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PRESUMING INNOCENCE: ALAN PAKULA AND
SCOTT TUROW TAKE ON THE GREAT AMERICAN
LEGAL FICTION

CHRISTINE ALICE CORCOS*†

The film Presumed Innocent is the subject of this Article by Professor Corcos. She explores the film's models of relationship between law and justice and between the attorney and layperson. In the film, the presumption of innocence formally releases a truly innocent person from legal proceedings, but is unable to release him from informal suspicion by laypersons who seek substantive justice. Using this theme, Professor Corcos assesses the irony and tension present in the film.

FORMER PROSECUTOR SET FREE
CHARGES AGAINST RUSTY SABICH DISMISSED

Spectators were stunned today when Judge Leon Lyttle dismissed murder charges against former D.A. Rosatt K. (Rusty) Sabich on the grounds that the prosecution had

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mishandled vital evidence needed for a conviction. Sabich was charged in the beating death of assistant district attorney Carolyn Polhemus. Prosecutor Thomas (Tommy) Molto refused to comment on the reasons for the missing evidence, saying only that "someone" had clearly made a grievous error in handling it, and that an investigation was underway. When asked if they planned to bring charges against anyone else in the case, Molto said it was "unlikely." Neither Sabich nor his attorney, Alexander (Sandy) Stern, could be reached for comment.

The Kindle County Register, Metro Section, at 1.

INTRODUCTION

Kindle County¹ newspaper readers whose only source of information about *People v. Sabich* is the article above might come to one of two conclusions about the case portrayed in *Presumed Innocent*.² For them, the meager facts available outside the courtroom must suffice to create a story about Rusty's guilt or innocence in accord with their preexisting assumptions about the nature of the legal system. Either the accused, an assistant prosecutor named Rusty Sabich, is guilty, and apparently has profited somehow from his knowledge of the legal system and what may have been honest error, or, he is innocent, and has escaped only through prosecutorial incompetence from a nightmare that could be visited on any unsuspecting person.

Observers attending the trial are not much better off. The official reason for dismissal of the murder charge is difficult for non-lawyers to grasp since it seems to be a "legal technicality" that allows Rusty to "get away with murder." The witnesses against him, including his former supervisor, Raymond Horgan, seem well-prepared and quite believable. The police have accumulated substantial circumstantial evidence showing Rusty's presence in the victim's apartment. Rusty has inside knowledge

1. Kindle County is the fictional setting for several of Scott Turow's novels.

2. (Mirage Productions 1990). Directed by Alan Pakula from the novel by Scott Turow (1987).

of the legal system and controlled the initial investigation into the victim's death, during which he may have withheld evidence. He seems to have been the logical suspect and the probable murderer.

How then does it happen that Rusty "gets off"? Is his story one of a murderer's good fortune and knowledge of "the system," or one of an innocent victim eventually vindicated by that system? Is it solely through the skill of his attorney that his case never goes to the jury, or did those procedural safeguards that protect both the guilty and innocent bring him safely out of the maze? Can either of these stories really explain Rusty's descent into the legal labyrinth, or does *Presumed Innocent* tell a third story about truth and falsity, and innocence and guilt? Does it illustrate the continuing tension between two images of the goal of law: one the impression that non-lawyers have, that the goal of law is to achieve justice, and the other the opinion that lawyers have, that the goal of law is to preserve the processes of fairness? The first image implies that the law is a monolith and justice its desired result. The second holds that it is a process, whose success is measured by its ability to preserve the rights of the individual against the tyranny of government or society. The certainty of the just result is self-defining, and derives from satisfactory completion of the process.

I suggest that *Presumed Innocent* presents us with both models of the relationship between law and justice and rejects them because of its identification of a fatal flaw in both. Using one of the fundamental fictions upon which our legal system is based, the film reveals that neither model deals successfully with the very real possibility that it can end with failure. The layperson, for whom the presumption of innocence is counterintuitive, and justice is the desired result, is less likely than the lawyer to accept the fiction as workable. The lawyer, for whom a just process is the goal, cannot assure the parties that that process will result in certainty. The presumption is therefore as a practical matter useless both to those who seek justice as an end and to those who practice it as a means. Through the story of Rusty Sabich, we see the presumption of innocence release a genuinely innocent person from formal accusation while failing to liberate him from informal suspicion. The legal system's inability to address this outcome is its fatal

flaw.

IDENTIFYING ASSUMPTIONS AND FORMULATING STORIES

Characteristic Stories

These questions are classic ones both for characters in courtroom dramas³ and for those of us who observe the action in and out of the courtroom.⁴ Courtroom drama jurors must make a choice among the stories presented to them through arcane rules of evidence and based on what limited facts they are allowed to consider. Other characters, freer to accept or reject the evidence of their senses, gathered both inside and out of the courtroom, also create stories about guilt or innocence which validate or contradict prior assumptions held about the legal system. As outside observers, we too evaluate the stories that such dramas tell about the legal system, accepting or rejecting their messages based on our beliefs, our hopes, or our cynicism about the possibility of justice.

Some courtroom dramas, such as *Anatomy of a Murder*⁵ and *To Kill a Mockingbird*,⁶ present us with two stories: one that the jury within the film has accepted as truth, and the other one that the film presents to us through Rusty's eyes, and that we accept as truth. Through their onscreen trials, these

3. On the courtroom drama in general see John Dorsey, *The Twentieth Century Courtroom Drama* (1979) (dissertation, University of Illinois, Urbana-Champaign). On the trial as focus of a narrative see ANN M. ALGEO, *THE COURTROOM AS FORUM: HOMICIDE TRIALS BY DREISER, WRIGHT, CAPOTE, AND MAILER* (1996).

4. Courtroom drama jurors are even more limited than we the viewers, since (as in real life) they should consider only the evidence legally presented in making their decisions, thus deciding on the most persuasive story. However, some filmmakers have explored the role of storytelling and/or external evidence in bringing culprits to justice or freeing the innocent. A classic example is *12 ANGRY MEN* (Orion-Nova/United Artists 1957) (Henry Fonda convincing eleven other jurors of the truth of his interpretation of the evidence based on their own perceptions of the world). More recently, the idea of the "guilty juror" (the killer actually serving on the jury) or the "knowledgeable-juror" (the juror solving the crime based on knowledge gained outside the courtroom) has come into vogue. See *SUSPECT* (Columbia/Tri-Star 1987) (juror attempts to solve crime based on specialized knowledge); *A KILLER AMONG US* (NBC television broadcast, Oct. 29, 1990) (juror becomes convinced that another member of the jury is the real killer).

5. (Columbia 1959).

6. (Universal 1962).

films give us two resolutions to the question of guilt or innocence: the filmic trial and the offscreen trial. These resolutions translate into public and private “truths” about guilt and innocence as well. Often these versions of truth do not agree. In *Anatomy*, for example, the jury finds the defendant “innocent” although we know he is “guilty”; in *Mockingbird* the reverse is true. Other courtroom dramas, such as *Reversal of Fortune*⁷ and *The Paradine Case*,⁸ resolve the filmic trial in one way while leaving us to ponder the “truth”—the defendant in *Reversal of Fortune* is found “innocent” while we are left uncertain as to the film’s opinion of his guilt; in *The Paradine Case*, the defendant is found “guilty” while the film strongly suggests that she might be “innocent.” In all of these dramas, however, the trial comes to some public conclusion about guilt or innocence. Some story is publicly accepted as “truth.”

Presumed Innocent and Characteristic Stories

Presumed Innocent is a different case. We obtain no public resolution, no “truth,” in the filmic trial, because the jury never returns a verdict. Rather, along with Rusty, we obtain a private resolution—we learn “truth” in a way that leaves permanently unresolved the basic questions that the legal system is designed to answer.

Further, we who have knowledge from both inside and outside the courtroom can create a story that resolves the primary question about Rusty’s innocence. But that resolution forces us to consider more deeply the question of another kind of guilt or innocence: the guilt or innocence of the legal system in creating or allowing the circumstances of Rusty’s arrest and trial. If we had the limited knowledge of the newspaper reader or the courtroom observer, this question would be less important. If we consider Rusty guilty, we would conclude that his story illustrates corruption, whatever our initial beliefs about the system. Should we find Rusty innocent (that is, give effect to the presumption of innocence) we would also believe his story illustrates eventual vindication through the legal system,

7. (Sovereign Pictures 1990).

8. (Vanguard/Selznick 1947).

whatever our opinion of the balance between corruption and fairness in that system.⁹ Either the system can be so distorted that a corrupt defendant and his unscrupulous advocate manipulate it, or it is not so corrupt that an innocent defendant and his skillful advocate cannot obtain vindication.

But Rusty is not vindicated: the charges are dismissed. The outcome allows those with limited knowledge to presume him either guilty or innocent, because they have no certainty either way. While the legal presumption of innocence may accompany him all his life, the actual presumption of guilt is likely to follow him, leaving questions about the true nature of the legal system unanswered. For viewers of the film, however, the charge that the legal system is unfair remains after the murder charge. Thus, *Presumed Innocent* forces us to confront along with Rusty the knowledge that we know the truth and that for all practical purposes that knowledge is irrelevant.

Because we ultimately acquire enough knowledge after the trial to learn the truth about Rusty's guilt, we might view *Presumed Innocent* simply as the story of a man wrongly accused, a not uncommon theme in movies.¹⁰ Rusty battles bias and

9. It is true that observers with limited knowledge who believe in Rusty's innocence will be dissatisfied with the dismissal, since it seems equivalent to the Scottish verdict of "not proven."

