

POPULAR CULTURE, LEGAL FILMS, AND LEGAL FILM CRITICS

James R. Elkins*

I. A CONFLUENCE OF SHALLOW RIVERS

I teach a law school course on “Lawyers and Film,” and have taught it a number of years.¹ In teaching the course, I have read everything that has come my way about legal films and about law and popular culture.² This body of scholarship, as I write, is twenty years in the making.³ Often, to my surprise and dismay, much of this

* Professor of Law, West Virginia University; Editor, *Legal Studies Forum*.

1. For my efforts to explain (and yes, *justify*) the “Lawyers and Film” course, see James R. Elkins, *Reading/Teaching Lawyer Films*, 28 VT. L. REV. 813 (2004).

2. A few years before his death, Wayne Booth, a literary critic, began an essay published in *College Literature* with this observation: “Since this is only the second time I’ve ever tried to do film criticism, I decided that I must read up on it. And . . . I read painstakingly, page by page, through all seven hundred and thirty books on my library’s list . . .” Wayne Booth, *Is There an “Implied” Author in Every Film?*, C. LITERATURE, Spring 2002, at 124, 124. It’s hard to know whether Booth, who does not typically write in a humorous vein, means for the reader to take his claim seriously.

I cannot assure the reader I have actually tried to survey (and reread) every essay and article on law and popular culture, although I have dutifully and diligently plowed my way through the books on legal films and most of the work of legal film scholars. For those who might venture still further afield, I recommend a new anthology of film criticism: AMERICAN MOVIE CRITICS: AN ANTHOLOGY FROM THE SILENTS UNTIL NOW (Phillip Lopate ed., 2006).

At this point, I’d ally myself with Booth, who made still another rather striking statement in his *College Literature* essay:

I hope that film studies will pay more attention to the quest for the center, including the moral or intellectual or political judgments at that center, rather than succumbing to this or that peripheral voice. This is a major requirement for effective film studies, as it is for the study of fiction.

Booth, *supra*, at 130. What we find, I’m afraid, in legal film criticism and the literature on law and popular culture is scholarship that succumbs to the “peripheral voice.” “Peripheral” concerns have become the conventions of law, popular culture, and legal film scholarship.

3. The year of this symposium, 2006, marks the twentieth anniversary of two of the earliest, most seminal essays, which set into motion the “turn to popular culture” and the beginning of a new field of study, the beginning of what may someday be viewed as a “school” of jurisprudence. I am, of course, referring to two essays by Anthony Chase: *Toward a Legal Theory of Popular Culture*, 1986 WIS. L. REV. 527 (1986), and *Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys*, 1986 AM. B. FOUND. RES. J. 281 (1986). At the

scholarly work on law and popular culture turns out to have little value in teaching films, or in helping students “read” films and put them to use as part of their legal education.

In trying to reconcile the gap between teaching legal films (that is, what I want to teach, and what I want students to *do* with lawyer films) and the scholarly work on legal films,⁴ I explore here the disjuncture between the conventions that dominate legal film criticism and what I do when I teach lawyer films.

To begin, this symposium⁵ advances a set of basic propositions that I fully accept:

- The *popularity* thesis: “television shows, movies, and books about the law are wildly popular in America.”
- The *effects* thesis: popular culture (film, TV dramas, novels, and traditional and non-traditional news sources) “teach Americans about the civil justice system.”
- The *reality* thesis: the depictions of law and lawyers we find in popular culture are sometimes at variance with and at other times faithful representations of lawyers we find in the “real world.”

While the propositions themselves are uncontested, the follow-up questions are problematic:

- What are we being taught about law and lawyers by way of popular culture?
- How do the depictions of law and lawyers in popular culture “differ from reality”?
- Are jurors “influenced” by popular culture representations of law and lawyers?

symposium, I had the distinct pleasure of meeting Tony Chase after corresponding with him for many years and publishing several of his legal film essays in the *Legal Studies Forum*, a journal that I edit.

I might, in another note of irrelevancy, say that in this twentieth year of law and popular culture studies, it might still be possible to read everything (well, almost everything) written to-date on law and popular culture. I am not suggesting that such an undertaking would be advisable! Twenty years from now, no one will even contemplate such an undertaking.

4. There’s a growing interest in legal and lawyer films in legal education and, consequently, a good deal of legal writing about films. Most of these author/teacher/scholars are not film critics in the technical sense; they do not publish film reviews. While a few are critics (e.g., Michael Asimow), it is not the film review, but writing about legal films more generally that I focus on in this essay.

5. Symposium, *Access to Justice: Law & Popular Culture*, 40 LOY. L.A. L. REV.539 (2007).

- Do lawyers and judges think that jurors are being influenced by popular culture representations?
- How does the influence of popular culture representations change the legal system?

My basic response is that we know far less about the effects of popular culture on law and lawyering than we would like to think we do. Scholarship is thin, speculation rife, particularly concerning the purported effects of popular culture which both permeate and undermine legal film criticism. Accordingly, although legal film scholarship flourishes, its purpose and value remain questionable.

In a larger sense, a more meaningful question is whether we learn anything about law and lawyers from popular culture. Assuming that we, as jurors or lawyers, do learn from popular culture, it is fair to further assume that we are influenced by what we learn. Undoubtedly, more than a few lawyers know a good deal about popular culture, know they are learning from it, and know that jurors learn from and are influenced by it. What lawyers *know* and how they *use* what they know in the practice of law, in working with clients, and trying cases before juries, is something worthy of study.

What I find, in fact, in the string of assumptions and pre-suppositions about popular culture⁶ is more speculation than actual

6. We might, for practice shall we say, once again state the basic propositions we're exploring here:

1) Lawyers (and law) are both the subject and object of films. In the somewhat fancy language of the day, lawyers and law are subjects of *representation*. One medium for representation, broadly stated, is popular culture.

There are four corollary notions:

1-a) Popular culture is now a "field" of academic study and has found a place for itself in the university.

1-b) Popular culture is part of a still broader field of study—"cultural studies"—and cultural studies has found its niche in the university.

1-c) Lawyer films and their representation of lawyers is a "subject" of interest in popular culture studies, in cultural studies, and in an emerging field we might call "narrative jurisprudence," see Cassandra Sharp, *The "Extreme Makeover" Effect of Law School: Students Being Transformed by Stories*, 12 TEX. WESLEYAN L. REV. 233, 238-39 (2005), a field sometimes identified, in its more practical aspects as, "legal storytelling." Richard Delgado, *Rodrigo's Final Chronicle: Cultural Power, the Law Reviews, and the Attack on Narrative Jurisprudence*, 68 S. CAL. L. REV. 545 (1995). We might note that "legal storytelling" and "narrative jurisprudence" have not, to date, taken significant steps to associate as part of this emerging field of study, legal and lawyer films, and law film criticism. Sharp, *supra*.

solid information. The questions that such assumptions pose are virtually unanswerable. For example, how has the influence—the effect—of popular culture representations of lawyers actually changed the legal system? Definitive responses to that question are not simply unavailable; we do not even know where to begin to look for the answer.⁷ Are jurors influenced by what they learn about law from popular culture? Presumably they are, although the nature of that influence is, and will remain, other than in exceptional and highly publicized cases, largely unknown. Will lawyers, in some cases, try to take advantage of what they think they know about popular culture? Likely, they already do, and more will attempt to do so in the future. Is it possible that some lawyers will overdo it? I think the answer is clearly yes.

Ultimately, the broader question is whether lawyers and their emerging awareness of popular culture will change the way they practice law and try cases before jurors. The answer is: probably not. It is highly doubtful that jurors and clients who are weaned on “legal thrillers,” “law and order” television shows, and legal films will be so dramatically altered by their fictional escapes that we will be able to gauge the effect of their reading, TV watching, and film-going on their involvement in the legal process. If the change in clients and jurors exposed to lawyers (real and fictional) in popular culture is imperceptible, it is doubtful that lawyers will significantly alter their

2) The representation of lawyers (and law) found in films (and other popular culture media) is a subject of study, but it is also the subject of critical commentary. Most, but not all, of this commentary is by legal academics. See, e.g., Nancy B. Rapoport, *Dressed for Excess: How Hollywood Affects the Professional Behavior of Lawyers*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 49 (2000).

3) The community of critical writing about “law and film” suggests that the representation of lawyers (and law) in film is pervasive (and thus, interesting and troubling). While the portrayal of lawyers (and law) in film presents lawyers in both a negative and positive light, the great fear is that the portrayal of lawyers is wildly unrealistic, grossly unethical, and basically misrepresents what lawyers actually do.

4) The negative and unrealistic portrayal of lawyers and law in film, which is persistent and pervasive, is bad for lawyers, bad for law, and bad for the general public.

7. The first major scholarly exploration of the effect of popular culture on the legal system and the practice of law was Richard Sherwin’s *WHEN LAW GOES POP: THE VANISHING LINE BETWEEN LAW AND POPULAR CULTURE* (2000). For my response to Sherwin’s book, see James R. Elkins, *A Law Culture Diagnostic*, 8 J. CRIM. JUST. & POPULAR CULTURE 48 (2001). For yet another response to Sherwin’s book, see Jessica Silbey, *What We Do When We Do Law And Popular Culture*, 27 LAW & SOC. INQUIRY 139 (2002).

practices to accommodate the unarticulated change.⁸ Of course, whether or not jurists might also respond to their exposure to popular culture is another matter altogether.⁹

II. THE PREOCCUPATIONS AND CONVENTIONS OF LEGAL FILM CRITICISM

It seems that legal theorists are forever preoccupied or concerned with *how* legal films (and more generally, popular culture) depict lawyers and the law. The primary complaint—one so prevalent and commonplace that it has become a staple convention of legal film criticism—is that popular culture’s representation of the law and lawyers is not “realistic,” particularly in legal films.¹⁰ The greater concern is that we seem forever gripped by a fear we cannot shake: that what people learn about the law and lawyers from popular culture is so basically and fundamentally misleading—so unrealistic—that it fundamentally undermines the legal profession and legal institutions. We anguish over (what we hope are) unrealistic and ungrounded representations of the law and lawyers; we fear they will have a pernicious effect on the decision making of jurors, and on lawyers who try cases before jurors. The fear is that the “unreal” representations in popular culture undermine the public’s belief in the legitimacy of law.

If legal film scholars presented this negative effects “thesis” as a thesis, or proposition, or a speculative assumption, we might find it of value. But it isn’t presented that way at all. Rather, scholars and critics alike present it as an assumptive truth. Consequently, it becomes a regular and conventional feature (if not the guiding faith) of legal film criticism and legal film scholarship. In fact, we can divide legal film critics into two basic camps, the fearful and the

8. Does a lawyer try a case before a jury steeped in legal thrillers or comprised of confirmed moviegoers any differently than a jury that is not? I suspect that even the lawyers who draw upon their knowledge of popular culture in their representation of clients will not themselves have an exact answer.

9. Do we assume that judges are creatures so sufficiently isolated that we need not worry about their TV watching, movie going, and reading of popular novels?

10. At this symposium, Professor John Nockleby of Loyola Law School’s Civil Justice Program, poses the question: “How do the depictions[, that is, the ‘popular culture representations of the civil justice system,’] differ from reality, and what effect do the depictions have on the [sic] reality?” John T. Nockleby, Professor of Law, Loyola Law School, Welcome and Overview at the Loyola of Los Angeles Law Review Symposium: How Popular Culture Teaches Americans About the Civil Justice System (Sept. 29, 2006).

celebratory: those who fear the representation of law and lawyers in film, and those who celebrate the possibility of legal films with no abiding fear of the “effects” hypothesis.

III. THE FEARFUL APPROACH

Given my skepticism about speculating on the effects of popular culture on law and lawyers, I am even less convinced that the “realism” critique of lawyer and legal films has any lasting merit. Indeed, it is still unclear whether the “education” the public receives about law and lawyers by way of popular culture has a negative or pernicious effect.¹¹ Oddly enough, we do not see arguments that the education about law and lawyers the public does receive—uninformed, distorted, and unrealistic as it may be—is better than having *no* education about law.

Individual jurors may well be adversely affected by what they learn about law and lawyers from popular culture. But the idea that a juror (or client) may be overly influenced by popular media seems no more exceptional than the real possibility that John Hinckley, who attempted to assassinate President Ronald Reagan, was influenced (in some immeasurable fashion) by his repeated watching of *Taxi Driver*. The behavior of unstable individuals, whose psyches brim with cultural representations and who have access to guns, are sometimes going to bring themselves to our attention by their wayward acts. And when these lost souls come to our attention, they are sometimes going to tell us, through their lawyers, that it was a diet of Twinkies, the absence of exercise or sex, or too much John Grisham, that led them to: a) commit an act of violence, b) make the decision they did as a juror, c) or, if lawyers themselves, pursue a strategy in the trial of a case to win over movie-savvy jurors.

I do not rule out the possibility that a star-struck lawyer, inundated by popular culture, takes to fanciful thinking and sets upon a perilous effort to mimic or adopt a ploy learned from television, film, or a courtroom scene in a legal thriller. But the foibles of our star-struck lawyer do not epitomize the daily lives of real-life lawyers any

11. I do not mean to suggest that the legal education one receives from popular culture is always or necessarily a particularly good one. But then, I would be remiss if I did not add that I have the same reservation about the “real world” education of lawyers. For a rather humorous satire on “real world” schools of law, see Jeremy Gilman, *The Real World School of Law*, 24 LEGAL STUD. F. 19 (2000).

more than the televised trial spectacle represents the everyday life in a courtroom. Still, lawyers and law students can learn from these phenomena.¹²

IV. THE CELEBRATORY APPROACH

The basic tenet of legal film criticism is that lawyer films tend to stereotype lawyers, often in a negative manner. One common negative stereotype is the unethical lawyer.¹³ Critics regularly and persistently contend that legal films fail to represent the “real work” of lawyers.¹⁴ Their criticism is that such films portray lawyers acting in unethical ways that no “real lawyer” would ever act, and, in doing so, get law and lawyers all wrong.¹⁵ This results in misinformation, goes the argument, which feeds a public perception of law and lawyers that ends up undermining the legal profession and legal institutions. Some legal film critics follow up their critique with the plea for representations of lawyers in film that will promote the good that lawyers do, films that will reinforce the legitimacy of legal institutions and present lawyers in the best possible light. In short,

12. During the televised version of the O.J. Simpson trial, I found it both odd and disconcerting that we were able, in legal education, to go about our *business* and our *rituals* during the course of this particular spectacle—one of the most sensationalized during my three decades as a law teacher—and act as if we had no intellectual or pedagogical interest in the trial, spectacle though it may have been.

13. For the standard litany of conventional views of legal film critics (carried to their speculative extreme), see Rapoport, *supra* note 6. For a rather heavy-handed focus on the ethics of lawyers in film, see Tonja Haddad, *Silver Tongues on the Silver Screen: Legal Ethics in the Movies*, 24 NOVA L. REV. 673 (2000). Haddad summarizes legal films and attempts to use them to discuss ethical issues, and then, based on her ethical evaluation, concludes that lawyers are portrayed in a negative fashion in certain films, negative that is, unless we are interested in “justice,” in which case, the film portrayals of lawyers may not be negative at all. *Id.* For a less heavy-handed exploration of the ethics of lawyers in legal films, see Carl Selinger, *The Uneasy Role of the American Criminal Defense Lawyer: True Believer*, 22 OKLA. CITY U. L. REV. 223 (1997).

