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### Just A Bigger Fish (book review)

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## Just A Bigger Fish

Review of *Shark Tank: Greed, Politics, and the Collapse of Finley, Kumble, One of America's Largest Law Firms* by Kim Isaac Eisler. Pp. 236, St. Martin's Press 1990

*Reviewed by Michael Ariens\**

There must be a name for this kind of book. It fits within the genre of such books as *Greed and Glory on Wall Street: The Fall of the House of Lehman*,<sup>1</sup> *The Predators' Ball: The Inside Story of Drexel Burnham and the Rise of the Junk Bond Raiders*,<sup>2</sup> *Barbarians at the Gate: The Fall of RJR Nabisco*,<sup>3</sup> *Sudden Death: The Rise and Fall of E.F. Hutton*<sup>4</sup> and, most popularly, *Liar's Poker: Rising Through the Wreckage on Wall Street*.<sup>5</sup> In *Shark Tank: Greed, Politics, and the Collapse of Finley, Kumble, One of America's Largest Law Firms*,<sup>6</sup> as in the above cited books, the story is generally about the decline and fall of an institution instrumental to capitalism which prospered during much of the 1980s.<sup>7</sup> In particular, it is about the decline and fall of one or more men whose hubris, as well as greed, makes the decline and fall so satisfying to read. These books might be organized profitably in the "Business Calamity" section at your local bookstore.

There are several other rules by which this kind of book is written.

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1. K. AULETTA, *GREED AND GLORY ON WALL STREET: THE STORY OF THE FALL OF THE HOUSE OF LEHMAN* (1986).

2. C. BRUCK, *THE PREDATORS' BALL: THE INSIDE STORY OF DREXEL BURNHAM AND THE RISE OF THE JUNK BOND RAIDERS* (1988). Since many of those raiders and their Svengali, Michael Milken, as well as Drexel Burnham have since fallen, the paperback edition contains a new chapter on recent events. I suppose *The Predators' Ball* could now be subtitled *The Inside Story of Drexel Burnham and the Rise [and Fall] of the Junk Bond Raiders*.

3. B. BURROUGH & J. HELYAR, *BARBARIANS AT THE GATE: THE FALL OF RJR NABISCO* (1990).

4. M. STEVENS, *SUDDEN DEATH: THE RISE AND FALL OF E.F. HUTTON* (1989).

5. M. LEWIS, *LIAR'S POKER: RISING THROUGH THE WRECKAGE ON WALL STREET* (1989).

6. K. EISLER, *SHARK TANK: GREED, POLITICS AND THE COLLAPSE OF FINLEY, KUMBLE, ONE OF AMERICA'S LARGEST LAW FIRMS* (1990) [hereinafter *SHARK TANK*].

7. A related version tells the story of the decline and fall of a Hollywood movie studio. See S. BACH, *FINAL CUT: DREAMS AND DISASTER IN THE MAKING OF HEAVEN'S GATE* (1985) (chronicling the demise of United Artists); P. BART, *FADE OUT: THE CALAMITOUS FINAL DAYS OF MGM* (1990) (discussing the dismantling of MGM).

It must be a good, quick read, in some sense a nonfiction potboiler; it must superficially sketch the arcane work done by men<sup>8</sup> who are paid fortunes for their arcane expertise; and, like most 19th century novels, it must finish with the moral that greed is not (always) good, and that in the end, persons consumed by greed will get their comeuppance.<sup>9</sup>

*Shark Tank* contains all this. We know this because the only decent person sketched in the book is Samuel Heyman, a corporate raider; the only empathetic character, Robert Persky, is convicted of filing false statements with the SEC; and the only insightful lawyer at Finley, Kumble is an associate who declines a partnership offer.<sup>10</sup> The story of the rise and fall of Finley, Kumble,<sup>11</sup> a law firm created in 1968 and dissolved less than twenty years later, is a very easy book to read. It (very) occasionally discusses the work which made some of the lawyers at Finley, Kumble very wealthy persons and it ends with the moral and financial bankruptcy of what was, not so long ago, one of the largest law firms in the United States.

