What I Know about Civil Litigation I learned from Movies

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Abstract

What single feature film about civil justice should I show my students if I show only one? I answer “A Civil Action,” the 1998 feature film based on a best-selling nonfiction book. First, “A Civil Action” the movie and *A Civil Action* the best-seller led to *A Documentary Companion to A Civil Action*, a compendium of formal, legal documents and filings that enable students to see how formal litigation transmogrifies disputes and transforms the sorts of justice that can issue from disputes. Second, “A Civil Action” better than any other film dramatizes the quest for settlement that orients litiga­tion far more than the unlikely eventuality of actual trial, verdict, or award. Third, I argue with less assurance that the plot of “A Civil Action” better con­veyscomplexities of disputing and litigating in sophisticated ways than do other feature films. Finally, I argue that “A Civil Action” at least matches alternative feature films in the range and complexities of cha­rac­­­terizations of lawyers and judges beyond chronic stereotypes and carica­tures. Having established excellences absolute and relative in “A Civil Ac­tion,” I conclude that “A Civil Action” can and will do little to overcome the wealth of misinformation fostered by movies about civil litigation.

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**The Introduction**

In this peculiar conference paper with pretensions to becoming a pedagogical note, I assay contributions of the feature film “A Civil Action” to understanding civil litigation[[1]](#endnote-1) in the United States of America. I argue that “A Civil Action” features multiple, absolute virtues and advantages relative to other feature films that prominently feature non-criminal litigation.[[2]](#endnote-2)

In Section One [§1] of this note I pose my research problem: “What single feature film about civil justice should I show my students if I show only one?” In the remainder of this note I answer that problematic question with “A Civil Action,” the 1998 feature film based on a best-selling nonfiction book. I answer “A Civil Action” first [§2 “The Companion”] owing to *A Documentary Companion to A Civil Action*, a compendium of formal, legal documents and filings that enable students to see how formal litigation transmogrifies disputes and transforms the sorts of justice that can issue from disputes. I answer “A Civil Action” second [§3 “Litigotiation”] because that film better than any other of which I am aware dramatizes the quest for settlement that orients formal litigation far more than the unlikely eventuality of actual trial, verdict, or award. Having established with some assurance that complementary materials [§2] and attention to settling rather than trying lawsuits [§3] make “A Civil Action” a superior choice, I with less assurance argue in § 4 [“The Story”] that the plot of that feature film better conveyscomplexities of disputing and litigating in sophisticated ways than do other feature films. Then [§5 “The Practitioners”] I argue that “A Civil Action” at least matches alternative feature films in the range and complexities of its charac­terizations of lawyers and judges beyond chronic stereotypes and caricatures. All the above written, in the concluding section, I remind readers that, precisely because “A Civil Action” differs from other films so greatly, “the master discourse of tort films” should be expected to prevail and persist.

**§1 The Problem**

As the title of this paper suggests, I presume that much of what even educated Americans know about civil litigation they have picked up from movies.[[3]](#endnote-3) Since movies long have teemed with misinformation and disinformation [caricatures, myths and urban legends, images, stereotypes, and oversimplifications, and fictions, falsehoods, fallacies, factlets, and factoids[[4]](#endnote-4)], educated Americans repeatedly have been exposed to infotainment that misinforms and disinforms. Infotainment—po­pular entertainment that conveys what audiences may take to be information—succeeds commer­cially through depictions that correspond to and build on knowledge and beliefs that filmgoers bring into theaters [or screens] systematically, chronically reinforce misinformation[[5]](#endnote-5) that becomes the pre­sumed reality from which not just later dramatizations follow but upon which politicking and govern­ing build. I do not imagine that educators can do much about such chronic, systematic, profitable misinformation. Hence, that large-scale problem is not the subject of this paper.

Instead, I concern myself in this paper with a problem much smaller and maybe more trac­table. If educators can do little to stymie the misinformation in the vastly wider culture, they should nonetheless do what little they can. Educators should attend to the focal moments between what students bring into classes and what students will face when they graduate. Hence, the audience I anticipate in writing this paper consists largely of fellow educators and the small-scale problem I set for myself in this paper is to opine one or more films that would best battle misinformation.

The narrow topic and modest thesis I advance in this note remain topical because attempts to change tort law and civil disputing recur. Civil disputes—a few in for­mal trials and far more “out of court” but informed by civil verdicts—have been and will continue to be chronic targets[[6]](#endnote-6) of ef­forts labeled “civil justice reform” by advocates and “tort deform” by op­ponents of such efforts, es­pecially as élites strive to stave off checks against their dominance in and of many legislatures, execu­tives, and bureaucracies. Beyond actualities in courts, images of disputing and, even more salient, of decisions and practices shape beliefs, opinions, and attitudes. If attempts to reform and to deform we shall always have with us,[[7]](#endnote-7) let us educate ourselves and our students with popular media.

**§2 The Companion**

As befits a peculiar conference paper, I begin with a perverse argument: The chief advantage of “A Civil Action” over other films[[8]](#endnote-8) is that “A Civil Action” [and the nonfiction book from which it derived, *A Civil Action*] led to a volume, *A Documentary Companion to A Civil Action*.[[9]](#endnote-9) If an in­struc­tor were to deploy only one feature film in association with a class that touched on civil litigation in the United States, that instructor would not find another feature film that was accompanied by such a valuable auxiliary to provide information against misinformation. Although I shall complement this chief advantage to “A Civil Action” with arguments about its other advantages in accentuating truths not commonly accessible and in debunking falsehoods far more commonly available, its docu­mentary companion is an advantage no other film I know can match. The documentary companion brings “A Civil Action” [and, for that matter, *A Civil Action*] factuality and verisimilitude, complexity and sophistication, and accuracy and precision beyond other resources.[[10]](#endnote-10)

A glance at the “Summary of Contents” and a more detailed “Table of Contents” shows what the documentary companion provides that no other nonfiction complement to a feature film provides.[[11]](#endnote-11) Forms and processes of civil litigation—jurisdiction, notice, pleadings and other pre-trial maneuvers, discovery, and motions amid trial—are reproduced for students to contemplate. In ad­dition, Jonathan Harr [the author of the nonfiction bestseller], William Cheeseman [lead attorney for W. R. Grace], Jerome P. Facher [attorney for Beatrice Foods], and Jan Richard Schlichtmann [lead attorney for Woburn plaintiffs] provide accessible, succinct statements on the lawsuit. A timeline [pp. *xxix-xliii*] conveys the excruciating span of disputing 1977-1997, a lesson that feature films not only do not usually convey but also that film-making typically condenses to keep the film a marketa­ble length. Students who behold “A Civil Action” and consult *A Documentary Companion* as a refer­ence—with prefatory materials and appendices more than 800 pages—acquire invaluable insights on the heterogeneity of formal and ordinary disputing and on differences between justice as rendered by lawyers and justice as apprehended by laypersons. These lessons accentuate John Travolta’s voiceovers in “A Civil Action” and deepen students’ appreciation of the argot that adorns and validates films in the civil justice genre while mystifying filmgoers.

