

Chapter 4

Civil-Law Films: The Cinema of Tort Liability

GANGSTER-FILM THEORIST Jack Shadoian begins his critique of American crime movies by asking himself what is accomplished within the gangster genre that cannot be achieved just as effectively within other cinematic genres. That is an excellent way to begin thinking about all kinds of genres, including the legal/lawyer one. What is it that is really specific to this genre and does not exist in the same form outside? The overlap between the legal genre and a host of others (gangster, prison, melodrama, Western, science fiction, *social-science* fiction, slapstick comedy, and so forth) immediately complicates the question in interesting ways.

Considering the public's addiction to the facts of crime, it is hardly surprising that the legal-trial genre is dominated by the high drama of criminal trials. It would, however, be erroneous to think that criminal trials exhaust the canon of courtroom confrontation in fiction and film. There is still the civil side. There are, for example, a civil-law cinema of psychiatry in court and separate categories for contract and property law on film. Indeed, a small group of surprisingly complex movies, rich in legal ideas and references (*The Addams Family*, *Beetlejuice*, *The 'burbs*, *Batman Returns*, *MouseHunt*, and *Nothing*

but Trouble), constitutes the vital core of property-law cinema. While there are, in addition, films touching upon such civil-law issues as libel and slander, divorce, child custody, denaturalization, and no doubt others, in this chapter we will focus on movies dealing with torts, what lawyers succinctly refer to as noncriminal wrongs.

The Master Discourse

Criminal-law films, as we have seen, can readily be divided into two dominant forms: crime-control and due-process cinema. The dominant form or "master discourse" of tort cinema, however, was established in four films made between 1982 and 1997: *The Verdict*, *Class Action*, *Philadelphia*, and *The Rainmaker*. It is important to note the similarity between these four films, which taken together can be seen as expressing a single story or narrative, in spite of the fact that each film is directed by an individual stylist or auteur: respectively, Sidney Lumet, Michael Apted, Jonathan Demme, and Francis Ford Coppola. The force of generic conventions was sufficient to effectively restrain the otherwise strong personalities and cinematic idiosyncracies of these four directors, while working within the master discourse.

In *The Verdict* (1982), Paul Newman plays Frank Galvin, a down-on-his-luck, alcoholic negligence lawyer who almost forgets to show up for the case of a lifetime. Oddly, this cornerstone of tort cinema is most usually debated by lawyers and law professors as a film about ethics and professional discipline, rather than for the legal context of the film itself, its substantive law focus. Of course, *The Verdict* is about good and bad lawyering. Of course, the film's audiences were at least as interested in whether Galvin would rally in time to save the day as they were in whether he had an obligation under the ABA code of professional responsibility to notify his clients, for example, of a settlement offer. But the film is also, crucially in my view, about medical malpractice, one of the most important areas within the entire field of American tort law.

Galvin represents the family of a plaintiff who has suffered irreversible brain damage as a result of the way anaesthesia was administered during a routine medical procedure. In the movie's decisive scene, Galvin examines a nurse on the witness stand who effectively

implicates the defendant physician in a plot to alter documents in order to hide his own responsibility for causing grievous harm. Galvin's closing argument to the jury—"Act as if you believe and faith will be given to you"—provides a remarkable restatement of Dean Prosser's general theory of torts: the courts are there to do justice, but we have to believe in the system itself before we will take the risks, and go to the trouble, to make use of those courts.

Now there is, on the one hand, a certain similarity between *The Verdict's* story line and that of some criminal-trial films. Take, for example, *True Believer*, discussed in the previous chapter as a classic due-process/criminal-law film. Again, James Woods plays Eddie Dodd, a down-and-out, formerly brilliant, now pot-smoking defense attorney basically available to any drug dealer who will take him on as counsel and can pay the fee in cash. Just as Frank Galvin gets that unique, dreamed-of, potentially redemptive case, so does Eddie Dodd. For each lawyer, the big case moves gradually from the periphery of consciousness to the very center of their being. It becomes an obsession. Winning is not just winning any longer. Justice in a particular case, economic survival, professional prestige, personal salvation, and the credibility of the legal system itself—all hinge on their heroic struggle to see that the rule of law prevails.