*Shark Tank* might better have been subtitled "The Story of How Steven Kumble Did It His Way and Look Where It Got Him." Since one difficulty I have with this nonfiction business potboiler is the delineation of character,<sup>12</sup> it is difficult for me to assess the character of Steven Kumble, the anti-hero of *Shark Tank*. The format of this kind of book requires that the anti-hero be portrayed in as pinched a fashion as possible. That is, even if they exist, there will be no stories of the anti-hero visiting terminally ill children (or financially supporting AIDS or cancer

8. These stories are also characterized by an absence of women. There is an aspect of the law firm or brokerage house as post-college fraternity, with the use of vulgar language as a way of bonding.

9. As indicated by the titles aforementioned, the genre seems to require a short, catchy title followed by a long, explanatory subtitle. It also requires the use of a word in the title like "Barbarians," "Predators," "Shark," "Liar's," and "Greed," which indicates uncivil or primitive conduct.

10. My only problem with this characterization is my puzzlement over why such an insightful attorney would remain at Finley, Kumble as an associate if he was not interested in a partnership.

11. Its final firm name was Finley Kumble Wagner Heine Underberg Manley Myerson and Casey. I will use Finley, Kumble.

12. I think this problem may be a problem of journalism. All of the authors of the business books abovementioned are journalists or have some close connection to journalism. Tom Wolfe, in his novel *The Bonfire of the Vanities* (1987), explores the problem well in discussing the portrayal of bond trader Sherman McCoy after his arrest. On the other hand, an advantage most journalists possess is that, unlike many academics, they tell a story well.

research).<sup>13</sup> Steven Kumble, a graduate of Yale College and Harvard Law School, whose father owned and operated "a nonexclusive swimming, tennis, and golf club,"<sup>14</sup> comes across as a vain, megalomaniacal, prevaricating, power-mad, enormously greedy, graceless social climber.<sup>15</sup> Since we know that Kumble will get "his" at the end of the story, each anecdote evidencing one of those traits makes us rub our hands with glee, since Kumble apparently deserves to fall.

While I have no desire to defend Steven Kumble, it seems that the package is too neat. Kumble is portrayed as so overwhelmingly rotten that my reaction is that Kumble was designed to represent the dark side of the changing American legal profession, rather than be shown fully as a person. One reason for this supposition is the author's reiteration that Kumble, and many of his cohorts, graduated from Harvard Law School. The author appears to be asking, how could graduates of the "best" American law schools, given advantages most persons could only dream of, have travelled down such an inglorious path in their legal careers? In evaluating Steven Kumble, the author is not presenting a study of a complex man, but a character type, the 1980s "greed is good" lawyer. My only surprise was that Ivan Boesky and Michael Milken were not mentioned in the book. If I am wrong about suggesting a greater complexity to Steven Kumble, I apologize to the author; I also then fear for those under the influence or power of Steven Kumble.

*Shark Tank* is mildly diverting entertainment, designed for lawyers and other professionals, and businessmen<sup>16</sup> to peruse at the beach. Although there are several disconcerting gaps in character development,<sup>17</sup> author Kim Isaac Eisler competently tells the reader the story of

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13. That is, unless the point is going to be how this presumably selfless activity was used for the personal gain or benefit of the anti-hero.

14. SHARK TANK, *supra* note 6, at 14.

15. Steven Kumble has written a book about Finley, Kumble, and he doesn't fare much better in his own book. See S. KUMBLE & K. LAHART, CONDUCT UNBECOMING: THE RISE AND RUIN OF FINLEY, KUMBLE (1990).

16. That is the only reason I can think of for entitling the book *Shark Tank*. In popular culture lawyers are viewed often as sharks (see the old joke about the lawyer, minister and doctor adrift at sea in a boat with sharks circling, and the punch line "professional courtesy"), so this catchy title is designed to inform them that this will be a story of lawyers as cutthroats. The only reference to a shark in the book is not to a lawyer. However, name partners Steven Kumble, Andrew Heine and Marshall Manley are likened in the book to either or both coral snakes and scorpions.

