

Semi-Final D

Judicial Ethics and  
Professional Conduct



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The Court goes to the **cinema**:  
exploring JUDICIAL ETHICS through *legal movies*

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We can surely consider cinema, as well as literature and other forms of art, a creative transposition of human needs and a way to represent important themes in a given historical moment.

However, there is more to the story. It is only partly true that all artists are mere *imitators*, as they represent and reproduce their own version of reality, which is not the reality itself. In addition, it is not completely true that the products of imitation are far removed from the truth. We can instead consider art, and good cinema within it, as a *critical* representation of reality, offering insight to a better and deeper understanding of reality itself.

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*Now more than ever we need to talk to each other, to listen to each other and understand how we see the world, and the best medium for doing this is cinema. (Martin Scorsese)*

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This also occurs in legal movies, which are an excellent litmus test for the interaction between fiction and reality. Legal proceedings, especially the adversary process, have a significant theatrical dimension and most of the court cases would make perfect stories for the

silver screen. These are the main reasons why trials are a staple of cinema courtroom dramas and comedies.

In general, art and good cinema may have ethical influence, proposing new ideas, offering new models of behaviour and denouncing bad conducts. Might it also play a role in the field of judicial ethics? In other words, does it convey messages and provide lessons on how a good judge should behave in court? Which skills, values and attitudes should he or she have? Which are the



most common mistakes in court communication? Do we find positive models of judges to be emulated by the real ones, who are the actual actors in a fundamental public service?

We rarely find direct and clear statements on ethics in legal movies, but the narrative, the dialogues, the images, and the sounds lead the spectators toward ethical assessment regarding what is right and what is wrong in the judicial world. This consideration is no new. Following what Aristotelian doctrine called *catharsis* (from the Greek word κάθαρσις, which means purification), anyone who watches an artistic performance is being freed from his or her passions, because the drama is able to sublimate reality, bringing the spectator feelings of ethical evaluation, compassion and pity. This is what should happen for judges, when they are spectators of artistic performances representing scenarios connected to their daily working life.

In particular, in theatre and cinema, there is a fictitious, invisible wall separating actors from the auditorium, the so-called *fourth wall*. By the breaking of the *fourth wall*, the real judge can empathize (or not) with the

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*Talking about dreams is like talking about movies, since the cinema uses the language of dreams; years can pass in a second, and you can hop from one place to another. It's a language made of image. And in the real cinema, every object and every light means something, as in a dream. (Federico Fellini)*

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screen judge, and this interplay is surely useful. By watching a legal movie, a judge has the unique opportunity to look at himself or herself from a different perspective: the people's (or the filmmaker's). Most people rarely enter the courthouse, but do often watch legal movies.

The movie screen becomes a special mirror, reflecting a better way to exercise the judicial office, free from geographical, legislative or language boundaries.

The encounter between judges and cinema dispels the Kantian myth according to which ethics and aesthetics belong to two separate worlds, unable to dialogue. Rather, in our opinion, the weight of ethics and the lightness of aesthetics come together in a sapient perspective, perfect and symmetrical conjunction among justice and the artistic world of entertainment, narrative, amusement, imagination, music and sympathy. The **combination of ethics and aesthetics** makes the ethical message of movies much more powerful than messages coming from books, seminars and codes. How many of us would admit to enjoying essays on ethics more than a good legal movie!

In the analysis of the legal movies watched for this paper, we selected three main common themes, which are relevant in our exploration on judicial ethics:

- I. Cinema as a bridge connecting the judges with the evolving modern society and as a stimulus for jurisprudential reflection: movies very often have been able to draw attention to



certain major legal issues on “new” fundamental rights, long before they were officially recognized by national, European or international legislations or case-law;

- II. With respect to judicial conduct, certain legal movies suggest what a judge should (or should not) do in court, from the point of view of the public perception of his or her behaviour; akin to a friend who gives constructive criticism;
- III. Legal movies often express stereotypes against judges and public prosecutors, especially against female judges, perhaps interpreting stereotypes that still exist in the real world.

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*Film as dream, film as music. No art passes our conscience in the way film does and goes directly to our feelings, deep down into the dark room of our souls. (Ingmar Bergman)*

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For each theme, we will analyse the movies we believe to be most significant. We will identify the main legal references involved, if any, and the lessons on judicial ethics: the “moral of the story”, taking into account the main judicial ethics codes, as Bangalore Draft Code of Judicial Conduct

adopted in 2001 by the Judicial Group on Strengthening Judicial Integrity, and revised at Round Table Meeting of Chief Justices in November 2002, the Magna Charta of Judges adopted in 2010 by Consultative Council of European Judges, the Ethics Code adopted in 2010 by the Italian National Association of the Judiciary – as a revision of the 1994 version-, the first judiciary ethics code at the European level.