Relative to “A Civil Action” as well as on their own terms,other feature films fall short in factuality and authenticity, complexity and sophistication, and accuracy and precision because they lack such auxiliary materials**.** I array alternatives and order them from films with supplementary information promoting facticity, sophistication, and accuracy and precision surpassing an average that I imagine and posit down to those films the supplements for which impart facticity, sophistica­tion, and accuracy and precision significantly below the average that I imagine and posit.[[12]](#endnote-12)

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| Table OneA Rough Ordering by Supplementary Materials of Feature Films of the “Tort Genre” |
| Supplements Way Above Average |
| “A Civil Action” (1978) |
| Supplements Above Average |
| “The Insider” (1999)  |
|  “Erin Brockovich” (2000) |
| Supplements About Average |
|  “The Rainmaker” (1997)  |
| “Class Action” (1991)  |
| “North Country” (2005) |
| Supplements Below Average |
| “The Sweet Hereafter” (1997)  |
| “The Verdict” (1982) |
| “Disclosure” (1994) |
| “Runaway Jury” (2003) |
| Supplements Much Below Average |
|  “Philadelphia” (1993) |
| “Michael Clayton” (2007) |

#  In Table One I rate “A Civil Action” by itself at the top because of *A Documentary Companion*. One tier down I credit “The Insider” for conveying facts and complexi­ties of the crusade against Big To­bacco. However, an instructor could associate “The Insider” with a vast literature,[[13]](#endnote-13) yet much of that feature does not convey civil law and litigational processes and the associ­ated literature would be difficult for even a law student or graduate student to compile and to wade through. I class “Erin Brocko­vich” alongside “The Insider” because it too conveys facts and complications precisely and accurately [by Holly­wood standards!]; still, Erin Brockovich’s mostly self-help book, *Take It from Me*,[[14]](#endnote-14) like even classics of tobacco literature, does not measure up to the pedagogical advantages of *A Documentary Companion*. Hence, I urge readers to regard my ranking “Erin Brockovich” and “The In­sider” above the average as conceding that each is “based on a true story” [as Hollywood flackery would put the matter on a trailer] but that the intricacies of the true stories are not as a­vailable as “A Civil Action” and *A Documentary Companion* make the truths and mysteries of Wo­burn. In addition, of course, any literature to which “The Insider” might propel students likely would not measure up to Jonathan Harr’s *A Civil Action*.[[15]](#endnote-15) Based on an account at once journalistic and literary, Harr’s non­fiction account is immense and would daunt many an undergraduate, but I have little doubt that Harr’s book by itself conveys accurately and precisely at least as much complex detail and sophisti­cated strategy as any supplements I might conjure for either “The Insider” or “Erin Brocko­vich.” It follows that “A Civil Action” is blessed with a documentary companion that is largely unmatched.

# Films I categorize as about average in Table One each possess pedagogical virtues aplenty but those virtues are, in my opinion, laden by and with dramaturgical vices and, most pertinent to my instant perspective, have problematic supplements. This I take to imply that materials “outside” the film can at best offset some of the vices. For “The Rainmaker” the “supplement” would be the John Grisham novel of the same name. Plenty of the novelistic virtues of *The Rainmaker[[16]](#endnote-16)*shine forth in thescreenplay Francis Ford Coppola wrote for “The Rainmaker,” but the movie frames its narra­tive around lawyer-jokes that the novel does not debunk, so students may acquire at least as much calumny as common sense from the novel. Feature film “Class Action”—please note, not the nonfiction book of that title on which “North Country” was based—deploys a captious case with which it then takes cinematic liberties with a depiction of litigation over the Ford Pinto already fraught with characterizations that differ greatly if not flat out war[[17]](#endnote-17) as well as an ending almost as histrionic as that of “North Country.”[[18]](#endnote-18) I order the film “North Country” low on facticity, com­plex­ity, accuracy, and precision because Hollywood production values overwhelm pedagogical values to such an extent that even a fine nonfiction account cannot rescue the film from my reservations. The film tells viewers about four minutes and forty seconds in that it was “inspired by a true story,” but that true story as rendered in the journalistic nonfiction *Class Action* does not include the melo­dra­matic carnival that consummates “North Country” and, not coincidentally, utterly misinforms film-viewers regarding what tactics will tend to succeed or even be tolerated in civil courtrooms.[[19]](#endnote-19) We each and all have endured amid opening or closing credits marketing-speak too insouciant to be taken literally or seriously that tenuously links the film to someone’s conception of some reality, as when “based on” or “inspired by” camouflage that the film is not totally contrary to known facts.

# I presume that films derived from fiction surmount its confabulations even less and less like­ly than films transmogrified from nonfiction, so my “Supplements Below Average” in Table One in­cludes four films from fiction. Reasonable readers may disagree with me about how much and how manageably “The Rainmaker” (1997) might be supplemented by the John Grisham fiction whence it sprung; they would be unreasonable, I think, to quarrel with me over “Runaway Jury,” a film about gun litigation derived from a novel about tobacco litigation.[[20]](#endnote-20) Referring students to *The Sweet Hereafter: A Novel[[21]](#endnote-21)* to derive truths about how trial lawyers construct cases would not illumi­nate “The Sweet Hereafter” (1997) enough justify using that touchy[[22]](#endnote-22) film in a course. Vivid, some­times lurid characterizations in Grisham and sensitive, sometimes titillating por­trayals in Banks tend to overshadow many truths that most teachers might deploy feature films to im­part. I suspect the same is true of “The Verdict”[[23]](#endnote-23) and “Disclosure,”[[24]](#endnote-24) also derived from potboilers.

# “Philadelphia” and “Michael Clayton” impart important critiques about civil litigation, but screenplays alone pale in authenticity, accuracy, and precision relative to scripts that can be comple­mented by nonfiction. Hence, I rank those two far below other candidates in Table One. Indeed, “Michael Clayton” may be so over the top that I should not include it in tort genre at all.[[25]](#endnote-25)

# *A Civil Action* is a work of nonfiction, but nonfiction need not improve on fiction. For the narrow problem that I have defined for this note, my leading criterion must be minimizing misin­formation on which “closing or blocking the courthouse door”[[26]](#endnote-26) is often premised. This “A Civil Action” does, in my judgment.

**§3 The Litigotiation[[27]](#endnote-27)**

I could have ended this peculiar conference paperwith the preceding section, but I proceed because “A Civil Action” surpasses other feature films in another respect that I deem important and concerning which I feel confident that “A Civil Action” excels. No feature film of which I know at­tends to the litigotiation that dominates civil suits. To be sure, other films include settlements or discussions of settlements or allusions to other formal litigation “in the shadow of the courthouse.” Courtroom histrionics and “Perry Mason moments”[[28]](#endnote-28) festoon feature films far beyond slow-moving conferences or strategic or tactical maneuvers or machinations, so we should expect Hollywood pro­ductions to lean toward the florid and away from the workaday.

Although many feature films convey some of the basics of civil disputing in the United States contemporary with the films and a few feature films depict many of the basic truths of civil suits, “A Civil Action” dramatizes in general why those who have more start ahead and stay ahead of those who have less almost always and in great detail how much and how many of the advantages accrue to have-mores.[[29]](#endnote-29) If this is a lesson an instructor deems important to convey—It is merely one of the most important propositions from sociologies of law for students to master!—instructors will not find a better full-length film than “A Civil Action.” At multiple stages of that film, multiple lawyers maneuver to settle out of court. “A Civil Action” starts from a settlement executed barely [and flamboyantly] via Schlichtmann’s playing chicken before trial in which Schlichtmann imperi­ously makes increasingly desperate defendants’ attorneys bid against themselves up to the moment of Schlichtmann’s opening statement. Even during that suspenseful start—Will Schlichtmann ac­cept the offer? Will Schlichtmann begin the formal proceedings by uttering his first sentence?—James Gordon [played by William H. Macy] states emphatically and unmistakably for all the film’s audience to hear that Schlichtmann’s financial backer, “the money man,” is preset to watch over the trial and his investment. What other film(s) so pungently portray the business end of personal injury law? The makers of “A Civil Action,” I think unmistakably, signal that litigation chases settle­ments.