17. For example, the story of Steven Kumble's relationship with his father is told in a disjointed fashion. At one point, just after discussing Kumble's relationship with his

how Finley, Kumble grew into the second largest law firm in the United States and how it crumbled quickly thereafter. Unfortunately, *Shark Tank* could have been a much more valuable book for its intended audience if Eisler had accomplished what I think he desired. In the introduction, Eisler tells the story of receiving Louis Nizer's *My Life in Court* from his father. Nizer stood for "total integrity, courage, persistence, and a willingness to stand up for an underdog, no matter how unpopular."<sup>18</sup> He ends the introduction, designed as a long epigraph, by mentioning his only meeting with Nizer, at which Nizer proclaimed his firm's opening an office in Los Angeles. "I asked the great defender of the underdog about the case on which he was working. His client was an oil company."<sup>19</sup>

The rise and fall of Finley, Kumble presented the opportunity to investigate the changes in the American legal profession in the last decade, changes which presage a much different system of legal service in the United States. Since *Shark Tank* was not published until more than two years after the demise of Finley, Kumble, there was no need to limit this story solely to the specific machinations at Finley, Kumble, which Eisler too often does. After all, the recent disintegration of one of the successor firms to Finley, Kumble, Myerson and Kuhn,<sup>20</sup> may make just as interesting a story, especially since there are allegations of fraudulent billing and name partner Harvey Myerson was indicted for racketeering and fraud.<sup>21</sup>

The extraordinary changes within the legal profession in the last decade all center around the making of the practice of law into a (more profitable) business.<sup>22</sup> The creation since 1978 (and continued existence) of three national publications tracking the legal profession, *The*

father, Eisler begins the next paragraph, "Although he grieved deeply over the death of his father, . . ." The following paragraph then returns to Kumble's college days at Yale, and no further mention is made of the death of Kumble's father. *SHARK TANK*, *supra* note 6, at 14-15.

There is a similar disjointedness in Eisler's discussion of Marshall Manley's first and second marriages, and the birth and custody battle over his son by his second wife. See *id.* at 68-69, 74-75 and 131-33.

18. *Id.* at xiii.

19. *Id.* at xvi.

20. Myerson refers to Harvey Myerson, a former name partner of Finley, Kumble, and Kuhn as Bowie Kuhn, former major league baseball commissioner.

21. See Geyelin, *U.S. Indicts Highflying New York Lawyer*, *Wall St. J.*, Mar. 8, 1991, at B8, col. 1.

22. See, e.g., Brimelow & Spencer, *The Best Paid Lawyers in America*, *FORBES*, October 16, 1989, at 197 (listing the highest paid attorneys in the United States in 1988).

*American Lawyer* (and the *AmLaw 50*), *The National Law Journal* and *Legal Times*;<sup>23</sup> the rise in the use and importance of headhunters and law firm consultants; the breakdown of partner (and associate) loyalty to the law firm, including the recent wholesale firing of associates and partners at large law firms;<sup>24</sup> the increase in required billable hours<sup>25</sup> for both partners and associates<sup>26</sup> and the increase in the number of years of service required for associates to make partner; the creation of permanent associates and temporary associates;<sup>27</sup> and the rise of "national" law firms are all related to the desire of lawyers to make greater and greater amounts of money. There has been a deep cultural shift in the American legal profession in the past ten or so years, which will continue, as evidenced by the desire of several law firms, particularly in Washington, D.C., to allow nonlawyers to be owners of the firm.<sup>28</sup>

While it would be easy to dismiss the demise of Finley, Kumble because it was not an old, established "white shoe" law firm or to analogize it to the other capitalistic excesses of the 1980s, I think the story of Finley, Kumble tells us something about the future of law firms

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23. There has also been an increase in the number of local or regional papers reporting on the legal profession, like the *Los Angeles Daily Journal* and the *New York Law Journal*. In addition, the *Wall Street Journal* began running a daily Law column in fall 1989.

