

*The Leon Jaworski  
Public Program Series*

Program ii

*Representing the American Lawyer as Celebrity*

*Saturday, August 4, 2001*

*9:30 a.m. – 11:00 a.m.*

*Hyatt Regency Chicago*

*Water Tower Room*

*West Tower, Concourse Level*



Program ii  
*Representing the American  
Lawyer as Celebrity*

framing Questions

- ☛ *How have we represented and understood the American lawyer as celebrated?*
- ☛ *How do publicly recognized—“celebrated”—lawyers act? How do others perceive them?*
- ☛ *Which lawyers are “celebrated,” e.g., lawgivers, trial lawyers, judges, civil rights lawyers, “TV” lawyers? How has this changed historically?*
- ☛ *What has been the impact of media culture on our representations and understandings of the “famous” lawyer?*
- ☛ *How have lawyers represented and understood themselves as celebrated? Who exemplifies the American lawyer as celebrity—as famous?*
- ☛ *What do our various representations of the lawyer as celebrity tell us about lawyers’ legal identity, our legal culture, and, more broadly, ourselves as Americans?*

# Program

*Presiding*

*Allan J. Tanenbaum*

*Chair, ABA Standing Committee on Public Education*

*Welcome*

*Gail Leftwich*

*President, Federation of State Humanities Councils*

*Moderator*

*Roger Cossack*

*Legal Analyst and*

*Co-Host, "Burden of Proof"*

*CNN*

*Panelists*

*Douglas Kmiec*

*Dean and St. Thomas More Professor of Law*

*Columbus School Of Law, Catholic University of America*

*Richard K. Sherwin*

*Professor of Law, New York Law School*

*Patricia J. Williams*

*James L. Dohr Professor of Law*

*Columbia University Law School*

*The Leon Jaworski Public Program Series*  
*Representing the American Lawyer as Reformer*  
*Program II*

Moderator

**Roger Cossack** is legal analyst and co-host of CNN's half-hour legal show, "Burden of Proof." Each day the program examines different newsworthy legal issues and features interviews with many of the nation's top lawyers, judges and members of Congress. Mr. Cossack has provided commentary for CNN on a wide variety of cases and legal matters, from the O.J. Simpson trial to the impeachment and trial of President Bill Clinton to the 2000 presidential election recount in Florida. He is also a contributing editor for CNN's Law Center ([www.CNN.com/law](http://www.CNN.com/law)), providing Web-exclusive columns and online news interviews. Before joining CNN, Mr. Cossack was both a defense counsel and a prosecutor with the Los Angeles County District Attorney's office, trying cases in local and federal courts in more than 20 states. In 1984, he briefed and argued *U.S. v. Leon* before the U.S. Supreme Court, a case that cleared the way for the use of evidence obtained in good faith when search warrants are later declared defective. Mr. Cossack is a contributing writer for *California Lawyer* magazine and has published articles in the *John Marshall Law Review* and *The New York State Bar Criminal Journal*. He earned a BA from the University of California and his JD from UCLA, where he later served on the faculty as an assistant dean.



## Panelists

**Douglas Kmiec** was recently appointed Dean and St. Thomas More Professor of Law of the Columbus School of Law at The Catholic University of America in Washington, DC. Prior to this appointment, Dean Kmiec held the Caruso Family Chair in Constitutional Law at Pepperdine University and had taught at Notre Dame for 20 years. Dean Kmiec is the author of numerous books on the American constitution and related subjects, as well as a popularly acclaimed book, *Cease-Fire On the Family*. He is frequently sought out for legal commentary on national television and radio programs, such as ABC News “Nightline,” “The Lehrer Newshour” on PBS, and National Public Radio. Dean Kmiec’s legal analyses frequently appear in the *Washington Post*, *Los Angeles Times*, and the *Wall Street Journal*. From 1985-1989, he served in the Reagan and Bush administrations as head of the Office of Legal Counsel in the U.S. Department of Justice. An honors graduate of Northwestern University, Dean Kmiec received his JD from the University of Southern California.

**Richard K. Sherwin** is Professor of Law at New York Law School. He has written widely on the relationship between law and popular culture, including articles about film and television. Prof. Sherwin’s recent book, *When Law Goes Pop: The Vanishing Line between Law and Popular Culture*, considers the consequences when legal culture and popular culture dissolve into each other. Among his published articles are “The Jurisprudence of Appearances,” “Picturing Justice: Images of Law and Lawyers in the Visual Media,” and “Lawyering Theory: What We Talk About When We Talk About Law.” Before joining the New York Law School faculty in 1988, he was an Assistant District Attorney for the County of New York and a senior instructor and coordinator of the Lawyering Program at NYU Law School. Prof. Sherwin received a BA from Brandeis University, JD from Boston College, and an LLM and JSD from Columbia University.

