

THE 25 GREATEST LEGAL MOVIES

TALES OF LAWYERS WE'VE
LOVED AND LOATHED

BY RICHARD BRUST

WHAT WOULD HOLLYWOOD DO without lawyers? In a town built on copyrights and cosmetic surgery, lawyers have done far more than pen the small print in studio contracts or post bail for hollow-eyed stars on the way to and from rehab. From the incisive Henry Drummond and the droll Mr. Lincoln to the callow Danny Kaffee and the regal Atticus Finch, lawyers have provided some of Hollywood's most memorable cinematic heroes and some of its most honorable and thoughtful films.

Earlier this year, the *ABA Journal* asked 12 prominent lawyers who teach film or are connected to the business to choose what they regard as the best movies ever made about lawyers and the law. We've collated their various nominees to produce our jury's top picks.

Together these films represent 31 Oscar wins and another 85 nominations as befits the best work of some of the greatest actors, writers and directors of their time.

So quiet, please. A rap of the gavel, a pull of the curtain, and 'Hear ye! Hear ye!' for the 25 greatest law films ever made.

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TO KILL A MOCKINGBIRD (1962)

Gregory Peck lends his legendary dignity to the role of Atticus Finch, Harper Lee's iconic small-town attorney. Penned for the screen by Horton Foote, the movie was an instant classic, as lawyer Finch rises above the naked racism of Depression-era Alabama to defend a crippled black man (Brock Peters) falsely accused of rape by a lonely, young white woman. Finch's quiet courage is seen through the eyes of Scout (Mary Badham), his 6-year-old daughter, and embraced by an emerging generation of lawyers as the epitome of both moral certainty and unyielding trust in the rule of law. When the accuser's drunken, incredulous father glares and asks Atticus, "What kind of man are you?" the unspoken answer is easy: both the self-assured lawyer and upright human being we all hope to be.

TRIVIA: THREE OSCAR WINS. FINCH WAS LEE'S MOTHER'S MAIDEN NAME.



2

12 ANGRY MEN (1957) Henry Fonda produced and starred in this faithful adaptation of Reginald Rose's critically acclaimed stage play chronicling the hostile deliberations of a jury in a death penalty case. A lone juror (Fonda) expresses his doubts about what seems at first an open-and-shut prosecution. What tumbles out of the ensuing discussion is a gut-wrenching examination of the prejudices, prejudgments and personal psychological baggage these assembled citizens have brought to a life-or-death debate over the fate of the young Puerto Rican defendant. Based on Rose's own experience as a juror in a manslaughter trial, the play was first adapted for TV by Sidney Lumet, who went on to direct the movie version, his first feature film.

TRIVIA: LOST ALL THREE OSCAR NOMINATIONS TO *THE BRIDGE ON THE RIVER KWAI*.

3 *MY COUSIN VINNY* (1992) Vincent "Vinny" Gambini (Joe Pesci) is a brash Brooklyn lawyer who only recently managed to pass the bar exam on his sixth try. He's representing his cousin and a friend—two California-bound college students who are arrested for capital murder after a short stop at a convenience store in rural Alabama. Still, the rule of law prevails in the courtroom of Judge Chamberlain Haller (Fred Gwynne). The movie packs in cinema's briefest opening argument ("Everything that guy just said is bullshit."), its best-ever introduction to the rules of criminal procedure, and a case that hinges on properly introduced expert testimony regarding tire marks left by a 1964 Skylark and the optimal boiling time of grits.

TRIVIA: MARISA TOMEI WON THE OSCAR FOR BEST SUPPORTING ACTRESS.

4 ANATOMY OF A MURDER (1959) Otto Preminger directs this realistic study of an Army lieutenant accused of murdering a bartender who allegedly raped his coquettish wife. An A-list cast is headed by James Stewart as the defense attorney, George C. Scott as prosecutor, Ben Gazzara as the defendant and Lee Remick as his wife. The surprise, though, is the stupendous performance in the role of the judge by real-life lawyer Joseph Welch, who represented the Army in the McCarthy hearings. The plot skips nimbly through a thicket of ethical dilemmas involved in representing a murder defendant. It was inspired by an actual case and adapted from a novel written by a Michigan supreme court judge. The original score is by Duke Ellington, who makes a cameo.

TRIVIA: NOMINATED FOR SEVEN OSCARS. LOST FOR BEST PICTURE TO *BEN-HUR*.

5 INHERIT THE WIND (1960) Two grand old lions of the screen, Spencer Tracy and Fredric March, play two grand old lions of the law, Clarence Darrow and William Jennings Bryan, as they grapple in the historic 1925 Scopes "monkey trial" in backwoods Dayton, Tenn. The film, adapted from a 1955 play by Jerome Lawrence and Robert E. Lee, is a fictionalized account, and the characters' names are changed, however slightly (Tracy's Darrow is Henry Drummond, and March's Bryan is Matthew Harrison Brady). But much of the courtroom testimony was taken straight from the trial transcript. Nor have Americans evolved much; 80 years later a federal judge in Pennsylvania was forced to rule on "intelligent design."

TRIVIA: "HE THAT TROUBLETH HIS OWN HOUSE SHALL INHERIT THE WIND." PROVERBS 11:29

6 WITNESS FOR THE PROSECUTION (1957) The legendary Billy Wilder (*Some Like It Hot*, *The Apartment*) directs from a script by the legendary mystery writer Agatha Christie. But it's the legendary Charles Laughton who fills the screen as the pompous barrister who is supposed to be retired after recovering from an illness but can't resist taking a puzzling murder case. Real-life wife Elsa Lanchester is his sharp-tongued nurse, and the two

sparkle as they verbally spar. Tyrone Power is the playboy defendant; Marlene Dietrich is his wife and, surprisingly, the witness in question. It's not the only surprise, as befits a Dame Agatha story. Watch for yourself.

TRIVIA: NOMINATED FOR SIX OSCARS. DIETRICH WAS CRUSHED NOT TO BE AMONG THOSE NOMINATED.

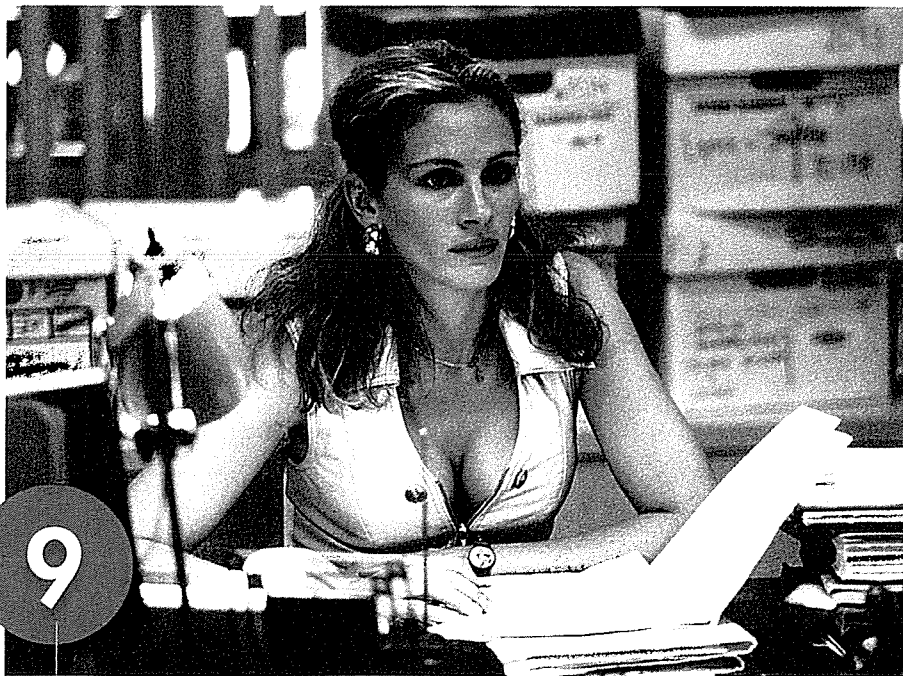
7 BREAKER MORANT (1980) Australian director Bruce Beresford adapts the story of three fellow countrymen who fight for the British Empire in the colonial Boer War in South Africa and are tried and convicted of war crimes. The issues raised in the 1901 guerrilla-war trial echo through decades of 20th century wars: Which orders to follow, which civilians are the enemy, etc. Includes outstanding performances, especially by Edward Woodward and Bryan Brown as the Australian officers and by Jack Thompson as

their disheveled defense attorney.

