of her body that she offers to show him. She informs Biegler that Barney Quill inflicted the injuries and at these stage, the audience might believe that. Biegler suggests that Laura Manion meet him when he goes to see Frederick Manion for the first time the next day. The couple display such coldness and formality to one another during this encounter, that Biegler, who is portrayed as an astute judge of human nature, dismisses Laura Manion and says he will see her later. Thus begins Biegler's journey towards the ethical dilemma that is the focus of this article. He is clearly aware of the tension between the husband and wife and must wonder about the source of the conflict. The actors provide an incredibly subtle performance that telescopes a likelihood of domestic violence to modern viewers. Laura Manion is hesitant and solicitous towards her husband and he is stand-offish, but gives her a look that sends a message that she best behave "or else." We learn that she leads an isolated existence in a trailer where she has no phone, no friends, no job, no independent income, no transportation, and no freedom to of movement.⁴⁰

Denial of the severity and cause of injuries is common amongst victims of domestic violence. Batterers become quite adept at signaling threats to their victims so that even without actual abuse, the victim knows she must obey his wishes. Isolation is one of the tools of batterers to keep control of their victim which is their primary objective. When Dancer is cross examining Laura Manion, he asks her if Frederick Manion is jealous which is another characteristic of perpetrators of domestic violence because they do not want to every lose control of their victim.⁴¹ If seen through Biegler's lenses of the 1950's and 1960's, which was before the characteristics of domestic violence were acknowledged to be a recognizable pattern of behavior, it could be argued that Biegler did not know or would not reasonably have known⁴² that Frederick Manion hit his wife. He might suspect it given his observations of the players and his understanding of human nature.

Biegler objects that the question about jealousy is vague. Nevertheless, Dancer continues the line of inquiry and Laura Manion admits that at a party in Thunder Bay, a lieutenant had been giving her too much attention. After Frederick Manion confronted the lieutenant, Frederick Manion took Laura Manion outside and hit her in front of eye-witnesses. On the stand, Laura Manion confesses to all of this because Dancer reminds her that he could have the eye-witnesses testify. Thus, Biegler has now heard evidence that at one time, Frederick Manion hit his wife and

⁴⁰ See e.g., Nina W. Tarr, *The Cost to Children When Batterers Misuse Orders for Protection in Custody Cases*, 13 *S. Cal. Rev. L. & Women's Stud.* 35, 54 (2003); Nina W. Tarr, *Civil Orders for Protection: Freedom or Entrapment*, 11 *Wash. U. J.L. & Pol'y* 157, 158, 160 (2003).

⁴¹ See e.g., Nina W. Tarr, *The Cost to Children When Batterers Misuse Orders for Protection in Custody Cases*, 13 *S. Cal. Rev. L. & Women's Stud.* 35, 54 (2003); Nina W. Tarr, *Civil Orders for Protection: Freedom or Entrapment*, 11 *Wash. U. J.L. & Pol'y* 157, 158, 160 (2003).

⁴² See discussion *Infra*.

other witnesses would be available to corroborate the incident.

Laura Manion admits on cross examination that Frederick Manion “slapped” her the night of the murder. Laura first attempts to deny that he “hit her” and then minimizes it as only a “slap” to bring her to her senses. Like many victims of domestic violence, Laura attempts to deny the reality of the violence and defend her batterer. She testifies that Manion forced her to swear on a rosary that she had been raped. Dancer suggests that her motivation for swearing on the rosary that she had been raped was to keep Manion from hitting her more. In the heat of the cross examination, he asks if the real story is that Manion had confronted Laura with Quill near the car and beaten her up. When they came back to the trailer, she swore on the rosary to stop the violence. Laura never gets to answer these accusations, but there is strong implication that he has the correct story.⁴³

Laura Manions’s story, even if she is trying to hide it, is that at different times, Frederick Manion clearly humiliated her, hit her, was jealous, and had isolated her from the outside world. In all likelihood, “the slap” that night caused the black eye and the rest of her bruises. While the jurors deliberate, Biegler sees Laura Manion in the hallway of the court house and she appears to be intoxicated. She is confident that her husband will be released and given all that has gone before, one wonders if she is bracing herself for the inevitable violence she knows is in her future. At the end of the movie, after Fredrick Manion is acquitted, he and his wife sneak out of town without paying their legal fees. The caretaker reports to Biegler, who comes to collect his fee, that Laura Manion was crying as they left and this could be interpreted as further evidence that she is trapped in a violent relationship.⁴⁴