## CINEMA AND THE NEW FRONTIERS OF HUMAN RIGHTS: A USEFUL TOOL FOR THE JUDICIARY

Among the many legal movies viewed for this paper, we selected three of them that, in our opinion, best show the power of cinema to promote and raise awareness on the protection of certain “new” human rights, which are still not included in national or international legislations. The language of moving images is particularly effective. Like that of fundamental rights, it is universal and without boundaries.

### **Philadelphia (1993)**

One of the best examples is *Philadelphia*, starring Tom Hanks (awarded Best Actor by the Academy Awards) and Denzel Washington. It is the first mainstream Hollywood movie to acknowledge HIV/AIDS, homosexuality and homophobia.



**SUMMARY OF THE FILM** - Andy Beckett is a senior associate in a law firm in Philadelphia. The firm fires him, officially due to his poor job performance.

Believing that the dismissal is instead linked to his hidden homosexuality and status as an AIDS patient, he asks the African-American lawyer Joe Miller to take his case and challenge the dismissal. Lawyer Miller himself, at first, is homophobic and fearful of physical contact with Andy, but he is able to come around and change. It is significant that it is an African-American actor who plays the role of the lawyer. In this way, the film likely analogizes a form of discrimination (racial discrimination) that most spectators disagree to a form that at the time of the movie was more debatable (discrimination based on AIDS and sexual orientation).

Despite his legal partners' defence trying to demonstrate that it was a lawful dismissal, at the end the jury votes in favour of Andy Beckett, granting him a substantial compensation for the damage.

Finally, like many other legal movies, it depicts a David versus Goliath story: a small sole-practitioner firm struggling against a large corporate law firm. The spectators always sympathize with David and the movie itself suggests that justice should be powerful enough to protect the weakest against the strongest.

**MOST RELEVANT SCENES** - Some scenes should impact the conscience of a judge. For example, when the lawyer Joe Miller reminds the Court of the importance

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*This is the essence of discrimination: formulating opinions about others not based on their individual merits, but rather on their membership in a group with the same characteristics. (Joe Miller in Philadelphia)*

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of avoiding prejudices related to a dislike of what is different and distant from us, like contagious diseases or different sexual orientation. The judge warns the lawyer that, within that courtroom, justice is blind to differences in race, creed, colour, religion and sexual orientation. Miller then underlines that the people inside do not live in that courtroom, as if to emphasize a separation between the real life and the trial life. The film director masterfully highlights this gap. For example, when someone enters the courtroom and the door closes behind him, a play of sounds, lights and shadows suggests a distance between what is outside the courtroom and the muffled world inside.

**LEGAL REFERENCE** - Only in 2000 - seven years after the movie -, did the European Union officially condemn discrimination at the workplace on grounds of religion or belief, *disability*, age or *sexual orientation* with Directive (EC) 2000/78.

Later, according to Article 21 of the Charter of Fundamental Rights of the European Union, in force since December 2009, it was clarified that “*discrimination based on any ground such as*



*sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.”*

In 2010, 17 years after the movie, the International Labour Organization issued Recommendation n.200 in the HIV and AIDS and the World of Work Book, which is the most important international source of soft law on the matter.

More than 20 years after the movie, the ECtHR case law also ruled in similar cases: in *I.B. v Greece* (2013) the Court upheld the appeal of I.B., a Greek citizen fired on the sole fact of being HIV positive and in *Novruk and others v. Russia* (2016), concerning the denial of permission to stay in the Russian Federation for people who are HIV positive, the Court held that HIV-positive people constitute a particularly vulnerable group and any treatment differing from the norm must be justified.

The ECtHR based its decisions on Article 8 of the European Convention of Human Rights, according to which everyone has *the right to respect for his private and family life*, and on the following Article 14, according to which the enjoyment of the rights and freedoms set forth in the Convention should be secured without discrimination on any ground.

**LESSONS FOR JUDGES** - The movie teaches that the trial should not be detached from what is going on outside the courthouse, in an evolving modern society. On the contrary, it should seriously take into account reality itself, to better understand and face it, with wisdom and prudence. Since law and case-law do not evolve at the same pace as society, being a good judge does not require only having an excellent mastery of law, but also a capacity to adapt quickly to new developments, to act appropriately and to keep himself or herself informed about what is happening outside the court.

The history of the last seventy years teaches that human rights are always work in progress and there are

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*Cinema is universal, beyond flags and borders and passports. (Alejandro Gonzales Inarritu)*

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always new frontiers to open, new challenges to confront and high walls to climb. Even in the absence of legislation on the matter, the judiciary should take into account the messages expressed by the civil society, conveyed through cinema and other forms of popular art. Separating the world of the judiciary from the world of culture would be wrongful; the paths of the judiciary, society, culture and public debate are shared, joined osmotically towards the aim of justice.

