Legal Fictions: Irony, Storytelling, Truth, and Justice in the Modern Courtroom Drama

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Christine Alice Corcos∗

If the parties will at my hands call for justice, then, all were it my father stood on the one side, and the Devil on the other, his cause being good, the Devil should have right.1

I've covered a lot of trials, and the one thing I would say is . . . never confuse an acquittal with innocence.2

In the film Witness for the Prosecution,3 title character Christine Vole4 suggests to the well-respected barrister Sir Wilfred Robards that the truth will not save her husband from the gallows. A miffed Robards responds that, on the contrary, “My dear Mrs. Vole, in our courts we will accept the evidence of witnesses who speak only Bulgarian and who must have an interpreter. We will accept the evidence of deaf-mutes, who cannot speak at all, so long as they tell the truth.”5

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2. Dominic Dunne, interviewed in Mugshots: The Murder of Martha Moxley (Court TV television broadcast, Nov. 5, 2001).
3. WITNESS FOR THE PROSECUTION (Theme Pictures 1957); see also BILLY WILDER, WITNESS FOR THE PROSECUTION: SCREENPLAY (final script June 10, 1957) (adapting the film from AGATHA CHRISTIE, THE WITNESS FOR THE PROSECUTION AND OTHER STORIES (Dodd Mead 1948)).
4. Originally the pivotal character had the name of Rochelle Vole. Her first name was changed to Christine for the play and film, possibly because the name “Christine” sounded more foreign or possibly because “Christine” is traditionally viewed as a “sexy” name. See generally D’Arcy Fallon, The Name Game: Molly, Megan, Matthew, Jason: When Baby Boomers Have Babies, These Are Names To Be Reckoned with, CHI. TRIB., May 4, 1988, at 29. It is unclear how much, if any, involvement author Christie herself had with the screenplay. She is noted for her frequent disapproval of Hollywood’s adaptation of her works, but seems to have never commented unfavorably on Witness for the Prosecution. JON TUSKA, THE DETECTIVE IN HOLLYWOOD 380 (1978).
5. WITNESS FOR THE PROSECUTION, supra note 3. Unless otherwise specified, all references are to the 1957 version.

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While Robards clearly intends\(^6\) to reassure Christine that the "golden thread that runs through British jurisprudence"\(^7\) ensures that the "truth," once spoken in an English court, results in a just verdict, Christine remains unconvinced. The final scene of the film demonstrates to what extent she, rather than Robards, understands that the legal system and justice may be diametrically opposed.\(^8\) Operating within the lawyer's traditional view that nonlawyers do not fully understand the procedural and philosophical safeguards of the common law legal system, Robards assumes that Christine believes that the system is fundamentally flawed and will condemn an innocent man. Not until the last moments of the film does he understand the irony of her remark about her husband—Leonard Vole is guilty, and he and Christine have used Robards's na"ıveté to weigh the system unfairly because the full truth would have condemned Vole, while their "truth" is also the instrument of his salvation.

In many modern courtroom dramas, authors and filmmakers express the tension between fairness and unfairness, justice and injustice, in ironic terms through sophisticated storytelling. They force people to confront and question assumptions about the legal system. Through remarks like Christine Vole's and outcomes like Leonard Vole's acquittal, people analyze expectations about law, justice, and human behavior. Combined with the unfolding drama, observers can appreciate the ironic observations about the legal system that these films provide: that it promotes clever lawyers' tricks to exclude useful evidence; that procedural safeguards tend to protect the guilty rather than exonerate the innocent; and, that in legal outcomes like those in *Witness for the Prosecution*,\(^9\) the desire for finality about guilt or innocence takes precedence over the ideal of justice. Professional participants in the legal dance act either as willing accomplices or naive dupes of the accused who manipulate them to "get away with murder." Courts garb

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6. His use of the example of "Bulgarians" and "deaf-mutes" reminds both Christine and the audience that she is a "foreigner." The image of Balkan nationals and the physically handicapped as outré—as witnesses requiring special benefit of the doubt or special assistance in pleading their cause—is a common one for the period and particularly in detective and mystery stories of the time. At one stroke, Robards emphasizes the idea that the British system is just to everyone, not simply its traditional English-speaking citizens, and that it still notices the differences between those whose native language is the Queen's English and those for whom the English language—in general and in legal terminology—is a foreign tongue.

7. While John Mortimer's character, Horace Rumpole, is noted for this phrase, it is a fairly common one in English legal usage. "Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception." Woolmington v. Dir. of Pub. Prosecutions, [1935] A.C. 462, 481–82 (H.L.).

8. See discussion *infra* Part II.B. for a definition of "irony."

their proceedings with elaborate rules of evidence that, to the uninitiated, seem to substitute legal fictions for obvious fact and abandon the search for truth in favor of imperfect finality. Yet, viewers continue to enjoy such films, perhaps because they reaffirm cynical beliefs about human nature and skepticism about society’s ability to create a legal system that will do justice. Observers advocate the jury system, but secretly believe that only they as individuals truly understand whether and how a defendant should be punished. Many authors and filmmakers share this cynicism. Through verbal and dramatic irony, contrasting truth and appearance, authors convey conflicting ideas about the relationship between law and justice. By weaving various types of irony into their stories, authors and filmmakers examine this relationship and engage observers in a dialogue about the extent to which they are willing to abandon certainty about guilt and come to terms with uncertainty about innocence. By breaching “the fourth wall,” authors make the audience willing participants in both the “crime” of injustice and the “punishment” of the perpetrator. Even characters who “get away with murder” do not commit the perfect crime because the audience knows their identities. While many films and television shows depict the triumph of the legal system over initial unfairness, others hint at or emphasize the unde-
lying skepticism about the law’s difficulty in achieving just ends. In the passage from Witness for the Prosecution quoted above, for example, irony, rather than a simple declaration of her views, contributes to author Christie’s ability to communicate more profoundly, more entertainingly, and ultimately more persuasively her notions of the relationship between law and justice. Christie, like many other authors discussed in this article, exploits the metaphor of the courtroom as stage to focus attention on her critique. Legal signs and symbols abound; lawyer-characters proliferate and, as in real life, attempt to dominate the action.

Authors and filmmakers repeatedly combine these elements—persuasive storytelling as method, irony as mechanism, and the courtroom drama as form—to suggest to their audiences that the philosophical and practical relationships between justice as an end and the rule of law as its means require, not complacency, but continual and serious re-examination. Each element carries with it particular characteristics which the author uses to convey a message. Such elements enable films to expand passing commentary into a full-blown discourse on the fairness of the legal system, postulating a fundamental contradiction between it and justice. The most successful films use a combination of method (storytelling), tone (irony), and form (courtroom drama) to engage viewers successfully in that discourse. In many films the more heroic characters tend to validate observer assumptions about the ultimate triumph of truth and the innate morality of some members of the legal profession, giving hope that “the system” may yet be manipulated to favor the “good,” the “just,” and the “fair.” Such dramas show how participants in the legal system can either pervert or uphold that system, and sometimes play both roles at once.

15. See ABSENCE OF MALICE (Columbia Pictures 1981) (showing that a newspaper’s libel victimizes not only a local businessman who eventually manages to defend himself, but also a powerless young woman who commits suicide because she cannot); I WANT TO LIVE (Figaro Films 1958) (taking the position that the defendant is wrongly condemned and executed). For films in which the journalist is pitted against the law, see Fear on Trial (CBS television broadcast, Oct. 2, 1975) (depicting lawyers who were participating in the persecution of journalists opposing the activities of Senator Joseph McCarthy), and Word of Honor (20th Century Fox television broadcast, Jan. 6, 1981) (depicting lawyers threatening a journalist who is protecting the source of information about a suspected child killer).

16. The theme of the wrongly convicted is a common one, feeding our darkest fears about the potential miscarriage of justice. See, e.g., A CRY IN THE DARK (Warner Bros. 1988); THE WINSLOW BOY (British Lion Film Corp. 1948); THE WRONG MAN (Warner Bros. 1956); Without a Kiss Goodbye (CBS television broadcast, Mar. 21, 1993) (depicting a mother who is wrongly convicted of the murder of her son who suffered from a rare genetic disorder).

17. Ultimately, we must, however, rely on the evidence in the film for the “truth” of the author’s story. Even in films with ambiguous endings, such as ANATOMY OF A MURDER (Columbia Pictures 1959), and The Legend of Lizzie Borden (ABC television broadcast, Feb. 10, 1975), this reliance does not pose a problem. But in films such as PRESUMED INNOCENT
In the case of the courtroom drama, I contend that the irony is necessarily both substantive and structural.\textsuperscript{18} It originates primarily from the author and secondarily from one or more of the characters, the audience being primarily passive until the conclusion of the drama, and its purpose is to persuade the observer that the outcome of the action is the only possible outcome in the legal system. Because the drama depends on situational and verbal irony, it is a perfect blending of the two major types of irony.

In this article I make use of definitions by D.C. Muecke and Wayne C. Booth to define and analyze the author's use of irony. An analysis of those aspects of irony most clearly calculated to propel dramatic intent—such as verbal and situational irony—taken in combination with the Boothian paradigm for the detection of irony, the mechanisms of storytelling, and the format offered by the situs and ritual of the trial—make a case for the unified critique of the legal system as it is presented in the modern courtroom drama.

After an introductory section on assumptions about the courtroom drama, a discussion of the popularity of the courtroom drama, and a discussion of key terms, I examine the case of \textit{R. v. Vole}. I then move on to consider the uses of irony and storytelling in other revealing and effectively-written courtroom dramas that pose questions about law and justice in elegant, thought-provoking ways.

\section*{I. INTRODUCTION}

\subsection*{A. The Courtroom Drama as Vehicle for Critique}

What makes courtroom dramas so popular? What makes their messages so potent? In this article I examine several films based on courtroom dramas written in the twentieth century,\textsuperscript{19} among them \textit{Adam's Rib},\textsuperscript{20} \textit{Anat-

\textsuperscript{(Warner Bros. 1990)}, where the narrator is also the accused, there is a problem. Observers have only the protagonist's word that he is innocent; they must presume innocence because there is no independent evidence to the contrary.

\textsuperscript{18} In legal terms, both substantive and procedural.

\textsuperscript{19} Examples abound of courtroom dramas and of films in which lawyers and the law play an important role. Space forbids an examination of several noteworthy films such as \textit{Paris Trout} (Showtime television broadcast, Apr. 20, 1991); \textit{QB\textsuperscript{VII}} (ABC television broadcast, Apr. 29, 1974); \textit{To Kill A Mockingbird}, supra note 14; and \textit{Philadelphia} (TriStar Pictures 1993), in which irony plays a very great part for much of the story. For a comprehensive listing, see Tarlton Law Library, \textit{Law in Popular Culture Collection}, at \url{http://www.law.utexas.edu/lpop/} (last updated July 1, 1999).

\textsuperscript{20} \textit{Adam's Rib} (MGM 1949) (basing the film on the screenplay by Garson Kanin and Ruth Gordo).
omy of a Murder, Inherit the Wind, Jagged Edge, Judgment at Nuremberg, Presumed Innocent, Reversal of Fortune, and Witness for the Prosecution. In some of these dramas, the defendant is either guilty or almost certainly guilty of the crime, as the audience and the lawyer realize at different points in each drama. The use of storytelling that enables some defendants to manipulate their lawyers—either by creating the defense or by slyly pointing the lawyer to the defense likely to be successful—reinforces the audience's sense of irony. In some cases the lawyer manipulates the proceedings to obtain an acquittal, although both he and the audience are unsure of the defendant's innocence. In several films and plays, the ultimate irony is the outcome of the trial. The acquittal or in one case the possible wrongful conviction of the defendant further intensifies the sense of horror of both observer and characters at a legal system gone haywire. For the lawyer the horror may be greater because he knows that he has dedicated his life to the continuation of the system that has gone wildly astray. The

21. Anatomy of a Murder, supra note 17 (basing the film on the novel by Robert Traver, a pseudonym for Michigan judge John Voelker, which was published in 1958 and based on a real case).
22. Inherit the Wind (United Artists 1960) (basing the film on the play by Jerome Lawrence and Robert E. Lee).
24. Judgment at Nuremberg (United Artists 1961) (basing the film on the book by Abby Mann, which was published by Signet/New American Library in 1961, and also the screenplay by Mann, which was published by Cassell in 1961).
25. Presumed Innocent, supra note 17 (basing the film on the novel of the same name by Scott Turow, which was published in 1987); see also Christine Alice Corcos, Presuming Innocence, 22 OKLA. CITY U. L. REV. 129 (1997).
27. Witness for the Prosecution, supra note 3. The film was based on the short story and play of the same name by Agatha Christie. A remake aired in October 1982.
28. Obvious examples are Jagged Edge, Presumed Innocent, and Witness for the Prosecution. In Presumed Innocent the defendant, former prosecutor Rusty Sabich, admires his attorney, Sandy Stern, when Stern tells him that the judge dismissed the charges because of the judge's fear that his involvement with the victim and his past history of taking bribes would become common knowledge through the release of a "B file." In fact, the "B file" which Stern threatened to exhibit had nothing to do with the judge's past.
29. In The Paradine Case (United Artists 1947), the defendant admits her guilt only after hearing that her lover has committed suicide. She testifies that her lover refused to help her poison her husband. One could postulate, however, that he did it by himself, and that once he is dead, she decides to take the blame in order to join her lover in death by letting herself be wrongly accused.
30. Lawyer burnout, because of disillusionment or a belief that an individual cannot change the system, is increasingly scrutinized both by attorneys and by psychologists. See, e.g., Brian S. Gould, Attorney "Burnout": Law and Disorder Part II—Attacking the Problem, NAT'L L.J., May 7, 1984, at 14; Gary L. Lefer, Attorneys Are Among Most Severely
filmmaker or playwright manipulates the observer further, in some cases by forcing him to confront the conflict between sympathy for the lawbreaker and a desire to maintain order in society. In others, the observer is torn by the conflict between the good but misguided lawyer—the only protection the observer himself believes he might have in a court of law—and the manipulative and guilty client. In most cases, however, the guilty party is unmasked and punished, either by one of the characters in the drama or by an unrelated event. Thus, the filmmaker or author manages to avoid substituting cynicism for irony.

1. The Possibility of Discourse

To convey their message and convince the observer of the validity of their interpretation, the authors and filmmakers of these dramas must first establish a common language that includes generally accepted images and opinions about the law and lawyers, before they can lead observers down

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31. In his elegant essay on detective fiction, Modus Operandi, Robin W. Winks asserts that “detective and mystery fiction adapt poorly to the screen or stage and hardly at all to television, so that authors and books are less reinforced than they are destroyed by modern communications.” ROBIN W. WINKS, MODUS OPERANDI 38–39 (1982). For that reason, the “mystery” in courtroom drama tends to arise from the suspense generated over the outcome of the case rather than from the identity of the criminal.

32. Another issue, beyond the scope of this article and more suitable to examination in the context of legal and social history, is the influence of the Hays Code on the overt depiction of wrongdoing. The Hays Code, which governed the standards of movie-making in the United States film industry from 1934 to 1968, prohibited a large number of words, events, and themes from being shown in domestically produced and released films, including the triumph of evil over good, as in the acquittal of a guilty party. See Charles Champlin, Critic at Large: In Film Censorship, It’s a Matter of Subjectivity, L.A. TIMES, Mar. 31, 1988, at 1 (discussing the impact of the Hays standards on films such as Guys and Dolls, Mr. Smith Goes to Washington, The Best Years of Our Lives, and The Bicycle Thief). Certainly at least some of the irony in American films of that period derives from fear of censorship. Authors have long used irony, satire, and parody to deflect the suppression of their ideas. It is ironic that although the guilty may go free in the courtroom, see ANATOMY OF A MURDER, supra note 17, and the innocent may suffer terribly from crime, see THE BICYCLE THIEF (Burstyn, Mayer & Produzioni De Sica 1948), the Hays Code enforcers believed that the public which could, in real life, attend the trial where the guilty goes free and see a crime committed against an innocent individual, should be protected from fictional portrayals of those events. On the Hays Code generally, see MURRAY SCHUMACH, THE FACE ON THE CUTTING ROOM FLOOR (1964) (presenting a fairly comprehensive interpretation of the Code’s impact, particularly on films such as Anatomy of a Murder, Inherit the Wind, and The Crucible). See also LEO STRAUSS, PERSECUTION AND THE ART OF WRITING (1952) (discussing the impact of censorship and totalitarianism on Eastern European writers).

33. This is particularly important in films such as Anatomy of a Murder, in which the defendant seems to get off “scot free.” See ANATOMY OF A MURDER, supra note 17.
the garden path of their ironic interpretations. To drive home the ultimate irony of their observations about the legal system, authors and filmmakers must first establish that they share the same conceptions about it as the audience. Through the drama's dialogue and action, they then present observers with evidence that contradicts their beliefs. In the conversation recounted above between Sir Wilfred Robards and Christine Vole, note that he defends the legal system as an ultimately fair one, intended to uncover the truth, and that she questions this assumption. Normally, one would expect that the layperson might place his faith in the legal system, and the lawyer cautions him that the road to exoneration may be difficult and uncertain.

2. Common Themes and Standard Images in Courtroom Drama

Generally, observers make assumptions about the drama, its purpose, characters, conventions, outcome, and the author's purpose in presenting it. People expect that it generally follows a certain form: that it tells a story about guilt and innocence; that it is peopled by easily recognizable "good" and "bad" characters with understandable motives; and that the author will resolve its conflict by revealing the guilty party, thus vindicating the innocent. One expects the author to tell an interesting and perhaps unexpected story, but to allow "justice" to triumph. Because the form chosen is that of courtroom drama, rather than a straightforward narrative or some other form, one expects the plot, characters, and outcome will be closely identified with the legal system. The author bears the responsibility to tell observers a believable, logically coherent story, even if he does not give them all the evidence needed to solve the puzzle presented. Of these expectations, all except the last are validated by experience.

Because of his pedagogical intent, the author tends not to reveal all the evidence needed to make a final judgment about the real culprit on trial—the legal system—until the last frame of the film. The author's final judgment is often an ironic one, a "surprise ending," in which he shows people that the trusted legal system is fundamentally unsuited to the determination of truth, because the truth must be revealed by an outsider (the author). The surprise ending should seem unfair, given the expectations that people have about certainty in the legal system. Yet, they willingly accept it, if it is logically consistent with what has gone before. How the author convinces people of a surprise ending's logic and fitness arises out of his skill at combining storytelling, irony, and structure.

34. WITNESS FOR THE PROSECUTION, supra note 3.
35. In this, viewers are unlike the fact-finder in a trial who expects all evidence to be presented without undue surprise or fanfare before she makes her decision.
To understand the author’s message, the observer must also subscribe, at least temporarily, to a particular assumption about the fundamental purpose of the legal system: that human beings established it to dispense justice as fairly as possible. Whether the legal system portrayed in a particular courtroom drama achieves that goal and why it succeeds or fails is the author’s primary message. If the audience begins and ends by believing that no legal system can ever dispense justice, then the outcome of a courtroom drama such as Anatomy of a Murder—depicting the defendant as guilty but allowing him to escape—will always seem expected, and the defense lawyer’s re-energized belief in the system naive. The author’s ironic message would be lost.

Courtroom dramas, such as Witness for the Prosecution, create a body of popular culture that conveys a uniform message with standard conventions that stand for the philosophical and political battles that rage when people consider the relationship between law and justice. The courtroom itself, as a forum in which good and evil, truth and falsehood, and right and wrong do justice is a familiar one to modern playgoers. It is populated by archetypal characters: particularly easily recognized lawyer types—the ambitious defense lawyer who stops at nothing to obtain an acquittal; the honorable and idealistic lawyer fighting a lone battle to protect a downtrodden and innocent defendant; the cynical and crooked district attorney prepared to railroad an innocent defendant for the sake of his career; the underpaid and overworked prosecutor protecting society from serial killers and uncaring corporate polluters; the bribe-taking judge unfairly overruling the desperate defense attorney’s objections; or the courageous jurist suffering with her family through bomb threats and anonymous letters because of a controversial case. These lawyers speak in a coded language, invoking and obeying arcane rules that only they understand. Many of the films about the legal system include these archetypes and the themes they represent, with characters and situations largely undifferentiated and oversimplified.

36. Anatomy of a Murder, supra note 17.
37. Witness for the Prosecution, supra note 3.
40. As an example, consider the female district attorney in the film Criminal Justice (HBO television broadcast, Sept. 8, 1990), which dramatizes a trial for rape. After the defendant agrees to the prosecution’s plea bargain, the complaining witness demands an explanation from the prosecutor (quite pointedly a woman) whom she had thought represented her interests. The district attorney belatedly attempts to explain that she represents “the people”—to no avail.
Yet the films continue to appeal to the movie-going and television-watching public, because these films correspond to a large degree to the lawyers and judges they think they know and to the stories they read in the newspapers and hear on the television and radio news. The stories are often trite, made up of the traditional factors that create tragedy such as: a love affair gone wrong; a desire to cover up a crime; a wish to profit from an inheritance; or a guilty party’s attempt to avoid suspicion. Many of these films are forgettable, but some raise the discourse to a higher level. Filmmakers and authors transform the courtroom into a stage onto which the audience confronts their conflicting feelings about law and justice, and they translate the mysterious symbols of the law into a discourse about right and wrong.

These observations are quite familiar to modern Americans. Through a steady diet of fictional and fictionalized trials, American observers create their own view of the legal world, fed by portrayals of lawyers whose ethical and procedural rules seem to allow elaborate and inevitable manipulation of the legal system in favor of personal or professional agendas. Because lawyers do not control movie and television show content and because lawyers are evincing a growing concern over the effect of talk shows, for example, on the predisposition of jurors to accept a novel legal theory, particularly on behalf of the defendant. See Stephanie B. Goldberg, Fault Lines, A.B.A. J., June 1994, at 40 (discussing the phenomenon Alan Dershowitz has dubbed the "abuse excuse").

Newer plots forming the basis of courtroom drama focus on the wish to right societal wrongs. See Philadelphia, supra note 19; Roe vs. Wade (NBC television broadcast, May 15, 1989); Separate but Equal, supra note 14. Other plots focus on the wish to control one’s own life or environment. See The Good Fight (Hearst Entm’t Prods. television broadcast, Dec. 15, 1992); Whose Life Is It, Anyway? (MGM 1981). Still more numerous are traditional "whodunits," which focus on the arrest and trial as the vehicle for discerning the guilty party. In most of these dramas, the lawyer acts as the film’s Sherlock Holmes, in a most unrealistic manner, but one that is readily accepted because it is seen so often. It may also be that observers still wish to believe that the lawyer, as officer of the court as well as receiver and analyzer of evidence, is in a better position to uncover the malefactor and bring him or her to justice than the layperson. Examples include: A Soldier’s Story (Columbia Pictures 1984); Murder (Tiger Aspect Prods. television broadcast, May 2002); and most "lawyer" shows on television, such as Perry Mason (CBS television series, 1957–66), and Matlock (NBC television series, 1986–92, ABC television series, 1993–95). That Perry Mason retains his attraction for lawyers and nonlawyers alike and that the character influenced many future lawyers seems clear. See Aviva Kemper, A Figment of Our Television Imagination, Legal Times, Oct. 4, 1993, at 66; David Margolick, Perry Mason Was the Legal Profession’s Best Friend, L.A. Daily J., Sept. 28, 1993, at 6.

E.g., Guilty as Sin (Hollywood Pictures 1993) (involving a particularly naive female attorney who has a relationship with her charming but probably guilty client); Physical Evidence (Columbia Pictures 1989) (involving a particularly naive female attorney who becomes involved with her rough but tender-hearted innocent client).