Whether or not Frederick Manion “beat” his wife becomes the focus of a fierce battle between Biegler and Dancer as Biegler feels increasingly cornered. Biegler’s personal honor is at stake. By this time, arguably, Biegler knows or reasonably should know that Manion has hit his wife, the night of the incident or before, because credible evidence has been presented. Biegler’s ego drives him to ignore the evidence and so he insists that on redirect Manion answer “straight out” whether he ever “beat his wife” on that night or at any other time. Manion is thereby forced by his own lawyer to choose between admitting he is a wife beater and hurting his case or lying. He lies.⁴⁵

Under the American Bar Association Model Rules of Professional Conduct, Rule 3.3 (a)(3), a lawyer is prohibited from knowingly offering evidence that the lawyer knows is false. As

⁴³If Dancer’s theory is correct, the subsequent production of the famous lost panties, even if torn, are could arguable be irrelevant because they only indicate that Laura Manion lost them in the car. The tear could have been the result of passion, poor quality, or violence but we will never know.

⁴⁴In addition to the film, see Kamir 2006, 126-127.

⁴⁵ If the language of the film is viewed through a modern lens, the slap and the hit on previous occasions and the night of the murder constitute “beating”.

the Comment 7 to Rule 3.3(a)(3) indicates, the Rule applies to criminal defense lawyers,⁴⁶ so if Biegler were in a modern courtroom, a Rule similar to Rule 3.3 would arguably constrict his behavior. A lawyer is permitted to refuse to offer evidence if the lawyer “reasonably believes” the evidence is false.⁴⁷ We are not dealing with a situation where a client is either implicitly or explicitly insisting on presenting false evidence to the trier of fact which is the more common problem.⁴⁸ Rather, in *Anatomy of a Murder*, it is the defense counsel asking a question that will elicit a response the lawyer knows or reasonably should be expected to know is false. Biegler is presented as an insightful man who can read human nature. He has seen and heard everything discussed above which would lead even a less astute person to realize that Manion had hit his wife. Nevertheless, in the heat of the competition, he insists that Manion explicitly answer the question. This is the teachable moment for students of professional responsibility. What is knowledge? Under ABA Model Rules of Professional Conduct, Rule 1.0(f) “knowingly,” “known,” and “knows” denotes “actual knowledge of the fact in question.” The lawyer must have a “firm factual basis” or the evidence must be “beyond a reasonable doubt.” However, what “knowledge” means remains unclear.⁴⁹ Does Biegler step over the line? If so, what motivates him and is there any rationale for his conduct?

So, the hero/cowboy, who is to exemplify all that is good about the champion lawyer, exposes the foible that “honor” is about ego. He cares more about himself than his client. Whether he suborned perjury by telling Frederick Manion a defense and then asking for a story at the beginning of the film is an interesting issue. However, there is also much to be learned about the adversarial process, honor, ego, heroes and ethics at the end of this film as well.

Professionalism, Civility, Power & Ego

Attempts to define the concepts of “professionalism and civility” for modern American lawyers have taken many turns including the vision of the original American Bar Association which was formed to keep the immigrant, non-protestant riff-raff out of the profession in the early 1900's⁵⁰; the development of honor codes, ethical rules, and now the Model Rules of Professional

⁴⁶Comment 7, ABA Model Rules of Prof. Conduct, Rule 3.3.

⁴⁷ABA Model Rules of Prof. Conduct, Rule 3.3(a)(3).

⁴⁸ The scene in the film in which Biegler is interviewing Frederick Manion for the first time provides the opportunity to discuss how to deal with a client who wants to fabricate a story to gain an acquittal. See e.g. *Nix v. Whiteside*, Biegler’s duties to his client who wants to give false testimony would depend on the jurisdiction. However, as Comment 9 to the Model Rule 3.3 acknowledges, if Biegler “reasonably believed” the evidence was false, he would be required to defer to his client’s choice to present it. Only if Biegler “knew” it was false could he refuse to participate in the presentation of the evidence. Even then, depending on the jurisdiction, he might have to allow his client to engage in a narrative without the benefit of the lawyer asking questions. See also Comment 8 to Model Rule 3.3.