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| Table TwoRough Ordering of Coverage of Litigotiation |
| Coverage of Litigotiation Way Above Average |
| “A Civil Action” (1978) |
| Coverage of Litigotiation Above Average |
| “Erin Brockovich” (2000)  |
| “Michael Clayton” (2007) |
| “The Verdict” (1982) |
| “Disclosure” (1994) |
| Coverage of Litigotiation About Average |
| “North Country (2005) |
|  “The Rainmaker” (1997)  |
| “Class Action” (1991)  |
| “The Sweet Hereafter” (1997)  |
| Coverage of Litigotiation Below Average |
| “Runaway Jury” (2003) |
| “The Insider” (1999) |
|  “Philadelphia” (1993) |

Multiple “sit-downs” with Cheeseman and especially Facher [Robert Duvall] pace the slow de­scent of Jan Schlicht­mann [John Travolta] from wheeler dealer concocting an ecological and legal cause célèbre to des­perate shy­ster trying to avoid a stereo­type down to which he keeps acting. Mr. Schlichtmann, the Cornell man, is waylaid at The Har­vard Club by Al Eustis [Sydney Pollack] who says he cannot afford to have every two-bit personal-injury lawyer signing up every jerk in Woburn resident a head cold [and to the consternation of his part­ners decides to “go for broke” rather than ac­cept $8,000,000].[[30]](#endnote-30) Mr. Schlicht­mann, liti­gational star, is patronized by Harvard Pro­fessor Facher in the hallway before a preliminary verdict by the jury and spurns an offer of $20,000,000.[[31]](#endnote-31) This is an unmistakable motif of the film; indeed, I find it the primary storyline.

That motif is scarcely unique: from Albert Finney in “Erin Brockovich” to Paul Newman in “The Verdict” civil justice films touch on settlement on their way to cinematically more arresting trials [trials in courtrooms and tribulations in courtroom actors]. “Erin Brockovich” features two settlement conferences, but each is cut off by the high-handed tactics of defense attorneys and by the fierce resentment of defense arrogance by Albert Finney and Julia Roberts. This lands “Erin Brockovich” in the “above average” category in my Table Two but keeps that film qualitatively beneath “A Civil Action” in portraying litigotiation. Before confronting the truth of how professionals routinely betray the confidence that clients repose in professionals, Frank Galvin [Paul Newman] assures his clients that the lawsuit will never come to trial [and then, of course, turns down $210,000 that his clients would readily have accepted, thereby betraying their trust in him and legal ethics]. That pushes “The Verdict” beneath “A Civil Action” in my scheme and would, if my rankings implied ordering within categories, nudge “The Verdict” under “Erin Brockovich.” “Michael Clayton” implicitly concerns settlement for much of its length, but a climactic scene shows crass, mercenary haggling by a venal, ruthless litigator [Tilda Swinton in her Oscar-winning turn] and by her corporate clients to buy off victims of a poisonous pesticide.

 The motif of settlements’ directing litigation is in ordinary tort films seldom more than an allusion. Before Bill White [Woody Harrelson] represents Josie Aimes [Charlize Theron] in “North Country,” he tells a fellow drinker the litigational facts of life:

If somebody like her came to see me back in New York with this dogshit case ... ...you know what I'd do? I'd take it. Settle quick, pocket the contingency...make more money than her, never see a courtroom.

I place “North Country” in my “about average” category in Table Two, however, because despite his brash proclamation, Mr. White heeds the siren song of the tort genre by going to court because no one has ever done a sexual harassment class action. When the script then makes White’s and Aimes’ suit unwinnable, White slouches from the corridor into the courtroom to execute at least two desperate stunts that—**Spoiler Alert!**—secure him and his client a settlement after all [as well as after chewing the scenery]. **Spoiler Alert!** The Pinto-like and Pinto-lite lawsuitin“Class Action” likewise settles after improbable stunts expose the perfidy and venality of defendants’ counsel in court and in chambers, providing viewers the thrills of adversarial combat and a happy ending without troubling film-makers or film-beholders to contemplate the travails of securing settlement. In other about-average dramatizations of litigotiation—litigation chasing settlement, remember), settlement may be implicit but premature as in “The Sweet Hereafter” (1997).

# In a few tort films litigotiation is barely visible or invisible [e.g., in Philadelphia (1993)]. These films I place in the “Below Average” tier in Table Two. “The Insider” (1999) concerns fear of litigation but not of settlement and so seems to me to be less attentive to settlement than it might have been. “Runaway Jury” (2003) presents an instance hard to categorize, for a jury consultant is managing the litigation by tampering with the jury while two protagonists are trying to induce jurors to find gun manufacturers liable; the attorneys who might conduct settlement hearings are almost always peripheral.

 If “A Civil Action” presents litigotiation far, far more completely than other civil-justice films, we should not wonder. Instead, we should attend to two theories of movies, one a 20th century theory of dramas in general and the other a 21st century formulation of the genre of tort films. The older theory issued long ago from Walter Lippmann: [[32]](#endnote-32)

Our popular taste is to have the drama originate in a setting realistic enough to make iden­ti­fi­cation plausible and to have it terminate in a setting romantic enough to be de­sirable, but not so romantic as to be inconceivable. In between the beginning and the end the canons are liberal, but the true begin­ning and the happy ending are landmarks.

While civil settlements might issue from corporate poisonings or commercial frauds that might in­duce audiences to identify with plaintiffs, settlements split the differences too much to make reso­lu­tion of conflict romantic enough to please, even if the loss of court­room melodrama and hi­jinks were not a box-office concern. Thus, we should expect from Lippmann’s 1922 formula that ver­dicts will outperform, so to speak, settlements. Remember: in Lippmann’s formula beginnings are realistic, not resolutions! Professor Anthony Chase provides us a second, more specialized for­mula that likewise explains why the settlements that end litigation will seldom be reflected on the sil­ver screen in proportion to their prevalence in lawsuits.[[33]](#endnote-33) In the tort-film genre, expect 1) honest if feck­less trial attorneys to fight for under­dog plaintiffs against 2) venal, ruthless defense attor­neys, especially attorneys re­presenting law firms[[34]](#endnote-34) and powerful commercial entities before 3) usually rule-bound and usu­ally even-handed judges in 4) a contest that threatens moral inequity near its begin­ning but al­most always delivers some commonsense equities near its ending with ample for­malities, jar­gon, extraordinary cunning, and not a little histrionics across most of the film.[[35]](#endnote-35) Set­tle­ments do not deliver on Professor Chase’s theory nearly as easily or as well as do courtroom histrionics.

**§4 The Story**

The Companion [§2] and The Litigotiation [§3] should make clear beyond a reasonable doubt that “A Civil Action” is a superior feature film for law students and other graduates, under­graduates, and perhaps even high-school students, but I now press my luck and endanger this pe­culi­ar paper by insisting that “A Civil Action” at once conforms to but diverges from the formulas for drama and especially tort drama. While most feature films about civil (in) justice adhere to the fa­shion suggested by the formulas of Mr. Lippmann and Professor Chase, “A Civil Action” presumes a familiarly precarious situation that terminates but does not resolve in a manner at least some­what unconventional, and the expected romantic, happy ending yields to a more realistic, more common, and thus more mixed outcome.[[36]](#endnote-36) Please recall from my introduction [§0] that I am far more confi­dent that “A Civil Action” is absolutely a superior resource for students and classrooms based on criteria I have marshaled above [in §§2-3], **but** I am less sure that I am correct in my relative or­der­ing of “A Civil Action” and other “tort genre” films in this section and in the section that follows it.

“A Civil Action” conforms to my conflation of Lippmann and Chase in that pollution real and hypothesized might account for a cluster of leukemia instances in Woburn, Massachusetts. Schlichtmann’s naming two deep-pocketed corporations [Beatrice and W. R. Grace] as agents of the cluster, his blaming the corporations for unreasonable or reckless actions and habits at two comer­cial sites they owned [if not controlled], and his claiming that the two large should compen­sate survivors fulfill the pattern articulated by Professor Chase and Pundit Lippmann.

