

**“DESPERATE FOR LOVE”:
CINEMATIC INFLUENCES UPON A DEFENDANT’S
CLOSING ARGUMENT TO A JURY**

Philip N. Meyer*

If you listen to the way people tell stories, you will hear that they tell them cinematically.

—David Mamet¹

It’s not a question of telling something that’s not true. It’s telling something that makes it true. That’s what makes a great trial lawyer.

—Professor Stephen Wizner²

If you’re ever in doubt about how to end your story, think in terms of an “up” ending. There are better ways to end your screenplays than have your character caught, shot, captured, die, or be murdered.

—Syd Field³

I spent the summer of 1991 at a mob trial in Hartford, Connecticut. The stories in that trial presented a remarkably complex interweaving of plots, counterplots, and subplots. There was drama, speculation as to motive and meaning, alternative visualizations of the past: a carnival of theatricality and storytelling. The mob trial was a story of events and judgments in a “field of pain and death.”⁴ The consequences of convictions for murder, attempted murder, conspiracy to commit murder and a plethora of other illegal activities were grave indeed. Nevertheless, the storytelling at the trial was surprisingly lighthearted. Several

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1. DAVID MAMET, *ON DIRECTING FILM 2* (1990).
2. Professor Stephen Wizner, *quoted in* Alix Biel, *To Wit*, *HARTFORD COURANT*, May 16, 1993, (Magazine), at 14, 19.
3. SYD FIELD, *SCREENPLAY: THE FOUNDATIONS OF SCREENWRITING 53* (expanded ed. 1984).
4. Robert M. Cover, *Violence and the Word*, 95 *YALE L.J.* 1601, 1601 (1986).

defendants spoke in tones of ironic detachment. This attitude was occasionally captured by the defendants' attorneys in direct examinations, cross-examinations and, especially, in the closing arguments.

The thirteen week trial of *United States v. Bianco*⁵ produced far more information than any member of the jury or audience, including this legally trained observer, could possibly assimilate. As the trial wore on, the jurors took progressively fewer notes. They were overwhelmed with facts, plots, subplots, and the layering of stories within stories. With the multiple counts and multiple defendants it was often difficult to tell what testimony and what story attached to what count in the indictment. The testimony exhausted the jury's and audience's attention span. Yet, even in the latter stages of the trial, moments of heightened drama captivated the audience.

The attorneys, like storytellers, adjusted their presentations to the dynamics of the event and the nature of the material, especially in their closing arguments. This article focuses on the closing argument by Jeremiah Donovan on behalf of one defendant, Louis Failla. This closing argument embodied stylistic practices that have emerged in the courtroom only recently. Donovan's argument was not structured according to textbook models.⁶ Instead, the content and imagistic sophistication of his closing argument anticipated characteristics of a new visual literacy.⁷

The first section of this article provides a thematic overview of Donovan's argument. Several portions of this closing argument are described. The second section of the article addresses principles of cinematic construction derived from screenwriting courses and manuals. This section discusses briefly how this nomenclature informs the nature of Donovan's closing argument. The argument presented a three-part narrative structure akin to the three act classical dramatic structure as reconfigured in commercial film. The similarities are remarkable; it is as if the aesthetic concerns of popular cinematic storytelling had been adopted in shaping the trial and the closing argument that

5. *United States v. Bianco*, No. H-90-18 (AHN) (D. Conn. July 16, 1991).

6. See Anthony G. Amsterdam & Randy Hertz, *An Analysis of Closing Arguments to a Jury*, 37 N.Y.L. SCH. L. REV. 55, 58 n.7 (1992) (listing standard treatises).

7. See generally Philip N. Meyer, *Law Students Go to the Movies*, 24 CONN. L. REV. 893 (1992).

encapsulated the defendant's version of reality.

I. THE ARGUMENT DESCRIBED

A. "Back Story"

Louis Failla, reputed Mafia soldier in the Connecticut faction of a New England crime family, was one of eight defendants charged with racketeering. The thirteen count indictment included charges that Failla supervised and operated illegal gaming businesses and engaged in wire fraud in connection with schemes to defraud the customers of these gaming operations. The most serious alleged racketeering act, however, was that Failla conspired with two mob informers to murder Tito Morales, his grandson's father. The prosecutor's case was strong; in fact, the evidence seemed insurmountable. Two informants who testified against Failla had been granted immunity and had reasons for lying—to avoid prosecution for other charges and to receive lenient sentences. Failla's words, however, had been captured on tape. Failla's Cadillac had been bugged and his self-incriminating conversations recorded. These tapes and the transcriptions of what one reporter called "Failla's greatest hits"⁸ formed the centerpiece of the Government's case against Failla and his codefendants. In these tapes, Failla implicated himself in the conspiracy to murder Morales and bragged about his multiple roles in the illegal business enterprises that were at the heart of other charges in the indictment against him.

The evidence was stacked against Failla and he had not testified. While Donovan had successfully impeached the credibility of the two mob informants on cross-examination, Failla had not produced evidence to rebut the incriminating testimony on the tapes. The prosecutor, in a five-hour closing argument, a serious deadpan harangue, had meticulously used these tapes to historically reconstruct Failla's criminality and the criminal activities of the seven other codefendants. In contrast, Donovan's closing argument deemphasized the specifics of the historically reconstructed "plot" created by the testimony and tapes that had

8. Edmund Mahony, *Defendant Takes Hits from Both Sides*, HARTFORD COURANT, July 17, 1991, at D1.

been central to the Government's case and closing argument.⁹ Donovan's story attempted to humanize Failla and to depict him as a sympathetic character.

The material for Donovan's closing argument was provided, primarily, by using the same incriminating tapes that had been played at the trial and served as the centerpiece of the Government's case against Failla and the other codefendants. But Donovan's approach to this material was different. He imaginatively respliced these tapes and retrofitted the pieces into a newly redefined version of the story.

The concept or dramatic theme of Donovan's Failla story could have been pitched in Hollywood. Failla the Fool, the "bumbling mobster wannabe," is a "character who could have stepped from the pages of Damon Runyon."¹⁰ Louis Failla, clown and exaggerator, engaged in minor criminal activity. Although he was a "made" Mafia soldier, he was an outsider, not really a part of the mob, operating beyond the control and authority of the evil capo of the Connecticut branch of the Patriarca crime family, Billy "The Wild Guy" Grasso. Failla was shunned by the Patriarca crime family and he struggled to make a living. His activities, although illegal under state law, were technically not violations of the federal RICO conspiracy statute¹¹ because they were not Patriarca family mob activities.

Donovan depicted Failla as a comic character. Failla's taped conversations were stories-within-stories, not a literal version of *the* story. Like the stories Failla told, his self-image was exaggerated and distorted, filled with self-deception, lies, and false bravado. The story-within-the-story was a sad tale that demanded compassion.