10. The fear of wrongful accusation and/or conviction is one of the most enduring and frightening specters in popular culture and in literature generally. Franz Kafka's *THE TRIAL* (William Muir et al. trans., 1960) is an obvious literary example, and many of Alfred Hitchcock's films are obvious cinematic ones. See, e.g., *THE WRONG MAN* (Warner Brothers 1956); *THE THIRTY NINE STEPS* (J. Arthur Rank/20th Century Fox 1960) *NORTH BY NORTHWEST* (Metro-Goldwyn-Mayer 1959). For non-Hitchcockian examples see *THEY WON'T BELIEVE ME* (RKO Radio Pictures 1947) and *FURY* (Metro-Goldwyn-Mayer 1936), both discussed in Norman Rosenberg, *Hollywood on Trials: Courts and Films, 1930-1960*, 12 *LAW & HIST. REV.* 341 (1994). Wrongful conviction is explored in *CALL NORTHSIDE 777* (Twentieth Century Fox 1948) (James Stewart plays a reporter who investigates an old murder case and discovers that an innocent man was imprisoned), *A CRY IN THE DARK* (Cannon International 1988) (Meryl Streep as an Australian mother wrongly convicted of the death of her child, really killed by wild dogs), and the passionate *I WANT TO LIVE!* (Figaro/United Artists 1958) (Susan Hayward as a woman wrongly sentenced and executed for murder). *THE LEGEND OF LIZZIE BORDEN* (ABC television broadcast, Feb. 1975) and films based on the lives of Bruno Richard Hauptmann (convicted and executed for kidnapping and killing Charles Lindbergh's child) and the Rosenbergs (convicted and executed for treason) are more problematic, as are miniseries depicting famous trials such as that of Dr. John Hill in *MURDER IN TEXAS* (NBC television broadcast, May 3-4, 1981). Further, the production company for *PRESUMED INNOCENT* (Mirage

what seems to be an awkward attempt on the part of the prosecutor to frame him. He is ultimately freed by the legal system to which he has devoted his life.

For the characters in the film, however, *Presumed Innocent* tells one of three other stories. Two of them are the stories non-lawyers find eminently believable. One story is that of the trial of a man so wily, manipulative, and knowledgeable about the legal system that the system cannot successfully bring him to justice. The other is of a man so unlucky that not even his specialized talents can protect him from the suffering of an inherently flawed process. These observers also act as jurors of a system either so well-constructed that even those with the most ability to influence it cannot manage to obtain the condemnation and ruin of a guilty man or so perverted that it could hound an innocent one, bringing him to the brink of disaster. For both these stories, the outcome is crucial to the validity of the system. Both groups believe firmly in the existence of "legal technicalities" which often resolve conflict in favor of judicial, if not actual, certainty about guilt or innocence. For either group, the trial's outcome is unsatisfactory because it creates neither judicial nor actual certainty. The third story is the one the lawyers in the film tell themselves about the nature of the legal system. For them, process is all; thus, "legal technicalities" preserve that process. Such technicalities are not evidence of failure but of success. Thus Rusty's story ought to validate the process. Yet, for them the outcome is unsatisfactory as well. The system whose substance is process ought to provide judicial if not actual certainty. Rusty is either innocent or guilty; the ideal process would result in acquittal or conviction.

Two stories, both from literature but based on fact, demonstrate the differing attitudes of these two groups. For the lay person the substance of the legal system, to preserve and mete

Productions 1990) is Mirage Productions, a significant name for a film company whose product presents the view that justice is a mirage. On Bruno Richard Hauptmann, see Anthony Scaduto et. al., *Inside New York*, NEWSDAY, Apr. 12, 1992, at 11 (describing Anthony Hopkins's research into a 1976 movie on Hauptmann). On the Rosenbergs, see Gary Arnold, *Uneven "Daniel": Fact Fights Fiction in Doctorow Adaptation*, WASH. POST, Sept. 23, 1983, at E1 (describing film version of Doctorow novel based on the Rosenberg trial and its aftermath).

out justice, is often subordinated to the necessity to preserve its form. Thus, injustice is often the inevitable outcome of law. Consider the following passage from Jonathan Swift's *Guilliver's Travels*, written to satirize real life social and legal situations in eighteenth century England:

. . . [I]f my neighbour hath a mind to my cow, he hires a lawyer to prove that he ought to have my cow from me. I must then hire another to defend my right, it being against all rules of law that any man should be allowed to speak for himself. Now in this case I who am the right owner lie under two great disadvantages. First, my lawyer, being practised almost from his cradle in defending falsehood, is quite out of his element when he would be an advocate for justice, which as an office unnatural, he always attempts with ill-will. The second disadvantage is that my lawyer must proceed with great caution, or else he will be reprimanded by the judges, and abhorred by his brethren, as one that would lessen the practice of the law. And therefore I have but two methods to preserve my cow. The first is to gain over my adversary's lawyer with a double fee, who will then betray his client by insinuating that he hath justice on his side. The second way is for my lawyer to make my cause appear as unjust as he can, by allowing the cow to belong to my adversary: and this, if it be skillfully done, will certainly bespeak the favour of the bench.

Now, your Honour is to know that these judges are persons appointed to decide all controversies of property, as well as for the trial of criminals, and picked out from the most dexterous lawyers, who are grown old or lazy, and having been biassed all their lives against truth and equity, are under such a fatal necessity of favouring fraud, perjury, and oppression, that I have known several of them refuse a large bribe from the side where

justice lay, rather than injure the faculty, by doing any thing unbecoming their nature or their office.¹¹

Swift continues in this vein, objecting to the use of precedents, which to his mind justify “the most iniquitous opinions,” rules of evidence, which allow them to “avoid entering into the merits of the cause,” and legal language, which promotes a confusion between “the very essence of truth and falsehood, of right and wrong; so that it will take thirty years to decide” any dispute.¹²

But the point is clear: the legal system exists to protect those in power, those in power conspire to conceal the truth (which would lead to justice), and only the exposure of their scheme by the author of the critique can reveal the truth to society. “Legal technicalities” substitute for a more substantive explanation of the seeming ability of many criminals to escape punishment while their victims suffer.

For the lawyer on the other hand, the purpose of the legal system is to preserve the rights of the individual through the appropriate process. While lawyers may differ on the extent to which this goal drives their actions, both prosecutors and defense lawyers for example swear to uphold the Constitution, which was designed to preserve the rights of the individual against the (federal) government, rather than the right of the government to impose its will upon the governed. Robert Bolt expresses this well in *A Man For All Seasons*, when he paraphrases Sir Thomas More’s famous statement: “If the parties will at my hands call for justice, then, all were it my father stood on the one side, and the Devil on the other, his cause being good, the Devil should have right.”¹³ For the lawyer, the process must be upheld, regardless of the outcome. A judge must not be swayed by the desirability of a particular outcome, if fairness will not support it.

Note that More equates justice and “good,” disassociating personalities from their causes. This disassociation is the tradi-

11. JONATHAN SWIFT, *GULLIVER’S TRAVELS* 282-83 (The Modern Library 1931).

12. *Id.* at 283-84.

13. WILLIAM ROPER, *LIFE OF SIR THOMAS MORE* 21 (Everyman ed. 1963). Robert Bolt’s play, *A Man For All Seasons*, leans heavily upon Roper’s work.

tional one that lay people expect. Invariably, however, in courtroom dramas, as in other types of fictional literature devoted to the study of the interaction of law and justice, personalities become comingled with their positions. Disentangling them becomes a challenge both for the lawyers, who as Swift points out, want to win their cases and for the clients and jurors, who want to see "their side" prevail, regardless of the justness of the cause. What should be a dispassionate weighing of the merits of each case seems to become a battle over personality or politics or preferences. The procedures on which More's processes depend seem arbitrary and their enforcement capricious. Thus originates the dissatisfaction with the legal system.

Expectations and the Hidden Defendant of Presumed Innocent

Presumed Innocent tells Rusty's stories in neither one of the ways that we are used to in understanding the legal system. First, Rusty is not the only defendant in *Presumed Innocent*. The legal system also is charged with unfairness, either to Rusty, if he is innocent, or to us, if he is really guilty. The two obvious trials in *Presumed Innocent* are Rusty's trial for murder and the legal system's trial for failure to preserve justice, either through outcome or through process. For non-lawyers the system's failure to convict Rusty if he is guilty is fatal, or to arrest, try and convict the real killer is fatal.

For lawyers participating in the drama, the system fails not because it indicts the "wrong person" (indeed they never know that) but because it ends in uncertainty. For lawyers watching the film, the system fails not only because the charges against Rusty are dropped, but because the legal process comes to a stop. The "legal impossibility" of trying another person for the crime creates an unacceptable and unalterable impasse.

For different reasons then, both non-lawyers concerned with outcome and lawyers concerned with process are disturbed by the abrupt end to Rusty's trial. Both have been robbed of the judicial certainty that a verdict provides and of the actual certainty that a completed trial seems to offer. Regardless of the outcome, observers want to see the drama played out; an interruption before the final curtain is emotionally as well as socially unsettling.

