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## The Law in Cinema: An Emerging Field of Study

Donald H.J. Hermann  
*DePaul University*

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BOOK REVIEW

THE LAW IN CINEMA:  
AN EMERGING FIELD OF STUDY

DONALD H.J. HERMANN\*

LEGAL REELISM: MOVIES AS LEGAL TEXTS. Edited by John Denvir\*\* University of Illinois Press, Urbana, 1996. xviii and 314 pages. Paperback \$19.95

REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES. By Paul Bergman\*\*\* and Michael Asimow.\*\*\*\* Andrews and McMeel, Kansas City, 1996. xix and 338 pages. Paperback \$14.95

I. FILMS IN LAW STUDY AND LEGAL SCHOLARSHIP

Film makers have long found that the law, lawyers, and courtrooms provide valuable dramatic material for translation into cinema.<sup>1</sup> Lawyers and law professors have increasingly been included in the film production process as film makers made an effort to increase the authenticity of their

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\* Donald H.J. Hermann, Professor of Law and Philosophy; Director, Health Law Institute, DePaul University. A.B., Stanford University, 1965; J.D., Columbia University, 1968; LL.M., Harvard University, 1974; M.A., Northwestern University, 1979; Ph.D., Northwestern University, 1981; M.A.A.H., School of the Art Institute of Chicago, 1993.

\*\* John Denvir, Professor of Law, University of San Francisco. B.A., Holy Cross College, 1964; J.D., New York University, 1967; LL.M., Harvard University, 1972.

\*\*\* Paul Bergman, Professor of Law, U.C.L.A. B.A., U.C.L.A., 1961; LL.B., University of California, Berkeley, 1968.

\*\*\*\* Michael Asimow, Professor of Law, U.C.L.A. B.S., U.C.L.A., 1961; LL.B., University of California, Berkeley, 1964.

1. See Ed Hulse, *The Movies' Greatest Court Cases Make Great Cassettes*, CHI. TRIB., Nov. 21, 1986, at 92. The author observes:

Few settings familiar to us from movies have the inherent dramatic appeal of the courtroom. Some of the most memorable movies of all time have hinged on court cases—sometimes strictly fictional, sometimes based on real events. Courtroom dramas, in particular, became a movie staple with the beginning of the talkie era. That's when Hollywood discovered that trials—with their emphasis on melodramatic give-and-take dialogue, interrogation and cross-examination—provided ripe opportunities for actors and actresses . . . .

*Id.*

legal based dramas.<sup>2</sup> It should not be too surprising that legal scholars and students of the legal system have begun examining films as significant documents, artifacts, or texts reflecting the attitudes of the general public's understanding of the operation of the law.<sup>3</sup>

Actually, there are some significant reasons for the appearance of monographs of the type being reviewed here. These include the introduction of film study into the legal curriculum<sup>4</sup> and an increased production of legal scholarship analyzing film.<sup>5</sup> Films or movies have come to be seen as significant cultural objects by some, and as revelatory texts by others.<sup>6</sup> The significance of popular culture for legal study was marked by the 1989 Symposium: Popular Legal Culture, published in the *Yale Law Journal*<sup>7</sup> and by the 1992 Conference entitled *The Lawyers and Popular Culture* sponsored by the University of Texas School of Law.<sup>8</sup> Academics associated with the Popular Culture movement view films dealing with lawyers, judges, and litigants as important artistic and

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2. See PHILADELPHIA (Tristar 1992) (crediting Tom Stoddard, an adjunct professor at New York University School of Law and former counsel for Lambda Legal Defense and Education Fund, Inc., as a consultant on legal issues relating to AIDS discrimination law).

3. See, e.g., Symposium, *Picturing Justice: Images of Law and Lawyers in the Visual Media*, 30 U.S.F. L. REV. 891 (1996).

4. See, e.g., Donald Hermann, *Law and Popular Culture: Law School Goes to the Movies*, 10 DEPAUL L. MAG. 8 (1995).

5. See Symposium, *Picturing Justice: Images of Law and Lawyers in the Visual Media*, *supra* note 3. (The symposium includes articles about images of the law and lawyers in film. Most significantly, the symposium presents 17 essays that each examine a specific film with reference to the law and the legal system); see also Symposium, *A Symposium on Film and the Law*, 22 OKLA. CITY U. L. REV. 1 (1997). This Symposium presents 16 articles on films ranging from expected movies such as *Breaker Morant* and *True Believer* to several less expected films including *Boyz in the Hood* and *The Ten Commandments*. Drew Kershen, *Breaker Morant*, 22 OKLA. CITY U. L. REV. 107 (1997); 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); Justin P. Brooks, *Will Boys Just Be Boyz N the Hood?—African-American Directors Portray a Crumbling Justice System in Urban America*, 22 OKLA. CITY U. L. REV. 1 (1997); Mary Libby Payne, *The Ten Commandments—The Movie: Freedom Extolled*, 22 OKLA. CITY U. L. REV. 193 (1997).

6. See, e.g., Francis M. Nevins, *Law, Lawyers, and Justice in Popular Fiction and Film*, in HUMAN. EDUC. 3 (1984).

7. Symposium, *Popular Legal Culture*, 98 YALE L.J. 1545 (1989).

8. THE LAWYER AND POPULAR CULTURE: PROCEEDINGS OF A CONFERENCE (David Gunn ed., 1993).

consumer products in contemporary society.<sup>9</sup> Films dealing with litigation and trials are seen as providing a basis for significant insight into how the legal system, and those who play a role in it, are understood in contemporary society.<sup>10</sup> A second important basis for valuing the material that movies provide for examination are the various strains of post-Modern theory that treat films as texts to be subjected to close reading and interpretation.<sup>11</sup> The accompanying erosion of the divisions between high and low culture has also had an important influence in the new value placed on movies as an appropriate subject of academic study.<sup>12</sup>

*Reel Justice*<sup>13</sup> and *Legal Reelism*<sup>14</sup> are significant books that contribute

9. See Stewart Macaulay, *Images of Law in Everyday Life: The Lessons of School, Entertainment, and Spectator Sports*, 21 L. & SOC'Y REV. 185, 185 (1987).

10. See Anthony Chase, *Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys*, 1986 AM. B. FOUND. RES. J. 281, 281. The author observes,

Lawyer (or other law-related) roles have remained among the most powerful and "overrepresented" occupations on prime-time television series, and pictures of the legal system have been communicated extensively through the "formats" of popular culture (e.g., movies, best sellers, soap operas, television news, advertising, pop music, jokes and stand-up comedy routines). Yet these vital signs of American attitudes toward the law have been largely ignored by both legal scholars and the bar.

*Id.* (footnotes omitted).

11. See generally John Denvir, *Legal Reelism: The Hollywood Film As Legal Text*, 15 LEGAL STUD. F. 195 (1991).

12. See John Fiske, *Popular Culture*, in CRITICAL TERMS FOR LITERARY STUDY 321, 331 (Frank Lentricchia & Thomas McLaughlin eds., 2d ed. 1995). Fiske recognizes the erosion of the distinction between high and low culture, but also suggests that to a certain degree popular texts and objects are appropriated by high culture. According to Fiske, Many argue that in postmodernity the distinctions among high, mass, and popular culture are rapidly disappearing. I think that this is overstating the case, though there is evidence that the boundaries are blurring and becoming more permeable. But some differences remain. While individual texts may move more rapidly and freely around the cultural geography, the ways in which they are evaluated and used still differ significantly, and still perform the function of distinguishing between high and popular culture. *Id.* at 331.