The most serious charge against Failla alleged that he conspired and plotted the murder of Tito Morales, his daughter's ex-boyfriend. The prosecutor detailed Failla's involvement in this murder conspiracy. Failla was, the prosecutor asserted, exactly what he appeared to be in the tapes. His words unequivocally revealed his intent to murder Tito Morales and manifested his thought processes. The Government portrayed Failla as a sinister character who plotted with other members of the Patriarca crime

9. The Government's initial closing argument took approximately five hours. There was also a rebuttal argument after the defendants had presented their closing arguments.

10. Biel, *supra* note 2, at 16, 19.

11. See generally 18 U.S.C. §§ 1961-1968 (1988 & Supp. IV 1992).

family to execute Tito Morales.

In Donovan's version of the story, however, as screenwriting teachers suggest, the "engine of action [was] in the characters rather than in the plot."¹² Donovan redefined and contextualized Failla's character. Character "is not a bundle of autonomous traits but an organized conception" constructed from "scraps and clues."¹³ So it was with Donovan's Louis Failla. Donovan's Failla was defined by subtext beneath the surface dialogue. While the prosecution's version of Louis Failla was a surface creation, exactly as he appeared to be, his intentions clearly embodied in the dialogue captured on the tapes, Donovan's Louie Failla was not an obvious, literal, or surface creation. The pieces of dialogue in the respliced tapes were the scraps and clues through which the jury was asked to search for Failla's true identity.

The jury watched Failla the Fool be transformed into Failla the Hero. This was the action climax to Donovan's brilliant two hour performance. Donovan's Failla stalled off the mob and the evil mobster capo of the Connecticut branch of the Patriarca crime family by pretending to plot the murder of his grandson's father. In doing so, he placed his own life in jeopardy, and, perhaps, saved himself (spiritually) by discovering his own integrity.

B. Opening: "The Hook"

Before the closing argument, I did not know how Donovan could respond to the evidence against Failla. There seemed no plausible defense strategy or counter-story to dispute what was, seemingly, indisputable. A reporter set the scene for Donovan's closing argument:

Louis Failla, a bewildered-looking Mafia soldier from East Hartford, has been at the heart of the federal racketeering trial of eight reputed members and associates of the Patriarca crime family.

Prosecutors hammered him while presenting their case, playing dozens of secretly made tape recordings on which Failla, in a voice evocative of Ed Norton on "The Honeymooners" television series, implicated nearly all his

12. JEROME BURNER, *ACTUAL MINDS, POSSIBLE WORLDS* 37 (1986).

13. *Id.* at 38.

co-defendants in a variety of offenses.

Tuesday, it was the defense's turn in U.S. District Court in Hartford. They took aim at him during closing arguments to the jury.

Failla, they said, rambles, is given to flights of fantasy, is prone to hyperbole and is disconnected from reality. He cannot be believed, they said, particularly . . . while ferrying . . . around in his Cadillac.

Finally, it was time for Jeremiah Donovan, Failla's attorney, to present his summation to the jury. Donovan wore a look of defeat as he approached the jury box, his head bowed, his voice exhausted. He allowed that he is not sure who has beaten his client worse, the government or the defense. Then, he began the most spellbinding harangue delivered since the trial began in late April.¹⁴

Donovan did not begin his closing argument with the customary formalistic introduction characteristic of closing arguments.¹⁵ He simply told a story. Donovan began:

I have sat here this morning and listened to Louis Failla accused of being an exaggerator. If you recall, someone who indulges in wild speculation, in fantasy. I haven't said a word yet, but now I want to come forward and plead guilty to those charges. Louis Failla, with all due respect to you, Louie, is an exaggerator. You heard it throughout the trial in tape after tape after tape.¹⁶

Throughout his opening, Donovan repeatedly referred to exaggerated visualizations of cartoons and popular myths. These references foreshadowed the storytelling techniques that would be employed later in the "third act":

[T]his is a case that lends itself to superlatives. . . .

. . . [T]his is the first case in which an induction

14. Mahony, *supra* note 8, at D1.

15. See Amsterdam & Hertz, *supra* note 6, at 60-61.

16. Transcript of Closing Argument at 6, United States v. Bianco, No. H-90-18 (AHN) (D. Conn. July 16, 1991) (transcript of closing argument of Jeremiah Donovan on behalf of Louis Failla) [hereinafter Transcript].

ceremony has been played for a jury. This is a case involving the murder of what may be the nastiest man ever to walk the shores of Connecticut, and it is a case in which the charge, in which the legal principals, are probably as complicated as in any case that's ever been brought in America.¹⁷

After referring to the potential complexity of the judge's charge, and explaining how Failla may have been guilty of some violations of state law but not of the federal offenses under RICO, Donovan concluded, "it's in the charge and elements of the offense that our defense lies. I'll get to that in a little while."¹⁸

Then Donovan broke from his narrative, a technique that he used repeatedly. It was as if he were tired from the beating he and his client had been taking at trial. Like his client, he needed the relief of a joke, for his own sake as well as the jurors'. This storytelling appeared spontaneous, as if he were merely stumbling upon his story as he went along. He reaffirmed his theme in this opening anecdote, an imagistic visualization of a barroom story: "As I make this defense . . . I feel a little bit like the legendary O'Toole."¹⁹ Donovan assumed an Irish brogue signaling the telling of an Irish pub story. The voice broke the tension, and the audience relaxed:

[Y]ou all know, who,—well, in a bar in Dublin in walked a fellow who was about as tall as Ted, the judge's clerk, broad as Jackie Johns [the Mafia informant who testified against Failla]. He had that glimmer in his eyes of craziness that I think you may have seen in Phil Leonetti. He walked into the bar and said, "Alright, where's O'Toole?"

All the patrons from the bar kind of looked in their drinks. They didn't want to be mistaken as O'Toole, except one little guy, seventy years old, five foot two, in the back, "I'm O'Toole. What is it to you?"

Well, the big guy picked up O'Toole, ran him down the length of the bar knocking off the glasses all the way and threw him through the plate glass window, walked

17. *Id.* at 7-8.

18. *Id.* at 9.

19. *Id.*

outside, picked him up, threw him through another plate glass window and left him for dead. All the patrons looked at the poor old boy in the bloody mess on the floor. Guy looked up and said, "I sure pulled a fast one on that big fellow. I'm not O'Toole at all."

Now I feel like O'Toole, because in tape after tape after tape Louie Failla says, "I am O'Toole. I'm the guy you're looking for. I'm the new capo for Connecticut." . . . And I'm getting up and saying he's not O'Toole at all. He's not. He's not guilty of the RICO offenses with which he's charged.²⁰

Donovan's opening took ten transcript pages (approximately ten minutes, or one page per minute). According to standardized screenwriting practices, the Hollywood formula for screenwriting success commands: "You've got to hook your reader immediately. You have approximately ten pages to let the reader know WHO your MAIN CHARACTER is, WHAT the premise of your story is, and WHAT the situation is."²¹ As the audience determines how it reacts to the story within the first ten minutes, a reader knows "whether your story is working or not; whether it's been setup or not."²² Thus, the structure of the opening is crucial.