Equally disturbing is the question of truth and falsity and the extent to which we can place our faith in the legal system to determine them effectively. Someone must pay for crimes committed, as Rusty tells us early in the film. If Rusty is guilty and escapes punishment, Carolyn Polhemus's murder remains unavenged, and the legal system has failed. If he is innocent, it is "a practical impossibility" to try anyone else for the crime. Again the victim is unavenged, and again the system has failed. Dismissal is the best the judge can offer, but it is an unsatisfactory conclusion, since it leaves open the legal question of Rusty's guilt. If he is guilty, what justification or story can we tell ourselves about that dismissal beyond the observation that the prosecution simply hasn't accumulated enough evidence to prove Rusty's complicity beyond a reasonable doubt? If he is innocent, how can we explain his arrest and trial? What kind of legal system allows the guilty to go free and the innocent to suffer the tragedy of accusation? From our perspective, as from Rusty's, dismissal is not enough.

For us, the observers outside the film who were present during the investigation, arrest, trial, exoneration, and ultimate discovery of the truth, the film presents even more disturbing questions about the nature of that process. Initially we believe in Rusty's innocence, then entertain the possibility of his guilt, and finally witness (privately) his exoneration.

Admittedly, our ability to judge Rusty is initially tainted because he provides us with all the information about the case. We are initially making our decisions about his guilt or innocence based solely on his testimony. We eventually discover, however, that his statements can be independently verified. The truth comes not through the legal system but from the drama that takes place after the legal system lost interest in Rusty. His story is validated, hence made believable, through its consistency with what we learn by the end of the film. Therefore, even although his story may be partially fabricated, we cannot determine his guilt "beyond a reasonable doubt." We become both Rusty's jurors, sworn to acquit him in these circumstances, and defendants in a third, less obvious trial: our own trial for bias against anyone unfortunate enough to be accused—our own re-

luctance to “presume innocence.”¹⁴ We are forced to acknowledge Rusty’s complete innocence, and our guilt. Until the end, we have been suspicious of him.

We certainly have some cause to be suspicious. Rusty’s behavior in the post-dismissal scene with Lipranzer seems to us more consistent with likely guilt than probable innocence, as he tosses the incriminating glass into the river. But this behavior would not, in a court of law, overcome the presumption of innocence, the burden of “beyond a reasonable doubt.”

PRESUMPTIONS, STRUCTURE, AND TECHNIQUES

Introduction

How does *Presumed Innocent*¹⁵ engage us in contemplation of these various trials? How does it manipulate our perceptions of the story and the legal system so that we abandon our secret suspicion that “he must be guilty or the police wouldn’t have arrested him,” which left uncorrected would result in outrage at the dismissal of the charges and substitute our certainty that he is innocent coupled with outrage that “others” will continue to suspect him? How, from our secret feeling that Rusty may be guilty in spite of the presumption of innocence, do we change to our certainty that, in spite of the fact that he is innocent, “others” will continue to believe him guilty?

14. Consider for example the overwhelming number of whites who believed that O.J. Simpson was guilty of the murders of his ex-wife and her friend even before the trial was well underway. See Mona Charen, *Racial Split Over O.J. Trial Is Disheartening*, FRESNO BEE, Mar. 10, 1995, at B7 (citing a Harris poll finding that 61% of white Americans believed Simpson is guilty).

15. The fact that two “authors” (Scott Turow, the novelist, and Alan Pakula, the director) contributed to the film, complicates the issue somewhat. For simplicity’s sake I will refer to “the film” or “*Presumed Innocent*” as representing the totality of Pakula’s and Turow’s vision. The real relationship among the creators of a film is much more complex.

Peter Benchley reads an article in a newspaper about a fisherman who captures a forty-five-hundred-pound shark off the coast of Long Island . . . [A]nd eventually he writes a novel . . . and Zanuck-Brown buy the movie rights, and Benchley and Carl Gottlieb write a screenplay, and Bill Butler is hired to shoot the movie, and Joseph Alves, Jr., designs it, and Verna Fields is brought in to edit, and, maybe most importantly of all, Bob Mattey is brought out of retirement to make the monster. And John Williams composes perhaps his most memorable score. How in the world is Steven Spielberg the “author” of that?

WILLIAM GOLDMAN, ADVENTURES IN THE SCREEN TRADE 101 (1984).

Through the use of ironic storytelling, the film manipulates our perceptions and alters our opinions, not only of Rusty, but of the legal system. As Rusty gains awareness of the ironic nature of his story, so do we.

However, in order to understand the message we must first identify our presumptions about the legal system, discover a method to identify the film's real messages about those presumptions, and come to some conclusion about the film's ultimate message. As we already know, *Presumed Innocent* presents two obvious defendants: Rusty, on trial for murder, and the legal system, on trial for unfairness. It uses ironic storytelling to manipulate our opinions of the guilt or innocence of these defendants. Once we understand our own presumptions about guilt or innocence, we understand the underlying premise of the film: ours is the final responsibility for justice.

Presumptions

In order to understand the film's ironic message, we must also acknowledge certain presumptions about the real (as opposed to the reel) legal system, primarily that its major purpose is to provide a just result, to dispense justice as fairly as possible. In doing so it resolves disputes about the past, about "what happened," and about "the truth." As Rusty Sabich points out in the opening moments of the film, unless a jury can hear all the evidence and come to a decision, how can we hope for approximate justice, as Rusty does? Simply providing certainty—that is, a resolution of the question of guilt or innocence—without a sense that the resolution bears some relationship to "what really happened" is not enough. We must postulate that the elaborate mechanisms of legal procedure, those "legal technicalities," will result more often than not in the freeing of the innocent and sometimes in the conviction of the guilty. In essence, we must presume the legal system "innocent" of malicious intent. If we do not begin with that assumption, we miss much of the film's ironic message, as it forces us to question the seemingly arbitrary and byzantine twists of fate that Rusty undergoes. More particularly, we must believe that Rusty Sabich initially believes it.¹⁶ Only then does the contrast

16. Of course, if we do not believe that Rusty accepts a link between law and

between his life as an officer of the court and his life as an accused murderer become ironic. Indeed, we must believe that Rusty as a lawyer is committed to the process, even though it ultimately fails him.

Indeed, we have no reason to believe that Rusty does not initially accept the ultimate fairness of the system. The film gives us many indications that this is so, including his initial address to us during the opening credits. Thus the film prepares us to accept its message through the contrast between Rusty's beliefs, which initially we share, and its own beliefs about the legal system, which it will persuade us to accept by the end of the story, namely that justice is neither the necessary nor even the probable outcome of the legal system. The film introduces us to the question of how we "know" what we know about guilt, innocence, truth, and falsity, and whether we can truly "know" anything with enough certainty to believe that the legal system can ever "do justice."¹⁷

The Structure and Techniques of Ironic Storytelling

Like many other courtroom dramas,¹⁸ *Presumed Innocent* uses ironic storytelling to convey its message of imperfect justice. It forces us to examine our presumptions about the legal system, and shows us, subtly and inexorably, how flawed they are. Through images, events and conversations, both in and out of the courtroom, the film puts the legal system on trial. Ironic storytelling lends itself to use in courtroom dramas like *Presumed Innocent* partly because of its elegance and subtlety. In addition, it helps the film convey its message about the fundamental conflict between justice and injustice in the legal system

justice we indicate that we disbelieve at least some of what he says. In that case, what happens to him throughout the film is perfectly predictable, since we doubt his word. But the ending makes nonsense of this interpretation.

17. Compare with the filmic Sunny von Bulow's voiceover remark about her husband in *REVERSAL OF FORTUNE* (Sovereign Pictures 1990): "Is he [Claus] the devil? If so, can the devil get justice?"

18. For a more comprehensive analysis of irony and storytelling in the courtroom drama, see Corcos, *Legal Fictions*, *supra* note † (discussing the use of irony and storytelling in *WITNESS FOR THE PROSECUTION* (Theme/United Artists 1957), *ANATOMY OF A MURDER* (Columbia 1959), *THE PARADINE CASE* (Vanguard/Selznick 1947), *JUDGMENT AT NUREMBERG* (Roxlom/United Artists 1961), and *PRESUMED INNOCENT* (Mirage Productions 1990), among other films).

far more persuasively than a straightforward telling of the story would do. It lends itself to the "surprise ending" that observers find more interesting, allowing them to decipher the meaning of the film for themselves, rather than having it simply presented to them.

Just as the jury hears conflicting stories, each interpreting the evidence, we hear conflicting stories, explaining the action outside the courtroom. Just as lawyers manipulate the rules of evidence to control the content of those stories, the film controls the content of the stories we hear and see.¹⁹ In order to analyze the complex messages in *Presumed Innocent*, we must first learn to discern the nature and presence of irony in storytelling. In his work, *A Rhetoric of Irony*,²⁰ Wayne C. Booth gives us valuable insights into the identification of irony in a written work. By applying these to the medium of film, we can begin to analyze the authors' messages.

DECIPHERING THE FILM'S IRONIC MESSAGE

Booth's Five Clues to the Existence of Irony

Wayne C. Booth's five clues that signal the presence of irony in a written work are 1) the "Straightforward warning," 2) "Known Error Proclaimed,"²¹ 3) "Conflicts of Facts within the Work,"²² 4) "Clashes of Style,"²³ and 5) "Conflicts of Belief."²⁴

19. Although both the novel and the film present Rusty's point of view, the filmic Rusty is much less obviously the center of attention since other characters speak for themselves (albeit through Rusty's retelling). The voice narration, intended to remind us that this is Rusty's version of events, and that Rusty's version equals "truth," is much less intrusive than the first person narrative of the novel, and therefore much more persuasive. Since we feel less manipulated (both by the filmic Rusty and by the auteur), we accept his innocence more readily.

