

1. City of Agents

The Power of Place

In 1930, as suddenly as a swarm of locusts, talent agents descended on Hollywood, infiltrating every crevice of the studio system. Headlines screamed in terror. Industry players demanded action. Editorials called for reform.

“More rank impositions,” one besieged critic raged, “are practiced by agents than by all other classes of people who make their living on the outer boundary of motion picture activity.”¹ Articles and pamphlets proffered tales of supposed underhandedness, “semi-legal trickery,” racketeering, and double dealing by these newly arrived tricksters.

Agents belonged to that strange new breed of businessmen that included advertising pitchmen, real estate agents, loan sharks, investment bankers, and stockbrokers, a flourishing species driven, according to the venomous analysis of Thorstein Veblen, solely “to get something for nothing.” Brokers made their money by offering services to business through a mediation function, contributing nothing of tangible value to industry since, Veblen declared, their “driving force was not an imperative bent of workmanship and human service, but an indefinitely extensible cupidity.”² Hollywood agents suffered from similar suspicions. As traditional skills and measures for evaluating efficacy vanished from markets dominated by deal-making and -brokering services, anxieties arose around the importance of distinguishing reliable advice and mediation from fast talk and ballyhoo. Comparable concerns arose around agents and their seemingly sudden descent upon Hollywood, a business itself maturing into a reliable market, one recently backed by banks and Wall Street investors.

To quell these suspicions Hollywood agents, like most other brokers, needed to persuade clients of their trustworthiness in order to win their business. In a profession lacking established rituals or forms of accreditation—

apprenticeships and guilds—issues of credibility and deceitfulness operated as both criteria for an agent’s salesmanship and marketability as well as grounds for interrogation and indictment. Agents sold themselves on their “character,” building their business as intermediaries in transactions and negotiations by calling on previously established relationships. Regulating, and containing these relationships, in addition to exposing character traits, represented the key strategy of assault for their detractors.

To the talented, agents promised special access, the capacity to make contact with higher entities, to turn commonality into valuable commodity, to turn promise into deliverance. Agents claimed secret knowledge and private passwords, guiding and granting entrée to producers and studios; they understood the grammar of power and could translate any Hollywood aspirant’s prayers into reality. They could make a star.

To their adversaries, agents represented craven Hollywood hucksters, fleeing producers of millions and preying on the pools of newcomers, talented and untalented, that were spilling into Hollywood. In this view the chicanery of agents threatened to contaminate the rational business methods that supposedly governed the burgeoning studio system.

Both portraits draw from a colorful genealogy of American opportunists, grifters, self-promoters, and peripatetic prophets, from Melville’s “Confidence-Man,” an antebellum con artist who appears different to various characters, shape-shifting through each scam as he plays on the trust he elicits from his victims, to P. T. Barnum, the great huckster of entertainment who heightened the audience’s sense of wonder through oratorical artifice and linguistic trickery, to Wall Street churners who accumulated commissions by convincing patrons to buy and sell stocks—a rich U.S. soil teeming with hustlers who, as one recent historian claims, represent the very drive and soul of the national character.³ Hollywood agents, no less than contemporary advertising men or con men, sprung from this hustling tradition. No mere queer creation of the phantasmagoric commerce and culture of Hollywood, agents, then, were all-American creatures.

Closely related to this origin story—in fact, passing through its very core—another conflict, one about interpretations and institutions, erupted in regard to the Hollywood agent. In the early 1930s agents militated for their own branch within the Academy of Motion Picture Arts and Sciences, the official organization of the industry. In calling for admission to this institution, agents sought legitimacy and recognition of their role in the studio system, comparable in importance to the roles of other academy members, such as producers, directors, and studio executives. At the same time the

academy launched its own investigation into “the agent problem,” an inquiry resulting in a proposed “Codes of Practice” for agents.

Editorials. Committees. Investigations. Regulations. Codes. It seems as if no one noticed agents in Hollywood until 1930. What were agents? Where did they come from? What role did they play in Hollywood business? These questions arose with urgency at this moment, and these questions are the questions of this book. They provide, then, a fertile starting point for this history. The intensity of the criticism, the scrutiny, and, perhaps even more important, the apparent failure to spot and recognize agents until 1930 reflect the significance of the historical changes underway in Hollywood. Delving into this issue reveals the role, function, and implicit power of the agent within the classical Hollywood system. This analysis, in turn, reveals both how agents positioned themselves within Hollywood business operations and how studios contested the position, presence, and agency of agents in these dealings.

Examining the conflicting and uneven development of agents offers an alternative to more traditional, monolithic conceptions of the classical Hollywood era, foregrounding significant power shifts that predate the postwar fragmentation of the studio system. Furthermore, these institutional power struggles circulated within a formative period of the studio system’s maturation into an oligopoly, a time characterized by some important issues and struggles: close public scrutiny of Hollywood’s monopolistic practices and its division of labor; controversy about the academy’s strategic involvement in the National Industrial Recovery Act (1933); and clashes between management and creative personnel. All these issues radiated through the debates about agents. Yet beyond the embattled, shocked rhetoric in the articles and public forums—the academy debates and committees, the hearings held by the National Recovery Administration—in the industry, agents carved out a space for themselves in Hollywood’s daily workings. Agents did so not only despite the institutional forces working against them but through and within these very these battles.

Signs of the growing hostility to talent agents surfaced most blatantly in the early 1930s in the weekly and sometimes daily exposés about agents in film industry journals. Bearing scaremongering headlines like “Grafting Flesh Peddlers,” these articles conjured up images of carney exploitation and financial instability. Agents, with their focus on deal making and bargaining, smacked of the kind of unruly and reckless scheming that this maturing industry was supposed to have left behind in the 1920s. As a corrective, articles and editorials called for reform and “the institution of some

sort of a code of ethics” to vanquish “the evils that exist under the present agent system”—a proposition that anticipated the motion picture academy’s own proposal three years later.⁴

The May 10, 1930, issue of *Film Spectator*, for example, featured a cover story entitled: “Pay Agents Only for What They Do”:

The question of what to do about agents is still without an answer. It is admitted that an artist has a perfect right to employ someone to represent him in a business way, and we will have agents as long as this right is practiced and recognized. It is obvious, therefore, that we cannot settle the agent question by cutting off the heads of all the agents.