Only if the judiciary is an effective and conscious part of the society and is able to recognise the sign of times, will it not be perceived as an unreachable power. Judges should not lock themselves in their ivory tower or in their courtrooms. On the contrary, they have an **ethical duty to**



**be open to the changing needs of civil society.** This ability to understand the needs of contemporary society contributes to bridging the gap between *applied justice* (what judges do) and *expectation of justice* (what people believe judges should do).

The enhancement of the cultural heritage of judges, as a precondition of a better exercise of the judicial function, is also promoted by the ethical codes. For example, within the Bangalore Principles of Judicial Conduct, we read that a judge should take reasonable steps to maintain and enhance his or her knowledge, skills and personal qualities necessary for the proper performance of judicial duties (Article 6.3). In this way, as the builders of a living justice, judges have an enormous responsibility of professional refinement. Consequently, every properly filtered cultural tool is a useful key to interpretation, especially in the fields where judges assume a substitute role in relation to an inadequate legislation.

Similarly, pursuant to the Ethics Code adopted by the Italian National Association of Judiciary in 2010, each judge in his or her social life should act with sensitivity to the public interest, dedicating him or herself to the deepening of knowledge in every field of work (Articles 1 and 3).

Of course, judges should critically consider the new needs and demands, and avoid passive approaches; as for fiction, critics involve the selection among good movies and bad movies, which can have mendacious, manipulator and stereotyping messages.

The film *Philadelphia* also teaches that many stories and battles for the recognition of fundamental rights are “not very nice cases”. They are often disapproved of by the majority of the public opinion and give rise to moral doubts. In a scene, the lawyer of the counterpart asks Beckett if he had had gay sex in a cinema with an unknown person and Beckett confirms. These behaviours were (and are) probably not morally accepted by the majority of the spectators. However, we would stress that in this case, in our opinion, the judge should have excluded the question, as it was irrelevant: the issue was not why and how Beckett got his disease, but why he was fired and if his dismissal was lawful or not. Judges are not moral censors! On the contrary, a good judge should be open-minded.

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*It's always difficult to keep personal prejudice out of a thing like this. And wherever you run into it, prejudice always obscures the truth. (12 Angry men, 1957)*

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In this regard, the Bangalore Principles of Judicial Conduct sanction the value of **equality**, according to which equal treatment of all the people before the courts “*is essential to the due performance of the judicial office: “5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not*



*limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds"). 5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds. 5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.”*

Two other important judicial values are involved in the ethical messages of the movie: judicial **independence** and **courage**. Indeed, the judges should be **independent** of the legislative, executive, economic and hierarchical powers, but **also of public opinion** and the media, especially for cases regarding minorities. The majority does often not support the rights of minorities and the value of courage is necessary in unpopular decisions.

### **Divorzio all’Italiana (1961)**

A movie that foreshadowed important debates in our country, long before a reform of family law and the criminal code, is ***Divorzio all’italiana*** (*Divorce Italian Style*), a 1961 comedy film starring Marcello Mastroianni and based on the novel *Un delitto d’onore* (*Honour killing*) by Giovanni Arpino.

**SUMMARY OF THE FILM** - In this comedy, the protagonist (Marcello Mastroianni) plays an impoverished Sicilian nobleman, married to an unattractive but devoted wife. He is in love with a younger girl, but at that time and until 1970 divorce was illegal in Italy. Divorces of Italian spouses declared abroad were considered contrary to public policy and the only way to end a marriage was the death of the spouse. However, the protagonist tries to induce his wife to have an affair with another man, so that he might catch her committing the crime of adultery, murder her, and receive a light sentence for committing an “honour” crime, according to Italian Criminal Code Article 587, then in force.

**MOST RELEVANT SCENES** - The paradoxical attorney’s closing statement, trying to convince the screen judges that his client acted correctly.

**LEGAL REFERENCE** - The movie is a striking example of how cinema managed to intercept (in this case, in a tragi-comic way) an important protective vacuum in the Italian legal system, represented by the indissolubility of civil marriage.

Nowadays, divorce is legal in all the UE countries (the last country to introduce it was Malta in 2011) and in the whole world only the Philippines and the Vatican State still forbid it.



However, there remains some dispute even now. In *Babiarz V. Poland*, the ECtHR found that there had been no violation of Article 8 or of Article 12 (Right to Marry) of the European Convention in the Polish court's refusal to grant the applicant a divorce because his wife refused to agree to the divorce. The Court found that the husband had been responsible for the marriage breakdown and that the refusal was not contrary to the reasonable principles of social coexistence.

