

READING/TEACHING LAWYER FILMS

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INTRODUCTION: FIRST MEMORIES OF FILM

My father was a hard-working man who lived within his means and wanted little. The one thing he did want was a new car. I was six years old when my mother acquiesced, and dad bought a sleek new green '51 Pontiac with an ember-colored Indian hood ornament. The year of the new car—1951—was memorable: I started first grade; my father drove the new Pontiac off a Mayfield, Kentucky car dealer's two-car-showroom-floor, and we began to frequent the local drive-in theaters. (These were the days before we had our first TV.) My favorite outings were the all-night shows, the first movie beginning at dark, and then, movies till daybreak.¹ To get through an entire night of movies required pillows and popcorn, a cooler of RC colas, and sandwiches we brought from home so we could save money by staying out of the snack bar.

It was at local drive-in theaters that we saw *Demetrius and the Gladiators*,² *The Robe*,³ and *The Ten Commandants*,⁴ movies selected not because we were so deeply religious, but because these Biblical epics were lavish productions of dramatic stories (stories made no less attractive to us because they had Biblical settings). Westerns were also popular in that era. *Bad Day at Black Rock*,⁵ *High Noon*,⁶ and *Shane*⁷ all premiered at the local drive-in theaters; they were sufficiently popular that we had to get to the

1. The year we got the new Pontiac, 1951, was a good year for films. For example, theaters were showing the following movies: *AN AMERICAN IN PARIS* (Metro-Goldwyn-Mayer 1951) (starring Gene Kelly and Leslie Caron); *A PLACE IN THE SUN* (Paramount Pictures 1951) (starring Elizabeth Taylor and Montgomery Clift); *A STREETCAR NAMED DESIRE* (Warner Bros. 1951) (starring Vivien Leigh, Karl Malden, and Marlon Brando); *LAVENDER HILL MOB* (Ealing Studios 1951) (with Alec Guinness); *RASHOMON* (Daiei Studios 1950) (directed by Akira Kurosawa); *STRANGERS ON A TRAIN* (Warner Bros. 1951) (directed by Alfred Hitchcock). We lived on a farm in a rural area of western Kentucky and the local theater in Benton, unable to compete with the new drive-ins, had closed by the time I came of age as a moviegoer. I do not recall seeing any of the 1951 movies, although we may well have seen *A Place in the Sun*. Obviously, *Rashomon* was not screened at the local drive-in theaters in western Kentucky and to this day, I have not seen *Rashomon*.

2. *DEMETRIUS AND THE GLADIATOR* (Twentieth Century Fox 1954).

3. *THE ROBE* (Twentieth Century Fox 1953).

4. *THE TEN COMMANDMENTS* (Paramount Pictures 1956).

5. *BAD DAY AT BLACK ROCK* (Metro-Goldwyn-Mayer 1955).

6. *HIGH NOON* (Stanley Kramer Prod. 1952).

7. *SHANE* (Paramount Pictures 1953).

drive-in early to get a decent parking place.

In 1954, I finally managed to see a film in a real movie theater. My uncle, Barney Thweatt, who everyone in western Kentucky knew as a member of the famous Brewers basketball team that won the Kentucky State Championship in 1948, took my brother and me to his barber in Murray, Kentucky. Then, after our haircuts, he decided to take us to a movie. Even now, I have a distinct memory of the velvet darkness in that Murray theater—my first theater—with lush violet curtains being pulled back to reveal the screen, that magic of feeling so perfectly small and so fully alive to the world unfolding before me, a world both fictional and real.⁸ In the fifty years that followed that magical afternoon watching *Johnny Guitar* (1953),⁹ the world—fantastical and real—has continued to unfold before me.

I. FILMGOERS AND FILM BUFFS

Professor Philip Meyer, a film buff and law/film scholar, in one of his early film pedagogy articles, tells the reader:

By avocation, I am a long-time film junkie and closet-screen writer. By vocation, I have worked with “criminals” in the prisoners’ rights office of a public defender and taught creative writing at a state psychiatric facility for criminals. I have always been fascinated by the stories of criminals. Consequently, I selected films [for a “popular storytelling” course] with the theme of the outsiders’ perspectives on law and society.¹⁰

Meyer goes on to say that in teaching films, he sought meaningful discussions with his students; discussions he hoped might prove therapeutic.¹¹ Meyer hints, in these passing remarks, at something we often forget—that watching films, like reading books, sailing, gardening, cooking, or painting, can become a part of one’s life. For reasons that lie deep, beyond scrutiny, these *other* enterprises and the closeted desires that they express provide anchors for inspiration and survival. Sometimes these

8. As Marshall McLuhan reminded us, “the business of the writer or the filmmaker is to transfer the reader or viewer from one world, his *own*, to another, the world created by typography and film. That is so obvious, and happens so completely, that those undergoing the experience accept it subliminally and without critical awareness.” MARSHALL McLUHAN, *UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN* 285 (1965).

9. *JOHNNY GUITAR* (Republic Pictures Corp. 1954) (Sterling Hayden & Joan Crawford).

10. Philip N. Meyer, *Visual Literacy and the Legal Culture: Reading Film as Text in the Law School Setting*, 17 *LEGAL STUD. F.* 73, 73 (1993).

11. *Id.* at 74.

anchors appear, not so thinly disguised, in the teaching of a lawyer-film course.

As a graduate of western Kentucky's drive-in theaters, I became a regular filmgoer at about the time I set out to become a lawyer attending real movie theaters in Lexington, Kentucky, and Greensboro, North Carolina, and then in Washington, D.C., Newark, New Haven, and Chicago, finally moving to West Virginia, but spending several summers watching films in San Francisco and Berkeley. In the 1970s and 80s, I watched hundreds of films,¹² but I never considered myself a film buff in the sense described by my friend, Phil Meyer. What I did, over the years, was to begin to use films in my courses.¹³ What I had in mind to do with lawyer films, as with other texts I sought out, was to find a way to better understand the work we do as lawyers, the meaning of our professional lives.¹⁴

12. A report from still another filmgoer: "I have gone to the movies constantly, and at times almost compulsively, for most of my life. I should be embarrassed to attempt an estimate of how many movies I have seen and how many hours they have consumed." ROBERT WARSHOW, *THE IMMEDIATE EXPERIENCE: MOVIES, COMICS, THEATRE & OTHER ASPECTS OF POPULAR CULTURE* 27 (1962). Conversely, Margaret R. Miles, a professor of historical theory at Harvard Divinity School, notes in her preface to *Seeing and Believing: Religion and Values in the Movies* that her "immigrant . . . parents forbade movie-going." MARGARET R. MILES, *SEEING AND BELIEVING: RELIGION AND VALUES IN THE MOVIES*, at xi (1996). She goes on to say that she was unable to walk by movie marquees without "guilty glances" at the "fascinating pictures" on the marquees. *Id.*

I saw my first movie, *The Glenn Miller Story* [Universal Pictures 1953], when I was seventeen, without my parents' knowledge or approval. It was a riveting experience; a new world was opened to me. In the world of the movies people did and said daring things, looking beautiful all the while, and confident, somehow, that everything would come out right in the end. It has taken me forty years to put the movies in perspective.

Id. at xii.

13. For an account of the use of films in various courses, some courses in which a law student might least expect to find them, see Francis M. Nevins, *Using Fiction and Film as Law School Tools*, in *LEGAL EDUCATION FOR THE 21ST CENTURY* 177-85 (Donald B. King ed., 1999). A revised version of the essay appears in STEFAN MACHURA & STEFAN ULBRICH, *RECHT—GESELLSCHAFT—KOMMUNIKATION: Festschrift für Klaus F. Röhl* 175-81 (2003)).

14. There is, in the use of films, a hint that we aging teachers might better connect with our young students, who learn (and think of themselves) as part of a film culture. But the buzz of revelation, which surrounds this idea, turns out to be speculation with more intuitive appeal than practical significance. In the late 1960s, Marshall McLuhan noted that:

The young today live mythically and in depth. But they encounter instruction in situations organized by means of classified information—subjects are unrelated, they are visually conceived in terms of a blueprint. Many of our institutions suppress all the natural direct experience of youth, who respond with untaught delight to the poetry and the beauty of the new technological environment, the environment of popular culture.

MARSHALL McLUHAN & QUENTIN FIORE, *THE MEDIUM IS THE MESSAGE* 100 (1967).

As an amendment to the McLuhan and Fiore observation, I would say we (old and young) have always lived mythically and must continue to do so. There is little to suggest that the young live,

I did not, after watching many movies over many years, with memorable and intense pleasure, take up the teaching of lawyer films with the idea that I had a method or formula for talking about films, or the lawyers portrayed in them; I was not at all sure what we might learn about ourselves from lawyer films. Basically, teaching lawyer films was, even as a confirmed filmgoer, pure pedagogical adventure.¹⁵ I had no idea, in teaching a law-film course, what was to be done, how to do it, or how students might respond.

But there is a context to my not knowing what was to be done with lawyer films. In a series of courses (and essays about the courses I teach), I have focused on the way students become lawyers and in doing so, how students adopt a legal mind-set and take up a legal persona and a practical philosophy about the legal work that becomes a part of their identity. Creating, teaching, and writing about these “professional socialization” courses,¹⁶ I have always assumed that it is the sentiments, sensibilities, rhetoric, and philosophies we adopt and enact as lawyers, as much as it is a knowledge of law, that determines the kind of lawyers we will be (and determines how one becomes one kind of lawyer rather than another). If, indeed, it is sentiments, philosophies, rhetoric, and identity that give a lawyer’s life shape and direction, we are still left with the central question—“What does it mean to be a lawyer?”—a question central to the implicit curriculum we find in legal education. When we teach to, with,

experience, and know the world more deeply or mythically than do their elders. Our culture does make it possible for some—young and old—to live deeply, but for most young people living deeply is something one expects to do later in life, if one bothers to do so at all. My students tell me that it is a great luxury to try to think about living deeply and indeed many of them are downright suspicious at the idea that it is either desirable or possible to think about living with an eye to the depths.

I wish it possible to report that in teaching lawyer films, I found a way to make learning easy for my students. It has not worked out that way. If the medium is the message, the message is all too easily misunderstood. Consequently, I do not see films as a mighty pedagogical tool. In the study of films, we learn what we should never have tried to forget, that serious learning comes as second nature and with graceful ease only to a few. But in this, if no great secret is revealed, no fault can be attributed to film, nor is it occasion for despair.

15. “[T]rying to impose an intellectual framework on an entire field of information, without any advance pointers, can be a remarkably daunting task.” Anthony Chase, *Review Essay*, 9 CARDOZO STUD. L. & LITERATURE 107, 112–13 (1997) (commenting on the legal film taxonomy work in PAUL BERGMAN & MICHAEL ASIMOW, *REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES* (1996)).

16. My professional socialization courses have included courses that focus on literature (*Lawyers and Literature*; *Narrative Jurisprudence*; *The Legal Imagination* (drawing on James Boyd White’s book by the same name)), philosophy (*Legal Ethics*; *Practical Moral Philosophy for Lawyers*, and in a first-year course, *Introduction to Law*, which is no longer part of our first-year curriculum), psychology (*Psychology for Lawyers*; *Legal Interviewing and Counseling*), and writing (*Appellate Advocacy*; *The Lawyer as Writer*). In these courses, I sought disciplines and texts that expose the various guises of the legal persona and intellectual frameworks for understanding how the legal mind and persona shape one’s identity, one’s work, and ultimately, one’s life.

and against this implicit curriculum, we need the kind of texts that make it possible to investigate the meaning question, to make it a serious part of one's education.

II. A LAWYERS AND FILM COURSE

After years of hesitation, I finally decided to teach a Lawyers and Film course and was immediately faced with a decision: What films do I teach? It was neither a practical nor an inviting task to review every lawyer film I had seen, and I had no desire to watch films that I would soon thereafter watch again with my students; I needed a different way to select the films.

A. Initial Selection of Films

With the hope that *remembering* a film, its characters, and its story would provide a benchmark for the pedagogical value of the film,¹⁷ I rather quickly assembled a working list which included: *A Few Good Men*,¹⁸ *Anatomy of a Murder*,¹⁹ . . . *And Justice for All*,²⁰ *A Time to Kill*,²¹ *'Breaker' Morant*,²² *Class Action*,²³ *Kramer vs. Kramer*,²⁴ *My Cousin Vinny*,²⁵ *Nuts*,²⁶ *Paris Trout*,²⁷ *Philadelphia*,²⁸ *Primal Fear*,²⁹ *Suspect*,³⁰ *The Accused*,³¹ *The*

17. It is worth noting that I saw all but one of the films I initially considered for the course at movie theaters rather than on videocassettes. See Michael Asimow, *Bad Lawyers in the Movies*, 24 NOVA L. REV. 533, 558-59 (2000) [hereinafter Asimow, *Bad Lawyers*] (arguing that watching a movie in a theater has a greater impact on the viewer than watching a movie on a television). Consequently, I had the benefit of the enhanced vividness and that special feeling of smallness before the unfolding of great drama that I have long associated with watching films in a movie theater. The more important point about remembering what we encounter in a film is, as Ray Carney, a film scholar reminds us: "It's part of the nature of art that it sticks in your craw. It may frustrate you, or bewilder you, but it stays with you." Ray Carney, *At the Other Movies with Ray Carney: An Interview with Peggy Lamb*, BOSTON U. TODAY, May 8, 1994, excerpted in ACADEMIC FADS AND FASHIONS: THE FUNCTION OF CRITICISM, available at <http://people.bu.edu/rcarney/acad/crit.htm> (last visited Mar. 10, 2004).

18. A FEW GOOD MEN (Columbia Pictures Corp. 1992).

19. ANATOMY OF A MURDER (Columbia Pictures Corp. 1959).

20. . . . AND JUSTICE FOR ALL (Columbia Pictures Corp. 1979).

21. A TIME TO KILL (Warner Bros. 1996).

22. 'BREAKER' MORANT (Pact Prod. 1980).

23. CLASS ACTION (Twentieth Century Fox 1991).

24. KRAMER VS. KRAMER (Columbia Pictures Corp. 1979).

25. MY COUSIN VINNY (Twentieth Century Fox 1992).

26. NUTS (Warner Studios 1987).

27. PARIS TROUT (Anchor Bay Entm't 1992).

28. PHILADELPHIA (Columbia Pictures Corp. 1994).

29. PRIMAL FEAR (Paramount Studios 1996).

30. SUSPECT (Columbia Pictures Corp. 1987).

31. THE ACCUSED (Paramount Studios 1988).

Client,³² *The Good Mother*,³³ *The Incident*,³⁴ *The Last Wave*,³⁵ *The Music Box*,³⁶ *The Verdict*,³⁷ *To Kill a Mockingbird*,³⁸ and *True Believer*.³⁹

It was from this list of lawyer films, which I remember so vividly, that I began making a selection of films for the course.⁴⁰ I had little trouble in deciding to include *Anatomy of a Murder*, *The Verdict*,⁴¹ and *To Kill a*

32. *THE CLIENT* (Warner Bros. 1994).

33. *THE GOOD MOTHER* (Touchstone Pictures 1988).

34. *THE INCIDENT* (Qintex Entm't 1990).

35. *THE LAST WAVE* (Ayer Prod. 1977).

36. *THE MUSIC BOX* (Carolco Pictures Inc. 1989).

37. *THE VERDICT* (Twentieth Century Fox 1982).

38. *TO KILL A MOCKINGBIRD* (Universal Int'l Pictures 1962).

39. *TRUE BELIEVER* (Columbia Pictures Corp. 1989).

40. In selecting the films for the course, I compiled still another list of films, which I remembered as entertaining, but were not films I wanted to watch again, or try to teach. On this list I included: *Body Heat* (The Ladd Co. 1981); *Cape Fear* (Universal Pictures 1991) (I had not at that time seen the 1962 version of *Cape Fear*); *Guilty as Sin* (Hollywood Pictures 1993); *Jagged Edge* (Columbia Pictures Corp. 1985); *Legal Eagles* (Universal Pictures 1986); *Presumed Innocent* (Warner Bros. 1990); *The Big Easy* (Trimark Pictures 1987); and *The Firm* (Paramount Pictures 1993). Some of the films on my do-not-show list have been the subject of critical commentary. See, e.g., John M. Burkoff, *If God Wanted Lawyers to Fly, She Would Have Given Them Wings: Life, Lust & Legal Ethics in Body Heat*, 22 OKLA. CITY U. L. REV. 187 (1997) (focusing, unfortunately, as does so much legal film criticism, on the fact that the film lawyer does things we do not expect a typical real-world lawyer to do); Christine Alice Corcos, *Presuming Innocence: Alan Pakula and Scott Turow Take on the Great American Legal Fiction*, 22 OKLA. CITY U. L. REV. 129 (1997) (analyzing *Presumed Innocent* as an example of the interplay between law and justice).

There has been some particularly good scholarly work done on *Cape Fear*. See RICHARD K. SHERWIN, WHEN LAW GOES POP: THE VANISHING LINE BETWEEN LAW AND POPULAR CULTURE 171-85 (2000) (assessing how legal culture and popular culture have mixed, and forecasting the consequences of this phenomenon); Francis M. Nevins, *Cape Fear Dead Ahead: Transforming a Thrice-Told Tale of Lawyers and Law*, 24 LEGAL STUD. F. 611 (2000) (explaining in depth the history of *Cape Fear*, a name that "has come to stand for three versions of the same fundamental story about law, lawyers, and our legal system"); Richard K. Sherwin, *Cape Fear: Law's Inversion and Cathartic Justice*, 30 U.S.F. L. REV. 1023 (1996) (theorizing that the 1991 version of *Cape Fear* is an allegory for society's confusions); see also Cramer R. Cauthen & Donald G. Alpin, III, *The Gift Refused: The Southern Lawyer in To Kill a Mockingbird, The Client, and Cape Fear*, 19 STUD. POPULAR CULTURE 257 (1996) (discussing attitudes towards law in the South by examining *To Kill a Mockingbird*, *The Client*, and *Cape Fear*). These scholarly writings on *Cape Fear*, both the 1962 and the 1991 versions of the film, suggest that one or both versions deserve consideration for use in a lawyer-film course.

While the films adapted from John Grisham's novels, in particular, *A Time to Kill* (Warner Bros. 1996), *The Client* (Warner Bros. 1994), and *The Rainmaker* (Douglas Prod. 1997), are credible films, they do not, in my view, rank well in comparison to other lawyer films. Judith Grant, writing about Grisham's films, argues that *The Firm*, *The Client*, and *The Pelican Brief* are "distinctly mediocre as both films and stories," and she goes on to note that her characterization of the films as mediocre is "charitable," which thus "makes their popularity all the more intriguing." Judith Grant, *Lawyers as Superheroes: The Firm, The Client and The Pelican Brief*, 30 U.S.F. L. REV. 1111, 1114 (1996). While I have never been a fan of Grisham's legal thrillers, like Grant, I find Grisham's popularity of interest.

41. A central theme in *The Verdict* is a lawyer's redemption. On the various forms that redemption, for film lawyers, might take, see Paul Bergman, *The Movie Lawyers' Guide to Redemptive Legal Practice*, 48 UCLA L. REV. 1393 (2001). We might include as examples of films that explore a

*Mockingbird*⁴²—three of the best lawyer films (all adapted from novels)—and while I knew students would have likely seen *The Verdict*, and perhaps *To Kill a Mockingbird*, they were far less likely to have seen *Anatomy of a Murder*.

I then made a first-round of cuts from the working list. I removed 'Breaker' Morant from the list, even though it is a fine film, with the idea that I might use it at some later date in a jurisprudence and film course.⁴³ I recalled strong performances by Richard Dreyfuss and Barbara Streisand in *Nuts*, but had little memory of what role the lawyer actually played in that film.⁴⁴ I decided not to use *Kramer vs. Kramer*, where the lawyers play a significant but brief role—the film's central focus is on a father learning to cope with raising his young son.⁴⁵ *The Good Mother* was dropped for much the same reason: lawyers simply play a limited (although not insignificant role) in the film. *The Incident*, a film rarely mentioned in the legal film literature, is a surprisingly good made-for-TV film about a small-town lawyer, Harmon Cobb (played by Walter Matthau), appointed to defend a Nazi prisoner of war against murder charges in the years following World War II. Cobb is taken by surprise when he finds that his client needs a real

lawyer's redemption, *A Civil Action* (Paramount Pictures 1998), *Erin Brockovich* (Jersey Films 2000), and *True Believer* (1989). On the common plot elements in these redemption films, see Patrick Keefe, *Reversals of Fortune: How Hollywood Makes Heroes Out of Lawyers*, LEGAL AFF., Mar./Apr. 2003, at 48.

42. On Atticus Finch, the literary character, see Thomas Shaffer, *The Moral Theology of Atticus Finch*, 42 U. PITT. L. REV. 181 (1981); Symposium, *To Kill a Mockingbird*, 45 ALA. L. REV. 389–584 (1994). To insure that lawyers do not reach an easy consensus on a hero, we have a new school of critics to suggest that Atticus Finch is not the hero we would have him be. See Monroe H. Freedman, *Atticus Finch—Right and Wrong*, 45 ALA. L. REV. 473 (1994) (arguing that Atticus Finch is not a passionate civil rights advocate but a reluctant lawyer passively maintaining the racial status quo in his town); Steve Lubet, *Reconstructing Atticus Finch*, 97 MICH. L. REV. 1339 (1999) (affirming the view that Atticus Finch is not the hero some make him out to be); John Jay Osborn, Jr., *Atticus Finch—The End of Honor: A Discussion of To Kill a Mockingbird*, 30 U.S.F. L. REV. 1139 (1996) (explaining why Atticus Finch was not a hero but instead had a childlike and unrealistic natural-law view of the world); Monroe Freedman, *Finch: The Lawyer Mythologized*, LEGAL TIMES, May 18, 1992, at 25 (emphasizing that Atticus Finch was not heroic because he was forced to take the case and that during his entire legal career he never attempted to help the poor through pro bono work); Monroe Freedman, *Argumentum ad Hominem: Atticus Finch as Hero*, N.J. L.J., Mar. 16, 1992, at 15 (denouncing Atticus Finch as unworthy of hero status, since he did nothing "to change the racism and sexism that permeate the life of Macomb, Alabama").

43. See *infra* Appendix C: Jurisprudence and Film.

44. Reviewing my colleague John Batt's commentary on *Nuts*, I should have given the film more consideration. See John Batt, *Law, Science, and Narrative: Reflections on Brain Science, Electronic Media, Story, and Law Learning*, 40 J. LEGAL EDUC. 19, 29–41 (1990) (noting that *Nuts* has "significant potential for law school teaching").