But see Roberta Smith, *Finding Art in the Artifacts of the Masses*, N.Y. TIMES, Dec. 1, 1996, at 43. (observing, "[o]f course, there has been nearly a century of active cross-fertilization between high and low culture, as the Museum of Modern Art's 1990 exhibition 'High and Low: Modern Art and Popular Culture' tried to demonstrate . . . . Some days it seems futile to even try to talk about the separation of high and low culture.").

13. Paul Bergman & Michael Asimow, *REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES* (1996) [hereinafter REEL JUSTICE].

to the academic study of films dealing with law and the legal system. I should also observe that both of these books will be enjoyed by the general reader and the film buff. Nevertheless, in an important way these two books provide excellent examples of the two different uses scholars make of films about the law.

## II. REEL JUSTICE AND THE POPULAR CULTURE METHODOLOGY

*Reel Justice: The Courtroom Goes to the Movies* by Paul Bergman and Michael Asimow, both law professors at the UCLA Law School, uses the approach of popular culture studies in the examination of sixty-nine movies in which the law or the legal system provides a significant basis for each film's narrative.<sup>15</sup> In an encyclopedic manner, information about each film is presented in a structured format. A headnote provides a sentence or two long synopsis about the film along with filmology information about the studio making the film, the director, the date of release, the running time, the screenplay author, a list of stars and roles, the academy award nominations, and the authors' rating of the "worth" of the films on a scale ranging from one to four "gavels."<sup>16</sup> The first major textual section considering each film is labeled "the story" and provides an account of the film's narrative.<sup>17</sup> This is followed by a section labeled "legal analysis" in which technical legal issues are discussed along with the author's evaluation of the accuracy and effectiveness of the legal elements of the film.<sup>18</sup> A third section entitled "trial brief" is included for many of the films; in this section the authors discuss the historical basis for some of the films, describe some relevant area of the law, or discuss the legal experience of individuals involved in the film's production.<sup>19</sup>

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14. LEGAL REELISM: MOVIES AS LEGAL TEXT (John Denvir ed., 1996) [hereinafter LEGAL REELISM].

15. See REEL JUSTICE, *supra* note 13, at xviii. *The National Jurist* also conducted a survey of law professors and law students to determine the most entertaining and educational legal movies. See Brett S. Martin, 25 *Must-See Legal Movies*, NAT'L JURIST, Oct. 1997, at 24.

16. See *id.* at xviii. (explaining that four gavels indicates "a classic"; three gavels is "good"; two gavels indicates a film is "just okay"; and one gavel indicates the prospective viewer should "ask for a new trial.").

17. See, e.g., *id.* at 2. (This is the first example of this section, but it can be found in the analysis of all the movies.)

18. See, e.g., *id.* at 3. (This is the first example of this section, but it can be found in the analysis of all the movies.)

19. See, e.g., *id.* at 4. (This is the first example of this section, but it can be found in the analysis of all the movies.)

*Reel Justice* would be a valuable resource tool if it merely provided analysis of an alphabetical listing of films. However, the value of the book is increased by the grouping of films into eight categories that can loosely be translated as: movies based on real trials; military cases; comedies; cases tried by lawyer heroes; case involving guilty clients; cases of circumstantial evidence; cases where judges or jurors play a special role; and civil cases.<sup>20</sup> A topical index at the end of the book enables the reader to identify films dealing with specific topics such as the insanity defense, manslaughter, or war crimes.<sup>21</sup>

The type of information and analysis provided in *Reel Justice* is well exemplified by its discussion of *Anatomy of a Murder*, a 1959 film directed by Otto Preminger.<sup>22</sup> In their synopsis of the film, the authors observe: "An army officer is charged with killing a man who allegedly raped his wife. With a little prodding from his attorney, the officer claims that he was under the spell of an irresistible impulse."<sup>23</sup> The authors go on to provide a more extensive account of the narrative of the film including the circumstances of the killing, the engagement of the protagonist lawyer Paul Biegler portrayed by Jimmy Stewart, the appearance of a crafty city-based prosecutor, and a trial conducted by a "down county" judge who is witty and capable.<sup>24</sup> The authors point out that, "As the case goes to trial, the only issue is whether Manion [the accused] was legally insane at the time he shot Quill [the rapist]."<sup>25</sup> The narrative takes a turn when the big-city prosecutor Claude Dancer, portrayed by George C. Scott, becomes involved in the case. The authors note that the film is given life by the contrast in performances between the actor who portrays the prosecutor with a tough guy attitude and the actor who represents the defense counsel exuding country-bumpkin charm.<sup>26</sup> The authors go on to discuss the significance of physical evidence referred to as the "missing panties" that the accused's wife claims were torn off by the deceased during a sexual attack.<sup>27</sup> Finally, a surprise witness testifies about her discovery of the missing evidence, ultimately suggesting that the deceased did in fact rape the accused's wife.<sup>28</sup>

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20. *See id.* at vii-ix.

21. *See id.* at 331-38.

22. *See id.* at 232-38; *see also* ANATOMY OF A MURDER (Columbia/Carlyle 1959).

23. REEL JUSTICE, *supra* note 13, at 232.

24. *See id.* at 233-34.

25. *Id.* at 233.

26. *See id.* at 234.

27. *See id.* at 234.

28. *See id.*

The value of *Reel Justice* comes with its legal analysis and accompanying notes about the underlying legal issues. The authors maintain that "*Anatomy of a Murder* is one of the grittiest and most dramatic trial movies ever made," featuring "eloquent attorneys who believe fervently in their causes, and a calm judge whose rulings reflect both common sense and legal wisdom."<sup>29</sup> The authors correctly conclude that the trial is reduced to an adjudication of the "irresistible impulse" defense,<sup>30</sup> which the authors then explain in lay terms.<sup>31</sup> Significantly, the authors criticize the film's depiction of the defense attorney's and his associate's research of the subject of the insanity defense in musty law books since experienced lawyers would have been well aware that a defense of "irresistible impulse" existed in the state for seventy-years.<sup>32</sup> The authors' point seems well taken when the viewer recalls that the defense lawyer served for many years as a prosecutor himself.<sup>33</sup> There is equally critical comment on the prosecutor's effort to mislead the judge about the availability of the insanity defense under the state's law;<sup>34</sup> it is suggested by the authors that such action would provide the basis for professional sanctions against the prosecutor.<sup>35</sup>

The authors maintain that the dramatic force of the film is enhanced by the initial exclusion of rape evidence, which is later admitted when the judge alters the course of the trial.<sup>36</sup> Nevertheless, the authors suggest that according to the actual rules of evidence the material relating to the alleged rape was admissible from the onset of the trial since the defense of "irresistible impulse" was necessarily related to the defendant's emotional response flowing from his belief that his wife had been raped.<sup>37</sup> The authors criticize the prosecution for its bombastic manner; they similarly question the tactics of the defense lawyer who ignores the possibility of a manslaughter defense.<sup>38</sup> Moreover, the authors properly question the defense counsel's indirect coaching of the defendant into an insanity

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29. *Id.*

30. *See id.*

31. *See id.* (This defense allows a defendant to be found not guilty if a judge or jury believes that due to mental illness, triggered by a powerful stimulus, the defendant was unable to stop himself from committing a crime even though he knew it was wrong to commit the crime.).

32. *See id.* at 234-35.

33. *See id.* at 235.

