

# MY 23 YEARS IN HOLLYWOOD

By John W. Cones

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### Introduction

This is the story of my experiences over a 23 year period, while working as an attorney in the Hollywood-based U.S. film community. Those experiences led to a great deal of research and writing about many of the problems I encountered there, either directly or through the reports of others. As that story about my 23 years in Hollywood evolved, it became clear that it is not just a story about my experiences in Hollywood, rather about how those experiences resulted in a massive amount of research and writing about what is really going on in Hollywood, and how that impacts each and every one of us. In other words, this book is part of a narrative description of what I discovered in Hollywood and my attempts to tell that story.

One of the most significant things I discovered about Hollywood is that throughout its history, many of the people who have chosen to criticize various aspects of the institution have been subjected to what I describe as the anti-Semitic sword. The phrase anti-Semitic sword refers to the affirmative use of the false accusation of anti-Semitism to distract attention from the truth of a statement. Over the years, this technique has been used repeatedly in Hollywood against a long list of outsiders who have challenged the Hollywood establishment. That list includes D.W. Griffith, George Schaefer, Joseph P. Kennedy, Orson Welles, Howard Hughes, Dennis Stanfill, Joseph Breen, William Randolph Hearst, Kirk Kerkorian, David Puttnam and others. I briefly review what each of those individuals did to arouse the ire of the Hollywood control group in my book *Hollywood Wars – How Insiders Gained and Maintain Control Over The Film Industry* (originally published by Marquette Books and more recently available through Amazon Kindle), and have made excerpts of that portion of the *Hollywood Wars* book available as part of Chapter 10 in this book.

In more contemporary times, I experienced the same false accusation during some of my years in Hollywood. I was made a target of Hollywood's anti-Semitic sword, not because I was in any way working at the same or similar levels in the industry as those mentioned above, but because I sought to conduct my own research into what was really going on in Hollywood, and tried to reveal the truth about who really controls Hollywood, along with pointing out why it should matter to the rest of us.

My name is John Cones. I am a securities/entertainment attorney in the sense that I do the legal work associated with securities offerings for entertainment projects. More specifically, and primarily, I handle the many highly specialized legal tasks involved when independent filmmakers seek to raise financing for their feature and documentary film projects from private investors. This book tells the story of how this all came about, but again, that's just the background for what I discovered about Hollywood – the more important part of this book.

This is not another book about the glamour side of Hollywood. It is the true story of an attorney and former television news reporter with some limited expertise relating to film finance, choosing to base his small law practice in Hollywood and working in the film industry for more than 20 years. This book presents the results of my research and observations with respect to this important American institution – the Hollywood-based U.S. film industry. It also represents another volley in what some in the civil rights movements refer to as the ongoing struggle to speak truth to power.

My involvement began in 1986 when I was practicing law in Houston, with another attorney. We were engaged in a so-called boutique law practice, highly specialized, handling the legal work associated with passive investor financing of a variety of business projects. Those projects and investor offerings included real estate, equipment leasing, medical technology, oil exploration and drilling, restaurants, nightclubs and some independent films. All of these projects, in those days, used the limited partnership as the investment vehicle and units in a limited partnership are securities. This was the first time that I became aware that some independent filmmakers used the limited partnership as an investment vehicle for raising money from large and small groups of passive investors to produce their films. In any case, the offerings we were handling back in the mid-'80s, relied heavily on the then available federal tax benefits for marketing purposes. In other words, the offerings were tax shelters, and for many investors that was their primary reason for investing.

In 1986, the U.S. Congress, in its wisdom (wink, wink), passed the Tax Reform Act of 1986, eliminating most of those tax benefits. I asked the other attorney I was working with how that might impact our law practice. Actually his practice, since I was working with him and his clients handling mostly state securities compliance for his client limited partnership offerings. Anyway, he said, he didn't think it would impact the practice at all. Wrong! It wiped out the practice as we knew it. Most of the offerings on the street could not be sold and most of the clients went out of business. Many of them owed me significant sums of money that could not be collected. So, at that point, I'm looking around trying to reconfigure my law practice in light of the changed circumstances.

In the meantime, the OPEC oil countries decided to flood the world markets with cheap oil and that threw Houston and eventually the rest of the so-called "oil patch" (i.e., Texas, Louisiana, Oklahoma and Alaska – states whose economies relied heavily on the oil industry) into a severe regional recession. Many of the smaller oil industry companies laid off employees, then went bankrupt. The employees that were laid off could not pay their mortgages and eventually, many of the savings and loan companies that had provided those mortgages went under. Many wealthy and prominent Texans lost much of their wealth in that recession. I wasn't wealthy, so did not lose much, just my highly specialized law practice, which was the way I made a living.

As a result of the loss of the tax incentives for investing and the regional recession,

Houston was not a good place to be starting over. So, I opted for a move, and to become more involved with independent film offerings. I was interested in the film industry for several reasons. One, a few of the securities offerings that had come through our law practice were film offerings. They were structured as limited partnerships. *Cotton Club* was one of the films in a multi-film package of three that we worked on. Disney and MGM also promoted large public offerings of limited partnership interests in feature films at that time. Secondly, my undergraduate degree from the University of Texas at Austin was in Communications. I saw movies as more than mere entertainment, rather as a significant medium for the communication of ideas, and that interested me. I also had an old friend, Maclovio Perez, who was doing the weather for the Los Angeles CBS affiliate, channel 2. He and I had worked together at KTBC-TV in Austin when I was still in law school. It turns out, like a lot of people in the Los Angeles area, he was working on developing a script idea and wanted me to help him write the script. So, in January of 1987, I left Texas and set out for California.

I admit that I did not do much homework about the history of the film industry before I headed to California. I just assumed that like any other business or industry in the U.S., if you were fairly intelligent and worked hard, an individual could prosper. I was not aware of some of the entrenched barriers I would encounter.

This is actually the first time I've told what is pretty much the whole story of my 23 years in Hollywood. I can hope that you'll agree with most of what I report here about what's really going on in the Hollywood-based U.S. film industry, even though you have not conducted the same studies I have, nor spent as much time as I have in researching how things really work in Hollywood (see Bibliography). In effect, this is the story of how I took my small, highly specialized law practice from relative obscurity to total oblivion (a slight exaggeration on the latter), while noting along the way, the outrageous business practices, myths, misinformation, scams and discrimination that contributed to that result, not just for me, but for thousands of others who have sought to work in the Hollywood-based U.S. film industry in one field or another (see the Chapter 14, The Hollywood Victims).

Even more important, however, this book is a call to action (see Chapter 18 – Bringing Reform to Hollywood). The problems that confront every outsider who seeks to work in the film industry have yet to be resolved. Enjoy!

John W. Cones

## Chapter 1 – STARTING OVER/STARTING OUT

**Beginning of the Curt Wilson Saga** – Just before I left Texas, I met with an aspiring film producer from Tulsa, Oklahoma (Curt Wilson) and his partner Donna Douglas (Ellie May of the Beverly Hillbillies TV series fame). We met in a conference room at the Dallas/Fort Worth airport. They wanted to raise money from passive investors for the development of a film project based on a book. The investor funds were to be used to acquire the rights to the book upon which the script was to be based, and to hire a screenwriter to write the script. I prepared the required securities disclosure document, along with the accompanying subscription agreement, and advised them how to comply with the federal and state securities laws. They successfully raised the money needed, acquired the rights to the book and hired a screenwriter to write the script. Little did I know that the meeting and transaction would lead to a seven-year saga involving a resulting major studio film release and a copyright infringement lawsuit. More detail on that later.

**Arriving in Hollywood** – When I first arrived in Los Angeles, I found an apartment in Studio City and shared it with a friend, Levi Isaacks. He was a cinematographer based in Austin and he was considering the move to LA to further his professional career. So, he wanted a place to stay when he was in Los Angeles during his transition. Levi and I had also worked together at KTBC-TV where he was a photo-journalist and I was an on-air news reporter. Levi is an excellent cinematographer and went on to work as the Director of Photography for numerous independent films and television shows.

Maclovio came by the apartment several times a week to work on his script. It was the story about a young man from the U.S. who traveled to Mexico for holiday and fell in love with a beautiful senorita, only to discover a great deal of prejudice against such relationships on both sides of the border. We whipped the script into shape and Mac set out to find production financing. At a social event he attended he met a high-roller who was flashing a lot of money and talked the talk. Mac pitched the film project to him. The man seemed to be impressed and offered to fund the entire movie. Mac realized afterwards that the man was somehow involved in drug trafficking and wanted to use the film to launder drug money. Mac was so unnerved by the experience that he abandoned the film project and it was never produced.

In the meantime, I had begun my research and study of the film industry. I have a preference for owning a book that I read, so I can highlight and make notes in the book, as well as reference it again later. So, I started accumulating an extensive library of well over one hundred books about the film industry – again not the glamor side, rather the business and legal aspects of the industry. Most of those titles are listed in the bibliography included at the end of this book. The entire collection was later donated to the University of Texas Film School's Semester in Los Angeles program for the benefit of UT film students spending a semester working and studying in Los Angeles.

I also signed up to take the California bar exam. California does not offer reciprocity to attorneys licensed in other states, so passing the California bar was necessary if I wanted to practice there. So, much of my focus that first year was studying for the bar. In addition, I had to make a living, so I worked in a variety of temporary positions obtained through agencies, including a brief stint at Turner Broadcasting, which had just purchased MGM-UA in March of 1986. In addition, to the MGM library of films, the purchase included a large number of still pending litigation matters. I worked to help organize those litigation files for a period.

Subsequently, I was able to get a job working in a non-attorney support role for a downtown Los Angeles litigation firm. That was pretty steady and kept me in the legal field. Some of the people in my bar review class had taken and failed the California bar as many as thirteen times. That was rather scary! And, some of the attorneys who worked for the firm where I was employed, had their doubts as to whether I would be able to pass the bar exam the first time out. It seems among some California attorneys there is a bias toward the California law schools like Stanford, UC Berkeley, UCLA and USC. I suppose it's also a bit unusual for an attorney licensed in one state to leave that state before being licensed in the new state. Most attorneys would probably get licensed in the new state first. My circumstances did not permit that, so I did it another way.

In any case, before I had taken the bar, the firm offered me a better position and more pay working as support staff for the incoming President of the California Bar, who was a member of the firm. She was interested in my background because it included some professional association work. I had also worked for the State Bar of Texas at one time. However, the new position would require a year's commitment and I was just about to take the California bar exam. So, I declined the new position, rolled the dice and took the bar exam, not knowing whether I had made a mistake or not. Fortunately, I did pass the California Bar the first time out, and once licensed set out to start my own highly specialized law practice, with a focus on investor financing of independent film.

## Chapter 2 – THE EARLY SEMINARS

During this same first year, I started promoting and offering self-sponsored film finance seminars for independent film producers. These were focused on the use of the limited partnership as the investment vehicle and on compliance with the federal and state securities laws, since units in a limited partnership were always securities. I advertized in *The Hollywood Reporter* and attendance at the first few seminars was modest but it was a start. The first seminar was held in the meeting room of the apartment complex where I lived. Later they were held in a meeting room of the Beverly Garland Hotel on Vineland in Studio City. The hotel was owned by actress Beverly Garland and was built on seven acres previously owned by Gene Autry.

Most of the independent film producers who attended the seminars seemed quite surprised to learn that limited partnership units were securities and what was involved in complying with the law. Of course, they seldom were exposed to that kind of information in film schools or elsewhere. So, my seminars were unique and well received. There seemed to be a thirst for that kind of technical information relating to film finance, and I enjoyed helping filmmakers learn about this specific form of financing.

As word got around amongst the independent filmmaker community in Los Angeles, I was invited to present my seminar on investor financing of independent films for the American Film Institute. This well-established film industry organization sponsored and promoted a number of film related seminars, lectures and/or panel discussions from time to time and had an actual catalog of courses that they offered. My seminar became one of those courses for awhile. The first AFI sponsored seminar I presented drew more than 100 attendees. It was standing room only in one of the theatres on the AFI campus there in North Hollywood.

Later I participated in several film finance panel discussions at AFI. Among the panelists was Lewis Horowitz, the long-time film finance pioneer who worked primarily in the area of lender financing, or more specifically, foreign pre-sales (for an explanation of this type of film finance, see my book *43 Ways to Finance Your Feature Film*). He was a very likable older gentleman who also performed some of his amateur magician's skills at the seminars, while he talked about how films could be financed with bank loans. He was actually describing the negative pickup and foreign pre-sales transactions, but he sometimes went too far and made some disparaging remarks about investor financing – something to the effect that filmmakers have to be careful about investor financing because such deals often result in litigation. He offered no evidence in support of the claim, which, in fact, was false. Of the several hundred film offerings I handled during the subsequent years, not a single offering resulted in litigation. That represented one of my early experiences with Hollywood misinformation.

**Three Questions** – At many of my early self-sponsored seminars, I always made myself available to answer whatever questions the attending producers had, and I was somewhat surprised to learn what their most persistent questions were. The most commonly asked question



in those days was: “What is this so-called ‘Hollywood creative accounting’ all about?” The second most common question was: “What is the best way to finance a feature film?” The third most common question at those early seminars was: “Do Jews control Hollywood?”

The short answer to the creative accounting question was: “I don’t really know but I’ll look into it.” My radio, TV and newspaper reporting background and legal training put me in a good position to undertake such a research project and I was highly motivated to learn about the film industry. Subsequently, I learned that the term “creative accounting” was a catch-all phrase used to describe numerous business practices that the major studio/distributors had utilized for years, and that these business practices tended to severely limit the profit participations of all other parties besides the distributor, who might otherwise participate in the revenue stream of a film.

The short answer to the 2nd question was that there was no single “best” way to finance a feature film. There were, in fact, a lot of different ways to finance feature and documentary films and each form of film finance had its associated set of advantages and disadvantages. Thus, it was the responsibility of each film’s producer to determine in each case, which form or forms of film finance would most likely lead to a successful outcome for their current project. Further, I knew that for some filmmakers, investor financing was the only way they would get their vision on the big screen, and I was simply making my securities law compliance expertise available to help those filmmakers meet their legal obligations with respect to the federal and state securities laws if they chose investor financing.

The short answer to the third question was the same as the first: “I don’t really know, but I’ll look into it.” My instinct was that it’s not really fair to suggest that Jews control Hollywood, since that may imply that all Jews are somehow involved, and I did not think that was true. And, even if it was true that a lot of Jews were involved in positions of power in the Hollywood-based film industry, I felt there must be a more accurate and less potentially offensive way to express the reality of Hollywood in this regard. In other words, it seemed to me that we should be able to avoid this “broad brush” approach to describing who really controls Hollywood.

These are the three questions, raised by my early exposure to independent film producers, that guided my research into the inner workings of the Hollywood-based U.S. film industry. Distracting your attention from the answers I’ve provided to these questions is why some in Hollywood have aimed the anti-Semitic sword at me. All, I’ve done on the other hand, is to observe the facts as they exist in the real world of Hollywood, facts not created by me, but merely observed and reported. The reaction of some in Hollywood is a classic example of shooting the messenger, when the people who run Hollywood are the ones actually responsible for creating the facts I’ve observed and reported.

**Creative Accounting** – I did not know at the time, but those three previously mentioned questions posed repeatedly by the filmmaker attendees of my early film finance seminars, would lead to more research, and result in several books that attempted to answer such questions in

greater detail. The first research project I undertook focused on the creative accounting question. What was it really? And, how did it work? My research of these questions involved the review of hundreds of court decisions, law review and law journal articles, magazine articles, trade press reports (e.g., *The Hollywood Reporter* and *Variety*) and the acquisition of more books to add to my growing library.

The result was a so-called monograph (detailed and documented study of a limited subject area) with a very straight-forward title. I do not hold myself out as a creative writer and this title proves it. The monograph was entitled: *337 Reported Business Practices of the Major Studio/Distributors*. It was self-published and initially sold through an office supply store on Sunset Boulevard, that catered to writers and other film industry people. The list of business practices was much more extensive than I had imagined. The listing of the names of the business practices as described by the various authors relied upon, along with the descriptions of each and the bibliographic sources from which the individual business practices were extracted, were later included in my dictionary of film finance and distribution, although the dictionary was not published until several years later (see discussion below).

In summary, however, these business practices were described by the various authors cited as unfair, unethical, unconscionable, anti-competitive, predatory and/or illegal. In effect, these 337 business practices were mostly designed to give film distributors one or more arguments to support their position that fewer or none of a film's profits should be shared with other potential profit participants including, producers, directors, writers, actors and/or investors, if that's what the distributor wanted to do (i.e., the language of such contracts commonly allowed the distributor to exercise its discretion in such decisions).

As an example, one of those sources was an article published in the *Los Angeles Lawyer* magazine in April of 1989. The article was written by Steven Sills and Ivan Axelrod. It was entitled "Profit Participation in the Motion Picture Industry". Sills and Axelrod were film industry profit participation auditors. They were typically hired by actors, producers, directors and screenwriters who were contractual profit participants in a particular movie, and who for whatever reason were not satisfied with the level of profits being paid to them by the distributor of that movie. These profit participation auditors would actually go onto the premises of the distributor and audit the books of the distributor with respect to the revenue stream of the subject movie. They were, in effect, on the front lines of the creative accounting war that had been waged in Hollywood for many years. No one had access to better information regarding what was happening with respect to movie industry profit participations than these and the other profit participation auditors working in Los Angeles. The article cited a half dozen or so specific business practices and explained why those business practices were detrimental to the interests of potential profit participants. My published monograph included the distributor business practices discussed by Sills and Axelrod, along with the hundreds of others my research had uncovered in similar source material.

Another source for some of the distributor business practices reported on in my 337 *Business Practices* monograph came from the writings of an accountant who had worked in-house for many years at Universal. He had somehow heard about my interest in creative accounting and my work, and we met for lunch. He told me that he had also been writing a book about Hollywood accounting practices, but he never completed the work or had it published. He offered me a copy of his manuscript and gave me permission to use and cite his work.

So, the sources for my writing about the Hollywood business practices that fall under the umbrella of the term “creative accounting” included profit participation auditors who regularly audited the books of major studio/distributors, and an accountant that actually worked for one of the major studio/distributors. I suspect that any researcher or writer would be hard pressed to find more authoritative sources for reliable information about such practices.

In addition, once, when returning on a flight from Boise, Idaho where I participated as a member of a film finance panel, I sat next to an executive at Disney, who in the course of our conversation, admitted to me that there were nights when word would come down from the executive suites that all of the attorneys and accountants should stay late that evening to figure out, based on the relevant contracts, how Disney could keep the money earned by a given feature film and not allow it to flow past Disney to various other profit participation participants. Apparently, that’s just the way Hollywood distributors do business. Unfortunately, the other profit participants have no adequate remedies.

In such situations, the first step for a disappointed profit participant is to spend another \$30 to \$40 thousand dollars to hire a profit participation auditor to go to the distributor and audit the distributor’s books relating to the performance of a specific film. The profit participation auditors uniformly say that they always find much more money that fell through the cracks, so it’s well worth it to audit. On the other hand, once the auditing firm provides its report, the profit participants have to ask that a demand letter be sent to the distributor. Somewhere, along the way, the distributor will typically respond with an offer to settle for less than the amount that is contractually due. So, what does the distributor have to lose, other than another possible negative story that a Hollywood distributor cheated motion picture profit participants? That does not occur often either, since most people in such situations opt not to complain publicly for fear they will be labeled “litigious” and not be able to do deals in Hollywood anymore.

Another problem that prevents the profit participation auditors from doing a more thorough investigation into the financial manipulations of a film distributor is the language used in the audit clause of the distribution deal itself. If the audit clause is drafted too narrowly, that further hampers the auditor’s ability to do a good job on behalf of his or her profit participation clients. The problem has been so pervasive in the film industry over the years, that attorney Joseph Schleimer presented a model audit clause for use in motion picture/television participation agreements to the 1996 UCLA Entertainment Law Symposium. It was referred to as the “Sills and Adelman Audit Clause” named after the profit participation auditors Steven Sills and William Adelman. It would even be better if every independent film producer negotiating a film

distribution agreement would ask their entertainment attorney to be sure and not only get a copy of that audit clause (which is available online) to include in the distribution deal, but to contact one of these highly specialized profit participation auditors and have them review the proposed audit clause in a pending distribution agreement, and ask for their suggestions.

After the profit participation auditors have done their work, and presented a demand letter to the distributor, the profit participants have another difficult choice: accept the inadequate offer or spend more money hiring a litigating attorney to take the distributor to court, and wait five to seven years to get to trial, only to have the distributor make another offer just before trial for less than the amount contractually due. If the profit participants want to go forward to trial, that involves more money with no guarantee of a good result. Further, and once again, if the profit participants make too much noise about this miserable process, there's always the possibility that they will be considered too litigious for any of the studios to do business with in the future. In other words, they'll never work in this town again, as the old Hollywood saying goes.

As a result of my research into the business practices of the major studio/distributors, I concluded that no ethical entertainment attorney could assure his or her clients that they could negotiate or draft a distribution agreement that would result in fair and reasonable handling of their potential film profits. And, even if the language negotiated in the written agreement between a producer and distributor was favorable to the producer, there was no guarantee that the distributor would interpret it that way. Based on this discovery, I chose not to expand my practice into the broader area of entertainment law, which I had previously thought about doing, and instead stayed with the more narrowly-focused securities law practice with entertainment clients (mostly low budget independent filmmakers).

I have continued to make hundreds of seminar, lecture, workshop and panel presentations relating to film finance over the years (see Appendix "C" for a list of the sponsors of such events.

### Chapter 3 – WHAT SOCIAL LIFE?

This is not a personal expose type book, but I was single during most of the 23 years I lived in and around Hollywood and a few of my dating and relationship adventures had some slight connection to my work in the film industry, and to what I had discovered about Hollywood.

**Adventures in Dating** – Early on, in the process of getting out and exploring the community, I met an attractive lady at a dinner theater in Santa Monica and we started dating. She lived in one of those expensive high rise condo buildings along mid-Wilshire Boulevard. In fact, she was fairly wealthy and she had combined two of the condos to make one quite impressive home.

In any case, one night she asked me to accompany her to a fund raising event for some organization based in Israel. She was Jewish and most of the people attending the event, held atop an office building at the corner of Westwood and Wilshire not far from UCLA, were also Jewish. Such fund raising events are not uncommon in Los Angeles. A significant amount of money regularly flows from the pockets of wealthy Los Angeles Jews to various causes in Israel.

Anyway, my date and I had a perfectly pleasant evening and the only reason the story is relevant is that at one point she introduced me to two of her female friends, one of whom asked for clarification on the spelling of my last name. My last name, of course is “Cones” which can sound quite similar to some Jewish last names like “Cohen”, “Cohn” or “Kohn”. After I politely spelled my name for her, she turned to my date and said, “Oh, he’s not one of us.”

We all chuckled, and I assumed she did not intend for her comment to be offensive, and I did not take it that way. But I did learn later that the sentiment was fairly common among the large Jewish population in Los Angeles, and among many of the Jews involved in the Hollywood-based film industry. In that industry, they are typically the insiders. Most of the rest of us are outsiders.

**My Son Joins Me From Texas** – Shortly thereafter, my teenage son Chris decided he wanted to move from Texas to California and live with me for his high school years. Since I did not have to be located right in the heart of Hollywood to work with independent film producers, many of whom were not even in the state of California, he and I set out to find a high school and community in the Los Angeles area where he would be comfortable. We looked at some 25 high school campuses in and around Los Angeles and finally determined that Laguna Beach would work well. So, we moved there and I commuted back and forth to Los Angeles whenever necessary. He attended Laguna Beach High School until he graduated in 1991, after which, I moved back to Hollywood, and he went off to college.

**A Long Term Relationship** – About a year or so after returning to the actual district of Hollywood, I moved to Brentwood and tried the high-rise lifestyle myself. That was about the time the country-western dance craze swept the country. Since I'm from Texas, most people assumed I knew how to do the two-step, but I really didn't because back home I'd always considered the so-called "shit kickers" to be a sub-culture, and in the urban areas like Houston, people participated in the country-western music scene or lifestyle mostly for recreational purposes. We're not all alike, you know.

In any case, I started frequenting one of the Santa Monica hot spots that was into the country-western dance trend and they offered dance lessons for those of us not yet educated in such matters. I picked it up fairly quickly and enjoyed the music and dancing at Denim and Diamonds several times a week. On one of those occasions, I met an attractive young woman there who also enjoyed dancing and we started dating. That led to an eight year relationship during which we lived together in her home in Pacific Palisades. She was Jewish and had a young son who I helped to raise during that period. I went on to coach him and some of his school friends in basketball and coached his recreational park league team. We attended the Kehillat Israel Synagogue on Sunset Boulevard in Pacific Palisades from time to time.

As I learned, there are three major so-called Jewish movements in the U.S. today, and a fourth, is not considered to be "major": Reform, Conservative and Orthodox are the three major movements with which people are somewhat familiar. But there is also a fourth movement, the Reconstructionist movement, although that movement is substantially smaller than the other three. The Orthodox and sometimes Conservative movements are often thought of as "traditional" movements. Whereas, the Reform, Reconstructionist, and also sometimes the Conservative movement are considered to be "liberal" or "modern" movements.<sup>1</sup> The Kehillat Israel Synagogue was part of this Reconstructionist movement. Among other things, this Reconstructionist movement had dropped the belief that Jews were God's chosen people. Even though, I was not then, nor am I now, a religious person, that sounded reasonable to me, and I thought, a worthwhile gesture on their part.

The Synagogue was new. While under construction, the congregation had made arrangements with a nearby Luthern Church to use their facilities for their services until the new Synagogue was ready. When the time to occupy the new Synagogue came, the congregation held a special celebration and parade walking from the Luthern Church to the new Synagogue and carrying the Torah under a chuppah. The chuppah had four poles that supported it and somehow I ended up carrying one of the four poles. When we got to the Synagogue, the Torah was removed and set in a special place, but the other three guys helping to carry the chuppah just walked away and left me standing there in the middle of the main Synagogue floor, holding all four poles. I did not know what to do since I'd never participated in this sort of ceremony, and I did not want to do something inappropriate or disrespectful, so I turned to the Rabbi and asked him what to do with the chuppah. To my surprise, he said, just fold it all together and lean it up against the wall in the corner, and that's what I did, as people began taking their seats for the rest of the planned service.

Later when the son was honored with his bar mitzvah ceremony, I wrote the script that accompanied the slide show we had prepared with photos of his life. We had one of his good friends narrate the presentation and I served as MC for the ceremony. Ironically, his bar mitzvah was held in the same room as my earlier experience, when I was told: “He’s not one of us.”

Our eight-year relationship eventually ran its course and we both moved on. I have to say that all of my experiences at and with the people of the Kehillat Israel Synagogue were pleasant and non-consequential in the sense that the people of the Synagogue were quite welcoming, and I never felt any discomfort or awkwardness even though I’m not religious at all. One of the members of the Synagogue was the copyright attorney to whom I referred my client Curt Wilson to help him with his law suit against Buena Vista (see the rest of that story below). He had also guest lectured for some of the film finance courses I taught at UCLA.

**So, You Want to Join the Tribe** – At one point during that 8-year relationship noted above, we visited with one of her girlfriends in nearby Brentwood. It just so happened that her father, a doctor was there and we chatted briefly. During the conversation, I mentioned that I had sometimes wondered about the history of my name – whether in fact, some long past Jewish ancestor had change their name to Cones to avoid persecution or discrimination. His immediate response struck me as somewhat arrogant, partly, I suppose based on the way he said it: “So, you want to join the tribe, eh?” Well, no, that was not the point. I was just curious about my name and my own ancestry. I had never thought in terms of tribes. But apparently, and according to Joel Kotkin, who wrote the book, *Tribes – How Race, Religion and Identity Determine Success in the New Global Economy* (Random House, 1993), a lot of people do place a great deal of emphasis on the idea that they still belong and owe their allegiance to one ancient tribe or another. Based on what I learned about Hollywood, many of the Hollywood insiders are among those.

## Chapter 4 – STUDENTS AND CLIENTS

During the course of my 23 year run in Hollywood, I was asked by independent producer clients to handle the legal work associated with approximately 180 film offerings. In addition, I handled the securities compliance tasks for offerings seeking to raise investor funds for television, music, Internet, live stage play and other entertainment companies or projects. Of the film offerings, 60 were successful and resulted in completed films (see list of film titles at Appendix “B”). The amount of money raised from investors for these film projects, sometimes development deals, but mostly production deals, ranged from \$100,000 on the low end to \$20,000,000, although the larger figure was an outlier and took the producer more than 10 years to raise. So, I don’t recommend that independent producers try to raise such a large amount of money from private investors.

Sixty films, is not a huge number, but for some filmmakers that was the only way they were going to see their vision on the screen. That’s the segment of the market in which I worked. We can also see that two out of three of those investor offerings were not successful, which confirms that investor financing of independent films is not an easy form of film finance. I never promoted it as such. But then, there are no easy ways to finance a feature film. In fact, the odds of getting any of the available major studio film finance deals might be closer to 1,000 to 1 for most Hollywood outsiders, and you would still have to worry about having your ideas stolen or having the studio executive interfere with your creative control. So, 1 in 3 successful film finance offerings is not a bad record for the low budget independent films of my producer clients.

Most of these attorney-producer client relationships went smoothly. For those who wish to move forward with an investor offering, after we’ve had a discussion about what they are trying to do, I provide them with a checklist of the information we need to disclose in the required securities disclosure document, that must be provided to each prospective investor before they invest, and, once that information is provided to me by the producer, we’re off and running. Some of these situations, however, became problematic or unusual for one reason or the other. Below, I’ve set out a sampling of some of those client situations that are somewhat relevant to issues raised in this book.

**My First Producer Client in California** – Partly as a result of my early seminars on investor financing of independent film, I was contacted by a young film producer with an office on the lot at Paramount Studios. His name was Dror Soref. He was a retired Israeli military officer who had come to the U.S. to be a film producer. Even though he had never produced a feature film, nor had much background as a filmmaker, he had contacts in the upper management levels of Paramount and was allowed to office on the lot, a very desirable arrangement for any independent film producer. After all, it’s always impressive to be able to invite prospective investors onto the lot at Paramount for lunch in the Commissary.



Dror hired me first to mentor him with respect to raising money from passive investors through limited partnerships, then expanded my role to actually put together two offerings, one a public offering, and a 2<sup>nd</sup> private offering. They were both for the same slate of three films, but since neither he nor I knew which might be funded, and since I was working in-house so to speak, we did both offerings.

After successfully registering the public offering in five states and with the SEC, and completing the private offering documents, it became clear that the private offering was more likely to succeed. But, it also became clear to me that partly because of Dror's very aggressive personality, he had no intention of complying with the important SEC prohibition against a general solicitation with respect to the private offerings, thus he would not be in compliance with one of the important SEC conditions upon which the offering exemption (Regulation D, Rule 506) was based. This SEC rule requires that the issuer of a security have a pre-existing relationship with the prospective investors, and that was not always the case with Dror's investors.

After discussing this issue with Dror several times and finally sending him a written caution letter, I had to disassociate from the project lest I also became caught up in these irregularities. After I left, Dror took the offering materials to another law firm, which gave it their blessing and he went out on the street (so to speak) and successfully raised enough money to produce one of the three films. The film was originally entitled *Cross Bait*, but the title was changed before its release to *The Seventh Coin*. It starred an aging Peter O'Toole as the antagonist, which was quite unusual for the renowned actor. The film got a limited theatrical release, and that's always fun to see a film you worked on in the theatres. Dror went on to write, direct and produce a few more films, but primarily made his living as a producer of television commercials, along with some music videos.

**My Most Successful Producer Client** – The results and experiences of the many bright and talented people who move to Hollywood to pursue their dreams varies wildly. The story of my most successful producer client as contrasted with the story of my least successful student (just below) illustrates the point.

One day I had an in-office visit from a young man who had recently graduated from the UCLA film school. He wanted to raise about \$150,000 from private investors to produce a movie based on a script he had written. He also intended to direct. I put together the required securities disclosure document (i.e., private placement offering memorandum or PPM) and subscription agreement and advised him about other aspects of complying with the federal and state securities laws. He successfully raised most of the money from a small group of passive investors. He reportedly added some of the needed dollars by using his own credit card. He brought in an ensemble cast of no recognizable names and shot the movie.

He then was able to get the film into the Sundance Film Festival in Utah. That was a victory for an independent filmmaker in and of itself. His film gained some notoriety there at

Sundance but did not win any awards. He did, however, come away with a theatrical distribution deal with MTV Films, which provided a \$1 million dollar advance for the distribution rights. Thus, this producer client and his investors were into profits on their \$150,000 independent movie before it was even released. That seemed to me to be a very good strategy for independent filmmakers and I hoped it would be replicated by others.

I had also hoped that this one successful producer would come back and we could do another investor offering, but fortunately for him and unfortunately for me, he got a better deal. He was asked to direct a \$20,000,000 picture for Buena Vista called *Annapolis*, which he did. After that, he directed several of the *Fast and Furious* franchise. More recently, he directed the latest version of the *Star Trek* series. His name is Justin Linn. His first movie, the one that was investor financed, was *Better Luck Tomorrow*. It's a good example of what many low budget independent producers aspire to do – create a clever script and produce a well-executed feature film, even without well-known actors.

**My Least Successful Student** – One semester while teaching a course at UCLA, I had a student who had formerly been an international attorney in Canada. He made one of those mid-career moves to Hollywood to pursue his dream of becoming a film producer. He never became a client of mine, but as we talked about various ways to finance movies in the course, he decided that he would exclusively pursue a strategy of developing and packaging A-List type movie projects (i.e., films starring the best known and most successful actors). In other words, he would seek to acquire underlying rights where necessary, arrange to have scripts written, create a budget, attach elements (well-known and high profile directors and actors), then pursue production financing through industry sources. Unfortunately, he did not have any of his own money to bring to the table, and so far as I know, did not seek to raise development financing from investors. Without being able to put significant amounts of money at risk, filmmakers are generally not able to obtain firm commitments from A-List talent, and without those commitments, it would be quite rare to secure production financing. Thus, he spent years chasing the so-called Hollywood deal, and he was just spinning his wheels (so to speak).

One day he called and asked if I would loan him \$300 dollars. He was then living on the street in the UCLA neighborhood and owed the money to a storage facility where he had stored his belongings. I should not have done it, and I figured I'd never see the \$300 dollars again, but I went and picked him up anyway, gave him the money and he paid for his storage facility. I then dropped him off where he asked. I did not see him again for several years until one day as I pulled up at the intersection of Westwood and LeConte next to the UCLA campus, I saw what appeared to be an elderly gentleman, struggling to make his way across the street at the crosswalk, taking those short little faltering steps, mumbling to himself and foaming at the mouth. I finally realized it was my former student. I couldn't stop, because I was in traffic, about to make a right turn on LeConte and on my way to a class. That's the last time I saw him.

After many years had passed, I tried to tell this story at a Women In Film Atlanta conference where I was the keynote speaker. To my own surprise I broke down and cried right

there in front of an auditorium filled with filmmakers. It took me a moment to gather my composure and proceed with the 3 hour power point presentation on film finance. I don't know to this day whatever came of my former student, but I can't imagine it was a good outcome.

From my perspective, this represents an example of a well-educated individual who basically destroyed his life by pursuing an unreasonable dream in what is essentially a rigged system. Read on.

**The Sephardic Jewish Student** – In another of the film finance classes I taught at UCLA, I had a student who held himself out as a Sephardic Jew. As he explained to the entire class, Ashkenazic and Sephardic Jews represent two distinct subcultures of Judaism. They both share the same basic beliefs, but there are some variations in culture and practice. The distinction has apparently existed within Judaism for more than a thousand years. Ashkenazic Jews are the Jews of France, Germany, and Eastern Europe and their descendants. Most American Jews today and most of the Hollywood Jews are Ashkenazim, descended from Jews who emigrated from Germany and Eastern Europe from the mid 1800s to the early 1900s. Sephardic Jews are the Jews of Spain, Portugal, North Africa and the Middle East and their descendants.

Without question, this young man was the most aggressive student I had ever experienced. He questioned nearly everything and most of our classes that semester were dominated by vigorous discussions of one topic or the other. We got through the experience without any lasting damage and it was probably both stimulating and educational for all in the class, including me.

I remember one conversation, however, in which he confessed to me that he had been trying to make some sort of film deal with some of the Askenazic Jews that are so dominant in Hollywood. He said they were the most aggressive negotiators he had ever encountered. And this observation came from the most aggressive student I have ever encountered. I could only laugh with him and commiserate.

**Returning to the Curt Wilson Saga** – Earlier, I mentioned working with clients Curt Wilson and Donna Douglas on a so-called investor financed development offering, in which they raised money from investors to acquire rights to a book and hire a screenwriter to write a script. Once they had the script and Donna was attached for a role in the film, they made several trips to Los Angeles to pitch the project to film companies. One of those companies was owned by Bette Midler (All Girl Productions – affiliated with Buena Vista and the releasing label Touchstone Pictures). The executives at Midler's company told Curt and Donna that they liked the script but did not want to co-produce the project with the two of them, since neither had experience producing films. Of course, that's exactly what Curt and Donna were trying to do – bring an interesting film project to the attention of a Hollywood-based production company that the two could partner with to bring a picture to the screen, and thereby gain valuable producing experience. In any case, Bette Midler's company did not want to co-produce, so the project appeared to be dead.

A few years later (in 1992), I saw a movie trailer that looked awfully familiar. I called Curt and suggested that he check it out. And when the movie was actually released he saw it and agreed with me that the trailer and movie appeared to be quite clearly based on the project he and Donna had previously developed and pitched to Bette Midler's company.

I do not handle litigation matters, but I referred Curt and Donna to a professor at UCLA who had the expertise to examine the original script compared to the script used as the basis for the movie to check for similarities. He was hired to do that and produced a very persuasive report citing some 254 similarities at various levels between the film as it was released and the original script submitted to Bette Midler's company by Curt and Donna. Curt had to go back to his investors to get more money to hire a copyright attorney to pursue litigation. And they filed a copyright infringement lawsuit against Buena Vista, the company that released the picture.

It took about 5 years to get the case to trial in Federal Court and at trial, it is the plaintiff producer's burden to show that the defending company or companies actually had access to the original script and that there was substantial similarity between the two scripts. Curt and Donna did fairly well on the similarity question, but apparently, the executives of Bette Midler's company got on the stand and misled the jury about access. Then the judge, for whatever reason, gave the jury such a narrow instruction on the issues to be decided that they had no choice but to decide in favor of the defendant Buena Vista. Several of the jurors talked to Curt afterwards and told him they knew he and Donna had been ripped off, but they felt powerless to do anything considering the judge's narrow instruction to the jury.

The movie involved was *Sister Act* starring Whoopi Goldberg. And here's what I believe may have happened. It is entirely possible that some of these smaller companies working in Hollywood do not keep very good records with respect to who they see and what projects are submitted. It's also possible that the executives of Bette Midler's company just got on the stand in court and simply lied about their access to Curt and Donna's script. The script actually was rewritten several times by different writers, so it is also possible that the production company executives forgot the source of the original script or idea for the movie.

In either case, it's up to a producer (the plaintiff in this case) to offer evidence to counter the lack of record-keeping and/or lies. In other words, whenever a filmmaker tries to pitch an idea for a film project to a production company (regardless of whether the idea is supported by a script or not), it is up to that filmmaker to create as much evidence as possible proving that such a meeting actually took place. Such evidence may include correspondence with the production company before and after the meeting, along with taking photos of the people involved in the meeting, if possible, or at least of the meeting facility, as well as detailed contemporaneous notes about the discussions.

On the other hand, even if there were failures on the part of the plaintiffs to meet their burden of proof in court, there is no excuse for production company executives lying about the pitch meetings or the source of the original idea for the movie. Filmmakers need to understand,

however, that such irresponsible behavior does occur in Hollywood and they must do everything they can to protect themselves.

Interestingly, in an August 4, 2010 interview for the UK's Metro news (a free newspaper published in tabloid format in the United Kingdom), Bette Midler claimed that the role played by Whoopi Goldberg in *Sister Act* was actually written for her.<sup>2</sup> Apparently, that is what she had been told.

According to the *Wikipedia* entries, screenwriter Paul Rudnick pitched *Sister Act* to producer Scott Rudin in 1987, which is quite interesting since that's the same year my clients had developed their script and pitched it to Bette Midler's production company. The *Wikipedia* report goes on to say that it was agreed that Bette Midler would be best for the lead role. The script was then taken to Disney. However, Midler apparently turned down the role, fearing that her fans would not want to see her play a nun. Eventually, Whoopi Goldberg signed on to play the lead. As production commenced, the script was reportedly rewritten by a half dozen screenwriters, including Carrie Fisher, Robert Harling and Nancy Meyers. With the movie no longer resembling his original script, Rudnick asked to be credited with a pseudonym in the film, deciding on "Joseph Howard".<sup>3</sup>

And that's the story of how a movie concept and script appears to have been stolen from one of my clients and re-written in Hollywood, only to become one of the most financially successful comedies of the early 1990s, grossing \$231 million worldwide, followed by a sequel and a Broadway musical.

Also in the *Wikipedia* report on *Sister Act*, two lawsuits involving the film are noted. On June 10, 1993, actress Donna Douglas and her partner Curt Wilson in Associated Artists Entertainment, Inc., filed a \$200 million lawsuit against Disney, Whoopi Goldberg, Bette Midler, their production companies, and Creative Artists Agency claiming the film was plagiarized from a book *A Nun in the Closet* owned by the partners. Douglas and Wilson claimed that in 1987 they had developed a screenplay for the book. The lawsuit claimed that there were more than 100 similarities and plagiarisms between the movie and the book/screenplay owned by Douglas and Wilson. The lawsuit further claimed that the developed screenplay had been submitted to Disney, Goldberg, and Midler three times during 1987 and 1988.<sup>4</sup> In 1994, Douglas and Wilson declined a \$1 million offer in an attempt to win the case. The judge found in favor of Disney and the other defendants. Wilson stated at the time, "They would have had to copy our stuff verbatim for us to prevail."

In a July 20, 2009 issue of *The New Yorker*,<sup>5</sup> Paul Rudnick told an elaborate story about how he came up with the idea for *Sister Act*, which appears to me to be somewhat dubious, since in my view, the idea for *Sister Act* actually came from my clients, the book for which they had purchased the rights and the script they had hired someone else to write. Rudnick goes into great detail in the article about how he came up with the idea and wrote the script. Considering the fact that people who are not telling the truth often add unnecessary details to convince us, it's as if

Rudnick was trying too hard. On the other hand, the only part of his story I doubt is that the idea for *Sister Act* came to him while he was lying on his couch. Again, in my opinion, the idea came to him because he had access to the script developed by Curt Wilson and Donna Douglas. But that's the way it goes in Hollywood. Producers beware!

In November 2011, a nun named Queen Mother Dr. Delois Blakely filed a lawsuit against the Walt Disney Company and Sony Pictures claiming that "The Harlem Street Nun," an autobiography she wrote in 1987, was the basis for the 1992 film. She alleged that a movie executive expressed an interest in the rights to the movie after she wrote a three-page synopsis. She sued for "breach of contract, misappropriation of likeness and unjust enrichment." Blakely dropped the original lawsuit in January 2012 to serve a more robust lawsuit in late August 2012 with the New York Supreme Court, asking for \$1 billion in damages from Disney. In early February, 2013, the New York Supreme Court dismissed the lawsuit with prejudice, awarding no damages to Blakely.

Of course, this all feeds into the typical Hollywood narrative that whenever any movie is a hit at the box office, people come out of the woodwork claiming some interest in the script. In the Curt Wilson case, however, I had worked with him and his partner for several years trying to help them bring their vision to the screen before *Sister Act* was actually released. So, I do not believe, nor will I ever believe that the Hollywood narrative applies in this case, but they got away with it! And, it's easy to see why. Most people are not going to believe an unknown producer from Tulsa, Oklahoma over well-known celebrities like Bette Midler and Paul Rudnick. And, Hollywood knows that.

Note again that the Plaintiff's Curt Wilson and Donna Douglas apparently did not meet their burden of proving that Bette Midler's company had access to the original script written at the request of Curt and Donna. But, it is important to understand that access to the original script and providing access in a court of law are two different issues. A failure to prove access does not mean that Bette Midler's company did not have access to that script. It just means the Plaintiff's did not provide the court with enough information to convince the Judge and Jury that access actually occurred. So, in this case, what we are really seeing is that another established production company appears to have taken advantage of the failure of a couple of Hollywood outsiders and never looked back. This is not an uncommon occurrence in Hollywood.

**It's All About Sex!** – One of my Los Angeles entertainment attorney acquaintances (Schuyler Moore) who appeared on lecture panels with me from time to time was fond of shocking our filmmaker audiences with the bold statement that "Hollywood is all about sex!" Notwithstanding the fact that his statement was a bit of an exaggeration and may have been offered just to get their attention, there is some truth in what he was saying. There is a long and documented history of wealthy men coming to Hollywood to play in the movie game and clearly they were at least partly motivated by the fact that being a player in Hollywood gave them access to a lot of beautiful women, some of whom also had no problem using sex to keep their careers moving forward. Some of that history is recounted in my *Hollywood Wars* book.

This is not a book about all of the sexism, misogyny, perversion and sexual bargaining one might find in Hollywood, but I did once come across a low budget independent film version of one aspect of this phenomenon. I got a call from a gentleman who had moved from Chicago to Hollywood. He had made his money working on the floor of the commodities exchange. He wanted me to help draft an agreement between him and a filmmaker. He was going to put up most of the money to produce a low budget picture and was to serve as the executive director for the movie. Normally, I represented the producer in such situations, but made an exception in this case.

We made the deal and he helped the filmmaker produce the film. During one of our conversations he readily admitted to me that he was primarily motivated to become an investor in independent films by the realization that putting up all or some of the money for a feature film, serving as the executive producer for the picture and hanging out on the set, gave him an opportunity to meet a lot of attractive actresses. I had always recognized that one of the reasons why some people invest in film is because they want their wife, or girl friend to appear in the movie. That's always been true and continues to be true today. This was the first time, however, that I had a man tell me straight out that he was using his film investments to meet actresses.

I have encountered at least two other specific examples of a common Hollywood male sexual attitude toward women. One instance involved a long-time friend of mine from Texas who attempted to become an actress in Los Angeles. She was quite attractive, well-trained and very accomplished as an actress. She ran into so many producers and men pretending to be producers who offered her movie parts in exchange for sex that she finally gave it up and returned to Texas to marry and start a family.

The other involved a young model friend of mine from Chicago who was invited to Los Angeles to appear in a television soap opera. She made the appearance and was subsequently invited to a party. At one point during the party, the producer of the soap opera escorted her into another room which turned out to be a bedroom. He tried to push her onto the bed, but she left, not only the bedroom, but Los Angeles, and returned to Chicago to continue her modeling career.

This attitude is not exclusive to Hollywood, of course, but it appears to be a bit exaggerated there because so many attractive women from all over the world, go to Hollywood seeking acting opportunities, and the field is so competitive, that a lot of the women who stay with it, feel compelled at one time or another to see where such offers will take them. The same phenomenon reportedly occurs with young men also, although I have no experience or direct reports of such occurrences.

**The Great Brooklyn Screenwriter** – Once I was contacted by a writer from Brooklyn. Most of his writing was not for movies, but he had written a screenplay and wanted to raise money from investors to produce the film. Someone had referred him to me. He was a very good writer. I know because he told me so. We never actually met, but talked with each other via

Skype. I would be sitting at my desk and he would be sitting on his apartment balcony in Brooklyn. It was kind of neat being able to communicate and do business like that all the way across the country.

As usual, after he had hired me to handle the securities offering, I sent him what I call a disclosure checklist. It's a short list of bits of information I need from a film producer, relating to the proposed film project, that needs to be included in the securities disclosure document (e.g., PPM). Such items include a synopsis of the script, the script's genre and logline, narrative biographies of the key people attached to the project, the anticipated MPAA rating for the film, box office comparables (i.e., comparable box office performances of other previously released films that are, in the judgment of the producer, similar to the film he envisions), proposed name of the investment vehicle/entity (by now, the manager-managed LLC had replaced the limited partnership as the preferred financing entity for such projects), name and address of the LLC manager, when and where the manager was created and who owns the manager, all forms of compensation to be paid to the owners of the manager, the minimum and maximum offering proceeds and LLC unit size. Of course, some of the answers to the questions are arrived at after consultation with me.

There is always a bit of tension between the securities attorney and a film producer client, since part of my challenge is to keep the producer from misleading investors in a material way by either leaving out important information or not stating information accurately. The PPM is both a "compliance document" designed to keep the issuer of the security (in this case a film producer) from going to prison for securities fraud, and a "selling document" that tells prospective investors about the project. Basically, the securities laws require that such investors be fully informed about the proposed investment. The producer, on the other hand is trying to put his best foot forward, so to speak, and create an effective "selling document" that encourages prospective investors to invest. Quite often, these independent film producers, desperately seeking investor funds with which they hope to produce their film project, tend to exaggerate.

In any case, such disclosures typically are emailed to me in the form of not more than 10 pages of text, which I then edit per SEC standards to fit within the context of a securities disclosure document containing other information required by law. Unfortunately, this screenwriter/producer sent me about 100 pages of text, about ten times what I needed and had asked for. In addition, some of it contained so much hyperbole, I had to tone it down so as not to mislead prospective investors. When he received and reviewed the first draft of the PPM, he went ballistic. He insisted that I include everything he had written in the PPM, just as he had written it. Of course, that was impossible. The PPM was already about a hundred pages in length, including exhibits, and doubling its page length would be counter productive. In addition, some of the language he wanted to use was so exaggerated that it was dangerous for him and me.

So, I did my best to explain to him that I was an independent contractor, not his employee, and as such it was my prerogative to control my own methodology. I also pointed out that I had considerable expertise and experience in film-related securities compliance matters,



and he had none, thus he needed to follow my instructions regarding the preparation of a PPM and not insist that we do it in such an unorthodox and/or unacceptable manner. We went back and forth for several weeks, and the guy just could not be persuaded. He sent me numerous emails threatening me with all sorts of repercussions if I did not do exactly as he demanded. Needless to say, the refusal to cooperate and the many threats forced me to resign from the project. So, after sending him several written notices that I would have to resign from the offering if he persisted, that's what I did. He continued to write threatening emails for awhile, but they gradually tapered off. I have to say, he was a good writer. I do not know to this day, whatever happened to the project. I never saw any advertisements for a completed film that looked like it was his, and we never Skyped again.

## Chapter 5 – RESEARCH AND WRITING

In the meantime, I continued to present seminars on film finance, study the film industry and prepare investor offering materials for independent film producers, as well as consult with them regarding how to comply with the federal and state securities laws.

**Dictionary of Terms** – One important concept that had impressed me while attending law school at the University of Texas in Austin, was the idea that if you wanted to really understand any complex field of knowledge, you must first learn the terminology. The film industry is no different from any other highly evolved human endeavor, it has developed a significant body of specialized terms that are critical to the understanding of, and communicating about specific activities relating to film. So I started collecting glossaries of film terms, including a couple of dictionaries of film terminology. The existing dictionaries were focused primarily on production-related concepts. Thus, I saw a gap in the existing literature of the industry and thought there might be a need for a dictionary of film finance and distribution.

During a several month period, I would research and select terms that related to film finance and/or distribution, then enter each of the terms into my computer in alphabetical order. It was interesting to note that in some instances, the existing glossaries or dictionaries were somewhat careless with their definitions. For example, I would find that the definitions of some terms were defined using the defined term. That's nothing more than a bit of circular reasoning which was of no help to anyone. So, in some cases, I had to revise the definitions. In other cases, I had to make up definitions based on the various contexts in which the term was used. I would methodically review the trade publications looking for suitable terms, then check to see if such terms were already in my collection and if not, find or come up with a definition. I kept adding terms and definitions, including the previously researched *337 Reported Business Practices of the Major Studio/Distributors*, until one day I realized that I had compiled the definitions of some 3,600 terms and had created a book.