More than one legal film critic has noted that “[t]he opposition between law and justice is a persistent trope in discourse on law.” Mark Tushnet, *Class Action: One View of Gender and Law in Popular Culture*, in LEGAL REELISM: MOVIES AS LEGAL TEXTS 244 (John Denvir ed., 1996). Denvir observes that “many feel that movies can play an important part in attempts to create a more just society by showing ‘traces’ of the just world we long for.” John Denvir, *Introduction to LEGAL REELISM*, *supra*, at xv. The conventions of legal film criticism divert our attention from the “justice” perspective we find in legal films.

14. See, e.g., Rapoport, *supra* note 6, at 49.

15. *Id.* at 49–50.

such critics wish that Hollywood would “get it right.” This approach is what I call the celebratory view of lawyers and the legal system.¹⁶

The stock, conventional views of lawyer films are nothing more or less than a battle over control of law’s iconography. Lawyers and legal academics confront varied representations, conventional and iconoclastic, as the contested images and practices of lawyers become carriers of meaning of law’s virtues and vices. In short, in the work of legal film critics, what is at stake is law itself, law in all its glory and its massive failures.

V. WHAT DO WE FIND IN FILM STUDIES?

When I started teaching lawyer films, I was faced with a problem that sometimes baffles my students: what are we supposed to be doing here? The first generation of books on law and film had been around for about a decade, and a second generation of work was in the making.¹⁷ The early books were of two kinds, and thus, seemed to serve two purposes: 1) they identified law and lawyer films, and 2) they made it clear that law colleagues were watching films and had begun to write about what they were watching.¹⁸ This first-generation literature, and early second-generation literature on law and film, had its place. Still, it wasn’t of particular help to me. Having watched a good many lawyer films over the years, I knew without surveying an annotated list of legal films what films I was most likely to include in the course, films I thought might find a place in a student’s education as a lawyer.¹⁹ While I admired some of this new writing about films—in particular, the essays found in John Denvir’s collection, *Legal Reelism*²⁰—I had set about to teach lawyer films rather than write about them. I found, rather quickly, that the nuanced close-reading presented in a film essay on *Anatomy of a Murder* was not so easily translated into discussion with students

16. For a brief discussion of celebratory and critical views of the legal profession, see HOWARD LESNICK, *BEING A LAWYER: INDIVIDUAL CHOICE AND RESPONSIBILITY IN THE PRACTICE OF LAW* (1992).

17. All this literature turned out to be of little help in teaching the course; yet, I was pleased to have it on my desk. The mere existence of these early law/film books suggested that film had a place in legal education, even if the exact nature of its place was unclear.

18. See, e.g., *LEGAL REELISM*, *supra* note 13.

19. For a description of the selection process, and the films considered, see Elkins, *supra* note 1.

20. See *LEGAL REELISM*, *supra* note 13.

about the film. Writing about films, as my colleagues had taken to doing it, and teaching these films seemed to exist in different universes.

Finding that the law/film literature provided little help with teaching lawyer films, I turned to film studies. I assumed I might find there what I could not find in law/film writings. I was looking to address two questions. First, how do I teach lawyer films? Second, what should I ask students to read about films? Again, I came away empty-handed on both fronts, which is not to say that there is nothing in the film studies literature that could help in teaching a lawyer's film course. But I must say I didn't find anything in the film studies literature that would be of immediate practical value in "reading" a film and putting it to use as part of my students' education as a lawyer. Indeed, I found quite little that offered assistance in what I had set out to do: see what we might learn about ourselves as lawyers through studying lawyer films.²¹

What I discovered in film studies was an emerging "field" of study with depth in two areas: first, the technical/formal study of film as a medium, and second, the theoretical interpretation of film (drawing on the various "schools" of theory—psychoanalytic, Marxist, feminist, etc.). Since my lawyer film course was about *lawyers*, not about film, the special study of the technical/formal aspects of film was, at best, of tangential interest. And because I found it both possible and desirable to teach a lawyers-and-literature course without a substantial theoretical component, I found no need to go down that road in teaching films. Traditional "film studies" literature, simply put, did not look promising.²²

VI. A PRELUDE TO THE READING OF TWO LEGAL FILM CRITICS

If, as I contend, the basic propositions of what we learn about law and lawyers from popular culture is more mystery than science,²³

21. I am reminded here of a comment by David Kennedy, about the kind of "borrowings" we do in the name of interdisciplinary work: "[S]aying you favor interdisciplinarity is not enough—we need to speak about the strategy for specific borrowings in service of particular projects." David Kennedy, *Critical Legal Theory, Remarks at the Law and the Arts Symposium* (Oct. 30, 1996), in *LAW AND THE ARTS* 115, 119 (Susan Tiefenbrun ed., 1999).

22. There was, I found, one intriguing cache of film literature that did seem to hold promise for students of law, and that was the intriguing work of on-screen writing and the construction of film stories.

23. We might turn to hardcore research data and empirical social science research to see what we can learn about the effect of fictional representations of lawyers, jurors, clients, judges

more speculation than serious critique, then how are we to explore the mystery, what are we to learn from (and about) the depictions of lawyers and law in popular culture? We might, of course, simply watch lawyer films²⁴ to figure out what they mean to us.²⁵ Better still, we might turn to that new cadre of legal academics and lawyers, the new “law and film” scholars, to see how *they* engage legal films,

on law, lawyers, and legal institutions. What, if anything, do we really know—that is, know empirically—about the effects of the depiction of lawyers and law in film, popular fiction, TV (televised trials, fake trials, drama series), and news accounts?

There is one obvious problem here, even as we think about making this move: How can empirical research distinguish between the data/information/messages/images/stories portrayed in fictional media (films, TV, novels) and that which is portrayed as non-fiction (TV news, newspaper accounts, Court TV, books)? There is no wall of separation between the fictional and the real. “[T]he line between the reality of lawyering and its fictional representation on television and in books has gone well beyond blurred. It isn’t really a question anymore of how lawyers and law are portrayed on television and in books because that depiction is merging daily with reality.” Lisa Scottoline, *Get Off the Screen*, 24 NOVA L. REV. 655, 656 (2000). In Scottoline’s view, “the wall between fiction and reality is as thin and porous as a cell membrane, with reality passing through it to fiction, and fiction flowing backwards to reality, in constant flux.” *Id.*; see also Charles B. Rosenberg, *The Myth of Perfection*, 24 NOVA L. REV. 641 (2000) (drawing a connection between the concern of the policing critics—realists, moralists, representationalists—and issues raised by the O.J. Simpson trial).

Scottoline, after an effective effort at demonstrating the non-existent line between TV fiction and legal reality goes on to suggest that it may not be such a bad thing, at least as the critics want to suggest. She concedes that there is some danger of confusion in this “blending of reality and fiction.” Scottoline, *supra*, at 669. Scottoline, a fan of television, finds a good TV drama for every bad one. *Id.* And with so many lawyer dramas at hand, we end up with “a robust if implicit debate over what a lawyer really is.” *Id.* at 670. Furthermore, “the more familiar all of us are with the law and with courts, the better off we all are.” *Id.*

24. There is not, to date, a recognized lawyer film genre, although I would argue it is lawyer films we might best talk about. The more often recognized genre of legal films is referred to as the “courtroom drama” genre.

There is, I think, a distinction to be drawn between lawyer films and legal films more generally. In my view, lawyer films are now sufficiently commonplace and recognizable in structure and narrative that they may well qualify for genre status (at least among legal film critics). The more common approach in legal scholarly writings (and beyond) is to talk about the courtroom drama genre or, as it is sometimes called, the trial genre. Specifically, a lawyer film focuses on a lawyer or group of lawyers. While a lawyer film may feature a trial, *e.g.*, ADAM’S RIB (Metro-Goldwyn-Mayer 1949); TO KILL A MOCKINGBIRD (Brentwood Productions 1962), and the trial may be of significance to the drama (and the story) of the film, it is the lawyer or lawyers who are the central focus and feature of the film. While we may learn about law (and its place in our society and in our lives) from film, there is, I think, still more to learn about lawyers.

25. And who is “us”? Legal academics who have decided to teach a film course? Legal academics concerned about the “decline” in professionalism? Academics who have an interest in legal films who do not teach in law schools? Film buffs? Sophisticated TV and film viewers? Occasional viewers of films? TV viewers? Viewers of films and TV who have a serious interest in good contemporary and literary fiction? Film and TV viewers who read no fiction and obtain virtually no information from other media sources?

how *they* read these films, and how *they* read the argument that legal films can be put to use in a student's education as a lawyer.²⁶

In my "Lawyers and Film" course, students want to know what they are to do with the films they watch. Is there something we should know, they ask, as we watch lawyer films so that we can talk and write intelligibly about the films? What I propose here is that we begin to look at the work of legal film critics as if we were students in *their* film course and ask similar questions. What do legal film critics do when they talk about legal films? *Why* are particular films being discussed, and *how* are we asked as viewers to address these films? What questions about meaning are raised by a film, and how does the legal film critic help us locate and work with these questions? Finally, *who* is the lawyer film critic, *what* is he telling us about the value of lawyer films, and *how* are we (legal educators) supposed to translate the film critic's work into work we can do with our students?

VII. DAVID PAPKE AND THE TENTACLES OF THE REALISM CRITIQUE

David Ray Papke, in an essay aptly titled, *Conventional Wisdom: The Courtroom Trial in American Popular Culture*, observes: "After reflecting on the courtroom trial in American popular culture, law students, law professors, and lawyers might be inclined to comment first on how little this portrayal has to do with 'reality.'"²⁷ Papke goes on to note that "[v]arious lawyers and legal commentators have written on the 'inaccuracy' of courtroom trials in American fiction, film, and television, and their writings often border on indictments."²⁸ This concern about the legal accuracy of lawyer films is a conventional feature of legal film criticism, a feature Papke

26. The two legal film critics I discuss, David Papke and Phillip Meyer, are not only academic colleagues, but have also been friends for many years, as have other legal film critics. Richard Sherwin has been a good colleague over the years and is an occasional correspondent. I managed to review his book, *When Law Goes Pop*, and our relationship seems to have survived my review. I have published Michael Asimow's work in the *Legal Studies Forum*, e.g., Michael Asimow, *Film Commentary*, 24 LEGAL STUD. F. 335 (2000), and he has graciously heard me out in my complaints about the focus on the reality critique in his legal film writings. I've known John Denvir for a good many years and have admired, from a distance, his involvement in the *Picturing Justice* website (a website—now regrettably inactive—on which some of my own occasional writings on lawyer films have been posted).

27. David Ray Papke, *Conventional Wisdom: The Courtroom Trial in American Popular Culture*, 82 MARQ. L. REV. 471, 487 (1999) [hereinafter Papke, *Conventional Wisdom*].

28. *Id.*

calls the “reality aesthetic.” According to Papke, the reality aesthetic has “some degree of validity, and it is troubling when popular culture becomes a force in actual trials.”²⁹ While Papke notes that the reality critique is not the only way “to appraise the American pop cultural courtroom trial convention,”³⁰ he seems at once to both honor the “reality aesthetic” and question it.

Papke does his juggling, initially, by attributing the “reality aesthetic” to others, as he distances himself from this approach to legal film criticism.³¹ Yet, it becomes clear that the “validity” of the “reality aesthetic” holds substantial sway with Papke.³² While Papke holds the “reality aesthetic” at arms length in his *Marquette Law Review* essay,³³ it is in a second essay on the same themes that he more directly embraces the “real world” critique of legal films.³⁴ As Papke notes, “[s]ome judges and trial lawyers find it virtually impossible to enjoy pop cultural trials because of their lack of correspondence to what the judges and lawyers experience in actual courtrooms. Their complaints are well taken, and the differences between pop cultural and real-life trials merit underscoring.”³⁵

In his essay, *The American Courtroom Trial*, Papke takes us through a standard litany of differences between courtroom trials and the legal trials we see in film and television,³⁶ but to what effect? What, according to the subtitle of this section of the essay, are the “ramifications and significance”³⁷ of these differences, this gap

29. *Id.* Tony Chase has referred to the “reality aesthetic” as “cinematic realism.” See Anthony Chase, *Review Essay*, 9 CARDOZO STUD. L. & LITERATURE 107, 116 (1997).

30. Papke, *Conventional Wisdom*, *supra* note 27, at 487.

31. See David Ray Papke, *Peace Between the Sexes: Law and Gender in Kramer vs. Kramer*, 30 U.S.F. L. REV. 1199, 1200 (1996) [hereinafter Papke, *Peace Between the Sexes*] (“When scholars contemplate law and legal proceedings in popular culture, there is perhaps an inevitable tendency to turn to considerations of accuracy.”).

32. Papke’s entanglement in the reality critique takes place in two essays on American pop cultural trials, both published in 1999, and they closely mirror each other. See David Ray Papke, *The American Courtroom Trial: Pop Culture, Courthouse Realities, and the Dream World of Justice*, 40 S. TEX. L. REV. 919 (1999) [hereinafter Papke, *The American Courtroom Trial*] (a significant part of the essay muses on the relationship between pop cultural trials and actual trials); Papke, *Conventional Wisdom*, *supra* note 27, at 487–89.

33. See Papke, *Conventional Wisdom*, *supra* note 27, at 487.

34. See Papke, *The American Courtroom Trial*, *supra* note 32, at 926–30.

35. *Id.* at 926.

36. See David Ray Papke, *Law, Cinema, and Ideology: Hollywood Legal Films of the 1950s*, 48 UCLA L. REV. 1473, 1480 (2001) [hereinafter Papke, *Law, Cinema, and Ideology*]; Papke, *The American Courtroom Trial*, *supra* note 32, at 926–30.

37. Papke, *The American Courtroom Trial*, *supra* note 32, at 930.

between reality and film? First, Papke notes that defense lawyers might worry that jurors exposed to film lawyers may expect defense counsel “to pull rabbits out of hats. . . .”³⁸ The response to this heightened expectation argument is that jurors have always expected magic in the courtroom, which prosecutors and defense lawyers are sometimes willing to provide. Lawyers do sometimes pull rabbits out of hats. Jurors, we might note, have all kinds of expectations of lawyers who try cases; lawyers learn to deal with these expectations, whatever they may be. It is not clear why, with some modicum of visual literacy and some affection for films, that a trial lawyer wouldn’t be willing to confront jurors’ popular cultural derived expectations, deconstruct them, and translate them to his advantage. A lawyer conversant with popular culture conventions can and will make them an active part of her case, just the way she does all her other knowledge of the world.³⁹

Papke at times appears skeptical about the reality critique of legal films: should it, he asks at one point, “control our comparative commentary on pop cultural and actual courtroom trials?”⁴⁰ If pop cultural trials and actual trials are “driven by different engines,” as Papke notes, then what are we to say about the relationship of pop culture fictive trials and their real world counterparts? Papke contrasts the “coherent story line” and engaging drama of fictive trials with the boredom induced by the “stumbling, woefully imperfect” trials we find in the real world.⁴¹ According to Papke, real world lawyers do not so much try “to tell good stories” as they simply do what must be done.⁴² Papke falls prey here, I think, to a false and perilous dichotomy. He places real world lawyers in courtrooms with failed stories, yet a world in which lawyers must seek “just” and “fair results,” a world in which they struggle for justice.⁴³ In Papke’s scheme, there are two worlds: the world of fictive trials

38. *Id.*

39. I understand that Richard Sherwin has undertaken a visual literacy project that will provide a sufficient “modicum” of education and exposure to film and film narrative that will make it possible to confront juror expectations of film lawyer magic. Professor Sherwin launched his Visual Persuasion Project Web site in 2005. Visual Persuasion Project, <http://www.nyls.edu/pages/2734.asp> (last visited Apr. 1, 2007).

