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Amicus Curious

White-collar figure, silver-screen character

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Picture this: the story of the most unusual and significant case of your career to date, unreeling on the silver screen at a theater near you, in a movie starring Matt Damon that opened earlier this month at No. 2 at the box office.

That picture has come into focus for James H. Mutchnik, a former federal prosecutor in Chicago who now concentrates his practice in white-collar criminal defense and antitrust matters as a partner in Kirkland & Ellis LLP. On a recent Sunday night, Mutchnik said, his wife rented a theater in Glenview, where about 150 of his friends, relatives, co-workers and clients turned out for a screening of "The Informant!"

The dark-comedy film, directed by Steven Soderbergh, is based on the true events involving the landmark Archer Daniels Midland Co. price-fixing investigation of the 1990s and Mark Whitacre, an executive at the agri-business giant who ends up working as an FBI informant against the Decatur company.

The movie, which features the antics of the bipolar whistle-blower played by Damon, focuses on the federal probe and the time period leading up to and through Whitacre's unraveling, when it was discovered that he had embezzled millions from ADM even as he was working as an FBI mole in a probe of the company's illegal activities to fix the price of lysine, a feed additive that produces lean muscle in chickens and pigs.

The film is an adaptation of the non-fiction book of the same title authored by former New York Times journalist Kurt Eichenwald.

Perhaps that is one reason why a stout Jayden Lund, the actor who plays Mutchnik in the movie, looks nothing like the former federal prosecutor who played a real-life role in the investigation and prosecution of the case when he was serving in the Antitrust Division of the U.S. Department of Justice.

"Steven Soderbergh, when he was directing the movie, told others that he didn't want to meet any of us, including Whitacre," the Kirkland partner said.

Mutchnik, who said he was among the federal prosecutors, FBI agents and other lawyers involved in the case who had been interviewed by the author of the book, had heard that the movie director did not want his perceptions



James H. Mutchnik

derived from the book to be colored by meeting the real-life players in the case. He also didn't want the actors to meet the people they would be portraying, Mutchnik said.

But the law firm partner did get to meet with screenwriter Scott Z. Burns and Damon, and he was introduced to other cast members, long before the movie was released. It was when Damon was in town for the filming of "Ocean's 12," he said. They met over drinks at The Peninsula hotel.

"By the end of the night, it was the screenwriter, Matt Damon and me," Mutchnik said. "Everyone had left — except there was a ring with tables of women all around the bar. We were getting ready to leave and there was a woman that came up to Matt Damon and made an origami rose out of a napkin. We each got one."

Cook County Circuit Judge James R. Epstein, who represented Whitacre when the jurist was in private practice, is portrayed in the movie by

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actor Tony Hale. At a premier party in New York earlier this month, Epstein met that actor and others, including Damon.

“What I thought was ironic was, during the filming, Eichenwald called me because he frantically was looking for a piece of my letterhead from our law firm at the time.”

The filmmakers wanted to create a sign for the movie set of Epstein’s law office, he said.

“I got it [the letterhead] for them, but I thought it was kind of peculiar that they were focused on the typeface, but they didn’t want the actors to meet the people they were portraying,” Epstein said. “But I recognize that I don’t think like an artist thinks.”

Mutchnik said that when Damon met with him in Chicago, it was mostly to pick his brain about Whitacre, who, while working with authorities, provided “unprecedented access to the smoke-filled room” in which the price fixing had occurred, the former prosecutor said.

He described Whitacre as “fascinating” and a “world-class cooperator, but for the fact that ... he ended up being a pretty massive embezzler.”

“He was conflicted in every way, so that made it hard to get to know him too well,” Mutchnik said. “He was a great cooperator, because he was just a good salesman on anything. There’s an endearing, naive quality about the guy that I still find enjoyable.”

Damon, Mutchnik said, “had lots of questions about the guy.”

“He made it clear that, having read the screenplay, he was looking at this as one of those lifetime roles, where you’ve got a shot at an Oscar,” Mutchnik said.

Does he?

“He did a great job portraying a really unusual fellow,” said Mutchnik, whose

former Justice Department partner, Robin R. Mann, is played in the movie by actress Joan Cusack.

“The movie is excellent, because it takes a complicated story that most people know, but yet makes it fresh and amazing because of Whitacre and his unique way of acting with the people around him, including Mutchnik the prosecutor.”

Mutchnik was just five years out of law school when he was assigned to the case.

“Of my professional life as an antitrust lawyer, it’s the biggest case ever, just the amount of money involved,” Mutchnik said. “Obviously, it was a huge deal for me personally. It was a great experience to be a young lawyer and participate in something that, even today, is still important.”

His character appears about one-third of the way into the movie, in about a half-dozen scenes and with just a few speaking lines, including the one where he answers a phone call with: “James Mutchnik.”

That’s when the Glenview theater audience of friends, family and colleagues erupted, the real-life Mutchnik said.

“Just to have everyone hooting and hollering was pretty wild,” he said.

The movie accurately depicts the facts of the real-life story, Mutchnik said, but viewing it through the eyes of a lawyer with ties to the case had him distracted, at times, by a few minor details.

“I’m talking about little things,” he said.

For example, Mutchnik said, “There’s a scene where one government person interviews a guy in Mexico City. I was there. There was actually four of us, and there’s no way a government agent is going to interview anybody alone.”

For Epstein, who wrote a first-person account of his experience as a movie character in a Sept. 24 Chicago Tribune

article, the film evoked mixed emotions.

“Mr. Soderbergh told the story as a dark comedy. Those of us who lived it recognized its unusual elements, but we were not entitled to, nor did we, see the case as a comedy,” he said in an interview for this column. “I was representing a human being who was in the midst of a tremendous legal mess, who was also suffering from a mental disorder at the time. It doesn’t sound like a comedy to me.”

But he said he can understand how others might see it that way.

“From the outside, people who would see bits and pieces of what Mark Whitacre was doing, I can understand why they might laugh,” he said.

That said, the film, as a “piece of entertainment,” got two thumbs up from Epstein.

And his brush with fame turned out to be a big hit with his daughter, Nora. She was 16 when she answered Damon’s telephone call to her family home more than five years ago, Epstein said, when the movie star had called to speak with her father about his former client. Damon allowed the teen to remain on the line during their lengthy conversation.

“She went and told all her friends after having spoken to Matt Damon, and then nothing happened on it for years,” Epstein said. “When she found out in March 2008 that the film was actually starting she said, ‘Oh, thank goodness — you’ve made an honest woman out of me.’”

Mutchnik, too, has scored some points at the home front.

“Even my kids think I’m cool for a little while,” he said. “My son is going to be 15 next month. He’s in the book as ‘Mutchnik’s son.’ And now he gets to see his dad on the movie screen. That’s pretty neat.”