TRIVIA: OSCAR-NOMINATED FOR BEST ADAPTED SCREENPLAY. *ORDINARY PEOPLE* TOOK THE TROPHY.

8 PHILADELPHIA (1993) Tom Hanks won an Oscar as an Ivy-educated gay attorney who claims his big-time law firm fired him after discovering he contracted AIDS. The somewhat dated and self-righteous script is saved by Denzel Washington's vibrant and nuanced performance as the solo personal injury lawyer who takes the case when everyone else turns Hanks' character down, and who comes to terms with his own homophobia. Bruce Springsteen fans will enjoy the Boss's Oscar-winning title song.

TRIVIA: THAT THE FILM IS "INSPIRED IN PART" BY THE LIFE AND LITIGATION OF GEOFFREY BOWERS, AN ATTORNEY WHO DIED OF AIDS, IS THE RESULT OF A REAL-LIFE LAWSUIT.



9 ERIN BROCKOVICH (2000) Julia Roberts does an Academy Award-winning turn as the real-life paralegal and sassy single mom whose dogged investigation into a suspicious real estate case turns up a pattern of illegal dumping of highly toxic hexavalent chromium and one of the heftiest class action suits in U.S. history. Albert Finney portrays her boss, Ed Masry. Lawyer line of the movie, she to him: "Do they teach lawyers to apologize? 'Cause you suck at it."

TRIVIA: THE REAL BROCKOVICH AND THE REAL MASRY MAKE CAMEO APPEARANCES IN A RESTAURANT.



10 *THE VERDICT* (1982) Paul Newman is a washed-up, alcoholic lawyer who gets handed a medical-malpractice case and sees it as one last chance to get his career right. James Mason is diabolical as his courtroom opponent who cavorts with the judge, played by Milo O'Shea. Charlotte Rampling is the love interest—whose interests may not be those of Newman's character. Tight and tense direction by Sidney Lumet (*12 Angry Men*, *Dog Day Afternoon*).

TRIVIA: NOMINATED FOR FIVE OSCARS IN THE YEAR OF *GANDHI*.

11 *PRESUMED INNOCENT* (1990) Lawyer-novelist Scott Turow's best-seller features Harrison Ford as Rusty Sabich, a top-notch prosecutor who finds himself accused of murdering a colleague with whom he's had an affair.



JUDGMENT AT NUREMBERG (1961) Stanley Kramer directed his searing portrayal of the Nazi war crimes trials in 1948. The Abby Mann script focuses, in particular, on charges brought against four German judges who are accused of allowing their courts to become accomplices to Nazi atrocities. An American judge, Dan Haywood (Spencer Tracy), finds himself trying to understand how these once-esteemed colleagues allowed themselves to be used. He gets little or no help from average Germans, who are busy distancing themselves from Germany's Nazi past. When one of the judges, Ernst Janning (Burt Lancaster), breaks from the others and confesses, it becomes clear that—whatever their original intentions—these judges have chosen political obligations over their personal senses of right and wrong.

TRIVIA: WON TWO OSCARS. MARLENE DIETRICH, WHO PERSONALLY EXPERIENCED THE NAZI REGIME, WAS ALLOWED TO WRITE MANY OF HER OWN LINES.

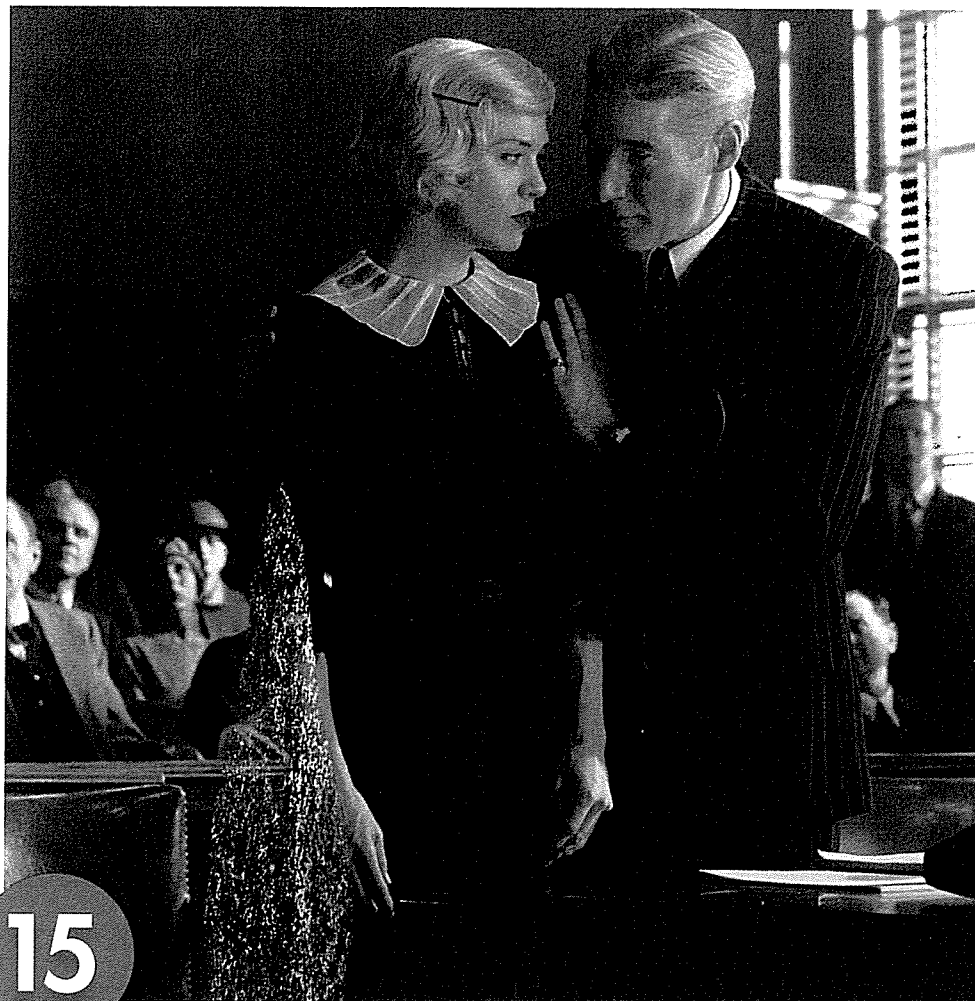
Through his lawyer, Sandy Stern (Raul Julia), Sabich discovers the seamy side of himself and the criminal law—a view that both offends and saves him. The well-constructed plot includes a dark twist at the end that Sabich will have to learn to live with.

TRIVIA: PRODUCED BY ALAN J. PAKULA, WHO EARLY IN HIS CAREER PRODUCED *TO KILL A MOCKINGBIRD*.

13 *A MAN FOR ALL SEASONS* (1966) Paul Scofield's Oscar-winning performance as Sir Thomas More, the Tudor-era judge made chancellor of England. He is caught in the political struggle involving Henry VIII's decision to defy the Roman Catholic Church and divorce his wife to wed Anne Boleyn. Lines from playwright Robert Bolt's stirring script are frequently quoted in U.S. court opinions: "I know what's legal, not what's right. And I'll stick to what's legal." And: "This country is planted thick with laws, from coast to coast—man's laws, not God's! And if you cut them down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then?"