45. For still another divorce lawyer film, see *The War of the Roses* (Twentieth Century Fox 1989).

defense.⁴⁶ *The Incident* was not readily available for pre-screening, so I rather arbitrarily decided not to use it in the course. There were still other films—*Philadelphia*, *The Client*,⁴⁷ and *True Believer*⁴⁸—which are of interest as lawyer films but are not sufficiently engrossing that I would take much pleasure in rewatching them with students. *My Cousin Vinny* is great fun, and a teachable film, and I considered including it because I wanted a comedy or two in the overall lineup. However, I decided not to include *My Cousin Vinny* because so many students have seen the film, many of them, more than once. I placed *Suspect* on the initial course list because, unlike many reviewers, I rather liked Cher's performance as the lawyer, Kathleen Riley. I used *Suspect* the first time I taught the course, and it evoked a lively discussion, but Kathleen Riley's involvement with a juror, Eddie Sanger (Dennis Quaid), who provides crucial assistance in Riley's efforts to defend her client, was such a flimsy plot development that I later dropped it from the course film list. I considered using *The Accused* but decided I had suffered enough the first time around and did not relish the thought of revisiting the painfully graphic depiction of gang-rape in the film. *The Accused*, for those venturesome enough to teach it, could be a worthwhile addition to a lawyer-film course.⁴⁹

46. A rather similar motif, the lawyer expecting to rubber-stamp a preordained conclusion decides to play a more rigorous part than expected, can also be found in *The Last Wave* (an Australian lawyer assigned to represent Aborigine men charged with murder) and *A Few Good Men* (a hot-shot, arrogant young man, gets assigned a case, which he is far from equipped to handle and learns some lessons about himself and about the law). The theme of lawyers providing validation to a community's judgment, or having the courage to refuse to do so, is a central theme of *To Kill a Mockingbird*. Atticus Finch, explaining to his children, Jem and Scout, that he is defending a Negro, Tom Robinson, tells them that "there's been some high talk around town to the effect that I shouldn't do much about defending this man." HARPER LEE, *TO KILL A MOCKINGBIRD* 83 (1960). As one of the courthouse regulars reminded his friends, Atticus was appointed by the court to represent Tom Robinson. "Yeah, but Atticus aims to defend him. That's what I don't like about it," replies another of the regulars. *Id.* at 174. Atticus Finch (portrayed by Gregory Peck in the film version) knows early on that he, his family, and his community, are going to be tested by the Tom Robinson case (although he cannot know exactly how that testing is going to unfold).

47. I did not come away from *The Client* with the notion that it was a significant film and did not include it in the course, perhaps because I remember it as being filled with "misdirection" (as one e-mail correspondent put it), and a fair number of bold signs that led nowhere.

48. See generally Carl M. Selinger, *Dramatizing on Film: The Uneasy Role of the American Criminal Defense Lawyer*: *True Believer*, 22 OKLA. CITY U. L. REV. 223 (1997) (comparing the lawyers in *True Believer* with typical American criminal defense attorneys).

49. Michael Asimow observes that *Town Without Pity* (United Artists 1961) is "probably the best film about a rape trial ever made." Asimow, *Bad Lawyers*, *supra* note 17, at 574. *Sergeant Rutledge* (Warner Bros. 1960) directed by John Ford, is still another acclaimed film that deals with rape. See generally SARAH PROJANSKY, *WATCHING RAPE: FILM AND TELEVISION IN POSTFEMINIST CULTURE* (2001) (deconstructing scores of films depicting rape); Sarah Projansky, *The Elusive/Ubiquitous Representation of Rape: A Historical Survey of Rape in U.S. Film, 1903–1972*, 41 CINEMA J. 63 (2001) (offering a feminist perspective on rape in the United States from 1903–1972).

B. Final Line-up of Films for the Course

The final line-up of films for the course distilled down to the following: *A Few Good Men*, *Anatomy of a Murder*, . . . *And Justice for All*, *Class Action*,⁵⁰ *Music Box*, *Paris Trout*, *Suspect*, *The Last Wave*, *The Verdict*, and *To Kill a Mockingbird*.

After teaching the course the first time, I began to consider new lawyer films as they appeared—*The Devil's Advocate*,⁵¹ *The Sweet Hereafter*,⁵² *Liar, Liar*,⁵³ *The Rainmaker*, *The Winslow Boy*,⁵⁴ *Snow Falling on Cedars*,⁵⁵ *The Castle*⁵⁶—and older films, like *Adam's Rib*,⁵⁷ when they came to my attention. *Adam's Rib* is a particularly good film with spirited performances by Spencer Tracy and Katharine Hepburn, both lawyers, whose marriage is threatened by Amanda Bonner's (Katharine Hepburn) resolution to take up a female client's criminal case (and the cause of women in general), a case prosecuted by her husband Adam Bonner (Spencer Tracy).⁵⁸ The lineup of films, as the course evolved over several

50. See Mark Tushnet, *Class Action: One View of Gender and Law in Popular Culture*, in *LEGAL REELISM: MOVIES AS LEGAL TEXTS* 244, 244–60 (John Denvir ed., 1996) (juxtaposing law and justice in relationship to gender).

51. *THE DEVIL'S ADVOCATE* (Warner Bros. 1997).

52. *THE SWEET HEREAFTER* (New Line Studios 1997); see Tony McAdams, *Blame and The Sweet Hereafter*, 24 *LEGAL STUD. F.* 599 (2000) (discussing the advantages and disadvantages of our legal system's assignment of blame for tragedy in the context of *The Sweet Hereafter's* moral message).

53. *LIAR, LIAR* (Universal Pictures 1997).

54. *THE WINSLOW BOY* (Winslow Partners Ltd. 1999).

55. *SNOW FALLING ON CEDARS* (Universal Studios 2000).

56. *THE CASTLE* (Miramax Home Entm't 1997). Ben Goldsmith, Research Assistant at the Australian Key Centre for Cultural and Media Policy, and a member of the Faculty of Humanities at Griffith University in Brisbane, Queensland, sent me a note in December just as I was preparing to teach *Lawyers and Film* for the first time. In the note, he described a new Australian film, *The Castle*, which had become a low-budget box-office success in Australia. As Goldsmith noted, the film "plays with stereotypes of characters in interesting ways" and involves two lawyer characters, "the first a small time solicitor who finds himself out of his depth when asked to take on the family's case" (an effort to save their home from further development of an airport), and the second lawyer, "a retired barrister whom Daryl Kerrigan (the father) fortuitously meets at one of their court appearances. The barrister is a constitutional law specialist, and it is through his offer to assist the family (gratis) that they are able to win the case and keep their home." Letter from Ben Goldsmith, Research Assistant Australian Key Centre for Cultural and Media Policy, to James Elkins, Professor of Law, West Virginia University (Dec. 2003) (on file with the Vermont Law Review).

Several months after receiving Goldsmith's note, I finally got around to viewing *The Castle*, and I found it amusing and delightful. Therefore, I added it to the course. A belated thanks to Ben Goldsmith for his gracious note, and for alerting me to the film and for his rich description of it.

57. *ADAM'S RIB* (Metro-Goldwyn-Mayer 1949).

58. The legal film critic, Michael Asimow, notes that *Adam's Rib* "contains subtle and nuanced lawyer personalities," and is one of the best lawyer films of the 1940s to present lawyers in a favorable light. Asimow, *Bad Lawyers*, *supra* note 17, at 573.

years, was: *Adam's Rib* (1949); *Anatomy of a Murder* (1959);⁵⁹ . . . *And Justice for All* (1979); *Class Action* (1991); *Paris Trout* (1991); *The Castle* (1999); *The Devil's Advocate* (1997); *The Last Wave* (1977); *The Music Box* (1990); *The Sweet Hereafter* (1997); *The Verdict* (1982); and *To Kill a Mockingbird* (1962).

There is, of course, nothing sacred about my evolving list of lawyer films. My basic criterion was simple: to select films that presented lawyers as central, memorable characters, and in doing so, would present us with stories worth talking about. While there are any number of excellent legal films that raise issues about law, order, and justice, I selected the films that left a lasting impression, films with lawyer protagonists that might prompt exploration of the relationship of our professional and personal lives. And, of course, I had no objection to using films associated with acclaimed novels and films that had received critical attention.⁶⁰

III. MECHANICS OF THE LAWYERS AND FILM COURSE

I worked out the course mechanics quite by accident. For the several years I had considered teaching a film course and was hesitant to do so, the basic reason was that I could not quite figure out the logistics for the course. How is one to assign a film that runs two hours and have any time, or energy, to discuss it? Or for that matter, after watching a film, who has any desire to have the lights go on, and then launch into an academic discussion of what has just been viewed? And if the film being discussed is not to be viewed and discussed at the same time, then when is the film to be viewed?

In an adventurous mood, I thought of beginning the film course with a film instead of the usual commentary about the course, but eventually bowed to the more conventional tactic—talking about the nature of the

59. *Anatomy of a Murder* is a fine film, a judgment confirmed each time I view it; it is generally considered a "classic." There is something quite remarkable about the film and I find, surprisingly, that I do not tire of seeing it again and again. The key to the pleasure in watching *Anatomy of a Murder* may well lie in Michael Asimow's claim that *Anatomy of a Murder* is "probably the finest pure trial movie ever made." Michael Asimow, *Film Commentary*, 24 LEGAL STUD. F. 335, 338 (2000). David Papke, drawing on Francis Nevins' characterization of the 1950s and early 1960s as the "Golden Age" of law films, finds the "courtroom scenes" in *Anatomy of a Murder*, "some of the best Hollywood had to offer." David Ray Papke, *Conventional Wisdom: The Courtroom Trial in American Popular Culture*, 82 MARQ. L. REV. 471, 474-75 (1999).

60. I find it of considerable advantage that some of the films, notably *Paris Trout* and *To Kill a Mockingbird*, were adapted from highly regarded novels, which I assign in my *Lawyers and Literature* course. James R. Elkins, *Lawyers and Literature*, at <http://myweb.wvnet.edu/~jelkins/lawyerslit/> (course website) (last visited Apr. 9, 2004); see also Deirdre Purdy, *Lawyers & Literature as My Mother Lay Dying*, 22 LEGAL STUD. F. 293, 298 (1998) (writing about Elkins' *Lawyers and Literature* course and discussing in particular *Paris Trout* and *To Kill a Mockingbird*).

course, the films selected, how the selection took place, the need to find a way to talk about the films and the lawyers we find in the films, the possibility that we might try to use the films to learn something about ourselves, and finally, the obstacles we might face in trying to work with films. With the infinite elasticity that accompanies such introductory remarks, my commentary on that first meeting of the first offering of the course—the class met once a week from 6 to 9 p.m.—left us just enough time to watch the evening's film.⁶¹ With the evening growing late, facing a room of tired students, I decided to hold off discussion of the film until the following week. The next week, we discussed the film we watched the first evening and watched the film assigned for that week. And it was by this rather fortuitous accident that I established a routine, which I continue to use in teaching the film course.⁶²

By showing a film one week and discussing it the next, I found that whatever is worthwhile talking about in a film is still fresh in memory a week after seeing the film (just as the films I selected for the course were remembered in some detail, years after they were first viewed). A memorable film leaves a residue of significance, which can be explored days and weeks (perhaps even months) after the dust of first viewing settles.

IV. WHY LAWYER FILMS?

Law students, relentless in their pursuit of a practical education, expect everything—and I do mean everything—they study to be relevant to the work they expect to do as lawyers. They listen to our claims on behalf of jurisprudence, legal history, legal ethics, and the various courses we present to them with the goal of broadening and deepening their education, with skepticism, if not disdain. The study of law may have always been a practical enterprise, but it is now a practical endeavor so solidly and thoroughly critiqued that we cannot claim ignorance about the cost of our practicalism. We have seen sweeping changes in legal scholarship over the past quarter century—a “greening” of legal scholarship might be a way to describe it—but legal education is still infected by a practicalist virus.⁶³

61. I now use *Adam's Rib* as the first film of the course. The course was scheduled for three hours in the early evening after dinner, one night per week.

62. For a description of the mechanics of another law school film course, see Alan A. Stone, *Teaching Film at Harvard Law School*, 24 *LEGAL STUD. F.* 574, 587–88 (2000) (a course in which Professor Stone studiously avoids courtroom drama films and contemporary lawyer films).

63. See, e.g., Charles J. Ogletree, Jr., *The Challenge of Providing "Legal Representation" in the United States, South Africa, and China*, 7 *WASH. U. J.L. & POL'Y* 47, 70–71 (2001) (stating that in the context of the evolving role of the legal academy in the United States, “[a]t the center of the debate is the issue of whether the primary purpose of law school is to prepare law students for legal practice”);

A. A Unique Focus and Perspective

How, in the prosaic, practicalist world of legal education and its “skills training,” can we hope to convince a law student that something worth knowing might be learned from watching lawyer films?⁶⁴ Compiling a list of lawyer films and working out the course mechanics is one thing, but of more fundamental importance is the question: Why teach these films? In my case, teaching lawyer films provided another venue for taking-up the professional socialization questions that had long influenced my teaching.⁶⁵ In an effort to give my teaching (and my life as a teacher) meaning, I have continued to seek out new texts (and courses within which to teach them), texts and courses that encourage students to reflect on the array of skills and sensibilities necessary for a meaningful life, and I’ve sought out texts that might help us understand the pathologies that undermine a meaningful life.

Some teaching colleagues place their faith in the explicit curriculum and in skills training. Yet, these same colleagues must know that what a student learns, how it is learned, and how that learning is transformed into a professional identity is shaped not only by the law school’s explicit curriculum but by the student’s involvement with legal education’s implicit curriculum. Lawyer films provide an opportunity to focus on this implicit education.⁶⁶

James P. White, *Legal Education in the Era of Change: Law School Autonomy*, 1987 DUKE L.J. 292, 302 (1987) (noting that the practicing bar has expressed impatience and hostility toward law schools and has advocated for greater curricular emphasis on practical lawyering skills).

64. In legal education everyone operates on the assumption that we know quite clearly what constitutes the “core” and the “periphery” (or in curriculum terms, the required and the elected). Students know well, or at least think they know, what constitutes their meat and potatoes in contrast to their curricular desserts.

65. Robert A. Johnson, a Jungian analyst and author of widely read books on archetypal psychology, observes that “finding work that is meaningful and fulfilling is not an intellectual task but rather an emotional, intuitive, and cognitive process that involves the whole person.” ROBERT A. JOHNSON & JERRY M. RUHL, *BALANCING HEAVEN AND EARTH: A MEMOIR* 119 (1998). Johnson’s observation suggests that there is something in the “whole person” of the teacher that takes us from one new course to the next. *Id.* There are, of course, traces of rational thinking involved in the decision to teach a new course, but the reasons, discovered *post hoc*, may tell us less than we might think. An intellectual decision to teach a film course can be located within the discipline’s fashions of the day, but it might also be understood as a meaning-seeking experience.

66. I associate a student’s “implicit education” with the kind of questions that prompt reflection: How did you happen to end up in law school? What brought you here? What kind of lawyer does legal education prepare you to be? What kind of lawyer does law school *not* prepare you to be? What kind of lawyer do you imagine yourself becoming? And, what obstacles do you expect to encounter along the way in becoming the lawyer you imagine yourself being?

For another interesting exploration of the implicit curriculum, see Howard Lesnick, *Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum*, 38 UCLA L. REV. 1157 (1990).

A lawyer-film course may seem to be an odd, out-of-the-way place to focus on skills of reflection and to pursue questions about the meaning of life, and perhaps it is. While the lawyer films I selected were designed as entertainment,⁶⁷ a film, to bring credit to its director, further the career of the actors who appear in it, and make a profit for its producers, must also present viewers with a dramatic story that captures their attention. Basically, what is *sold* to us as entertainment turns out to be not only entertainment, but a *dramatic story*; we can put these dramatic lawyer stories to use in legal education.

In watching a film, we expect to witness something extraordinary, something special, out-of-the-way, unusual, perhaps even something perverse or grotesque,⁶⁸ or something that speaks to the unspeakable.⁶⁹

67. "Any critique of Hollywood films or television shows that depict lawyers or involve legal subject matter must begin with a fundamental and crucial understanding that these mediums have one underlying purpose—to entertain." David M. Spitz, *Heroes or Villains? Moral Struggles vs. Ethical Dilemmas: An Examination of Dramatic Portrayals of Lawyers and the Legal Profession in Popular Culture*, 24 NOVA L. REV. 725, 739 (2000). We might reflect for a moment on the fact that: "The motion picture has become the most influential and compelling form of mass entertainment ever created." John Marini, *Western Justice: John Ford and Sam Peckinpah on the Defense of the Heroic*, 6 NEXUS 57 (2001). Lest we despair at the craven and debased notion of "entertainment," Spitz observes that "entertainment, in the dramatic sense, revolves around storytelling and conflict." Spitz, *supra*, at 739. Frank McConnell, in his exploration of stories and mythmaking in literature and films observes that: "Even at the most unredeemed level of 'escapist' entertainment, cheap novels or trash films, the didactic force of storytelling is still present and important. What kind of world does a person want to escape to?" FRANK MCCONNELL, STORYTELLING AND MYTHMAKING: IMAGES FROM FILM AND LITERATURE 4 (1979). As readers of this essay undoubtedly know, we are well into—and may be nearing the zenith of—an era in which "legal storytelling" and "narrative jurisprudence" have become a focal interest in contemporary jurisprudence. Storytelling is a built-in feature of our professional practices, our work, and our thinking as lawyers. A film course is *one* way to begin to explore stories and the lawyer as storyteller.

Considering films as entertainment and pleasure, we might ask: "If we grant that cinema can be the most vulgar, escapist medium, is it not also true that its real power lies precisely in its seductive sensuality?" YVETTE BIRÓ, PROFANE MYTHOLOGY: THE SAVAGE MIND OF THE CINEMA vii (Imre Goldstein trans., 1982). I shall forego the temptation to translate Biró's observation into a commentary on the place of sensuality in legal education or for that matter, in lawyer films.

What we are dealing with here is the common idea evoked in the word "entertainment": "Entertainment usually implies that only one part of the brain is being used." JONATHAN ROSENBAUM, MOVIES AS POLITICS 89 (1997). We should not forget that: "Any successful narrative that involves or entertains us is structured to combine logic and surprise." ROY ARMES, ACTION AND IMAGE: DRAMATIC STRUCTURE IN CINEMA 14 (1994).

68. See, e.g., THE DEVIL'S ADVOCATE (depicting Satan as a New York attorney who seduces a young recruit with offers of power, sex, and money). "[A] good portion of all popular U.S. films deal with situations of excess—murder, violence, comedy, perversity, apocalypse, encounter with the alien, war, cosmic battles, gender difference, sexuality, and similar issues. Perhaps this is crucial to establishing cultural myths and cultural connection with otherness." Conrad E. Ostwalt Jr., *Conclusion: Religion, Film, and Cultural Analysis*, in SCREENING THE SACRED: RELIGION, MYTH, AND IDEOLOGY IN POPULAR AMERICAN FILM 152, 155 (Joel W. Martin & Conrad E. Ostwalt Jr. eds., 1995).

69. Confronted by the unspeakable world portrayed in the film, I am left in the darkness of the

Lawyer films present us with stories that are simultaneously ordinary entertainment and stories worth studying because they are craftily composed⁷⁰ fictional worlds that suggest the possibility not only of an evening of escape⁷¹ and entertainment, but a way of getting us beyond what we already know (and the determined ways we act on what we think we know). Films, the best of them, take us up close to what can only be described as mystery.

We seek compelling stories—and as lawyers become involved in and must learn to tell such stories—because we are pushed, shoved, and dragged into an unfolding future that can be claimed only as we confront obstacles and endure arduous struggles. There seems to be, in both life and film, an alchemical quest, to transform the banality of everyday life into a life worth living in a world in which truth and justice sometimes prevail. Put most boldly, compelling stories, the stories to which we are drawn and those which repel us, “matter, and matter deeply, because they are the best way to save our lives.”⁷²

B. *The Quest for Justice*

Legal films tell stories made dramatic by invocation of our sense of justice and injustice.⁷³ From the time of the Greek tragedies, we have found justice—justice betrayed and denied, justice sought and vindicated—as a central element of drama.⁷⁴

movie theater, feeling small, but intensely alive.

70. “Technically, film making is a difficult and complicated art. . . . Miles of film are shot, cut, edited, and assembled. If the effect is sometimes trivial, it is certainly not because conscientious technical virtuosity is not exploited.” Donald Slesinger, *The Film and Education*, 13 J. EDUC. SOC. 263, 263–64 (1940). For an engaging introduction to the “complicated art” of film making, see JOHN SAYLES, *THINKING IN PICTURES: THE MAKING OF THE MOVIE* MATEWAN (1987).

71. “Celluloid lawyers live interesting, intense lives far removed from the drab real world of mundane legal practice.” KATHY LASTER, *THE DRAMA OF THE COURTROOM* 11 (2000).

72. MCCONNELL, *supra* note 67, at 3. McConnell may have overstated the point. A more cautious observation might be: It is by way of stories that we maintain hope, the kind of hope that allows us to deal with the unknown, and the future obstacles, contests, and struggles that lie ahead.

73. If there is a single theme to be found in lawyer films, it is the emphasis on justice and on law and its relationship and impediment to justice. See Stefan Machura & Peter Robson, *Law and Film: Introduction*, in *LAW AND FILM* 1, 2 (Stefan Machura & Peter Robson eds., 2001) (“The dominant theme in law films has . . . been how the lawyer pursues justice.”); see also Nicole Rafter, *American Criminal Trial Films: An Overview of Their Development, 1930–2000*, in *LAW AND FILM*, *supra*, at 9–25 (focusing on justice and the “justice figure” in criminal trial films).

74. See Daniel Lerner, *Justice and Drama: Conflict and Advocacy*, 23 *LEGAL STUD. F.* 417 (1999) (analyzing the theme of justice in literature); Daniel Lerner, *Justice and Drama: Historical Ties and “Thick” Relationships*, 22 *LEGAL STUD. F.* 3 (1998) (proposing that drama influences cultural ideas about justice); Daniel Lerner, *Passions for Justice: Fragmentation and Union in Tragedy, Farce, Comedy, and Tragi-Comedy*, 13 *CARDOZO STUD. L. & LITERATURE* 107, 107 (2001) (explaining the

In lawyer films, we find lawyers pursuing justice (or standing in the way of it) as they deal with clients, judges, other lawyers, and people in the community. We identify, if we have any sense of humanity and empathy, in a deep, fundamental way with those who have suffered injustice and with those who work to see justice done. Our identification with film characters is secured and deepened by the serious, real, debilitating obstacles we (and the characters in the film) confront in our (their) quest for justice. A quest made all the more perilous because we know that the just do not always prevail; the quest for justice can break your heart.

Lawyer films expose us to justice as tragedy, justice that we know is hard to come by, and justice of the most ordinary kind we know from personal experience and from the communities where we live.