After coming up with a cover page, table of contents, introduction and bibliography, I printed out a manuscript of the book and took it by Samuel French Bookshop on Sunset Boulevard in Hollywood, thinking someone there might know of publishers interested in books about the business and legal aspects of film. Samuel French was well known as a film industry bookstore, and I had already purchased more than a few books there to add to my own film library. I was introduced to a couple of Samuel French employees, Gwen Feldman and Jim Fox who had just started a small film-related book publisher on the side. So, they were interested in taking a look at my book. In a few days, I got a call from them and they indicated they were interested in publishing my book through their company Silman-James Press. We negotiated and signed a contract and the book came out in 1992 with the title *Film Finance and Distribution – A Dictionary of Terms*.

The book did fairly well over the years and became an industry staple. It was written specifically for independent film producers and had somewhat of an anti-establishment bias (noted in the introduction), so I was surprised one day when I was being introduced at a seminar by a young talent agent from one of the larger and better known talent agencies who referred to my book as “the bible of the industry”. I doubt that many of the older talent agents thought of my book that way, after all, it contained the 337 business practices of the major studio/distributors and was somewhat critical of more than a few industry practices including agency packaging. It was also, however, being used as supplemental material for a few film school and law school courses around the country, and as I recall, it was translated into Korean for consumption in the South Korean market.

**Film Industry Contracts** -- During these early years in the film industry, I sought out and tried to attend every seminar, lecture or panel discussion relating to entertainment law, film finance or business and legal aspects of the film industry that I could find. Such presentations were sponsored by AFI, UCLA, USC, IFP/West (now FIND), Women in Film and other organizations. Quite often, entertainment attorneys would appear on the panels or present lectures at such gatherings, and in most instances, they would include sample contracts as handouts for the seminar attendees.

Over the years, I ended up with a couple of banker’s boxes full of film industry contracts, which is when I first realized that the film business is a document intensive industry. Each independent film is often treated as a separate business and will require the negotiation and drafting of a large number of written agreements. Also, from time to time, I would have an independent producer ask me to either prepare a specific contract, or for a sample of such a contract. Since I had already decided not to expand my law practice to include entertainment law tasks such as drafting other contracts not related to investor financing, I had to decline and refer them to entertainment attorneys who did handle such transactions. Many of these independent film producers complained that they could not afford to pay an entertainment attorney to draft such agreements.

So, I finally decided to organize, revise and edit all of the sample contracts I had collected over that several year period into a thick book of contracts that could be made available to independent filmmakers. The book was sold exclusively through the same previously mentioned Samuel-French bookstore in Hollywood. Surprisingly, it sold all over the world. Copies were sent to Russia, Germany, New Zealand and most other places where a film industry existed. Presumably, those filmmakers or film companies wanted to see how these agreements were drafted in the U.S. by Los Angeles-based entertainment attorneys.

Years later, after the Internet was created and websites became popular, I developed my own website ([filmfinanceattorney.com](http://filmfinanceattorney.com)) and along with other information of interest to filmmakers, offered the sample film industry contracts online either individually or in one package with the following disclaimer:

The one hundred and fourteen (114) sample film industry agreements set out below are made available here for educational purposes only. Preparation or use of such agreements without consulting with an experienced entertainment attorney, or in some cases, a securities attorney with experience in the film industry, involves a high level of risk. The sample agreements are organized into six broad categories: (1) acquisition/development, (2) packaging, (3) lender financing, (4) investor financing, (5) production documentation and (6) distribution/licensing. This collection of attorney-prepared film industry agreements may be the most comprehensive collection of film industry agreements made available to independent producers and attorneys to date. However, these contracts are merely "SAMPLE CONTRACTS", (i.e., they are not "standard contracts", "fill-in-the-blank contracts", "state-of the art contracts", "custom contracts" or "form contracts" with commentary and alternative language. They have been prepared for use by parties and in situations that are likely to differ from your circumstances. Any use beyond learning about how such transactions commonly work in the film industry should be in conjunction with the advice of an attorney experienced in the specific transaction for which the document is intended.

Again, quite surprisingly, these sample film industry contracts were purchased not only by filmmakers, but entertainment attorneys and law firms all across the country, as well as elsewhere around the world, and continue to be purchased today.

**43 Ways To Finance Your Feature Film** – I was finally able to set aside some time to do the research needed to answer that second question asked of me earlier by attendees at my film finance seminars: “What is the best way to finance a feature film?” Based on that research, I was able to categorize the various forms of film finance into four major book sections: studio/industry financing, lender financing, investor financing and international film finance options. The book was an attempt to provide a reliable overview of the many available methods for financing feature and documentary films. But, it was also partly a matter of self defense, in the sense that anytime an independent producer would ask the above question, it would be necessary for me to be able to carry on an informed discussion of the other available options, besides investor financing, and the pros and cons of each.

As stated earlier, my view was that there are a lot of different ways to finance feature and documentary films, and each form of film finance had its associated advantages and disadvantages. So, that became one of the organizing principles of the book. Within each of the four major categories, each form of film finance would be briefly described and that description would be followed by a listing of advantages and disadvantages. As with most of my writing, the *43 Ways to Finance Your Feature Film* book was heavily annotated and included an extensive bibliography of sources. I tend to be rather straight forward with my writing, something for which many readers have expressed an appreciation, and tend to rely heavily on an accumulation

of many outside published sources, organizing and restating the material in a unique way while adding my own perspective and commentary.

The number 43 in the title was somewhat arbitrary in the sense that some film producers find they have to combine several different types of film finance in order to develop, produce and distribute a motion picture, and the variety of combinations is almost limitless. But for purposes of this book on film finance, the number of stand-alone forms of film finance originally came in at 43. The book is now in its third edition (published by Southern Illinois University Press), and the later versions had to be re-organized to accommodate new methods of film finance while still retaining the original title.

**The Feature Film Distribution Deal** – My research and writing about Hollywood’s creative accounting led to a more in-depth exploration of what distributor’s do. Typically, from a film finance point of view, the producer is generally responsible for financing the development and production costs of a film. There are some financial arrangements, however, in which a distributor’s contractual commitment to distribute a film is used, in effect, as collateral for a bank loan to cover some or all of the film’s production costs. Such deals may include worldwide or domestic negative pickup deals and/or foreign presales (again, see *43 Ways to Finance Your Feature Film*).

Other distributor tasks include acquiring rights to distribute a completed film in one or more markets (i.e., acquiring product), creating and implementing a marketing plan for each film to be distributed, preparing and arranging for all of the paid advertising required to promote the film, monitoring the film’s performance in the marketplace (e.g., checking to make sure movie ticket sales are accurately reported), collecting the distributor’s share of film revenues from the various revenue streams in each market and media, and determining and disbursing any profit participations contractually committed to other profit participants such as actors, writers, directors, producers and/or investors.

This latter task is where the creative accounting comes in. In effect, film finance is not just about raising the money to develop and/or produce a motion picture, but also relates to how or if the revenues generated by the exploitation of that movie actually travels back to other profit participants besides the distributor. These are the topics explored in my 5<sup>th</sup> book: *The Feature Film Distributor Deal – The Single Most Important Film Industry Agreement* (published by Southern Illinois University Press in 1997). In addition, to discussing many of the tasks which are performed by distributors, and for which the distributors deduct sums of money from a film’s revenue stream (as distributor expenses), this book also included copies of five different types of film distributor deals for filmmakers to see and study. That includes the so-called production-financing/distribution deal (PF/D deal), the negative pickup deal, the acquisition deal, the rent-a-distributor deal and a foreign distribution deal.

Having thoroughly studied this aspect of film distribution and how distributor’s operate, I came to the conclusion that most distributors in Hollywood rarely allowed significant sums of

money to pass through their accounts to other profit participants unless that profit participant was arbitrarily favored by the distributor in some way. In other words, there was so much discretion for the distributor and unconscionable language in favor of the distributor, built into these film distribution agreements, that it really appeared to be up to the distributor to determine, how much, if any, of a film's profit would be paid to others. Further, as already described in the "Creative Accounting" discussion earlier, there are no adequate remedies for profit participants who get cheated in this manner.

**The Unscrupulous Business Plan Promoters** – One of the continuing themes I encountered repeatedly in Hollywood was the idea, often promoted by business plan consultants, that the first thing a filmmaker needed to do when seeking to raise money from investors was to create a business plan, not just the idea for the business, but a bound document that tells the prospective investor about the film industry and the proposed investment. On the other hand, a business plan is not an investment vehicle. In other words, you can't sell shares in a business plan. It must be paired with a suitable investment vehicle.

In my experience, having served on hundreds of panel discussions in Hollywood relating to film finance over the years, this latter point was seldom mentioned by these business plan consultants. Furthermore, my securities law background had taught me that only certain people could legally invest in an offering promoted exclusively through a business plan, and these same business plan consultants either did not know that, or simply failed to mention it. In point of fact, the legitimate target audience of investors who could legally invest in a film offering promoted through a business plan was quite narrow indeed.

As it turns out, there are two kinds of investors: active investors and passive investors. The federal courts have defined the active investor to be someone who (1) is regularly involved in helping make the important decisions associated with the project (i.e., they are involved in management), (2) the written agreement between the producer group and the investor or investors must clearly authorize these investors to be involved in such decision-making, and (3) such investors must have knowledge and experience in the relevant industry (i.e., in this case, the film industry). In other words, active investors must be able to participate in the decision-making in a meaningful way. They cannot rely on the expertise of the filmmakers, or they would be considered passive investors. Anytime you have passive investors involved in a business venture, that means a security is being sold, and in order for that offering to be legal, the issuer of the security must comply with the federal and state securities laws.

One of the primary requirements of complying with the securities laws is that each prospective investor must be presented with a properly drafted securities disclosure document (e.g., private placement offering memorandum or PPM) that discloses all material aspects of the proposed transaction, so that the prospective investor is fully informed about the deal in which he or she is being asked to invest. There are clear and distinct differences between a properly drafted securities disclosure document and a business plan. Even though there may be some overlap in

their contents, there are also important mandatory differences in the information these documents contain, and certainly differences in the people with whom they can be legally used.

As it turns out, it is fairly rare to find someone outside the film industry, where you typically find investors, who actually qualify as an “active investor” in accordance with the definition of that term provided by the federal appellate courts (see my article re “Defining the Active Investor” at my website [filmfinanceattorney.com](http://filmfinanceattorney.com)). So, these business plan consultants who glibly promoted the use of the business plan to raise money from investors were regularly misleading independent filmmakers about their use. And, this business plan consultant scam continues today.

I actually had a young African American female filmmaker in my office at one time break down and start crying because she had been talked into paying a business plan consultant \$5,000 to prepare a business plan for her film project, only to later discover that she did not need a business plan, rather she needed a PPM. She was upset because she did not have any more money to pay for the preparation of a PPM, which does require a considerable amount of work and expertise. She was a victim of this all too common Hollywood business plan consultant scam. The Hollywood based business plan consultants tend not to disclose that a business plan is not the appropriate documentation for a passive investor offering, either because they do not know or do not care.

As a result of these disappointing experiences relating to the misleading and overly active promotion of business plans in film finance circumstances where business plans were not appropriate, I wrote my own book about the use of business plans in film finance to try to counter some of the misinformation (*Business Plans for Filmmakers*, Southern Illinois University Press, 2010). In the introduction of that book, I set out 8 statements about the use of business plans relating to film finance, that I had heard being passed around in the Hollywood film community or read somewhere, that I considered to be myths.

The following eight statements represent such myths:

1. One of the first things you do when seeking to finance a feature or documentary film is to prepare a business plan.
2. A business plan is useful in seeking film finance from film industry sources.
3. The primary means for raising money to produce a film from investors outside of the film industry is through the use of a business plan.
4. A business plan can be used by itself to raise money from investors.
5. A business plan may be used to raise money from passive investors.

6. A business plan is just another name for a private placement offering memorandum (i.e., a PPM and a business plan are the same thing).

7. Even if you need to be using a private placement offering memorandum, you should also use a business plan as supplementary material.

8. Even if you need a securities disclosure document, it will be helpful to the securities attorney for you to have already prepared a business plan first.

Each of these statements were and continue to be false and misleading. My book on the use of business plans in film finance went on to elaborate on the reasons why these statements are false, but here are the corresponding short responses:

1. It depends on the type of film finance being pursued. A business plan is not useful or appropriate for many forms of film finance including certain forms of investor financing.

2. Industry financing sources like the major studios, their affiliated distribution companies, other established production companies and most entertainment lenders do not need to see a business plan, rather a producer's package provides the appropriate level of documentation for them.

3. A business plan's usefulness in helping to raise money is limited to one to a few fairly rare active investors from outside the industry, people many producers do not want to be involved with their films for the very fact that they will be actively involved in helping make the important management decisions associated with the project.

4. A business plan is not an investment vehicle and therefore must be paired with an investment vehicle that is suitable for use with active investors.

5. A business plan cannot be legally used by itself to raise money from passive investors, but may serve as supplemental material to a properly drafted securities disclosure document, although there are risks involved in using business plans as supplemental material when seeking to raise money from passive investors.

6. Business plans and securities disclosure documents are two different documents with some similar and over-lapping content, but also some different content, and the two have distinctively different uses.

7. Using any supplemental material including a separate business plan with a private placement offering memorandum in a private offering of securities is accompanied by a certain level of additional risk.



8. This may be good advice for a young and inexperienced securities attorney or one with little to no experience putting together a film private placement offering memorandum, but for a securities attorney with considerable experience putting together film offerings, only a small percentage of the information put into a business plan will be useful, and that will likely have to be carefully edited. The better practice is to just provide the limited and selected information requested by the securities attorney, not a full business plan.

As it turns out, misinformation about the use of business plans in film finance was not only being disseminated by unscrupulous business plan consultants, but also by some of the very film organizations that had been created for the purpose of helping independent filmmakers. One example of this latter problem was observed repeatedly at IFP/West (now FIND). They seemed to be hopelessly biased in favor of business plans and willfully ignorant about when it was more appropriate to use a properly drafted securities disclosure document (e.g., PPM). There appeared to be two reasons for this bias: (1) one or more business plan consultants were members of the IFP/West (FIND) board of directors from time to time, and (2) the group would often charge law firms or other sponsors a fee to serve as a sponsor for given segments of their seminars, thus the emphasis was not on whether any of the attorneys at the firm had bona fide expertise on a particular topic (like investor financing of independent film), but whether the firm was willing to pay the seminar sponsor fee. This practice was clearly unethical for both the film group and the sponsoring law firms.

Notwithstanding the possibility that a business plan might be a useful planning tool for any business, including a film production company, the primary reason why most filmmakers get involved with business plans is their desire to raise money for a project from investors. Thus, the focus of my book on film related business plans is on using business plans to actually raise money to develop, produce or distribute a feature or documentary motion picture. Using a business plan for planning purposes has been dealt with adequately in other books about more generic business plans.

**The Lazy Entertainment Attorney** – As noted earlier, I was often invited to serve on panels for filmmaker groups wanting to learn about the business side of the film industry. Again, that's because I was one of the few who focused on film finance, more specifically, investor financing of independent film. I did not prefer the panel format, however, because if the panel only has an hour or so to make a presentation, and there are four or five panelists, there's really not enough time to talk about a complicated subject like securities compliance.

At one such event, after I had made my little 10 minute presentation about what I do, I sat back down and the entertainment attorney sitting next to me leaned over and rather arrogantly said: "We don't do the securities offerings. We just use the contingent promissory notes." I could not really discuss the matter with him since we were on a stage, in front of an audience, in the middle of a panel discussion and needed to listen to the next speaker. So, I just nodded and turned back to the program.

Afterwards, I started thinking about what he had said and wondered if that was actually legal. I did some preliminary research and determined that it might not be. About the same time, another attorney friend who served on the editorial board for *Los Angeles Lawyer* magazine called and asked if I would be willing to write an article for the magazine. I said, “Sure, how about an article on entertainment attorneys misleading filmmakers about the use of contingent promissory notes in film finance?” He said that sounds good, so I’m off to the nearest law library to do the research.

What I found was that contingent promissory notes which are loans to be repaid out of the revenues generated by the exploitation of the film, are in fact securities, and thus compliance with the securities laws is required for such financial instruments, just as it would be for units in a limited partnership and the manager-managed LLC. In other words, this attorney was putting his producer clients who used this approach in a vulnerable position. Any lender (or more accurately investor) who was not satisfied with the results of this risky investment could make the claim that the producer had sold him or her a security without complying with the securities laws, and then demand a refund. The producer would have no defense. And, being asked to refund money you’ve already spent is an awkward situation. That original article was published in May of 2015 in the *Los Angeles Lawyer* magazine. It is also available in the articles section of my website ([filmfinanceattorney.com](http://filmfinanceattorney.com)) under the title “Contingent Promissory Notes as a Film Finance Method – Are Filmmakers Being Misled?” Unfortunately, the magazine’s editors changed the title to “Security and Independence” which suggests an altogether different and somewhat misleading topic, but oh well.

**My Own Pattern of Behavior** – One of the things that is apparent to me as I write this book and should be apparent to any of you, is that a pattern began to emerge in my involvement with the film industry. As I was either made aware of a problem, or discovered a perceived problem on my own, I dug into it (i.e., did the research) and usually what resulted was an article, monograph or book. That first question from independent producers about creative accounting resulted in the *337 Reported Business Practices of the Major Studio/Distributors*, the monograph that helps to explain why most motion picture profit participants tend to be denied their fair share of a film’s profits. The requests from independent producers to be able to see how certain contracts were written resulted in the collection of *Film Industry Contracts* which was first a book that sold throughout the world, and then the individual contracts or the entire package were made available online. My own desire to better understand the language of the film industry led me to collect all of the film related glossaries I could find and that eventually resulted in the *Dictionary of Film Finance and Distribution*, a book that has been published by three different third-party publishers, and described by others as the “bible” of the industry (hooha!).

The questions from independent producers about what is the best way to finance a feature film led to the research and publication of the book *43 Ways to Finance Your Feature Film*, now in its third edition. Continued research into the business practices of motion picture distributors led to an expansion of the *337 Reported Business Practices* monograph into publication of the

book *The Feature Film Distribution Deal – The Single Most Important Film Industry Agreement* (Southern Illinois University Press, 1997).

My attempt to top off all of this writing and research with a book tentatively entitled *What's Really Going On In Hollywood and Why It Matters* resulted in a massive 2,500 page document in my computer that eventually had to be broken up into a number of smaller works. Of those, three were actually published by third-party publishers. Those titles included *Hollywood Wars – How Insiders Gained and Maintain Illegitimate Control Over the Film Industry* (Marquette Books, 2007), *Patterns of Bias in Hollywood Movies* (Algora Publishing, 2012) and *Motion Picture Biographies – The Hollywood Spin on Historical Figures* (Algora Publishing, 2015).

So back to my work pattern. The article published in the *Los Angeles Lawyer* magazine (“Contingent Promissory Notes as a Film Finance Method – Are Filmmakers Being Misled?”) was prompted by the off-the-cuff remark of an entertainment attorney who suggested that he used such promissory notes with his producer clients so they could avoid having to comply with the securities laws. My book *Business Plans for Filmmakers* came about as a result of the exasperation I had experienced for years from having independent producers tell me that they were being led to believe by business plan consultants that it was ok to use a business plan to raise money from investors, in circumstances when that was not actually legal.

The other book titles that resulted from the *What's Really Going On In Hollywood* effort include: *Who Really Controls Hollywood*, *The Arrogance of Power – Movies and Antitrust*, *Politics, Movies and the Role of Government*, *A Study in Motion Picture Propaganda – Hollywood's Preferred Movie Messages* and *Motion Picture Industry Reform*. These titles have all been published at Amazon Kindle. Also, now at Amazon Kindle is a re-published version of the original *337 Reported Business Practices of the Major Studio/Distributors*, along with another book called *Hollywood Essays – A Collection*. This latter work is a collection of essays written during my 23 years in Hollywood that summarize my thinking about some of the issues raised by my research.

## Chapter 6 – WHO REALLY CONTROLS HOLLYWOOD

**Who Really Controls Hollywood** – Eventually, I got around to starting my research on that third question repeatedly posed to me at my early film finance seminars: “Do Jews control Hollywood?”. I wanted to take a serious look at the question, after all, this was the industry in which I had chosen to work for a significant period of my adult life, and it’s important to know whether the system is rigged, no matter by whom. I first set out to consider and contrast the various segments of the industry to determine which could most reasonably be said to be the most powerful. I considered (and discussed in the resulting book) industry segments such as producers, directors, writers, actors, studio executives, agents, entertainment attorneys and so forth. I concluded that for most of the U.S. movies seen by most of the people in the domestic marketplace and around the world, the top studio executives at the major studio/distributors held the most power over the most films, even though for any given picture, any of the categories in the above list might have an individual that wielded significant power with respect to a particular film.

I had already determined that Hollywood movies contain a number of significant patterns of bias (whether in purely fictional works or in the movies based on historical characters – see discussion in Chapter 8 below), the next natural question must be asked: “Why is this phenomenon occurring?” Others who have studied Hollywood have already suggested the answer. Anthropologist Hortense Powdermaker, for example, wrote as early as the 1950s, in her book *Hollywood: the Dream Factory; an Anthropologist Looks at the Movie-Makers*, that the taste, good or bad, of the men who make the movies will be inevitably stamped on them.<sup>6</sup> Custen also pointed out in connection with his study of biopics, that although the cinematic lives of the famous take place in locations the world over, and are set in time periods covering over two thousand years, they inevitably reflect the values of the world of the Hollywood studio and their personnel.<sup>7</sup> My own statement of this phenomenon is that movies tend to mirror the values, interests, cultural perspectives and prejudices of their makers.

This important thesis statement, offered in slightly varying forms by at least three different observers of the Hollywood scene over a 50 year period, raises the next important question in our analysis of what is going on in the Hollywood-based U.S. film industry, that is: “Who really controls Hollywood?” Or, more specifically, who makes the three important decisions relating to (1) which films are produced or released, (2) who gets to work on those films in the key positions and (3) what is the content of the screenplay on which those films are based? This is important, once again, precisely because Hollywood movies mirror the values, interests, cultural perspectives and prejudices of those key decision-makers. For most practical purposes, they are the film makers. A related question is: “How can we most accurately describe the members of this Hollywood control group?”

My study of this question, published under the title *Who Really Controls Hollywood* (now available at Amazon Kindle), reveals that most of the power in Hollywood to effect the vast majority of the movies produced or released by the major studio/distributors, which in turn, are

the movies most people see on the screen, still rests in the hands of the top three studio executives (with some influence in limited instances exerted by a few of the more powerful talent agencies, actors, writers or others).

This study also demonstrated that very few of the top studio executives have been women. Thus, we can safely conclude early on in our analysis, that women are generally outsiders to the Hollywood control group. Women have long been recognized as one of the disenfranchised minorities in Hollywood. If that were not true, it is highly doubtful that the consistent patterns of bias noted with respect to women in movies would exist. Again, although some improvement for the employment of women at the top executive levels has occurred in recent years, it is not nearly enough.

In addition, both David Prindle who wrote *Risky Business – The Political Economy of Hollywood*, and Ronald Brownstein who authored *The Power and the Glitter – The Hollywood-Washington Connection*, confirm that the vast majority of the people involved in Hollywood filmmaking at all levels are politically liberal. My research noting patterns of bias relating to the predominance of political right-wing movie villains also tends to support this observation (see Chapter 8 – Bias in Motion Picture Content).

Further, according to Michael Medved, the men who run Hollywood, do not appear to be very religious. Medved points out that the best available study of the industry establishment shows that 93 percent of (the entertainment community) attend no religious services of any kind.<sup>8</sup> Again, the patterns of bias exhibited in Hollywood motion pictures, also support the observation that Hollywood filmmakers, as a general rule, are not actively involved in organized religion. Thus, without conflicting evidence to the contrary, it is safe to conclude that generally, the men who control Hollywood are politically liberal and not very religious.

As recently as the summer of 1992, Los Angeles litigating attorney Pierce O'Donnell raised the question of the racial characteristics of the men who control Hollywood, when he described the contemporary management of the U.S. film industry, in his *Beverly Hills Bar Journal* article. He said an elite clique of two dozen white males manage the major studios and control virtually all of the movies distributed in the United States.<sup>9</sup>

The following year, in 1993, David Prindle reported similar observations relating to the racial characteristics of those who control the U.S. film industry saying Hollywood is largely peopled by young white males. Previous surveys conducted by various organizations in the late 1980s documented that the industry's work force barely begins to reflect the ethnic and gender composition of American society.<sup>10</sup> Lawyer and former Universal Pictures business affairs executive Rudy Petersdorf echoed these observations saying, studios are like a secret club. Their whole reason for existence is to perpetuate the privileged, luxurious lifestyle of a select few white males.<sup>11</sup>

Without raising the more specific issues of religious or cultural heritage, and notwithstanding the arbitrariness and irrelevance of placing a precise number on the size of Hollywood's inner circle, these observers of the Hollywood scene are clearly critical of the way the U.S. film industry is run, and place the primary blame directly on a small group of "white males".

My own separate study of this issue confirms that O'Donnell, Petersdorf, Prindle and the others (who have studied and written about Hollywood) are all partially correct in asserting that Hollywood is dominated by a small group of white males. But, it also appears to be true (as reported by Prindle, Brownstein, Medved and others) that the individuals who make up this group of white males are politically liberal. In addition, as Medved observes, the members of the Hollywood insiders' club are not very religious. Thus, it would be more accurate to report that the Hollywood control group is made up of white males, who are politically liberal and not very religious.

Unfortunately, that is still not the whole story with respect to the specific characteristics of the Hollywood insiders' club that are relevant to the kinds of movies we see, and to limit our analysis of such characteristics to gender, race, political orientation and level of interest or involvement with religion, is to engage in what is referred to in my own field of securities law as a material omission. In other words, anyone who limits their analysis to only these factors have either negligently or maliciously engaged in a tilting of the truth, by leaving out important information, that is clearly relevant to a true understanding of who controls Hollywood, why and with what results. After all, the motion picture is a unique product. It tends to mirror the values, interests, cultural perspectives and prejudices of its makers, and the content of movies can be very influential.

That next bit of useful information about the Hollywood control group's members relates to their religious/cultural heritage, something avoided altogether by Pierce O'Donnell, and misstated by Michael Medved. In 1988, however, Neal Gabler wrote in his book *An Empire of Their Own – How the Jews Invented Hollywood*, that the original Motion Picture Producers and Distributors of America was founded and for more than thirty years operated by Eastern European Jews. Gabler went on to state that the much-vaunted "studio system" was supervised by a second generation of Jews. He pointed out that the storefront theaters of the late teens were transformed into the movie palaces of the twenties by Jewish exhibitors, the most powerful talent agencies were run by Jews. Jewish lawyers transacted most of the industry's business.<sup>12</sup>

Subsequently, in 1993, David Prindle provided a more contemporary report, stating that Hollywood contains a much higher percentage of Jews than does American society as a whole. Prindle further stated that Hollywood was virtually founded by Jews and its important decision making positions have been dominated by them ever since. Also, according to Prindle, all of today's studio heads (this was in the early '90s) are Jewish.<sup>13</sup> And, of course, there has been no significant change in this regard since.

My study of the literature of the film industry determined that the writings of Neal Gabler, David Prindle and others, including Joel Kotkin, Terry Pristin, Peter Bart, David McClintick and Paul Rosenfield (whose respective books and articles on Hollywood are included in the accompanying bibliography) all provide cumulative and convincing evidence that the Gabler/Prindle view is still correct; that is, the Hollywood-based American motion picture industry has, from the very beginning, and still is, controlled and dominated by Jewish males of European heritage. As noted earlier, when the observations and writings of Medved and Brownstein are added, we also discover that these Jewish males are typically not very religious and for the most part, are politically liberal. Thus, taken together, it is possible then to authoritatively conclude that the Hollywood-based U.S. film industry has always been, and is still controlled and/or dominated by that same small Jewish sub-group (the politically liberal, not very religious Jewish males of European heritage).

But I did not stop there. In an effort to confirm the accuracy of these observations I again conducted my own study of the racial, religious and cultural backgrounds of the top three studio executives of the Hollywood major studio/distributors that are still considered to be majors today, for the entire periods of the respective histories of those companies. These are the people, who we noted earlier, make the important decisions about which films are produced or released, who gets to work on those films in the key positions and the content of the scripts on which such films are based.

The top three studio executives at the major studio/distributors have what the industry calls “greenlight authority”. In other words, they could greenlight (i.e., approve) production financing for a film project. That’s real power. That, in many instances, gave them the power to determine whether one of many film projects would get made, along with who would produce, direct, write and/or act in the picture. The actual positions involved included the board chairman, the president of the studio and the head of production. Sometimes, a studio might have two heads of production. Some board chairmen were more involved than others.

So I made a list of the names of those individuals who served in those positions from the very beginning of each of the major studio/distributors to the time of the study (in the mid’90s). Then I created several columns, one for gender (male/female), another for race (for lack of a better term since we are all members of the only race that actually exists – the human race), a third for religious/cultural heritage and finally, a column for the source of the information. The following is a summary of the results of that study more fully set forth in the resulting book entitled *Who Really Controls Hollywood* (now available on Amazon Kindle).

Several conclusions can be drawn from this study of major studio executives. First, there appears to be no persons of African/American, no persons of Asian/American, and only one person of probable Hispanic/Latino heritage in this entire group of 226 Hollywood studio executives. In other words, African-Americans, Asian Americans and Hispanics have been completely and arbitrarily excluded from the highest levels of power in the Hollywood-based U.S. film industry for that entire, nearly 90-year history (as of the time of this study) and there

appears to be little evidence of any significant change since. In my view, it is not likely that anyone other than a racist would sincerely argue that the persons who have held these studio executive jobs actually deserved to be in such positions to the complete exclusion of African/Americans, Asian-Americans and Hispanic/Latinos (male or female).

Second, only 8 of these top major studio executive slots were occupied by women at any given time (that is, only 4% of the total number of studio executive positions reported) and only for relatively short periods of time. Also, only 6 women were involved (Sherry Lansing, and Dawn Steel worked in high level executive positions for two different studios). Not only are all of these major studio/distributors so-called male bastions, three of them (Disney, MGM and Universal) have never permitted a women to enter one of the three top level positions considered in this study, completed in 1994. Again, in my view, it is not likely that anyone other than a sexist would sincerely argue that the persons who have held these highest level studio executive positions deserved to be there to the almost complete exclusion of women.

Third, of the 226 individual major studio/executives identified for purposes of this study, (counting those who served at more than one studio in one of the top executive positions, once for each studio served) 84 are specifically identified by the sources cited as being Jewish or having a Jewish heritage. That is a little over 37%, a figure that is extremely high when compared with the percentage of Jews in the U.S. population (i.e., 2.4%) but well below the estimates of many of those who have actually worked in Hollywood over the years. On the other hand, if we calculate the number of persons identified as Jewish or of a Jewish background in such executive positions as a percentage of all of those persons whose religious/cultural background have been specifically cited in the sources reviewed (see bibliography) the percentage moves to the other extreme (i.e., 82%). In other words, the many sources reviewed only disclosed the religious/cultural background of the studio executives in 103 of 226 instances or 46% of the cases, regardless of whether such persons have a Jewish or non-Jewish background. It may be fair then to report that the percentage of the top three studio executives (i.e., board chairmen, presidents and production chiefs) at the major studio/distributors still considered to be majors today (and who are specifically identified as Jewish or of Jewish heritage in published sources) lies somewhere between 37% on the low end and 82% on the high end.

When confronted with a similar problem, however, Patricia Erens, in conducting her research for the book *The Jew in American Cinema*, determined that in some cases, film characters can be considered Jewish by virtue of their names or other distinguishing features (use of Yiddish phrases, mention of Jewish holidays, etc.), although no specific reference to their Jewishness is included in the film's dialogue. In a situation, where the information relating to the religious/cultural background of people in the film industry is not published or otherwise remains secret (for whatever reason), it is necessary to resort to methods similar to those used by Patricia Erens in order to come up with a more accurate and reasonable estimate of percentages relating to the religious/cultural background of such high level studio executives.



In order to develop such additional information, two methods were utilized for purposes of this book. First, the assistance of Jewish individuals (Los Angeles natives who have had some contact with the film industry and are therefore somewhat familiar with the Hollywood Jews) was obtained to study the list of studio executives provided and to identify those with names that are "likely" to be Jewish. Those names were then compared with the names of persons identified in various published sources (again, see bibliography) that are or were Jewish, to further increase the likelihood that such names actually represent people who are Jewish or who have Jewish backgrounds. That group is identified in the resulting chart with the designation "Jewish name". Using that method, an additional 50 persons were added to the 84 previously identified as being Jewish or of Jewish heritage. With these added names, the new percentage calculation would suggest that of 226 studio executives on the list, 134 are Jewish, have a Jewish background or are likely to be of a Jewish heritage (based on their names), thus about 60% (in any case, a clear majority) of the studio executives on the list may be considered to share a Jewish heritage.

In any event, it is not likely that anyone other than a Jewish-supremacist (i.e., one who believes in the racial or otherwise inherent superiority of Jewish people) or, at least, a philo-Semitic (i.e., one who is prejudiced in favor of Jews) would sincerely argue that this disproportionate number of males (and females) of Jewish heritage deserved to be in these high-level studio executives positions to the exclusion of other white males, African-Americans, non-Jewish women, Hispanic/Latinos, Asian-Americans and others who have no Jewish background.

For those who might take the defensive posture that such a listing and calculation is at the very least inappropriate, please read further and be reminded that this book (and its companion volumes) are making the very serious, but quite reasonable allegations that Hollywood is controlled by a small group of Jewish males of European heritage, who are politically liberal and not very religious, and who are not representative of the Jewish community or "nation" as a whole, and who have, over the years, engaged in unethical, unfair, predatory, anti-competitive and illegal business practices, including wholesale discrimination (i.e., nepotism, favoritism, cronyism, blacklisting and reciprocal preferences) directed toward persons of other racial, ethnic, cultural and/or religious backgrounds. That's what's really inappropriate, and, in fact, illegal.

On the other hand, this book does not in any way suggest that these studio executives have engaged in such practices because they are Jewish, rather, it is more accurate to say they have engaged in such practices despite having a Jewish background. This book further alleges, however, that the beneficiaries of that wholesale discrimination in the U.S. film industry are primarily the fellow Jewish males (of European heritage) of those in control positions.

In addition, this study concludes that control of the film industry in the hands of any narrowly defined interest group, has undesirable effects on the kinds of motion pictures that are produced and distributed, who gets to work on those films and the content of the movies themselves; and these results are not in the best interests of the nation, or the world for that matter. Thus, the question relating to the religious/cultural background of the people in the top level positions of the major studio/distributors of Hollywood is at the very heart of the larger

issues about which this series of books on Hollywood has been written, and therefore must be explored in any responsible inquiry by anyone who seriously considers the question.

Since as reported elsewhere in my writings, long time studio executive David Picker offered the opinion that if he had said “yes” to all the projects he turned down, and “no” to all the ones he approved, it would have worked out about the same, then it really should make no difference, from a commercial point of view, whether studio executives are African-Americans, Latinos, American-Indian, females, white Anglo-Saxon males from the South, Christians, Muslims, or whatever, because the films released by the major studio/distributors will still perform about the same in the marketplace. Also, if as is so commonly stated in Hollywood, "nobody knows" anything (see the discussion in *Hollywood Wars* and below, relating to "Myth and Misinformation"), there must be other reasons why people from the groups listed immediately above, are generally excluded from high level studio executive positions. Based on my study, those reasons now appear to be more clear (additional clarification is provided in the companion volume *Hollywood Wars* on this question of "How Did They Gain and Maintain Control?")

One of the more interesting aspects of this study to me, is that anyone could replicate it. In other words, its results could be updated or confirmed by anyone willing to do the research. It could also be updated, and certainly there will be those who say that Hollywood is changing thus these conclusions no longer apply. On the other hand, I've seen no evidence of any significant differences today in the makeup of the ranks of the top studio executives with greenlight authority, and I challenge anyone to actually demonstrate such a change. In fact, none of the other commentators cited in the book *Who Really Controls Hollywood* actually conducted a study as I did, and no one has done so since, so far as I know. Most people outside the film industry are not really interested in what happens in Hollywood, and those in the industry typically don't want to live under the threat of “You'll never get work in this town again.” They also don't want to be accused of being anti-Semitic, which is a common reaction to such a study by some of the uninformed or dishonest members of the Hollywood community.

Since I am, on the verge of full retirement from my law practice, my hope is for others to continue my work and expand it – to update my studies, to expand such studies, for example to include an examination of the gender, racial and religious/cultural backgrounds of let's say, the top 30 talent agents in Los Angeles, the top 30 entertainment attorneys, producers, directors, writers, actors and actresses, as well as the studio executives. If it turns out that a similar lack of diversity and patterns of discrimination are found in all of those fields (similar to those I observed among the top three studio executives with greenlight authority), that may further tend to confirm my studies, and help to make people understand the breadth and gravity of the problems in Hollywood.

## Chapter 7 – HOLLYWOOD BUSINESS PRACTICES

Next in logical order, is the question relating to how this narrowly-defined Hollywood control group gained and has maintained its power over the Hollywood-based U.S. film industry for its 100+ year history. My studies of this question, reported in the two books *The Feature Film Distribution Deal* and *Hollywood Wars* demonstrate that the major studio-distributors, gained and have maintained their dominance over the film industry by means of unfair, unethical, unconscionable, anti-competitive, predatory and in some cases illegal business practices.

The U.S. film industry is dominated by a small group of so-called major studio/distributors, (i.e., MPAA member companies like Disney, Sony (Columbia/TriStar), Universal, Warner Bros., 20th Century Fox and Paramount). These companies are considered majors because over long periods of time, their films generate double digit market share as compared to the so-called independent film companies. Films released by this group of majors have collectively generated approximately 92% of the domestic theatrical box office gross for many years. That figure does not necessarily mean that the MPAA company films are better films or actually deserve to dominate the box office figures. It does mean that the MPAA companies know which 75%<sup>14</sup> of the motion picture theatres in the domestic theatrical marketplace will consistently generate 92% of the box office gross<sup>1</sup> and that these MPAA companies can effectively book their motion pictures in those theatres to the exclusion of the films being released by independent feature film distributors<sup>2</sup> either because the MPAA companies have

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### Endnotes

<sup>1</sup> The number of motion picture theatre screens in the U.S. as of this writing was approximately 23,600. Thus, assuming the major studio/distributors in the aggregate have 20 films in release (on average) in any given week and utilize an average of 866 prints per film, that means those films being distributed by the major studio/distributors would take up 17,320 screens in the U.S. or 73.38% of the available screens), thus preventing the films being distributed by independent distributors from exhibiting their films on those same screens. Also, interestingly enough, this hypothetical 73.38% of screens is very close to the percentage of screens (a selected 75% of the theatres in the U.S.) that typically generate more than 90% of the box office gross.

<sup>2</sup> The companies of the American Film Marketing Association, the trade group which represents the interests of the independent feature film distributors (i.e., film distributors that are not considered major distributors).

ownership interests<sup>3</sup> in such theatres or can control access to such theatres through sheer market power.

In addition to the hundreds of unconscionable provisions of the feature film distribution deal imposed on the rest of the film community by the major studio/distributors, as described in great detail in the book entitled *The Feature Film Distribution Deal*, the companion volume, *Hollywood Wars*, explores some 114 other specific business practices that have been used by these same studios and their associates during the 100+ year history of the Hollywood-based U.S. film industry to gain and maintain their control over the Hollywood empire. A quick sampling of these business practices include:

Anti-competitive involvement in acquisition, development and production financing;

Imposing excessive creative controls in conjunction with that film financing;

Extracting unconscionable amounts for distribution fees and expenses;

Routinely overstating distribution expenses;

Providing favored treatment in distribution for their own productions as opposed to independent films;

More aggressively collecting revenues for their own films as opposed to the movies of independent producers;

Consistently failing to properly implement the terms of the distribution agreements;

Consistently misinterpreting distribution agreement provisions in favor of the distributor;

Cross collateralizing an entire slate of films even when not authorized to do so;

Using wide releases to take the public's money before bad word-of-mouth gets out;

Wasting huge amounts of money in development;

Using development deals to take competing projects off the market;

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<sup>3</sup> The major studio/distributors were ordered to divest themselves of their ownership interests in theatre chains by the Paramount Consent Decree of 1948, but in the intervening years, the proscriptions of the decree have been weakened under the continued assaults of the MPAA companies and more recently because of the lack of vigorous opposition by the U.S. Justice Department. Ownership of production, distribution and exhibition in the motion picture industry amounts to the vertical integration of the industry.

Using the turnaround transaction to shift moneys back and forth between studios and their friendly executives;

Cooperating with talent agencies in utilizing illegal packaged deals;

Studio executives accepting loans from producers who make films for the same studio;

Studio executives cashing checks written for stars;

The studio executive hiring of a screenwriter represented by that same studio executive's wife;

Hiring attorneys as in-house counsel and continuing to use the attorney's outside firm;

Engaging in rampant nepotism, cronyism, favoritism, blacklisting and other forms of illegal employment discrimination;

Participating in an insider's executive shuffle among the studios;

Utilizing the threat of the executive mass exodus to retain studio control even though financial control of the studio may be held by Hollywood outsiders;

Arbitrarily excluding outsiders from the Hollywood social activities that lead to advancement;

Regularly engaging in illegal reciprocal preferences with other Hollywood insiders;

Engaging in a long history of discriminatory practices against Hollywood outsiders including D.W. Griffith, Joseph Kennedy, William Randolph Hearst, Orson Welles, Howard Hughes, Kirk Kerkorian and David Puttnam (the current Hollywood outsider target being Rupert Murdoch);

Artificially inflating the cost of film production for self-serving reasons;

Paying excessive studio executive compensation and pressuring them to make political contributions;

And, utilizing the power of private censorship for commercial and cultural purposes.

Again, this listing of Hollywood business practices goes on for several pages and numbers into the several hundreds. They are all cataloged and discussed from varying perspectives in three of my books (if we include the original monograph). When you read the hundreds of books and articles on the U.S. film industry listed in the accompanying bibliographies, as I have, this is the history of Hollywood business practices that is revealed.

Again, the major studio/distributors have gained and maintain their dominance and control of the U.S. motion picture industry by means of some or all of the business practices described in my monograph *337 Reported Business Practices of the Major Studio/Distributors*. Without reproducing that entire monograph here, selected excerpts appear below:

**Vertical Integration** – The re-entry of the major studio/distributors into the exhibition arena as owners of theatre chains is now permitted because of a reversal in the policies of the U.S. Justice Department, the federal agency charged with the responsibility of enforcing federal anti-trust laws. Such laws are no longer vigorously enforced by the Justice Department with respect to the motion picture industry, a change at least partly brought about by the policies of the Reagan Administration in the 1980's and continued by the Bush and Clinton administration into the mid-90s. Each of the Reagan, Bush and Clinton presidential campaigns received substantial monetary contributions from high level executives of the various MPAA companies.

**Settlement Transactions** – The market power of the MPAA companies has been gained and is maintained by engaging in numerous questionable, unethical, unfair, predatory and/or illegal business practices.<sup>4</sup> For example, many of the MPAA companies<sup>5</sup> routinely settle with exhibitors for a lump sum payment after the run of one or more motion pictures from that same distributor for an amount that is somewhere between 10% to 30% less than what is owed to the distributor by the exhibitor. If the film or films in question were produced by a major studio/distributor that practice may be of little concern to third parties. But in instances where a film in question was produced by an independent producer and where other third party net profit participants are involved, the above described settlement transaction is a violation of the distributor's fiduciary duty<sup>6</sup> to protect the interests of parties with whom it has contracted. In other words, the distributor is giving away money that belongs to others, and there is no way of know whether the exhibitor has agreed to deal favorably with that same distributor or other films in the future.

Of course, you might ask why the distributor would settle for less money on a given picture. One answer is that by settling for less on the independently produced film, the exhibitor is more likely to pay the distributor the correct amount, if not more, on the films produced by the distributor and subsequently exhibited by the theatre.

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<sup>4</sup> For a more comprehensive listing of these film distributor practices see *337 Reported Business Practices of the Major Studio Distributors* by the same author.

<sup>5</sup> Universal reportedly does not engage in the practice of settling with exhibitors. Consequently, industry insider's say that Universal is not able to book its films into the best theatres, a situation which suggests that exhibitors also engage in questionable business practices.

<sup>6</sup> The settlement transaction as between the distributor and exhibitor clearly involves a conflict of interest for the distributor of an independently produced motion picture.

**Blind Bidding** – The practice of blind bidding<sup>7</sup> has also been used in the past to further increase the MPAA companies' market power. The major exhibitor chains (some of which are partly owned by the major studio/distributors) can afford to exhibit a loser from time to time, so long as they know they are also going to get the best movies a distributor makes available.<sup>8</sup> But the small independent exhibitors operate with a more narrow margin and cannot afford to blind bid a film and take a chance on it being a poor choice for their particular theatre and surrounding community of moviegoers.<sup>9</sup> Thus, the financially stronger major exhibitors will always get to show the best films during their earliest runs in the area because they can afford to out bid their smaller competitors and they will usually get the MPAA distributor films offered on a blind bid basis since they can afford to take the chance.<sup>10</sup> Even if this precise practice is not longer in use, you have to wonder what took its place and why the MPAA distributors would agree to a less favorable practice. Actually, they would not. So, you can be assured, that whatever replaced the practice of blind bidding was equally favorable to the MPAA companies or more favorable.

**Five O'Clock Look** – When bidding out the exhibition of an about-to-be-released film, the MPAA distributors have also been known to call a favored exhibitor after all of the bids are in and report the highest bid, so that the favored exhibitor can out bid the competitors<sup>11</sup>. This practice also works to exclude the exhibitor not favored by the major distributors.

**Block Booking** – Block booking is the film distribution practice of tying together one or more motion pictures for licensing within a market, (i.e., a distributor will accept a theatre's bid on a desirable film or films contingent on the exhibitor's promise that it will also exhibit a less desirable film). This practice was addressed by the Paramount consent decree of 1948<sup>12</sup>, in which

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<sup>7</sup> The licensing of a motion picture to an exhibitor without affording the exhibitor with an opportunity to view the completed film.

<sup>8</sup> See “Film Studios Threaten Retaliation Against States Banning Blind Bids”, *Los Angeles Times*, June 1, 1981.

<sup>9</sup> See “The Relationship Between Motion Picture Distribution and Exhibition: An Analysis of the Effects of Anti-Blind Bidding Legislation”, Suzanne Ilene Schiller, *Comm/Ent. L.J.*, Volume 9, Fall 1986.

<sup>10</sup> See “Blind Bidding: A Need For Change”, Keith M. Gregory, *Beverly Hills Bar Journal*, Winter 1982-1983.

<sup>11</sup> This practice is referred to in the industry as the "five o'clock look" and may also be one aspect of the broader practice of granting reciprocal preferences.

<sup>12</sup> *United States v. Paramount Pictures, Inc.*, 334 U.S. 131 (1948).

the major distributors at that time were forbidden to employ the practice.<sup>13</sup> The basic premise of this decree was to prohibit block booking, (i.e., that motion pictures must be licensed picture by picture, theatre by theatre, so as to give all exhibitors equal opportunities to show a given film). Like, other practices described above, block booking has a tendency to prevent independent producer and independent distributor access to certain theatres. The practice continues today in a more informal way.

**Allocations** – The MPAA company distribution deals are often drafted so as to allow the distributor a great deal of discretion in making allocations (e.g., in allocating the costs of advertising several films among such films). Allocation issues also arise in the licensing of films in a package for television, whether for network or syndication and in foreign distribution and sometimes in the allocation of a portion of film rentals to shorts and trailers. Not surprisingly, the discretionary judgment of the distributor more often than not results in accounting decisions in favor of the distributor.

**Improperly Claimed Expenses** – Auditors who regularly audit MPAA distributors on behalf of producers and other net profit participations often find that the distributors have wrongfully or unfairly allocated certain of its incidental expenses or costs to a film, or have completely fabricated distribution expenses that are allocated to a film.

**Final Judgment** – Many of the MPAA company distribution agreements require the producer to reimburse the distributor for legal fees if the producer files a lawsuit against the distributor but fails to obtain a final judgment against the distributor. Most lawsuits are settled prior to "final judgment" and substantial legal fees may have been incurred.

**Adhesion Contracts and Unconscionability** – The major studio/film distributors are fond of pointing out that many of the business practices that are complained about by others are actually practices authorized by the language of the film distribution agreement. However, such contracts have been found to be so heavily restrictive of one party (the producer), while so non-restrictive of another (the distributor), that doubts arise as to their representation as voluntary and uncoerced agreements.<sup>14</sup> The concept implies a grave inequality of bargaining power between the parties. It often arises in the context of so-called "standard-form" printed contracts prepared

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<sup>13</sup> See "Anti-Trust Developments in Sports and Entertainment Law", Paul J. Tagliabue, *Anti-Trust Law Journal*, 1987.

<sup>14</sup> Such contracts are referred to as contracts of adhesion or unconscionable contracts. Courts have recognized there is often no true equality of bargaining power in such contracts and have accommodated that reality in interpreting such contracts.



by one party and submitted to the other on a "take it or leave it" basis.<sup>15</sup> Although the concept of adhesion contracts has more typically been applied to consumer transactions, some courts have used this legal theory to reinterpret commercial agreements.<sup>16</sup> It is more common, however, for the legal concept of unconscionability to be applied to such transactions. Unconscionable contracts are so unreasonably detrimental to the interests of one of the contracting parties as to render the contract unenforceable.

As pointed out above, the major studio/distributors have the market share and market power to overwhelmingly dominate the production, distribution and exhibition of U.S. made motion pictures, thus it may be fair to characterize all feature film distribution agreements between independent producers and MPAA companies as unconscionable.

**Blacklisting and Economic Retaliation** – Unfortunately, people in the film industry generally do not complain too loudly about the business practices discussed here for fear of being "blacklisted". In other words, if producers, directors, actors, actresses and others who work in the motion picture industry complain or sue a distributor because of the above described MPAA company business practices, without being willing to settle for a round dollar amount far less than what might have otherwise been paid, it is very likely that such a person will soon find themselves without much work in the film community (i.e., "You'll never work in this town again!").

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<sup>15</sup> See "How Contracts Escalate into Torts", Kurt E. Wilson, *California Lawyer* magazine, January, 1992.

<sup>16</sup> See "Adhesion Theory in California: An Update", Richard P. Sybert, *Loyola of Los Angeles Law Review*, 1983.