TRIVIA: WON SIX OSCARS, INCLUDING BEST PICTURE AND BEST DIRECTOR (FRED ZINNEMAN).

14 *A FEW GOOD MEN* (1992) Say what you will about Tom Cruise, but he is high-octane as a reluctant Navy JAG litigator in Rob Reiner's suspenseful film iteration of this military courtroom drama by Aaron Sorkin (creator of *The West Wing*). Two low-ranking Marines from the



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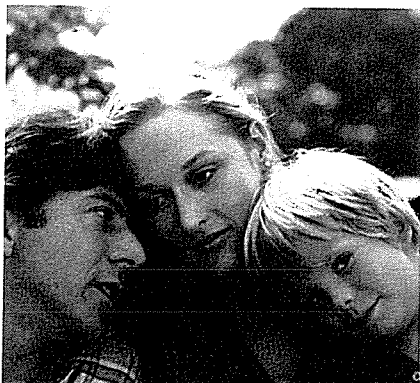
CHICAGO (2002) Lawyers tap-dance all the time, but Richard Gere does so pretty darn well as sleazeball attorney Billy Flynn in the film adaptation of the highly successful Bob Fosse musical. Catherine Zeta-Jones and Renee Zellweger play celebrity murderers who cynically parlay their Jazz Age notoriety into a vaudeville act. Maurine Dallas Watkins' original play, *Chicago, or Play Ball*, produced as a silent film by Cecil B. DeMille in 1927 (and later, the 1942 Ginger Rogers vehicle *Roxie Hart*), is based on two actual murder trials she covered as a reporter for the *Chicago Tribune*.

TRIVIA: WON SIX OSCARS. IN THE ORIGINAL BROADWAY PRODUCTION, FLYNN WAS PLAYED BY THE LATE JERRY ORBACH OF *LAW & ORDER* TV FAME.

Guantanamo Bay naval base are being court-martialed for the death of another, allegedly part of an unofficial punishment known as a "code red." The Marines say they were following orders. Their unapologetic commander, Col. Nathan Jessep (an absolutely electric Jack Nicholson) says they acted on their own. The truth, if you can handle it, turns out to be something more complicated than a sense of duty—but sometimes, exactly that.

TRIVIA: SORKIN BASED HIS ORIGINAL PLAY ON A MILITARY CASE PROSECUTED BY DAVID IGLESIAS, LATER U.S. ATTORNEY FOR NEW MEXICO.

16 *KRAMER VS. KRAMER* (1979)
Dustin Hoffman and Meryl Streep both won Oscars as Ted and Joanna Kramer, an estranged couple fighting over custody of their son. Ted deals with real fatherhood for the first time as a sin-



gle dad when Joanna leaves him. But he must also face his own failures when Joanna resurfaces demanding to gain custody of their son. An all-too-painful reminder of the human toll that is possible when domestic relations litigation takes a nasty turn.

TRIVIA: WON FIVE OSCARS. FOR SOME OF THE MOST COMPLEX SCENES, HOFFMAN LEANED ON HIS OWN RECENT EXPERIENCE WITH DIVORCE.

17 *THE PAPER CHASE* (1973)
James T. Hart (Timothy Bottoms) is a first-year law student desperately seeking the approval of Harvard's sternest professor, Charles W. Kingsfield Jr. (John Houseman). He begins to get the respect that he's earned, only to discover that the young woman he's involved with (Lindsay Wagner) is the professor's daughter. The real drama, however, is

the demanding milieu of Harvard Law School, where reputations can be made and broken in a single, grueling class.

TRIVIA: HOUSEMAN REPRISÉD HIS OSCAR-WINNING ROLE AS KINGSFIELD FOR FOUR SEASONS ON TELEVISION.

18 *REVERSAL OF FORTUNE* (1990)
Before there was an O.J. to help confuse us about the difference between innocent and not guilty, there was Claus von Bulow. Jeremy Irons won an Oscar for his portrayal of the feckless von Bulow, crassly dependent husband of Newport, R.I., socialite Sunny von Bulow, who lapsed into a coma when she was allegedly injected with an overdose of insulin. Tried and convicted of attempted murder in 1982, largely on privately gathered evidence, von Bulow hires Alan Dershowitz, the now ubiquitous Harvard law professor, whose account of the case is the basis for this movie. The law line of the movie occurs when von Bulow is attempting to explain to Dershowitz (Ron Silver) what actually happened: "No," shrugs

Dershowitz. "Never let defendants explain; puts most of them in an awkward position." "How do you mean?" asks von Bulow. "Lying," says Dershowitz.

TRIVIA: DERSHOWITZ APPEARS IN CAMEO AS A JUDGE ON THE APPELLATE COURT.

19 *COMPULSION* (1959)
In 1924, Chicago is rocked by a spectacular murder, apparently committed by two brilliant teenagers from wealthy families who have sought to plot and execute the perfect crime. An aging legendary lawyer, Jonathan Wilk (Orson Welles), is hired to defend the young men with the modest hope of sparing them from the gallows. The film is based on Clarence Darrow's actual defense of Nathan Leopold and Richard Loeb. Director Richard Fleischer turns the sordid details of their vicious crime into a passionate attack on the death penalty.

TRIVIA: WHEN STUDIO PUBLICISTS ADVERTISED THE FILM'S CONNECTION TO THE LEOPOLD AND LOEB CASE, LEOPOLD SUED FOR INVASION OF PRIVACY. HE LOST.



AND JUSTICE FOR ALL (1979) An angry Al Pacino (is there any other kind?) plays Arthur Kirkland, the very best lawyer he knows in Baltimore. His client is losing his marbles; his girlfriend is losing her patience; the senior judge plots suicidal fantasies. Moreover, he is trapped into representing a judge accused of rape—a judge who is gleefully ignoring the incarceration of a very innocent and distressed Kirkland client. All of this is thrown together in a final courtroom harangue that makes Pacino's bank robber mugging in *Dog Day Afternoon* sound like Trappist prayer. You think I'm outta order? Hey, courtroom or not, it's Pacino.

TRIVIA: JACK WARDEN, WHO PLAYS A SUICIDAL JUDGE, APPEARS IN TWO OTHER FILMS ON THE ABA JOURNAL'S TOP 25, *12 ANGRY MEN* AND *THE VERDICT*.

whose tannery, they've decided, is responsible for the leukemia-related deaths of eight children. At its core, however, this is a grown-up thriller



about the perilous practical consequences of demanding moral outcomes from a legal action better suited to risk-and-reward. John Travolta is earnest as Jan Schlicht-

mann, the firm's senior partner whose outrage drives the firm into a war of attrition against a better-funded foe. Robert Duvall is adroit as the quirky Jerome Facher, a corporate lawyer whose experience predicts Schlichtmann's every naive move. Best lawyer line goes to

Facher: "Pride has lost more cases than lousy evidence, idiot witnesses and a hanging judge all put together. There is absolutely no place in a courtroom for pride."

TRIVIA: NOMINATED FOR TWO OSCARS. SCHLICHTMANN STILL PRACTICES LAW IN BEVERLY, MASS.

21 IN THE NAME OF THE FATHER

(1993) Pete Postlethwaite and Daniel Day-Lewis play Giuseppe and Gerry Conlon, a real-life father and son falsely accused of participating in two separate IRA bombing sprees outside London. The film chronicles their struggle to convince British courts of their innocence. After 15 years, human rights lawyer Gareth Peirce (Emma Thompson) is able to prove that police had altered records of their interrogations, forcing a British court to release the younger Conlon and his three alleged co-conspirators. Six others were exonerated after serving their sentences. A seventh, Giuseppe Conlon, died in prison.

TRIVIA: NOMINATED FOR SEVEN OSCARS. NO WINS.