Admittedly, lawyers in an advisory capacity make determinations about possible defamation problems, particularly in the "docudrama" area. See Jacqui Gold Grunfeld, Docudramas: The Legality of Producing Fact-Based Dramas—What Every Producer’s Attorney Should Know, 14 Hastings Comm. & Ent. L. J. 483 (1992); Oliver R. Goodenough,
cause lawyers are easy targets in the culture generally, conflicting portrayals of lawyers are likely to continue. Limitations on the real lawyer's freedom of action may include outside factors, such as public opinion, and factors internal to the legal system, such as the rules of evidence and the canons of legal ethics, and (eventually) the necessity for resolution of the conflict. While the creator of fictional lawyers is less constrained by these limitations, she still must pay them some heed, even though they are presented as reasons for the miscarriage of justice rather than the imposition of justice.

Finally, the courtroom drama serves as either the backdrop or focus of the action, representing either overtly or subtly all the expectations that both lawyers and nonlawyers have about what the courtroom signifies. The heavy symbolism that accompanies the trappings of the law exemplifies the difficulties in communication that the initiated (lawyers) and uninitiated (nonlawyers) have in discussing the relationship between law and justice.

B. Similarities Between Real Dramas and Reel Dramas

Many commentators have remarked on the similarities between the stage and the courtroom. Indeed, trial practitioners cultivate the dramatic arts in order to present cases that are more persuasive on their clients' behalf. Many lawyers enjoy either amateur or professional status as actors.

Avoiding Legal Trouble in Preparing Docudramas, N.Y. L.J., Nov. 24, 1989, at 5. Lawyers who are also industry executives have additional control, yet do not escape negative portrayals either. See, e.g., NETWORK (MGM 1976); THE PLAYER (Spelling Entm't 1992).

45. See also discussion infra Part II.D.

46. That they are smart to do so seems evident from the confusion that jurors may feel from their experience with fictional lawyers. See Robert A. Clifford, The Impact of Popular Culture on the Perception of Lawyers, LITIG., Fall 2001, at 1.

47. Many lawyers are actually frustrated actors. See, e.g., BLADE RUNNER (Warner Bros. 1982) (including the portrayal by William Sanderson, a Memphis State University Law School graduate); Newhart (CBS television series, 1982–90) (recurring role as Larry played by William Sanderson); ROCKETEER (Walt Disney Pictures 1991); Star Trek: And the Children Shall Lead (NBC television broadcast, Oct. 11, 1968) (including the appearance of Melvin Belli as Gorgon the Friendly Angel); see Vernon Scott, Life After "Newhart," UPI, Apr. 25, 1991. Many others abandon the action of the courtroom for writing careers, including: Terry Louise Fisher, L.A. Law (NBC television series, 1986–94); Melinda Snodgrass, Star Trek: The Next Generation (syndicated television series, 1987–94); John Grisham, author of THE CLIENT (1993), THE FIRM (1991), THE PELICAN BRIEF (1992), and other novels; and Barry Reed, author of THE VERDICT (1980). On other lawyers turned authors, see Adrienne Drell, Murder, They Write, A.B.A. J., June 1994, at 46. Some people, however, do the reverse—witness the career of Sheila James, who gained fame as Zelda, the irrepressible admirer of Dobie Gillis on the classic television series The Many Loves of Dobie Gillis (CBS television series, 1959–63). A graduate of Harvard Law School, she is now active in women's, children's, and gay rights causes and teaches law as an adjunct professor at Loyola Law School in Los Angeles, California. Kuehl returned to the screen in Bring Me the Head of Dobie Gillis (CBS television broadcast, Feb. 21, 1988).
In addition, actors love to play lawyers, as the constant flow of plays, films, and television series about the legal profession attests. While the audience should not assume that actors playing lawyers share their characters' attributes and philosophies, many of them clearly enjoy taking on the roles of these powerful and influential characters, whether or not they personally admire the legal profession. In particular, actors seem to like becoming the focus of the frustration or admiration that nonlawyers feel toward attorneys.

The fictional courtroom as setting for a critique is particularly apt. It focuses on the characteristics of lawyers in an adversary system. The courtroom is the prototypical battlefield for both lawyer and client; both participants and observers recognize it as the most public arena, besides the media, in which a cause can be vindicated, even though actual litigation, at least in civil cases, may be the least favored means by which to settle a dispute. The fictional courtroom is alien territory for the client, who nevertheless may welcome his "day in court," and familiar territory for lawyers. Yet lawyers tend to object to the portrayal of the legal system in such dramas, while nonlawyers welcome the portrayals, at least in terms of justification for mistrust in "the system." Likewise, the actual courtroom serves as a real-life stage on which the participants may present their own versions of truth to a presumably impartial audience.

The major difference between a real trial and the filmed version is that the fictional trial allows the audience to breach the fourth wall, allowing them access to information that no single participant in a real trial would have. No party in a real trial knows everything that transpires, is present at every important event, and overhears every important conversation. In addition, in the real world, technically nothing that happens outside the court-


49. Marvin Mindes noted:

Even in fully blossomed legal conflicts, the chief strategy is the use of threat rather than actual combat, which is much too expensive to be practical and represents the failure of threats. For a threat to be effective, the threatener must be seen as both able and willing to do harm.

Marvin W. Mindes, Trickster, Hero, Helper, B. LEADER, May/June 1983, at 14, 17 (based on a more comprehensive article: Marvin Mindes & Alan C. Acock, Trickster, Hero, Helper, 1982 AM. B. FOUND. RES. J. 177). Compare this evaluation with the comments of the James Mason character in THE VERDICT (20th Century Fox 1982), defending a church-run hospital against medical malpractice charges, who cynically suggests that a little more pressure on the alcoholic attorney representing the plaintiff will result in a settlement favorable to the church because the attorney is afraid to go to court.


51. See supra note 13 and accompanying text.
room is relevant to the outcome, and some of what happens within the
courtroom is likewise excluded by the judge. The creator of a filmed drama
may allow the audience first-hand knowledge of nearly all of the relevant
action in and out of the courtroom, allowing them to make up their minds as
the story unfolds, or, like well-bred jurors, wait until the denouement. The
control that the author exerts over the information that observers obtain,
whether complete or not, is purposeful and directed toward his message.
Whether observers know what to make of it is another matter. Ultimately,
the film drama creates a "perfect" world in which justice can triumph and
the truth can emerge—a situation mimicked only imperfectly in the real
world. The control that parties in a real courtroom drama exert is incom-
plete, even the judge who makes decisions about the admissibility of evi-
dence and the behavior of those parties in her courtroom cannot completely
direct the flow of the action.

Nonlawyers viewing films or plays about lawyers and the legal system
likely have very firm opinions about the relationship between law and jus-
tice in these dramas. Whether they are aware of it or not, they respond to the
author's opinion on the subject; an author with an ironic opinion appeals to
them. Ironic plotlines, such as the unexpected revelation in the courtroom
exposing the guilty party, or actions outside the courtroom to which only
they and the characters are privy that illuminate testimony given in court,
can validate or challenge lay expectations about the workings of the legal
system. For example, for the observer untrained in the law, the most signifi-
cant aspect of a courtroom drama may be the injustice he perceives in the
trial and the conviction of a defendant with whom he sympathizes or whose
guilt is in doubt.52 In addition, the more realistic the portrayal of courtroom
life, the more amoral or unethical the lawyers and judges may seem.53 The

52. In discussing The Andersonville Trial (PBS television broadcast, May 10, 1970),
Dorsey notes that "[t]his type of reversal is ... common in the courtroom drama of the post-
war period—the court is put on trial, the investigators are investigated, and the accusers
become the accused." John Thomas Dorsey, The Courtroom Drama in Postwar Germany and
America 30 (1979) (unpublished Ph.D. dissertation, University of Illinois, Urbana-
Champaign) (on file with the University of Illinois Library).

53. See generally What America REALLY Thinks About Lawyers and What Lawyers
Can Do About It, NAT'L. L.J., Aug. 18, 1986, at S3 (citing for example the belief of twenty-
seven percent of those polled that lawyers' "'honesty and ethical standards' [are] 'low' or
18, 1986, at S2. But for a contrary view, as well as an explanation of why lawyers write
fiction about the law, see ROBERT TRAVER, ANATOMY OF A MURDER, at ii (anniv. ed. 1983).

I wanted to tackle a single courtroom trial [because] ... I had a small ax of my
own to grind. For a long time I had seen too many movies and read too many
books and plays about trials that were almost comically phony and overdone,
mostly in their extravagant efforts to overdramatize an already inherently dra-
matic human situation. I longed to try my hand at telling about a criminal trial
the way it really was, and, after my years of immersion, I felt equally strongly
defense lawyer may appear interested only in manipulating the system to obtain the acquittal of his client.\(^4\) The prosecutor may be portrayed and understood as overly ambitious,\(^5\) uninterested in the protection of individual rights,\(^6\) or interested only in protecting the status quo. Whatever their role in the drama, the attorneys are often unsavory characters, who intentionally subvert the system or obtain the correct (i.e., just) result only through an accident or the intervention of some outside agency.\(^7\)

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\[\text{Id.}\]

\(\text{54. For example, consider Remy’s defense lawyer in }\text{THE BIG EASY (Columbia Pictures 1987). The newspaper’s lawyer in }\text{ABSENCE OF MALICE, supra note 15, is another good example. In explaining the law of defamation to the reporter played by Sally Field, he asserts that it does not matter what the truth is, but what the plaintiff can prove in court. While this is a fair statement of the law, it very likely does not sit well with non-law trained viewers who feel that the Paul Newman character has been victimized.}\]

\(\text{55. For example, the district attorney in }\text{BULLITT (Warner Bros. 1968), threatens to retalitate against the title character if he does not produce the star witness immediately—regardless of the physical threats that have been made against the man’s safety.}\]

\(\text{56. An example is Tom Krasny, the prosecutor in }\text{JAGGED EDGE, supra note 23. The National Law Journal poll, see supra note 53, indicates that most Americans polled believe that “citizens’ groups” contribute more than lawyers or judges to the protections of individual rights (forty-two percent to eleven percent and eleven percent, respectively); however, in reply to the question “[o]f the following phrases, which most closely represents your view of the most positive aspect of lawyers?” twenty percent responded “[t]hey protect the rights of citizens” and six percent “[t]hey are active in bringing about social change.” It may be that most Americans responding to the poll did not realize, or did not remember, that citizens’ groups include such organizations as the American Civil Liberties Union or the Sierra Club, organizations in which lawyers participate more extensively than do nonlawyers.}\]

\(\text{57. There are heroic or principled attorneys in “reel dramas.” See, e.g., }\text{INHERIT THE WIND, supra note 22 (Henry Drummond and Matthew Harrison Brady); Judge Horton and the Scottsboro Boys (NBC television broadcast, Apr. 22, 1976) (Judge Horton); To Kill A MOCKINGBIRD, supra note 14 (Atticus Finch). Some lawyers begin as cynical or venal characters but regain their commitment to the law through an epiphany. See }\text{THE VERDICT, supra note 49 (Frank Galvin); TRUE BELIEVER (Columbia Pictures 1989) (Eddie Dodd).}\)
C. The Critique of the Legal System and the Lawyer's Objections to the Setting, Method, Purpose, and Tone of the Drama

A novel is a mirror carried along a road.

—Stendhal

Many courtroom dramas, particularly those telecast during "sweeps" weeks on the commercial networks, which are usually plucked from the daily newspapers, are not necessarily thoughtful or well-written. But they are popular because, while they oversimplify the law and turn tragic events into an evening's entertainment, they also play to the audience's antipathy toward lawyers and the legal system including aspects such as: (1) its seeming unfairness; (2) its seeming arbitrariness; and (3) the venality of those initiated into its mysteries (lawyers and judges). These simplistic legal dramas also appeal to the audience's wish for stability and for "justice" because they show that some innocent people are acquitted, some lawyers are honest and caring, and the legal system can protect rights and uncover truth. Lawyers tend to discount the usefulness and importance of courtroom


59. They also seem to miss the real-life irony illustrated by some of these cases. Consider that the Menendez brothers, cast by the prosecution as greedy children who murdered their parents for a $14.5 million inheritance, are now reported to be bankrupt.

Even if Lyle and Erik Menendez were to be acquitted of murder in the Aug. 20, 1989, shotgun slayings of their parents, they would stand to inherit nothing—a remarkable turn of events for a case in which prosecutors have long contended that the brothers killed out of hatred and greed.


60. See Without a Kiss Goodbye, supra note 16 (publicizing the Patricia Stallings case); see also Tom Uhlenbrock, Painfully True: Patricia Stallings, Unjustly Sent to Prison for the Death of Her Son Ryan, Can't Bear To Watch a TV Movie About the Ordeal, ST. LOUIS POST-DISPATCH, Mar. 18, 1993, at 1G. Stallings's plight was also documented on the NBC series Unsolved Mysteries (NBC television broadcast, Nov. 13, 1991). If Lorena Bobbitt's case is ever dramatized, she is likely to emerge either as a victim or as someone who "got off," even though she was immediately committed to a state psychiatric hospital for a minimum of forty-five days for evaluation. See Paul Bradley, Unkindest Cut: Bobbitt Case Captured Media, RICHMOND TIMES DISPATCH, Jan. 2, 2000, at S45. On the popularity of today's headlines as fodder for tomorrow's movies of the week, see Mike Bygrave, Crimes They'd Kill To Shoot, SUNDAY TELEGRAPH, Jan. 3, 1993, at 13.

61. The characters of Sarah Waddington and her associate in Roe vs. Wade, supra note 42, are examples.
dramas, particularly as a focus of study in the law school curriculum,\textsuperscript{62} citing the inaccurate or cavalier portrayal of actual court procedures, or calling attention to the negative presentation of attorneys\textsuperscript{63} and judges as more interested in money or power than in ensuring that justice is done, even though the facts in the case may warrant this conclusion.\textsuperscript{64} An author’s ironic depiction of the legal system in action exacerbates the discomfort of real world lawyers, but their objection to inaccuracy causes them to dismiss the very important observations being made about the interaction of law and society.\textsuperscript{65} Even so, the use of movies as part of the law school curriculum seems here to stay.\textsuperscript{66}

\begin{itemize}
\item[62.] It seems clear, however, that fictional and film lawyers influence many young people to pursue a career in the law. See Kempner, \textit{supra} note 42. On using film to teach law, see D. D. Anderson, \textit{Using Feature Films as Tools for Analysis in a Psychology and Law Course}, 19 \textit{Teaching Psych.} 155 (1992); Philip N. Meyer, \textit{Law Students Go to the Movies}, 24 \textit{Conn. L. Rev.} 893 (1992). Further, the ABA is spending over $700,000 in an effort to revamp the image of the legal profession. See \textit{infra} note 65. So, perhaps, we \textit{should} be spending more time looking in the fictional mirror.

\item[63.] A lawyer friend mentioned that the depiction of lawyers in \textit{The Firm} (Paramount Pictures 1993), confused her because she was unable to decide which of the many lawyer characters was supposed to be the hero—the “good lawyer.” She “couldn’t tell the bad guys from the good guys because they all wore suits;” in effect, whether the character was a “good guy lawyer” or a “bad guy lawyer,” he or she looked and sounded exactly like all the other lawyers, mouthing the same words and performing the same actions, and apparently representing the same goal for a large part of the film. The film’s message, unlike the novel’s, may be that lawyers really are hired guns—in that case, she got it right. Conversation with Sally S. Walters, Cleveland, Ohio (Sept. 18, 1993).

\item[64.] Note that in filmed dramas the protagonist attorney is often played by a popular star. See \textit{Inherit the Wind}, \textit{supra} note 22 (Spencer Tracy); \textit{The Verdict}, \textit{supra} note 49 (Paul Newman). In such cases the public prefers the character, though he may be flawed at the start of the drama, to emerge a more ethical person, somewhat blunting the message that the practice of law corrupts. On the tendency of Hollywood to soften rough edges in accord with a star’s persona, see \textit{John Gregory Dunne, Monster: Living Off the Big Screen} (1997). Actors generally choose sympathetic parts, but consider Robert Vaughn’s slimy district attorney in \textit{Bullitt}, \textit{supra} note 55, and James Mason’s patronizing lawyer in \textit{The Verdict}.

\item[65.] Lawyers seem ambivalent about their role. According to Mindes’s 1982 survey, they “want to be seen as ‘tough, macho gunslingers’ to get their job done. But, at the same time, they want their clients to turn to them as helpful problem-solvers.” Elizabeth Olson, \textit{Lawyers Want To Be Liked and Feared}, UPI, June 3, 1983 (citing the work of Marvin Mindes, including his article \textit{Trickster, Hero, Helper}).

\begin{itemize}
\item[](I)Increasingly, lawyers are realizing that they are morally responsible and have substantial influence over how their clients behave . . . [the] survey showed the public thinks only a minority of lawyers fit the trickster portrait . . . . Misperceptions fuel the unlovable image of lawyers, and hurt the profession . . . If lawyers think clients expect bad behavior, it “frees the lawyer from moral blame for behaving rottenly.”

\textit{Id.} Mindes futher suggests that “[t]he generally dominant images tend to depict both what lawyers fear others think of them and what lawyers may fantasize themselves to be . . . . The key question is not what lawyers are depicted as doing but rather the kind of people they are portrayed as being.” Mindes, \textit{supra} note 49, at 33. Mindes places the onus on lawyers to
D. Use of Courtroom Dramas in the Law School Curriculum

Felix Frankfurter pointed out that "[i]n the last analysis, the law is what the lawyers are. And the law and the lawyers are what the law schools make them." Whether or not this is true, many nonlawyers believe it. Thus, lawyers are right to consider what they make of the law and what nonlawyers think of it. Lawyers, through the law, control daily life to such an extent that many nonlawyers believe and many lawyers know that injustice is inevitable. The use of irony to disguise authorial messages in court-


68. Practicing lawyers selectively re-enforce what the lay public thinks about them through their own attitudes toward controversial legal questions. Discussing the disinclination of large law firms to admit any involvement with the defense of the right of gays to serve in the military, a Wall Street Journal article stated that:

[s]ome . . . firms with corporate clients have balked at accepting these cases or, if they have taken them, have been reluctant to talk about them publicly, fearful of alienating other clients or provoking discord among their members. That contrasts with firms' usual positive attitude toward public interest cases, which provide training to young lawyers, fulfill public service commitments and enhance the firms' image.


69. One of the concerns expressed is the need to "promote justice, fairness and morality." See NARROWING THE GAP, supra note 67, at 213 passim. The conviction and/or execution of the innocent is an obvious example. See Richard Cohen, An Innocent Man Freed After 9 Years on Death Row, CLEV. PLAIN DEALER, July 4, 1993, at 3C (citing the case of Kirk Bloodsworth, twice convicted of the 1984 rape and murder of a child). "Genetic evidence, unavailable at the time of the trial in 1984, proved that a semen stain left on the pant-
room dramas highlights the critique of the legal system apparent in each of these dramas, which gives the lawyer an opportunity to view the legal system through someone else's eyes and evaluate that critique. It gives the law teacher an opportunity to introduce students to questions of professional responsibility, fundamental fairness, notions of justice, and the purpose of law in society. Such films encourage law students to consider their reasons for pursuing a legal career and to consider questions such as: What is the purpose of the law? What is the purpose of the advocate? The trial?

Id. From the world of film, consider the comments of lawyer Teddy Barnes's children in JAGGED EDGE, supra note 23. Says her daughter, referring to Teddy's potential client, "He killed his wife. I saw it on TV." Id. Teddy responds, "He allegedly killed his wife." Id. Interjects the son, "That means he's gonna get away with it." Id. Many people say the same thing about O.J. Simpson.

Ironically enough, lawyers are portrayed in one of two ways in these films. Either they are so determined to win the courtroom fight that they have divested themselves of any commitment to ethical behavior, or they are honest, ethical individuals defeated by the system. The "Perry Mason" syndrome in which the lawyer is both honest and skillful and the client is both innocent and (more or less) attractive is a rare phenomenon in film, although not on television. On the "Perry Mason" phenomenon, see Eve C. Greene, Masonic Jurisprudence, PRAC. LAW., Dec. 1986, at 69. As another example see the series Matlock, supra note 42. But consider the highly acclaimed series, The Defenders (CBS television series, 1961–65), in which a father and son law firm took on unpopular causes weekly—theirs was a comparatively short run. Some recent series, however, emphasize the ironic contrasts discussed in this article and prevalent in films. See Civil Wars (CBS television series, 1991–93); Eddie Dodd (ABC television series, 1991); L.A. Law, supra note 47; Law and Order (NBC television series, 1990–present); Shannon's Deal (NBC television series, 1990–91); Sweet Justice (NBC television series, 1994–95); The Trials of Rosie O'Neill (CBS television series, 1990–91). In addition, the series Picket Fences (CBS television series, 1992–96), a sort of Twin Peaks meets Mayberry R.F.D., featured current controversies in law and ethics through the characters of an activist police chief, his wife who is the town doctor, and "Douglas Wambaugh," a local attorney who appears "for the defense, Your Honor" in nearly every episode. One exception in films to the sincere but downtrodden image of the lawyer is Separate but Equal, supra note 14, the filmed story of the desegregation cases, in which Sidney Poitier accurately portrays the young Thurgood Marshall as a committed, realistic, and gifted advocate. While these films are interesting for other reasons, they do not inspire the same kind of thoughtful debate about the nature of law, the meaning of justice, and the proper role of the attorney as do dramas in which the characters' motives are mixed, their responsibility unclear, and the contrast between justice and law emphasized. Every so often, the media trumpets the discovery of a "real life lawyer" whose dedication and courtroom feats approximate those in fiction. Witness the attention that was given to Florida prosecutor Harry Lee Coe, who obtained the conviction of two white men charged with setting a black tourist on fire. See Michael Blowen, Atticus Finch Lives! BOSTON GLOBE, Oct. 9, 1993, at 24.

Interestingly, the television drama Civil Wars, supra note 70, which concerned itself primarily with divorce and family law, routinely showed lawyers active both as litigators and as counselors in planning sessions with clients and in negotiation and settlement conferences. In addition to Law and Order, supra note 70, which is set in a prosecutor's office, Civil Wars was one of the few fairly realistic legal dramas on television in the 1990s. For further discussion of legal dramas on television, see Corcos, supra note 66, at 503 n.13 (discussing L.A. Law, Law and Order, Civil Wars, and other shows).
What is the relationship between law and justice? In addition, the author uses irony to tell a story that depicts shifting realities to persuade the observer of the “truth” (the validity) of the critique (the story). The intersection of stories told by different actors in the drama becomes their reality and the ultimate outcome the observers’ reality.

Films and plays dramatizing trials and courtroom intrigue are always popular with the general public, often because their frequently ironic outcomes confirm the suspicions of nonlawyers that lawyers are interested in process and power rather than justice. Criminals go free, although the observer “knows” they are guilty. The innocent suffer, although they may someday be vindicated. An ironic treatment provides support for public

72. For lawyers some of the most interesting parts of courtroom dramas emphasize the study of procedure rather than the “mystery” aspect of the story, although the determination of guilt or innocence is also interesting to attorneys. For the impact that procedure can have on the message in a mystery film, see generally Corcos, supra note 66. In pedagogical terms, the mock trial is a very interesting and effective way for law students to acquire some of the skills of litigators. Consideration of the “unsettled” legal questions or questionable verdicts could be the basis in a moot court practice argument for retrying such historical figures as Joan of Arc, Saint Thomas More, Mary Queen of Scots, Galileo Galilei, King Louis XVI, or Roger Casement, or in trying for the first time historical figures such as Richard III for the murder of his nephews or Henry II for complicity in the murder of Archbishop Thomas à Becket. To prosecute or defend such persons successfully, the students involved would have to learn the law and procedure of the time, which might spark interest in and appreciation for alternative legal systems and differing definitions of what constitutes crimes like treason, for example. In preparation for the trial of Richard III, for instance, students might read biographies by Alison Weir, Paul Murray Kendall, Horace Walpole, and Saint Thomas More, treatises on the history of criminal law by T.F.T. Plunknett and S.F. Milsom, and novels such as Josephine Tey’s The Daughter of Time, in which a novelist acts as revisionist historian by bringing Richard’s guilt into serious question.