## Chapter 8 – BIAS IN MOTION PICTURE CONTENT

**Movies Mirror Their Makers** – One of the underlying theses of my book *Patterns of Bias in Hollywood Movies* (Algora Publishing, 2012) is that to a large extent, movies mirror the values, interests, cultural perspectives and prejudices of their makers, not to an absolute degree, but as a general rule. As George Custen pointed out in connection with his study of biopics, although the cinematic lives of the famous take place in locations the world over, and are set in time periods covering over two thousand years, they inevitably reflect the values of the world of the Hollywood studio and their personnel.<sup>15</sup> In her classic study of Hollywood, Hortense Powdermaker agreed, saying that the taste, good or bad, of the men (and women) who make the movies will be inevitably stamped on them and will break through all rules and taboos.<sup>16</sup>

Powdermaker went on to say that much of the producer's power is similar to that of the front-office executive. Both tend to project onto the movies their own personalities, their ideas of love and sex, their attitude to mankind, and their 'solutions' to social problems.<sup>17</sup> In addition, Powdermaker said that the producer also usually picks able, skilled authors who share his (or her) interests.<sup>18</sup>

Powdermaker continued this theme, saying that the personalities of the men who sit in the front office are of interest because their own natures influence the content of the movies. It is the executives (and producers) who have the greatest power to stamp the movies with their personal daydreams and fantasies. The tendency of executives to see the movie audience in their own image results in a rather high correlation between the executives' personalty and their opinions of the audience. Power concentrated in the hands of one man or a few becomes personalized. In Hollywood, the man (or woman) who sits in the front office sets the tone of the whole studio, influencing and shaping attitudes and behavior of everyone in it; even more important, he leaves his stamp on the movie.<sup>19</sup>

In other words, regardless of whether the executive reads or listens, acts singly or with others, he usually projects his own taste onto the public.<sup>20</sup> The important decisions on scripts are conditioned by the taste, judgment and personality of executives. Decisions about casting and cutting or on shooting a picture on location or in the studio, on the production's budget, and the settlement of disputes which may arise between any of the important people involved in the movie are likewise the responsibility of the production executive.<sup>21</sup> Of course, all of the above decisions made by a film's producer and/or its supervising studio executive will inevitably have creative effects on the ultimate film.

Thus, one of the less than desirable direct results of a film industry dominated by a small group of men who share similar backgrounds is a likely bias in the content of the movies. For example, as Pristin points out, the practice of nepotism is at least partly responsible for Hollywood's insularity, narrow perspective and largely homogeneous work force. The industry has long been criticized for employing relatively few women, blacks and other minorities,

especially in its upper ranks. More diversity among management personnel would likely lead to a more interesting mix of movies.<sup>22</sup> Again, the economic control of Hollywood cannot be separated from creative control.

As noted earlier, Powdermaker also states that Hollywood is no mirrorlike reflection of our society, which is characterized by a large number of conflicting patterns of behavior and values. Instead, Hollywood had emphasized some of those values to the exclusion of others.<sup>23</sup> Also, as noted earlier, in talking about Hollywood's politically liberal slant, David Prindle observed that it is not Hollywood's willingness to embrace national problems in movies and on television that is disturbing. It is the relentless one-dimensional viewpoint that dominates the films and television that come out of the industry.<sup>24</sup>

The present studio dominated system also allows certain insider filmmakers or filmmakers with insider backing to pursue their own hidden agendas (i.e., plans of things to be done or intentions that are not apparent or divulged). Filmmakers make movies for many reasons. Making money, becoming famous, earning the respect of professional peers, providing entertainment and communicating important ideas would seem to be high on anyone's list of the typical reasons why movies are made, although the order of importance certainly may differ amongst individuals. The feature film, as a communications medium, with its large screen, color technology, special effects, lighting techniques, exquisite photography, incredible sound, excellent talent on and off the screen, is also, without question, one of the most effective methods for communicating ideas that the world has yet devised. It would indeed be naive for anyone to assume that the communication of ideas is not an important motive for any serious filmmaker or filmmaking concern. A feature film also affords a unique opportunity for those who control or dominate the process of decision-making as to which movies or ideas are included in motion pictures, to insert such ideas or select and actively promote the movies which best express the views held by those same decision-makers.

My book *Patterns of Bias in Hollywood Movies* serves to collect and furnish some of the available evidence which points toward the answers to two fundamental questions about the American motion picture industry: (1) Is the control exercised by the Hollywood control group reflected in the kinds and content of the motion pictures produced and released? and (2) Do American movies adequately reflect the nation's multi-cultural diversity or do they reflect a consistent pattern of bias in favor of those who control Hollywood and against those who do not control Hollywood? Because of the inherent difficulties in assembling an objective panel and reviewing enough movies that have been produced and released over a sufficient period of time to constitute an adequate sampling of negative and positive portrayals of various ethnic, religious, racial, gender, sexual preference and cultural groups in American motion pictures, this report is based on a different approach, and a less formal study of the above questions. Hopefully this effort will stimulate interest in the study of patterns of bias in motion picture content and lead to further studies using more formal methodologies.

As stated earlier, there appears to be substantial evidence that the Hollywood control group does in fact consistently portray itself in a positive manner while consistently portraying other populations in a negative manner (see discussion in *Movies and Propaganda*). The various ethnic, cultural, religious and racial groups that have publicly complained about the portrayal of their members in movies are listed below. A significant number and variety of ethnic, cultural, religious, gender, sexual preference and racial groups within the American multi-cultural society have bitterly complained over the years about how Hollywood's mainstream movies have consistently portrayed them in a negative manner and about unequal employment opportunities in the film industry. A sampling of these complaints are set in the *Patterns of Bias* book in a mostly chronological order within each subject category.

Hollywood movies have consistently exhibited certain specific patterns of bias with respect to the people and places portrayed. Some of such patterns of bias have been consistently negative and others, consistently positive. Michael Medved's book *Hollywood vs. America* vigorously, and I believe, in most instances, correctly, criticized Hollywood for attacking religion, assaulting the family, using excessive foul language, being addicted to violence, being hostile to heroes and for bashing America and its government agencies.

In fact, it was quite instructive to see President Clinton in April of 1995, following the Oklahoma City bombing, attacking the conservative talk show hosts for bashing America and its government, when Hollywood motion pictures have been doing the same thing for years, through, what I believe is an even more effective communications medium (i.e., the feature-length motion picture). As an example, we have to look long and hard to find a movie portrayal of a current CIA or FBI agent that is sympathetic. We also have to look long and hard to find a movie portrayal of a politician or government official that is not negative. But, in a rather transparent attempt to use one of our nation's greatest tragedies for political gain, Clinton did not choose to criticize the Hollywood establishment for its America-bashing, but instead chose to criticize the political right and their talk show cronies.

In other words, if anyone, including the President is going to make the argument that ideas espoused on talk shows contribute to an environment in which domestic terrorist attacks actually occur, no one could possibly assume that the communication of similar ideas or others through film are any less responsible for contributing to the creation of that same environment. Instead of pointing the finger of blame toward one side or the other of the political spectrum, both should be held responsible. In any case, the forms of Hollywood bias in motion pictures criticized by Medved are not reiterated here. The focus in this book is on other Hollywood patterns of bias, that are equally damaging to society, patterns of bias that were either overlooked or simply not addressed by Medved.

The material that follows relating to the resulting patterns of bias serves to demonstrate two additional results of the situation in which the control of Hollywood resides in the hands of a narrowly defined interest group: (1) it demonstrates how such control affects the kind of movies we see and (2) having seen these results (and moving in the opposite direction with respect to

cause and effect), it provides additional support for the contention made in another of the books in this series on Hollywood: *Who Really Controls Hollywood*, that Hollywood is, in fact, controlled by a small group of Jewish males of European heritage, who are politically liberal and not very religious; a narrowly-defined group that is either making the kinds of movies its members want to see, or making such movies it is being pressured into making by various segments of the broader so-called "Jewish community".<sup>17</sup>

As reported in that book, the history of the upper level management of the major studio/distributors which have dominated the American motion picture industry during that century reveals relatively few examples of such positions being held by African-Americans, Latinos, women and others besides the previously identified Hollywood insider group. Gays, of course, present a special problem for analysis in that during most of the century, gay men were not likely to be openly gay. Thus, it is extremely difficult to determine whether there were some so-called "closet gays" in upper level management film industry positions who simply chose not to fight for positive portrayals of gays in movies for fear of revealing their own sexual orientation. Other than that possibility, the nearly 100 year history of Hollywood management suggests a positive correlation between who does not control Hollywood and who is consistently portrayed in a negative or stereotypical manner in American motion pictures.

If movies, to a great extent, mirror the values, interests and cultural perspectives of their makers, then it is possible to learn a great deal about movie makers by observing who and what things or places are consistently negatively portrayed in their movies. For purposes of this book, the term negative portrayals refers to the unfavorable or stereotypical depiction of someone or something in a motion picture. The underlying assumption is that it is absolutely wrong for the motion picture industry to consistently portray any particular group of persons in a negative manner in its feature films and in fact, such consistent portrayals actually rises to the level of private propaganda, since the Hollywood-based U.S. film industry is, after all, in private hands. Be that as it may, my studies and the work of others in this regard indicate that there are clear biases expressed in movies released by the U.S. major studio/distributors.

One of those repetitive studies was conducted during the eight years prior to the publication of the *Hollywood Wars* book while lecturing on topics relating to "Film Finance", "The Business and Legal Aspects of Film Distribution", "The Relationship Between Economic and Creative Control in the American Motion Picture Industry" and "Motion Picture Industry

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<sup>17</sup> The book *Who Really Controls Hollywood* is by the same author. It analyzes and compares the various segments of the film industry to reveal where the real power resides (i.e., the power to determine which movies are made, who gets to work on those movies and the actual content of such films). The study concludes that such power, by and large, still rests in the hands of the top three studio executives of the so-called major studio/distributors. It then proceeds to analyze the backgrounds of the 226 such individuals who have held those positions throughout the history of the Hollywood-based U.S. film industry (as of this writing), ultimately determining that somewhere between 60 to 80 percent have been, and continue to be, Jewish males of European heritage, who are politically liberal and not very religious.

Reform" under the sponsorship of the USC School of Cinema-TV, the American Film Institute, the USC Cinema-TV Alumni Association, the UCLA (graduate level) Independent Producer's Program, the UCLA Anderson Graduate School of Management Entertainment Section, UCLA Extension, IFP/West, Cinewomen and other film industry groups. The people attending such lectures represented an international cross-section of film industry professionals and other persons interested in careers in the film industry who were also avid moviegoers. Informal surveys of such classes were undertaken from time to time, asking the question: "Based on the movies you have seen during the past ten year period, what racial, ethnic, cultural, religious, sexual preference and/or gender groups have been consistently portrayed in MPAA movies<sup>18</sup> in a negative manner?" These informal survey results consistently included the following groups:

America	American Indians	American Institutions
Arabs	Asian Americans	Bi-Cultural Couples
Business	Capitalism	Gay/Lesbians
Establishment	Government	Hispanics
Japanese	Middle Class	Nazis
Police	Professionals	Rednecks
Religion	White Southerners	Texans
White Supremacists		

Such informal surveys again suggest that there is a positive correlation between the groups who publicly complain from time to time (see discussion below) about being portrayed in American movies in a negative manner, and those groups perceived by a cross-section of moviegoers to be consistently negatively portrayed in American movies.

The literature of the industry also provides additional evidence of these same patterns of bias in our movies. Where applicable, references from industry literature are included in the study below. Further, this study is based on reviews of motion pictures covering the entire period of the existence of the Hollywood-based U.S. film industry, as those reviews appear in several publications<sup>19</sup> including Steven Scheuer's *Movies on TV and Videocassette*,<sup>25</sup> *Halliwel's Film Guide*<sup>26</sup> and *Roger Ebert's Video Companion*<sup>27</sup> (1994 Edition). In other words, the movies used

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<sup>18</sup> The survey question was limited to MPAA movies because their releases have for years consistently generated approximately 92% of the box revenues for theatrical releases in the U.S. Thus, the independent releases as a whole are not that statistically significant.

<sup>19</sup> Included among this group of described movies are some that are ostensibly British productions. They are included because it is extremely difficult to separate British movies from U.S. movies since the two industries have traded actors and directors back and forth for years, both are English-speaking countries, of course, some of the U.S. majors have owned British-based studios, production units and distribution facilities for years, funds from the U.S. have often been utilized to finance what might otherwise be considered a British production and a U.S. domestic distribution commitment may have been the critical financial element which allowed the film to be produced. In any case, the British productions that are included were released in the U.S.

as the basis of this study were not specifically selected for that purpose. Rather, the study primarily relies on the selections of several movie critics who are not in any way related to this study.

In addition to all of the other criticism directed toward Hollywood over the years, one of my own early observations about this filmmaking community made primarily as a moviegoer, suggested to me that the body of work produced by Hollywood filmmakers actually contains a number of blatant patterns of bias. By that I mean, Hollywood films, when viewed over a period of many decades, have consistently portrayed whole populations in our diverse society in a negative or stereotypical manner.

That concerns me, so in addition to my ongoing law practice, I set out to study this phenomenon and ultimately wrote a book about it, initially called *Patterns of Bias in Motion Picture Content*. The book was eventually published by Algora Publishing in 2012 with the title *Patterns of Bias in Hollywood Movies*. I determined that several of Hollywood's most blatant patterns of bias occur in the areas of race, ethnicity and national origin. Included in this group are consistent negative and/or stereotypical portrayals of Arabs and Arab-Americans, Asians and Asian-Americans, Hispanics and Latinos, African-Americans, along with Native Americans.

**Arabs and Arab-Americans** – My study of thousands of movies and movie reviews indicates that Hollywood, throughout its 100+ year history, has specifically portrayed Arabs and Arab-Americans as evil, barbaric, oversexed, depraved, villainous, shifty, possessed, hostile, fanatical, criminal, mystical, wicked and crazed. Arabs have also been portrayed as thieves, shady, kidnappers, enemies, mysterious, murderers, assassins, terrorists, blood-thirsty, saboteurs, extremists, cult-ridden, curse-stricken, oily, shifty-eyed, violent, and as idiots. On the other hand, and here is the problem, seldom have Hollywood movies contained more favorable portrayals of Arabs or Arab-Americans. Thus, the millions of viewers of Hollywood movies worldwide are burdened with a prejudiced and extremely unbalanced perspective of what Arabs and Arab-Americans are like.

**Asians and Asian-Americans** – This study also revealed that Hollywood's portrayals of Asians and Asian-Americans consistently presented them as enemies, cold, calculating, ruthless, aggressive, criminals, slave owners and conspiring businessmen. Just as with the Arabs and Arab-Americans, it is also accurate to report that Hollywood has seldom portrayed Asians and Asian Americans in a positive light.

**Hispanics/Latinos** – Hispanics and Latinos have generally been portrayed in Hollywood films as drug traffickers, kidnappers, mean, macho, scraggly, violent, cynical, gang members, tire slashers, prison inmates, racists or in despair. Once again, Hollywood films contain very few positive portrayals of Hispanics or Latinos.

**African-Americans** – Although the portrayals of African-Americans have improved somewhat in recent years, there is a long dismal history for Hollywood to overcome. As

screenwriter Dalton Trumbo pointed out, in the early years Hollywood movies made “tarts” of the Negro's daughters, crap shooters of his sons, Uncle Toms of his fathers, superstitious and grotesque crones of his mothers, strutting peacocks of his successful men, psalm-singing mountebanks of his priests and Barnum and Bailey side-shows of his religion. In addition to a sprinkling of more positive portrayals in more recent times, African-Americans have been further portrayed in Hollywood films as, voodoo followers, gang members, crooked cops and young blacks surviving in South Central LA. Hollywood movies have also portrayed an African-American playwright mistaken as a burglar (because he was Black) and Black preachers have repeatedly been portrayed as buffoons. Again, some improvement has occurred in the portrayals of African-Americans on the screen, but not nearly enough.

**American Indians** – Of course, Hollywood has really done an about face in portraying American Indians. Whereas, they were represented for years as whooping, scalping, heathen and murderin' red varmints, now they are more likely to appear as the oppressed and cheated defenders of a precious culture.

You may, of course, feel there is no harm threatened by the polarizing extremes or consistency of any of these patterns of motion picture bias, after all, movies are merely entertainment, right? To the contrary, my research supports the belief that the consistent portrayal of negative stereotypes in U.S.-made movies contributes to prejudice, and here's why. In contrast to what the Hollywood establishment would have us believe, movies are more than mere entertainment; all movies communicate ideas. Throughout the history of Western civilization, ideas have always, and will always serve as significant motivators of human conduct. Therefore, ideas, specifically those ideas presented in motion pictures (one of the most powerful and effective forms of communication yet devised), will inevitably influence human thought and behavior, particularly, the thoughts and behavior of the relatively uneducated or unsophisticated youth of our nation, to whom many of these Hollywood films are specifically directed. Furthermore, and unfortunately, the prejudice stemming from the repeated negative and stereotypical portrayals noted earlier, contributes to discrimination, and discrimination often leads to conflict. Thus, I believe that in all probability, the U.S. motion picture industry and its consistent patterns of bias have, over the years, become contributing factors (not the sole cause, but important contributing factors) in the development of unnecessary prejudice, discrimination and conflict within our multi-cultural society.

**Sexual Stereotypes** – My studies also demonstrate that Hollywood movies have a tendency to exhibit consistent biases relating to sexual stereotypes. Two of the most blatant include the industry's treatment of women and its portrayals of gays and lesbians. Hollywood portrayals of women over the years have included silent, submissive and untrustworthy females. In addition, women have been portrayed as being on the sidelines, victims, prostitutes and as the sexual harasser. As a rule, gays have been portrayed as bitchy, lonely, jealous, murderous, angry and gloomy. They are also sometimes presented as effeminate and harmless buffoons, but also as child molesters, murder victims, suicides, potentially homicidal and villains. Lesbians have been portrayed in a similar stereotypical manner, except for the substitution of masculine for



effeminate, while in still other movies they have been delesbianized altogether. The portrayals of women have improved somewhat in recent years, but mainstream film portrayals of gays and lesbians remain mired in the negative stereotype.

**Politics** – Considering the repetition of Hollywood character portrayals from a political perspective, it is quite apparent that one of the most consistent patterns of Hollywood movie bias comes in the form of positive presentations of liberal points of view and negative portrayals of villains from the extreme right of the political spectrum. Seldom does Hollywood portray its movie villains as political liberals.

**Religion** – Another Hollywood movie bias occurs with respect to religion. Although, some have suggested that a drastic change occurred in Hollywood regarding the treatment of religion on screen following the demise of the industry's Production Code in 1968, my review of Hollywood films about religion indicate that prior to that year, at least two parallel approaches to religious topics were represented, one sympathetic to mainstream religious beliefs (although limited to Old Testament Biblical stories), the other antagonistic. The only thing that appears to have changed, is that after 1968, the films that are antagonistic to religion, specifically Christianity, clearly have been predominant.

In summary, Hollywood has portrayed Christians as sexually rigid, devil worshipping cultists, talking to God, disturbed, hypocritical, fanatical, psychotic, dishonest, murder suspects, Bible quoting Nazis, slick hucksters, fake spiritualists, Bible pushers, deranged preachers, obsessed, Catholic schoolboys ruining amok, Adam and Eve as pawns in a game between God and Satan, an unbalanced nun accused of killing her newborn infant, dumb, manipulative, phony, outlaws, neurotic, mentally unbalanced, unscrupulous, destructive, foul mouthed, fraudulent and as miracle fabricators. Regardless of how you feel about religion and Christianity in particular, the use of a powerful communications medium by anyone to consistently portray Christians and other religious characters in such a disgusting manner is despicable.

**Hollywood's Rape of the South** – American films appear to consistently project a pro-bi-coastal prejudice and an anti-regional prejudice against the Mid-West and the South. As an example, negative portrayals of the American South in Hollywood films are particularly offensive and often include the negative or stereotypical portrayals of people, places or things in the Southern U.S. from Texas to Florida. Such portrayals appear to be the result of a form of regional stereotyping, based on the regional prejudice of the filmmakers themselves. The Hollywood film moguls (read bigots) must feel that prejudice based on pre-conceived notions about a group of people from a particular region of the country, is more acceptable than prejudice based on pre-conceived notions about people of a certain race, religion, ethnic group or culture. But in reality, there is no substantial difference.

My studies indicate that during the 1980s and the early '90s Hollywood continued a long-established and ruthlessly consistent pattern of negative or stereotypical portrayals of these Southerners that began as early as the 1920s. White Southerners have been most often portrayed

as murderers and other types of criminals, country music lovers, being from small towns, flawed lawmen, cagey Cajuns, eccentrics, hillbillies, members of the Ku Klux Klan, oil field workers, rednecks, strippers and prostitutes, plantation owners, dumb, odd-ball characters, poor, gossips, "the lowest form of human life", lifelong losers, aimless, racists or otherwise prejudiced individuals.

A total of 251 movies were included in this particular survey of films about the South. As it turns out, only 12% of them were directed by directors from that region of the country. This may help explain why so many of them present negative and/or stereotypical portrayals of these subjects. It also points to the heart of the problem for all of the other groups mentioned earlier. What we see is that there are relatively few Arabs, Arab-Americans, Asians, Asian-Americans, African-Americans, Native Americans, Hispanics, Latinos, women, gays/lesbians, Christians, political conservatives or White people from the South making the key decisions with regard to the production and distribution of Hollywood films. Under those circumstances, the observed patterns of bias may be considered inevitable. The makers of these films do not, as a general rule, know their subjects and are prejudiced themselves.

As noted earlier, these motion picture patterns of bias problems are wholly separate from and in addition to the many problems noted by PBS film critic Michael Medved in his book *Hollywood vs. America*, in which he complained about excessive violence, gratuitous sexual content, foul language, anti-authority themes and anti-religious movies. Medved and I agree that there are serious problems with the Hollywood filmmaking community. We apparently disagree, to some extent, with regard to who's responsible for these problems, and what solutions might actually bring about effective change.

The above listing and discussion is not intended to be exhaustive nor does it include all groups that have complained about being consistently negatively or stereotypically portrayed by the American film industry (or about the related lack of equal employment opportunity at all levels of the film industry). Other identifiable populations voicing complaints from time to time with regard to their portrayals in Hollywood movies include Muslims, Italian-Americans, German-Americans, Irish-Americans, Gypsies, the deaf and hard of hearing and the elderly. Also, we rarely see any Mormons working in the Hollywood-based U.S. film industry, nor many films about Mormons. Practitioners of the Voodoo religion are also consistently portrayed as villains in Hollywood movies, along with most forms of religions that are considered by the Hollywood community to be cults.

In addition to serving as a brief history of those groups that have complained about biased movies and their negative or stereotypical portrayals in American movies, this review also tells us which groups of people view themselves as "outsiders" or the "disenfranchised" in relation to the Hollywood power structure. Thus, relating back to issues discussed in this book's companion volume *Who Really Controls Hollywood*, this listing tells us quite clearly, who does not control Hollywood. For surely, if any of these groups controlled Hollywood, they would choose to portray themselves in a more positive light in motion pictures from time to time, and provide

more equal employment opportunities for members of their respective groups. Further, we see again that creative control in Hollywood cannot be separated from economic control, after all, the top studio executives ultimately make the decision as to which movies are produced and released for viewing by most moviegoers, and these same executives exercise considerable contractual control over the producer, director, screenwriter, script, actors, actresses, budget, running time and MPAA rating, all of which effect the creative result.

Many of the business practices (primarily distributor business practices) discussed in this book's companion volumes *Hollywood Wars – How Insiders Gained and Maintain Illegitimate Control Over the Film Industry* and *The Feature Film Distribution Deal* contribute to the major studio/distributors' control and dominance of the motion picture industry. That control, in turn, gives the major studio/distributors the power to make whatever movies they want and to communicate through such movies whatever ideas they choose. In addition, the control of the major studio/distributors excludes large segments of our multi-cultural society from meaningful participation in the movie-making process, and results in the consistent portrayal of many of these same "outsider" interest groups in a negative or stereotypical manner.

Now, that we have determined that Hollywood movies contain blatant patterns of bias, in that they consistently portray whole populations of our diverse society in a negative or stereotypical manner, and that Hollywood is controlled by a small group of politically liberal and not very religious Jewish males of European heritage, it is also clearly relevant to determine what populations or themes are favored by the Hollywood control group in its motion picture portrayals. That study has also been conducted and published under the title *A Study in Motion Picture Propaganda – Hollywood's Preferred Movie Themes*.

First, if we refer to the study of motion picture biographies (see discussion below), we discover that when the motion picture biographies with Jewish creative elements are combined with the biopics featuring Jewish subjects, significant roles for Jewish characters, 'Jewish heroes' and Jewish 'enemies', the applicable percentage of the entire body of Hollywood biopics with Jewish elements exceeds 70%, an incredibly disproportionate number for an industry supposedly based on merit. Under such circumstances, no credible person could seriously assert that this phenomenon could actually occur as the result of a truly free market system, unhindered by numerous anti-competitive business practices.

Also, as already noted, Hollywood films, over the years, have generally portrayed a liberal political point of view. I'm not saying that I disagree with that liberal perspective in all instances. I consider myself politically liberal on many issues. I just do not believe it is appropriate for any side of the political spectrum to control access to any powerful communications medium, particularly in a democracy that supposedly values the free competition of ideas.

Further, Hollywood has not only left out huge gaps in its coverage of history (as reported in Douglas Gomery's book *Movie History: A Survey*), but Hollywood cannot help but revise

history with each movie touching on any historical event. Thus, Hollywood filmmakers are not only in the business of making filmed entertainment, they are also in the business of rewriting history with a powerful communications medium. On the other hand, filmmakers are dangerous historians because they tend to rewrite history to make it more entertaining, among other things. And, it appears that the Hollywood filmmakers believe that history is almost always more entertaining if the rewritten version reflects their own personal beliefs about what happened, or what should have happened, or what was really important enough to be presented on film. Thus, once again, Hollywood's treatment of history supports the conclusions set forth in *Patterns of Bias in Hollywood Movies* that movies mirror the values, interests, cultural perspectives and prejudices of their makers.

**Pleas for Tolerance** – Ironically, among the other related themes commonly appearing in Hollywood films, throughout the industry's 100+ year history, are the racial and other pleas for tolerance. Such pleas are totally inconsistent with the Hollywood control group's real-life treatment of other racial, ethnic, religious or cultural groups in employment situations, and on the screen. The Hollywood history of the implementation of its own pleas for tolerance is exceptionally dismal.

**Slaves and Slave Owners** – Another unusual example of Hollywood's unique perspective which appears to approach subjects differently depending upon how the subjects relate to the history of the Hollywood control group itself, is revealed in Hollywood's treatment of slavery in movies. A brief survey of the history of slavery in Hollywood films (set forth in *A Study of Motion Picture Propaganda*) reveals that the slaves themselves at various times include Jewish and other white slaves, along with Asian and Black slaves. On the other side, the slave owners are portrayed as Arab, Babylonian, Egyptian, Libyan, Chinese, Roman and White, with 73% of these White slave owners from the American South. What is clear from this brief survey of Hollywood's portrayal of slaves, slave traders and slave owners is that Hollywood seems all too eager to send up films depicting slave owners and slave traders who are not Jewish, but not nearly as eager to produce and distribute films portraying the historical fact that some Jewish men were involved in white slave trafficking, owned slaves in the American South and in the West Indies and were actually involved in some of the slave running and/or trading that brought slavery to the American South. This Hollywood spin on slavery thus appears to be another example of gross historical revisionism through selective and self-serving omission.

**Immigrants** – Another sub-group of Hollywood films and a pattern of bias that appears to be related to the interests or perspective of the Hollywood control group is that category of movies that seek to positively portray immigrants, particularly European immigrants. The argument is not being made here that there is anything inherently wrong with producing and releasing movies that portray immigrants in a positive light. Of course, we should have movies that do that. But, if the Hollywood emphasis does not more evenly distribute the presentations between positive and negative immigrant portrayals, then we have a consistent pattern of bias in favor of immigrants, or more Hollywood propaganda.

Also, if we have a situation in which only certain immigrant groups are portrayed positively, (for example, immigrants from Central and Eastern Europe as opposed to immigrants from South America, Asia or Africa), we have a different and even more damaging level of propaganda being disseminated through this important medium of communication. The key is a balancing of the overall presentation, both in terms of pro and anti-immigrant positions and in terms of which immigrants or positively or negatively portrayed. This overall balance appears to have been long missing from the Hollywood-based U.S. film industry in many subject areas, providing still further evidence that movies mirror the values, interests, cultural perspectives and prejudices of their makers, and that Hollywood is in fact controlled by a small group of politically liberal and not very religious Jewish males of European heritage, who are also quite prejudiced. The necessary balance just mentioned can best be achieved across the board through greater diversity at all levels of the U.S. film industry.

**Gangster and Outlaw Movies** – The portrayal of acts of violence in movies is another consistent Hollywood theme that has already been explored by many other film industry observer/writers. The related specific sub-genre, however, of gangster and outlaw movies presents a special problem, in that it is difficult to know what effect the portrayals of the lifestyles of criminals will have on any given member of the viewing audience. Many observers would suggest that even though a gangster or outlaw portrayed in a motion picture may come to an early death or be punished for his crimes in other ways, many of the movies portraying gangsters glamorize the calling so much that some in the audience will inevitably be encouraged to adopt the life style, presuming or hoping that they will not repeat the same mistakes made by the gangster or outlaw portrayed in the movie.

My survey of Hollywood's gangster/outlaw films set forth in *A Study of Motion Picture Propaganda*, revealed that gangsters and outlaws have been portrayed as: disciplined businessmen, good-looking, soft-hearted, ingenious, suave, legendary, attractive, famous, idolized, cool and collected and as fun loving fellas. The films showed mobsters dallying with the sexually awakened daughter of an attorney, wanting to go straight, as victims of society, saving a town, mingling with entertainers and the wealthy, fleecing the rich and giving to the less affluent, and robbing banks as a sideline. Moviegoers watching these films observed that a society girl can learn the true meaning of love from the selfless devotion of a gangster's moll, that ex-soldiers and college grads sometimes choose to become gangsters, that mobsters sometimes get to make movies, that they can be art lovers, that family ties are more important than anything, that mobsters have a special code of ethics or code of honor, that they may be able to buy a bank to launder illegal profits, their careers can flourish even after deportation and (after their careers are over) they may be immortalized in movies or honored with a motion picture tribute. This history of gangster/outlaw movies suggests that Hollywood is acting as the public relations agent for the mob. Maybe this history also serves as a clue to the sources of some of the money required to finance these outrageously expensive films.

The truth is that with gangster and outlaw movies there will always be some people in the audience for such films that consider the life of the gangster glamorous, no matter how the movie

ends. After all, no one stands at the theatre door attempting to make judgments about the intelligence, sophistication or vulnerability of moviegoers, thus, Hollywood filmmakers cannot possibly know that their films do not adversely affect members of any given audience.

Of course, the Hollywood studio executives will trot out their standard "no proof" argument (that there is no proof of such a cause and effect link). There is also no proof that gangster, outlaw and other violent movies do not encourage some people to behave in an anti-social manner, and there never will be. The choice for people with common sense, is really between allowing a small group of greedy motion picture studio executives the freedom to make exploitation films that may cause a considerable amount of harm to society, as opposed to, taking reasonable steps to reduce the huge amounts of money these greedy executives and filmmakers receive, in the hopes that such a reduction will also limit their power and ability to ignore public pressure, so that in the long-run our society as a whole will benefit. For many reasonably intelligent people in our society, that should not be a difficult choice. It merely needs to be implemented in a legal and non-discriminatory manner. Again, greater diversity at all levels in the film industry is the appropriate remedy.

Another aspect of the outlaw/gangster genre of Hollywood motion pictures is the extremely uneven presentation of various ethnic groups as movie bad-guys. For example, the survey of gangster/outlaw films prepared as part of my study covered the period from 1925 through 1994. It included some 156 examples of the genre, the vast majority of which featured Italian mobsters as the central characters. Thus, we can add Italians and Italian-Americans to the list of those populations that have consistently been defamed by Hollywood moviemakers over the years.

As already mentioned, the analysis and discussion provided in the three books: *Who Really Controls Hollywood*, *Patterns of Bias in Hollywood Movies* and *Motion Picture Biographies*, set forth evidence that tends to show that the Hollywood control group has not been very sensitive (throughout its 100+ year reign over the Hollywood-based U.S. film industry), to the concerns of African-Americans, Hispanic/Latinos, women, gays/lesbians, Arabs, Arab-Americans, Asians, Asian-Americans, American Indians, Christians, White Southerners, Italians and Italian-Americans and others, when it comes to the consistent negative or stereotypical portrayals of such populations in movies. Since the combined research of Neal Gabler, Terry Pristin, David Prindle, Patricia Erens and other writer/observers of the Hollywood scene, confirms that the so-called traditional Hollywood management still controls and dominates Hollywood, it then becomes materially relevant to consider what results from that control in terms of the positive portrayals in movies produced and released by this control group, the positive portrayals other than those found in the motion picture biographies considered in the *Motion Picture Biographies* book (see summary discussion below). For example, have Jewish-themed movies actually being produced and released, in disproportionate numbers, and do they tend to consistently portray Jewish issues and people in a more favorable manner than the people or issues associated with these other populations?

**Jewish Movie Portrayals** – Once again, my studies revealed that a disproportionately high percentage of American-made movies present Jewish characters, stories, themes, sub-plots or issues, and that such presentations (although not always absolutely positive) are generally more favorable than their counterparts in movies focusing on other racial, ethnic, religious or cultural groups. It is extremely important to note that this disproportionate interest in Jewish stories and favorable Jewish portrayals in Hollywood movies occurs at the expense of the film presentation of the many important stories of other religious, ethnic, racial and cultural groups in America.

Hollywood's Jewish movie characters have been portrayed positively as talented, warm-hearted, concerned, cordial, business-minded, successful, intellectual, luminous, sophisticated, likeable, funny, wealthy, handsome, valiant, academic, heroic, chivalrous, responsible, clever, bright, assertive, persistent, intelligent, self-assured, rich, sensitive, incorruptible, entrepreneurial, vigorous, brilliant, scholarly, attractive, influential, colorful, passionate, studious, religious, determined, hip, hard-working, well-intentioned, compassionate, adventurous, warm, courageous, pragmatic, concerned and discerning.

Interestingly enough, most of the negative portrayals of Jews in films (once again, directed, produced and distributed mostly by Jewish males) were associated with the portrayals of Hollywood studio executives. They have been portrayed as idiosyncratic, exploiters, venal, disingenuous, nasty, alcoholic, petulant, arrogant, pretentious, jaded, cynical, egotistical, condescending, insulting, aggressive, manipulative, quirky and neurotic. Thus, even though the portrayals of Jews in Hollywood films have clearly been mixed, their treatment overall is still more favorable than the other groups already considered, because with these other groups, there has been no larger segment of favorable portrayals to balance the negative.

**Religious Minorities** – Also, in contrast to the fairly common portrayals of religious Jews in Hollywood films, other religious minorities in the U.S. are seldom portrayed in Hollywood films at all. Significant portrayals in American movies of Islamic, Buddhist, Sikh or Hinduist religious practices or practitioners are rare. Those of the Amish, Mormon and Quaker religions are only slightly more common. All pale in comparison, however, to the disproportionate attention paid to the religious and cultural aspects of Judaism in Hollywood films. On the other hand, when any of these religions other than Christianity are portrayed in such movies, they are generally portrayed in a positive manner. As we saw earlier, the film portrayals of Christians and Christianity have consistently been extremely negative in recent decades. Once again, when members of a particular religious/cultural group use a powerful mass medium of communications to consistently portray themselves for many years in a mostly favorable light, while consistently portraying other religious/cultural groups in a negative manner, such conduct rises to the level of propaganda.

**Overview** – Hollywood appears to have had a long-term obsession with movies that express anti-Nazi, anti-German, anti-Fascist, anti-totalitarian, anti-right wing, anti-white supremacist, anti-Ku Klux Klan, anti-White Southern, anti-woman, anti-gay, anti-Hispanic, anti-

Asian, anti-government, anti-Republican, anti-conservative and anti-Christian themes, ironically, once again, mixed in with many pleas for tolerance. The results of the review of films reported in *A Study of Motion Picture Propaganda* indicate that on the other hand, Hollywood is more likely to portray Jewish characters, stories, themes, sub-plots or issues in a more favorable manner.

One of the apparent and fairly predictable results of a U.S. film industry controlled by any small narrowly-defined interest group is that such a group would tend to churn out more movies exhibiting a recognizable pattern of bias, than would be the case if the U.S. film industry was actually controlled by a more diverse group of owners, executives and agents who offered greater opportunities to a more diverse group of younger executives, agents, producers, writers, directors and actors. Diversity at all levels in the industry is the key.

In the final analysis, Hollywood and its movies are not representative of the United States in a cultural, religious, ethnic, racial, regional or political sense. To the contrary, Hollywood movies appear to be more representative of the attitudes of the people who control Hollywood, and again, they appear to be a very narrow-minded and prejudiced group indeed.

Since Hollywood is controlled by a small group of Jewish males of European heritage who are politically liberal and not very religious, and a disproportionate number of Hollywood movies provide positive portrayals of the Jewish people, religion and culture, along with liberal political positions, while at the same time providing a disproportionate number of Hollywood movies depicting negative portrayals of non-Jewish persons, Christians, or conservative political characters and issues, then it is quite fair to argue that many Hollywood movies represent nothing more than the private propaganda of this narrowly-defined Hollywood control group. And, what is even more incredible, is that they have fooled most audiences around the world into paying for their propaganda dissemination activities.

Again, and in all fairness, it should be pointed out at this juncture, that nothing in this book or my other writing suggests that the behavior of this Hollywood control group is typical of Jews generally. Also, nothing I've written or stated suggests that any members of the Hollywood control group behave the way they do because they are Jewish. Instead, my writing and my own thinking assumes their behavior is not typical of Jews generally and occurs not because of, but despite their Jewish heritage.

On the other hand, (and as noted elsewhere) one of the apparent weapons in the arsenal of the Hollywood insiders, traditionally used against those from the outside who sought and seek to criticize or participate in their insider's game, was (and continues to be) to falsely label such persons as anti-Semitic, either openly or through so-called whispering campaigns (that is, repeating the false conclusion and accusation without offering supporting evidence). As you know, anti-Semitism requires hostility directed toward Jews generally, or hostility directed toward one or more persons of Jewish heritage, because they are Jewish. My work is merely criticism. It does not rise to the level of required hostility. Further, my criticism is merely directed at the behavior of a very limited number of politically liberal and not very religious



Jewish males of European heritage, not toward Jews generally. And, my criticism is based on a long and well-documented history of the business-related behavior of this small group as opposed to merely the religious/cultural status of the group's members. My work is, therefore, most accurately described as mere criticism of the behavior and business practices of a small group of men who happen to be Jewish. Anyone who suggests otherwise has not read the work or is engaging in a misrepresentation of the material.

Another example of the patterns of bias found in Hollywood movies comes in the form of the very specialized film genre, the motion picture biography or biopics as they are called.

**Hollywood Biopics** – After conducting my studies of patterns of movie bias relating to specific races, religions, sexual stereotypes, political orientation and regional portrayals, I redirected my research efforts toward the specific genre of motion picture biographies. I wanted to know whether similar patterns of bias could be observed with respect to the historical characters chosen to be portrayed in Hollywood's motion picture biographies, and what periods of history received the most attention.

As it turns out, an earlier study had been done on this topic. Professor George Custen, wrote *Bio/Pics – How Hollywood Constructed Public History*. Unfortunately, Custen's study only covered films through the 1960s. My study attempted to update his material through the early '90s. In Custen's study of biopics only 4% of the films featured non-white North American subjects. As Custen pointed out, only two professions, athlete and professional entertainer, are associated with black Americans, representing in a simplistic way many people's perceptions of the limited careers open to blacks. Native Americans (in the pre-'60s biopics) were represented largely as defeated warriors, victims of superior white military strength.<sup>28</sup> Although, my more contemporary study revealed a few more motion picture biographies featuring favorable portrayals of Indians, less than 4% featured African-Americans and only 5 of those portrayed African-Americans who were not athletes or entertainers. So the old Hollywood patterns in biopics discovered by Custen continued into the '90s for African-Americans and American Indians.

In addition, during the entire history of Hollywood, there were no other U.S. Hispanic/Latino subjects honored in Hollywood biopics, other than the one entertainer featured in *La Bamba* in 1987 (and more recently, *Selena*). To more graphically illustrate whose lives are worthy of a biopic in the opinion of Hollywood film community, there have been more Hollywood motion picture biographies of real criminals, gangsters and outlaws throughout the history of Hollywood than for all American Indians, African-Americans and Hispanic/Latinos considered together. This one component of Hollywood's bias is a national disgrace!

Analysis of the Hollywood biopics (i.e., motion picture biographies of historical characters) give us another opportunity to learn about what is going on in Hollywood with respect to the choices made by decision-makers and to which films get made and/or released.

My analysis of this body of films, the Hollywood biopics (as set out in more detail in the book *Motion Picture Biographies – the Hollywood Spin on Historical Figures*), considers the geographic setting for such films, the occupations portrayed, time and sex biases, ideology, historical accuracy and the race, culture and ethnicity of the biopic subjects. In some instances, the conclusions of the author of the earlier work in this area (George Custin's *Bio/Pics*) are compared with those of my more contemporary study. In other instances, this later study places an emphasis on different issues which are critical in gaining an understanding of the Hollywood-based U.S. film industry.

**Geography** – As Custin pointed out, in their projection of biography onto a world map, Hollywood created a distorted view of accomplishment that sustained an image of history that made it appear that entire domains of achievement had been invented by Americans<sup>29</sup> Custin's study of biopics, which only surveyed the genre through the middle of the century, reveals that two-thirds of all biopics were either about Americans or set in America and after the United States, Europe appeared to be the center of the biographical universe, with 22 percent of films set there. Custin further observed that if the American and European totals (are combined) 89 percent of all famous people were either American or European -- Asia and Africa accounted for only 3 percent of all biopics in Custin's study.<sup>30</sup>

Custin's study also revealed that America's rival, the U.S.S.R, as well as uncolonized Asia were noticeably under-represented. Custin pointed out that these enormous voids represent a kind of cinematic equivalent to isolationism,<sup>20</sup> a willful ignoring of entire nations whose ethnicity, race, ideology, or, dangerously, all three, prevented them from gaining the credentials needed for entering biographyland.<sup>31</sup> In Custin's study films set in Japan and China (less than 1 percent) take place either in the long ago past (*The Adventures of Marco Polo*), or present Asian nationals as outmoded resisters to the voice of American modernity.<sup>32</sup>

The weighted geographic distribution appears to have continued (and even increased) in more contemporary biopics. My own study of Hollywood biopics revealed that the films focusing on American subjects were far greater in number than any other country or continent. There were 324 Hollywood biopics with American subjects. The next significant level of subjects came from Europe (101), and considering the European heritage of many of those in the Hollywood film community, that is not surprising. The American and European subjects combined (from the more recent expanded study) account for slightly more than 95% of the biopics in this larger study. The next highest number of subjects from an area of the world was the Middle East with 9 films and then Australia and Asia with 3 each. Biopic subjects from Africa and India were featured in 2 films each. There were also only 2 films featuring subjects from our nearest neighbor to the south, Mexico. There was only one Hollywood biopic featuring a subject from

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<sup>20</sup> This form of movie biopic "isolationism" is quite interesting and specifically inconsistent with the film industry's strident opposition to and consistent vilification of the pre-World War II political isolationists.

Greece. None of the biopics focused on a subject from our nearest neighbor to the north, Canada. There were also none from any of the Central or South American countries.

**Occupations** – As Custen reported, the great man as a tragic or grand royal figure or the famous statesman, popular before World War II, was replaced by the great man as a giant of some branch of the entertainment industry. While military figures and gangsters would be honored equally with biopics, particularly during the 1950s, the era of the biopic of the statesman vanished with the close of the World War II.<sup>33</sup> Custen also observed that by weighting the universe of fame so that it is numerically biased in favor of fame in the performing or creative fields, the movies justify their own system, lending credibility to idols of consumption rather than idols of production. In short, the dominance of performer biopics is a grand justification for the legitimacy of popular entertainment.<sup>34</sup>

Continuing to reflect the interests of Hollywood filmmakers, my more recent expanded biopic study also revealed that the most common occupation for biopic subjects was people in the entertainment field, including actors, actresses, singers, musicians and composers. There were 130 (29%) of those. The next most common occupation favored by Hollywood was the criminal/gangster/outlaw at 50 (11%), thus the criminal/gangster/outlaw biopic has now surpassed the military hero as subjects of Hollywood biopics. In some instances the gangsters and entertainers were also involved with each other. The criminal/gangster/outlaw and entertainer biopics combined accounted for 40% of all occupations portrayed in Hollywood motion picture biographies covering an 82 year period.

**Westerns** – Another favorite Hollywood biopic topic was the Western. There were 38 of those, including the 7 of the Custen study that could easily be identified as Westerns from their titles only. Also, 6 of these Western biopics focused on Indian subjects.

**Other Occupations** – Then there were 30 (7%) athletes featured in the biopics (20 – white; 6 – black; 1 – Indian; 1 – woman; and 2 – horses). Unfortunately, there were no American women athletes honored with Hollywood biopics throughout the period covered. Also, there were 25 military heroes (6%), 24 royalty (5%), 22 politicians or government leaders, 18 writers (including poets and playwrights), 14 religious leaders, 8 biopic subjects from law enforcement, 8 aviators, 7 businessmen, 7 dentists and doctors, 6 spies, 6 journalist/reporters, 5 inventors, 5 scientists, 4 artist/painters, 4 ambassador/diplomats, 4 nurses, 3 explorers, 1 banker, 1 teacher and 1 Supreme Court Justice represented.

**Men vs Women** – In Custen's study of studio biopics he discovered that there were almost two and a half times as many male biographies as females. Moreover, the bulk of female biographies were of entertainers and paramours. Custen noted that in general, the distribution of power in society is mirrored by the distribution and limitation of the lives depicted for women.<sup>35</sup> Custen's study further showed that men had numeric superiority in twelve careers while films on women dominated only four areas. After paramour and educator, those were royalty and medical. Also, the biography of the single famous woman accounted for only one-quarter (25.8%) of all

biopics in Custen's study, whereas men alone accounted for 65 percent of all biographies, more than twice the number of biopics of women.<sup>36</sup> One might also add that . . . three categories – entertainer, royalty, paramour – made the female the object of a male gaze.<sup>37</sup>

Those trends were altered even more in favor of men in my more contemporary study, which revealed that 83% of the subjects were male and only 17% were female. Even though the mistress, entertainer, Royalty and nurse categories dominated among women in my later study, other occupational fields for women, like writer, poet, intern, governess, athlete, orphanage founder, gangster, scientist, aviator, were included along with peasant girl, wife and groupie.

**Time Bias** – Custen's study also revealed a "time bias" in Hollywood biopics. He reported that 59 percent of all films set in the United States took place in the twentieth century, 39 percent in the nineteenth century, and only 2 percent in the seventeenth century. This is in contrast to Europe, where only 8.5 percent of all films were set in the twentieth century.<sup>38</sup> As Custen reported, biographies of those before the Renaissance were rare indeed (4 percent), and limited to charismatic biblical figures or Egyptian or Greek royalty.<sup>39</sup> More than 80 percent of all entertainment biopics in Custen's study were set in the eighty years between 1880 and 1960. Of these entertainer biopics, almost a third were about vaudevillians.<sup>40</sup>

Custen determined that if the subject of the biopic spoke German, chances are that such a person lived in the nineteenth century (the “good” Germany) and composed music (Schumann, Schubert, Brahms, Strauss) or was a scientist (Erlich), or a humanitarian entrepreneur whose fondest wish was for “one world” (Julius Reuter). On the other hand, if the subject of the biopic was French, such a person lived in the nineteenth century, or was either an intensely romantic eighteenth-century female (Madame Du Barry, Marie Antoniette, etc.) or an intensely political writer (Zola), statesman, and military figure (Napoleon), or, in the case of Louis Pasteur, a man dedicated almost equally to the advancement of science and the honor of France.<sup>41</sup>

In addition, both the *Zola* and *Ehrlich* biographies dealt with anti-Semitism.<sup>42</sup> Paul Ehrlich, the scientist, who discovered a treatment for syphilis, was consciously selected as a subject for a biopic (*Dr. Ehrlich's Magic Bullet*) because he was both German and a Jew. As Warners story editor Finally McDermid explained to Will Hays (who was concerned with the explicitness of the “syphilis” angle in *Ehrlich*), the reason for picking Ehrlich as a protagonist had very little to do with syphilis and its cure. Ehrlich happened to be a great humanitarian and a German Jew.<sup>43</sup>

**Ideology** – Political orientation is one of the areas that cannot always be ascertained by a review of a film's synopsis. For example, there were only 23 readily identifiable political liberals in my expanded sample of biopics. Even so, the liberals significantly outnumbered the political conservatives, since there were only 4 of the latter. The portrayal of the major political parties of U.S. Presidents was much closer, with 7 biopics of Democratic presidents and 6 of Republicans, although the most recent of the Republican presidents was Eisenhower 1952 - 1960.

The Soviet Union, and its overall absence from Custen's study of studio biopics cannot easily be explained as racist, rather here, the barrier to representation was ideological. Studio heads were even more afraid of Communism than they were of the threat of the Nazis. Thus, Russia (represented in eight films of Custen's study) had to mean pre-revolutionary Russia. The incredible cinematic possibilities available in the Russian Revolution are of course, off-limits to the virulently anti-Communist industry. Moreover, many of the early movie moguls were immigrants from Russia or Eastern Europe, where as Jews, they were subject to a variety of forms of discrimination and persecution.<sup>44</sup>

Of course, the film industry was not as "virulently anti-Communist" as Custen would suggest since it is well-known that many Communists worked in the industry (primarily as writers, actors and directors) before the anti-communist purges in the 1950s. In addition, the studio house-cleanings came only after the studio heads began to fear that the public furor over communists might negatively impact the amount of money that could be earned at the box office with their movies. In other words, it would be more accurate to say that many on the creative side of the film industry were Communists or sympathetic, whereas the studio heads themselves were either anti-Communist or simply pragmatic.

Custen further suggests, however, that many forces militated against producing any biopic of a Communist or totalitarian leader. Although ideological censorship may seem to be the most obvious explanation for these absences, there were other reasons. For example, a substantial number of biopics explain famous people with reference to their families, their neighborhood or home roots, their education and friends. Such humanizing touches might render the lives of these charismatic but forbidden lives emphatic, perhaps even providing social explanations for their "evil" behavior that might seem to excuse it. Being masters at propaganda, Hollywood realized that the normal biopic treatment simply could not be used for these Communist figures.<sup>45</sup> Of course, the Hollywood decision-makers have had no similar hesitation in providing "social explanations" for the "evil behavior" of the many criminals, gangsters and outlaws they have chosen to portray in their biopics and other films.

**Historical Accuracy** – Few if any of the biopics in Custen's or my more recent and broader study can be considered historically accurate. Part of the reason for that, of course, was the attitude of the studio executives. Darryl Zanuck, for example, expressed his belief in a memo dated July 28, 1936 that historical inaccuracies in biopics do not cause any trouble. For example, he said, in the biopic *Rothschild* he made Rothschild (from the Jewish banking family) an English Baron, although no Rothschild ever became a Baron. Zanuck went on to say that he had the King of England give (Rothschild) the honor, but that at this time there was no King of England since the king was in the insane asylum.<sup>46</sup>

Hayden White also noted that no history, visual or verbal, mirrors all or even the greater parts of the events or scenes of which it purports to be an account.<sup>47</sup> In addition, Daniel Leab pointed out, that in Hollywood biopics, truth, accuracy, and a proper respect for history have been routinely subordinated to the need for dramatic effect and even the whims of filmmakers.<sup>48</sup>

On the other hand, in the sample of 100 biopics Custen used for content analysis, 90 percent were prefaced by a written, spoken introduction that asserted the truth status of the narrative that was about to unfold.<sup>49</sup> Despite such blatantly false Hollywood promotional claims, the various reviews of Hollywood biopics commonly state that a given film is only "loosely based" on the truth, or that it is "fictionalized", "unhistorical", "romanticized" or only "moderately truthful". Thus, there appears to have been a significant difference between the film industry's marketing claims with respect to the historical accuracy of its biopics and what actually is portrayed on the screen, a difference that may rise to the level of irresponsible misrepresentations, and a difference that appears to carry over to the film industry's advertising of its other movies as well (see discussion of "The World's Greatest PR Machine" in the *Hollywood Wars* book).