34. *See id.*

35. *See id.*

36. *See id.*

37. *See id.*

38. *See id.* at 236.

defense.<sup>39</sup> According to the authors, the defense attorney's conduct "probably violates the attorneys' code of ethics [when he guides the accused] towards the one story that might produce a not-guilty verdict."<sup>40</sup>

The dramatic climax of the trial is described as involving violation of "one of the oldest tactical rules of trial,"<sup>41</sup> namely, "a cross-examiner is never supposed to ask a question to which he doesn't know the answer."<sup>42</sup> In this case, the prosecutor, in an effort to discredit the surprise witness and to cast doubt on her testimony suggesting that the deceased had raped the accused's wife, asks the witness if she is the spurned lover of the deceased.<sup>43</sup> An acquittal almost becomes assured when the witness answers that the deceased was her father.<sup>44</sup> This is but one example of the authors' extensive criticism of both the prosecutor and defense as engaging from time to time in techniques of cross-examination that are ineffective and unethical.<sup>45</sup> Finally, the authors point out that the fee-arrangement between the accused and the defense counsel was unethical.<sup>46</sup> The accused proposed to pay the attorney if the attorney "got him off."<sup>47</sup> The authors point out that such a "contingency fee" may be proper in civil cases, but

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39. *See id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *See id.*

44. *See id.*

45. *See id.* at 235-36.

46. *See id.* at 237 (explaining that while contingency fees are proper in personal injury cases and other civil matters, such arrangements are improper in criminal matters); *see also* ROGER C. CRAMTON, AUDIOVISUAL MATERIALS ON PROFESSIONAL RESPONSIBILITY, 15 (1987). Professor Cramton takes strong issue with the ethical propriety of the fee arrangement in *Anatomy of a Murder*. Professor Cramton argues,

The propriety of the fee arrangement is in issue as well as its prudence. After several interviews in the jail's interview room, Biegler tells Manion that he will take the case but he wants \$3,000 up front as a retainer. Manion promises to give Biegler \$150 on his pay day, a week later, and the remainder when and if Biegler gets him off. Biegler agrees to the terms, which amount to an illegal contingent fee in a criminal case. *See* MR 1.5(d)(2) and DR 2-106(c). The question is helpfully discussed by Charles R. Wolfram, *Modern Legal Ethics*, sec. 9.4.3 (1986), who criticizes the traditional arguments for banning the use of contingent fees in criminal cases. Because the fee arrangement was illegal, Biegler will be unable to recover it even if he discovers where the Manions have gone.

*Id.*; *O'Donnell v. Bane*, 431 N.E.2d 190 (Mass. 1982).

47. REEL JUSTICE, *supra* note 13, at 237.



is unethical in criminal cases.<sup>48</sup> In any case, in the film, the acquitted accused, along with his wife, skips town without paying the defense counsel his fee.<sup>49</sup>

In the third part of their film analysis, the authors point out that the book, on which the screenplay was based, was written by Justice Voelker, retired from the Michigan Supreme Court.<sup>50</sup> The role of judge in the film was played by Joseph N. Welch, a Massachusetts judge who earlier in his career had gained prominence as a defense counsel in the "Army-McCarthy hearings."<sup>51</sup> The authors also provide significant discussion of various doctrines related to the insanity defense including "irresistible impulse,"<sup>52</sup> "McNaughten rule,"<sup>53</sup> "Durham rule,"<sup>54</sup> and the procedures following acquittal by reason of insanity.<sup>55</sup>

One note of caution is warranted in regard to the accuracy of the narrative accounts given of individual films in *Reel Justice*. Often there are inaccuracies in these synopses that sometimes have significance for the legal issues raised by the film. For example, the narrative account of *Class Action* includes significant errors in the summary of the film that are likely to affect one's assessment of the legal and ethical issues raised by the film.<sup>56</sup> *Class Action* involves a wrongful death suit based on allegations of faulty automobile design.<sup>57</sup> One of the central issues in this case, and a significant element of the film's plot, is the pre-trial discovery process and a pre-production engineering safety report that concluded the

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48. *Id.* (explaining that while contingency fee arrangements are proper in personal injury cases and other civil matters, such arrangements are improper in criminal matters).

49. *Id.*

50. *See id.* at 238 ("Robert Traver, the author of the book on which the movie is based, was a pseudonym for the late Justice Voelker who wrote the book after his retirement from the Michigan Supreme Court.").

51. *See id.* (stating that Joseph N. Welch, who played the role of Judge Weaver, was an actual judge who represented the U.S. Army in the "Army-McCarthy hearings").

52. *See id.* (explaining that the irresistible impulse defense is not a permissible defense to a murder charge in every state).

53. *See id.* (noting the McNaughten rule is recognized in all states and allows a defendant to be found not guilty by reason of insanity only if a judge or jury believes that the defendant's mental illness prevented him from knowing what he did was wrong).

54. *See id.* (stating that the Durham rule is another test of insanity that was announced in *Durham v. U.S.*, 214 F.2d 862 (D.C. Cir. 1954)).

55. *See id.* (noting that contrary to the conclusion in *Anatomy of a Murder*, normally one of the procedures following an acquittal by reason of insanity is for the defendant to serve at least a minimum amount of time in a medical facility).

56. *See id.* at 270-76.

57. *CLASS ACTION* (TCF/Interscope 1990).

automobile model at issue was likely to explode if the automobile was struck from the rear when the left turn signal was engaged.<sup>58</sup>

In the film, it is not clear whether the report is ever located. Instead, the defense attorney locates the author of the report and subsequently locates his notebook and records on which the missing report was based.<sup>59</sup> The defense attorney seemingly acquiesces to her managing partner's decision to deliver the subpoenaed materials to the plaintiff's attorney knowing that the material is misfiled and incorrectly inventoried, making it difficult, if not impossible for the plaintiff's attorneys to find the material.<sup>60</sup> After delivering the subpoenaed material, the defense attorney discovers that the notebook and records were not included in the delivery of documents, and the misleading inventory entry was deleted.<sup>61</sup> Each of these aspects of the delivery of subpoenaed material raises significant ethical questions about the conduct of the defense attorney. In conveying this somewhat tangled scenario, the authors provide the following account:

[T]he report appears and disappears so often that it seems to have been written by Houdini rather than Dr. Pavel [the safety engineer researcher]. Against the wishes of Dr. Getchell [an executive of the automobile manufacturer] and Michael, her obnoxious supervising partner and lover, Maggie decides to turn the report as well as a mass of other documents over to Jedediah [plaintiff's counsel] and his associate Nick, in compliance with their written demand for Argo's [the automobile manufacturer] engineering reports. The report never gets to them, but it does show up in Maggie's desk drawer. When she next looks for it, it's gone again; Michael has destroyed it.<sup>62</sup>

This account suggests that the defense counsel made an initial effort to comply with the subpoena. The film, however, raises questions about whether the deliberate misfiling and the intentional erroneous inventory constituted compliance with the rules of discovery, and whether such conduct was unethical. When the defense counsel learns the material was not delivered, she does check in her desk to see whether her copy of the material has been taken, which it has.<sup>63</sup> The film does not suggest that defense counsel came into possession of the actual material she thought

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58. *See id.*

59. *See id.*

60. *See id.*

61. *See id.*

62. REEL JUSTICE, *supra* note 13, at 272.

63. *See* CLASS ACTION, *supra* note 57.

had been delivered to the plaintiff's attorneys.<sup>64</sup> While this may seem a small error on the narrative account of *Class Action*, the value of *Reel Justice* in discussions of legal and ethical issues is substantially lessened by such errors.