Prevails over what? In *True Believer*, it will be recalled, it is the cops and the district attorney who set up Dodd's innocent client to take the fall for something he did not do. The target of Galvin's advocacy in *The Verdict*, however, is quite different: physicians and the hospital where they practice medicine and the high-powered malpractice defense firm that represents them at trial.

Again, the stories themselves are structurally similar. Art critic Lawrence Alloway, in a very interesting essay on violent American movies written to accompany a film series shown at the Museum of Modern Art in New York, points out that motion pictures "are dominated by conventions and can be grouped in cycles. . . . In movies the actors are as stereotyped as, say, the young hero or the old warrior types in Renaissance portraiture." So the cross-generic (criminal-law film / tort-law film) superimposition of Eddie Dodd onto the silhouette of Frank Galvin should come as no surprise.

And we can even apply Alloway's offhand illustration to the particular iconography of tort cinema. Just as we find "the young hero"

in *The Rainmaker's* Rudy Baylor, we can also see "the old (or aging) warrior" in *The Verdict's* Frank Galvin. "Situations," Alloway further argues, "are as recurrent in movies as the set themes of speeches in Seneca's plays, such as the 'simple life' speech, the 'haunted grove' speech, and the 'king must be obeyed' speech, to quote E. F. Watling."

A highly significant example of the sorts of recurrent situations identified by Alloway, but within the genre of tort films, is what might be described as the "how I almost didn't get the client" scene. In *The Rainmaker* (1997), Rudy Baylor (Matt Damon) has to get past rusty gates and barking guard dogs to get the signatures of an exhausted mother and a war-injured veteran, who is "not right in the head," on a contingent fee agreement so that he can represent their son who is dying of bone cancer. Bleeding from the nose onto crucial documents, the son heroically signs his own name to the contract.

In *Philadelphia* (1993), a homophobic attorney, played by Denzel Washington, actually rejects his first opportunity to represent HIV-positive fellow lawyer Andrew Beckett (Tom Hanks), who has been fired from his prestigious law-firm position for alleged incompetence, right after being promoted within the firm. Crusading plaintiffs'-rights attorney Jedediah Tucker (Gene Hackman), in *Class Action* (1990), stands in line to get his client, whom he reels in by telling him that "these bastards think they can do anything they want [but] they don't always get away with it. . . . Once in a while people like us, this law firm, we stop them. This is going to be one of those times."

In *The Verdict*, Frank Galvin tapes a note to his office door and goes to a bar to drink scotch and play pinball while his clients cool their heels in the hallway of a dingy office building where Galvin stores his metal filing cabinets but is generally too hungover to practice law—he has had four cases in court in the last three years. Again, *True Believer* is cut from the same cloth. Eddie Dodd is almost too stoned to answer the door to his office (he now also lives in the back room) when an elderly Korean woman, mother of the falsely imprisoned Shu Kai Kim, comes to beg for Eddie's help. And just as Frank Galvin has a colleague and friend (Hank Warden) sober him up just in time and guide him along the way, Eddie Dodd has an idealistic young assistant who points Eddie in the right direction.

Who "They" Are

But what is crucially *different* about the tort-film genre, or subgenre, as I suggested above, is the target: "who *they* are," as a grizzled Edmond O'Brien put it in Sam Peckinpah's *The Wild Bunch*—who it is viewers can look forward to seeing impaled in the last act. Like every criminal-law teacher, I spent years telling first-year students that the reason the plaintiff in criminal-law cases is always the government is that these are public, not private, actions. And movies, in their way, reflect the same reality: the villain in tort cinema is private, not public, power.

So private parties, yes, but why villains? It makes perfect sense to ask why the master discourse of tort cinema, engraved frame by frame on public consciousness by *The Verdict*, *Class Action*, *Philadelphia*, and *The Rainmaker*, should have developed the way it did, *when* it did. We are now, and have been at least since Reagan's election in 1980, in a period of development in the history of American tort law and litigation that seems, on balance, to have drawn the line on liberal state capitalist transformation of tort liability. This conservative backlash is often peddled under the heading "tort reform." We might reasonably anticipate a tort cinema during this period that would mirror the current "structure of feeling" (as Raymond Williams would have put it)—the value system, in short, of a vigorous, antilawyer, antiliability, corporate rollback of progressive tort law and practice. But that is not what we have been getting from Hollywood torts. How come? Maybe the persistence of state capitalist tort values in the present period (see, for example, antitobacco and antifiarmars litigation) is pushing proplaintiff moving pictures to the fore. Maybe Hollywood is still run by communists (that, for the record, is a joke). Perhaps the movies enjoy something more than merely "relative autonomy" from the social and economic infrastructure. But I can think of another explanation which seems to me better than these.