In addition, this consistent historical inaccuracy in motion picture biographies raises even more questions about why the patterns of Hollywood bias toward the subjects chosen exists. After all, if the movie makers are free to substantially fictionalize, almost anyone's life story could be made of interest to moviegoers (i.e., commercial). In other words, any attempt by Hollywood decision-makers to explain that certain subjects were not chosen for biopic treatment because there was nothing of interest to the typical moviegoer in the proposed subject's background, can now be recognized for exactly what it is: Hollywood rationalization and doubletalk!

Custen ultimately concluded that Hollywood biography is to history what Caesar's Palace is to architectural history: an enormous, engaging distortion, which after a time convinces us of its own kind of authenticity. Hollywood biographies are real not because they are believable. Rather, one must treat them as real because despite the obvious distortions ranging from the minor to the outright camp, Hollywood films are believed to be real by many viewers.<sup>50</sup> The biographical film (the biopic) routinely integrates disparate historical episodes of selected individual lives into a nearly monochromatic Hollywood view of history. These films build a pattern of narrative that is selective in its attention to profession, differential in the role it assigns to gender, and limited in its historical settings.<sup>51</sup>

As stated earlier in my book on biopics and its companion volume *Patterns of Bias in Hollywood Movies*, "movies mirror the values, interests, cultural perspectives and prejudices of their makers". Expressing a similar theme, Custen pointed out that the biopics of his study appear to be in-house reflections of the community of producers that made them. For example, he cites the relationship between Jewish performer George Jessel's<sup>52</sup> background as a vaudeville performer and his production of six biographies for Zanuck at Fox, all of which placed vaudeville at the center of the universe.<sup>53</sup>

Custen also observed that the studio biopics were the product of institutional pressures that located authority in the hands of one or more powerful figures whose world view was remarkably narrow<sup>54</sup> and that the producers of the Hollywood biopics often filtered the content of

a great life through the sieve of their own experiences, values, and personalities.<sup>55</sup> In any case, the studios tried to control, through various means, the attempts of others to shape their making of history. They accomplished this – in part for reasons of efficiency, in part for ideological purposes.<sup>56</sup> My more current and extended study of the Hollywood biopics demonstrates that these phenomena have continued without significant change.

In addition to historical inaccuracy (in the extreme in some cases), there are at least two other aspects of the Hollywood biopics that stand out, as this body of films are reviewed: (1) quite commonly Hollywood tends to place a great deal of emphasis on the subject's romantic involvements, regardless of how significant such relationships were to the individual in real life, and (2) many of the subjects are relatively obscure or little known individuals. One further characteristic of the Hollywood biopic, as with other films produced by entities in the U.S. film capital, is the involvement of a disproportionate number of producers, directors, writers, actors and actresses of Jewish heritage, adding further support for the contention that a movie industry controlled by a small group of Jewish males of European heritage, who are politically liberal and not very religious (who also routinely engage in nepotism, favoritism, cronyism, blacklisting and other forms of discrimination), do tend to favor those who share their religious/cultural background and routinely deny opportunities to those who do not share that background (see *Hollywood Wars – How Insiders Gained and Maintain Illegitimate Control Over the Film Industry*).

**Race, Culture and Ethnicity** – In contrast, and continuing to mirror the makeup of Hollywood, the biopics from 1912 to 1994 included at least 53 (12%) Jewish subjects (a conservative estimate, since no person in this study is identified as being Jewish or having a Jewish heritage without published authority such as Lyman, Friedman, Katz, Erens, Dinnerstein, Gabler, Lacey, Johnson, etc.). Another 32 biopics (7%) included significant roles played by Jewish characters. In addition, 27 of the biopics in my more contemporary study contained subjects that may be fairly characterized as "Jewish heroes" (i.e., non-Jews who took significant actions that favored Jewish interests), while another 12 of these biopics may be characterized as films featuring Jewish "enemies" (i.e., negative portrayals of people who were considered hostile toward Jews). Thus, a total of 124 (28%) of the biopics in the contemporary study featured Jewish subjects, Jews in significant roles, "Jewish heroes" or Jewish "enemies".

Also, in contrast to the above record, only 26 people from the American South were featured in Hollywood biopics and they were mostly portrayed in a negative or stereotypical manner, as gangsters, outlaws or country-western entertainers. Thus, this study of Hollywood biopics further confirms a significant Hollywood prejudice towards persons from the American South as well as other religious, ethnic, cultural, racial or regional groups arbitrarily excluded from the Hollywood insiders' club (the persons who control Hollywood and share a common background, i.e., Jewish males of European heritage who are politically liberal and not very religious).

Looking at the participation of persons of Jewish heritage in the creation of these biopics, we see a similar pattern. At least 65 (15%) of the Hollywood biopics in my more contemporary study were directed by directors of Jewish heritage. Actors or actresses of Jewish heritage appeared in 119 or 27%. Producers of Jewish heritage produced some 72 or 16% of these films and at least 46 or 10% of the biopics were based on scripts written by writers of Jewish heritage. In total, 269 of the 443 Hollywood biopics in this study (61%) involved the efforts of creative persons of Jewish heritage. Again, this 61% figure does not count Jewish studio executives, composers, editors, cinematographers or others of Jewish background not listed above who may have participated in the creation of these films. Also, my study does not go so far as to do so, but if the films with Jewish creative elements were to be combined with the biopics featuring Jewish subjects, significant roles for Jewish characters, "Jewish heroes" and Jewish "enemies", the applicable percentage of the entire body of Hollywood biopics with Jewish elements would likely reach into the 70 percentage range, an incredibly disproportionate number for an industry supposedly based on merit.

As can be seen from the analysis of the background of the filmmakers of the biopics discussed above, in many instances, some combination of multiple participants (i.e. studio executives, producers, directors, screenwriters, actors and/or actresses) shared a Jewish background. Under such circumstances, no credible person could seriously assert that such instances could actually result in a true free market system, unhindered by powerful anti-competitive forces.

From a sociological point of view, it may be reasonably asked, what combination of factors produces such a result? Would it be fair to assume that such factors as cultural arrogance, culture promotion, prejudice or collective insecurity may be involved in producing the patterns of bias described herein? Would it be fair to say that the Hollywood-based U.S. film industry, among other things, is actually a privately controlled culture promotion machine, at least inadvertently supported by U.S. federal policy and the financial contributions of the mass movie-going public that has been duped into believing that movies are merely entertainment, when in fact, Hollywood movies taken as a whole, and because of their consistent patterns of bias over time, actually rise to the level of special interest propaganda? The answers to such questions are beyond the scope of this work, but may be legitimately pursued by others in the future, after all, the motion picture is an important medium of communication, and in a democracy, should be free from these generalized, long-term biases.

It does appear to be quite clear that the Hollywood-based U.S. film industry has always been (and continues to be) controlled by a small group of Jewish males of European heritage, who are politically liberal and not very religious (see *Who Really Controls Hollywood*). And, that among other things, this control group has engaged in extensive nepotism, favoritism and cronyism, in addition to reciprocal preferences, primarily based on the Jewish heritage of the beneficiaries of those forms of discrimination (see my *Hollywood Wars* book). In addition, it is clear that as a result of that control, Hollywood movies have consistently portrayed people, places and things associated with the Jewish culture in a more favorable manner, while at the



same time, consistently portraying people, places and things that are not Jewish in a more negative manner, and because of its consistency over time, this pattern of bias rises to the level of propaganda, in fact, a privately-controlled culture promotion machine.

Of course, others have forewarned that following the publication of my books, there is a very good chance that someone will step forward and make the accusation that its contents are anti-Semitic. Aside from being an entirely false accusation without any evidentiary basis, the truth of the matter is, that the circumstances of Hollywood were created by others. My books are primarily reports of observations, along with descriptions of the circumstances that actually exist in Hollywood. In other words, as a writer/observer, I am merely the messengers who is describing the real-life factual circumstances created by others. It may be, on the other hand, that these presentations have been more honest than most of the other writings about Hollywood in the past and more accurate (or more specific) than others in many of the reported observations. Neither the additional level of honesty nor the increased accuracy or specificity, however, can form a reasonable basis for a charge of anti-Semitism. My books have merely attempted to discuss and make reasonable judgments based on the facts relating to who controls Hollywood and how that control reveals itself with respect to who gets to participate in the making of Hollywood movies, which movies get made and the content of those movies; all circumstances controlled by third parties, and circumstances that have merely been observed and reported by me with more honesty and accuracy.

Since these practices have been ongoing in the Hollywood-based U.S. film industry for more than 100 years, it is well past the time that the bias of this important communications medium be discarded, so that all segments of this nation's multi-cultural society have a fair and equal opportunity to tell their important cultural stories through this significant medium for the communication of ideas. After all, it is also clear that regardless of who controls Hollywood and with what results, it is absolutely inappropriate in our multi-cultural society for any readily identifiable interest group (whether the group identity is based on ethnicity, culture, religion, race, class or otherwise) to be allowed to dominate or control this, or any other important communications medium.

## Chapter 9 – FILM INDUSTRY REFORM MOVEMENT

Less than a year after Southern Illinois University Press had published my 5<sup>th</sup> book, *The Feature Film Distributor Deal – The Single Most Important Film Industry Agreement* (1997), I got a call from a filmmaker by the name of James Jaeger. He was based in a suburb of Philadelphia. He had previously spent some 11 years in Hollywood, starting in 1977. He worked in a variety of production related positions on about a dozen feature films. After reading my book, he wanted to offer his support and encouragement for my writing. He said, he had experienced some of the same problems I had written about and, like me, wanted to do something to help bring about a change for the better in Hollywood. We corresponded for some time and finally came up with the idea of creating an organization with a presence online that would be devoted to helping to bring about film industry reform. We came up with the name Film Industry Reform Movement (FIRM) and due primarily to James' effort, a website was created (<http://www.homevideo.net/FIRM>), and FIRM itself, came into being in March of 1998.

FIRM's mission statement stated the following:

The Film Industry Reform Movement is an international association of concerned citizens, moviegoers and film industry professionals dedicated to the proposition that the motion picture is a significant medium for the communication of ideas, and therefore, has great potential for influencing human thinking and behavior.

F.I.R.M. is further based on the belief that movies, to a large extent, tend to mirror the values, interests, cultural perspectives and prejudices of their makers, and that all interest groups within any diverse society, especially in democratic societies, should have a fair and equal opportunity to tell their unique cultural (and other stories) through this important communications medium. Without these opportunities, the concept of a free marketplace of ideas -- a concept that underlies the highly-valued right of free speech -- will significantly be flawed and inevitably, one, or only a few special interest groups, will be able to express their views, through this powerful medium, to the exclusion, and ultimate detriment, of all others.

More specifically, the Association seeks to:

### CONDUCT RESEARCH

Work toward encouraging more thoughtful, critical and analytical research regarding aspects of the above general propositions as well as research relating to:

- a. The true nature of feature films;
- b. The impact of movies on individuals and society;
- c. What people (and entities) have the power to determine which movies are produced

and released;

d. Who gets to work on those movies in the key positions;

e. Who determines the themes and contents of screenplays for those movies; and

f. How did such persons (and entities) gain that power.

Such research may help point the way toward the desirable goal of creating a more level playing field for the artists, technicians, executives and investors in the world's film industries.

#### SEEK EQUITY

Work toward creating a more equitable economic and creative environment within which film industry professionals may pursue their craft and livelihood, so that moviegoers and society in general may benefit from less homogenous, more diversified motion pictures.

#### STRIVE FOR DIVERSITY

Work toward providing for more diversity in the ownership and control of the means of production, distribution and exhibition in the feature film industry so as to increase opportunities for film industry professionals from all backgrounds to ultimately increase diversity in the kinds of concepts, ideas and images portrayed and seen by the movie-going public, through this important entertainment/communications medium.

#### EDUCATE

Collect and make available (through educational seminars, newsletters, books, the Internet, annual conventions and other means), statistics, economic data and other important information about the feature film industry that is useful and of interest to the Association's members, the press, film professionals, investors and citizens of the world.

#### PROMOTE FAIR TRADE PRACTICES

Advance lawful and fair trade practices, customs and usage within the film industry.

#### SHARE INFORMATION

Teach, instruct, develop, disseminate and share information and techniques among its members pertaining to the development, production, distribution and exploitation of feature films in all territories and media.

#### ADVANCE THE STATE-OF-THE-ART

Do any other act or thing, incidental to or connected with, advancing the motion picture

art-form, recognizing that such advancements need not be motivated solely by pecuniary considerations or financial gain but by a genuine desire to bring about improved conditions in the film industry and a more harmonious world culture.

The major sections of the FIRM website included the Mission Statement, Background Information, Dialogs, Discussion Forum & Archives, Press Releases, Research, Help F.I.R.M. and Bookstore.

At FIRM, we also attempted to bring attention to positive developments in the Hollywood-based film and entertainment industry that was consistent with FIRM's goals. For example, in May of 2014, we called attention to and congratulated NBC/Universal for posting a Chief Diversity Officer (Craig Robinson as of May 2014) who "reports directly to NBCUniversal CEO Steve Burke" and is "responsible for defining, enabling and fostering a corporate culture that values diversity of talent, ideas, values and backgrounds across all parts of the company. That's exactly the kind of change we were hoping for.

The Discussion Forum was the most active section of the Website, and created the most excitement. It attracted all kinds of comments, some that were in support, others totally opposed and some from the extreme right wing (what we now refer to as the alt.right sector) with comments that went far beyond what FIRM stood for. It appears that there are extremists on both sides of the more moderate concerns about Hollywood that we were attempting to express and help resolve.

James also became active as a documentary filmmaker. In 1981, he founded Matrix Productions where initially he produced TV commercials, public service announcements and eventually live, multiple-camera events. Starting in 2007, he produced a series of documentaries including his most recent, entitled *Mainstream -- How Hollywood Movies and the New York Media Are Promoting the Globalist Agenda*. I do not lump Hollywood and the so-called New York media together in my writings, but limit my perspective to what's really going on in the Hollywood-based U.S. movie industry. On the other hand, I am immensely appreciative of James' support for the work that I have done. (James Jaeger's full biography is posted at the FIRM site).

James and I do not always agree on political issues either. He is an advocate of a smaller federal government. My own view is that when a nation such as ours, has a long history of big national and sometimes global companies taking advantage of consumers and their own employees, as well as taking actions that are destructive of the sole planet upon which we rely for our survival (all for the purpose of enriching their owners and managers), the only force that can moderate such actions is a strong and effective government that is willing to enforce the nation's laws. Of course, this highlights one of the problems with film industry reform. It will inevitably take big government action in order to eliminate discrimination and other detrimental Hollywood business practices. On the other hand, the political right, so often the target of Hollywood movies, is generally opposed to big government.

In any case, even though the FIRM site has been maintained to this day, it has not brought about the kind of reform we felt was needed, so there is still work to be done. We both agree, with the sentiment expressed elsewhere in this book, that most people outside the film industry don't seem to care that much about what is happening in Hollywood. They are often distracted by the glamor, the publicity, the stars and the award shows. Of course, that's exactly what the Hollywood establishment wants. Also, as stated elsewhere here, most of the people pursuing careers in the film industry are too afraid to become involved in a movement like FIRM, partly because they fear that such an association will damage their careers, which are generally difficult enough as it is.

## Chapter 10 – A SWIPE OF THE ANTI-SEMITIC SWORD

As noted earlier, one of the things I discovered as I conducted my research for the *Hollywood Wars* book is that there existed a long history in Hollywood of outsiders being accused of being anti-Semitic. Maybe some were – others not so much. In the first chapter of that book, I reviewed the history of the interaction of a series of Hollywood outsiders with the Hollywood establishment. Such individuals included D.W. Griffith, George Schaefer, Joseph P. Kennedy, Orson Welles, Howard Hughes, Dennis Stanfill, Joseph Breen, William Randolph Hearst, Kirk Kerkorian, David Puttnam and others.

Of course, my work in the Hollywood-based U.S. film industry does not rise to a similar level as any of those individuals, so I'm not trying to draw an analogy between my work and theirs. I was primarily involved in working with low budget independent filmmakers seeking to raise money for their film projects from private investors. I am simply pointing out that there is a long and sordid history of Hollywood establishment types using the accusation of anti-Semitism as a way of thwarting criticism of industry practices.

I've reproduced below the excerpted chapter from the *Hollywood Wars* book regarding what I now refer to as the anti-Semitic sword, a concept defined as the affirmative use of the false accusation of anti-Semitism, designed to distract attention from the truth of the statements made.

Another frequently used weapon in the arsenal of the Hollywood insiders against those from the outside who sought and seek to participate in their insider's game, or who openly criticize how the game is played, was and continues to be, to falsely label such persons as anti-Semitic, either openly or through so-called whispering campaigns. As Neal Gabler pointed out, calling someone an anti-Semite was one of the surest ways of blackening him among the Hollywood executives.<sup>57</sup> At one time or another that label was attached to Joseph P. Kennedy, Howard Hughes, George Schaefer, Joseph Breen and Y. Frank Freeman, among others.

For example, when RKO production head George Schaefer refused Louis Mayer's offer to buy the negative of Orson Welles' masterpiece *Citizen Kane* (Mayer made the offer to destroy the movie, which was loosely and unflatteringly based on the life of his friend William Randolph Hearst), Schaefer suddenly found himself the victim of a whispering campaign accusing him of anti-Semitism. Determined to find the source, Schaefer later traced the rumors to a close associate of Mayer's. As Gabler reports, nothing prevented the Hollywood Jews from practicing a reverse discrimination – “Those goyim!” Harry Warner would yell in derision, or “He's a nice fellow for a goy,” a Jew might say – but only in their inner sanctums, when they were safe among fellow Jews, and only verbally.<sup>58</sup>

Joseph P. Kennedy is described by biographers Collier and Horowitz as "Cheerfully anti-Semitic".<sup>59</sup> Gabler called Kennedy a suspected nazi sympathizer.<sup>60</sup> Ronald Brownstein reported that Joseph Kennedy was remembered in Hollywood for several things including "his anti-Semitism."<sup>61</sup> As an example of Joseph Kennedy's anti-Semitism, author Brownstein cites the 1940 meeting where he warned studio executives that they would incite anger against the Jews if they continued producing films hostile to the Nazis.<sup>62</sup> Of course, there may have been other reasons (e.g., a genuine reluctance for the country to be drawn into what Kennedy perceived to be a European war) besides a hatred of Jews generally that may have prompted Kennedy's actions at that meeting. Collier and Horowitz go on to say that Kennedy was at least a casual anti-Semite, again without citing authority for such a harsh judgment and with only a brief discussion (provided as an endnote some 500 pages later in their book). On the other hand, it would appear that Collier and Horowitz were at least casually prejudiced against their biographical subject themselves. In their endnote the writers not only state that Kennedy and his sons "vigorously" denied any such accusations, but the authors merely offered conflicting hearsay evidence of Kennedy's attitudes towards Jews. They also suggest that Kennedy's anti-Semitism was real but reflexive, part of the ideology of the melting pot which he devoted his life to climbing out of. In any event, they do not show that Joe Kennedy was any more prejudiced toward the Jews of Hollywood than they were towards him. In addition, isolated instances of hostility directed toward a small, but unrepresentative group of Jewish males and primarily based on the actual conduct of those Jewish males, does not really rise to the level of anti-Semitism.

With respect to Kennedy's position on World War II, it would appear to be more fair to assert that Joe Kennedy was primarily motivated by a desire to protect the lives of his own family (particularly his own sons) and his great fortune. Ultimately, Joe Kennedy lost his eldest son (Joe) in the war, his eldest daughter's husband (Billy Hartington) and his second son (Jack) were injured in the war. He had reason to be concerned about war. Those legitimate concerns of a father provide no justification for bringing the issue of anti-Semitism into such a discussion. Part of the charge of anti-Semitism against Joe Kennedy was also apparently based on the written impressions of the German ambassador to England of conversations he had with Kennedy prior to the war. Not only were those cables written by a Nazi, looking for any kind of support wherever he could get it, why would anyone choose to believe a Nazi over Kennedy who flatly denied the press' interpretation of the Nazi's characterization of Joe Kennedy's remarks? It appears that some people in this country were simply trying to do great damage to Joe Kennedy's reputation by suggesting that he was prejudice against Jews and that was the reason he was opposed to the U.S. entry into the war. In other words, if a person like Joseph Kennedy has an honest disagreement regarding important national policy matters with some segments of the Jewish community in America, there is always a possibility that such a person will be labeled anti-Semitic.

It might therefore be more relevant to inquire into whether there is any connection between the fact that Joseph Kennedy owned a movie studio in Hollywood at one time and his later appearance in Hollywood discouraging Hollywood Jews from making anti-Nazi films just prior to World War II. Is it not possible that Kennedy was merely opposed to American intervention in what he perceived to be a European war? If that is the case, then it is likely that Kennedy was wrongfully labeled an anti-Semite by the Hollywood Jews not because he was really anti-Semitic but as part of a campaign to discredit him or simply because he opposed their efforts to produce propagandistic movie shorts, newsreels and feature films that ultimately might help involve the U.S. more directly in the war (see *A Study in Motion Picture Propaganda*).

The only difference between the attitude of Joseph Kennedy (who expressed his alleged anti-Semitism through occasional inappropriate language) and those who dominate the Hollywood film industry, then and now, is that those in the film industry express their deep felt prejudices through their films; the sentiment is the same (see the related discussions in *Patterns of Bias in Hollywood Movies*, *Motion Picture Biographies – The Hollywood Spin on Historical Figures* and *Who Really Controls Hollywood*).

In another instance, biographer Charles Higham claims Howard Hughes was grossly anti-Semitic.<sup>63</sup> At the point in the Higham book, at which the charge is made, (page 39 of the Charles Higham book *Howard Hughes – The Secret Life*), the author has only made one reference to anything closely resembling even a sympathy toward anti-Semitism, (i.e., the hiring of a poet who had allegedly written an anti-Semitic poem). It would seem that if Hughes was anti-Semitic and Higham thought that Hughes' alleged prejudice had something to do with his relationship with the heads of the major Hollywood studios, Higham would spend a little more time developing the theme or setting forth some objective evidence of the alleged anti-Semitism. Here again is an example of the way some writers carelessly throw around charges of anti-Semitism. It may be that this illustrates a pattern among the film industry studio heads, (i.e., some of the people they don't like or don't want to succeed in the film business, they label simply try to dismiss as anti-Semitic.) This Hughes incident, also again raises the question, if Hughes was prejudice, was he more prejudice than the Jewish males who dominated Hollywood at the time? This is not to say that the previously-referred to poem was not anti-Semitic, it may have been. This book also does not take the position that Howard Hughes was not anti-Semitic. It is only being stated here that if anyone wants to label someone else "anti-Semitic" then they ought to have the courtesy and intellectual honesty of setting forth their well-documented evidence so that others can make their own reasoned judgment. Otherwise, such labeling merely amounts to "name-calling" which has never been accepted as legitimate argument among intelligent or reasonable people.

According to Higham, Hughes' great sin against the Hollywood studio moguls of the day was to call them "king kikes"<sup>64</sup> Even though author Higham places the supposed Hughes quote "king kikes" within quotation marks, as if quoting from some source, there is no



note in the book's endnotes for that chapter supporting such a quote. The term "kike" is defined by the American Heritage dictionary as offensive slang, used as a disparaging term for a Jew. Its Yiddish counterpart is "goy", another offensive term used as a disparaging term for one who is not a Jew. David McClintick, for example, reports that studio executive Dennis Stanfill was known around Hollywood as the "town goy"<sup>65</sup> Thus, the question may be asked, "Are those Hollywood people who provided that derogatory statement about Dennis Stanfill to McClintick any more or less prejudice than Hughes?" And, have they proved anything?

Interestingly, the original chart in my book *Who Really Controls Hollywood*, which showed the gender, race and religious/cultural heritage of the Hollywood studio executives, included this reference to Dennis Stanfill as "the town goy". That was the only information I could find regarding his religious/cultural heritage. I got a phone call one day from his widow, asking that I please take out that reference because she found it offensive. I said, "Of course, I'll take it out, but would you mind telling me what was his religion?" She said he was Methodist, so I put that in the chart in place of the previous reference.

Temple University professor David Bradley, was an African-American student at the University of Pennsylvania in 1968. As Bradley writes in David Rosenbergs' book *The Movie That Changed My Life*, that college experience gave him an opportunity to observe the odd traditions of the university's major tribes, upper-class White Anglo-Saxon Protestants and Jews. Bradley stated that they were at their most tribal when gathered in fraternities. There were Christian houses and there were Jewish houses, or "goy" houses and "kike" houses, depending on whom you were talking to. Bradley provides an example of the kind of racist humor of the period relating that the goyim said a kike was a Jew who'd left the room, the kikes said a goy was an Anglo-Saxon putz who was still in the room but didn't know any Yiddish. On the other hand, Bradley referred to them all as a bunch of honkies<sup>66</sup> So, really, who is being the more offensive here? Does the use of such terms by Bradley mean he is prejudiced?

The following questions should be asked: Is one of these terms more offensive than the other? If someone who uses the term "kike" is by that act alone anti-Semitic, does that make anyone who uses the term "goy" (including Harry Warner as cited above) is equally prejudice against non-Jews? And is the use of the term "kike" or "goy" all that is required to label someone as a prejudice person? And, would that also make Temple University professor David Bradley a racist merely because he sometimes refers to white folk as "honkies"?

Furthermore, while it is fairly common to see Hollywood outsiders accused of being anti-Semitic, it is not as common to see commentary about the prejudices of Hollywood insiders, even though it appears that some in Hollywood are just as guilty of prejudice. For Example, Al Ruddy, the producer assigned to oversee *The Godfather* reported to Robert Evans during the shooting of the film (and referring to Francis Ford Coppola) that

the “guinea” shoots a great scene, but it doesn't cut together.<sup>67</sup> Evans refers in his own book to Steven McQueen's attorney Bill Thompson as a "redneck"<sup>68</sup> Evans also refers to Gilley's, the night club outside Houston which was the inspiration for the film *Urban Cowboy*, as “100 percent prime redneck”.<sup>69</sup> Does he really think the term "redneck" is not extremely offensive to a segment of the population? In another instance, when Robert Evans was looking for money to produce *The Cotton Club* he claims he was offered financing by Adnan Khashoggi, but he turned it down because he was familiar with Arab mentality and Khashoggi, even though labeled the richest man in the world at the time, was Arab. Instead, Evans preferred to get financing from Menachem Ricklis, also a millionaire many times over and a Jew<sup>70</sup> At one point, in negotiations with Khashoggi, Evans reported that he didn't like being Arabed down.<sup>71</sup> In another incident appearing in the Evans book, Charlie Einfeld, the marketing and distribution genius at Fox predicted that both audiences – the rednecks who go for oaters and the horror freaks would like Evan's new film *The Fiend Who Walked the West*.<sup>72</sup>

Another incident which Higham used to support his charge that Howard Hughes was anti-Semitic, is that Hughes bought a viciously anti-Semitic novel, *Queer People*, for immediate production following *Scarface*. According to Higham, it was the story of a reporter who invades the Hollywood of 1931 and finds the community run by squalid Jewish executives. Unfortunately, for Hughes, no actor would appear in the picture; they knew they would never work in Hollywood again if they did. Anonymous phone callers threatened Hughes' life, and studio chiefs offered him fortunes to desist. On August 22, 1931, after Hughes had cast William Haines in the lead, borrowing him from Louis B. Mayer, who was grossly caricatured in the script, Hughes was forced to announce that *Queer People* was suspended indefinitely. His press release at the time said the film would have taken the public behind the scenes of Hollywood. Not a single American newspaper commented on the suppression; but the *London Daily Mail* printed a startling series of articles giving the inside story on the matter. As a result, Will Hays, head of the Motion Picture Producers Association and the chief arbiter of movie morals, a close friend of Louis B. Mayer, turned on Hughes with anger, definitively and for good. Despite the fact that Warner Bros. had made the bloodily violent *Little Caesar*, which Hays had given kid-glove treatment, Hays set out, implacably, to wreck Hughes' *Scarface*.<sup>73</sup>

Notwithstanding the fact that it would be a very dangerous precedent for the Hollywood film community itself to assume or conclude that a person who produced a single movie on a given topic believes some or all of the specific ideas contained in that movie, it appears that in this incident, Hughes was in fact the victim of malicious censors who refused to allow him the same right to pick and choose the kind of movie he wanted to make that the rest of the Hollywood film community has always demanded.

Clayton Koppes and Gregory Black also reported that the head of the film industry's Production Code Administration was considered "anti-Semitic"<sup>74</sup> apparently because he was politically conservative and vigorously fought to prevent Hollywood films from

being used to disseminate liberal propaganda or similar views of international politics just prior to World War II <sup>75</sup> (also see *A Study in Motion Picture Propaganda: Hollywood's Preferred Movie Messages*).

Michael Medved reported that over the years, he has received mail from viewers and readers in all regions of the country who suspect that the disproportionate number of Jews in Hollywood leadership positions might somehow account for the alienation of the industry elite from the American mainstream. Some of these letters, Medved wrote, appeared to be sincere attempts by basically well-meaning people to understand what's gone wrong with the popular culture. Others reflected anti-Semitic attitudes of the most poisonous and pernicious variety.<sup>76</sup> Without really discussing what is or what isn't "anti-Semitism", Medved raised the issue and thus by implication seemed to try to make any discussion of who controls Hollywood and includes mention of Jews, possible grounds for charges of anti-Semitism. Did he do so purposefully (i.e., for the purpose of chilling the free speech of Hollywood's critics?) Medved rationalized that no business in the world is so firmly associated in the public mind with the Jewish people as the American entertainment industry. When substantial segments of society begin to view Hollywood as some hostile, heedless force, he said, it's unavoidable that some of those who hold this attitude will try to explain the situation with reference to the Jews.<sup>77</sup> Medved went on to state, however, that questions about Jewish influence on Hollywood have in fact moved well beyond extremists groups.<sup>78</sup> Note that in his discussion of this issue, Medved slipped right into a reference to "the Jews" (in general) as opposed to the real subject of the discussion, a small group of people who run Hollywood, most of whom happen to be Jewish, at least in the cultural sense.

On the other hand, as already noted, O'Donnell and McDougal severely criticized Hollywood without ever directly raising the issues of religion or culture in relation to the question of who is responsible. Their solution, which appears to be specifically designed to evade the possible charge of anti-Semitism, was to say Hollywood is controlled by two dozen white males. These two white male authors thus avoid the possible charge of anti-Semitism while leaving open the possibility that they are racist.

At times, it does seem though that some in the Hollywood Jewish community appear to be fairly quick to label critics who raise the question of any level of Jewish control of Hollywood as anti-Semitic. It would appear from the record that the allegation of anti-Semitism is often raised irresponsibly and as an affirmative weapon designed not to ferret out the truth, but as an attack on the credibility of the Hollywood critic (i.e., by alleging that the critic is prejudiced, and the prejudice is the real reason for the criticism not any observations founded in reason or fact). In other words, the false allegation of anti-Semitism is commonly made to distract attention from the original discussion and in an attempt to move the discussion to the motives of the Hollywood critic. It would appear that under such circumstances, people like Joseph P. Kennedy, Howard Hughes, George Schaefer, Dennis Stanfill and Joseph Breen, may have all been wrongfully labeled anti-

Semitic (or in the alternative, none of the authors who reported the allegations, made an adequate case to support and accompany their allegations). Thus, either way, their allegations were irresponsible.

This is an important point. It would seem that if a person is going to make an accusation that someone is anti-Semitic, or as an author, pass along such allegations, the very least that society should require of the accusing party, is that he or she provide some credible evidence that supports such allegations. This book takes the position that none of the above authors, Higham, Koppes, Black, Brownstein or Gabler met any minimum burden of persuasion with regard to this issue, although, at least Gabler's report on George Schaefer suggests that Schaefer was in fact the victim of a "whispering campaign" which in turn implies that the original charge was not true. All of the rest, repeated the allegation and provided little if any credible evidence to support the charge. That seems to fall within the scope of "the sword of anti-Semitism" in that these authors have participated in repeating a false allegation or have repeated an allegation that may be true, without providing sufficient evidence that would allow reasonable people to make their own informed judgment. It would appear then, that such behavior is either negligent, or that the clear and intended result of such behavior is to inhibit criticism of any Jews or the behavior of Jews generally, thus, making the charge of anti-Semitism, an offensive (as opposed to defensive) weapon in the debate and discussion arsenal (the anti-Semitic sword).

In any event, some persons of Jewish heritage who were privy to discussions about the writing of (the *Hollywood Wars*) book during its draft stages cautioned about being as straightforward with regard to the problems in Hollywood as the book sought to be. They suggested that some of the more radical elements in the Jewish Community would misinterpret this writing as anti-Semitic, since, the book, is very critical of a small group of people who are in fact Jewish, or have a Jewish background. These well-meaning friends and associates were also concerned that they would have to defend these writings, and ultimately the author, among family and friends, particularly if such people did not read my books and only heard others misrepresent what these books actually say. Thus, it is important to pause for a moment and examine anti-Semitism, so that all who read one or more of my books or become involved in a discussion of them, can conveniently and quickly find assistance in dealing with the possible false allegation of anti-Semitism. In other words, this book series on Hollywood presents a good opportunity to gain a better understanding of what anti-Semitism is and what it is not.

Some effort should first be made to define what it means to be anti-Semitic. According to the American Heritage Dictionary of the English Language, for example, an anti-Semite is one who discriminates against or who is hostile toward or prejudiced against Jews.<sup>79</sup> Unfortunately, there are at least a couple of problems with this definition. It does not provide any quantitative limits on the number of Jews (minimum or maximum) that are required to fall within the scope of anti-Semitism, nor does it distinguish between

hostility based on good cause. In other words, this definition would permit hostile behavior or language directed toward two Jews who have in fact committed horrible acts to be considered anti-Semitic. Thus, that dictionary definition of anti-Semitism seems too vague and overly broad. It is not workable in a practical sense.

Checking another dictionary, *Webster's Seventh New Collegiate Dictionary* also defines "anti-Semite" as one who is hostile to or discriminates against Jews. This definition is pretty much the same (after all, discrimination is based on prejudice) and it has the same inadequacy (i.e., it does not distinguish between the person who is hostile toward Jews generally, as opposed to the person who may be hostile toward a few Jewish individuals who happen to be Jewish, but the hostility is not related to their Jewishness, instead, for example, because of their actual bad behavior). In other words, these first two dictionary definitions of anti-Semitism actually suggest that if anyone is hostile toward any number of Jewish people, regardless of the behavior of those particular Jewish people, the hostile individual may be fairly called anti-Semitic.

Maybe it would be more helpful to use a definition by someone who holds himself out as a scholar on the subject and who wrote a very contemporary book entitled *Anti-Semitism in America*. Leonard Dinnerstein, a professor of history at the University of Arizona, for example, defines anti-Semitism in his recent book as hostile expressions toward, or negative behavior against, individuals or groups because of their Jewish faith or heritage. Dinnerstein goes on to point out that prejudice reflects antagonistic thoughts but when those ideas are put into actions that restrict or condemn Jews (or others, for that matter) they become forces of discrimination.<sup>80</sup>

Note, however, that Dinnerstein's definition adds an essential element, omitted by the dictionaries. He states that in order for hostile expressions or negative behavior directed toward Jews to be fairly considered anti-Semitic, it must be made because the targets are Jewish, or it must stem from a belief that Jewish persons behave the way they do because they are Jewish. In other words, Dinnerstein's definition adds the requirement that the alleged anti-Semite's motives must be considered. Demonstrating someone's motives for negative behavior or hostile expressions clearly requires a much higher level of evidence, certainly much higher than that demonstrated by any of the above cited authors. Since, the charge of anti-Semitism is a serious charge, this book takes the reasonable position that it should not be taken lightly, and should not be made without good reason. In addition, the better practice is that no such charge be made unless it is accompanied by evidence regarding the motivation of the alleged anti-Semite, not just another allegation regarding such person's motivations. After all, that's nothing more than gossip or a whispering campaign and the people who participate in such activities have a similar mentality to a lynch mob.

Dinnerstein, meanwhile, (writing in 1994) goes on to state that anti-Semitism has existed throughout American history.<sup>81</sup> This is no doubt an accurate statement. On the other hand,

it is just as accurate to say that some Jewish prejudice against some non-Jews has also existed throughout Jewish and American history. Dinnerstein does not say that, however. He like Medved makes a very important omission from his discussion. As you may recall, Medved reported in his book *Hollywood vs America* said, Jewish control of American entertainment now stands at an all-time low,<sup>82</sup> while omitting to state the other side of that same truthful statement, (i.e., but a small group of politically liberal and not very religious Jewish males of European heritage still retain more control in Hollywood than any other readily identifiable religious, racial, ethnic or cultural group). Omitting an important fact is just as wrong as mis-stating the truth.

It may be fair, considering these two examples, to raise the question as to whether Dinnerstein and Medved are actually trying to reveal the whole truth, or just the part they want us to see. After all, based on the studies and collection of anecdotal reports contained in this book, it may be just as accurate and fair to report that the politically liberal and not very religious Jewish males of European heritage who control Hollywood are, as a group, just as prejudiced against non-Jews, if not more so, than most Americans who are considered anti-Jewish. Thus, anyone concerned about prejudice directed toward one particular group, must also be concerned about the prejudices of that group directed at others. If not, such persons may be considered unfair and hypocritical in their analysis and suffer a loss of credibility. It must also be remembered that people who are regularly and wrongfully accused of being prejudice may become very resentful of such allegations and in the long-term become prejudice against those who make such allegations, thus generating a self-fulfilling prophesy.

Another, presumably, even more authoritative definition, of anti-Semitism comes from *The New Standard Jewish Encyclopedia* (7th Edition)<sup>83</sup> That publication acknowledged as the authoritative source book of information about all aspects of Jewish life, provides an even more conservative definition of anti-Semitism, saying it is a term used to designate the organized movement or other manifestations against the Jews; more loosely, hatred of the Jews generally. Wigoder's definition seems to require that in order for something to rise to the level of anti-Semitism, it must either be part of an "organized movement" or at least be directed at Jews generally. Thus, under such a definition, it would be inappropriate to label an individual as anti-Semitic unless that individual was part of a larger movement against Jews, or was at least guilty of an expression of hatred (which is even stronger than "hostility") toward all Jews or, at least, a broad cross-section of Jews.

Author Patricia Erens chose a similar approach in defending Jewish filmmakers who provide negative or stereotypical portrayals of Jews in American films. Erens stated that the fact that most of the works (reviewed in her book *The Jew in American Cinema*) were written or scripted by Jewish writers and produced by Jewish businessmen and actors classifies them as a form of self-examination.<sup>84</sup> And she pointed out that this Jewish self-examination is different from an attack from without. However, in determining whether such Jewish self-examination in film actually rises to the level of Jewish anti-Semitism,

Erens quotes Robert Alter's definition of anti-Semitism, which holds that anti-Semitism implies an active hostility towards Jews as a group and an active intention to vilify them.<sup>85</sup> Thus, Erens takes the position that one must make a distinction between a negative character or even an unlikable family and a slur aimed at the entire Jewish community. Using this criterion Erens reported that very few films are genuinely anti-Semitic works, despite the outcry and rage of overly sensitive, defensive, and protective Jewish critics.<sup>86</sup>

In any case, the good news from Dinnerstein's published analysis of anti-Semitism in America is that prejudice in the United States toward all groups has declined since 1945, and that Jews, more than any other identifiable group, have been the major beneficiaries as educational, employment, housing, resort, and recreational opportunities opened up for them.<sup>87</sup>

Thus, it is fair to observe that if those who write about Hollywood and who make accusations about the anti-Semitic beliefs or behavior of non-Jews, such accusers have an affirmative obligation to support such accusations with credible evidence, and not only use a reasonable definition of the term anti-Semitism but disclose what definition they are using. That evidence must at least show that the person accused either was "hostile" toward Jews generally, or was "hostile" toward one or more Jews because they were Jewish. Otherwise, these accusers should be considered not credible, and even worse, someone who maliciously wields the sword of anti-Semitism, a blatantly dishonest debate and discussion tactic.

Based on the above research, the definition I found to be most useful is that anti-Semitism is hatred or hostility directed toward Jews generally or against a single Jew because he or she is Jewish. I left out the organization or movement requirement, because I think it is possible for a single individual to be anti-Semitic without being part of a larger organization or movement. In any case, no where in any of my writing do I state, suggest or imply anything about Jews generally. Further, nothing I write can fairly be characterized as hatred or hostility. I'm merely critical of the business-related behavior of a small group of people who happen to be Jewish. Nor is there any evidence that I am criticizing anyone's behavior because they are Jewish. Rather, my criticism is based on the view that the business practices engaged in by those who run Hollywood are unfair, unethical, unconscionable, anti-competitive, predatory and/or illegal, the very terms used by the authors I cite in my *337 Reported Business Practices* monograph, as the descriptions provided by those source authors for that work. Thus, in my view, anyone who accuses me of being anti-Semitic is either uninformed or dishonest. And anyone who thinks that just because a person says or writes something negative about someone who happens to be Jewish must be anti-Semitic, such a view is really advocacy for carving out a group of people here in the U.S. that are above criticism, and that, is un-American.

Another mistake that occurs is for someone to take my accurate observation about who really controls Hollywood (i.e., Hollywood is controlled by a small group of politically liberal,

not very religious, Jewish males of European heritage) and misstate it as “Jews control Hollywood”. People who do that apparently do not understand the difference between the rather basic concepts of “some” and “all”. And in fact, as you recall, the original reason I set out to answer that question, first asked of me by independent film producers (i.e., “Do Jews control Hollywood?”), my answer was no, it is not accurate to state that “Jews control Hollywood”. The more accurate but different statement is that Hollywood is controlled by a small group of politically liberal, not very religious, Jewish males of Eastern European heritage.

**My Very Own Whispering Campaign** – During the entire time I was in Hollywood, I was one of the most active lecturers or panel discussion participants whenever any of the film organizations that sponsored such events wanted to have someone talk about the business and legal aspects of filmmaking, particularly the topic of film finance or more narrowly, investor financing of independent film. All told, I’ve probably given such lectures or appeared as a panel member on some 500 occasions, to an aggregate audience of filmmakers numbering about 6,000 or more. One of the reasons for that is that my practice was narrowly focused on federal and state securities compliance for entertainment projects, more specifically independent feature and documentary films. And, most securities attorneys did not handle the legal work associated with the investor financing of independent film offerings because they felt such offerings were too risky and might result in litigation involving their law firm. Whereas, most of the entertainment attorneys in Los Angeles were too busy with more purely entertainment law related practice matters, and they did not have the time or inclination to keep up with changes in the federal and state securities laws. In addition, I had written several books and articles about the film industry that had been well-received.

One of the other most active entertainment attorneys on the so-called lecture circuit in Los Angeles who had also written several books was Mark Litwak. Over the years, Mark and I had developed a professional relationship and friendship. We had much in common. Eventually, he referred his independent film producer clients to me for the securities compliance work, and he would later handle the production documentation for those same clients after they were funded.

One day I got a surprise phone call from Mark. He said something to the effect that someone (not identified) had called one of the other attorneys in the offices Mark shared, and told that attorney (who was identified by Mark as Michael Donaldson) that they should not associate with me because I was anti-Semitic. Let me add here that I know Michael Donaldson and have heard him lecture on several occasions. He is a well-respected entertainment attorney in Los Angeles with bonafide expertise in the area of clearing films for errors and omissions (E&O) insurance and handling the claims that sometimes follow. I don’t know that he knew me at the time this incident occurred, and I’ve never discussed it with him. I also have to give Mark credit for at least calling me and telling me what happened. But even though we had a good 15 to 20 minute conversation, I could not convince Mark that I was not anti-Semitic, so we parted ways. We rarely shared the lecture stage again and he stopped referring his producer clients to me for the securities work. Ironically, he began referring that work to another attorney friend of mine



(Pete Wilkie) who I had mentored with respect to securities offerings for film projects, to some extent, when he first came to Los Angeles. Pete agreed to do the securities work for Mark's clients on a cut-rate basis, just as I had done.

One of the regular sponsors of both our lecture presentations was Dov Simens a former line producer who created the 2-day Film School seminar presentation. Dov would regularly invite both Mark and I to give lecture presentations at his seminars – Mark on entertainment law and me on securities compliance for investor financing of independent films. Shortly after my phone conversation with Mark, Dov also dropped me from participation in his programs. The whispering campaign had apparently spread to Dov.

A third individual who apparently became involved in this whispering campaign of misinformation regarding my beliefs, was named Carlos Abreau. He had come to Los Angeles with his wife, and they like a lot of others who came to Hollywood, wanted to make a movie. They had written a book about some of their adventures and wanted the story to make it to the big screen. Again, like many others before them, they needed to do something else in the meantime, so Carlos started a website relating to Hollywood. Someone told Carlos that I might be a good source of relevant content for his website (content drives traffic) and he came to me and asked if I would be willing to post some of my articles about film finance on his website. I agreed to do that, and we also created a question and answer forum about film finance on the website. Over the years, we had built up a massive archive of questions and answers about film finance, questions posed by filmmakers with my answers. Unfortunately, Carlos got wind of the whispering campaign Mark told me about, and he too abruptly dropped me from his website without even talking to me. He also refused to provide me with the accumulated archive of film financing questions and answers, so that material was lost.

To my knowledge, that's the extent of the whispering campaign, although I have no way of knowing how widespread it became. Clearly, I lost some of the securities work that Mark referred from time to time. The lectures for Dov Simens were lost. My website presence for Carlos Abreau was taken down. Fortunately, I continued to get securities work from other sources and because of my own lecturing and writing activities, I was also able to create my own website ([filmfinanceattorney.com](http://filmfinanceattorney.com)) where I re-established the film finance Q&A service and have maintained that for some 15 years, again accumulating a massive archive of questions and answers about film finance. It's difficult, if not impossible to calculate the value of the damage caused to my law practice from such a whispering campaign, so in such circumstances, you just have to move on. I do not know whether any of these individuals involved would confirm what I've reported here, if asked, but I do not really care. I can only report the truth – they have to live with themselves.

When we step back, there is another way to look at this dispute. After all, anti-Semitism is a form of prejudice. It involves making pre-judgments about a group of people or a single individual. But falsely claiming that someone is prejudice or that some parts of their writing is prejudice, does not have anything to do with the facts as they exist in the real world. Such an

accusation merely goes to the motives of the person reporting the facts. In other words, even if someone wrongfully accepts the argument that some parts of my writing are anti-Semitic, that does not change who really controls Hollywood. The fact is that Catholics, Baptists, Mormons, Presbyterians, Hindus, Buddhists, Sikhs, nor any other religious/cultural group controls Hollywood, other than the group identified by my study. The fact is that African-Americans, Latinos, Native Americans, Asian-Americans, nor any other racially identifiable group other than the group identified in my study, has controlling power in Hollywood. The fact is that women do not have controlling power in Hollywood.

Thus, my counter-argument is that the people falsely claiming that some parts of my writing are anti-Semitic are merely using that emotional argument hoping to question my motives and thus distract people's attention from the substance of what my study actually reveals. That's all that's going on here. It is both despicable and wrong.

**How Low Can You Go?** – There was a period after my studies regarding who really controls Hollywood that a few people began not only to engage in the name calling online, but resorting to all sorts of twisted logic to counter my reported facts. One of the worst examples of that tactic was seen in the accusation that I was guilty of “counting Jews”. Aside from the false accusation of anti-Semitism, this is about as wrong and offensive as a Hollywood apologist could get. To be fair, what I did was conduct a transparent study of who really controls Hollywood, without any pre-conceived notions about what the results would actually be. After concluding that the real power with respect to most films released by the major studio/distributors resided with the top three studio executives of those companies, I set out first to determine whether men or women dominated those positions. Clearly, the answer was “men”. I then sought to determine which of the commonly designated races dominated these positions. Again, quite clearly, the answer was “white men”. I also studied the literature of the industry to learn that most of these white men were politically liberal and not very religious. In my final column of the chart created for this purpose, I listed the religious/cultural heritage of these politically liberal, not very religious white men. Again, if the facts as reported in the biographical volumes and press clippings I reviewed, had indicated that Baptists, Catholics or Methodists dominated this group, that's what the report would have stated. Then, I suppose, someone could wrongfully accuse me of counting Baptists, Catholics or Methodists. But, the facts did not take us there. The facts gave us another conclusion. That's the conclusion I reported. No form of prejudice was involved.

**Lecturing at UCLA** – During some of these years, I taught film finance or related courses at the UCLA film school, the graduate level business school and at UCLA Extension. I taught for several semesters at the film school and one semester I got into a discussion with the students about the issue of who really controls Hollywood. It was part of a lecture entitled “The Broader Film Finance Environment”. The idea was that if Hollywood has been dominated by one particular group for more than 100 years, it is unreasonable to think that such dominance was not the result of massive ongoing discrimination at all levels, or that such dominance and discrimination would not have an impact on who can get their movies financed. I gave them my honest assessment based on my research. When the next semester came around I was told by the

man who had originally hired me, and in a very nice way, that the school was cutting back on some of its course offerings and I would not be asked to teach anymore.

Some may ask why I did not sue for discrimination, after all, my class discussion of who really controls Hollywood was not based on any form of prejudice, rather on a well designed study that could be replicated by anyone who so desired. On the other hand, I had no evidence or proof of any kind that the school's reason for dropping me was anything other than a budget cut. I just had my suspicion and that's not worth much. My suspicion was partly based on the reaction in class by one of the students who disagreed with my assessment of the situation in Hollywood. I suspected that she complained to the administration and no one was even willing to discuss the matter with me, but again, that is speculation on my part.

**Maybe the Dictionary Was a Casualty** – After publishing my book *The Dictionary of Film Finance and Distribution* for many years, Gwen Feldman, one of the owners of Silman-James Press called one day and told me that they had decided not to continue publishing my book. As she put it: “We had a good run.” And that was it. It does seem a bit odd that a small publisher would stop publishing a book that was still selling well, but I really have no idea whether the whispering campaign had finally reached them, so it is impossible to say whether the dictionary was another casualty. As with the lecturing and legal work, however, I was able to find another publisher who wanted to continue publishing the dictionary. David Demers, a communications professor at Washington State University had created a small publishing company (Marquette Books, LLC) and he agreed to not only publish the dictionary, but two other titles: *Hollywood Wars – How Insiders Gained and Maintain Illegitimate Control Over the Film Industry*, as well as *An Introduction to the Motion Picture Industry – A Guide for Filmmakers*. So we changed the name of the dictionary slightly, updated some of the terms, added others and kept on trucking.

**The Threatened ADL Protest** – During the time that I was working to publish my book *Motion Picture Biographies – The Hollywood Spin on Historical Figures* (Algora Publishing, 2015), one of my editors at Algora Publishing called me once to report that someone from the Anti-Defamation League had called this New York-based publisher and threatened to conduct a protest out in front of the publisher's offices if they published this book. The publisher did not buckle under, went ahead and published the book and the ADL did not conduct its threatened protest. This suggests that someone who worked for the publisher tipped off someone at the ADL, and then someone at the ADL either with or without the authority of the ADL itself, made the call and the threat. I do not know what actually happened behind the scenes. I also do not know whether anyone at the ADL had acquired an advance copy of my manuscript or not, or whether anyone at the ADL actually knew what they were talking about when it came to the contents of my book.

It is possible that the call and threat were made by a rogue individual at the ADL or elsewhere, who was acting based on rumors (i.e., part of a whispering campaign – see discussion below). I'd like to think that someone at the ADL actually looked at my book and realized that

nothing therein was actually anti-Semitic, but I do not know that is what happened either. It could be that someone at the ADL decided that a protest would call further attention to my work and that it would be better to avoid that. Who knows? It's just another of the many unsavory ways that some in Hollywood and those interested in protecting Hollywood (i.e., Hollywood apologists) conduct themselves when someone like me is critical of the Hollywood establishment.