40. Papke, *The American Courtroom Trial*, *supra* note 32, at 930.

41. *Id.* at 931.

42. *Id.*

43. *Id.*

(found in legal films) where advocates get to “tell good stories,” and participate in drama designed to “engage viewers and readers,”⁴⁴ and a second “imperfect” world where lawyers must actually try their cases.

It’s not at all clear how Papke, a serious student of narrative jurisprudence,⁴⁵ ended up with this dichotomous view of film trials and real world trials. Today, law students are taught storytelling as a feature of litigation; storytelling is a theme in legal advocacy courses around the country.⁴⁶ Yet, Papke, adopting comments by Alan Dershowitz, contends that it is left to “[j]urors, journalists, and others to seek coherent narratives,” while lawyers must traffic in “[i]rrelevant actions and testimony, randomness, purposelessness,” and matters that are “often indeterminate.”⁴⁷ Papke implies that a trial does not lend itself to the coherence we associate with stories, and that lawyers are precluded, by features of real world trials, from presenting their cases with the coherence we associate with stories. Papke, in a different essay, makes the point this way: “Overall, actual trials do not necessarily have coherent story lines. Testimony and evidence are not parts of one big, emerging puzzle as they are in a Hollywood film.”⁴⁸ There is, of course, a vast, growing body of literature, both clinical and theoretical, which suggests that storytelling and story-sensibility are emerging as, if it has not already become, the dominant perspective in trial advocacy today.⁴⁹ Papke’s argument is all the more odd given his long-standing interest in legal storytelling and narrative jurisprudence.

44. *Id.*

45. Papke’s engaging, always instructive, writing on narrative jurisprudence includes: NARRATIVE AND THE LEGAL DISCOURSE: A READER IN STORYTELLING AND THE LAW (David Ray Papke ed., 1991); David Ray Papke, *Discharge As Denouement: Appreciating the Storytelling of Appellate Opinions*, 40 J. LEGAL EDUC. 145 (1990); David Ray Papke & Kathleen H. McManus, *Narrative and the Appellate Opinion*, 23 LEGAL STUD. F. 449 (1999).

46. See, e.g., MARILYN J. BERGER ET AL., TRIAL ADVOCACY: PLANNING, ANALYSIS AND STRATEGY 11, 21 (1989).

47. Papke, *The American Courtroom Trial*, *supra* note 32, at 931.

48. Papke, *Law, Cinema, and Ideology*, *supra* note 36, at 1480. Papke’s repeated reference to the proposition that trials aren’t coherent stories draws upon a quarrelsome commentary by Alan Dershowitz. See *id.* at 1480–81 n.34; Papke, *The American Courtroom Trial*, *supra* note 32, at 931 n.54.

49. See, e.g., ANTHONY G. AMSTERDAM & JEROME BRUNER, MINDING THE LAW: HOW COURTS RELY ON STORYTELLING, AND HOW THEIR STORIES CHANGE THE WAYS WE UNDERSTAND THE LAW—AND OURSELVES (2000); ERIC OLIVER, FACTS CAN’T SPEAK FOR THEMSELVES: REVEAL THE STORIES THAT GIVE FACTS THEIR MEANING (2005).

Papke tries to move beyond his reality aesthetic/critique by arguing that pop cultural trials need not be accurate “to teach us something about law.”⁵⁰ Fictive trials are important, according to Papke, because they “contribute to the popular understanding of law. The pop cultural trial educates at the same time it entertains.”⁵¹ Yet when Papke explains what he takes to be the impact of pop culture representations of law and lawyers—the “education,” rather than entertainment, component—he provides a more skeptical assessment:

[T]he greatest impact of pop cultural portrayals of courtroom trials involves our societal understanding of law as a large, abstracted concept. The pop cultural trial serves as a symbol of law. The symbol obfuscates inequalities of race and class. It assures us that legal representation is available and effective. It probes facts and uses objectivity to reach fair decisions. It inspires and reassures The pop cultural courtroom trial . . . portrays, symbolizes, and serves up an acceptable version of reality under a rule of law. . . . [W]e do like to think of ourselves as a people living by the rule of law.⁵²

Here, the education of the public about law and lawyers is not so much of real value, that is, an education, as it is the promotion of an “abstracted concept”—a “symbol”—that obstructs our view of what is really going on in society (with its “inequalities of race and class”). Papke seems (if loosely and by implication) to suggest that what we might want to think of as education (by way of popular culture) is not really an education at all. The only “version of reality” of law and lawyers to be found in popular culture is, for Papke, mere wish fulfillment, a way of reassuring ourselves, distancing us from law’s failure.

What I find peculiar about Papke’s assessment of pop culture courtroom trials is that he flirts with the conventional view of legal film critics perplexed about popular culture, and legal films in particular, because they fail the reality critique, then seemingly argues that legal films so romanticize our view of law and lawyers

50. Papke, *The American Courtroom Trial*, *supra* note 32, at 931.

51. *Id.*

52. *Id.* at 931–32.

that they mask the underlying reality of law. Yet, he also contends that it is at “fictive trials” where advocates tell “good stories” and create a form of “drama” that “engage[s] viewers and readers.”

Papke’s effort to deal with the reality critique is an on-going, see-saw effort. He attempts to both distance himself from the critique and accept its place in legal film criticism. We see Papke’s conflicted ambivalence manifested again in an essay on *Kramer vs. Kramer*⁵³ where, in taking up the legal realism/accuracy criticism of legal films (and the representations of law and lawyers in popular culture more generally), he notes that “[w]hen scholars contemplate law and legal proceedings in popular culture, there is perhaps an inevitable tendency to turn to considerations of accuracy.”⁵⁴ We don’t know, given the neutrality of the statement, whether Papke includes himself in this group of legal scholars who can’t quite manage to avoid the inevitable or not. And, of course, we’re not told what makes the reality critique so seemingly “inevitable.” There’s no hint that when legal film critics succumb (as they so persistently do) to what *seems* inevitable, that they (and we, their readers) have not simply missed the larger picture.⁵⁵ What Papke does not confront, in turning away the reality critique at the front door while inviting it in at the back door, and in recognizing what he calls a “variety of cultural criticism,”⁵⁶ is whether the reality critique has any real pay-off, or whether it is simply a tried old truism, a handy convention of legal film critics that has become so pervasive that it does indeed seem inevitable.⁵⁷

53. Papke, *Peace Between the Sexes*, *supra* note 31, at 1200. Papke’s ambivalence is made all the more striking by his citing, in three essays, the fact that Jon L. Breen argues that the “accuracy” of trial films is a crucial issue in their evaluation. JON L. BREEN, *NOVEL VERDICTS: A GUIDE TO COURTROOM FICTION* (1984); Papke, *Peace Between the Sexes*, *supra* note 31, at 1201; *see also* Papke, *Conventional Wisdom*, *supra* note 27, at 487; Papke, *The American Courtroom Trial*, *supra* note 32, at 930.

54. Papke, *Peace Between the Sexes*, *supra* note 31, at 1200.

55. I first noticed the “reality critique” and its debilitating effects in my first efforts to teach lawyer films. What law students seemed inevitably drawn to do was to use their insider knowledge of the lawyer and their new status as legal initiates to put that knowledge to use so they would have *something* to say about lawyer films. The problem was that after we worked our way through the reality critique, the legal inaccuracies, and the catalogue of ethical violations, I found that students didn’t have much to say. The reality/legal inaccuracies/ethical violations critique, when exhausted, took the wind out of their interpretative/critical sails.

56. Papke, *Peace Between the Sexes*, *supra* note 31, at 1201.

57. The focus on accuracy in legal films is also a regular feature of legal film courses. For example, Professor Andrew Schepard, at Hofstra University School of Law, notes in his syllabus for a “Law and Popular Culture” seminar that “[w]e will discuss the accuracy and inaccuracy of

What I would like to see in the work of legal film criticism is the deconstruction of this persistent notion that the reality critique is inevitable. What we want from the critic are signs of struggle and a strategy for resistance. Papke writes, “[c]riticism of this sort [the reality critique] does no harm, and there is indeed something to be gained from alerting the citizenry to differences between the law and legal proceedings in popular culture and what might be understood as ‘real life.’”⁵⁸ The problem, however, is that Papke’s half-hearted acceptance of the reality critique is not designed for “the citizenry,” but presented to fellow legal film critics, where it serves to buttress rather than study or confront the reality critique. Thus, the claim that the reality critique “does no harm” falls short.

Papke does, at times, point out the suspect nature of the reality critique. For example, he has noted that “[c]ritics with a bent for noting ‘legal inaccuracies’ should dismount the high horse of expertise and recognize that cultural conventions and prescriptions, much more than faithfulness to the law, shape works of popular

the way that lawyers and the legal system are portrayed in popular culture, particularly whether the portrayals are consistent with good legal practice and the codes that regulate lawyer behavior.” Andrew Schepard, Hofstra Univ. Sch. of Law, Tennative Seminar Syllabus: Seminar in Law and Popular Culture (2006) (on file with author), *available at* http://www.hofstra.edu/PDF/law_popular_schepard_syllabus_sp06.pdf.

In a footnote, Professor Schepard thanks Michael Asimow “for allowing me to adapt his syllabus for this seminar.” *Id.* at 1 n.*. The assigned book for the seminar is MICHAEL ASIMOW & SHANNON MADER, *LAW AND POPULAR CULTURE: A COURSE BOOK* (2004). *See Schepard, supra*, at 2. Asimow, who has written extensively on legal films, including several books, embraces the conventions of legal film criticism I question in this essay. David Black has noted that Asimow’s first book on legal films (co-authored with Paul Bergman), was “legally informed but theoretically uninquisitive realism.” DAVID A. BLACK, *LAW IN FILM: RESONANCE AND REPRESENTATION* 61 (1999). Black points out the crudeness of Bergman and Asimow’s “‘would-this-really-happen?’ approach to narrative criticism,” and contends that the book is relevant for film studies for its symptomatic behavior. *Id.* at 62.

Asimow and his co-author, Shannon Mader, do note in *Law and Popular Culture: A Course Book* that “the subject of ‘realism’ in film is actually quite complicated and contentious.” ASIMOW & MADER, *supra*, at 13. Later they observe, “The issue of realism in film is a notoriously complicated and contentious one.” *Id.* at 112. But what Asimow and Mader may mean by the claim that realism depends upon the filmgoers “own experiences and ideologies” is not clear. *Id.* There is a hint of what they might mean in Diane Waldman’s observation that criticism “based on plausibility [is] always ideological, predicated not only on a realist aesthetic, but also on the writer’s own subjectivity and experience masquerading as logic and knowledge of the ways of the world.” Diane Waldman, *A Case for Corrective Criticism: A Civil Action*, in *LAW ON THE SCREEN* 201, 202 (Austin Sarat, Lawrence Douglas & Merrill Umphrey eds., 2005).

The “reality critique” has been so widely adopted and so often employed as a convention of legal film criticism that it has now grown well beyond the confines of Michael Asimow’s work.

58. *Id.*

culture.”⁵⁹ Accordingly, in his discussion of *Kramer vs. Kramer*, Papke tries to place the “legal inaccuracies” of the film in the context of the film’s larger purpose: the “struggle between the sexes and a struggle over how the sexes should understand their roles.”⁶⁰ Yet, aware as he is of the “legal inaccuracies” trap, and cautioning that we should be looking to the larger “purpose” of the film, Papke seems unable to extricate himself from the sweet honey (from the ever inevitable) of the realism critique. In writing about the trial scenes in *Kramer vs. Kramer*, Papke notes, at one point, that various “scenes and proceedings” shown in the film, “are of course rife” with legal inaccuracy:

The questions in court about Joanna’s liaisons would be irrelevant, and it is balderdash to present an ex-spouse supportively signaling the other ex-spouse in the midst of cross-examination in a hostile custody fight. What unmitigated ignorance and even malpractice it would be for a divorce lawyer (or any lawyer for that matter) to suggest that somebody would have to take the stand on appeal.⁶¹

What the import of the inaccurate “scenes and proceedings” in *Kramer vs. Kramer* might be for anyone other than a lawyer (a lawyer who, as a film viewer, put aside his legal knowledge), or for a legal film critic immersed in conventional thinking, Papke does not tell us.

Papke has written often about legal films, and we begin to see a pattern in his work: He attempts to distance himself from the reality critique while he embraces it. Or he embraces the reality critique and then tries to loosen himself from its grasp.⁶² The focus on legal

59. *Id.*

60. *See id.* at 1201–03.

61. *Id.* First, I’d note that the polemics in this brief description of the legal inaccuracies in *Kramer vs. Kramer* are an unusual contrast to the cool steady prose I associate with Papke’s scholarly work. More oddly, perhaps, Papke attributes the legal inaccuracies in *Kramer vs. Kramer* to the fact that the film, as well as its legal inaccuracies, are all presented from the “masculine” perspective. *See id.* One suspects that Papke may, in this suggestion, have fallen under the beguiling influence of feminist legal film criticism. *See generally* David Ray Papke, *Cautionary Tales: The Woman as Lawyer in Contemporary Hollywood Cinema*, 25 U. ARK. LITTLE ROCK L. REV. 485 (2003). The problem with feminist legal film criticism is, to put it most simply and bluntly, that it is all too predictably (and all too often) more a rhetoric of ideology than it is film criticism.

62. For example, in Papke, *Law, Cinema, and Ideology*, *supra* note 36, at 1481, after laying out a thoroughly conventional description of the way actual trials differ from film trials, Papke tries to dampen the effect of his legal inaccuracies description. First, he notes that they do not

inaccuracies can (and often does) disguise, as Papke makes clear, what a legal film has to teach: “The pop cultural trial does not have to be ‘accurate’ in order to teach us something about law. Regardless of its correspondence to actual trials, the pop cultural trial can and does contribute to the popular understanding of law. The pop cultural trial educates at the same time it entertains.”⁶³ But, as we’ve noted earlier, what Papke means by “educates” takes an odd turn.⁶⁴ How does the trial as symbol educate us? “[P]op cultural courtroom trials continue to inspire confidence and to proffer encouraging lessons about law in American life.”⁶⁵ The images found in courtroom trials presented to us in popular culture do not educate in the sense that we normally use that word, but rather, according to Papke, they “suggest a dream world of justice.”⁶⁶

There’s something askew, one might think, in Papke’s efforts to attribute justice to the “dream world” of popular culture, since he has also contended, or strongly implied, that it is real world lawyers and the imperfect way they must try their cases, where we see the real struggle for justice. The better argument, one might think, is that in fiction, film, and life we find lawyers who seek justice, and that the “dream world of justice” is as vital to real world lawyers (and as often unattainable), as it is in the trials we find represented in popular culture—film and fiction.