However, “A Civil Action” portrays environmental pollution and leukemia clustering as hard to establish even under a standard of “more probable than not” or “preponderance of evidence,” especially as meeting those standards was repeatedly made difficult by Judge Walter J. Skinner. The case’s muddled, meager resolution and Schlichtmann’s difficulties in establishing causation contrast starkly but realistically with audiences’ growing assurance in “The Insider,” “Runaway Jury,” “Erin Brockovich,” “The Rainmaker,” “Class Action,” “The Verdict,” “Philadelphia,” and “Disclosure” [in rough order from most widespread and deadly injuries to least] that targets of lawsuits are not merely civilly liable civilly but guilty ethically, morally, and legally.[[37]](#endnote-37) “A Civil Action” falls far short of “Michael Clayton” in that culpability and debasement are not established nearly as ubiquitously in the former case as in the latter, in which a madman and a bagman are closest to being morally up­right. “The Sweet Hereafter,” like “A Civil Action,” preserves some questions about what caused what, who might be liable to whom, and where truly moral agents and laudable decision-makers might lie.[[38]](#endnote-38) I count, then, at least eight and maybe nine films in which ordinary people [such as the modal watchers of movies] are imperiled in the manner Lippmann expected.

Please compare tort films’ “realistic” beginnings, which Pundit Lippmann formulated in 1922, with their “romantic” endings. “Erin Brockovich,” [[39]](#endnote-39) “Class Action,” and “North Country” probably provide the most impressive awards, while “The Insider,” “Disclosure,” “The Rainmaker,” “Runaway Jury,” “The Verdict,” and “Philadelphia” furnish “resolutions” more personalized and perhaps somewhat promising. If I may thus array these endings from greatest happiness to most individuated satis­fac­tion of claims, I may sustain Lippmann’s expectation of happy endings in dramas. The dissipation of the dispute in “The Sweet Hereafter” is discerned far more easily than any resolutions in human suffering or survivors’ guilt. “Michael Clayton” ends with at best survi­vors, most as soulless and adrift as the title character riding aimlessly about Manhattan as the credits roll. The endings of “A Civil Action” are at best melancholic: Schlichtmann’s career is in ruins,[[40]](#endnote-40) his law partnership in shambles, his clients no better off and perhaps made worse by the litigation,[[41]](#endnote-41) the corporations and their local subsidiaries merely temporarily off the hook for their pollution, and the poisoning of groundwater perhaps effected in the next century. Clearly, three films diverge from the happy endings Lippmann formulated, but that means eight of the films under scrutiny conformed.

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| Table ThreeRough Ordering of Storylines’ Diverging from Formulas |
| Storylines Smash Formulas |
| “Michael Clayton” (2007) |
| Storylines Significantly Diverge from Formulas |
| “A Civil Action” (1978) |
| “The Sweet Hereafter” (1997) |
| Storylines Largely Converge with Formulas |
| “Erin Brockovich” (2000)  |
| “The Verdict” (1982) |
| “Disclosure” (1994) |
| “The Rainmaker” (1997)  |
| “Class Action” (1991)  |
| “Runaway Jury” (2003) |
| “The Insider” (1999) |
|  “Philadelphia” (1993) |
|  “North Country (2005) |

 If my prose scorecard of confor­mi­ty and nonconformity compli­cates matters too greatly, please inspect Table Three, which counts at most two films contra­dic­ting the formula, one film exploding the formula, and the rest conforming.

 The storyline of “A Civil Action” de­parts from Lippmann’s formula for drama in at least two regards. First, the moral culpa­bil­ity and legal liability of faraway corpora­tions or the local companies is problematic. That is to say that the “beginning” of the film is realistic but not in the sense Lipp­mann intended. Instead, truer to facts on the ground or under the ground than films merely “inspired by a true story,” the Wo­burn movie is too like the Woburn case to be drama­tur­gically “realistic.” Second, “A Civil Action” has multiple endings none of which is romantic. That, too, is too true to life for Lippmann’s formula. It seems clear to me that “A Civil Action” diverges from stories that tort films routinely relate.

What I may not have made clear above is that “A Civil Action” defies the “tort-film genre” that Professor Chase proposed.[[42]](#endnote-42) In “A Civil Action” plaintiffs’ attorneys are almost always honest and occasionally feckless but far more complicated than in the modal films from which Professor Chase generalizes. The defense attorneys in the Woburn case are not so much venal and ruthless as banal [Cheeseman] and savvy [Facher]. Most attorneys who habitually represent law firms and power­ful commercial entities could live with the image propagated in “A Civil Action.” Judge Skinner may have been less creative and garrulous than Harr or Zaillian [director and screenplay writer] made him out, but he scarcely seemed rule-bound or all that even-handed judges in the case or in the movie. “A Civil Action” begins in the injustice of children dying from leukemia and law­yers losing the victims in and to the cash flow but delivers almost no commonsense justice despite and because of technical, procedural proficiency, facility with argot, fierce cunning, and hysteria matched to histrionics across the film.

**§ 5 The Practitioners:**

Lawyers and judges adorn many films about civil justice. If we focus on characters and char­acterizations and overlook performers and performances,[[43]](#endnote-43) we detect practitioners familiar from Pro­fessor Chase’s “master discourse of tort cinema,”[[44]](#endnote-44) which I described above: feckless attor­neys representing underdog clients; ruthless attorneys securing the interests of large-scale, well-heeled defendants, and even-handed judges. In this section of this note I examine how familiar con­tending agents interact with familiar adversarial settings and find that “A Civil Action” features an array of agents and characters more varied and more complicated than many other civil justice films and a law firm more virtuous than many in films about civil law. Although I find “A Civil Action” su­pe­rior to such cinematic studies of attorneys as “The Sweet Hereafter,” “Michael Clay­ton,” and “The Rainmaker,” I do not find the pedagogical advantages of “A Civil Action” to be as marked as I have argued them to be in earlier sections of this note. Instructors, I concede, will differ widely in the images of lawyers and of law firms they want to stress or to address. It follows that “A Civil Ac­tion” might not serve such instructors better than, say, “Class Action” or “Michael Clayton,” which may encourage critical, even cynical, dispositions toward legal practitioners.[[45]](#endnote-45) Nonetheless, I main­tain that a signal virtue of “A Civil Action” is that it incorporates multiple dimensions of law­yer­ing, law firms, and judging beyond the single-dimensional caricatures dominating most other films.

I begin from stereotypes of jural practitioners in general. The remarkably prescient Mr. Lippmann anticipated in 1922 the centrality and durability of stereotypes for film-making: [[46]](#endnote-46)

What will be accepted as true, as realistic, as good, as evil, as desirable, is not eter­nally fixed. These are fixed by stereotypes, acquired from earlier experiences and carried over into judgment of later ones. And, therefore, if the financial in­vest­ment in each film and in pop­ular magazines were not so exorbitant as to re­quire instant and widespread popularity, men of spirit and imagination would be able to use the screen and the periodical, as one might dream of their being used, to enlarge and to refine, to verify and criticize the reper­tory of images with which our imaginations work. But, given the present costs, the men who make moving pictures, like the church and the court painters of other ages, must ad­here to the stereotypes that they find … . The stereo­types can be altered, but not in time to guarantee success when the film is released six months from now.

“A Civil Action” displays some of the stereotypes that Mr. Lippmann long ago taught us to expect but, more important for purposes of this note, arrays lawyerly behaviors and characters that both fulfill and flout stereotypes of lawyerly adversaries. In that way, “A Civil Action” caters to stereotypes that viewers bring to their screens large or small but complements those stereotypes with complexity, nuance, and density that may lead viewers to question stereotypes. Perhaps the most prominent example would be rules and adages that Schlichtmann and Facher posit, adages and rules from which Schlichtmann often deviates and to which Facher almost always adheres. John Tra­vol­ta’s voiceover at the very beginning of the movie and his early conduct of a personal injury case im­print in audiences’ minds from the start that Schlichtmann is one crass, wily legal operator. Through­ the rest of the movie, Professor Facher introduces lessons he imparts to his students at Harvard Law School. These lessons serve to alert audiences to Schlichtmann’s deviations from adversarial “best practices” or “winning ways.” Schlichtmann’s missteps sometimes spring from motives far less crass than those Schlichtmann articulated while wheeling his client to a courtroom at movie’s start. Sometimes Schlichtmann’s mistakes seem to follow from the pride against which Professor Facher warns[[47]](#endnote-47) or from Schlichtmann’s sensitivity to other attorneys’ disdain for trial lawyers who chase personal injuries. Whatever the source of his misjudgments, Schlichtmann is far more compli­cated than film attorneys in general and plaintiffs’ attorneys in films and in appeals for tort reforms. Pro­fessor Facher, representing one defendant corporation, is a crafty veteran who has mastered the stra­tegies and tactics of litigation that he teaches at Harvard Law School as well as the psychology of participants that he exploits. Mr. Cheeseman, representing the other deep-pocketed defendant, seems a simpler, more straightforward advocate but manifests throughout the movie [and, of course, the nonfiction book] sensitivity to nuances of testimony and niceties of civil procedure.[[48]](#endnote-48)