C. *Exposing Conflict*

An essential part of the meaning we give our lives as lawyers is the identity we "take-on" when we become lawyers and the struggle to make this "taken-on" identity fit with who we imagine ourselves to be. Law provides an arena in which the struggle with socially sanctioned identity is worked out. Lawyer films provide one of the "theaters of conflict" in which we try to understand "essential aspects of humanity and society."⁷⁵ We use lawyer films to help "articulate" and help us understand "the sprawling, ill-understood conflicts"⁷⁶ in which we find ourselves enmeshed, the conflicts

"tragic-comic mode" and its effect on justice); Daniel Lerner, *Teaching Justice: The Idea of Justice in the Structure of Drama*, 23 LEGAL STUD. F. 201 (1999) (meditating on whether there is something "fundamental in the experience of drama that implies an experience of justice"); see also Adi Parush, *The Courtroom as Theater and the Theater as Courtroom in Ancient Athens*, 35 ISRAEL L. REV. 118 (2001) (examining ancient Athenian courts and the literature they inspired).

75. Suzanne Shale, *The Conflicts of Law and the Character of Men: Writing Reversal of Fortune and Judgment at Nuremberg*, 30 U.S.F. L. REV. 991 (1996). Rennard Strickland, a longstanding student of film, argues that: "Films can and do ask important questions." Rennard Strickland, *The Hollywood Mouthpiece: An Illustrated Journey Through the Courtrooms and Back-Alleys of Screen Justice*, in THE LAWYER AND POPULAR CULTURE: PROCEEDINGS OF A CONFERENCE 49, 54 (David L. Gunn ed., 1993). What are these questions and how do lawyer films address them?

At its best, a movie can take the shadow of justice and injustice and, with its enlarged images flickering across the screen, remind us that law in the final analysis is a human enterprise, that there is a human cost behind both our failures and our successes. Films can return us to occasions which have tested the law—and tested it in the most human of terms. . . . Film not only tells us what kind of community we have become but also is capable of helping us understand what kind of community we ought to become. . . .

Id. at 58–59. It may have been something of this sort that Richard Sherwin had in mind when he observed that we seek in films "ways of living and judging." Richard K. Sherwin, *Nomos and Cinema*, 48 UCLA L. REV. 1519, 1541 (2001).

76. Shale, *supra* note 75, at 991.

that underlie the on-going quarrels we have with ourselves, our work, and our profession.

D. Defining Who We Are

The reason for teaching lawyer film is simply this: we need vivid, compelling representations of lawyers in action (lawyers seeking justice and lawyers blind to the injustice they bring about), to explore and re-imagine the ongoing, unfolding, relentless, sometimes heart-breaking, and fateful struggle to give professional life meaning. We need cinema lawyers (and fictional lawyers) as subjects and as stories, not to study who they are, but to learn more about who we are. Lawyers in film and in fiction become part of the rich storied world in which we try to imagine, think, act, and live a role, but a role in which we bring who we are as a person to the work we do, and a life in which the work we do gives the person we are a meaning it could not otherwise have. Simply put, lawyers in film teach us who we are and what we become when we do what some lawyers will do. And, of course, film lawyers teach us about perennial, ultimate questions: How is law enacted? What is the relationship—a most troubled and troubling one—between law and justice? How can an individual lawyer stand against the power of the “system”?⁷⁷ How are we to understand and live with the reality of individual failure? How are we to live (and to act) in the face of law’s failure? How does law (as a lawyer lives it and as an ideology) blind us to the larger reality in which it is embedded?⁷⁸ To explore these questions we need stories that help us focus on the meaning dimension of professional life.

E. Reflections on Storytelling

If narrative is central to law, as it is now widely assumed to be, then lawyer and legal films may, as Professor Phil Meyer suggests, provide a “unique mechanism” for “critical reflection on the dynamics of legal

77. The “system” represents not only an established order and institutional power, an order and power to which we devote our working lives, but it also represents that part of the world we assume to be larger than self: a collective force beyond our direct means to influence or effect. A system may, for all its value, come to threaten an individual or an entire community. In lawyer films, we often find a protagonist—the lawyer—who must take on the system, must act to oppose the system, and must deal with the fact that he or she is already “in” the belly of the beast. A lawyer who battles the system is a common motif of the lawyer film genre.

78. See generally John William Corrington, *Logos, Lex, and Law*, 26 *LEGAL STUD. F.* 709, 712–13 (2002) (explaining that the “metaphor” or way in which a lawyer sees himself and his place within the legal institution is not how others perceive it and urging lawyers to remember “Lord Mansfield’s dictum: It is not enough that justice be done. It must be *seen* to be done”).

cultural storytelling.”⁷⁹ In a film course, we create a new jurisprudence of lawyering and we do it by studying legal minds and legal culture reflected in the stories being told about lawyers and their culture, stories in which we find represented the various identities (and pathologies) taken on by lawyers.

Teaching lawyer films also allows us to reflect on a cultural phenomenon—lawyers and law have never been more prominently featured in popular culture (television, movies, novels, journalistic accounts in newspapers, and radio talk-shows) than they are today.⁸⁰ With the scholarly

79. Meyer, *supra* note 10, at 73. Meyer describes his use of films in legal education as a “simple idea,” an idea based on the premise that:

[L]awyers are popular storytellers who operate in an aural and visual storytelling culture. Lawyers tell imagistic narratives constructed upon aesthetic principles that are closely akin to the structural principles that control the formulation of plot-structure in commercial cinema. We tell stories with hard driving plot-lines and clear themes that are readily distilled. We shoot our films from the fixed perspective of protagonist-clients. We are simple realists who construct our stories to hook the sympathy and capture the imagination of audiences who think in pictures. We sequence shots on imaginal storyboards until we establish the patterns that ultimately suit our purposes. We speak and think filmically. We have much to learn from visual storytellers working the same popular cultural turf.

Id. at 91. Meyer further notes that: “Popular cinematic stories are generally simple linear narratives viewed from the fixed perspective of an omniscient narrator or protagonist with whom the viewer identifies. The story hooks the imagination of the audience and propels the imagination forward with a “hard” plot-line.” *Id.* at 75.

In recent years, we have seen the appearance of a growing body of legal scholarship focused on legal films, but with the exception of Professor Meyer’s work, little on legal film pedagogy. Meyer’s film pedagogy writings include, in addition to the essay cited above: Philip N. Meyer, *Convicts, Criminals, Prisoners, and Outlaws: A Course in Popular Storytelling*, 42 J. LEGAL EDUC. 129, 132 (1992) (discussing legal films as a pedagogical tool to reacquaint law students with the “discontinuity and inexplicability of the lives they will encounter as lawyers”); Philip N. Meyer, *Law Students Go to the Movies*, 24 CONN. L. REV. 893 (1992) (discussing Meyer’s experimental course entitled *Law and Popular Storytelling*). But for Meyer’s early writing on teaching legal films, many of us, this author included, may well have never gotten around to teaching film courses.

80. We live in an era of lawyer TV dramas, John Grisham novels, and popular lawyer films. What, one wonders, does this intense, pervasive preoccupation with law and lawyers, courtrooms and legal themes, tell us about culture? Or, should we say popular culture? Is the cultural preoccupation with lawyers and law a positive or negative development? And, how does the preoccupation with lawyers affect the legal profession? For the first sustained treatment of this question, see SHERWIN, *supra* note 40. For my reading of Sherwin’s effort, see James R. Elkins, *A Law Culture Diagnostic*, 8 J. CRIM. JUST. & POPULAR CULTURE 48 (2001), available at <http://www.albany.edu/scj/jcipc/vol8is1/elkins.html>. For some of the most intriguing and suggestive practical work being done on these questions, one needs to consult the recent work of Phil Meyer. See Philip N. Meyer, *Desperate for Love: Cinematic Influences Upon a Defendant’s Closing Argument to a Jury*, 18 VT. L. REV. 721 (1994) (dissecting a passionate closing argument in a criminal case); Philip N. Meyer, “*Desperate for Love III*”: *Rethinking Closing Arguments as Stories*, 50 S.C. L. REV. 715 (1999) (analyzing narrative story-structure in closing arguments); Philip N. Meyer, “*Desperate for Love II*”: *Further Reflections on the Interpenetration of Legal and Popular Storytelling in Closing Arguments to a*

attention now given to popular culture⁸¹ and the emerging scholarly focus on law and film,⁸² lawyer films are of particular interest to legal educators who focus on the “implicit curriculum” by which students prepare themselves for an imagined “real world.” We turn to the “fictional world” of lawyers in film as a source of vivid images, memorable stories of conflict in which protagonists fail and triumph, and through these stories we begin the study of ourselves and our identity as lawyers. With lawyer films, we turn our attention to the implicit law school curriculum and engage in a pedagogy of self-learning, looking to see if we can find mirrored in the film what we most want and most fear in being a lawyer.⁸³

Jury in a Complex Criminal Case, 30 U.S.F. L. REV. 931 (1996) (discussing a closing argument as a cinematic stories); Phil Meyer, *Why a Jury Trial is More Like a Film Than a Novel*, 28 J. LAW & SOC'Y 133 (2001) (discussing Hollywood's influence on the substance, style, content, and structure of courtroom storytelling and trial work).

81. Both popular culture and cultural studies have achieved scholarly recognition as emerging disciplines and now constitute academic “fields” of study. Film study itself is becoming a significant field of academic study and in recent years, law review symposia and books on law, lawyers and film lend scholarly credibility to the study of law in popular culture. See, e.g., Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 WIS. L. REV. 527 (proposing a method to use American pop culture for legal scholarship); Avi J. Stachenfeld & Christopher M. Nicholson, *Blurred Boundaries: An Analysis of the Close Relationship Between Popular Culture and the Practice of Law*, 30 U.S.F. L. REV. 903, 903 (1996) (exploring the intertwined nature of the practice of law and popular culture). Legal scholars, attuned as they are to developments in the humanities and the social sciences, have also begun to study popular culture. See STEVE REDHEAD, UNPOPULAR CULTURES: THE BIRTH OF LAW AND POPULAR CULTURE (1995) (exploring the emerging discipline of “law and popular culture”).

82. See, e.g., DAVID A. BLACK, LAW IN FILM: RESONANCE AND REPRESENTATION 1, 4 (1999) (detailing the interconnectedness between law and fiction film “as narrative, representational, critical, and pedagogical regimes”); ANTHONY CHASE, MOVIES ON TRIAL: THE LEGAL SYSTEM ON THE SILVER SCREEN (2002) (discussing the legal film genre and sub-categories within that genre); STEVE GREENFIELD ET AL., FILM AND THE LAW (2001) (reviewing the portrayal of lawyers and the law in film and analyzing how this genre can be classified); LEGAL REELISM, *supra* note 50 (collecting articles by legal scholars on various films); Symposium, *Picturing Justice: Images of Law and Lawyers in the Visual Media*, 30 U.S.F. L. REV. 891 (1996) (depicting how law and lawyers are portrayed through the medium of cinematic film). In addition to these scholarly explorations of law and film, there are several legal film books which offer descriptions and critiques of lawyer and legal films. See PAUL BERGMAN & MICHAEL ASIMOW, REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES xvii (1996) (critiquing sixty-nine trial films to provide the viewer with a greater sense of a film's legal authenticity); LASTER, *supra* note 71 (a compendium of courtroom films).

For on-going reviews of current legal and lawyer films, as well as genre classics, the best source is *Picturing Justice: The On-line Journal of Law and Popular Culture*, at <http://www.usfca.edu/pj/> (last visited April 26, 2004). For an earlier, first generation of legal film writing, see JON L. BREEN, NOVEL VERDICTS: A GUIDE TO COURTROOM FICTION (1984); THOMAS J. HARRIS, COURTROOM'S FINEST HOUR IN AMERICAN CINEMA (1987); Paul J. Mastrangelo, *Lawyers and the Law: A Filmography*, 3 LEGAL REFERENCE SERVICES Q. 31 (1983).

83. For a student guide to working with lawyer films, see *infra* Appendix B.

V. OBSTACLES TO "READING" LAWYER FILMS

We should expect our students to encounter obstacles when they read lawyer films just as they encounter obstacles in reading judicial opinions, novels, or poems.⁸⁴ If we do not expect students to read films so they can write academic film criticism or law review style commentary,⁸⁵ then the student standing "before the law"⁸⁶ must find a way—a new way—to work with lawyer films, a way which focuses on the identity, role, and persona of the lawyers encountered in films.

Students of law, like lawyers and law professors more generally, often suffer serious failings as film readers. Their failings are two-fold: they bring both too little and too much to a lawyer film. When the legal-trained student or lawyer watches a film, they are often trying to escape law rather than confront it. Consequently, they assume that the ultimate purpose in watching a film is pleasure, not education. The typical law student says,

I watch films for pleasure; indeed, I am taking this Lawyers and Film course simply because I love movies. I do not want to destroy that pleasure by subjecting every film I watch to heavy-duty interpretation. I watch lawyer films for fun, for entertainment. In this course, I would like to escape the relentless drumbeat of the traditional law school course, not re-encounter it in a new guise.

For some viewers of lawyer films, the pleasure/entertainment aspect of movies simply cannot be overcome; the student never learns how to "read"

84. We may find that when our students read lawyer films they have difficulty with the idea there is something in the film that they might want to learn..

[T]he task of the competent respondent to narrative film can be defined in large part as the construction of a 'solution' or 'description' *that can stand on its own as a coherent, relatable, usable verbal narrative*. The spectator encounters a vast succession of moving, permeable targets, each with a relatively small bull's-eye and a much larger region of eccentricity, and must find a course that hits as many bull's-eyes as possible.

BLACK, *supra* note 82, at 29.

85. There is a growing cadre of law professors and legal studies teachers who take legal films seriously, and can be viewed as exemplary film critics. For examples, see the works of Chase, *supra* note 81; Carrie Menkel-Meadow, *Can They Do That? Legal Ethics in Popular Culture: Of Characters and Acts*, 48 UCLA L. REV. 1305 (2001); Meyer, *supra* note 10; Nevins, *supra* note 13; Papke, *supra* note 59; Norman Rosenberg, *Looking for Law in All the Old Traces: The Movies of Classical Hollywood, the Law, and the Case(s) of Film Noir*, 48 UCLA L. REV. 1443 (2001); and Strickland, *supra* note 75.

86. See FRANZ KAFKA, *Before the Law*, in THE PENAL COLONY: STORIES AND SHORT PIECES 148–50 (Willa Muir & Edwin Muir trans., 1959) (describing the mystery of the law through the allegory of a doorkeeper and a man seeking admittance).

a lawyer film as a text that can prompt critical self-engagement and self-study, as a text that might prompt reflection on lawyers and their work.

A second obstacle is the knowledge that lawyer films are produced by the Hollywood film/culture industry. The politically savvy student says, "Lawyer films are a product of the Hollywood film industry and aren't intended as prescriptions on how to be a lawyer or how to practice law. You have to remember these films are made for mass audiences; they are made to generate big profits." And it is true enough that films are made for money by a culture industry; the films I use in course remind us, in not so subtle ways, that they are Hollywood films. By focusing on the Hollywood source of the film, the student discounts the film as a text that can be read for educational purposes.⁸⁷

There is still a third obstacle for the legal-trained viewer of lawyer films, perhaps the most pernicious of all. As legal insiders, law students and lawyers often focus on the legal accuracy of a film, while ignoring the film's larger meaning.⁸⁸ When I ask a student, "What do you see in this film?" She typically replies, "The most obvious thing I notice about this film, and about TV shows involving lawyers, is how inaccurate they are. Lawyer movies don't come close to reflecting the reality of trial litigation, and they are even worse when it comes to depictions of ordinary legal procedures." Law-student insiders (and knowledgeable film critics of

87. For students who hold a rather jaundiced view of "Hollywood," I might recommend bibliography by way of KRISTIN THOMPSON, *STORYTELLING IN THE NEW HOLLYWOOD: UNDERSTANDING CLASSICAL NARRATIVE TECHNIQUE* (1999). Or we might try still a different strategy, by recommending an engaging biography of a major, controversial Hollywood director, like Oliver Stone. See JAMES RIORDAN, *STONE: THE CONTROVERSIES, EXCESSES, AND EXPLOITS OF A RADICAL FILMMAKER* (1995).

88. Some legal film critics have noted the problem and tried to address it. For example, Suzanne Shale notes that, "[i]f Hollywood misrepresents the facts of the legal system quite frequently, it perhaps misrepresents its values rather less. Where dramatic need drives it to distortions of fact, dramatic need *also* draws it towards the very real conflicts that lie at the core of the law." Shale, *supra* note 75, at 1011. John Denver points out that:

While the Hollywood version of legal reality is clearly unrealistic, it may provide an important antidote to the law school version which seems to flatten the moral universe of most students, convincing them that just because real world disputes are complicated, there are no "right" and "wrong" sides. All lawyers are technicians. Lawyers defending tobacco companies and lawyers defending the homeless are on a moral par, some just better paid than others. Movies force us to confront the view that good and evil do exist and all lawyers must ask themselves "Which side are you on?"

John Denver, *Lawyers We Love to Hate*, PICTURING JUSTICE: THE ON-LINE J. L. & POPULAR CULTURE, MAY, 8, 2003, at http://www.usfca.edu/pj/love2hate_denver.htm; see also Menkel-Meadow, *supra* note 85, at 1307 (focusing on the ethics of lawyers in novels and films and arguing that fictional lawyers "present an excellent opportunity for students of legal ethics to examine the work of lawyers"). "[D]epictions of lawyers in popular culture . . . demonstrate a full range of moral and ethical behavior, both personally and professionally . . . these depictions of lawyers in popular culture are actually extremely effective exemplars of legal ethics from which we can teach and learn much." *Id.* at 1311.

whom we expect better) constantly critique lawyer films for legal inaccuracies and for their unrealistic depiction of the legal profession. Lawyer films, in this view, are simply failed documentaries; it is the assumed role of the insider to remind us how useless it is to seek meaning in a Hollywood lawyer film when the film cannot even manage to get legal procedures right.

Considering these obstacles to critical engagement with a lawyer film, how can those who are legally trained get beyond the idea of movies as entertainment? If we cannot get beyond these obstacles, lawyer films cannot be texts worthy of serious reading and study.

VI. READING LAWYER FILMS: SIX STRATEGIES

We might begin a study of lawyer films by asking our students to remember their first efforts in reading cases. Legal education begins with the most fundamental of enterprises—reading judicial opinions. Students who do it well, succeed; others learn it well enough to survive, and still others never really master the art of reading cases at all. In watching lawyer films, the student is being asked to “read” a different kind of text and like learning to read judicial opinions, it takes some re-adjustment. Some students may find that they never become adept at reading films.

As we focus on reading, we become more aware of the way we read, and strategies for reading that get us beyond first impressions (the film is “good,” the film is “bad,” the film is “realistic” or “unrealistic”).⁸⁹ The way we get students of film beyond simplistic reading is to reflect on the strategies we have in place for understanding a particular film, and how those strategies have helped or hindered our response to the film.⁹⁰ But the question about strategies is so intricately related to the question—“Do lawyer films have meaning?”—that it can be hard to sort out which comes first: the meaning or the strategy. And if films do have meaning(s), where

89. Media literacy scholars have alerted us to the passive way that students engage the media. Passive viewers “generally accept the surface intentions of most everything they see and hear. Many individuals labor under the mistaken assumption that they already know a great deal about film, television, and the other mass media simply because they view and use them all the time.” Gary R. Edgerton & Michael T. Marsden, *Media Literacy and Education: The Teacher-Scholar in Film and Television*, 30 J. POPULAR FILM & TELEVISION 2, 3 (2002). Edgerton and Marsden argue that higher levels of media literacy can be cultivated: “Increased analytical and perceptual competence involves the ability to assess and appreciate media content from cultural and aesthetic points of view; more important, these skills assume the ability to infer values and engage in moral discourse concerning the imagery we observe and experience daily.” *Id.*

90. We might want to relate this idea of strategies for reading a film to the lawyer as strategist more generally. See, e.g., Richard K. Neumann, Jr., *On Strategy*, 59 FORDHAM L. REV. 299 (1990) (exploring the process of creating strategy, including how to teach it and related moral problems).

does this meaning come from? How can it be articulated? How can the meaning(s) we derive from the film be made a part of our education? How is it that some students of film get rather good at this exploration for talk while others flounder?

Some students are quite agile and adept at reflecting on their reading (or in this case viewing) strategies, seeking out new ones, and open to criticism of old strategies. Some students are simply more curious and open to new texts (and new genres), texts with which they may have had little experience, or texts which seem to offer no obvious paths to follow. A student, open and curious about the unfamiliar in film, or the glossy surface of a film, may eventually be able to translate this curiosity into new strategies for learning.⁹¹

A. *Look First to the Film Itself*

I have often entertained the fantasy that the right text⁹² needs no teacher; it teaches itself.⁹³ My students have tried to dissuade me of this notion,⁹⁴ but I still hold to the idea that a text often contains internal markers (strong clues) as to how it can be read (indeed some texts are rather dictatorial in this regard). These markers or clues allow a knowledgeable, persistent reader to figure out how the text can be read and put to use.⁹⁵

91. Law school itself presents an array of experiences and new texts and the possibility of new ways of reading and learning.

92. The right text is a text carefully chosen, a text that raises questions about meaning, a text that has the possibility of leaving a lasting impression on the student. The text is right, not in any kind of absolute sense, but right in the sense that it is the best text *this* teacher could locate for *these* students. The right text is a text that can be put to meaningful use by the student still curious, still able to learn.

93. My fantasy was not in the least impeded by discovery of the work of Peter Elbow. See, e.g., PETER ELBOW, *WRITING WITHOUT TEACHERS* (2d ed., 1998) (explaining how students can learn to write without the guidance of a teacher).

94. Students do not think much of and argue against my "the right text is self-teaching" notion. Consequently, I do not go on to say to my students, as I am sometimes tempted, that: I have found these texts (stories, accounts, statements, philosophical arguments, or films) and I present them to you; they are all I have to offer. These texts constitute my duty to you as a student, even as they reflect my pleasures as a reader. What they may mean to you I cannot foretell. I have, in my search for these texts, learned a great deal. They have served as an education on matters of real importance to me, and it is my hope that they can be made part of your education as well. Whether in fact they become a part of your education is now with you to decide.

95.

Novels and other narratives are generally constructed in such a way as to allow (or even impel) the reader to find a coherent structure within them. Even (or perhaps especially) narratives which revel in strangeness of setting or structure . . . rely on the reader's ability to find a 'place to stand' with reference to the narrative. There are novels, however, which seem to be intended to fool or to confuse the reader by presenting conflicting clues about the shape and nature of the narrative.

It was the idea that texts teach themselves, both explicitly and implicitly, which I translated as: *look first to the film*.⁹⁶ I want students to learn to make use of what they find when they “read” the film: memorable scenes, striking dialogue, courtroom speeches, recurring symbols, music (that sets a mood and heightens our attention),⁹⁷ the camera shots that take the viewer into the courtroom,⁹⁸ and more basic still, the always ever-present story.

B. Remember the Film is Education

James Boyd White, a “law and humanities” scholar, says, “I read for an education.”⁹⁹ Viewers of lawyer films might use White’s statement to frame these questions: What kind of education does this film make possible? What kind of knowledge of lawyers, the legal profession, and the world does the film offer? And, what view of the world and lawyers and law does this film offer that is not so readily found in the world of law and lawyers presented to me as a student of law?