20. WAYNE C. BOOTH, *A RHETORIC OF IRONY* (1974).

21. *Id.* at 57. ("If a speaker betrays ignorance or foolishness that is 'simply incredible,' the odds are comparatively high that the author, in contrast, knows what he is doing.") The characters in courtroom dramas are rarely ignorant or foolish in this way, but they are often clearly wrongheaded or mistaken.

22. *Id.* at 61.

23. "If a speaker's style departs notably from whatever the reader considers the normal way of saying a thing, or the way normal for this speaker, the reader may suspect irony [A] true stylistic clash must be based on recognizing different ways of saying what, in substance, would seem to amount to identical messages." *Id.* at 67-68. John Mortimer uses this approach often in his stories. JOHN C. MORTIMER, *RUMPOLE OF THE BAILEY* (1978). Consider Rumpole's habit of uttering sar-

Examples of all of these clues are represented in *Presumed Innocent*. Each signals the presence of either dramatic irony (also called irony of fate) or irony of character (also called irony of impersonation),²⁵ which, as expressed through the film, conveys the true message of the film.

Types of Irony

What kinds of irony do Booth's clues reveal? Generally, both irony of fate and irony of character permeate *Presumed Innocent*. Through persuasive storytelling these convey conflicting messages of fact and belief.²⁶

Analyzing the Ironic Messages in Presumed Innocent

Armed with some ability to identify irony where it exists, as well as a definition of the types of irony in use in the film, let us examine how the film tells Rusty's story, and how it convinces us of the truth of its message. That message is contained in the title of the film, though it will not be completely intelligible to us until we have meditated on the entire drama. Still, let us begin with that phrase, full of double meanings, which encapsulates both the authors' and Rusty's beliefs about the legal system.

The title *Presumed Innocent* is not ironic to the observer who recognizes the meaning of the phrase without questioning its validity in ordinary courtroom practice. It becomes ironic only after the observer finishes watching the film, since its message that the presumption of guilt that surrounds Rusty Sabich once he is accused is the reality. The "presumption of innocence" with which lawyers and judges bombard us is mere

castic comments under his breath, directed at another character in the story. When he is overheard he quickly alters the comment to make a sound-alike but often meaningless comment.

24. See BOOTH, *supra* note 20, at 57-73.

25. For more on the two types of ironies see ALAN R. THOMPSON, AN ANATOMY OF DRAMA 36 (2d ed. 1946).

26. Quintilian first identified these types of irony; other critics and theorists have since elaborated on them. A recent useful discussion is DOUGLAS C. MUECKE, IRONY (1970). *But see* ALAN R. THOMPSON, THE DRY MOCK, A STUDY OF IRONY IN DRAMA (1948); GARNETT G. SEDGWICK, OF IRONY, ESPECIALLY IN DRAMA (2d ed. 1948); ROBERT BOIES SHARPE, IRONY IN THE COURTROOM DRAMA (1959).

lip service to an ideal that we begin to suspect the legal system may never have pursued.

Note also that as a prosecutor Rusty can never presume an accused innocent, because to do so would violate the canons of legal ethics applicable to prosecutors.²⁷ Once accused, he must confront his own beliefs, since he intends to take advantage of the requirement that the jury presume him innocent. Therefore, once the observer understands the film's message, the title becomes a kind of shorthand for the bewildering maze of legal procedures, media innuendo, and personal torment that an accusation of criminal behavior represents. The observer must understand (though he need not share) these assumptions, in order for the title to take on its nature as a straight-forward warning that the story has more than one meaning. The film is a crash course on the legal system. From its ironic title to its ironic conclusion it symbolizes both what is wrong and what is right about the U.S. legal system.

Irony of Character

To what evidence can we point to say that the film intends an ironic message? Let us consider first the irony of character, revealed by several of Booth's clues, that places a prosecutor, the traditional upholder of the law, on trial for his life.²⁸

27. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.8 (1994) ("The prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause . . ."). MODEL CODE OF PROFESSIONAL RESPONSIBILITY, EC 7-13 (1983). ("The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict.") Under DR 7-103 "(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause." *Id.*

28. Rusty's opening speech (a voice-over) in the film presents the dilemma of the story in microcosm. Like *WITNESS FOR THE PROSECUTION* (Theme/United Artists 1957), it begins and ends with a shot of an empty courtroom. Rusty explains the jury's role, which is to find the truth, to convict the guilty and to exonerate the innocent. The jury's role in fact is to interpret the evidence which the judge allows it to hear and to judge its persuasiveness, which may or may not have anything to do with truth. The jury never has the opportunity to deliberate, since Judge Lyttle uses the question of missing evidence to dismiss the charges, based on his fear that the defense attorney will reveal unsavory facts about Lyttle's relationship with the deceased. What we are to take as true is revealed only in retrospect by Rusty. In the official version, no one is ever charged with the crime again. "It is a practical impossibility to try two people for the same crime." The prosecutor, whose job

Irony of character finds its expression both in the identity of the defendant, a prosecuting attorney, and in the conclusion of the film. The prosecuting attorney is effectively silenced, not only by the loss of his job (also a dramatic irony), either through the lost election or through the aftermath of the trial, and by his knowledge of the identity of the real killer, who has ended his career by removing his ability to act "innocently," that is, by believing in the system. By losing his identity as suspect, he also loses his identity as prosecutor and as upholder of justice. Rusty Sabich metamorphoses from one role to another so frighteningly, and so quickly, both in our minds and in the minds of his friends and associates, that we begin to understand how tenuous and incidental freedom is for anyone not caught by the legal system, and how easy are capture, arrest, trial, and possible conviction.²⁹ Indeed, Rusty's arrest is an obvious example of the "straightforward warning" that irony is present. In the traditional legal or mystery thriller, the narrator cannot be the killer, since as observers we need to be able to believe that the narrator is, if not one step ahead of the killer, at least able to determine the killer's identity.³⁰

In *Presumed Innocent*, even though some of Rusty's behavior seems unusual and possibly incriminating (in particular, his request to Detective Lipranzer that the police not examine his telephone records), we proceed on the assumption that Rusty is

it is to pursue the criminal and who was himself pursued, senses that the entire system, and his own life, has been derailed by the murder. Compare with the Argentinean film *THE OFFICIAL VERSION* (Progress Communications 1985), in which the protagonist is forced to consider the true fate of her adopted child's natural family.

29. The film asserts, and by the end, we believe, that the legal system is corrupt and unredeemable. All that stands between anyone caught in it and ultimate disaster are faithful friends and clever (hired) lawyers. As Alan Dershowitz tells his student Maggie in *REVERSAL OF FORTUNE* (Sovereign Pictures 1990), once the accusation is made, "[y]ou have no one who believes in you. Even the mailman starts looking at you funny. All you've got is your lawyer."

30. There are of course exceptions, the most notable being Agatha Christie's *THE MURDER OF ROGER ACKROYD* (1954), which caused a great furor when it was published. Christie's revelation that the narrator was the killer was called "unfair" by many critics and resulted in a "prohibition" on this tactic by the Detective Club. It is listed as one of the Ten Commandments of Detection, Ronald Knox, *A Detective Story Decalogue*, in *THE ART OF THE MYSTERY STORY 14* (Howard Haycraft ed. 1946). A more modern "mystery" novel which makes use of the narrator as perpetrator angle is Ernesto Sabato's *EL TUNEL* (1951).

beyond suspicion. His arrest triggers our belief that Rusty may indeed be guilty, even though at that point we have no idea what "story" could be presented to persuade us of that fact beyond a reasonable doubt. Our reaction immediately raises the specter of bias, both on the part of a justice system that, but for the independent act of a rival prosecutor, might have covered up his crime, and on the part of society (ourselves), which immediately equates arrest with guilt. Through an exploration of Rusty's dual roles as prosecutor and accused, the irony of impersonation forces us to re-examine our assumptions about "good" versus "bad," "right" versus "wrong," and "innocent" versus "guilty." The image of the upholder of the law as a potential criminal sends us one of the film's most important ironic messages.³¹

The image of the lawyer, expert in the manipulation and control of the legal system, as the accused in a criminal trial (particularly murder), is an obvious choice for the author wishing to present an ironic situation.³² We expect that lawyers can

31. Note that immediately after Rusty's arrest, the film begins to emphasize to us that the evidence with which we are presented can tell one of two stories: guilt or innocence. The coroner's report seems to indicate that Rusty was very likely Carolyn's last sexual partner, but internal inconsistencies and the presence of the prosecutor's phone number written on the file indicate at best sloppy procedure which brings the probative value of the report into question and at worst an outright attempt to frame Rusty for the crime. In particular, the coroner's apparent incompetence and inability to create a story to accord with the facts enforces our impression that he is part of a conspiracy against Rusty. He suggests that Carolyn had voluntary intercourse with the killer, someone she knew. To explain the presence of the spermicide he suggests that the killer took the diaphragm away with him, since it wasn't in the body or in the apartment, but is at a loss to explain why he would have done so. He misses completely the evidence that Carolyn had undergone a tubal ligation which becomes evidence of his incompetence under Sandy Stern's cross-examination, and realizes that his explanation of the presence of the spermicide is completely untenable. Yet he is correct in maintaining that spermicide existed.