In European Union Law the exercise of the right to divorce in cross-border cases is highly facilitated. In fact, according to Council Regulation (EC) 2201/2003 of 27 November 2003 (Brussels IIA) concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, spouses can file divorce claims in different alternative courts and Council Regulation (EU) 1259/2010 of 20 December 2010 (Rome III) implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, sets out conflict of law rules with regard to divorce and legal separation and allows the spouses to draft an agreement to choose the more suitable applicable law in cross border cases (Article 5).

As for Italian national law, by describing an absurd social legitimacy of murder (the community authorized, even condoned, the murder of the unfaithful wife), the movie pillories the then existing code of honour and the condition of women, convincing the audience to review their positions on the matter. At that time, in fact, Article 587 of the Criminal Code, which was repealed only in 1981 (after 20 years!) as being contrary to constitutional principles, provided for a lighter sentence for whoever caused the death of the spouse, daughter or sister, in the act of discovering his or her illegitimate sexual relationship and in the state of rage determined by the offense caused to his honour or that of the family.

**LESSONS FOR JUDGES** - The judicial proceeding represented in the movie must have struck the true judges of the time, who had to apply the law as it was in force. *Divorzio all'italiana* teaches that judges should not underestimate popular art, even when it is provocative.

It sends a clear message and indicts the backwardness and absurdity of the existing legislation. That specific legislation was openly in contrast with the solidarity model between spouses enshrined in the Italian Constitution of 1948. If the judges had paid attention to the message of the movie, they would have challenged the unconstitutional legislation before the Italian Constitutional Court. Unfortunately, it did not happen and only in 1981 was the "honour" mitigating effect for murders abolished.

The movie anticipated a massive representation of family law issues on the big screen, also based on the universality of these themes. This certainly influenced the general perception of real



judges, forcing them to take into account the creation of a consciousness on the social changes in families over the last 50 years.

Family law stopped being only a *private matter*!

### **Kramer vs. Kramer (1979)**

On the same point, *Kramer vs. Kramer*, a 1979 American family legal drama film, starring Dustin Hoffman and Meryl Streep, winning five Academy Awards.

**SUMMARY OF THE FILM** - Ted and Joanna get divorced and she leaves him to raise their little son Billy by himself. Fifteen months after she walks out, Joanna returns to New York to claim Billy, and a custody battle ensues. Likely on the assumption that the mother is best for raising a child, the court awards custody to Joanna. Even so, Joanna eventually signs over custody of the child, because she knows that his true home is with Ted.

**MOST RELEVANT SCENES** - The scenes of the spouses inside the courthouse are very touching: they seem very sad in an intimidating and unfriendly environment.

**LEGAL REFERENCE** - According to Article 24 of the EU Charter of Fundamental Rights, into force from 2009, entitled “The rights of the child”, “*in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration*” and “*every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests*”.

In the ECHR, instead, there is not explicit reference to the principle of a child’s best interest, because the principle was still being developed in the 1950s. Moreover, the ECtHR in 2007 has developed the principle by way of interpretation, both basing it on the Member States *consensus* (*Neulinger and Shuruk v. Switzerland*) and on international law principles and legislation (for example, on the United Nations Convention on the Rights of the Child in 1989) by adopting as a parameter the already mentioned ECHR Article 8 on the respect for private and family life.

**LESSONS FOR JUDGES** - First, the movie encourages the judges to give primary consideration to the best interest of the child in custodial causes, within the often difficult task of reconciling the divergent interests of the spouses. This interest, by the way, is not necessarily coincident with the assignment of custody to the mother or to the wealthiest parent, as also enshrined in the current legislation on the matter.

Movies like *Kramer vs. Kramer* are able to demonstrate that most people likely encounter the legal system and a judge in the context of family law, more than in any other area of law.



Therefore, judges are their first port of call and should take special care to prevent the courtroom from being perceived as a hostile place, and not the place where rights are protected.

The movie also raises awareness on the need for good mediation tools instead of controversial procedures in family law disputes: the judges should improve their **mediation skills** and **ability to dialogue, listen and communicate effectively** with the spouses using persuasion where appropriate to resolve conflicts. The ethical value involved is **competence** that, we repeat, is different from mastery in law. It requires a broad professional ability.

The other relevant ethical values are **respect** and **ability to listen** with attention in a serene atmosphere. According to the Bangalore Principles, “*competence and diligence are prerequisites to the due performance of judicial office. [...] 6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges. [...] 6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.*”

The point is *how* to communicate properly.