Lacking recourse to the guillotine, the studios resorted to medieval tactics nonetheless, pulling up the gates and exiling agents from their kingdoms. Stories of studios’ banning agents from their lots—always a temporary measure—surfaced almost weekly in the early 1930s. On July 15, 1932, for example, *Variety* reported that Fox had barred the leading talent agent Myron Selznick and his company from the studio lot as a response to alleged unethical practices in several transactions. Fox claimed that its efforts to land Zasu Pitts had resulted in a confirmed deal but that Selznick had abruptly changed her weekly salary, denying Pitts’s services until the studio agreed to the new figure. Likewise, Fox’s efforts to contract John Cromwell upon his release from Paramount derailed when Selznick intervened and set the director up at RKO. These articles painted a contentious relationship between agents and producers, as both sides battled for control of talent. Both the industry discourse and the practices of the studios, then, positioned agents as unnecessary forces. Industry journals consistently characterized the agent as a redundant yet unjustifiably powerful force in the marketplace. Why, for example, one article asked rhetorically, should a star like Jean Hersholt, with a proven track record, with an already established artistic reputation and salary, require an agent?⁵ If agents touted the individuality of their clients—distinguishing their saleable personalities or skills—they also challenged the notion of talented individuals’ standing out on their own, unique, pure, and unassisted. Perceived as leeches, undeserving of the commissions earned from the labor of others, agents seemed chimerical courtiers in the commerce of culture. As the controversy about agents raged, studio executives locked agents out, usually with publicity, thereby painting a picture of commercial charlatans and tricksters. Through the dialogue between muckraking journalism and studio actions, industry discourse and practices worked together in a shared paradigm governing (or attempting to govern) the actions of agents. At the same time, while

thoroughly embedded within the film business, agents used these challenges to articulate their utility to both clients and studios.

The Emergence of Hollywood Agents

Of course, agents didn't suddenly invade Hollywood. The subsystem of agents evolved with the studio system itself. The alarmist articles about the growing influence of Hollywood agents reflected a real increase in the number of talent agencies that were sprouting up in Hollywood in the late 1920s. In 1925, for example, fewer than twenty talent agencies listed their services in industry directories; of this group, at least six were merely publishers of talent directories and not genuine agencies. But by 1933 *Film Daily Yearbook* listed more than sixty Hollywood talent agencies (and nearly twenty more in New York).

This spike in the numbers of agents was directly related to the maturing of the film business in the late 1920s. Heretofore a risky hodge-podge of ever-changing alliances and prone to bankruptcy or litigation, the film business consolidated into a smaller number of larger companies. A series of mergers, wherein production companies acquired distribution companies and theater chains (and vice versa), settled the business into five to eight major corporations. Vertically integrated—controlling significant percentages of distribution and theatrical exhibition, as well as production—these companies produced roughly 80 percent of the films released in a given year. The studios' stranglehold on the exhibition business owed largely to their acquisition of key theaters in major markets, forcing independent theaters to vie for the big releases and agree to strict deals from the studios (for example, limited screening times and agreeing to book films in blocks, that is, to buy batches of five to thirty or more films from the studios). As the film industry became concentrated in Hollywood studios, with integrated distribution firms demanding steady product from the production divisions, talent agents stepped in to serve business functions that had become overlooked during the expansions of the studios.

Indeed, when the studios attempted to internalize the process of scouting and managing talent, they encountered a number of obstacles, primarily cost and conflicts of interest. For one thing, managing a wealth of talent, let alone hunting for incoming artists, entailed a tremendous expense. Contracts would need to cover actors' idle periods, a pricey proposition.⁶ For another, an in-house studio-run talent agency could not guarantee fair play during the negotiation process, for the studio, very likely in practice, and certainly in

perception, would always maintain its own interests over those of talent. *Variety* described this latter proposal as one “operated by and for the benefit of studios under studio control and eliminating outside agents.”⁷ Thus, from an overall market standpoint, independent agents made more sense. Through their commissions agents absorbed the costs of scouring the field for and on behalf of talent while maintaining a contractual commitment to their clients’ interests.

Why did talent deal with agents? Like all brokers, agents offered a service, increasing the rewards earned by their clients in return for a percentage of the reward. Trust came from the contractual agreement that an agent gained only when the client did, or at least that was the theory. Furthermore, the abilities that established an agent’s worth—to open studio gates, contact studio executives and producers, to know which doors to knock on—were in demand by actors, writers, and directors. An established agent could perform all these functions and in that sense streamlined the process for incoming talent (while also performing gate-keeping duties for producers). Agents acted as trustworthy guides to getting work in Hollywood (and, for this very same reason, quacks, confidence men, and embezzlers fleeced thousands of newcomers as well).⁸ Similar pressures pushed the industry to organize the Central Casting Corporation in 1925 to deal with the influx of extras into Los Angeles and the scandals arising from the many lost aspirants.⁹ The very exigency to construct such a turnkey mechanism, a guidance office, a managerial department, a selective steering bureau, parallels the practical and industrial need—dealing with the hordes of Hollywood hopefuls—that was served and exploited by agents. However, most agents had interest in only the more ambitious artists who were seeking leading roles or writing and directing credits. Representing new artists promised greater rewards than placing extras and gave rise to the surge in talent agencies in the late 1920s.