The mistake in the narrative account of *Class Action* is compounded by the "legal analysis" the authors offer. For example, the authors state, "In order to defeat her father [plaintiff's counsel] and further her climb up the law firm ladder, Maggie [defense counsel] seems to accede to the destruction of a crucial report."<sup>65</sup> If the defense counsel had participated in the destruction of evidence, the ethical wrongdoing would be clear cut and the legal issue certain in terms of noncompliance with the rules of discovery.<sup>66</sup> However, the film's portrayal of the defense counsel's action is more complex and the ethical issues are more ambiguous than the authors describe. While literal compliance with a discovery request for material is one thing, efforts at deception or confusion in the method of compliance with discovery may, nonetheless, raise significant ethical questions.<sup>67</sup>

### III. LEGAL REELISM AND CONTEMPORARY THEORIES OF INTERPRETATION

*Legal Reelism: Movies as Legal Texts* edited by John Denvir, a professor of law at the University of San Francisco School of Law, is a collection of fourteen essays exploring the meaning and significance of a number of films dealing with law and justice by a number of scholars from a wide background of academic disciplines from a variety of post-modern critical theory perspectives.<sup>68</sup> For example, French philosophers Michael Foucault and Gilles Deleuze are the source of the critical framework for an essay, *The Laws of the Game*, by a professor of Romance Languages at Harvard University, Tom Conley, in which he examines Jean Renoir *La Règle du Jeu* (*The Rules of the Game*).<sup>69</sup> Similarly, critical race theory provides the framework for the essay *Rewriting History with Lightening*

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64. *See id.*

65. REEL JUSTICE, *supra* note 13, at 273.

66. *See, e.g.*, MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.4.

67. *See id.*

68. *See* LEGAL REELISM, *supra* note 14, at xi-xviii.

69. *See id.* at 95-117. Examples of the type of work drawn from for the theoretical context for this essay include: MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON, (Alan Sheridan trans., 1977); and GILLES DELEUZE & FELIX GUATTARI, ANTI-OEDIPUS: CAPITALISM AND SCHIZOPHRENIA, (Robert Hurley et al. eds., Univ. of Minnesota Press 1983) (1972); *see also* THE RULES OF THE GAME (LaRegles du Jeu) (LaNouvelleEdition Francaise 1939).

by a law professor at Santa Clara University Law School, Margaret M. Russell, in which she examines Spike Lee's *Do The Right Thing*.<sup>70</sup> Finally, film theory itself provides the context for an essay, *Law Noir*, by Norman Rosenberg, a professor of history at Macalester College.<sup>71</sup>

The use of contemporary critical theory in viewing films is exemplified by the essay in *Legal Reelism* entitled *Myth and Meaning* by a professor at the University of Indiana Law School, David Papke, in which he examines Francis Ford Coppola's *The Godfather*.<sup>72</sup> According to Papke, the history of the viewing experience of the *Godfather* trilogy "nicely illustrates that the insights of reception or response theory are as applicable to film as they are to literature."<sup>73</sup> Critical response theory argues that the meaning of a film cannot be deduced from the director's intent, nor from the formal features of a film.<sup>74</sup> Instead "different audiences make different responses on the basis of their specific cultural competencies and dispositions."<sup>75</sup> According to Papke, Coppola's *Godfather* films did not have the impact on American audiences viewing these films that was intended by the director.<sup>76</sup> According to Papke:

"Coppola was determined to challenge the mythic understanding of the United States as a pluralistic society living by a rule of law and serving as a model for the rest of the world. He proffered as a symbol for America, the lawless and criminal Corleones, a family headed first by father Vito and then by his son Michael."<sup>77</sup>

70. See LEGAL REELISM, *supra* note 14, at 172-98; see also DO THE RIGHT THING (UIP/Forty Acres and a Mule Filmworks 1989). See generally CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT, (Kimberle Crenshaw et al. eds., 1995).

71. See LEGAL REELISM, *supra* note 14, at 1-22. See generally R. BARTON PALMER, HOLLYWOOD'S DARK CINEMA: THE AMERICAN FILM NOIR (1994).

72. See LEGAL REELISM, *supra* note 14, at 1-22. Professor Papke draws heavily on the writing of Wolfgang Iser who has written broadly on the subject of reader response theory. See WOLFGANG ISER, *The Reading Process: The Phenomenological Approach in NEW DIRECTIONS IN LITERARY HISTORY*, 125-45 (Ralph Cohen ed., 1974); WOLFGANG ISER, *Interaction Between Text and Reader*, in THE READER IN THE TEXT: ESSAYS ON AUDIENCE AND INTERPRETATION, 106-19, (Susan R. Suleiman & Inge Crosman eds., 1980).

73. LEGAL REELISM, *supra* note 14, at 17.

74. See generally JANET STAIGER, INTERPRETING FILMS: STUDIES IN THE HISTORICAL RECEPTION OF AMERICAN CINEMA (1992).

75. ANDY WILLIS, *Cultural Studies and Popular Film*, in APPROACHES TO POPULAR FILM 184, (Joanne Hollows & Mark Jancovich eds., 1995).

76. See LEGAL REELISM, *supra* note 14, at 6.

77. *Id.* at 1.

Instead, viewers of the film most often saw the protagonists in these films as exemplars of the American success myth; “[m]any enjoyed and interpreted the *Godfather* films with reference rather than in opposition to American myths.”<sup>78</sup>

Papke traces the history of the *Godfather* trilogy, beginning with Mario Puzo’s publication in 1969 of the best selling novel with “tabloid-style peeks at ways of the Mafia” and interludes of “ribald and illicit sex.”<sup>79</sup> Coppola was not the first choice to be director of a film based on the novel. Nonetheless, after being chosen to direct such a film, Coppola reshaped the story “to use the Corleones to symbolize the essence and decline of America.”<sup>80</sup> Papke divides the first *Godfather* film into four cinematic “acts” that form an “extended metaphor for the ruthless and predatory aspects of capitalist America.”<sup>81</sup>

In Papke’s analysis, the first act of *The Godfather* contrasts the public side of Corleone family life with the sinister underside of the power and violence that supports it. The film begins with the wedding of Don Corleone’s only daughter and its festive outdoor reception occurring while Don Corleone, within a shadowy study, receives tribute and requests for favors.<sup>82</sup> The operation of the Mafia is exemplified by the dispatch of an attorney to “negotiate” a contract for the Don’s godson, and the severing of the head of the director’s racehorse when negotiations fail to proceed.<sup>83</sup> The second act portrays the inevitable loss of innocence and seduction into the world of violence and crime that is meant to suggestively symbolize the American system. This part of the film includes a strategy meeting leading to ultimate gang warfare over issues related to the illicit narcotics market.<sup>84</sup> Michael Corleone, a former Ivy League student and World War II veteran, is drawn into multiple murders in retaliation for the attempts on his father’s life and other violence produced by the drug related gang war.<sup>85</sup> The third act involves the family tragedies that inevitably are part of the world of violence and corruption. Michael Corleone is sent to Sicily where he meets and marries a woman who is killed by a car bomb intended for Michael.<sup>86</sup> Meanwhile in New York, the eldest Corleone son

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78. *Id.* at 2.

79. *Id.*

80. *Id.* at 3.

81. *Id.*

82. *See id.*

83. *See id.* at 4.