**Patricia J. Williams** is James L. Dohr Professor of Law at Columbia University School of Law, where she teaches courses on jurisprudence, commercial law and contracts. In announcing her selection as a 2000 MacArthur Fellow, the MacArthur Foundation lauded her as an “interdisciplinary legal scholar and public intellectual [who] approaches issues of law and social justice in novel ways. Her writings weave together elements of popular culture, memoir, political theory, social activism, and traditional analysis of cases, statutes, and the Constitution.” Prof. Williams is the author of *The Alchemy of Race and Rights: A Diary of a Law Professor* and *Seeing a Color-Blind Future: The Paradox of Race*. She is a columnist for *The Nation* (“Diary of a Mad Law Professor”) and has authored numerous articles for scholarly journals and popular magazines and newspapers. Prof. Williams also appears frequently on national media, including “The Today Show” on NBC, “The Lehrer Newshour” on PBS, and National Public Radio’s “All Things Considered” and “Fresh Air.” She also wrote and narrated “That Rush!,” a short study of American talk show hosts. A graduate of Wellesley College and Harvard Law School, Prof. Williams served as a deputy city attorney in Los Angeles and staff attorney for the Western Center on Law and Poverty before becoming a law professor.

# *Celebrity Lawyers and the Cult of Personality*

Prof. Richard K. Sherwin

New York Law School

There once was a time in America when lawyers played a vital role in the life of our democracy. At least, that is the story Alexis de Tocqueville brilliantly told in his classic account of America in the 1830s. “There are neither nobles nor men of letters in America,” Tocqueville observed. “Therefore, the lawyers form the political upper class and the most intellectual section of society.” If an aristocracy is found in this country, Tocqueville went on, “it is at the bar or the bench.”

This was no idle gentry. In Tocqueville’s view, American lawyers provided an essential bulwark against the tyranny of the majority. The jurist’s trained prudence and conservative instincts, his love of history and tradition, applied “an almost invisible brake” when the American people “let themselves get intoxicated by their passions or carried away with their ideas.” In short, it was up to the American lawyer to neutralize the vices inherent in popular government. Who else could check the radical egalitarian impulse of Jacksonian populism?

How much has changed a hundred and sixty years on. If American lawyers once were perceived as a brake upon popular passions, today we see something very different. Law has entered the age of images, and the best-known lawyers among us are show business icons, luminaries in the culture of celebrity. The lawyer as celebrity has become a willing participant in the mutually assured seduction that goes on between TV journalists and producers and the lawyer pundits, anchors, and screen personalities who help make entertainment king.

What has gone wrong?

## **The Appearance of Justice**

Yale Law School Dean Anthony Kronman, in his darkly titled book *The Lost Lawyer*, argues that American lawyers today are experiencing a “spiritual crisis.” According to Kronman, greed, competition, and the loss of a sense of public service have eroded traditional virtues of character, leader-

ship, and wisdom. But the spiritual crisis that Kronman describes is actually part of a much larger cultural phenomenon.

In times of disorder the need grows for public rituals that will proclaim the resilience of the social order. As Justice Warren Burger wrote in *Richmond Newspapers v. Virginia*, in an opinion advocating the need to keep courtrooms open to the public, “[to] work effectively, it is important that society’s criminal process satisfy the appearance of justice, and satisfying the appearance of justice can best be provided by allowing people to observe it.”

This, of course, was written before the O.J. Simpson trial burst upon the national scene, which is to say, before trying, testifying, and presiding over a criminal case came to be seen as an audition for audience approval. It came before the demand to fill air time gave rise to a cottage industry of legal pundits and professional commentators, from Greta Van Susteren and Roger Cossack on “Burden of Proof” to Geraldo Rivera on “Rivera Live.” It came before reality law programming proliferated, with the stars of the Simpson trial being recruited for TV shows (such as Johnnie Cochran’s “Cochran & Company” and “Johnnie Cochran Tonight” and Marcia Clark’s short-lived “Lie Detector”), commentary spots (Robert Shapiro signed with CBS News, Barry Scheck opted for “Dateline” NBC), and guest appearances (“Rivera Live,” “Larry King,” “Entertainment Tonight,” “Oprah,” “Hardball,” “Burden of Proof,” “Power of Attorney”)—not to mention Christopher Darden’s budding TV acting career. It was before attorney sages like Gerry Spence and F. Lee Bailey marketed their high profile personalities, providing the American public with nuggets of wisdom in twenty seconds or less. And it was before the highly aberrational criminal trials on Court TV set a new baseline for pop law in America, deceptively masking the reality of plea bargaining and the run of the mill cases in which death, sexual assault, and celebrity defendants, contrary to TV appearances, are anomalies rather than the standard fare that plays on the screen.