73. Mindes suggests that “[l]awyers generally do not recognize public expectations for them to be helpful, understanding, likable—to be good guys. Instead lawyers act on their misperception that people expect them to be tricky, overbearing, greedy and cold.” Mindes, supra note 49, at 16. Thus, lawyers inadvertently fulfill their clients’ worst expectations. See also Lewis Cameron, Celluloid Courts: The Verdict, THE HERALD (Glasgow), Jan. 13, 1994, at 14 (examining the attraction of American movies for British audiences).

74. The observer’s knowledge is necessarily subjective in nearly all cases and is based on inferences drawn from the evidence deliberately presented ambiguously by the author. His belief that he has “all the evidence” (at least until the end of the drama) enables him to participate more fully in the action by judging the guilt or innocence of the defendant. If the outcome of the drama demonstrates that the author has withheld crucial evidence (as in Witness for the Prosecution or Jagged Edge), the ultimate fate of the guilty party must be morally satisfying; otherwise the author’s trickery leaves the observer feeling betrayed. While the jurors in the drama must make their decisions based on evidence presented in the courtroom, the observer wishes to make his based on out-of-court evidence as well. He wishes to be right about the guilt of the defendant, in order to validate the legal system. If he is wrong (i.e., if the author presents an unexpected ending based on last minute evidence, as in Witness for the Prosecution), the observer wishes it to be for a valid reason, and he wishes the guilty party to suffer. See discussion infra Part II.B.
opinion about the fairness of the legal system,\(^7\) which some authors express through an absurdist view\(^6\) of the legal world, further emphasizing the idea that the legal system is a gigantic con game over which only the lawyers have any control.\(^7\) Other authors take a more realistic approach, basing their legal fictions on real cases for didactic purposes.\(^7\) The courtroom drama and its interaction with law has been studied only sporadically, however, in contrast to the flood of studies about novels and law.\(^7\)

\(^{75}\) For example, contemplate the discussion and outcry over the proposed execution of Leonel Herrera, the man convicted of killing a police officer in 1981. Herrera v. Collins, 904 F.2d 944 (5th Cir. 1990), denial of stay, 508 U.S. 902 (1993). Herrera’s lawyers, citing the testimony of persons who did not come forward originally, claimed that Herrera’s brother was the guilty party, but the United States Supreme Court refused to reopen the case. Herrera v. Collins, 508 U.S. 902 (1993); see Jennifer Liebrum, Herrera’s Video Alibis Go to Governor, HOU. CHRON., May 11, 1993, at A14; Supreme Court Limits Death Row Appeals (NPR radio broadcast, Jan. 26, 1993). Herrera was subsequently executed. See Christopher Colford, The Court’s Balance Shifts to the Center, CLEV. PLAIN DEALER, July 11, 1993, at 1C.


\(^{77}\) The game metaphor is a common one. He tries to create a “legal justification” for the killing of Barney Quill, Lieutenant Manion plays a game of “hot and cold” with Paul Biegler during an early interview in ANATOMY OF A MURDER, supra note 17. Manion: “I must have been mad.” Biegler (after a long pause): “Anger’s no excuse.” Manion: “No, I must have been crazy. (Pause) Am I warm?” The positioning and behavior of Laura Manion and Paul Biegler in Anatomy of a Murder and Christine Vole and Sir Wilfred Robards in Witness for the Prosecution, supra note 3, are both sexually ambiguous and strategic in terms of their husbands’ fate. In The Andersonville Trial, supra note 52, Captain Wirz accuses his lawyer of participating in a game with his life.

\(^{78}\) Stephen Knight, however, defines the ironic view as an attempt to deal with the contradictions and explain the hidden agenda that, to most laypeople, seems to be operating in the legal system. STEPHEN KNIGHT, FORM AND IDEOLOGY IN CRIME FICTION 15 (1980).

\(^{79}\) Literature focusing primarily on the courtroom drama is somewhat sparse. See, e.g., Dorse, supra note 52; THOMAS J. HARRIS, COURTROOM’S FINEST HOUR IN AMERICAN CINEMA (1987) (a breezy look at several famous courtroom films including Anatomy of a Murder and Inherit the Wind). Other works include studies of the trial in Renaissance and seventeenth-century plays such as DOROTHY PAYNE BOERNER, THE TRIAL CONVENTION IN ENGLISH RENAISSANCE DRAMA (1980). Heidi Falletti attempts to explain the dramatic and script changes necessary when a novel is translated to the screen. Heidi E. Falletti, Contrasting Distortions: The Trial as Novel and Film, 1987 TRANSFORMATIONS FROM LITERATURE TO FILM: PROC. FIFTH ANN. CONF. FILM KENT ST. U. 165. Ann M. Algeo has written about the trial in novels. See Ann M. Algeo, The Courtroom as Forum: Homicide Trial in Dreiser, Wright, Capote and Mailer (unpublished Ph.D dissertation, University of Pennsylvania) (on file with the University of Pennsylvania Library). Dissertations, books, and articles abound on the general interaction between law and literature as seen through novels. See, e.g., RICHARD A. POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION (1988); RICHARD
E. Film Versus Literature

I concentrate primarily on the filmed versions of the dramas because they represent the popular appeal that the original printed play or novel may lack and because the filmmakers intend these films for the nonlawyer who desires entertainment as well as discussion. Such films also generally represent a non-lawyer's view of the legal system, and collapse and oversimplify many of the legal issues that may be present in the original version of the drama to concentrate on the major theme: the conflict between law and justice.

H. WEISBERG, THE FAILURE OF THE WORD: THE PROTAGONIST AS LAWYER IN MODERN FICTION (1984). The mother of all law and literature lists is John H. Wigmore, A List of One Hundred Legal Novels, 17 ILL. L. REV. 26 (1922). Further titles are available in CHRISTINE A. CORCOS, AN INTERNATIONAL GUIDE TO LAW AND LITERATURE STUDIES (2000). Many scholars, not simply law professors and literary critics, are also beginning to examine the influence of rhetoric and literature on legal transactions. See Sandra Harris, Questions as a Mode of Control in Magistrates' Courts, 49 INT'L J. SOC. LANG. 5 (1984) (arguing that the form in which English magistrates, who are often not law-trained, pose questions defines and controls the stories elicited from witnesses). One may infer from Harris's article that the legal formulas popularized through the mass media influence even lay judges to formulate what they consider to be acceptable legal questions, whether or not those questions advance the purpose of the examination. Such an inference suggests that the use of laypersons in order to "humanize" the legal system and dispense justice rather than law may not have quite the result its proponents anticipate. Television has examined the phenomenon at least once. In the Twentieth Century Fox special Lawyers and Their Movies, actor Tom Bosley narrated a look at lawyers, judges, and the legal system, while Melvin Belli provided commentary. David Pike, Trial Tactics, Hollywood Style, NAT'L L.J., July 25, 1983, at 43. Not surprisingly, legal eagles were for once generally pronounced admirable human beings, and even judges were described as "[ninety] percent... warm, human guys who are intelligent, while [ten] percent of them are drunks—abrasive and bad." Id.

80. Many of these films are based on best-selling novels, but the audience for the printed word is always numerically smaller than the audience for a movie or television series. Anatomy of a Murder had only sold 12,898 copies by 1983, but the film was a popular success. See Desson Howe, Appreciation: Perfectly Preminger: The Director & His Fight for Adult Films, WASH. POST, Apr. 24, 1986, at D1.

81. The number of lawyers who are turning their courtroom experiences into money-making propositions is growing. See, e.g., VINCENT BULIOWSI & CURTIS GENTRY, HELTER SKELTER (1974); VINCENT BULIOWSI & BRUCE HENDERSON, AND THE SEA WILL TELL (1991); VINCENT BULIOWSI & KEN HURWITZ, TILL DEATH US DO PART (1978); ALAN M. DESHOWITZ, REVERSAL OF FORTUNE (1985); SCOTT TUROW, THE BURDEN OF PROOF (1990); SCOTT TUROW, PRESUMED INNOCENT (1987). Additionally, although they have not written novels, many lawyers involved in sensational trials do contribute to making of courtroom dramas about them. See Bygrave, supra note 60; Dennis Duggan, For a Great Show, Come to Court, NEWSDAY, Feb. 28, 1993, at 47.

82. The contrast between the novel Anatomy of a Murder and its filmed counterpart is one such example. While the film is extremely faithful to the original, its makers have excised major portions of the novel in order to create a more coherently filmic whole. In particular, large sections devoted to Polly Biegler's internal monologues on the meaning of legal ethics and law, and his evolving relationship with Mary Palant, who represents hope and
II. ANALYTICAL FRAMEWORK, DEFINITIONS, AND LIMITATIONS: AN OVERVIEW OF METHOD, TONE, AND FORM

A. Storytelling—The Method

The author’s clear message played out in these dramas is the necessity for some sort of evaluation of the seemingly irreconcilable conflict between the system of law and the system of beliefs about justice played out in these dramas. Because in each case the author’s purpose includes both entertainment and social commentary, one of the most engaging methods of retaining the viewer’s attention is to use the medium of irony. Straightforward storytelling would neither be as exciting nor as instructive. In addition, the real-life trial and the courtroom drama have obvious similarities. Both are heavily orchestrated; both depend on the observer’s reaction to their style of presentation for their forcefulness; and both may use the device of surprise or trickery to guide the observer into a particular interpretation of the story being told.83 The real-life trial often suggests the operation of irony of fate for the persons involved, sometimes manipulated or heightened by the actions of the attorneys trying to persuade the jury to bring in a particular verdict. The author of a courtroom drama manipulates the fictional trial for an even more potent result: the observer’s eventual conversion to the author’s beliefs about the meaning of justice, the successes or failures of the legal redemption, are simplified and collapsed for dramatic effect. More and more critics, however, are suggesting that film as an art form deserves a place in the core curriculum as an example of the popular culture that influences thinking and behavior in our society. In addition, film offers a different kind of narrative that should be studied for its own sake.

Film is a collaborative narrative art which we can only read in terms of specific works . . . .

. . . it is not enough to incorporate film with other media as a somewhat elderly and soon disposable relative. Film, which includes television and video, is a contemporary narrative art whose place on the curriculum is amongst all the arts, and whose most valuable place would be in a newly constituted field of narrative studies.

ROBERT WATSON, FILM & TELEVISION IN EDUCATION: AN AESTHETIC APPROACH TO THE MOVING IMAGE 148–49 (1990) (suggesting that the filmed version of a novel not only amplifies but transcends the original author’s message through the screenplay, the acting, the editing, and the cinematography).

83. Storytelling reaches its most ironic, or most farcical, in films such as THE DIVORCE OF LADY X (London Film Prods. 1938), which begins with a young barrister who has always represented men in their divorce actions falling in love with a woman he believes to be married and ends up becoming a “woman’s lawyer.” THE GAY DIVORCEE (RKO Radio Pictures 1934), satirizes contemporary mores by showing the accepted methods for an unhappily married woman to obtain a divorce. She hires a co-respondent and arranges for her husband and the hotel detective to find them in flagrante delicto (in reality, at breakfast after a perfectly innocent and uneventful night).
system, and the fundamental relationship between the two. Dialogue exists on two levels: between characters and between the author and the observer.

To present a unified analysis and critique of the law, the author tells his audience a story, much as the lawyer tells a story to the fact-finder in a courtroom. Both may use all the elements of rhetoric available to persuade their audiences of the "truth" of their stories. Each makes use of words, actions, gestures, silence, and innuendo selectively, often in an ironic manner. The structures of the play and the trial are quite similar, and each borrows from and influences the other. The lawyer's purpose is practical: he hopes to win his case through a combination of persuasion and procedural devices and does not limit his approach to irony. He may be friendly, aggressive, straightforward, and evasive by turns, as he attempts to persuade the juror of the "truth" of his story—or at least the probable "falsity" of the opposing side's version.

84. On the lawyer as storyteller, see Samuel Schrager, Trial Lawyers as Storytellers, in 1986 FESTIVAL OF AMERICAN FOLKLORE 12 (Thomas Vennum Jr. ed., 1986) (suggesting that lawyers' success in persuading the jury depends largely on "how artfully the lawyer can use (or defuse) the standard plot conventions familiar to all lawyers"). See also W. LANCE BENNETT & MARTHA S. FELDMAN, RECONSTRUCTING REALITY IN THE COURTROOM: JUSTICE AND JUDGMENT IN AMERICAN CULTURE (1981); POSNER, supra note 79, at 78; John E. Simonett, The Trial as One of the Performing Arts, 52 A.B.A. J. 1145 (1966).

85. The lawyer may often use irony during cross-examination to make his point without appearing to browbeat the witness. On effective direct- and cross-examination, see among others the articles by James W. McElhaney, listed infra note 87. On the use of storytelling by lawyers, see RICHARD K. SHERWIN, WHEN LAW GOES POP (2000).

86. Graphically, the relationship between the trial and the drama might appear like this:

<table>
<thead>
<tr>
<th>TRIAL ELEMENT</th>
<th>DRAMA ELEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Testimony Admitted</td>
<td>Words</td>
</tr>
<tr>
<td>Testimony</td>
<td>Silence</td>
</tr>
<tr>
<td>Physical Evidence</td>
<td>Actions</td>
</tr>
<tr>
<td>Circumstantial Evidence</td>
<td>Result of Actions</td>
</tr>
<tr>
<td>Emphasis On</td>
<td>Story</td>
</tr>
</tbody>
</table>

The author of a courtroom drama also hopes to persuade, for philosophical or pedagogical reasons rather than professional reasons. He examines the contrast between law and justice, and together with the audience (reader or observer) comes to some sort of conclusion about the inevitability and appropriateness of that particular relationship. For the author, the most effective method is often an entertaining story that points to a moral, and the most sophisticated and persuasive presentation is through irony. He has no "procedural devices" to introduce or exclude evidence. The author does not have the luxury of a captive audience; his "jurors" can abandon him at any time. He has only his skill as a storyteller and the consuming interest of most audiences in the criticism of a power elite. While many very good courtroom dramas present a critique of the system through an absurdist viewpoint or through parable, my primary interest in this article is to explore the use of irony rather than exaggeration or fantasy to present a unified critique of the legal system. Because such dramas reflect events and characters that to the observer are commonplace and realistic, they are much more persuasive than absurdist works.

The story in a courtroom drama often centers on one of two subjects: an unjust law (or a just law improperly applied) or a trial (either of an innocent person in real danger of condemnation or of a guilty person likely
to be acquitted). The law may be unjust on its face, or it may lead to unjust results (for example, a law against abortion). The defendant may be morally innocent or actually innocent, or no more guilty than others who have not been accused. Finally, the defendant may be guilty and may escape punishment through the conviction of another person or through manipulation of a "legal technicality," a technique beloved of critics of the legal system. Each storyteller attempts to persuade others (real or fictional) of the "truth"—that is, the likelihood, of his or her story. Stories are generally ironic, either in themselves or in contrast with what other stories reveal. Storytelling manifests itself through the following:

1. **Revelation of physical evidence directed by either the author or the characters.** One example is Teddi's discovery of the typewriter on which the anonymous letters were typed in the film *Jagged Edge.*

2. **Lawyer-client interviews.** One example is the cat-and-mouse interview Polly Biegler conducts with Lieutenant Manion in *Anatomy of a Murder.* After Manion extracts his likely defense from Biegler, Manion is ready to do without him, demonstrating early in the film how easily he manipulates Biegler.

3. **Theories of the case presented by the lawyer.** Amanda Bonner's theory of the case in *Adam's Rib* shows the extent to which a clever attorney can recast a purely emotional act committed by a thoroughly unpolitical person (Doris's attack on her husband) as a political statement about women's rights while seeing no parallels between her client's position and her own.

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Mar. 6, 1975), *Judgment at Nuremberg, supra* note 24, and *The Andersonville Trial, supra* note 52, center less on the "whetherheudunit" than on the degree of punishment likely. In the docudrama of the Menendez brothers' trial, the writers make the question of the degree of guilt (and consequently the procedural aspects of the trial) much more compelling than the suspense generated in films like *Jagged Edge* because the viewer already knows the outcome. *Menendez: A Killing in Beverly Hills* (CBS television broadcast, May 22, 1994).

93. See, e.g., *JAGGED EDGE, supra* note 23. Films like *Jagged Edge* emphasize the procedural aspects of the trial to a different end; they question the ethics and the legal system that allow lawyers to defend someone who looks so guilty and who is ultimately revealed to be guilty. Nonlawyer viewers tend to reject the premise that "legal technicalities" are necessary for the continued fairness of the legal system because they may allow ten guilty men to go free and such an outcome offends both their personal sense of justice and their personal sense of safety.

94. *Id.*

95. *ANATOMY OF A MURDER, supra* note 17.

96. *ADAM'S RIB, supra* note 20.
4. **Testimony.** Most courtroom dramas reveal irony through contradictory testimony by the characters. *Witness for the Prosecution* makes the most obvious and dramatic use of this technique by allowing Christine Vole to speak nothing but the truth on the stand and yet permitting Sir Wilfred to characterize everything she says as a lie.

5. **Overall shape of the drama provided by the author.** Each courtroom drama discussed in this article uses all types of irony discussed below in conveying the author’s message.

6. **Reflection, analysis, and evaluation by the observer.** If the observer receives the author’s message correctly, they retell themselves the drama several times during its course, finally coming to a resolution about the author’s ultimate opinion about law and justice after seeing the conclusion of the drama.

Whether these dramas are based on real events or on literal legal fictions (and even dramas about real events must be fictionalized to enhance their entertainment appeal), their critique of the legal system is most effective when authors use irony to point out the conflict between the result expected by the observer (justice) and the result actually obtained (law). The conflict between the desired or expected legal result and the actual outcome—the relationship between justice and law—forms the ironic basis which interests both the filmmaker and the viewer, and should interest the lawyer as well. Each of these three parties may derive a different but valid


meaning from the drama. The emphasis on and understanding of the irony in the drama gives these interpretations their importance. The drama is a particularly effective means for critique because it relies so heavily on words (the dialogue), action and the perception of action (by the characters and the observer), and on the interpretation of both words and action as evidence of guilt or innocence.

Storytelling has several levels in the courtroom drama. Within the drama itself, the characters tell each other stories about the events depicted. The witnesses tell more or less persuasive stories to the lawyers and judges. The lawyers tell stories to judges and jurors. The suspects tell stories both to their lawyers (before the trial commences) and to the judge or jurors. The entirety of the drama is also a story told by the authors or filmmakers to the observers, a story which may or may not be consistent with the stories the characters tell. Observers then tell stories to themselves and each other about the meaning of the dramas they have witnessed. They may or may not be persuaded by the authors that the dramas mean what the authors say; they may agree with a character in the drama or may derive an entirely different meaning, depending upon the observers’ own sensibilities and assumptions.

B. Irony—The Tone or the Point of View

The definition and identification of irony in the courtroom drama are crucial steps in determining the author’s meaning and receiving the message. Irony generally manifests itself in two forms: the irony of fate or irony of situation (dramatic irony) and the irony of impersonation (irony of character). Observers detect it through various tests, which Wayne Booth conveniently identifies in his work *A Rhetoric of Irony*. Authors apply it and expect the audience to detect it in various ways, all arising directly out of the conflict they identify between law and justice: (1) through the contrast between the ritual of the trial and the likelihood that such rituals will uncover the truth; (2) through the difference between stories told at trial and stories told outside the courtroom; and (3) through the divergence between the outcome of the trial and the subsequent fates of the characters. In the next part of this article, I discuss various types of irony and tests for its existence. In the last part, I show how authors use it in various courtroom dramas to present their messages about the conflict between law and justice and convince the observers of their legitimacy.

99. Thus, irony expresses itself verbally through statements asserted as true by the characters and perceived as untrue by the observer, or vice versa or dramatically through actions taken or not taken by the characters which the observer later perceives as fateful.
Since the time of the Greeks, philosophers and literary critics have long debated the nature of irony and the difficulty of detecting it in the novel or poem. They have paid somewhat less attention to irony in the drama. For Quintilian, "irony is made evident to the understanding either by the delivery . . . , the character of the speaker or the nature of the subject. For if any of these three is out of keeping with the words, it at once becomes clear that the intention of the speaker is other than what he actually says." Commentators have pointed out that Quintilian's analysis, while a good starting point, is of limited value since it focuses on speech rather than print and one of the three elements mentioned may be out of keeping with the words out of "ineptness or inadvertence: to be sure it is not [that] we need to know more of the speaker or his views." A modern theorist, D.C. Muecke, points out that one may think of irony primarily in terms of form or quality, of the ironist or the victim or the ironic observer, of the technique or the function or the effect. As a result a heterogeneous collection of names for 'kinds' of irony has come into existence; but far from adding up to a classification of irony it has merely increased the fogginess surrounding the word.

102. Robert Boies Sharpe identifies the dramatist's ironies as: "irony of impersonation," the irony created by the actor's "both being and not-being both himself and the character he is playing" and "irony of character," a phrase which Sharpe attributes to Alan Thompson and which denotes the "actor, already playing a part, takes on a second a different character—either by taking a new name, with or without material disguise . . . , or by hypocritically assuming, in facial expression, voice, and action, a new personality." ROBERT B. SHARPE, IRONY IN THE DRAMA 30, 36 (1959). Sharpe notes that the first type of irony of character was more common in Renaissance drama, the second more common in modern drama. Id. Other critics interested in the question of irony in the drama include the highly influential G.G. SEDGEWICK, OF IRONY, ESPECIALLY IN DRAMA (2d ed. 1948); ALAN R. THOMPSON, THE DRY MOCK, A STUDY OF IRONY IN DRAMA (1948); C. Thirlwall, On the Irony of Sophocles, 2 THE PHILOGICAL MUSEUM 1833 (1983).

103. BOOTH, supra note 101, at 49 (quoting QUINTILIAN INSTITUTIO ORATORIA).

104. Id. Of course, speech was more a heavily used form of communication than writing during Quintilian's time.


106. D.C. MUECKE, IRONY 11–12 (1970). Muecke further identifies contrasting forms of irony: the "comic" and the "tragic." The latter of which he identifies with "Sophoclean irony" and "dramatic irony." He points out that "self-irony" can mean either the irony of the self-aware individual or the irony of the non-self-aware (in itself an ironic result). He notes that A.R. Thompson's The Dry Mock, supra note 102, identifies "irony of manner" and "irony of character," further divisible into three types: "the irony of unconscious self-exposure . . . , the irony of a Socrates deliberately presenting himself as a simpleton, and the irony in Saki's presentation of a child as both a murderer and . . . an innocent ten-year-old." MUECKE, supra, at 12. John Evan Seery devotes an entire chapter to a study of various definitions of irony in his book. See JOHN EVAN SEERY, POLITICAL RETURNS: IRONY IN POLITICS AND THEORY FROM PLATO TO THE ANTINUCLEAR MOVEMENT 161–201 (1990).
Apart from the debate over the categories of irony, critics also disagree over the qualities necessary to qualify the point of view as ironic. Muecke identifies several of those elements commonly agreed upon as necessary to qualify a work as ironic: the simulated lack of awareness on the part of the author or the character of the import of words or deeds, the contrast between "reality and appearance," "the comic element," and "detachment," a term which Muecke uses to express both the attitude and the narrative distance of the author.