Carolyn's tubal ligation is another ironic circumstance. This woman who was so passionately interested in prosecuting child abusers apparently wanted no children of her own. An obvious inference is that she perceived childrearing as an impediment to her career. One might speculate that she was prosecuting these cases merely to advance that career, but we have already been notified that these are "dead end" cases. In addition, we have her own comment to Horgan that if all the ambitious and capable lawyers take higher-profile assignments, ". . . you have the worst lawyers trying the hardest cases." Note, however, that in the novel Carolyn has had a child.

32. The use of the lawyer as defendant is a common and powerful ironic device

solve their problems easily through the "technicalities" with which they are familiar in order to avoid committing crimes. If they are accused of wrongdoing, the tendency of nonlawyers is to assume guilt according to one of the following theories: (1) they were not quite as expert as we assumed and were caught by attorneys (or other investigators) smarter than they (implication: some lawyers are honest); (2) they were expert but overly greedy, sloppy or desperate, and were caught by honest parties (implication: some lawyers are honest and the system itself is trustworthy, though subject to abuse); or (3) they were unbalanced personalities who happened to be attorneys (implication: the majority of lawyers are honest and the system will ferret them out). Depending upon the author's view of the legal system and human nature his critique of the legal system—and consequently his final message to the observer—illustrates one of these theories. Rarely does the observer begin with the assumption that the lawyer is guilty. The implied betrayal of trust demonstrated by an attorney's abuse of the system, a trust which always seems to recur, is so profound (in cases of embezzlement or blackmail for example) that the observer prefers to believe the worst in order not to seem naive. In the case of murder the betrayal is even more basic, since of all crimes that the law is meant to prevent, murder is the most heinous. The taking of human life is the one irreparable harm and the one act that the law must avert by offering other, less violent options.

Rusty's voice-over in the opening scene establishes the irony of his situation: "I am a part of the process of accusing, judging, and punishing." Normally, he can only do the first; as the defendant, first accused, then exonerated, he ends by doing the second because the first is denied to him. As we will discover, the identity of the real killer effectively precludes him from doing the third, just as the jury will never decide on

in courtroom drama. The television drama *Indict and Convict* (television movie 1974) features a prosecutor charged with the murder of his wife and prosecuted by his former colleagues. Throughout the drama, his innocence seems clearer than his guilt. His knowledge of the legal system and of his colleagues, thought patterns enables him to manipulate the system successfully for a time, although the prosecutor does manage a conviction. The result is more satisfying for the observer in terms of restoring his belief in the legal system, but it lacks philosophical interest.

“truth.” Without that decision, no resolution is possible. Rusty’s experience demonstrates that the very system to which he has devoted his life cannot uncover the truth necessary to resolve the question of guilt. Others (Rusty’s lawyer, his police officer friend, the real killer, and the district attorney) intervene to prevent crucial evidence from being presented to that jury.

What does his ordeal teach Rusty? That the system works only for those know who how to manipulate it. The presumption of innocence isn’t merely untrue; it’s irrelevant. The fact that the jury—our designated representatives and the only outsiders in the system—never gets the opportunity to pass judgment on the accused tends to solidify that impression. To render judgment juries rely on stories that seem plausible, stories told to them by the lawyers and the witnesses involved—people whom the legal system tells us have some special ability to bring “relevant” (that is, procedurally acceptable) evidence into court. A jury must decide only on the behavior of witnesses and the accused that seems consistent with what it thinks it knows about how guilty and innocent people act in stressful situations. As potential jurors in real life, and as jurors in Rusty’s cause, and in the cause of the legal system, we assume that the evidence truthfully delivered to us, as the fictional jury assumes it is delivered to them, is both is complete and probative. *Presumed Innocent* shows us that what we assume and “know” about the legal system may lead us into error. Knowledge is often only presumption, and presumption may be prejudice. How the film reveals these presumptions and convinces us to adopt its “truths” instead of ours is due to the heavy use of irony in the telling of Rusty’s story. As the film presents the “evidence” of the partiality and venality of the legal system, and of the impossibility of justice, we discover that our assumptions about justice are wrong. Ours is the third trial: we are on trial for our assumptions, for what we “know” about the legal system. At the beginning we are innocent because we are ignorant. Having been presented with the evidence, we can no longer remain ignorant or innocent. Yet we are not totally innocent, since we secretly accept at least the possibility of Rusty’s guilt, based only on his arrest, and not on any evidence presented in a court of law. We are already guilty of bias—precisely the film’s point.

The irony of character that presents the lawyer-manipulator as accused-manipulated also interacts directly with the contrast between speech and silence to make other points about the legal system. Rusty is a trained attorney with definite opinions about how to obtain a conviction, but seems to forget everything he knows about the likely reactions of jury and prosecutor when he himself is on trial. The Fifth Amendment preserves our right to be free from self-incrimination, and not to testify, and no guilt should be presumed from a refusal. Rusty knows that, yet has used it as a prosecutor when he can to get a conviction. As a defendant, he is trapped by the thinking he has helped to perpetuate. He argues with Sandy Stern, his attorney, over whether to testify. Rusty insists, "The jury wants to hear me say I didn't do it." Defense attorneys in general prefer not to let their clients testify. The client may say something in an unguarded moment that the attorney cannot control, allowing the prosecutor an open opportunity to attack the defense's entire case. Whether Stern believes in Rusty's innocence or not is immaterial, since as an experienced defense attorney, he has a different assessment of a defendant's silence.³³ He convinces Rusty to take the Fifth Amendment before the grand jury, although, like Claus von Bulow in *Reversal of Fortune*, Rusty takes the traditional stand of the innocent defendant, that he has nothing to fear and that taking the Fifth only makes him appear guilty.³⁴

Throughout the film the tension between the two attorneys contributes to the feeling of unease and uncertainty about the purpose of the proceedings. Rusty is concerned with his own

33. Stern is clearly reacting to a fear that Rusty may be guilty, and *may* lie on the stand. Defendants who take the stand face prosecutors anxious to catch them in a lie, an almost sure route to conviction. Telephone interview with Kevin McMunigal, Feb. 16, 1995.

34. This view is shared by many nonlawyers who equate "taking the Fifth" or arrest with guilt, expressed in remarks such as "If he didn't do it, why did they arrest him?" or "If she won't testify, she must have something to hide." In spite of their professed cynicism, many nonlawyers believe that the system works, that the police do not arrest without probable cause and that the innocent are acquitted. Procedural guarantees such as the right against self-incrimination seem to them to be lawyer-tricks designed only to aid the guilty. Scott Turow's triumphantly ironic novel explores this attitude through its treatment of Sabich's feelings of isolation once he is indicted.

exoneration, sensing that anything less than complete certainty as to his innocence will be fatal to his career and personal life. Stern simply wants an acquittal, and will use any means to get it, even procedural "tricks," which protect all defendants equally. However, silence often represents lies, while lies, freely and confidently told, masquerade as truth. Stern opposes Rusty's desire to testify, based on the cost/benefit analysis that all criminal defense attorneys engage in: (1) how good is the evidence against Rusty? and (2) how good a witness will Rusty be? Stern fears that Rusty will be an ineffective witness, either because of his anger or because of his disbelief at his situation. While Stern prefers that Rusty not testify, he floats the possibility of Barbara's appearance on the stand. He believes that Barbara will be a good witness: a faithful wife believably testifying that her husband is innocent. His misconception makes him ironically correct about the likely effect of her testimony. Rusty's opinion is completely opposite: not only does he believe that he can control his situation more completely if he testifies, he also believes (rightly) that Barbara will not be a convincing witness. He thinks her too emotionally unbalanced to present a coherent story. Ironically, her story would exonerate him, should she choose to tell it.³⁵

By juxtaposing Rusty's role as prosecutor with his role as defendant, the film shows us the elaborate legal fictions behind our justice system. *Presumed Innocent's* fiction lays out the facts about the legal system. While the accused's silence is a right guaranteed by the Constitution, we secretly believe that only the guilty refuse to speak (hence Rusty's statement to Sandy: "The jury wants to hear me say I didn't do it.") Not only does the grand jury want to hear him say it, we want to hear it too, since we as the audience are the final arbiters of Rusty's guilt or innocence. Although Stern tells the judge that Rusty is "an integral part of our defense," Rusty loses every tactical argument that he has with Stern. Like a good attorney, Stern

35. The question of belief is a crucial one in many courtroom dramas, most notably in *WITNESS FOR THE PROSECUTION* (Theme/United Artists 1957) in which the testimony of the prosecutor's main witness presents a sufficiently believable story to obtain the acquittal of a guilty defendant. For a more exhaustive discussion of this aspect of the courtroom drama, see Corcos, *supra* note †.

controls the defense completely. Sabich, the wily prosecutor, becomes Sabich the client, *unable* to make effective decisions in his own defense.³⁶

The identities of the victim, police officers, witnesses, judges, prosecuting and defense attorneys, and the killer also present ironies of impersonation. Everyone in the film is guilty of either legal or moral wrongdoing. The dead woman, Carolyn Polhemus, is also a prosecuting attorney who is "put on trial" by certain of the defendant's friends, including the police detective, and found to be "bad news," that is, guilty. Indeed, her character is part of the justification used by Rusty's friend, the police officer Lipranzer, to withhold the evidence that could convict him. After the judge dismisses the charges, Lipranzer gives Rusty the evidence, even though he is not entirely sure that Rusty is innocent. For him actual guilt is irrelevant, since Carolyn's manipulative and ambitious nature made her "bad news" to anyone involved with her.³⁷ Like nearly everyone else, Lipranzer does not presume Rusty innocent, and re-interprets his own role in the administration of justice to assist Rusty, a man he considers may be legally guilty but, if so, is morally innocent.