⁴⁹ Nathan M. Crystal, *False Testimony by Criminal Defendants: Still Unanswered Ethical and Constitutional Questions*, 2003 U. Ill. L. Rev. 1529, 1534-1537 (2003).

⁵⁰See Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (Oxford

Conduct,⁵¹ studies by commissions such as “Stanley Commission” that issued a “Blueprint for the Rekindling of Lawyer Professionalism,”⁵² “civility codes” passed by various States; Rule 11 of the Federal Rules of Civil Procedure;⁵³ required courses in professional responsibility in all law schools;⁵⁴ and Continuing Education Requirements that mandate a minimum number of hours in “ethics.” Who is the upright lawyer who balances the obligations to the client, the role of officer of the court, a duty to improve the law, serve society by seeking justice, while still make a living?⁵⁵

Austin Sarat points out the concept of professionalism is “elastic”⁵⁶ and heavily influenced by culture, time, and place. As a term, language about “professionalism” has been criticized as self-serving platitudes to maintain a monopoly and market services to the public.⁵⁷ Alternatively, the term is used as a term to create an exclusionary insider group that exclude outsiders from the profession. Nevertheless, Sarat argues that professionalism provides lawyers a “map” that he defines as follows:

At the heart of this idea of lawyer professionalism is a vision of autonomy and ethical practice, of civility and decorum in the daily life of lawyers, and of lawyers committed to and regulated by a set of principles encoded in the profession's Model Rules. The image of lawyer as statesman looms large as the unspoken model to which lawyers should aspire. In this image, lawyers' ethics go beyond strict adherence to professional rules. Rather, they reflect the dictates of practical wisdom, a capacious sense of the public interest, and a judicious ability to see and reconcile the client's long-term interest with the

University Press 1976).

⁵¹ See e.g., George M. Cohen, The Multilayered Problems of Professional Responsibility, 2003 U. Ill. L.Rev 1409, 1411 where the author explains that the Rules of Professional Conduct provide the architecture of lawyers’ professional conduct.

⁵² Austin Sarat, Enactments of Professionalism: a study of Judges’ and Lawyers’ Accounts of Ethics and Civility in Litigation, 67 Fordham L. Rev. 809, 811-812 (1998).

⁵³ See e.g. Peter A Joy, The Relationship Between Civil rule 11 and Lawyer Discipline: An Empirical Analysis Suggesting Institutional Choices in the Regulation of Lawyers, 37 Loy.L.A.L. Rev. 765, 778-810 (2004).

⁵⁴ American Bar Association Standard for Accreditation of Law Schools, Standard 302(5).

⁵⁵ See e.g. Eugene R. Gaetke, Expecting Too Much and Too Little of Lawyers, 67 U. Pitt. L. Rev. 693, 699-701,(2006).

⁵⁶ Austin Sarat, Enactments of Professionalism: a study of Judges’ and Lawyers’ Accounts of Ethics and Civility in Litigation, 67 Fordham L. Rev. 809, 815,818 (1998) where the author explains the elasticity of the concept of professionalism.

⁵⁷ Sarat, 814-816.

best interests of both law and the society it serves. ⁵⁸

Despite language about civility and decorum, for civil and criminal trial lawyers, zealotry is the defining concept for a highly successful lawyer.⁵⁹ Trial lawyers must be aggressive, tough and willing to stand up in any fight.⁶⁰ These terms capture Paul Biegler as he battles Dancer in the Courtroom. The term “zealotry” was eliminated when the Code of Professional Responsibility was converted to the Model Rules of Professional Conduct⁶¹ and Deborah Rhode has forcefully argued that research shows that it is not the most effective means of achieving the truth.⁶² Nevertheless, it is imbedded in the cultural norms of the adversary process and any study of professional responsibility must address the parameters of what is acceptable. An excellent example of the consequence of overzealotry is Biegler pressing Frederick Manion to answer whether he has ever beaten his wife. The audience can feel his frustration, empathize with his sense of righteousness, and yet be objective enough to see how he errs. Here we see Omit Kamir’s analytic framework of “film as judgment”⁶³ because the audience can step back and judge the lawyer’s actions. As a learning tool for lawyers, the question will be whether they can take the lessons learned from the film and be self-reflective enough to know when they themselves stand on the same brink. In addition, what might a lawyer say to himself or herself to rationalize after the fact if he or she does elicit a lie?