Papke provides still another look at legal films and his argument that they support law as ideology—a dream world of justice—in *Law, Cinema, and Ideology: Hollywood Legal Films of the 1950s*.⁶⁷ In this essay, Papke links the belief-in-law as an ideology (which he

require that the film be rejected, as legal films “do not purport to be documentaries” and “do not attempt to be cinematic snapshots of the American legal profession, courtroom trial, or law in general.” *Id.* Papke, here as elsewhere, observes another convention of legal film criticism, in noting that the “important legal films” of the “golden age” explore the relationship of law and lawyers to justice. *Id.* Of course, the proposition that there was a “golden age” of lawyer films in the 1950s and 1960s—an age now past—is itself still another convention of legal film criticism.

63. Papke, *The American Courtroom Trial*, *supra* note 32, at 931.

64. See *supra* notes 50–52 and accompanying text.

65. *Id.* at 920.

66. *Id.* “The pop cultural trial . . . transports us to the dream world of justice.” *Id.* at 932. One might, in response to Papke, note, as did Bertrand Russell, that “Man is essentially a dreamer, wakened sometimes for a moment by some peculiarly obtrusive element in the outer world, but lapsing again quickly into the happy somnolence of imagination.” DAN NIMMO & JAMES R. COMBS, *MEDIATED POLITICAL REALITIES*, at viii (1983) (quoting BERTRAND RUSSELL, *SKEPTICAL ESSAYS* (1928)).

67. Papke, *Law, Cinema, and Ideology*, *supra* note 36.

relates to legal films more generally) to the 1950s and 1960s “golden age” of legal films:

The films speak positively of law, lawyers, and legal institutions or, at least, of what law, lawyers, and legal institutions might provide for social life. For the most part, the films suggest lawyers are men of integrity committed to deserving clients. Courtroom trials are fair and provide closure to heated controversies. And law in general is a close ally of justice.⁶⁸

Basically, according to Papke, the “golden age” legal films “endorse the rule of law” and “inspire belief” in it.⁶⁹ But how, then, are we to “read” films like *Adam’s Rib*,⁷⁰ *Anatomy of a Murder*,⁷¹ and *The Verdict*,⁷² each in its own way a classic legal film, against Papke’s description of “golden age” film ideology?⁷³ Papke’s ideological criticism of legal films may be more subtle than most, but when he moves beyond the suggestion that a “Hollywood film

68. *Id.* at 1475.

69. *Id.* at 1483.

70. *ADAM’S RIB*, *supra* note 24.

71. *ANATOMY OF A MURDER* (Carlyle Productions & Columbia Pictures Corporation 1959).

72. *THE VERDICT* (20th Century Fox 1982).

73. Papke does make a passing reference to *Anatomy of a Murder*, to say that “[t]he legal process—even in the Hollywood film—does not always get things right; it does not always deliver justice.” Papke, *Law, Cinema, and Ideology*, *supra* note 36, at 1486.

Papke notes, in a book review of Anthony Chase’s *MOVIES ON TRIAL* (2002), Chase’s objection to a “dominant-ideology thesis,” and by implication, a belief-in-law ideology. David Papke, *How Does the Law Look in the Movies?*, 27 *LEGAL STUD. F.* 445, 459 (2003) [hereinafter Papke, *How Does the Law Look?*]. While Chase’s proposition seems to undercut Papke’s central thesis as to the presence of a dominant belief-in-law ideology in popular culture, Papke expresses agreement (at least as to popular culture generally, if not for the 1950s/60s “golden age” of films more particularly), when he says, “I agree that popular culture should not be reduced to a monolithic, system-supporting whole.” *Id.* But the agreement is no more than expressed, before effectively redacted. Papke says, “I do apprehend a dominant ideology in the United States, one which, among other things, promotes the notion that we live by a rule of law.” *Id.* at 445. The ideology, contends Papke, is found not only in legal system supporting films, “but also films which present apparent miscarriages of justice.” *Id.* at 446. The off-handed reference to the miscarriage of justice in *To Kill a Mockingbird*, an “apparent” miscarriage, is a bit odd. In *To Kill a Mockingbird*, we are not, as Papke suggests, “invited to believe that were it not for isolated examples of pettiness, greed or bias, law and legal institutions could have gotten things right.” *Id.* Rather, *To Kill a Mockingbird* would invite us to see Atticus Finch and some few neighbors, and perhaps the judge, as being the isolated legal figures in a drama where there is no reasonable expectation that a jury will find the innocent Tom Robinson not guilty. This is not an invitation to see the system as beset by an isolated instance of bias, but a legal system fatally infected by what Harper Lee, in the novel, calls “Maycomb’s usual disease.” HARPER LEE, *TO KILL A MOCKINGBIRD* 97 (1960). This is an instance, perhaps rarer for Papke than for other ideological film critics, in which ideology pushes the critic to a misreading of film.

includes . . . a significant ideological component,” and that the “images, ideas and narratives” found in legal films “have a normativity to them,” that legal films “convey messages,”⁷⁴ his effort to actually describe the ideology/normativity/message becomes more troubling than it is dispositive.⁷⁵ It is quite difficult to point to the “message” (whether a single message, or multiple messages, or mixed contradictory messages) of a particular film,⁷⁶ and all the more difficult to work out *the* cultural message of any legal film, or of legal films of any given era.⁷⁷

That some legal films present a “powerful evocation of a legal faith,”⁷⁸ is undoubtedly true. But one suspects that in every era there are also films that present and question that “legal faith,” films that deconstruct that faith. And, of course, there are legal films that both reinforce and call into question whatever prevailing ideology we might associate with a particular film. Papke may be right to associate a belief-in-law ideology with films like *Judgment at Nuremberg*⁷⁹ and *12 Angry Men*,⁸⁰ but he seems determined that his

74. Papke, *Law, Cinema, and Ideology*, *supra* note 36, at 1482.

75. If the reality critique of legal films has the legal film critic constantly underperforming, the ideological film critic must, alternatively, be in greatest danger of overreaching, of attempting a performance more satisfying as a performance than it can ever contribute to what we try to find, in legal films, to teach our students.

76. Papke has himself noted that particular films may suggest different “political and economic meanings” (that is, ideological meanings) depending upon viewer and audience. See Papke, *How Does the Law Look?*, *supra* note 66, at 444. Dan Nimmon and James Combs elaborate on Papke’s point:

[P]eople act on the basis of pictures they carry around in their heads, pictures of the way they think things are. These pictures derive from, and are changed by, two sources or a combination thereof. One is direct experience. People’s daily lives consist of direct, firsthand experiences with events, places, other people, objects, and so on. They eat and sleep, work and play, argue and relent, worry and relax. The pictures in their heads help them give meaning to all of that and everything adds up to a portion of each one’s reality. But a lot of things happen with which people do not deal directly. They hear, read, or see pictures of these things, imagine what took place, give them meaning, and incorporate these indirectly experienced things into their pictures of the world, a second portion of their reality.

NIMMO & COMBS, *supra* note 66, at 1–2.

77. I do not mean to argue that the tenor, tone, and style of legal films do not change over time. It is our effort to read, in any kind of minimally coherent way, the effect of these changes, changes that we can describe with some accuracy, that poses real difficulties.

78. Papke, *Law, Cinema, and Ideology*, *supra* note 36, at 1483.

79. *JUDGMENT AT NUREMBERG* (Roxlorn Films Inc. 1961).

80. *12 ANGRY MEN* (Orion-Nova Productions 1957).

ideological analysis can also be used as a way to summarize the legal films of an “era.”⁸¹

Papke elsewhere describes the belief-in-law ideology as a “convention,”⁸² and provides a somewhat different interpretation of the effect of ideological conventions than the one he lays out in his association of legal films with the dream world of justice. Again, Papke sets out the possibility that films—the “golden age” legal films—may “effectively use the law to explore larger questions of personal and social justice”⁸³ It is, says Papke, “this cinematic contemplation of law’s relationship to justice” that both the public and film critics find “to be engaging.”⁸⁴ But it is unclear whether Papke means to include himself as a viewer/critic who finds the portrayal of the quest for justice in films engaging or not. If the quest for justice in film is a false front, a disguise for the underlying “faith in law” ideology, then the quest for justice in legal films, for an ideological critic like Papke, would be something akin to a Trojan horse. If legal films can do no more than serve our dream world of justice, and in so doing blind us to the injustices of the real world, then we may view legal films as pernicious. But it is not at all clear that Papke would be willing to argue that legal films have, generally, a pernicious influence on the legal profession, on jurors, or the public at large. Papke’s disquieting shift in perspective—speaking for all of us, speaking for some of us, speaking for himself—is, I fear, a regular feature of ideological legal film criticism, and it mars Papke’s otherwise admirable efforts in *Law, Cinema, and Ideology*.

81. “Major American legal films produced between *12 Angry Men* and *Judgment at Nuremberg* conveyed much the same [ideological] message” *Id.* at 1486. While I am not persuaded by Papke’s efforts to suggest that the legal films of the 1950s and 60s can be viewed from a single belief-in-the-rule-of-law ideological perspective, his socio-historical explanation for the prevalence of so much faith-in-law in legal films of this era is quite interesting, relating the ideology to Hollywood’s effort at Americanism and distancing Hollywood from allegations that it was “infested with Communists.” *Id.* at 1487.

82. Convention is a term I would use to describe the regular, expected, persistent rhetorical features of legal film criticism (and, by extension, I’d apply the term to the way we now traffic in speculations about the “impact” and the “effect” of the representations of law and lawyers found in popular culture on the general public, and the legal profession and legal institutions). It is when we explore and confront the conventions which govern our practices, in this case, the rhetorical practices of legal film critics, that we advance the art of film criticism.

83. *Id.* at 1481.

84. *Id.*

But then Papke, ever cautious, admits that even he engages in ideological critique “with some trepidation.”⁸⁵

VIII. THE LEGAL REALITY CRITIQUE INHIBITS LEARNING

We know the reality critique is powerful because it is appealing, widespread, and presented so often with the fanfare of revelation. But is it really inevitable? The reality critique is, at once, a reassuring move for legal film critics—it gives them something to do, drawing on a purported expertise the lay viewer does not have—and it represents a substantial failure.⁸⁶ The problem with the reality critique is that it props up and maintains a convention of legal film criticism that leaves us thinking we are film critics when what we are doing is defending the legal profession.⁸⁷ Basically, the reality critique impoverishes our critical work.⁸⁸ It obscures the meaning of lawyer films even as it purports to be essential to their critical evaluation. The conventional realism critique leaves us with an inadequate understanding of a film as a story, as a drama with meaning, as a struggle to tell a story (or stories) about justice. The conventional realist critique offers an appearance of criticism—a mirage.

Films present a world somewhat like our own, a world we sometimes think of as real, sometimes as fictional. In the fictional/real

85. *Id.*

86. We might expect this kind of criticism from practicing lawyers who happen into the theater to see a film, and it turns out to be a lawyer film. Or, we might expect the reality aesthetic when ABA lawyers, ever vigilant about the public perception of lawyers and forever defensive about the legal profession, write about films.

87. I am reminded of film studies scholar David Bordwell’s admonition that “criticism is shaped by the institutions that house it” DAVID BORDWELL, MAKING MEANING: INFERENCE AND RHETORIC IN THE INTERPRETATION OF CINEMA, at xiii (1989). And we’re reminded of this basic proposition yet again in David Kennedy’s claim that “[p]rojects of criticism and reform in a professional field arise in the context of an ongoing disciplinary practice.” David Kennedy, *When Renewal Repeats: Thinking Against the Box*, 32 N.Y.U. J. INT’L L. & POL. 335, 340 (2000). “A great deal of what international lawyers do is polemicise for the existence, power, and usefulness of ‘international law.’” *Id.* at 343. Kennedy goes on to note that “[t]o appreciate,” the “mental map” of critics, “we should treat their pronouncements about the tradition they criticize and the future they urge into being almost as symptoms of their professional character.” *Id.* at 344.

88. In teaching “Lawyers and Film,” I concluded early on that the reality/legalism critique had no necessary place in the course. If comparing film lawyers to real world lawyers impedes our reading of the film, our focus on the film’s story, and prompts an inattentiveness to the film’s characters, their conflict, and the drama unfolding in the film—as I think it does—then we must find another way to watch a film, another way to read the film, another way of working our way toward the meaning of the film.

world of films, lawyers sometimes act like us, and sometimes they do not. And sometimes, we simply don't know how lawyers act or are supposed to act. Exactly what the relationship of film lawyers may be to real-world lawyers is the one question the reality critique purports to address and then fogs up with confusion.

The troublesome fit is not, as legal film critics so often claim, between the world of film lawyers and the world we inhabit, but the fit between the film and the critic. It is this relationship—critic and film—that needs development.

IX. PHILIP MEYER: FILM STORIES AND LEGAL STORYTELLING

Phil Meyer first took us to the movies, along with his students, in the early 1990s in an essay titled, "Law Students Go to the Movies."⁸⁹ Meyer wasn't the first legal academic to write about legal films, but he got an earlier start than most of us. In his early film writings, Meyer writes about teaching film.⁹⁰ The course that he taught focused not just on legal films, but on literature, storytelling, and popular culture.⁹¹

Meyer, in one of his earliest film articles, tells the reader, as one might assume he tells his students: "By avocation, I am a long-time film junkie and closet-screen writer."⁹² He alerts readers here to the fact that he has a personal connection to films, that they are part of

89. Philip N. Meyer, *Law Students Go to the Movies*, 24 CONN. L. REV. 893 (1992) [hereinafter Meyer, *Law Students*]. The importance of Meyer's early film course (which he viewed as a law and storytelling course) in his subsequent work as a legal film critic is found in his various articles about the course. See Philip N. Meyer, *Visual Literacy and the Legal Culture: Reading Film as Text in the Law School Setting*, 17 LEGAL STUD. F. 73 (1993) [hereinafter Meyer, *Visual Literacy*]; Philip N. Meyer, *Convicts, Criminals, Prisoners, and Outlaws: A Course in Popular Storytelling*, 42 J. LEGAL EDUC. 129 (1992) [hereinafter Meyer, *Convicts, Criminals, Prisoners, and Outlaws*]; Philip N. Meyer, *Criminality, Obsessive Compulsion, and Aesthetic Rage in "Straight Time,"* 25 LEGAL STUD. F. 441 (2001) [hereinafter Meyer, *Criminality*].

In more recent years, Meyer has taken up the teaching of criminal law and, emboldened by his early experience teaching film, now makes films a regular part of his criminal law course. See Philip N. Meyer & Stephen L. Cusick, *Using Non-Fiction Films as Visual Texts in the First-Year Criminal Law Course*, 28 VT. L. REV. 895 (2004).

90. One of the reasons I'm drawn to Meyer's work is that he focuses on teaching. Scholarly work which focuses on teaching has, in my view, a way of drawing down to the essence of an enterprise (that is, a subject) in a way that academic, theoretical writing often misses.