The targets on which these four films train their sights are, respectively, negligent physicians and the medical-malpractice defense bar, the automobile industry, employers who discriminate against minorities and the disabled in their hiring practices, and the insurance industry. In other words, crooked corporate America. Perhaps the sharpest expression of this sort of targeting is provided in a movie

which, if not a tort film per se, at least features Ed Norton as a kind of “tort character.” It is actually difficult to classify David Fincher’s *Fight Club* (1999). Richard Schickel at least tries to locate the film, suggesting that it works “*American Beauty*–Susan Faludi territory, that illiberal, impious, inarticulate fringe that threatens the smug American center with an anger that cannot explain itself.”

Schickel’s description seems to fit perfectly another Norton film, Tony Kaye’s *American History X* (1999), made the same year as *Fight Club*. It also fits rather well a football-hooliganism film, Alan Clarke’s *The Firm* (1988). Clarke’s brutal British essay on soccer violence, starring Gary Oldman as Bex Bissek, is actually something of a blueprint for *Fight Club* since the English “firms” of the title are fighting clubs that challenge competing crews of football supporters to a game of up-the-ante, at least until Bex goes too far and gets himself killed. What makes *American History X* and *The Firm* quite superior pictures is not so much their surface realism as their social acuity—they are utterly convincing. It is hard to imagine their main characters surviving in their respective social milieus *without* the occasional bit of physical nastiness. Not so *Fight Club*’s angry young men, who may well be professionals and businessmen by day but hardly seem persuasive as urban anarchists by night—the two just don’t mix.

Ed Norton’s disgust with his job in *Fight Club*, more like that of Russell Crowe’s character in Michael Mann’s *The Insider* (1999), is, however, absolutely convincing. Norton explains his work to a woman who happens to be sitting next to him on an airplane, while the audience is treated to a series of shots of a grotesquely burnt-out automobile chassis: “I was a recall coordinator. My job was to apply the formula. A new car built by my company leaves somewhere traveling at sixty miles per hour. The rear differential locks up. The car crashes and burns with everyone trapped inside.

“Now,” continues Norton methodically, “should we initiate a recall? Take the number of vehicles in the field *a*, multiply it by the probable rate of failure *b*, then multiply the result by the average out-of-court settlement *c*. *A times b times c equals x*. If *x* is less than the cost of a recall, we don’t do one.” The friendly woman sitting next to Norton, carefully eating her airline dinner with measured strokes of knife and fork, stops cold. She is appalled.

“Every time the plane banked too sharply on takeoff or landing,”

Norton recalls in voice-over, "I prayed for a crash or a midair collision . . . anything. Life insurance paid off triple if you died on a business trip." Just as Norton's job description is punctuated by images of other recall coordinators climbing around a charred and twisted vehicle making jokes about how the people inside died, his prayer for an air disaster is immediately illustrated by the hallucinatory depiction of an inflight air catastrophe, followed by a nightmarish disintegration of the plane fuselage. Looks like no survivors. That is basically Norton's view of modern living in a business society: "On a long enough time-line, the survival rate for everyone drops to zero." A human life, at least in the view of the corporate number crunchers, has little or no value.

Or so it would seem, as the history of the manufacture and marketing of tobacco products in America unfolds. No film has targeted the tobacco companies more effectively than Mann's *The Insider*. Powered by strong performances from Al Pacino and Russell Crowe and backed by an exquisite musical score, *The Insider* is Michael Mann's best film. But moral corruption in the tobacco (and television) industries is exposed by First Amendment-driven electronic-media reporters, not by tort-law-driven plaintiffs' attorneys. The only thing that might qualify *The Insider* as a tort film would be the desperate effort by disingenuous lawyers from "CBS corporate" to deploy tort doctrine (an exaggerated fear of "tortious interference" suits brought against the network by big tobacco) to kill an explosive news story. *The Insider* belongs primarily to the "journalist as hero" genre of motion pictures (*Call Northside 777*, *Z*, *All the President's Men*, *Defence of the Realm*).