## Chapter 11 – OVERZEALOUS APOLOGISTS PROTECTING THE EMPIRE

In my ongoing effort to document what was really going on in Hollywood and provide useful information to filmmakers, I encountered still another example of the anti-Semitic sword – this time not used by people involved directly with the Hollywood film community, but by employees of a New York-based book publisher. The reference to “empire”, of course, comes from the previously referenced title for Neal Gabler’s book, *An Empire of Their Own – How the Jews Invented Hollywood* (Anchor Books, 1988).

**Attempts at Documenting the Truth** – One unassailable and never changing fact about the Hollywood-based, U.S. film industry is that there is a lack of diversity at the top in Hollywood. No one questions the accuracy of that statement. Unfortunately, some will unnecessarily and erroneously cry foul when and if anyone goes beyond that unassailable fact to demonstrate a healthy and responsible level of curiosity to study, observe, discuss or write about the logical questions that reasonably follow from that fact. Such questions include:

(1) Who has been disadvantaged and arbitrarily excluded from positions of power in Hollywood all of these years?

(2) How did this more than one hundred year lack of diversity at the top in Hollywood occur?

(3) Who exactly is at the top in Hollywood?

(4) Besides the widespread reverse discrimination, what additional results flow from this lack of diversity at the top?

The first question can easily be answered by simply listing all of those groups who are not now and have never been adequately represented in the top level positions within the most powerful Hollywood motion picture entities: the so-called major studio/distributors [currently consisting of Warner Bros., 20<sup>th</sup> Century Fox, Sony (including Columbia and TriStar), Disney (Buena Vista), Paramount and Universal]. Such disadvantaged groups include African-Americans, Latinos, women, Irish Americans, Italian Americans, Asian Americans, Native Americans, Whites from the American South, political conservatives, Christians, Mormons and Muslims. No one has ever made the claim that any of these groups are adequately represented in top level positions of authority in the Hollywood-based U.S. film industry and there is no evidence to suggest that such a claim would be true.

The answers to questions (2) and (3), are presented in a series of books and articles published in recent decades by nearly a dozen authors. In 1988, Neal Gabler wrote *An Empire of Their Own – How the Jews Invented Hollywood*. His book provides an historical view demonstrating how the original Jewish movie moguls dominated what we have come to think of

as Hollywood and how their direct or cultural descendants continued that dominance through the mid-'60s.

Then, in 1992, several additional books were added to the literature of the Hollywood-based U.S. film industry and sought to bring this story up to date. Hollywood film critic and author Michael Medved published *Hollywood vs. America – Popular Culture and the War on Traditional Values*, which pointed out that most of this Hollywood control group is not very religious and is mostly politically liberal. Medved, an Orthodox Jew, very familiar with the Hollywood community complained that many of the scenes and themes of Hollywood movies promoted a secular world view as opposed to a more conservative religious world view.

Also in 1992, Los Angeles attorney Pierce O'Donnell and journalist Dennis McDougal published their book *Fatal Subtraction – How Hollywood Really Does Business* taking the business practices of a single major studio/distributor (Paramount), some of whose business practices had been declared unconscionable by the trial court in the Paramount v. Buchwald case, and demonstrating that such business practices were commonly used by all of the Hollywood major studio/distributors. Since Paramount chose not to appeal the court's adverse decision, no court-made precedent was created in the process, thus the major studio/distributors have been able to continue the same or similar practices to this day.

My own 1992 book contribution, *Film Finance and Distribution – A Dictionary of Terms* included among the 3,600 terms defined and discussed, the earlier monograph listing 337 *Reported Business Practices of the Major Studio/Distributors*, business practices which were accurately described in the book as unfair, unethical, unconscionable, anti-competitive, predatory and/or illegal. This list explained in no uncertain terms how the Hollywood control group both gained and maintain its illegitimate control over the Hollywood-based U.S. film industry. Those business practices included the regular use of nepotism, cronyism, favoritism and other forms of discrimination, which in the context of Hollywood is actually a form of reverse discrimination.

Another book, also published in 1992 added to our understanding of how Hollywood works (Paul Rosenfield's *The Club Rules – Power, Money, Sex, and Fear – How It Works in Hollywood*). Journalist Terry Pristin followed in 1993 with an article in the *Los Angeles Times* Calendar Section ("Hollywood's Family Ways – Who Can You Trust Better than Kin"), explaining what an important role that special form of discrimination called nepotism played in the so-called Hollywood control group's ability to maintain their dominance over the film industry into the modern era. Also in 1993, academic David Prindle explored the business practices of the Hollywood film community in his book: *Risky Business – The Political Economy of Hollywood*.

The following year, an article edited by Victor Marchetti appeared in the New American View newsletter making the argument that any denial of Jewish control over the film business is false. His article was entitled: "The Big Hollywood Lie: Denying that Jews Control the Film Business". On the other hand, Marchetti's analysis is flawed in the sense that his argument for

Jewish control of Hollywood is too broad. In other words, it is unfair to the millions of Jews around the world who have no interest in or influence over Hollywood to paint with such a broad brush and implicate them as being part of any Hollywood control group.

Skipping forward into the 21<sup>st</sup> century, another academic, Martha Lauzen, confirmed the ongoing difficulty of women in achieving positions of power in Hollywood in her “Celluloid Ceiling 2006 Report – Behind-the-Scenes Employment of Women in the Top 250 Films of 2005”. Continuing with the plight of women in Hollywood, Jane Louise Boursaw, in her article “Film Fatales – Shocking Statistics About Women in the Film Industry”, goes on to cite the opinion of Cari Beauchamp, Hollywood historian and author of several books, including *Without Lying Down: Francis Marion and the Powerful Women of Early Hollywood* (Scribner, March 1997) and *Adventures of a Hollywood Secretary* (University of California Press, 2006). Boursaw points out that Beauchamp claims that the phrase “white men” is the best way to describe those who dominate or control the Hollywood scene.

On the other hand, as noted earlier, this description has the same flaw of imprecision that the phrase “the Jews” has, as used in the false statement that “Hollywood is controlled by ‘the Jews’” (again, a false and misleading assertion). To say that “white men” are the dominant group is once again an overly broad and imprecise description of the Hollywood control group, thus making it less likely that any effort to resolve what is clearly a long-standing tradition of reverse discrimination in Hollywood will ever be resolved.

In 2007, another of my books (*Hollywood Wars – How Insiders Gained and Maintain Illegitimate Control Over the Film Industry*) was published. It traced the history of this dominance and/or control over Hollywood by a small, narrowly-defined group from the earliest days of the film industry through the end of the century. It also took the honest step of more accurately defining exactly who the Hollywood control group is, relying partly on the previously cited literature of the industry as well as original research. Thus, the most accurate description of the Hollywood control group is that they are mostly politically liberal, not very religious, Jewish males of European heritage. This definition adds clarity to the discussion, but does not implicate all Jews and does not state, suggest or imply that members of this small group behave the way they do or engage in the cited business practices because they are Jewish. It simply states the observable facts (see my book *Who Really Controls Hollywood* and the explanation of my research methods in the Peter Lang e-mail transcript set forth as Appendix “A”).

With respect to question (4), a series of my own heavily annotated books and other cited sources present the thesis that control of Hollywood in the hands of any narrowly-defined group will inevitably result in a limiting of the ideas presented through this “significant medium for the communication of ideas”, since movies tend to a great extent to mirror the values, interests, cultural perspectives and prejudices of their makers (i.e., those who control the medium).

**Hollywood Apologists Censoring the Truth** – With this background, I was asked by Peter Lang Publishing of New York to author a book for their communication series to be

entitled: *Motion Pictures – A Complete Guide to the Industry*. One of the eight chapters of the completed and edited manuscript dealt with film industry problems. Such a book would not be “complete” (as the title suggested) without discussing important industry problems. One of those problems was the well-known and never denied fact that there is a lack of diversity at the top in Hollywood. Of course, based on the literature of the industry cited above, and my own research (explained in detail to Peter Lang Publishing) I went on to point out that the most accurate description of this Hollywood control group which is responsible for the lack of diversity at the top in Hollywood is the narrowly-defined control group described above.

Peter Lang’s Managing Director Chris Myers and Acquisitions Editor Mary Savigar refused to publish the book with that single statement in it. In complete disregard of the extensive discussion of this issue contained in the existing industry literature, these individuals actually used as their reason for their refusal to publish the already completed book, the false allegation that the statement was anti-Semitic (the classic anti-Semitic sword – a false allegation of anti-Semitism used to distract attention from the truth). In other words, some amongst us do not know the difference between bona fide criticism of the business practices of the Hollywood control group and anti-Semitic writing (again, a chapter in the *Hollywood Wars* book traces some of the history of Hollywood’s use of the anti-Semitic sword to squelch criticism of the Hollywood establishment and chill the free speech rights of film industry critics).

Following a similar publishing experience on one of his many books about the film industry, Boston University Professor of Film and American Studies (Ray Carney, PhD) offered, in direct correspondence with me, the opinion that:

“America is a land of censorship, but most of it is not so obvious or explicit. The more pervasive censorship is implicit: It is the self-censorship of the cowardly; the censorship of the mob and the majority that doesn’t tolerate minority opinions; the censorship of individuals not daring to speak the truth for fear of getting into trouble with their bosses, co-workers, or friends; the fear of saying something that might ‘offend’ someone else, that might ‘alienate’ someone else. Those forms of censorship are everywhere I look – in publishing, in academia, in business.”

With respect to Hollywood, this sort of pervasive censorship is only one side of the coin. Historically, it appears that at least since World War II when Hollywood, working closely with the U.S. government, discovered or confirmed how effective the motion picture was in communicating propaganda (see Clayton Koppes and Gregory Black’s *Hollywood Goes to War – How Politics, Profits and Propaganda Shaped World War II Movies*) Hollywood has quietly continued to use the feature film as a propaganda vehicle (see *A Study in Motion Picture Propaganda – Hollywood’s Preferred Movie Messages*).

One of those favored themes has been to consistently portray Jewish characters and themes in a favorable light or as perennial victims and advocates for tolerance (with the exception of portrayals of the studio executives themselves). Partly as a result of this flood of



consistent movie and other mass media messages over a 100 year period, it is extremely difficult for many Americans to consider Jewish individuals as perpetrators of wrong doing. Thus, the first reaction from many people when they hear or see criticism of the film industry business practices engaged in by people who happen to be Jewish, is to assume that the author of that criticism is prejudice. That assumption then tends to block further inquiry and discourage academics or other observers of Hollywood throughout the country from investigating any of the perfectly legitimate questions posed above. Hollywood thus gets a free pass.

Dr. Carney went on to compare my assertions about Hollywood to those of Neal Gabler in his book *An Empire of Their Own – How the Jews Invented Hollywood*, saying:

“You're both saying the same thing: Namely, that a certain ethnic group and cultural set of attitudes is largely responsible for a distinctively deplorable set of organizational structures and corporate entities. Gabler burns incense to that situation and you don't, but there is no difference in the basic assertions each of you make.”

Many people confronted with some of these issues automatically assume that since we are supposedly a nation of laws, if the Hollywood establishment was actually engaging in the hundreds of unfair, unethical, unconscionable, anti-competitive, predatory and/or illegal business practices as alleged, somebody would attempt to enforce the laws, wouldn't they? Not exactly. The economic law of supply and demand is so out of whack in the film industry and it is so difficult for people at all levels to obtain and keep their jobs, that anyone who complains is ostracized by the close-knit Hollywood insider group (see, for example, Julia Phillips' book *You'll Never Eat Lunch in this Town Again*). Further, the MPAA PAC (the political action committee of the major studios' trade association), along with the individual company PACS, the excessively overpaid top level studio executives and their spouses, contribute so much money to political candidates from the President on down that it is nearly impossible to get any governmental agency to take action against Hollywood for antitrust, employment discrimination or other violations. Thus, Hollywood is, in fact, the perfect crime.

The good news is that the complete book Peter Lang was afraid to publish, including the short sentence expressing the truth about Hollywood's control group was eventually published under another title by a more thoughtful publisher (Marquette Books of Spokane, Washington) whose owner had the courage to allow authors to write the well-researched truth. The bad news is that topics relating to the lack of diversity at the top in Hollywood and the associated issues cannot be honestly and openly researched or discussed in America generally, even though we claim to have free speech, an intellectually honest academic community and a democracy based on a free marketplace of ideas.

As I pointed out to Peter Lang's Chris Myers and Mary Savigar, the publisher could publish the book with the disclaimer that the views expressed therein are those of the author. In addition, other subsequent authors could disagree, if they chose, and support their positions with

facts, as I had done. But no, Myers and his associates (including one or more so-called peer reviewers from Hollywood) preferred the embarrassingly dishonest approach of refusing to publish a book containing truthful statements. Thus, we see that our free speech in this country is not only sometimes susceptible to government interference, but it is also susceptible to the arbitrary whims of misguided New York publishers. If this practice of bullying authors into leaving accurate information out of their books is widespread, what else has been kept secret from the American and world reading publics? Further, if one of our most significant media for the communication of ideas (the motion picture) is not fairly open to the expression of the important cultural ideas of all segments of our diverse population, how diluted is our country's democracy?

For a blow-by-blow account of the email exchange between me and the folks at Peter Lang regarding whether my book had any language in it that could be fairly considered to be anti-Semitic, and their refusal to publish the book, see Appendix "A", entitled: "Something's Rotten in the Big Apple! The Inside Story of a NY Publisher's Attempt to Conspire With Hollywood Insiders to Defraud America".

## Chapter 12 – THE MANY FILM FINANCE SCAMS

There are other aspects of the film industry environment that indirectly (and sometimes directly) impact the independent producer's ability to fund film production activities. Many of these are actually scams at one level or another, and are intended to separate the producer from his or her money. The following described scams are taken from an article I wrote about the subject. Not all of such scams are included here. They are directly or indirectly related to film finance and have occurred in the so-called film community for many years. Unfortunately, none of the film industry organizations purporting to represent various interests within the film industry have seen fit to do much about such scams. In fact, some of the scams are being committed by film industry organizations. Thus, independent producers and those who may become independent producers someday need to reorganize and work on these problems affecting their vital interests. At least, they must be aware that such scams are ongoing and try to avoid them.

**Credible Appearing Lists of Film Project Documentation** -- Just because someone claiming to have access to financing for one or more films produces a credible looking list of requested documentation and information does not mean that the purported financing source is legitimate. In this day of the Internet, anyone can generate such a list because such information is readily available (e.g., on the websites of completion bond companies). Unfortunately, these film finance scam artists (or the sometimes unsuspecting finders for scam artists) who claim to be able to provide the financing for an independently produced feature film, insist on an advance from the producer at the last minute to cover some imaginary administrative fee or other fictitious fee after the producer is led to believe that the funding is in place and the project is approved. In such cases, the independent producer's due diligence investigation of the bona fides of such film financing sources must be thorough.

**Securities Law Dodge** -- As noted above, entertainment attorneys and other film finance consultants sometimes advise independent producers to ignore the federal and state securities laws when raising money from a group of passive investors, by using promissory notes that are repayable out of the film's revenues (i.e., contingent and therefore securities). Such transactions amount to selling an unregistered security, with no attempt being made to comply with available exemptions from the securities registration requirement.

**Misuse of Business Plans** -- As noted earlier, many entertainment attorneys or other film finance/business plan consultants also sometimes encourage or persuade filmmakers to raise money from passive investors using only a business plan as the document providing information to the prospective investor, when a securities disclosure document is required. There are proper uses for business plans, but they are not appropriate documents for selling securities (see "Business Plan or Securities Disclosure Document" in *43 Ways to Finance Your Feature Film*).

**Negative Advertising or Misleading Information** -- Film industry professionals writing about or lecturing about "equity financing pitfalls" sometimes suggest that the scam artists who regularly prey on independent producers are offering equity financing deals when such scams are generally offering loans, not equity. On the other hand, sometimes such deals are so poorly drafted, that it is difficult to determine whether a loan or equity investment is being offered. Producers beware.

**Investor Come-Ons** -- Attorneys and film finance website services using the suggestion that they may be able to help bring investors to client film offerings as a come-on to get the client's offering business (if the producer hires them), when they either have no intention of bringing investors to the table or the independent producer has no way of knowing whether it might happen. In addition, little, if any, evidence suggests that these attorneys or website services are actually in any better position to bring investors to the table for a risky investment like an independent feature film than anyone else.

**Tie-In Arrangements** -- Entertainment attorneys sometimes offer to prepare a securities offering memorandum for a reduced fee, so long as the producer agrees to hire them for the production documentation and other entertainment law work associated with the production and distribution of the feature film or documentary. Sometimes these entertainment attorneys are not experienced and knowledgeable in the area of securities offerings and they also sometimes raise the amount normally charged for the production work to make up for the smaller offering fee. The film industry is populated by independent contractor specialists. Filmmakers must be cautious in attempting to utilize the services of so-called "one-stop-shops" for any of their development, finance, production and/or distribution needs.

**Biased Seminars** -- Blatantly biased film finance seminar presentations. Almost all film finance presentations are biased in one way or another. That's because no single individual possesses bona fide expertise in all areas of film finance. But, some film industry organizations, cross the line and knowingly provide false and misleading information because they are more interested in making money on their seminars by both selling the right to serve as a seminar sponsor to people who do not have bona fide expertise in some of the areas presented. Other groups are biased in the sense that they consistently sponsor seminars extolling the virtues of one form of film finance (e.g., lender financing) while failing to provide equal time for other forms of film finance (e.g., investor financing), that actually may be of more importance to the vast majority of the association's members. Such groups are thus failing to fairly meet the information needs of their own members.

**Hollywood's Ethical Malaise** – In one sense, Hollywood is like a shell game, while most everyone is looking at all of the glamour, the money and power are being stolen. Some have described part of what goes on amongst entertainment attorneys and others as "Hollywood's ethical malaise". In a guest column written for *Variety* (October 12, 2004) by Los Angeles attorney Eric Weissman, Mr. Weissman admitted that an ethical malaise hangs over the entertainment business. He reported that more than ever these days, the news contains allegations of abuses and criminal behavior by industry professionals. Citing just a few examples, he pointed to the Los Angeles City Attorney's lawsuit against the PR firm Fleischman Hillard over fraudulent billing; the indictment of Franchise Pictures for fraudulent production budgets; and the indictment of Entertainment Industry Development Corporation head Cody Cluff for embezzling public funds. Weissman lamented the years of bad publicity for studio accounting practices pointing out that such practices put pressure on talent to make demands for huge up-front salaries. He added that some entertainment industry clients are so insecure that their agents ask for money under the table payable directly to them in addition to the 10% that was paid to the agency, so that the client is assured of personal representation. He also indicated that he has heard of entertainment attorneys who, in return for the promise of top flight services, will pocket monies for themselves under the table in addition to what was being paid to the firm.<sup>88</sup>

**Packaging and Talent Agency Film Finance Activities** – One of the most controversial agency business practices in the film industry, which impacts the studios, their shareholders, agency clients and the moviegoing public is referred to as "agency packaging" or merely as "packaging", since

entertainment attorneys who represent talent also engage in such practices from time to time. In packaging a film project, an agency will sometimes attach its actor clients and a director client to a script written by one of its writer clients, then present the packaged project to the studios on a take-it-or-leave-it basis, refusing to allow the studio to change any part of the package even if in the view of the studio, a different choice with respect to talent would likely result in a better film. As a result of the agency's package, the agency is able to make more money on that particular film either due to the commissions it "earns" from its talent compensation, or for a packaging fee charged to the studio.

Who is getting cheated in these situations? The stockholders of the major studio/distributors (because packaged films are unreasonably expensive), moviegoing audiences (because the films are generally not as good), some writers, actors, actresses, directors and producers (who are arbitrarily excluded from consideration). Who benefits? The agents, some of their clients and the studio executives whose relationships with agents are thus cemented, unless the agents think less of the studio executive for rolling over and playing dead. In point of fact, the studio executive is generally sacrificing the best interests of his or her corporate employer's stockholder owners and the interests of the actors and actresses excluded from the package, along with the interests of the moviegoing public, in the effort to help the agent make more money while also hoping for that long-shot hit movie. Thus, agency packaging appears to be at the heart of a very corrupt system, primarily perpetuated by Hollywood insiders. And, very few people have the courage to oppose the agencies on this issue.

In addition to packaging, some of the larger agencies have now moved into another traditional producer activity, that of film financing. Some of the agencies have created film financing firms as subsidiaries or affiliate companies, hire individuals with film finance expertise and when an agency is working on putting together a packaged project, the film finance arm will get involved in helping to raise some or all of the production financing. This makes it even more difficult for a studio to turn down the agency packaged and financed deal, and in these instances, not only are the agencies taking over some of the functions of the independent producer, but also usurping the financing activities of not only the studios, but also the foreign sales agents, who might otherwise be arranging for foreign pre-sales on a film project.

Note that the coercive and illegal (i.e., anti-competitive) tie-in arrangement is involved in agency packaging, but that is not even the worst of the problem. Agents with this much power sometimes become arrogant and abuse their power. As an illustration, one talent agent recently packaged a film project that also came with investor financing arranged by the producer, but at the last minute the talent agent insisted that in order for the project to go forward with his clients on board, the producer needed to also have his investors commit to finance a low budget film project featuring the agent's girlfriend. For that reason, the deal fell through. This was a clear case of a talent agent abusing his power.<sup>89</sup>

**Manipulated Risk** – A significant part of the risk associated with the production of independent films is artificially created by the overly wide releases of major studio/distributor films, and the excessive power of these majors to get their films (some of which are of mediocre to poor quality) on theatre screens in place of independent films regardless of the comparative quality of the competing films. This is done through leverage gained by the production and distribution of so-called major studio/distributor "tentpoles" or "tentpole pictures", otherwise known as "blockbusters". Although it is more accurate to refer to them as "hoped-for blockbusters", since no one can accurately predict how any film will perform at the box office. In any case, the people representing the distributor will state, suggest or imply to the booking agent for the theatre chain that if the distributor's other less commercial products (i.e., coming

features) are booked into the theatres, the distributor will tend to be more favorably inclined to allow the theatre chain to exhibit the distributor's coming "blockbuster" on more favorable terms. Additional pressure is brought to bear by structuring the distributor/exhibitor deals so that the longer a film stays in a theatre, the greater portion of the box office proceeds is kept by the theatre. Of course, it's the "blockbusters" that have the longest staying power, thus, the exhibitors are under a great deal of economic pressure to do whatever the distributor wants so the exhibitor will get that next "blockbuster" film. Since this tactic accomplishes the same end as the illegal practice of block booking this "blockbuster strategy" is merely an evolved form of block booking, which is more difficult to prove.

**Women Are Among the Disadvantaged** – One of many groups that have traditionally appeared to be on the outside looking in with respect to the U.S. film industry is women. The following figures developed by Martha Lauzen, Ph.D., a professor at San Diego State University's School of Communication and published in an annual report called "The Celluloid Ceiling", illustrate this circumstance:

Nineteen percent (19%) of films released in 2005 employed no women directors, executive producers, producers, writers, cinematographers or editors.<sup>90]</sup>

Women accounted for only 7% of directors in 2005, representing a decline of 4 percentage points as compared with 11% in 2000.

A comparison of women's employment on the top 250 films in 2005 and 1998 shows that the percentages of women directors, writers, executive producers and cinematographers have declined, while the percentage of women producers has increased.

Women working behind the scenes influenced the number of on-screen women. When a program had no female creators, females accounted for 40% of all characters. However, when a program employed at least one woman creator, females comprised 45% of all characters.

In Academy Award history, only three female filmmakers have been nominated for best director award (Lina Wertmuller in 1977, Jane Campion in 1994 and Sofia Coppola in 2004). None have won.<sup>91</sup>

The gender equity problem in Hollywood continues today. According to Beatrice Verhoeven's January 12, 2017 report in *The Wrap* (a digital news organization covering the business of entertainment and media) there was a 22 percent decline in the number of top-grossing 2016 movies directed by women — a glaring fact that shows Hollywood continues to be resistant to change despite a groundswell of support for more gender equity in the industry.

Only 7 percent of directors of the top 250 domestic grossing films last year were women, down from 9 percent in 2015, according to the 19th annual Celluloid Ceiling report by Center for the Study of Women in Television and Film at San Diego State University. (While the difference is just 2 percentage points year over year, the drop in raw numbers is a more alarming 22 percent.)<sup>92</sup>

In an attempt to do something about these perceived inequities, some 38 film festivals operate throughout the world solely for the purpose of showing the work of women directors.<sup>93</sup> It remains to be

seen whether showcasing the films of women directors at film festivals will be enough (see “Lack of Diversity at the Top” below).

Other efforts are being made. Tara Veneruso, a Los Angeles based film editor and director helped to create a group called “First Weekenders”. The group sends an email to about 3,000 recipients every week, listing women-directed features being released that week. Veneruso reports that it is not always easy to find women-directed features every week and when they do, only about one in ten are woman-directed on any given weekend.<sup>94</sup>

Martha Lauzen reports further that while there are many great organizations that are active in seeking to improve the situation of women in the movie industry -- Women Make Movies, New York Women in Film and Television, Women In Film, Movies by Women and the Fund for Women Artists, there are no major, well-funded organizations to step up and say it's not acceptable that only 5% of directors in any given year are women.<sup>95</sup>

Lauzen also claims that groups representing minorities have fared slightly better. On the other hand, this is not an entirely accurate statement in the sense that the word “minorities” as used here and in the film industry generally does not include a very prominent national minority, or that small segment of this minority that actually was and continues to be able to maintain a clear majority in key positions in the film industry for more than 100 years. Again, the most accurate description of that segment of the national minority concerned is “politically liberal, not very religious, Jewish males of European heritage”<sup>96</sup> A majority of the top three studio executive positions have been held by members of this narrowly defined group throughout the history of the major studio/distributors, and it appears that a similar lack of diversity exists in the ranks of talent agents and entertainment attorneys, two of the most common professions from which studio executives are selected (see “Lack of Diversity at the Top” below) It may be fair to assume, if disadvantaged people in the film industry such as women and other “minorities” continue to play games and/or dance around this important issue of precisely who really controls Hollywood, there is little chance that significant change will ever occur.

Continuing along the same lines, in her article “Film Fatales – Shocking Statistics About Women in the Film Industry”, Jane Louise Boursaw goes on to cite the opinion of Cari Beauchamp, Hollywood historian and author of several books, including *Without Lying Down: Francis Marion and the Powerful Women of Early Hollywood* (Scribner, March 1997) and *Adventures of a Hollywood Secretary* (University of California Press, 2006). Boursaw points out that Beachamp claims that the phrase “white men” is the best way to describe those who dominate or control the Hollywood scene.<sup>97</sup> On the other hand, this description has the same fatal flaw that the phrase “the Jews” has, as used in “Hollywood is controlled by ‘the Jews’” (another false and misleading assertion).<sup>98</sup>

These statements are not only too general, they are also misleading. Neither of these statements are precise enough to avoid criticism of an entire class of people, many of whom do not have anything to do with Hollywood. It is just as accurate to say that “white men” do not control Hollywood and just as accurate to say that “the Jews” do not control Hollywood. In other words (as already noted), some people in this country apparently do not know the difference between the meanings of the words “some” and “all”.

This clarification should make it obvious that this small Hollywood control group is not representative of Jews generally, nor does it appear that they behave the way they do because they are

Jewish. It is more fair and probably more accurate to speculate (since that's all anyone can do with respect to the motives of others) that their motives are similar to the motives of many people around the world from all backgrounds, that is to say, they are principally motivated by greed and the desire for power – two very common human attributes across the board.<sup>99</sup>

If women and all other disenfranchised “minorities” want to claim their fair share of power in the Hollywood-based U.S. film industry, they must at least have the courage to accurately and precisely identify from whom that power must be taken.

**Studio Business Practices** – Major studio/distributors based in Hollywood have consistently engaged in hundreds of well-documented unfair, unethical, unconscionable, anti-competitive, predatory

and/or illegal business practices that permit the major studio oligopoly to dominate the domestic film marketplace and squeeze the films of independent producers off the available screens.<sup>100</sup>

As Troma Entertainment founder Lloyd Kaufman describes the overall mindset of the big-budget-movie industry: They've taken the crush-kill-destroy mentality of an action movie and made it their business model.”<sup>101</sup>

**Major Studio/Distributor Vertical Integration** – The major studio/distributors are actively involved at several levels of the film industry (i.e., they are involved in development, finance, production and distribution). This vertical integration creates a competitive advantage for the major studio/distributors when competing with other film companies that are not vertically integrated.

**Censorship is Alive and Well in Hollywood** – Even though an organization like the National Coalition Against Censorship exists and actively seeks to protect against censorship, the group does not appear to be aware that the Hollywood-based film industry is dominated by a very narrowly defined group of insiders whose views tend to censor the content of motion pictures and have done so for 100 years.<sup>102</sup> Most of the pro-Hollywood establishment observers and writers tend to limit their concept of censorship to government censorship, whereas, in truth, censorship can be exercised by anyone with the power to do so, whether through government authority, private corporate authority (possibly for commercial reasons) or through the private power controlled by individuals (exercised possibly for cultural reasons). Criticism of this latter form of censorship is seldom heard in Hollywood, partly because the privately held power is used to silence such dissent.



## Chapter 13 – HOLLYWOOD MYTHS AND MISINFORMATION

In addition to the series of myths associated with the business plan (discussed above), the advertising, promotion and publicity of the world's greatest PR machine, appears to include a considerable amount of misinformation and myth about the nature of film and the industry. As David McClintick stated Hollywood – its mores, its modus operandi, even its *raison d'être* – has been shrouded in myth since movies began and remains so today.<sup>103</sup> Some of these Hollywood myths (and the accompanying misinformation) are discussed below. It is fair to point out that this chapter is somewhat historical in the sense that most of this research was conducted some years ago during the mid-part of my 23 years in Hollywood. However, in most instances the same or similar myths and instances of misinformation continue to be disseminated by the Hollywood apologists today.

**The Industry is Very Different Today than During the Studio Era** – Although "Bordwell, Staiger, and Thompson, in *The Classical Hollywood Cinema* (1985), argue forcefully that 1960 was the 'end' of the studio system mode of production . . . "<sup>104</sup> and that the end of the studio system made a great impact on the way business is conducted in Hollywood, the research in support of this book series suggests that much too much has been made of that point. After all, most of the same major studios are still alive and well today and continue to dominate Hollywood movies in much the same way they did during the earlier period prior to the so-called "end" of the studio era. Even though, it is obvious that the major studio/distributors do not do everything in the same manner, however, those things that have changed are not so significant, at least with respect to the issues raised in this series of books, relating to who controls Hollywood, how they gained and maintain their control and what are the results of that control.

The widely held belief that the end of the studio era really affected those with power in Hollywood relative to most others who have never had power in Hollywood is another myth perpetuated by the industry and those who fail to apply any significant level of critical analysis to industry activities. As an example, it is one thing to point out that some power shifted from the studio executives to the agents following the demise of the so-called studio system, but of what relevance is that to the independent producer, the independent distributor, the vast majority of talent that cannot rely on agents to effectively represent them and the movie-going audiences around the world? Not much!

**The Industry Will Be Destroyed** – Paramount attorney Robert Draper said during the *Buchwald v Paramount* trial that Buchwald attorney Pierce O'Donnell " . . . who loves to sue movie studios, is leading Mr. Buchwald and all the other creative people in the industry – actors, directors, producers, writers and studio people – down a primrose path that would destroy the industry."<sup>105</sup> This is another film industry myth that is commonly trotted out whenever anyone criticizes the way business is conducted in Hollywood or threatens the Hollywood power structure in some way. Mr. Draper could not possibly believe that suing the major studio/distributors will destroy the industry. He could only honestly mean that those entities in

the industry that he prefers to work for (i.e., the major studio/distributors) might be destroyed or severely weakened if more and more courts are asked to review their business practices. On the other hand, the U.S. film industry itself would continue. It just might not be the same. Independent producers and distributors, would quickly fill whatever gap was created, if any, and the old entrenched insider group might not be able to skim off nearly as much of the movie revenues to the exclusion of other interests in the industry.

MPAA president Jack Valenti was also guilty of putting out the same kind of Hollywood establishment propaganda. For example, he once " . . . reiterated his call for the United States to tread very carefully in pending trade proposals and warned that the future of the country's copyright industries are at stake. Testifying before the Senate Judiciary Subcommittee on Patents, Copyrights and Trademarks . . . Valenti told lawmakers that America's most valuable export prizes face destruction without Congressional pressure and administration support for eliminating trade barriers. Valenti said . . . 'The future of this vast trade bounty is being put to risk by the ingenuity of international trade hazards, whose form has many shapes, but whose objective has one, and that is to exile, shrink or otherwise restrict the free and unhobbled movement of American intellectual property in too many countries of the world.'<sup>106</sup> Although Valenti's concern about foreign pirates stealing American intellectual property and copyrighted works without compensating their makers is valid, the Valenti warning about "destruction" of the industry, again, is just so much hyperbole. Besides, if we want foreign countries to play fair, we must also insist that our American companies play fair. The U.S. film industry as represented by the MPAA companies has a long history of utilizing anti-competitive practices in foreign countries in their relentless pursuit of excessive profits.

**Power In Hollywood Cannot be Transferred** – Charles Kipps also provides a rather misleading view of the transfer of power in Hollywood. He claims that " . . . in Hollywood, power has a . . . subtle basis. It is not seized by force nor can it be obtained by right of transfer. It must be cultivated over a long period of time."<sup>107</sup> This is nothing more than additional Hollywood establishment propaganda. As this book and its companion volume *The Feature Film Distribution Deal* demonstrate power in Hollywood has mostly been gained through unethical, unfair, anti-competitive, predatory and in some cases illegal business practices, and it has in fact been transferred from generation to generation by many of the same extended families, to the mostly politically liberal and not very religious Jewish males of European heritage. If Hollywood power cannot be transferred (i.e., retained in the hands of a small close-knit community in Hollywood) and the industry truly functioned as a free market economy, then power in Hollywood would have naturally become more dispersed throughout the industry's 100+ year history among the many other racial, ethnic, religious, cultural and regional groups that make up our diverse society.

**Hollywood Has Become More Fiscally Responsible** – Nicolas Kent provided us with another example of Hollywood misinformation in suggesting that " . . . when *Heaven's Gate*, a lavish western from the Academy Award-winning director of *The Deer Hunter*, Michael Cimino, went so far out of control that it forced United Artists out of business, fiscal responsibility

became the order of the day."<sup>108</sup> First, it is simply not true to state that the UA movie *Heaven's Gate* forced UA out of business. In truth director Michael Cimino's fiscal irresponsibility on *Heaven's Gate* merely encouraged a profitable sale of United Artists. It also is not accurate to suggest that fiscal responsibility became the order of the day among the major studio/distributors, following the *Heaven's Gate* debacle. It is absolutely foolish to suggest that the major studio/distributors have been fiscally responsible at any time in their history.

**It's Only Money** – Some of the Hollywood players also rationalize their schemes to deprive other people of the economic benefit of their work by stating that "[i]t's only money." They're expressing the view that the film business is merely a game, that many of the disputes that occur only relate to money and that is not important. The truth is that in most instances, the money being squabbled over represents several years of people's lives, expertise and efforts as well as their dreams, and that many of the film industry professionals whose rights are being trampled because "it's only money" end up with a drinking problem or some other dysfunction due to the dilemma they find themselves in, (i.e., they don't feel they can sue the distributor and still be able to get another job in this town, or in this industry).<sup>21</sup> In addition, the competition for money in the film industry also determines who gets to make future movies, who gets to hire the people who work on those movies, what scripts among the thousands available are selected to be produced, what ideas are communicated through such films and how many theatres will screen the film. It's not just about money, it's also about peoples lives and careers.

**But It's All True** – Quite often, spokespersons for the Hollywood establishment will respond to criticism by taking the position that the people places and things portrayed in their movies are accurate representations of people, places and things that actually exist. In other words, if a particular portrayal of a person is very negative, their defense is that there really are people like that. Or if a portrayal of an extremely violent event is included in a movie, their argument is that such things do occur in real life, therefore it is appropriate to put it on the screen. This argument, unfortunately, tends to focus on individual movies as opposed to the patterns of bias of concern in this series of books (see *Patterns of Bias in Hollywood Movies and Motion Picture Biographies*). In other words, it is irrelevant that people as portrayed in one or several movies actually exist, if the movies generally provide negative portrayals of some populations in our society and consistently portray other populations in a positive manner. It is even more offensive if the people who are consistently portrayed in a positive manner, at least more positive than those populations that are consistently negatively portrayed, are the cultural cousins of the same people who control Hollywood. Such a slanted pattern of bias then rises to the level of Hollywood propaganda (see *A Study in Motion Picture Propaganda*).

**Outsiders Are Inept** – Another myth underlying many statements about Hollywood is that outsiders do not know as much about the film industry as the insiders and therefore the

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<sup>21</sup> Additional discussion of the damaging effects of the Hollywood system on the health and welfare of those who participate is provided under the heading "Murder, Suicide and Other Forms of Hollywood Death" in *Legacy of the Hollywood Empire*.

outsiders cannot effectively run the major studio/distributors. For example, Peter Bart makes the statement that in " . . . the early 1980's, Disney had fallen into a corporate torpor under the management of Walt Disney's son-in-law, Ronald W. Miller."<sup>109</sup> Similar, if not worse statements have been made from time to time about the founders of United Artists, Joseph Kennedy, Howard Hughes, Kirk Kerkorian, Rupert Murdoch, Ted Turner, etc. This kind of statement is nothing more than insider propaganda directed against any outsiders who may temporarily gain a measure of power in Hollywood. This seems to be a common practice, that is to denigrate the efforts of the outsiders who come to Hollywood, to make such statements self-fulfilling prophecies by engaging in unfair, unethical, anti-competitive, predatory and illegal business practices, which, in the long term, force the outsiders out of business, so that they can be replaced with more Hollywood insiders. In this way, the myth is perpetuated and seems to be true.

**Films are Merely Entertainment** – The entertainment moguls have consistently misrepresented the nature of their business. They have repeatedly maintained that they are merely providing "entertainment", when in truth, every movie, song, radio show, television program, video and disc is, without question, in addition to hopefully being "entertainment", a form of communication, and as communication, each of these devices communicates ideas and messages. The perpetrators of the "it's only entertainment" myth are hoping no one will examine the film industry as closely as these books have, for fear the general public and the disenfranchised in the industry will come to realize what is really going on in Hollywood. Part of that reality is that the Hollywood insider community is using the feature film as a significant medium of communication to at the very least, tell their important cultural stories to the general exclusion of the important stories of other cultural groups (see discussion under the heading "Why It All Matters" in *Legacy of the Hollywood Empire*).

**Films Do Not Influence Behavior** – These same entertainment moguls are fond of saying, that there is no proof that the ideas and messages contained in their various forms of so-called "entertainment" influence behavior or are harmful to anyone. On the other hand, parents only have to stop and think about how many times they have asked themselves the question: "Where did my child come up with that idea, that language or model for behavior?" to know that somebody besides the parents, the schools and churches are influencing the daily behavior of their own children. In addition, isn't it odd that the entertainment industry pays millions to advertise and promote their products based on the assumption that such advertising will influence people to pay money for those same products while denying that other forms of communication besides advertising can have any effect on human behavior? The motion picture industry is also guilty of taking the embarrassing position that movies do not influence the behavior of people while accepting hundreds of thousands of dollars for products which appear in such movies, again based on the proven assumption that such "movie product placements" actually result in significant increases in sales for such products. Finally, on this point, no person who is even slightly aware of the development of Western civilization (or other human cultures or societies) can honestly deny the power of an idea. We all know and recognize that ideas are powerful. And since, again, all of the above mentioned media communicate ideas, only the intellectually dishonest "entertainment moguls" can espouse the position that their "entertainment" does not

influence behavior (see discussion at "Movies Influence People" in *Legacy of the Hollywood Empire*).

**Parents Alone Are Responsible for What Their Children Think** – These same entertainment moguls also argue that it is the parents' responsibility to see that their children do not listen or watch any of these various forms of entertainment/communication that the parents' deem offensive or inappropriate for their children. But the "entertainment moguls" know full well that a parent taking such a position is put in an extremely awkward position with respect to the oftentimes delicate relationship with their child, and short of adopting the isolation practiced by the Amish, parents are in fact not very likely to be successful in preventing their children from being exposed to pervasive mass media messages and/or influences.

**The Public Votes With Its Pocketbook** – Next the entertainment moguls argue that they are just giving the American public the kind of "entertainment" they want to see and pay for. On the other hand, as stated above, the people who make this argument control the world's most powerful "PR" machine. They are experts at misleading the American public about what they are about to see or hear on the movie screen and other media. To demonstrate this, you only need to ask yourself how many times have you gone to a movie you thought you wanted to see (based on the advertisements for the movie) and been disappointed because the movie turned out to be something very different or certainly less than advertised. Thus, it is hardly honest to argue that people only go to movies they like. It is more accurate to say that people go to see movies they are tricked into thinking they will like. A significant portion of the box office gross for movies is money moviegoers would take back if offered a money-back guarantee.

**Movies Merely Reflect Society** – Film industry marketing consultant Richard Lederer offers the opinion that "[t]o some degree, the contemporary audience dictates the type of film Hollywood will produce. It is sad but true . . ." Lederer claims, ". . . that movies have always been an imitative--not an innovative--industry."<sup>110</sup> As we shall see, it is entirely incorrect to assert that movies ". . . have always been imitative . . ." It would be more accurate to say movies are sometimes imitative but on other occasions, movies are innovative. Hortense Powdermaker knew and stated as much more than 60 years ago, saying: "Hollywood is no mirror-like reflection of our society, which is characterized by a larger number of conflicting patterns of behavior and values. Hollywood has emphasized some, to the exclusion of others."<sup>111</sup> Powdermaker also said, that "Hollywood is . . . not a reflection, but a caricature of selected contemporary tendencies . . ."<sup>112</sup>

In their ongoing effort to avoid responsibility, the "entertainment moguls" continue to argue, however, that their movies merely reflect the state of our society. To test this argument, a small number of teens who lived in the presumably violent city of Los Angeles, were asked how many murders they had seen in real life. They all said "none". They were then asked how many murders they had seen in movies and on television, and the estimate was somewhere in the many thousands. If other parents would try this simple little test, the vast majority would get similar results. That demonstrates that movies and television do not actually reflect the real world

for most people, but rather that the entertainment moguls choose to emphasize and exaggerate some of the more outlandish aspects of our society just to attract the gawkers.

**You Are Violating Our Right to Free Speech** – Another knee-jerk reaction from the "entertainment industry" whenever anyone criticizes their work product is that we are violating their First Amendment rights to free speech. The free speech argument only applies to those film industry critics who are telling the film industry that it must change the content of its movies. Those are not the remedies suggested in this series of books (see *Motion Picture Industry Reform*).

This series of books takes the position that the Hollywood control group gained and has maintained its power for the 100+ year history of the Hollywood-based U.S. film industry by utilizing unfair, unethical, anti-competitive, predatory and, in some case, illegal business practices. This series further contends that if the U.S. antitrust laws and employment discrimination, among others, were vigorously enforced in the film industry, the result would be greater diversity at all levels in the industry, and that such diversity would result in greater opportunities for all segments of our society to tell their important cultural stories through this significant medium for the communication of ideas.

**The Film Industry Is Important to Our Economy** – The film moguls are also fond of pointing out that the U.S. film industry is one of the nation's most important exporters, (i.e., the industry brings in a significant amount of revenues based on its exports to other countries). On the other hand, if a substantial amount of the money brought to the U.S. by the film industry is spent bringing in immigrants from other countries for the purpose of taking away jobs from perfectly capable people already here, paying excessive salaries to studio executives, actors, actresses, writers, directors, agents and entertainment attorneys, making contributions through political action committees and otherwise to political candidates that help the major studios maintain their control over the industry, pursuing a decidedly liberal political agenda through film, and making charitable contributions to causes favored by the Hollywood insiders at home and abroad, why is it so great that the industry generates such a high level of exports? Who does it benefit other than the Hollywood insiders? Only a very narrow cross-section of American society actually benefits from those income revenues generated by Hollywood's exports.

**The Censorship Smokescreen** – The "entertainment moguls" also routinely put forth the "straw-man" argument relating to censorship (i.e., misstatements or exaggerations of the arguments of the opposing side which are easily toppled), by suggesting that the only available remedy favored by industry critics is some form of government censorship. The real reason such an argument is generally put forth by the industry establishment is that the censorship remedy is easily refuted by the "entertainment moguls" since hardly anyone seriously supports it, and that is exactly why it is mentioned in most of the articles spewed out by the "entertainment industry". The censorship argument is a smokescreen at best (see the discussion regarding censorship as a remedy in *Motion Picture Industry Reform*).

**We're Different** – Most people who have worked in the film industry for any length of time are quite aware of the general reputation of the major studio/distributors for oppressive tactics. Often, for example, distributor representatives will make oral representations early in discussions with producers that their distribution organization is not typical of other feature film distributors, (i.e., suggesting indirectly that they do not conduct their activities in a manner substantially characterized as described in this book and its companion volume *The Feature Film Distribution Deal*). The proof of such self-serving descriptions, should lie in the actual conduct of the distributor over a period of time and in a consistent pattern of behavior which avoids much of the above-described business practices. On the other hand, if you are ever sitting around a table with a group of independent producers (or chatting with them at an industry seminar) and ask if any of them knows of an honest distributor, (and that exact question has been put to thousands of such producers in seminar settings for the past twenty years), you are likely to get the same answers, (i.e., no one has yet stepped forward with the identification of or a favorable recommendation on a distributor who distributed their film).

**Academy Awards Are Primarily Designed to Recognize the Deserving** – Although still the most coveted film award, . . . the aura of the Oscar has become increasingly tainted. Since the 1960s the voting system has been under fire by members of the industry and outside critics as being influenced more by publicity and sentiment than by actual quality and merit."<sup>113</sup> In addition, commercial considerations appear to play a huge rule in the selection process. As David Prindle reports, " . . . the winners of the Academy Award for best picture garnered an additional \$30 million at the box office (adjusted for inflation) after the ceremonies (during the '80s)."<sup>114</sup> And Steven Bach reports that " . . . the Oscar wins caused *Deer Hunter* box-office receipts to rise \$100,000 a day in the New York area alone."<sup>115</sup> While the *Katz Film Encyclopedia* provides a more conservative estimate of the value of an Oscar, (i.e., a " . . . best picture award can be worth tens of millions of dollars"<sup>116</sup> more at the box office . . . ), these numbers bring into question the expensive promotional campaigns waged by the studios on behalf of their films and the motives of those voting. On the down side, *Variety* reports that " . . . nominee losers (at the Academy Awards) often experience a sudden skid the following weekend at the box office."<sup>117</sup>

One of the more puzzling of motion picture industry phenomena is the rather common occurrence at the annual Academy Awards for independently produced films to win a disproportionate share of the more important awards, (e.g., best picture, best director, best actor, best actress, best screenplay, etc.), particularly since many of those same award-winning films are not as commercially successful as many of the films produced by the major studio/distributors. Some industry observers would quickly dismiss that anomaly as the result of differences between movies that are targeted for the large mass audience (commercial product) and those that are designed to be small films tailored for a limited but more discriminating audience (not commercial). Another factor in how well these two categories of films are received at the box office may have nothing to do with whether such pictures are quality award winners or merely commercial, but have more to do with which distributors have the market power to get their films shown at theatres, to spend the money to advertise and promote their pictures and the leverage to

collect film rentals from exhibitors. Besides, the more artistic award-winning independently produced films, after receiving all of the free publicity and promotion associated with the Academy Awards, are suddenly now more "commercial" and those distributed by the major/studio distributors before the awards can be re-released (or continued in release) to take advantage of their new profit-making potential.

**Distributor Rentals Are About Half of the Box-Office Gross** – In the Jason Squire book, entertainment attorney Peter Dekom is quoted repeating an old industry rule of thumb, that distributor " . . . rentals are about half of box-office (gross) . . . "118 Entertainment attorney Mark Litwak repeats the myth in his more recent book on *Dealmaking*, saying "[g]enerally, exhibitors retain about half of the box office receipts and pay the other half as rental payments."<sup>119</sup>

That portion of a film's box office receipts that are paid to the distributor by the exhibitor is referred to as distributor rentals. It is typically calculated based on negotiated percentages of the exhibitor's net (and in the alternative percentages of box office gross). Exhibitor's net is arrived at by deducting the exhibitor's expenses (contractual theatre overhead) from the box office gross. While the major studio/distributors are able to extract distribution terms for a major motion picture which calls for the payment of as much as 90% of the exhibitor's net (or 70% of box office receipts; whichever is greater) during the film's initial week or two of release, the range is quite wide indeed, varying from as low as 25% to as high 65% over the entire run of the film. The average film rental ratio for MPAA releases is about 43%. In any case, the industry rule of thumb of 50% is likely to be very misleading if utilized in any calculations relating to a film's prospective revenue stream.

**The Film Industry is a Risky Business** – Film industry executives have been able to persuade David Prindle to perpetuate the myth that the entertainment industry is the "Riskiest Business". He states that the " . . . Hollywood entertainment industry is a business whose product is art . . . a less-than-ideal object of commerce . . . although it is fairly easy to gauge the market for . . . movies in general, it is nearly impossible to do so for a particular artistic product . . . successful screen art is nearly impossible to replicate . . . firms can reproduce a successful product nearly indefinitely. Not so with entertainment . . . Much of what Hollywood does can be interpreted as a series of strategies to replicate the unreplicable . . . the difficulty of predicting public tastes and the impossibility of exactly duplicating a hit – make the enterprise of producing film and television extraordinarily risky."<sup>120</sup> Prindle goes on to say that "[a] consequence of the high risk inherent in the business is the rate of failure. Most ideas for films never make it to celluloid: the few that are produced often lose money."<sup>121</sup>

Entertainment attorney Peter Dekom seems to agree, saying that the " . . . profit margins in the motion picture business are coming down . . . Everyone knows that the motion picture business is risky . . . "122 Joseph Phillips echoes the industry refrain by stating that "[i]t is clear that the risk of financial loss in producing commercial films is great . . . " As further support Phillips cites the fact that " . . . Joseph E. Levine, president of Avco-Embassy, (stated in 1974) . . . that only 'one out of 20 pictures makes it now' compared with pre-TV days when 'nine out of ten



earned money."<sup>123</sup> Director Steven Spielberg even joins the industry chorus, saying that "[a]ll motion pictures are a gamble. Anything having to do with creating something that nobody's seen before, and showing it, and counting on 10 or 20 million people, individuals, to go into the theater to make or break that films – that's a gamble."<sup>124</sup>

Paramount even made the so-called "risky business" argument in the Buchwald case. However, the ". . . court . . . never reached the merit of (the) . . . argument because the studio abandoned its 'risky business' defense – that its net profit formula is justified by the nature of the film business – a month and a half before the date of the (court's) decision."<sup>125</sup> Commentators speculated that Paramount executives felt the company might be compelled to reveal additional details of its financial activities if it maintained the "risky business" position.

Jason Squire also has apparently accepted this Hollywood myth or misinformation because he states that ". . . the high risk inherent in the business points to why conservative capital has historically shied away from the motion picture investment although control of motion picture companies has always been attractive to a broad spectrum of players."<sup>126</sup> Unfortunately, Squire simply seems to accept the industry myth that it is risky without exploring the many other possible reasons why "conservative capital has historically shied away from the motion picture investment . . ." as this book does. In addition, it is one thing to say that ". . . control of motion picture companies has always been attractive to a broad spectrum of players . . ." but it is quite another thing to suggest that ". . . a broad spectrum of players . . ." has been able to succeed as "players" in the U.S. film industry. As the material in this book attests, that would simply not be an accurate statement (see discussion of "The Hollywood Outsiders" in Chapter 1 of the *Hollywood Wars* book).