### **CINEMA AND JUDICIAL CONDUCT. LEGAL MOVIES AS LESSONS ON (GOOD OR BAD) JUDICIAL CONDUCT**

Older judges and legal scholars often say that judges communicate only through their judgements. This is a key principle of the traditional judicial pedagogy. In our opinion, this is not true, or at least not entirely true.

There is also an implicit way to communicate through behaviour, attitudes, style, language, tone of voice, proper posture, manners, and everything that, even unintentionally, contributes to the interaction with the parties, lawyers, court staff and witnesses. Ethically, this communication is as important as the communication through judgements. The negative image of judges in fiction (and elsewhere) is often due to implicit communication, that shows arrogance, carelessness and a lack of empathy in their conduct.

Courtroom fiction does not consider very much the legal concepts and procedural rules. Certainly, one of the reasons is because they are dull, difficult to understand and not entertaining! The other reason is that spectators are much more interested in how judges (and public prosecutors



and lawyers) behave. The same happens for people entering our court houses, they focus much more on behaviour, which shows how much the judge, the custodian of justice, cares for the case, respects them, and listens to them.

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*A judge must bear in mind that when he tries a case, he himself is on trial.*  
(Philo, philosopher)

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The main purpose of this chapter is to stimulate a reflection on this theme, and also to suggest some solutions.

We selected two movies, which clearly describe how judges should not behave in court, and in particular when dealing with an indicted person and a victim of rape.

### **Sulla mia pelle (Italy 2018)**

The first significant movie on this point is *Sulla mia pelle*, literally “*On my skin*”, a 2018 Italian movie that tells the true story of Stefano Cucchi, a young man who was arrested for drug dealing and who died while in detention under circumstances currently still under judicial factfinding.

**SUMMARY OF THE FILM** - Stefano is smoking a cigarette in his car with a friend, when two Carabinieri order him and his friend out of the car to be searched. He is found with several doses of hashish and cocaine, and immediately arrested. The Carabinieri bring Stefano to their station in state of detention, but, before he is asked to sign the arrest report, three of them violently carry him into a room. The morning after, he appears in court. During the hearing, he has difficulty speaking, but he does not say anything about his conditions to his father and to the judge, who asks nothing, in spite of the visible signs of injuries. The judge orders him to remain in a state of detention. In the prison hospital, Stefano refuses treatment. After a few days, he is found dead in his room.

**MOST RELEVANT SCENES** - During the hearing for the confirmation of the provisional arrest, the judge does not look at Stefano, while interviewing him, and does not inquire about his bad physical conditions, but asks only routine questions. In the shots, the judge seems very far from the indicted, and not only in terms of physical distance.

**LEGAL REFERENCES** - The most important legislation related to this matter is Article 3 of the ECHR, which prohibits torture and inhumane or degrading treatments or punishments. This prohibition is one of the most important principles of the modern judicial and penitentiary systems. The ECtHR defines it as “*a fundamental principle of democratic societies*” in the landmark judgement *Soering v. United Kingdom* (1989), regarding the extradition of a European citizen to the United States, where there would be the risk of a death sentence for having committed homicide.



Due to the importance and the range of flexibility of this rule, Article 3 became a model of protection that is recalled in the most recent documents on human rights such as the Charter of Fundamental Rights of the European Union.

Concerning domestic law, only in 2017 did Italy approve legislation introducing the crime of torture, but in December of the same year, the UN Committee against Torture criticized that the new statute does not comply with the United Nations Convention against torture and must be changed. Specifically, the Commission found it "*incomplete in so far as it does not mention the purpose of the act in question. Further, the crime does not include the details of the author, with a reference to public officials.*"

**LESSONS FOR JUDGES** - One of the first scenes of the film emphasizes negligent behaviour of the judge, consisting in a disinterest in looking at the person and in not asking why he had such injuries. The judge of the movie seems very busy, but workload and backlog are not good excuses: judges are not sentencing machines! They should always pay attention to the people, make eye contact when speaking to them and listen with attention (communicative attention) to their words. All these are sign of **respect**, one of the main ethical values, as argued above.

A Swedish survey in 2015 ("Internal and external Dialogue: a Swedish approach to quality work in Courts") confirms that people view how cases are dealt with as important as their outcome, and that they trust more in the judicial system if they feel that they were treated with fairness. Therefore, they will be willing to cooperate with and respect the judgement, especially in family law and in criminal court cases.

This is actually a new frontier of the judge craft, which is not just about etiquette and good manners. It is connected with the so-called **procedural fairness** or **procedural justice**, a new model of justice, whose key principle is treating court users with dignity and respect, ensuring that they understand the process, that they have a voice, and that the decision are made neutrally. Its aim is not only the respect of legal procedures, but also the perception of fairness of the people involved in judicial proceedings. Justice must not only be done but also be seen to be done. To give voice, to behave with respect and neutrality toward individuals and to have trust in the judge are the main conditions to reach this result.