Let us contrast the complexities of Schlichtmann, lead attorney for plaintiffs, the pedantry and practicality of Professor Facher, sole attorney for Beatrice corporation, and the professionalism of Mr. Cheeseman, head of a team representing W. R. Grace, with cartoonish renderings that abound in the tort genre concerning civil counsel or advocates in general. Where heroic [if often flawed and feeble[[49]](#endnote-49)] plaintiffs’ Davids bring their slingshots to gunfights against institutional Goliaths with overweening corporate and legal firepower, seasoned movie-goers expect the tort-genre film to build up stereotypic heroes fighting for truth and justice [perhaps after bringing down the stereotypic hero to lengthen the odds against prevailing] and to bring down stereotypic villains defending venality and perfidy. After all, to producers, directors, and writers the most relevant jurors sit in theaters [or, nowadays, television rooms]. Examples are common:

* In “The Verdict,” Frank Galvin, as a trial lawyer broken down by the corruptions of practice, fights for truth against not just Ed Concannon [James Mason], the “Prince of Darkness” who explicitly advocates and rationalizes winning at every cost and whose team/law firm disappears Galvin’s key witness and employs a sexual spy, but as well against the Roman Catholic prelate, Bishop Brophy [Edward Binns] who taunts Galvin with Pilate’s question, “What is the truth?” Galvin is a drunken ambulance-chaser who emerges as superior to “winners” and perhaps to Bishop Brophy even though—Spoiler Alert!—to win his case and to redeem his soul Galvin grossly violates ethical canons and postal law.
* In “Class Action” (1991) Gene Hackman’s David battles his daughter [Mary Elizabeth Mastrantonio] and her Goliath firm to vindicate science [if not quite truth] and to vanquish corporate greed and indifference to ordinary suffering even though the underdog plaintiffs are hopelessly overmatched by evil lawyers played by Colin Friels and Donald Moffat at the helm of a devilish law firm, yet father and daughter emerge with souls intact and relations improved.
* In “Philadelphia” (1993) A powerful Philadelphia law firm discriminates against lonely HIV-sufferer Andrew Beckett [Tom Hanks] and his lone counsel, homophobe Joe Miller [Denzel Washington], in the cynical confidence that its perjury and conspiracies will prevail through jural guile, but, as Lippmann predicted in 1922, Beckett and Wilson emerge heroic by comparison in a romanticized but bittersweet ending.[[50]](#endnote-50)
* In “The Rainmaker” (1997) Leo F. Drummond [Jon Voight] and his “Wall of Flesh” associates [and the insurers whom they are defending] lie and maneuver to defeat have-nots and have-lesses but first-timer Rudy Baylor [Matt Damon], his partner who skirts every ethical norm and each legal rule but in repeated attempts cannot pass the bar exam [Deck Shifflet, played by Danny DeVito] and his shady employer on the lam [J. Lyman “Bruiser” Stone, played by Mickey Rourke] press the case of pitiable Dot Black [Mary Kay Place] and her dying then dead son with truth and common sense.
* The movie “North Country” (2005) features defense counsel far less despicable than the book from which the movie derived and a plaintiff’s attorney Bill White [Woody Harrelson] proceeds from crass motives to push gender justice and takes on villains corporate and labor.
* “Michael Clayton” (2007) leaps beyond stereotypes of lawyers for corporate defendants to banal evils and murderous lawlessness to such an extent than an absolute madman and an absolute “bagman” become relative heroes among lawyer-joke villains; only the “fixer” in the title [played by George Clooney] acquires as many as two dimensions.

To be certain, some examples scramble the mix of plaintiff and defense and the happy ending but nonetheless exemplify unidimensional characters amid “heroes and villains” plots:

* In “Erin Brockovich” (2000) the attorneys whom PG&E throws at the tiny firm of Ed Masry [Albert Finney] are stereotypically amoral automatons as unfeeling as formalistic while the freewheeling, empathetic, and intuitive Erin Brockovich [Julia Roberts] saves the feckless trial lawyer Masry and cartoonish Theresa Dallavale [Veanne Cox] from blowing the case.[[51]](#endnote-51)
* Dustin Hoffman plays an ultimately virtuous trial lawyer who defends democracy, truth, and justice against jury consultant, trial manager, and all-around focus of evil Rankin Fitch [Gene Hackman] in “Runaway Jury” (2003), but John Cusack and Rachel Weisz render the lead attorneys played by Hoffman and Bruce Davison epiphenomenal.
* “The Sweet Hereafter” (1997) involves a local, solo defense beset by big city trial lawyer Mitchell Stevens [Ian Holm] who tries to gin up a case where none may exist and fails.[[52]](#endnote-52)
* Thuggish lawyers for Big Tobacco fighting against the truth’s being exposed, venal and craven corporate attorneys cosseting CBS stock but indifferent to factuality, and pusillanimous executives at “60 Minutes embattle producer Lowell Bergman [Al Pacino] and tobacco chemist Jeffrey Wigand [Russell Crowe] who single-mindedly pursue truth with but little assistance from trial attorneys in the whistle-blowing “The Insider” (1999).

Beyond images of attorneys in civil justice films in general, we may note characterizations of attorneys who defend civil defendants. “A Civil Action” shows some misconduct by defense attor­neys that may make defense attorneys seem like hard guys or bad guys, but, until the final credits, the actions of defense attorneys make Schlichtmann’s claims more no more persuasive. Facher and Cheese­man contrast in that Facher—the law school professor, hence pedant to actors and audi­ence alike—takes advantage of formal procedures and pragmatic stratagems[[53]](#endnote-53) while Cheeseman’s use of procedures seems feckless if not counterproductive in the movie if not in the book and Cheese­man verges on suborning perjury and other “sharp practices” that Professor Facher need not employ.[[54]](#endnote-54)

From my survey of attorneys abovewe may extract greater range in “A Civil Action” than in other tort films. This true even of just plaintiffs’ lead attorney Jan Richard Schlichtmann, who even without his team’s division of labor shows greater range of orientations than trial lawyers in other films. True, “Erin Brockovich” shows some variety: Albert Finney is underdog prag­matic and Peter Coyote big time operator; “The Rainmaker” gives us Rudy Baylor, who cheats a bit, but Deck Shiff­let and Bruiser Stone and explicit framing of lawyer jokes and barratry; and Ian Holm’s Mitchell Stevens in “The Sweet Hereafter” is a complicated man but seems to me a unidimensional trial law­yer ginning up a suit. In “The Verdict” Frank Galvin, hearse-chaser, becomes a cham­pion of civil justice [saved by jurors and Kaitlyn Costello] and so maybe attains two dimensions.

Among practitioners filmmakers might presume judges—especially for members of audi­ences who expect adversarial adjudication in which judges are passive umpires and in which attor­neys are usually managing the spectacle or at least the stage—should routinely recede and only dur­ing histrionics or hysterics become active or adamant. Consistent with such a presumption, “the master discourse of tort cinema” mostly reduces judges to peripheral rather than focal stereotypes. Films that do not may portray judges as more or less intrusive. Dean Stockwell in “The Rainmaker” insinuates himself on behalf of high-powered defense attorney Jon Voight in a manner far more ob­vious than Danny Glover assists neophyte plaintiffs’ attorney Rudy Baylor [Matt Damon], but each judge puts his thumb on the scales of justice in a manner that film-makers will not let audiences miss. In “The Verdict” Milo Shea intervenes repeatedly on behalf of the defendants, two physicians and the Archdiocese of Boston and its hospital, to stack the deck further against derelict ambulance chased Frank Galvin [Paul Newman]. Still, arbiters and judges usually recede.