Courageous criminal lawyer Eddie Dodd's world can easily be turned on its head, and both the police and district attorneys, *True Believer's* nemeses, can be made into heroes with a snap of the fingers (television series like *Law and Order* do so every night of the week). But Frank Galvin's or Rudy Baylor's world? The system that employs someone like Ed Norton in *Fight Club* to do what he does? Corporations like big tobacco switching places with the victims of medical malpractice or insurance fraud or abandoned product recalls, with a snap of the fingers? Now, there is a challenge.

A steep challenge, to be sure, though not (depending on your view of business ethics) because corporations are inherently bad. Rather, in

terms of popular American storytelling, there do not seem to be readily available narrative structures within which corporations can be portrayed as champions. In *Marxism and Form*, Fredric Jameson describes how the European novel had to go through a period analogous to what Marx described in economics as the stage of capital accumulation—only in the case of fiction, it is the stage of primitive accumulation of narratable forms. Corporate America in the movies seems to me a tad short on narratable hero figures and formations. From Robert Wise's *Executive Suite* in the 1950s through Oliver Stone's *Wall Street* in the 1980s, business has tended to look less like a public profession than it has a highly specialized branch of organized crime.

Let us assume, for a moment, that this is actually the main stumbling block. "As persons appropriate from the common repertoire of legal schemas and resources," say legal sociologists Patricia Ewick and Susan Silbey, "they are constrained by what is available, by legality as it has been previously enacted by others." And just so with motion-picture producers, story consultants, screenwriters, and directors making films about torts. Lots of models of lonely, struggling lawyers who ultimately prevail on behalf of the little guy, but precious few scenarios in the script file which you would headline "Corporation Makes Good." The corporate entity, according to lawyer and popular raconteur Gerry Spence, "has been created to perform but one function: to seek profit. In the fulfillment of that objective, it is as mindless as any machine and as soulless as any cement mixer."

So what's a corporation to do? It's difficult to imagine how the kind of thirty-second public-relations promotion corporations put on television could be turned into a feature-length film. Several pages into *Fortune* magazine's 1999 "Fortune 500" issue, Hoechst AG of Frankfurt, Germany, has a two-page spread whose theme is spelled out boldly: "Imagine, lovesickness being the only thing that can cause a heartache." The picture and print add up to the notion that Hoechst chemical company is putting its heart into putting an end to heart and circulatory diseases. Better, obviously, than bravely committing your company to employment of slave laborers in Nazi Germany, a crime for which Hoechst, as part of the I. G. Farben chemical combine, was convicted at Nuremberg.

Could Hoechst's glossy-business-magazine-advertising approach somehow imply a story line, the model for a narrative structure that

could be incorporated into some new tort-film discourse? Or, failing that, could the tort film be given new life from a generic transplant? In Henry Hathaway's *Call Northside 777*, crusading big-city reporter P. J. McNeal (Jimmy Stewart) clears the name of Frank Wiecek (Richard Conte), an innocent man wrongly convicted of killing a cop. Just as defense attorney Eddie Dodd clears his client's name and springs him from prison, and journalist McNeal accomplishes the same trick in the Hathaway picture, could the movies find a way to do the same thing for business? Could a motion picture manage to tell the story of a victimized corporation, wrongly accused of negligence in the popular press and in civil court, only to be exonerated by a no-nonsense jury in the film's upbeat ending?

"It is fashionable at the moment," writes Andrew Solomon in his brilliantly crafted study of depression, *The Noonday Demon*, "to excoriate the pharmaceutical industry as one that takes advantage of the sick." Solomon observes to the contrary that in his experience "people in the industry are both capitalists and idealists—people keen on profit but also optimistic that their work may benefit the world, that they may enable important discoveries that will put specific illnesses into obsolescence." Given the feverish efforts of antipsychiatry activists to enlist prominent tort lawyers in their struggle to make drug companies legally liable for treatment-coincident suicides (depressed psychiatric patients who kill themselves or others while on medication even though they do so simply because they are depressed), then it seems clear that raw material for the "corporation makes good" scenario is certainly out there, just waiting to be discovered by ambitious motion-picture-studio story departments, like the one portrayed in Robert Altman's *The Player* (1992).