22 A CIVIL ACTION (1998)

On its surface, this is a David vs. Goliath: Small-firm Boston plaintiffs lawyers up against two conglomerates



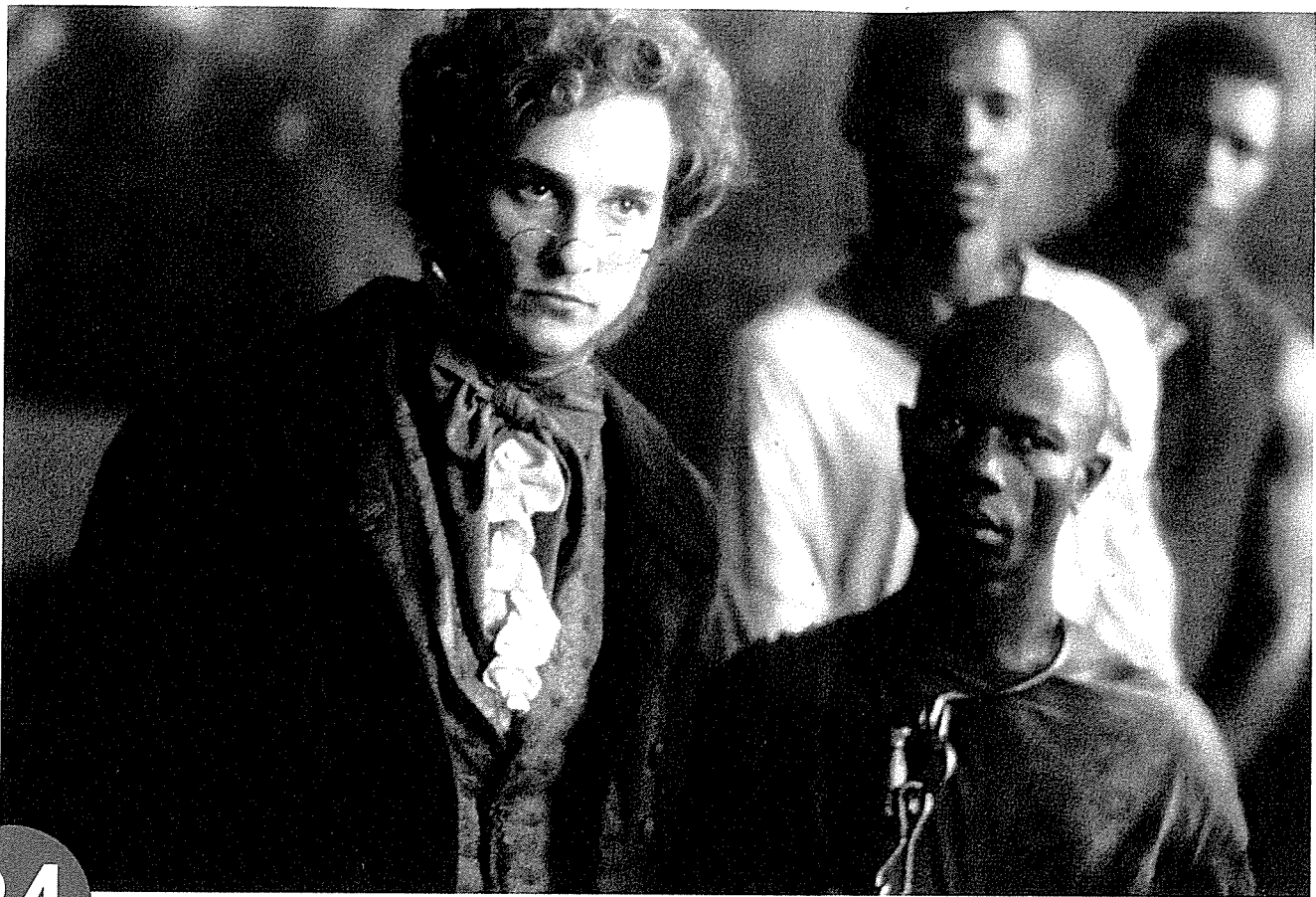
23 YOUNG MR. LINCOLN (1939)

Henry Fonda makes an engaging, beardless and believable Abraham Lincoln in John Ford's fictionalized account of Lincoln's early adult years from New Salem to Springfield, and—this being Hollywood—from the lovely and doomed Ann Rutledge to the ambitious and manipulative Mary Todd. The key plot point revolves around a killing that takes place during a July 4 brawl. As a newly minted lawyer, the young Lincoln manages to quell a lynch mob by telling them he needs the two brothers accused in the murder to be his first real clients. The film won an Academy Award for its screenplay and has been named to the National Film Registry.

TRIVIA: OSCAR-NOMINATED FOR BEST WRITING, ORIGINAL STORY. THE ACADEMY AWARD WENT TO MR. SMITH GOES TO WASHINGTON.

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24

AMISTAD (1997) Steven Spielberg directed this historic drama of the famous 1839 slave ship uprising. An all-star cast includes Matthew McConaughey, Morgan Freeman and Anthony Hopkins as former President John Quincy Adams, who argues the case to the U.S. Supreme Court. Justice Harry Blackmun reads the court's opinion in a cameo role as Justice Joseph Story. The film was criticized for taking liberties with the facts, but it succeeds as a portrayal of antebellum America coming to grips with slavery—and how the law was employed both for and against.

TRIVIA: NOMINATED FOR FOUR OSCARS.

25 MIRACLE ON 34TH STREET (1947) The holiday classic has one of the most improbable courtroom scenes ever. But then, how would you go about proving that your client is the real Santa Claus? John Payne portrays the eager young attorney whose client, one Kris Kringle (played by Edmund Gwenn), calmly insists he's St. Nick. Maureen O'Hara is the cynical businesswoman who finally believes. Her daughter, a young Natalie Wood, eventually does too. Treacle, to be sure, but with a humorous edge that has kept it going for Christmases past, present and future.



TRIVIA: WON THREE OSCARS AND RANKED NO. 9 AMONG THE AMERICAN FILM INSTITUTE'S "MOST INSPIRING FILMS OF ALL TIME."

THE JURY

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PAUL BERGMAN, a UCLA law professor, co-authored *Reel Justice* with Asimow, as well as other books and articles about law in the media. He is a frequent and popular lecturer on the topic.

RICHARD BRUST is an *ABA Journal* assistant managing editor who has been a film geek since childhood. Since he compiled the jury of lawyer film experts, he audaciously decided to include himself.

JOHN DENVIR is a University of San Francisco law professor and editor of *Legal Reelism: Movies as Legal Texts* and the companion website, Picturing Justice.

ELIOT EPHRAIM is an attorney and agent representing media personalities in Chicago, where his clients include film critic Roger Ebert.

DAVID M. HUNDLEY is a Chicago litigator and author of the blog *Cinema Mishmash*, an eloquently written series of reviews and criticisms. He is a member of the Gene Siskel Film Center advisory board.

HAROLD HONGJU KOH, a widely known expert on international law, is dean of Yale Law School, where he presents clips from films on the law to his civil procedure class.

DAVID R. PAPKE is a law professor at Marquette University in Milwaukee. He has written extensively on the influence of film and popular culture on law.

STEVEN O. ROSEN is a Portland, Ore., litigator who has presented the popular CLE seminar "Movie Magic: How the Masters Try Cases" in 38 states.

RICHARD K. SHERWIN is a professor at New York Law School and author of *Popular Culture and Law and When Law Goes Pop: The Vanishing Line Between Law and Popular Culture*. He is director of the law school's Visual Persuasion Project and a frequent commentator on TV and radio.

LYNNE SPIGELMIRE VITI is a Wellesley, Mass., solo practitioner and writer who teaches Law, Literature and Film at Wellesley College.

JAMES B. ZAGEL is a veteran federal judge in Chicago and former director of the Illinois state police. A member of the Screen Actors Guild, Zagel has appeared in two films (as J.S. Block)—1989's *The Music Box*, directed by Constantin Costa-Gavras, and 1991's *Homicide*, written and directed by David Mamet.