On the other hand, Rudy Petersdorf testifying in the Buchwald v Paramount case refuted the studio's "risky business" defense saying that ". . . there were still sufficient sources of revenue so that an unsuccessful picture at the box office (in domestic theatrical release) would recover most of the studio's investment from sources such as network television, syndication and foreign. So even pictures which were way down on the list in terms of performance at the box office generated enough money to recover the studio's cash outlay and perhaps even make some money for the studio."<sup>127</sup> Furthermore, if the film business was such a risky business more of the major studio/distributors would have gone under during the past century. In truth, it would be more accurate to say that the film industry is a risky business for everybody but the major studio/distributors precisely because of the business practices utilized by these major studio/distributors which in turn make it difficult for anyone else to financially succeed in the business.

**Winners Must Pay for Losers** – In his testimony in the Buchwald v Paramount case, studio executive Ned Tanen stated that "[i]f one screenplay out of fifteen or eighteen is ever made into a movie, it's par for the course at a major company . . . It's basically a development business and most of the projects you develop do not get made . . . Winners (pay) . . . for losers . . . That was how it had to be in such a risky, speculative and incredibly expensive business. If the

studios didn't take the biggest chunk of change from (the blockbusters) . . . other movies might not get developed at all."<sup>128</sup> Thus, Paramount " . . . tried to support its view that producing films is a risky venture, which requires that winners subsidize losers . . . " As evidence, the studio presented " . . . the court with the following limited information: of the ninety films released between 1978 and 1982, only thirty-four were profitable for Paramount and five of these contributed to more than fifty percent of the profits earned on all of the successful pictures during that period . . . "<sup>129</sup> As noted above, the studio eventually dropped this argument, " . . . presumably because Paramount did not want to . . . allow a court-appointed accounting expert to examine its books and records."<sup>130</sup>

As Adam Marcus reported, " . . . the principal rationale underlying the motion picture industry's accounting system (is) . . . that most films are financial failures and that as a result, the successes must compensate for the failures."<sup>131</sup> Producer Art Linson agrees, saying that "[f]ewer than one out of ten movies really make significant money and are perceived as hits. Fewer than one out of twenty are perceived as good movies."<sup>132</sup> And as Mel Sattler explains the theory, "[t]he main rationale offered by Paramount (in the Buchwald case) for the standard net profit contract is what Sattler referred to as the 'fundamental economic underpinning' of the motion picture business: 'a studio must recoup not only its investment in a successful motion picture, but also sufficient additional revenues therefrom to cover the studio's unrecouped investment on its unsuccessful motion pictures, its ongoing development program, its distribution organization, and to finance its slate of future motion pictures.'"<sup>133</sup>

This "fundamental economic underpinning" of the motion picture business is a fraud because the films that are being taken from in many instances are independently produced films, the reported distributor expenses are hopelessly inflated, the distributor utilizes hundreds of business practices (as set forth above and in *The Feature Film Distribution Deal* ) to shift monies from the revenue streams of independent films to the revenue streams of its own product, etc. In addition, as O'Donnell and McDougal point out, Paramount and other studios have substantially reduced their financial risk in movie-making by means of off balance sheet financing, co-financing and other programs by which outside investors contribute some or all of the money for producing and/or distributing the films.<sup>134</sup>

Paramount actually defended itself in the Buchwald lawsuit by saying " . . . the contract was clear and unambiguous and (talent) . . . knew exactly what they were getting when they signed on the dotted line . . . Movies are a risky business . . . 'winners must pay for losers.' If blockbusters did not subsidize the many money-losing movies studios made, the movie industry would not survive."<sup>135</sup> Now there's a familiar argument: " . . . the movie industry would not survive . . . " Again, the major studios are saying that if you don't let us keep our books in our usual and customary manner, which allows us to take money from the revenue streams of some movies and transfer it to other movies, the entire industry will not survive. Again, it is not a question of whether the industry will survive, but what entities within the industry will survive and at who's expense. Paramount, on behalf of all of the major studio/distributors was really saying that it would be much more difficult for the major studio/distributors to make as much

money as they have been making (so they could continue to pay the exorbitant executive and talent compensation, along with the political contributions that keep the investigators away) if the court does not allow them to continue handling their accounting in their own unique way (i.e, making the winners pay for the losers). As stated earlier, in the event any or all of the major studios failed tomorrow, they would immediately be replaced by independent producers and distributors. In the meantime, it continues to be blatantly false to suggest that the ". . . movie industry would not survive."

In addition, Prindle actually comes back to question his own conclusion asking, "If Hollywood entertainment is such a risky business, how do so many firms manage to prosper for so long?"<sup>136</sup> He then points out that ". . . Universal has been functioning, in one corporate form or another, since 1909; Paramount, since 1912; and Warner Brothers, since 1918 . . ." The short answer (Prindle suggests) . . . is . . . They deal in bulk . . . The long-term gamblers in the industry thus hedge their bets by spreading the action (spreading the risk)."<sup>137</sup> The real answer this book suggests is that the business is not that risky for a few of the top companies, that have regularly engaged in unfair, unethical, anti-competitive, predatory and even illegal business practices. In other words, much of the money the major studio/distributors take from their so-called "winners" actually should be paid to someone else, and in many instances, the "losers" would not be financial losers at all if it were not for the routine manipulation of financial results associated with such films.

While producer Don Simpson was at Paramount he reported that the studio ". . . made thirty-seven profitable movies in a row. 'The truth is (says Simpson) that with ancillary sales . . . very few pictures lose money . . . Most break even. If you're making a picture for between seven and ten [million dollars], you don't lose money. The studio can't lose. I've been at Paramount for eleven years, and I can only remember two pictures losing money . . . We always got our money back. [even on] *Reds*, the budget of which I can't reveal [reportedly more than \$35 million], we got our money back before the picture opened. Absolutely. People don't understand how this business works. You go out and get guarantees . . . [The misconceptions] are all publicity shit . . . [The studios] try to make *Time* and *Newsweek* believe in the poor beleaguered movie business."<sup>138</sup> The great Hollywood PR machine is at it again!

As Peter Bart stated, "[i]f a serious economist every tried to analyze the arcane ways of Hollywood, a nervous breakdown might quickly overtake him. Examine the inverse relationship between profitability and capital investment, for example. In the 'real world', new investment tends to decline in response to shrinking margins. In Hollywood, on the other hand, when times get tough, new investors always seem to rush into the fray . . ." <sup>139</sup> What this really means, is that some of the people coming into the industry at the highest levels, like Edgar Bronfman and Sumner Redstone, know that the numbers the industry presents to government regulators and the public simply do not accurately reflect the real profitability of the film business. In other situations, it means that Hollywood has gone out into the market and misled outside investors into thinking it is ok to invest in the film business.

**The Distributor Takes All The Risk** – According to Joseph Phillips and others in the industry, "[t]he distributor, usually a major film company, is typically the one who takes the risk."<sup>140</sup> He goes on to state that "[a]lthough the distributor often tries to spread the risk by bringing in outside investors who underwrite a share of the costs and who participate in any profits, it is the financial backing and the agreement to distribute the finished film by the major film company which is crucial."<sup>141</sup>

Attorney Mark Litwak also echoes this distributor argument, saying that "[d]efenders of the major studios point out that the studios bear all the financial risks of making movies and therefore deserve the lion's share of revenues."<sup>142</sup> The operative word here is "share". After all, profit participation auditors report that the major studios typically only share revenues in about 5% of the cases.<sup>143</sup>

Both the Phillips and the Litwak statements above are overlooking some very fundamental aspects of film finance and its associated risk (1) independent producers and their financiers often assume the financial risks associated with acquisition, development and production costs on film projects, many of which are eventually distributed by the major studio/distributors, who only have their distribution costs at risk; (2) in a few situations each year, the independent producers and their financiers, actually assume some or all of the additional financial risk of covering the distribution expenses; and (3) in many instances, the major studio/distributors spread their risk by bringing in other financial partners on specific film projects. In any case, there are few films on which the major studio/distributors take all of the risk, financial or otherwise.

**Too Much Financial Leverage Caused Most Film Company Failures** – Some industry observers point out that the extensive use of financial leverage was not part of the business culture prior to the 1970's and suggest that most failures of feature film production companies are associated with excessive use of financial leverage. Financial leverage, is a term which refers to the amount of debt a company has in relation to its equity. The more long-term debt the company has, the greater the financial leverage. Such analysts point to improper financial management (e.g., increasing debt during good times, rather than decreasing debt) as one of several related reasons for such failures. Other reasons cited include the failure to use sophisticated computerized financial modeling on a continuous basis and the abandonment of successful actions (while substituting new, untried ideas, without first piloting them with limited financial commitments).

In contrast, this book suggests that improper financial management may be somewhat irrelevant (or at least, not the more important problem) in an industry that is so dominated by a few major players who have long-standing reputations for engaging in numerous questionable business practices. In other words, this book is suggesting that there are other reasons for the demise of such companies and that the author who suggested that financial leverage was the primary cause of those company failures was actually hoping to generate business for his

financial consulting practice, and therefore his analysis of the causes of those film company failures was clouded with self-interest, just as many other transactions in the film industry are.

**Their Movies Were Just No Good** – The film industry also likes to perpetuate the myth that the single most important reason for company failures in the film industry is that the choices made by failed film companies with respect to the movies they chose to develop, produce or distribute were not good choices, that is the films were not well received by the movie-going public. Such a misleading argument overlooks all of the rest of the questions about the way the major studio/distributors conduct their business that are raised in this book (and its companion volume *The Feature Film Distribution Deal*), including the so-called theatrical squeeze, the settlement transaction and home video royalties (see related discussions herein).

**Well Known People Know What They Are Doing** – Name dropping means including the names of very important people in a conversation or other communication for the purpose of impressing the person receiving the communication. The name dropping tactic is not only used in social conversations but in business conversation including the presentation of film industry seminars, book promotion and, of course, in film publicity. Some financial analysts also suggest the tactic was successfully used by the large public feature film limited partnership offerings in the '80s and '90s which raised monies for films produced and distributed by some of the major studio/distributors with well-known stars (Star Partners with MGM/UA and Silver Screen by Disney). Investors appeared to be more willing to invest in such vehicles even though the performance record of such large major-studio offerings was consistently dismal from an investment perspective. The disappointing performance of such film partnerships from the investor perspective has also contributed to the perception that feature film limited partnerships, generally, are not useful financing vehicles for motion pictures. The truth is that the actual final financing vehicle generally has little to do with the financial results, for outside investors. Distributor business practices, on the other hand, have a great deal to do with those results, and those distributor practices do not change regardless of which financing vehicle is used to raise production funds.

**There Are No Rules** – One of the most commonly held myths among some populations within the Hollywood community, is a myth often repeated by so-called industry insiders in speeches, lectures and seminars (i.e., "There are no rules."). This belief probably started out as a positive expression that newcomers to the industry should not be held back by conventions relating to creative endeavors. It has (as evidenced by the distributor practices related in these books), been perverted by some to mean that the Hollywood community is different from all other "commercial worlds" and the usual rules do not apply. As an example, screenwriter, author William Goldman repeats the myth, saying, ". . . there are no rules." But we can at least assume he is talking about writing scripts.<sup>144</sup> Unfortunately, he goes on to say that "[t]here are no concrete rules here any more than anyplace else in the movie business."<sup>145</sup> Also, Paul Rosenfield points out that Sylvester Stallone is a hero of the Hollywood insiders club ". . . because of *Rocky* . . ." In other words, according to Rosenfield, Stallone and *Rocky* ". . . reassures the club that it's okay to do anything to win."<sup>146</sup>

Nicholas Kent also states in his book that "[t]here are no rules in Hollywood . . . "147 then goes on to explain that " . . . because (movie people) . . . are 'artists', it seems they tend to consider themselves immune from the bounds that restrain other people. They live in a world apart, subject to their own laws, their own sense of right and wrong."148 If that is the case, then Hollywood would be a great place to be an investigator for the IRS, the U.S. Justice Department, the FTC, the EEOC, the local District Attorney, the Wall Street Journal or the trade press, if you were authorized to go after the famous and powerful.

Fine Line Features president Ira Deutchman offered the statement that "[t]he movie business is a business where there are no rules . . . " then actually contradicts himself by saying that " . . . the minute you think you've learned the rules, they change on you . . . "149 In David McClintick's book the following exchange re Hollywood is related: "It's as if Watergate never happened out here," Berte Hirschfield (wife of Alan Hirschfield) is reported to have said to David Geffen, "It's as if this town (Hollywood) were an island that doesn't have to live by the rules of civilized society." "It isn't an island, but it is a very seductive community which changes the perceptions of many people who live here . . . " Geffen reportedly replied.<sup>150</sup>

During a " . . . day-long symposium on sexual harassment in the workplace held at the Directors Guild . . . " on October 31, 1993, Sony Pictures Entertainment labor counsel Jennifer A. Rubin stated that "Hollywood is not exempt from the laws that everyone else lives by and is one of the worst offenders . . . "151 On the other hand, Peter Bart reported as recently as September 1994, that in " . . . some cases, to be sure, companies simply ignore the contracts and invent their own rules."<sup>152</sup>

The people who are making the statement "[t]here are no rules" or some reasonable facsimile, may in reality be saying, "[w]e know there are rules, but we are not going to abide by them because we know that no one who wants to stay in the film business will complain and even if they do, their remedies are woefully inadequate." In other words, "[w]e don't abide by the rules, because we have been able to get away with it for years and continue to do so today." At some point, this part of the Hollywood community needs to be reminded that the anti-trust laws, securities laws, tax laws, employment discrimination laws, contract provisions and criminal laws still apply to their conduct.

**Film Schools Would Not Offer Film Courses if There Were No Need** – There are a large number of colleges and universities in the U.S. offering courses or degree programs in film. Some of the better known film schools include New York University, the University of Southern California and the University of California at Los Angeles. The *American Film* magazine reported a few years ago that these film-study programs across the U.S. graduate some 26,000 students each year, but that only 5% to 10% of those graduates actually end up making a living in their chosen field. Is it possible that both the industry and the film schools are actively misrepresenting the promise of career opportunities in the film industry; that they are misleading some 23,400 individuals annually and persuading them to pretty much waste their undergraduate studies on subjects which are not likely to be of much value in their lives? And does anyone

recognize that the film industry actually has a self-serving reason for actively or passively encouraging this fraud on unsuspecting students? After all, a significant number of people entering the film industry for the first year wind up having to work as interns for little or no pay just to get some experience, and such a system is merely a clever variation on slavery.

As David Prindle, a college level government instructor, points out, ". . . the director who yearns to create a cinematic masterpiece may work for years, or even for an entire career, shooting insurance commercials or daytime soap operas. But this well-known fact does not discourage ever-increasing numbers of students from enrolling in directing classes at universities."<sup>153</sup> On the other hand, if this "fact" is so well-known, it would seem that the colleges and universities themselves (and/or the industry) should take the responsible step and refuse to allow so many young, immature and unsophisticated students from making the mistake of studying and training for a career they are not likely to have.

In point of fact, I have received only limited support for the positions I have taken over the years relative to Hollywood, from college and university academics, not, in my opinion, because those in the academic community are necessarily right and I'm wrong, but because they, like so many others in the film community are afraid to speak out. Many of them actually worked in Hollywood at one time, or still hope to get a film project off the ground. A lot of them left Hollywood because of the same difficulties I write about in my books. But their prevailing attitude is that if you are honest with film students and tell them about the reality of Hollywood, that may discourage them from pursuing film careers, and as a result, that may eventually mean the loss of one or more teaching jobs, or the closing of a film school. So for many of our film school teachers, it's all about self-preservation, not about seeking out the truth. In effect, the great majority of our film school instructors and administrators are teaching, training and encouraging students to work in a corrupt industry, without providing the students with adequate warning, or the tools to cope.

**Acting Opportunities Abound** – Prindle expressed the opinion that in most industries, the supply of workers adjusts over time to the number of available jobs. In the language of economists, labor markets tend toward equilibrium. Not so in Hollywood. Since the 1920s, hordes of people have converged on Los Angeles, attracted both by the hope of realizing themselves in cinematic expression and by the possibility of striking it rich. Prindle went on to report that the official unemployment rate among members of the Screen Actors Guild was about 85 percent (that figure does not even count the ambitious amateurs who have not been able to acquire a union card). In other words, according to Prindle, the film industry does not conform to rational economic models of how labor markets work, but is in permanent disequilibrium.<sup>154</sup>

**There is No Racial Discrimination in Script Selection** – Herb Steinberg, spokesman for the major studios was quoted by Prindle as saying, that the authors of scripts are usually identified to readers only by the name on the cover and that if an executive or producer picks a script written by a white male, it is because, without being identified as such, the white male did the best job.<sup>155</sup> Unfortunately, Herb Steinberg is not telling us the whole truth with regard to

script selection, after all, studio readers do not select the scripts that are going to be developed, and certainly do not select the scripts to be produced into movies. Readers merely perform a very preliminary screening service by reading and reporting on the thousands of script submissions, so the studio executives will not be burdened with the responsibility of reading such an overwhelming number of scripts. Thus, the studio executives, only read those scripts that appear to be the most favored by the readers or those that are recommended by known and trusted sources (agents, attorneys, etc.).

Also, there are no available statistics on which sources initiate the most actual productions. In addition, if a script looks promising, someone within Hollywood's inner circle has to have a meeting with the script writer and/or his or her agent to talk terms, development possibilities and to determine whether the script writer will be involved in future writing on the project. In any case, by the time and before a script is actually selected for development or production, you can be certain that the full identity of the scriptwriter is known to the studio executive recommending the choice in the vast majority of the cases. Thus, Steinberg's representation above is disingenuous, at best. It is fair then to ask the question, why would Herb Steinberg make such a misleading statement? Based on the research on the industry underlying this series of books, the probable answer is that most of the scripts actually produced are written or co-written by the family, friends or associates of the Hollywood insiders who have an interest in misleading the public about the fairness of the system.

**The Film Industry Operates in a Free Market** – Film industry insiders commonly suggest that business in Hollywood is conducted in accordance with long established free market principles, (i.e., free market forces are primarily responsible for prices, availability, etc). As Professor Noam Chomsky, points out however, (in reference to the general U.S. economy) talk about a free market at this point is something of a joke. Chomsky goes on to point out that one alternative to the free market system is the one we already have, because we often don't rely on the market where powerful interests would be damaged. Our actual economic policy is a mixture of protectionist, interventionist, free market and liberal measures. And it's directed primarily to the needs of those who implement social policy, who are mostly the wealthy and the powerful.<sup>156</sup> The same is true of the U.S. film industry (i.e., talk of a free market at this point is something of a joke).

In its own brochure, the MPAA talks about wanting a free market. There it states that the MPAA/MPEAA wants nothing more than a free, open and fair marketplace where their stories on film and tape can compete honestly with all others.<sup>157</sup> And specifically with respect to foreign trade, MPAA leaders make the specious argument that all the U.S. film industry asks is to have the same freedom of movement in other countries that foreign businessmen find so alluring and seductive in the U.S.<sup>158</sup> Both of these references are actually directed toward keeping markets free in foreign territories, so that U.S. film and video product will not be prevented from taking over the local market to the exclusion of locally produced films and videos. The statement does not apply to the domestic marketplace, where the power and dominance of the major studio/distributors has never been effectively challenged in the 100 plus year reign of the



Hollywood majors. Thus, what the MPAA is really saying is that the MPAA does not want a free market in the domestic marketplace, it merely wants an opportunity to dominate the foreign territories just as it does in the U.S.

A true free enterprise system is an economy structured around unfettered choice, (i.e., businesses are free to choose what products they will make, consumers are free to choose what they will buy and prices are generally left to fluctuate with supply and demand in an openly competitive market). Free enterprise has traditionally been one of the basic underlying economic principles of the U.S. economy. Unfortunately, it has long been established that businesses with the power to do so, if not limited by government, will use predatory practices, unfair business practices, anti-competitive practices, unethical practices, etc. to gain a competitive edge over some competitors, often to the detriment of the consuming public. These latter phrases appear to more accurately describe the U.S. film industry than "free enterprise".

A Paramount spokesman in the *Buchwald v Paramount* case admitted, for example, that the MPAA companies could do business any number of different ways. They could try to negotiate a better split with the theater owners and add more revenues. They could pay gross participants less. They could pay studio executives less. Shareholders could settle for less dividends.<sup>159</sup> In addition, studio executives, stars, agents and the insider entertainment attorneys could accept less money for their services, agency and attorney packaging could be frowned upon as unethical (at least), distributors could demand that exhibitors settle pursuant to the terms of the original contract following a film's run, and so forth. But none of those things typically happen. Hollywood chooses to conduct its business the way it does, because it has the power to do so, and the great imbalance in power as between parties, in most instances removes the free choice characteristic of a free market.

**We're Honest in Expressing Our Views of the Film Industry Critics** – After Michael Medved's book came out in 1992, *Time's* Richard Corliss wrote: "[t]here's a lot to criticize in grimy popular culture, (but) critic Michael Medved is the wrong man for the job . . . Instead of just isolating a disturbing tendency in pop culture, he is compelled to document it with suspicious statistics, to draw conspiratorial conclusions, to call for a return in spirit to the movies' puritanical Production Code of the 1930s . . ." <sup>160</sup> Peter Biskind, writing in *Premiere* magazine called Michael Medved's book *Hollywood vs. America* " . . . simplistic . . . repellent and ill-argued . . ." <sup>161</sup> Variety's Peter Bart on Medved's book: " . . . the tome provides a chilling glimpse of what happens when a humorless, authoritarian mind is inundated by the noise of pop culture . . . the book reads instead like a nervous breakdown set in type." <sup>162</sup>

In defense of Medved, he did not suggest a conspiracy, nor did he " . . . call for a return in spirit to the movies' puritanical Production Code of the 1930s . . ." Such misstatements of the truth appeared regularly in the Hollywood trade press following the publication of Medved's book, and appear to be just another example of how mean-spirited, dishonest and malicious the Hollywood insiders' counter-attacks can be. The well-orchestrated attack on Medved's credibility

is typical of the way Hollywood treats outsiders, or, in Medved's case, a fellow Jewish male who happens to be very religious, and who also recognizes much of what is wrong with Hollywood.

Medved also had to defend himself in March of 1992 " . . . against colleagues' criticism that his objectivity has been compromised by his acknowledged relationships with Hollywood studios." Medved had apparently done " . . . script work for two film studios . . . " although he said " . . . he hadn't been paid for those services since becoming a critic in 1985." He also " . . . accepted \$8,000 to \$10,000 to be an expert witness for Paramount Pictures in the studio's defense of columnist Art Buchwald's *Coming to America* lawsuit." Los Angeles critic and president of the National Society of Film Critics, Peter Rainer said, "[i]f you're being paid as an expert adviser in a case involving a studio, it places you in a conflict-of-interest limbo that no critic wants to find himself in."<sup>163</sup> On the other hand, if Hollywood tried to apply a rule prohibiting conflicts-of-interest across the board, most of the activities of the Hollywood insiders will be shut down immediately. It is hardly fair to criticize Medved for a minor and rather insignificant example of behavior (a minor conflict-of-interest) that is an essential part of everyday business in Hollywood at an even more serious level.

Hollywood will typically try to characterize its critics as part of a "political fringe" on the far right and that the real motives behind such attacks are efforts to gain publicity for and advance the careers of such critics. As an example, in a full page ad in the *Daily Variety*, November 23, 1993, the liberal Hollywood group The Center For the Study of Popular Culture said "Hollywood is no stranger to attacks that characterize it as an enemy of the republic. The political fringe has always found us a useful target of opportunity from which to nurture demagogic careers or to distract their constituency from the real problems that surround society."<sup>164</sup> Note here, of course, that this Hollywood group is laying the groundwork for suggesting that many of Hollywood's critics come from the "political fringe".

**We Don't Exaggerate the Arguments of Our Critics** – The film industry apologists who want to distract the "film industry critics" in their criticism relating to who really controls Hollywood often resort to the old "straw man" argument by exaggerating the claims being made by the industry critics. The defenders of Hollywood thus suggest that the critics are really alleging that some sort of "cabal" exists or that a "conspiracy" exists, not because that is what the industry critics are actually saying, but that such exaggerations place a much higher burden of proof or persuasion on the critics and serves to divert the focus of the discussion. In other words, it is much more difficult for the industry critics to prove or show persuasive evidence that a "Jewish cabal" or any other cabal exists in Hollywood or that a "Hollywood insiders conspiracy" or any other form of conspiracy exists in Hollywood, so the defenders of Hollywood like to misrepresent the industry critics' arguments precisely for that reason.

Again, when Michael Medved came out with his book *Hollywood vs America*, the industry retaliated by attacking his credibility and misstating the arguments he made. In an article in *Los Angeles* magazine, Michael Logan answered some of those misstatements, pointing that "Medved . . . does not advocate censorship, calling it 'a very stupid answer to a very serious

problem.' He does not claim media messages cause destructive behavior but feels they encourage it. He does not suggest that the entertainment industry is single-handedly responsible for America's ills but that it exacerbates and contributes to them."<sup>165</sup> The above Michael Logan statements were all made in answer to Hollywood insider misinformation and exaggeration put out in response to Medved's criticism of the industry.

Hollywood also tends to exaggerate and misstate the claims of its opponents. For example, the ad goes on to state that ". . . Senator Paul Simon and Attorney General Janet Reno have decided to focus on television and motion pictures as the root cause of this decay of common virtues that is destroying our own present and our children's future . . ." <sup>166</sup> In truth, neither Simon or Reno claim that media violence is the "root cause" of societal decay, only that it is a significant contributing factor.

The Hollywood liberals also tend to exaggerate the remedies proposed by industry critics, suggesting that it ". . . is only a matter of time before they conclude we must also be instructed in what we can say." The remedy of the Hollywood liberals ". . . is not less free speech – it is more. McCarthyism taught us that the consequences of silencing a single voice are far worse than allowing that voice to be heard . . . we must reaffirm our dedication to the unambiguous language of the First Amendment, lest we be forced to relive the tyranny of the blacklist years."<sup>167</sup> In other words, an effort is being made here to characterize those who would criticize the film industry as "McCarthyites". And, even though the film industry critics are not advocating censorship, these Hollywood liberals want the readers of its ads to believe that is what is being proposed. Such misleading tactics are patently dishonest.

**The Movie Industry is Different** – The Hollywood insiders and those who choose to publish their views, like to rationalize by saying the ". . . movie industry defies strict analysis from a traditional business point of view. Any profiling of its points to certain concepts not characteristic of other industries, concepts that can prevail only in an industry whose product is creative."<sup>168</sup> This is another aspect of the Hollywood insider line, pure and simple. Those major studio/distributor entities that have controlled and dominated the U.S. motion picture industry for three to four generations want the rest of the world to believe that traditional business analysis (whatever it is) will not adequately explain the operations of the film business. They also want us to believe that traditional accounting principles cannot be applied to this industry. Both of these statements appear to this author to be nothing more than rationalization put forth in an effort to justify the continuing control of the motion picture industry in the hands of a few.

**American Movies Are Better** – Entertainment attorney Lee Steiner is quoted in Goldberg's book as saying: "American movies have strong international appeal because the production quality is generally higher than movies made abroad . . ." <sup>169</sup> Is this a true statement? How can anyone objectively compare and judge the "production quality" of movies competing in the foreign marketplace? How can anyone, including attorney Lee Steiner be in a position to say why people in foreign countries go to see American movies more than films from other places? Is it possible that Steiner is overlooking the fact that people go to see movies that are

conveniently available to be seen? Thus, if most of the movies on the screens around the world are American, it does not really matter that their production quality is higher, if it is. And if American distributors in foreign countries are still using block booking, there is no question that some of those American movies, that are drawing larger audiences than the film product of other countries, are in fact poorer quality movies in every respect. In addition, if the unfair, unethical, anti-competitive, predatory and illegal business practices of the American major studio/distributors are the real underlying reasons why foreign filmmakers do not have greater success in the marketplace, then that directly affects the amount of money that is available for those filmmakers to produce their next film, thus effectively reducing their ability to put more "quality" on the screen. Thus, Steiner's analysis is overly simplistic at best.

**Movie Financial Projections** -- Another example of a myth or just plain misinformation I encountered often in the film industry was the idea that the use of financial projections with an investor offering for a film project would often or inevitably result in a lawsuit. I've already mentioned the first time I came across similar misleading statements from Lewis Horowitz at an AFI sponsored panel discussion, where he cautioned filmmakers about raising money from investors altogether. Of course, it was in his self-interest to encourage filmmakers to seek lender financing for their projects (as opposed to investor financing), since lender financing was the area in which he worked. On another occasion, I was sitting on a panel with a well-known entertainment attorney on my left and an SEC enforcement attorney on my right. At some point in the discussion, the topic of financial projections came up and the entertainment attorney got very excited and proclaimed to the assembled audience: "Never use financial projections with investor offerings. You'll get sued!"

Of course, that advice ran counter to my own experience since I had handled the legal work for hundreds of film and other entertainment related investor offerings, most all of which included financial projections, and none resulted in litigation. So, I felt obligated to share that experience with the audience so they would not be misled. I suppose this was just one of those situations where an entertainment attorney got out a little past his area of bona fide expertise and repeated a myth about film finance.

I went ahead and explained that it is important in such situations to understand whether or not a security was involved, since the SEC has a policy relating to financial projections, thus the rules for handling financial projections for a film project may differ depending on whether a security was being sold, or not. Among other things, the SEC policy requires that disclosures accompanying the projections should facilitate investor understanding of the basis for and limitations of projections. In other words, the use of film industry jargon, not readily understood by investors with little knowledge or experience in the film industry is discouraged. And if a film producer was selling a security (e.g., interests in a limited partnership or manager-managed LLC) and he or she complied with the SEC's policy on financial projections, such producers were much less likely to have a problem. The SEC attorney, meanwhile, did not say a word on the topic of financial projections allowing my explanation to stand.

I had run into this problem in another way from time to time. A producer would come to me to prepare a PPM and to consult on federal and state securities compliance but may have already paid \$500 to \$1,000 for financial projections prepared by a so-called third party preparer. Nash Services and Film Profit are two that come to mind. Unfortunately, in the process of preparing the PPM, the producer would have to make a significant number of decisions about the deal to be offered to prospective investors, some of which might have an impact on the financial projections that had already been prepared. In such cases, the producer would have to take the financial projections back to the third-party preparer and have them revised.

Several problems typically came up in such situations. The SEC's policy required that the underlying assumptions upon which the financial projection numbers were based be set out in writing, and that they be reasonable based on current circumstances in the industry. The projections offered by these third-party preparers never provided a complete set of assumptions. Instead they would offer some very brief explanatory notes on some of the categories of revenues or expenses in the projections. And, they would often use industry jargon, without adequate explanation, thus most prospective investors were not likely to understand the basis for the projections. Further, since the projections had been prepared before the terms of the deal between the producer group and the investors had settled, the projections would stop at the producer level (i.e., not be taken out all the way to the purchaser of a single unit in the offering) with a return on investment (ROI) for that single unit purchaser. Investors don't care so much about the amount of money that comes back to the producer, rather they care more about how much might actually make it back to the individual investor. That's the whole point of providing financial projections for investor offerings.

This problem goes back to the previously discussed issue relating to filmmakers being misled by business plan consultants and other film industry organizations about the differences between raising money from active investors versus passive investors. When passive investors are involved, the producer is selling a security, and in order to conduct a legitimate offering to such investors, he or she must comply with the Federal and state securities laws, including the SEC's policy on financial projections. Otherwise, the producer may be asked to give the money back to the investors after it's already been spent (a quite awkward situation), and the producer may have no adequate defense. In addition, such producers may also subject themselves to the risk of being prosecuted for civil or criminal violations of the securities laws.

Finally, a brief comment about the subtleties of verbiage. In all of my writing and commentary about financial projections, I use the phrase "revenue stream" as opposed to "water fall", a marketing term that many in the film industry are fond of using. My reasoning is that from a securities compliance point of view, the phrase "water fall" as used to describe the money that may or may not flow back to the investors could be inherently misleading. The use of such a term combined with other materially misleading statements in a securities disclosure document may lead to a claim of securities fraud. It is not unreasonable to envision an attorney arguing at trial on behalf of a disgruntled investor at some point in the future that the filmmakers suggested in their investor documents that the money would come back in a manner similar to a "water

fall”. In other words, the visual implication is that there will be a lot of money, not just a trickle. The term conjures up a different image than the more commonly used term revenue stream. In addition, the phrase “revenue stream” is a more concrete term in that the word “revenue” for which most people have an understanding is part of the phrase. Thus, it is safer for filmmakers to use the more conservative term “revenue stream” than “water fall” when discussing or writing about the possible economic results of a film investment, particularly if the sale of a security is involved.

## Chapter 14 – HOLLYWOOD VICTIMS

I suppose it's fair to say that most people outside the film industry do not care all that much about what's really going in Hollywood, and that almost all of those who are involved in the film industry are afraid of saying anything or complaining for fear of "never working in this town again". I believe, however, that it is quite naive to suggest that there are no victims of Hollywood crimes. With all of the admiration one might muster for such a thing, some may reasonably choose to describe the Hollywood game as the "perfect crime". In response to those who would suggest that there are no victims for the Hollywood malfeasance cited in this and my other books on Hollywood, the following is a fairly comprehensive list of the victims of the Hollywood-based U.S. film industry:

1. Millions of children who are exposed to violence, graphic sexual content and excessive foul language because the industry does not properly rate movies or provide adequate advance information about motion picture content.
2. Millions of parents who are fooled into spending their hard-earned money and taking their children to inappropriate movies.
3. Millions of children and adults who are exposed over a lifetime to consistent negative and stereotypical portrayals of certain populations in our diverse society. Such portrayals lead to prejudice, which in turn leads to discrimination and unnecessary conflict, adversely affecting the entire nation.
4. Millions of politicians, government officials, parents, teachers and others in positions of authority who are consistently portrayed as fools and bumbling idiots in Hollywood movies (the Hollywood anti-authority themes).
5. Millions of Arabs and Arab-Americans, African-Americans, Latinos, Women, Gays/Lesbians, German-Americans, Italian-Americans, Irish-Americans, Asian-Americans, Native Americans, Southerners and others who have been victimized by Hollywood prejudice expressed through the consistent negative and stereotypical portrayals of these populations.
6. Millions of Christians and Muslims who are also regularly portrayed in a negative and stereotypical manner in Hollywood films.
7. Thousands of large and small investors who foolishly believe that they will be treated fairly by Hollywood deal makers and accounting practices.
8. Thousands of attractive women from all over the world who are drawn to Hollywood thinking they may become movie stars, only to end up selling their bodies to survive. Some do not survive.

9. Thousands of attractive struggling actresses and actors who are booked by unscrupulous agents into foreign entertainment gigs that turn out to be nothing more than the modern-day version of a white slave trade.

10. Hundreds of small independent producers who cannot get their movies into decent theatres because they are squeezed out of the marketplace by the releases of the major studio/distributors, whose movies are not always of better quality, but who use anti-competitive business practices to gain leverage over the exhibitors.

11. Thousands of actors, actresses, directors, producers, screenwriters, composers and studio executives from all over the country who are routinely excluded from fair access to opportunities in Hollywood through nepotism, favoritism, cronyism, blacklisting and other forms of employment discrimination rampant in the Hollywood-based U.S. film industry.

12. Hundreds of actors, actresses, directors, producers, screenwriters who have tried to demand a fair accounting of film revenues and have been blacklisted for their efforts.

13. Thousands of actors, actresses, directors, producers, screenwriters who would have demanded a fair accounting from the major studio/distributors or would have taken the studios to court but for the reasonable fear of being blacklisted.

14. Thousands of actors, actresses, directors, producers, screenwriters and composers who are cheated out of good work on major films because powerful talent agents regularly exclude them from their packaged deals presented to the studios on a take it or leave it basis (a clear violation of the antitrust laws).

15. Thousands of screenwriters all across the country whose ideas or actual screenplays are stolen from them in a Hollywood system that does not provide fair protection or just compensation for either.

16. Hundreds of small independent theatres that cannot get fair access to the releases of the major studio/distributors because distribution is not conducted on a truly competitive basis.

17. The U.S. Justice Department that cannot function as it should in vigorously enforcing the U.S. antitrust laws in the film industry because of political interference originating in a White House influenced by massive political contributions.

18. The hundreds of Congressional politicians who do not have the courage to properly investigate Hollywood because of the millions of dollars in campaign contributions periodically directed toward their campaigns or the campaigns of their opponents.



19. Private sector film ratings and review organizations that do not have the same access to pre-screened movies as the MPAA's ratings board and whose services are overlooked by the moviegoers because the MPAA has misled the American public and its governmental representatives into thinking the MPAA ratings are adequate.

20. Hundreds of independent feature film producers whose movies are rated by the MPAA ratings board by a different and discriminatory set of standards than the films of the major studio/distributors, the member companies of the MPAA itself.

21. Thousands of independent producers and distributors from Canada and other countries whose movies are unfairly excluded from wide distribution in the U.S. and from theatrical exhibition in their own countries because the major U.S. studio/distributors dominate the screens of most foreign territories, using the same or similar unfair, unethical, unconscionable, anti-competitive, predatory and illegal business practices that they have used for 100+ years here in the U.S.

22. Independent film studios in parts of the country other than Hollywood that are placed at a competitive disadvantage by some of the same unfair, unethical, unconscionable, anti-competitive, predatory and illegal business practices of the majors.

23. Other segments of struggling film industries in the states of New York, Texas, Florida, North Carolina, Idaho, Washington, and elsewhere that cannot survive because of the business practices of the Hollywood-based major studio/distributors.

24. Millions of ordinary taxpayers all across the country who are asked from time to time to subsidize the film industry with contributions taken from general tax dollars.

25. Moviegoers of all types who are regularly misled into thinking certain movies are worth seeing and are wrongfully separated from their money by massive and misleading Hollywood advertising.

26. Thousands of legitimate public interest discussion topics that are routinely crowded off the television news and public affairs programs by the overly aggressive promotion of the Hollywood PR machine, the most powerful ever created.

27. The expression of artists of all interests whose visions are regularly sacrificed to the commercial and other interests of the Hollywood majors.

28. The ideas of political conservatives that are routinely shunned in Hollywood movies in favor of liberal political thought.

29. The greater diversity of ideas that could be presented through this significant communications medium if the U.S. film industry were controlled by a more diverse group of

people who did not constantly strive to brainwash the American public into believing that movies are merely entertainment, when the truth is that all motion pictures communicate one or more messages, and quite effectively.

30. Millions of actors, actresses, directors, producers, screenwriters, composers, distributors and others who, over the years, have foolishly devoted huge segments of their lives chasing after a career in the film business only to discover that Hollywood is not based on a merit system at all, but a tightly controlled insider's game, thus they never had a chance.

31. Hundreds of other worthy trades and professions that lose talented people to the primarily false lure of Hollywood.

32. Immigrants to the U.S. from all parts of the world except Europe, whose immigrants have been traditionally favored by Hollywood moguls throughout the nearly 100+ year history of the Hollywood-based U.S. film industry.

33. All members of the many racial, religious, ethnic, cultural groups and regional groups in America whose important cultural stories cannot make it onto the screen because of the prejudices held by those who control the industry.

## Chapter 15 – THE GREAT AMERICAN MOTION PICTURE DEBATE

[Note – This chapter and the next two chapters are actually excerpted essays from my book *Hollywood Essays*. They offer overviews of the problems in Hollywood from slightly different perspectives.]

Over the years, we have conducted a national debate in this country on the role that motion pictures play in our society. Some of the questions being debated include:

- (a) Are feature films pure entertainment or purveyors of culture, information and/or propaganda. In other words, what is the essential nature of feature film?
- (b) Are the major studio/distributors really just providing the public with the movies they want to see or persuading us through advertising to see the films they choose to make?
- (c) Do film images influence behavior?
- (d) Do all or most significant interest groups within our multi-cultural society have a fair opportunity to tell their stories through the medium of feature film?
- (e) Does government have a role to play in determining who is able to participate in the film industry at a meaningful level?

Jack Valenti, who was the chief spokesperson for the Motion Picture Association of America (during much of the time I worked in Hollywood) and other film industry leaders have been quite fond of expressing their opinions that feature films are merely entertainment. I have to disagree on that point. In my view, no feature film is merely entertaining. Of course, some are not entertaining at all. Motion pictures contain ideas and no reasonably intelligent person could possibly refute the contention that ideas are powerful. They are powerful human motivators. Ideas have underscored all of the great social innovations and revolutions witnessed by the world to date. Thus, if we are not motivated by the desire to mislead, we must accept and admit that motion pictures, while they may be primarily designed to entertain, also communicate ideas, transmit cultural influences and affect behavior. I might add that in my opinion, the motion picture medium which offers the wide screen, elaborate color, sophisticated sound, special effects and extremely talented creative elements is one of the single most powerful mediums of communication yet devised by human beings and therefore potentially one of the most influential.

One of the more self-serving examples of circular reasoning paraded out in this debate by the MPAA companies is that they are merely providing the general public with the kinds of movies the public really wants to see. In other words, if people did not want to see the movies now being provided they would quit paying for the tickets. I simply ask you how many times have you gone to see a movie that has been heavily advertised and came away realizing that you had been misled. The truth is that the advertising and public relations blitzes generated on

behalf of the MPAA movies is so out of control that at least half of the people attending movies today have no idea what they are about to see. It is also extremely difficult to find truly objective reviews of these movies because if a critic is too harsh on a particular film company, their advance screening privileges will be cut off. In addition, the moviegoing tastes of huge segments of our population are simply ignored by the major studios because they find it easier to make movies for the less sophisticated younger set who can be more easily lured into the theatres with misleading advertising.

Now, on to other aspects of the great American motion picture debate. American society is and will always be made up of multi-cultural interests. However, based on the multiplicity of complaints made by African-Americans, Hispanics, women, the elderly, gay/lesbians, American Indians, Christians, Arabs, Italian-Americans and other regional, cultural, ethnic and/or religious interest groups in the United States, American-made feature films do not consistently reflect or fairly portray that diversity. All of such groups have in recent years publicly criticized the consistent negative portrayals of their members in American-made motion pictures. And you know what, they're right.

Unfortunately, criticism and even isolated boycotts of specific offensive movies are not likely to result in a change in these clear patterns of bias or the kinds of movies produced by the organizations that control and dominate Hollywood. Approximately ninety-two (92%) of the domestic theatrical box office gross (the money paid by moviegoers at theatre box offices) is generated by feature films released by the so-called major studio/distributors and that statistic has been at or about the same level for several decades. Revenues generated by the more lucrative home video market is even more drastically weighted in favor of the major studio/distributors and their affiliated companies. These major studio/distributor conglomerates are Sony which owns TriStar, Columbia, Triumph Releasing and Sony Pictures Classics; MCA/Universal; Paramount; Warner Bros.; Disney which owns Buena Vista, Hollywood Pictures and Touchstone; 20th Century Fox; MGM/UA and Orion although the latter two have experienced severe financial difficulties in recent times.

Again, contrary to the view often expressed by the MPAA, this market dominance is not necessarily the result of choosing better movies, at least at the middle of the range and on the low end of the major studio releases in terms of quality. It is more likely the result of sheer market power. For example, Harold Vogel points out in his book "Entertainment Industry Economics" that approximately 75% of the theatres in the United States regularly generate some 92% of the domestic theatrical box office gross. This means that if each of the 13 releasing units of the 8 previously identified major studio/distributors are on the average able to keep just 2 films in release during each week of the high attendance periods of the year (summer and the Christmas holidays) and each film is on approximately 730 screens (i.e., about 730 prints per film) those films then take up more than 75% of the approximate 25,000 U.S. screens. Assuming then that the major studio/distributors know which theatres traditionally generate the largest share of box office gross (and they surely know that), the market dominance of the major studio/distributors can be explained through sheer market power without any regard to the quality of the movies

distributed by such entities. In other words, if the major studio/distributors have and exercise the power to get their movies into the right theatres to the exclusion of movies distributed by independent distributors, and in complete disregard of the continuing interest group complaints I mentioned earlier, the comparative quality of the competing movies is somewhat irrelevant and so are the complaints.

So, how did this group of major studio/distributors obtain the power necessary to control and dominate markets for feature film? My own book "Film Finance and Distribution" (distributed by Samuel French Trade) lists more than 300 reported business practices allegedly engaged in by the major studio/distributors that are either unethical, unfair, predatory, anti-competitive and in some cases downright illegal. All of such practices tend to favor the majors over the independents with respect to providing access to power, control, dominance and the all-important financial bottom line. Of course, whoever controls Hollywood, determines which American-movies are made, who gets to work on those movies and to a great extent, the content of those movies.

One devastating example of such a business practice is the so-called settlement transaction between distributors and exhibitors. In distributing a motion picture, the distributor will contract with a theatre owner (the exhibitor) to show a film. The contract will provide that the box office gross will be split between the distributor and exhibitor in accordance with a negotiated and agreed upon formula. When it comes time for the exhibitor to pay the distributor, it is apparently common practice among most of the major studio/distributors to settle for an amount (according to profit participation audit estimates) that is somewhere between 10 to 30 percent less than what is contractually due.

Why would a distributor settle for less than what is owed? One likely possibility is that such a settlement, which favors the exhibitor, will help the distributor get its next movie shown at that exhibitor's theatres (as opposed to movies being distributed by competing independent distributors). But there is yet another, even more worrisome possibility. These major studio/distributors not only distribute their own movies but they also distribute motion pictures produced by independent producers (i.e., those who do not work directly for the major studio/distributors). By accepting less revenue on the independently produced movies but something close to the actual amount due on the movies that were both produced and distributed by the major studio/distributors, these majors and the cooperating exhibitors are together able to shift huge amounts of motion picture revenues from the revenue stream that would have benefitted all gross and net profit participants of the independently produced movies to the bank accounts of the participating exhibitors and major studio/distributors. Annual estimates of the amount of money shifted from one revenue stream to the other in this manner exceed \$100 million dollars.

Another reason why the major studio/distributors have the clout to get their movies into the right theatres is that in some instances, they actually own controlling interests in such exhibition chains. Although, the famous Paramount case temporarily prohibited this form of

movie industry vertical integration (that is, ownership of production, distribution and exhibition) in the U.S. years ago, the major studio/distributors have chipped away at the decree until it is now routinely disregarded. They were aided immeasurably in their effort to remove the Paramount decree barrier to vertical integration by the U.S. government's own Justice Department. Following the installation of the motion picture industry's good friend Ronald Reagan in the White House in the 1980's, the U.S. Justice Department reversed it's long-standing policy of vigorous enforcement of the U.S. anti-trust laws in the motion picture industry. In other words, following the Reagan inspired policy change and continuing through today, federal government policy in America favors the big vertically integrated major development, production studios, distributor and exhibitors, to the detriment of the smaller independent producers, distributors and exhibitors. These are the same major studio/distributors whose movies regularly contain excessive violence, gratuitous sex and the most foul language. These are also the same major studio/distributors whose movies regularly portray African-American, Hispanic, female, elderly, gay/lesbian, American Indian, Christian, Arab, Italian-American and other members of the U.S. population in a negative and/or stereotypical manner. Many people in our society feel such consistent negative portrayals inevitably lead to prejudice, that prejudice leads to discrimination and discrimination leads to conflict, very unnecessary conflict.

Thus far, there is no indication that any U.S. President has even been aware of this connection between power and movies or would be inclined to change a government policy that encourages the concentration of power in the hands of a few corporate conglomerates who are routinely inhibiting our multi-cultural society's ability to minimize conflict. For that matter, few, if any of the top elected or appointed officials in U.S. government appear to realize that the MPAA does not represent all of the American motion picture industry, nor do they seem to recognize that more diversity in the ownership and control of the means of producing, distributing and exhibiting American-made motion pictures is more likely to result in greater diversity in the ideas and images presented through this most effective form of communication.

In my judgment, the often used counter-arguments of "censorship" and "freedom of expression" are smokescreens in this great American motion picture industry debate (i.e., these arguments miss the point and confuse the real issues). What is really needed is a Congressional investigation of the business practices of the major U.S. studio/distributors, the business practices which made it possible for the major studio/distributors to dominate and control the American motion picture industry to the exclusion of a wider spectrum of voices. Such an inquiry should also include a review of the relationship between Presidential politics and U.S. government policy toward the enforcement of the federal anti-trust laws in the motion picture industry and a serious national debate on the question of the fundamental fairness of a governmental policy that encourages the dominance of an important communications medium and cultural resource such as the motion picture by a small group of corporate conglomerates whose basic desire for power, money and control drives their "block-buster" mentality and consistently results in the production and distribution of exploitation/lowest common denominator movies despite the repeated pleas of our culturally diverse population.

## Chapter 16 – HOLLYWOOD'S DISDAIN FOR DEMOCRACY

Some of you may have heard that there are those who consider my positions on certain issues relating to the Hollywood-based U.S. film industry to be controversial. To me, my views are honest, straightforward, based primarily on facts and entirely logical. So now, we'll give you an opportunity to decide for yourself.

First let me point out the general academic orientation from which I come. My undergraduate degree at the University of Texas at Austin was in communications. So my approach to film has always been one in which I recognize that motion pictures are more than merely entertainment. As the U.S. Supreme Court stated in its 1952 *Burstyn v. Wilson* case, the decision which first applied the First Amendment right of free speech to feature film, the motion picture is a significant medium for the communication of ideas. I agree with the Supreme Court's assessment and consider the motion picture to be one of the most powerful communications media ever devised.

Second, my minor concentration as an undergraduate was in sociology, so quite naturally, I am also concerned about issues relating to whether the ideas communicated through this powerful communications medium of feature film, have an impact on our society, and if so, what is the nature of that impact?

So, these are a couple of important starting points for me, two areas of academic study which still influence my thinking and approach to the study of film. Now, it just so happens that back in 1987, my law practice took me to Los Angeles for the purpose of working with independent feature film producers who sought to raise investor funds with which to develop or produce their movies. That's what I did professionally in Los Angeles for 23 years.

In addition to helping hundreds of independent feature film producers attempt to put their visions on the screen, I've also lectured to thousands of filmmakers, attorneys and others over the years at UCLA, USC, SMU, the American University in Washington, D.C., the American Film Institute, Loyola University, the University of Texas and the Cal Western school of law, the Hollywood Film Institute and elsewhere, about this topic of film finance. I developed seminar handouts to accompany those lectures, and the handouts grew into books. So I've now authored and published sixteen books about the film industry, starting with this area of film finance and then moving on to topics delving into the relationship between film finance and creative control. It turns out that in many real life transactions, it is extremely difficult to separate the source of financing from the power to control what goes on the screen.

As I did more and more research about the film industry I realized that a number of Hollywood observers and commentators were concerned and had written about what they viewed as excessive violence in films, graphic sex, gratuitous foul language, a politically liberal slant and anti-religion themes in Hollywood films, so not wanting to duplicate their work, I took a look at

another area of concern to me, and that is the apparent depiction of certain populations in our diverse society in a negative or stereotypical manner.

It just seemed to me that if the motion picture was a significant medium for the communication of ideas, and we recognized that ideas, have always (throughout the history of modern civilization), and will always, influence the thinking, beliefs and attitudes of human beings, then it could not possibly be desirable to allow any powerful communications medium to consistently portray certain groups within our diverse society in a negative or stereotypical manner. But, that apparently is exactly what was happening with Hollywood films. A number of groups have in fact complained from time to time about this phenomenon, but unfortunately, they've not had much success in influencing the way such decisions are made in Hollywood.