84. *See id.*

85. *See id.*

86. *See id.*

is ambushed by an opposing crime family.<sup>87</sup> The fourth act represents the inevitable transfer of corrupt power from one generation to another. In the final act, power is transferred from Don Vito to his son Michael after the leaders of the opposing Mafia families are assassinated.<sup>88</sup> The film ends with Michael receiving the “kiss of recognition” from the family’s “members.”<sup>89</sup>

Papke maintains that Coppola meant the film to operate on several levels: the immigrant Italian-American family that achieves success; an underworld family whose business is crime; and a demythological symbol of the American experience.<sup>90</sup> According to Papke: “Michael’s criminology and his bullying dishonesty are increasingly cold, efficient, and corporate.”<sup>91</sup> Papke quotes Coppola:

It became clear to me that there was a wonderful parallel to be drawn, that the career of Michael Corleone was the perfect metaphor for the new land. Like America, Michael began as a clean, brilliant young man endowed with incredible resources and believing in a humanistic idealism. Like America, Michael was a child of an older system, a child of Europe. Like America, Michael was an innocent who had tried to correct the ills and injustices of his progenitors. But then he got blood on his hands. He lied to himself and others about what he was doing and why. And so he became not only the mirror image of what he’d come from, but worse.<sup>92</sup>

*The Godfather* met with financial success and critical acclaim winning the Academy Award for Best Picture in 1973.<sup>93</sup> However, Papke reports that Coppola’s intention to present the Mafia and Michael as symbols for America and corporate criminality went “virtually unrecognized in the nation’s movie houses.”<sup>94</sup> Instead, the film was seen as having “valorized the mythic family and the legend of the self-made man.”<sup>95</sup> In fact, Papke reports, the film may have contributed to a surge of interest in family

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87. *See id.*

88. *See id.*

89. *Id.* at 4-5.

90. *See id.* at 5.

91. *Id.*

92. *Id.* at 6; *see also* William Murray, *Playboy Interview: Francis Ford Coppola*, *PLAYBOY*, July 1975, at 60.

93. *LEGAL REELISM*, *supra* note 14, at 6.

94. *Id.*

95. *Id.*

genealogy.<sup>96</sup> Vito Corleone was seen as a prime example of the self-made man, a retelling of the Horatio Alger myth; “[p]oor, orphaned, and lacking a formal education, Vito Corleone had nevertheless fought his way to the top.”<sup>97</sup> A more insidious view of the film according to Papke was its apparent “endorsement of authoritarian power as an alternative to legalism.”<sup>98</sup> From this perspective *The Godfather* presents,

law and legal institutions as hopelessly biased: police are on the take, judges are in the Mafia’s pocket, and family lawyers make offers that cannot be refused. More appealing is the face-to-face authority of Don Corleone. He relieves disappointment, reestablishes social order, and provides justice of a kind.<sup>99</sup>

Papke goes on to examine Coppola’s efforts in *Godfather II* and *Godfather III* to achieve his objective of demythologizing the fundamental lawlessness of America. However, Papke reports that these further efforts at demythologizing also failed to produce the effects that Coppola intended.<sup>100</sup>

The theoretical background of response theory provides the basis for Papke’s conclusion that cultural artifacts are not merely forms into which writers, composers, and directors infuse meaning that will later be dramatized by readers, listeners, and viewers.<sup>101</sup> Coppola as director of the *Godfather* films may have set out objectives to be achieved in these films, but these goals neither exhaust what the films communicate nor fully restrict what viewers might find interesting and appealing. The images and performances are symbolic systems of a feature film that are simply too complex for any director to feel confident that he or she may control in terms of the meaning given to them by the films’ viewers. This, Papke suggests, is an important insight for scholars and viewers of films dealing with law and the legal system: “the law-related messages in films derive from a richly complex, contested, and contextualized process, and this process in turn makes the study of law-related films all the more engaging and challenging.”<sup>102</sup>

The richness of the approaches suggested by Papke and the other essay authors in *Legal Reelism* can be illustrated by another possible reading of

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96. *See id.* at 8.

97. *Id.*

98. *Id.*

99. *Id.*

100. *See id.* at 14.

101. *See id.* at 17.

102. *Id.* at 18.

the *Godfather* trilogy. This is an intertextual reading of the film against the text of Aeschylus' *Orestia*, which includes the plays *Agamemnon*, *The Libation Bearers* and *The Eumenides*.<sup>103</sup> The theme of revenge permeates both trilogies, as family and honor demand reprisals and redress. In the *Orestia*, the endless spiral of revenge killings are ended only by institutionalizing public authority in the punishment of legal transgressions.<sup>104</sup> The "Furies" conclude the *Orestia* with their prayer:

This is my prayer: Civil War  
fattening on men's ruin shall  
not thunder in our city. Let  
not the dry dust that drinks  
the black blood of citizens  
through passion for revenge  
and bloodshed for bloodshed  
be given our state to prey upon.  
Let them render grace for grace.  
Let love be their common will;  
let them hate with single heart.  
Much wrong in the world thereby is healed.<sup>105</sup>

By contrast, in the *Godfather* trilogy, the movement is away from state enforcement of the law by authorized officials to a system of personal vendetta that becomes institutionalized into a program of precise organizational revenge reaching from the lowest to the highest levels of society.

The *Orestia* begins with the play *Agamemnon* in which the king, Agamemnon, returns home after achieving victory in Troy.<sup>106</sup> This victory was made possible by Agamemnon's sacrifice of his daughter Iphigenia to placate a goddess who would otherwise have prevented the Greek fleet from sailing to Troy.<sup>107</sup> Agamemnon is killed by his wife, Clytemnestra, in retaliation for his daughter's death.<sup>108</sup> Clytemnestra is supported in her efforts at revenge by her lover, Aegisthus.<sup>109</sup> In *The Libation Bearers*,

103. See THE COMPLETE GREEK TRAGEDIES (David Grene & Richmond Lattimore eds., Vol. I 1953).

104. See *id.* at 34-35.

105. *Id.* at 188.

106. See *id.* at 12.

107. See *id.* at 8 (noting that the prophet Calchas, supported by public opinion, forces Agamemnon to sacrifice his daughter to the goddess Artemis).

108. See *id.* at 12.

109. See *id.*



Orestes, the son of Clytemnestra and Agamemnon, returns from exile.<sup>110</sup> After a reunion with his sister Electra, Orestes gains access to the palace where he kills Clytemnestra and Aegisthus in an act of revenge for his father's death.<sup>111</sup> Orestes then flees after being driven mad by the Furies.<sup>112</sup> In *The Eumenidies*, Orestes is purified by Apollo at Delphi.<sup>113</sup> Nevertheless, he is forced to stand trial for murder in the court of the Areopagus.<sup>114</sup> Apollo defends Orestes while the Furies act as prosecutor.<sup>115</sup> Orestes is acquitted only after Athena intervenes and convinces the Furies to accept the practice of communal punishment in place of personal revenge.<sup>116</sup> The principal theme of the *Orestia* is the need to eliminate practices of personal revenge, vendetta or blood feud if human society is to become civil society. Civil society can only be achieved by replacing a program of personal revenge with public prosecution and legal process.

Vito Corleone's career in organized crime began in his youth when he decided that the police and the American legal system were either simply ineffectual or corrupt; in any case, the enforcers of law were not able to protect his family and others in his community from crime and extortion. The organized crime family of *The Godfather* is in part a system of private enforcement which inflicts injury and death through a system of personal revenge and vendetta overseen by the Godfather.<sup>117</sup> One can view *The Godfather* trilogy as providing a narrative that is the inverse of the *Orestia*.<sup>118</sup> The movement in *The Godfather* is from a system of formal public order to a pervasive practice of private vendetta or revenge.

#### IV. COMPARING METHODOLOGIES

Mark Tushnet's essay *Class Action: One View of Gender and Law in Popular Culture*<sup>119</sup> permits an examination of the contrast between the

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110. See *id.* at 30.