This network of agents was part of the social grid of classical Hollywood. Most agents hung out their shingles in Hollywood proper because it was central to all the studios, where the agents made their daily rounds of meetings.¹⁰ Beverly Hills drew in a number of agencies as well since the young city offered lower taxes as a way of attracting new businesses. The geographic location of the agencies supported frequent and spontaneous meetings with executives and clients on the studio lots or lunches at neutral restaurants. Like any supplier to industry, agents forged regular relations with their buyers. However, agents sold unique products that required much more frequent discussions with buyers, since a client might change interests or could require a stronger pitch to fit into a particular project, or a studio could modify its production slate. A routine rendezvous involving an agent

and client or studio executive facilitated important swaps of information. An exchange performed, for example, in the informal setting of a restaurant, within the speculative and contingent manner of gossip (the latest information about artists and projects or hypothetical explorations of combinations of clients on particular projects) could subsequently translate into serious deals. Serious deal making relied on free-form explorations; on casual, uncommitted conversation; and accurate, up-to-date reports. At lunch or over drinks an agent could take the temperature of a client or producer before the real brokering heated up. Other industries called this research and development; Hollywood called it lunch, even if no less important exchanges and explorations occurred in these meetings.¹¹

The relative absence of agents in Hollywood in the early 1920s suggests a general *perception* that the movie industry lacked the elements required for an agency to thrive, namely, central organization and predictable business strategies and operations. Indeed, the William Morris Agency, a Broadway institution since the 1890s, more or less steered clear of the movie business until 1928, when it opened a Hollywood office; it then struggled for the next decade to gain ground in the film business. So the emergence of agents, their alarming “arrival” on the scene in the late 1920s, coincides with the maturation of the Hollywood studio system. Agents’ presence goes part and parcel with the process of the corporate organization of the industry as one governed by the logic of the firm, wherein companies sought to consolidate multiple transactions under one roof.¹² The contestation regarding the role of agents stems from efforts to define the proper balance of the firms and how or in what way their logic would operate or govern the business practices of this industry—essentially a conflict about the “free agency” of talent. In this sense the early battles about agents’ power in the 1930s represent industrial growing pains as the various components of the business struggled to establish places for themselves within the expansion and stabilization of the business.¹³

Of course, talent agents came with a storied past, almost as old as vaudeville, where they performed an important administrative function. Acting as a representative for talent, agents served the constantly varying programs in clubs and vaudeville venues, large markets that often changed acts every night, by managing bookings and keeping track of an act’s commitments. This market demanded strict scheduling logs (agents kept substantial books on their clients’ commitments) and almost daily contact with employers. Very likely the steadiness of work in New York and the eastern markets in the 1920s, as well as the demanding surveillance of the programming and the timetables alone, kept many Broadway agents from

exploring the Hollywood market, even while the salaries commanded by movie work grew.¹⁴

A quick survey shows that the agents who emerged as leaders in Hollywood in the late 1920s and early 1930s sprang from within the film business.¹⁵ Before their careers as two of the leading Hollywood agents of this period, Myron Selznick and Charles Feldman, for example, had already established themselves within the business, the former as a producer (under his father's famous company) and the latter as a lawyer handling contract negotiations for talent. Likewise, Leland Hayward cashed in his studio background in public relations and production when he moved into the agency business in the late 1920s. Mike Levee started as a prop man in 1917, became a founding partner of Brunton Studios in 1920, and sold the company to Paramount, where he then worked as a senior executive. He next became vice president of First National, before finally opening his Hollywood talent agency in the early 1930s. Before Nat Goldstone established his own flourishing agency in 1932, he worked at Universal under Carl Laemmle, as did Ivan Kahn, who set up a relatively successful agency in the late 1920s. Zeppo Marx worked with his famous brothers before establishing his own agency in the early 1930s. The Hawks-Volck Agency played off the fact that its main partner was the brother and representative of the director Howard Hawks. Before H. N. Swanson's career as an accomplished literary agent, he worked as an executive at RKO, and he exploited his contacts there in his new enterprise (some of Swanson's early letters soliciting clients for his agency were written on RKO stationery). Edward Small alternated between producing and working for his talent agency in the 1920s, and Bert Allenberg began his Hollywood career as a business manager for film talent in the 1920s before joining forces with Phil Berg in 1932 to establish one of the major talent agencies of the 1930s, a close rival to Selznick and Feldman. And the list goes on.

Industry statistics confirm that the leading talent agents grew with (and within) the evolving studio system. By the early 1930s four agencies represented the majority of members in the motion picture academy.¹⁶ The Selznick-Joyce Agency represented 87 academy members (23 actors, 37 writers, 27 directors); Collier and Flynn represented 22 (18 actors, 3 writers, 1 assistant director); the Edward Small Agency represented 20 (8 actors, 5 writers, 7 directors); and Phil Berg represented 15 (8 actors, 1 writer, 5 directors).¹⁷ Granted, many major stars managed to not join the academy; nonetheless, these statistics offer a useful barometer for measuring the significance of an agency. Note that the owners of these four agencies arrived in the agent business through positions in the industry, with each of these

founders coming from other areas of the Hollywood infrastructure. By contrast, outsiders like New York's William Morris or Leo Morrison (a Broadway-based agent who moved to Hollywood at this time) counted few to no academy members among their clients.

That Broadway agencies found such difficulty penetrating the Hollywood market illustrates how important early social connections proved to be for the leading agencies. In all the cases described earlier, the agents forged significant business and social relationships within the industry before emerging as full-fledged talent representatives. Agents like Goldstone, Small, and Berg tapped connections from their business dealings in previous incarnations, thereby overcoming through their working relationships with producers the barriers of entry that Broadway agents found difficult or insurmountable.