So, instead of restricting my research to any particular group victimized by Hollywood films, I considered film portrayals of many populations that co-exist in our modern day society, and confirmed to my satisfaction that at least a half-dozen groups or so were indeed consistently portrayed in Hollywood films in a negative or stereotypical manner. Those groups included Arabs and Arab-Americans, Muslims, Christians, Latinos, Asians and Asian-Americans, Italian Americans and Whites from the American South. My studies indicate that several other population groups have in recent years made some small gains toward more balanced or diverse portrayals in Hollywood films, but still are probably not where they ought to be in that regard and those groups include women and African-Americans, along with gays and lesbians.

Again, keep in mind that my belief and concern is that the consistent portrayal of any population in our diverse society in a negative or stereotypical manner, through a powerful communications mass medium like feature film, will inevitably influence the attitudes, thinking and beliefs of millions of moviegoers, particularly the more unsophisticated younger members of those audiences. And my concern is a serious and legitimate concern.

In any case, once I confirmed that these blatant patterns of bias actually exist in Hollywood films, the next logical question is, why? Why are whole populations in our diverse society consistently portrayed in Hollywood films in a negative or stereotypical manner? Well, again I turned to the literature of the film industry and determined that several observers of Hollywood, including Hortense Powdermaker who had studied the film industry from an anthropological perspective in the middle of the century, had already offered a possible explanation. But, I came up with my own expression of the phenomenon, and that is that movies, to a large extent, tend to mirror the values, interests, cultural perspectives and prejudices of their makers. And, I've yet to find anyone who rejects this thesis statement – that movies, to a large extent, tend to mirror the values, cultural perspectives and prejudices of their makers. So, this leaves of with no other choice, as seekers of truth, but to proceed to the next logical question: who are the makers of Hollywood films?

As any researcher must do, I've tried to narrow the focus of this inquiry, in this instance to those films produced or released by the Hollywood major studio/distributors, because those are



the films seen by some 95% of the domestic theatrical moviegoing audience. So, then the question becomes, who has the power to decide which movies are going to be produced or released by the Hollywood major studio/distributors each year.

Again, I primarily relied on my survey of the film industry literature, the published works of several hundred other authors and observers of the Hollywood scene, combined with some original research. I looked at various segments of the film industry (producers, distributors, talent agents, directors, actors, actresses, screenwriters, equipment manufacturers, entertainment attorneys and so forth) and concluded that although in some instances a particularly powerful agent, actor, actress or director may have a considerable amount of influence in helping move a given film project forward, ultimately, those people who actually have the power to greenlight a movie are still the top three studio executives at the vertically integrated major studio/distributors.

So, I limited my study to the top three studio executives at these so-called major studio/distributors, made a list of the names of those executives from the start of operations for each of those companies through the mid-90s when the study was done, and set out to determine as best I could, what about their backgrounds might result in the particular patterns of bias I had observed in Hollywood films. Again, I merely collected from the industry literature, including individual press clippings on these studio executives what they and others had already reported about their backgrounds. I merely conducted an organized study that allowed me to determine that some 60 to 80 percent of these individuals who had greenlight authority over Hollywood films actually shared a common background. And, based on the literature of the industry and using specific descriptions already offered by many other Hollywood observers, that shared background could most accurately be described as politically liberal, not very religious, Jewish males of European heritage.

Now, for some people, this was going too far! But for me, it was merely a logical progression leading to a factual and sociological observation. And, I've seen no study by academics or others offering persuasive evidence that the Hollywood control group could be more fully or accurately described in a significantly different manner. It seems that some of the Hollywood apologists simply can't handle the truth.

Now, it is important to note that nowhere in my writing or lectures, have I ever stated, suggested or implied that any of these 20 or so (mostly) gentlemen at any given time, behaved the way they behaved because they are Jewish. It's just simply not there. Nor, have I ever written, stated, suggested or implied that the behavior of this small group of gentlemen is typical of the much broader Jewish community. Furthermore, I've never stated, suggested or implied anything about Jews generally. There is nothing in my writing that can be fairly interpreted to be hostility or hatred. Criticism – yes! Criticism of the business-related behavior of a small group of men, most of whom happen to be Jewish. Despite the false allegations of some of the so-called Hollywood apologists, including the false accusation of anti-Semitism, those broad generalizations are just not there.

And further, I'm not even suggesting that the consistent negative or stereotypical portrayals of certain populations in our diverse society has any particular connection to the Jewish part of the multi-faceted backgrounds of these studio executives. Rather, I'm suggesting that these particular individuals, the twenty or so studio executives who at any given time have the power to decide which movies will be produced or released by the major studio/distributors each year, have been and continue to be prejudiced, or at the very least not very sensitive to the biased portrayals they are consistently putting out through their films. I am also stating with certainty that there is very little diversity at the highest levels in the Hollywood establishment and that lack of diversity is reflected on the screen.

Aside from those few who have chosen to utilize the false accusation of anti-Semitism (what I call the anti-Semitic sword) in their effort to chill my free speech, others have simply taken the position that inquiries into the backgrounds of studio executives is for some reason inappropriate. On the other hand, these same Hollywood apologists readily admit that it is appropriate for the studio executives to utilize the enormous communications power of feature film to make bold, emotionally charged and sometimes outrageous or misleading statements about religion, politics, culture, ethnicity, race, regional populations, sexuality and all manner of other topics. If we accept the fundamental concept that movies, to a large extent, tend to mirror the values, interests, cultural perspectives and prejudices of their makers, then it is completely appropriate to study whether there are positive correlations between what we see on the screen and the backgrounds of those who have the power to determine what is portrayed in movies. Unfortunately, few, if any in our academic community have the courage to undertake such highly relevant studies.

On the other hand, how did the power to determine which movies will be produced or released by the Hollywood major studio/distributors come to be concentrated in the hands of such a narrowly-defined interest group? Again, my studies indicate that it occurred over a 90-year period through the use of hundreds of business practices that can be collectively described as unfair, unethical, unconscionable, anti-competitive, predatory and illegal. Those specific business practices are set forth and discussed in some detail in my two books: *Hollywood Wars – How Insiders Gained and Maintain Illegitimate Control Over the Film Industry* and *The Feature Film Distribution Deal*. Ultimately, I've had to conclude that control of the Hollywood-based U.S. film industry has been obtained illegitimately. It was gained and is maintained through the systematic and arbitrary exclusion from power of most Hollywood outsiders by the consistent patterns of behavior of this Hollywood insider group.

Now, what does this have to do with democracy? Well, the fundamental concepts of democracy and freedom of speech, the very freedom enjoyed by feature film and other media in our society, go hand in hand. They are both based on the underlying principle of a free marketplace of ideas. In other words, the drafters of our Constitution, determined many years ago, that our nation would be more likely to make the best democratic decisions with respect to important issues that face our country if all viewpoints are heard -- if everyone in our society has

a fair opportunity to express their views.

Well, times have changed. Now, our national discourse is dominated by the mass media. And, one significant medium for the communication of ideas in our society is feature film. To the extent, that this important communications medium is not equally and fairly open to all groups within our diverse society for the expression of their views, our free marketplace of ideas is severely limited and our democracy is substantially weakened. Members of the Hollywood control group have long been hiding behind the protection of the free speech provision of the First Amendment to our Constitution to communicate whatever its members want to say through film, while at the same time, using other means including employment discrimination and anti-competitive business practices to prevent others from telling their important stories, and communicating their ideas through film.

So, what is it that we need to do in order to bring greater diversity to film, and thereby strengthen our democracy? There are a lot of things that we should be doing including reforming our fraudulent movie ratings system and talking to our Congressional representatives and other government leaders about their failure to insure equal or fair access to this important communications medium, but for the moment, we need to create and permanently fund a film industry research institute to encourage and support ongoing research into what is really going on in Hollywood. Because without this ongoing and current research and the information it develops, the Hollywood establishment will always attempt to dismiss our efforts by claiming that our information is out of date and Hollywood has changed.

The truth is that in many important respects, Hollywood has not changed that much in its 100+ year history and we need at the very least to conduct the research and produce annual reports on diversity, or the lack thereof, in the executive suites of the Hollywood major studio/distributors, along with the corresponding level of diversity on the screen. Limited but similar research is already being conducted in the field of television and for some of the film industry guilds and women's groups. It is no less important for the film industry generally.

Recently, the United States joined with its NATO allies to spend billions of dollars and put American lives at risk in fighting for a principle, that is: no nation-state shall be defined primarily by the ethnicity of its people. What I am saying is that this same important principle should be applied here in our own country and democracy so that no industry, certainly not an important communications industry such as feature film, can be allowed to arbitrarily preclude participation at its highest executive levels based on considerations of ethnicity.

Ultimately, as already pointed out by the Supreme Court, the motion picture is a significant medium for the communication of ideas. And, in a democratic society, we cannot afford to stand by and allow any single narrowly-defined interest group to control or even dominate any of our important communications media, because that inaction will inevitably weaken, if not transform our cherished democracy into a fraudulent facsimile. In the absence of a

free marketplace of ideas, our democracy is flawed. And, it is impossible to have a free marketplace of ideas, so long as any of our important communications media are controlled by one or even a few, narrowly-defined interest groups. If we want to preserve our democracy and make the world a better place, we need to start with what we communicate to each other, and who gets to communicate.

## Chapter 17 – THE LOWEST FORM OF HUMAN LIFE

I saw a movie some years ago, in 1993 actually. It was a major studio release by Columbia, and starred one of my favorite actors, Robert Duvall. The movie was *Geronimo – An American Legend*. Some of you may have seen it. Duvall played a Western character, and in a part of the movie not significantly related to the main theme, he had a run-in with a group of scruffy Texans. After the Texans had departed, Duvall announced to his associates that "Texans are the lowest form of human life".

Now, I have to admit that I laughed. I thought it was funny. I'm not an insecure Texan. But, on the other hand, I have to ask, was that really funny or offensive? What if the movie was a different movie about a character who said "African-Americans are the lowest form of human life? Would that be funny or offensive? What about another movie in which the character said "Asian-Americans" are the lowest form of human life, funny or offensive? And, what if the movie character said "Jews" are the lowest form of human life? Funny or offensive? What if the subjects of the disparaging remark were women, Latinos, Christians, Muslims, Arabs, Italian-Americans, gays/lesbians, Whites from the South?

Do your feelings differ depending upon which group is being defamed? Should they? Would your feelings differ if you knew, for example, that White folks from Texas and the American South are among at least five distinct populations in our diverse society that have been consistently portrayed in Hollywood movies in a negative or stereotypical manner for decades? Would your feelings differ if you realized that those biased Hollywood movie portrayals included those of Arabs and Arab Americans, Latinos, Asians and Asian-Americans and Christians, along with Whites from the American South, and that other groups including African-Americans and women have also been victimized by Hollywood portrayals over the years, although less so in more recent movies?

Would your feelings differ if you realized that feature films are much more than mere entertainment (what many Hollywood spin doctors have repeatedly told us and want us to believe), when the truth is that our U.S. Supreme Court has actually declared that the motion picture is a significant medium for the communication of ideas, and on that basis has extended the constitutional right of free speech to films? Would your feelings differ if you realized that ideas have always and will always be important factors in influencing human thinking and behavior?

And, would your feelings differ if you realized that millions of the people who go into these darkened theatres and view these powerful movie images are young, not very sophisticated, and in some cases, not well educated or even mentally balanced individuals? After all, no one stands at the theatre door trying to determine who can effectively separate reality from fantasy in movies, do they?

If someone like those individuals I've just described, repeatedly saw a particular group of people consistently portrayed in a negative or stereotypical manner over the years in a significant number of Hollywood movies, what are the chances that such portrayals would influence the attitudes of those moviegoers with respect to those negatively or stereotypically portrayed populations? Probably, pretty good, wouldn't you say?

And, would you feel any different if I told you that my studies of what's really going on in Hollywood demonstrate that movies, to a large extent, tend to mirror the values, interests, cultural perspectives and prejudices of their makers. And further, that the Hollywood-based U.S. film industry is today and has been for its 100+ year history dominated by a small, narrowly-defined group of individuals with very similar backgrounds. In other words, there is and has been very little diversity at the top in Hollywood, in those positions with the power to determine whether a given motion picture is produced or released for viewing by American and worldwide audiences. And, that lack of diversity at the top in Hollywood produces these patterns of bias in motion picture content.

As a significant medium for the communication of ideas, there can be no doubt that it is absolutely essential to the preservation of our democracy and the underlying free marketplace of ideas (upon which our democracy is based), to recognize that our national movie industry has an affirmative obligation to offer us a more balanced view of the real world and of all important matters communicated through movies. The industry also has an affirmative obligation to make the control positions at the dominant film companies available to a more diverse group of executive decision-makers, so that movies can mirror the values, interests, cultural perspectives and prejudices of a more representative group of Americans. Diversity is the key. It is in your interest and our national interest.

## Chapter 18 – BRINGING REFORM TO HOLLYWOOD

As soon as more people recognize that movies are more than mere entertainment, that they are, in fact, a significant medium for the communication of ideas, and that ideas influence human behavior – therefore, movies influence behavior; then it is likely that people will understand that movies are important, and that they are actually evolving into a vital component of the health and welfare of our entire society. In effect, the motion picture has become one of those dreaded "strangers" whispering into the collective ears of millions of our children. The truth is that every citizen has a stake in what messages are repeatedly conveyed to the rest of society, particularly when those messages are being communicated through such a powerful medium as the motion picture.

In our efforts to bring about long-term, lasting reform of the U.S. motion picture industry, we must keep in mind that inevitably, a weakening of the illegitimate control of the major studio/distributors over the film industry will create greater opportunities for other interest groups in our multi-cultural society to tell their "stories" through this important communications medium. Those other interests might be alternatively characterized as independent producers or distributors, the creative community, small business interests, or as all of the other cultural, ethnic, racial, religious and regional populations who do not now, and have never controlled the U.S. film industry.

Increased diversity in the motion picture industry would ultimately result in more movies and other forms of entertainment that are in fact more "uplifting" and considered more appropriate by the parents who are responsible for the education of their kids (as well as a larger percentage of our general population). It would also result in a motion picture industry (and ultimately an entertainment industry) that is populated by a larger number of smaller companies, who in turn would tend to be more sensitive to the needs of the consumers simply because they would not be so powerful and arrogant as the major Hollywood studio/distributors of today.

One of the most significant failures of the great Western democratic and free enterprise systems has been for the rest of society to stand by while a wealthy and powerful few in certain industries, like tobacco, oil and entertainment exploit our society for commercial or cultural purposes, to the detriment of that same society. Ultimately again, one of the objectives of my research and publications is to inform the American public about what is really going on in Hollywood, to hopefully help create a justified sense of outrage among our citizenry and to serve as a catalyst to encourage the use of the enormous resources of the executive, legislative and judicial branches of the U.S. government to bring about long-term and lasting reform of the U.S. film industry; reform that is designed to achieve the public policy goal of creating equal economic opportunities for people of every race, culture, religion, nation or region of origin and sexual preference, and to thus bring about more diversity at all levels of the film industry, particularly those levels that determine which movies are made, who gets to work on those movies, and the content of the scripts on which such movies are based, so that eventually, the

U.S. film industry will produce and release films portraying a broader and more diverse range of positive and negative portrayals of all persons, places and things depicted in motion pictures.

Reform of the nation's motion picture industry will require the long-term commitment of a large number of concerned citizens organized at the national level; citizens who know and recognize the true nature and depth of the problem. Remedies will necessarily include the organization of coalitions of interest groups, improved enforcement of existing laws, class action and individual litigation, new legislation and possibly, long-term, broad-based, national boycotts. Such remedies are discussed in more detail in the book *Film Industry Reform* (available at Amazon Kindle).

It is indeed quite ludicrous for anyone to suggest that government should not play a role in assuring that all cultural groups within our diverse society have a fair and equal opportunity to tell their important cultural stories through motion pictures. After all, government has been manipulated for years by and for the benefit of the Hollywood establishment in its relentless campaign to gain and maintain control over this important industry. The history of that manipulation is set forth in the book entitled *Politics, Movies and the Role of Government* (now available at Amazon Kindle). Furthermore, most of the potentially detrimental effects of government attempts to regulate the film industry have been effectively avoided by the industry itself.

The American public must overcome the influence purchased by Hollywood's massive political contributions to members of Congress and Presidential campaigns. After all, these political contributions from Hollywood, are quite tainted. They are tainted by the way in which they were obtained (that is, through the use of unfair, unethical, unconscionable, anti-competitive, predatory and/or illegal business practices). They are tainted because the people who make them are being paid excessive amounts of money with the implicit understanding that some of that money will then be converted into political contributions. They are tainted by the litmus test that is often tied to their availability, a litmus test requiring our elected officials to submit to the political desires of a small group of insular people. The film industry's political contributions are tainted because of the favorable treatment the film industry obtains from government in exchange for its political contributions, and the resulting abuse of power in which the major studio/distributors are able to engage, (for example, blatant discrimination against persons who are not considered part of the Hollywood insider control group). They are tainted also, because with their government sanctioned power, the major studio/distributors are able to consistently portray whole populations of our diverse society in a negative or stereotypical manner through this powerful communications medium.

We must further recognize that movies are important. They are much more than the "mere entertainment" that Hollywood management would have us believe. In fact, the motion picture is a significant medium for the communication of ideas. That is exactly why the U.S. Supreme Court applies First Amendment protection to motion pictures. Recognizing further that ideas have always been, and will always be, one of the most important motivating forces influencing



human conduct, then all reasonable persons must recognize that the motion picture, one of the most effective forms of communication yet devised, has great potential for influencing people's thought and behavior, and, in fact, does influence human behavior on a regular basis, particularly amongst that target audience for which many films are directed, the relatively immature and unsophisticated youth of our nation.

All persons in our society have a right to be concerned about the effect of the modern technology of the motion picture on themselves and the rest of society, and to be understandably alarmed to discover that control of the Hollywood-based U.S. motion picture industry does not come anywhere close to reflecting the diversity in U.S. society, and even worse, that many observers who have chosen to write about Hollywood have specifically sought to mislead the public about this critically important issue.

Finally, we must recognize that it is simply not acceptable in a free, democratic and diverse society that values the free flow of information and the competition of ideas in an open marketplace, for the citizens or their government, to stand idly by and allow any narrowly-defined interest group (regardless of whether such group is defined in terms of its race, religion, cultural background, ethnicity or otherwise) to control or dominate any important communications medium, including film. We must remember that movies mirror the values, interests, cultural perspectives and prejudices of their makers, thus to the extent that the film industry is controlled by any narrowly-defined interest group, the values, interests, cultural perspectives and prejudices of most other segments of our diverse society will not be regularly or accurately reflected on the screen (at best, they are being filtered through the cultural sensibilities of another group).

Now that we have passed the 100th year anniversary of the film industry, it is well beyond time that this privately controlled culture-promotion machine be dismantled, so that all segments of this nation's multi-cultural society have an equal and fair opportunity to tell their important cultural stories through this significant medium for the communication of ideas. After all, it is clear that regardless of who controls Hollywood and with what results, it is absolutely inappropriate in our multi-cultural society for any readily identifiable interest group to be allowed to dominate or control this, or any other important communications medium.

As noted above, audits, demands on distributors, threatened lawsuits, narrowly focused and brief boycotts and publicity stunts do not seem to have much effect with respect to changing the business practices of the major studio/distributors or their resulting control and dominance of the U.S. motion picture industry. Not surprisingly, I have devoted another entire book to the topic of various remedies to the problems in Hollywood that may be considered (see *Motion Picture Industry Reform* available at Amazon Kindle). Here below, is a shorter list of several possible courses of action that may be considered:

(1) the general public must be made more aware of the nature of the business practices engaged in by the major studio/distributors, how such practices provide such entities with control

over the industry and how such control is used to consistently portray important populations within our society in a negative manner and to disseminate other messages desired by the MPAA companies, e.g., the positive portrayals or glamorization of violence, sexual promiscuity, drug use, etc.

(2) the public and public officials must be informed that the Motion Picture Association of America does not speak on behalf of the entire motion picture industry<sup>22</sup> and that, like television, motion pictures are more than just entertainment, they also represent a very important form of communication;

(3) a broad based national coalition of interest groups<sup>23</sup> must be formed for the purpose of monitoring motion pictures and identifying patterns of bias and other consistently objectionable messages contained in films;

(4) political candidates at the federal and state levels must be informed of these business and communications practices and encouraged to take stands in opposition to such practices;

(5) state legislative candidates throughout the country should be encouraged to commit to the passage of anti-blind bidding statutes;

(6) candidates for U.S. Representative and Senate races specifically must be called upon to seek a Congressional investigation of the business practices of the major studio/distributors;

(7) candidates for the U.S. Presidency should be asked to commit to a policy of vigorous enforcement of the U.S. anti-trust laws in the motion picture business and a reversal of the recent trend toward vertical integration in the industry, i.e., the purchase of ownership interests in theatre chains by the major studio/distributors (a trend which in turn encourages the greater concentration of ownership and control of the U.S. motion picture industry in the hands of a small group of companies);

(8) all of such officials should be asked to promote policies which create greater and more equal opportunities for all interest groups in America to participate in the production, distribution and exhibition of this very important communications medium, i.e., U.S. made motion pictures and

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<sup>22</sup> For example, among other industry groups the National Association of Theatre Owners (NATO) represents exhibitors, the American Film Marketing Association (AFMA) represents independent distributors and the Association of Independent Video and Filmmakers (AIVF) represents independent video and filmmakers.

<sup>23</sup> Such a coalition may be called the National Coalition for the Elimination of Bias in Motion Pictures or FIRM (Film Industry Reform Movement).

(9) if all else fails, a broad-based coalition of interest groups<sup>24</sup> should organize a nation-wide boycott of motion pictures released by the MPAA companies for a year or more in an effort to weaken their economic grip on the industry and to stop their abuse of such control or

(10) legislation designed to halt the offensive business practices of the MPAA companies should be drafted and introduced in Congress.<sup>25</sup>

## **Summary and Conclusion**

Even though I have tried to use the story of my 23 years in Hollywood as the organizing principle for this book, you realize by now that this story is not really about me. It's about what is really going on in Hollywood and how it affects us all.

To summarize, some years ago, I moved my securities law practice from Houston to Los Angeles for the express purpose of providing very specialized legal services to independent feature film producers who were seeking to finance their film projects with investor funds, (that is, through non-film industry financing). Several years into the practice, I had already been informed by literally hundreds of film-industry professionals that the so-called Hollywood-based U.S. film industry is essentially controlled by what some described as a close-knit group of insiders; and that Hollywood is not a level playing field; not a merit system and not a free market.

This presentation reveals the results of my own investigation into these persistent allegations, many of which I have been able to confirm. In addition, this book tries to further explain what is a more appropriate alternative to an insider-controlled film industry, that is a momentous expansion of opportunities for all interest groups within our multi-cultural and diverse society to tell their important cultural stories through this significant communications medium -- the feature film. That is the ultimate objective of my work on this issue -- to create a free and open film industry marketplace, not burdened with anti-competitive business practices favoring a select few.

In the past, there have been very few limitations that could be effectively brought to bear on those who have controlled the U.S. motion picture industry, thus they have generally been able to disseminate whatever messages they choose through this most effective communications medium. Thus, in a multi-cultural society such as the U.S. where we claim to place a high value on diversity in the marketplace of ideas, it is not in the public interest for governmental policies

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<sup>24</sup> Groups that have consistently been portrayed in MPAA movies over the years in a negative manner include women, the elderly, Hispanics, African-Americans, gay/lesbians, Christians, Italian-Americans, Japanese, Germans, Asians, Arabs, politicians and government officials and people from the South.

<sup>25</sup> Such legislation may be referred to as the Motion Picture Industry Fair Practices Act.

to encourage the concentration of ownership and control of the motion picture industry in the hands of a few very powerful, closely associated and vertically integrated entities. To the contrary, it should be the policy of both the federal and state governments in the United States to encourage broader ownership and control of this important communications industry, for it is only through broad ownership and control of motion picture production, distribution and exhibition that fairness in the economic and intellectual marketplace can be achieved.

And so it was – an interesting ride! Some of you may believe that this is a plea for sympathy. But that is not how I feel. I do not seek anyone’s sympathy. I made the decisions that took me to Hollywood and the decisions that caused me to stay there for 23 years, long past the time I realized that the system was rigged in favor of Hollywood insiders. I also made the decision to seek the truth and follow the facts about Hollywood, where ever they led. I accept responsibility for those decisions. This is, however, a plea for honesty, clear thinking and change.

Yes, I probably stayed in Los Angeles too long, but I had a specific skill-set – a body of knowledge and specialized expertise that I enjoyed sharing with filmmakers. I got a great deal of satisfaction out of the positive comments of clients and seminar attendees who thanked me for guiding them through the complicated process of complying with the laws relating to investor financing of a film project.

As I approach the final days of my own career, I do not lecture as often as I used to. But when I do, I sometimes ask the question of my audience: “How many of you have read all sixteen of my books about the film industry?” Of course, no one has. And, I usually get a laugh as the response to that question. But then I follow up with the question: “Why would any reasonably intelligent person work in or seek to work in an industry for which you have not done your homework?”

Of course, that’s exactly what I did. Fortunately, I didn’t suffer a bona fide tragedy or disaster like many of those who go to Hollywood seeking fame and fortune. In addition, of course, my goals were never that lofty, although admittedly, I never achieved all of my objectives either. All I can say is that I was successful in making a small contribution to my chosen career field helping thousands of independent filmmakers learn about and better understand their film finance options, writing 16 books and 30 or more articles about the film industry along the way, providing an informative website for the benefit of thousands of filmmakers and helping at least 60 teams of filmmakers achieve their goal of putting their vision on the big screen. In addition, in contrast to the warnings of Louis Horowitz and others, none of my clients were ever sued, and none of those clients were ever found to have violated any of the rules in any sort of securities law enforcement proceeding. I am grateful for that.

I was recently invited to return to the American Film Institute’s campus and participate in a panel discussion sponsored by Ivy Entertainment, a networking organization for alumni of ivy league universities working or seeking to work in Hollywood. The topic was “How to Start Your Production Company”. I felt I would be remiss if at some point during the discussion, I did not

acknowledge that there are some problems with choosing a career in film, and anyone contemplating such a move should at least give some consideration to these problems. I summarized the problems as three in number: (1) a lack of diversity at the top that practically impacts all levels of the industry, (2) the previously discussed distributor business practices that fall within the phrase “creative accounting” all of which tend to limit the participants in film profits to the distributors and (3) the severe imbalance in the law of supply and demand for nearly all individual career paths in Hollywood.

I was also recently invited back to UCLA Extension to teach an online course relating to Independent Film Finance. It’s an overview of film finance with an emphasis on investor financing of independent films. The course is based on U.S. law but students from all over the world take the course. The UCLA Extension tuition charge is \$695. The course is more about the various forms of film finance that are available to independent producers as they consider which route to take for any given film. If they want to look more closely at some of the problems I’ve discovered in Hollywood, they can read any of my several books that deal with those issues.

My overall impression of Hollywood, is that it is a very sophisticated system that has taken Hollywood’s so-called “best and brightest” more than one hundred years to shrewdly craft, in which there are three underlying objectives: (1) steal the good ideas for films brought in by outsiders before a script is ever written, (2) steal some or all of the screenplays that are submitted by outsiders by taking the ideas contained therein and rewriting the scripts multiple times or (3) just have the distributor take the money earned by a film on the backside, without properly compensating most of the other profit participants.

I’ve seen estimates of the percentage of times that film profits are not allowed by a distributor to flow through to other contractual profit participants, and those estimates are as high as 95%. In other words, in only an approximate 5% of the cases do other profit participants besides the distributor (i.e., writers, producers, directors, actors, actresses, or investors) get to participate in a film’s profits. And those that do are generally either an insider themselves or they are represented in some capacity by an insider (e.g., by an insider entertainment attorney or talent agent or both).

Of course, many will react to such a statement by saying: “But, I am a very talented person and thus should be successful in Hollywood based on my talent alone!” Unfortunately, there are lot of talented people attracted to the Hollywood-based U.S. film industry from all over the world, to the extent, as already noted, that the law of supply and demand is out of whack in almost every field of endeavor in the film industry. And most of those talented people don’t make it in Hollywood. They don’t make it because Hollywood is not a merit system at all. It is a system that was created by and exists for the benefit of Hollywood insiders. In other words, for any given opportunity in Hollywood there will typically be a significant number of very talented individuals who are quite capable of performing that job at a very high level. The problem is that the very talented people who have a cultural connection with the Hollywood insiders have an

advantage. Over the hundred plus years of Hollywood's existence, those folks have typically arbitrarily benefitted from the discriminatory preferences of the Hollywood insiders.

What seems to be happening is that everyone is willing to admit that there is a long-standing lack of diversity at the top in the Hollywood-based U.S. film industry. But few are willing to consider what the impact of that lack of diversity is on the hundreds of thousands who have sought to work in the film industry over the years, the millions of moviegoers who watch Hollywood's motion pictures or the broader U.S. and world movie going populations as a whole. Lots of people rightly complain about the Hollywood bias directed against their particular group as seen in the movies themselves, in the casting of certain movies and at the annual award shows, but few are willing to identify precisely who is responsible. And, without the courage to speak out and accurately describe who keeps engaging in these discriminatory acts, there is little chance of ever resolving the problem.

Remember, we are talking about discrimination in employment. Hollywood apologists seem comfortable saying who is being discriminated against, but they appear to want everyone to keep secret about who is actually engaging in that discrimination. Some may think of that as political correctness run amok. It reminds me of an old joke. It's "horse feathers" and ask that you think of another animal, and another animal product.

At the base of the centerpiece of the University of Texas at Austin campus (the UT Tower), words of wisdom are etched above the main entrance. I walked by that statement every morning on my way to class the first year I attended. It says: "Ye shall know the truth, and the truth shall make you free." According to the Bible, those words were expressed by Jesus. Although, there is a difference between academic truth and the perceived freedom it brings, and the truth that Jesus was apparently talking about, I now feel like I am free, and it's a good feeling. I don't have to pretend that there are not serious problems with the Hollywood system. Most of the rest of you appear to be still burdened with the fiction that everything is ok in Hollywood, or that it does not have an impact on your life. Now, you know better. In fact, it is Hollywood that cannot handle the truth.

Everybody knew there was some sort of problem with prejudice and discrimination in Hollywood just from the most recent highly-publicized Academy Awards controversies about no African-Americans being nominated. What I have demonstrated is that the problems with prejudice and discrimination in Hollywood go much, much further, well beyond the single "discrimination against African-Americans" issue. My ultimate conclusion is that it is impossible for any narrowly-defined group to maintain its dominance over an important industry like the film industry, in an open, free market, for more than 100 years, without massive employment discrimination. So, I encourage each of you to free yourselves from what in many cases may be an inadvertent coverup of massive wrongdoing in Hollywood, and have the courage to speak out and join together to take action. That's the only way the Hollywood dream can be fairly open to others besides the Hollywood insider group.

I'm sure this book will have its critics, just as some of my past writing has been criticized (mostly with straw man arguments, hyperbole, name-calling and baseless allegations). I can tell the critics in advance, however, that if that criticism comes to my attention, and I have a chance to respond, I will ask four questions: (1) How long have you worked in the Hollywood-based U.S. film industry? (2) How many independent film producers have you talked to? (3) How many of the books and articles in my bibliography have you read? and (4) What original research on these topics have you done? If the answers are not that impressive, such criticism can easily be dismissed as coming from someone who just does not know what they are talking about.

In addition, I might ask: "Why would anyone be offended by me honestly telling my story about my experiences, my studies and my observations about Hollywood?" After all, I do not lack confidence in my own ability to make reasonable judgments about such matters. If a critic wants to change something, seek to change the underlying problems that the Hollywood community itself has created, not the person who observes and reports on those problems.

To be clear about where I'm coming from, recognize that I am also politically liberal and not very religious. Thus, my objections to what is happening in Hollywood are not based on political or even religious grounds. Remember, that early in my Los Angeles film finance seminars, I first was asked the question: "Do Jews control Hollywood?" And, I set out to determine the accuracy of that statement. As you know by now, my research demonstrates that the statement that "Jews control Hollywood" is not accurate and even quite misleading. It is more accurate to say that some Jews control Hollywood – the politically liberal, not very religious Jewish males of European heritage. Thus, I am merely contending that this significant medium for the communication of ideas, must be fairly open to more diverse viewpoints – that no single, narrowly-defined interest group should, in a democracy, be allowed to control such an important communications outlet.

My time and work on this issue has pretty much passed. I've done what I could do. That includes writing and publishing well-researched and highly annotated books about various aspects of what's really going on in Hollywood. I'm nearing retirement. I've tried to provide a clear and honest warning about the problems in Hollywood and how they effect the rest of us. Now, it's up to you. Good luck!

## **Appendix A – SOMETHING’S ROTTEN IN THE BIG APPLE!**

### **The Inside Story of a NY Publisher’s Attempt to Conspire with Hollywood Insiders to Defraud America**

A funny thing happened on my way to publishing a book for my New York publisher. In the summer of 2006, I met the publisher of another of my books about the Hollywood-based film industry in San Francisco to help staff his booth at the trade show associated with the annual gathering of communications professors at their International Communications Association conference. The individual publisher’s name was David Demers. His publishing company was Marquette Books. The title of the book he published for me was: *Hollywood Wars – How Insiders Gained and Maintain Illegitimate Control Over the Film Industry*.

I have been working in the film industry as a securities/entertainment attorney for about 20 years. My area of concentration is film finance, more specifically investor financing of independent films. Along the way, I’ve lectured more than 300 times all across the country on the subject of film finance or the more narrow topic of investor financing of independent films. My producer client offerings successfully raised money and produced or helped produce about 60 independent films including *Better Luck Tomorrow*, *Amy’s O* and Comedy Central’s *Strangers With Candy*. The films are typically low budget independent films.

My books about the film industry include *Film Finance and Distribution – A Dictionary of Terms*, originally published by Silman-James Press in Los Angeles and subsequently re-published under the revised title *Dictionary of Film Finance and Distribution – A Guide for Independent Filmmakers* by Marquette Books. Southern Illinois University Press published the overview of film finance (*43 Ways to Finance Your Feature Film*) now in its third edition, and *The Feature Film Distribution Deal*. I successfully self-published and sold another book across the world. It’s entitled *Film Industry Contracts* and contains 100 sample film industry agreements. I have for years maintained a pro bono Q&A forum online to answer questions from independent producers about investor financing of independent films.

David Demers thought it might be helpful in promoting the *Hollywood Wars* book if I were there at the booth and available to meet interested professors. During some of my down time at the conference, I visited the booths of the many other book publishers also attending the conference and offering their publications. One of those publishers was Peter Lang Publishing of New York. Their representative at the conference was Damon Zucca, the Acquisitions Editor for the publisher’s media and communications studies series. They had already published books for the series relating to radio, magazines, the Internet, broadcast television and other media, but as Damon explained they had experienced some difficulty in finding an author that could complete a book for the series about the film industry. Each of the books for the series named an industry, for example, “Radio” then followed with the sub-title “A Complete Guide to the Industry”. In other words, this series of books was designed to provide fairly comprehensive overviews of



each of these important communications industries. The film industry book was to be called *Motion Pictures: A Complete Guide to the Industry*. The general editor for the series was David Sumner, a professor of journalism at Ball State University, in Muncie, Indiana.

I told Damon Zucca about my years of research on the film industry and my previous publishing. I also offered to take on the film industry project for Peter Lang Publishing. When he got back to his office, he sent me the publisher's book proposal guidelines. I prepared and submitted a proposal. Peter Lang's Senior Acquisition Editor Phyllis Korper sent me a contract in October of 2006 saying:

“Thank you for submitting your excellent proposal for editorial consideration. I am delighted to report that Peter Lang Publishing is very much interested in publishing this book in David Sumner's series of books on the media industries.”

We then signed a contract. Subsequently, I was contacted by Peter Lang's Production Manager Bernadette Shade to begin the process of actually producing the book and providing her with necessary information including author and book information, a list of keywords, a book synopsis, along with Library of Congress materials. Ms. Shade was quite helpful.

Shortly thereafter, Damon Zucca left Peter Lang Publishing and moved over to Oxford University Press. He was replaced by Mary Savigar. The manuscript went through the usual editing process and several drafts including deleting a hundred plus pages to meet an arbitrary page limit. Lots of editorial suggestions from both David Sumner and Mary Savigar were accepted and incorporated into the book.

In September of '07 David Sumner wrote: “I want to say first how much I appreciate your prompt and punctual work and the positive way you have made any changes we requested. I am very happy with the overall content.”

In October of '07 Mary Savigar wrote: “Many thanks for this final draft of the manuscript. David and I appreciate all the time you have spent taking our comments on board and we think you've done an excellent job incorporating our suggestions. I am pleased to say that I am now ready to send the manuscript to the copy editor.” In December '07 several technical issues raised by the copy editor were resolved.

On December 27, of '07 I received an e-mail from Mary Savigar discussing several further technical issues relating to copy editing. Those also were resolved. Later on the same day, I received another e-mail, this one from the General Editor for the book series, David Sumner raising a point that Mary Savigar was apparently unwilling to discuss with me since it was omitted from her earlier e-mail of that same day. David's e-mail reads:

“I had a chance to meet Mary Savigar at the journalism educators convention in Washington, DC, last August and like her very much. She is a young English woman in

her early 30s probably and just came to New York to work for Peter Lang. After your manuscript came back from the copy editor, she talked to me about their concern in chapter 7 where you talk about ‘politically liberal, not very religious, Jewish males of European heritage’ and they felt it could be interpreted in the wrong way (anti-Semitic). I did not agree with her because I saw your point and urged them to keep it in. There is a widespread sense among people I know that Hollywood movies tend to portray Christians or pastors/priests as clumsy not-too-bright people, especially if they are from the South. This section helps explain why. But I did agree to look at the passages in chapter 7 where you make those points and see if I could edit it ‘tone it down’ (her words). So I did that and have attached a copy of that section with my edited version followed by your original version . . . Are you willing to accept these edits? I believe it’s important to respect the integrity of the author and have tried to edit it in a way so that you make the same point. But I did reduce the number of times you referred to ‘politically liberal, not very religious, Jewish males of European heritage.’ We hope you will accept these edits as a compromise to a delicate situation.”

David Sumner and I had a few phone conversations about the matter, but I took the position that it really was not appropriate for him to be asked to revise a portion of my book without Mary Savigar advising me as to what specific language was deemed unacceptable.

In the meantime, apparently David Sumner conferred with Mary Savigar and she sent a followup e-mail a several weeks later (January 18, ‘08) saying:

“David has informed me that he just spoke to you. In light of your conversation, he has asked me to send you his suggested edits to pages 203-206 where there are several references to Jewish men who hold leadership positions in Hollywood. In the attached document, David has copied and pasted the original material from pages 203-206 and then copied and pasted the same three pages with his edits and deletions. In both the original and revised texts he has highlighted in yellow those paragraphs where you talk about Jewish men. When you have had a chance to consider these edits, please let us know if you are willing to accept them.”

I wrote Mary Savigar back that same day stating: “Before I consider such changes, I believe it would be in order for me to be advised as to: (1) Who is objecting to the original text? (2) What are they objecting to? (3) What is the basis for the objection?”

Mary Savigar responded on January 24, ‘08 saying: “The copy editor initially raised the query about some of the material on pages 203-206. I then discussed this with David Sumner. We felt the editor has some valid points and the attached copy is just a suggestion as to how the material might be amended. The issue is that some of the material, we feel, could be viewed as offensive to some readers. We felt the attached edits in my last e-mail provides a compromise. Please let me know what you think.”

Early the next day, I responded by e-mail to Mary Savigar saying:

“What I am asking specifically is: ‘What are the editor’s valid points?’ Issues of concern to me are knowing what you feel are ‘valid points’, and whether it is appropriate for a publisher to ask an author to change material for some vague and undisclosed reason. My objective in writing this book is to be honest about the film industry (i.e., a complete guide). I’m not very sympathetic to people who want me to tip toe around the truth because of some vague notion that some unstated persons may be offended by the truth. I’ve worked in and researched the film industry for 20 years. I’ve been honest and straightforward about what I write. My faithful following expects me to be truthful and that’s what I’d like to be.”

She wrote back on January 30, ‘08 saying: “Thank you for your e-mail. I appreciate your comments and am happy to leave the text as it is. I still think some of the paragraphs would benefit from being shorter but I will leave it up to you to decide whether you want to edit them. Please let me know. The assistant editor is inputting your changes to the hard copy as we speak.”

I responded on the same day stating: “Since I’ve already deleted about a third of the material to meet page limits, unless someone has some very specific suggested editing cuts to make, I’d just prefer to move on with the book as is.”

I did not hear anything further from Mary Savigar for a month and a half ( March 19, 2008) when she sent another e-mail saying:

“The proof reader has just finished reading the manuscript. Unfortunately, she has noted some serious issues which we need to resolve before we go anything further. Please find the text attached. The most serious concern at this stage is something I know we have discussed briefly before but we need to do so again. This is the issue of anti-Semitic material. The material causing concern is on page 175, ‘censorship’ on p.177, 222-223, 229-230, and questions on p. 180. The proofreader's concerns reflect those of the copy editor. I have also re-read this material as have colleagues in-house, and we are all of the same opinion that the book cannot be published with this material left in. It has to be deleted or we will need to cancel the book. Although it’s only a few pages this is a very complex and serious issue. The material about a ‘Hollywood control group’ consisting of ‘Jewish males of European heritage’ (p222) is not ok. Even if you are not saying anything about Jewish character in general you most definitely are saying something about the Jews in general. Why? Because you are saying that some Jews conspire ‘to gain and maintain control over Hollywood’ (p227). Rather than engaging in a protracted debate about whether your viewpoint is valid or not, it is easier to look at the situation from this viewpoint: we are publishing this volume as a basic primer to teach undergraduate students about the film industry. The observations about Jewish control of Hollywood is gratuitous and inappropriate for this audience. If you agree to address our concerns I suggest we have the whole final manuscript (after you have changed it) read again for just

this issue. There are some other issues which need addressing after this main issue has been settled. I realize that this is a difficult situation that may cause you concern and I do hope that we can find a way forward.”

The next morning I responded to Mary Savigar’s e-mail (with a copy to David Sumner):

“Here’s an excerpt from my book *Hollywood Wars – How Insiders Gained and Maintain Illegitimate Control Over the Film Industry* that appears to be on point for purposes of our discussion. Of course, I am very disappointed at the intellectual dishonesty involved in threatening to refuse to publish a perfectly good book, without supporting your arbitrary views with credible reasons. For example, when an editor starts interfering with the substance of a book as opposed to issues relating to punctuation, readability, formatting, etc. the burden of persuasion is on the editor to show that something needs to be changed. You have not only failed to meet your burden of persuasion, you haven’t even made the attempt. Initially, you could only argue that some parts of the book might be considered offensive. Now, more recently you’ve gone so far as to label some of the writing in the book as “anti-Semitic”. On the other hand, you have not offered any recognition that there are numerous definitions of the term anti-Semitism available for use in such a discussion and you’ve not offered a single definition from which to work (see the below book excerpt for several working definitions of the term). Nor, have you pointed to specific language in the book that meets all of the elements of any such definition. Thus, you have not made your case. You’ve merely acted in an unprofessional manner, yelled and screamed “anti-Semitism” and threatened to pull the plug on the book. Ultimately, you are demanding that I omit factual information regarding the state of Hollywood and by doing so mislead readers of the book to think that such problems are not real. You may think that is an appropriate role for a book editor, but I think you are way out of line and extremely unethical. Please provide me with the e-mail addresses for those people at the publishing house who are your supervisors. I think this discussion needs the involvement of more reasonable and more honest individuals.”

The Excerpt – Some effort should first be made to define what it means to be anti-Semitic. According to the American Heritage Dictionary of the English Language, for example, an anti-Semite is “[o]ne who discriminates against or who is hostile toward or prejudiced against Jews.”<sup>1</sup> Unfortunately, there are at least a couple of problems with this definition. It does not provide any quantitative limits on the number of Jews (minimum or maximum) that are required to fall within the scope of anti-Semitism, nor does it distinguish between hostility based on good cause. In other words, this definition would permit hostile behavior or language directed toward two Jews who have in fact committed horrible acts to be considered anti-Semitic. Thus, that dictionary definition of anti-Semitism seems too vague and overly broad. It is not workable in a practical sense.

Checking another dictionary, *Webster's Seventh New Collegiate Dictionary* also defines "anti-Semite" as "one who is hostile to or discriminates against Jews." This definition is

pretty much the same (after all, discrimination is based on prejudice) and it has the same inadequacy (i.e., it does not distinguish between the person who is hostile toward Jews generally, as opposed to the person who may be hostile toward a few Jewish individuals who happen to be Jewish, but the hostility is not related to their Jewishness, instead, for example, because of their actual bad behavior). In other words, these first two dictionary definitions of anti-Semitism actually suggest that if anyone is hostile toward any number of Jewish people, regardless of the behavior of those particular Jewish people, the hostile individual may be fairly called anti-Semitic.

Maybe it would be more helpful to use a definition by someone who holds himself out as a scholar on the subject and who wrote a very contemporary book entitled *Anti-Semitism in America*. Leonard Dinnerstein, a professor of history at the University of Arizona, for example, defines anti-Semitism in his recent book as ". . . hostile expressions toward, or negative behavior against, individuals or groups because of their Jewish faith or heritage." Dinnerstein goes on to point out that "[p]rejudice reflects antagonistic thoughts but when those ideas are put into actions that restrict or condemn Jews (or others, for that matter) they become forces of discrimination."<sup>2</sup>

Note, however, that Dinnerstein's definition adds an essential element, omitted by the dictionaries. He states that in order for hostile expressions or negative behavior directed toward Jews to be fairly considered anti-Semitic, it must be made because the targets are Jewish, or it must stem from a belief that Jewish persons behave the way they do because they are Jewish. In other words, Dinnerstein's definition adds the requirement that the alleged anti-Semite's motives must be considered. Demonstrating someone's motives for negative behavior or hostile expressions clearly requires a much higher level of evidence, certainly much higher than that demonstrated by any of the above cited authors. Since, the charge of anti-Semitism is a serious charge, this book takes the reasonable position that it should not be taken lightly, and should not be made without good reason. In addition, the better practice is that no such charge be made unless it is accompanied by evidence regarding the motivation of the alleged anti-Semite, not just another allegation regarding such person's motivations. After all, that's nothing more than gossip or a whispering campaign and the people who participate in such activities have a similar mentality to a lynch mob.

One other semantical problem occurs with both Dinnerstein's and the dictionary definitions of anti-Semites, and that relates to the meaning of Semite itself. On the one hand, the American Heritage dictionary's preferred definition of a Semite is "[a] member of a group of Semitic-speaking peoples of the Near East and northern Africa, including the Arabs, Arameans, Babylonians, Carthaginians, Ethiopians, Hebrews and Phoenicians." Its secondary meaning is "Jew".<sup>3</sup> Also, Webster defines "Semite" as "a member of any of the peoples descended from Shem; a member of any of a group of peoples of southwestern Asia chiefly represented now by the Jews and Arabs but in ancient times also by the Babylonians, Assyrians, Arameans, Canaanites, and

Phoenicians. It also defines Semitic as "of, relating to, or characteristic of the Semites; specifically Jewish" or "of, relating to, or constituting a branch of the Afro-Asiatic language family that includes Hebrew, Aramaic, Arabic and Ethiopic." Webster further defines Semitic as "any or all of the Semitic languages".

Thus, the word "Semite" is not always synonymous with the term "Jewish" and Jews only represent a part of the Semitic peoples. Consequently, it is not specifically accurate to say that a person who is anti-Jewish is necessarily anti-Semitic. And it is understandable that many of the other Semitic peoples of the world may be offended by the Jewish usurpation of the term "Semitic" in place of "Jewish" when used to describe someone who is anti-Jewish but not anti-Semitic in the broader sense. Even if the argument is made that dictionaries report usage, and are therefore justified in saying anti-Semitic means anti-Jewish because it is commonly used that way, all of the non-Jewish Semitic peoples still have a right to complain about the inherent ambiguity in the use of such term, and it may be a more useful and worthy purpose for the people who write and publish dictionaries to help clear up such ambiguities in the language instead of contributing to the confusion.

Dinnerstein, meanwhile, (writing in 1994) goes on to state that "[a]ntisemitism has existed throughout American history."<sup>4</sup> This is no doubt an accurate statement. On the other hand, it is just as accurate to say that some Jewish prejudice against some non-Jews has also existed throughout Jewish and American history. Dinnerstein does not say that, however. He like Medved makes a very important omission from his discussion. As you may recall, Medved reported in his book *Hollywood vs America* said, ". . . Jewish 'control' of American entertainment now stands at an all-time low . . ." <sup>5</sup> while omitting to state the other side of that same truthful statement, (i.e., but a small group of politically liberal and not very religious Jewish males of European heritage still retain more control in Hollywood than any other readily identifiable religious, racial, ethnic or cultural group). Omitting an important fact is just as wrong as mis-stating the truth.

It may be fair, considering these two examples, to raise the question as to whether Dinnerstein and Medved are actually trying to reveal the whole truth, or just the part they want us to see. After all, based on the studies and collection of anecdotal reports contained in this book, it may be just as accurate and fair to report that the politically liberal and not very religious Jewish males of European heritage who control Hollywood are, as a group, just as prejudiced against non-Jews, if not more so, than most Americans who are considered anti-Jewish. Thus, anyone concerned about prejudice directed toward one particular group, must also be concerned about the prejudices of that group directed at others. If not, such persons may be considered unfair and hypocritical in their analysis and suffer a loss of credibility. It must also be remembered that people who are regularly and wrongfully accused of being prejudice may become very resentful of such allegations and in the long-term become prejudice against those who make such allegations, thus generating a self-fulfilling prophesy.

Another, presumably, even more authoritative definition, of anti-Semitism comes from *The New Standard Jewish Encyclopedia* (7th Edition)<sup>6</sup> That publication " . . . acknowledged as the authoritative source book of information about all aspects of Jewish life . . . " provides an even more conservative definition of anti-Semitism, saying it is a " . . . term . . . used . . . to designate the organized movement or other manifestations against the Jews; more loosely, hatred of the Jews generally." Wigoder's definition seems to require that in order for something to rise to the level of anti-Semitism, it must either be part of an "organized movement" or at least directed at Jews generally. Thus, under such a definition, it would be inappropriate to label an individual as anti-Semitic unless that individual was part of a larger movement against Jews, or was at least guilty of an expression of hatred (which is even stronger than "hostility") toward all Jews or, at least, a broad cross-section of Jews.

Author Patricia Erens chose a similar approach in defending Jewish filmmakers who provide negative or stereotypical portrayals of Jews in American films. Erens stated that the " . . . fact that most of the works (reviewed in her book *The Jew in American Cinema*) were written or scripted by Jewish writers and produced by Jewish businessmen and actors classifies them as a form of self-examination."<sup>7</sup> And she points out that this Jewish self-examination is different " . . . from an attack from without." However, in determining whether such Jewish self-examination in film actually rises to the level of Jewish anti-Semitism, Erens quotes Robert Alter's definition of anti-Semitism, which holds that "Anti-Semitism implies an active hostility towards Jews as a group and an active intention to vilify them."<sup>8</sup> Thus, Erens takes the position that " . . . one must make a distinction between a negative character or even an unlikable family and a slur aimed at the entire Jewish community. Using this criterion . . . " Erens reports that " . . . very few films are genuinely anti-Semitic works, despite the outcry and rage of overly sensitive, defensive, and protective Jewish critics."<sup>9</sup>

In any case, the good news from Dinnerstein's published analysis of anti-Semitism in America is that " . . . prejudice (in the United States) toward all groups (has) declined since 1945 . . . " and that " . . . Jews, more than any other identifiable group, have been the major beneficiaries as educational, employment, housing, resort, and recreational opportunities opened up for them."<sup>10</sup>

Thus, it is fair to observe that if those who write about Hollywood and who make accusations about the anti-Semitic beliefs or behavior of non-Jews, such accusers have an affirmative obligation to support such accusations with credible evidence, and not only use a reasonable definition of the term anti-Semitism but disclose what definition they are using. That evidence must at least show that the person accused either was "hostile" toward Jews generally or was "hostile" toward one or more Jews because they were Jewish. Otherwise, these accusers should be considered not credible, and even worse, someone who maliciously wields the sword of anti-Semitism, a blatantly dishonest debate and discussion tactic.