This is of paramount importance when personal freedom is involved. When people coming before them are deprived of liberty, judges should engage in real communication and demonstrate care for their mental and physical conditions.

We believe that in spite of the lack of procedural rules in our domestic law, there is an **ethical duty of protection of the detainee**, which could be performed with the following guidelines, we drafted as a potential solution.



1. Judges should always verify if the detainee shows evident signs of abuse;
2. If a detainee shows evident signs of abuse, judges may suspend the hearing and order a private conversation with the person and his/her lawyer;
3. During this private conversation, judges may ask the detainee if he or she was abused by police officers;
4. Information given by detainees during this private conversation cannot be used against them in any trial;
5. If judges have a reasonable doubt that detainees were abused during the arrest, they may order the opinion of a medical expert;
6. Judges may forbid police officers who made the arrest from entering in further contact with detainees.

Due respect and protection of detainees does not mean forgetting the victims of crimes.

### **The Accused (1988)**

The second movie we selected on the matter of judicial behaviour in court is *The Accused*, a 1988 American film, starring Jodie Foster (Academy Award for Best Actress), based on the real story of a young woman who was raped in a pub and had to fight against widespread negative stereotypes to obtain justice. At the beginning, even the female public prosecutor who prepared the case behaves in a prejudicial manner.

**SUMMARY OF THE MOVIE** - Sarah Tobias is a young waiter in a pub. One night, while wearing a provocative outfit, sensual dancing and after some drinks, three men rape her, while other clients urge them on. Only a boy, Kenneth Joyce, makes a useless call to the police.

Initially Kathryn Murphy, vice district attorney, tries to find a deal with the defendants (solely an accusation for unintentional injuries). At a later moment, in spite of her boss' disagreement, she decides to proceed with an accusation for instigation for all the people present at the rape scene.

The three rapists are identified and interrogated. During the trial, Sarah is cross-examined very harshly.

Thanks to Kenneth Joyce's deposition, the three rapists are found guilty for their actions.

**MOST RELEVANT SCENES** - Some days after the rape, Sarah meets one of the men, who was in that pub and he starts speaking to her. Other two scenes: when Sarah was cross-examined on the stand and when the public prosecutor fought with her boss, who disagreed with her intention to investigate further.



**LESSONS FOR JUDGES** - The movie highlights how court trials and investigations in rape cases and sexual crimes can cause further injury to the victims. It describes the coldness, rudeness and impersonality of criminal justice, which appears unsuitable to overcoming the traumatic experience of the victim. Proceedings and investigation could be even more painful, when victims are less than saintly, as evidenced in this movie. This is the reason why many rape victims do not want to deal with all the procedural hurdles and relive their terrible experiences in cross-examination. Sometimes, they do not even report the offence, as they do not want to feel like the one under accusation.

After more than thirty years, has the culture changed in rape trials?

It appears not, the issue is still topical, as on-going debate and the EU Directive 2012/29/EU (establishing minimum standards on the rights, support and protection of victims of crime) show.

What can judges do?

Judges have, also in this case, the ethical duty to protect the victim, by taking measures to avoid any unnecessary contact between victims and the indicted and by excluding invasive questioning about their former love affairs, about the outfits, about alcohol or drug abuse that do not have any relevance with the crime. The issue is not whether the provocative behaviour or outfit of the victim encouraged the committing of the crime, but if the indicted forced her to have sex without her consent. As argued above, judges are not moral censors.

In order to avoid further victimization, it is important to create a serene atmosphere in court, much different from the atmosphere when Sarah is on the stand, cross-examined by the lawyer of the indicted.

The ethical values involved are, also in this case, **respect, equality and concern for the dignity of the individual.**

We observe that the character of the female prosecutor (Kathryn) is highly professional, competent and committed. She truly cares for Sarah and is a positive model of ethical conduct, despite of the common stereotype in certain legal movies describing female judges as overemotional and with a poor personal life.



### **LEGAL MOVIES, JUDGES' PRIVATE LIVES AND STEREOTYPES**

Cinema and legal movies often point out that judges are so committed to their profession that it affects their private lives. They also describe the most common stereotypes and prejudices against this profession.



Serving as a judge means having a job that cannot be fully carried out in a few hours inside the courthouse. It is a profession that has inevitable consequences on the lifestyles and on the way of thinking and interacting with others.

Unlike the movies we analysed above, for this theme we have selected two movies whose protagonist is a judge: a female judge in the first one and a junior judge in the second.