HONORABLE MENTIONS

AMONG THE OTHER LEGAL FILMS OUR JURY CITED (IN ALPHABETICAL ORDER):

THE ACCUSED (1988) Jodie Foster is a woman who is gang-raped in a bar and, when the rapists go free, goads a reluctant prosecutor to pursue the patrons who urged them on.

ADAM'S RIB (1949) George Cukar's mannered comedy, with Spencer Tracy and Katharine Hepburn as married lawyers who oppose each other in court.

BEYOND A REASONABLE DOUBT (1956) Dana Andrews is a writer who sets himself up on a murder rap to reveal the shortcomings of circumstantial evidence.

THE CAINE MUTINY (1954) Humphrey Bogart is riveting in this adaptation of Herman Wouk's complex novel about military authority and moral duty.

CLASS ACTION (1991) A father and daughter clash in and outside the courtroom as they square off in a volatile product liability case.

THE CLIENT (1994) Susan Sarandon is an underwhelming lawyer who finds herself representing a young boy who has witnessed a Mafia hit.

COUNSELLOR AT LAW (1933) John Barrymore is a workaholic lawyer who is in danger of losing his family in this William Wyler film.

THE COURT-MARTIAL OF BILLY MITCHELL (1955) Otto Preminger directs Gary Cooper in this tale of the real-life maverick general who thinks an airplane can sink a ship—and is court-martialed for proving it.

THE DEVIL'S ADVOCATE (1997) A new attorney introduced into the world's most powerful law firm discovers that its managing partner is morally challenged.

THE FIRM (1993) Tom Cruise is recruited by a prestigious law firm that he gradually learns has a very sinister background.

THE FORTUNE COOKIE (1966) Walter Matthau and Jack Lemmon romp in this Billy Wilder comedy about a sleazy lawyer who talks a relative into feigning injury for the sake of a lawsuit.

GHOSTS OF MISSISSIPPI (1996) The true story of efforts to bring to justice Byron De la Beckwith for the 30-year-old murder of civil rights activist Medgar Evers.

INTOLERABLE CRUELTY (2003) The Coen brothers reveal their take on divorce law. George Clooney is at his toolhy best.

JAGGED EDGE (1985) Defense attorney Glenn Close gets close to a client, played by Jeff Bridges, who is on trial for the murder of his heiress wife.

JFK (1991) Oliver Stone takes on New Orleans District Attorney Jim Garrison's efforts to solve the Kennedy assassination. History yields to riveting storytelling.

LEGALLY BLONDE (2001) Reese Witherspoon became one of the most sought-after actresses in Hollywood after ridiculing the elitism of Harvard Law.

LIAR, LIAR (1997) A hilarious vehicle for Jim Carrey, who plays a lawyer who finds he is physically incapable of telling a fib.

MICHAEL CLAYTON (2007) George Clooney shines in this look at the dark underbelly of big-firm law.

MUSIC BOX (1989) Hungarian immigrant Mike Laszlo, accused of being a war criminal, asks his daughter (Jessica Lange) to defend him in court. She learns more about him than she wants to know.

NORTH COUNTRY (2005) It's one woman against the system: The extraordinary Charlize Theron plays a miner who sues the company.

THE PELICAN BRIEF (1993) A law student discovers a plot to assassinate U.S. Supreme Court justices in this John Grisham adaptation.

THE PEOPLE VS. LARRY FLYNT (1996) Cameos abound in this portrayal of the trial of the renowned porn publisher.

PRIMAL FEAR (1996) Richard Gere is the attorney and Edward Norton a young altar boy accused of killing a priest in a story whose plot twists and turns.

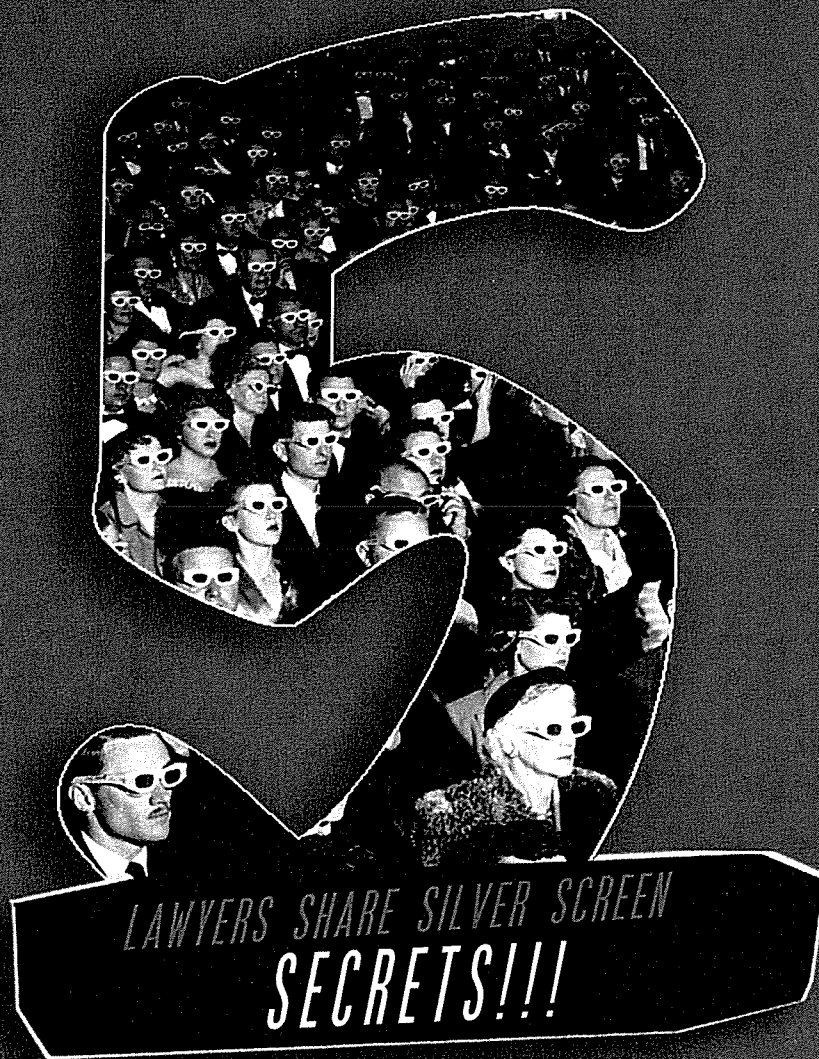
THE RAINMAKER (1997) Another John Grisham lawyer fights the system, this time with Matt Damon starring and Francis Ford Coppola directing.

A TIME TO KILL (1996) An earnest retelling of the Grisham novel about a racially charged killing in the Deep South. Matthew McConaughey and Sandra Bullock spark.

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★ ★ ★ ★ ★

"HOW I LEARNED TO LITIGATE AT THE MOVIES"



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ABAJOURNAL

BY MICHAEL ASIMOW

WE SWIM IN A SEA OF POPULAR CULTURE. Whether it comes at us in the form of television, movies, radio, novels or music, pop culture is everywhere, and most of us enjoy it.

But pop culture is no longer just the fluff of modern society. Even though it's intended to be consumed and quickly forgotten, we need to take pop culture seriously, particularly because a great deal of it concerns law and lawyers.

Lawyers must realize that pop culture teaches the general public most of what it knows—or thinks it knows—about the legal system. And even though many of those lessons are wrong, what the public believes about the legal system has a significant effect on how lawyers and the courts do their work.

Studies show that people who watch *Judge Judy* think it's the judge who asks the questions at trial. *L.A. Law* gave law practice such a glamorous veneer that it sparked a boom in law school applications. In surveys, regular viewers thought of lawyers as wealthy and good-looking more often than people who didn't watch the show. The "C.S.I. effect" has created a new and often unreasonable influence for forensic evidence: Without it, prosecutors have trouble getting past reasonable doubt; and where it does exist, jurors perceive absolute proof of guilt.