In contrast to what he characterizes as a populist civil-trial narrative, law and politics professor Jeffrey Abramson describes a "Hamiltonian narrative" that tells "a mirror-image story, about victimized corporations and fraudulent plaintiffs served by the big industry of trial lawyers." The only film Abramson identifies as telling the Hamiltonian story, however, is Atom Egoyan's *The Sweet Hereafter* (1997), based upon Russell Banks's novel, a movie about a small town victimized by tragedy, and perhaps law, but without a victimized corporation at the center. Review after review of the film describes how the emotionally devastated residents of a community in British Columbia

are preyed upon by ambitious plaintiff's attorney Mitchell Stevens (Ian Holm). Legal sociologist Austin Sarat says that *The Sweet Hereafter* shows how civil litigation can be "as dangerous to the social health of a community, as to the psychic health of persons in mourning." But the relationship between tort law and corporate conduct is really not at issue.

In *Time*, Richard Schickel says the ambulance-chasing behavior of Egoyan's tort lawyer, Stevens, cannot be explained by greed; Roger Ebert in the *Chicago Sun-Times* goes so far as to argue that *The Sweet Hereafter* "is not about lawyers or the law, not about small town insularity, not about revenge." What is the film about? Certainly, *The Sweet Hereafter* deserves to be described as a powerful statement about the terrible inadequacy of various legal yardsticks for measuring liability and compensating loss. The complexity of human tragedy and loss sometimes cannot be comprehended by law or any other social system. However this idiosyncratic film is ultimately interpreted, it should not be seen as a harassed corporate culture's response to Abramson's populist, antibusiness, civil-trial narrative.

But if not *The Sweet Hereafter*, what about Stephen Zaillian's *A Civil Action* (1998)? Could a reclusive and rather unsympathetic old-line Boston law-firm attorney rise to the occasion and clear the name of a victimized corporation, a company falsely accused of, say, poisoning the drinking water of a whole Massachusetts community?

Civil-Action Cinema

That is at least one way of looking at *A Civil Action*, which deals with a court case arising from leukemia deaths attributed to chemical pollutants contaminating the water supply of Woburn, Massachusetts. The attorney for Beatrice Foods, Jerome Facher, played by Academy Award-nominated Robert Duvall, does get his corporate employers off the hook. And Jan Schlichtmann, played with remarkable conviction by John Travolta, does have some of the negative personal characteristics of Walter Matthau's plaintiff's attorney, William Gingrich, in Billy Wilder's *The Fortune Cookie* (1966). Many fans of Jonathan Harr's detailed legal account, on which *A Civil Action* is based, did not find the film nearly tough enough on the judge, the corporations,

or Schlichtmann's opposing counsel. So one might regard the movie as an important new departure in tort cinema.

But one of the two corporations featured in the film, W. R. Grace and Co., did not see it that way. On the contrary, they even set up a web page on the internet to get the truth out, suggesting that Jonathan Harr's book and the subsequent film effectively falsify by what they leave out. Interviewed at Grace's headquarters in Boca Raton, Florida, by a *Miami Herald* business reporter, a Grace spokesperson expressed disappointment that the producers of *A Civil Action* failed to provide W. R. Grace with any opportunity whatever to help tell the story of the Woburn tragedy.

The rather deferential *Herald* reporter did not ask, for example, whether Grace felt that Steven Spielberg should have granted the German government or, for that matter, a representative group of Nazi war criminals an opportunity to edit the *Schindler's List* shooting script prior to production. But Grace's protests were themselves sufficient to make the point. *A Civil Action* picks on the same culprit as other mainstream tort films: corporate America. Thus, *A Civil Action* follows the same pattern or genre code established in *The Verdict*, *Class Action*, *Philadelphia*, and *The Rainmaker*—and not just with respect to the crucial issue of villains and heroes either. The film also includes its own remarkable version of the mandatory “how I almost didn't get the client” scene, where Jan Schlichtmann actually has to park his Porsche by a highway bridge and climb down onto the muddy shoals of a polluted stream, in his expensive leather dress shoes, to see for himself just what has been done to the unsuspecting residents of Woburn by Beatrice and W. R. Grace.