### **The Children Act (2017)**

One of the most successful legal movies of recent years is *The Children Act*, a 2017 drama based on the novel written by Ian McEwan, starring Emma Thomson.

**SUMMARY OF THE FILM** - Fiona Maye is a judge in the Family Division of the High Court of Justice of England and Wales. As her marriage crumbles, she has to deal with a case involving Adam Henry, a 17-year old boy suffering from leukaemia, who is refusing a life-saving blood transfusion as a Jehovah's Witness. After taking the unexpected decision to visit him in hospital, she rules to save the kid's life, in spite of the contrary opinion of his family and of the child himself.

**MOST RELEVANT SCENES** - It is immediately clear from the beginning of the movie that Fiona loves her job more than anything else in her life. She has single-mindedly pursued her career at the expense of her failing marriage. Even when her husband announces that he is planning to have an affair, she keeps taking notes on one of the most difficult cases of her career, with the draft of the judgements near her chaise-longue on the floor of the living room. Fiona is so utterly dedicated to her work that her swearing-in ceremony as a judge is compared to entering a convent: *"she belonged to the law as some women who had once been brides of Christ"*.

The main character of *The Children Act* comes across as a 'workaholic' judge, who values her career above her loved ones. She works long hours under extreme time pressure, aware of providing a public service at the highest order. Fiona is a tough woman, who has become accustomed to passing judgement over some of the most emotional and impactful questions of people's lives. However, as we take a deeper look, we discover that she is a sensitive woman who struggles to find a balance between her private life and her draining job. Of course, this is an issue that many can sympathize with.

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*I'm always too busy.  
The law can take over your life.  
(Fiona Maye in *The Children Act*)*

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**LESSON FOR JUDGES** - Working as a judge is very demanding and it requires undivided attention while making crucial decisions that deeply affect other people's lives. Consequently, it



seems almost impossible to separate completely one's private and professional life, as the two are inevitably connected.

On the other hand, the private life and personal sensitivity on a given topic could affect the decisions that a judge makes. In *The Children Act*, Fiona is facing a marriage crisis that inevitably impacts the difficult case she has to deal with, making it harder to think clearly.

As we understand while watching Fiona's story, finding a good balance between one's personal life and public duty is one of the most difficult challenges for a judge and it is a task that should not be underestimated. Indeed, the work could be seriously jeopardized if a balance is not found and one side takes over the other.

*The Children Act* gives us the chance to think about another aspect concerning the role of the judge as represented in movies, which concerns women and legal professions. The main character is a woman who appears tough and severe but who eventually gets personally involved in a case she has to deal with, showing her fragilities and weakness, all enhanced by the personal crisis she is going through.

In legal movies, female judges, lawyers and public prosecutors are often represented as overemotional, and as less rational than men are. For centuries, men had the monopoly over rationality. As emotions and justice were thought to be incompatible, women were not admitted to legal professions until the twentieth century. Sadly, this form of prejudice against women in the judiciary afflicts the real world as well, despite women being the numeric majority in many EU countries (79% in Slovenia, 78% in Latvia, 74% in Romania and 54% in Italy, according to the last CEPEJ Report).

Although progress has been made to fight gender bias, there is still a long way to go in order to eradicate it completely. Even nowadays people in certain areas, especially men, are afraid that if their judge is a woman, they may obtain weaker protections for their rights. This attitude inevitably undermines the value of women's work and weakens trust in the judiciary. Therefore, it is necessary to understand that this problem must be solved not only in order to safeguard women's rights, but above all to ensure the proper functioning of the entire legal system in everyone's best interests, both men and women.

In an effort to avoid gender bias, for example, all people in the courtroom should be addressed by their last names and appropriate titles; terms of endearments should be avoided together with references to physical appearance and remarks that imply sexual stereotypes. Everyone should use a gender-neutral and inclusive language, treating women and men with equal dignity and respect and valuing their professional achievements.



Nevertheless, from the character of Fiona we learn much more. She is **independent** and **courageous**, as she decides on difficult cases, involving ethics and bioethics under criticisms from a part of the media and the public opinion. She appears very **diligent**, as she ensures the quality of her judgements within a reasonable time, without delay. Her judgements are intelligible, and she **communicates effectively** and **listens with attention**, caring for the individuals (parties, lawyers and court staff). She is **competent**, also in relation to new legal developments. She has **respect**, shows **humanity** and **concern for the dignity of individuals**. In spite of the turmoil in her private life, her behaviour in court is serene, balanced and **prudent**, demonstrating self-discipline in coping with stress and frustration. She is **rational** and **objective**, like any good judge. She is respected and influential, without being arrogant and bossy.

We might say a living handbook of judicial ethics!