Donovan's opening fulfilled the aesthetic commands of the screenwriting manual. He established a sympathetic character and point of view—Failla's—and implicated the dramatic situation: the bumbling everyman, a low-level Mafioso struggling to make a living, trapped by the orders and commands coming down from the Connecticut capo.

C. *Dramatic Conflict: Excerpts from the Set-Up & Confrontation*

In the next stage of his closing argument Donovan created the dramatic situation and established the dramatic conflict between Louis Failla and Billy "The Wild Guy" Grasso (and the power of the Patriarca crime family). Louis Failla, the Mafia outsider and small-time operator, struggled, often ineptly, to make a living. A tenderhearted man, filled with pretense and false bravado, his

20. *Id.* at 9-10.

21. FIELD, *supra* note 3, at 9.

22. *Id.* at 66.

actions always fell short of his words. He was also deathly afraid of Billy Grasso, the Mafia capo. Nevertheless, he engaged in unauthorized minor criminal activity, fearful that his self-directed extra-Mafia activities would be discovered by Grasso and the leadership of the Patriarca crime family.

Through the conflict between Failla and Grasso, Donovan contextualized the dramatic tension as he established his defenses to the lesser RICO charges. Each of these racketeering acts served as inciting incidents and set-ups for the final dramatic confrontation of the third act. For example, the indictment included the allegation that Failla ran an illegal gambling operation in New York for the Patriarca crime family. Donovan's defense was simple: although Failla may have been involved in a gambling game that was technically a criminal activity under New York State law, Failla was not charged under New York state law. Further, this game was not part of the Patriarca mob controlled criminal enterprise alleged in the indictment. It was unrelated to the crime organization's activities.

Marking the jury's laughter at the opening hook, Donovan told this part of his story.

First of all let's talk about chronology here. With respect to Louie Failla, this case begins in about February of 1989. What do we know about Louie Failla at that point? Well, he's living in . . . [a] rented duplex out in East Hartford. Hasn't been painted for eighteen years. . . . He is living essentially in poverty. . . .

Why is he living in poverty? A made member of the Patriarca crime family, how could he be living in poverty? Because something has happened, and William Grasso has essentially shunned Louie Failla. . . . They keep him out of all activities. Grasso has done that. . . . [He] wouldn't let Louie be involved in anything.²³

Donovan also spoke anecdotally of the antagonist, Billy Grasso. Grasso, "the nastiest [man] . . . who's ever walked the shores of Connecticut," told one of his men that after he assassinated a person, he would bury him with his hand up, "so I can kick it every day as I walk by." "[W]alking through a McDonald's

23. Transcript, *supra* note 16, at 10-11.

with one of his men, and enraged, [he] picks up a kid's hat and throws it down."²⁴

Louis Failla was petrified of Grasso. Donovan assumed Failla's speaking voice to relay Louis's internal monologue:

I used to go home at nights worried that he'd [Grasso] say the next day, . . . "I got a fucking hole dug for you already. Go get my fucking money." I was living in fucking fear. . . . I was afraid to take my wife in the car, the baby in the car. Couldn't take my grandson anywhere. I looked in his [Grasso's] face, and I saw a fucking totally insane man. I saw a totally insane man.²⁵

Next, he admitted the alleged facts that Failla operated a gambling operation in New York. Delving deeper than the prosecution's version, he depicted visual details, and reintroduced secondary characters as if they were characters from *Butch Cassidy and the Sundance Kid*:²⁶

And he had his friend Jack Farrell. Jack Farrell is a master mechanic . . . in the sense that this guy had all the natural moves to be a card shark and a dice shark. Jack Farrell and this pretty girlfriend, Patty Auletta, defraud you just by being so quiet that you would never think that he had a shoe there where she could feel the next card coming up was a high one or low one.²⁷

Donovan not only admitted the existence of the criminal card game but revisited the details of the purported illegal contest:

[I]t was a sting. . . . [T]hey tried to get these extremely rich, high rolling gamblers, . . . real high rollers, guys with a lot of money to burn, to come up and play black-jack and to play dice, craps, and they would try to play.

...
The problem was that when Louie Failla got involved,

24. *Id.* at 11.

25. *Id.* at 12.

26. See *BUTCH CASSIDY AND THE SUNDANCE KID* (Twentieth Century Fox 1969).

27. Transcript, *supra* note 16, at 13.

it didn't work very well.²⁸

Every time Failla showed up, scenes were transformed by Failla's bumbling character into comedy. Only at the end of this sequence, or other sequences, did Donovan tie his story back into his legal defenses about the gambling game. At the end of the New York gaming sequence of scenes, Donovan depicted "a real cartoon-like picture of the statute"²⁹ and admitted that the game was "in violation of New York laws."³⁰ It was not, however, Donovan argued, in violation of RICO, the racketeering-influenced and corrupt organization statute:

Here's what I mean. You not only have to have a participant in a RICO organization commit a crime. It has to be a crime that furthers the enterprise.

...
... The crimes have to be related to the organization. They have to further the policies of the organization. They have to bring money into the organization. They have to be done with respect to the person's role in the organization.³¹

The New York gambling game was outside of organization activities. "This New York gambling game put money in Louie Failla's pocket, put money in Jackie Farrell's pocket . . . money in various people's pockets, but didn't put any money in Billy Grasso's pocket and didn't put any money in the pockets of the alleged Patriarca crime family."³²

Donovan embraced the prosecution's literal depiction and use of the tapes to redefine these events as the plot points of a much different story.³³ Donovan used the tapes to spin the plot forward in a different direction than the prosecution. There were conversations revealing Failla's fear about the risk should Grasso

28. *Id.* at 14.

29. *Id.* at 20.

30. *Id.* at 19.

31. *Id.* at 22-23.

32. *Id.* at 24-25.

33. Early in the argument, Donovan told the jurors: "You know, and in fact, as I think about this case, as I think about Louie Failla's role in the case, anyway, you know, I'm hard-pressed to think of all that many disputes I have with the Government with respect to facts." *Id.* at 17-18.

discover the game: "We're all fucking done as far as I'm concerned."³⁴ Donovan noted that "as far as Louie Failla went, boy, that would be an offense that would be a harsh one, harsh."³⁵

Donovan used this technique in response to the other charges, dramatically underscoring the conflict between the not-so-good Failla and the real villain Grasso.