C. Focus on the Story

We read lawyer films best when we think of them as stories. We have

Daniel Melia, *The Rhetoric of Disorientation*, at http://rhetoric.berkely.edu/undergraduate_courses/r03.html (last visited Mar. 10, 2004).

In the absence of coherent structure and a ready place to stand, the reader must look elsewhere for ways to read a particular text (whether the text is a judicial opinion, the poems of Wallace Stevens, or a lawyer film). There are, of course, guides to be found. Ironically, the student most easily stumped in reading a text is the student who is least likely to search out a guide to the text that might provide new strategies for reading.

96. Following Alan Stone, we might call this “listening” to the film. Stone says, “I watch a film in the way a psychoanalyst listens to a patient. I try to suspend judgment and understand what the author is saying and doing. I approach a film as an exercise in listening, and then make an effort to discover the underlying coherent structure and meaning of the film.” Stone, *supra* note 62, at 588 (footnote omitted).

97. Duke Ellington’s original film score for *Anatomy of a Murder* is an obvious feature of the film, and sufficiently so that even those who are musically disinclined hear the music as a character in the film.

98. Films are full of symbols that demand our attention. For example, in lawyer films, we might take note of the way the camera frames and presents the architecture of the courthouse. (One might compare these shots to pictorial representations of the Taj Mahal.) The camera framing tells us something about the courthouse and the inner sanctum (the courtroom where the trial drama is to be staged). See Papke, *supra* note 59, at 479–80 (commenting on the courthouse/courtroom setting in lawyer films). These symbols turn out to be important in the film and in the lives of lawyers. Cf. Dennis E. Curtis & Judith Resnik, *Images of Justice*, 96 YALE L.J. 1727 (1987) (discussing images of justice).

99. Milner S. Ball & James Boyd White, *A Conversation Between Milner Ball and James Boyd White*, 8 YALE J.L. & HUMAN. 465, 476 (1996).

been listening to stories, telling stories, and reading them from the time we were children, so we must know something about stories. We undoubtedly know more stories than we know *about* stories. Watching lawyer films involves us in stories we know and stories we do not know, and they challenge the knowledge we assume we have about stories¹⁰⁰ and the deep structural prototypes that we use to organize them.¹⁰¹ The problem arises when we learn that the stories we know and what we know about the stories is not so easily put to use.

One pleasure found in watching films comes from our involvement in a carefully (if not always wisely) crafted story. Film stories are peopled with vivid (often unforgettable) characters, men and women of different habits and sensibilities who must contend with (and rebel against) the situations and settings in which they find themselves. The drama in lawyer films comes from an encounter with what Will Wright, writing about the Western film genre, calls "different kinds of men."¹⁰² In the West, as in Western films, we find "farmers, cowboys, cavalymen, miners, Indian fighters, gamblers, gunfighters, and railroad builders."¹⁰³ The setting today where we are most likely to find many "different kinds of men," and the place where the stories of these different men and women are being told, is in the courtroom. In a courtroom trial, a lawyer is required to defend (and prosecute) decisions and actions (and in doing so, various ways of life). And it is not just the situational antagonism of the plaintiff and defendant,¹⁰⁴ who by way of some prior relationship have seen their dealings go bad, but it is also the very real difference in the men and women who act as courtroom advocates and storytellers for the plaintiff and defendant—the lawyers—that we find still more relevant for our education as lawyers. And we may, in a lawyer film, find that the party least likely to have a personal stake in the fight—the judge—is still another kind of man or woman whose

100. Lawyer films present, yet again, stories long told, stories we continue to tell, stories which have defined, limited, and expanded the nature of our existence; stories upon which we premise our hope and which fuel our fears; stories in which we encounter, challenge, surmount, or succumb to the deep and most fundamental conflicts of our culture. The conflicts in our polyvalent culture, with its various and opposed traditions, are no secret to the ordinary person, and are common fodder for the legal system. Being common, highly-charged, and law-defined, they become the structural polarities for the myths in which our legal work is embedded.

101. See generally ROGER C. SCHANK, *TELL ME A STORY: A NEW LOOK AT REAL AND ARTIFICIAL MEMORY* (1990) (assessing how storytelling contributes to memory).

102. WILL WRIGHT, *SIXGUNS AND SOCIETY: A STRUCTURAL STUDY OF THE WESTERN* 6 (1975) ("The fictional interaction of different kinds of men often makes details of motivation unnecessary and intensifies the forces of their situational antagonisms.").

103. *Id.* at 5.

104. Wright notes that in the context of the Western, "these differences [between men and women] are believable" and consequently, "stories that utilize" these differences "can readily portray fundamental conflicts by relying on the established meanings of the various types." *Id.* at 6.

adherence to or deviance from his role becomes a situational antagonist along with the the lawyers and the parties to the conflict.

Imagine the camera capturing this familiar courtroom setting: a raised stage with the black-robed judge sitting behind an elevated bench with an open space before him, and two massive wood tables eight or ten feet apart at which are seated the lawyers waiting their turn to address the court, to strut and pose before the jury.¹⁰⁵ The camera carries film viewers into the courtroom to watch the assembling of the legal actors, to watch one of the lawyers questioning a witness, and then pans to the jury box and the faces of the twelve jurors listening intently. The camera moves in now to focus on the lawyer questioning the witness. The witness appears confused, bewildered, a look of fear making its way onto his face, as he is asked questions which the viewer knows he cannot possibly answer truthfully, his evasive answers suggesting his untruthfulness (an untruthfulness exposed by the skills of the lawyer).

Wright, in his instructive study of the Western film genre, frames a prototypical lone rider scene in the Western and finds in it the "familiar setting" by which "social and moral meanings" of the Western film are conveyed.

A lone rider, sitting easily in the saddle of his dusty horse, travels across the plains toward a small, new town with muddy streets and lively saloons. He wears a tattered, wide-brimmed hat, a loose-hanging vest, a bandanna around his neck, and one gun rests naturally at his side in a smooth, well-worn holster. Behind him, the empty plains roll gently until they end abruptly in the rocks and forests that punctuate the sudden rise of towering mountain peaks.¹⁰⁶

The meaning embedded in these familiar settings and scenes—the courtroom scene in the lawyer film, the lone rider in the Western—"literally tells a story."¹⁰⁷ The courtroom setting tells us that disputants have taken their quarrel to the law, and that they are engaged in a serious conflict which they themselves cannot resolve. It is a conflict in which the harm was so great, the perceived unreasonableness of one of the parties so blatant, or an unacknowledged principle so significant, that one of the parties sought recognition of his or her claimed right and the justice in

105. On lawyers and their courtroom acting, see Peter W. Murphy, "There's No Business Like . . . ?" *Some Thoughts on the Ethics of Acting in the Courtroom*, 44 S. TEX. L. REV. 111 (2002).

106. WRIGHT, *supra* note 102, at 4.

107. *Id.*

asserting it by resorting to the legal system. Something important to someone is at stake, something serious and valuable. There is, in the political rhetoric of the day, loose talk about “frivolous lawsuits,” but that is not what we find presented in the law suits and the courtroom scenes in lawyer films.

D. Understand the Conflict

If we could live free of conflict, tension, and the fault-lines that underlie human existence, we would have less affinity for stories than we do. And without stories, the film industry would go the way of the small family farmer. Conflict is as central to drama, as drama is to story, and as story is to life. Our lives are connected to lawyer films by way of story, drama, and conflict.

To understand the stories in our lives and our films, we need a better understanding of conflict and the various ways in which we struggle to understand the “great opposites”: good and evil, order and disorder, love and hate, success and failure, individual and society, past and future, modern and primitive, masculine and feminine, imagination and reality, profane and sacred. If these oppositional forces in our life create tension and conflict, and we identify ourselves by the way we struggle with these “great oppositions,” then lawyer films provide us with crude maps of these oppositional forces and our struggle with them. Lawyer films play with, and play against, the tensions between and within the “great opposites.”¹⁰⁸

Lawyers work with conflict, traffic in it, and make their living from it. And, as a result of being so closely associated with conflict, we sometimes produce it. In a lawyer film, we can “follow the conflict” the way prosecutors in white-collar crime investigations are told to “follow the money.”¹⁰⁹ The conflict(s) we find in a film must be placed in perspective,

108. In many films, the plot consists of little more than the crude opposition of the great forces, and the result is flat, one-dimensional characters—a film without dramatic appeal. The starkness of good and evil presented crudely teaches us little. Films that emphasize the good/evil plot and ignore character development may be entertaining, but they tell us little about our own struggle with good and evil, and with the complex, real, and heroic struggle of lawyers with good and evil.

109. Politicians sometimes adopt essential messages framed in memorable phrases. Bill Clinton and his political handlers made this one famous: “[I]t's the economy, stupid.” Edwin J. Feulner, Ph.D., “*It's the Economy, Stupid*,” *Circa 1996*, HERITAGE FOUNDATION: PRESS ROOM, May, 16, 1996, at <http://www.heritage.org/Press/Commentary/ED051696b.cfm>. One might say in reading film, “follow the conflict,” or more poignantly, “it's the conflict, stupid.”

Conflict in film stories is most often represented by a series of engagements, confrontations, and battles between protagonists and antagonists. The protagonists and antagonists are not only individual characters, but they are also symbolic personifications of forces, movements, and world-views. These forces or powers which the characters represent may be resisted or embraced, so the

both *in* the film and *beyond* the film, in the world we inhabit.

To be able to participate vicariously in stories about characters who play out possible lives, confront possible situations, who have moral conflicts and who must make choices, is to learn such truths about life, not through personal experience but through a kind of super experience—that is, an experience that one might never be able to have oneself, except through the story.¹¹⁰

Robert Scholes, in *Textual Power*, argues that “laying bare” the basic oppositions which underlie conflict exposes “the flow of value and power” and is “a basic part of the critic’s repertory.”¹¹¹ Consequently, “[i]n getting from the said and read to the unsaid and interpreted . . . [t]he first things to look for are repetitions and oppositions that emerge at the obvious or manifest level of the text.”¹¹² The reading of a film takes place as we work with the oppositions we find in the film.

[We] must ask what these oppositions “represent,” . . . what they “symbolize.” This aspect of interpretation involves connecting the singular oppositions of the text to the generalized oppositions that structure our cultural systems of values[. . .]. . . . Considered in this light, interpretation is not a pure skill but a discipline deeply dependent upon knowledge. It is not so much a matter of generating meanings out of a text as it is a matter of making connections between a particular verbal text and a larger cultural text, which is the matrix or master code that the literary text both depends upon and modifies. In order to teach the interpretation of a literary text, we must be prepared to teach the cultural text as well.¹¹³

Scholes posits not only a movement from reading to interpretation, but from interpretation to criticism. Criticism, according to Scholes, entails

struggle is both internal to the character and between the characters.

110. TIM BYWATER & THOMAS SOBCHACK, AN INTRODUCTION TO FILM CRITICISM: MAJOR CRITICAL APPROACHES TO NARRATIVE FILM 37 (1989). A viewer need not have direct experience of a particular conflict to see and understand how conflict works. A central tenet of liberal education is that students learn to experience the world vicariously (as well as by way of direct, hands-on knowledge), and that through education (i.e., reading) we learn to understand features of the world we do not experience directly.

111. ROBERT SCHOLES, TEXTUAL POWER: LITERARY THEORY AND THE TEACHING OF ENGLISH 4 (1985).

112. *Id.* at 32.

113. *Id.* at 33.

“the critic’s recognition of her or his own values.”¹¹⁴ We use binary oppositions to read a text, to think critically about it, to deconstruct it;¹¹⁵ we use the oppositions to recognize our own ideals, and our own limits. In reading the film’s critical oppositions, we put the film to use.

E. Identify with the Characters

Reading a film requires students to identify with the film’s characters, to become engrossed in the life of a film character who has burdens to bear, threats to confront, and obstacles to overcome¹¹⁶—a character asked to learn something about himself and his world.¹¹⁷ In seeing the film character learn, we, in turn, learn something about ourselves.

There is something odd, peculiar, and wonderful about the knowledge we come to possess about film characters. We may know where a character lives, what kind of furniture she has in her bedroom, the kind of car she drives, her marital and family situation, where and with whom she works, what kind of work she does, how she is regarded by her coworkers, her relationship with her boss, how the boss is regarded in and out of the office, and the various tensions and conflicts created by her work.¹¹⁸ I know more about many lawyer film characters than I do about most of my real world colleagues, some of whom I have worked with for twenty-five years!

We learn enough about film characters—those portrayed with subtlety in a well-written film—to become briefly, but intensely and intimately involved in what we know to be fictional lives. Involved with the character, the character becomes a person we begin to care about; we want things to

114. *Id.* at 38.

115. We deconstruct a text when we read “to elucidate its quarrels with itself, the contradictions and uncertainties suppressed beneath its superficial order.” John Leubsdorf, *Deconstructing the Constitution*, 40 STAN. L. REV. 181 (1987).

116.

The most compelling invitation to identify oneself with the screen character is offered when the protagonist is forced by the narrative to make hard choices and difficult decisions. This is the moment when the audience recalls the agony of minds we would rather not make up, and are generous with our sympathy for characters who cannot avoid doing so.

Shale, *supra* note 75, at 1001.

117. “Hollywood stories are ones in which the leading characters are propelled into some personal odyssey, in pursuit of something they desire. By the journey’s end, their experiences will have changed them in a significant way.” *Id.* at 998.

118. “The thing that a character has choice a [sic] over and really reflects his character is his job. The job is in some ways a portrait of the person. His job reflects a little of what his life is about.” Dorian Scott Cole, *Roles We Play*, VISUAL WRITER, 1998, at <http://www.visualwriter.com/HumanCond/Roles.htm>. Dorian Cole further notes that “[j]obs are often vehicles in life that give us something we need—they often build a sense of self-esteem, make us feel competent, useful, wanted, respected, give us a sense of belonging and purpose, and sometimes even make us feel loved.” *Id.*

turn out well, and we want the character (who becomes a person to us) to get what he or she desires because of what we have learned about them. We want for film characters what we want for ourselves.¹¹⁹ Entertained by plot, we are educated by the film's characters.¹²⁰

F. *Contemplate the Hero*

James Boyd White notes that "the activity of law is inherently idealizing."¹²¹ There are many ways to idealize and many ways to imagine the life we live. In film stories, we see how an imagined life actually works, and in particular, a life that we can think of as heroic. It is in a limited subset of images of lawyer and of self, in the deep imagining and fantasizing of legal work, that we find the myth that sustains us.¹²²

119. David Spitz suggests that when we (the viewers) confront the situational conflicts staged for us by film characters, we must judge the characters and when we do, the "standard is inevitably the viewer's own moral beliefs and attitudes. . . . [W]e each must judge that character in our own way." Spitz, *supra* note 67, at 735. That the viewer/reader is called on to judge sounds right. What I view suspiciously is the notion that the standards are our "own" beliefs and attitudes, and that this act of judging is done in "our own way." *Id.* Would it not be equally accurate to note that when we judge a character we do so as a community, as viewers enmeshed in a culture? Our response is social and public as much as it is personal and private. This does not mean we all see, and read, the same film, or that we do not interpret and give meaning to the film in ways that implicate the self, or that we do not have an experience of the film that is personal and idiosyncratic.

Spitz recognizes that the artists who produce the film "have something to say," but having said it, can it be ignored? *Id.* To ignore what the film has "to say" leaves us, as it leaves Spitz, with a rather crude relativism. There is just enough truth to relativism to make it intuitively attractive. Well, of course, everyone has their own moral beliefs and attitudes, and of course, these beliefs and attitudes are put to use in judging a film's characters. The unexamined question is how much of a film-viewer's attitude and sense of right and wrong, and how much of the viewer's personal judgment about a film character is a through-going adaptation of a common/conventional response, a response adopted from the stock beliefs available in the culture.

120. As Shale perceptively notes:

Hollywood movies are stories about "character" and how character determines the outcome of life events. "Character" is the sum of a human being's personhood: biography, memory, virtues and vice, reactions, capabilities, potentiality, and weakness. In movies, we learn about such character when it is expressed in the actions which emerge from human conflict: conflicts between people, conflicts within a person, and conflicts between persons and their environments. Human lives and, perhaps even more so, movie lives, are littered with incompatible goals and incommensurate values. In the movies, it is the task of "character" to resolve the human conflicts that our goals and values create. It is always a character who takes steps, a character who makes choices, a character's responses that drive the story forward or spin it around in new directions. It is a character who overcomes, a character who changes or learns.

Shale, *supra* note 75, at 999.

121. Ball & White, *supra* note 99, at 480.

122. "[M]yth has enabled human beings to connect with their psychological and religious depths, aspects of their world not normally accessible by the conscious mind. Myth puts people in touch

We need not expect law students to admit that they have set out to be heroes or expect them to readily see the heroic in their quest to survive the rites of passage in becoming a lawyer.¹²³ Yet, it would be a mistake to underestimate the effect that the lawyer-hero image—Clarence Darrow, Earl Rogers, F. Lee Bailey, Percy Foreman, Edward Bennett Williams, Louis Nizer, Gloria Allrud, Gerry Spence, and the lawyer heroes we find in fiction and film—have on our efforts to imagine ourselves as lawyers. Our lawyer heroes (arrogant egotists and humble alike) tell us something we want and need to hear—that a lawyer's work is at the heart of things, that legal work has meaning. To live with the fantasy that life has social and cultural significance is to posit an ideal and to set out upon a worthy quest. The stories of lawyer heroes and their quests is one way that myth (and heroic consciousness) is made "real."

The myth of law exercises a gravitational pull on our lives, on our sense of self, on our politics, and our culture. The mythic resonance of lawyer stories is most obvious in stories where lawyers use law and their skills as lawyers to speak truth to power, and stand up to a community as Atticus Finch does in *To Kill a Mockingbird*.¹²⁴ The stories of lawyers and how they stand against those who abuse power—a story found in films like *Erin Brockovich*, *A Civil Action*, *The Incident*, *And Justice for All*, *A Few Good Men*—are central to the myths we carry with us as lawyers.¹²⁵

with great foundational forces, powers that generate and govern the world." SCREENING THE SACRED: RELIGION, MYTH, AND IDEOLOGY IN POPULAR AMERICAN FILM 66 (Joel W. Martin & Conrad E. Ostwalt Jr. eds., 1995).

123. Over the years, I have sought out the stories of my students and listened to them talk about their decision to become lawyers and their experience as they undergo the legal rites of passages that will make them lawyers. There is, along the way, talk about the boredom and challenges of legal education, uncertainties about the work that lies ahead, questions about professional identity, concerns about the public's perception of lawyers, along with brash talk about the glories to come. In all of this talk and the various disguises students deploy it, there can be found a cacophony of ideals and fears as the student becomes a protagonist in a new story, the story that being a lawyer makes possible. In one version of this story, law will allow us to be great warriors who engage in epic courtroom battles, facing skilled foes (some of them decidedly mean-spirited), over whom we will triumph in the name of justice. It may sound outlandish to suggest that, in becoming a lawyer, one sets out on a mythic quest, but the hero archetype is so frequently disguised that we fail to see it in the stories our students tell.

124. One might note that communities are often ambivalent and conflicted about heroes, even as they are about truth-tellers.

125. The lawyer-hero may have little immediate impact on the powerful, but the words of the lawyer spoken and written in response to power—words of an attentive conscience—enable us to see how power works and how it can be confronted. The confrontation may be costly and it may not always be successful, but out ethical heroes, lawyers among them, provide instruction, guidance, and inspiration.

Speaking out, telling the truth to those who profit from deception and lies, and standing up to power, can be costly; it entails suffering. When Atticus Finch, in *To Kill a Mockingbird*, undertakes the defense of Tom Robinson, a black man falsely charged with the rape of a young white woman in the 1930's in Alabama, we know that his patience and endurance will be tested. When Atticus is visited at

The stories of our most authentic lawyers—we call them heroes—contain a crucial insight into the problem of truth confronted by the amorality and immorality of power: the insight that we may lose and falter, but, in doing so, we live a life of hope. For example, in *To Kill a Mockingbird*, Atticus tells his son, Jem, after the jury conviction of Tom Robinson, that he is tired, but not bitter.

Atticus is not defeated by the social injustice perpetrated by the jury and Maycomb's racism because he knows that the community has failed itself, and that it is diminished by its failure. Atticus also knows that his life—along with the lives of his children—is in Maycomb, and that he must make a home for himself and his children and must live with those who do not share his vision of social justice. In making a worthwhile life in communities that fail us, as Maycomb fails Atticus, we experience the reality of failure and the power of an ethical vision to sustain us in troubled times, in troubled communities.

Yet, we go on. Robert Cover in his celebrated work on narrative jurisprudence suggests that each of us has an inner life, and from the existence of this inner world we create an imagined world, a world in which we can make psychological commitments to ourselves and others, a commitment to truths that express our deepest ethical sensibilities.¹²⁶ These private commitments play a fundamental role in social transformation. "[P]owerful, expressive movements of the inner life may," Cover argues, "have revolutionary potential."¹²⁷ The revolutionary potential of an imagined world must be realized in a history that chronicles failed heroes, inflated expectations, and misguided visions. It is such a history, which "corrects for the scale of heroics that we would otherwise project upon the past."¹²⁸ In suffering heroic failure, we lay the grounds for a future in which power recognizes truth. The image of the hero is fundamental to becoming a lawyer. I do not think it a dramatic overstatement to suggest that we are each, in some way, touched by a sense of the heroic.

home by a group of neighbors and town folk who have gotten word that Atticus actually means to defend Robinson, Link Deas, one of the men in the group, says to Atticus "don't see why you touched it [Tom Robinson's case] in the first place. . . . You've got everything to lose from this, Atticus. I mean everything." HARPER LEE, *TO KILL A MOCKINGBIRD* 146 (Warner Books 1982) (1960). The cost to Atticus in defending Tom Robinson is most evident in its impact on the lives of his children, Jem and Scout, as they try to live with, and understand the fact, that some people in the community do not want to see Tom Robinson defended at all.

126. Robert M. Cover, *The Folktales of Justice: Tales of Jurisdiction*, 14 CAP. U. L. REV. 179, 196-97 (1985).

127. *Id.* at 197.

128. *Id.* at 190.

VII. MUST FILM LAWYERS BE PORTRAYED REALISTICALLY?

If there is a predominant recurring theme in legal film scholarship, it emerges from the misguided notion that lawyer films fail both the legal audience and the larger public because they portray lawyers negatively¹²⁹—constantly focusing on unethical lawyers—and they are simply not *realistic*.¹³⁰ The corollary of this view is that lawyer films are little more

129. For a discussion of the negative portrayal of lawyers and whether it is anti-lawyer, see *infra* Part VIII.

130. See, e.g., Michael Asimow, *Embodiment of Evil: Law Firms in the Movies*, 48 UCLA L. REV. 1339, 1341 (2001) [hereinafter Asimow, *Embodiment of Evil*] (addressing the “negative portrayal of law firms in film” and comparing “law firms depicted in movies with those of the real world,” while asking “whether real law firms, especially big ones, could possibly be as bad as reel law firms”); Nancy B. Rapoport, *Dressed for Excess: How Hollywood Affects the Professional Behavior of Lawyers*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 49 (2000) (arguing that the negative portrayal not only affects society’s view of attorneys, but also casts a negative light on an attorney’s self-perception).