How agents developed their businesses and sold their services explains why so many of the leading agents developed out of other roles in the studio system. Budding talent agents needed to sell themselves to two markets: prospective clients *and* their prospective employers. The barriers of entry for agents—the costs and obstacles of establishing a business—were almost nothing in terms of cash outlay: clerical personnel, a steady working phone number, and some business clothes (some less successful agents worked without offices, though few survived this way).¹⁸ To a large degree, then, the keys to entry for agents remained almost entirely social—connections to important executives at studios—and perceptual—the appearance of, in the eyes of potential clients, associations with important studio executives. Successful agents, then, built themselves around social networks, establishing connections to talent and to the major studios. The latter depends to a strong degree on the quality of talent gained through the former. But even in pursuit of talent, studios relied on regular contact with trusted, proven individuals (agents who had steered them to capable or winning talent in the past), so that ties to talent alone might not guarantee entry to a studio for a novice agent. Convincing talent that she or he needed a particular representative depended on the agent's capacity to demonstrate some special "in" with important studio executives. In this regard agents sold their charisma, a peculiar set of skills or prowess that was difficult, if not impossible, to quantify in the traditional sense of services (for example, the mathematical acumen sold by an accountant with degrees and licenses and demonstrable practice or by a carpenter, whose labor skills were easily measured in performance).¹⁹

One way that agents sold their charisma was by circulating their list of clients to studio executives, the trade press, and within industry gossip. Agents readily stitched their names to stars in articles in *Variety*, and they

drew in new clients through their association with established ones. Agents placed ads in trade papers linking themselves to stars and other talent. Both Edward Small and Myron Selznick, for example, produced pamphlets touting their various clients; other agents, like Charles Feldman, frequently took out ads listing their prominent clients in particular productions. Film industry directories also published lists of licensed agents, and these publications served as guides for incoming talent.²⁰ By the time agents became more or less accepted components of the industry in the 1930s, studio executives even steered incoming agentless talent (in those rare cases) to agents to avoid any accusations of unfairness in negotiations (for example, David Selznick and his executives at RKO frequently tipped off his brother about unsigned talent). By advertising their associations, both to talent and to studios, through prominent deal making or client lists, agents created an aura for themselves that translated their business connections into pecuniary value.

The skirmishes between studios and agents—as with so many of the battles of the 1930s—essentially erupted over stars. In the teens and early 1920s the star system arose largely as a form of product identification and differentiation, a role that stars continued to serve in the maturing studio system. A star's market value promised to reduce the risk of financing a production because a star was believed to guarantee some certainty in box-office returns, even if this relationship magnified salaries. Yet stars represented more than a strong indicator of potential returns. As a studio's most visible assets, stars lent prestige to a studio. Moreover, as studio operations grew into the more complex "Fordist" synchronization of large monopolies, stars lent stability to annual production planning—because the stars remained under studio contract, studio executives could plan their annual budgets around the release of a certain number of star vehicles. For example, stars allowed studios to leverage slates of films (selling "blocks" of twenty to thirty or more films), tethered to one star's release, for sale to exhibitors. In other words, for certain theaters to receive a star's film, they had to buy several of the studio's other films. In this sense the star provided both box-office value and the ability to sell less desirable films to exhibitors—a certainty that the devious machinations of "star-raiding" agents threatened to destroy.

Controlling and curtailing the movements of stars involved Ptolemaic charts that carefully balanced a star's availability with the diverse but unrelenting production needs of the studio's annual release schedule, a slate that itself was tied to their release calendar for theatrical markets. Stars, then, factored into all aspects of production and studio operations, which allowed for

the possibility of streamlining production practices, so that, for example, studio writers could generate screenplays with specific stars in mind, and studios could buy and prepare projects confident that appropriate stars remained locked in their stable. The alleged star raiding by agents—luring stars to break their contracts and re-sign at other studios—threatened not only the loss of the capital of stars (and that bankable box office) but also their usefulness in integrating the different practices of the studio, thereby destabilizing the studio's vigilant, crucial computation of its assets and personnel.

Given the tremendous importance of the star in networking the integrated spheres of studio operations, studios invented a slick, secure form of ensnaring a star's servitude: "the option contract." Such a contract ran anywhere from one to seven years, with many in the latter range. Studios held the option to review and renew the contract at certain intervals, but the talent held no right to refuse or review the contract once it was signed. Since these contracts overlapped—studios retained multiple contracts, all containing various deadlines—studios had to keep track of as many as one hundred contracted assets. As Universal's Eugene Zukor explained: "Let's say you had a Gary Cooper contract that calls for \$250,000 [a salary renewal]. We have to notify Cooper by three o'clock tomorrow afternoon. We have another contract that comes up for decision by noon tomorrow. As for today, we have several writers' contracts that have to be signed or else those people are going with Fox and MGM. We have to call their agents within the hour."²¹ Agents waited to pounce on these expiration dates, and as a contract approached its terminal date, the ticking clock set off a flurry of activity. To ward off the pillaging agents, as Zukor noted, the studios developed an accounting system simply to track their complex network of overlapping contracts, countering potential offers by timing their own with calculation.

Still, this option contract would seem to eliminate or greatly diminish the necessity of agents. Indeed, that remained part of its intent. On the one hand, the option contract represented stability, guaranteeing regular employment and salary to actors, often stipulating specific salary increases at each renewal, a promising prospect for the notoriously nomadic existence of creative professions. On the other hand, the contract represented a form of indentured, if starlit, servitude. Since only the studio controlled renewal rights, salaries remained fixed, often in the face of box-office success, and the studio tacked on any absences to the end of the contract, a practice that sometimes amounted to one- or two-year extensions (and fairly frequent litigation). Still, as many agents noted, their clients often preferred the security of a long-term contract to the more lucrative but risky rewards of a freelance career.

Nonetheless, the option contract left room for agents to practice their craft. Agents renegotiated salaries at certain review periods or following the escalating box-office success of their clients. Within reason and moderation studios often willingly rewrote contracts to appease their stars and major directors. In addition, agents frequently negotiated such terms as the required or limited hours of reporting to the set, publicity, dressing rooms, and even tea breaks. The notorious practice of studio “loan-outs,” where studios leased their contracted talent to other studios, often at a profit to the original studio (frequently splitting a percentage of this profit with the client), served as an arena for negotiation for agents. Studios, albeit with some caution, proved amenable to loan-outs since this practice put otherwise expensively idle talent to use and potentially increased or broadened the appeal of the studios’ properties. It also provided a sense of freedom for the actors. As an agent from this period explained:

I have secured for a number of my clients contracts which permit them to play in one outside picture a year, on terms which they negotiate independently. Usually such permission enables the artist to appear in some favorite story or work for some favorite director, and the novelty of an interlude on a different lot breaks the monotony of constant association with too-familiar faces.²²

Loan-outs, in this sense, alleviated some of the restrictions or oppressiveness in option contracts and, at the same time, carved out a space for the action of agents.