People who have learned their law from TV expect that opening and closing arguments will be short and punchy and based on a strong, media-inspired storyline. They want you to use demonstrations, visual aids and simulations, and it will help if you can pull a rabbit out of a hat on cross.

Pop culture attests that good lawyers find out and reveal the truth about what happened, and breach the attorney-client privilege to protect the public from vicious criminals.

But lawyers aren't immune from the effects of how they're portrayed by popular culture. We also take lessons from movies and TV.

Just like everyone else, some of what we learn is wrong. In Germany, young lawyers make motions in court that are unknown to German law because they saw them on American TV shows. A new law firm in Washington, D.C., conducted meetings every morning in which the lawyers reported on their cases. It was a total waste of time, but they got the idea from *L.A. Law*.

Films also remind us how lawyers and law firms

can go terribly wrong. *Michael Clayton*, for example, portrays a pack of greedy and unethical attorneys who specialize in dirty tricks, struggle with substance abuse and betray their clients. Then there are the films that teach and inspire us about how we should advocate on behalf of clients in real life.

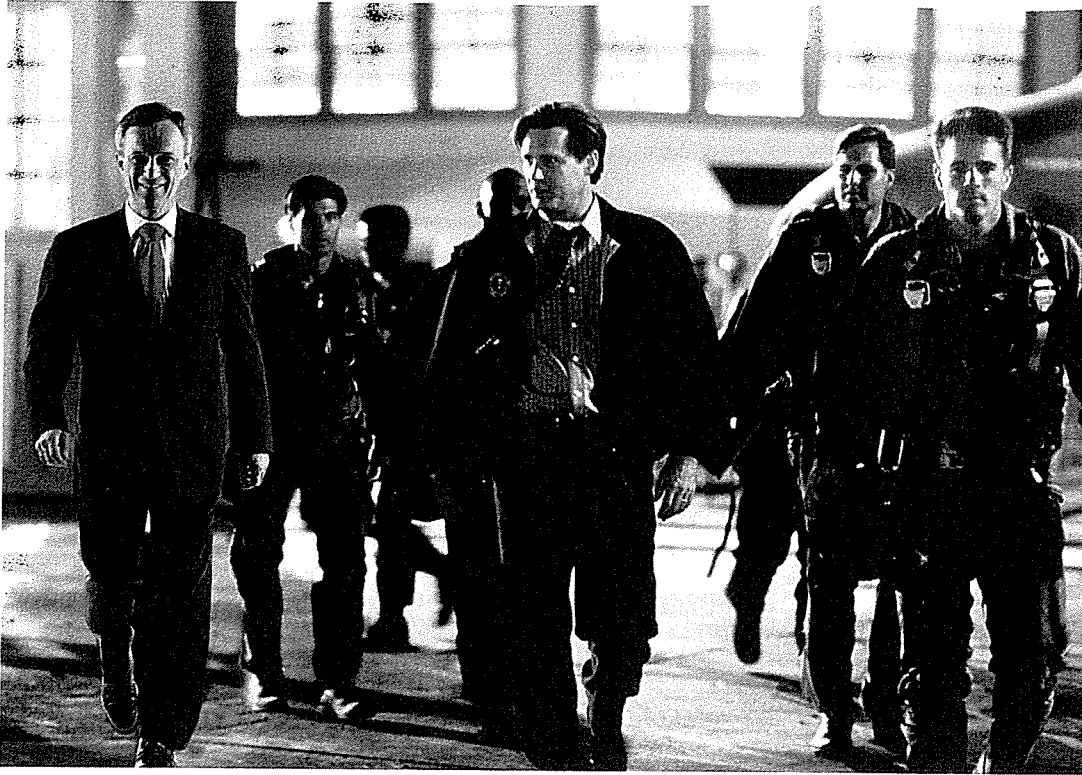
To Kill a Mockingbird made many of us want to become lawyers in the first place—it had that effect on me. Films like *Inherit the Wind*, *Philadelphia* and *In the Name of the Father* show lawyers at their very best, standing up for clients who are despised.

We can even take practical lessons from what we see on the big (or little) screen. In the essays that follow, four top litigation experts use some of their favorite films—not all of them about lawyers—to illustrate important lessons about trial technique.

So enjoy legal pop culture, but don't forget that no matter how trashy, inaccurate and even downright ridiculous it often appears to be, it always affects those who consume it. Whether we like it or not, we must take that impact into account in the way we conduct ourselves as lawyers.



MICHAEL ASIMOW, sitting at right, ponders the finer points of the legal argument put forth by Atticus Finch (Gregory Peck) in this photo illustration from *To Kill a Mockingbird*. Asimow teaches courses in popular culture and administrative law at the UCLA School of Law in Los Angeles. He is co-author with Paul Bergman of *Reel Justice: The Courtroom Goes to the Movies* and co-author with Shannon Mader of *Law and Popular Culture: A Course Book*. He chairs the ABA Section of Administrative Law and Regulatory Practice.



STEVEN ROSEN, at far left, answers the call with Bill Pullman, center, as President Whitmore in this scene from *Independence Day*. Rosen is owner of the Rosen Law Firm in Portland, Ore., which focuses on civil litigation. He has presented his CLE program, titled "Movie Magic: How the Masters Try Cases," throughout the United States. He is a co-chair of the Distance CLE Committee in the ABA Section of Litigation.

**THE FILM: INDEPENDENCE DAY
THE LESSON: YOU'LL MAKE THE MOST IMPACT
WITH A BIG BANG APPROACH.**

BY STEVEN O. ROSEN

AN ALIEN SPACESHIP GLIDES TOWARD EARTH, SO HUGE that it casts a shadow over the entire moon. So begins *Independence Day*, Hollywood's big summer blockbuster of 1996:

The alien ship quickly launches smaller craft that hover above major cities around the world before destroying them.

As the movie approaches its climax, U.S. President Thomas Whitmore is holed up at what's left of an Air Force base in New Mexico's legendary Area 51, where he addresses a crowd of survivors as a motley assortment of pilots—himself included—prepare for a last-ditch attack against the alien mother ship:

"In less than an hour, aircraft from here will join others from around the world. Perhaps it's fate that today is the Fourth of July, and you will once again be fighting for our freedom. Not from tyranny, oppression or persecution, but from annihilation. And should we win the day, the Fourth of July will no longer be known as an American holiday, but as the day the world declared in one voice: 'We will not go quietly into the night! We will not vanish without a fight! We're going to live on! We're going to survive!'"

Amid the special effects excitement and a rousing climactic battle—the aliens lose again!—the writer and director of *Independence Day* give us an important lesson about how to tell a story and how to persuade: Start big and end big. To borrow a term from astrophysics, it's the big-bang approach.

This is a winning approach for lawyers, whether structuring negotiations with opposing counsel, deliver-

ing an opening statement or closing argument, writing a brief in support of a motion, or setting the order of witnesses at trial. If you want to be effective, the movies teach, don't bury the best stuff in the middle.

That lesson also is demonstrated in films with legal themes.

Class Action (1991), applies the big-bang approach to arguing motions. A plaintiffs personal injury lawyer played by Gene Hackman starts oral argument of his motion to compel as follows:

"Your honor, the court has before it a discovery motion compelling the defendant to supply the names, job descriptions, current addresses of all Argo employees involved in the design of the Meridian model between 1980 and 1985."

Those 37 words launch the oral argument with a bang by stating exactly what the plaintiff seeks. Not necessary, you think? Then perhaps you might reflect on how often you've heard a client, opposing counsel, judge, arbitrator or mediator at some point say to you, "OK, but tell me just what is it that you want."