91. Meyer has noted that his early film course "straddled lines between law and narrative, and law and film studies." Meyer & Cusick, *supra* note 89, at 913. The course came at a time when "law and narrative scholarship was nascent, and law and film scholarship nonexistent." *Id.*

92. Meyer, *Visual Literacy*, *supra* note 89, at 73.

who he is.⁹³ The question, for Meyer and for the reader, is this: how can films, and one's long-standing affection for them, become part of the work we do as law teachers? The key to translating personal interest into an academic interest lies, for Meyer, in his assumption that "[f]ilms provide a unique mechanism for . . . critical reflection on the dynamics of legal cultural storytelling."⁹⁴ Underlying his proposition that films prompt "critical reflection," Meyer sets forth still another basic premise: trial attorneys "are fact-based storytellers operating in a popular and predominantly oral culture" and, as such, have a great deal to learn from "non-legal cultural storytellers working the same turf."⁹⁵ Drawing on his work with film, Meyer argues that "imagistic storytelling" is a "discrete lawyering skill," a skill that Meyer sought to address in his early lawyer/film/storytelling/literature course.

Meyer describes his use of films in legal education as a "simple idea"—lawyers are storytellers. He explains the idea this way:

Like the movie-maker, the trial attorney is an oral cultural storyteller who tells fact-based narratives that convey a story and a particular vision of the world. The principles of narrative ordination for a trial storyteller are like the aesthetic structures that compel movie directors to craft stories along a tightly ordered narrative spine. Severe constraints are placed on narrative subjectivity by certain storytelling conventions, such as the rules of evidence.

The trial attorney, like the movie director and *unlike* the novelist, describes action in a shared external world. The trial attorney, like the movie-maker, plays to a passive audience with a compressed attention span. The trial

93. Concluding his description of a 1990–2001 film/storytelling course he taught at the University of Connecticut School of Law, Meyer notes, "The course was . . . deeply personal." *Id.* at 92. For that course, Meyer had selected films about "convicts, criminals, prisoners, and outlaws—protagonists on the margins of society," *id.*, because he had worked on prisoners' rights in a public defender's office, taught creative writing at a psychiatric facility for criminals, and had "always been fascinated by the stories of criminals." *Id.* at 73. Meyer writes about one of the films used in this course, *Straight Time*, in still another article. See Meyer, *Criminality*, *supra* note 89.

Now, fifteen years later, Meyer is still writing about storytelling and criminals, both in his published work, and in work that he is doing with Anthony Amsterdam on the use of narrative and storytelling in death penalty cases.

94. Meyer, *Visual Literacy*, *supra* note 89, at 73.

95. Meyer, *Law Students*, *supra* note 89, at 894.

attorney speaks directly to the audience only in the opening and closing arguments. Otherwise, he tells his story exclusively through the presentation of witnesses and real evidence. The audience at the cinema or at trial watches and listens to the “uninflected” material characteristic of “montage” without the explicit guidance of the writer’s subjective and controlling narrative voice. The audience must attribute meaning. Meanwhile, the form demands that the story move ineluctably forward.⁹⁶

In his early teaching, Meyer used *Chinatown* and *The Thin Blue Line*, a murder mystery and a murder documentary (or “anti-mystery”) respectively, because they allowed him “to explore the nature of the narrative structures” in the films.⁹⁷ Meyer notes:

[T]he form of the criminal trial bears significant structural similarity to the curiously proximate narrative form of the murder mystery, especially the cinematic murder mystery. Murder mysteries, like trials, maintain tension between alternative possibilities imbedded in the narrative. There are stories and counter-stories. The tension between alternative possibilities [is] resolved when a detective, similar to an attorney, revisits the past.⁹⁸

Central to Meyer’s film writings is the “similarity” he finds “between trial and movie storytelling.”⁹⁹ One way to get law students to think about the stories they tell as lawyers and to develop their story sensibilities¹⁰⁰ is to prompt them to make use of the films they watch.

96. *Id.* at 897–98. Meyer teaches his students that we “think imagistically and visually,” that “imagistic storytelling appeals to emotions and instinctual responses that are the primary targets of rhetorical persuasion.” *Id.* at 904.

Popular cinematic stories are generally simple linear narratives viewed from the fixed perspective of an omniscient narrator or protagonist with whom the viewer identifies. The story hooks the imagination of the audience and propels the imagination forward with a “hard” plot-line. . . . This concept of underlying “story theme” is akin to the lawyer’s notion of “theory of the case” in the trial storytelling process.

Meyer, *Visual Literary*, *supra* note 89, at 75. “[N]arratives are controlled by themes.” Meyer, *Law Students*, *supra* note 89, at 902.

97. Meyer, *Law Students*, *supra* note 89, at 900.

98. *Id.*

99. *Id.* at 896.

100. *Id.* at 895–96. Meyer notes that in teaching students how to “think like lawyers,” there is an “analytical indoctrination” that “requires students to internalize the aesthetic conventions and

Meyer is an engaging writer—his days at the University of Iowa Writers Workshop are put to good use¹⁰¹—and I’ve long been attracted to his work (on film pedagogy, on the lawyer as storyteller, and, more recently, on the use of film stories in telling legal stories). One reason, among others, that I find Meyer’s work attractive is hidden away in a statement he makes in a course syllabus he gave his students in the early 1990s, where he says, “We will discuss what these film stories, and the methodologies of their telling—along with the advertent and inadvertent messages they convey—might have to tell us about our lives, and the nature of our legal storytelling culture.”¹⁰² Legal storytelling may be a discrete lawyering skill—and I think Meyer is right that it is—but the stories we tell, and how we tell them, both in law and beyond law, *tell us about our lives*. It is this linking of film to skill, and skill to life, that makes Meyer’s work so valuable.

I find Meyer’s work with film and legal storytelling attractive for still another reason: he makes clear that his work is a response to analytical structures he finds in the traditional case-method, and “think like a lawyer” and “write like a lawyer” preoccupations of

analytical forms necessary to succeed in law school.” *Id.* at 895. The problem with this tradition and its conventions is that students learn (or continue) “to repress emotional and intuitive responses that are crucial to effective storytelling.” *Id.* Law school, as we know all too well, teaches some skills and teaches them well. The problem, as Meyer and many others have noted, is that law school overlooks the skills and sensibilities needed by the practicing lawyer, and then, having overlooked certain skills, proceeds to discount, devalue, and disdain them. See Meyer, *Visual Literacy*, *supra* note 89, at 83. Meyer found some students “frozen into narrative disbelief” based on their “deep skepticism” about narratives and the deception found in the “continual barrage of visual and aural stories” found in popular culture. *Id.* What Meyer seeks to do in his film/storytelling courses is to “revivify” the student’s “innate sense of narrative.” Meyer, *Law Students*, *supra* note 89, at 895.

When Meyer says that what he seeks with his students is “meaningful discussions” of films, we can assume he means that he wants his students to be able to talk about the stories they tell as lawyers, as a way to get them to be cognizant of storytelling as a skill. Meyer, *Visual Literacy*, *supra* note 89, at 73, 92. Meyer expresses the hope that these conversations will be “therapeutic.” *Id.* at 73. Whether Meyer means therapeutic in the sense of healing an afflicted legal education, therapeutic for the ailing student (hungry from unmet needs), or to Meyer, who once described himself as “an itinerant professor of legal writing, a drifter and outsider myself,” he does not say. Meyer, *Convicts, Criminals, Prisoners, and Outlaws*, *supra* note 89, at 129.

101. See Philip N. Meyer, *Making the Narrative Move: Observations Based Upon Reading Gerry Spence’s Closing Argument in The Estate of Karen Silkwood v. Kerr-McGee, Inc.*, 9 CLINICAL L. REV. 229, 230 (2002) [hereinafter Meyer, *Making the Narrative Move*] (“I was a student of creative writing in a graduate program in the [Midwest] many years ago.”) In a footnote, Meyer confesses to the particulars: “I received my M.F.A. from The Writers’ Workshop at the University of Iowa in 1973.” *Id.* at 230 n.3.

102. Meyer, *Law Students*, *supra* note 89, at 894–95.

legal education.¹⁰³ Meyer's focus is on a fundamental, but little developed, trial lawyering skill—storytelling—and the sensibilities necessary to move from classroom legal analytics to real world client advocacy and its predominant “narrative oral culture.”¹⁰⁴ To make this transition—classroom analytics to lawyer/client (client/lawyer) oral culture—students must, Meyer argues, “develop vocabularies” that make it possible for them to reflect on the storytelling world in which they live.¹⁰⁵

While Meyer was teaching his lawyer/film/storytelling courses in the early 1990s, he also wrote (and has continued to write) essays in which he analyzes the performance of lawyers who make use, of what he calls “visual literacy.”¹⁰⁶ In “*Desperate For Love*”: *Cinematic Influences Upon a Defendant's Closing Argument to a*

103. As for these preoccupations, Meyer contends that this “exclusive discipline [which I’ve called preoccupations] drains some of the wildness, creativity, and the oppositional/critical thinking and narrative persuasion abilities that inform the effective practice of law.” Meyer & Cusick, *supra* note 89, at 896. In using films, Meyer wants to respond to students, who “are hungry to—quite literally—‘see’ how the law works, ‘hear’ how it sounds, and ‘feel’ vicariously what it is like.” *Id.* at 896–97.

104. See Meyer, *Visual Literacy*, *supra* note 89, at 74. Meyer observes that

criminal law practice, and indeed any litigation practice, does not occur in clean well-lighted places of the classroom or within the laboratory of appellate cases. Litigation occurs in a shadow world, where narratives swirl dangerously far removed from the decontextualized slivers of textbook cases that are selected to re-present and embody the law.

Meyer & Cusick, *supra* note 89, at 898. “[F]ilms enable students to explore, and shine a light upon, the shadowy imagistic narratives in criminal law.” *Id.* at 899. They can “provide a powerful narrative antidote to the positivism of the cases.” *Id.* at 901.

105. Meyer, *Visual Literacy*, *supra* note 89, at 74. Law school requires the student to “internalize certain repetitive and preconfigured analytical forms.” Meyer, *Convicts, Criminals, Prisoners, and Outlaws*, *supra* note 89, at 130. “The student must learn how to analyze, synthesize, and analogize cases, and how to apply doctrinal law to ‘the facts’ within these tightly organized structures.” *Id.* The “formulaic reasoning pattern” represented in traditional law school analytics is itself an “aesthetic convention” and a “particular genre” of storytelling. *Id.* The mechanics of this form (and this genre of storytelling) is problematic, according to Meyer, because it fails to address “the multi-dimensional, complex, conflicting, ambiguous, and particularistic stories at the heart of legal problems.” *Id.* What the law school version of story-making sacrifices is the “imaginative vision capable of organizing . . . facts into stories.” *Id.* The underlying, driving force in Meyer’s pedagogy is his relentless focus on the students’ (and lawyers’) story sensibility, see *id.* at 129–30, and the effort to bring students back around to their “innate sense of narrative,” *id.* at 130.

106. Philip N. Meyer, “*Desperate For Love*”: *Cinematic Influences Upon a Defendant's Closing Argument to a Jury*, 18 VT. L. REV. 721 (1994) [hereinafter Meyer, *Desperate for Love*]; Philip N. Meyer, “*Desperate for Love II*”: *Further Reflections on the Interpenetration of Legal and Popular Storytelling in Closing Arguments to a Jury in a Complex Criminal Case*, 30 U.S.F. L. REV. 931 (1996) [hereinafter Meyer, *Desperate for Love II*]; Philip N. Meyer, “*Desperate for Love III*”: *Rethinking Closing Arguments as Stories*, 50 S.C. L. REV. 715 (1999) [hereinafter Meyer, *Desperate for Love III*].

Jury, an essay published in the *Vermont Law Review* in 1994, Meyer draws on observations of a thirteen week mob trial in Hartford, Connecticut, where he witnessed the work of lawyer/storyteller, Jeremiah Donovan, who represented one of the defendants in *United States v. Bianco*.¹⁰⁷ Meyer contends that Donovan's performance, in his opening statement and closing argument, as throughout the trial, can be explained better by an understanding of legal films than it can by drawing on trial advocacy textbooks.¹⁰⁸ For example, Meyer argues that Donovan's closing argument follows, in a rather remarkable fashion, the "three act classical dramatic structure" found in Hollywood films.¹⁰⁹ "[I]t is as if the aesthetic concerns of popular cinematic storytelling had been adopted in shaping the trial and the closing argument that encapsulated the defendant's version of reality."¹¹⁰ Meyer, having found an explanatory framework—classical story structure and screenwriting "metaphor and nomenclature"—for describing Jeremiah Donovan's work, explores the work of this talented and skilled defense lawyer using this new language and conceptual framework.¹¹¹

Meyer finds in Donovan's portrayal of his client, Louis Failla, a simple, "recognizable" character, the kind of character we expect to find in a Hollywood film.¹¹² In contrast, the prosecutor, Devlin, presents a "version of Failla [which] is not really a 'character in a drama,' but is merely 'one of many evil men . . . conspiring to do cruel and violent acts.'"¹¹³

107. Meyer, *Desperate for Love*, *supra* note 106, at 721–22; see also *United States v. Bianco*, 998 F.2d 1112 (2d Cir. 1993).

108. See Meyer, *Desperate for Love*, *supra* note 106, at 740–45.

109. *Id.* at 722. "Clear narrative structure and design is crucial in all forms of popular storytelling, especially since its reemergence in the early 1970s as a dominant aesthetic form in popular film, entertainment, advertising, and . . . even the 'commercial' novel. Screenwriting teachers characteristically emphasize three-part narrative structure." Meyer, *Making the Narrative Move*, *supra* note 101, at 245. The three part structure is, simply, a story with a beginning, middle, and an end, or in screenwriting terms, the set-up, the confrontation, and the resolve. *Id.*

110. Meyer, *Desperate for Love*, *supra* note 106, at 722–23.

111. *Id.* at 740.

112. *Id.* at 741.

113. Meyer, *Desperate for Love II*, *supra* note 106, at 956. Meyer goes on to note the failure of Devlin's closing argument:

Devlin's closing argument is decontextualized, and the long excerpts of transcript testimony recited are almost boring. Devlin does not reveal the powerful narrative possibilities embedded in this material. After all, these are stories about family, honor and betrayal. They chronicle what men do out of love, as well as from hate and greed.

Meyer notes that cinema characters are not expected to “display the depth of literary characters.”¹¹⁴ Rather,

[t]hey are reduced in psychological complexity, exaggerated, and shot out across hard plot lines. The protagonists . . . [are often] possessed by simply univocal forces that respond to external pressure through action. This tension, between the internal force that motivates the protagonist and an external oppositional force, generates the simple conflict that shapes the formulaic narrative structure at the heart of popular film. These internal forces, like the characters, are readily identified.¹¹⁵

Meyer explores, with adroit skill, Donovan’s construction of defendant Louis Failla. Donovan portrays Failla as a character who could engage in the acts described by the prosecution while, at the same time, be motivated by forces which would, if properly viewed and understood by the jury, cast Louis Failla’s actions in an light that would permit a jury to acquit him.¹¹⁶ For Donovan to tell his client’s counter-story in a case the government has built using informants and extensive wiretaps, the Failla character presented by the prosecution must be deconstructed and re-presented by way of an alternative cinematic character type that jurors can understand. Donovan’s closing argument for Failla becomes, in Meyer’s view, a “cinematic fable.”¹¹⁷

These Mafia men are complex and compelling characters. This is potentially richly dramatic material, but Devlin stays scrupulously away from narrative and psychological depictions of character that invite speculation as to motive and meaning. All of Devlin’s Mafioso, including Louie Failla, are monochromes.