As early as the mid-1920s, studios had discussed pooling their regulation of talent through a central booking office (a variation on the industry branch that managed extras) that would act as a studio-run agency for actors.²³ The cooperative venture that managed the turbulent pool of extras limited access to the major studios and stifled the competition of extras’ booking agencies. Producers and the Academy of Motion Pictures both floated the concept of a similar centralized clearing house for actors as well, to be run either by the studios or the academy. Actors and agents balked, yet studios continued to discuss the idea, especially as the number of independent Hollywood agents grew. And rumors—mostly unfounded—persisted that the studios had conspired to freeze salaries by refusing to use actors who failed to renew contracts with other studios. The idea of a central booking service gave some credence to such cartel theories, as did the Big Five Agreement, wherein the studios agreed to support and deploy the same sound technology in the late 1920s. Both examples show how studios, nominally and normally competitive entities, could, at least provisionally and periodically, set aside their competition and coordinate and consolidate their behavior to stabilize the health

of the industry at large and strengthen their overall power. Star raiding—when studios courted stars whose contracts were nearly up or when the studios encouraged stars to break their contracts—was the most blatant example of studio competition and a strong, if still contentious, strategy for agents in the 1930s. Production companies often found it more profitable to employ known talent and to secure individuals by offering them higher salaries because, in the words of one industry observer, “competing exhibitors, desirous of acquiring the services of such talent, induced the breaking of existing contracts.”²⁴ Even if the threat of a lawsuit forestalled reckless or flagrant disregard of contracts, agents and actors gambled on counteroffers as a way of renegotiating existing contracts.

In 1931 producers developed an agreement that ostensibly addressed the issue of star raiding.²⁵ Under the terms producers vowed to notify each other of all offers to talent and limited negotiations to a thirty-day window around contract expiration dates. Both the indeterminate nature of the time limit (how would agents know of approaching terminal contract dates?) and the mandatory reporting of competitive offers would effectively disempower agents. The agreement offered studios a way of controlling this competition, for all the studios would retain knowledge of counteroffers and actual salary figures. Likewise, in the late 1920s the Academy of Motion Pictures presented itself as a collective negotiating agency but one designed, financed, and run by producers.²⁶ Agents and their clients vociferously attacked these plans, for in both these failed proposals producers’ access to information and control of the “market” for talent undermined the competitive power of talent, thereby all but eliminating the need for agents.

Agents and the Academy

As a countermove, in 1931 a number of leading talent agents formed the Artists’ Managers Association with the aim of defending their presence and purpose in the industry and to negotiate with the producers’ association on such issues as studios’ barring agents from their lots, the proposed central booking office, and talent raiding. After extensive quarrels the negotiations died, and the talent agents switched tactics. Now the agents, as a body, sought official entry to the Academy of Motion Picture Arts and Sciences.²⁷ Established in 1927 as a central organization moderating the expanding empire of Hollywood, the academy’s ostensible role as a neutral mediating body for issues such as technical standardization, artistic recognition, and labor negotiations barely masked its antiunion agenda. So while the academy

gained power in Hollywood, it remained controversial, particularly for artists, many of whom viewed it as a pawn of the producers. Still, the talent agents clearly recognized the academy's growing power, even if it remained more symbolic than real.

The agency problem grew more disconcerting late in 1932 when academy officials discovered that agents had convinced California politicians to introduce a bill in the state legislature that would exempt agents from the control of the California Labor Commission, the division that supervised all employment businesses, from maids to temporary-job services to talent agencies. The state labor commissioner granted annual licenses to talent agencies, and the commissioner supervised the contracts between agencies and talent. Talent agents wanted legislation that would remove them from such direct surveillance and create a separate sphere for their line of work. That this legislation would nonetheless involve contractual supervision and legal standards went unnoticed by the academy and other industry representatives. Instead, many Hollywood insiders considered this political gambit on the part of agencies an effort to extricate themselves entirely from supervision and responsibility.²⁸

In December 1932 the academy's board of directors developed a response. Internal academy memos reveal that at the monthly board meeting, much discussion focused on a recent increasing source of friction with agencies, the studios' practice of barring agents from their lots and the attendant press coverage. Acknowledging that agents were the only important industry figures excluded from the academy, the board authorized an investigation "designed to bring about a Code of Practice to govern the relations of agents, their clients, and the producers."²⁹ Surviving internal notes from these meetings delineated a number of issues in need of exploration, among them:

Complaints by Agents:

- Studios barring various agencies at different times and the inconvenience to agencies and potential loss to clients
- That studios use the threat of such barring as a weapon in negotiating
- Agents forced to go to court to collect commissions
- Producers acting as agents

Complaints by Producers:

- Agents overloaded with clients, thus failing to serve their interests
- The "excessive zeal" of agents whose demands "set up an artificial barrier between the artist who wants to work and the producer who wants to engage him."

- “That the interference of the agent tends to break down the personal relationship and feeling of mutual loyalty between the studio and the employee.”

Complaints by Talent:

- Feuds between agents and producers hurt clients
- 10% commission
- Firing agents made difficult by convoluted contracts

How the committee might mediate these issues was the real challenge, particularly since problems concerning contracts always entailed potential legal disputes and in fact were governed by state law. From the start, then, the committee faced both speculative issues (what realistic alternative could it develop for the arbitration of contract disputes outside existing state laws?) and intangible problems (how could a code address issues like loyalty and “excessive zeal?”), even while it dealt with more transparent problems (commissions, producers acting as agents, and the specific wording of contracts).

This review issued from an overall retooling of the academy, which was seeking to become more of a mediator in the marketplace than a body serving only the producers. In fact, the academy announced that this agency code would be “the first Code presented for the approval of the membership under the new by-laws.” That the “agent problem” represented one of the first issues that the revamped academy tackled reflects the perceived magnitude of this issue within the industry.

