

The Noble Lawyer:

Professionalism in the Face of Adversity

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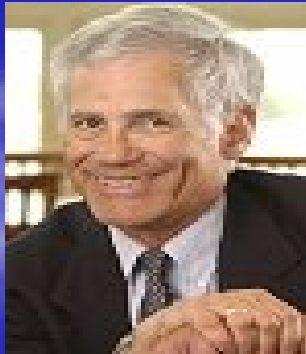
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LAW and CULTURE

derision and depression



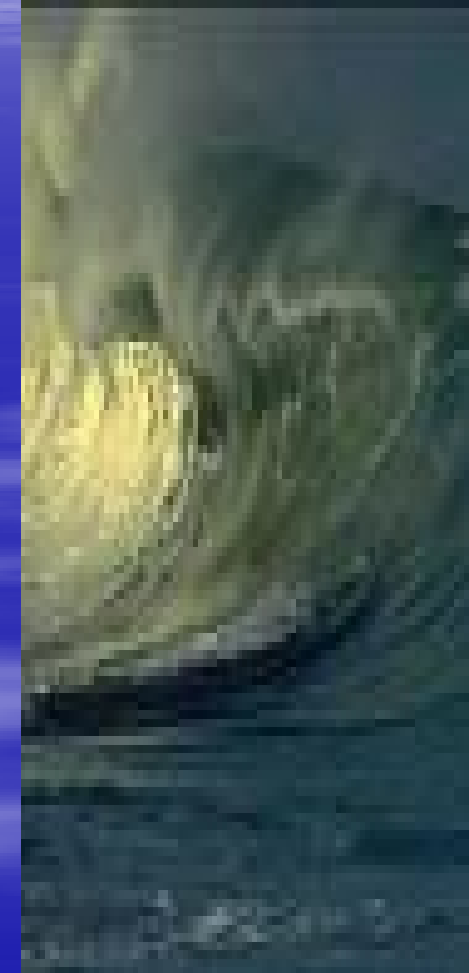
- Marc Galanter, Univ. Wisconsin, *Lowering the Bar: Lawyer Jokes and Legal Culture* (2005).



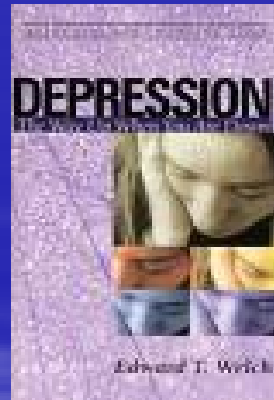
- Michael Asimow, "When Lawyers Were Heroes," 30 *U.S.F. Law Rev.* 1131 (1996); "Embodiment of Evil: Law Firms in the Movies," 48 *U.C.L.A. Law Rev.* 1339 (2001).

The Waves of the Future

- Galanter's 2004 study of federal courts from 1960 to 2000:
 - Decrease in percentage of cases actually tried from **11.5%** to **1.8%** while case filings actually grew).
 - The rate of summary judgments rose from **1.8%** to **7.7%**.
- John Lande's 2005 article: The "ecology of disputation" has radically changed because of ADR, globalization, and by the trend in most state courts away from traditional trials and toward summary dispositions.
- Contingent fees are dwindling where lawyer profitability argues against a steady diet of representation of mortal human beings, particularly in tort cases marginalized by subrogation recoveries and lower intangible damage awards.



Reasons these Problems are Important to Ethicists



- A Very Large Number of Serious Grievances are Attributed to:

- Substance Dependence
- Depression

Which in turn feed on low self-esteem and feelings of helplessness.

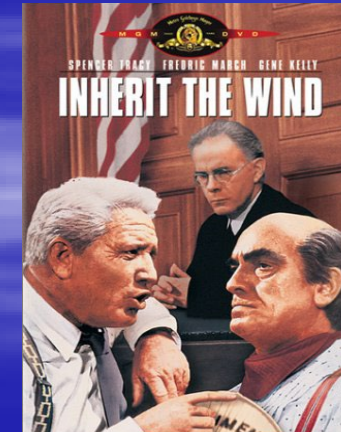
The Golden Age of Lawyering, 1950-1980: The Tort and Rights Revolutions



- Civil Rights
- The New Frontier
- Public defenders
- Miranda and the exclusionary rule
- Strict Product Liability
- Law and Economics
- Private Attorneys General