D. Excerpts from the Resolution

The final act provided the narrative resolution of Failla's story. Dramatically, Louie Failla's character was transformed and the crisis was resolved at this climax. Legally, the final act was Failla's defense to the murder conspiracy charge, the most serious against him.

Donovan marked the beginning of the third act with another anecdotal story that signaled the transition to the final episodes of his story:

And this brings us finally to the murder of Tito Morales, and this, ladies and gentlemen, is the most serious crime that faces Mr. Failla. Before I start, I'll get my breath back.

I'll tell a story about Frankie Roosevelt, who was apparently an absolutely brilliant fellow at making different sides believe that he was leaning toward their position. There was a coal strike during the depression in West Virginia, and it had turned violent. The President decided that he would attempt to mediate the dispute in order to end the violence, and he got the workers back into compliance. It was a cause that Mrs. Roosevelt, Eleanor Roosevelt, was very much interested in, so what she decided she would do would be to hide behind a curtain and listen to the meetings that the President had.

So first the owners of the mine come in and they explain that, "Look, it's the depression. We're not getting much money for our coal. We admit the conditions are bad. We're doing the best we can to improve them. The wages are low, but we can't possibly pay more. We'll go

34. *Id.* at 25.

35. *Id.* at 26.

out of business. The violence in the strike is over.”

President Roosevelt listened and said, “You know, you’re absolutely right. You’re absolutely right.” They left.

John L. Lewis, the head of United Mine Workers, came in, and he said, “These workers are not making a living wage. Children are being used in the mines. The conditions are absolutely horrible. They’ve brought in strike breakers. The strike breakers are causing the violence.”

The President said, “You know, John, you’re absolutely right. You’re absolutely right.” He left.

Eleanor Roosevelt was enraged. She came out from behind the curtain. She said, “Franklin, you told the miners [mine owners] that they were absolutely right, and you told John L. Lewis that he was absolutely right. What are [you] doing?”

Roosevelt looked at her and said, “Eleanor, you’re absolutely right. You’re absolutely right.”

Louie Failla does this all the time. He doesn’t just exaggerate. He is a verbal chameleon. He adopts the coloration of whoever is with him. We see it all over. . . . When I said that, you were supposed to say[, “You’re a]bsolutely right, Jeremiah. You’re absolutely right.”³⁶

In telling this story, Donovan acted the different characters. Several reporters described how he physically interacted with the jury. Edmund Mahony observed, “Donovan sometimes strode and other times tip-toed in front of the jurors. He shouted, then whispered and waved wildly with his arms. U.S. District Court Judge Alan H. Nevas hid his face to cover a smile and the audience guffawed out loud.”³⁷

In this act, the conflict peaked. Failla had to confront Billy Grasso and the Patriarca mob, specifically, Grasso’s two violent henchmen, Jackie Johns and Sonny Castagna, who were plotting the murder of his daughter’s ex-boyfriend.

After arguing that “except for Louie Failla, Tito Morales would be dead,”³⁸ Donovan tried briefly to explain the legal basis

36. *Id.* at 41-43.

37. Mahony, *supra* note 8, at D10.

38. Transcript, *supra* note 16, at 47.

of his theory that Failla did not participate in a conspiracy to murder Morales. He did not lecture the jury about the law, however. He merely invited their participation in an understanding of the law. To provide the legal frame for his story, he briefly recited the legal theory of conspiracy that anticipated the judge's possible charge:

In order to determine whether Louie is guilty of a conspiracy to murder Tito Morales, you're going to have to make a decision about whether the conspiracy existed and what Louie's intent was. Now in a conspiracy it's seldom true that one act taken by itself can be detected as tending to prove the unlawful agreement. What I mean by this, I mean there was an agreement. There was an agreement between Sonny Castagna and Jackie Johns. Sure, they wanted Tito Morales dead, but Louie did not.³⁹

Donovan moved to another sequence of action: nine months prior to the conversations in the car, the two mob enforcers close to Billy Grasso were talking about killing Morales. "Why was it going on?" Donovan asked the jury. "What was the motive to kill Tito Morales?"⁴⁰

Donovan employed sequences of scenes to answer his rhetorical questions. First, a sequence of scenes displayed the bad blood between Morales and the mob henchmen. In one scene Morales, who had been a partner of Jackie Johns in Hartford crime, was arrested. In another scene, the conversation between Castagna and Johns showed their belief that Morales thought that they had turned him into the police. In another scene, (again, a reenactment of a tape-recorded conversation) Johns and Castagna told Failla that Morales could implicate them in another murder. Donovan detailed Castagna's and Johns's motivation through transcriptions of the tapes layered into a cinematic montage. He concluded with characteristic understatement before the cutaway to the final scene in the sequence: "Tito Morales, who knows about what happened with the other kid, can get Sonny and Jackie into some pretty serious trouble."⁴¹

39. *Id.* at 47-48.

40. *Id.* at 49.

41. *Id.* at 55.

Finally, Donovan visually capped off this sequence by describing, from Castagna's and Johns's point of view, the shot of Tito Morales "seen going into the federal building."⁴²

Immediately thereafter, Donovan cut across cinematic time to the first scene in the next sequence, where "Johns and Castagna go to Billy Grasso with this problem that they have with Tito Morales, and Grasso gives the order to Failla that Morales has to die."⁴³ Again, there was the characteristic understatement and irony in Donovan's assessment of this scene: "This is not an order that can be ignored lightly."⁴⁴

Donovan cut to the next scene. Failla and Jack Farrell in Failla's Cadillac: "they're reminiscing back to the days when Billy Grasso controlled everything."⁴⁵ Donovan reenacted the scene captured on the tape of when Failla told Farrell about how he once made an excuse to Grasso, presumably refusing to participate in the murder of Morales:

Failla says, "I didn't do what he said. That's why I walked away from the table once . . . [h]e came flying right back, 'You motherfucker.'"

42. *Id.* at 56. The viewer understood, cinematically, from this image that Morales was about to "roll over" on Castagna and Johns, the two mob informants. Donovan underscores this visualization: "Tito [Morales] was seen going into the federal building, and very shortly thereafter . . . there's a real rough call to Jackie Johns [from Sonny Castagna] . . . to get over here fast." *Id.*

Donovan then narrated to the jury, with the bitterly ironic tone that underscored the entire argument, especially when the characterization shifted from the comedy of Louis Failla to the serpentine tonality that accompanied the images and activities of Johns and Castagna as if there were, literally, music accompanying the appearance of the evil mobsters Castagna, Johns and Grasso:

What are [these guys] worried about? They're worried Tito Morales is going to go in and spill the beans that these were the guys who murdered Eric Miller. They're scared that he's going to go in and tell them all about Jackie Johns and Jackie Johns's counterfeiting and drug activity. . . . And besides, Jackie Johns doesn't like [him] too much, anyway, because [he] put the moves on his girlfriend.

Id.