### **Lawyers and the Culture of Celebrity**

As perceived by the American public, law today is becoming entertainment, and entertainment, law. The line between the reality of lawyering and its fictional representation has all but disappeared. As cognitive psychologist Reid Hastie recently observed, “Today the media’s impact is more important than ever before in the history of the jury trial because there is much more widespread reporting of trials and crime events, especially on television.” Such reporting is not especially known for getting things right, but that is not the important thing. It is the repository of popular templates that jurors bring with them into the courtroom that matters, especially in the gaps between elusive technical rules and media-informed common sense.

Popular images of criminals, lawyers, and judges leach into the courtroom,

the political campaign, and the advertising blitz for law reform. It is what we see when cynically promoted stereotypes of the criminal predator covertly activate racial prejudice and a populist rage for retribution against the dangerous “other” among us. It is what happens when a juggernaut media campaign in the wake of the kidnapping and murder of twelve-year-old Polly Klaas gives birth to the strictest populist sentencing regime in the nation: California’s “three strikes and you’re out” law. The vaunted ideal of the appearance of justice has become synonymous with reality TV.

In a time of disorder, televised order becomes a simulacrum, a mockery of our thwarted need. The fate of the self travels a parallel path. In a time of insecurity concerning the authentic self, the need grows for models of self-aspiration. This is what the celebrity supplies: an intensified sense of being there, dressed in the trappings of material success. In the culture of celebrity to be known is to be. And, as everyone knows, to be known you must be on TV. On this score, the celebrity lawyer is the lawyer par excellence.

### **The Triumph of the Surface**

But on TV, the celebrity lawyer’s being is a screen presence, all surface no depth. As veteran journalist Nina Totenberg put it, “Ideas do not work particularly well on television... Talking heads work best by bouncing off another, but the statements that work best in counterpoint are not necessarily the best things those two or three people said.” Barry Scheck is more direct: “The problem is that...the producers are picking people so they’ll fight with each other to make good television, to create a certain kind of ratings vehicle, and basically we’re not getting context, we’re not getting a sense of proportion, we’re not really getting educated.” In other words, meaningful substantive content yields to effective, which is to say, dramatic visual stimulation. Television needs strong pictures and a very simple story line. Philip Roth recently described this as “the triumph of the surface.”

On TV, everyone has the right answer, and is quick to do battle with those who venture opposing views. It is a world in which Judges Judy, Brown, and Wapner dispense quick justice—lecturing, cajoling, and insulting the parties before them. Populist TV judges, like populist TV DAs and TV detectives, do not suffer fools gladly. Their job is to cut through the deceptions, counter the rip-offs, sweep up the deadbeats. No one has time for the technicalities of law. Tough love, swift action. The medium won’t bear hard-to-visualize abstractions, like the presumption of innocence, the right against unreasonable search and seizure, or the potentially unpopular demands of due process.

### **Law in the Age of Images**

In the current age of images, legal reality is being projected in a variety of ways inside the courtroom: from day-in-the-life videos in personal injury

cases, to police surveillance videos, to civilian and journalist videos and their digital reconstruction (as jurors saw in the criminal trial of the Los Angeles police officers who beat Rodney King), to computer graphics, digitally reconstructed accidents and crime re-enactments, to video montage as a form of legal argument (including the strategic interweaving of commercial feature film footage). Effective legal advocates today know and are putting to use what advertisers and politicians have known and practiced for quite some time: how to get the message out, how to tailor content to medium, how to spin the image, edit the bite, seize the moment on the screen, and in the mind of the viewer.

Today, the domain of experience independent of the mediation of popular culture is shrinking. The visual mass media have become the major source of the building blocks of worldly knowledge and common sense. The convergence of new visual communication technologies and an unrestrained market is changing our mind and our culture. Speed is king. Sound bites rule. And as we all surf the image flow, meanings yield to the visual logic of film and television. It is above all a logic of visual association in a medium bent on intensifying emotion. After all, it is the intensity and immediacy of emotional payoff that keep us watching.

We live in a time of blurred boundaries, when film characters from Oliver Stone's *Natural Born Killers* help the prosecution get the death sentence in a real capital case, and when fictional re-enactments in Errol Morris's docudrama, *The Thin Blue Line*, have the power to re-open a real murder case and ultimately free a defendant who spent over eight years on death row. It is a time when a president's video deposition, in the early stages of impeachment, is reviewed on the front page of the *New York Times* by the paper's film and television critic (dutifully noting the tape's "unlikely resemblance to [Louis Malle's film] *My Dinner With Andre*").