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| Table FourCharacterizations of Legal Practitioners |
| Characterizations of Practitioners Quite Varied |
| “A Civil Action” (1978) |
| Characterizations of Practitioners Varied |
| “Class Action” (1991) |
| “Erin Brockovich” (2000)  |
| “The Verdict” (1982) |
| “Michael Clayton” (2007) |
| Coverage of Practitioners Largely Stereotypic |
| “The Rainmaker” (1997)  |
| “The Sweet Hereafter” (1997)  |
| “Runaway Jury” (2003) |
| “The Insider” (1999) |
| “Philadelphia” (1993) |
| “North Country (2005) |
| “Disclosure” (1994) |

 In sum, even depictions of practitioners in “A Civil Action” seem to me superior to those in alternative feature films, al­though I am merely persuaded and not quite convinced of this superiority. The eclectic array of defense and plaintiff at­tor­neys in “A Civil Action” complexifies lawyering and litigating in a manner that debunks, however temporarily, cartoons and caricatures in other films. Pro­fessor Facher and Mr. Cheeseman differ from one another for the defense in “A Civil Action” to a degree greater than Maggie Ward [Mary Elizabeth Mastrantonio] dif­fers from the rest of her firm in “Class Ac­tion,” the feature film that comes closest to a comparable range of personae in defense teams. In “The Sweet Hereaf­ter” defense attorney is solo and minor antagonist. In “The Rain­maker,” “The Verdict,” “Erin Brockovich,” and “The Insider,” defense teams are not variegated but nearly standardized. And what of plaintiffs’ attorneys? In “A Civil Ac­tion” the plaintiffs’ attorneys split at least into swashbuckling, hubristic Schlichtmann versus money manager William Macey and hapless, practical partners who serve as a minuscule Greek chorus re­minding the protagonist that his tragic flaws will doom them all. Jedidiah Tucker Ward [Gene Hack­man] in “Class Action” may stand apart from his team enough to provide viewers a stereo­scopic view of how Davids challenge Goliaths. Matt Damon and Danny DeVito portray very dif­ferent ad­vocates for plaintiffs in “The Rainmaker,” but they so integrate their efforts [and are so out of their depths] that not much range in lawyering is evident. In addition, “The Rainmaker” begins and ends with gibes at lawyers, stereotypical snark on which “Philadelphia,” “North Country,” and “Disclo­sure” unmistakably play. Thus, in Table Four I once again set “A Civil Action” apart.

**The Conclusion**

 I may have seemed in this note to have strayed from, even contradicted, my title: “What I Know about Civil Litigation I Learned from Movies.” I believe that I have justified that title. In demonstrating how and to what extent “A Civil Action” differs qualitatively from other modern feature films, I have shown that moviegoers will have far more access to the misinformation in other films than to the better information in “A Civil Action.” Whatever good “A Civil Action” might do in a classroom or in connection with a course of study, the lessons of that film must be overmatched by other films. Indeed, I noted Professor Chase’s insight that “A Civil Action” was succeeded by “Erin Brockovich,” another movie based on—which in Hollywood often means “not unrelated to”—actual events. “Erin Brockovich” conveyed much less about settlement and litigotiation and lambasted and lampooned lawyers throughout. “Erin Brockovich” delivered the Hollywood ending that Walter Lippmann formulated before the Hollywoodland sign went up in 1923. Multiply by major movies before and after “A Civil Action” and *A Civil Action*, throw in best-selling fiction, and consider television,[[55]](#endnote-55) and, however salutary “A Civil Action” and *A Civil Action* may have been, myths and misinformation must engulf our students, our media, and our culture. Like “The Dude” in “The Big Lebowski,” the master discourse of tort cinema abides.

1. Notes

 In this paper I strive to be consistent in my usage of “dispute” and its cognates for the most general class of clashes between or among individuals or groups; “litigation” and “litigotiation” for the subset of disputes in which trained legal personnel are engaged; and “adjudication” or “trial” for the smaller subset of disputes in which formal-legal procedures and venues figure. I believe that my usages conform to classic categories in the study of conflict resolution. Please see Marc Galanter, *Why the Haves Come Out Ahead: The Classic Essay and New Observations* (Quid Pro Books, 2016) p. 15, n. 1. [↑](#endnote-ref-1)
2. I pretend no systematic sample of films touching on or related to civil disputing. From this note I exclude feature films that primarily relate to criminal investigations or prosecutions [in part owing to Hollywood’s extensive use of criminal courtrooms relative to civil litigation, an understandable preference for Hollywood but a concomitant “oversampling” for students]; feature films that primarily pertain to custody of children or to family law; contractual disputes; and civil disputing that is so limited, transient, and peripheral to a film [“Counsellor At Law” and “The Big Hangover” provide examples] as to have at most minimal effects on views of disputes about naming non-criminal wrongs or delicts, blaming parties for personal injuries, or claiming recompense from one or more parties based on parties’ failures to exercise due care. I limit my reverie in this note to what Anthony Chase labels the “tort genre” because that genre, I presume, is a primary source of misinformation about civil disputing in the United States. Anthony Chase, *Movies on Trial: The Legal System on the Silver Screen* (The New Press, 2002) pp. 105-108. Please compare the list in Ross D. Levi, *The Celluloid Court­room: A History of Legal Cinema* (Praeger, 2005) pp. 135-155. Restricting myself to what Chase labelled the modern tort genre [and including two feature films released after publication of Chase’s book, I compare in this note “A Civil Ac­tion” (1998) with “The Verdict” (1982), “Class Action” (1991), “Philadelphia” (1993), “Disclosure” (1994), “The Rain­maker” (1997), “The Sweet Hereafter” (1997), “The Insider” (1999), “Erin Brockovich” (2000), “Runaway Jury” (2003), “North Country” (2005), and “Michael Clayton” (2007). [↑](#endnote-ref-2)
3. I presume away no influences from fiction [especially not John Grisham] or television [*Lawyers in Your Bedroom*] on attentive, educated citizens. I presume that classrooms can do little about such mass media in or alongside classrooms. I must choose. I restrict this paper to films to discuss what one or a few choices we educators can best make in classes. [↑](#endnote-ref-3)
4. Michael Saks 25 years ago defined “factoids” and “factlets,” wonderful mnemonics for classroom discussions. Please consult “[Do We Really Know Anything about the Behavior of the Tort Litigation System. And Why Not?](https://scholar.google.com/citations?view_op=view_citation&hl=en&user=Nw_8OD4AAAAJ&citation_for_view=Nw_8OD4AAAAJ:u5HHmVD_uO8C)” *University of Pennsylvania Law Review* 140 (4), 1147-1292, esp. pp. 1162-1168. [↑](#endnote-ref-4)
5. Although I do not want to overlook how much misinformation [descriptions, depictions, and charac­terizations more false than true or at least more inaccurate or imprecise than some assessor is prepared to overlook] is disinformation [descriptions, depictions, and characterizations deliberately inaccurate or imprecise in an effort to deceive], repeating the more general set “misinformation” alongside the subset “disinforma­tion” soon would numb the rea­der. Hence, I dis­pense with “disinformation” throughout the rest of this note. To see how much misinformation is deliberate, please see Marc Galanter, “Real World Torts: An Antidote to Anecdote,” *Maryland Law Review* Vol. 55 pp. 1093-1160 (1996). [↑](#endnote-ref-5)
6. For a retrospective of decades of misinformation in tort reform, please see William Haltom and Michael McCann, *Distorting the Law: Politics, Media, and the Litigation Crisis* (University of Chicago Press, 2004) Ch. 2. To see how such misinformation has endured into the present century, I recommend Stephen Daniels and Joanne Martin, *Tort Reform, Plaintiffs’ Lawyers, and Access to Justice* (University Press of Kansas, 2015). [↑](#endnote-ref-6)
7. Even as I wrote this note [www.rawstory.com/2017/03/gop-lawmakers-are-about-to-pass-two-laws-that-would-make-it-nearly-impossible-to-sue-corporations/](http://www.rawstory.com/2017/03/gop-lawmakers-are-about-to-pass-two-laws-that-would-make-it-nearly-impossible-to-sue-corporations/); accessed 21 March 2017. [↑](#endnote-ref-7)
8. I include documentary as well as feature films in this declaration but review only features films in this note. [↑](#endnote-ref-8)
9. Lewis A. Grossman and Robert G. Vaughn, *A Documentary Companion to A Civil Action* (ThomsonReutersFoundation, 2008; 4th edition). [↑](#endnote-ref-9)
10. In addition to the companion, the movie, and the nonfiction tome, please be aware that Mr. Schlichtmann has described the disputes at Barry University: www.youtube.com/watch?v=PVg37Xfnkd0; last accessed 28 March 2017. [↑](#endnote-ref-10)
11. Grossman and Vaughn, *A Documentary Companion to A Civil Action*, pp. *xliv-xlvii* [“Summary of Contents”] and pp. *xlix-lxi* [“Table of Contents”]. [↑](#endnote-ref-11)
12. I hope the following goes without my stating it: My ordinal ranking of alternatives is a crude heuristic. I do not aspire to or attain even a Pseudo-Likert five-point scale. [↑](#endnote-ref-12)
13. For a small sample of that literature, please see Michael McCann, William Haltom, and Shauna Fisher, “Criminalizing Big Tobacco: Legal Mobilization and the Politics of Responsibility for Health Risks in the United States,” *Law & Social Inquiry* Volume 38, Issue 2 (Spring 2013)  Pages 288–321. Marie Brenner’s “The Man Who Knew Too Much,” *Vanity Fair* http://www.vanityfair.com/magazine/1996/05/wigand199605; last accessed 5 April 2017 informed the script for “The Insider.” [↑](#endnote-ref-13)
14. #  Erin Brockovich, *Take It from Me: Life's a Struggle But You Can Win* (McGraw-Hill, 2001).