1. The Detection of Irony

Muecke suggests that "a sense of irony depends for its material upon a lack of a sense of irony in others." The author's choice of material dictates the use of irony as a vehicle to express the critique, since the contrast between law and justice is the purpose of the critique, and the contrast between the characters' ignorance and the author's omniscience provides the structure in which the critique is expressed. Further, the use of the play or drama format, in which both the characters and the observer experience the action in real time, contrasts favorably with the novel format in which the characters have already acted and the observer is merely reading an account

107. Muecke traces the development of what modern readers might call "irony" from the time of the Greeks to the present, pointing out that in the traditional Greek dramas, irony of fate was sufficient to classify the drama as ironic. The character did not have to be aware of the irony. MUECKE, supra note 106, at 14. In eighteenth century English prose of Jane Austen for example, the irony of fate gave way to the dramatic irony provided by the author and conveyed to the reader. Characters involved in the action may or may not be self-aware enough to detect either verbal or situational irony. Id. at 14–15. Flaubert and other "realistic" writers have through their narrators, "abandoned any obligation to guide the judgement of [their] reader[s]." Id. at 15. Muecke's book is a good overview of the nature of irony. See id. at 13–48. He also points out that the appreciation of life's fundamental contradictions make irony possible. In a world in which such contradictions are accepted, as in the period before 1600 in which the Christian religion dominated both life and thought, irony is rare. The rise of irony corresponds with curiosity and criticism of the world. For Muecke, "general dramatic irony" is the result of progress. Id. at 70, 74. Similarly, in a world in which the legal system is primarily derived from religious precepts and administered by the Church, the legal critique is less likely to develop. Once the state mounts a rival legal system, an appreciation of the ironic is possible. In addition, as a legal system becomes more sophisticated the dichotomy between law and justice becomes more pronounced and the critique more distinct.

108. Id. at 25–26.
109. Id. at 30.
110. Id. at 33.
111. Id. at 35.
112. For more about narrative distance and its function in storytelling and the manipulation of the reader, see generally WAYNE C. BOOTH, THE RHETORIC OF FICTION (1961).
113. MUECKE, supra note 106, at 2.
of their actions. 114 The observer, however, must be aware of the irony; otherwise, the author cannot communicate the message. 115

2. Irony at Work: Determining Meaning and Receiving the Author's Message

To understand the author's critique in each of these dramas the observer must be able to detect and understand the irony present in the commentary. He must then be able to relate the ironic commentary to the actions and words of the drama to decipher the author's message successfully. The irony may emerge on one or more levels, beginning with the title of the drama and continuing through the observer's reflections on its message long after it has concluded.

To recognize irony in the courtroom drama, the observer must begin with the assumption that the legal system dispenses justice. 116 If he comes to

114. Id. at 44.
115. The observer's awareness need not be comprehensive or even particularly profound, so long as he has some frame of reference against which to judge the action. The more knowledge he possesses, the more intricate and layered is the dialogue with the author. For a non-courtroom drama example, see How To MARRY A MILLIONAIRE (20th Century Fox 1953), in which a cranky Betty Grable snowbound in a remote mountain cabin pompously identifies a radio orchestra as "Harry James" and his group. Her companion demands to know how she can be sure, and she replies, "How do I know it's Harry James? Because it is Harry James!" Immediately thereafter the announcer identifies the group as a (presumably) local band playing from somewhere in the vicinity. By itself, the interchange is funny. Contemporary filmgoers would also have to know that at the time Betty Grable and Harry James were married. See Bombshells.com, Betty Grable Biography, at http://www.bombshells.com/grable/bio/index.shtml (last visited Apr. 20, 2003). In the same vein, early in WITNESS FOR THE PROSECUTION, supra note 3, Christine Vole comments that she will present the testimony of a devoted wife. Another character responds that "[t]he testimony of a devoted wife does not carry much weight." Observers initially understand this comment as ironic because it expresses the natural doubt that arises when a spouse provides an alibi. Further, coupled with their knowledge that Christine cannot testify against her husband, they realize that under law, her testimony is completely devalued. As long as she is his wife, her testimony, no matter what its content, will be unconvincing. The observers do not yet know her plan to save Leonard; that is further irony because the observers like Robards, believe that they understand the situation far better than she. During the trial, when she plays her trump card, sacrificing herself by seeming to perjure herself, they detect more irony, particularly since the crucial part of her testimony as to Leonard's whereabouts, while presented as false, is entirely true. Finally, we comprehend the real irony of two early interviews with Christine and Leonard. Christine assures Robards that Leonard "worships the ground I walk on;" from her sardonic tone the observers infer that his foolish adoration is not reciprocated. Leonard eagerly tells Robards that Christine loves him desperately; from his manner, and their prior knowledge of Christine's statement to Robards, the observers deduce that he is as foolish as she implies. Only at the end of the drama do the observers realize that (ironically) she is completely mistaken in her assessment of Leonard's feelings, while he understands hers completely.

the text or the film without that assumption, part of the author’s message becomes temporarily irrelevant.\textsuperscript{117} Returning to Agatha Christie for example, \textit{Witness for the Prosecution}\textsuperscript{118} becomes ironic only at the end of the drama, when the observer realizes that Christine Vole, while ostensibly a witness against the man society has recognized as her husband, has actually given testimony intended to exonerate him. Similarly, the title \textit{Presumed Innocent}\textsuperscript{119} is not ironic to the observer who recognizes the meaning of the phrase without questioning its validity in ordinary courtroom practice. It becomes ironic only after the observer finishes reading the book or watching the film, since Turow’s message that the presumption of guilt that surrounds Rusty Sabich once he is accused is the reality, and not the presumption of innocence which people assume is at the heart of the American criminal justice system. Once the observer understands Turow’s message, the title becomes a kind of shorthand for the bewildering maze of legal procedures, media innuendo, and personal torment that an accusation of criminal behavior represents. The observer must understand (though he need not share) these assumptions, or the title loses its power as commentary and becomes simply a phrase with a precise legal meaning that escapes the nonlawyer.

Similarly, the title of the satire \textit{Adam’s Rib}\textsuperscript{120} carries with it certain associations for the observer who knows the biblical story of Eve’s creation. After he views the film, he also connects it with the authors’ beliefs about the possibility of legal and social equality between the sexes.\textsuperscript{121}

\begin{itemize}
  \item \textsuperscript{117} Much of the irony derives from the observer’s perception of the author’s intentionally internal inconsistencies, but some derives also from the observer’s comparison of the fictional dramatic world and the extrinsic world. “[W]e often find that everything in a passage or situation suddenly makes sense if and only if we see it as irony, and one could argue that we are either made or ‘programmed’ to enjoy and use this particular kind of inversion whenever possible or appropriate.” BOOTH, supra note 101, at 101.
  \item \textsuperscript{118} \textit{Witness for the Prosecution}, supra note 3.
  \item \textsuperscript{119} \textit{Presumed Innocent}, supra note 17 (movie); \textit{Presumed Innocent}, supra note 81 (novel).
  \item \textsuperscript{120} \textit{Adam’s Rib}, supra note 20. Based on the screenplay by Garson Kanin and Ruth Gordon, this film shows a woman as a successful and assertive attorney, a rarity even today. While the examination of the image of women lawyers on television and in films is beyond the scope of this article, see Stephanie B. Goldberg, \textit{Bar Girls? Images of Women Lawyers on TV Slowly Improving, Panel Says}, 76 A.B.A. J., Apr. 1990, at 41. Goldberg notes:
    \begin{quote}
    While Claire Huxtable . . . of “The Cosby Show” is a latter-day June Cleaver, and flaky Christine Sullivan . . . of “Night Court” could double for Lucy Ricardo, the formidable trio of the hit “L.A. Law”—Ann Kelsey . . . Grace Van Owen . . . and Abby Greene—manage to be strong, sexy and supremely competent as lawyers, certainly a new twist for prime-time television.
    \end{quote}
    \textit{Id.}
  \item \textsuperscript{121} With regard to female attorneys on television and film, see Richard Babicoff, \textit{How Far Have You Come, Baby? Women Lawyers on TV, in Movies Show That It Hasn’t Been Far Enough}, L.A. DAILY J., Dec. 21, 1987, at 4; Terry Kay Diggs, \textit{No Way To Treat a Law-}
For a final example, consider the title *Anatomy of a Murder*, which is ironic on several levels. Despite the elaborate processes of law described to investigate whether the act is an excusable homicide and despite the acquittal of the defendant, the author intends the viewer to understand the act as murder. First the term "murder" implies intent and lack of excuse to the layperson; the question of premeditation makes it particularly difficult to pardon. Second, the "anatomy" of an act, event, or idea is relevant only in the context of an attempt to understand a particular rationale or method with a view toward finding a cause, excuse, cure, or prevention. In the case at bar, none of these is possible. Since the act has occurred, it is no longer preventable or curable, and because the author believes it to be murder, by definition it is not excusable. Further, the entire defense is predicated on the theory that the cause is "irresistible impulse"—again, an unpreventable event, and an extremely narrow legal exception as well. Therefore, while the rationale may hold academic interest, it is of no practical importance to most people; the "legal excuse" provided to Lieutenant Manion looks suspiciously like one of those "legal technicalities" so offensive to nonlawyers. Finally, one can perform an anatomy in medical terms only on dead matter. Yet, *Anatomy of a Murder* concerns itself overwhelmingly with the consequences of the murder and its liberating or imprisoning effect on the survivors. The act lives again and again in the testimony of the survivors (and in the viewing of the film).

The title of the film or written work, what Wayne Booth would identify as the author's "straightforward warning," is only one clue to the identification of irony in a given work. Booth suggests several other guides to the existence and amount of irony present.

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122. ANATOMY OF A MURDER, supra note 17.

123. As in THE ACCUSED (Paramount Pictures 1988), which recalls the "Big Dan" rape case Commonwealth v. Vieira, 519 N.E.2d 1320 (Mass. 1988), the victim in Anatomy of a Murder is put on trial and found guilty, although the legal reason for acquittal is the successful use of the "irresistible impulse" defense.

124. BOOTH, supra note 101, at 53.

125. Identification of the existence of irony is only the first step in understanding. As Booth points out, the reader or observer must also determine how much irony is involved. Does the author put limits on the permissible amount of irony to be derived from the work? If so, how does the reader or observer distinguish between what is to be taken literally and what is to be taken ironically? While discussion of this point is beyond the scope of this
3. Five Clues to the Existence of Irony

In addition to the "straightforward warning" that irony is present, Booth suggests four other clues to identification of irony: "known error proclaimed," "conflicts of facts within the work," "clashes of style," and "conflicts of belief." As I demonstrate in this article, the most common clues to the observer in the courtroom drama are the "conflicts of facts" and "conflicts of belief" clues. While they need not both be present to create irony in the courtroom drama, the more complex dramas include both contradictory facts which force the characters and the observer to question the truth of the stories being told and contradictory philosophies that force the characters and the observer to question the truth of assumptions about the relationship between law and justice.

a. Booth's conflicts of facts test for irony

Conflicts of fact may manifest themselves in different ways, depending on the author's intended message, but they must emerge through conflicting verbal and physical evidence presented in the drama. In some dramas a character may believe in the innocence or guilt of another character, only to discover that the opposite is true through evidence he discovers or that is revealed through the trial. Examples include *Jagged Edge* and *Witness for the Prosecution*. In these cases the character changes his mind, though not necessarily his opinion of the legal system (the sadder but wiser phenomenon).
All the examples in the previous section [of the book] led us to rely on knowledge or conventional judgments brought to the work, knowledge on which we base our guesses about whether the author shares his speaker’s ignorance. But many works of stable irony provide within themselves the knowledge necessary for establishing that a speaker’s ignorance is not shared by the author. Whenever a story, play, poem, or essay reveals what we accept as a fact and then contradicts it, we have only two possibilities. Either the author has been careless or he has presented us with an inescapable ironic invitation.¹³³

In the case of the courtroom drama, the author creates an entirely independent universe in terms of the facts which apply to the particular crime, but the legal world portrayed derives for the most part from a recognizable legal system.¹³⁴ The observer can measure “truth” against an independent standard, and his recognition of irony is that much more acute. Much of the irony in Witness for the Prosecution derives from the observers’ uncertainty concerning the title character’s (Christine) motivation, not from doubt about her truthfulness. The observer assumes that she intends to facilitate the defendant’s conviction, not his acquittal. When the defendant is acquitted, the observer assumes that she is the victim of the irony and is consequently amazed when she reveals that her intent from the outset was to obtain his freedom.

b. Detecting conflicts of fact

Generally, detecting conflicts of fact might not seem difficult in the courtroom drama. Because the author introduces most relevant information through the words or actions of the characters, any discrepancies in the information that the various stories’ characters share with each other or the observer through word or action may signal conflicts of fact. Likewise, any discrepancies between what the observer knows about the world and what the author shows or tells the observer may signal such conflicts. In Witness for the Prosecution,¹³⁵ Leonard Vole’s representation of Christine as his wife and Christine’s assertion that she had a husband in Germany still living when Leonard married her signals a conflict of fact. For this reason, a character’s storytelling, particularly storytelling that is corroborated either by outside evidence or by another witness, is crucial to the ultimate determination of “truth.” Although a particular story or particular evidence may not be

¹³⁴. Franz Kafka’s works used to be an obvious exception, but recent revelations about legal systems all over the world indicate that his nightmarish visions might be realistic depictions after all. See generally Kafka, supra note 76.
¹³⁵. Witness for the Prosecution, supra note 3.
admissible in the cinematic court, the observer accepts all stories and all evidence as admissible in their own court of imagination.

What makes conflict of fact more difficult to detect is its mixture with conflicts of belief. For example, in *Witness for the Prosecution*, Robards expects that a wife who loves her husband should show her concern and try to help him by providing a convincing alibi in the event he is tried for murder. At the same time, he believes that a wife who demonstrates what he considers to be an inadequate amount of concern cannot love her husband and therefore will not provide him with any assistance. Because Christine does help her husband, Robards, thus, seems to have a set of facts that do not accord with his assumptions about human nature.

c. Booth's conflicts of belief test for irony

Conflicts of belief are more difficult to recognize because they are muffled by the author's subtlety and preference for manipulation of the observer. In *Adam's Rib*, for example, the main characters believe themselves to be in accord in terms of their marriage and their understanding of law and justice. As the drama develops, they discover that in fact they hold opposing views, which leads to a separation. The conclusion of the drama is somewhat ambiguous; although they reconcile, the observer is not certain whether they have achieved a true "meeting of the minds" (the contract that Adam speaks of as the basis for marriage), whether one of them has decided to sacrifice his or her opinion for the sake of the marriage, or whether they have simply glossed over the problem for the time being. Clearly, however, the characters have discovered some truths about themselves and their beliefs about the role of law in society that they did not recognize before, and this recognition is possible only because the authors do not agree fully with either of them.

Irony also surfaces through the use of characters whose stated philosophies are at issue with what the reader would consider normal for their backgrounds, upbringing, or social class. Several of the accusing officers and witnesses in *The Andersonville Trial* are Southerners who fought for the North, and some of the accusing witnesses are Southerners who blame Captain Wirz for the inhumane conditions at Andersonville. The head of the military tribunal sounds like a Southerner. The defense lawyer, whose accent is indeterminate, is from Baltimore "a city of divided loyalties," whose politics were dictated at least partially by geographic location. Wirz, a German emigre who fought for the Southern cause, indicates that he enlisted as

136. *Id.*
137. *ADAM'S RIB*, supra note 20.
a private but rose through the ranks quickly because he had had military training "abroad;" thus, not only is he an alien by birth but by training.

In both The Andersonville Trial\textsuperscript{139} and Judgment at Nuremberg,\textsuperscript{140} the charges against the defendants consist ironically of a negative: the failure to disobey the orders of a government that lost the war.\textsuperscript{141} If either government had won, of course, these defendants would have been heroes. Thus, conflicts of belief about appropriate behavior in wartime surface not only among characters in the drama\textsuperscript{142} but also between the author and the observers, and among observers themselves.

The most sophisticated test that Booth advances for the identification of irony rests on the observer's ability to recognize the difference between what the author's characters say and what he himself believes.\textsuperscript{143} The au-

\begin{itemize}
\item[139.] Id.
\item[140.] JUDGEMENT AT NUREMBERG, supra note 24.
\item[141.] A FEW GOOD MEN (Castle Rock Entm't 1992), presents a similar theme: the ethics of obeying "unwritten" rules that have traditionally promoted military discipline.
\item[142.] Colonel Chipman (the prosecutor in The Andersonville Trial) and Colonel Lawson (the prosecutor in Judgment at Nuremberg) become almost mesmerized by the horror of which the defendants are accused.
\item[143.] Procedurally, these tests are quite similar, differing only in their sophistication. The difference between this kind of reconstruction [of the author's meaning from the evidence given in the work] and what we have seen earlier is not then in the process but in the degree of sureness one feels about the conflicting grounds on which the conflicting conclusions are built. Though most of what we called facts or knowledge could be reduced to "belief" by an aggressive Socratic questioner, we were in general dealing there with what most men would agree to without argument. Now we have come to what men dispute about, and we are thus more likely to find ironies that are overlooked, or interpreted differently when found. If someone disputes our reading, we are faced with a question that is clearly both critical and historical: what is a convincing reading of this line in this context ....

BOOTH, supra note 101, at 74–75 (emphasis added). Booth further suggests two tests for this kind of sophisticated analysis:

[1] What has been my past experience with this moral or intellectual position? Do many people I respect seriously hold what is being argued here? If so, the likelihood of irony is diminished, though by no means removed. But if almost everyone I know would reject either the main point or the arguments advanced for it, then the likelihood of irony is greatly increased.

[2] What do I know about the beliefs of the man signing his name to this piece?

Id. at 79–80. Booth admits that neither of these tests is foolproof and points out that "[e]very reader will have greatest difficulty detecting irony that mocks his own beliefs or characteristics. If an author invents a speaker whose stupidities strike me as gems of wisdom, how am I to know that he is not a prophet?" Id. at 81. This is perhaps why lawyers like Robert Traver, the author of Anatomy of a Murder, have so much trouble enjoying nonlawyers' fictional critiques; tangled up in the minutiae of the mistakes they spot, they are unable to appreciate the validity of the critique.
thors of the courtroom dramas discussed in this article rely heavily on the observer’s skill in this area; without it, their message is quite lost. “[W]e are alerted whenever we notice an unmistakable conflict between the beliefs expressed and the beliefs we hold and suspect the author of holding.”144 If the observer cannot determine the author’s beliefs (if they seem unstable or unstated), the observer cannot appreciate the message. The military prosecutor in The Andersonville Trial145 reaffirms his faith in the system of justice which has resulted in the conviction of a soldier not perceptibly more guilty than many other soldiers not tried; the observer believes (and suspects that the author believes) that a fair trial for the man was never a possibility, no matter what the prosecutor chooses to believe.146

In summary, the observer must keep several questions in mind when evaluating irony in the courtroom drama. Are the words intended literally by the author? By the character speaking them? How does one know? Are the words at variance with other words or actions, which the observers see demonstrated or know from extraneous evidence?147 Is the author figuratively winking at the observer and saying in effect, “Look behind the words (or the action) and you will understand my meaning”?148 Is he or she engaging the observer in argument, inviting the observer to join in his observations about the characters he has created and acknowledge their truth, thus

144. Id. at 73.
145. The Andersonville Trial, supra note 52.
146. This military prosecutor, like Polly Biegler, Sir Wilfred Robards, and Tony—clings to his belief in “the system” even more desperately after he begins to question the procedural aspects of the trial, unlike Rusty Sabich, who abandons his belief in the system after his own trial.
147. This is possible in a written work but unlikely in a film, since films for the most part exist individually and independently of each other and in many cases independently of the observer’s “real” world. Compare with Weisberg’s discussion of “anterior meaning” in the procedural novel. See Weisberg, supra note 79.
148. While the author manipulates both the characters and the observer, he must at some point accept the observer as an equal if he is to be sufficiently persuasive. The author who mocks his reader to the point that the reader cannot even identify risks losing both the reader’s attention and respect. In some cases, such as Witness for the Prosecution, the author continues to manipulate the observer as well as the characters to the end, but at the conclusion allows the observer to come to a final conclusion about her meaning. If the ending were entirely ambiguous, that is, if the observer is not sure that Christine murders Leonard out of passion but suspected some other motive, the observer would come to a different conclusion about the legal system. The observer would also consider the author inept, since after she takes observers on a wild ride through several different motives, she returns to the one most likely and gives observers no indication that another motive is possible. The ending that Christie offers allows the observer to recapture some of his assumptions concerning the amount of justice possible through the legal system. Because the ending is unambiguous, Christie clearly wants the observer to recapture those assumptions, albeit with a deeper understanding of their limitations.
creating a unified front between himself and the observer against those characters?

d. Detecting conflicts of belief

A good example of the use of a character’s words as a medium for communicating their antithesis through irony comes in the film *Guilty Conscience.* The main character, Arthur Jamison, imagines himself at a law school graduation dinner giving a marvelously inspiring speech concerning the meaning of the law: “The law is a net to catch a fly in, and let the hawk go free,” emphasizing that the lawyer’s role is to widen the holes in the net to allow the hawk (his client) to escape the consequences of his actions. As the observer soon discovers, he casts his wife in the role of the fly and himself as the lawyer or hawk. Subsequently, Jamison, the master of ceremonies, states that although he “speaks with his tongue firmly in his cheek, no one serves the legal profession better or more responsible than he.” Jamison then pictures himself slipping out of the room unobtrusively and going home to murder his wife. This particular scene also demonstrates quite succinctly the irony of impersonation suffusing *Guilty Conscience.*


150. He refers to this as “a subversive proverb” and “not in Blackstone.” The use of the word “subversive” conveys to his audience that while on its face the statement seems to contradict what lawyers are supposed to believe about the legal system, it conveys what they actually do believe. It is “not in Blackstone;” it is an unspoken, unacknowledged truth, even by the man who represents for common law attorneys the plain meaning of the law.

151. As his wife Louise points out, Arthur maneuvered her into signing a pre-nuptial agreement which would leave her “with nothing, not even the car.” How he could have managed that with the educated daughter of a judge is never made clear, although Louise admits that she was “pliable” and presumably very much in love when they were first married. One may wonder whether she could have successfully challenged the agreement in divorce court, but she apparently believes (at least he believes that she believes) that she could not. At the end of the film, we discover that Arthur’s evaluation of her character is frighteningly accurate.

152. Like many stories told in flashbacks or in the imagination of one of the characters, this film shows Arthur remembering or imaging scenes that simply could not have occurred in the way that the film presents them. He could not, for example, see himself entering and leaving a room from a third party’s angle of view (the camera’s, hence the viewer’s). When he carries on imaginary conversations with the prosecutor he “has to beat” in order to get away with his perfect murder, observers see both characters, not just Arthur’s imaginary adversary. Observers suspend disbelief in Arthur’s story both as he presents it and ultimately once the drama ends, since they see that Arthur has been right all along. Arthur is the observer in much of the film; he must be, because he plays back his observations for audience. Yet, he is also the observed, not only by himself in his imaginings, but by the viewer through the camera lens and by other characters in the drama.
As Booth points out, the recognition of irony in works which mock one’s own beliefs is the most difficult to detect. Yet, in the case of the courtroom drama, it is also the most useful because it forces the observer to re-examine his assumptions, beliefs, and expectations about the legal system:

[D]ifficult or unsolved cases should not lead any reader to throw up his hands in despair or indifference. Rather [the observer] should marvel, in a time when everyone talks so much about the breakdown of values and the widening of communication gaps, at the astonishing agreements that stable ironies can produce among us.

Ultimately, irony derives from the author’s intent. If what he says through the characters or action is clearly communicated as being at variance with what the reader perceives that he means, he may only be a bad communicator. If the observer determines that this variance is intentional, the author is ironic. To convey a meaning that the observer can find philosophically useful, however, the author must not intend irony in the conclusion of the drama. Whatever the author’s final conclusion, he must also intend the observer to take it seriously, that is, without irony. The meaning must be clear—law and justice either are, or are not, reconcilable.