The academy drafted several people to serve on the committee. B. B. Kahane, an RKO executive, would prove the most zealous in his pursuit of the agency problem. The directors Frank Capra and Lloyd Bacon, the actor Robert Montgomery, the producer Jesse Lasky, the cinematographer Lee Garmes, and a handful of others joined Kahane for the first meeting on April 20, 1933. That gathering reiterated most of the concerns first raised in board meetings. But surviving memos and notes from the second meeting on May 1 reveal how the committee shifted the language governing its discussion of these problems to a focus on responsibility and behavior.

The committee divided the agency problem into three areas: the “responsibilities between agent and artist,” “practices” between agents and producers, and “conditions involving all parties.” This last area basically covered the playing field—contracts, arbitration, and negotiation—and the discussion of the first two areas—*responsibilities* and *practices*—would generate rules governing “fair play.” This relegated most of the earlier issues expressed by the board to a kind of foundation level: contracts, arbitration, and negotiations represented the primary conditions that gave rise to the

more significant problems between producers and agents. So the committee redirected the discussion to focus on regulating behavior by defining responsibilities (of agents and producers) and their practices. Under responsibilities the committee explored:

- The services agents promise to render to their clients
- The duration of these promised services [a responsibility stated in the contract]
- Commission rates [again, a contractual issue]
- Conditions for transferring a client's service from one agent to other agents within an agency [an issue related to the growing size and organization of agencies]
- Grounds for the cancellation of contracts³⁰

That the academy would include contractual issues here as well as commission rates shows how the committee members reconceived—or attempted to reconceive—the agency problem as one that transcended strictly monetary or legal issues. The committee read contracts at their purely axiomatic level as renderings of responsibility, as codes of commitment by both parties to more abstract principles, for example, promises of services rendered, and of principles guiding commitment (duration) and cancellation (on certain grounds). Plucking these principles—promised services, duration, grounds for cancellation—from the contracts and treating them as general levels of responsibility allowed the committee to place them more in the realm of ethics than of strict contract law. With this maneuver the committee claimed these principles as codes that might fall under the regulation of the academy. From this new perspective the committee could develop its own codes distinct from state law or general practices. These new codes, in turn, would empower a more localized—in terms of the industry—force of regulation. Reframing the issue in this early meeting in terms of a discourse about responsibilities, practices, and conditions would prove crucial in the ultimate drafting of the committee's proposal.

The committee met at least seven more times during the next three months. In the process it interviewed industry representatives, held meetings with selected agents, organized forums of discussion with agents, and gathered documents such as standard agency contracts. It consulted with the Los Angeles Department of Labor Statistics, corresponded with New York's Actors Equity (the union for Broadway actors), pelted California's State Labor Commission with questions, and consulted with a state assemblyman.

Agents, meanwhile, used the review to revitalize their demand for inclusion in the academy. On April 22, 1933, the leading agents Phil Berg, Ruth

Collier, Myron Selznick, Arthur Landau, and others notified the academy that they had elected Collier and two other agents to serve on the agents committee of the academy. But, they added: "It is our understanding that either subsequent to the establishment of a Code of Practice or prior to such establishment, we will be invited to membership in the Academy, the conditions of such membership to be worked out." Aware of the importance that the academy placed on this issue, the agents struck a warning blow here, linking their participation to a guarantee of admission. No record exists of the academy's response.

Internal committee meeting notes show that Frank Capra and others expressed concern that the imperiousness of their mission had failed thus far to make an impression on agents, which may have been an early indicator of the efficacy of the code they planned to produce. To be fair, internal memos reveal that the committee took seriously many of the problems and objections raised by agents at various meetings, as transcripts from the follow-up committee meetings demonstrate an effort to address such concerns. Moreover, the conflicts that pitted talent against producers offered no simple division into warring factions. Agents and talent found an ally in the academy, for example, in regard to salary control and competition. The academy objected to any form of arbitrary caps on salaries (as proposed by the studios), arguing that contests between actually competing employers, not secret agreements or other subterfuges, presented the only fair and practical method of arriving at compensation.

On July 29, 1933, the academy committee released its "Code of Practice" for agents. The proposal claimed to counter and contain what the academy dubbed "cases of racketeering, double-dealing, arrogance, failure to live up to obligations, semi-legal trickery and the feuds between producers and agents which have caused loss to artists, agent, and producer alike." Striking as its tone the search for equal justice, the report insisted that the code's twenty-three sections would also protect the honest agent.

An outline of the "Evils and Abuses Aimed at by the Code" led readers into the committee report itself. Aside from such egregious if exaggerated offenses as one-sided contracts, excessive commissions, the collection of unearned commissions, or the neglect of the artist's interest by the agent, the code sought to outlaw the following abuses:

BETRAYAL OF TRUST. The Code establishes as a condition of the validity of the agent's contract in advising the artist the artist's interest and benefit shall be the sole consideration.

LOSS TO THE ARTIST THROUGH AGENTS BEING BARRED FROM STUDIOS. The Code undertakes to make impossible in the future any

renewal in the long feuds which have invariably damaged the interests of the studios, the agent and all the clients of the agent affected.

IMPROPER EFFORTS BY ANY PRODUCER TO DEPRIVE THE ARTIST OF HIS RIGHT TO REPRESENTATION BY HIS AGENT. One of the strongest clauses in the Code states the principle that in all negotiations the artist is entitled to the advice and counsel of his agent, and that the artist may have the agent accompany or represent him.

ASSIGNMENT OF A CONTRACT WITHOUT THE CONSENT OF THE ARTIST. The Code makes it clear the contract is for the personal services of the agent and his associates on behalf of the artist and that the contract cannot be transferred or assigned without the artist's consent.

Each precept regulating the conduct of agents was designated as one that protected the free movement of talent within the marketplace or was carefully balanced by a clause constraining the behavior of producers—a kind of chess game.