 [↑](#endnote-ref-14)
15. Jonathan Harr, *A Civil Action* (Random House, 1005). [↑](#endnote-ref-15)
16. John Grisham, *The Rainmaker: A Novel* (Doubleday, 1995). [↑](#endnote-ref-16)
17. Please contrast Mark Dowie, “Pinto Madness,” *Mother Jones* (September/October 1977) [www.motherjones.com/politics/1977/09/pinto-madness](http://www.motherjones.com/politics/1977/09/pinto-madness); last accessed 13 March 2017 with “The Myth of the Ford Pinto Case,” Gary T. Schwartz, 43 Rutgers L. Rev. 1013 (1991). [↑](#endnote-ref-17)
18. **Spoiler alert!** I credit “Class Action” for conveying adversarial skullduggery but recoil from the melodramatic ending [↑](#endnote-ref-18)
19. Spoiler alert! Please skip this note if you should rather not have me spoil the ending of “North Country.” Loose as U. S. courtrooms can be, few U. S. district court judges would permit a plaintiff’s attorney to excoriate a witness for pants-wetting cowardice and to invite members of the gallery to stand up for the plaintiff [a rite of democracy to some moviegoers perhaps, but to other viewers a gentle mob]. Moreover, Charlize Theron is until an isolated plaintiff in a movie based on the true story of the first sexual harassment class action? [↑](#endnote-ref-19)
20. John Grisham, *The Runaway Jury: A Novel* (Doubleday, 1996). [↑](#endnote-ref-20)
21. Russell Banks, *The Sweet Hereafter: A Novel* (Harper Perennial, 1997). [↑](#endnote-ref-21)
22. Spoiler alert! Novel and film would require trigger alerts concerning incest. [↑](#endnote-ref-22)
23. Barry Reed, *The Verdict* (St. Martin’s Paperbacks, 1992). [↑](#endnote-ref-23)
24. Michael Crichton, *Disclosure: A Novel* (Ballantine, 1993). [↑](#endnote-ref-24)
25. #  I do not consider comedies in this paper because comedies tend to go even more over the top because they need not be at all realistic in exploiting “common knowledge” for laughs. Whiplash Willie Gingrich, Walter Matthau’s Oscar-winning turn in “The Fortune Cookie” or Fletcher Reede [Jim Carrey] in “Liar Liar” defile legal practice and doctrine for laughs. I’d insist on supplements too extensive to justify using either comedy at all lest I disseminate disinformation far more memorable than the information I purport to be imparting.

 [↑](#endnote-ref-25)
26. #  I here play off the titles of Erwin Chemerinsky’s *Closing the Courthouse Door: How Your Constitutional Rights Became Unenforceable* (Yale University Press, 2017) and Stephanie Mencimer’s *Blocking the Courthouse Door:* *How the Republican Party and Its Corporate Allies Are Taking Away Your Right to Sue* (Free Press, 2011).

 [↑](#endnote-ref-26)
27. I hope I convey the concept of “litigotiation” adequately in what follows. Litigotiation, as contributed by Professor Marc Galanter is at least twofold. First, Professor Galanter exhorts us to reconceive of civil disputing as comprising negotiation and adjudication as parts of a single process. Second, Professor Galanter teaches us that negotiations outside the courtroom and trying cases in courtrooms use formal judicial processes or the threat of formal judicial processes to secure set­tlements far more often than disputants take matters to trial. Please see Marc Galanter, “Worlds of Deals: Using Negotiation to Teach about Legal Process,” *Journal of Legal Education* Vol. 34 p. 268 (1984) John Lande, “Taking Advantage of Opportunities in ‘Litigotiation,’ “ *Dispute Resolution Magazine* Vol. 21 p. 40 (Summer 2015) http//ssrn.com/abstract=2649095; accessed 21 March 2017. Because feature films so often shortchange settlement talks in favor of high drama and hijinks in trials, factuality and verisimilitude, complexity and sophistication, and accuracy and precision must suffer. [↑](#endnote-ref-27)
28. A “Perry Mason moment” was a turn in the plot that enabled Perry Mason to win when he seemed poised to lose. search.tb.ask.com/search/GGmain.jhtml?searchfor=perrymason+moment&redirect=CPC; last accessed 2 April 2017. [↑](#endnote-ref-28)
29. I have little doubt that in general civil disputing better serves have-mores than have-lesses. Indeed, I do not regard the call as close. If I nursed or cherished any such doubts, I’d re-read Donald Black’s *The Behavior of Law* or Marc Galanter’s “Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change,” *Law and Society Review* Vol. 9(1) pp. 95-160 (Autumn 1974). Professor Black would demonstrate to my satisfaction anew that “have-mores” may be defined along more than one dimension and that across space and time those of greater wealth, status, education or other culture, respectability, and organization profit more from law, including civil law. Professor Galanter restricted himself to civil disputing in his *Why the Haves Come Out Ahead: The Classic Essay and New Observations*. See also Herbert M. Kritzer and Susan Silbey (eds.) *In Litigation: Do the “Haves” Still Come Out Ahead?* (Stanford University Press, 2003). In addition, please see the judgment by Professor Anthony Chase in note 39 *infra*. [↑](#endnote-ref-29)
30. Please check out this negotiation at [www.youtube.com/watch?v=XEGy\_asxL2U](http://www.youtube.com/watch?v=XEGy_asxL2U); last accessed 6 April 2017. [↑](#endnote-ref-30)
31. Although the subtitles are in Spanish, the soundtrack is in English at [www.youtube.com/watch?v=lpal3VRUjjY](http://www.youtube.com/watch?v=lpal3VRUjjY); last accessed 6 April 2017. [↑](#endnote-ref-31)
32. Walter Lippmann, *Public Opinion* Ch. XI “The Enlisting of Interest.” [↑](#endnote-ref-32)
33. Please see Anthony Chase, *Movies in Trial* (The New Press, 2002) Ch. 4, esp. pp. 115-116. I am not certain that Professor Chase would agree with every specification of the standard civil-law or tort movie that I introduce in this paragraph. Please notice that I synthesize Mr. Lippmann’s formula into Professor Chase’s. [↑](#endnote-ref-33)
34. #  See in general Michael Asimow, “Embodiment of Evil: Law Firms in the Movies,” *UCLA Law Review* Vol. 48 (2000-2001) pp. 1339-.