### **Law into Entertainment, Entertainment into Law**

As real lawyering and its fictional representation on television merge, content as well as the new visual aesthetics leach from popular culture into the legal culture. And one wonders whether television lawyer Ally McBeal, someone for whom private is public, emotion is reason, and fantasy is real, might be telling us something about the new, "postmodern" lawyer prototype. Do we recognize our post-O.J., post-Monica Lewinsky culture in Ally's incessant blurring of inner and outer, in her strange mix of reality and fantasy? Is there some new aesthetic of persuasion at work here: one-part emotional vulnerability, one-part genuine caring, taking us as close as we're likely to get to postmodern authenticity and hence trustworthiness, that core element of rhetorical power? In a culture in which the boundaries between reason and emotion have broken down is the "postmodern" trial lawyer better off

defying conventional logic and following the dictates of intimate feelings? As Ally McBeal declares to a colleague, she, like her profession, is “anti-sense.”

We have come a long way from Tocqueville’s admiring account of law and lawyers in America. Rather than serving as a deliberative brake upon popular passions lawyers have become high profile agents of the media’s artificial enhancement of emotion. As UCLA law professor Peter Arenella notes, “The television audience tends to forget the human tragedy it is witnessing as the trial merges with the other soap operas presented for the audience’s pleasure.” But if law is merging into the “supra-ideology” of entertainment, as culture critic Neil Postman puts it, popular legal representations from the culture of entertainment are also merging into law.

Today, the most unrepresentative (“sensational”) cases inform the popular legal imagination and become the basis for public policy and law making. As Stanford law professor Lawrence Friedman recently wrote, “Criminal policy is made by Polly Klaas and Willie Horton.” A similar phenomenon is occurring with regard to the lawyer as celebrity. Today we encounter the lawyer as self-promoter, hawking personality for fame and profit. On Court TV’s “Cochran & Company,” host Johnnie Cochran wins every show. When an actor from the soap opera “All My Children” tells him “you’re our prototype,” Cochran graciously offers to open an office in Pine Valley, the fictional setting of the soap. It is the same TV logic that allows us to watch actor John Travolta commenting on the real lawsuit in a television documentary about the making of the movie, *A Civil Action*, based on the book of that title. If we stick around, we can watch reality TV episodes of “COPS” sandwiched between dramatic episodes of “Homicide.” Or perhaps we’ll catch the real Erin Brockovich campaigning on TV against tort reform after having gained notoriety following actress Julia Roberts’ acclaimed portrayal of her in the box office hit, *Erin Brockovich*. Or perhaps we’ll see an ad seeking caps on personal injury awards, bruited the litigious irresponsibility of people who spill coffee in their laps and then ask for millions from corporate deep pockets. This ad was part of a carefully orchestrated campaign fueled by conservative think tanks and funded by corporate beneficiaries. The same campaign used the mass media to endlessly cycle distorted information about the McDonald’s case.

However, as Geoffrey Miller has astutely observed, “When folklore beliefs are pled in court they shift from half truths to something people believe in as a cultural or moral norm.” We see a similar phenomenon when legal pundits, animated by public criticism of unpopular jury verdicts, use notorious trials as a benchmark for social policy. Here, too, legal reality follows close on the heels of legal legends, factoids, and fictional representations.

### **Where Have You Gone, Atticus Finch?**

These developments cannot but erode the public’s faith in the legal system’s

good working order. And as polls indicate, law and lawyers have never fared worse in the public's eye. Atticus Finch has gone the way of Joe DiMaggio.

It is hard to be sanguine about the future. The spiritual crisis that has befallen the legal profession is yet another sign of the steady devolution afflicting the culture at large. Lawyers will not regain their lost standing as masters of prudent judgment and balanced deliberation, nor will they gain any deeper professional identity than the cult of personality allows, while in the grip of current cultural conditions.

The American experiment in democracy can overcome the loss of public service and the triumph of immediate self-gratification only if we take seriously the responsibility of citizens and jurists to embrace values that transcend self-interest alone. Speaking out on behalf of the poor and the powerless, calling attention to serious erosions in constitutional safeguards against excessive state power, casting light on systemic causes of inequality in the distribution of vital resources, or unfairness in the imposition of disproportionate criminal sentencing, including race-based distortions in capital sentencing—issues such as these are not the stuff of popular entertainment. Their complexity cannot be readily translated into sound bites and gripping visuals.