Professor Elkins suggests that one of the values of using film to teach law students is it is an opportunity to see power vanquished.⁶⁴

We find in lawyer films a world in which the wild energy of the lawyer represents an elemental form of truth, which stands in opposition to the ways of power and its destructive potential. We watch film (and television) to escape the seething sense of futility and powerlessness we experience in the world we now inhabit. If we realize in watching lawyer films some deep desire to see the powerful opposed, to see them whine and wither as they confront defeat, prompting some nascent hope that the corruption of power can be comprehended and demystified, and from time to time defeated, then we will have found in lawyer films a worthwhile purpose. When lawyer protagonists come to grips with power, either power out in the world or the sense of powerlessness in their own lives, we are touched at some deep place where desire remains unsettled and unsatisfied.

Biegler is in some ways the lawyer protagonist who is to speak truth to powerful forces

⁵⁸ Sarat, 816.

⁵⁹ Sarat, 818, 819 quoting, David Luban, *Lawyers and Justice: An Ethical Study* at xix (1988).

⁶⁰ Sarat, 819, 20.

⁶¹ Model Code Dr 7-101 & 7-102; Benjamin H. Barton, 83 N.C.L.Rev. 411 (2005).

⁶² Deborah L. Rhode, *The Profession and the Public Interest*, 54 Stan. L. Rev. 1501, 1503 (2002).

⁶³ Kamir, 69.

⁶⁴ James R. Elkins, *Law in Film/Film in Law: Reading/Teaching Lawyer Films*, 28 Vt. L. Rev. 813, 862 (2004).

that conspire against his client who has been wronged. Yet, when Biegler's personal competitiveness and self-righteous indignation drives him to force his client to lie on the stand, there is a rich opportunity to discuss how power corrupts even those who intend to "do good." Biegler is in a power struggle with Dancer and wants to win. If he stands for virtue, may he use a lie to vanquish the competitor who stands for abuse of power? Given the contemporary culture of law and order and desire for security, if this movie were made today, one suspects that the prosecutor would be cast in the role of the defender of justice and goodness on behalf of Laura Manion, while the defense lawyer would wear the mask of the manipulator who uses tricks to save a guilty client. Regardless of who wears the mantle of righteousness, will that lawyer be forgiven for engaging in unethical lawyering in order to vanquish the other who misuses power?

Carrie Menkel-Meadow argues that those fictional lawyers who popular culture portrays as heroes occasionally "bend a rule" or make an ethical mistake in the name of the justice or greater good that they seek.⁶⁵ She says "Note that heroic lawyers sometimes, not always, seek the truth (that is the "honor" of scientists and academics). Justice occasionally requires an untruthful turn. The ironies of many stories about lawyers are that a lawyer seeking justice must occasionally trample on the truth or on an ethical rule to get there." However, Biegler's questionable ethical conduct when he presses his client is about his own needs, not the greater social good.

In 1998, a group of sociologists interviewed groups of civil defense lawyers in large law firms to examine their attitudes about professional issues "beyond the rules of ethics."⁶⁶ The language that the lawyers used indicated that they were comfortable to talk about "rules" and "norms" but not about ethics, morality, or other philosophical terms.⁶⁷ Rather than identifying "misconduct" when referring to unacceptable behavior, they rely on used other terminology such as "'assholes" and "junk-yard" or "attack dogs." *These comments were made all the more unexpected to the non-lawyers among us by the fact that defense lawyers identified "incivility" and "rudeness" as what they considered to be some of the most offensive behavior in which overly aggressive litigators in large firms engage.*⁶⁸ These lawyers were seen as having a "pragmatic" approach to ethics. The 1998 result into the large firm defense lawyers' perspectives

⁶⁵Carrie Menkel-Meadow, Can They Do That? Legal Ethics in Popular Culture: of Characters and Acts, 48 UCLA L. Rev. 1305, 1316 (2001).

⁶⁶ See e.g. **Error! Main Document Only.**Carla Messikomer, Ambivalence, Contradiction, and Ambiguity: The Everyday Ethics of Defense Litigators, 67 Fordham L. Rev. 739 (1998).