There is one big difference between *A Civil Action* and the other tort films I have discussed here. To be sure, the dragon who must be slain by the lawyer/knight errant is, in all five films, as I have said, a private power broker or megathug. But in *A Civil Action*, unlike in the other films, the bad guys win. As soon as I read that Harr's book was being made into a movie, I was both intrigued and perplexed by the enterprise. How could the end of *A Civil Action* be accommodated to the “is the jury limited in its damage award to the amount the plaintiff is seeking?” scene which, more or less, provides a stunning, and deeply satisfying, climax to the master-discourse films? Conversely, if the facts were made to fit the fiction—cf., John Ford's *The Man Who*

Shot Liberty Valance (1962): “When the legend becomes fact, print the legend”—would the filmmakers actually show Beatrice and Grace losing, perhaps even being forced to apologize onscreen to the Woburn parents who lost their children, something that has not happened to this day? “Because movies generally contain conflict, climax, and closure,” argues attorney Tonja Haddad, commenting on legal films where attorneys cut corners in order to win, “and audiences prefer to see the ‘good guys’ prevail, the lawyers in these movies, despite their unethical behavior, are the heroes who allow justice to triumph.”

Contrary to convention, as I see it, the people who made a movie out of Jonathan Harr’s *A Civil Action* decided to take their chances and let the chips fall where they may. The chemical polluters basically get off scot-free in *A Civil Action*; and it is the admirable (and I think quite heroic) but nevertheless defeated—nearly destroyed in fact—Jan Schlichtmann who ends up holding the bag. When he turns down what he regards as a pathetic settlement offer from Jerome Facher, Schlichtmann explains that a settlement would not be right, would not be fair to the children who died. Facher brutally responds that it stopped being about them the moment the first pleadings were filed. In the final scene, where Schlichtmann is shown as a petitioner in bankruptcy court, the presiding judge asks him what he has to show for all his years of high-flying trial lawyering, where are the objects by which people in our kind of society measure their personal worth? Clearly, these are critical scenes.

Although it is not what Facher meant, in one profoundly important respect the case *did* stop being primarily about the children as soon as lawyers got involved. Once the case was absorbed by the American legal process, it was less about children, facts, personal responsibility, or justice than it was about money. And corporations have more money than everyone else. They can pay their attorneys more and last longer and generally win, certainly when they are dragged into court, kicking and screaming, by the powerless.

John F. Kennedy was fond of quoting Harry Truman’s remark that ten million Americans can afford to send lobbyists to Washington to look after their interests; everybody else has to depend on the president of the United States. 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. In this case, a nonfiction source helped replenish, indeed change the stock, piling up in the great storehouse of (tort cinema's) narratable forms. That is exactly how all literary and cinematic genres change over time, reflecting new, and sometimes bitter, realities.

Precedents

At the same time, however, *A Civil Action* is not itself without cinematic forerunners. Both with respect to its "true life" source and, significantly, its bleak conclusion, *A Civil Action* closely tracks Mike Nichols's *Silkwood* (1983). Both films have the guts to "name names" (Beatrice/Grace in *A Civil Action* and Kerr-McGee in *Silkwood*), and while one would not normally think of the Nichols picture as a "tort film," since it lacks lawyers and trials, it targets nuclear power in the same way that each of the tort films I have discussed arraigns a particular company or industry.

The climax of *Silkwood* comes when Karen Silkwood (Meryl Streep), attempting to deliver key documents about Kerr-McGee's doctoring of atomic fuel rods to a waiting *New York Times* reporter, is apparently run off the road in her Honda and killed. "Amazing Grace" floods the soundtrack as Nichols reveals this appalling conclusion to the Karen Silkwood story. Although Karen herself, through her decision to join the union and her commitment to stopping Kerr-McGee in its tracks may, in a sense, have "been lost, but then found," the documents she was carrying that night have *never* been found. In 1979, a federal court required Kerr-McGee to pay the Silkwood estate 10.5 million dollars in damages as a consequence of the corporation's negligent treatment of Silkwood on the job.

Between Silkwood's death in 1974 and the release of Nichols's film about her battle for plant safety in 1983, another film was made about the nuclear-power industry, and this one too seemed based, in part, on

Silkwood's experience. In James Bridges's *The China Syndrome*, released in 1979, virtually simultaneously with the Three Mile Island near meltdown, a television station employee is shown driving at high speed to get photographs documenting plant-construction fraud to a public regulatory hearing on nuclear-power plants. He too is run off the road and killed and, in this "fiction film," even less ambiguity marks who is responsible for the deadly vehicular ambush.