Conventional legal film criticism goes something like this: Would a real lawyer have behaved this way? And, if she really did, what kind of trouble would she get into, i.e., which professional ethical rule has she violated and how severely would she be punished by the bar for the transgression? See, e.g., Tonja Haddad, *Silver Tongues on the Silver Screen: Legal Ethics in the Movies*, 24 NOVA L. REV. 673 (2000) (analyzing ethical issues raised by several films and concluding that movie lawyers frequently violate rules of professional ethics, but attain “justice” and thus lawyers who know ethical rules are more critical of movie lawyers than viewers who may only understand “justice”). For a less heavy-handed use of lawyer films to explore the ethics of lawyers, see Selinger, *supra* note 48.

Nowhere has the stock-in-trade critique of lawyer films as unrealistic been more prominent than in the scholarship about women lawyers in film. See Stacy Caplow, *Still in the Dark: Disappointing Images of Women Lawyers in the Movies*, 20 WOMEN’S RTS. L. REP. 55 (1999) (discussing Hollywood’s unkind depiction of women lawyers); Louise Everett Graham & Geraldine Maschio, *A False Sentiment: Narrative and Visual Images of Women Lawyers in Film*, 84 KY. L.J. 1027 (1996) (exploring the narrative and visual qualities of five films—*Adam’s Rib*, *The Accused*, *The Music Box*, *Class Action*, and *The Client*—to assess the way in which women lawyers are portrayed); Carolyn Lisa Miller, “What a Waste. Beautiful, Sexy Gal. Hell of a Lawyer.”: *Film and the Female Attorney*, 4 COLUM. J. GENDER & L. 203 (1994) (presenting a deconstructionist analysis of films featuring female attorneys); Carole Shapiro, *Women Lawyers in Celluloid, Rewrapped*, 23 VT. L. REV. 303 (1998) (discussing how lawyer films about women in the late 1980s and 1990s represent women more positively than in the past); Carole Shapiro, *Women Lawyers in Celluloid: Why Hollywood Skirts the Truth*, 25 U. TOL. L. REV. 955 (1995) (exploring gender differences in lawyer films).

We can no more expect a true or realistic representation of women lawyers in film than we can expect such a representation of doctors, accountants, psychiatrists, teenagers, parents, or anyone else. The conventional critique of films that portray women lawyers fails, as a commentator on religious films notes, to recognize that as with religious films, lawyer films may “both support and subvert established structures, or conserve society’s values even while they critique them.” John Lyden, *To Commend or to Critique? The Question of Religion and Film Studies*, J. RELIGION & FILM, Oct. 1997, at <http://www.unomaha.edu/~wwwjrf/tocommend.htm>.

[P]opular films may act as windows to transcendence which express messages seen as valuable . . . as they open us to new visions or reassert what is valid in old ones—and films may also support class, race, and gender structures which deserve deconstruction. They may do both simultaneously, even within the same film. . . .”

Id.

than mass entertainment, an entertainment that is dangerous for both the profession and the public.¹³¹

Film commentary which calls for more realistic portrayals of lawyers is basically misguided.¹³² We can begin to explore the legal accuracy/unrealistic portrayal critique of lawyer films by asking: Do we have as predicate for watching any film that it must portray the "real world"? We go to movies for entertainment,¹³³ to get away for an evening, to escape, and more importantly, we watch films to become absorbed in and engaged by a story, a story made hyper-real by visual images, stage craft, music, and the setting in which the film is watched. The quality and lasting impact of the film—and the value of the film for pedagogical purposes—is not found in its realistic portrayal of a world we already know; rather, pedagogical quality is found in viewing a fictional world that can become, for a few hours, a substitute for our real world. What we learn, and what we take away from this substitution of a fictional world for the real world is sufficiently complex that it becomes easily lost in the demand that lawyer

131. As the conventional approach to legal film criticism solidifies and is reinforced, the critics express concern about how the unrealistic portrayal of lawyers in film will impact the public perception of lawyers and law. The more we see such concerns raised the more we realize how little we actually know about the impact of the portrayals of lawyers in popular culture and how easy it is to misinterpret these portrayals.

132. David Papke, in his discussion of the legal accuracy strain of legal film criticism, takes a somewhat more benign view. Papke suggests that:

Criticism of this sort does no harm, and there is indeed something to be gained from alerting the citizenry to differences between the law and legal proceedings in popular culture and what might be understood as "real life." However, those who are determined to apply a legal truth test to popular culture . . . should also realize that the "legal inaccuracies" are not mistakes, much less attempts to dupe the lay public. Critics with a bent for noting "legal inaccuracies" should dismount the high horse of expertise and recognize that cultural conventions and prescriptions, much more than faithfulness to the law, shape works of popular culture.

David Ray Papke, *Peace Between the Sexes: Law and Gender*, in *Kramer vs. Kramer*, 30 U.S.F. L. REV. 1199, 1201 (1996). Papke recognizes the legal inaccuracies in *Kramer vs. Kramer* (1979), but finds that they serve some larger purpose in the film—i.e., "the movie is about gender and gender roles." *Id.* at 1203. In an essay on the courtroom trial in American popular fiction, Papke again notes the "reality aesthetic" of lawyers and legal film commentators who focus on the "inaccuracy of courtroom trials" in films, and again finds that it "has some degree of validity," Papke, *supra* note 59, at 487, but that legal films can teach us something about the law. David Ray Papke, *The American Courtroom Trial: Pop Culture, Courthouse Realities, and the Dream World of Justice*, 40 S. TEX. L. REV. 919, 930–32 (1999).

One commentator sees in the failed realism critique of legal films a "myth of perfection." See Charles B. Rosenberg, *The Myth of Perfection*, 24 NOVA L. REV. 641 (2000) (theorizing that movies and television have given society a skewed idea that a "perfect" legal system can and might exist); see also LASTER, *supra* note 71, at 4 (rejecting accuracy and realism as the basis for critique of legal films).

133. Oddly enough, the realist school of lawyer film criticism does not argue that it is the production of the film for entertainment that makes it unreliable and unworthy; rather, it points to the various inaccuracies the films embody and the fact that in reality lawyers are different from the way they are portrayed in films.

films realistically portray lawyers.

In response to the legal accuracy/realistic school of lawyer film criticism, we are confronted with the need to be clear about what lawyer films are and how they might serve as instructive "texts." Nancy Rapoport points in this direction when she notes:

The discourse of film is based on many things, but it is most decidedly *not* based on Hollywood's deep understanding of law and lawyers. In fact, Hollywood knows very little about lawyers or lawyering. That's not surprising: the business of Hollywood is film, not law (or medicine or history or science fiction). All that Hollywood needs to know about law, in order to go about its business, is how law can fit into the conventions that make up the world of movies. Those conventions force the discourse of film to filter most of "real" law out, leaving only the most cinematically interesting parts. Those parts include the drama of the trial, the compelling image of the lawyer-hero, and the equally compelling image of the lawyer-devil.¹³⁴

While I do not see much future in trying to talk about the "discourse of the film," Rapoport is right to imply that we need the ability to bracket our concern for "real law" (whatever that might be). Accordingly, we can study the *drama*, the *compelling image*, the *hero*, and the *devil* (a rather interesting name for the *villain* the hero must confront and defeat to return to his/her rightful place in society).¹³⁵

The lawyer film, found deficient when viewed from real law/real world critique, might, as Suzanne Shale suggests, be viewed from a different perspective.¹³⁶ She argues that "some movies represent far more of the nature of law than we acknowledge."¹³⁷ The problem for the realist critique

134. Rapoport, *supra* note 130, at 58.

135. Similarly, Gerald J. Clark notes:

It is certainly no criticism of the writers of fiction that their scripts lack realism. . . . [I]t might prove difficult to create great dramatic tension out of a real estate closing or the preparation of a will. The scriptwriter travels the world in search of dramatic tension, moral ambiguity, and heroic characters. The courtrooms they create are more like dramatic stages than real courtrooms. Nor should it surprise us that the protagonists seem more like Theseus than real lawyers. The purpose is the creation of dramatic tension and entertainment, and since the days of the Greeks the chosen vehicle has been the heroic archetype.

Gerald J. Clark, *The Lawyer as Hero?*, in *THE LAWYER AND POPULAR CULTURE: PROCEEDINGS OF A CONFERENCE*, *supra* note 75, at 179, 193.

136. See *infra* Appendix C.

137. Shale, *supra* note 75, at 994.

of lawyer films is that Hollywood represents law as “an epic form.”¹³⁸ Shale goes on to outline a way of thinking about film-making and film narrative that might help us sort through the conventional indictment of lawyer films as being legally deficient:

First, we must consider the narrative conventions that structure the paradigmatic Hollywood movie, shaping it into a tale of heroic odyssey. Second, we must look at the way in which a screenwriter creates a story from the life-stuff of events. In asking how a *story* emerges, I am asking how the writer creates a meaningful, thematic narrative rather than an inconsequential, flat recitation of occurrences. Third, we need to turn our minds to the problem of *plot*—that is, how the meaningful story is presented to the audience as a series of discrete events. Having found a meaningful story in the life events, the screenwriter must still establish a satisfying way of telling it.¹³⁹

Shale has encoded in this brief commentary an agenda for the student of lawyer films:

- What “narrative conventions”¹⁴⁰ do we find in the lawyer film and what do they tell us about lawyers that we might want to make a part of our education?
- Of what value to us, and to the public more generally, are the “tale[s] of heroic odyssey”¹⁴¹ we find in lawyer films?
- If a screenwriter “creates a story from the life-stuff of events,”¹⁴² how are we to navigate the delicate/crude relationship between “the life-stuff of events”¹⁴³ and the fiction presented to us in the film?
- What kind of “*story* emerges”¹⁴⁴ when we become lawyers and how is this emerging story related to the fictional stories of lawyers we find in films?

138. *Id.*

139. *Id.* at 997–98 (citations omitted).

140. *Id.* at 997.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.* (citation omitted).

- How does a story, those we live and those we see in films, become a “meaningful [and] thematic narrative”¹⁴⁵ in contrast to stories which are an “inconsequential, flat recitation of occurrences”?¹⁴⁶
- How is a “meaningful story,”¹⁴⁷ in film and in life, to be presented to an audience?
- Can a “satisfying way”¹⁴⁸ be found to tell the stories we want to tell? What makes for a satisfying film lawyer story?

VIII. ARE LAWYER FILMS ANTI-LAWYER?

Finally, I want to turn to the notion that lawyer films portray lawyers in a negative light and in doing so are anti-lawyer.¹⁴⁹ Do the legal film critics who focus on the strikingly negative images of lawyers in film have grounds for concern, if it is likely, as a fellow amateur film critic noted, that you can find screen lawyers selling their grandmother in order to get a conviction? My argument is simple: the negative portrayal of lawyers in films presents no great danger to the legal profession because we misread the meaning of the portrayals.

Let me begin with the comments of deX (this is his web signature), a controversial participant in a web “film-philosophy” forum in which I participated before I began teaching the film course. It was deX who made the command about screen lawyers who sell their grandmothers to secure a conviction. When I raised a question about the conventional view in legal circles that lawyer films were anti-lawyer, it was deX—who as you will see is no fan of capitalization—offered an interesting layperson’s view of the situation:

145. *Id.*

146. *Id.*

147. *Id.* at 998.

148. *Id.*

149. The commentary here, now revised, was first posted on-line. James R. Elkins, *Are Lawyer Films Anti-lawyer?*, PICTURING JUSTICE: THE ON-LINE J.L. & POPULAR CULTURE (Jan. 1998), at <http://www.usfca.edu/pj/articles/Elkins.htm>.

Before examining the notion that lawyer films are basically anti-lawyer, we might also deal with the idea that the anti-law mood in the country is related to the anti-lawyer sentiment in Hollywood films. If the two moods—anti-law and anti-lawyer—are joined at the hip, then we need to be cautious about using lawyer films for educational purposes. See generally James R. Elkins, *Rhetoric, Disciplines, and Stories: How Will We Know When We Have Too Much Law?*, 22 LEGAL STUD. F. 519, 519 (1998) (evaluating whether more or less law is better for a stable society). I’m not at all convinced that anti-law, anti-government, anti-lawyer sentiments can be traced to Hollywood films and consequently have no fear that in teaching lawyer films I have become part of the anti-law movement (of which I want to part).

ultimately, i think that most popular legal films do not simply offer us the "sell your grandmother" view. rather, in an attempt to acknowledge the populist conceptions of corruption etc., and somehow defuse and demythologize [law] . . . [read "damage control"]: they start with grandmother sales as the negative against which a positive alternative of the triumph of true justice is achieved by following the changes undergone by a romantic and ideal character who is usually nothing short of pure ethix on legs [in the flesh]. in such dramas the Law, more often than not, is constructed as the ultimate instrument for true change and the best place to make a real difference despite corruption. . . .

in my experience what most people walk away from a legal drama pic or tv series thinking is not that lawyers sell their grandmas, but that law is simply interpretation—there are those who interpret it for their own selfish means and those who interpret it in such a way as to reinvent the world into a better place for all.¹⁵⁰

Although deX is not a lawyer, he knows something about films and he seems particularly perceptive about lawyer films. Yet, what deX knows about lawyer films is missing from the conventional views of legal film critics.¹⁵¹

A. Films Cast Lawyers in a Negative Light

In the conventional criticism of lawyer films, legal critics have begun to sound like doctors who talk about lawyers but using a doctors-on-lawyers "script." The problems that confront medical doctors are quite real, but pressed as they are for quick-fix solutions, we can predict what most doctors are going to say about medical malpractice and insurance before they say it. We have developed "scripts" of a similar sort in the legal community. One of our "scripts" reads: the public does not think so highly

150. Posting of deX (on file with Vermont Law Review).

151. A legal film critic may be more or less receptive to lawyer films depending on whether he or she expects law to be celebrated or critiqued. For an examination of the critical reception of a film, see Shirley A. Wiegand, *Deception and Artifice: Thelma, Louise, and the Legal Hermeneutic*, 22 OKLA. CITY U. L. REV. 25, 27, 49 (1997), which examines how one may critique a film based on that person's belief in how the legal system protects certain individuals and also how those privileged and powerful members of our society pass judgment without having certain life experiences. Wiegand's critique is somewhat diminished by her failure to see that *some* men may interpret *Thelma and Louise* (Metro-Goldwyn-Mayer 1991) with the same critical perspective that she approves, notwithstanding the fact that they have not had the real world experiences that make women receptive to the film.

of lawyers (and we are repeatedly reminded of this); as members of the legal profession we worry about this public perception; we fear that the public perception of lawyers has a negative impact on our work and our profession (and the “rule of law”); and finally, we fear that the negative representations of lawyers in film and fiction fuel the negative public perception of lawyers. The problem with this “script” is that it fails to take into account the historical ambivalence of the public about lawyers,¹⁵² and it offers no explanation as to how the public’s negative perception of lawyers might affect the relationship of lawyers with clients, or how the public perception of lawyers impacts the legal profession more generally. We do not know how the negative public perception works, and we do not know how to evaluate the meaning of the perceived perception (whatever it may happen to be).¹⁵³

152. We know that the negative public perception of lawyers is not of recent origin; indeed, it seems to extend back to the founding of the country. The public (as if there were one public and not many) has long been ambivalent and conflicted about lawyers, about their role in society, and the rightful place of law (and its agents) in the culture. For those with a sense of history, it seems frightfully shortsighted to trace the contemporary public views of lawyers to their unrealistic and negative portrayal in legal films.

Those who ignore the historical ambivalence about lawyers, and about law, and suggest that the public perception of lawyers is related to how lawyers are presented in popular culture, provide no explanation as to how these troubling public attitudes are formed and whether they can be addressed. If there is a negative public opinion about lawyers generally (about their virtue, their role in society, or their actions in bringing about the problems that beset us)—how much does it ultimately matter? The negative public opinion of lawyers does not seem to have resulted in the kind of suspicion that keeps anyone from filing a lawsuit or hiring a lawyer to do their legal work. Whatever belief a particular client might derive from popular culture induced attitudes about lawyers, one might assume that a lawyer who represents that client will address, directly or indirectly, the client’s public education by way of popular culture, with an education more particularly attuned to the reality of the problem at hand. If the negative public attitudes about lawyers happen to take hold, and begin to actually influence our willingness to use the legal system to settle disputes, we might expect some to applaud such a development. We have been warned (and sometimes warned about the warning) of purportedly “excessive” litigation, suggesting that we are an overly litigious society, and have failed to properly account for the transaction costs of our litigious ways, and that there are more efficient and socially desirable means for dealing with disputes and social conflict.

153. David Papke, in his work on the “symbolic courtroom trial” found in legal films, has offered some suggestive commentary. He argues that the trial as a symbol,

grows out of American culture in general, and it feeds back into it. It serves in fact as a variety of constitutive social language, that is, while drawing from our sentiments, values, and ideologies, the courtroom trial convention reinforces, shapes and directs. One cannot measure the impact with any precision, but the pop cultural convention likely affects lawyers’ attitudes; the public’s view of lawyers, courts, and society; and even American consciousness in the most general sense.

Papke, *supra* note 59, at 488; see also Martha Merrill Umphrey, *The Dialogics of Legal Meaning: Spectacular Trials, the Unwritten Law, and Narratives of Criminal Responsibility*, 33 LAW & SOC’Y REV. 393, 393–94 (1999) (discussing how a trial “is a distinctive domain for the production of legal meaning” within the context of the 1906 murder trial of Henry Kendall Thaw). Papke offers a glimpse

at what the impact of popular cultural conventions might actually be: (1) lawyers, influenced as they must surely be by the representation of lawyers and legal culture in popular culture, may find the practice and life of the law less interesting than they had contemplated, inducing a kind of "professional melancholy;" (2) courtroom trial scenes in legal films may contribute to the "burgeoning public hostility toward lawyers" (surprisingly, Papke attributes this public hostility not to the way film lawyers lose sight of justice, fairness, and ordinary commonsense, but to the fact that they are so much more competent, polished, and heroic in films than they are in everyday life); (3) the ever-present courtroom trial scenes may, and Papke presents it as an open question, "contribute[] to the cult of the court and the on-going American belief in the rule of law" (Papke suggests that "[t]he courtroom trial convention of American popular culture reinforces the ideas that courts work as institutions and that law in general can be trusted both in its articulation and application"); (4) the portrayal of courtroom trials in legal films obscures, at least for criminal cases, "that class and race" are significant factors in the criminal justice system; and (5) the courtroom drama may, at some deeper level of consciousness, reflect our (American), "national tendency to see things as black or white, as right or wrong, as guilty or innocent." Papke, *supra* note 59, at 488–89.

For an exploration of the depiction of lawyers in popular culture media and the public perception of lawyers, see Spitz, *supra* note 67. Spitz, to his credit, notes that the source of the public's negative perception of lawyers is "ultimately incapable of being resolved in any exact or conventional fashion." *Id.* at 728. Spitz, as others, notes that a majority of the public has no direct exposure to lawyers or the legal system. *Id.* And since most have not studied the law, the assumption must be that what knowledge they have of the legal system is by way of media sources, and thus, popular culture. Spitz goes on to point out that what the public gets from media and popular cultural sources "may be distorted, biased, or convoluted" because it is "based on fictional characters that are merely being depicted wantonly for dramatic effect." *Id.* at 731.

One may well agree with Spitz's first premise—the public gets a substantial part of its information about law and lawyers from the media—and part of his second premise—that law and lawyers are depicted "for dramatic effect"—without concluding that lawyer films present a "distorted, biased, or convoluted" view of law and lawyers. That we absorb information as it is presented to us in popular culture and that our consciousness is subjected to shaping and re-shaping by way of mass and visual media is a truism of modern life. But what information we take in, and what screening filters we might use, and how this information may be put to use is well beyond the reach of most legal film criticism.

The import of Spitz's suggestion that lawyers in film are "depicted wantonly for dramatic effect" lies in the word *wantonly*. *Id.* In his commentary on the history of lawyers depicted in television dramas, Spitz finds they were "not always depicted and stigmatized in such a deprecatory fashion." *Id.* Notice the reference to *stigmatization* and *deprecation*. Still later in the essay, we are treated to the observation that Arthur Kirkland (Al Pacino), the lawyer in *And Justice for All* is "perniciously unrealistic" even though Spitz recognizes that Kirkland's abandonment of his client and his rule-prescribed duties have been undertaken for the purpose of "retaining his own sanity and personal sense of right and wrong." *Id.* at 744. What makes the abandonment of rules and professional duties to a blackmailing, murderous judge to save one's sanity "pernicious" to the legal profession, or, for that matter, "unrealistic" is not clear. And yet, Spitz, conflicted as he is throughout the essay, is able to observe that *And Justice for All* presents a "despondent view of the entire legal system," a system that is "aberrational," and does this to create a setting so Kirkland can "come to grips with his own conscience" and can seek "a higher form of justice—the truth." *Id.* at 744–45. We—the film viewers, film critics, and lawyers—just might be willing to see this portrayal of a man coming to grips with his conscience and in doing so recognizing something that he can know as the truth, to be worth whatever shadow might be cast on the legal system in the process. Spitz posits the conflict as criminal justice system vs. Arthur Kirkland's "personal sense of justice," but he also refers to the justice in question as a "higher form of justice." *Id.* at 744. It is, one might assume, this higher sense of justice that we openly (or if we are lawyers, secretly) applaud when Kirkland violates the most fundamental tenets of the professional lawyer and speaks the truth.

In contrast to the legalist/realist film critics—shall we call them “policing critics”—who warn us about the negative portrayal of lawyers in film, there are few lawyer films without lawyer protagonists with whom the viewer can be expected to identify. Whatever the public may think of lawyers, however they derive and make use of their knowledge of lawyers from popular culture, and whatever the polls may show about the disdain of lawyers, this negative public sentiment cannot be blamed on Hollywood and its films. If we are to blame Hollywood for the woes of the legal profession, then how do we explain the presence of so many heroes in lawyer films?¹⁵⁴ We might assume that the public response to lawyer heroes and lawyer villains is sufficiently complex, multi-sourced, and historically grounded, that we simply do not, at present, know what elements and aspects of the current negative sentiment can be traced to the negative portrayals of lawyers in film.

We see lawyers cast in a negative light, in lawyer films and in life, because they are given an opportunity to walk up to a line that says: *Line. Do Not Cross. Do Not Go Beyond.* And when confronted with the line—

We—film viewers and lawyers alike—may share the knowledge that we can expect no non-fictional lawyer to act as Arthur Kirkland acts, just as we may know that the criminal justice system is not as aberrational as portrayed in *And Justice for All* and that no judge is likely to be as crazy as is Judge Fleming (John Forsythe). We might know all this quite well, lay person and lawyer alike, and still walk away from *And Justice for All* knowing that we have seen something disturbing, something of importance that we have trouble fully explaining, just as we have trouble explaining what honor or love, patriotism or professionalism, might mean to us.