1. *The American Heritage Dictionary of the English Language*, Third Edition, Houghton Mifflin Company, 1992, 81.
2. Dinnerstein, ix.
3. American Heritage Dictionary, 1641.
4. Dinnerstein, viii.
5. Medved, 317.
6. Wigoder, Geoffrey, *The New Standard Jewish Encyclopedia*, Facts on File, 1992, 58.
7. Erens, 257.
8. Ibid, 257.
9. Ibid.
10. Dinnerstein, xii.

David Sumner sent me a further note the next day (March 20): “I have tried to be a go-between on this disagreement, but do agree with you. This is the busiest time of the academic year for me and I am swamped with grading projects and other meetings, events, etc. After I have had time to gather my thoughts, I will write another e-mail to Mary. I told her Peter Lang is the publisher and has the right to decide what gets printed under its imprint, but if you don’t agree, you also have the right to refuse to publish it under your name.”

On that same day (March 20) I responded to the series editor David Sumner stating: “I understand, but I’m hoping it won’t go to the take-it-or-leave-it stage. I’m just asking for some reasonable discourse, about the issue, instead of thoughtless labels, omitted definitions and no analysis as to whether any of my language contains the elements of any reasonable definition. Have you worked with anyone else there at Peter Lang? It appears to me that Mary is just not capable of standing up to these copy editors and is not willing to protect her authors.”

I also sent off another e-mail on March 20 to an Editorial Assistant at Peter Lang (Caitlin Levelle) who had been briefly involved in correspondence regarding the publishing contract to ask: “In the event that it appears a Peter Lang editor is inappropriately demanding specific edits to a book in process and threatening to refuse to publish the book if such edits are not made, is there any mechanism in place there at Peter Lang for having someone else to step in to resolve such a problem and offer the author a fair hearing?” I also sent a similar e-mail to Production Manager Bernadette Shade.

Later that day I received an e-mail from Peter Lang’s Managing Director Chris Myers saying: “Bernadette Shade forwarded a copy of your e-mail to me. Although Mary Savigar is out of the office this week, she did brief me on the situation with the content of your book, so I am familiar with the current state of things. You can feel free to reply to this e-mail at your convenience.”

I wrote back:



“In my view Ms. Savigar is jumping to a false conclusion without fully considering the issue. She has, in my opinion, falsely proclaimed that some of my writing is anti-Semitic, without offering any authoritative definition of what anti-Semitism is, without breaking down the alleged offensive language or demonstrating how that language meets all of the elements of the authoritative definition. She has just skipped past that sort of reasonable analysis and immediately threatened to throw out the book, if I don't go along with her shallow analysis. I think that if she and others who are encouraging her will stop long enough to actually examine my statements, they will realize that what we are dealing with here is the truth, and it is important that my and Peter Lang books focus on the truth, otherwise we are misleading our readers. Thanks for your participation.”

In the meantime, David Sumner also wrote to Chris Myers saying:

“I support Mr. Cones and believe it's important for publishers to support the editorial freedom and integrity of their authors. Mr. Cones was personally recruited by Damon Zucca and asked to write this book when we were desperately seeking an author to write the book on motion pictures. I am not qualified to discuss what is or isn't ‘anti-Semitic.’ I do know, however, that what he has said has been written and documented by other authors in other books and articles. I checked his sources. There is nothing he has said that is libelous or that puts the publisher at risk. If Peter Lang decides not to publish the book, I will feel a personal obligation to help him find another publisher. I will, however, continue to fulfill my duties as general editor of the Peter Lang Media Industry Series.”

Chris Myers then responded to David Sumner saying in relevant part:

“ . . . I appreciate the position you're in--I've seen situations like this before. You have the awkward job of maintaining loyalty to your authors at the same time as doing the right thing for the publishing house. I'm trying to be the lightning rod to relieve you of as much of the problem as possible. Mary is away for a few more days, then she's at a conference in NY for the majority of next week (I'll be there as well), but I'll ask her to give this priority treatment. Simply put, I don't want to proceed with publication as the text now stands, and I've seen the email this morning from John to Mary asking for further instructions, so hopefully this can all be resolved amicably without the need to cancel the contract. Let's see what the two of them can work out. In the interim, thanks for your effort.”

I also wrote again to David Sumner saying: “Thanks for your support. I sent Mary some research and discussion of the issue of anti-Semitism. Don't know if anyone at Peter Lang has seen it since she is apparently out for the week. I had already started looking for someone at Peter Lang to get involved before I read your prior message re waiting. Chris Myers has sent me one e-mail and I've responded. We'll see.”

Then continuing our correspondence on March 20, Chris Myers wrote:

“Let me apprise you of the situation to date as I have been made aware of it. When your final draft was submitted to us, it was reviewed by Mary Savigar for approval of the final content, as well as the editor responsible for assigning copy editing. Independent of each other, both identified your discussion about Jewish control of Hollywood as problematic. While other, lesser issues also need to be resolved before we can continue editing the project, this content remains the primary focus of the discussion.

“I am aware of the email that she sent to you the other day, since I approved the final content. I understand that you consider her description of the problem as a shallow analysis, but I disagree with that assessment. To be blunt, I primarily need to concern myself with the ability of Peter Lang to have its books stand up to peer review and, ultimately, to be able to sell a sufficient quantity of each book that we publish to maintain our Media and Communication list. I, too, have trouble understanding the necessity of stressing the issue of Jewish control of Hollywood as if that is a single, overarching factor in its business environment. Many writers argue that Hollywood and the entertainment industry as a whole are dominated by major corporations that have no knowledge or interest in entertainment but rather are interested only in profits. This argument is countered by industry people who maintain that studios are still interested in producing quality products. My point is that different writers maintain differing viewpoints about the industry. To place so much emphasis on the rather narrow point about Jewish control seems out of balance with the purpose of the book. Including my own read of the material, 3 publishing people felt the same way. I have no doubt that book reviewers will feel the same way. This is why I agree with Mary's assessment of the draft.

“I suspect that you are not going to agree with my viewpoint any more than you did with Mary's. I understand that you have documented your argument by citing secondary sources and, to some extent, I sense that you are looking for a comparable approach to this exchange. The emphasis of my side of the conversation, however, is based as much on 20+ years of experience as Director of Peter Lang as anything else. I know our market well enough to know what will and will not work in our books. Understand that you've written a good manuscript that contains what I had hoped would have been a few problems that could be easily remedied. Let me also state that while I appreciate your wish to have freedom of expression as a writer, we as publisher also wish to have some control over the content of our books. We are asking you to alter a very small percentage of the project as a whole. In any case, I stand behind Mary's message about the need to alter the manuscript.”

My response later that same day stated:

“It is amazing to me that someone like you and your two independent editors could so easily make the very same mental slip that creates the problem here. I do not talk

anywhere in my book about 'Jewish control of Hollywood'. That wording is ambiguous and allows for the inference that all Jews are somehow involved. That is clearly not the case, and clearly is not what I've written. It is one thing for a book publisher to reject my writing for something I've actually written, but it is quite something else for a publisher to misstate my position and then reject the book because of that incorrect view of my writing.

"I also do not take the position that control of Hollywood is the 'single, overarching factor in its business environment.' Those are your words, not mine. That's setting up a second straw man. I simply have determined both through direct research supported by secondary sources that this factual observation (and no one at Peter Lang has demonstrated it is not a factual observation), is part of a number of problems in the Hollywood business environment that should not be left out of any discussion that purports to be 'A Complete Guide to the Industry'. It would be helpful if we could all just focus on what I've written, not what someone assumes I've written.

"Also, keep in mind that some of the people who are offering 'peer review' have agendas of their own (i.e., to protect the status quo in Hollywood), so they're happy to confuse this issue.

"I happen to agree with the U.S. Supreme Court, that the motion picture is a significant medium for the communication of ideas, but would go further and suggest that a significant communications medium like the film industry that is dominated by the voices of a few (i.e., lacks diversity at the top) is not healthy for our nation's democracy (which is supposedly based on a free marketplace of ideas). A nation that cannot figure out what the essence of the problem is (i.e., lack of diversity at the top, no matter who is actually in control) is a nation that will never be able to stimulate healthy change in that important communications industry. A publisher that stands in the way of the truth on this important matter is harming the nation's democracy."

"Why don't you have Ms. Savigar set out the exact language she thinks is objectionable and explain why it is objectionable, without resorting to such vague notions like 'well it may be offensive to somebody'. Don't your authors at least deserve that?"

In the evening of March 20, I also wrote back to Mary Savigar saying: "Ok, it is clear that we are not communicating regarding the material you consider offensive. So, let's agree to disagree. But, I'm not sure what you are asking me to do. If you want to delete something, go ahead and delete it. If you want me to change something, tell me exactly what you want me to change. You don't need my opinion regarding most of the editorial notes sent with the accompanying edited version and I've already answered the source question re the chart. So, proceed to publish the book."

The next morning (March 21) David Sumner wrote to Chris Myers saying: "I have stated

my position supporting John Cones since I didn't feel I could stand by neutral on the sidelines. In the meantime, I would appreciate if all of you could work it out.”

Subsequently on March 30, I sent an edited hard copy version of the manuscript back to Mary Savigar with the following letter:

“The most recent version of the above-referenced manuscript has been printed out in hard copy form and reviewed. The needed changes have been carefully noted in red ink on the document itself. If you have any questions regarding these changes please let me know as soon as possible. The changes are mostly very minor and only involve 75 of the 271 total pages. Overall the book is clean and a quick read. It is a valuable contribution to the literature of the film industry and an important part of Peter Lang's communication series. Thank you and your associates for your valuable contributions.

“Now with respect to the remaining questions of concern:

“1. Target Audience – There unfortunately appears to be a misunderstanding with respect to the target audience for this book and that seems to be affecting your opinion regarding the appropriateness of certain information contained in the book. You indicated in your e-mail to me of March 19, 2008;

‘we are publishing this volume as a basic primer to teach undergraduate students about the film industry’.

“In your August 1, 2007 e-mail you stated:

‘I think this is really important. The book is an introductory textbook for students new to the field.’

“Unfortunately, both statements are absolutely incorrect and completely inconsistent with the more authoritative and contractual description of the audience for the book provided to me earlier by the series editor David E. Sumner (before you were even hired at Peter Lang), – the target audience description upon which my original proposal for the book was made and contractually accepted. That description reads:

‘(a) Undergraduate and graduate students in introductory courses in each discipline and courses in mass media in society, mass media history, and mass media economics; (b) scholars in departments of communication, sociology and popular culture, (c) college and university libraries and (d) executives and professionals in the industry.’

“I am sorry that you have misunderstood this basic assumption about the book and hope that you will recognize that it is inappropriate for an editor or publisher to significantly change the target audience for a book after the book has been substantially written, and/or

for the partial or primary purpose of simply making an argument that the book as written is not appropriate for a more narrow and presumably less sophisticated audience.

“I further dispute your implied contention that any students (at any level), scholars, librarians and/or executives and professionals in the field need to be protected from the truth (or want to be lied to by the authors of the books they read or the editors and publishers who publish those books). If you can demonstrate that I have made any false statements in the book, please do so immediately. To this point, you have made no attempt whatsoever to make such a demonstration.

“2. Alleged anti-Semitism– Now with respect to the more difficult issue of your false allegations of some anti-Semitic writing in the book. As you suggest in your March 19, 2008 e-mail, it is not even fair to say that we have discussed this issue “briefly” because you have refused to discuss it. And, instead of entering in any dialogue in good faith about this important issue, you have simply trotted out the threat of cancelling the book.

“Further, your opinion on the matter of anti-Semitism is not supported by any research that you have revealed, no analysis of what anti-Semitism is or isn’t, not based on any authoritative sources and includes no comparison of what any specific words actually written with the elements of any known and reasonable definition of anti-Semitism. As you have expressed in your e-mails you are relying on the opinion of one or two copy editors, your own opinion, possibly that of your managing director Chris Myers and one or two so-called peer reviewers (people in the film industry who you’ve asked to review the book).

“First, we have to understand that none of these people have the credentials to step forward and allege that some of the writing in this book is anti-Semitic. They have no particular expertise on this very narrow question. Some may be motivated by concerns of political correctness. The peer reviewers clearly may have their own self-interest in mind by trying to delete what is essentially mere criticism of the business practices of the Hollywood establishment, after all the Hollywood insiders have been able to successfully engage in reverse discrimination for more than 100 years without serious challenge.

“Your supervisor Chris Myers stated in his e-mail to me that his primary concern is “the ability of Peter Lang to have its books stand up to peer review and, ultimately, to be able to sell a sufficient quantity of each book that we publish to maintain our Media and Communication list.”

“Do any of you realize what that implies? It implies not only that my writing on this issue is absolutely correct about a small, narrowly defined control group in Hollywood exercising enormous and inordinate control over the film industry, but it also apparently has the power to reach out and influence the publishing of New York publishers and film schools around the country by squelching anything that comes close to being critical of

that unhealthy control. Chris Myers probably knows, as I point out in the book that the film industry is over-populated with filmmakers of all stripes and as a result many of them have moved into academia. They tend to carry with them the same prejudices held in Hollywood. And those prejudices are being used to try to stop the publication of a perfectly good book.

“What a wonderful opportunity for a publisher to stand up for what is right – to be part of a stimulus for discussion and conversation about the issue of anti-Semitism, so that more people will be more aware of what it is and what it is not. I am ashamed of you and other people like you who react with a knee-jerk and fail to look deeper into the subject.

“In the book itself, I point out on pages 174 and 175:

‘Continuing along the same lines, in her article ‘Film Fatales – Shocking Statistics About Women in the Film Industry’, Jane Louise Boursaw goes on to cite the opinion of Cari Beauchamp, Hollywood historian and author of several books, including *Without Lying Down: Francis Marion and the Powerful Women of Early Hollywood* (Scribner, March 1997) and *Adventures of a Hollywood Secretary* (University of California Press, 2006). Boursaw points out that Beauchamp claims that the phrase “white men” is the best way to describe those who dominate or control the Hollywood scene.<sup>170</sup> On the other hand, this description has the same fatal flaw that the phrase “the Jews” has, as used in “Hollywood is controlled by ‘the Jews’ (another false and misleading assertion).<sup>171</sup>

“These statements are not only too general, they are also misleading. Neither of these statements are precise enough to avoid criticism of an entire class of people, many of whom do not have anything to do with Hollywood. It is just as accurate to say that “white men” do not control Hollywood and just as accurate to say that “the Jews” do not control Hollywood. In other words, some people in this country apparently do not know the difference between the meanings of the words “some” and “all”.

“This clarification should make it obvious that this small Hollywood control group is not representative of Jews generally, nor does it appear that they behave the way they do because they are Jewish. It is more fair and probably more accurate to speculate (since that’s all anyone can do with respect to the motives of others) that their motives are similar to the motives of many people around the world from all backgrounds, that is to say, they are principally motivated by greed and the desire for power – two very common human attributes across the board.<sup>172</sup>

“If women and all other disenfranchised ‘minorities’ want to claim their fair share of power in the Hollywood-based U.S. film industry, they must at least have the courage to accurately and precisely identify from whom that power must be taken.

“I don’t really see how any author can be any more clear that they are not talking about Jews generally while also readily admitting that the small group at the top in Hollywood does not behave the way because they are Jewish. That clearly takes this writing out of the realm of anti-Semitism and you are all smart enough to know that. Your continued and repeated bashing of me in your e-mails with the false allegation of talking about ‘Jews in general’ is blatantly dishonest.

“It appears that you are arguing that we should allow the American reading public to continue to be confused about who controls Hollywood, that it is ok to let them think that Beauchamp’s description of “white men” is adequate and tells the whole truth. That’s a smoke screen. From her perspective, it is adequate because she is looking at the film industry from the standpoint of the women who have been discriminated against for 100 years. No one denies that white males have been discriminating against women in Hollywood since the institution was created. Why is it so difficult for some people to understand that it is important to the future development of a much broader diversity at all levels in the film industry and the country to be more precise in our description of who is doing the discriminating in Hollywood and against whom that discrimination is directed? That is exactly what my writing does. That is what is new about my approach.

“In fact, from my point of view, I’m doing the so-called broader Jewish community a favor by agreeing with them that ‘Jews do not control Hollywood’. I also explicitly state that in the above quote. In other words, I disagree with the author of ‘The Big Hollywood Lie: Denying that Jews Control the Film Business’ the article edited by Victor Marchetti, appearing in April 1, 1994 New American View newsletter; and online at ihr.org. I disagree for the reasons stated above. I’m in the middle on this issue. My interest is being scholarly and accurate in the description of who controls Hollywood, not in over-stating the case as Victor Marchetti does or making a material omission as historian Cari Beauchamp and so many others do for various reasons.

“Chris Myers also makes the comment in his March 20<sup>th</sup> e-mail that my position was documented by citing ‘secondary sources’, as if to dismiss the quality of my research. Let’s also clear up that false assumption. The first level of sources relied on include the following, most of which are noted in the book’s bibliography. I do not expect you to read these books, but at least an editor ought to give the benefit of the doubt to the author who has read and studied all of these books.

Celluloid Ceiling 2006 Report – Behind-the-Scenes Employment of Women in the Top 250 Films of 2005, Martha M. Lauzen, Ph.D., School of Communication, San Diego State University.

*Female Studio Executives*, Jennifer Berry, research paper for “Film Finance and Distribution”, UCLA Producer's Program, Fall, 1994.

“Film Fatales – Shocking Statistics About Women in the Film Industry”, by Jane Louise Boursaw, *MovieMaker Magazine*, Winter 2006.

“He'll Never Eat Lunch In This Town Again!”, Michael Logan, *Los Angeles Magazine*, September 1992.

“Hollywood Movies, Society, and Political Criticism”, Stephen P. Powers, David J. Rothman and Stanley Rothman, *The World & I*, April 1991.

“Hollywood’s Ethical Malaise,” Eric Weissman, *Variety.com*, October 12, 2004.

“Hollywood's Family Ways”, Terry Pristin, *Los Angeles Times* Calendar Section, January 31, 1993.

“Killing the Golden Goose: Hollywood's Death Wish”, Pierce O'Donnell, *Beverly Hills Bar Journal*, Summer, 1992.

“Lawyer Rips H'w'd, Calls for Reform.” Kathleen O'Steen. *Daily Variety*, September 29, 1992.

“Piercing Indictment – Accused of Trying to Destroy Tinseltown, Art Buchwald's Attorney Pleads 'Not Guilty' and Turns the Charges Back on his Accusers and You.” Steven Gaydos. *Los Angeles Reader*, December 11, 1992.

“Researching the Truth About Hollywood's Impact – Consensus and Denial”, Michael Medved, *Ethics Magazine*, Josephson Institute, 1993.

*An Empire of Their Own – How the Jews Invented Hollywood*, Neal Gabler, Anchor Books, 1988.

*Anti-Semitism In America*, Leonard Dinnerstein, Oxford University Press, 1994.

*The Club Rules – Power, Money, Sex, and Fear – How It Works in Hollywood*, Paul Rosenfield, Warner Books, 1992.

*A History of the Jews*, Paul Johnson, Harper & Row, 1987.

*A History of the Jews in America*, Howard M. Sachar, Vintage Books, 1993.

*Hollywood Be Thy Name – The Warner Brothers Story*, Cass Warner Sperling and Cork Millner, Prima Publishing, 1994.

*Hollywood Goes to War – How Politics, Profits and Propaganda Shaped World War II Movies*, Clayton R. Koppes and Gregory D. Black, University of California Press, 1987.



*The Hollywood History of the World*, George MacDonald Fraser, Viking Penguin, Inc., 1989.

*Hollywood: the Dream Factory; an Anthropologist Looks at the Movie-Makers*, Reprint of 1950 ed., Hortense Powdermaker, New York: Ayer, 1979.

*Hollywood vs. America – Popular Culture and the War on Traditional Values*, Michael Medved, Harper Collins, 1992.

*Movie-Made America: A Cultural History of American Movies*, Robert Sklar, Random House, 1975.

*Naked Hollywood – Money and Power in The Movies Today*, Nicolas Kent, St. Martin's Press, 1991.

*The Power and the Glitter – The Hollywood-Washington Connection*, Ronald Brownstein, Vintage Books, 1992.

*Risky Business – The Political Economy of Hollywood*, David F. Prindle, Westview Press, 1993.

*They Can Kill You . . . But They Can't Eat You – Lessons From the Front*, Dawn Steel, Pocket Books, 1993.

*Tribes – How Race, Religion and Identity Determine Success in the New Global Economy*, Joel Kotkin, Random House, 1993.

*You'll Never Eat Lunch in this Town Again*, Julia Phillips, Penguin Books, 1991.

*Who Makes the Movies?*, (a collection of essays), "Pink Triangle and Yellow Star", Gore Vidal, published by William Heinemann, Ltd., London, 1982.

“It is my contention that no person who is intellectually honest can read Terry Pristin’s “Hollywood Family Ways”, Neal Gabler’s *An Empire of their Own – How the Jews Invented Hollywood*, Leonard Dinnerstein’s *Anti-Semitism in America*, Paul Rosenfield’s *The Club Rules – Power, Sex and Fear – How It Works in Hollywood*, Paul Johnson’s *A History of the Jews*, Howard Sachar’s *A History of the Jews in America*, Michael Medved’s *Hollywood vs. America – Popular Culture and the War on Traditional Values*, David F. Prindle’s *Risky Business – The Political Economy of Hollywood* and Joel Kotkin’s *Tribes – How Race, Religion and Identity Determine Success in the New Global Economy* (and I have read and digested the contents of each of these important books) without concluding exactly what I have concluded for purposes of accurately describing the Hollywood control group.

“I am also not aware that the writing of any of these authors has been labeled anti-Semitic. My writing simply melds together the already published views of these able scholars to provide an accurate description of the inevitable facts on the ground in Hollywood. I am merely a reporter of the facts as they exist and these facts were created by someone other than me. If you want to change the facts, feel free. If you want to molest the truth, please don’t.

“I would think it would be embarrassing to know that all of these authors have written so much about this subject (and their publishers have published their books and articles), but that Peter Lang does not have the courage to participate in this discussion – that the Peter Lang editors are afraid of offending somebody by being honest. Leaving out the particular information of concern to you creates an obvious intellectual vacuum in the literature where a reasonable conclusion ought to appear. Do you really believe that I’m the only person who will not notice the oddity of that missing information?

“Now back to sources: I was not even satisfied after having reviewed the above excellent sources already published in books and articles. I took my research several steps further – steps beyond the research of anyone else who has ever dealt with this subject matter. I first analyzed who really has the power in Hollywood, more specifically who has the power to green light movies and therefore has the power to determine which scripts are selected for production, which movies are produced and distributed by the major studio/distributors and who gets to work in the top level positions on those movies. My analysis (available in the manuscript entitled “Who Really Controls Hollywood”) ultimately concludes that such power rests primarily in the hands of the three top studio executives at each of the major studios.

“I then went to the UCLA and Academy Libraries in Los Angeles and spent weeks pouring through materials to create a comprehensive list of the names of those top executives. I then sifted through the published individual biographies of each of those studio executives from the time each of the major studio/distributors were created up until the time of the study in the mid-‘90s, along with the individual envelopes of newspaper clippings maintained by the Academy Library on important film industry individuals to determine whether they were male or female, their political affiliation (where possible) and their cultural and religious background. That meant reading about where they were born, to what parents, about their grandparents, where they went to school, where they went to Church, Synagogue or Temple, when and where many of them were Bar Mitzvahed, where they were married, organizations to which they belonged and where they were buried. It’s all there in the Academy Library clippings. The actual purpose was to put to rest the myth that has been floating around Hollywood for years that “The Jews control Hollywood”.

“That research including the books cited above resulted in a finding that approximately 70% of those top three studio positions have actually been held by persons fitting the

precise description “political liberal, not very religious, Jewish males of European heritage”. The ordinary dictionary meaning of the word “control” is “to exercise restraining or directing influence over”. Therefore, it is entirely accurate to describe this small group of people (usually about 13 to 15 individuals at any one time) as a “control group”, after all, they clearly exercise restraining or directing influence over the film industry. It is also clearly inaccurate to suggest from what I have written that my writing applies to a broader group of people or that these individuals engage in the well-documented and much-litigated business practices in which they engage other than for the usual motivating reasons: power and greed.

“I do not believe that the vast majority of Jews in America or the world want us to lie about what is actually going on in Hollywood. I would argue that such a position is ultimately not in their best long-term interest. And even though some of you may believe that by over-zealously guarding all Jews from any form of criticism is appropriate, I believe that to be a misguided intention, and will eventually do more harm than good for the very people you are trying to protect.

“Further, there is a big difference between falsely proclaiming that a specific piece of writing is anti-Semitic and stepping up to actually demonstrate that certain specifically identified words meet a reasonable standard. You have failed to even attempt to set out any standard for making a judgment about what is anti-Semitic writing. Your rush to judgment reflects a lack of integrity or a lack of understanding of the subject. So, let me help you briefly. Anti-Semitism, as noted in my chapter “The Anti-Semitic Sword” (and based on the multiple and authoritative sources cited there) can best be defined as “hatred or hostility directed toward Jews generally or one or more Jews because they are Jewish”. First, I challenge your implied finding that there is any “hatred” or “hostility” directed toward either possible subject in my book. There is criticism of the business practices, yes. But that is different from “hatred” or “hostility”. Criticism is fair. Hatred and hostility is not. Further, even though you and Chris continue in your e-mails to make the false claim that I have said anything about Jews in general, that is simply false on its face. And, you have made no attempt to show specifically where you think that occurs. You have instead, mis-quoted and mis-interpreted my writing, ostensibly because of your own prejudice which may be over-riding your ability to think clearly on this issue. Finally, no where in my book is there any evidence of language that can reasonably be interpreted as stating, suggesting or implying that I believe this small group of individuals in Hollywood behave the way they do because they are Jewish. In fact, I explicitly state just the opposite. How can you argue in good faith that I believe just the opposite of what I state in writing that I believe?

“3. The Assumption that An Honest Book Will Not Sell – I question Chris Myers’ assumption that a book that openly and honestly identifies some of the problems facing the filmmaking community in America will not sell. It may, in fact be welcomed as a breath of fresh air on college and university campuses all across the country, as well as in

much of the film industry, which is becoming less and less concentrated in Hollywood. It may serve as a catalyst for stimulating useful discussion of important issues that relate to the film industry, clearly one of our most important communications media. It also may be controversial in the view of some, but since when did controversial books not sell? Only when they are arbitrarily and thoughtlessly censored and are not published by well-meaning publishers trying not to offend a protected group in our society?

“4. The Practical Matter of Editing – Now as a practical matter, I’ve already stated twice in my recent e-mails to you that if you want to provide me with the specific edits that will accomplish your goal of hiding the truth, I’ll certainly try to work with you to figure out a way to take concluding material out, without removing the entire discussion that leads up to the conclusion. That, will of course, be difficult (which may be the reason you have not offered your own specific editing suggestions to date) while also looking pretty ridiculous to any discerning reader. I’m not interested in being embarrassed and would hope my publisher would not force me to write something that is blatantly false. In other words, just saying to me that somewhere on page 177 or page 180 we think there is some anti-Semitic writing is not adequate for any purpose, precisely because no language anywhere in the book is anti-Semitic. If you wish to be more precise with regard to which specific words you are referring, please use those handy quotation marks and say: on page whatever, in the third paragraph, the words “blah blah blah” are anti-Semitic in my opinion and must be removed. Then we can talk about whether or not those specific words are actually anti-Semitic and I can refer you to all of the sources I’ve already reviewed to help prepare you for that discussion. You cannot just assume the truth of your contention and then proceed to the death penalty. It appears that you do not actually know what the exact language of concern is or that you are afraid of being specific for fear that others will eventually realize that those words are not anti-Semitic. In point of fact, if the words you are concerned about are not actually anti-Semitic, this entire exercise is a waste of everybody’s time, and quite likely prompted by PC hysteria combined with the expressed self-serving interests of one or more Hollywood-based peer reviewers who happen to be wrong and wrongfully manipulating your views.

“5. David Sumner’s Support – I am thankful for the support of your own General Editor for the Media Industry Series, David Sumner, and hope you will take note of his e-mail to Chris Myers stating:

‘I support Mr. Cones and believe it's important for publishers to support the editorial freedom and integrity of their authors. Mr. Cones was personally recruited by Damon Zucca and asked to write this book when we were desperately seeking an author to write the book on motion pictures. I am not qualified to discuss what is or isn't ‘anti-Semitic.’ I do know, however, that what he has said has been written and documented by other authors in other books and articles. I checked his sources. There is nothing he has said that is libelous or that puts the publisher at risk. If Peter Lang decides not to publish the book, I will feel a personal obligation to help him find another publisher.’

“The view of a book series’ General Editor ought to carry great weight in such considerations and serve as a clue for which direction you ought to go with this decision. Unless you can actually develop and present a strong “case” in writing to both of us for supporting your position you should abandon your objection to the publication of this book. Your “case” to this point has been non-existent and consists merely of a false allegation and a threat. In other words, you are not only acting in a flippant manner with me, you are doing the same with your company’s General Editor for the book series. I’m sure the academic community will take note of such shabby treatment.

“6. The Matter of Your Threatening Me with Non-Publication – I cannot tell you how disappointed I am that you (an editor of a big-time New York publisher) resorted to this unethical bullying tactic without ever even attempting to engage in any good faith discussion of substance about the subject at hand. You clearly have the power to stop publication of this excellent book (which you and your copy editors have helped to bring into being) and you seem ready and willing to abuse that power. Keep in mind, however, that we are publishing in a different time. Such transactions today are more transparent. We are now publishing in the time of the Internet, where ideas and information can spread around the world in an instant. It thus appears to me that we have three options:

“(a) PUBLISH THE BOOK AS IT IS: With this option, we can celebrate its honesty, its precise language and aggressively promote its controversial potential. I’m all for that.

“(b) PUBLISH THE BOOK WITHOUT THE MATERIAL YOU ERRONEOUSLY BELIEVE IS ANTI-SEMITIC: In that case, I will proceed to continue drafting an article for publication in a New York-based or national magazine about my experience with Mary Savigar, Chris Myers and Peter Lang Publishing. Much of what I have written in this letter and that is contained in your and Chris’ e-mails will be cited in that article. The exact language wrongfully deleted will be disclosed. The article will be circulated to all academic institutions and associations in the country, other publishers, newspapers, magazines, television stations, radio talk shows and so forth, along with postings on the World Wide Web and Internet. The tentative title for the article is “A Conspiracy to Defraud the American Filmmaking Community”. That conspiracy which you have admitted in your e-mails to me involves you, Chris Myers, your two copy editors and the peer reviewers. Of course, I’ll want to get their names along the way. Although a novel claim, I believe the time is right and these circumstances present a wonderful opportunity to contact the district attorney of your company’s home district, the attorney general of New York and the Justice Department to see if I can stir some interest in bringing criminal charges based on this alleged conspiracy to defraud the American filmmaking community. After all, you are claiming to be selling and seeking to make money off of a “complete guide to the industry” and fraudulently misleading the book’s retailers and purchasers to believe that they are getting an honest presentation of the facts when they are not. You are actually maliciously and knowingly attempting to give them an incomplete guide to the industry, a guide containing false information and/or omitting

material and relevant information. Further, I will also file a complaint with the appropriate federal agency regarding a possible claim of reverse discrimination. Such activities will be accompanied by appropriate press releases to the national media. The complete and sordid history of your wrongheaded participation and involvement in the Peter Lang failure to publish this book will be presented in detail on the Internet and elsewhere. You need to be very sure about your choices, proud of what you are doing and why you are doing it, because people are going to know. Once the published book is being sold on the Internet through Amazon.com and Barnes & Noble online it's promotional pages will be accompanied by the story of its publication so prospective purchases will have the history of the book and your role in attempting to squelch a portion of its contents.

“(c) REFUSE TO PUBLISH THE BOOK: In that case, I will of course seek another publisher and believe that with David Sumner's already offered help and the help of others, I will be able to find a publisher who is willing to publish this book. If this option is chosen, all of the other remedies discussed under option (b) will also be pursued to make sure that anyone choosing to deal with Mary Savigar, Chris Myers and Peter Lang Publishing know exactly what they are dealing with when entering into a contract to publish a book with your company. Your actions seem to make a Peter Lang publishing contract worthless. Your take-it-or-leave-it attitude is unconscionable.

“In summary, do not delude yourself into believing that your use of what you believe is a quiet, private threat of non-publication of a small part of a book is not really a serious matter. For one, you are attempting to squash a significant part of my life's work. I've been working with these delicate issues for 20 years. I also believe that you are participating with your associates in a conspiracy to engage in reverse discrimination, the same sort of reverse discrimination that I have been studying here in the Hollywood-based U.S. film community for that same 20 years (see my chapter from the book *Hollywood Wars* on “The Anti-Semitic Sword”). In other words, you are wielding the anti-Semitic sword, the false allegation of anti-Semitism being affirmatively used to deny an individual's rights of free speech. Maybe together we can make the concept of the anti-Semitic sword world-famous. How do you think the Jewish community would feel about that? As noted above, I further believe that you and your associates are also engaging in a criminal conspiracy to defraud the American filmmaking community. Film schools all across the country are going to want to know about that. I also believe that governmental investigations of your activities and any possible criminal charges are outside the scope of your contract's arbitration clause and thus it does not apply. Your choices to this point have been short-sighted, mis-directed, unethical, dishonest, uninformed and otherwise despicable. Your treatment of me as an author has been disrespectful, demeaning and unprofessional. You have not lived up to any acceptable standard for conducting yourself as a representative of a legitimate publishing house. You can do better! I would suggest that you try to avoid relying too heavily on the opinions of your copy editors on matters outside their areas of limited expertise. Their knee-jerk judgments are partly the cause of

our problem.

“Just so you will know, my background includes six years as a newspaper, radio and television reporter, six years as an association executive/lobbyist and then the remaining 30 years as a practicing attorney. I believe a large potential audience exists for this story of reverse discrimination by a New York publishing house against a Los Angeles attorney and if you do not make the appropriate decisions with regard to the proper publication of this fine book, I will vigorously pursue all possible remedies for your bad decision accompanied by press releases to national media. I might even be able to make you famous, or infamous, depending on your perspective.

“The easiest thing for you to do at this point is to publish the accompanying edited version of the book. You can justifiably take the position that there is nothing in this book that is either anti-Semitic or offensive to any reasonably informed person. You can also attribute all of the opinions expressed in the book as those of the author. You can further take credit for helping to stimulate a healthy discussion throughout the country concerning an important issue. You seem to be taking the position that intelligent people should not even discuss this issue. How incredibly crude and barbaric!

“Note that this letter will be forwarded to a continuously expanding circle of individuals around the country as this matter moves forward. This dishonest treatment of an author needs to be exposed to the light of day. However, I will hold off on those copies until I have received your decision. In the meantime, I still have hope that you make the right choice.

“P.S. I also noted in my most recent review of the book that you went back on your promises to (1) take out the series commas before “and”, and (2) to spell “theatre” which is considered appropriate for the National Association of Theatre Owners (the most prominent national organization of theatre owners in the country) as “theatre” and not “theater”. In my notes to you, I do point out several instances where the actual spelling of the word in the proper names of such organizations has been wrongfully changed by your copy editors.”

Incidentally, research relating to the Hollywood-based U.S. film industry in addition to that cited in the above e-mail, may be found in the following:

*Who Really Controls Hollywood*, John W. Cones, manuscript, 1996.

*Patterns of Bias in Motion Picture Content*, John W. Cones, manuscript, 1995.

*Motion Picture Biographies – Hollywood’s Spin on Historical Figures*, manuscript, 1995.

*A Study in Motion Picture Propaganda – Hollywood's Preferred Movie Messages*, manuscript,

1996).

In any case, I subsequently (April 2) received the following brief e-mail from Chris Myers: “We are in receipt of the revised copy of your manuscript and your letter dated March 30, 2008. Given the content of that letter, please note the following. First, I wish for all future correspondence from you to be directed to me exclusively; I have asked Mary Savigar to transfer the project to me. Second, I am suspending all further work on your book until I can confer with our legal counsel. I will get back to you with more details at the conclusion of that process.”

I responded that same day saying:

“Thank you for your e-mail of April 2, 2008. I appreciate your ‘wish’ that I correspond just with you, but unless you pair that request with a promise to publish the book as it has now been edited, you really have nothing to say about with whom who I correspond. I agree that you have made the right decision taking Mary Savigar off the project. She did not demonstrate the intellectual honesty or integrity to deal with this particular situation. Unfortunately, some of her decisions may have been encouraged by you. Since you and Mary Savigar have already threatened to cancel the contract on the book (without good reason), and showed no willingness to even discuss the issue of substance, suspending all further work on the book neither adds nor takes away anything. Your conference with legal counsel is also understandable, but I can tell you in advance, your primary problem is not a legal problem, rather it’s a PR problem that is about to explode in your face. For I intend to devote all of my hobby hours for the next ten years explaining to anyone and everyone in whatever forum how irresponsible your and your associate’s behavior has been. I don’t know at this point whether you are part of a larger conspiracy to defraud the American public and the American film industry about what is really going on in Hollywood, but the choice is yours. You can keep this unsavory transaction between our small group and publish the book, or you can make it an even bigger controversy. The book and I welcome the controversy. I think there are lots of reporters in the world press who would relish the opportunity to expose what goes on behind closed doors at a New York publishing house. You also do not have the privilege of determining how long you can hold off my PR activities on your behalf, so the “conclusion of that process” with legal counsel is irrelevant to me. The only thing you have that I want is to publish the book as it is. And you chose to say nothing about that possibility in your e-mail. Best of luck to you and your associate Mary Savigar.”

On April 18, 2008, I received an e-mail from Chris Myers saying: “After further consideration of your manuscript of *Motion Pictures: A Complete Guide to the Industry* by the Board of Editors of Peter Lang it has been decided that it does not fit the criteria required for intended inclusion of the book in the company’s Media Industries Series presenting the various media disciplines to the academic and professional communities. Your response to our editor’s request for manuscript revisions clearly indicates that you are unwilling to modify the manuscript to meet those criteria. We respect your position that those revisions impact the integrity of the



work and therefore consider it more suitable for publication by a house not focused on scientific and academic texts.”

Once again, Chris Myers, in this e-mail, is hiding behind dishonest double-talk. Neither he nor anyone at Peter Lang has demonstrated that the book does not “fit the criteria”, and in fact, as shown by her earlier e-mails, Mary Savigar wrongfully tried to change the criteria for the book (relating to its target audience) after I was contracted to write it. None of them have shown where there is any anti-Semitic language in the book. They have never offered any reasonable or authoritative definition of what anti-Semitism is. They have not shown what specific writing in the book meets the elements of any such definition. Further, they are claiming that they are an “academic” publisher, but academics is about the truth. Peter Lang, Chris Myers and Mary Savigar tried to force me to publish a dishonest and false account of what is really going on in Hollywood. There is nothing honest or academic about that. Arguing that I was “unwilling to modify the manuscript” is simply, in my view, a bold face lie, since I responded repeatedly to their requests that if they would or could demonstrate that their false claim of anti-Semitic writing was anything more than blatant error or their part, I’d be happy to consider it.

In my view, Peter Lang publishing has failed miserably in its ill-conceived attempt to squelch the truth about Hollywood and no one like Mary Savigar and Chris Myers who would stoop to the sleazy tactics used by the two of them in that effort ought to remain in responsible positions at a major publishing house.

John Cones

## Appendix “B” – Client Film List

Feature or documentary films fully or partially funded through investor financing work provided by the Law Offices of John W. Cones:

1001 Ways to Enjoy the Missionary Position	Hard Scrambled
Across the Line	Haunted House
Amy’s O	Her Majesty
The Bedbug Movie	Her Minor Thing
Believe Me	The Indianapolis Indians
Better Luck Tomorrow	Interview With The Assassin
Beyond the Chair	Johnny Got His Gun
Blue Skies Are A Lie	Josh
Bomb The System	Kama’aina
The Boneyard	The Keeper – The Legend of Omar Khayyam
Bottom Feeders	The Letters
Break a Leg	Love and Mary
Brian’s Search	Magic
Bug	Making Contact
Calvin Marshall	Ocean of Pearls
Charmed and Dangerous	Oxygen
Chicks 101	Patient 14
Colored Eggs	Red Canvas
Compound Fracture	Rough Hustle
Crackerjack	Save Me A Seat
Cross Bait (original title)	Straight Right
The Dead Matter	Strangers With Candy
The Eves	The Surprise Party
The Fabulous Sounds of the Pacific Northwest	Undying Dreams
Fat Rose and Squeaky	Visioneers
Feathers	Waterborne
Frog and Wombat	What Love Is
Gerald	Zyzyx Road
Ghost of Her Walks	
Grand Champion	
Halfway Decent	

## **Appendix “C” – SEMINAR SPONSORS**

A comprehensive list of the sponsors of film-related seminar, lecture and panel discussion presentations by Los Angeles attorney/author/lecturer John W. Cones from 1987 through the present.

American Film Institute  
American University (Washington, D.C.)  
Atlanta Film Festival  
Asheville Film Festival  
Austin Community College  
Austin Film Society  
Barnes & Noble  
Beverly Hills Bar Association Entertainment Law Section  
Black Talent News  
California Lawyers for the Arts  
California State University, Los Angeles  
California Western School of Law (San Diego)  
Caribbean Film Institute (Puerto Rico)  
Charleston Film Festival  
Cinetex ‘90 International Film and Television Festival (Las Vegas)  
Cinewomen (Los Angeles)  
Columbia College/Chicago (Semester in LA Program)  
Columbia College/Hollywood (12 week courses)  
East Lansing Film Festival  
Equitable Securities Corporation  
Filmmaker Magazine  
Film Atlanta  
Film South  
4Reelz School of Film  
Founders National Bank of Los Angeles  
Georgia Bar Association  
Georgia Lawyers for the Arts  
Hollywood Film Festival

Hollywood Black Film Festival  
Hollywood Film Institute  
Houston WorldFest  
Idaho Film Office  
Independent Filmmakers of the Inland Empire  
IFP/West  
IFP/West Producer's Group  
International Wildlife Film Festival  
Institute for International Film Finance (IIFF)  
Ivy Entertainment Hollywood  
Latin Entertainment Media Institute  
Latin Heat Magazine  
The Los Angeles Film School  
Los Angeles Texas Exes Annual Hollywood Seminar  
Los Angeles Independent Film Festival  
Loyola College of Law Sports Entertainment Law Society  
Loyola Marymount University  
Nashville Bar Association  
Nashville Film Festival  
NationsBank, Music Row Branch  
New Orleans Video Association Center (NOVAC)  
North Carolina School of the Arts  
Occidental College  
Oregon State Film Office  
Peoria (AZ) Film Festival  
Pepperdine University  
Phoenix Film Festival  
Portland Creative Conference  
Reel Women (Los Angeles)  
SAG-AFTRA Houston Austin Local  
San Diego Filmmakers  
Santa Clarita Independent Film Festival  
ScreenwritingExpo  
Sherwood Oaks College

ShowBiz Expo  
Silver Lake Film Festival  
Southern Methodist University  
Southern Oregon Film and Television (SOFaT)  
Southwest Alternate Media Project (Houston)  
Spiderwood Studios (Austin)  
State Bar of Texas Entertainment Law Institute  
Texas Association of Film and Tape Professionals  
The Nashville Film/Video Association  
UCLA Extension (seminars and 12 week courses)  
UCLA graduate level Producer's Program (12 week courses)  
UCLA's Anderson Graduate School of Management  
University of Puerto Rico (Continued Education Division)  
University of Texas Annual Entertainment Law Institute  
UT Austin MBA Texas+ Program  
UT Film School  
UT Los Angeles Center (Semester in LA Program)  
UT Continuing Education  
USC Cinema-Television Alumni Association  
USC School of Cinema/Television  
Whittier Law School Entertainment & Sports Law Society  
Women In Film (Los Angeles, Salt Lake City, Atlanta and Houston)  
Writers Boot Camp (Los Angeles)

## ABOUT THE AUTHOR

John W. Cones maintained a securities/entertainment law practice in Los Angeles for 23 years during the period when the research for this book was being conducted (1987-2010). He now resides in Texas, his home state. He is licensed to practice law in the states of California and Texas. His Los Angeles practice focused on advising independent feature film, video, television and theatrical producer clients regarding their federal and state securities law compliance obligations relating to both active and passive investor financing vehicles including investor financing agreements, joint ventures, investment contracts, corporate stock offerings, limited partnerships and related entertainment law matters. He also prepared the offering disclosure documents for such financing vehicles, helped in creating the investment vehicles, the required Federal and state notice filings, associated financial projections and other related matters.

He is the author of the internationally distributed book *Film Finance and Distribution--A Dictionary of Terms*, (Silman-James Press, 1992) and the 640 page collection of film agreements entitled *Film Industry Contracts*, (self-published, 1993). His third book *43 Ways to Finance Your Feature Film*, was published in 1995 by Southern Illinois University Press. Other book titles include: *Hollywood Wars – How Insiders Gained and Maintain Illegitimate Control Over the Film Industry*, *Legacy of a Hollywood Empire*, *Patterns of Bias in Hollywood Movies and Motion Picture Industry Reform*. Mr. Cones has also authored state and national association magazine articles and his law journal article "Feature Film Limited Partnerships" appeared in the January 1992 symposium issue on independent productions published by the *Loyola of Los Angeles Entertainment Law Journal*. Another article entitled "Maximizing Producers' Negative Pick-Up Profits" was published in the June 1992 issue of "Entertainment Law & Finance".

Mr. Cones lectures on film finance and distribution topics and has done so on more than 250 occasions to an audience which in the aggregate exceeds 5,000. His lectures on "Investor Financing of Entertainment Projects" have been presented in Los Angeles, Las Vegas, Dallas, Houston, Boise, Sacramento and San Francisco and were sponsored by the American Film Institute, the University of Southern California Cinema-Television Alumni Association, Loyola Marymount Continuing Education Division, Cinetex '90, Cinewomen, UCLA Extension, state film commissions and individual producer groups. He has also lectured and/or served as course coordinator for UCLA Extension on courses entitled "The Film Distribution Deal," "Contractual Aspects of Financing, Producing and Distributing Film" and "Negative Pickups: Business and Legal Concerns". Mr. Cones also lectured for the UCLA graduate level Independent Producers Program ("Low Budget Financing and Distribution") and for the UCLA Anderson Graduate School of Management.

Mr. Cones also answers questions relating to investor financing of independent film online at his website ([filmfinanceattorney.com](http://filmfinanceattorney.com)),

He is a member of the California and Texas state bar associations and has also been active as a member of the Beverly Hills and Los Angeles County Bar Associations. He has also been a member of the American Film Institute, the Independent Feature Project/West, the Association of Independent Video and Filmmakers, the San Francisco Film Arts Foundation, the Cultural Environment Movement, the Film Forum and the University Film and Video Association.

Prior to beginning his law practice in Los Angeles in 1987, Mr. Cones engaged in the private practice of law in Houston (1981-1986). In that practice he supervised state securities compliance aspects of Regulation D (private placement) limited partnership and corporate offerings (including movie production/distribution, oil and gas, real estate, equipment leasing, night clubs, restaurants, cattle breeding/feeding, thorough-bred breeding and medical technology). In his securities law practice, Mr. Cones has participated in the preparation of disclosure documents and federal/state compliance for 135+ public or private limited partnership, investment contract or corporate stock offerings. Mr. Cones moved his law practice to California in 1987 specifically to work with independent producers in the manner described above.

During the years 1976 through 1981, Mr. Cones worked as a lobbyist/association executive and in-house counsel for professional associations headquartered in Austin and Chicago. In those positions, along with his more general association management responsibilities, he prepared and delivered congressional testimony, drafted legislation and wrote and edited books, magazines, magazine articles, newsletters, speeches and press releases. His article "What Lobbyists Really Do" has been reprinted in four state association publications in three states. As an association executive he was also involved in long term planning, board meetings, conventions, seminars, staff supervision and association membership activities.

In 1975 and immediately following graduation from law school he served as legislative counsel to the Texas House of Representatives. In that position he drafted, edited and reviewed state legislation, counseled legislator sponsors with respect to state constitutional requirements applicable to such bills and supervised union proof-readers who reviewed such legislation as it passed various legislative stages.

Prior to 1975 Mr. Cones was a Radio-Television News Reporter at KTBC (Channel 7) television, Austin where he worked at varying times as a television news anchor, on general and film assignments and as a sports or weather anchor. Mr. Cones worked at KTBC full-time while attending

law school at UT Austin. He had also performed on-the-air news reporting duties previously at KRIS-TV Corpus Christi and KITE radio in San Antonio.

Mr. Cones is a 1967 graduate of the University of Texas at Austin with a Bachelor of Science degree in Communications and a 1974 graduate of the UT Austin School of Law with a Doctor of Jurisprudence degree.



## OTHER BOOKS BY THE SAME AUTHOR

*Film Finance & Distribution – A Dictionary of Terms* – Definitions of some 3,600 terms used in the film industry in the finance and distribution of feature films. In addition, to the definitions, examples of usage and commentary are provided for some terms.

*Film Industry Contracts* – A collection of 100 sample film industry agreements relating to acquisition, development, packaging, employment, lender financing, investor financing, production, distribution, exhibition, merchandising and licensing.

*43 Ways to Finance Your Feature Film* – A comprehensive overview of film finance with a discussion of advantages and disadvantages of forty-three different ways to finance feature films and other entertainment projects.

*Patterns of Bias in Hollywood Movies* – A survey of the people, places and things that are consistently portrayed in a negative or stereotypical manner in Hollywood films, based on thousands of movie reviews. This study also provides a description of the populations that are consistently portrayed in Hollywood movies in a more favorable light.

*Motion Picture Biographies – The Hollywood Spin on Historical Figures* – A report on the historical figures favored by Hollywood for biographical treatment in film and the blatant patterns of bias demonstrated in such biopics.

*Hollywood Wars – How Insiders Gained and Maintain Illegitimate Control Over the Film Industry* – A comprehensive analysis and discussion of hundreds of the specific business practices used during the nearly 100-year span of control of the Hollywood-based U.S. film industry by the so-called Hollywood control group (or traditional Hollywood management).

*Legacy of a Hollywood Empire* – A study that reveals what has resulted from control of the U.S. motion picture industry being in the hands of a narrowly defined interest group, in terms of the quality of films, the nature of the film industry and unequal employment opportunities. This book also explores why these things have happened and why it makes a difference to society in general.

*The Arrogance of Power: Movies and Antitrust* – A study of the relationship between the Hollywood-based U.S. film industry and the U.S. antitrust laws.

*Politics, Movies and the Role of Government* – A report on the long established and continuing role the federal government has played in the affairs of the Hollywood-based U.S. film industry.

*Motion Picture Industry Reform* – A discussion of various techniques, strategies and methods that may be useful in bringing about the long-term reform of the U.S. motion picture industry, which is considered by the author to be one of the most significant media for the communication of ideas yet devised by human beings.

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