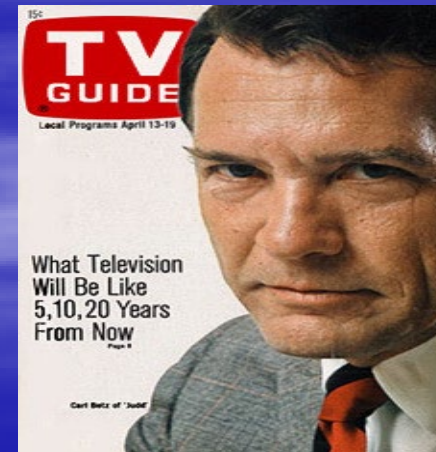
Law and Culture: Vintage 1960's (Movies)

Mockingbird: 1962; Witness 1957; Anatomy: 1959; Inherit 1960; Nuremberg: 1961

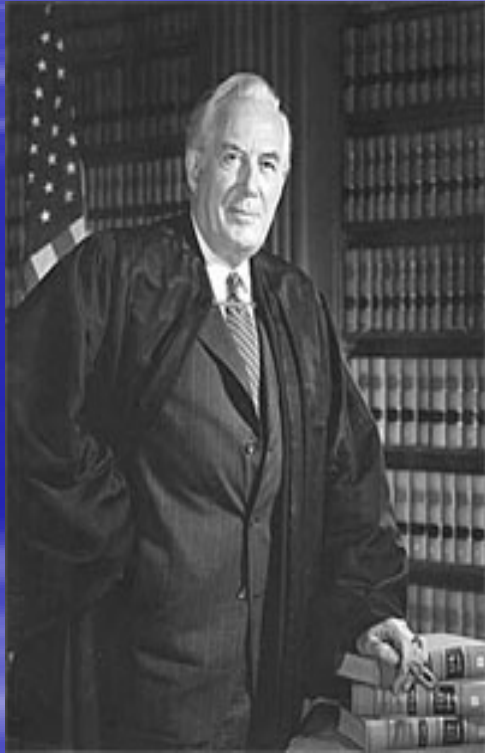


Law and Culture: Vintage 1960's (T.V.)

Mason: 1957-66; Defenders 1961-65; Judd: 1967-69 ; Marshall 1971-74

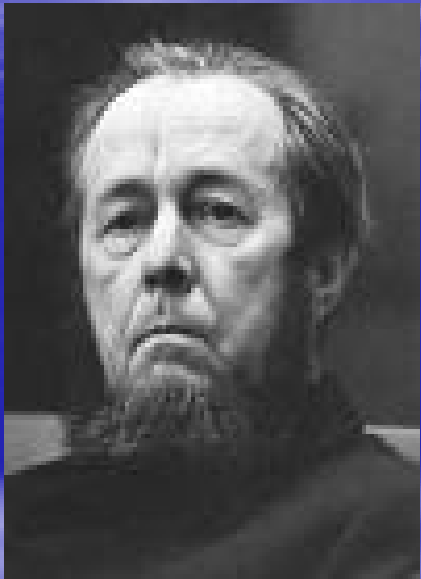


The late 1970's and the Ultimate Turn Against Law



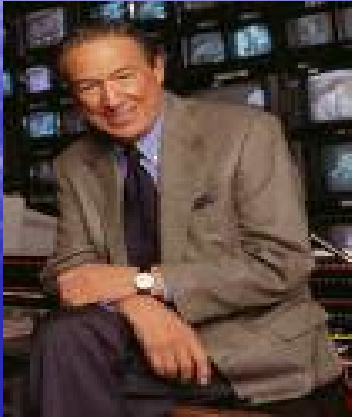
- Chief Justice Warren Burger's 1976 Pound Conference **speech:** *"Unless we devise substitutes for courtroom processes-and do so quickly-we ,may well be on our way to a society overrun by hordes of lawyers, hungry as locusts, and brigades of judges in numbers never before contemplated."*
- **1978 Newsweek:** "Americans in all walks of life are being buried under an avalanche of lawsuits."

Formalism Critiqued: Solzhenitsyn, Harvard 1978

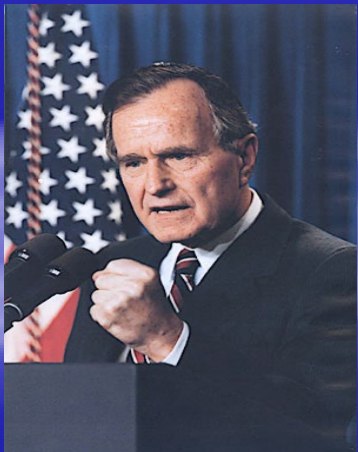


- “(In the West of today) Any conflict is solved according to the letter of the law...If one is right from a legal point of view, nothing more is required...One almost never sees voluntary self-restraint. Everybody operates at the extreme limit of those legal frames.”
- “I have spent all my life under a communist regime and I will tell you that a society without any objective legal scale is a terrible one indeed. But a society with no other scale but the legal one is not quite worthy of man either...”