Rusty's superior, Raymond Horgan, assigns Rusty the murder case because "you're the only guy I can trust." In reality, Rusty is "the only guy" likely to be loyal enough to cover up

36. "The lawyer who defends himself has a fool for a client."

37. Actual guilt is not irrelevant to Rusty, but he is unable to do anything effective with the truth he uncovers. For a believer in the system, this outcome is most bitter and most ironic.

One commentator points out how effectively the film persuades us of the appropriate position of women in society, thus manipulating us to the extent that we never question Rusty's (uncorroborated) evidence about the real killer's identity. "Rusty Sabich is the only person aside from Barbara herself who knows that she is the guilty party (if, indeed, he has not fabricated her story) . . ." Amelia Jones, "She Was Bad News": *Male Paranoia and the Contemporary New Woman*, in 25/26 CAMERA OBSCURA 297, 314 (1984). However, this interpretation seems unnecessarily cynical, suggesting as it does that Rusty has a continuing motive in lying about his guilt. It may be that he constructs an explanation of the crime that implicates Barbara in our eyes. However, we have no independent evidence that this is so and the film gives us no reason to believe that Rusty would deliberately implicate his wife in our eyes (there is no "other woman" apart from the victim; divorce is common in our society, and Barbara now has a job, helping to address Rusty's fear that he might have to pay alimony, Rusty does not seem either paranoid or insane enough to concoct such a story, etc.)

Horgan's involvement with the dead woman. Horgan equates "trust" with blind loyalty. The prosecutor who should be assigned the case is Horgan's political enemy, who becomes the prosecuting attorney in Sabich's case. Yet Horgan doesn't trust Rusty enough to tell him the truth about the dead woman or about their involvement with the judge. Further, Horgan lies on the stand in a final effort to cover up his own involvement and implicate Rusty.³⁸

Horgan's role is particularly interesting, in that he is both Rusty's direct accuser and indirect savior. We learn through Rusty's attorney that the judge, that symbol of impartiality, has retained his post only through prior manipulation of the system by Horgan, who "saved a great legal mind" for the bench. Thus Horgan, the accuser, becomes the indirect means of Rusty's acquittal (irony of fate).

The judge himself also has a pre-existing relationship with the victim, through her persistence in investigating the "B" (Bribery) file given to her by Horgan during their affair. That investigation leads to the dismissal of the charges against her accused killer, since the person named in the "B" file is the judge handling the case. In order to prevent the defense attorney's pursuit of the information in the file, he dismisses the charges by using the missing glass as evidence of police misconduct. He had a personal relationship with the victim (as did Horgan and Rusty), and should probably have recused himself,³⁹ but his failure to do so is the means of Rusty's escape. In a sense, therefore, Lyttle, the recipient of Horgan's earlier sympathy and assistance, returns the favor by releasing the defendant against whom Horgan testifies.

Nico Della Guardia, the new district attorney who prosecutes Rusty, is a political rival whose assistant is Rusty's former colleague and personal enemy Tommy Molto (who quit the

38. When Horgan harangues his employees to "act like professionals" in pursuing the investigation he is really demanding an arrest to enhance his chances of winning re-election. Once he loses at the polls and no longer controls the investigation he becomes concerned that he might become a suspect, hence his insistence that Sabich mishandled the case, an accusation ironically true of the prosecution's handling of the case against Sabich.

39. See ABA CODE OF JUDICIAL CONDUCT Canon 2 (1990) ("A Judge Should Avoid Impropriety . . .").

office the day that Carolyn's murder was discovered). Molto wishes to play the roles of both witness and prosecutor, by using a statement Rusty made to him as an admission of guilt. The judge refuses to recognize this dual personality, telling Della Guardia that Molto can act as either witness or prosecutor, but not both. Sandy Stern, Rusty's attorney, has a reputation as a sharp, slick and (in spite of his foreign accent) successful defense attorney,⁴⁰ the kind with whom Rusty is normally embattled in a courtroom. Our assumptions about Sandy's true nature⁴¹ lead us further into contemplation of Rusty's guilt or innocence. If he were innocent, he would not turn to Sandy Stern, since only a guilty person would hire such a spectacularly successful advocate. We have difficulty crediting Sandy Stern's ability to make his career defending only the innocent, if we believe Rusty to have been "innocent" (honest) until now, since we tend not to presume his clients "innocent." Yet without skillful lawyers like Stern, innocent defendants, among whom Rusty might be numbered, have no hope.

The duality in the identity of the murderer also heightens the ironic message. She is Rusty's wife Barbara, the witness

40. I am indebted to Professor Laura Tartakoff, of the Case Western Reserve University Political Science Department, for pointing out that few, if any, admirable attorneys in films are foreigners. The attribution of an accent, like the attribution of religion (in particular, Judaism) or another minority group, such as women, in cinematic lawyers tends to send specific messages to the viewer. African-American and women lawyers tend to suffer from images of inferiority, which bypass the necessity for viewers to consider them as individuals in the context of the film. On African American lawyers see Ric Sheffield, *Constructing a Social History of African American Lawyers Through Popular Culture: Film, Television, and Lawyer Calhoun*, 17 J. LEGAL PROF. 45 (1992). On women lawyers see Carole Shapiro, *Women Lawyers In Celluloid: Why Hollywood Skirts the Truth*, 25 U. TOL. L. REV. 955 (1994) and Ric Sheffield, *On Film: A Social History of Women Lawyers in Popular Culture 1930 to 1990*, 14 LOY. L.A. ENT. L.J. 73 (1993), and my forthcoming essay on the series *Civil Wars* and women attorneys on television in the collection *LAW AND THE SMALL SCREEN* (Robert Jarvis & Paul Joseph eds., forthcoming 1998).

41. The defense attorney's aggressively "blind" role tends to confuse laypersons, particularly in films such as *ANATOMY OF A MURDER* (Columbia 1959), in which Paul Biegler gives the defendant Lieutenant Manion "the famous lecture" concerning the story that Manion should tell in order to preserve Paul's ability to act in ignorance of his guilt or innocence; *JAGGED EDGE* (Columbia 1985), in which Teddi Barnes confuses her client by asking him for the truth but telling him never to lie to her; and *ADAM'S RIB* (Metro-Goldwyn-Mayer 1949), in which Amanda Bonner coaches her client into a convincing story.

Sandy Stern wishes to put on the stand, who eventually confesses her crime and tells him that she would have come forward with the truth had she known that Rusty would be tried and nearly convicted. Since he was originally in charge of the murder investigation, she believed he would have discovered her guilt and protected her by labelling the investigation "unsolved." Thus, her dual identity allows her to manipulate both Rusty and the legal system successfully. Significantly, Barbara is a mathematician, and her actions are rationally planned to lead to her desired outcome.⁴² The irony implicit in the true identity of the murderer contrasts with the assumptions that the investigators make about his/her real identity. The killer is presumed to be male, partly because the crime seems to have heavy sexual overtones⁴³ and partly because Carolyn's enemies seem to be predominantly male (that is, criminals she has prosecuted), even though her behavior threatens other women more than men. The supposed perverse nature of the crime seems uniquely associated with males, rather than females, even though Carolyn herself certainly understood the dark side of human natures based on both her courtroom and personal experiences. The motive is indeed sexual, but it is committed by a member of the sex that is "presumed innocent."

In the end, Rusty does exactly as she believes he would, telling the viewer "I couldn't take my son's mother away from him," just as his friend the police detective was not able to turn over evidence likely to condemn Rusty in the eyes of the jury. Like Lipranzer, the friend who cannot bring himself to assist in Rusty's prosecution by voluntarily producing the evidence without being asked for it, Rusty's multiple role as father and husband prevents him from doing justice as a prosecutor or as a vengeful and exonerated defendant.

In addition, the film has some interesting things to say about men and women in general. The women lawyers in the film are either clever but destructive sirens—"bad news" like

42. Some commentators have objected to this premise, pointing out that the likelihood of Rusty's conviction is so high, absent the fortuitous circumstances that lead to dismissal of the charges, that Barbara's protestations that she would have come forward to prevent his conviction cannot be credited. See Jones, *supra* note 37.

43. "He fucked her to death," says Lipranzer.

Carolyn Polhemus, or they are capable and honest but gender-neutral or “masculine,” like Mac.⁴⁴ Raymond Horgan is surprised that Carolyn wants the rape and child abuse cases that come into the office, suggesting that these are “dead end” cases; ambitious assistant prosecutors should lust after other, more high-profile opportunities. Carolyn’s interest in this type of litigation shows Horgan that she “doesn’t get it”; she doesn’t understand how to succeed because she is burying herself in a kind of gender-based legal ghetto. Nothing could be further from the truth. Carolyn knows how to use her sexuality to get ahead in what should be an asexual pursuit: the pursuit of justice.⁴⁵ It is Rusty, the hand-picked successor to Horgan, who “doesn’t get it.” Although he saves the most prominent cases for himself and tells Carolyn that child abuse trials are tough to win, and unfortunately not worth the office’s time, she manipulates him into helping her. Her passion for the child victims of these cases rekindles his own lost love for the law, and her passion for success at any price puts her and one other person onto a destructive path.⁴⁶

Nor does Rusty understand his wife’s ambition: he neglects her, undervalues her ambitions for an education (“My wife, the almost Ph.D.”), and fails to recognize how desperate and dangerous she is. She is as much “bad news” as Carolyn, though for different reasons.