If what the audience already knows is at variance with what is said, though what is said is internally consistent, they know that irony may be present. “When we come to ‘subject,’ the third in Quintilian’s triad [of ways that irony is made evident], we discover that most of our clues in this case indeed come from clashes between what is said and what we think we know about the subject . . . .” Further, observers can examine the author’s skill and consider that

“[i]f the author did not intend irony, it would be odd, or outlandish, or inept, or stupid of him to do things in this way.” Every clue thus depends for its validity on norms (generally unspoken) which the reader embraces and which he infers, rightly or wrongly, that his author intends. Rhetorically speaking, it makes no difference whether we think of these norms as being intrinsic or extrinsic . . . . The only relevant distinction between what is inside and what is outside will be technical: Can I . . . make all necessary inferences about the implied author’s norms on the basis of the text itself . . . or must I . . . search for “external” clues about the author’s probable intentions?

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153. See Booth, supra note 101, at 61.
154. Id. at 82.
155. Id. at 52. See supra Part II.B for a discussion of Quintilian’s triad.
156. Booth, supra note 101, at 52–53.
The films discussed in this article exhibit irony of subject because they focus on the observer's belief that he understands that law gives effect to justice in his own legal system. The author's purpose is to challenge belief and persuade the observer through an ironically told story that another relationship actually exists. Ultimately, the many stories told by the characters, which seem to come together under the author's or filmmaker's direction, are simply reflections of the one real truth which exists outside the film, even outside the audience's ability to imagine it. Like Plato, the authors postulate ultimate truths about the events depicted that the observers can only approximate and that the characters in the dramas can never be fully aware.

e. The combination of the conflicts of facts and conflicts of belief test

In dramas such as Presumed Innocent, there are conflicts of fact and conflicts of belief married to create a somberly ironic view of the legal system. Not only is the guilt or innocence of the protagonist unclear, but he comes to realize that the faith in the system, which he once had and believed his colleagues shared, represents an unworkable dream. He comes to share the author's belief that justice is not the necessary, nor the probable outcome of a legal proceeding, even though both he and the author are lawyers.

4. A Working Definition of Irony

For the purposes of this article, I use both the list of elements which Muecke identifies as commonly accepted characteristics of irony and the definition of stable irony developed by Wayne Booth in his very perceptive book A Rhetoric of Irony. In this work Booth identifies the kind of irony most often associated with literature, that is, the irony operative in the relationship between author and reader, as “stable irony.” Booth lists four characteristics that distinguish stable irony from other kinds of irony. Stable ironies are:

157. If the observer already believes that a fundamental conflict exists between law and justice, or that law in fact perverts rather than gives effect to justice, he may still appreciate the irony but his appreciation will be more cynical and less earthshattering.
159. Presumed Innocent, supra note 17.
161. Booth, supra note 101, at 3.
162. In his view the other types of ironies are “ironies of event” (unintended events in which an author is not involved) and “ironies of fate.” Booth notes that previous writers have not studied what he calls “stable irony.” Id. at 3 n.4.
indented, deliberately created by human beings to be heard or read and understood with some precision by other human beings; they are not mere openings, provided unconsciously, or accidental statements allowing the confirmed pursuer of ironies to read them as reflections against the author . . . .

[Further,] [t]hey are all covert, intended to be reconstructed with meanings different from those on the surface, not merely overt statements . . . .

They are all nevertheless stable or fixed, in the sense that once a reconstruction of meaning has been made, the reader is not then invited to undermine it with further demolitions and reconstructions. That he may choose to do so on his own, and thus can render any stable irony unstable, is irrelevant . . . .

They are all finite in application . . . . The reconstructed meanings are in some sense local, limited.163

An acceptance of the existence of, indeed the necessity for, stable irony in the courtroom drama stems from the playwright’s didactic purpose. Booth’s reconstructions of underlying meaning164 take place in four steps:

Step one. The reader is required to reject the literal meaning. It is not enough that he may reject that meaning because he disagrees, nor is it enough that he should add meanings. If he is reading properly, he is unable to escape recognizing either some incongruity among the words or between the words and something else that he knows . . . .

Step two. Alternative interpretations or explanations are tried out,—or rather, in the usual case of quick recognition, come flooding in. The alternatives will all in some degree be incongruous with what the literal statement seems to say—perhaps even contrary, as one traditional definition put it, but certainly in some sense a retraction, diminution, or undercutting . . . .

Step three. A decision must therefore be made about the author’s knowledge or beliefs . . . . It is this decision about the author’s own beliefs that entwines the interpretation of stable ironies so inescapably in intentions . . . .

163. Id. at 5–6.

164. Booth points out that English does not have a “distinctive verb for the unique and complex process of reading stable irony. One would think that . . . we would have developed something more precise, for understanding stable irony, than ‘interpret’ or ‘decipher’ or ‘translate’ or ‘understand’ or ‘dig’ or any of the many other expressions for taking another person’s meaning.” Id. at 33.
Step four. Having made a decision about the knowledge or beliefs of the speaker, we can finally choose a new meaning or cluster of meanings with which we can rest secure.\(^{165}\)

If these four reconstructive steps are applied to the conversation between Robards and Christine in *Witness for the Prosecution*,\(^{166}\) one will find that in step one, for example, Christine's calm, cynical manner is at variance with the agitated and emotional state the audience would normally expect from a woman whose husband has been arrested for a brutal murder. In step two, the audience may postulate that Christine does not understand the danger her husband faces because she is a foreigner and she believes too firmly in the legal system to doubt that he could be convicted. She seems to understand English well enough, however, and her statement that the “truth will not save Leonard” seems inconsistent with both of these theories. In step three, the audience therefore postulates that the author believes that Christine does not love Leonard, or more likely, that the author believes that Christine does not have trust in the legal system.\(^{167}\) Whichever it is the audience must have some kind of certainty (stable irony) to understand the author’s message (step four).

Generally, then, the observer must ask whether words and action are intended literally by the author or actor. Are they at variance with other words or actions, or with what the observer already knows?

For the most part, the plays and films which I discuss in this article demonstrate what Booth considers “stable” ironies:\(^{168}\) that is, the author or filmmaker has certain meanings that she or he wishes to convey to the reader or observer and which, once deciphered (or in Booth’s language, reconstructed) convey a unified view of the world. For this reason, they stimulate thought about the role and development of law in society, because after the reader or observer has deciphered and reconstructed them they present a unified critique of the legal system.

5. *The Irony in Detection: Methods of Communicating Conflicts of Fact and Conflicts of Belief*

Because a major part of the communication in courtroom dramas is verbal, Booth’s other clues to the detection of irony besides conflicts of

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165. *Id.* at 10–12.
167. Her curious lack of emotion could be due to her personality. We do not yet have enough information to decide that she does not love Leonard, although we list it as a possibility.
168. While it is possible for a courtroom drama to leave the observer in some confusion about what the author intends him to think (Agatha Christie, for example), this would blunt the message. Therefore most authors (including Christie) avoid it.
facts and beliefs become useful as well. The authors of courtroom dramas convey irony in several ways, each of which I will discuss in turn. These clues are, as Booth defines them, and as I have discussed earlier: (1) the author’s straightforward warning; (2) a character’s proclamation of known error; (3) the conflicts of facts; (4) clashes of style; and (5) the conflicts of beliefs. Authors use each to a greater or lesser degree in their storytelling. In addition, their characters use the methods to some degree in interpreting evidence and in reconstructing stories based on that evidence. In this way, the characters attempt to convince one another as the authors attempt to convince their observers of a particular truth about law and justice to be derived from the drama.

Authors make use of different types of irony such as dramatic irony, also called the irony of fate or the irony of situation, and irony of impersonation, or irony of character, expressed either through verbal or dramatic irony to convey their conflicting messages of fact and belief.\(^{169}\) For example, dramatic irony finds its expression in the identity of the defendants in these dramas. In addition, the irony of fate permeates their conclusions. Irony of character allows an exploration of the nature of speech, the interpretation of evidence, and the impact of storytelling on the judicial outcome.\(^{170}\) Likewise, certain situations advance the ironic message. Among them are the lawyers as the accused, the victim as defendant, and the legally guilty, morally innocent person as defendant.\(^{171}\) Dramatic irony gives the drama its inspiration and form. At its most symbolic level it becomes irony of fate (or poetic justice) as opposed to human justice, further emphasizing the gap between real justice and ideal justice—also identified as the disparity between human justice viewed through the legal system and justice imposed by the author’s moral sense. Dramatic irony also provides the drama with its resolution. The irony of impersonation may manifest itself through conflicting actions undertaken by various characters or by specific language used by the characters.\(^{172}\) In most cases the characters are ignorant of much that the audience knows; this technique invites the audience to participate more fully in the author’s storytelling.\(^{173}\) Irony of situation encompasses all

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169. Quintilian first identified these types of irony; other critics and theorists have since elaborated on them. See supra notes 106–07, for a more recent useful discussion. But see THOMPSON, supra note 102; SHARPE, supra note 102.

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

171. Each of these situations is discussed infra.

172. Sharpe mentions another critic’s analysis of the contrast between Claudius’s public and private language in Hamlet. "This subtle difference is an ironic one, created by Shakespeare’s skill to sharpen our sense of the quality of seeming in the character of the usurping king." SHARPE, supra note 102, at 73.

173. Sharpe also noted:
facets of the plot: (1) the choice of defendant; (2) the outcome of the trial; and (3) the outcome of the action.

[Dramatic irony] is so admirably effective as a tool of playwright and actor because in the theater actor and audience are both found in ideally ironic attitudes; the actor because he is consciously and publicly impersonating, the audience because its conscious co-operation in the theatrical illusion gives it that detached point of view which is necessary for the ironic appreciation of the co-existence of two or more conflicting levels in the stage situation. 174

Another definition of dramatic irony emphasizes the conflict created by the author who asks the observer to "compare what two or more characters say of each other, or what a character says now with what he says or does later." 175 The evaluation of conflicting evidence is a natural process in a courtroom drama; thus, this definition of dramatic irony becomes useful in examining the extent of irony in such works.

6. Irony and the Tension Between Law and Justice in the Courtroom Drama

The kinds of issues emphasized in these dramas are expressed by dramatic irony: they relate to the contrast between the likely guilt of the accused and the ability of the lawyer to obtain an acquittal; 176 the outcome of the trial and the ultimate fate of the defendant; 177 the guilt of the accused relative to crimes committed by others in society; 178 the contrast between

For the audience's enjoyment of the ironies which such pretenses spawn, the greater dramatists always provide the plot-device of dramatic irony, which lets the spectator in on things which are not yet revealed to some of the characters on the stage, and they exploit it by allowing the actor to make his "real" character show through the false one in soliloquies, asides, slips hastily caught, wry grimaces, near-unmaskings, and so on.

*Id.* at 37.

174. *Id.* at 42. Note that the film ADAM'S RIB, *supra* note 20, begins with a shot of a theater curtain that rises to reveal the screen credits and ends with the same image. The film thus points out the parallels between the story told on the stage and the story told in the courtroom (of stage and in real life). Compare with the opening and closing scenes in the original version of WITNESS FOR THE PROSECUTION, *supra* note 3, which takes place in an empty or nearly empty courtroom, representing both the structure and the authority that is called into question in the film.

175. BOOTH, *supra* note 101, at 63.


177. See, e.g., JAGGED EDGE, *supra* note 23.

178. See, e.g., INHERIT THE WIND, *supra* note 22; JUDGMENT AT NUREMBERG, *supra* note 24; The Andersonville Trial, *supra* note 52. One commentator argues that the courtroom drama represents the artistic expression of the criticism of society and distrust of government
the ritualistic elements of the trial and the crime of which the defendant stands accused, and the contrast between the presumed “fairness” of the trial and the likely outcome. Underlying the apparent conflict between the human desire for justice, however justice may be defined, and the institutions of the law, which often seem to operate contrary to what the observer perceives as justice, is the question of whether it is better to let ninety-nine guilty men go free than to let one innocent man suffer. Most courtroom dramas opt for the former rather than the latter—though not without a good deal of overt or subtextual discussion—and, thus, achieve precisely the outcome that makes the public sleep less soundly in its bed. The basic conflict between the rule of the majority and the rights of the individual is effectively expressed in ironic terms because it necessitates coming to terms with the notion that the guilty have the same rights as the innocent. In the public’s mind, lawyers bear the responsibility for inflicting further harm on society in the name of the individual. Authors conduct their dialogue with the observer concerning all of these issues through extensive use of irony as they tell their stories. An author may express irony quite obviously or quite subtly, and the observer must be alert enough to recognize it in order to enter into the dialogue. Irony may be overt and obvious, for example as in the title of the drama, in the naming of the characters, or in a blatant juxtaposition between a character’s words and his action, leading the observer directly to the author’s meaning. The irony may also be subtle and layered, as in a careful revelation of the contrast between a character’s intention and his words through double meanings and ambiguous events, or in the contrast between a character’s intended action and its unintended consequences.

C. The Courtroom Drama—Form

In this article I use the word “drama” to refer to either a film (either written for the screen or adapted from another medium), a play, or a novel. A “courtroom drama” is a drama in which the action takes place in or is dramatically and directly connected to a trial. I use the word “observer” that swept Europe and the United States after the Second World War. See Dorsey, supra note 52, at 4–5.

179. See, e.g., ADAM’S RIB, supra note 20.

180. See, e.g., JUDGMENT AT NUREMBERG, supra note 24; The Andersonville Trial, supra note 52; To KILL A MOCKINGBIRD, supra note 14.


182. The courtroom as a theatrical setting is not new, nor are legal themes a modern literary invention. For a short discussion of irony in some of Shakespeare’s dramas, many of which have legal themes, see SHARPE, supra note 102, at 52 passim. For discussions of the use of the courtroom in other Renaissance plays, most notably in Jonson, Marlowe, Fry, Webster, and Middleton, see BERTIL JOHANSSON, LAW AND LAWYERS IN ELIZABETHAN ENGLAND (1967), or generally W. Moelwyn Merchant, Lawyer and Actor: Process of Law in
to refer to either the viewer, in the case of a film or performance, or the reader in the case of the written literature. Unless otherwise stated the observer is a nonlawyer. I use the term “author” to mean either the novelist or playwright on whose work the film is based, the director, or the screenwriter, depending upon the context.\textsuperscript{183}

One of the author’s most effective means of critique comes through the use of actual judicial procedure because these are the very elements of the legal system that seem to most laypersons to lead to inequity and injustice. The most effective areas are in the depiction of the attorney-client relationship,\textsuperscript{184} in the use or misuse of evidence,\textsuperscript{185} in the use or misuse of procedural devices,\textsuperscript{186} and in the depiction of the jury system, either as an accurate method of exonerating the innocent or as a perversion of justice.\textsuperscript{187}


On the trial as a device in the novel, see Ann M. Algeo, \textit{The Courtroom as Forum: Homicide Trials} by Dreiser, Wright, Capote, and Mailer (1992) (unpublished dissertation, Lehigh University) (on file with the Lehigh University Library) (comparing \textit{An American Tragedy}, \textit{Native Son}, \textit{In Cold Blood}, and \textit{The Executioner’s Song}). For a more complete listing of materials on the interaction of law and literature, see CoRCos, supra note 79.

183. It is also less awkward stylistically, because this article is primarily about the image of the legal system portrayed in selected courtroom dramas, and not about the authorial differences and contrast between print and film in plays brought to the screen. While the director or screenwriter may amplify the irony already present in the drama being translated to the film, the original author creates the controlling commentary, atmosphere, and attitude. Therefore it seems appropriate to discuss “Agatha Christie’s vision” of the legal system rather than “Billy Wilder’s vision” when discussing \textit{Witness for the Prosecution}, even though Wilder creates much of the dialogue that conveys Christie’s message.

184. \textit{Sworn to Silence} (ABC television broadcast, Apr. 6, 1987) (portraying a defendant who tells his attorneys in a confidential communication where the body of the victim is buried).

185. \textit{The Wrong Man}, supra note 16.

186. The film \textit{My Cousin Vinny} (20th Century Fox 1992), is an obvious example. Vinny, a hapless New Yorker, has finally passed the bar after six tries; his first case is a murder south of the Mason-Dixon line. He manages to win it through his use of a hostile expert witness and his knowledge of civil procedure.

187. \textit{Twelve Angry Men} (United Artists 1957) (showing juror Henry Fonda convincing eleven other jurors to acquit the defendant based on a rational examination of the evidence presented). This device was reused in both a \textit{Matlock}, supra note 42, episode and a \textit{Murder She Wrote} (CBS television series, 1992–96), episode in which the heroes prevent the conviction of innocent defendants by insisting that the jury re-examine the evidence, giving it an interpretation other than that proposed by the prosecution. In the \textit{Matlock} episode, the attorney (Ben Matlock) in an unaccustomed role as a fact-finder demonstrates the strengths of the adversary system by “cross-examining” the evidence presented. The farce \textit{Ladies of the Jury} (RKO Radio Pictures Inc. 1932), uses the device of the juror who determines the truth through her knowledge of human nature, thus discounting what proves to be tainted
Form encompasses the various procedures and institutions that precede, accompany, and follow the trial, inevitably becoming targets for the author’s critique. They lend themselves to structuring the drama as well as advancing the story. To state it in more formal terms, procedures included in the form are:

1. **PRETRIAL**—Pretrial discussion between lawyer and client and preliminary law enforcement interrogations of the accused and witnesses. During this period and during the periods covered below, various stories interpreting the facts to which the observer is privy take shape. Examples include *Adam’s Rib*\(^{188}\) and *Anatomy of a Murder*.\(^{189}\) In a linearly presented story, PRETRIAL also encompasses the exposition leading to the arrest and trial of the defendant.

2. **PREPARATION FOR TRIAL**—The interactions among the characters that are governed by the operative code of legal ethics. These interactions may include deviations from accepted behavior, as in the clear violation of a rule of legal ethics by the lawyer, or in a severance of the relationship between lawyer and client. While this interaction can continue throughout the process, it first manifests itself in the pre-trial period. Examples include *Judgment at Nuremberg*,\(^{190}\) *The Paradine Case*,\(^{191}\) and *Jagged Edge*.\(^{192}\)

3. **TRIAL**—The *voir dire* process. Selection of the jury allows the author to comment on the fairness of the procedure, either by demonstrating the contrast between the defendant and the empanelled jurors, or between the impartiality that one assumes to be a crucial part of the system but that in reality is sacrificed to politics or expediency. Examples include *Adam’s Rib*,\(^{193}\) *Inherit the Wind*,\(^{194}\) and *Twelve Angry Men*.\(^{195}\)

4. **STATEMENTS TO THE COURT**—The opening and closing statements of the prosecution and defense attorneys. These statements, taking the form of whatever story the characters advance as evidence by prosecution witnesses and successfully convincing fellow jurors to acquit the defendant. In both scenarios the focus is on the jury and its role in the system, and significantly, on how an independent jury sometimes obstructs the will of the other participants in the system by discounting or re-interpreting the judge’s instructions in order to do justice.

\(^{188}\) *ADAM’S RIB*, *supra* note 20.

\(^{189}\) *ANATOMY OF A MURDER*, *supra* note 17.

\(^{190}\) *JUDGMENT AT NUREMBERG*, *supra* note 24.

\(^{191}\) *THE PARADINE CASE*, *supra* note 29.

\(^{192}\) *JAGGED EDGE*, *supra* note 23.

\(^{193}\) *ADAM’S RIB*, *supra* note 20.

\(^{194}\) *INHERIT THE WIND*, *supra* note 22.

\(^{195}\) *TWELVE ANGRY MEN*, *supra* note 187.
the "truth," may become ironic commentary on the legal process. The address to the jury often encapsulates the most emotional, yet most calculated appeal available to the attorney. Examples include Adam’s Rib, Inherit the Wind, and Judgment at Nuremberg.

5. WITNESSES—The examination and cross-examination of witnesses, including the defendant. Evidentiary rules are the most confusing to nonlawyers because they seem calculated to prevent the very outcome desired, that is, the determination of the truth. Examples include Judgment at Nuremberg and Witness for the Prosecution.

6. JURY—The jury deliberation. During jury deliberation observers see the contrast between what judges and attorneys want jurors to consider during deliberation and what they actually do consider. The difference, if any, represents the difference between an interpretation of the spirit of the law (justice) and resistance to the letter of the law. Examples include Twelve Angry Men and Ladies of the Jury, remade as We’re on the Jury. A mirror image example existing in an alternative legal system is Murder on the Orient Express.

7. VERDICT AND SENTENCING—The rendering of the verdict and the imposition of sentence (if any). Examples include Inherit the Wind, The Paradine Case, and Witness for the Prosecution.

8. POSTTRIAL—The aftermath of the trial, particularly if the observer believes (because of author persuasion) that the defendant was wrongly convicted or wrongly acquitted. To address this concern, the author frequently shows or hints at retribution for the guilty party, or provides the guilty party’s confession by word or deed. The post-trial scene in the courtroom drama serves as the author’s moral take on the difference between law and justice. The more at odds the verdict and the post-trial moral, the more dis-

196. ADAM’S RIB, supra note 20.
197. INHERIT THE WIND, supra note 22.
198. JUDGMENT AT NUREMBERG, supra note 24.
199. Id.
200. WITNESS FOR THE PROSECUTION, supra note 3.
201. TWELVE ANGRY MEN, supra note 187.
203. WE’RE ON THE JURY (RKO Radio Pictures 1937).
204. MURDER ON THE ORIENT EXPRESS (EMI Films Ltd. 1974).
205. INHERIT THE WIND, supra note 22.
206. THE PARADINE CASE, supra note 29.
207. WITNESS FOR THE PROSECUTION, supra note 3.
cernibly ironic the message. Examples include *Jagged Edge*, *Anatomy of a Murder*, and *Witness for the Prosecution*. *Reversal of Fortune*, left symbolically ambiguous, fits more into the ninth category below as a commentary on the easy ability of the legal system to confuse form with substance, while leaving the ultimate victim of the crime with no discernable remedy.

9. QUASI- OR PSEUDO-LEGAL ALTERNATIVES—Imitations of or alternatives to the legal system whose goal is to dispense the justice that the author believes is not available through the traditionally constituted legal system. Some examples include *M* and *Murder on the Orient Express*.

Finally, form encompasses the essentially verbal, as opposed to physical, nature of the courtroom drama as a film archetype. While actions may speak louder than words, even in a courtroom, words are the stuff of the legal system. Attorneys rely on words for nearly all means of communication to include or exclude evidence that supports their persuasive stories and to attack the persuasive stories of their opponents. As in real life, some attorneys in filmed courtroom dramas rely on the interpretation of particular words in a statute or in the common law to win their cases. Most notable are those cases in which the attorney either relies heavily on literal meaning to obtain the desired result or questions the literal meaning to obtain the acquittal.

D. Other Definitions

I use the phrase "legal system" to mean primarily the legal systems of the United States and the United Kingdom, unless otherwise stated. "Justice" means the "right result," the "equitable result," the result with which

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212. M (Paramount Pictures 1931).
214. See, e.g., *Anatomy of a Murder*, supra note 17; *Jagged Edge*, supra note 23. In *Jagged Edge*, for example, when her colleague points out that evidence exists that the victim, the wife of the defendant, was considering a divorce, the lawyer, Teddi Barnes, snaps that the prosecution has hearsay evidence only, and from one witness. When a worker at the tennis club states that he found a knife similar to the murder weapon in the defendant's locker, she suggests successfully that he made a mistake with regard to the number of the locker. In this way she attacks the case piece by piece.
215. See, e.g., *Adam's Rib*, supra note 20; *Inherit the Wind*, supra note 22; *Judgment at Nuremberg*, supra note 24; *The Andersonville Trial*, supra note 52.
one is morally satisfied (the death or punishment of the criminal, reparations made to the innocent victim).