A legally trained viewer watching *And Justice for All* may come to the conclusion that the film presents a host of ethical violations, and that in the depiction of these ethics violations the film casts a negative view of the legal profession (lawyers violate the confidences of the clients and denounce them in court when things get tough). That the film fails to depict the reality of the everyday practice of law can be fairly said to simply, fundamentally, and ultimately, miss the point of the film and miss it by a good country mile. Spitz cannot quite figure out whether he wants to go down this road or not—although he cannot quite seem to resist pointing out the litany of ethical rule violations he finds in the film. Spitz, *supra* note 67, at 744–45. Spitz ultimately falters as he tries to decide whether Arthur Kirkland is a worthy fictional film lawyer or not, leaving us with the idea that maybe he is a hero and maybe not and maybe the film damages the legal profession and maybe it does not. We can avoid this kind of ambivalence if we quit worrying about the damage that lawyer films do to the legal profession and focus on the more obvious ways in which lawyers damage themselves and the ways in which they are damaged by a life doing legal work.

154. It has been the systematic search in legal films for lawyers portrayed as villains and heroes, usually finding them to be more villainous than heroic, that has been the central focus of recent work by Michael Asimow. See, e.g., Asimow, *Bad Lawyers*, *supra* note 17, at 583 (finding that most film lawyers are bad role models); Asimow, *Embodiment of Evil*, *supra* note 130 (addressing the negative portrayal of law firms in film); Michael Asimow, *When Lawyers Were Heroes*, 30 U.S.F. L. REV. 1131, 1138 (1996) (portraying Atticus Finch in *To Kill a Mockingbird* as the ideal lawyer). I have serious reservations about Asimow’s interpretative surveys of “bad lawyers” in film, but find his work as a legal film historian on firmer ground. See, e.g., Michael Asimow, *Divorce in the Movies: From the Hays Code to Kramer vs. Kramer*, 24 LEGAL STUD. F. 221, 221 (2000) (examining why divorce films, unlike other genres, do not provide any insight into social history).

the warning—What do lawyers do? Some ask, adjusting their glasses, “What line?” “Do you see a line? I don’t see a line. You call that a line? It looks more like a scratch of some kind to me. I don’t see any line that I need to be concerned about. The line mentioned in the warning is not *this* line.” And so the lawyer talks, and talks, and talks, erasing the line, talking sophistry. Lawyers learn to walk across the line as if it were not there, acting as if the warning was written in Farsi. Indeed, walking across the line, even as the line is pointed out to them, they proclaim innocence. Every lawyer thinks of himself as Billy Budd, the innocent.

Do all lawyers (film or real) take this stance toward lines not to be crossed? No. Are some lines to be questioned? Well, yes, of course they are, and it is the everyday business of lawyers to engage in this questioning of lines. We know, of course, that lawyers take different stances toward lines, to the reality of lines, and to the lines we are all warned not to cross. We know also that some lawyers, whether by way of curiosity, innocence, or willfulness, want to get up close to lines both real and imaginary. More basic still, we lawyers work with lines, we contest them, and we learn how to see that lines get moved (forward, backward, temporarily erased, sometimes erased entirely) because our clients want them moved or because justice demands. We also do this work because we know that some lines have been drawn in a more equitable and just way than others. We should not be surprised that, in working with lines as we do, lawyers learn to get up close to them, drawing near to edges and boundaries.

We can expect lawyers to sometimes mistake where the line is and when it can be appropriately moved backward or forward, and when it is being transgressed—with legal approval. Given the nature of our work, this business of lines and line crossing tends to be controversial. Yet, when lawyers in film ignore the rules of ethics to get something they want, or something they think their client wants, legal film commentators howl like stuck pigs about how unrealistic the film is, and how Hollywood traffics in negative images of lawyers.¹⁵⁵

Some lawyers acknowledge the existence of lines, legal and ethical, personal and professional, and in working the lines, know—at least intellectually—that when true, real lines are crossed, there is a price to pay. Knowing this, we might find of interest, and of pedagogical value, those stories and scripts, from life and from film, that have lawyers getting

155. And there is something odd here. At the same time legal film commentators concern themselves with the defamation of our reputations as lawyers by our negative betrayal in films, we find bar associations and courts around the country promulgating (if not actively seeking to enforce) civility codes—codes in which real world lawyers are instructed to do what most of us think a fellow lawyer with any common sense would do as a fellow human being without threat of institutional sanction.

pushed, shoved, and dragged by events, by clients, and by their own ineptness, to cross these lines. (We want to say to them, "Don't you know you'll have to pay a price for this?")

B. Even So, Lawyer Films Are Valuable

What are we to make of crossing lines (mistakenly, negligently, willfully, or wantonly), and the effort it takes to get one's life and legal practice back in order after having found oneself on the wrong side of the line? The thing that makes lawyer films interesting, valuable, and instructive—makes them worth studying, worth trying to understand—is that the film viewer knows, and is intended to know, what the lawyer character in the film seems not to know: that there are lines, that they are being crossed, and that there will be a price to pay for the crossing. We expect lawyer villains in film to be punished, and the pleasure in having this happen is more palpable, real, and psychologically satisfying when we know that lawyers so thoroughly shield themselves from sanction and punishment in the real world. (The film lawyer, far more than the real world lawyer, risks punishment by serving the interests of those who have the wherewithal to pay good money for bad behavior.) If we see justice done in lawyer films, it is all the more satisfying if the justice compensates for the injustice we know to exist in ordinary life. As much as we may desire to see justice done, we do not expect in lawyer films to see every bad act punished, every violation of the profession's rules sanctioned, or good fully rewarded.

What lawyer films do manage to do, and do well, is to tell a story. The story has a point and a purpose, and everything in the film must weave the tale, a tale that convinces us that it is a tale worth telling (the best tales are memorable, haunting, disturbing, compelling, and/or puzzling). When we leave a film—the best of the surprising number of good lawyer films—we know we have been told something about how the world works (as the film works on the world).

Film viewers know something about the lines lawyers are warned not to cross (even though they cannot claim to be insiders), and they know something about lawyers and about the ethics of lawyers. The film-viewer, is assumed to have a modicum of common sense. Bascially, then, based on everything the film-viewer knows, *she knows that the lawyer must know the line is there*. Yet the line gets crossed, and it gets crossed so readily that we begin to question both the reality (of the film) and the fiction (of the lawyer

who crosses the line).¹⁵⁶ It is this ability of the film-viewer to see the line, to read the *Do Not Cross* sign, and to see the lawyer fail to heed (in film and in life) the warning, that makes for the negative image of lawyers. Film-viewers and people-on-the-street want to ask: Who gives the lawyer the god-almighty power to ignore the lines we know to have been imposed on us (ironically by law and lawyers no less)? Is there, we might wonder, something in the character, the training, and the selection of those who become lawyers that make them unable to see what a legal film-viewer/lawperson can see so readily? And how could Hollywood's lawyer films portray this line-crossing in such a deliberate and persistent fashion if lawyers in the non-cinema world—if there can be such a place—do not engage in the kind of line-crossing so vividly dramatized in lawyer films?¹⁵⁷

If there is a lawyer film genre, and it is part of the genre to have lawyers cross the uncrossable line, then we must focus on the ability of the film viewer to see what the lawyer does not.¹⁵⁸ How is it that otherwise

156. "The borderland between fiction and reality is contested territory." Rosenberg, *supra* note 132, at 641.

The motion picture has become the most influential and compelling form of mass entertainment ever created. It combines art and technology in a way that appears to defy the laws of nature as well as common sense. In the movies, the apparent seems to be real. Once under its spell, the real, itself, can become the apparent.

Marini, *supra* note 67, at 57.

157. Lisa Scottoline, a lawyer turned novelist, makes the point this way: "[T]he line between the reality of lawyering and its fictional representation on television and in books has gone well beyond blurred. It isn't really a question anymore of how lawyers and law are portrayed on television and in books, because that depiction is merging daily with reality." Lisa Scottoline, *Get Off the Screen*, 24 NOVA L. REV. 655, 656 (2000). In Scottoline's view, "the wall between fiction and reality is as thin and porous as a cell membrane, with reality passing through it to fiction and fiction flowing backwards to reality, in constant flux." *Id.*; see also Rosenberg, *supra* note 132, at 644 (drawing a connection between the television show *L.A. Law*, the O.J. Simpson trial, and modern concerns over legal ethics).

Scottoline, after demonstrating the nonexistent line between TV lawyer fiction and legal reality goes on to suggest that it may not be such a bad thing. She concedes, however, that there is some danger of confusion in this "blending of reality and fiction." Scottoline, *supra*, at 669. Scottoline, a fan of television, finds a good TV drama for every bad one. *Id.* And with so many lawyer dramas at hand, she argues that we end up with "a robust if implicit debate over what a lawyer really is." *Id.* at 670. Finally, she concludes (with an observation that I share) that "the more familiar all of us are with the law and with courts, the better off we all are." *Id.*

158. Yvette Biró has noted, rather perceptively, that:

To see: in every culture this has had a mysteriously rich meaning. To see meant to penetrate, to understand. He who could see became a divine or diabolical messenger in the eyes of men. The seer, beyond direct experience, managed to get closer to more distant truths; he could explain the past and foretell the future. Prophesying is but the drawing of hoped-for or feared conclusions based on an inspired interpretation of knowledge gained through signs. This means that seeing, by its nature, is far more than passive reception; it is a creative, intellectual activity.

If the camera is the extension of our eyes, the broadening of our vision, then it is

intelligent trained professionals can be so blind? And by what measure of magic and character do film-viewers gain such acute vision that they *know* and *see* what the lawyer does not? And what do we expect to find in the work of legal film critics who assume the virtue of lawyers as professionals, and point a long-boney finger at each and every violation of a professional norm and ethical rule while naming the number of the rule violated?¹⁵⁹ How does the legal commentator divert our attention from the justice we find in lawyer films, to a justice known only by lawyers and their self-prescribed ethics?

C. *The Devil's Advocate*

To move from abstraction to a specific film, we might consider *The Devil's Advocate* (1997), a film unlikely to find favor with legal film critics. The lawyer protagonist in the film, Kevin Lomax (Keanu Reeves) is found by legal commentators to be both ludicrous and still a threat to the legal profession. These are the film critics who cannot bear the thought that a lawyer might be associated with the work of the Devil. Kevin Lomax's threat to right thinking about the legal profession¹⁶⁰ is made more serious by the fact that he is young, handsome, married to a beautiful wife, and awfully good at his work. Moreover, Kevin Lomax seems to have a special talent, a way of understanding jurors that makes it possible for him to win what would appear to be unwinnable cases. Kevin Lomax is a lawyer to be envied, so talented that we wonder just what he might be capable of achieving.¹⁶¹ We then learn—as if we did not know already—that Kevin Lomax can be lured, by the promise of his talent, the great reach of his ambition, and the ability of others to see his unfulfilled needs, to cross the line (indeed, several lines) for which we know he must pay a price.

What we find in *The Devil's Advocate* is that Kevin Lomax, by the

also an extension of our intellect. Through the camera not only seeing but also cognition has become more sensitive and acquired a far wider range.

BIRÓ, *supra* note 67, at 39.

159. For those who lay claim to virtue, see ALBERT CAMUS, *THE FALL* (Justin O'Brien trans., 1956), where we are reminded, by way of the meditations of one Jean-Baptiste Clamence, about the dangers of self-deception and false virtue.

160. Right thinking about lawyers goes something like this: We lawyers are simply human beings, with all the flaws of our fellow human beings; most of us are trying to solve problems brought to us by our clients; yes, there are a few "bad apples" in the barrel, but we do not deserve to have our real problems compounded by the negative, unrealistic portrayal of lawyers in Hollywood films, which filmgoers in their uninformed way take to be a representation of what lawyers are really like.

161. We are always intrigued by those who have great talents, natural and acquired, who allow these talents to be used for devious ends, by devious men. Lawyers, one would think, might be especially intrigued by this talents-turned-to-mischief motif.

nature of his work, has begun to represent clients that are basically no-good, (clients who are exemplars of evil, for those of us who still believe in the reality of evil). Further, he allows his great talent to be used on behalf of these questionable clients. Lawyers like Kevin Lomax deal with real badness (confusion, poor judgment, weakness of character, as well as social and culturally sanctioned excess); they see, talk, touch, and litigate this badness; in getting up close to it and the fallen world of their clients they are in turn put in danger by it. Should we be surprised that lawyers like Kevin Lomax cross the line, that they metaphorically take sides with the Devil?

It is Kevin Lomax's crossing-over, which we are allowed to *see* and which we *see* in lawyer films generally, that threatens the stability of our settled views as lawyers and legal film critics.¹⁶² To the great horror of legalist policing film commentators, viewers find this crossing-over entertaining as it resonates with what the public believes to be truth (God forbid) about lawyers—that they can be bought and their advocacy put to use by the Devil. Since Hollywood lawyer films need neither to conform to our conventional thinking about lawyers and the legal profession, nor present lawyers in the celebratory way we most want to be seen, we are spared, in films, the insider's spin. The fear of lawyers and legal critics who warn against a Kevin Lomax story is that we might begin to take it seriously, that the public might begin to think that lawyers do the Devil's work (still more threatening since the Devil in *The Devil's Advocate*, John Milton—Al Pacino—turns out to be an entertaining, intellectual, and philosophically astute character).

The film critics want to tell us, as they tell themselves, that lawyers simply cannot be thought of in the way Kevin Lomax allows us to see them. To protect the good name of lawyers, we need someone to ridicule Lomax as unrepresentative of the legal profession. Since *we* cannot be the enemy, Lomax must be a character invented by Hollywood to further torment and threaten the (good) work of real world lawyers.

That lawyers, in films and beyond films, traffic in the broken, the shady, the false, the fraudulent, and the criminal, while making a good living doing it, is not a well-kept secret. That we do this underground work, and hold so sanctimoniously to the *virtue* and *ethics* of a profession, suggests an emperor with no clothes.

Working with lawyer films, and knowing something about real world lawyers, we are left with a simple question: Does a *compact* between a

162. Kevin Lomax's crossing-over is portrayed in the film as a dream sequence in which he is seen to cross-over; a dream sequence we learn at the end of the film is simply a bad dream, a dream that warns of how great talent can be misused.

lawyer and the Devil make any sense, any experienced (real world) sense, any cinematic sense? We know it has made for some telling moments in *The Devil's Advocate* (and did so in a film which at times was so over-the-top, excessive, and downright weird that it sometimes threatened the coherence of the film). Kevin Lomax's compact with the Devil made for high drama, and at times compelling drama, even though it may not have resulted in a great film. Is not the compact with the Devil an imaginative context for revisiting the devilish play of good and evil, the good and evil we find in the work of zealous lawyers? Where do the good lawyering talents of Kevin Lomax (and real-world lawyers) end and the work of the Devil begin?

In contrast to the legal film police, I think we should appreciate the educational value of lawyer-film villains who are portrayed with all their foibles and warts, lawyers so unethical we gasp at their audacity. Only when confronted with the most profound villainy, can we celebrate raw virtue (most often in the same film, the same drama, and in some instances, the same character who has so vividly and compellingly portrayed the negative elements of our character and our profession).

Kevin Lomax, seduced by his own talent and by the lure of a big city law practice, shows us how ordinary it is for talented lawyers to want to push themselves, their talents, their skills, and their lawyering, as far as their endowments can take them. We (viewers) know that pushing on in this way cannot be done without danger. And if there is danger to be risked, let it be Kevin Lomax who takes the far-out trip with the Devil. The film-viewer wants to say to Lomax—"Boy, you've got a talent that's a pretty thing to see, now you be careful you don't let this powerful thing you've got lead you astray." (Ride the tiger, get eaten by the tiger.) Can Kevin Lomax not see that his powerful talents, used indiscriminately and unreflectively, undermine everything that he believes he *is*? Is it anti-lawyer, or a detrimental negative portrayal of a lawyer, to particularize and give full character to the presence of a talent so powerful that it leads one to sign on for the Devil's work?

D. Lawyer Films and the Ways of Power

Lawyer films are not, in their negative portrayals, anti-lawyer, but an opportunity to participate vicariously in the various dramas that upend our lives and render our communities less inhabitable by the day. We would like best to have the great drama of good versus evil finally settled, with evil banished, and the good crowned ultimate victor. Since we can hardly imagine such an outcome, and we know we do not have the skill and power

to bring about such an outcome, we can expect our greatest dramas—legal and tragic—to be repeatedly restaged in popular culture, and in literature, as they are in daily life. We do not, and the lawyers in film do not, finally prevail over evil by acting virtuously; we enact virtue for its own good, trusting that we might survive to fight another day. To have and understand heroes, film lawyer heroes and everyday heroes, we must know the reality of failure and of tragedy. The lawyers' failure that we see in lawyer films is an inevitable truth, a truth both entertaining and educational.

We want lawyers to get close to power, to know its ways and vulnerabilities, to respond to it with knowledge and skill, and to teach us about power.¹⁶³ We want someone, anyone—lawyer, politician, scientist, prophet—who will speak truth to power and, in so doing, fan the spark of hope that we may survive the predations of the powerful. Power opposes truth. Lawyers know this and have the socially sanctioned skills (sometimes misused) to do something other than roll-over in the face of power. It is this standing up to power, confronting it with the tools that have been made available to us, tools specifically placed in the care of lawyers, which makes film lawyers so frightening, so threatening, and so dangerous in their wild disregard for settled and conventional forces of power.

The thing about lawyers is that they have the skill and the knowledge, and are socially sanctioned to speak truth to power. When they do it, we celebrate the occasion. When they do it and live to speak another day, we are curious about the strategy by which they manage to survive. When they do it and make a habit of it, we remark on their character. This speaking truth to power is a common motif in lawyer films, and in life (witness our whistle-blowers), and we know that there is often hell to pay for standing toe-to-toe with people who have real power.

We know, or should know, that it takes fortitude, even for those trained as lawyers, to speak to power. We cannot expect all lawyers to possess the courage to do it, or that those who may have summoned the courage once will have the capacity to make it a habit (or that those with courage will be the most skilled). Judges can make life difficult for a lawyer. Often, the client does not want to hear the truth. Too often, there is no great monetary reward for speaking the truth. We probably should not expect a lawyer to be anymore courageous than the next person, but we do. Courage is neither a routine matter, nor a rare occurrence. It will happen today, at some law

163. See, e.g., ROBERT BOLT, *A MAN FOR ALL SEASONS* (1962) (presenting a dramatic account of Thomas More, adapted into a play); Stanley Hauerwas & Thomas L. Shaffer, *Hope in the Life of Thomas More*, 54 NOTRE DAME LAW. 569, 570 (1979) (portraying the life of Thomas More and his skilled, hopeful, and tragic confirmation with King Henry VIII).

firm meeting, in some lawyer's office, or in a courtroom; routine or rare, it still seems quite extraordinary. It is this poetry of power—not having it but speaking to it, fearful of it but confronting it, getting close to the thing we do not allow to debilitate us—that makes the work of lawyers so intriguing, so compelling, and such a perfect match for Hollywood films.

Lawyers are not trained in American law schools to know anything about power,¹⁶⁴ yet they continue to be fascinated by it.¹⁶⁵ Law students must secretly prepare themselves (psychologically and educationally) for their opportunity to oppose power. In this underground, anti-establishment aspect of their education, law students may come to possess the courage and skill, as well as psychological and communal resources, to do what lawyers—film and real—do. No, it is not a mundane sort of thing to speak in opposition to power (and those who have it). Read the story of virtually any whistle-blower and you find a paradigmatic case of the ways of the powerful. Talk to Anita Hill,¹⁶⁶ or talk to anyone who stands up to power. You hear the same tale: the powerful or their agents will try to destroy you if they cannot corrupt or co-opt you.¹⁶⁷ The powerful use power—a

164. By hook and by crook, I have taught a good number of courses which are well outside the mainstream law school curriculum. I have been blessed (and cursed) with finding great pleasure, and intellectual excitement in the creation and teaching of these courses. I have dreamed up far more courses than I have actually taught, one of them being a course called *Power*. Law students assume that lawyers are powerful, that this power is social and personal, that it can be used for good and for ill, that it may make them wealthy (and if it does not, it will have them doing good work). There is a great deal of implicit teaching about power in legal education, power is poked at, alluded to, and imagined, but never studied. With the *Power* course, I had in mind an exploration of the fantasies, illusions, pathologies, and ideals we associate with power. Having a limited number of years left to teach, and still other dreamed-up courses to offer, *Power* will, I suspect, never see the light of day.

165. Lawyers, notwithstanding the fantasies of law students, do not have real power, but they are closer to power (and the centers of power) than most citizens. Lawyers are mere agents, salesman (often selling the kind of medicine we know as "snake-oil"), and companions, to those in power, more than they are the possessors of it. And yes, a few lawyers acquire power by association with those who have it by obtaining wealth. They are powerful too, by way of delegation, acting for those who have real power. And we know that lawyers get entangled in the power conflicts of their client (and those that emanate from their private lives) and are badly mangled by these conflicts.

By watching lawyers at work, film-viewers get themselves a bit closer to power with all its glory and its evil. We are all, I think, curious about power, how it works, tempts, and corrupts. Some lawyers get close to power without being ruined by it. We assume it takes something akin to courage, and a bit of something known as character, to get close to power without being tainted by the perversity of it.

166. See ANITA HILL, *SPEAKING TRUTH TO POWER* (1997) (presenting Anita Hill's account of her participation in the Senate hearings on the nomination of Clarence Thomas to the Supreme Court).

167. See DAVID BROCK, *THE REAL ANITA HILL: THE UNTOLD STORY* (1994) (claiming that Anita Hill lied during the Clarence Thomas confirmation hearings). Brock, the former ultra-conservative, liberal-basher, has decided to renounce his old ways and confess that his methods and motives were not pure. See Alex Kuczynski & William Glaberson, *Book Author Says He Lied in His Attacks on Anita Hill in Bid to Aid Justice Thomas*, N.Y. TIMES, June 27, 2001, at A18 (reporting that David Brock admitted he lied in his book); David G. Savage, *Anita Hill Writer Says Judge Leaked FBI*

notorious truism—and in doing so, leave destruction in their path. Those who are not destroyed by power and the powerful become our heroes.

We find in lawyer films a world in which the wild energy of the lawyer represents an elemental form of truth, which stands in opposition to the ways of power and its destructive potential.¹⁶⁸ We watch film (and television) to escape the seething sense of futility and powerlessness we experience in the world we now inhabit. If we realize in watching lawyer films some deep desire to see the powerful opposed, to see them whine and wither as they confront defeat, prompting some nascent hope that the corruption of power can be comprehended and demystified, and from time to time defeated, then we will have found in lawyer films a worthwhile purpose.¹⁶⁹ When lawyer protagonists come to grips with power, either power out in the world or the sense of powerlessness in their own lives, we are touched at some deep place where desire remains unsettled and unsatisfied. In watching a lawyer film we may have learned something from what we have assumed was only entertainment.