24. See Machlewitz, *How to Counterattack If You're Losing Your Job*, Barrister, Spring 1991, at 16 (listing firms which have recently fired associates and partners).

25. Or conversely, the increased use by law firms of billing methods which reduce the reliance upon, or eliminate altogether, billing based on hourly rates. See Galanter & Palay, *Why the Big Get Bigger: The Promotion-To-Partner Tournament and the Growth of Large Law Firms*, 76 VA. L. REV. 747, 77:1 n.61 (1990) (citing law firm consultant Mary Ann Altman for the proposition that there is "evidence that hourly billing is once again falling into disfavor for certain types of transactions").

26. Concomitantly, there has been an increasing trend in large law firms toward requiring partners and associates to submit daily the hours billed, as opposed to weekly or biweekly submissions.

27. See Johnson & Coyle, *On the Transformation of the Legal Profession: The Advent of Temporary Lawyering*, 66 NOTRE DAME L. REV. 359 (1990). See also Hayes, *Lawyers Hire Ghostwriters, Raising Specter of Liability*, Wall St. J., December 5, 1989, at B1, col.4.

28. See *Law Firm Partnerships: Should Non-lawyers Be Admitted as Partners?*, A.B.A. J. —, 38 (1990) (Rule 5.4 of the District of Columbia Rules of Professional Conduct adopted by the District of Columbia Court of Appeals permits law firms in the District of Columbia to make nonlawyers equity partners under some circumstances). See Wall St. J., Dec. 20, 1990, at B4, col. 4 (noting that a nonlawyer named partner in the District of Columbia Office of O'Conner & Hannan). This is the converse of the recent trend in which law firms are creating wholly-owned subsidiaries like engineering and lobbying consulting firms, and other nonlaw business entities.

and the legal profession. The future for large law firms is that a few will be able to prosper quite well based on their institutional names.<sup>29</sup> Others will more thoroughly categorize the "finders, minders, and grinders" within the firm, thus creating a number of partnership and associate tracks and levels. These firms will continue to encourage the "finders" of clients, the rainmakers, by paying them more than the "minders," partners who more directly manage the legal affairs for those clients. Finally, some large law firms, particularly in New York City and Washington, D.C., will create growth by marketing their legal expertise nationwide without creating branch offices, while other large law firms will grow by becoming multi-state law firms, with branch offices scattered in one or more regions of the country. Size will continue to matter to large law firms,<sup>30</sup> but unless and until ethical rules regarding conflicts of interest are amended, the structure of the legal profession will likely not be the same as the accounting profession.<sup>31</sup>

The effect upon the legal profession will be a greater stratification within the profession. There will be more large, multi-state full service law firms and very profitable and small boutiques specializing in unusual areas of corporate law and litigation. There will be fewer mid-sized law firms and more branch offices, especially in cities like San Antonio, where I live. There will remain a large number of lawyers whose non-corporate practices will not be affected at all. While some of this news is old,<sup>32</sup> the difference is that this stratification will occur not only locally, but regionally as well. That is, the stratification of the practice of law will affect more dramatically the various types of law practiced in

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29. See Schaller, *Rose, Rose, & Rose, The Quest for the Right Law Firm Name*, WASH. LAW \_\_\_\_\_, 40 (1990). One problem with Finley, Kumble's name is that it was so long it made it look even more nonestablishmentarian than it was. While some law firms are able to get away with more than two or three names, like Paul, Weiss, Rifkind, Wharton and Garrison, and Skadden, Arps, Slate, Meagher and Flom, most established firms have no more than two or three names, like Sullivan & Cromwell, Cravath, Swaine & Moore, Covington & Burling, and Arnold & Porter. Even the two longer named firms mentioned above are colloquially referred to as Paul, Weiss and Skadden, Arps.

30. See Galanter & Palay, *supra* note 25.

31. Compare Gibbons, *Law Practice in 2001*, A.B.A. J. \_\_\_\_\_, 68 (1990) (predicting a future in which the legal profession looks much like the accounting profession).