III. STORYTELLING AND IRONY

A. Application of the Method and Tone to the Form: An Overview

 Murders. By all means, let's talk about murder. 216

In all of these dramas, words are of paramount importance, and they represent all manner of truths, half-truths, and lies. The lawyer's ability to communicate, to persuade the court of the defendant's guilt or innocence is one manifestation of the importance of words. Another is the emphasis on "the letter of the law," sometimes in regard to procedural elements, for example the admissibility of evidence or questions put to witnesses. Sometimes it is in regard to the color or interpretation given to the testimony or evidence introduced in court. Through selective communication, as well as through the use of the rules of evidence, the cinematic lawyer tells his stories. Storytelling is an important element in these dramas. Who is believed and for what (legal) reason is often presented in ironic fashion for a specific didactic purpose.

The storytelling, the naming, and the irony begin immediately. If the title of the drama and its related associations constitute the prologue, 217 Act I consists of the act itself (shown or hinted at on the screen), the naming of the act (the accusation of the defendant), and the first lawyer/client interview. Actions, words, implications, and inferences begin to combine to illuminate the author's message about lawyers, clients, ethics, 218 and justice.

In the next section of this article, I examine several courtroom dramas as they demonstrate total critiques of the legal system through their intentional use of ironic storytelling to examine the categories above, through the various parts of the trial and its representation of reality on-stage and off.

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216. Arthur Jamison, to a room full of graduating law students, in Guilty Conscience, supra note 149. Later on he identifies the three parties in any murder as "the criminal, the victim... and the attorney." As the drama unfolds the observer realizes that Jamison himself is all three, the ultimate irony of which he is unaware until the last scene.

217. The opening credits of ADAM'S RIB, supra note 20, show a toy stage with the actors' names superimposed on a theater curtain. The "play within a play" image is quite clear.

218. Some of the most ironic moments in courtroom dramas occur when although the lawyer conforms to the ABA code of ethics, observers and the other characters in the drama perceive him or her as unethical or immoral.
1. The Relationship Between Author and Observer in Witness for the Prosecution

If, for example, one analyzes the scene described earlier in this article between Christine Vole and Sir Wilfred Robards in *Witness for the Prosecution*, the observer can uncover many of the conflicts traditionally identified in courtroom drama. Further, the use of irony can be examined to convey the author’s view of these conflicts, even as the observer appreciates her ability to manipulate one’s feelings about the characters and their behavior in the drama.

To understand Robards’s statement, and the case of *R. v. Vole*, as Christine and the film intend the observer to understand it rather than the way Robards intends Christine to understand it, the observer must examine how *Witness for the Prosecution* conveys its real opinion of the relationship between the British legal system and justice. Inspired by the Christie short story, Wilder created a distance between author and characters and invited the audience to join in their opinion of them and their actions. Christie originally created that distance through the use of irony. Wilder, whose specialty as a screenwriter was the ironic depiction of characters in absurd situations, carried out the task of supplementing the evidence necessary to persuade the audience that Christie’s opinion of the characters and their actions, and of the relationship between law and justice, is the correct one. Similar to the other authors and filmmakers of courtroom dramas, I will discuss in this article, and like many practicing attorneys, Christie and Wilder recognized that straightforward exposition of the story is neither as gripping nor as persuasive as a series of contrasting scenes in which the author can engage readers or observers to evaluate evidence of guilt or innocence and make judgments about a legal system that fails to give effect to the expected result (unquestioned acquittal for the innocent, irreversible conviction for the guilty). Through these contrasting scenes the author can manipulate both the characters and the observer’s reactions to them and reinforce the observations he makes about the legal world in which they operate.

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220. For more about the creation of narrative distance, see generally *Booth*, *supra* note 101.

221. See for example his screenplay for the political farce *One, Two, Three*. See Norbert Wöhnli on the Web, *One, Two, Three*, at http://www.nobby.de/e_m123.html (last updated Mar. 29, 2002).

222. Agatha Christie delighted in manipulating her readers. One of the most blatant examples was her novel *The Murder of Roger Ackroyd* (1926), in which she committed the cardinal sin (among mystery writers) of making the narrator the guilty party. Some readers found her clever handling of the clues to the murderer’s identity irreproachable, but others—
2. **Theory and Practice: Applying Booth’s Clues**

In *Witness for the Prosecution*,\(^{223}\) what is ironic in the interview between Robards and Christine Vole? How much can the observer discern during the conversation? How much more does the observer become aware of during the film? And how much remains unrevealed to the observer until the end of the drama? First, one should examine Christine’s initial interview with Robards and then turn to the question of the definition of terms.

Observers already sense, for example, that Christine Vole is an ironic character; her initial remarks to Robards reveal that. Without realizing that she can hear him, he suggests to an associate that he get smelling salts for the lady, as she will undoubtedly faint when she hears the news of her husband’s arrest. She interrupts him with the statement that she never uses smelling salts; “they puff up the eyes.” Robards, who should be a master of psychology, has already miscalculated severely. This cool and detached woman, seemingly interested only in her own appearance, has apparently come to plead with Robards to defend her husband. What should be an emotional interview becomes a battle of wits demonstrating her ability to manipulate a successful attorney, himself the symbol of manipulative ability. Although Robards has assured Mayhew that he will not take the case, Christine’s suggestion that the “champion of the hopeless cause” finds this cause “too hopeless” is too obvious a challenge to ignore. Within the first few minutes, the irony of fate begins to develop: Christine as Leonard’s wife should be more eager than anyone to defend him, but she betrays no emotion. The observer suspects that her motives are mixed at best. Her dual personality as Leonard’s wife and yet as less than avid defender also introduces the aspect of irony of impersonation. As the interview continues, Christine calmly assures Robards that she will provide Leonard with an alibi; “[t]here will be tears in my eyes when I speak.” Neither the observer nor Robards believes any longer that Christine wishes to defend her husband; the observer has uncovered what Wayne Booth refers to as “conflict of fact.” As Christine continues to speak, both the observer and Robards begin to believe that Leonard may in fact be innocent and that Christine is attempting for some (as yet undisclosed) motive to destroy his alibi with an unconvincing story. The audience does not yet know whether the author believes Leonard is innocent, but do know that Christine seems to believe otherwise. When she suggests that the truth will not save her husband, the observer is as shocked as Robards. One senses a conflict of belief not only concerning Leonard’s guilt, but also concerning the viability and fairness of

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the English legal system, although the audience does not yet know on which side Christie comes down. Christie and Wilder have already laid the groundwork for their discussion of the fundamental conflict.

The film also makes the audience aware of the form of the drama as an essential part of the critique. By following the development of the action from the commission of the act, through the initial lawyer-client interview, to interviews of witnesses, to the lawyer's development of a legal theory of the case, through the trial itself, to the conclusion of the action, the audience participates as observers, as "jurors," in the adjudication of this conflict. The dramatic form in which the author expresses the action is a necessary part of the commentary on the legal action and on the ultimate evaluation of the rules that govern the legal system.

B. Detection of Irony in Words and Silence

The lawyer's relationship with his or her client, particularly the lawyer's receptivity to the client's desire to tell "the truth," sets the tone for dramas such as *Reversal of Fortune*, *Witness for the Prosecution*, *Presumed Innocent*, *Jagged Edge*, *Miracle on 34th Street*, *Inherit the Wind*, *Anatomy of a Murder*, and *Suspect*. In some of the dramas, the focus is on the manipulation of the legal system, while in others the focus is on redefining the legal issues involved in the case. In *Reversal of Fortune*, Alan Dershowitz tells Claus von Bulow that he does not care to hear von Bulow's version of the case, pointing out that the more he knows the more limited ethically are his options. The drama therefore revolves around Dershowitz's ability to manipulate the legal system in favor of his client, rather than around the question of von Bulow's guilt or innocence. After the "monocle test" in *Witness for the Prosecution*, which he considers incon-

224. In explaining that he does not intend to call Christine as a witness, Robards tells Leonard that "she is a foreigner" and may easily be intimidated or confused by English law. Leonard insists that his wife must testify: "I'll be lost without Christine!" Robards's explanation is ironic, since he suspects that she may understand entirely too much about the system. As they leave, his associate comments that "[i]t's touching how he clings to his wife." "Yes," responds Robards, "like a drowning man clutching at a razor blade."

228. *Jagged Edge*, supra note 23.
230. *Inherit the Wind*, supra note 22.
234. See *Witness for the Prosecution*, supra note 3. In the "monocle test," Robards adjusts a light source in the room to shine directly into his client's eyes and then observes the
clusive, Sir Wilfred Robards decides to do the best he can for Leonard Vole, even though he senses that something is not quite right in the man’s story. Again, the emphasis is on the manipulation of the legal system to cast doubt on the prosecution’s case, rather than to devise a new defense. In *Presumed Innocent*, Sandy Stern pays little attention to Rusty Sabich’s protestations of innocence and manages to obtain a dismissal through clever manipulation of the judge, though the circumstantial evidence, as well as the public sentiment against his client, is great. In similar circumstances, *Jagged Edge’s* Teddi Barnes demands assurances from Jack Forrester that he is innocent and that he will never lie to her. Her demand for “truth” limits his options as well as hers. Ultimately, she obtains a dismissal of the charges, a tacit admission that otherwise the case is weak, and the observers do not discover until the end of the movie that he is guilty.

Fred Gayley’s successful defense of Kris Kringle in *Miracle on 34th Street*, however, seems severely compromised after Kringle asserts his identity as “Santa Claus,” both during the initial interview and on the witness stand. Faced with an inability to present a persuasive case, Gayley redefines the issue as one not of mental competence but of factual identity. Both the audience and Amanda Bonner (*Adam’s Rib*) know that Doris Attinger is “guilty;” therefore the audience is interested to see how Amanda will redefine the crime to appear less “criminal.”

Henry Drummond in *Inherit the Wind* and Polly Biegler in *Anatomy of a Murder* attempt a third alternative by combining the two approaches discussed above: redefining the case and manipulating the legal system. Knowing that his client, Cates, is guilty, Drummond attempts to present his client as morally innocent, thus redefining the crime by bringing the law into question, and attempts to show that Cates’s statements do not meet the definition the statute requires. Neither approach is successful, primarily because Cates is guilty and makes no real effort to defend himself and because public sentiment is against him. Unlike Amanda’s successful redefinition of Doris’s act in *Adam’s Rib*, Drummond’s assertion that Cates’s law-breaking is really laudable is too far-fetched to appeal to the jury. Unlike Drummond, Polly Biegler focuses on Manion’s “legal excuse” for his con-

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latter’s reaction through his monocle. He presumes that a truth teller will hold his gaze even though uncomfortable, but a liar will look away.

236. *Jagged Edge, supra* note 23.
237. *Miracle on 34th Street, supra* note 229.
238. *Adam’s Rib, supra* note 20.
239. *Inherit the Wind, supra* note 22.
240. *Anatomy of a Murder, supra* note 17.
duct, the accused's mental state after he learns of his wife's rape. Biegler's problem is complicated by the fact that the judge initially refuses to allow the most persuasive evidence, that of the rape, to be heard. Biegler is successful because his appeal is based on solid legal precedent once he persuades the jury of the truth of the rape and the reality of Manion's response to it.

Clearly, those lawyers who demand "truth" from their clients limit both their own and their client's options. Just as clearly, however, those attorneys who are unable to obtain their clients' assistance such as Kathleen in Suspect find themselves with no persuasive defense for their clients and are forced to pursue the truth, that is, to solve the question of guilt or innocence outside the courtroom, hence outside the system. The most successful lawyers are those, like Polly Biegler, who manage to tread the indistinct line between suggesting a line of defense to the client and explaining the law and "letting him decide if he wants to follow it."

1. Irony, Words, Storytelling, and Silence in the Lawyer-Client Interview and Relationship (Passive Storytelling)

How the lawyer explains the law without manipulating the client combines the client's ability to withhold and provide information at the same time, while the lawyer evaluates the information and decides whether the law will admit an existing defense or requires a "story" sufficiently persuasive to admit a new one.

a. Adam's Rib

Irony infuses the opening scenes of Adam's Rib as the film first depicts the attack on Warren Attinger and then the scenes of domestic life with the two attorneys, Adam and Amanda Bonner. While this film, like all

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241. Id. Note that both Laura and Manny are actively engaged in the manipulation of the story, to the point of omitting the fact that Laura swore on a rosary to convince her husband of the truth of her story. Id. When confronted by Biegler, Laura says that they thought the episode would only "make things worse ... make it look like Manny didn't believe [her]." Id. Polly repeatedly urges both Manion and Laura to tell the truth on the stand, but like Dershowitz in Reversal of Fortune, supra note 26, he does not necessarily want to know too much; he does not, for example, want any motivation other than the agreed upon "irresistible impulse" to cloud his defense of Manion.

242. Suspect, supra note 232.

243. Anatomy of a Murder, supra note 17 (quoting Parnell McCarthy to Polly Biegler).

244. Adam's Rib, supra note 20.
courtroom dramas, is intensely verbal, some of the irony is musical or visual as well. Much of the irony emerges through an initial comparison of Adam and Amanda’s approaches toward life and the law.

Nowhere is the contrast between the two Bonners’s styles more evident than in their initial questioning of the two Attingers. In the hospital interview with the wounded Warren Attinger, his girlfriend Beryl Kane looking on, Adam asks forthrightly, “What’s your explanation?” Adam finds Warren an extremely unsympathetic, complaining witness, particularly when he replies, “She’s just plain crazy!” Responds Adam, “You just give us the facts and the background . . . just tell us the truth as clearly and as accurately as you can.” Warren, of course, is in no position to relate the truth, even if he were inclined to tell it. In any event, he is inaccurate and exaggerates Doris’s state of mental instability and her failings as a wife. Consequently, Adam is faced with reconstructing a crime and preparing a prosecution based on faulty evidence from admittedly inaccurate eyewitnesses.

In contrast with Adam’s direct request for facts and Warren’s vague and unhelpful response, Amanda offers an open-ended invitation to tell what happened. Doris responds with very precise and definite statements concerning her marriage and the act. Amanda, who is already trying to concoct an acceptable story to explain Doris’s act (in an approach similar to Polly Biegler’s in Anatomy of a Murder), begins to guide and coach her immediately. Although intelligent, Doris is disheartened. Amanda must supply a reason (her marriage and children) to cooperate in her own defense. Doris tells Amanda that her shooting of Warren was “no accident . . . I wanted to shoot him.” Amanda immediately responds, “Suppose we decide later just what you wanted to do.” “That’s silly,” Doris said. “The difference between ten years in prison and freedom is not silly, Mrs. Attinger.”

245. In the opening scene, victim Warren Attinger saunters toward his mistress’s apartment whistling “You Are My Lucky Star” while his distraught wife waits to ambush the couple in their love nest.

246. Based on the outcome of the film, we are clearly expected to conclude that neither Adam nor Amanda is representative of a “good” lawyer. Rather, a good lawyer combines Adam’s ability to size up the Attinger case, even with a confession, as “not a cinch” (that is, the willingness to engage in hard work to win a case) and Amanda’s ability to save energy and work by redefining the legal issues so that the opposing side must play legal “catch-up.”

247. When Amanda asks, “How long married?” Doris responds, “Nine years, four months and twelve days.”

248. Doris tells her: “So I sent the kids to school and I went and bought a gun.”

249. Clearly Doris feels that Amanda’s attempt to establish a legally defensible state of mind is lawyerly nitpicking, a reaction quite common to laypersons.
As Amanda probes, looking for a possible line of defense (although in her mind she has already decided it will be an attack),<sup>250</sup> Doris recognizes her interest in analyzing her mental state and offers an altered version of the events. "It was like a dream . . . like I was watching myself . . . "<sup>251</sup> Amanda is so enchanted with this turn of events that she ignores the fact that Doris also admits she thought about the act all day.<sup>252</sup>

b. Conflicts of belief and the lawyer-client relationship: *Anatomy of a Murder, Witness for the Prosecution, and Jagged Edge*

In *Anatomy of a Murder*,<sup>253</sup> the defendant, Lieutenant Manion, has formulated a defense to his crime either before or shortly after he committed it. In his first interview with lawyer Paul Biegler, called "Polly" by his friends, Manion refers to having "the unwritten law" on his side, the unwritten law being the right to avenge the attack on his wife Laura.<sup>254</sup> The lawyer points out that "the unwritten law" is a "myth"<sup>255</sup> and in any case would not apply because Manion did not see the act committed against his wife. He then explains the four defenses available to Manion: (1) the act was really suicide or accident; (2) Manion did not commit the act; (3) the act was le-
gally justified; and (4) the act was excusable. Biegler then asks Manion to consider "how crazy" he was when his wife told him about the rape. In the film version, Biegler earlier refuses to suggest any particular story to the defendant. Responds Parnell McCarthy, Biegler's friend, "Maybe you're too pure, Paul—toe pure for the natural impurities of the law," suggesting that every defense lawyer coaches his client into an acceptable story. Because Polly was a prosecutor for so long, he has difficulty with this part of his role as a defense attorney; although, as a former prosecutor, he should be ideally suited to recognize the most likely attack on his client's case. He eventually returns to talk to Manion again, and they flesh out the "insanity" defense together. Parnell assists Manion by implying that Polly is afraid he will lose the case, while offering him an alternative story to tell himself: that the defense lawyer takes on clients because it is his job, not because he likes them. "You don't have to like him, Polly, you just have to defend him."

Given the outcome of the case, the observer is entitled to wonder whether the lawyer manipulates Manion into presenting this interpretation of events or whether Manion manipulates the lawyer into suggesting a possible successful line of defense. In any event, the novelist and the film-

256. Manion quickly understands that "craziness" as a mental defect and "madness" as an emotional condition converge in this particular defense. ANATOMY OF A MURDER, supra note 17. In an ironic passage in the novel, Polly Biegler describes the process of "explaining" the law to the client.

The Lecture is an ancient device that lawyers use to coach their clients so that the client won't quite know he has been coached and his lawyer can still preserve the face-saving illusion that he hasn't done any coaching. For coaching clients, like robbing them, is not only frowned upon, it is downright unethical and bad, very bad. Hence the Lecture, an artful device as old as the law itself, and one used constantly by some of the nicest and most ethical lawyers in the land. "Who, me? I didn't tell him what to say," the lawyer can later comfort himself. "I merely explained the law, see." It is a good practice to scowl and shrug here and add virtuously: "That's my duty, isn't it?" Verily, the question, like expert lecturing, is unchallengeable.

TRAVER, supra note 53, at 35. The film (which starred Jimmy Stewart, whose on-screen persona was the paradigm of the upstanding and honest character) gives this speech to Polly's friend Parnell McCarthy, allowing Stewart to appear more honorable because he was more reluctant initially of any manipulation of the client on his part. See ANATOMY OF A MURDER, supra note 17. "Besides, I'm not the right lawyer for this guy..."

257. ANATOMY OF A MURDER, supra note 17. The lawyers in ADAM'S RIB, supra note 20, JUDGMENT AT NUREMBERG, supra note 24, and THE PARADINE CASE, supra note 29, certainly do so. In fact, Tony in The Paradine Case barely allows his client to get a word in edgewise, so captivated is he by his own emerging theory of the case.

258. ANATOMY OF A MURDER, supra note 17.

259. When Polly asks Manion to come up with partial payment for his services, Manion indicates that rather than pay him, he prefers to find another lawyer, saying: "I've got my
maker both manipulate the observer into a particular conclusion about the quality of justice available in an American courtroom. The result of the discussion induces Manion and his wife to present an interpretation of his actions that corresponds to the fourth category of defense, however, because Polly tells Manion, "I'll tell you where you don't fit—you don't fit into any of the first three." Manion's power to manipulate his wife extends through his jail cell bars. While discussing the case with an increasingly confident Laura in his car, Polly tells her that he can give her something to worry about: her husband is watching them from his cell window. Her reaction is immediately fearful, and Polly demands to know whether she is afraid of her husband. Laura is neither as clever nor as single-minded as Christine Vole. Instead of seizing the opportunity to abandon her husband, who will surely be convicted if she does not assist in his defense, she admits her fear, but assures Polly that she wants her husband to be exonerated. Unlike Christine in Witness for the Prosecution, Laura speaks the truth about the crime (the rape), which is verified by the lie detector test. Only reluctantly does she speak the truth about her relationship with her husband, sensing (correctly) that it makes him an even less attractive defendant.

In Witness for the Prosecution, Robards overlooks the evidence and truths spoken which would explain much of the mystery of Christine's testimony ("She's an actress, and a good one," Leonard has already told him) in favor of speculation. "It's too easy, something's wrong," he tells Brogan-Moore after the acquittal. His own experience tells him that his abilities in the courtroom do not extend to the kind of miraculous outcome the "hopeless" Vole case presents. He prefers to believe in what seems to him to be defense now, right? Insanity." Responds Polly, dismayed: "I'd better stick around and make sure you get off." What Polly does not do is get Manion's signature on a promissory note immediately; when he attempts to do so after the acquittal, he discovers that Manion and his wife have fled.

260. Anatomy of a Murder was not the first time director Otto Preminger had defied both the censors and his colleagues in the film industry to present a film which questioned accepted standards of decency by showing the unpleasantness of the real world. See The Man with the Golden Arm (Carlyle Prods. 1955) (regarding the horrors of drug use); The Moon Is Blue (Carlyle Prods. 1953) (using the forbidden words "pregnant," "mistress," and "virgin").


262. ANATOMY OF A MURDER, supra note 17. In a later scene with Polly, she suggests that Manion's conviction would be "a way to end it," but hastily adds, "I didn't mean that; I don't want that."

263. WITNESS FOR THE PROSECUTION, supra note 3.

264. The lie detector test represents "technology," but even though it is invested with "certainty" in a way that Robards's "monocle test" is not, it is still not admissible in court.
an ordinary motive carried out through an extravagant plan (that she is in love with another man and frames Leonard) to an equally mundane motive carried out by an even more elaborate plan (that she loves her husband and frames herself).

Christine taunts Robards with the words “the great Sir Wilfred Robards has done it again,” and then goes on to explain how her actions were part of a grand design to obtain Leonard’s acquittal. Robards’s subtlety and chauvinism forced him to seek a motive beyond Christine’s love for Leonard in what she has done. He is therefore amazed to discover that a foreign woman untrained in the law, but an astute observer of human behavior, can manipulate the system far more successfully than he. Christine piles irony upon irony in this scene, since both Christine and the observer clearly believe that they have an accurate understanding of the outcome of the trial, although Christine knows more than the observer, while Robards mistrusts the surface but fails to comprehend the reality. Christine’s initial story, that she loves her husband, does not convince Robards because she overplays the part intentionally to raise questions about her veracity. Her next story, that she loves another man, seems more likely to him, yet he is still unconvinced. Robards does not re-exert his natural dominance until, in the courtroom, the truth becomes known and the full extent of Christine’s plot and Leonard’s duplicity is revealed.

265. Christine’s remarks are often ironic because she is more aware than other characters, as in this example. When she comments on Leonard’s love for her, however, her comment is ironic not because of her knowledge, but (ultimately) because of her lack of knowledge. When she becomes aware of the irony of her situation, she ends the drama with a supremely ironic act. She negates the effect of Leonard’s acquittal, for which she has sacrificed nearly everything, by killing him and sacrificing herself. Ultimately, “the great Sir Wilfred Robards” will “have to do it again” to obtain her acquittal. Her sometime courtroom foe will become her greatest legal champion.

266. This irony explicitly heightens the author’s critique of the English legal system. Even though Agatha Christie was not herself an attorney, she satirizes or critiques many facets of the legal system quite effectively both in Witness for the Prosecution and in Murder on the Orient Express as well as in many other works, although she does not always do so accurately. See AGATHA CHRISTIE, WHERE THERE’S A WILL, IN SURPRISE, SURPRISE! A COLLECTION OF MYSTERY STORIES WITH UNEXPECTED ENDINGS (1965) (suggesting incorrectly that an older will regains validity when a newer will is destroyed).

267. He remarks to his junior that Vole reminds him of someone caught between the gallows and a banana peel; after the acquittal the gallows disappears, but “there’s still that banana peel somewhere, under somebody’s foot.” WITNESS FOR THE PROSECUTION, supra note 3.