On a more harmonious note, we may take some comfort in the thought that many anonymous lawyers perform heroic acts in the service of higher principle. Pockets of informed communication can be found on the Internet and elsewhere. One must look for it. One must want to go beyond the conventional fare. One must hunger for the rewards that the culture of celebrity and mass entertainment cannot provide.

I place my bet on the young, and on all those, regardless of age, who seek to translate their alienation and sense of loss into meaningful and constructive public actions. But whether the lure of instant gratification will prove stronger than the call to public service, whether the narcissism of fame and greed will trump an ethos of care and respect for others, particularly those who are most in need, remains to be seen.

It is not up to the American lawyer alone to make a difference. But if enough American lawyers actively sought professional fulfillment through a more deliberate cultivation of character, service, and wise deliberation in the service of larger values, their leadership just might peel away some of the tarnish that has darkened the image of lawyers, where and when, once upon a time in America, Tocqueville celebrated a great democracy and a noble profession.



# The Leon Jaworski Public Program Series

## representing the lawyer in American Culture

### SERIES OVERVIEW

The series is devoted to an examination of how lawyers are, and have been, represented in American culture. The premise and orientation of the series is that, because of the seminal role that law and lawyers play in American culture, exploring fundamental legal identities and attributes will help elucidate who we are as Americans. In considering “law” culturally as an integral part of the humanities, the series focuses on how we can better understand these representations and the meaning they have for us. Ultimately, the frame of reference is how these subjects explicate American mores—what Tocqueville characterized as the habits of heart and mind that represent “the whole moral and intellectual state of a people.” With respect to the five different attributes explored by the series, each of the public programs will consider how the American lawyer has been represented in art, literature, legal and other texts, artifacts, and media culture. The panelists will reflect on legal identities and attributes drawn from both historical and contemporary cultural practices.



## Programs

### **Program I: Representing the American Lawyer as Reformer**

**(May 1, 2001)**

How, specifically, has legal reform been understood in the American context? What is its dynamic? What are its guiding principles and values? How has legal reform been understood and represented as expressing popular will, exercising reason, or realizing justice? Where does “lawyers’ reform” take place (e.g., litigation, adjudication, legislation, public opinion and media, ethics, legal practice and technology)? What are the fundamental attributes that characterize the American lawyer as reformer? Who are exemplary models? Why? How have representations of the lawyer as reformer changed throughout American history?

## *Forthcoming Programs*

### **Program III: Representing the American Lawyer as Judge**

(May 1, 2002)

How have we represented the American judge as embodying the democratic rule of law, the relationship between law and governance when the people are sovereign? How have we represented and understood judges in the process of becoming—and being—judges? How have we represented their essential qualities? How has this changed historically? How are our representations of the judge and adjudication dependent on those of the lawyer and of lawyerly qualities? On the judge’s independence from the lawyer in particular and “independence” from—what and whom—more generally? Who exemplifies the lawyer as judge in American culture?

### **Program IV: Representing the American Lawyer as Rhetor**

How have we understood, in a cultural and historical sense, the law as rhetorical and lawyers as rhetors? How has this been depicted in specific cultural practices? How have we understood—variously, if not ambivalently—the relationship between language and truth expressed through legal rhetoric? Who is the model for the American lawyer as rhetor, a master of persuasion?

### **Program V: Representing the American Lawyer as Citizen**

Thomas Jefferson argued that the American lawyer must aspire to be a “public citizen.” This phrase is echoed today in the language of the profession’s ethics codes, such as in the preamble to the ABA Model Rules of Professional Conduct. Is the American lawyer as citizen simply aspirational? How does the American lawyer’s legal identity relate to her civic identity—and vice versa? What are the ties that bind—or separate—the “lawyer” and the “citizen” in our law-based democracy? Who exemplifies the American lawyer as citizen? How has the American lawyer as citizen been represented culturally?



# *Representing the American Lawyer as Celebrity*

## *PROGRAM PARTNERS*

**ABA Standing Committee on Public Education** mobilizes the resources of the American Bar Association to promote public understanding of law and the legal profession.

**Federation of State Humanities Councils** is the membership and advocacy organization of the 56 state and territorial humanities organizations.

**Illinois Humanities Council** promotes greater understanding of, appreciation for, and involvement in the humanities by the citizens of Illinois.



### **About Leon Jaworski**

As president of the ABA in 1971, Leon Jaworski established the special committee that was the genesis of the Association's Division for Public Education. In 1983, a bequest from his estate generously established the Leon Jaworski Fund for Public Education, which continues to support annual public programs, such as this one, devoted to furthering public understanding of law and the legal system.

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