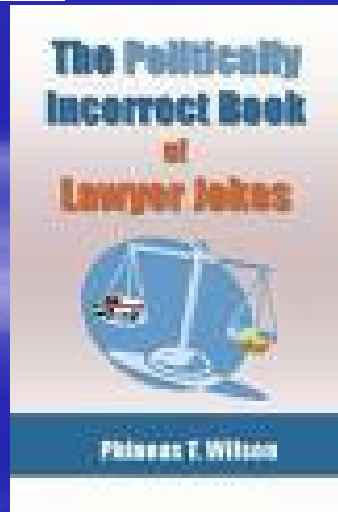
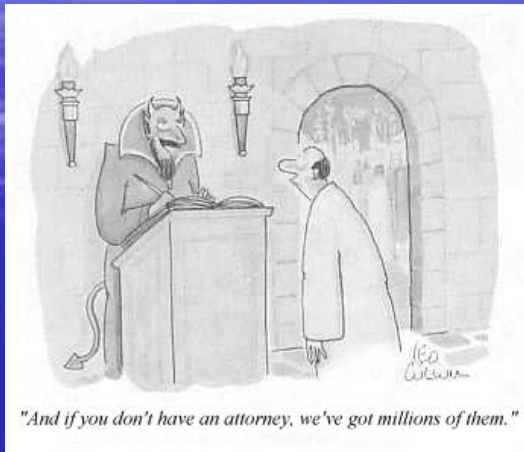
The Rest of the Story: 1988-1996



- 60 Minutes: “Justice for Sale”
- “Law Reform,” by laypeople beginning in Missouri, **Texas**, and California:
- **Wedge Issue**:
 - *NY Times* (August 31, 1992): The President's aides have found something they think is even scarier to voters than Willie Horton: ...sharp lawyers in tasseled loafers who, as Mr. Bush put it in his speech to the Republican convention, are running wild, terrorizing doctors and even Little League coaches with personal-injury suits, malpractice suits and other kinds of liability cases.



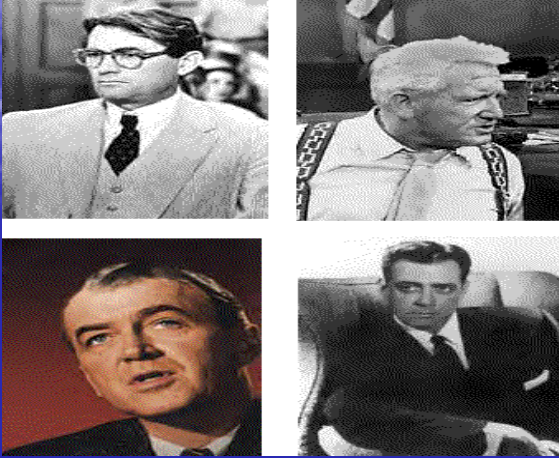
Backlash, Tort Reform, & Culture Wars: the Rise of Lawyer Bashing



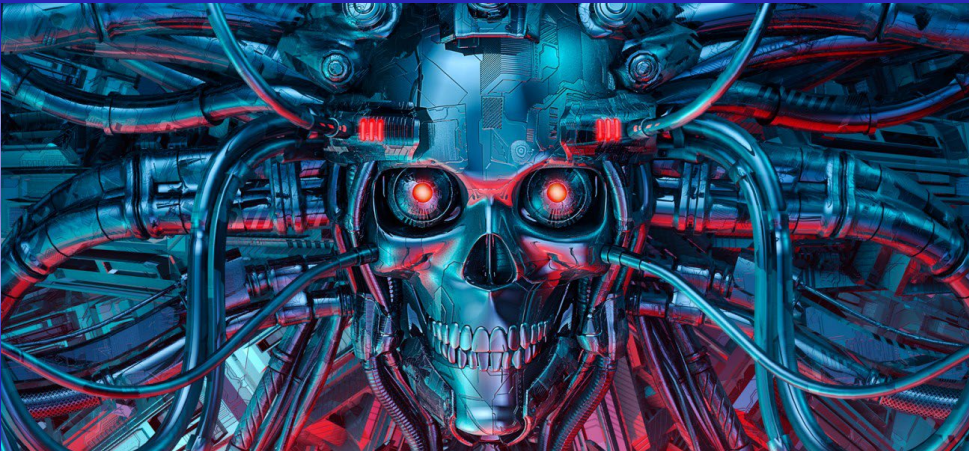
- There have always been lawyer jokes.
- But their number radically increased since 1985.
- And they have changed in substance.
- And they ushered in constant change in the law and lawyering, **which is disorienting.**

LAW and TECHNOLOGY

Disorientation and Depression



- Where is the joy?
- Where is the honor?