268. Robards repeatedly shows evidence of a lack of self awareness that borders on the comic. He misreads both Leonard and Christine, and his nurse, Miss Plimsoll, as well. The two Voles manipulate him, using his knowledge of the law for their own ends. His attempts to manipulate the nurse after her initial seizure of the cigars secreted in his cane seem successful to both Robards and the observer, until the end of the drama when the nurse reveals
As it is revealed, the defendant, Vole, and the primary witness against him, Christine, concocted a defense together. They manipulated the experienced defense lawyer into unwittingly helping them. Christine tells the defense counsel, “the great Sir Wilfred Robards,” that her knowledge of English law (“a wife cannot testify against her husband”) gave her the idea for the winning defense. Since Christine is not Vole’s wife, although initially no one knows this, and because she will not be believed if she appears as an alibi witness, Christine decides to reveal the truth on the stand, knowing that Robards will characterize it as a lie and that the jury will believe that it is a lie. Ironically, the truth does set Leonard Vole (temporarily) free. When he tells Christine the truth at the end of the drama, that he is leaving her for another woman, she stabs him with the knife that earlier he used to kill Mrs. French. Christine becomes an ironist who unconsciously ironizes herself, what Muecke calls the “irony of self-betrayal.”

Christine succeeds in misleading Robards because his experience and prior success in the courtroom have made him cocky and over-confident, although his recent heart attack has reminded him of his mortality.

that she knows very well that he repeatedly violates his doctor’s orders to forswear alcohol and tobacco.

269. She seems to create the defense, and he presumably follows her lead. They do not communicate while he is in prison or during the trial, so although the observer is tempted to believe that they have worked out the details of the plan together, it is more likely that he has told her the story he plans to tell and she manipulates the evidence and the attitudes of the attorneys, judge, and jury to accommodate his story.

270. Leonard and Christine are actually in a bigamous relationship since she has a husband, presumably living, in East Germany.

271. The irony of the conversation recounted at the beginning of this article is finally made clear, since Christine does tell the truth, and the judge and jury refuse to believe it.

272. MUECKE, supra note 106, at 59 (citing SEDGEWICK, supra note 102). Muecke directly relates the irony of self-betrayal to dramatic irony “in which the victim is serenely unaware that the real state of affairs is quite different from what he assumes it is, and . . . the Irony of Events, in which what happens in the reverse of what is confidently expected.” Id. at 60. Similarly, the conflict of belief sometimes extends to the defense lawyer’s willingness or necessity to believe in the defendant’s story, even when it conflicts with the facts.

273. WITNESS FOR THE PROSECUTION, supra note 3. Because of the threat to his health, his doctors have forbidden Robards to take on any more criminal cases, instructing him to limit his practice to civil cases “a couple of divorces, a nice tax appeal.” Although it is supposed to lengthen his life, this kind of law practice is death to Robards. He comes alive again only when faced with the exciting prospect of saving Leonard Vole in a “hopeless case.” At the end of the film, although “the operation was a success, the patient died”: Robards has won the case, but his client is dead. But he takes up the gauntlet again in order to defend Christine. He marches out of the courtroom with more vitality than we have seen in him throughout the film, with the nurse trailing behind knowingly carrying the thermos full of brandy. Robards’s continual harassment of the well-meaning nurse, “There she waits, like a hangman waiting on the scaffold” in the original 1957 filmed version of Witness for the Prosecution is particularly amusing because the nurse is played by Elsa Lanchester, Laughton’s wife.
Throughout the film he firmly believes that he is fooling the doctors and nurses at the hospital and continues to fool his nurse by concealing cigars in his cane, replacing the hot cocoa in his thermos with brandy, and cadging smoking materials from colleagues and clients. He tests Leonard Vole’s veracity with his “monocle test” in which he focuses the sun’s light on Vole’s eyes via the monocle lens to see Vole’s reaction—extreme nervousness that would indicate guilt, or calmness, which would indicate innocence. When his associate Brogan-Moore asks him the result of the test, he admits that Vole did not react to the light (he passed, a circumstance which baffles him, since he suspects that Vole is guilty). Christine, however, refuses to play the game. She and Robards spar over what he considers her rather too cool attitude toward her husband’s very real danger of conviction. “I want to help Leonard,” she responds, “and I want to help you, Sir Wilfred.” As the light reflected from the monocle continues to bother her, she gets up and adjusts the curtains, saying as she does so, “Now, isn’t that better?” The dual meaning of the phrase may escape him, as it initially escapes the observer. Vole’s reaction represents his ability to take circumstances and rules as they are in life and change his own behavior to manipulate the reaction of the observer. Christine’s action in closing the draperies shows her willingness to manipulate perceptions to prevail.

Leonard initially and repeatedly lies to Robards. Christine tests the waters, and when she finds that the truth disguised as a lie will be more convincing than a real lie which follows the lines Robards expects, she tells the truth-as-lie. As Robards

274. His entire strategy rests on the proposition that he can manipulate the jury into believing that the circumstantial evidence is not persuasive. The evidence that is uncovered is continually ironic. Although the defense scours London for a witness who saw Leonard in a bar on the night of the murder in a particular coat, they cannot find one (naturally since he wasn’t in the bar), but the prosecution does find a witness to identify Leonard in the coat, a week before the murder, in the company of a “clinging” blonde. One wonders what Christine, hearing this testimony, thought of the blonde.

275. She finds them early in the film and confiscates them, much to his dismay.

276. The use of double meaning is a common one in the ironic courtroom drama, since it furthers the author’s message more efficiently and elegantly than long and dramatically awkward explanations. Generally, double meanings take on the coloration of the topic at issue: in Witness for the Prosecution the truth of Leonard’s story, in Anatomy of a Murder, the question of the real motive for the murder. In Anatomy of a Murder, several comments advance the sexual agenda as well as the legal one. ANATOMY OF A MURDER, supra note 17. For instance, he gives her a beer before their first real discussion of the case, Polly asks Laura, “Are you ready?” When she looks up provocatively, he blubbers, “I meant . . .” and she interrupts with “I know what you meant.”

277. WITNESS FOR THE PROSECUTION, supra note 3.

278. Compare with the treatment of Kris Kringle in MIRACLE ON 34TH STREET, supra note 229, who tells the literal truth (that he is Santa Claus), but is not accepted as such until his attorney packages that truth in terms of a story that the court can accept; i.e. the United States government recognizes this man as the one and only Santa Claus. Thus, the truth about
points out, the danger to his client lies in the fact that the jury does not like Christine, but they believe her. They like Leonard, but they do not believe him. The failure of Robards’s previously surefire “monocle test” is the first intimation to the observer that truth will be an elusive creature in this story.\textsuperscript{279}

Jack Forrester, the defendant in \textit{Jagged Edge},\textsuperscript{280} proclaims his innocence. Again, the crime is one of great brutality, the stabbing deaths of the accused’s wife and a maid. Shortly after the trial begins, defense lawyer Teddi Barnes begins to receive anonymous letters revealing a similar crime that took place eighteen months before and suggesting another suspect. In reality the defendant, who is guilty of both crimes, is sending the letters to point Teddi in the direction of a successful defense strategy.

The prosecutor, Tom Krasny, is so anxious to convict the defendant of the crime that, although he investigates the earlier attack, he takes the position that the crimes are unrelated even though the modus operandi is the same in both cases. He recognizes that the same person perpetrated the earlier attack as well as the murders, but cannot place Forrester at the scene of the earlier crime. Krasny is a good judge of character, like Sir Wilfred Robards he senses that the accused is guilty of his wife’s murder, but his line of inquiry cannot link Jack to the earlier attack, which seems to exonerate the man. When the anonymous letters alert Teddi to the existence of the earlier, similar crime, she questions the victim, and the victim testifies that Krasny’s investigator told her the crimes were unrelated. Krasny’s credibility evaporates as he attempts to salvage something of his case against Jack by accusing him of having committed the earlier crime to cover up the later murder of his wife. Teddi then compounds his disgrace by accusing him of withholding evidence that would exonerate her client, a clear violation of the ethical rules, and reveals his similar act in the “Styles case.” Krasny’s ill-concealed zeal leads him to concoct a case against the right person for the wrong reason, and his mishandling of the case, coupled with Jack’s effective manipulation and manufacture of evidence, results in an acquittal.

Although her private investigator identifies the kind of typewriter on which the letters were typed and repeatedly affirms her belief in the defendant’s guilt, Teddi continues to participate in the case.\textsuperscript{281} The defendant’s Santa is only truth if enough people believe it or a suitable authority figure so declares it. Reality does not enter into the equation.

\textsuperscript{279} The remake omits the “monocle test” on Christine, unfortunate because it is a subtle message about her character that conveys a great deal to the alert observer.

\textsuperscript{280} \textit{JAGGED EDGE}, supra note 23.

\textsuperscript{281} Teddi does float the possibility of withdrawal from the case with the presiding judge, who tells her that while he would allow her to withdraw, he feels that the defendant would clearly be put at a disadvantage since the trial has started. See \textsc{Model Rules of Prof’l Conduct} R. 1.16 (2002). It may be argued that her attitude forces her client to lie to
knowledge of legal ethics (her inability to pull out of the case once it has gone to trial, even though she has extracted a promise from him not to lie to her) and his manipulative ability allow him to control her both during and after the trial. Teddi’s demand for this promise amounts to a request for the defendant to present her with a story that she and the observer can believe in. Her inability to accept the truth (although as his lawyer she is the only person to whom he can tell the truth) leads inevitably to his destruction as he creates a story more to her liking. Like Amanda Bonner she gives lip service to the truth, but demands fiction.

The intimacy between Teddi and Jack continues after his acquittal, only by chance does Teddi discover the typewriter that links him to the anonymous letters. He realizes that she now knows he is guilty, and although he cannot be retried nor can she reveal his guilt, he decides to kill her. She is ready for the attack and shoots him as he enters her bedroom.

her, since he genuinely believes that if he tells her the truth she will refuse to defend him. If this is so, it is questionable whether she can ethically withdraw from representation since it is her action, not his, that precipitates the fraud.

282. Presumably she is relying on Rule 1.16 of the ABA Model Rules of Professional Conduct: “the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled . . . ,” assuming that the agreement not to lie to her falls under this section. Id. Compare Teddi’s attitude with that of the lawyer in REVERSAL OF FORTUNE, supra note 26. When von Bulow offers to tell Dershowitz his story, the lawyer replies, “Never let a client tell you his story. It’s an invitation to lie to you.” While von Bulow is an attorney, he is European-trained and his knowledge of American trial procedure seems to be minimal.

283. JAGGED EDGE, supra note 23. His manipulation skills are commented on by several characters in the drama. The investigator states “He’s a real manipulator.”

284. Compare with the approach of Alan Dershowitz in Reversal of Fortune, supra note 26, who declares that he does not want “the truth” because he does not want his client to lie to him.

285. Affairs between lawyer and client (particularly between female lawyer and male client) are distressingly common in the cinema (PHYSICAL EVIDENCE, supra note 43, and GUILTY AS SIN, supra note 43, are examples). The lawyer in THE PARADINE CASE, supra note 29, is clearly fascinated by his client, although no physical intimacy ensues. In SUSPECT, supra note 232, the female attorney engages in a serious (and unethical) flirtation with a member of the jury, who engages in his own investigation. Anne Osborne, the district attorney in THE BIG EASY, supra note 54, has an affair with a police officer who becomes a defendant in a case she prosecutes. Although the canons of legal ethics do not forbid such intimacy, most lawyers try to avoid such emotional entanglements.

286. Teddi and Jack’s physical intimacy dates from before the trial, and the observer can see quite early on that her professional judgment is impaired. JAGGED EDGE, supra note 23. Physical intimacy between lawyer and client, between lawyer and juror, or between judge and witness is apparently not unknown in real life. See Victoria Slind-Flor, Dangerous Liaisons, NAT’L L.J., Nov. 19, 1990, at 2 (relating that a California judge was involved with prosecution witness during trial).

287. Jack could still be tried for the earlier attack. As the judge points out during the murder trial, he is not on trial for that crime. JAGGED EDGE, supra note 23.
Her premeditated act, which masquerades as an excusable homicide (self-defense), is the only way she can see out of her moral dilemma. It is the ironic conclusion to a thoroughly ironic film since she has other, less drastic methods of ending the threat to her—notifying the police that she suspects Jack will attack her, or asking her private investigator colleague to assist her. The ethical dilemma in which Biegler and Teddi Barnes find themselves and which other films illustrate typify the kind of philosophical problem which nonlawyers find hypocritical in attorney behavior.

2. The Conduct of the Trial: Words and Silence as Mechanisms for Selective (Active) Storytelling

In questioning a witness or the accused, lawyers often make use of the traditional (Socratic) method of interrogation, noted for its irony. The lawyer uses the very words of the witness to "prove" or "disprove" according to the rules of evidence the "truth" of the witness's statement, just as Socrates traditionally and seemingly innocently used the words of his questioners against them to elicit a conclusion different from the one they had originally postulated. Indeed, some commentators believe that Plato's representation of Socrates's irony "contains the germs of all the newer ironies which have so afflicted the literature of the last century." Thus, one might postulate that the irony in use by authors of courtroom drama derives directly from the disingenuous and disarming manner popularized by Socrates.

Lawyers also control the words of witnesses by careful phrasing of questions designed to elicit a response favorable to their clients, by timely objections to prevent words from entering the official transcript of the trial,

288. See, e.g., Sworn to Silence, supra note 184.

289. Although a witness swears to tell the truth, he frequently does not have the opportunity since the lawyer, not he, controls the manner and timing of the questions and, therefore, the story that is told.

290. On varying interpretations of the amount of irony in Plato, and in possible misreadings of his works, see Seery, supra note 106, at 71–141.

291. Id. at 98 (citing Sedgewick, supra note 102, at 13). Seery also points out that George Friedrich Wilhelm Hegel interpreted Socrates's thought as ironic, not because of the result of his dialogues, but because of his manner of engaging in that dialogue. Id.

According to Hegel, the point of Socrates'[s] pointed remarks was to inspire men to distrust their inherited presuppositions and, in turn, to look for more principled ("objective") guidance within themselves. He did this not primarily through a twist of the logical screws but by presenting himself in an ironic manner.

Id. at 88. Hegel viewed irony as "especially insidious . . . detrimental to the existence of the state." Id. at 89. Thus, he would have found no value in the ironic manner in which the dramatists and filmmakers under discussion question both the means and the ends of the legal system.
and through silence: by not requesting certain information from witnesses. In the same way, authors control their characters' words and the audience's reactions. By imparting or withholding information through their characters' speech, they direct images, emotions, and ultimately the reality that emerges from the conflation of all the stories told.

3. Irony and Symbol as Substitute for Words

Lawyers in courtroom dramas, like lawyers in real life, frequently make use of posturing and figurative appeals to the jury to manipulate jury members into an acquittal or a conviction. In such cases, image is clearly at least as important as reality. In *Jagged Edge*, Teddi Barnes sits alone with her client at the defense table, and he carries her briefcase into and out of court to emphasize that although he is accused of murdering a woman, a woman believes in his innocence enough to defend him. In *Adam's Rib*, Amanda gives her client the new hat that Adam bought her to make the woman more attractive to the jury and repeatedly emphasizes her motherhood and her desire to keep her family together. The defense lawyer in *Reversal of Fortune* clearly wishes his client were less patrician and more approachable because he is afraid of the image the man conveys. The defense lawyer in *The Andersonville Trial* makes use of his client's infirmity and ill-health by requesting a chaise lounge for him and medical care for him; this attempt to influence the judges is ultimately unsuccessful. Paul Biegler puts Laura Manion in a severely tailored suit, close-fitting hat,

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292. *Jagged Edge*, supra note 23. Early in the film, Jack clearly makes his preference for a female lawyer known, and his choice falls on Teddi, presumably because he believes he can manipulate her feelings for him. The use of an androgynous forename for the lawyer is also an indication of the dual role she plays in the drama: lawyer/protector (usually a masculine role) and lover/protected (usually a feminine one).


295. Von Bulow repeatedly insists on both his innocence and his absolute honesty, an attitude that "an innocent man would take." He insists that "he is what he is," a wealthy European accused of attempting to murder his wealthy American wife. When Dershowitz tells him, "You're a very strange man," von Bulow responds, "You have no idea." Von Bulow's sardonic response amplifies Dershowitz's understatement and unease. Neither Dershowitz nor the observer ever really knows how strange, nor how truthful—or artful—von Bulow really is.

and glasses to "tone down" her sultry image.\textsuperscript{297} Once testimony of the rape is introduced, the prosecutors challenge that new persona in court, and Biegler invites her to take off the hat and glasses and display her beauty instead.

\textit{Inherit the Wind}\textsuperscript{298} provides a combination of silence and symbol to drive home its point about the use to which the law may be put in the name of bigotry. The film opens with a shot of the statue of Blind Justice\textsuperscript{299} while a singer delivers the hymn \textit{Gimme That Ole' Time Religion}, symbolic both of the attitudes of many of the townspeople that have brought the crisis over the anti-evolution law to a head and of a quieter, more confident, less questioning time that is quickly passing. Religion is clearly allied with the legal system from the beginning as the local minister accompanies the sheriff to arrest the defendant. Later, Blind Justice stands guard over the jailhouse where defendant Bert Cates listens to the crowd singing the \textit{Battle Hymn of the Republic}, to newly devised words, while it burns him in effigy.\textsuperscript{300} The Bible itself serves as a symbol of both imprisonment and liberation for Cates. The newspaperman and self-proclaimed atheist E.K. Hornbeck, the symbol of progress and free speech, inadvertently hands lawyer Henry Drummond the weapon with which to attack the prosecution's case. During a conversation after Drummond's unsuccessful attempt to introduce evidence of evolution in court, Hornbeck tosses him a Bible. If evidence concerning the Bible is all Drummond can make use of, he demonstrates that as a good advocate he can make use of it successfully. The same electorate that provides the jury in \textit{Inherit the Wind} also serves as a figurative threat to the

\textsuperscript{297. ANATOMY OF A MURDER, \textit{supra} note 17. In particular he demands that she wear a girdle, "especially a girdle. I don't mind a little feminine jiggle now and then, but save it for your husband if and when I get him off."}

\textsuperscript{298. INHERIT THE WIND, \textit{supra} note 22. While author Jerome Lawrence acknowledged that he and Robert E. Lee wrote the play in response to what they considered attacks on free speech and free thought during the McCarthy era, it retains its timeliness. For example, consider a challenge to schoolchildren's assigned reading such as \textit{The Wizard of Oz} mounted by concerned parents in Hawkins County, Tennessee, which reached the Supreme Court in 1983.}


\textsuperscript{300. INHERIT THE WIND, \textit{supra} note 22. "We'll HANG Bert Cates to a sour apple tree/We'll HANG Bert Cates to a sour apple tree/We'll HANG Bert Cates to a sour apple tree/Our God is marching on!" In another verse they treat defense lawyer Henry Drummond to the same courtesy.}
(elected) judge, who is reminded that "November isn't far off."\textsuperscript{301} The radio technician who sets up his equipment in the courtroom to broadcast the verdict represents the outside world, judging the events in Hillsboro. Hornbeck assures Matthew Brady, the prosecuting attorney, that "with your lung-power, you'll never need" the ease of communication that radio provides, but he is wrong.\textsuperscript{302} After the verdict, Brady attempts to address the courtroom full of spectators that so short a time before had eagerly awaited his every word. Now they withdraw, laughing at him and questioning his life's work.

Rolph, the lawyer for Ernst Janning, uses the same tactic in \textit{Judgment at Nuremberg}.\textsuperscript{303} Charged with defending his client's enforcement of sterilization laws and laws against fraternization between "Aryans" and "non-Aryans," Rolph cites United States cases and statutes embodying similar ideas.\textsuperscript{304} The argument that if the client is guilty he is no more guilty than others in the same circumstances is of course used successfully in \textit{Adam's Rib}\textsuperscript{305} and unsuccessfully in \textit{The Andersonville Trial}.\textsuperscript{306} It is one that appeals to juries (\textit{Adam's Rib}) because of its seeming "fairness" but not one that appeals to the law-trained sitting in judgment. In any case the observer senses that Janning's conviction in \textit{Judgment at Nuremberg} is already decided, no matter how persuasive his attorney may be.

At the end of \textit{Adam's Rib},\textsuperscript{307} eager photographers urge Doris and Warren to pose for a picture with their children and Warren's girlfriend. Thus they invent for the public an image of reconciliation and closure that is unlikely to reflect the parties' feelings; yet through its publication it will become the truth for the newspaper readers who see it.

C. Irony of Impersonation and the Choice of Defendant

Apart from pointing out the easy manipulation of the legal systems available to such unscrupulous defendants as Leonard Vole and Frederick Manion, the author or filmmaker can also criticize the legal system by dem-

\begin{itemize}
\item \textsuperscript{301} Like the judge in \textit{Miracle on 34th Street}, \textit{supra} note 229, and Judge Heywood in \textit{Judgment at Nuremberg}, \textit{supra} note 24, he must balance his interest in and duty to the law with his interest in keeping a job.
\item \textsuperscript{302} In \textit{Inherit the Wind}, \textit{supra} note 22.
\item \textsuperscript{303} \textit{Judgment at Nuremberg}, \textit{supra} note 24.
\item \textsuperscript{304} Among them are Oliver Wendell Holmes's opinion in \textit{Buck v. Bell}, 274 U.S. 200, 205 (1927), upholding the legality of the sterilization of a "mental defective." On the questionable scientific dogma which led to decisions such as the one in \textit{Buck v. Bell} and the Nazi eugenics experiments, see \textit{Ruth Hubbard & Elijah Wald, Exploding the Gene Myth} 13–22 (1993).
\item \textsuperscript{305} \textit{Adam's Rib}, \textit{supra} note 20.
\item \textsuperscript{306} \textit{The Andersonville Trial}, \textit{supra} note 52.
\item \textsuperscript{307} \textit{Adam's Rib}, \textit{supra} note 20.
\end{itemize}
onstrating that it fails from the beginning in its quest for justice by bringing the "wrong defendant" to trial. The "wrong defendant" may be a totally innocent person, or he may be someone whose morality is immediately apparent to the observer, and who, though he may be literally guilty, is ethically innocent of the charges.

1. Presumed Innocent and the Lawyer as the Accused

With the choice of defendant, particularly when the defendant is a lawyer, the conflicts of fact merge with the conflicts of belief to create a dramatic whole. Both the lawyer as ethical chameleon and the lawyer as defendant are popular choices for the author wishing to examine the contrast between law and justice in the legal system.

The image of the lawyer, expert in the manipulation and control of the legal system, as the accused in a criminal trial (particularly murder) is an obvious choice for the author wishing to present an ironic situation. Observers expect that lawyers can solve their problems easily through the "technicalities" with which they are familiar to avoid committing crimes. If they are accused of wrongdoing, the tendency of nonlawyers is to assume guilt according to one of the following theories: (1) they were not quite as expert as the observers assumed and were caught by attorneys (or other investigators) smarter than they (implication: some lawyers are honest); (2) they were expert but overly greedy or sloppy or desperate and were caught by honest parties (implication: some lawyers are honest and the system itself is trustworthy though subject to abuse); and (3) they were unbalanced personalities who happened to be attorneys (implication: the majority of lawyers are honest and the system is trustworthy). Depending upon the author's view of the legal system and human nature, his critique of the legal system, and consequently his final message to the observer, illustrates one of these theories. Rarely does the observer begin with the assumption that the lawyer is guilty. The implied betrayal of trust demonstrated by an attorney's abuse of the system, a trust which always seem to recur, is so profound (in cases of embezzlement or blackmail for example) that the observer prefers to believe the worst not to seem naive. In the case of murder, the betrayal is even more basic, since of all crimes that the law is meant to

308. The use of the lawyer as defendant is a common and powerful ironic device in courtroom drama. The television drama Indict and Convict (ABC television broadcast, Jan. 6, 1974), featured a prosecutor charged with the murder of his wife and prosecuted by his former colleagues. Throughout the drama, his innocence seems clearer than his guilt, and his knowledge of the legal system and of his colleagues' thought patterns enables him to manipulate the system successfully for a time, although the prosecutor does manage a conviction. The result is more satisfying for the observer in terms of restoring his belief in the legal system, but it lacks philosophical interest.
prevent, murder is the most important. The taking of human life is the one irreparable harm and the one act that the law must avert by offering other, less violent options.