In addition to confirming the generally agreed-upon 10 percent commission for agent's services, the document outlined the services rendered by agents:

- a. To use his best efforts to further the professional interests of the Artist, to develop the personal abilities and increase the earning power of the Artist and to obtain and maintain for the Artist a favorable and valuable professional reputation.
- b. To plan for the future work of the Artist and to seek out and confer with those who may employ or recommend the employment of the Artist.
- c. To negotiate for and endeavor to procure employment on favorable terms for the Artist in the fields of employment designated in this Contract.
- d. To promptly inform the Artist of all offers for his services and all inquiries received by the Agent with regard to the Artist's availability for employment.
- e. To examine any and all proposed employment contracts and to give business advice as to their advisability.
- f. To attend any and all conferences between the Artists and Producer or prospective employer when requested by the Artist.

This part of the document represented a fair degree of realism. By the early 1930s agents more or less defined and practiced their craft by exercis-

ing all the principles listed, rendering their inclusion in the proposed code more or less a formality, if not a redundancy. In this sense, as much as the document aspired to control and contain agents, the final draft also officially recorded practices by agents and their clients, as well as commonplace transactions in the Hollywood market (negotiations and contracts). Moreover, the notion of a free market required the existence of something like the agent. The very existence of agents confirmed the free-market values that shaped and defined the business: the right to bargain, the right to sell to the highest bidder, the right to climb the ladder based on talent and proven success. Such values buoyed the very business and rationale of an agent. Agents defined themselves as serving the advancement of an individual's career within a competitive marketplace. Producers could not deny this aspect of an agent's identity. How, then, could they contain agents? Normative boundaries required some sort of authority, some sort of supervening source of legitimacy. Ethics and standards of practice offered such a form of control. "Ethics" promised a form of self-regulation that still allowed the market to appear to be a free and open space. Thus the code offered a regimen, one appropriate and calibrated to the work of the industry, seeking to harmonize the various forces in the marketplace. As a document outlining the limits set on individuals within a business, the code was an example of how business practices demand players to occasionally sublimate their individual drives and profits for the overall good of the marketplace.³¹ That promise of self-regulation still had at least one major practical problem: how to enforce it.

With the code more or less in its final form, the committee speculated on different approaches for getting it into practice. The most immediate—the strategy the committee's members would launch within the week—sought to enforce the code through agreement by its members (including its corporate members, the major studios). That still left out a sizable portion of the industry. In this sense the committee continued to show interest in shaping a standardized labor contract from the perspective of the code so that these principles could more or less fall under the authority of the California State Labor Commission. Finally, the committee sought to slip its code into one of the "the fair practices codes" being developed in Washington, D.C., by the National Recovery Administration.

By the end of the summer academy executives met to discuss strategies for ensuring the code's passage. An internal memo labeled "AGENCY CAMPAIGN" listed a number of potential strategies, including gathering announcements from agents—"if any," the memo limply added—who favored the code. Following the public release of the code, the memo suggested that the academy encourage its members to "furnish grievances

against agents as basis for test suits and for action by labor commission." In this regard the academy would prompt members with a special letter attesting to the organization's willingness to assist with agency problems. The academy entertained the idea of publishing a list of all lawsuits filed against agents. Finally, the memo suggested that "if necessary," the academy could "line up some paper . . . to start expose of agency situation in Hollywood." No record exists to determine whether or how far the academy pursued this last strategy.

The August 21, 1933, edition of the *Academy Bulletin* boasted that the organization had received a flood of letters, telegrams, telephone calls, and personal messages supporting adoption of the agents code. Yet the September 5 issue warned that some agencies were fighting an unscrupulous campaign against the code's ratification. This notice was drowned in the chorus of approvals quoted in the bulletin, which added that the code needed only 35 more votes for ratification. The September 26 issue proclaimed the code's overwhelming approval. How the academy would put it into effect, however, remained the most important question.

With its concern for fair play and its plea for chivalry, the academy's "Code of Practice" for agents strikes a quixotic tone, particularly as it was in no way legally binding. Yet this curious document represents more than an amusing anomaly. That Hollywood business leaders recognized the agent problem as one of behavior revealed an important point underlying the work of agents, which amounts to social networking and persuasive campaigning on the behalf of talent. Directly limiting such tactics would limit the freedom of the market to allow for and measure the distinctive success of talent. By framing the regulation of agents as a code of ethics linked to principles supposedly developed from experience and consensus (the committee of erstwhile ethicists and its advisers), the market appears to remain axiomatically free yet is controlled by ties to transcendent forces like virtues and fair sportsmanship. However, the document had no muscle. In effect, agents still had to convince potential clients that they would be faithful representatives.

"Agents Sock Producers": The New Deal Makers and the New Deal

The debate about agents coincided not only with intensified journalistic scrutiny of the industry, and with the academy's own official reviews but also, and perhaps more important, with President Roosevelt's New Deal. In

March 1933 the newly elected president declared a four-day national bank holiday, to stop more panic withdrawals, as part of his attack on the Depression. Three months later Roosevelt created the National Recovery Administration (NRA) to rehabilitate industry and labor relations. As part of this process, the NRA drafted codes of fair competition to govern industries and trades, inviting leaders from management and labor, as well as owners and bankers, to contribute to their formation. NRA field representatives scouted and scrutinized various industries and established compliance boards and branches to oversee the new codes. In addition to generating reports on an industry—based on research and interviews—the NRA fielded testimony through hearings, in which representatives from diverse areas described the current conditions of the industry, offered suggestions for stabilization, and recommended additions to the NRA codes.