Id. at 956–57.

114. *Id.* at 957.

115. Meyer, *Desperate for Love*, *supra* note 106, at 740–41.

116. *See id.* at 741–42.

117. Meyer, *Desperate for Love II*, *supra* note 106, at 961. Meyer finds in Donovan’s closing argument as “cinematic fable” an embodiment of the three-act construction characteristic of Hollywood cinema and traditional Hollywood “formula prototypes,” a “stock story” that Donovan has been able to draw upon to create “legally effective” defense. *Id.* at 957. The value of a stock story is that it helps “anchor jurors’ perceptions in shared referents that have the power to transform judgment.” Meyer, *Desperate for Love III*, *supra* note 106, at 750. Meyer notes that “[s]tock stories give shape to folk wisdom, embody metaphoric reason, and purposefully direct judgment in the law.” *Id.* “The collective folk wisdom that guides cultural judgment is expressed in stock stories.” *Id.* at 751. Meyer, in another article, quotes Michael Roemer’s observation that, “[t]hrough our movies are clearly formulaic, the audience believes in them, just as we once believed in myths, legends, and fairy tales. They tell us what we know and confirm the truths we live by.” Meyer, *Making the Narrative Move*, *supra* note 101, at 266 (quoting MICHAEL

In the trial, according to Meyer's cinematic description, the defendant is "a Mafia outsider who tries to talk his way into a ruthless world but whose real story is that of a man with a need to be loved. To be loved, he must initially tell stories out of deep and selfish inner needs."¹¹⁸ Failla's simplistic, cartoon-like character is finally, and dramatically, transformed by Donovan, the storyteller, into a man a jury can willingly, even eagerly, find innocent.¹¹⁹

Meyer concludes that Donovan purposely¹²⁰ used cinematic storytelling strategies in his defense of Failla.¹²¹ Donovan engages the jury in a story, which he presents to them by way of images and a "Hollywood plot structure complete with stock characters."¹²² What at first appears to be an easy case for the prosecution is up-ended and re-configured by Donovan's storytelling because he is able to draw on the "deeper narrative subtext" of Failla's life as a mobster.¹²³ The cinematic nature of the story Donovan tells about Failla, Meyer explains, is found in the "cinematic cuts and montage," in Donovan's ability to keep the jury "emotionally invested in the story" and in a development and acceptance of "competing story lines" (in which the action—the crimes—are set "against the interior drama").¹²⁴ The result is a closing argument that makes Failla's story, through Donovan's telling of it, feel and work "just like a popular film."¹²⁵

ROEMER, TELLING STORIES: POSTMODERNISM AND THE INVALIDATION OF TRADITIONAL NARRATIVE 282 (1995)).

118. Meyer, *Desperate for Love*, *supra* note 106, at 746.

119. *See id.*

120. Meyer, *Desperate for Love II*, *supra* note 106, at 943 ("[T]he story structure is purposeful.").

121. Meyer, *Desperate for Love*, *supra* note 106, at 748. Meyer, like the lawyer, Donovan, has made "artful" use of his turn to the "conventions of screenwriting" which allow him (and the reader) to identify and understand Donovan's "strategic choices." *Id.* As Meyer notes, attorneys may be engaged in storytelling whether they recognize what they are doing or not. *See id.* at 747. The failure to be conscious and "purposeful" in one's storytelling may result in serious and significant mistakes on the part of the lawyer. *Id.* Meyer concludes that the new "storytelling style" of lawyers like Jeremiah Donovan has been, "remarkably influenced by the conventions of popular imagistic storytelling." Meyer, *Desperate for Love II*, *supra* note 106, at 933.

122. Meyer, *Desperate for Love II*, *supra* note 106, at 957.

123. *Id.*

124. *Id.* at 958. It's by way of the development of the "interior drama" in Failla's life that Donovan is able to create a world of "shared expectations," an "imaginative interior world of shared images," in which jurors can identify with Failla and the entire cast of characters (jurors, defendant, defendant's family, the judge, Donovan) "into a world of hopeful possibilities." *Id.* at 958–59. We are drawn into Donovan's hopeful world because we all want "to believe in the goodness of what can be uncovered in the human heart and transcendence." *Id.*

125. *Id.* at 958.

Donovan demonstrates that the government's tapes, which record the words of Failla that the prosecutor thinks will convict him, are "just the surface of a larger story."¹²⁶

My affinity for Meyer's work comes from the way he grounds his observations in his teaching, his observations of lawyers, and his use of an innovative framework, and language, for describing a trial lawyer's art. Meyer's use of cinematic technique is an attempt to locate legal and lawyer films, with their particularistic stories, and relentless contextualizing,¹²⁷ within a body of legal film criticism that is all too often entangled in obsessing about their failure to portray the real work of lawyers.

Meyer has found a way to put film stories (and the lawyers who use film story structures) to use "to shatter the formalist shells in which law school tends to encase students"¹²⁸ Meyer makes clear that his film/storytelling work is "by design, antitheoretical."¹²⁹ And yet, his writing about the pedagogical use of film in the classroom and in the courtroom is clearly theory-informed. Simply put, Meyer has worked out a relationship with theory that keeps

126. *Id.*

127. See Austin Sarat, *Exploring the Hidden Domains of Civil Justice: "Naming, Blaming, and Claiming" in Popular Culture*, 50 DEPAUL L. REV. 425, 429 (2000) ("In this age of the world as a 'picture,' the proliferation of law in film, on television, and in mass market publications, has altered and expanded the sphere of legal life.").

128. Meyer, *Convicts, Criminals, Prisoners, and Outlaws*, *supra* note 89, at 132. For an interesting twist on this "empty fields" metaphor/image, consider Steve Redhead's argument that what we have today is a "media-saturated, self-referential, culture into which law has in part disappeared." STEVE REDHEAD, UNPOPULAR CULTURES: THE BIRTH OF LAW AND POPULAR CULTURE 7 (1995) (drawing on Jean Baudrillard's contention that the media "can be regarded as a site of disappearance"). One way to see the failure of the prosecution's case against Louis Failla is that Failla's crimes, to the extent they may have been committed, were lost in the world of words of the taped conversations.

This idea of being lost in a world of words, reminds me of a passage from a wonderful short story by Lowell B. Komie, where the protagonist, thirty-two year old trial lawyer Julia Latham Kiefer, is beginning to move toward the edge of her own existence. LOWELL B. KOMIE, *The Cornucopia of Julia K.*, in THE LEGAL FICTION OF LOWELL B. KOMIE 69, 69-76 (2005). Kiefer relates, early in the story, how she has sent a memorandum to her firm's office committee suggesting that the computers are emitting radiation and that the secretaries should be issued radiation badges. "She [Kiefer] knew that the machines were cancerous, that the green glowing chains of perfectly formed calligraphy were as lethal as chains of carcinoma cells. It was all excess verbiage anyway, pages and pages of abstruse verbiage, and it was metastasizing and spilling out of the screens." *Id.*

129. Meyer, *Convicts, Criminals, Prisoners, and Outlaws*, *supra* note 89, at 132.

theory in its place. While theory is reflected in Meyer's writing, it rarely is allowed to take center stage.¹³⁰

The reason for working with films, says Meyer, is to help students see "the singularity of stories," to help them see "their sometimes maddening irreducibility."¹³¹ Stories find their way into our teaching, regardless of what we do as teachers. In teaching film stories, we don't necessarily need a catalogue of film theories to figure out that we're in the presence of a story, that the story matters to us, and that trying to explain how the story matters can be quite difficult. Meyer is quite clear that what we need is a story sensibility that keeps us coming back to stories, even to those situations and enterprises that appear to be story-less.¹³² (Meyer also makes clear his regard for anti-narrative and stories that seem to subvert the idea of narrative.)¹³³ Meyer doesn't try to use films for moral guidance or moral critique; he doesn't use them to show students how to distinguish between good lawyers and bad lawyers. For Meyer, the value of studying films is bottom up; students are expected to "come away unsettled from their confrontations with protagonists on the margins of society."¹³⁴ For Meyer, this unsettling of students is done with a purpose: "We watch and read stories to shatter the formalist shells in which law school tends to encase students, and thus to open the students up once again to the discontinuity and inexplicability of the lives they will encounter as lawyers."¹³⁵

X. THE LOOK HOMEWARD

What I want to do now is to present a way of reading lawyer films (and an argument for teaching a lawyers' film course)¹³⁶ that stands in stark contrast to the present day preoccupations and

130. The film critic, Richard Schickel, in a candid assessment of film theory, one I happen to share, says, "I find most critical theory . . . very nearly unreadable and quite totally useless when one tries to employ it in evaluating a specific film. Film is simply too various a medium to be successfully encompassed by any theory." RICHARD SCHICKEL, *SECOND SIGHT: NOTES ON SOME MOVIES 1965-1970*, at 32 (1972). Schickel goes on to note that "there is no aesthetic standard to which we can all repair in comfort." *Id.* at 36.

131. Meyer, *Convicts, Criminals, Prisoners, and Outlaws*, *supra* note 89, at 132.

132. *Id.* at 131-32, 137.

133. *See id.* at 130-31.

134. *Id.* at 131.

135. *Id.* at 132.

136. *See* Elkins, *supra* note 1.

conventions of legal film critics. My reading of legal films, in contrast to those who employ a reality critique, or favor sociological¹³⁷ and ideological approaches, is basically that of a teacher: it is classroom and purpose-driven.¹³⁸ I cannot, therefore, make any claim of objectivity¹³⁹ or that I have found a secure ultimate high-ground from which to peruse and evaluate legal films.

In my purpose-driven reading of legal films, I try to think about a film and its place in a student's legal education. Ultimately, whatever place it may have depends on my students and their efforts to puzzle through the meaning of the film. In working with a film, I treat it as a text that offers insights about the world that we do not find in traditional legal texts. Simply put, I want to read and teach

137. Robert Warshow, commenting on the sociological approach to film criticism, observes:

[T]his approach tends to slight the fundamental *fact* of the movies, a fact at once aesthetic and sociological but also something more. This is the actual, immediate experience of seeing and responding to the movies as most of us see them and respond to them. A critic may extend his frame of reference as far as it will bear extension, but it seems to me almost self-evident that he should start with the simple acknowledgment of his own relation to the object he criticizes.

Robert Warshow, *Preface to The Immediate Experience*, in *AWAKE IN THE DARK: AN ANTHOLOGY OF AMERICAN CRITICISM, 1915 TO THE PRESENT* 141, 143 (David Denby ed., 1977). Warshow argues:

The sociological critic is likely to be the more guilty, holding the experience of the movies entirely at arm's length. Indeed, it might be said that he pretends not to go to the movies at all; he merely investigates a social or psychological "phenomenon"—something, that is, which involves others. Even when he does try to acknowledge his own part in the experience, it is only by treating himself as one of the "others."

Id. He notes further that "[t]he sociological critic says to us, in effect: It is not *I* who goes to see the movies; it is the audience." *Id.* at 144.

One commentator notes that Robert Warshow "was one of the few first-rate movie critics we have had" and that it was Warshow who suggested, "A man watches a movie, and the critic must acknowledge that he is that man." David Slavitt, *Critics and Criticism*, in *MAN AND THE MOVIES* 335, 343 (W.R. Robinson ed., 1967). Slavitt goes on to note, "The critic has to admit that he was there. There is no theory to save him, no tradition to rely on, no coherence but the coherence of his soul." *Id.* The problem with the work of legal film critics is that they so seldom admit that they have any personal stake in a film, other than professional disdain.

138. We teach law students a kind of purpose-driven way of reading as a standard practice in legal education. But we also want our students to read beyond the limited purpose—excavation of the rules of law—that we set before them. The secret/difficulty/mystery/glory of legal education turns, for the student, on the resolution of this paradox: reading in the purpose-driven way in which students are initially instructed, and learning to read outside the box in which the limited focus of legal education's rule-oriented, IRAC-based, purpose-driven outlook places students (and their instructors).

139. Objectivity is an elusive intellectual pursuit. I find most talk of objectivity (and subjectivity), at least by my students to be downright uninformed and bordering on strange. My advice (to myself), like the advice given to novice novel writers, is to show rather than tell; objectivity and subjectivity are terms to avoid because they hide rather than show meaning.

lawyer films that are meaningful to my students.¹⁴⁰ My purpose-driven approach to reading and teaching lawyer films turns out to be the same purpose that shapes my reading of legal film critics.

I assume that, to be a good lawyer, we need to know something about what it means to be a bad lawyer. A student, no less than a lawyer, is fully suspended (and is sometimes strung out) in the world of good student/bad student. She may be spared judgment for an initial few months when she begins law school, but it's a judgment that cannot long be avoided.¹⁴¹ Legal education (in law school and beyond) is a long, sometimes steady, sometimes jerky, process of learning to navigate the world of good lawyer/bad lawyer. While every student holds dearly to the fantasy that she will be a good lawyer, we know that in holding to and adopting this fantasy one enters the realm of fiction. Unfortunately this is a fiction that cannot always be sustained in life. I teach lawyer films in which lawyers do good things (sometimes for good people, sometimes for bad people). Many lawyers in film turn out to be good people. Yet, there is no great revelation to learn that in films we also find lawyers who do bad things, lawyers who turn out to be quite despicable. In confronting these good and bad lawyers in film, we begin to explore the morally tantalizing fiction that lawyers represent the forces of the good, the light and justice. Do they? Or do we simply will ourselves into the belief that they do? In lawyer film stories, we see how our fictions hold up as we try to articulate them in the sometimes bright, sometimes dim light of what we want to call the real world. In a pedagogical, teaching-driven approach to legal film criticism, we get around to the inevitable reality critique, but not by way of a film's legal inaccuracies, and the ethical lapses of film lawyers, which turn

140. Some law teachers will make occasional use of films, or clips from films, along with traditional texts in their courses. These occasional users of film may find references in the work of legal film critics that will steer them to films to review for possible use in their courses. I assume, however, that legal film teachers are avid viewers of film (and read about films they do not see) and will have less need of the work of legal film critics to point them to films relevant for a film course. Legal film critics undoubtedly provide a service, if only a limited one, in writing about films we have not seen. The perverse downside to this service is that legal film critics say just enough about meaningful legal films to suggest that they should not be taught, or that what the films teach is not good for students.

141. I will not, here, have occasion to comment on the way we make judgments about our students, and how, in the process, we encourage them to make judgments about themselves. That our judgment informing processes are flawed (and sometimes fatal), seems, at least to me, beyond question. That we cannot, and should not, try to evade the necessity of judgment is also, I would argue, rather obvious.

out, I think, to be a deflection of reality.¹⁴² What we find, in taking the more indirect route to film reality, is that lawyer films, in exploring the character, life, practices, and pathologies of good and bad lawyers, make us more attentive to that fine, sometimes erasable, quixotic line we try to draw between fiction and reality. Legal film critics also traffic in the fiction-reality dichotomy, but in doing so, they adopt conventions that cut us off from the most meaningful aspects of lawyer film stories.