Law and Politics: Alienation and Cynicism



- Judges as Political Actors: Campaign Contributions and due process; *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).



- Judges as Political Victims: Primaries and Election Year Courthouse Sweeps

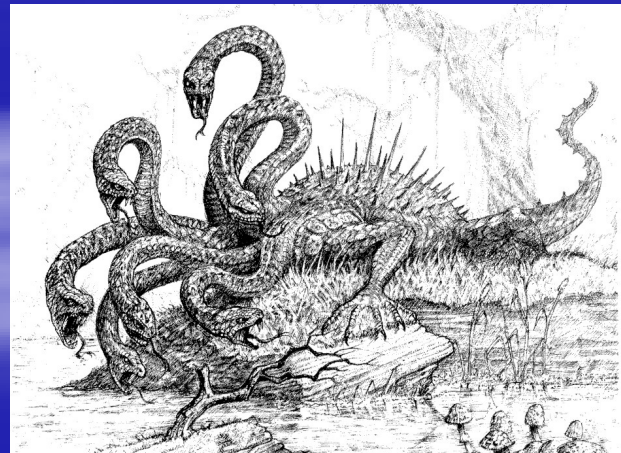
Plain Old Injustice



- Everyone deals with injustice sooner or later.
- Lawyers make a career of it.



Apophatic Professionalism: The *Unprofessional* Lawyer



- Uncooperative
- Unconcerned with truth
- Unconcerned with justice
- Unconcerned with resolution
- Often the first to make accusations of unethical behavior, DQ. “The Hydra.”
- Motivated by FEAR: fear of losing, of losing clients, of losing control

The Path to Professionalism



- “Attachment leads to suffering.”
--Siddhartha Gautama
- “If you realize that all things change, there is nothing you will try to hold on to.”
— Lao Tzu, *Tao Te Ching*
- “A man’s true wealth is the good he does in this world.”
--The Prophet Muhammad
- “He who trusts in his riches will fall, but the righteous will flourish like the green leaf.”
--*Proverbs* 11:28
- “Watch out! Be on your guard against **all kinds** of greed; life does not consist in an abundance of possessions.”
--*Luke* 12:15

Science Agrees



- For people with poor emotional well-being, happiness rises with income until \$100,000, then shows no further increase as income grows.

--Kahneman, Deaton, & Killingsworth, "Income and emotional well-being: A conflict resolved," *Proc. Natl. Acad. Sci. U.S.A.*, vol. 120, no. 10 (2023)

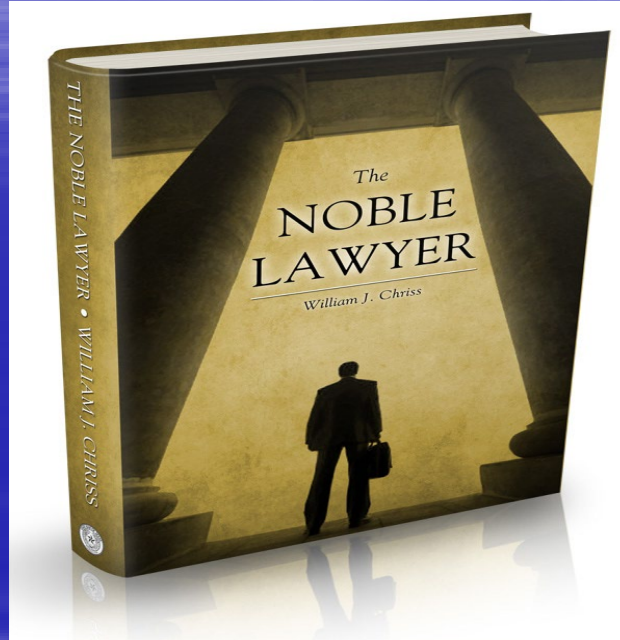
THE GOAL OF PROFESSIONALISM: The Answer of Steven Judd

- Wealth?
- Power?
- Fame?
- Prestige?



--Sam Peckinpah, *Ride the High Country*
(1962)

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