Dramatic Irony

In tandem with irony of character, dramatic irony allows an exploration of the nature of speech, the interpretation of evidence, and the impact of storytelling on the judicial outcome.⁴⁷ The identity of the real murderer is ironic. Instead of a former lover or a convict with a grudge against the victim, it is

44. See generally Jones, *supra* note 37.

45. Why such a successful and smart lawyer should want to sleep her way to the top is a mystery. Ironically, she may believe that the legal system is so unfair that even a talented and well-prepared female prosecutor cannot expect to succeed on her own merits, but will always need a male mentor.

46. The novel specifies that Carolyn has a child, whom she has abandoned to its father, an irony lost in the film.

47. While the author is the ultimate creator of both kinds of irony, he may also allow his characters to create one or both in the interests of plot development.

a woman, the defendant's wife, who frames him so effectively that, but for the skill of his lawyer and the chance suppression of crucial evidence that the killer herself had manufactured, he would have been convicted. The dramatic irony in *Presumed Innocent* furthers the film's message about presumptions of guilt and innocence in juxtaposing actions which are intended to have one effect but achieve quite another. Among Booth's clues to the presence of irony, conflicts of fact and conflicts of belief often combine to produce the dramatic irony.

On the surface, the film is about a perfect murder: the death by violence of a beautiful and ambitious assistant district attorney, Carolyn Polhemus, and the arrest and trial of her former lover, another D.A., Rusty Sabich. To the prosecutors in the case, he looks very guilty. Evidence of his presence is all over the crime scene, he has no alibi, he has a motive (jealousy), and no other suspects present themselves. It seems that Rusty has gone too far this time, and in his overconfidence, has assumed that he understood the system well enough to avoid capture. We read about these kinds of murders every day, and secretly believe in the accused's guilt, even though we know he should be "presumed innocent." After all, if he weren't guilty, the police wouldn't have arrested him, would they? We see the mobs of newspaper people covering the story, threatening Rusty's right to a fair and unbiased jury with their unending pre-trial publicity. We see the victims of this unfortunate situation: the faithful wife, the innocent son sent away to camp to escape the unwelcome attention, and the faithful friend unable to assist Rusty publicly.

Rusty's attorney, Sandy Stern, goes into action. We see all the "tricks" of which Rusty as a prosecutor normally complains being used in his defense as Sandy looks for ways to discredit the evidence. We see Rusty's friend, a police detective, bend the rules to help him. If we read the stark details of this kind of activity in the paper, coupled with the news that the charges are eventually dismissed, we would be even more cynical, pointing out that as usual, the system protects its own: yet another guilty person with connections has "gotten off." Worse yet, he "gets off" on a "technicality"—the most crucial evidence against Rusty has "disappeared," proving to us that someone has tampered with evidence to help a guilty man go free.

Yet, this case is quite different; we know Rusty Sabich. From the beginning of the film, we have heard his calm voice describing the workings of the legal system, telling us his version of events. Bad as things look for him, we believe him, because we are expected to like him. He has told us his most intimate thoughts, he has trusted us, and we feel obligated to trust him in return.⁴⁸ But how can we help him? How can anyone help him? The evidence against this presumably innocent man seems overwhelming. Immediately we feel the anxiety, the uncertainty, and the doubt about the fairness of the legal system that the film wants us to feel. We begin to understand the irony of the title: we presume Rusty innocent, but "others" don't.

As Rusty tells us his story, we begin to appreciate more of the dramatic irony in the film. Conflicts of fact and belief abound. Rusty's fingerprints are on the bar glass found in Carolyn's apartment after her death, and presumed to be part of a set which she owned. We also know that he could not have made them the night of the murder, although he might have made them at some other time. We must reconcile these two facts, just as the jury may eventually be called upon to do. The full irony does not surface until the end of the film, when we learn that the glass was not Carolyn's, and Rusty's fingerprints were put there by himself in his own home. The killer transferred the glass to Carolyn's apartment to implicate Rusty, allowing the glass as well as other (manufactured) evidence to tell a particular (untrue) story: that Rusty was there on the night of the murder. That he had been there on other nights is indisputable, but undemonstrable. Another example: the police detective tells Rusty that the semen found indicates that the man involved had type "O" blood and was sterile (since the sperm were dead). "Like my very own," comments Rusty. "Yeah, I thought of that," says the detective, "but you got a kid." The semen is indeed Rusty's, and the sperm are dead because the woman with whom he had intercourse (who was not Caro-

48. Compare with barrister Wilfred Robards' assessment of Leonard Vole and Christine Helm in *WITNESS FOR THE PROSECUTION* (Theme/United Artists 1957) ("They [the jury] don't like Christine Vole, but they believe her. They like Leonard but they don't believe him.").

lyn) used a spermicide, while Carolyn did not.

The incoming district attorney removes Lipranzer from the case because prosecutors believe his friendship with the accused will entice him to misuse his position in the police department. The removal actually facilitates the detective's ability to help his friend, whom he begins to suspect of the crime. His explanation is that he took custody of the glass after it returned from the crime lab, by which time he was no longer on the case. No one ever asked him for the evidence, so he never volunteered it. The question of spoliation of evidence, while a minor point in the drama, nevertheless emphasizes the theme: "taking the law into one's own hands" to obtain justice. Thus, the prosecutor's act results in the destruction of his case against Rusty. Turow's point is particularly ironic in that it is a police detective who "takes the law into his own hands" and a public prosecutor (an experienced officer of the court unable to help himself even though he understands the system completely) who benefits from the act. We, as observers, concur in the detective's decision. That the defendant is innocent is both a validation of the act and ultimately irrelevant, and even more ironic, since Turow's clear message through the juxtaposition of title ("*Presumed Innocent*") with process ("presumed guilty," even by one's friends, who know the flaws in the system, just as Christine Vole, the "witness" in *Witness for the Prosecution*, knows the flaws in the system) and ultimate outcome (dismissal of the charges without exoneration and public revelation of the guilty party) is that only the naive believe in the presumption of innocence. The knowledgeable realize that to achieve justice one must circumvent the procedural safeguards in the system.

Ultimately Rusty is revealed as naive. He has believed in the concept of the presumption of innocence. Until his personal entanglement in the system he believes in its fundamental fairness, even though he knows some participants in it are dishonorable. By reversing his initial decision and agreeing to participate in the child abuse case Carolyn is prosecuting, he attempts to reaffirm that belief in spite of the fact that he doubts the jury will believe the child, because his experience is that child witnesses recant their generally truthful testimony in these types of cases. He pleads the boy's cause eloquently. Consider

his closing statement to the jury in the child abuse case: He repeats the child's testimony simply and directly: "My mommy hurt my head . . . my mommy *hurt* my head." While he intends to appeal to the emotionalism of the jury, he also clearly believes in the boy's veracity; Carolyn has convinced him through her own concern and naiveté.

Similarly, Raymond Horgan, Rusty's former boss, helped the presiding judge out of a moral and legal predicament several years before rather than reveal the judge's wrongdoing. In doing so, says Rusty's attorney, Horgan rescued a good man and restored a "good legal mind to the bench," but also helped provide the means through which the case will be dismissed. In a drama in which so many characters make their living from the law (which should represent the pursuit of justice) other emotions, not unexpectedly friendship, but also jealousy and revenge, interfere to tip the scales toward outcomes that are morally just, although not legally sanctioned.

The "clashes of style" clue to irony is present in Tommy Molto's allegation that Rusty's sarcastic response, "Yeah, you're right" represents a confession of guilt. We are present when Rusty snaps back at Molto, and we know that the comment is not meant to be taken literally. That Molto attempts to do so, either because he is so malicious and desperate that he willingly misinterprets the remark, or because he believes the judge to be so incompetent that he thinks the judge will do so, illustrates part of the film's message that the legal system is only as just as the individuals involved in it. The judge, however, recognizes the remark as an ironic one: it does not correspond with his assumptions about how Rusty normally speaks to a colleague, nor is it characteristic of the remarks of a knowledgeable attorney who understands the charge being made. Therefore it must have another meaning, which the judge correctly assigns to it. Note that Rusty does not interpret Tommy Molto's remark as ironic, however, because he believes the man is corrupt and may be intellectually lacking. He takes the remark literally to mean that Molto seriously believes he killed Carolyn. What he does *not* take literally is the possibility that he may actually be accused.

The ironic contrast between the meanings of silence and speech in the film also illustrates the importance of storytelling.

This includes not only the film's telling of Rusty's story, but also the lawyers' telling of stories to the juries, and other characters' telling of their own stories. Silence as a means of storytelling is also ironic in *Presumed Innocent*. Various characters' silences represent both truth and lie. Rusty's silence, both before the grand jury, and during the trial, tells those who believe that "there is no smoke without fire" that he is guilty. His police officer friend's silence further indicts him at the end, indicating that his friend remained silent about the glass because he believes Rusty is guilty. Raymond Horgan's initial silence about his prior relationship with Carolyn also tends to make Rusty look more guilty. Horgan's silence about Judge Lyttle's financial problems, as well as the judge's silence about his involvement with Carolyn, hide the motives of other characters for the crime. Judge Lyttle's silencing of Sandy Stern in regard to the "B" file shows his guilt and the use of silence to achieve the acquittal of an innocent man.

Rusty is in danger of being convicted of the murder through the evidence planted by the real killer, and is only freed because his police detective friend "is silent"—withholding vital evidence, a glass with Rusty's fingerprints on it.