The NRA spirit and its goal of returning industries to healthy, productive states naturally fed into the debates about agents and the rhetorical strategies used by Academy of Motion Pictures. Producers tactically deployed NRA discourse as a way of demonizing agents as wildcards who inflated salaries to unhealthy levels and destabilized the economic equilibrium that Roosevelt's bank moratorium was attempting to establish. As representatives of talent, if not exactly labor organizers, agents were embroiled in the studio-driven efforts to curtail the exorbitant salaries of key talent. Thus the studios' attacks on agents—banning them from studio lots and publicizing these exiles, as well as the various proposals of intensified and disempowering regulation—represented one part of their general strategy to disenfranchise labor, from curtailing the salaries of stars (the primary domain of agents) to weakening organization in the crafts area. In a certain sense the disputes about agents really amount to a maturing oligopoly's efforts to stabilize production financing, to control studio assets, primarily key talent, and to regulate salaries, thereby making them predictable.

Given the national scope of this bureaucratic endeavor, officers of the NRA moved surprisingly fast. The NRA was officially established in June 1933, soon after passage of the National Industrial Recover Act, and government representatives popped up in Hollywood by the end of the summer. But the industry began drawing battle lines long before NRA inspectors descended on Hollywood. Agents, producers, writers, directors, actors, theater owners, and others jockeyed for position, launched attacks, and lobbed accusations at one another almost daily in the pages of the *Hollywood Reporter* and *Variety*. Proclaiming its "vital connection with practically every phase of the industry's affairs," the academy sought to act as the official referee for the NRA's research into the film industry. In

response, the newly formed Screen Writers Guild, and the budding guild of screen actors, teamed with agents to oppose the academy's involvement, claiming that the institution leaned too much toward producers' interests. For its part the academy dubbed the guilds radical organizations and accused them of using "guerilla warfare," stirring discontent and suspicion among their members. As the academy became more involved with the NRA's activities, more and more actors publicly quit the organization, and by October directors were threatening to join them. Instead of gaining power by cozying up to the NRA regulators, the academy managed to mobilize and strengthen the opposition, inspiring stronger pushes for unions by writers, directors, and actors. By October 1933 the academy faced extinction. Internal academy documents reveal that its special agents committee targeted the NRA process as a way of slipping its "Code for Agents" into the NRA's final code of fair competition for the motion picture industry. When word got out, agents protested to the press and in meetings with NRA representatives, repeatedly objecting that the academy did not truly represent them. Still, NRA officials remained skeptical of agents throughout their research and on their trips west relied on producers as guides to the wilds of Hollywood. B. B. Kahane, the RKO executive who led the academy agents committee, escorted the NRA's Sol Rosenblatt—dubbed "Rosy" in *Variety* reportage—on his initial field excursions to Hollywood, no doubt influencing him to target agents during his first close reviews of the industry—as *Variety* declared, "Agent Question Headache for Industry Big Brains." Then came the counterpunch, as *Variety* observed, "Agents Stall Rosy," a front-page banner headline that followed months of battles: "Agents Sock Producers," "Code Cripples Agents," "Pact Socks Percent Boys." Each headline led readers into fairly convoluted articles on the intricacies of the proposed NRA codes dealing with agents, most following the pattern of recommended codes and compromises displayed in the academy debates.

An internal NRA study, which reviews the information collected during the NRA's review of the film industry, was published in November 1935; it discussed problems in regard to agents, despite their firm position in industry practice.³² Divided into sections covering production, distribution, and exhibition, the study first outlined the data pertinent to each arena and then closed with a section in each that was labeled "Unfair Trade Practices." Here the document concluded, "The problem of salaries of stars and the activities of agents are the only two significant trade practice problems which may be clearly allocated to the production division of the Industry." The NRA recognized that production centered on a relatively small group of personalities, namely, actors, directors, writers, and technicians "who have become

known through advertising, publicity, and other methods." Their removal from a project would seriously disrupt production until a studio found or developed a suitable replacement. The NRA summary confirmed (and conformed to) the industry logic governing the importance of a certain tier of talent, hitching productions to the employment of these individuals and the steady flow of productions to their contracted guarantees of performance. Yet the document acknowledged that long-term contracts failed to solve the problem of star raiding, since producers, given the weight accorded stars in the exhibition arena, could easily resort to enticing stars to break contracts for more lucrative offers. While studios could match such overtures, the very prospect "produced psychological effects which tended to decrease the quality of the stars' work and in extreme cases rendered them worthless." The NRA then officially singled out talent agents as a key problem in this industry. More important, it acknowledged that agents practiced in an arena—the negotiation for salaries and labor conditions—that had escaped regulation by the NRA. If producers sought to exploit the regulatory climate of the NRA review to rein in agents, this program ended up both validating agents' presence in the marketplace and rendering them immune from extensive governance. Agents notorious—agents victorious.

In the end the NRA hearings secured the role of the agent in the studio system. While the testimony by Kahane and others, motivated by a desire to mitigate the power of agents, scathingly tarnished them by questioning their role, the NRA ultimately recognized the need for such agents and stabilized, even confirmed, their function in the studio system. Thus Roosevelt and the Screen Actors Guild refused to recognize the original NRA proposal (which had been drafted by academy representatives and the producers), a rejection widely noted in the industry press as a victory for agents and their clients.

In 1935, when the Supreme Court declared the National Industrial Recovery Act unconstitutional, enough work had been done in the press, in public forums, and with the academy that agents had staked out a permanent position in the industry. They had gone head to head with producers, studio bosses, and government officials and emerged with a stronger sense of identity. Despite scandalous tales of enticing talent and escalating salaries for their spoiled stars, agents contributed one form of stabilization to industry operations as a whole, for agents provided a way of organizing, navigating, and trafficking transactions with incoming talent. In this sense the battle between agents and producers represented more of a dispute about who would control the negotiations and transactions with talent than about the necessity of such activity. Moreover, legal, political, and economic policy

supported the role of the agent, as did a general sense of business ethics and essential services to the needs of talent and producers in the growing and fast-paced studio system. Agents became ensconced in Hollywood not only through negotiations with state officials, federal representatives, and industry leaders; the engrained business connections and routine practices, and the utility of talent agents to film production, carved out a fixed role for them. Put another way, the material pressures of production demanded that producers and studios continue to do business with talent agents, a subsystem of practitioners that grew with and served the studio system.