 [↑](#endnote-ref-34)
35. Michael McCann and William Haltom, “Ordinary Heroes vs. Failed Lawyers—Public Interest Litigation in *Erin Brockovich* and Other Contemporary Films,” *Law & Social Inquiry* Vol. 33 (4) (Fall 2008) pp. 1045-1070. Please recall that Lippmann posited elements of the plot of the tort genre before movies had soundtracks. Dramas begin from realistic imperilment of actors with whom modal members of audiences will iden­ti­fy and wend toward a romantic ending. The seemingly true-to-life beginning and an ending far happier than sociology of law would portend are almost invariant; twists of plot between beginning and ending may supply novel, jurally implausible actions in familiar institutional settings. Please see Lippmann, *Public Opinion*, Ch. XI “The Enlisting of Interest.” [↑](#endnote-ref-35)
36. Roger Ebert of the movie: “ ‘Civil Action’ [*sic*] is like [John Grisham](http://www.rogerebert.com/cast-and-crew/john-grisham) for grownups. Watching it, we realize that Grish­am's lawyers are romanticized hotshots living in a cowboy universe with [John Wayne](http://www.rogerebert.com/cast-and-crew/john-wayne) values. The real world of the law, this movie argues, has less to do with justice than with strategy and doesn't necessarily arrive at truth. The law is about who wins, not about who should win.” [www.rogerebert.com/reviews/a-civil-action-1999](http://www.rogerebert.com/reviews/a-civil-action-1999); last accessed 7 April 2017. [↑](#endnote-ref-36)
37. That is, standard civil-justice cinema may incline members of its audience to contemplate that civil wrongs may be inadequate even to address moral wrongs that poison or otherwise imperil communities. [↑](#endnote-ref-37)
38. I intended the pun. [↑](#endnote-ref-38)
39. “Nothing underscores the originality of *A Civil Action* more dramatically than the fact that the film was remade, but with a different ending, in about fourteen months. Of course Steven Soderbergh’s *Erin Brockovich* (2000), like *A Civil Action*, is based on actual events whose outcome determined the film’s conclusion. . . . *Erin Brockovich* could do what *A Civil Action* could not: provide its audience with a Hollywood ending.” Chase, *Movies on Trial*, pp. 117-118. [↑](#endnote-ref-39)
40. When Al Eustis [Sidney Pollack] offered Schlichtmann $8,000,000, he warned Schlichtmann that Schlichtmann risked his career if he turned down the offer. What may have been rhetoric became prophetic. [↑](#endnote-ref-40)
41. “If most Americans have to depend on tort law to enforce their interests against the structure of corporate power, they haven’t got a chance. That, I think, is the meaning of *A Civil Action*, and it is not something that can readily be fit into the reigning tort-film paradigm—elaborated in *The Verdict*, *Class Action*, *Philadelphia*, and *The Rainmaker*. So, in this sense, *A Civil Action* does indeed cause a new wrinkle in the otherwise smooth fabric of the tort-film genre.” Chase, *Movies on Trial*, pp. 115-116. Note that Professor Chase wrote before “North Country” and “Michael Clayton.” “North Country”—Spoiler Alert!—has a happy ending, but “Michael Clayton” is at least as bleak as “A Civil Action.” [↑](#endnote-ref-41)
42. Chase, *Movies on Trial*, pp. 113-119. [↑](#endnote-ref-42)
43. I mention at peril of distracting my readers from where I am headed various actors who have done splendid work in feature films: Paul Newman in “The Verdict,” . . . This section of this paper, however, concerns characters and characterizations rather than actors. [↑](#endnote-ref-43)
44. Chase, *Movies on Trial*, p. 105. [↑](#endnote-ref-44)
45. #  Cinematic examples abound. The attorney for Sally Field’s newspaper is ineffectual and spineless in “Absence of Malice” (1981). Regarding feckless trial attorneys, please see Michael McCann and William Haltom “Ordinary Heroes vs. Failed Lawyers—Public Interest Litigation in Erin Brockovich and Other Contemporary Films” Volume 33, Issue 4 (December 2008) pp. 1043–1070.

 [↑](#endnote-ref-45)
46. Walter Lippmann, *Public Opinion* (Free Press, 1922) p. 107. [↑](#endnote-ref-46)
47. “Now the single greatest liability a lawyer can have is pride. Pride … Pride has lost more cases than lousy evidence, idiot witnesses and a hanging judge all put together. There is absolutely no place in a courtroom for pride.” Jerome Facher [Robert Duvall] in “A Civil Action” [www.imdb.com/title/tt0120633/trivia?tab=qt&ref\_=tt\_trv\_qu](http://www.imdb.com/title/tt0120633/trivia?tab=qt&ref_=tt_trv_qu); last accessed 7 April 2017. [↑](#endnote-ref-47)
48. Cheeseman gets less respect than Professor Facher in the movie, but Jonathan Harr notes in *A Civil Action* that one of Cheeseman’s technicalities, Rule 11, prevails with Judge Skinner by an—not the—end of the Woburn cases. [↑](#endnote-ref-48)
49. See Michael McCann and William Haltom, “Nothing to Believe In – Lawyers in Contemporary Films About Public Interest Litigation,” in Austin Sarat and Stuart Scheingold (eds.) *The Cultural Lives of Cause Lawyers* (Cambridge University Press 2008) pp. 230-252. [↑](#endnote-ref-49)
50. *N. b*., Mary Steenburgen as Belinda Conine, lead attorney for the powerful law firm, behaves ethically and gently in her examination of Mr. Beckett [Hanks]. She may be heroic as well. [↑](#endnote-ref-50)
51. Please seek greater detail in McCann & Haltom, “Nothing to Believe In.” [↑](#endnote-ref-51)
52. I cite “The Sweet Hereafter” to observe that Mitchell Stevens is a unidimensional trial lawyer, but I concede readily that Mr. Stevens has daughter issues that add one or more dimensions to the character. Please note that—Spoiler Alert!—this ambulance chaser loses. [↑](#endnote-ref-52)
53. Spoiler Alert! Professor Facher and Beatrice escape the case largely unscathed after Facher offered Schlichtmann a $20,000,000 settlement. [↑](#endnote-ref-53)
54. In case it does not go without saying, let me note the obvious: “Michael Clayton,” too, shows various sorts of attor­neys, of whom George Clooney, a shady bag man amoral / immoral, proves most praiseworthy or least vile, fol­lowed by Tom Wilkinson, a master litigator who mentally breaks down and physically strips down to become less vile than he has come to see himself to be, followed by Sidney Pollack, who heads the barracuda firm, followed by the truly evil, utterly depraved Tilda Swinton. That is a spectrum I admit: 50 shades of shadiness. “Michael Clayton” revels in even more than reveals the evils of corporate defense, but the impact derives to a great extent from hyperbole that may be occasionally truthful but likely exaggerates wildly [↑](#endnote-ref-54)
55. Michael Asimow (ed.) *Lawyers in Your Living Room! Law on Television* (American Bar Association, 2009); Elayne Rapping, *Law and Justice as Seen on TV* (New York University Press, 2003); Robert M. Jarvis and Paul R. Joseph (eds.), *Prime Time Law: Fictional Television as Legal Narrative* Carolina Academic Press, 1998). [↑](#endnote-ref-55)