32. See A. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW (1921) (The Reed report suggested that because different types of lawyers did markedly different kinds of work, future lawyers should be trained differently in order to serve the different needs of society. The Reed report was rejected by the American Bar Association, which shortly thereafter created uniform accreditation standards for law schools. See also J. HEINZ & E. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (1982).

say, Dallas, as compared to San Antonio. Additionally, the likelihood is that the efforts of large law firms to find business will create more work for the disciplinary arms of the bar, as ethical conflicts and competition between large law firms increase. This may result in the unintended consequence of lessening the prejudice of the disciplinary boards against small law firms and sole proprietorships.

Most importantly, the increasingly shrill harangues by judges and academics about the decline of "professionalism" and the rise of "commercialism" in the practice of law will increase in number and decibel level and at the same time will be heard less often. The increasing trend to organize and structure law firms based solely on the bottom line reduces or eliminates the public service efforts of large law firms. The compartmentalization of pro bono efforts at several large law firms is an attempt both to make the members of the firm feel less guilty about not participating themselves and to act as a smokescreen against attacks that lawyers in large law firms do not serve the public interest.

The problem may be that the "professionalism" gambit was always a way of enabling lawyers to make an exceptional amount of money while publicly asserting their service to society.<sup>33</sup> By extravagantly rewarding rainmakers, working at ethical boundaries to retain the business of clients and always keeping their eyes on the fee, Finley, Kumble was merely doing openly what many other large law firms had been doing covertly. The story of the rise and fall of Finley, Kumble should not be viewed as unique in the legal profession. Finley, Kumble was not different in kind than other large law firms, it was only different in degree. Instead, the changes in the legal profession signified by Finley, Kumble should expose to society the realization that, by and large, lawyers are not interested in justice or public service, but in money and lots of it.

Finally, *Shark Tank* outlines two stories which need to be studied in order to more fully appreciate the sociology of the large law firm. First, to what extent has the influence of Steven Brill and *The American Lawyer* affected large law firms. Has his emphasis on the big deal, the big trial, profits per partner and the personalities of partners at large law firms changed the behavior of the large law firm or its members?<sup>34</sup>

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33. See generally J. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* (1976). See also Gordon, *The Independence of Lawyers*, 68 B.U.L. REV. 1, 2-6, 48-51 (1988).

34. Brill has recently written a book entitled *TRIAL BY JURY: THE TACTICS, DEALS, AND DECISIONS THAT DETERMINED THE OUTCOME OF 17 OF THE DECADE'S BIGGEST LEGAL CASES* (1989). Could the publicity from this book (much of it reprinting articles from articles first ap-



Since we know that presumably rational businessmen will act irrationally in the search for fame, money or power,<sup>35</sup> have lawyers similarly acted now that publications exist which focus more on them than on the case?

Second, what is the value of and how does a law firm achieve "white shoe" or establishment status in the practice of law in New York City? While some firms apparently achieve this status based in large part on their longevity or client base, other large law firms have achieved this status within the past 25 years. A related inquiry is the relationship between historically WASP law firms and historically Jewish law firms in New York. To what extent was "white shoe" status a product of the cultural background, legal education or ethnic heritage of its members,<sup>36</sup> and to what extent, if any, does that background or heritage remain a factor in large law firm practice in New York City?

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pearing in *The American Lawyer*) affect the judgment of large law firm lawyers?

35. See B. BURROUGH & J. HELYAR, *supra* note 3 (discussing Ross Johnson at RJR Nabisco).

36. An interesting anecdote in SHARK TANK tells of a Fall 1979 meeting of Finley, Kumble partners, at which new partner Marshall Manley was introduced. The meeting was held at named partner Andrew Heine's country club, "founded by wealthy German Jews like the Heines who dressed in white and only white." Manley was spotted walking up the driveway wearing a "brightly colored sweatsuit." Partner Howard Rappaport is quoted as saying, "He looks like the grounds keeper," and one soon-to-be-departed partner tells another soon-to-be-departed partner, "We're getting out just in time. This guy's trouble." P. 68. As the largest rainmaker at Finley, Kumble, Marshall Manley's power grew rather than diminished during his stay at the firm.