⁶⁷ See e.g. **Error! Main Document Only.**Carla Messikomer, Ambivalence, Contradiction, and Ambiguity: The Everyday Ethics of Defense Litigators, 67 Fordham L. Rev. 739, 742 (1998). "**Error! Main Document Only.***Even the cardinal principles of Anglo-American analytic philosophy, such as autonomy, beneficence, non-maleficence, justice, equity, and fairness--which one would suppose to be highly compatible with the logico-rational, positivistic, utilitarian attributes of the American legal system and legal thinking--were eschewed.*"

⁶⁸ Id at 742.

provide insight into how behavior such as Bieglers may be seen as acceptable. He was being cornered by Dancer who was the “asshole, junk-yard, attack dog” so Biegler was justified in defending himself. He was responding to Dancer with like-kind behavior. If this rationale is acceptable, or even seen as sympathetic, it means that all lawyers’ behavior can seek to the lowest common denominator.

The literature on “cause lawyering” such as Margareth Etienne’s piece, *The Ethics of Cause Lawyering: Empirical Examination of Criminal Defense Lawyers as Cause Lawyers*, 95 *J.Crim L. & Criminology* 1195 (2005)⁶⁹ provides another analytical framework for examining Biegler’s conduct. Etienne inquires whether criminal defense lawyers who are motivated by moral and ideological principles have ethical conflicts because they do not adopt the mantle of a neutral whose only responsibility is to represent the individual client’s interest. If lawyers are activists who use a case to make social change or change the law, can they adequately represent an individual client? She held forty interviews with defense lawyers to study what motivated them and the impact of their personal agendas on their clients’ interests. She ultimately concluded that criminal defense lawyers who are passionate about their moral visions can sometimes be more effective than the lawyer who believes in taking a neutral stance. She suggests that ethical and professional norms should accommodate this perspective. Nevertheless, she admonishes that the client’s goals must take priority over the attorney’s cause be it personal or political.

Is Biegler a “cause” lawyer and what might be the “cause” that Biegler sees himself fighting for? In retrospect, as Kadir points out, Biegler is responsible for protecting the honor of the man whose wife has been raped – or even sexually active – or even simply a sexual being. Given the social construct of the time, sexuality or non-marital sexual activity short of rape could all have offended men’s honor and thus Biegler is seen as the hero as he defends Frederick Manion’s interest. If this was Biegler’s cause, it was consistent with Manion’s so long as the defense of the cause did not interfere with the goal of achieving an acquittal. Once Biegler’s cause becomes personal, under the accommodating standard that Etienne suggests, his client’s interests should have trumped his own.⁷⁰

⁶⁹ See also Marc Galanter, *The Faces of Mistrust: the Image of Lawyers in Public Opinion, Jokes and Political Discourse*, 66 *U.Cin.L.Rev.* 805, 813- 815 (1998) in which the author discusses the backlash against the concept that lawyers have a duty to social justice.

⁷⁰ Can Biegler’s actions be justified from a trial strategy perspective? Was Biegler was forced to ask Frederick Manion the question? At the outset, there is a strong argument that Dancer’s relentless preoccupation with whether Frederick Manion hit is wife was misplaced – it is an irrelevant point that would have been best down played or brushed aside by the defense. Nevertheless, Biegler became increasingly defensive and agitated about Dancer’s implications. Dancer’s theory was Frederick Manion is a violent person and certainly Biegler as called upon to respond to that general evidence. Even though Frederick Manion was an unpredictable, volatile witness, Biegler made the risky decision to use him to prove his non-violent nature.⁷⁰ The decision to take the stand falls into the small group of trial strategy decisions that a client, as

So, given the risky nature of the question, why did Biegler ask it? At that moment, his cause was his own honor – his own ego. It can be argued that he lost sight of his client’s interest in an acquittal or was at least willing to take a risk and ask the question because he wanted so badly to show the jury, and the audience, that Dancer was wrong - which meant that he, Biegler, was right. The power struggle became triangulated: Frederick Manion’s interests vs. Biegler’s and Biegler’s vs. Dancer’s. Thus, we have the perfect scenario to examine how a lawyer, in the heat of a conflict with another lawyer, can lose so much perspective that the client is caught in friendly fire...either lie or make a statement that hurts your case.