111. See *id.* at 31.

112. See *id.*

113. See *id.* at 9.

114. See *id.*

115. See *id.* at 34-35.

116. See *id.* at 35.

117. See LEGAL REELISM, *supra* note 14, at 1-18.

118. See *supra* notes 101-15 and accompanying text.

119. See LEGAL REELISM, *supra* note 14, at 244.

approaches taken in the two books under review.<sup>120</sup> Both Tushnet and Bergman/Asimow provide an extensive narrative account of the film, *Class Action*.<sup>121</sup> Bergman/Asimow then go on to discuss the film with reference to issues about discovery in the legal process; legal ethical obligations relating to that process; the proper scope of witnesses known to be telling the truth on the one hand and the elicited perjured testimony knowing it to be false on the other hand; and, finally, questions about the propriety of providing information or assistance to opposing counsel.<sup>122</sup>

Tushnet examines *Class Action* with reference to a model of opposition which he says can be observed in many legal orientated films in what he terms “the law — against — justice trope” in which “the woman lawyer stands for justice, and the male lawyer for law, and some mediating compromise is worked out.”<sup>123</sup> According to Tushnet,

The recent film *Class Action* (1991) offers a more conventional variant on the opposition of law and justice, male, and female, Dominant and Other. *Class Action* is an ordinary courtroom drama in which law stands against justice. It pursues the second common story line, of reconciliation and mediation. It sustains dramatic tension, though, by initially displacing the association of law with the Dominant and justice with the Other. At the film’s start, law is associated with the woman and justice with the man. The film’s narrative is driven by the effort to realign these opposition through a “reconciliation” in which the woman abandons law for justice, while the man synthesizes them.<sup>124</sup>

In Tushnet’s view, *Class Action* involves the realigning of the female lawyer so that she takes on the appropriate gender role.<sup>125</sup> This realignment involves covertly and directly providing assistance to opposing counsel so that the female lawyer can overcome the injustice resulting from the erosion of discovery orchestrated by other members of her firm.<sup>126</sup>

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120. Compare Mark Tushnet, *Class Action: One View of Gender and Law in Popular Culture*, in LEGAL REELISM, *supra* note 14, at 244-60, with REEL JUSTICE, *supra* note 13, at 270-76.

121. See REEL JUSTICE, *supra* note 13, at 270-76; LEGAL REELISM, *supra* note 14, at 244-60.

122. See REEL JUSTICE, *supra* note 13, at 273-75.

123. LEGAL REELISM, *supra* note 14, at 247.

124. *Id.* at 249 (citation omitted).

125. See *id.* at 259.

126. See *id.*

While Tushnet's analysis of the film enriches the reading given by Bergman and Asimow, it is by no means an authoritative or final reading. One could easily develop an analysis of the film that marginalized the gender elements of the film and, instead, considered the narrative with reference to the emergence of large firm practice and the effect of such institutional development on the erosion of ethical constraints on legal practice including conformity to the requirements of discovery.

## V. TAKING LAW FILMS INTO THE CLASSROOM

The introduction of film studies into legal study will certainly enrich the law schools' curriculum and provide legal scholars valuable material for study and commentary. The course I am currently teaching employs three approaches to using films to gain insight into the status of the lawyer and the operation of the legal system: inter-textual reading of films and written text; variations in narrative approach to a legal subject; and the use of films to explore jurisprudential concepts. This course is further enriched by readings from the two books under review, as well as from essays in the *University of San Francisco Law Review Symposium, Picturing Justice: Images of Law and Lawyers in the Visual Media*.<sup>127</sup>

### A. Intertextual Readings

The basis for the intertextual reading of a series of Hollywood studio films dealing with changing roles and images of the lawyer in the twentieth century is provided by Anthony Kronman's monograph *The Lost Lawyer*.<sup>128</sup> In his book, Kronman, the dean of Yale Law School, examines what he sees as a change in values that underlie the aspirations of American lawyers.<sup>129</sup> According to Kronman, the accepted view of yesterday was that outstanding lawyers were not simply accomplished technicians, but persons of prudence and practical wisdom.<sup>130</sup> With this self-image, the lawyer's chosen career was found to be meaningful and rewarding. Kronman maintains that this ideal is now dying, and that lawyers feel less fulfilled by their work.<sup>131</sup> As the deliberative values of

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127. Symposium, *Picturing Justice: Images of Law and Lawyers in the Visual Media*, *supra* note 3.

128. See ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993).

129. See *id.* at 1.

130. See *id.* at 2.

131. See *id.* at 3.

the statesman lawyer ideal have faded, Kronman concludes society has been the loser.<sup>132</sup>

Understanding of the archetype of the statesman lawyer is enhanced by a viewing of *Inherit the Wind*.<sup>133</sup> This film is based on the Scopes trial.<sup>134</sup> The film presents the story of a teacher in a Southern town who is jailed for teaching Darwin's theory of evolution.<sup>135</sup> The principal antagonists in the film are the lawyers Matthew Harrison Brady and Henry Drummond, who are based on the real life litigators in the trial, William Jennings Bryan and Clarence Darrow, a Christian fundamentalist and an agnostic, respectively.<sup>136</sup> These two "statesmen lawyers" engage in a trial in which far more than a public school teacher's employment is at stake. The clash of opposing beliefs, religious faith versus scientific proof, community values versus individual autonomy of thought and expression, involves the two lawyers as persons with convictions about the appropriate role of law in society and its use as the mechanism for promoting social consensus.

While the lawyers in *Inherit the Wind* are characterized by their strong convictions and civic mindedness, the lawyer portrayed in *To Kill A Mockingbird*<sup>137</sup> is presented as a man of character and moral virtue.<sup>138</sup> The protagonist, Atticus Finch represents a black man accused of beating and raping a young white woman.<sup>139</sup> The lawyer faces down a lynch mob, but despite a masterful defense his client is convicted.<sup>140</sup> It has been argued that people react positively to Atticus and his story because they want to see characters who have a strong moral sense—a feeling for transcendent moral values or a "natural law" view of the world as Kronman

132. *See id.* at 4. (contending that as the statesman ideal fades, the ability of lawyers to provide strong leadership in politics will fade as well).

133. *INHERIT THE WIND* (UA/Lomitas 1960); *see* REEL JUSTICE, *supra* note 13, at 14-20; *see also* THOMAS J. HARRIS, COURTROOM'S FINEST HOUR IN AMERICAN CINEMA 110-28 (1987) (discussing Henry Drummond's role as the lawyer for Bertram Cates, prototype of John T. Scopes, in *Inherit The Wind*); Gerald F. Uelman, *The Trial as a Circus: INHERIT THE WIND*, *supra* note 3, at 1221; 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. 1221, 1225 (1996).

134. *See* RAY GINGER, SIX DAYS OR FOREVER? TENNESSEE V. JOHN THOMAS SCOPES (1958).

135. *See* REEL JUSTICE, *supra* note 13, at 14.

136. *See id.* at 18.

137. *TO KILL A MOCKINGBIRD* (U-I 1962).

138. Compare *INHERIT THE WIND*, *supra* note 133, with *TO KILL A MOCKINGBIRD*, *supra* note 137.

139. *See* *TO KILL A MOCKINGBIRD*, *supra* note 137.