IX. THE MEANING PROBLEM

In law school, we always know where meaning lies—the law is meaning—and sometimes students are lulled into believing that it is law and only law that they want or need to study. For law students, the first task, and sometimes the last, is to know what lawyers know—the law and how to use it.

A. *What Is Real to the Law Student?*

Oddly enough, there is quite early on in the life of the law student, a suspicion and a knowledge that law school cannot be the real thing, if by real we mean something which stands alone, an enterprise to be valued in and of itself. The student comes to grips with what is real (demanding, overwhelming, and sometimes overpowering) by seeing legal education,

Files, L.A. TIMES, Aug. 25, 2001, at A15 (reporting that David Brock admitted being commissioned to write a derogatory book about Anita Hill and how he obtained F.B.I. files from a judge). For the full confession (or as full of a confession as a liar is capable), see DAVID BROCK, *BLINDED BY THE RIGHT: THE CONSCIENCE OF AN EX-CONSERVATIVE* (2002).

168. Of course, there is a counter-pull, a lulled passivity, when we rely on lawyer films and television lawyer dramas to serve as our hope and our desire for justice; we are immobilized, even as we learn the true condition we are in.

169. “[M]any feel that movies can play an important part in attempts to create a more just society by showing ‘traces’ of the just world we long for.” LEGAL REELISM, *supra* note 50, at xv.

not as the real thing, but as a means to something real.¹⁷⁰ Whether the student is actually benefited or harmed by this way of dealing with the reality of law school can best be resolved by looking at storied accounts of how the student deals with law school.

There are distinct differences between the law students who are hell-bent on getting somewhere—and are more than willing to tell the speed with which they want to do it—and those who find law school a perfectly good time to reflect on where they come from and where they now find themselves.¹⁷¹ Both the reflective and non-reflective student must come to grips with the many and varied manifold tasks at hand. These tasks may feel and be experienced as *more* or *less* real. Some students are frustrated by the reality of what they experience—a “boot camp of the mind,” a “legal monastery,” a school for hired-guns, a summer camp for sophists, a haven for non-intellectuals, an ongoing study in the phenomenology of arrogance. Others find in law school a version of reality that makes real learning possible—a new way of thinking, and seeing with greater clarity, understanding how “facts” can be contested, and how law deals with and adjudicates contrasting and conflicting stories. Some students learn that lawyers are managers, makers, and tellers of stories, and that our role in these stories turns out to be a complex one. The student attuned to complexity learns how law and justice (the profane and the sacred) are perceived in the life to be led as a lawyer.

B. Meaning and Lawyer Films

We might, with these cursory remarks on meaning and the law student in mind, turn now to the idea of meaning and lawyer films. If we think of a lawyer film as a story to be put to use as a part of one’s education, then we might think of the film as a bridge to the future, as well as a way to think about where we have come from. A lawyer film offers a glance at where we are going, and where we have been; it connects the law student viewer

170. Legal education can be viewed as the managing of means to secure an end, or a step along the way, a rite of passage (in which one confronts a series of frustrating annoyances and obstacles, deviant characters, and a testing of one’s strengths and convictions). Legal education is simply not the reality we would have it be. The student puts law school into perspective by keeping in mind that law school is not the place they most want to be, but a place that takes them to that place. For most students, the idea of the law school journey is to get somewhere else; getting there is *not* being there and being there is what *really* counts.

171. In contrast to the student who sees the reality of law school as being the conveyor belt by which they are carried into the future, some students survive law school by looking back. The idea is not just becoming a lawyer but being a lawyer who carries something special home with him. Finding one’s way to law school is an arrival, a mark of distinction deserving celebration. It is having come from somewhere that makes law school special, and one’s arrival notable.

to an imagined (feared) future, as it reminds us of an imagined (feared) past.

And of course, a lawyer film can be an evening's entertainment—\$7.00 and an evening that allows you to escape your real-world worries, sorrows, and failures. Escaping from what ails you at \$4.00 or \$5.00 an hour (less than the minimum wage) sounds like a real bargain. We might, somewhere along the way, want to think about the lawyer film as entertainment, how it got to be so, and how it allows us to escape, even as it brings us back around to realities of the mundane worlds we inhabit.

If there is a central, thematic message in popular culture studies and film studies, it is this: we should take our entertainment seriously. One of the founders of popular culture studies puts the point this way:

Popular culture is not only entertainment, not only the media. It covers 98-99 percent of American society today in one way or another. It is the life-scene, the life-action, the way of existence of nearly all Americans, and it creates the culture in which all must live, even the few among us who claim to hate and be unaffected by it. Popular culture is the way we live while we're awake, how we sleep and what we dream.¹⁷²

Lawyer films, with their prominence in popular culture, require study, questioning, and exploration.

The academics in popular culture and film studies tell us that films require interpretation. This means that a film, like any text, can be read, and it can be read for its depths. The basic idea of interpretation is simply this: for every surface, there is a depth. Some surfaces may be more suggestive of their depths than others, while some surfaces may betray depths so shallow that they waste our time in trying to read them. And for some surfaces, we may well find ourselves staring into depths that go on . . . and on . . . beyond our limited knowledge, perhaps even beyond what we can readily imagine. We have in lawyer films the shallowness of an evening's entertainment, the depths of our desires, and the serious possibility of education.

Of course, the academic who speaks to us from popular culture and film studies, who claims that films require interpretation, may mean we need "theory" to read a film. Having once been enamored with theory, it requires no gut-wrenching confession to admit that we may need far less theory than academics would have us try to digest. My ambivalence about film theory can be put this way: theory, whether psychoanalytic, feminist,

172. Ray B. Browne, *Why Should Lawyers Study Popular Culture?*, in *THE LAWYER AND POPULAR CULTURE: PROCEEDINGS OF A CONFERENCE*, *supra* note 75, at 7, 7.

structuralist, or Marxist, sets up a framework, a structure, a language, and a method of analysis, and in doing so becomes the engine that drives the critique. There are two obvious problems with film theory. First, the text interpreted is “made” or “found” to fit the theory, thus endangering the life, vitality, and meaning of the text. The theory competes with the text for our attention, and often, overwhelms the text being interpreted. The object becomes theory, the text an incident or an occasion for elaborating the theory. The more elaborate the theory, the more endangered the text. Second, while we assume that it is the theory that makes the revelation of meaning possible (and it sometimes does exactly that), we may also find that meaning resists capture by our interpretative theory nets.¹⁷³

With the admitted practical orientation of the law student (which can be frighteningly ugly in its crudest embodiment), and my own revisionist thinking about the misplaced role of theory, I am prompted to find a different way of approaching lawyer films. It begins with this question: How is this text to be used? What we are doing in law school when we read a lawyer story, or watch a lawyer film, is really quite simple. We are trying to figure out not where the story/narrative/novel/film belongs in an academic study of the text (a placement we may leave to literature and film studies students),¹⁷⁴ but where the text belongs in our lives, its use in figuring out where we are, what we are doing, and where we are going. It is this view of the text, and its place in a law school curriculum, that has us asking: What am I to do with this text, this story, this film? Can I use it? Can I read it so it becomes useful? And, can it be read so that it has a place in what I am trying to learn about myself, about the role I adopt as a lawyer, and about the identity that seems to accompany this? Interpretation in service of use sounds right to me. Interpretation that takes the reader through the theory thicket is just another way to get lost.

With this understanding of what I want to do with students in a lawyer film course, I was intrigued by the suggestion of Tim Bywater and Thomas Sobchack in *An Introduction to Film Criticism* that the basic purpose of

173. Wendell Berry, the Kentucky farmer, novelist, poet, essayist, and philosopher, notes that: “Our knowledge of the world instructs us first of all that the world is greater than our knowledge of it.” WENDELL BERRY, *STANDING BY WORDS* 65 (1983). An academic enamored with theory—doing it, writing it, studying it, and teaching it—may miss Berry’s point, and make theory the God of knowledge rather than its servant.

An experiential approach to theory suggests that either one has an affinity for theory, or one does not. One has either the mind for it, or the mind to avoid it. As a scholar, one either produces it, or one consciously tries to produce readings that keep theory in its place. As a student, one either appreciates theory, or disdains it. And, having set up this oppositional framework, one can readily see that theory is more complex than this simple opposition would suggest.

174. There may be some need to do the kind of work that literature and film studies academics call interpretation, but we will not adopt their devotion to theory to do it.

film criticism is “to increase the possibilities of meaning available in the experiences of viewing and thinking about movies.”¹⁷⁵ Bywater and Sobchack describe a “humanist approach” to reading films of the sort we might undertake in legal education that differs from an academic investigation of film “as an aesthetic, social, and historical phenomenon.”¹⁷⁶ The work of the humanist film-reader is straight-forward (even when it is not simple): “[T]he humanist approach to film attempts to make sense of the individual’s emotional and intellectual experience of a film (it always begins with that personal encounter with the work), to draw conclusions about the value of that experience, and then to communicate that value to others.”¹⁷⁷ The question that lies at the heart of the humanistic approach is this: “What can movies tell us about the human condition?”¹⁷⁸ This question spawns a host of others dealing with how we are to get the “ideas . . . hidden beneath the surface of a film.”¹⁷⁹

Bywater and Sobchack find two implicit assumptions in the humanist approach:

(1) that movies are more than simple entertainment and deserve a backward glance, some extra thought, some writing about, in order for us to understand the experience of filmgoing more thoroughly and (2) that since movies are about human experiences, any human who has some interest in intellectual matters in general can write intelligently about the experience of the movies.¹⁸⁰

They conclude that “[f]or the humanist, critical inquiry, intellectual curiosity, and logical analysis of all aspects of experience are habitual responses to life” and it is this habitual response that the humanist critic brings to the “the film experience” where the critic tries “to discern . . . the mark of human excellence.”¹⁸¹ The stories most inviting to a humanist inquiry are the stories and fictions that “provide a place or point in time

175. BYWATER & SOBCHACK, *supra* note 110, at xiii.

176. *Id.* at xii, 25.

177. *Id.* at 25. It should be obvious that “[w]e respond to movies that have meaning for us,” and that often “we do not consciously know what specifically evokes the response.” Alexander J. Bolla, *The Portrayal of “Admiralty Law” in Films*, 31 J. MAR. L. & COM. 539, 539 (2000). Consequently, we have to “look inward, examine [our] own responses in more than a cursory way, and try to understand what it was that produced the initial response to the film.” BYWATER & SOBCHACK, *supra* note 110, at 43.

178. BYWATER & SOBCHACK, *supra* note 110, at 25.

179. *Id.* at 26.

180. *Id.* at 25. “This approach is called *humanist* because it sees film as an art like other arts, and film criticism as a general human activity practiced by the educated, cultured person.” *Id.*

181. *Id.* at 26–27.

where the viewer is invited to make comparisons between the story on the screen and the world in which the viewer exists."¹⁸²

CONCLUSION: AN UNUSUAL LAW SCHOOL COURSE?

As I complete work on this essay, I receive an email message from a reporter for *National Jurist*, Christine Willard, and she wants to know whether I might be willing to talk with her about my *Lawyers and Film* course. She is writing an article, she says, about unusual law school courses. I decided to talk with Ms. Willard, but did so in the misguided belief that I might be able to persuade her that *Lawyers and Film* should not be treated as an *unusual* course but as an *essential* one.¹⁸³ Indeed, I would argue that in teaching lawyer films my purpose is rather straight-forward and consistent with the kind of professional socialization and implicit curriculum courses I have been teaching for twenty-five years. Yet, for some reason, the idea of teaching films in a law school sounds unusual.

When I say my purpose in teaching lawyer films is straight-forward, I mean, I am exploring questions that are central to a student's legal education, even if they happen to be questions which are not consistently raised in more traditional courses. How does one get to be a lawyer, and once you have gotten to be a lawyer what does it mean? And, what does it mean in terms of who you are and how you live? These meaning questions and concerns are present—if implied—in everything we do in legal education. That these questions do not appear on the syllabus of most law school courses does not erase them (although it may devalue and discount them in subtle ways when they do get raised).

The questions I raise in the *Lawyers and Film* course are not unusual, at least in my teaching. There is something unusual in the teaching of a lawyer films course only if one finds it unusual to return, again, to central questions of real importance.

182. *Id.* at 38.

183. When Ms. Willard's article appeared, it was titled, *Cool Courses*. Christine Willard, *Cool Courses*, NAT'L JURIST, Sept. 2003, at 35, 37.

APPENDIX A: THE LAWYER FILM GENRE

Legal films suggest a subject matter, if not a genre. But there does seem to be a consensus, at least among legal film critics, that trial or courtroom drama films are likely candidates for genre status,¹⁸⁴ although the genre has not as yet been widely recognized in film criticism literature. We do not as yet have in place a scholarly definition of the legal film genre and I do not plan to offer one here since my focus has not been legal films, but a more limited array of lawyer films, which can themselves be viewed from a genre perspective.¹⁸⁵ In my view, it is lawyer films, rather than the

184. Steve Greenfield and Guy Osborn relate the trial/courtroom genre to what they call the "theatre of law" and note that:

The courtroom has long been used as a vehicle for drama. It is an arena in which dramatic tension can easily be built, and with the added ease of constructing grand soliloquy and speech. This trend is echoed in film portrayals and advocacy offers the chance for an actor to display great oratory. Historically, the classic law film has revolved around a formal and serious courtroom drama with clear identification of the search for justice. Prime examples of the genre include *Young Mr Lincoln* ,[sic] *To Kill A Mockingbird*, *Inherit the Wind*, and through to more contemporary examples such as *Suspect*, *The Verdict* and *Philadelphia*. In addition, films such as *Brothers in Law* and *My Cousin Vinny* have ploughed the comedic quality of lawyers and legal process.

Steve Greenfield & Guy Osborn, *Film, Law and the Delivery of Justice: The Case of Judge Dredd and the Disappearing Courtroom*, 6 J. CRIM. JUST. & POPULAR CULTURE 35, 36 (1999), available at <http://www.albany.edu/scj/jcipc/vol6is2/greenfield.html>. Greenfield and Osborn go on to point out that while we may use the trial/courtroom feature of the film for placement in the legal film genre, these films are all "open to broader meanings and interpretations." *Id.* It may well be these broader meanings that make the films important in the education of law students.

The fascination with the trial and courtroom warriors runs deep in American culture. The trial ritual offers wonderful cinematic possibilities of tension and drama. In addition, in America, which lacks a state religion, law and depictions of judges as minions of the secular god (law) have become a national substitute for the universal church.

Lawrence Fleischer, Book Review, N.Y. L.J., Oct. 1, 1996 (reviewing BERGMAN & ASIMOW, *supra* note 82, available at <http://www.law.ucla.edu/faculty/bios/asimow/book/review33.htm>).

185. The lawyer film genre is, of course, clearly related to the legal film and courtroom drama film. However, as the scholarly work on lawyer films progresses, we may find legal scholars drawing more on the Western, detective, crime, and film noir genres to provide the first working outlines of a lawyer film genre than on legal film. Anthony Chase notes that "[t]he overlap[s] between the legal genre and a host of others (crime, gangster, prison, melodrama, western, science fiction, social science fiction, slapstick comedy, and so forth) immediately complicates the [genre] question in interesting ways." Anthony Chase, *Civil Action Cinema*, 1999 L. REV. M.S.U.-D.C.L. 945, 945-46. Chase goes on to note that:

Popular fascination with crime, in short, gives you bestselling mysteries; professional fascination with crime, devoid of sentiment, gives you the defense lawyer. Considering the public's addiction to the facts of crime, it is hardly surprising that the legal trial genre is dominated by the high drama of criminal trials. But the professional and moral predicament faced by a defense attorney

courtroom drama genre films, that is of greater value to law students.¹⁸⁶ Law schools, as one of their several missions, prepare students for litigation, placing the central mission of law school in competition with the meager technical offerings of courtroom genre films. We may be offering a first level education as a trial lawyer, but law schools do virtually nothing to address the problem of how one is to go about living with the law.

Let me present here a preliminary, working thesis, and suggest that there is a lawyer film genre and that we can begin, tentatively, to outline its structural features. Lawyer films, seen from a genre perspective, contain some set of the following structural elements:

- the film's protagonist, central character, or narrator is a lawyer;

with a guilty client (*Knock on Any Door*, *And Justice for All*, *Compulsion*, *Jagged Edge*, *Criminal Law*, *Guilty as Sin*, *Primal Fear*), is only one subcategory of the criminal trial film. Perhaps more familiar, or at least traditional, is the heroic tale of a defender who represents the innocent (*Young Mr. Lincoln*, *To Kill a Mockingbird*, *Suspect*, *Presumed Innocent*).

And just as it would be a mistake to collapse the legal genre itself into trial films, it would also be erroneous to believe that criminal trials exhaust the cannon of courtroom confrontation in fiction and film. There is still the civil side.

Id. at 947–48.

On the Western as a genre of interest to lawyer film students, consider that the Western involved protagonists engaged in the fundamental struggle over law and order. This struggle takes place in a world both harsh and brutal where the forces associated with good and evil can still be readily identified, and the individual who most readily stands out in this social world is the man or woman with courage. The West in film is,

a place where simple survival was difficult, a place where nature was uncompromising, just as society had been uncompromising in the places they had left. The West offered the possibility of a new beginning, of re-founding, of establishing governments from reflection and choice, rather than mishaps of birth and tradition. In the West, it was thought, they had it in their power to make the world over again. But the Western movie showed that even in a new land, the law was not easily established on principles of justice and the common good.

Marini, *supra* note 67, at 57. Marini goes on to note:

The Western, therefore, could raise the question concerning the supposed virtues of progress, and the forces—perhaps more virtuous—opposed to it. It did not take the superiority of civilization for granted. The law, and civilization, too, had to justify itself in an almost philosophic way. It is for this reason that the appeal of the Western was a universal, not just an American, phenomenon.

Id. at 58. On the Western genre, its narrative conventions, structural components, and mythic significance, see WRIGHT, *supra* note 102. Will Wright's *Sixguns & Society* is required reading for anyone seeking to do genre work on lawyer films.

For an effort to draw parallels between film noir and legal film genres, see Norman Rosenberg, *Film Noir*, in LEGAL REELISM, *supra* note 50, at 280–302.

186. I am trying to define a specific kind of legal film in which there is a particular focus on the lawyer and the lawyer's world. A film may feature a lawyer and still not be a lawyer film, and there are both legal and courtroom dramas which focus on the larger world within which a lawyers' work takes place.

- the film presents the lawyer engaged in professional work;
- the lawyer's work (and the ordinary world in which that work takes place) has been significantly disrupted either by a client's case or cause,¹⁸⁷ or by some feature of the lawyer's work, her life in the firm, or some event in the lawyer's personal life;¹⁸⁸
- the ordinary world of the lawyer (which we may find to be "ordinary" only to the lawyer!) is subject to a significant threat (loss of the client's case, or loss of professional status/marriage/family from actions of the client, agents of the client, or sustained loss to the lawyer himself) that threatens the lawyer with disorder;¹⁸⁹
- the threat of dissolution, loss, identity deformation, harm must be addressed and is addressed by the lawyer's resort to professional (legal) and personal resources (character); in addressing the threat the lawyer's work and the meaning of that work is at stake (as are other things of value);¹⁹⁰

187. Kristin Thompson observes that "Hollywood protagonists tend to be active, to seek out goals and pursue them rather than having goals simply thrust upon them. Almost invariably, the protagonist's goals define the main lines of action." THOMPSON, *supra* note 87, at 14. The protagonist in a lawyer film provides a different perspective on this fundamental narrative convention in that the lawyer's goals and pursuits are often defined by a client's case or course that places the lawyer in conflict with others (or with himself).

188. The lawyer may, in some lawyer films, be acting as a surrogate, agent, or representative for a client whose ordinary world has been significantly disrupted, whose character/identity/work are at stake and who then seeks reparation of his situation by way of the lawyer's resort to legal remedies.

189. The lawyer, in confronting enemies (who are the sources and causes of the disruption in his life and in his work, or in his client's life or work) and in using his tools/resources/character as a lawyer, ends up implicating larger social institutions.

Storytelling . . . is always the story of the individual in some sort of relationship to his social, political, or cultural environment. He can found that environment, he can civilize it, he can find it confusing, or he can hate it: but the basic terms of story are, like the basic terms of any human being's relationship to his world . . .

MCCONNELL, *supra* note 67, at 6.

190. *L.A. Law* marketed a substantially different kind of lawyer television drama, different in that it focused on the ethical and personal lives of lawyers. Where Perry Mason had been a detective hero, always seeing to it that the innocent were acquitted, *L.A. Law* showed lawyers at times working hard to acquit the guilty, at all times working hard to make lots of money, and rarely working hard to follow strict legal ethics.

Charles B. Rosenberg, *The Myth of Perfection*, 24 NOVA L. REV. 641, 644 (2000). The format of *L.A. Law* was, according to Rosenberg, a "mix of the personal and the substantive." *Id.* *L.A. Law* aired in the fall of 1986, ran for eight years (1986–1994), and was "the first true 'blockbuster' legal show, watched

- the lawyer may, as part of the narrative, be involved in litigation which may result in a significant courtroom drama (and the courtroom drama may play a significant part in the film) or the entire film (story) may lead to the trial and the trial becomes a central feature of the film;
- the lawyer's work, engagements with clients, and efforts to marshal his own psychological resources require an encounter with substantial obstacles that require something akin to a heroic effort to overcome.

Basically, what we find in lawyer films is a four part narrative structure:

- When first viewed, the lawyer is: fallen and in disarray (Frank Galvin in *The Verdict*), the lawyer is a rising star (*The Devil's Advocate*, *A Time to Kill*), the lawyer is an existing legal star (*Primal Fear*, *A Civil Action*);¹⁹¹ the lawyer is in a mid- or later-life crisis (*Anatomy of a Murder*, *The Sweet Hereafter*, *Class Action*), or the lawyer is neither fallen, nor a star, but bound to the endless world of routine (*Suspect*, *And Justice for All*, *Adam's Rib*, *Erin Brockovich*). The fallen star characterization is commonly assigned to the secondary/supporting roles in various lawyer films. Secondary/supporting lawyers may be mentors to the protagonist or may betray the protagonist as he/she tries to overcome the obstacles confronted during the course of the film.
- The lawyer's world—fallen, rising, descending, stuck at mid-life, or stuck in a lawyer's routines—must now be disrupted (by one or a series of events), a disruption that is precipitated by the appearance

some weeks by as many as forty million people." *Id.* We might see the precursor of *L.A. Law* in earlier lawyer films, in particular *Anatomy of a Murder* (1959) (portraying the work of an admirable lawyer for a client we assume was guilty) and *The Verdict* (1982) (portraying a lawyer whose personal and professional life is in substantial disarray, and who engages in questionable ethical conduct, although his civil client is deserving). If it is the "ethical and personal lives of lawyers" that marks the modern turn in lawyer films, the development might be traced to *Adam's Rib* (1949) and *To Kill a Mockingbird* (1962).