Rusty Sabich is unable to speak the truth at the end of *Presumed Innocent*, silenced as much as is Teddi Barnes in *Jagged Edge*.⁴⁹ Both are officers of the court who know the identity of the killer but who can say nothing. Rusty's inability to speak comes from 1) his practical knowledge of the legal system and 2) his personal inability to sacrifice his son's happiness. Unlike Teddi Barnes he cannot even eliminate the killer in self-defense, though significantly he stands in a closer personal relationship to her than does Teddi to Jack Forrester. The case he knows the most about from both sides is the case he can never prosecute, and never bring to a conclusion. Sandy Stern pays little attention to Rusty's protestations of innocence, and manages to obtain a dismissal through clever manipulation of the judge, though the circumstantial evidence, as well the public sentiment, against his client is great.

49. (Columbia Pictures 1985).

Some scenes in the film demonstrate the power of storytelling to propel the legal system. When the overly ambitious prosecutor tries to introduce Rusty's sarcastic comment "Yeah, you're right," as a confession, the judge tells him what we would tell him if we were there; "You don't get it, Mr. Prosecutor. He wasn't confessing, he was telling you where to go." The prosecutor tells one story to explain Rusty's remark. The judge creates another, which although he wasn't there, coincides more nearly with our experience.

Nico Della Guardia also wants Tommy Molto to testify to Rusty's remark. While he does not cite the applicable rule, Judge Lyttle refuses to let Molto act as both witness and prosecutor, and forces Della Guardia to choose between putting the man on the stand as a witness to Rusty's dubious "confession" and keeping him as his associate.⁵⁰

To explain Rusty's frequent phone calls to Barbara from Carolyn's apartment, Sandy suggests that the timing coincides with the prosecution of an important case. It is to be expected that the two lawyers would be in frequent consultation. However, when Rusty suggests this explanation to Lipranzer early in the film, the police officer is unconvinced, indicating both that he trusts his own evaluation of Carolyn enough to believe that she and Rusty were somehow involved personally, and that his loyalty to Rusty may eventually outweigh his duty as a member of the justice system.

The opening scene of the film is another example of dramatic irony. While the empty courtroom implies the possibility of "truth," a lack of bias, and a presumption of innocence, the forum in which we will discover the reality behind the accusation against Rusty is not the courtroom at all. Indeed, the jury never has an opportunity to decide among the stories presented, since the charges are dismissed. The courtroom becomes instead a stage—a metaphor⁵¹ through which different charac-

50. Judge Lyttle is clearly referring to Rule 3.7 of the MODEL RULES OF PROFESSIONAL CONDUCT (1994), which do not allow an attorney to appear as a witness in a proceeding in which he also acts as an advocate, except in certain very limited circumstances.

51. The courtroom as stage or theater is a common one, both in writing about trial practice and literature and in film. See for example the opening scene of *ADAM'S RIB* (Metro-Goldwyn-Mayer 1949) in which the opening credits appear super-

ters tell contradictory stories about Rusty's guilt, in which the prize goes to the story which seems to explain the admissible evidence most satisfactorily, and in which reality and truth become secondary considerations.

Conflicts of Belief, Conflicts of Fact, and the Film's Message

In microcosm, the child abuse case that Carolyn prosecutes represents the kinds of conflicts that predominate *Presumed Innocent*. As Rusty points out, the difficulty that Carolyn Polhemus has in persuading the child witness in the abuse case to stick to his story is a major problem in prosecuting such cases. Child victims often recant their testimony when faced with their tormentors in open court. Thus, they may tell the opposite of the truth and jurors may consequently (and ironically) believe them, partly through a failure to understand their difficulty and fear, and partly through an unwillingness to accept the enormity of the crime. The presumption of innocence will then lead to the acquittal of the guilty rather than the protection of the innocent.

The major example of conflicts of belief present in *Presumed Innocent* is Rusty's faith in the legal system, developed through his own sense of honor and his work as a prosecutor. When that legal system unjustly accuses him of murder, he must reconcile his previous opinion of the system with its present workings, and he must attribute what he considers its aberration in putting him on trial to something other than a fundamental flaw in the system. Otherwise, he will not be able to continue as a lawyer after his acquittal. The exploration of Rusty's frustration with the rules of the system exemplifies the film's message. Throughout the movie, he has had trouble understanding the true nature of the legal system. He has presumed it innocent, believed in its promise. In spite of the skill demonstrated by several characters in the film in manipulating Rusty's acquittal, *Presumed Innocent* is also about understanding what's going on and how to survive. It is about luck, both bad and good. It is about one man's passion for the law, another's passion for a woman, and about a woman's passion

for her distant husband. It is about what goes on under the surface, and about the truths that we believe, though they remain unspoken. It is about friendship. It is about the lies we need to make our society work. It is about trust, and the lack of it. Except in the most superficial way, it is not about innocence.

Nearly every one in *Presumed Innocent* is guilty of something that is morally or legally wrong, although only a few are punished. Rusty loses his wife, his career, his reputation and his faith. His wife loses the man she loves. The murder victim is never avenged. Tommy Molto, Nico Della Guardia, and the coroner all enhance their reputations for incompetence.⁵² *Presumed Innocent* is about a legal system that goes wrong and only achieves the right result because two very smart people who understand that system are willing to manipulate it.

When Rusty Sabich finally discovers the truth it is again ironically through a conversation which has a figurative meaning different from its literal meaning. As he discovers the blood-stained tool that is the murder weapon, his wife comes in announcing "I did it!" She is referring to the job interview in which she has effectively convinced a prospective employer that she is qualified for the position, but also in a larger sense to the life she leads: she has convinced everyone that she is a normal, loving, understanding and patient wife. However, Rusty initially (and correctly) takes her statement as confirmation that she is Carolyn's killer. As she continues her discussion of the interview, we understand what her remark means in that context, and initially condemn Rusty for his evil thoughts; we "presume" her "innocent." Eventually, however, we understand that his initial understanding was correct and the full force of the film's message becomes clear.

Presumed Innocent forces us to confront our innermost fears about the legal system, namely that someone entirely innocent can be accused, "framed," and sentenced for something he hasn't done. *Presumed Innocent* also shows us that if we believe in the presumption of innocence, we don't "get it." It

52. Raymond Horgan, however, goes on to a new job in a prestigious law firm, the judge carries on with his career and Sandy Stern enhances his reputation with yet another successful defense.

leads us through the darkness of our own cynicism about the legal system and the possibility of justice. But if we don't accept the presumption of innocence, we are as flawed and as guilty as the system.

Presumed Innocent also forces us to take on certain roles in the drama of the legal system, just as Rusty does. We are not just observers of the drama, we are the judges evaluating the testimony we hear and the actions we see (note that we never see a scene in which Rusty does not appear or of which he does not have personal knowledge). In this way, Rusty controls our opinion of the legal system, even though we are unaware of it. Rusty the prosecutor also takes on other roles: he is the accused, and he is also, at the end of the film, judge and jury. He is betrayed by nearly everyone he trusts: his boss, his mistress, and his wife. Only his lawyer and his police officer friend stand by him in an effective way. His is the nightmare we all dread. The film shows us clearly that the only way to defeat this oppressive, megalithic, overwhelming legal system is with smart supporters who can manipulate the system, and not through innocence. Absent a clever defense attorney, the presumption of innocence is worth nothing. In a behemoth of a legal system, not even a smart prosecutor-turned-defendant can avoid conviction unless his defense lawyer is even smarter than he is. And what does this tell us about the other clients which that lawyer represents? Do they look as guilty as Rusty? Are they more guilty than he? And will Sandy Stern get them off, even if Rusty is the prosecutor in the case? What does this tell us about the legal system? That the only way to win is to manipulate the system?

The film brings into question everything we want to believe about the legal system, including the idea that if we tell the truth, we will be believed and everything will be all right.⁵³ Rusty *wants* to testify, but his lawyer resists this idea. In Sandy's opinion, a client who testifies condemns himself. Then can we believe that Rusty is a good lawyer, an effective prosecutor? Has he inadvertently condemned innocent defendants?

53. Compare with some of the film noir movies that Norman Rosenberg examines, *supra* note 10.

Ultimately everything the film tells us is encapsulated in the title: *Presumed Innocent*. Those two words have contradictory meanings to the non-lawyer. They seem to be a shield against unfair condemnation. But given our belief that everybody has something to hide, they also mean that the accused is guilty, we just haven't proven it yet. That is certainly the meaning thrust on the poor, ignorant, or unpopular defendant.

Presumed Innocent's dark vision of the legal system tells us that *anyone* can be accused. The legal system doesn't condemn Rusty, but it doesn't exonerate him either. His lawyer and his friend help derail the system to save him from conviction. They cannot save him from the whispers of his neighbors. Nor can anyone else, because we know that the real killer will never stand trial. We know, because Rusty tells us so. He has been a prosecutor, he knows how these things work. Why at this point would he lie to us? We hope that in the future, we will try to presume others innocent, but we also understand ourselves and our tendency to believe "there's no smoke without fire."

Presumed Innocent thus represents the triumph of procedure over substance that makes non-lawyers cynical. We know that no "public truth" about the murder of Carolyn Polhemus will ever emerge. We also know the private truth about her death, and about the death of our trust in the legal system. We now know we must always presume innocence, but we also know that, having suffered through a trial with Rusty Sabich, we can never be innocent again.