In his 1998 article, *The Faces of Mistrust: the Image of Lawyers in Public Opinion, Jokes and Political Discourse*,⁷¹ Marc Gallanter suggests that the public regard for lawyers was at one of its highest levels in the 1960s and uses Biegler in *Anatomy of a Murder* as an example of how film reflects culture. Gallanter goes on to say that public opinion of lawyers in the 1980s and 1990s was despoiled, and that the television and film characters of that period exposed the background action and human side of lawyers so the clear dichotomy between the all good or all bad lawyer became blurred.⁷² A 2007 perspective of Biegler’s would counter Gallanter’s original statement of the pure hero and expose the Achilles heel of the hero/cowboy that was held in such esteem in the 1960s. The self-absorbed pre-occupation with personal honor, can compel the hero to make mistakes.⁷³

Some might argue that Biegler’s conduct does not matter because he “won:” his client was acquitted. The desire to win as defined as an acquittal is a component of the lore of the hero/lawyer/public defender. Abbe Smith, in *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathetic, Heroic Public Defender*, critiques Charles Ogletree’s paradigm of the motivations for public defenders. Smith points out that a desire for heroism and winning is insufficient to sustain a career as a public defender because so few cases are tried so the work is often humdrum, winning can be a hollow victory because of recidivism, and the role of the “hero” is troubling when taken on by white middle class public defenders in a system

opposed to the lawyer, must make.⁷⁰ Nevertheless, Biegler had a duty to advise his client about the risks of taking the stand and, if Biegler did such counseling, did anticipate how to deal with allegations of a violent character? Did foresee that he might ask the question about whether Frederick Manion had ever beaten his wife? Once Frederick Manion was on the stand, and Dancer had made such a point of his violent character, did Biegler have any other strategic options?

⁷¹ 66 U.Cin.L.Rev. 805, 811 & 812 (1998).

⁷² Gallanter, 66 U.Cin.L.Rev. 805, 815 (1998).

⁷³See e.g. Carrie Menkel-Meadow, *Can They Do That? Legal Ethics in Popular Culture: of Characters and Acts*, 48 UCLA L. Rev. 1305, 1305 (2001) in which the author suggests having students name their fictional legal icons to help them understand their constructed concept of great lawyers.

where most of the defendants are poor people of color.⁷⁴ Professor Smith suggests that a paradigm that includes respect, pride in a professional craft, and a sense of outrage are more likely to motivate public defenders to stay in the profession longer.⁷⁵

The fact the Biegler wins actually enhances the value of the scene as a vehicle for thinking about lawyer's conduct because it raises the eternally present question of how lawyers personally assess what is acceptable. Should it be what one can get away with or should there be internal restraints that constrict behavior? A different take on the film as is Biegler did not succeed professionally because his client ran off without paying him. Did the conduct of the trial, including that redirect, affect the client's satisfaction to the extent that he did not pay for his representation or was Frederick Manion just a deadbeat who frequently shirked responsibility for both a murder, his treatment of his wife, and his bills?

If Biegler personifies the hero/lawyer and his flawed behavior is attributable to his drive to protect his own and his client's honor which is a concept associated with paternalism and male privilege,⁷⁶ would he have asked the question if he were a she? In 1985, Carrie Menkel-Meadow published *Portia in a Different Voice: Speculations on Women's Lawyering Process*⁷⁷ in which she relied on Carol Gilligan's work on differences in women's development. Menkel-Meadow argued that women lawyers might change the practice of law because of their "ethic of care" that relied on relational, connected, contextual forms of reasoning that focus on people in contrast to men who rely on an "ethic of justice" based on a logical hierarchy of values and abstract universalistic principles. If Menkel-Meadow's 1985 theories were universally correct and Biegler were a woman, the trial would not have deteriorated to a clash of male egos and Ms. Biegler would have been alert to the emotions, context, and people. She would have been paying attention to the cues about Frederick Manion as a batterer – which would have meant she knew the question about whether he hit his wife was putting him in an impossible position. More importantly, the trial would not have been about her own ego as a champion in battle, it would have been about resolving the multi-faceted problems the case presented.

Menkel-Meadow's 1985 suggestions that women would transform the practice of law is now seen as a stage in the development of feminist legal theory that began with a desire to see women treated as the same as men and moved to a paradigm of viewing women as different but equal.⁷⁸ In 1994, Professor Menkel-Meadow revisited the theories that women would change the

⁷⁴ Abbe Smith, Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathetic, Heroic Public Defender, 37 U.C. Davis L. Rev. 1203, 1233-38 (2004) critiquing Charles J. Ogletree, Jr., Beyond Justifications: Seeking Motivations to Sustain Public Defenders, 106 Harv. L. Rev. 1239, 1271-94 (1993).

⁷⁵ Smith, 1243-1264.

⁷⁶ Kamir, fn 20.