XI. PEDAGOGICAL FILM CRITICISM

I attempt in an earlier essay on lawyer films to suggest ways we might think about films, and impliedly, in doing so, become legal film critics.¹⁴³ My strategy for reading and teaching lawyer films was to look closely at the various obstacles that confront the “legal” reader or viewer (including obstacles posed by traditional legal film criticism), and then to approach the film as a meaningful text. I recommended that we: (1) look to the film itself;¹⁴⁴ (2) think of the film as a text that might be instructive in one’s education;¹⁴⁵ (3) focus on the story found in the film; (4) in focusing on the story, be attentive to the story’s characters (and how we identify with them, or distance ourselves from them);¹⁴⁶ (5) try to isolate and understand the

142. I adopt the phrase “deflection of reality” from Kenneth Burke: “Men seek for vocabularies that will be faithful *reflections* of reality. To this end, they must develop vocabularies that are *selections* of reality. And any selection of reality must, in certain circumstances, function as a *deflection* of reality.” KENNETH BURKE, A GRAMMAR OF MOTIVES 59 (Cal. ed. 1969) (1945).

143. See Elkins, *supra* note 1.

144. In this admonition to look to the film itself, we take up the first axiom of the critic: “A critic first and foremost must concentrate on what is happening onstage. The question then, of course, is not so much exactly what we are seeing but rather what to make of it.” Octavio Roca, *The Critic’s Lonely Journey: In an Age of Indulgences, Having High Standards Can Be Seen as an Unforgettable Sin*, S.F. CHRON., Aug. 23, 1998, at PK-40.

145. It is now commonplace, and thus, a convention of legal film critics that much of what we (the general public) know about law and lawyers, we learn from popular culture. My contention is that lawyer films can be made part of a law student’s education.

146. The reason we might want to “identify” ourselves with a character is not to mimic what we see on film, whether it be heroic or sleazy, admirable or perverse, but to study fictional characters. The fiction of film is less a representation of who we are and more a reflection of the puzzle, the paradox, the mystery of who we are.

What legal film critics prompt us to forget is that our best, meaningful legal and lawyer films “will undoubtedly include well-drawn characters . . .” J. Thomas Sullivan, *Imagining the Criminal Law: When Client and Lawyer Meet in the Movies*, 25 U. ARK. LITTLE ROCK L. REV. 665, 670 (2003). Sullivan has it right when he notes that “[c]reative artists have seized upon legal stories in the creation of movies that inform and entertain their audiences by focusing on the ways

conflict that drives the story (the conflict within a particular character or between characters);¹⁴⁷ and, finally, (6) consider the film as an exploratory chapter in the myth of the hero.

Following up on these strategies—capsules of advice for legal students in a lawyers and film course—I began to sketch out a pedagogical, humanistic, phenomenological, viewer-response, story-focused, meaning-oriented approach to legal film criticism. Naming creatures that we are, indebted to classification and simplification, tagging and cognitive placement, I'll tentatively call this approach to lawyer films, "pedagogical film criticism."

Pedagogical film criticism begins with the notion that we "read" film.¹⁴⁸ The reading analogy may get us started, but then, admittedly, it begins to run thin as we try to fathom the singular power of a film, account for its visual qualities (formed by way of a proliferation of images),¹⁴⁹ and begin to assess its meaning. Reading a film is a way of thinking about the film, about what it might mean, and about how we might use the film as education.¹⁵⁰ The "reading film" metaphor

in which law, lawyers, and legal issues become intertwined with or dominate the lives of the characters they create or portray." *Id.* at 668.

147. A character in film, as in life, takes on depth and complexity as it evolves in and through conflict. We are vitally interested in conflict, not only because it makes for a good story and intense drama in both film and in life, but because as lawyers we live (and practice law) on the conflicts presented to us by our clients. The great drama in our lives as lawyers is often framed as conflict (pure and tainted, persistent and episodic) with other lawyers and judges, and sometimes with the clients whose interest we seek to serve. Law, perhaps as much as any profession, lives and evolves with conflict as its core.

148. In the study of lawyer films, we return to this matter of reading: How do I read films? How do I try to get beyond my first impression, my basic sense, that the film was "good" or "bad"? What kind of strategies do I have (and will I need) for getting at the meaning of the film? We fall, rather quickly, into the net of a series of meaning questions: Do films have meanings? And if they do have meaning, where does this meaning come from? What role do I play in the effort to give meaning to what I have seen and experienced in watching the film? How do some students of film get to be better at this business of meaning than others?

It would be wonderful if we could provide students with written texts that provide a better feel for the humanistic approach to reading lawyer films. Unfortunately, the present texts on film theory, film criticism, and film studies do not provide an economical and accessible response to the question: how can a student read lawyer films (and write about them) in a thoughtful, reflective, meaningful way? The introductions to film (and film theory) tend on the whole to be either too technical or too philosophical, too "schools of film theory" oriented, to be used by students of law in their study of film. Even the most recent books on law and film are inadequate as introductory "how to read lawyer films" texts.

149. Austin Sarat has observed that "law exists in a world of images whose power is not located primarily in their representation of something exterior, but rather within the images themselves." Sarat, *supra* note 127, at 428.

150. The focus on reading films is another invitation to students to remember their first efforts in reading law, how they learned to master the new texts—judicial opinions, legal statutes, legal

will, undoubtedly, be thought simplistic by film studies scholars; yet, some simplifications are useful even when they are not elegant.¹⁵¹

If the focus on “reading” film is simplistic, as it certainly is, a pedagogical-focused film criticism that begins with “reading” must move the viewer toward “meaning.” There is, of course, no *one* way of focusing on or determining the *meaning* of a film, any more than

doctrinal writings—that were presented to them as first-year law students, and how, by reading these texts, they learned not just law, but how to become a lawyer.

The best source of film criticism/theory/studies for legal educators lies in the efforts, not of film critics, but of historians and religious studies scholars who take up films with the basic questions that confront legal educators: Should I teach films? How can I justify doing so? How do I deal with the fact that films, even documentary films, are based on fiction and are often thought to be more allied to art than to reality? The two most useful and instructive books on the pedagogy of film in history and religious studies are ROBERT A. ROSENSTONE, *VISIONS OF THE PAST: THE CHALLENGE OF FILM TO OUR IDEA OF HISTORY* (1995), and SCREENING THE SACRED: RELIGION, MYTH, AND IDEOLOGY IN POPULAR AMERICAN FILM (Joel W. Martin & Conrad E. Ostwalt, Jr. eds., 1995). On the emergence, and decline, of the idea of film as art, see RAYMOND J. HABERSKI, JR., “IT’S ONLY A MOVIE”: FILMS AND CRITICS IN AMERICAN CULTURE (2001).

The best books on legal films, John Denvir’s collection of essays, *LEGAL REELISM*, *supra* note 13, and Anthony Chase’s *MOVIES ON TRIAL: THE LEGAL SYSTEM ON THE SILVER SCREEN* (2002), are of sufficient intellectual focus to be of interest to film studies scholars, but unfortunately, neither book provides more than wisps of interests on the pedagogy of legal and lawyer films. The lack of pedagogical focus extends to still other legal films studies books, including *LAW AND FILM* (Stefan Machura & Peter Robson eds., 2001), and *LAW ON THE SCREEN* (Austin Sarat, Lawrence Douglas & Martha Merrill Umphrey eds., 2005). For a bloated theoretical foray, see DAVID BLACK, *LAW IN FILM: RESONANCE AND REPRESENTATION* (1999).

One of the few, if not only, legal film books to focus on film pedagogy is ASIMOW & MADER, *supra* note 57. While *Law and Popular Culture* provides a wealth of valuable background reading on films (and on the law, for students in film courses outside of law school), the book is marred, in my view, by the relentless focus on the “legal accuracy” of the films surveyed, and a comparison of the lawyers found in film to their so-called “real” world counterparts (whoever they might be), and a facile judgment on the value/quality/meaning (and “effect”) of legal films depending on whether the lawyer is judged to be a “good lawyer” or a “bad lawyer.” While I have made clear that the good/bad lawyer phenomenon is a feature of legal films, the pedagogical value of a film does not turn on whether the student’s exposure to bad lawyers, even when the “bad lawyer” is presented in a stereotypical fashion.

151. David Bordwell, a film studies scholar whose work I admire, notes that he does not favor the use of the term “reading” “as a synonym for all inferences about meaning, or even for those interpretive inferences about films’ meanings.” DAVID BORDWELL, *MAKING MEANING: INFERENCE AND RHETORIC IN THE INTERPRETATION OF CINEMA 2* (1989). He “reserve[s] the term *reading* for interpretation of literary texts.” *Id.* Bordwell uses the term “interpretation” to draw attention to “inferences about meaning” that are central and commonplace in the work and in the world of film criticism. *Id.* As for my own use, I find the term “interpretation,” serviceable as it may once have been (and continues to be for some among us), too theory-encrusted to serve as a central descriptive term for the legal film criticism I want to do and that I want students to do.

Film studies and film theory could, in my view, gain immensely by more studied efforts at simplification. One way of simplifying without being reductive and dismissive is by focusing on the needs of teachers and students (wherever these students might be located; assuming that some students may study film in legal, religious, women’s, and history studies—every student of film is not a student of film studies).

there is a single way of reading any text. Films, like other texts, particularly literary text, lend themselves to the accretion of meaning as the student moves from film to film, a meaning that shifts and is shaped by locating the film as part of a larger world of educative texts.

Basically, I want students to view lawyer films with the idea and the hope that they will find meaning in and for the film. I have no illusion that instructing film viewers to read for meaning will get us very far.¹⁵² We still need to ask (and explore) these questions: how does one go about reading for meaning? What reading strategies can be deployed that move the viewer beyond the visual images of the film?¹⁵³ If films have meaning (even if it is a meaning we construct for them), what sources do we turn to for that meaning? How do we go about gathering, plotting and digressing on the meaning we find (and construct) in films? (Where, in other words, does meaning come from? How do students explore their role—their stake—in the effort to find and give meaning to what they see and experience in watching the film?) How do some students/viewers/critics get to these meaning questions with relative ease, while others flounder?

It would be a boon for many students if we could provide a precise map of a film's "meaning" and could devise a protocol for the map-making enterprise. One might expect to do this by way of film theory, film criticism, and film studies; yet these most basic resources turn out to be inadequate. What we find in a pedagogical approach to film criticism is not a template for meaning, but rather a crude map consisting of strategies for reading film that relates what we find in lawyer films to the "meaning" of questions that arise in our lives as lawyers.¹⁵⁴

152. Michael Asimow has suggested that the best way to "show" how the concepts presented here might be put to work is to set out a particularized reading of several films. Asimow's suggestion is a good one; time and energy permitting I would have followed his suggestion.

153. We are, I think, in talking about the meaning of a film, talking about something well beyond visual literacy.

154. One of the founders of popular culture studies puts the point about the inevitability of the "meaning" of popular culture this way: "Popular culture is not only entertainment, not only the media. It covers 98–99 percent of American society today in one way or another. It is the life—scene, the life—action, the way of existence of nearly all Americans, and it creates the culture in which all must live, even the few among us who claim to hate and be unaffected by it. Popular culture is the way we live while we're awake, how we sleep and what we dream." Ray B. Browne, *Why Should Lawyers Study Popular Culture?*, in *THE LAWYER AND POPULAR CULTURE: PROCEEDINGS OF A CONFERENCE* 7, 7 (David L. Gunn ed., 1993). Browne's point, overstated as one might expect of a founder of popular culture studies, suggests, in its more sober

XII. RE-INVENTING LEGAL FILM CRITICISM

If we understand the impoverishment of the reality critique offered by legal film critics, steer clear of the temptation to catalogue a legal film's inaccuracies, subdue our alarm when confronted with nauseating scenes of lawyers engaged in ethical violations,¹⁵⁵ and keep a skeptical eye on the conventional speculations about the negative effects of popular cultural portrayal of law and lawyers, we will be better legal film critics. We must, quite simply, reinvent ourselves as legal film critics, as we ask our students to become critical viewers of legal films.

We begin with a note of humility. David Slavitt puts the point most directly: "The critic is laughably impotent, has no influence either with the film-makers or with the film audiences, has no suitable or adequate vocabulary with which to discuss the films for his putative reader, and, perhaps worst of all, has no position on which to stand, from which to formulate a general theory of what he is trying to do or wants to say, and no way of rationalizing his intellectual career."¹⁵⁶

A touch of humility is necessary as we remind ourselves that we—students and teachers—are trying to figure out what it means to be a lawyer, and that we have turned to film to help us pose and

assessment, a convention of virtually all legal film critics: popular culture (including films) is sufficiently important that it deserves study. Austin Sarat notes that, "[t]oday, law lives in images that saturate our culture and have a power all their own. Mass mediated images are . . . powerful, pervasive, and important . . ." Sarat, *supra* note 127, at 450.

Rennard Strickland, a longstanding student of film, argues that "[f]ilms can and do ask important questions." Rennard Strickland, *The Hollywood Mouthpiece: An Illustrated Journey Through the Courtrooms and Back-Alleys of Screen Justice*, in *THE LAWYER AND POPULAR CULTURE*, *supra*, at 54.

And what are these questions, and how do lawyer films address them?

At its best, a movie can take the shadow of justice and injustice and, with its enlarged images flickering across the screen, remind us that law in the final analysis is a human enterprise, that there is a human cost behind both our failures and our successes. Films can return us to occasions which have tested the law—and tested it in the most human of terms.

Id. at 58–59. This idea that the film "means" something, and that it's the work of the critic, the teacher, and the student to get at this meaning, is basically and ultimately related to the varied reasons that we teach using films.

155. "If people think of lawyers as rapacious sharks, this is unlikely to be pure invention; probably something really swims out there in the water, sharp-toothed and greedy, which produces the fear and the loathing." Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L. J. 1577, 1593 (1989).

156. Slavitt, *supra* note 137, at 337.

reformulate our questions about meaning (indeed, prompt us to admit that we have such questions).¹⁵⁷

In my “Lawyers and Film” course, I assume we watch films, instead of reading more law cases, for a reason. Some fundamental part of being a lawyer comes from being a knowledgeable reader of law cases. But other parts of being a lawyer, fundamental parts, aren’t addressed in law cases. It is what law cases do not address and legal education admits only by way of an “implicit curriculum” that lawyer films present visually and dramatically. My focus, when I watch films with students, is on these questions: What is this film? How are we to “read” it? What are we to do with this story, these characters, and the drama in which they have become involved? What kind of story is this? How can it matter to us? What can we learn about ourselves and the profession by watching this film, by way of these fictional film characters, experiencing (sometimes as if it were more real than the real itself) the drama that unfolds in the film story? We take up these questions with humility because we

157. “[F]ilm, as a medium, always highlights the contingencies of our legal and social conditions.” Sarat, *supra* note 127, at 429. Film

attunes us to the “might-have-beens” that have shaped our worlds, as well as the “might-bes” against which our worlds can be judged and toward which they might be pointed. In so doing, film images contribute to both greater analytic clarity and political sensibility in our treatments of law, whether they are in the hidden domains of civil justice or elsewhere.

Id. at 430.

I might note that Sarat’s “reading” of the Atom Egoyan film, *THE SWEET HEREAFTER* (Alliance Atlantis Pictures & Ego Film Arts 1997), is an exemplar of the kind of pedagogical-focused film criticism I have argued for here.