140. *See id.*

characterizes the world view of the statesman lawyer.<sup>141</sup> Others see Atticus as an absurd character holding onto traditional values in a valueless world.<sup>142</sup> In the view of John Jay Osborn, Jr.: "Atticus is in his own way . . . deluded and imprisoned . . . Atticus cannot see beyond his law books. Indeed, he seems scared to do so, as if it would unleash the real demons in the town. He plays along with the system."<sup>143</sup>

The lawyers in *Anatomy of a Murder* are portrayed as skilled in their craft and in tune with their society in a way that would be foreign to Atticus Finch; these are men of practical wisdom.<sup>144</sup> The craft of the defense counsel is developed through the course of the film as he suggestively indicates what must be proved to establish an effective defense.<sup>145</sup> One commentator has suggested the richness of the film is derived largely from the realistic portrayal of attorney-client relationships: "the portrayal of the mixture of trust, hope, suspicion, and antagonism that characterizes many attorney-client relationships is vividly portrayed."<sup>146</sup>

The possibility of drawing upon inner resources to meet the demands of honorable practice as a lawyer is dealt with in *The Verdict*.<sup>147</sup> The film deals honestly with a malaise that seems to plague a good number of practicing bar members. A symptom of this malaise is disillusionment about the ability to bring about real benefits to clients. *The Verdict* provides an excellent cinematic vehicle for exploration of the all-too-familiar cycle of disillusionment, disappointment and failure, commonly

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141. See, e.g., David Guterson, *Amid the Cedars, Serenity and Success*, N.Y. TIMES, Feb. 29, 1996, at C1. See generally Claudia Johnson, *Without Tradition and Within Reason: Judge Horton and Atticus Finch in Court*, 45 ALA. L. REV. 483 (1994).

142. See, e.g., John Jay Osborn, Jr., *Atticus Finch—The End of Honor: A Discussion of To Kill A Mockingbird*, 30 U.S.F. L. REV. 1139, 1142 (1996). See generally Monroe H. Freedman, *Atticus Finch—Right and Wrong*, 45 ALA. L. REV. 473, 480 (1994).

143. Osborn, *supra* note 142, at 1141.

144. See ANATOMY OF A MURDER, *supra* note 22; see also REEL JUSTICE, *supra* note 13, at 232-38 (providing a legal analysis of *Anatomy of a Murder*); HARRIS, *supra* note 133, at 68-109 (providing a legal analysis of *Anatomy of a Murder*).

145. See ANATOMY OF A MURDER, *supra* note 22; REEL JUSTICE, *supra* note 13, at 232-38; HARRIS, *supra* note 133, at 68-109.

146. CRAMTON, *supra* note 46, at 14.

147. THE VERDICT (Twentieth Century Fox (Zanuck-Brown) 1982); see also REEL JUSTICE, *supra* note 13, at 301-06 (providing a legal analysis of *The Verdict*); HARRIS, *supra* note 133, at 150-67 (providing a legal analysis of *The Verdict*).

complicated by substance abuse, particularly alcoholism, in the legal profession.<sup>148</sup>

In *The Verdict*, a down-and-out alcoholic lawyer takes on a case that presents him with a chance to regain his self-esteem.<sup>149</sup> The case involving medical malpractice pits the lawyer against a Catholic diocesan hospital represented by a formidable litigation firm.<sup>150</sup> The path to regaining his self-esteem leads the lawyer to affirm the values that Kronman's idealized lawyer embodies. The lawyer musters the compassion and conviction that permits him to vindicate his client's interests and emerge as a lawyer who engages in moral battles worth fighting.<sup>151</sup>

The way in which large law firm culture shapes the popular view of legal practice is raised by *Class Action*,<sup>152</sup> which already has been discussed here, and another film, *The Firm*.<sup>153</sup> Kronman views the practice of law in the large firm to be one of the most significant factors affecting the contemporary practice of law—and not for the better.<sup>154</sup> Kronman correctly observes that the big firms “attract the best law school graduates, have the most powerful clients, and possess the greatest clout within the profession. They also make the most money. As a result, they exert a disproportionate influence on the practicing bar as a whole.”<sup>155</sup> These factors lead Kronman to conclude: “if we want to know what conception of professional excellence is likely to guide the next generation of practicing lawyers, we thus have reason to examine with special care the . . . [conception of excellence] our large firms have recently come to embrace.”<sup>156</sup>

*The Firm* focuses on the hiring and early career of Mitch McDeere, who is offered a well paying job after his graduation from Harvard Law

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148. See *THE VERDICT*, *supra* note 147; see also Samuel Frizell, *The Profession Has A Problem*, L.A. DAILY J., Apr. 6, 1993, at 6 (showing that substance abuse is a prevailing problem among the legal profession).

149. See *THE VERDICT*, *supra* note 147.

150. See *id.*

151. See *id.*

152. See *CLASS ACTION*, *supra* note 57; see also REEL JUSTICE, *supra* note 13, at 270-76 (providing a detailed legal analysis of *Class Action*); LEGAL REELISM, *supra* note 14, at 245-59.

153. See *THE FIRM* (Paramount 1993); see also Judith Grant, *Lawyers as Superheroes: The Firm, The Client, and The Pelican Brief*, 30 U.S.F. L. REV. 1111-21 (1996).

154. See *KRONMAN*, *supra* note 128, at 272.

155. *Id.*

156. *Id.*

School.<sup>157</sup> McDeere is an able and ambitious law school graduate, driven by a desire to achieve beyond his working class past. A prosperous corporate law firm based in Memphis offers McDeere a position that not only will pay off his law school debt, but also provide the basis for an affluent lifestyle.<sup>158</sup>

As he sets out on what promises to be a highly successful and lucrative career with the firm, McDeere is confronted by FBI agents who present him with evidence of corruption and murder within the firm.<sup>159</sup> With help from friends of his imprisoned brother, McDeere manages to elude the firm, its questionable clients and the FBI, by uncovering evidence of over billing, legal malpractice, and mail fraud that implicates excesses that have become a part of large law firm culture.<sup>160</sup> The evolution of lawyer-hero from legal statesman fighting for vindication of truth and justice to accomplished technician is complete: the evidence McDeere exposes largely consists of technicalities, hardly the stuff of a grand morality play. Further, McDeere demonstrates his integrity by leaving the law, not by using it to accomplish a greater good.

### B. *Alternative Narratives*

Films about lawyers and legal events are important to the study of law in society because they provide context. They infuse the law with the human dimensions that are excised in legal records and official accounts.<sup>161</sup> One achieves a richer understanding of a trial, for example, by considering creative interpretations of the legal proceedings, the underlying events, and the larger societal concerns at stake.<sup>162</sup>

A series of films treating the 1924 trial of Nathan Leopold and Richard Loeb for the kidnaping and murder of Bobby Franks provide an excellent opportunity for us to examine how narrative treatments of a legal event enhance our understanding.<sup>163</sup> A young boy's brutal murder, perpetrated in the pursuit of committing the "perfect crime," by two

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157. See *THE FIRM*, *supra* note 153; see also Grant, *supra* note 153, at 1114-17.

158. See *THE FIRM*, *supra* note 153; see also Grant, *supra* note 153, at 1114-17.

159. See *THE FIRM*, *supra* note 153; see also Grant, *supra* note 153, at 1114-17.

160. See *THE FIRM*, *supra* note 153; see also Grant, *supra* note 153, at 1114-17.

161. See generally *REEL JUSTICE*, *supra* note 13, at xvii-xix (explaining the significance of movies in analyzing the legal profession); see also *LEGAL REELISM*, *supra* note 14, at xi (explaining the significance of movies in analyzing the legal profession).

162. See, e.g., *REEL JUSTICE*, *supra* note 13, at xvii-xix; *LEGAL REELISM*, *supra* note 14, at xi.

163. See generally *COMPULSION* (1959); *ROPE* (1948); *SWOON* (1962); HAL HIGDON, *THE CRIME OF THE CENTURY: THE LEOPOLD AND LOEB CASE* (1975); see also *State v. Leopold*, Nos. 33,623 & 33,624, Cook County, State of Ill. (1924).