⁷⁷ 1 Berkeley Women's L.J. 39 (1985).

⁷⁸ See e.g. Nancy Levit, Robert R.M. Vercheck, FEMINIST LEGAL THEORY, 15-38 (2006); Martha Chamallas, INTRODUCTION TO FEMINIST LEGAL THEORY (New York: Asped Publishers, 2d ed.2003); Kathryn Abrams, Legal Feminism and the Emotions: Three Moments in an Evolving Relations, 28 Harv. L. J. & Gender 325, 332 (2005);

practice of law in her piece *Portia Reux: Another Look at Gender, Feminism, and Legal Ethics*.⁷⁹ She cites sociologist Cynthia Fuchs Epstein⁸⁰ who concluded that there is a tremendous variation in the behavior of women who enter the practice of law so the differences are attributable to individual characteristics rather than simply gender. In other words, there is no essential woman lawyer. This “anti-essentialist” paradigm is associated with the deconstruction or “constructionist” that acknowledges how context and experience change how women experience the world.⁸¹ Critical race theory has followed a similar development and thus provides the insight that lawyers of color may experience the practice of law differently than their Caucasian counterparts, but there is no “essential” other that can be seen as a prototype.⁸²

Menkel-Meadow may have overstated her case in 1985 that women would transform the practice of law, but she made a major contribution to the dialogue that continues today about where women, and lawyers of color, fit into the constructed paradigm of the good lawyer. The question of whether it would have made a difference in the scene in the film if Biegler had been an “outsider” to the profession – a woman and/or a person of color – makes the a discussion of ethics or professionalism of his conduct even more interesting.⁸³ As Russell Pearce as pointed out, whiteness is a race, and serious students of professionalism must ask what difference it makes at each juncture.⁸⁴ Acknowledging differences and negotiating their impact is more effective than assuming everyone will be “bleached out.”⁸⁵ Scenes from films make very useful vehicles for opening these discussions because the audience can step back and evaluate the lawyer’s conduct from the comfort of an observer while still having the sense of players’ context, narrative, and motivation.

Conclusion

Anatomy of Murder was one of the first and continues to be one of the most dominantly used films for examining public and professional expectations about lawyers ethics and conduct. The lawyer hero who zealously represents his disagreeable client in the courtroom and is

⁷⁹ 2 Va.J. Soc.Pol’y and Law 75 (1994).

⁸⁰ Cynthia F. Epstein, *DECEPTIVE DISTINCTIONS*, 72-98 (1988).

⁸¹ Abrams, 333-336.

⁸² See e.g. Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 *Clinical L. Rev* 369 (2005); Susan Bryant, *The Five Habits: Cross-cultural Competence in Lawyers*, 8 *Clinical L.Rev.* 33 (2001); David B. Wilkins and G. Mitu Gulati, *Why Are so Few Black Lawyers in Corporate Law Firms: An Institutional Analysis*, 84 *Calif. L. Rev.* 493 (1996); Bill On Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Classes*, 45 *Stan. L. Rev.* 1807 (1993); Peter Margulies, *Re-Framing Empathy in Clinical Legal Education*, 5 *Clinical L. Rev.* 605 (1999); Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 *Clinical L. Rev.* 373 (2002).

⁸³ See e.g. Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 *Fordham L. Rev.* 2081, 2082-2083, 2087 (2005).

⁸⁴ Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 *Fordham L. Rev.* 2081, 2082-2084, 2089 (2005).

⁸⁵ Pearce, 2094-2098.

ultimately vindicated with an acquittal is one of the great icons, and myths, of the legal profession. Looking at from its own time in history and through a modern lens helps us understand the genesis of the complexity of the lawyers' images and dilemmas as they reconcile duty to the court, client, and profession. This article focuses on a scene that highlights the weakness of the honor code that perpetuates by an expectation that the individual lawyer has a responsibility to be the hero. The scene exposes the danger that the hero/lawyer will be so driven to save his own ego that he might step over an ethical line and ask his client to lie on the stand. There are arguments to be made on both sides whether Biegler's conduct is unethical in terms of the Rules of Professional Conduct and whether it is unacceptable from a broader professional perspective. There are even arguments that might rationalize his decision. The nuance and uncertainty portrayed by the scene make it all the more valuable as a vehicle for exploring professionalism from a variety of angles including the role of gender, race, and class play in how lawyers conduct themselves.