191. In lawyer films, we typically see lawyers at the top of their form, high and mighty, and we expect them to take a fall and to learn they missed something along the way. We expect that even the high and mighty still have something to learn, something their success may have helped them to avoid learning. Indeed, those films usually feature part of the lawyer's delusions about themselves and about their world.

of a particular client/case. The appearance of the client moves the story character from the opening state of affairs (settled or in disarray) and threatens the present order (a threat of a still deeper fall or a hastening of the decline).

- The fallen lawyer must seek, against opposition and by overcoming obstacles, a more secure place in the world; that is, the fallen lawyer must seek redemption. The path of the rising star must be threatened by obstacles and opposition that block the ascent and threaten a great downfall. The star's place at the top of the heap must be questioned or challenged. A mid-life crisis may loom (if the lawyer has already lost his or her family, then his legal practice may now be at stake). The everyday routine work of the lawyer must in some way become extraordinary, as in *And Justice for All*, or in Amanda Bonner's decision to take a case in which she opposes her husband, Adam Bonner, in *Adam's Rib*, or the hostile reactions of a community in *A Civil Action*, or the hostility of a client in *The Verdict*.
- With the lawyer's world and work, and the lawyer's position in this world established, and then threatened, the lawyer having responded in more or less ethically acceptable ways to the challenge, must now resolve the conflicts in which he or she has been placed by the disorder in his or her life. The nature of the response turns on the lawyer's character. The response leads to a resolution and the reordering of the lawyer's world, or to a new life beyond law's reach.

APPENDIX B: LAWYER FILMS PEDAGOGY: QUESTIONS WE RAISE

To translate the "implicit curriculum" into a set of explicit, practical concerns that might provide guidance for our work in a lawyers film course, I propose the following questions for those who ask: What is this *Lawyers and Film* course all about? What are we to do with these lawyer films? What is it that you expect us to learn?

On Being a Lawyer and Learning about Ourselves: What, if anything, do we learn about lawyers, from lawyer films? And, how are we to go about doing this "learning"? What obstacles do we confront in trying to learn something about lawyers from lawyer films? And perhaps still more important, what can we learn about ourselves from film representations of

lawyers?¹⁹²

The "High" and the "Low" (the lawyer as hero and as villain): How are the ideals and the pathologies associated with a life in law portrayed in film? How does the fictional film lawyer help us see and understand the allure of a life in law and to understand that law has a mythic dimension? What neurotic and dysfunctional aspects of character and psyche do we find in film lawyers? And, how do the pathologies we find in film lawyers reflect our own pathologies?¹⁹³

Clients and Our Relationships with Them: How do lawyers engage and respond to clients in lawyer films?

The Lawyer's World: What kind of social world do film lawyers inhabit? That is, what kind of families do they have? To what communities do film lawyers belong and how do they act as members of those communities? What do film lawyers teach us about friendship, loyalty, and betrayal? In what sense are the social worlds inhabited by the lawyer healthy or perverse? How do lawyers create and disrupt the communities they inhabit?

Being Critics: How do the lawyers we find in film represent and reinforce particular ideological stances? How do they rebel against law and legal ideology?¹⁹⁴ And, what new critical perspective do lawyer films make

192. Films "not only document who we think we are—and were—but also reflect the inconsistencies in our self-image." Eileen T. Bender, *Malice in Wonderland: American Working-Girl Scenarios, in THE MORAL IMAGINATION: HOW LITERATURE AND FILMS CAN STIMULATE ETHICAL REFLECTION IN THE BUSINESS WORLD* 53, 59 (Oliver F. Williams ed., 1997). "A critic may extend his frame of reference as far as it will bear extension, but it seems to me almost self-evident that he should start with the simple acknowledgment of his own relation to the object he criticizes . . ." WARSHOW, *supra* note 12, at 26.

We have long claimed in legal education that students are to take responsibility for their own learning, but what we do not teach is how the student might make himself or herself a subject of study. To see ourselves as a subject of study, we must learn to engage in reflection and introspection. It is crucial for a student to develop a sense of who she is as a person at the same time that she acquires a legal mind. The effort to learn the law, solve legal problems, and utilize lawyering skills, requires the development of a searching mind, attention to detail and form, perseverance, a desire to get things done right, clarity of vision, performative skills, and finally, a moral/ethical sensibility. From this rather short list, it is possible to see that becoming a lawyer demands a great deal; it can demand all one has to give *and more*. Being a law student engages the whole person, an engagement that legal education simply does not address. The way a student expects to live out the lawyer story affects the way law is learned and law is practiced. The values and beliefs, and the conflicts created as these values and beliefs are lived, constitute a story that deserves attention.

193. Film lawyers present, in the most stark and dramatic fashion, a visually enhanced story of how we adopt and adapt to a role that is often allowed to dominate one's life. On the psychological aspects of a lawyer's role and person, see BENJAMIN SELLS, *THE SOUL OF THE LAW* (1994) (Sells was a litigator with a large Chicago firm and is now an archetypal psychotherapist in private practice in Chicago.) For an effort to address the pathologies of lawyering drawing on literature, see James R. Elkins, *Pathologizing Professional Life: Psycho-Literary Case Stories*, 18 VT. L. REV. 581 (1994).

194. There is, for some, a belief that lawyers are so deeply involved in the present social order

possible?¹⁹⁵

The Place of Lawyer Films in Popular Culture: How can we account for the popularity of lawyer films (and lawyer television dramas)?¹⁹⁶ And, is our present preoccupation with lawyers and law in popular culture (lawyer films, novels, TV dramas) a positive or negative element in contemporary society?

Lawyer Films as a Genre: Do lawyer films constitute a film genre and if so, how is it to be described?¹⁹⁷ David Chandler, in his *Introduction to Genre Theory*,¹⁹⁸ poses some questions about genre that I have adapted for students in my lawyer films course: Is there a lawyer film genre? What films suggest the existence of such a genre? What conventions and story patterns are common to the genre? How do these genre conventions shape and constrain the meaning we attribute to such films? What ideological assumptions and values do we find embedded in lawyer films? What “pleasures” do we associate with watching lawyer films? To what audience are lawyer films directed?

Study of Film: How does film differ from other media in which lawyers are portrayed (television dramas, Court TV, novels, journalistic accounts)? How do films, and their particular mode of production, affect the portrayal of lawyers? What particular difficulties might one face in reading, interpreting, and understanding the social, political, and cultural messages

that they cannot be effective critics of that order. This “we are all part of the problem” view does not allow us to distinguish between those who are so much a part of the system that they actively replicate it and those who question the system and attempt (even if in small ways) to combat it. We may all be more or less part of the problem but there is something to be said for trying to distinguish between those who are “more” and those who are “less” captives of the system. If we do not know the difference between those who represent the “system” (by way of their profound faith in it) and those who question the “system” (and are critical of the established faith in it), then we are destined for real trouble.

195. We find the suggestion in some quarters that legal films offer a critical perspective missing in legal education. Arguably, legal/lawyer films are particularly useful for those who explore the role of law and lawyers in a social and political context, and engage in ideological analysis. See, e.g., Rebecca Johnson & Ruth Buchanan, *Getting the Insider's Story Out: What Popular Film Can Tell Us About Legal Method's Dirty Secrets*, 20 WINDSOR Y.B. ACCESS JUST. 87, 88 (2001) (calling for a “new critical cinematic legal methodology”). Johnson and Buchanan argue that we should use films to illuminate the “shadowy corners of our own discipline” because legal films provide insight into “our own disciplinary blind spots.” *Id.* at 88–89.

196. “If we are to comprehend the public view of the legal profession in our society, American film must be seen as more than a pleasant or even challenging diversion.” Rennard Strickland, *The Cinematic Lawyer: The Magic Mirror and the Silver Screen*, 22 OKLA. CITY U. L. REV. 13, 14 (1997).

197. See *supra* Appendix A.

198. David Chandler, *Introduction to Genre Theory*, at <http://www.aber.ac.uk/media/Documents/intgenre/intgenre.html> (last visited Mar. 11, 2004). For more on film genre, see MICHAEL RYAN & DOUGLAS KELLNER, *CAMERA POLITICA: THE POLITICS AND IDEOLOGY OF CONTEMPORARY HOLLYWOOD FILM* 76–105 (1988) (paralleling the mid-1970s rise of conservatism in American politics with the transformation of a variety of film genres).

presented (encoded) in lawyer films? How does film differ from other forms of representation as a medium of instruction and source of cultural information? What elements of film (e.g., story-telling, narrative, drama, mythology, visual presentation, ideological critique) are of particular interest to lawyers? Do students of law (and lawyers) confront particular problems in working with the images of lawyers in film? Can we work with lawyer films in a serious, critical, reflective way without undertaking a study of the various "schools" of film theory?¹⁹⁹ And, can we, by watching

199. In teaching lawyer films, I assign minimal reading and commentary *about* films and no readings about the particular films we study in the course. I do so with the realization that film studies is an established academic discipline and that there is a substantial body of scholarly research and writing on films. The problem, simply put, is that most research and writing on film studies and film theory is irrelevant to the law student, who is studying to be a lawyer rather than a filmmaker, or a film critic. The background readings I recommend to students are drawn both from the web and selected texts, which I find to be of practical value, not only in reading lawyer films, but in legal storytelling more generally. With these criteria in mind, I recommend ROBERT MCKEE, *STORY: SUBSTANCE, STRUCTURE, STYLE, AND THE PRINCIPLES OF SCREENWRITING* (1997) and CHRISTOPHER VOGLER, *THE WRITER'S JOURNEY: MYTHIC STRUCTURE FOR WRITERS* (2d ed., 1998). While both the McKee and Vogler books ostensibly focus on screen writing, they provide insight into the "deep structure" of film narrative and thus, by implication, the kind of narratives with which lawyers must work. These screenwriting texts focus on how stories are constructed and what makes stories work.

The literature on screen writing can be contrasted to the academic work on film theory (and the interpretation of film), which is so littered with academic jargon and theoretical posturing that it is hard to find scholarly work that is both accessible and relevant to the non-film studies student. I recommend McKee and Vogler to students because they suggest a way to read lawyer films, and, in their focus on narrative (and myth), can help us understand something about the practice of law. I stay away from film criticism, for reasons suggested by Ray Carney, who noted that:

The vocabulary of formalist criticism represents an attempt to give its methods a pseudo-scientific rigor and precision. It's an open secret that film study is ghettoized in the American university and that film scholars, still not taken quite seriously by their colleagues in the humanities, are forced to overcome a kind of academic inferiority complex. One of the ways they have responded to this sense of being second-class citizens in the arts is by doing what any other threatened guild does: attempting to legitimize their field by developing an esoteric methodology and a specialized language.

Ray Carney, *A Polemical Introduction: The Road Not Taken*, in 11 *POSTSCRIPT: ESSAYS IN FILM AND THE HUMANITIES* No. 2, at 3–12 (1992), *excerpts reprinted in* RAY CARNEY, *ACADEMIC FADS AND FASHIONS: THE FUNCTIONS OF CRITICISM*, at <http://people.bu.edu/rcarney/acad/irony2.shtml> (last visited Mar. 9, 2004). The formalists, Carney argues, ignore "the most meaningful and important parts of an artistic experience—the content, tone, feelings, emotions, characters, acting, understanding of life embodied in the world. The formalist account gives us films with style a mile high and knowledge of life an inch deep." *Id.* Carney further notes that:

Most contemporary academic criticism is . . . not humble, but superior, skeptical, smug, and knowing. The critical stance does not involve intimacy with the text in all of its particularity, but flying 50,000 feet above it in a realm of ideological abstractions, swooping down on it only occasionally, for selected evidence to bolster a predetermined position. Most importantly, it does not involve lovingly opening oneself to the work, *learning* from it, but more often than not, *debunking* it: exposing its so-called "complicity with the reigning ideology," and, as far as possible, reducing the work to its political, social, and material origins.

films, discussing them, and arguing about them, build a strategy for reading films from the ground up?²⁰⁰

"Reading" Film: The central problem, for the student of lawyer films, can be simply put: How is the film to be read?²⁰¹ What can the film mean to those of us who have set out to become lawyers? And, how can the film be put to use in understanding the professional life I have undertaken?

Interview by David Sterritt, Staff Writer of the Christian Science Monitor with Ray Carney, Professor Boston University (2004), *excerpts reprinted in* Ray Carney, *Challenging Truths*, at <http://people.bu.edu/rcarney/acad/crit.htm> (last visited Mar. 10, 2004). The interview was conducted in preparation for an article Sterritt subsequently published in the *Christian Monitor* about Ray Carney's biography of John Cassavetes. David Sterritt, *A New Look at John Cassavetes*, *CHRISTIAN SCI. MONITOR*, May 10, 1994.

200. I teach lawyer films with the assumption that we can find and devise strategies for reading films, knowing as we do that others, for other purposes, have studied and written about films. Ray Carney, asked whether watching film is a skill that can be learned:

I better believe that it is something that you can learn and something that can be taught! Because that's my job—helping students learn how to see and think in new ways. That's what all teachers do. . . . They show students new ways of thinking—not just new names and dates and facts—but whole new ways of understanding. And it's what art does too. It teaches us new ways of knowing, new ways of thinking about our lives. That's what all real learning consists of. But, of course, that takes a lot of effort, and, being human, we resist that sort of learning. We want to remain in our old habitual grooves.

Carney, *supra* note 17.

201. I use the term "reading" to suggest that a film is a text, and like all texts it must be read to be understood. By understood, I stress that the purpose of reading is to put the text to use (in contrast to what is called interpretation). One reason to focus on "reading" a film is that reading is something students purportedly know how to do. Every student assumes they know what to do when asked to read. The problem, of course, is that students in a film course are no better prepared to read a film than they are *Billy Budd* or a judicial opinion.

The idea of reading a film as a text, and one to which I subscribe, has been described by Alan Stone as a method "premised on a conventional illusion—that the text [that is, the film] is the product of a single mind, and has sufficient coherence to stand as a 'text' that can be interpreted." Stone, *supra* note 62, at 588 n.37. Stone notes however that this "textualist approach" and "appeal to coherence should be familiar to lawyers and judges, who are basically involved in efforts to interpret law and the intentions of law-makers." *Id.* Basically,

like novels, short stories, plays, poems, and essays, films are a medium through which stories are told and the moods and images of America given shape and specific articulation. As a form of American literature, films reflect in a deceptively effortless way the nightmare and dream imagery which is part of our aesthetic and cultural heritage.

Vivian C. Sobchack, *Beyond Visual Aids: American Film as American Culture*, 32 *AM. QUART.* 280, 291–92 (1980).

I have not, in my use of the term "reading," relied on well-known film studies texts, which also use this descriptive phrase. For example, see JAMES MONACO, *HOW TO READ A FILM: THE ART TECHNOLOGY, LANGUAGE, HISTORY, AND THEORY OF FILM AND MEDIA* (1977) and JOHN IZOD, *READING THE SCREEN: AN INTRODUCTION TO FILM STUDIES* (1984).

APPENDIX C: JURISPRUDENCE AND FILM

I have never managed to teach a "Jurisprudence and Film" course, but the decision to drop '*Breaker*' Morant (Pact Prod. 1980) from the *Lawyer and Film* course film list set me to thinking about "jurisprudence" films. My working list for the jurisprudence film course now includes: *A Cry in the Dark* (Warner Bros. 1988); *A Dry White Season* (Sundance Prod. 1989); *A Man for All Seasons* (Open Road 1966); *Amistad* (Dreamworks SKG 1997); *Brubaker* (Twentieth Century Fox 1980); *Cool Hand Luke* (Warner Bros. 1967); *Dead Man Walking* (PolyGram Filmed Entm't. 1995); *Dirty Pictures* (Metro-Goldwyn-Mayer 2000); *Falling Down* (Warner Bros. 1993); *Ghosts of Mississippi* (Columbia Pictures Corp. 1996); *Incident at Oglala: The Leonard Peltier Story* (Spanish Fork Motion Pictures 1992); *Inherit the Wind* (Comitas Prod. Inc. 1960); *In the Name of the Father* (Universal Pictures 1994); *I Want to Live!* (Figaro Films 1958); *JFK* (Warner Bros. 1991); *Judgment at Nuremberg* (United Artists 1961); *Mad Max* (Mad Max Films 1979); *Mad Max Beyond Thunderdome* (Kennedy Miller Prod. 1985); *Mad Max 2: The Road Warrior* (Kennedy Miller Prod. 1981); *Missing* (Universal Pictures 1982); *Natural Born Killers* (Trimark Pictures 1994); *Rashomon* (Daiei Studios 1950); *Reversal of Fortune* (Warner Studios 1991); *Snow Falling on Cedars* (Universal Pictures 2000); *Star Chamber* (Twentieth Century Fox 1983); *Straight Time* (Warner Bros. 1978); *The Advocate* (Miramax Home Entm't 1994); *The Birdman of Alcatraz* (Norma 1962); *The Green Mile* (Castle Rock Entm't 1999); *The Insider* (Touchstone Pictures 1999); *The Man Who Shot Liberty Valence* (Paramount Pictures 1962); *The Ox-Bow Incident* (Twentieth Century Fox 1943); *The Paper Chase* (Twentieth Century Fox 1973); *The People vs. Larry Flynt* (Columbia Pictures Corp. 1996); *The Shawshank Redemption* (Columbia Pictures Corp. 1994); *The Thin Blue Line* (American Playhouse 1988); *The Winslow Boy* (Winslow Partners Ltd. 1999); *Twelve Angry Men* (Orion-Nova Prod. 1957); and *Z* (Valoria Films 1969).

Brubaker (Twentieth Century Fox 1980), *Cool Land Luke* (Warner Bros. 1967), *Dead Man Walking* (Havoc 1995), *I Want to Live* (Figaro Films 1958), *The Birdman of Alcatraz* (Norma 1962), *The Green Mile* (Castle Rock Entm't 1999), and *The Shawshank Redemption* (Columbia Pictures 1994) are films about the death penalty, prisons, prison life, and prison administration. On the portrayal of prisons in film, see Melvin Gutterman, "Failure to Communicate" *The Reel Prison Experience*, 55 SMU L. REV. 1515 (2002); Teree E. Foster, *I Want to Live! Federal Judicial Values in Death Penalty Cases: Preservation of Rights or Punctuality of Execution?* 22 OKLA. CITY U. L. REV. 63 (1997); William

Haltom, *Laws of God, Laws of Man: Power, Authority, and Influence in Cool Hand Luke*, 22 LEGAL STUD. F. 233 (1998); Roberta M. Harding, *Celluloid Death: Cinematic Depictions of Capital Punishment*, 30 U.S.F. L. REV. 1167 (1996); Carole Shapiro, *Do or Die: Does Dead Man Walking Run?*, 30 U.S.F. L. REV. 1143 (1996).

On the various "jurisprudence" films set forth in the list, see Carolyn Patty Blum, *Images of Lawyering and Political Activism in In the Name of the Father*, 30 U.S.F. L. REV. 1065 (1996); Robert Louis Felix, *The Ox-Bow Incident*, 24 LEGAL STUD. F. 645 (2000); Orit Kamir, *Judgment by Film: Socio-Legal Functions of Rashomon*, 12 YALE J.L. & HUMAN. 39 (2000); Paul A. LeBel, *Misdirecting Myths: The Legal and Cultural Significance of Distorted History in Popular Media*, 37 WAKE FOREST L. REV. 1035, 1041-42 (2002); Douglas O. Linder, *Salvaging Amistad*, 31 J. MAR. L. & COM. 559 (2000); Steven Lubet, *The Man Who Shot Liberty Valance: Truth or Justice in the Old West*, 48 UCLA L. REV. 353 (2000); Marini, *supra* note 67; Philip N. Meyer, *Criminality, Obsessive Compulsion, and Aesthetic Rage in "Straight Time,"* 25 LEGAL STUD. F. 441 (2001); Nell Minow, *"An Idea Is a Greater Monument Than a Cathedral": Deciding How We Know What We Know in Inherit the Wind*, 30 U.S.F. L. REV. 1225 (1996); Osborne M. Reynolds, Jr., *Review of Cool Hand Luke*, 22 OKLA. C. U. L. REV. 97 (1997); David S. Sokolow, *From Kurosawa to (Duncan) Kennedy: The Lessons of Rashomon for Current Legal Education*, 1991 WIS. L. REV. 969 (1991); Robert Waring, Z, 30 U.S.F. L. REV. 1077 (1996).

Incident at Oglala (Spanish Fork Motion Picture 1992) and *The Thin Blue Line* (American Playhouse 1988) are documentary films and the decision to include them in a film course based on fictional (commercial/Hollywood) films presents some interesting pedagogical issues.²⁰²

One might also want to address fact/fiction problems presented by films like *A Man for All Seasons* (Open Road 1966),²⁰³ *Ghosts of Mississippi* (Columbia Pictures Corp. 1996), *Inherit the Wind* (Lomitas Productions, Inc. 1960), and *Reversal of Fortune* (Warner Studios 1990), which are based on the lives of historical characters and events. For more

202. See Charles Musser, *Film Truth, Documentary, and the Law: Justice at the Margins*, 30 U.S.F. L. REV. 963 (1996) (discussing *The Thin Blue Line* as an example of documentaries on trials and the issues involving truth in the documentary).

203. *A Man for All Seasons* is a stunning film, made all the more interesting by a reading of the screenplay on which the film is based. The screenplay is based on ROBERT BOLT, *A MAN FOR ALL SEASONS: A PLAY IN TWO ACTS* (1962) (narrating the story of Thomas More and his conflict with King Henry VIII over his marriage to Anne Boleyn). For an intriguing analysis of the play, see Hauerwas & Shaffer, *supra* note 163; see also PETER ACKROYD, *THE LIFE OF THOMAS MORE* (1998) (chronicling the life of Thomas More).

on these fact/fiction problems, see Colleen Coughlin, *Law at the O.K. Corral: Reading Wyatt Earp Films*, 22 LEGAL STUD. F. 133 (1998) (analyzing a national ideology through the Wyatt Earp narratives); Steve Greenfield & Guy Osborn, *Pulped Fiction? Cinematic Parables of (In) Justice*, 30 U.S.F. L. REV. 1181 (1996) (analyzing films based on two landmark criminal cases); Paul A. Lebel, *Misdirecting Myths: The Legal and Cultural Significance of Distorted History in Popular Media*, 37 WAKE FOREST L. REV. 1035 (2002) (focusing on Oliver Stone's *JFK* and Steven Spielberg's *Amistad*).

With real-events-based films, it is all too easy to get side-tracked by the kind of questions that have followed Oliver Stone's real-events based films: Does this film "accurately" portray the characters and the real world events in which they were involved? Is the film a misreading of history? And, what does it mean when real world events and characters are so thoroughly reinterpreted that they become no more than creative impetus for a film? As interesting and important questions as these may be, they may absorb far too much psychic space to allow for the kind of inquiries that might be undertaken in a jurisprudence and film course.