43. *Id.*

44. *Id.* Donovan illustrated:

Remember when [Phil] Leonetti testified Do you remember why Spiritto died? Spiritto was a guy who declined—I think he just failed to follow an order to kill someone. He failed to follow that order. He had to die.

Louie Failla is placed in that same position with what he thinks is a totally insane man.

Id. at 57.

45. *Id.*

"I said, 'Look, you don't see the eyes around. I've got people watching me. I know when to fucking move and [when] not to. You're not supposed to tell me when to move.'"

"You do what I tell you, you yellow motherfucker."

....
.... Grasso's furious at him that he's a yellow motherfucker. What he's doing is he's saying, "Eyes all around me. I can't do it." He is making an excuse.⁴⁶

"But why did Louie Failla not carry out this order of Grasso?" Donovan asked the jury. "Because he and Morales were close."⁴⁷ Donovan's answer to the question signaled the car scene between Failla and Morales that starkly contrasted Failla's interactions with the mobster henchmen, Castagna and Johns. Donovan used the tape transcripts to help the jurors visualize a father-son camaraderie between Failla and Morales. For example, while driving in Failla's Cadillac, Failla told Morales, "All right, you take care of yourself, kiddo. I love you. You know that, don't you?"⁴⁸ And then Donovan, stepping out of the scene, observed, as if he were a juror, "I don't know. It's not often, I think, that grown men tell each other they love each other"⁴⁹ Quickly, to further convince the jury, Donovan cut to the next scene in the sequence:

The great one is, I think, on August 28th, and they're talking about Jason [Morales' son, Louis' grandson]. [Donovan assumes Failla's speech pattern] "You should see their fucking tape. They took him to Lake Compounce yesterday, and they made a videotape of him, and he gets up and he starts playing fucking good times, singing and dancing. That was, [the] whole fucking thing. You should see this fucking tape. He should send it to Hollywood. That was, this kid did everything. He looked at the audience and people and give him a fucking scowl like this [Donovan imitates Failla imitating his grandson's scowl] with his face." Morales laughed. "I got

46. *Id.* at 57-58.

47. *Id.* at 59.

48. *Id.*

49. *Id.*

to show you."⁵⁰

Donovan briefly framed the scenes and marked the end of the sequence.

There's a tenderness between them. I said tenderness is too strong. There's a mutual respect and affection between them. Louie has been placed in a terribly, terribly difficult position. His life is in danger if he does not carry out the order, and he's the father of his grandchild.⁵¹

This sequence brought us to a turning point and the climax at the end of the "third act":

So what does Louie do? Louie does nothing. Nothing happens. . . . [N]othing happened in April, nothing happened in May, nothing happened in June, July, August, or September. Nothing at all happened. . . . [b]ecause Louie Failla didn't do what Billy Grasso said. . . . Tito Morales is alive and happy in prison because of Louis Failla . . . [who] disobeyed an order from Grasso at peril to his own life. "You yellow motherfucker." Because of the affection that he had for Tito Morales.⁵²

Finally, Donovan tied the story into the legal issue of intent—what did Louie Failla intend to do, what did he mean to do? Donovan instructed the jury that "to figure out his [Failla's] intent, you got to think what he was thinking . . . you got to see this."⁵³

Donovan playfully pulled down a larger than life cartoon reproduction of Louis Failla. "There's Louie," Donovan spoke to the picture and then confided intimately to the jury, "I tell you, you got to convict a guy on a look, Louie would spend the rest of his life in jail." The jury and spectators chortled. Donovan continued: "Two things you got to do. What did Louie say, or

50. *Id.* at 60-61.

51. *Id.* at 61.

52. *Id.* at 61-62.

53. *Id.* at 64.

what was Louie thinking when he said it."⁵⁴

Donovan set up the tension in the space between what Louie said and what Louie intended—between the explicit text and the subtext. Donovan had to explain the complex subtext that underlay Failla's words.⁵⁵

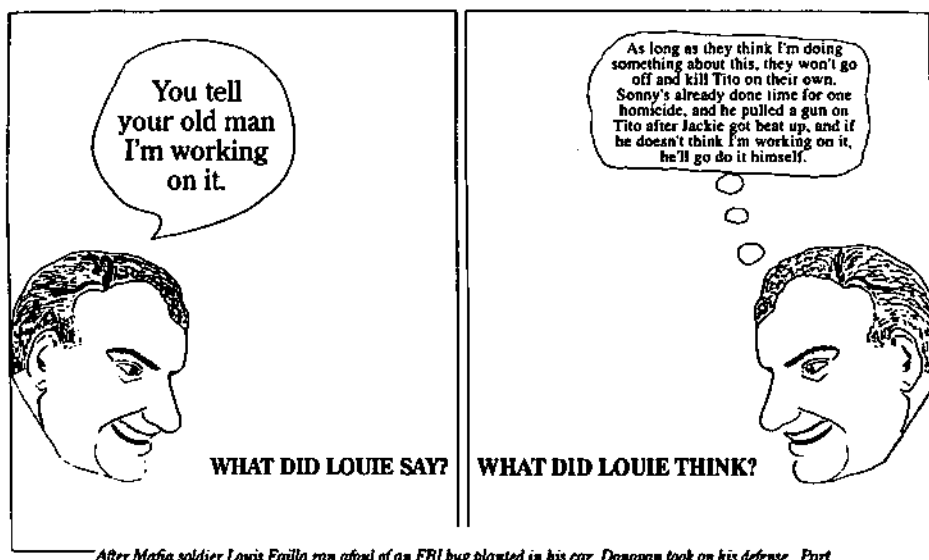
Donovan proceeded through each seemingly incriminating taped conversation. He spoke Failla's words, and then articulated Failla's thoughts. As he spoke the words, he brought down one cartoon illustration of Louis Failla facing right with a "hard" solid-line bubble of Louie's words. He then illustrated the counter-story of Louie's thoughts, emerging in small bubbles from the profile of Failla facing left from the right hand corner of a new page. The bubbles of testimony capturing Louie's thoughts established the subtext underlying the literal meaning of his words and revealed Failla's true motivations—to stall the mobsters and save Tito Morales's life. This story eclipsed the prosecution's "literal" story which implicated Failla in the murder conspiracy.⁵⁶ The very words that suggested complicity in the murder conspiracy charges, vindicated him of the most serious charge against him.

54. *Id.* at 64-65.

55. "Subtext is what happens below the surface of a scene; thoughts, feelings, judgments—what is *unsaid* rather than *said*. We've all had the experience partaking in a conversation in which what is said has nothing to do with how the people feel." SYD FIELD, *THE SCREENWRITER'S WORKBOOK* 86 (1984).