DELIVER THE FIREWORKS

A THIRD EXAMPLE OF THE BIG-BANG APPROACH IS GIVEN in *Judgment at Nuremberg*, the 1961 film based on the trials of doctors, judges and other professionals charged with committing war crimes under the Nazi regime in World War II. The movie focuses on the prosecution of Ernst Janning, one of four fictional judges on trial. The American prosecutor, played by Richard Widmark, concludes his direct examination of friendly witness Karl Wiecek, a former German judge as follows.

Q: Was it necessary for judges to wear any distinctive mark on their robes in 1935?

A: The so-called führer's decree required judges to wear the insignia of the swastika on their robes.

Q: Did you wear such an insignia?

A: No. I would have been ashamed to wear it.

Q: Did you resign in 1935?

A: Yes, sir.

Q: Did Ernst Janning wear a swastika on his robe?

A: Yes.

The prosecutor's direct exam was not linear, asking about events in chronological order. Rather, and deliberately, it was set up to end with a bang, and that made the chances of a successful cross-exam by opposing counsel less likely.

Start big. End big. Start with a bang. End with a bang. As Will Smith's Air Force Capt. Hiller says at the end of *Independence Day* to a young boy whom he's befriended: "Didn't I promise you fireworks?"

"Yeah."

THE FILM: ANATOMY OF A MURDER THE LESSON: CHRONOLOGY CAN BE THE KEY TO BREAKING DOWN A WITNESS' STORY ON CROSS

BY PAUL BERGMAN

IF THERE WERE A MUSEUM OF COURTROOM DISASTERS, prosecutor Claude Dancer's cross-examination of Mary Pilant in *Anatomy of a Murder* (1959) surely would be one of the top exhibits. Watching Dancer, museum visitors would see in excruciating detail some of the worst mistakes you can make on cross.

Even allowing for dramatic license, *Anatomy of a Murder* is the grittiest and most realistic courtroom film ever made. Director Otto Preminger defied the Production Code and local censorship boards by focusing the plot on an alleged rape and a pair of women's panties. (The stellar cast includes attorney Joseph N. Welch as the judge. Just a few years earlier, Welch helped bring down Sen. Joseph McCarthy with his dramatic rebuke, "Have you no sense of decency, sir?")

Posted to an Army base in Michigan's remote Upper Peninsula, Lt. Frederick Manion (played by Ben Gazzara) is charged with murdering Barney Quill, the owner of a local inn. After listening to an ethically questionable lecture from defense attorney Paul Biegler (James Stewart) on possible defenses to murder, Manion claims that he became temporarily insane after his wife Laura (Lee Remick) told him that Quill had brutally raped her. He was acting on an "irresistible impulse" when he walked to the inn and shot Quill.

Prosecutor Dancer (George C. Scott) counters that Laura and Quill were having an affair, and that Manion was perfectly sane when he beat Laura and shot

Quill after learning about it.

At the trial, surprise defense witness Pilant fills a huge gap in Manion's dubious rape story by producing Laura's torn panties. Biegler displays the panties—quite modest by current fashions—for all to see. Pilant, who manages Quill's inn, testifies that the day after he was killed, she was, as usual, sorting the inn's laundry when she found the panties at the bottom of his laundry chute. Pilant had tossed the panties into the rag bin, but brought them to court when she realized their significance to the case.

FATAL BLUNDER

DANCER CROSS-EXAMINES PILANT FEROCIOUSLY. HADN'T she been Quill's lover? Isn't she lying about finding the panties to get back at him for cheating on her with Laura? Tormented by Dancer's repeated accusations that she and Quill were lovers, Pilant stammers, "It's not true. Barney Quill was my" When she hesitates, Dancer

PAUL BERGMAN, second from right, has a front-row view of the defense table in *Anatomy of a Murder*. Bergman teaches trial advocacy and evidence at UCLA School of Law in Los Angeles. He also directs the school's Street Law Clinic. He is co-author with Michael Asimow of *Real Justice: The Courtroom Goes to the Movies*.



goes in for the kill: "Barney Quill was what, Miss Pilant?"

Finally, Pilant blurts out her secret: "Barney Quill was my father!"

Dancer slinks meekly back to the prosecutor's table, pausing only to say, "No more questions."

Dancer's first problem, of course, is that he asks Mary Pilant a key question without knowing for sure what her answer will be, and the bomb she drops on him shatters his "jealous lover" theory.

But Dancer also is intent on using bullying tactics to make Pilant out to be a perjurer. As a result, he never stops to consider that the chronology of events should cast doubt on her story.

Given the fact that her father was viciously murdered, is it likely that the very next day she would be tending to mundane chores, such as sorting the inn's laundry? Wouldn't she take time off to grieve, plan a funeral and tend to her father's business affairs? So might she be mistaken about when she found the panties? Might she have found them some days after her father was killed, when she returned to work? And if so, wouldn't Laura—who was terrified of her husband—have had ample time to dump the torn undies into Barney's laundry chute?

Often, lawyers are all too ready to imitate Claude Dancer by going for home runs when conducting cross-exams. A more effective, if less dramatic, strategy would be to undermine inferences adverse to your client by bringing the implausible aspects of the witness' story to the surface. And organizing events chronologically often is an effective way to carry out that strategy.

THE FILM: *A FEW GOOD MEN* THE LESSON: JURORS GIVE THEIR OWN MEANING TO THE DIFFERENT WAYS THAT MEN AND WOMEN EXPRESS THEMSELVES BY M.J. TOCCI

CONSIDER THE CONTRASTING COMMUNICATION STYLES of two key characters in *A Few Good Men*, the 1992 film about a trio of military lawyers who must prove a cover-up by a base commander to save two Marines charged with murdering another soldier.

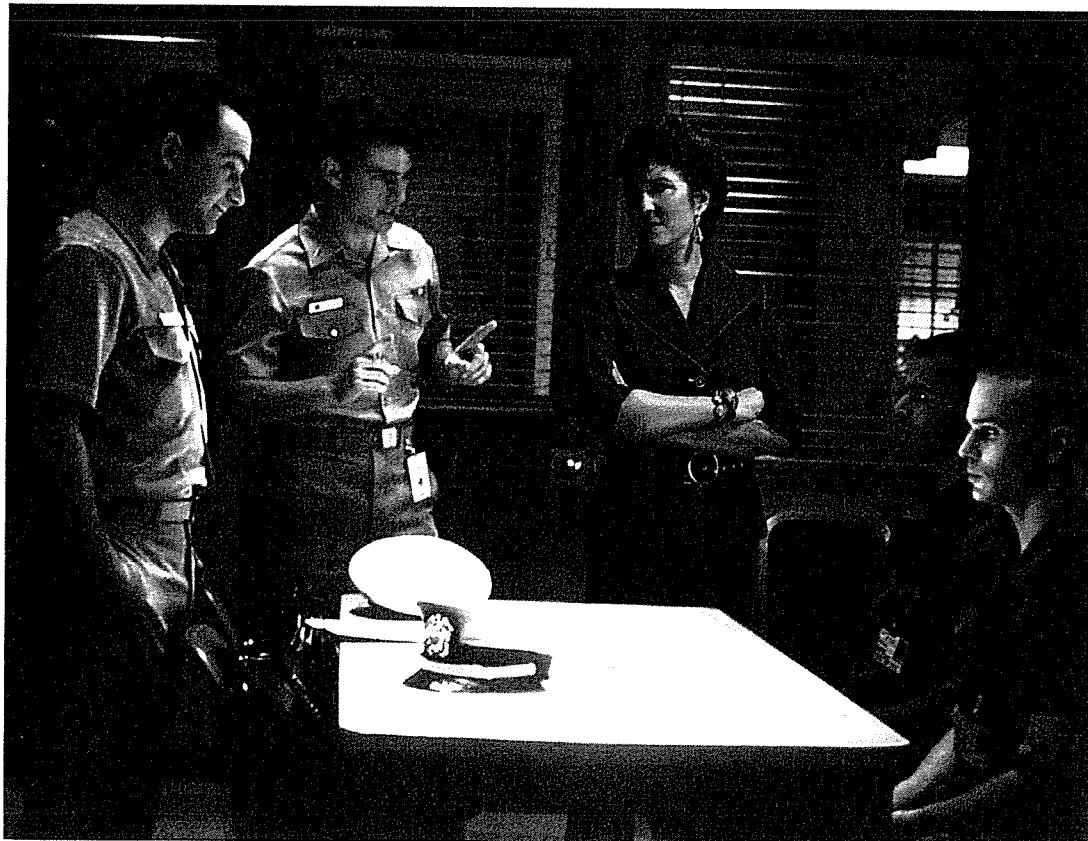
At one end of the spectrum is Marine Col. Nathan Jessep, the base commander. When Jessep, memorably played by Jack Nicholson, is called to testify, he enters the courtroom with the fanfare befitting his rank. His demeanor is confident—bordering on arrogant. His manner of speech is direct, unequivocal and delivered with volume, emotion and authority. He is an instantly compelling and authoritative witness.