Some critics might tend to regard *Silkwood* and *China Syndrome* as poor examples of precursors for *A Civil Action*, since they are less "tort films" than "conspiracy films." Catching some of the same flak directed toward Oliver Stone's *JFK*, the two nuclear-power films may be written off as further examples of what we have already characterized, following Hofstadter, as "the paranoid style of American politics."

It is important to recall, however, a simple fact familiar to any lawyer: the essence of conspiracy is not secrecy—let alone paranoia—but, rather, *agreement*. In other words, what makes a conspiracy charge so appealing to prosecutors is that it can be made out simply by providing sufficient evidence that two or more individuals have entered into an agreement to commit a crime. The defendants do not have to actually commit the crime itself—the agreement is the conduct part of the crime of conspiracy.

What *The China Syndrome*, *Silkwood*, and *A Civil Action* have in common is just this sense of agreement, the notion that the people who run the television stations, the courts, the regulatory agencies, and industries that are hazardous to our health have basically entered into an agreement to make sure that nothing is allowed to threaten the bottom line: profits. Law is routinely outmatched when confronted with this agreement, this horizontal plane of combined social action, also known as "social class."

Remake

Nothing underscores the originality of *A Civil Action* more dramatically than the fact that the film was remade, but with a different ending, within about fourteen months. Of course Steven Soderbergh's *Erin Brockovich* (2000), like *A Civil Action*, is based on actual events

Brockovich's war against California's Pacific Gas and Electric Co. had to be told, not simply because of its inherent interest, but also because it could provide the basis, in a way, for a "cinematic antidote" to *A Civil Action*. It is otherwise hard to believe that the first two American dramatic films about legal cases arising from corporate water pollution would be made back to back, about a year apart. *Erin Brockovich* could do what *A Civil Action* could not: provide its audience with a Hollywood ending. Both films name (corporate) names, both have the "lawyer meets with disgruntled clients en masse" scene, and both even include an "expensive shoes" scene (John Travolta ruins his trying to get down to the Woburn river; Julia Roberts does not like the ones worn by the smug, upscale woman litigator, who Roberts feels wants to "steal" her case).

But while *Erin Brockovich*, for which Julia Roberts won the best-actress Oscar, fits reasonably comfortably (Brockovich is a paralegal rather than attorney) within the master discourse of tort cinema, *A Civil Action*, as we have argued, does not. Jeffrey Abramson acknowledges that Jonathan Harr's *A Civil Action*, and by implication the film based on Harr's book, "is a story without a happy populist ending." In spite of the extreme similarity between *Erin Brockovich* and *A Civil Action*, their different endings imply radically different conceptions not only of the tort process, but of the nature of American justice.

The real remake of *A Civil Action*, even though it is a television documentary rather than a fiction film, is *Trade Secrets: A Moyers Report* (2001), one of the most powerful indictments imaginable, not only of chemical companies and their indifference to the harm they cause, but also of the failure of liberal democracy to protect its citizens from predatory capital. And that is the point: *Trade Secrets* is a documentary. Or better, since the documentary form by itself does not guarantee accuracy, *Trade Secrets* is a documentary film that pulls no punches. So just as in *A Civil Action*, *Trade Secret's* chemical companies get away with it.

Describing the process by which Karl Marx became a Marxist, Ernest Mandel records that while still a young man, as soon as Marx "tackled a current political problem—namely, the new law on the

theft of wood—he came up against the problem of social classes. The state, which ought to embody the ‘general interest,’ seemed to be acting merely on behalf of private property, and, in order to do this, was violating not only the logic of law but even some obvious principles of humanity.”

When a serious journalist or filmmaker tackles a current tort problem, like that of the Woburn catastrophe, he or she comes up against the problem of social classes. The Massachusetts court, which should have embodied the general interest of the commonwealth, violated not only the logic of law but even some painfully evident principles of humanity in effectively insulating chemical companies from any real responsibility for the harm they caused. In *A Civil Action*, Jan Schlichtmann is compelled to relearn the same early lesson taught to Marx by the new law on the theft of wood. It seems to be a lesson that we are unable, or perhaps unwilling, to learn once and for all. In *A Civil Action*, Jan Schlichtmann takes to heart Frank Galvin’s advice, “Act as if you believe . . .” and as a consequence, his life virtually disintegrates. By contrast, the master discourse represents (in dialectical tension) both a fantasy about the tort system and the dream of a better world.