56. The strategy of redefining the story elements in the prosecution's case is one of three primary defense strategies. According to Bennet and Feldman, the defense may "alter the interpretation of a story's central action through challenge, redefinition, or reconstruction of the story itself." W. LANCE BENNETT & MARTHA FELDMAN, *RECONSTRUCTING REALITY IN THE COURTROOM: JUSTICE AND JUDGMENT IN AMERICAN CULTURE* 98 (1989). The success of this strategy "depends on the defense's ability to find a story element that is ambiguous enough to support another definition and, at the same time, central enough to the story to effect the meaning of the central action." *Id.* at 102.

Here, the defense attempted to provide a counter-story with "an internally consistent interpretation of the defendant's motives." *Id.* at 103.



After Mafia soldier Louis Failla ran afraid of an FBI bug planted in his car, Donovan took on his defense. Part of Donovan's courtroom performance involved telling jurors what Failla really meant by his recorded statements — that Failla didn't have homicidal intent. Donovan drew poster-sized cartoons to make his argument.

The cartoon bubbles, together with Donovan's reenactments of Failla responding to the murderous mobsters and the orders of the evil mob boss, provided the dramatic denouement to the carefully scripted two-hour performance. At the end, Donovan displayed a final visual cartoon of the two profiles of Louis Failla looking at the jury, and Donovan reasserted:

What did Louie do? Nothing. No evidence of going out and buying a gun. No evidence of a real plan that would bring Tito out at this time to this place. . . . No evidence of any of the kind of actions that one would expect that Louie should have been engaging in if he had really conspired to kill Tito Morales. He talked, and by talking he saved Tito Morales's life. By making Johns and Castagna think that he was going along with the plan, he got Tito Morales that one more month he needed

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Donovan referred only briefly to the legal implications of his story, leaving it largely to the judge's charge.⁵⁸ Likewise, Donovan only briefly emphasized the standard of reasonable doubt.⁵⁹ It was up to the jury to formulate their own ending to the Louie Failla Story.

II. OBSERVATIONS ON THE SCREENPLAY & CLOSING ARGUMENT

This section suggests how conceptual understandings of the cinematic notions of character, story structure, and theme in popular films may provide a metaphor and nomenclature that inform Donovan's closing argument on behalf of Louis Failla.

A. Character

Cinematic characters seldom display the depth of literary characters. They are reduced in psychological complexity, exaggerated,⁶⁰ and shot out across hard plot lines. The protagonists, especially in contemporary protagonist and plot driven Hollywood films, are possessed by simple univocal forces that respond to external pressure through action. This tension, between the internal force that motivates the protagonist and an external oppositional force, generates the simple conflict that

58. *Id.* at 74-75.

You have a tougher job. In trying to determine intention, the person's intention is necessarily very largely a matter of inference. No witness, you know, can be expected to come in here and testify that he looked into another person's mind and saw therein a certain purpose or intention. I tried to do it with cartoons. I can't do it. No FBI agent or expert can come in and testify what Louie's intention was.

Now how do we do it? One way in which a jury can determine what a person's purpose and intention was at any given time is by determining what that person's conduct was and what the circumstances were surrounding that conduct, and from these, from the conduct, to infer what his purpose or intention was. To draw such inferences is not only the privilege, but it's the duty of the jury, provided, of course, the inference you draw is a reasonable one.

Id.

59. *Id.* at 76. "[W]e don't send people to jail, we don't take people away from their wives, their children, their grandchildren, unless we are persuaded that he has done what the Government said and persuaded beyond a reasonable doubt." *Id.*

60. "Their character traits have to be compressed and condensed. All non-essential character traits must be eliminated and then compacted—layered—into a denser form." MARGARET MEHRING, *THE SCREENPLAY: A BLEND OF FILM, FORM AND SUBSTANCE* 187 (1990).

shapes the formulaic narrative structure at the heart of popular film. These internal forces, like the characters, are readily identified. The resulting narrative exploits are compressed and carefully configured to fit and surprise (yet never defy) the audience's expectations as the protagonist struggles to resolve external conflict. The storyteller's point of view is always that of the protagonist.

The formulaic conventions for defining character and establishing motivation in popular films provide a template for understanding the dynamics of Donovan's Louis Failla. Donovan employed a familiar viewer-friendly two-dimensional structure in his representation of Failla's character. Louis Failla was a simple character, readily recognizable. His motivations were scripted, internally consistent: he was a comic protagonist, an exaggerator, a fabulist. His stories were big Mafia dreams, filled with chronic self-distortion and self-deception. When Louis attempted to execute a scheme, however, his actions seldom achieved the consequences that he anticipated. He was not an effective Mafia tough guy. He was an inept and comic character; he was not venal or cruel. Louis Failla drove around in his Cadillac, telling big stories, engaging in small scams to survive, keeping out of the way of Billy Grasso and operating outside of, and ostracized from, the power of the Patriarca crime family.

During the third act, Louis Failla literally appeared as a cartoon, much like he had been defined in the closing arguments of the other attorneys and appeared in the Runyonesque tapes. In the third act, however, at the point of crisis and climax, Failla's character reversed in response to the external pressure, and he transcended the cartoon when he chose to protect the life of his grandson's father and stall the mobsters by using his larger-than-life stories as his protection. It was, at this dramatic moment, that Donovan would have the jury imagine the real Louis Failla.

Donovan's Failla was not a real person, however. He was a two-dimensional creation who existed in a narrated dream state framed by popular cinematic representations of Mafia archetypes and the codefendants in the trial. Donovan's storytelling attempted to locate the cinematic archetype of Failla in a world of life-like credible characters, more credible than the Failla depicted by the prosecutor's version of reality. The prosecutor's version of Louis Failla, a flat and sinister caricature, was far more a lifeless cartoon than Donovan's literal cartoon representation of Failla. Donovan's use of cartoons ironically emphasized this discrepancy

in the prosecutor's depiction of Failla. That is, Donovan's imaginative cartoon version of Louie Failla was presented as a more acceptable version of reality than the prosecutor's one-dimensional lifeless yet supposedly objective and historical reconstruction.

In popular films that adhere to the Hollywood formula, characters must be centered, and their motivations must be apparent and consistent. The plot must be kept on track by the characters' (especially the protagonist's) pursuit of the object of univocal narrative desire. Screenwriting manuals suggest that this outer goal—the plot goal—must be clarified by an internal goal—the personal goal.⁶¹

In *Screenplay*, an analysis of the Hollywood formula of popular cinema, Margaret Mehring, Director of the University of Southern California School of Cinema, describes the "personal goals" which "drive the characters to reach their plot goals."⁶² These goals are "the voices within the character that yearn for fulfillment, that must be satisfied. They're the needs that create the energy to overcome obstacles."⁶³ These forces, like the characters themselves, are exaggerated, monochromatic, and provide the motivation for the protagonist.