Contrast Jessep with Lt. Cmdr. JoAnne Galloway (Demi Moore) as she seeks to oversee the defense in the high-profile murder case. Even as she tries to convince the Navy brass that she has the knowledge, expertise and commitment necessary to tackle this politically sensitive case, she comes across as equivocal, indirect and halting. Her statements sound more like questions because of the rising inflection in her voice. She doesn't ask directly or energetically for what she wants and instead speaks softly, with minimal eye contact and little show of emotion. The assignment instead goes to a

lower-ranking colleague, Lt. Daniel Kaffee (Tom Cruise), who has practically no actual trial experience.

Is it just a case of movie stereotypes? Probably not. After studying jury trials in North Carolina over a three-month period, anthropologist William M. O'Barr concluded in *Linguistic Evidence* that jurors have different perceptions of what he termed powerful and powerless language. O'Barr determined that male and female witnesses with a powerful

M.J. TOCCI, standing at right, watches Lt. Daniel Kaffee (Tom Cruise) explain the case to two soldiers in trouble in *A Few Good Men*. Tocci is a principal in the Pittsburgh office of Trial Run Inc., a litigation training and consulting firm, and president of Fulerum Advisors, a multidisciplinary consulting company that counsels firms on ways to retain and advance women.



speech style elicited a significantly more favorable response from jurors, but that women tended to speak less powerfully than men. Women using powerless speech styles were seen as generally less credible, especially by female jurors.

And yet simply “acting like men” isn’t the answer for women. Research indicates that women are perceived to be less likable as they become more powerful and confident, but if they appear to be less confident they are viewed as more likable. At the same time, gender is fundamental to our sense of who we are.

Galloway embodies that conflict. Substance and style converge as she—like so many women in the real world—seeks a communication approach that is both authentic and effective.

A MANNER OF SPEAKING

SO NOW YOUR OWN WITNESS RAISES HER RIGHT HAND and takes the oath, and you begin your direct examination with the usual preliminary questions. Because you have not yet covered anything substantive, it appears that nothing significant has happened. Research shows, however, that multitasking jurors are making instantaneous judgments about her competence, her trustworthiness and even her likability. These judgments are based on a number of factors—most of which are invisible and subconscious. If it is indeed true that we never have a second chance to make a first impression, we should understand how that first impression is made.

One important factor is conversational style. In his 2007 bestseller *Blink: The Power of Thinking Without Thinking*, Malcolm Gladwell argues that we form first impressions in the blink of an eye. Jurors are “thin slicing” when they simultaneously evaluate the witness’s eye contact, gestures, speech, appearance and testimony. Conversational style is one of the thin slices that enhance or diminish the witness’s credibility.

Sociolinguist Deborah Tannen tells us in *Talking from 9 to 5: Women and Men at Work* (1995) that, rather than recognize different conversational styles as the cause of confusion and misunderstanding, we challenge the speaker’s intentions (“she thinks she’s so smart”) or her abilities (“she doesn’t sound very sure”) or her character (“she is evasive in answering questions”).

The possibility that conversational style will affect your witness’s credibility should influence your preparation of the witness, your direct examination strategy, and how you use closing argument to address possible misunderstandings by the jury of your witness’s testimony.



MICHAEL TIGAR, top right, joins a group of striking miners in *Salt of the Earth*. Tigar is a professor at Duke University School of Law in Durham, N.C., and emeritus professor at American University in Washington, D.C. He is a past chair of the ABA Section of Litigation. He has written several books published by the ABA, including *Fighting Injustice*, *Examining Witnesses*, *Thinking About Terrorism* and *Persuasion: The Litigator’s Art*.

THE FILM: SALT OF THE EARTH THE LESSON: YOUR CASE IS ABOUT REAL PEOPLE TELLING THEIR STORIES BY MICHAEL E. TIGAR

WE ALL KNOW THAT AT TRIAL WE MUST PRESENT JURORS with a coherent story of the case. But we often forget that a story is told by people, to other people. The story is built up from testimony of witnesses, who bring their version of what happened, and their sense of the justice or injustice of it. With our guidance, these witnesses speak to the jurors, each of whom brings his or her own set of attitudes and personal experiences to the process.

To tell the story of our case simply and persuasively, we must learn to share vicariously the lives and experiences of our clients. After all, Clarence Darrow had never walked the corridors of madness as had Leopold and Loeb, nor ever braved a white mob while trying to move a black family into their new home, nor lived among union organizers in the mines, mills and forests. Yet, more eloquently than any other lawyer of his time, Darrow was able to summon up images of those experiences for judges and jurors.

Salt of the Earth is not a movie about lawyers, and it’s hardly even about the law. But it is a film about seeking

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"HOW I LEARNED TO LITIGATE AT THE MOVIES"

Continued from page 53

justice, and it can teach us how to listen to people's grievances and then tell their stories.

Salt of the Earth was produced in 1954. It depicts an actual Mine, Mill & Smelter Workers strike against a zinc mining company in New Mexico. The striking local was predominantly Hispanic, and the demands included equal pay with Anglo workers, decent living conditions in the company town and a safe working environment.

The company refused to negotiate. It closed off access to the company-owned food store. It tried to bring in scab labor. Eventually, the company obtained a Taft-Hartley injunction that forbade the striking miners to picket. At that point, the miners' wives asserted themselves and took up the picket duties. Eventually, the company agreed to most of the miners' demands.

A film like this, especially told from the perspective of the workers, was not easy to make in the heart of the McCarthy era. Union leaders were targets of red-baiting. Director Herbert J. Biberman and his co-writer, Michael Wilson, were members of the Hollywood 10 blacklist. The producers had trouble getting financing, there were efforts to disrupt the filming, and their principal actress—Rosaura Revueltas, one of the few professionals in the cast—was arrested and deported to Mexico. The film did not have a general release in the United States until 1965.

But 54 years after it was made, *Salt of the Earth* treats themes that still are volatile in U.S. society: workers' rights; health care; the struggle for gender equality; and efforts to divide people based on their race, ethnicity or immigration status.

These are the film's lessons for trial lawyers:

First, most of the actors were nonprofessionals. They included Juan Chacón, the male lead, who was a union local president, and Clint Jencks, who essentially appeared in his real-life role as an official of the international union.

These people are witnesses—they are miners and miners' families, telling their own stories in compelling fashion. If a Hollywood writer and director can encourage performances like that, you as a trial lawyer can do it as well. But you must listen and care as deeply as the people who made this film, and think as creatively as they did about how your witnesses present themselves.

Second, the film teaches us to look deeply into the human situations that our clients bring to us, and to search for causes rather than litigate the effects.

Third, the film rein-

forces our sense that we can—as citizens and as trial lawyers—dare to talk about fundamental issues of justice and injustice, knowing that we must awaken in jurors the desire to reaffirm what is right and change what is not. ■



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