The Sweet Hereafter addresses a complex array of fears, desires, needs, and demands in our culture’s imagining of law and litigation. The film shows the appeal as well as the distasteful quality of litigation, the desires that move some toward the law and others away from law. The film illustrates the fantasies of law’s remedial power that sit alongside our fears of the power that law exerts.

Sarat, *supra* note 127, at 431.

In a remark that is relevant to both the theme of the Loyola conference and to the exploration of legal film criticism, Sarat finds it possible that

reading film may lead us to new places in our understanding of law. Film may open up new possibilities for engagement with some of the most pervasive myths about civil justice and civil litigation. . . . [W]e may find that the resources for critique of, and critical engagement with, those myths are already present in popular culture.

Id. at 450.

know there are no standard answers and no readily available guide(s) to help us find the answers.¹⁵⁸

We can rest assured that legal film critics cannot provide guidance. And, I'm afraid, we will not be rescued if we turn to film critics generally.¹⁵⁹ There can be nothing but wasted efforts in following what Wayne Booth has called, the "peripheral voice."¹⁶⁰ What we give up, in following the conventions of legal film criticism—realism, legal inaccuracies, ethical violations, negative stereotypes—is a focus on the film *and* the meaning of the film.

We must rethink what it means to be a critic. Consider the following statement by Helen Vendler, a poetry critic:

I must say something about the vocation that separates me from the "scholar" I'm a critic rather than a scholar, a reader and writer more taken by texts than by contexts. . . . I continually asked myself, as I read through the works of poets, why some texts seemed so much more accomplished and moving than others. . . . [T]o clarify to oneself and then to others, in a reasonable and explicit way, the imaginative novelty of a poem and to give evidence of its technical skill isn't an easy task. . . . [In *Lord Jim*], Joseph Conrad remarks on "that mysterious, almost miraculous, power of producing striking effects by means impossible of detection which is the last word of the highest art." I wanted, hardly knowing how, to detect the means of that power.¹⁶¹

158. I want to teach students as much as possible about lawyer films, knowing that they are not film studies students, have no knowledge of film theory, and must learn to be film critics even as they spend the bulk of their day reading law cases.

In teaching lawyer films I assign minimal reading *about* films, and no readings about the particular films I use in the course. There are, however, works from screenwriters that I recommend to students. See, e.g., ROBERT MCKEE, *STORY: SUBSTANCE, STRUCTURE, STYLE, AND THE PRINCIPLES OF SCREENWRITING* (1997); CHRISTOPHER VOGLER, *THE WRITER'S JOURNEY: MYTHIC STRUCTURE FOR WRITERS* (1998). While both McKee and Vogler ostensibly focus on screenwriting, they provide insight into the "deep structure" of films. The writing on screenwriting is much more attuned to how stories are constructed and what makes stories work, and thus, more directly applicable to the lawyer as storyteller. (No one has mined this insight better than Philip Meyer.)

159. Even with the best of film criticism, it is unlikely that one will find much in a film review that will provide help in reading (or teaching about) a lawyer film.

160. Booth, *supra* note 2, at 130.

161. Helen Vendler, *A Life of Learning*, The Charles Homer Haskins Lecture Series Before the Annual Meeting of the American Council of Learned Societies (2001), available at <http://www.acls.org/op50.htm>.

We will have to admit that being a “critic” of legal films will require everything we’ve got. David Kennedy, in a different context, notes: “I try to remember to think of myself as coming to the law with everything I’ve got, which is some knowledge of a variety of different texts from different places. My job is to mobilize them in a project.”¹⁶² Pauline Kael, in a 1963 essay, argued that our greatest critics—she names André Bazin and James Agee—“may have something to do with their using their full range of intelligence and intuition, rather than relying on formulas.”¹⁶³

The catalogue of legal inaccuracies and ethical violations is legal film criticism by formula; we can do it in our sleep. The problem is that we end up sleepwalking through the film. The conventions of legal film criticism allow us to snooze on in discipline slumber.¹⁶⁴

Films are a source of pleasure, a pleasure sometimes difficult to define and explain.¹⁶⁵ It was Pauline Kael who reminded us that

162. David Kennedy, Critical Legal Theory, Remarks at the Law and the Art Symposium (Oct. 30, 1996), in *LAW AND THE ARTS*, *supra* note 21, at 115, 130.

163. Pauline Kael, *Circles and Squares: Joys and Sarris*, in *AWAKE IN THE DARK*, *supra* note 137, at 136, 148.

164. What we want of law and popular culture, at its best, is “the merging of disciplinary boundaries . . .” Cassandra Sharp, *The “Extreme Makeover” Effect of Law School: Students Being Transformed by Stories*, 12 TEX. WESLEYAN L. REV. 233, 233 (2005) (relating popular culture to identity formation). One reason for this “merging of disciplinary boundaries,” *id.*, lies in the fact that “the many products and images that comprise popular culture are infinitely fertile in suggestions and contain both a manifest existence and a latent, but nonetheless potent symbolic state.” Jarret S. Lovell, *Crime and Popular Culture in the Classroom: Approaches and Resources for Interrogating the Obvious*, 12 J. CRIM. JUST. EDUC. 229, 229 (2001).

Robert Rosenstone, a historian, in his book on the place of films in the teaching of history, observes, “With film the cat of our meaning cannot be placed back into the bag of discipline. If we are honest we can never again deny the arbitrary nature of that discipline. And thus of the meanings we insist it must carry.” ROBERT A. ROSENSTONE, *VISIONS OF THE PAST: THE CHALLENGE OF FILM TO OUR IDEA OF HISTORY* 236 (1995). Rosenstone is, of course, talking about history as a discipline here, but he could as well be talking about law. What we might do with films according to Kenney Hegland, is use them “[t]o place the law in a larger more humanistic tradition, to break down some academic barriers, to slowly erode the imprisoning wall of expertise.” Kenney Hegland, *Law School Film Forums: Getting Some of the Mush Back In*, 29 J. LEGAL EDUC. 232, 233 (1978).

165. We do not, perhaps, need to be reminded that legal films, as educational as they may or may not be, were developed and produced as entertainment. At least one commentator has noted that “[t]he motion picture has become the most influential and compelling form of mass entertainment ever created.” John Marini, *Western Justice: John Ford and Sam Peckinpah on the Defense of the Heroic*, 6 NEXUS 57, 57 (2001). This observation is most certainly true if we include television within the definition of “motion picture.” We need not shy away from the further realization that “cinema can be the most vulgar, escapist medium,” and that even trashy films may provide meaningful pleasure. YVETTE BIRÓ, *PROFANE MYTHOLOGY: THE SAVAGE MIND OF THE CINEMA*, at vii (Imre Goldstein trans., 1st Midland Bk. ed., 1982). On the pleasures

films must be “judged in terms of how they extend our experience and give us pleasure”¹⁶⁶

We can prepare ourselves to be unsettled (as best as that preparation can be done). Is it possible that we might—with the help of Hollywood¹⁶⁷—get a view of law and lawyers that unsettles us and challenges our conventional notions of lawyers?

and value of trashy movies, see Pauline Kael, *Trash, Art, and the Movies*, in AMERICAN MOVIE CRITICS, *supra* note 2, at 337, 337–67; J. Hoberman, *Bad Movies*, in AMERICAN MOVIE CRITICS, *supra* note 2, at 517, 517–28.

In working our way through the paradox of films—entertainment as art, art as entertainment—we might consider Robert Warshaw’s observations:

The movies—and American movies in particular—stand at the center of that unresolved problem of “popular culture” which has come to a kind of nagging embarrassment to criticism, intruding itself on all our efforts to understand the special qualities of our culture and to define our own relation to it. That this relation should require definition at all is the heart of the problem. We are all “self-made men” culturally, establishing ourselves in terms of the particular choices we make from among the confusing multitude of stimuli that present themselves to us. . . . There is great need, I think, for a criticism of “popular culture” which can acknowledge its pervasive and disturbing power without ceasing to be aware of the superior claims of the higher arts, and yet without a bad conscience. Such a criticism finds its best opportunity in the movies, which are the most highly developed and most engrossing of the popular arts, and which seem to have an almost unlimited power to absorb and transform the discordant elements of our fragmented culture.

ROBERT WARSHOW, *THE IMMEDIATE EXPERIENCE: MOVIES, COMICS, THEATRE & OTHER ASPECTS OF POPULAR CULTURE* 23–24 (1979). Warshow’s observations are from a 1954 preface to the book. *Id.*

166. Kael, *supra* note 163, at 160. The pedagogical approach to legal films has us seeking ways to use lawyer films to see how we might alter and expand our present “sphere of legal life.” I adopt the phrase “sphere of legal life” from Austin Sarat’s observation that, “[i]n this age of the world as a ‘picture,’ the proliferation of law in film, on television, and in mass market publications, has altered and expanded the sphere of legal life.” Sarat, *supra* note 127, at 429. Basically, I think it now rather obvious that

[s]tories, real or fictional, provide a context that rules and case law often do not. Stories do not just report the events but also provide contextual information that may be useful to one’s analysis, such as relationships between the parties, personal motivations, social status, the importance of this conflict in the actor’s life, and sometimes even the origin of the dilemma.

Alexander Scherr & Hillary Farber, *Popular Culture as a Lens on Legal Professionalism*, 55 S.C. L. REV. 351, 361 (2003) (citation omitted).

167. Most lawyer films are made by directors and actors who have no legal training, working with scripts written by authors who have no background in law, featuring skilled actors and actresses. “Film, as opposed to the written text, permits the creative artist to translate and transmit the story in very immediate terms to a mass audience.” Sullivan, *supra* note 146, at 667. It is the translation of story into “immediate terms” that makes a film evocative. See Allan Manson, *Law, Movies, and Breaker Morant: Learning About Process*, 17 QUEEN’S L.J. 274, 302 (1992) (on the “evocative” nature of films). And is it not lawyers who we expect to develop the skill and the power to evoke feelings, empathy, and a sense of justice?

What films do, sometimes powerfully so, is satisfy our need for a compelling story. Some stories we find compelling because they threaten our secure moorings.

Narratives do not simply reflect expectations; they confront expectations with dangers and obstacles. They are about the Troubles people encounter while following scripts. So they introduce categories of unexpected outcomes (like comedies and tragedies) and categories of what precipitates trouble and of what redresses trouble. (The latter two categories are of particular interest to the law, of course.) Narratives are about “treachery” and “revenge” and “honor” and “reward” and “defeat” and “overcoming.” It is through narratives that we come to see people as heroes, villains, tricksters, stooges (and so forth), and that we come to see situations as victories, humiliations, career opportunities, tests of character, menaces to dignity (and so forth).¹⁶⁸

The bottom-line? “[F]ilm forces us to live in a most uncomfortable sort of world”¹⁶⁹

XIII. FILMS: ESCAPISM AND BRIDGES TO REALITY

Films present finely crafted,¹⁷⁰ composed, fictional worlds¹⁷¹ to which we can (temporarily) retreat;¹⁷² they allow us to explore, from a (seemingly) safe distance, the real-world dilemmas of our own lives. A film viewer’s journey is a round-trip: real world (and its

168. ANTHONY G. AMSTERDAM & JEROME BRUNER, *MINDING THE LAW* 46 (2000).

169. ROSENSTONE, *supra* note 150, at 236.

170. “Technically, film making is a difficult and complicated art. . . . Miles of film are shot, cut, edited, and assembled. If the effect is sometimes trivial, it is certainly not because conscientious technical virtuosity is not exploited.” Donald Slesinger, *The Film and Education*, 13 J. EDUC. SOC. 263, 263–64 (1940).

171. It was Marshall McLuhan who reminded us that “[t]he business of the writer or the filmmaker is to transfer the reader or viewer from one world, his *own*, to another, the world created by typography and film. That is so obvious, and happens so completely, that those undergoing the experience accept it subliminally and without critical awareness.” MARSHALL MCLUHAN, *UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN* 384 (W. Terrence Gordon ed., Critical ed., 2003) (1964).

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

fictions) to film world (and its reality) and then a return home.¹⁷³ To put the point more pragmatically: lawyer films serve as a connecting link between professional life and life beyond law (the life that constantly seems to want to intrude on and in our lives as lawyers).

We might think of a “pedagogical” approach to lawyer films as a way to prepare ourselves for an imagined “real world,” a world in which law is practiced by attending to both realities and fictions of that world, a world that we can explore by way of the vivid characters, heightened drama, and mythic reach of the “fictional lawyers” (and fictional worlds) we find in legal films. Or, as the poet, Marianne Moore has demanded of poetry: we need not only poets, but lawyers who are “literalists of the imagination,” who “can present for inspection, ‘imaginary gardens with real toads in them.’”¹⁷⁴ Fictional film lawyers are, in a real sense, “real toads” set in imaginary gardens of a real world.

Law, its study and practice, can lead to the unsavory conclusion that we seem destined to foul our own nest, a realization that pushes us, unwittingly, into a grand funk. We may, in this messy condition, have prepared ourselves for the fictional world of film. Pauline Kael once noted that “[m]ovies—a tawdry corrupt art for a tawdry corrupt world—fit the way we feel.”¹⁷⁵ But then, as any filmgoer knows, “A good movie can take you out of your dull funk . . .”¹⁷⁶ Film, at once an escape, it is also a venturing forth into mystery, into the unknown.

173. Films rely upon the power of image and narrative (image telling the story, the story made “real” in images) to make life in (and beyond) the film more compelling, while helping us to appreciate both the ordinariness of day-to-day life and our efforts to transcend it. “Movies are very powerful and can, through the use of provocative images, explore controversial themes and evoke passions that can affect even the most tightly closed minds.” Melvin Gutterman, “*Failure to Communicate*”: *The Reel Prison Experience*, 55 SMU L. REV. 1515, 1515 (2002) (citation omitted).

Film stories, like the stories we find in literature, “matter, and matter deeply,” argues Frank McConnell, “because they are the best way to save our lives.” FRANK MCCONNELL, STORYTELLING AND MYTHMAKING: IMAGES FROM FILM AND LITERATURE 3 (1979). One way that films may help us save our lives, is that we see in films, “ways of living and judging.” See Richard K. Sherwin, *Nomos and Cinema*, 48 UCLA L. REV. 1519, 1541 (2001). I assume that Sherwin means that lawyers must figure out how to live, most especially, how to live as lawyers. In part, our “way of living” follows from the way we judge the practices of others, indeed, the insight we have into our own practices.

174. MARIANNE MOORE, *Poetry*, in THE POEMS OF MARIANNE MOORE 135, 135 (Grace Schulman ed., 2003)

175. Kael, *supra* note 165, at 337. Kael claims that movies reflect “the sullen art of displaced persons.” *Id.* at 338.

176. *Id.* On Ken Sanes’s website, “Transparency,” we find instructive commentary on the “master plot” of existence, a plot in which “we are all stranded,” a plot that leaves us “yearning

for things to be made whole. Everything else is subplot.” Ken Sanes, *Contemporary Storytelling: Tales of Life Way After the Fall*, <http://www.transparencynow.com/exile2.htm> (last visited Apr. 2, 2007). Sanes argues that much of what we find in popular fiction and film reflects our “moral yearnings.” *Id.* He goes on to say: “[Fiction] is an expression of our drive to meaning, in which authors temporarily lift themselves out of the mysterious world and create their own mysterious worlds, in an effort to make manifest what is hidden in the original.” *Id.*