Hollywood screenwriters also speak of the protagonist's "inner contradiction" that accompanies the internal personal goal.⁶⁴ This is the conflict within the protagonist that, according to Hollywood folk wisdom, makes the protagonist's character compelling. Usually, like the personal goal, there is one characteristic primary and identifiable inner contradiction that determines the protagonist's identity and shapes the character's cinematic destiny or fate.

For example, in Abraham Polonsky's classic *Body and Soul*, Charley Davis, the protagonist, a boxer who has struggled desperately to become successful and escape poverty, makes a deal with a venal fight promoter named Roberts to throw his last championship fight.⁶⁵ The film, told largely in flashbacks, is

61. "A good character has compelling personal goals. These personal goals spring from very deep emotional needs, deprivations, and scars. The need for self-respect; for self-actualization. The need to be loved; to be respected." *Id.* at 195.

62. *Id.* at 54.

63. *Id.* at 54.

64. Robert McKee, Lecture at Story Structure Workshop (Mar. 11-12, 1990) (notes on file with the author).

65. *BODY AND SOUL* (NTA-Republic 1947).

about Charley's external struggles: his fights against poverty, his need for his sweetheart's love, his yearning to escape the wishes and expectations of family, and his desire to achieve professional respect and recognition. His external conflict is articulated by the struggle in his final championship fight and the struggle to defeat his true opponent⁶⁶ in the film, Roberts. But it is Charley's contradiction that makes the story so compelling. "His internal conflict is between his need for fame and fortune and his need to maintain his sense of self-esteem. He cannot have both at the same time. It's one or the other."⁶⁷ In the Hollywood formula, there is always a reassuring familiarity or universality in the character's external longing coupled with an internal psychological contradiction.

Failla's personal goal, like that of Charley's was partly material and partly psychological: like Daniels, Failla struggled for those Hollywood staples of "fortune and fame" as well as for professional recognition, respect, and self-esteem. The inner contradiction in Failla's character, however, was more subtle. Donovan's not-so-tough-guy Louis Failla told big stories to capture and please his audience. He did so because he lacked something within himself and yet simultaneously needed something that he was missing desperately. This psychological need interfered time and again with the achievement of his personal goal and, perhaps, contributed to his self-destructive confessions in a car that he could have anticipated was bugged. It could not be determined what this missing element was, however, until the end of Donovan's closing argument when the theme became explicit and Failla became a truly compelling character, far more than a cartoon.

The dramatic internal tension appeared in Failla's character between Louie Failla, the purported Patriarca Mafioso with a tough guy exterior, and his Runyonesque bravado and other competing facets of his personality. This contradiction was revealed in his conversations with his friend Jack Farrell, in his conversations with Tito Morales about his grandson, and even in his participation in the racketeering acts, for example his gentle

66. "Opponents initiate plot events that create conflict and result in success or failure, dominance or submission, and life or death." MEHRING, *supra* note 60, at 198. In Donovan's story of Louie Failla, Billy Grasso, the evil mob boss, and his henchmen Sonny Castagna and Jackie Johns, were the opponents who precipitated the final crisis.

67. *Id.* at 195.

unMafia-like collection practices for bad debts. This tension also created the drama that precipitated the final dramatic act when the audience was given an opportunity to see Failla as a small man fighting overwhelming forces that could destroy him. This tension was depicted visually in the two cartoon images that reflected two competing halves of a contradictory personality. In the first two acts, Donovan emphasized the softened pathology of Louie the exaggerator; he was like the self-destructive O'Toole in Donovan's opening barroom anecdote. His humanity did not surface, however, until the third act reversal and his narrative redemption.

Finally, when constructing the dynamics of character according to the Hollywood template, the protagonist struggles towards an outer or external plot goal. Plot goals, like personal goals, are very specific, they include "[t]hings like becoming a famous pilot, being married to a wealthy woman, capturing a notorious criminal, or earning a higher education degree."⁶⁸ Initially, the plot goal may appear simply as an external and visible representation of the personal goal. For example, in Douglas Day Stewart's *An Officer and a Gentleman*⁶⁹ the protagonist Zack's outer goal, his plot goal, is to become an officer in the Naval Air Corps, while his inner personal goal is his need to be loved, respected, and to be someone who people believed in.⁷⁰ These two goals are seemingly in accord. Tension between the protagonist's personal goal and the plot goal results in the "darkest moment" or the "final crisis" and ultimately moves the protagonist to the climax "when the protagonist *must* make a decision that will reflect a substantial change within him or her and will create a substantial change in the situation. . . . [T]he moment the change manifests itself . . . the moment when the theme of the story becomes clear."⁷¹

Failla, like Zack in *An Officer and a Gentleman*, seeks a specific external plot goal. Failla wants to become a capo of Connecticut organized crime activities. Failla, like the legendary O'Toole in Donovan's story, pretends to be who and what he is not. In the final act, he has an opportunity to achieve this external plot goal: he can ingratiate himself with Billy Grasso and

68. *Id.* at 54.

69. *AN OFFICER AND A GENTLEMAN* (Paramount 1982).

70. MEHRING, *supra* note 60, at 195.

71. *Id.* at 55.

the Patriarca crime family by participating in the conspiracy to murder Tito Morales. In Donovan's version of the story, however, he does not do so. It is at this moment that the dramatic theme of Donovan's story became clear.

B. Story-Theme in Popular Film

Initially, Mehring, in *Screenplay*, defines film-theme with synonyms. Theme is the "premise, root-idea, spine, direction, point, message, throughline" of the film.⁷² Second, Mehring attempts to provide illustrations of sample themes in popular films. She uses, among others, the themes from *Body and Soul* and *An Officer and a Gentleman* as films that express a value; the former "makes a strong statement in favor of self-esteem" while the latter "values concern for the well-being of others."⁷³ She locates the moment for articulation of the theme "in the climax" and in the "sense of completion—of unity achieved—[that] unveils the theme."⁷⁴ Finally, she states the guiding principle for the neophyte screenwriter trying to formulate a cinematic theme for a screenplay: while a theme can theoretically be "announced in a relatively few sentences" the screenwriter should never do so; "It is the function of screenwriters to seduce, to influence, to affect—to gain understanding and acceptance of their themes through vicarious and emotional experiences."⁷⁵

Nevertheless, popular film titles often imply the theme. Titles tell the audience what the film is about without giving away the story or making a simplistic and reductionist statement that robs the product of mystery and artistic integrity. From the examples provided by Mehring, in the title *Body and Soul*, Polonsky implicates that the body of the archetypal protagonist, Charley can never achieve his plot goal or personal goal unless there is an integration of a deeper component of his soul in his character. In Stewart's far more obvious commercial entertainment, *An Officer and a Gentleman*, the thematic message conveyed by the title is appropriately explicit: Zack the protagonist can truly become an officer only if he learns to be a gentleman (gentle-man?) and act with humanity, humility, kindness,

72. *Id.* at 221.