University of Chicago students would provide enough substance for a dramatic film in itself. Add Clarence Darrow arguing against the imposition of the death penalty on the two confused murderers and you have a monumental event in American legal history.<sup>164</sup>

Three films based on the Leopold and Loeb case provide very different perspectives on the crime and trial, but reveal how legal events stimulate the creative imagination. *Compulsion* is based on the novel of the same title by a news reporter, Meyer Levin.<sup>165</sup> This film draws heavily on official records and contemporary accounts of the murder and trial. The characters of the two students are based on psychiatric evaluations developed for the prosecution and defense, which were published in Chicago newspapers during the trial.<sup>166</sup> The attorneys involved in the film include a competent state's attorney, whose methodical questioning of the suspects leads to their mutually incriminating confessions, and a defense lawyer, who delivers a closing argument on the sources of criminality and the injustice of the death penalty that leads to imposition of prison sentences on the two murderers.<sup>167</sup>

Alfred Hitchcock's *Rope* was inspired by the Leopold and Loeb murder.<sup>168</sup> The film focuses on the two murderers and their adherence to a Nietzschean philosophy of the superman unrestrained by conventional law or morality.<sup>169</sup> The two friends strangle a classmate for an intellectual thrill.<sup>170</sup> They proceed to invite their victim's family and mutual friends to dinner served on a buffet table consisting of a trunk, with the body of the deceased stuffed inside.<sup>171</sup> The two friends are depicted as arrogant members of the privileged class. The boys' former teacher comes to

164. See generally *The Crime of Compulsion*, in ATTORNEY FOR THE DAMNED: CLARENCE DARROW IN THE COURTROOM 16-88 (Arthur Weinberg ed. 1957) (containing a detailed synopsis of the Leopold & Loeb case); CLARENCE DARROW & JUDGE ALFRED TALLEY, CLARENCE DARROW ON THE DEATH PENALTY (Chicago Historical Books 1991) (1924); CLARENCE DARROW, THE STORY OF MY LIFE (De Capo Press 1996) (1932) (unabridged republication of the first edition published in 1932 supplemented with a new introduction by Alan M. Dershowitz. Clarence Darrow's contribution to the story); NATHAN F. LEOPOLD, JR., LIFE PLUS 99 YEARS (1957) (Nathan Leopold's confessional memoir).

165. See MEYER LEVIN, COMPULSION (1956).

166. See COMPULSION, *supra* note 163; see also REEL JUSTICE, *supra* note 13, at 113-15.

167. See COMPULSION, *supra* note 163; REEL JUSTICE, *supra* note 13, at 113-15.

168. See ROPE, *supra* note 163.

169. See *id.*

170. See *id.*

171. See *id.*



suspect them of the crime and learns that their brutal acts were inspired by twisting the philosophical theories he had espoused in class.<sup>172</sup>

At the time of the actual trial, one suppressed dimension of the case was the homosexuality of Leopold and Loeb. *Swoon* explores this topic.<sup>173</sup> This film offers an impressionistic *film noire* treatment of the two murderers: both eighteen, both from good families, both brilliant, and seemingly typical “boys next door”—emphasizing their lack of interest in the act of murder for which they are being tried. Their attorney is left with no alternative but to plead for leniency in sentencing rather than arguing for their innocence.<sup>174</sup>

### C. Exploring Jurisprudential Concepts

The use of films to explore abstract concepts of jurisprudence may at first seem problematic. However, the exploration of concepts such as “legality” and due process can be facilitated through a close viewing of such films as *Judgment at Nuremberg*<sup>175</sup> and *Star Chamber*.<sup>176</sup>

*Judgment at Nuremberg* involves the war crimes prosecution of four Nazi judges, one of whom does not acknowledge the authority of the tribunal.<sup>177</sup> The trial raises significant issues about legality and due process, especially *ex post facto* laws. The “crimes against humanity” with which the defendants are charged did not exist prior to the conclusion of World War II.<sup>178</sup> Prior law imposed sanction on nations, not individuals.<sup>179</sup> Individuals could be prosecuted only for violation of state law by domestic authorities.<sup>180</sup> The film raises significant questions of

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172. *See id.*

173. *See SWOON, supra* note 163.

174. *See id.*

175. *See JUDGMENT AT NUREMBERG* (United Artists/Roxlom 1961); *see also* REEL JUSTICE, *supra* note 13, at 20-25; 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. 991-1022 (1996). *See generally* HARRIS, *supra* note 133, at 129-49 (providing a detailed legal analysis of *Judgment at Nuremberg*).

176. *See STAR CHAMBER* (Twentieth Century Fox 1983); *see also* REEL JUSTICE, *supra* note 13, at 251-54 (providing a legal analysis of *Star Chamber*).

177. *See JUDGMENT AT NUREMBERG, supra* note 175; *see also* REEL JUSTICE, *supra* note 13.

178. *See JUDGMENT AT NUREMBERG, supra* note 175; 1 INTERNATIONAL CRIMINAL LAW: CRIMES AND PUNISHMENT 583 (M. Cherif Bassiouni & Ved P. Nanda eds., 1973) (explaining the history behind the development of crimes against humanity).

179. *See INTERNATIONAL CRIMINAL LAW, supra* note 178, at 589 (including the revised statutory language on war crimes after World War II).

180. *See id.*

moral responsibility for those who administer reprehensible, though validly promulgated, laws.

*Star Chamber* involves an extra-legal tribunal of nine judges that meet secretly to impose punishment, including execution, on defendants who have been acquitted because of some "legal technicality" involving police conduct that has violated provisions of the United States Constitution.<sup>181</sup> The film provides a realistic depiction of suppression motions that lead to the release of criminals otherwise facing apparently conclusive incriminating evidence.<sup>182</sup> The film raises the question of whether judges would ever be justified in acting in an extra-legal fashion because of their frustration with the operation of the system of criminal procedural rules.<sup>183</sup> *Star Chamber* along with *Judgment at Nuremberg* raise serious questions about the relationship of legality and justice.

## VI. CONCLUSION

This essay has attempted to suggest the value of film as a resource for teaching and scholarship in law. However, this discussion has touched only on a very small number of considerations that make film such a valuable source of research and analysis. Issues of film censorship, particularly the influence of the American film industry's Production Codes, on film content can provide a rich basis of inquiry.<sup>184</sup> The influence of the studio system<sup>185</sup> and the development film genre<sup>186</sup> also suggest significant avenues of study focusing on the institutional context of film production. These in turn can enrich the study or viewing of films for the various purposes that have been discussed here.

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181. See *STAR CHAMBER*, *supra* note 176; see also *REEL JUSTICE*, *supra* note 13, at 251-54.

182. See *STAR CHAMBER*, *supra* note 176.

183. See *id.*

184. See generally LEONARD J. LEFF & JEROLD L. SIMMONS, *THE DAME IN THE KIMONO: HOLLYWOOD, CENSORSHIP, AND THE PRODUCTION CODE FROM THE 1920'S TO THE 1960'S* (1990).

185. See generally DAVID BORDWELL ET AL., *THE CLASSICAL HOLLYWOOD CINEMA: FILM STYLE & MODE OF PRODUCTION TO 1960* (1985).

186. See generally *FILM GENRE READER* (Barry Keith Grant ed. 1986); *HANDBOOK OF AMERICAN FILM GENRES* (Wes D. Gehring ed., 1988).

We live in a visual age. Films capture our interest and imagination. The viewing of films about lawyers, the legal system, law cases or legal issues provide valuable insight into the way these matters are understood in contemporary society. Those who are interested in research and study about films dealing with legal issues have a rich and fertile field of resources. The books reviewed here, and the other sources that have been cited, will ease access into the exciting field of films about law, lawyers, and the legal system.