In the movie - and in the book - she is admired by all; even the spectators like her and we are sure that most of them, in the real world, would be happy to be judged by one like Fiona. Those spectators would then have a better understanding of the role of the judge in the society.

A provocative question: if the same story had had a man as main character, would it be the same? Or, do women judges truly make a difference, in films and in reality?

Our answer is: diversity is a value for the judiciary, because the individuals best-suited to judicial office include women as much as men.

### **Il giudice ragazzino (1994)**

Another film in which a judge has a central role is ***Il giudice ragazzino***, an Italian drama movie of 1994, in which the main character delivers a beautiful speech concerning the way judges should behave in their private lives in order to preserve their independence. This movie also shows us how hard it is for young magistrates to start their careers, having to face difficulties and prejudice coming from older colleagues, parties and lawyers. This happens mostly in difficult areas, as in in the South of Italy.

**SUMMARY OF THE FILM** - The film tells the true story of Rosario Livatino, a young deputy public prosecutor who is willing to fight against the Sicilian mafia. Given the young age of many public prosecutors and judges serving in the south of Italy, the Italian President of the Republic nicknames them 'judge-kids'. His professional path is beset with obstacles until finally he is killed in a mafia attack on September 21, 1991.

**MOST RELEVANT SCENES** - At the very beginning of the movie, the main character gives a very meaningful speech saying that the freedom and the independence of a judge depends highly on how he or she behaves outside the courtroom. These words have an even more significant



impact because Livatino is giving the speech during a public event in front of some people connected with the local mafia, who look clearly bothered by what he is saying.

**LESSONS FOR JUDGES** - A judge has to fulfil his or her professional duties with care and attention, but that is not enough. In order to be truly impartial and **independent** a judge must be free of any improper influence that may also come from external sources. This means that he or she has to behave with **transparency** even outside the office, in the private life, carefully selecting every relation and connection.

These principles are so important and significant that they have been included in the Bangalore Principles of Judicial Conduct (Article 1 “*Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects*”) and in the Ethics Code adopted by the Italian National Association of Judiciary in 2010 (Articles 8 and 10).

Moreover, the movie shows us that the improper influences that a judge could suffer may even arise from other forms of public power or from senior judges. Unfortunately, it may happen that young judges and public prosecutors at the beginning of their career are patronized by older magistrates and by other members of the community.

How should we overcome these hurdles and stereotypes? The answer could be independence, courage, professionalism, mastery in law and, most of all, tutorship and strong support by senior colleagues. According to Article 14 of the Ethics Code adopted by the Italian National Association of Judiciary, it is a duty of the chiefs of the courts to take a special care of junior judges.



Our research has been quite peculiar in comparison with the traditional way of studying judicial ethics, as cinema offers an imaginative rather than a discursive interpretation of concepts.

Most of the studies on courtroom movies and ethics have focused on ethics for lawyers. We tried to explore the topic from a different point of view; that of judicial ethics.

Our (pleasant) exploration in legal movies demonstrates that aesthetics, beauty, entertainment, narrative and the amusement of good cinema can also contribute improving the debate on judicial ethics, sharpening our capacity for analysis and moral reasoning.

It is surprising that with only seven movies we found so many issues and ethical lessons.



We are proud and pleased with our research outcomes, as the best way to teach and learn ethics is to debate.

As we tried to demonstrate with clear examples, the silver screen is a very powerful stimulus for jurisprudential reflection, especially when fundamental rights are involved. It has the power to transcend boundaries and to unite people, as universal rights do. In the meanwhile, we realized that one of the most important aims of the judiciary is to perform the difficult task of filling the gap between law and justice.

We also opened a window onto the influence of courtroom movies on judicial conduct. We realized that they could be a very good critical friend for judges when they denounce bad conducts or describe effectively models to emulate. For this reason, in our opinion, cinema would be an excellent additional tool for interdisciplinary judicial training. Statutes and procedural rules alone are not enough to improve the behaviour of those judges who act nondescript bureaucrats, excusing themselves because of workload and backlog.

In the analysis of movies stereotypes against judges, and in particular against female judges and junior judge, we have considered that the only way to overcome the problem is to be aware of them, to behave properly both in court and out, with professionalism, and to have the support of colleagues, especially of the senior ones.

Now, at the end of our work, we try to imagine a world without courtroom movies.

Would the image of justice be different? We believe so. We emphasized earlier that most of the people know the world of justice only through cinema, which depicts it better than the cold and abstruse legislations and court practices.

Would judges and their service be different? Our answer is: it depends.

Surely, the judges who keep their fingers on the pulse of an evolving society would be different, as they would lose an important tool to navigate society's needs and a mirror to reflect people's expectations.

On the other hand, for judges who prefer to stay in their comfortable ivory tower, nothing would change.