73. *Id.* at 223.

74. *Id.*

75. *Id.* at 224.

and selfless compassion.

After Jeremiah Donovan completed his final argument on behalf of Failla, I drafted several titles to capture the commercial story-theme. My first title for Donovan's closing argument was *Divided Loyalties*. The theme statement (or perhaps the commercial trailer) would describe the story as being about Louie Failla, a small-time, ineffective, underachieving Mafia man with unrealistic ambitions; a man trapped between the demands of his adopted mob family and his feelings for his real family. In choosing between the two, Failla learns something about himself and his value system.

Later, I scrapped this title. It was too simplistic. Donovan and Failla deserved better. I recalled Louie Failla rising before the jury; he faced them and then turned to his family. I sat watching the jury and Failla and the cartoon representation of Failla and the jury. I wanted to laugh or cry or just applaud.

In attempting another title, I strove to capture more artistic subtlety akin to Polonsky's thematic *Body and Soul*. Donovan's artistic product, like Polonsky's, possessed a heightened commercial and artistic integrity that deserved the right title: *Desperate for Love*. My film theme-statement would describe this as the story of a Mafia outsider, who tries to talk his way into a ruthless world but whose story is that of a man with a need to be loved. To be loved, he must initially tell stories out of deep and selfish inner needs. In the end, however, he changes dramatically, transcends the cartoon he has become, like his creator Jeremiah Donovan, and becomes a storyteller who tells his stories to save a life and redeem himself along the way.

C. Concluding Observations

In a recent article, Professors Anthony Amsterdam and Randy Hertz contrasted a defendant's and a prosecutor's closing arguments to a jury.⁷⁶ The prosecutor was straightforward and followed the textbook structure of how to construct a closing argument in a criminal case. A first reading of the transcript of the defendant's closing argument, however, initially appeared nonlinear. The transcript of the story in the defendant's closing argument was filled with elliptical pieces, repetitions, and

76. See Amsterdam & Hertz, *supra* note 6.

discontinuities.⁷⁷ Initially, the authors were at a loss to understand the structure of the argument. Eventually, however, analysis revealed a story-structure and discrete microlinguistic strategies embedded in the argument.

The story that connected the scenes then became apparent; the theme of the "Quest of the Hero" was "unmistakable."⁷⁸ The jury was cast in the role of the hero and set out on the heroic quest. The plot "develops in three large movements."⁷⁹ This revisits classical three-act dramatic structure. Amsterdam and Hertz noted, "[b]ecause the subject of the defense counsel's argument is the trial in 1991, its form of narrative is the Drama. . . . The defense epistemology, as befits Drama, is performative and constructivist."⁸⁰

Amsterdam and Hertz observed that it was possible that the defendant's attorney may not have been consciously aware they had chosen to structure their argument in dramatic form as a prototypical Hero's Quest. Furthermore, it was inconceivable that either defendant or prosecutor consciously mobilized the many linguistic and communicative strategies employed in the closing argument.⁸¹

At times, this lack of awareness made the attorneys select inappropriate storytelling strategies. For example, in the argument studied by Amsterdam and Hertz, the legal issue was—similar to Donovan's argument on behalf of Failla—the defendant's intent. All the hard evidence seemed to go against the defendant. In concluding their analysis, Amsterdam and Hertz observed how the prosecutor used the metaphor, "MIND IS A CONTAINER" and how inadvertent use of this metaphor was advantageous to the defendant.⁸² The defendant's attorney could have characterized the walls of this container as "notoriously opaque," and it would have been extremely difficult for the jury to "peer into" the container and "discern a solid object (the specific intent to kill) inside."⁸³

77. *Id.* at 62 ("Defense counsel's argument, by contrast, does not follow any standard rhetorical sequence. Nor does it have any intelligible narrative structure as a story It contains ten separate capsule descriptions").

78. *Id.* at 65.

79. *Id.* at 69.

80. *Id.* at 75.

81. *Id.* at 117.

82. *Id.* at 121.

83. *Id.* at 120.

In contrast, the linguistic strategies Donovan employed were purposeful. For example, Donovan compelled the jury to discern Failla's intent by looking for a story beyond literalist readings of the decontextualized and incriminating conversations in the automobile. To do so, it was necessary to minimize the text and dramatize the power of what was implicit but never said.

Unlike the attorneys in the Hertz and Amsterdam study, Donovan selected correct and appropriate storytelling strategies. He went beyond merely selecting linguistic devices or adapting metaphors suited to his microlinguistic task. Donovan artfully employed narrative that provided an alternative visual context for the incriminating tapes. He sought to have the jurors suspend their literal sensibilities and imaginatively visualize a more subtle story, a subtext, a story in which the words merely provided clues from which the imagination could decode and construct a more complex meaning to the story.

The conventions of screenwriting are helpful in identifying Donovan's strategic choices. For example, one cardinal rule of screenwriting is "never write on the nose."⁸⁴ A scene must never be about what the characters say the scene is about as this would leave no room to engage the imaginative participation of the audience. The dialogue, the literal text, should be the surface of the deeper narrative subtext. Consequently, what is crucial occurs "below the surface of the scene . . . what is *unsaid* rather than [what is] *said*."⁸⁵ Screenwriting texts illustrate the axiom with a scene from Woody Allen's *Annie Hall*.⁸⁶ In this scene, Alvy Singer, the protagonist, meets Annie Hall, and subtitles differentiate Alvy's and Annie's thoughts from their spoken words.

ALVY

(gestures to photos on the wall)

. . . [T]hey're wonderful, you know.
They have . . . they have, uh . . . a
. . . a quality.

Title: You are a great—looking girl.

84. McKee, *supra* note 64.

85. FIELD, *supra* note 55, at 86.

86. ANNIE HALL (Twentieth Century Fox 1977).

ANNIE

. . . I would like to take a serious photography course soon.

Title: He probably thinks I'm a yo-yo.

ALVY

Photography's interesting, 'cause, you know, it's—it's a new art form, and a, uh, a set of aesthetic criteria haven't emerged yet.

Title: I wonder what she looks like naked?⁸⁷

Similarly, when Donovan shifted the jurors into the imagistic mode of cinematic story structures, the transcript of spoken words were no longer paramount; they were merely one piece to decode in a puzzle of meaning.

CONCLUSION

Trial practitioners like Jeremiah Donovan are gifted storytellers operating in an aural and visual storytelling culture. Many are sensitive to the aesthetics and influences of other popular storytellers, including popular film makers, and intuitively display these understandings in the practice of their lawyering craft. They have much to teach legal academics and we have much to learn from studying their craft and art as a part of our legal scholarship.

87. FIELD, *supra* note 55, at 86-87 (quoting ANNIE HALL, *supra* note 86).