The confusion of roles is a major component of the dramatic irony present in Presumed Innocent, and the spectacle of the lawyer-manipulator as accused-manipulated is a particularly striking one. From the cynical title (Rusty Sabich is clearly not presumed innocent by anyone except the real killer and arguably his lawyer) and his opening “I am a prosecutor” voice-over in the film, Sabich swings between the extremes of judge and judged, between accuser and accused. Sabich’s superior, Raymond Horgan, assigns the murder case to him because “you’re the only guy I can trust.” In reality Sabich is “the only guy” likely to be loyal enough to him to cover up Horgan’s involvement with the dead woman. Horgan equates “trust” with blind loyalty: the prosecutor who should be assigned the case is Horgan’s political enemy—an enemy who ironically becomes the prosecuting attorney in Sabich’s case. Yet Horgan does not trust Sabich enough to tell him the truth about the dead woman or about his and the dead woman’s involvement with the judge. Further, Horgan lies on the stand in a final effort to cover up his own involvement and implicate Sabich.

Rusty’s experience as a prosecutor seems to lead him completely astray once he becomes the defendant. His very definite opinions about how to obtain a conviction should alert him to the dangers of his own appearance.

309. Presumed Innocent, supra note 17. Nor, it is clear, is the legal system presumed innocent. The film asserts, and by the end, we believe that the legal system is corrupt and unredeemable. All that stands between anyone caught in it and ultimate disaster are faithful friends and clever (hired) lawyers. As Alan Dershowitz tells his student Maggie in Reversal of Fortune, supra note 26, once the accusation is made, “[y]ou have no one who believes in you. Even the mailman starts looking at you funny. All you’ve got is your lawyer.”

310. Presumed Innocent, supra note 17. The observers are not even sure until the end whether Rusty is guilty or not, although they like him and want to believe in him.

311. Rusty’s opening speech (a voice-over) in the film presents the dilemma of the story in microcosm. Like Witness for the Prosecution, supra note 3, it begins and ends with a shot of an empty courtroom. Rusty explains the jury’s role, which is to find the truth, to convict the guilty, and to exonerate the innocent. The jury’s role is to interpret the evidence that the judge allows it to hear and to judge its persuasiveness, which may or may not have anything to do with truth. In the film the jury never has the opportunity to deliberate because Judge Little dismisses the charges based on his fear that the defense attorney will reveal unsavory facts about Little’s relationship with the deceased. The “truth” regarding his guilt or innocence is revealed only in retrospect by Rusty. The prosecutor, whose job it is to pursue the criminal and who was himself pursued, senses that the entire system, and his own life, has been derailed by the murder.

312. Presumed Innocent, supra note 17.

313. When Horgan harangues his employees to “act like professionals” in pursuing the investigation, he is really demanding an arrest to enhance his chances of winning re-election. Once he loses at the polls and no longer controls the investigation, he becomes concerned that he might become a suspect, hence his insistence that Sabich mishandled the case.
on the stand, yet he insists to Sandy Stern, his attorney, that "the jury wants to hear me say I didn’t do it." Stern is reluctant; defense attorneys in general prefer not to let their clients testify because the client may say something in an unguarded moment that the attorney cannot control, allowing the prosecutor an opportunity to attack the defense’s entire case. Stern’s own choice is for Rusty’s wife, Barbara, to plead his case, but Sabich indicates that he believes his wife will not be a good witness. His sixth sense about testimony seems to guide him clearly but inexplicably here. Although Rusty believes (ironically) that his wife would not be a good witness because she is emotionally unstable, the truth is that she would not be a “good witness” because she committed the crime. Although Stern tells the judge that Sabich is “an integral part of our defense,” Sabich loses every tactical argument that he has with Stern. Stern controls the defense completely, like a good attorney. Sabich the wily prosecutor becomes Sabich the client unable to make effective decisions in his own defense.

Rusty’s voice-over in the opening scene establishes the irony of his situation: “I am a part of the process of accusing, judging, and punishing.” Normally, he can only do the first—accusing; as the defendant, first accused, then exonerated, he ends by doing the second—judging—because the first is denied to him. Like a jury that “can’t decide on truth,” because of the identity of the real killer, Rusty can never do the third—punishing. Without that decision, no resolution is possible. Sabich’s entire experience demonstrates that the very system to which he has devoted his life cannot uncover the truth necessary to resolve the question of guilt. Others (Sabich’s lawyer, his police officer friend, the real killer, the district attorney) intervene to prevent crucial evidence from being presented to that jury. What does his ordeal teach Rusty? That the system works only for those who know how to manipulate it. The presumption of innocence is not merely untrue; it is irrelevant.

314. When Sabich discovers the truth, it is again ironically through a conversation which has a figurative and literal meaning. As Sabich discovers the blood-stained murder weapon in the basement, his wife comes in announcing “I did it.” She is referring to a job interview where she has effectively convinced the prospective employers that she is qualified for the position, and also in a larger sense to the life she leads—she has “done it;” she has convinced everyone that she is a normal, loving, understanding, and patient wife. Sabich initially (and correctly), however, takes her statement as confirmation that she is Carolyn’s killer. As she continues her discussion of the interview, we understand what her remark means in that context and initially condemn Sabich for his evil thoughts; we “presume” her “innocent.” Eventually, however, we understand that his first impression was correct and the full force of Turow’s message becomes clear.


316. PRESUMED INNOCENT, supra note 17.
2. The Victim as Defendant and the Spirit of Justice

Authors also express irony in the choice of a technically guilty defendant who commits an act that many laypersons would consider "just" in the circumstances. In dramas such as *Adam's Rib*, the authors sympathize partly with the defendant, whom they portray as a victim of another woman's "homewrecking." Similarly in *The Accused*, the victim is figuratively on trial, because only if the jury believes that she is actually a rape victim will it find her attackers guilty. In many dramas, the authors point out the favorite courtroom tactic of defense lawyers to "put the victim on trial," a ploy especially obvious in both real and fictional trials. In television courtroom dramas such as *Matlock*, *Perry Mason*, and *L.A. Law*, the moral guilt or innocence of the victim may provide the defense attorney with weaponry to defeat the charges. Similarly, the prosecutor attempts to use the attractiveness of the victim and the unattractiveness of the defendant in an effort to sway the jury. This approach clearly suggests that even lawyers believe that the trial is an inefficient device for determining truth.

318. *THE ACCUSED*, supra note 123.
319. In addition to *The Accused*, other films which examine the ordeal of the rape victim include *When She Says No* (ABC television broadcast, Jan. 30, 1984), and *Without Her Consent* (NBC television broadcast, Jan. 14, 1990). The rape of males is treated in *FORTUNE AND MEN'S EYES* (MGM 1971) (a prison drama highlighting the rape of males by stronger, more influential inmates), and *The Rape of Richard Beck* (ABC television broadcast, May 27, 1985) (cop raped by the criminals he is chasing).
320. The belief that a woman's "no" really means "yes" or "maybe" is by no means dead in American jurisprudence. See James P. Gregor, *Saying "No" Should Be Enough*, CHI. TRIB., July 3, 1994, at 9 (noting Pennsylvania Supreme Court's reversal of rape conviction on the grounds that complaining witness failed to resist); Myriam Marquez, *With Rape, It's Resist and Get Beaten, or Don't Resist and Get Blamed*, ORLANDO SENTINEL, July 27, 1994, at A18 (discussing trial court's dismissal of rape case). A similar fact pattern is the plot of *When She Says No*, supra note 319. Consider also the concern voiced by some commentators that Robert Shapiro, O.J. Simpson's lawyer, "put the victim on trial" by bringing details of Nicole Simpson and Ron Goldman's habits and acquaintances into evidence. See generally SUSAN BROWN MILLER, AGAINST OUR WILL: MEN, WOMEN, AND RAPE (1975); Cary B. Willis, *Agencies Hope Simpson Case Casts Spotlight on Domestic Abuse*, COURIER-JOURNAL, June 21, 1994, at 3B.
322. *Perry Mason*, supra note 42.
324. Other examples, examined elsewhere in this article are Sir Thomas More in *A MAN FOR ALL SEASONS* (Columbia Pictures 1966), based on a novel written by Robert Bolt; Thomas à Becket in *BECKET* (Paramount Pictures 1964), whose symbolic trial in public opinion results in the condemnation of his temporal superior, the king, as his murderer; and Joan of Arc in *SAINT JOAN* (United Artists 1957). Henry Wirz in *The Andersonville Trial*, supra note 52, and the judges in *JUDGMENT AT NUREMBERG*, supra note 24, might qualify as victims in
Observers also sense that the jury's ability to discern truth from falsity is more an outcome of the procedure than of the substance of the trial. In *Witness for the Prosecution* observers know more (or think they know more) than the Vole jury knows about Leonard's guilt or innocence. The initial belief that he is innocent is based not on the evidence in the courtroom. If the audience was on the Vole jury and were to take into account the testimony against him given by such disparate persons as Christine and Janet MacKenzie, who could not be acting in concert, they would have to find him guilty. What sways the observers and eventually sways the Vole jury is the information they receive about Christine's motives outside the courtroom that Robards manages to get into evidence. Absent his clever manipulation of precedent, they would be unable, as observers or as members of the jury, to do what they believe to be justice. Had the verdict been "guilty," they would have condemned the Vole jury for the wrong result, though they knew they would have had to deliver the same one. The audience senses, therefore, that the system is imperfect; it can result in an unjust verdict based not on evidence heard, but on evidence withheld. Discovering the truth of the matter is even less comforting. Robards manages to introduce compelling evidence and pulls off a gigantic legal coup: Leonard's acquittal. At last, the observers feel exonerated, since both they and the jury have come to the same conclusion. To find out that Leonard is actually guilty and that the evidence so miraculously introduced is fabricated to obtain his acquittal is such a blow that again the observers question the wisdom of the jury system, while admitting to themselves that had they been charged with giving the verdict, they would have acquitted him as well. Thus, Christie uses the conflicts of fact and beliefs to bring about the ironic result that emphasizes her point: both legal justice and moral justice are matters of belief, but only the first is imperfect.

Observers of *People v. Manion* come to a similar conclusion in *Anatomy of a Murder*. Polly tells Manny initially that he needs a defense that will excite the sympathy of the jury. "Your wife was raped, so you'll have the sympathy of the jury going for you. Now, the jury needs a peg to hang an acquittal on. What's your legal excuse for killing Barney Quill?" What story can Manny and Polly tell that will persuade twelve jurors who have read the "essentially accurate" stories in the local newspaper that Manny

the sense that while guilty of the crimes with which they are charged (and in Wirz's case that is also arguable) they are scapegoats for actions also committed by peers.

327. Pre-trial publicity is never explored as an issue in *Anatomy of a Murder*, nor in any of the other courtroom dramas, although several of them show newspaper coverage. See, e.g., *Adam's Rib*, supra note 20; *Presumed Innocent*, supra note 17; *Witness for the Prosecution*, supra note 3.
deserves to be acquitted? Note that the “irresistible impulse” defense may lead to the right result in spite of Manny’s manipulations. Before they discuss possible defenses, Manny describes to Polly his feelings of disassociation during and after the act. In particular, “[it] was as if I was just watching . . . . I have no memory of pulling the trigger or of what happened after.” Unless Manny did extensive legal research before committing the act, a theory for which the observers have no evidence in the film, he may well be one of the few murderers who legitimately fits into the fourth category, in spite of the accusation of cold-blooded murder that the prosecution makes against him. The bartender describes him as completely impassive before, during, and after the act, although he has a different, non-psychiatric, interpretation of the behavior: he thinks Manny is a violent and deliberately brutal person. The Army psychiatrist finds the bartender’s description of Manny’s actions “like a mailman delivering the mail” extremely apt. “Yes, like a mailman, he would have a job to do, and he would do it.” These backwoods jurors buy the unusual and subtle irresistible impulse defense, possibly because it seems to parallel the retributive justice of their experience—“an eye for an eye” in Biblical terms; in secular terms, the ancient necessity to avenge dishonor to one’s name, family, and property (which until recently included one’s wife). They may also be reacting to the clear attempt on the part of the prosecution to minimize or deny the rape and Laura’s truthfulness. Her “victim” status is clear to Biegler’s secretary, who evaluates her as “the kind of woman men can take advantage of—and do.” Laura’s victimization occurs several times over: she is the pawn of her husband, Manny; Barney Quill; and the prosecution. Ultimately her victimization is complete: Biegler uses Barney’s attack on her and its effect on her husband as the justification for the murder, which releases Manny to return to her and continue his brutal treatment of her.

The defense attorney Hans Rolph also attempts to portray Ernest Janning as a victim of circumstance and his own philosophy in Judgment at Nuremberg, an attempt that is unsuccessful, although Janning, like Captain Wirz in The Andersonville Trial, would likely have obtained a different verdict had their trials been held a few years later.

328. Anatomy of a Murder, supra note 17.
329. Note the similar descriptions of Barney Quill, the victim.
331. The Andersonville Trial, supra note 52.
3. **Obedience to a Higher Law: The Legally Guilty, Morally Innocent Party as Defendant**

By contrasting legal guilt with moral or ethical innocence, many authors emphasize the lack of responsiveness that the legal system often shows to changes in technology or mores. In an episode of *Picket Fences* and in dramas such as *Murder or Mercy*, the moral debate surrounding the use of euthanasia allows the author to emphasize the “miscarriage of justice” aspects of putting a legally responsible person on trial for a crime that many in society believe ought not to be a crime. Other favorite ethical questions are the duty of persons to obey a “higher law” or one’s own conscience. Note for example a film dramatizing the imprisonment of Dr. Elizabeth Morgan, who chose to go to jail rather than allow her ex-husband to see their daughter because she believed him guilty of sexually abusing the girl. The clear message in such films is that the legal system protects the abusers, not the abused, and fails in its duty toward the oppressed and the victimized.

Bound up with the examination of these questions is the social critique manifested through the irony of situation or character in allowing the defendant to be tried for a crime that his or her peers either do not classify as a bad act or that they would themselves commit in similar circumstances. The author forces the observer to examine the point at which he would himself obey a “higher law.” The best of these films demonstrates that no one person is completely in the right. Rather, in a system of competing interests, the law’s tendency to give effect to traditional values may no longer reflect majority opinion regarding certain moral dilemmas.


335. Another example is the television drama *In Broad Daylight*, supra note 255, based on Harry MacLean’s book of the same name, and describing the widespread “amnesia” of small town witnesses to the murder of the town bully who “had it coming.” *See Joan Hanauer, Ent.*, UPI, Feb. 1, 1991.
In some cases the crime of which the defendant is accused would not be a crime in other countries or other times. For example, the irony typified by trials involving witchcraft bound up with other crimes (Saint Joan\textsuperscript{336} and The Lady's Not for Burning\textsuperscript{337}) allows the observer to reflect both on changing mores and on the definition of criminal behavior. Joan's leadership of her country's army represents a patriotic act in French terms, and a treasonous one in English ones.\textsuperscript{338} Equally, the defendant in The Andersonville Trial\textsuperscript{339} would not have been tried had the Confederacy won the war. Arthur Miller's The Crucible\textsuperscript{340} forces the observer to consider how, although witchcraft is no longer a crime in this country, it symbolizes behavior or circumstances which will always be so classified. The characters charged with witchcraft in The Crucible represent those who do not fit a mainstream definition of normality, either because of their views (the character Giles) or because of their success in business or a profession (Susanna).\textsuperscript{341} Woody Allen adopts Miller's use of the witchhunt as a symbol for the persecution of unpopular beliefs in The Front,\textsuperscript{342} which has a climactic courtroom scene in which Allen's character finally takes responsibility for his own principles by rejecting responsibility for the work of others.\textsuperscript{343} By doing so and accepting "guilt" for his actions, he affirms his actual innocence of the "crime" of communist sympathies. In Fear on Trial,\textsuperscript{344} an accused communist sympathizer (John Henry Faulk) finally obtains a measure of revenge on his accusers.\textsuperscript{345} Many other films and plays use a courtroom scene to drive home

\textsuperscript{336}. SAINT JOAN, supra note 324.
\textsuperscript{337}. THE LADY'S NOT FOR BURNING (ITV television broadcast, 1987).
\textsuperscript{338}. Further, France and England represented different geographic and political entities in the fifteenth century. Allegiance and authority were differently apportioned. The observer's appreciation of Shaw's play requires his understanding of the differences in the social and political setting (that is, an understanding of a universe not fully articulated in the play) as well as of his appreciation for the universality of human motivations that Shaw presents. See generally ERIC BENTLEY, THE PLAYWRIGHT AS THINKER 137-57 (1976).
\textsuperscript{339}. The Andersonville Trial, supra note 52.
\textsuperscript{340}. ARTHUR MILLER, THE CRUCIBLE: A PLAY IN FOUR ACTS (1953).
\textsuperscript{341}. The irony extends to the circumstances of the drama. Because persons like Giles are willing to die for a principle, Miller and other playwrights can continue to write their plays.
\textsuperscript{342}. THE FRONT (Columbia Pictures 1976).
\textsuperscript{343}. Another film about the "red scare" is GUILTY BY SUSPICION (Warner Bros. 1991), but a far better examination of the issue is Eric Bentley's play Are You Now or Have You Ever Been?, in RALLYING CRIES (1977).
\textsuperscript{344}. Fear on Trial, supra note 15.
\textsuperscript{345}. The "Red Scare" period is likely to retain its popularity for playwrights and filmmakers since it represents the nadir of political responsibility, the perversion of the legal system, and the beginnings of its redemption. According to the ACLU, at least one blacklisted writer is still encountering problems, nearly fifty years after the discreditation of Senator McCarthy. The very media that spread and perpetuated (through its blacklist) the "red scare" also helped end it by covering the House Committee on unAmerican Activities hearings and related events, most notably the one in which attorney Joseph Welch challenged
the author's point about the perversion of the system by manipulative and malicious people, abetted by the fearful, the uncaring, or the stupid.

In some dramas the defendant may or may not be innocent. It is difficult to tell because neither the defendant nor the observer knows with what crime the defendant is charged and indeed in some cases guilt or innocence is of secondary importance. An obvious example is Franz Kafka's *The Trial* in which Joseph K (who represents Kafka, both the observer and the observed) is arrested, charged, and tried by a system which derives its purpose only from its own existence.

Finally, the "guilty" defendant who is charged with an act only questionably "criminal" enters the realm of fantasy in *Miracle on 34th Street*. *Miracle* concerns the claim of kindly and seemingly harmless old Kris Kringle that he is Santa Claus. An incredulous prosecutor attempts to have the man committed to a mental institution on the grounds that such a thing is impossible—Santa Claus does not exist. The courtroom becomes a forum for determining the truth concerning the existence of what most people consider a mythical figure, at least in his modern incarnation. The truth, however, is the last thing to emerge from the confrontation between legal procedure and reality. Limited by Kringle's admission that he believes himself to be Santa Claus, Fred Gayley, Kringle's lawyer, decides to "prove" the truth of his client's assertion. He does so by prevailing upon the court to accept as evidence of that truth the United States Post Office's delivery of hundreds of letters addressed only to "Santa Claus" to Kringle. The judge gratefully seizes on this official "recognition" of Santa Claus's existence as

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Senator Joseph McCarthy, beginning McCarthy's fall from power. In a bit of real life irony, Otto Preminger cast Welch as the no-nonsense but sympathetic judge in *Anatomy of a Murder*, *supra* note 17. Welch gives a wooden but sincere performance.

346. Orson Welles filmed a version of Kafka's novel in 1962. Some commentators find the film, although a great work of art, not faithful to Kafka's vision because it over-emphasizes certain points (such as the universality of the story) and completely misrepresents some of Kafka's ideas. Thomas Hines points out that Welles shows Joseph K's conviction in the film, although in Kafka's novel he is acquitted. See Thomas Hines, *The Trouble with Ambiguity: Franz Kafka's Novels The Trial and The Castle into Film*, 1987 TRANSFORMATIONS: FROM LITERATURE TO FILM: PRO. FIFTH ANN. CONF. FILM KENT ST. U. 156, 158. The contrast between the novelist's story and the filmmaker's story in this type of drama is an example of the differing opinions of nonlawyers concerning the meaning of justice.

347. Muecke points out that *The Trial* is a grand metaphor for the individual's quest for meaning in life and recognition of its absurdity. MUECKE, *supra* note 106, at 76.

348. *Miracle on 34th Street*, *supra* note 229. *The Devil and Daniel Webster* (RKO Radio Pictures 1941), is another film in which a lawyer enters a world in which the human legal system is a quite alien invention and manipulates circumstances to obtain the acquittal of his client. Another example is the *Star Trek: The Next Generation* episode, *Devil's Due* (syndicated television broadcast, Feb. 4, 1991).

349. *Miracle on 34th Street*, *supra* note 229.
a convenient way out of his election year dilemma, declaring that he will not dispute the federal government's finding. By recasting the actual act of some postal employees overburdened with holiday mail as the official act of the United States government, the attorney tells the court a story legally acceptable, therefore legally believable.

Neither Gayley nor any other adult in the drama believes that Kris Kringle is "really" Santa Claus even though the court decides in his favor, although all are fully prepared to believe that Kringle is "symbolically" Santa Claus. The legal fiction remains a fiction until Christmas Day when the attorney discovers circumstantial but independent evidence that reality and Kringle's truth are equivalent. Gayley's last speech in the film reveals the extent to which he finally recognizes that his courtroom success is due more to his client's genuine otherworldly origins than to his own abilities as an advocate. The "truth" recognized by the court and the "truth" perceived by the attorney and by the observer are one, although based on wildly divergent evidence and reasoning. Further, like Polly Biegler and Amanda Bonner, Gayley discovers the "truth" outside the courtroom—that is, outside the legal process. Note that Wilfred Robards discovers the "truth" in the courtroom, but symbolically outside the legal system because the revelation comes after the trial.

*A Man for all Seasons* presents a citizen who finds that an existing legal order acts to prevent him from carrying out what he conceives to be the spirit of the law. The title character in *A Man for all Seasons* is Sir Thomas More, a lawyer and Lord Chancellor of England. He refuses to sign an oath required of him by the King, is tried for treason, and condemned to death. The observer never learns why More refuses to sign the oath nor the reason for his silence. The fact that More refuses to tell any story at all, however, is supremely ironic in that as a lawyer he understands the importance of courtroom storytelling and refuses to participate in it. Why si-

350. His campaign manager has informed him that no one will re-elect a judge who puts Santa Claus in a mental institution. Id.


352. It is likely, however, that his objection is not legal but philosophical, in that he recognizes the king's authority to require the oath but considers the content unconstitutional.

353. More is not the only sixteenth-century figure whose quarrel with Henry VIII was filmed. In *Anne of the Thousand Days* (Universal Pictures 1969), Queen Anne is tried for treason (adultery) and executed after the King both divorces her and proclaims that their marriage was never legal. It is difficult to see how Anne could be guilty of committing adultery if she was never legally married to her husband. History provides a final bit of irony—
lence should be a treasonable offense is likewise left to the observer's imagination, although Henry suggests to More that his formal acquiescence is necessary to persuade others of like mind. It is left to the playwright to tell a version of More's story that seems to accord with the documentary evidence and satisfies the observers philosophically.

The irony in *Inherit the Wind* is provided as much by the viewer as by the characters. The skillful and philosophical defense attorney wins his case by losing; his client is obviously guilty of having defied the law, but by the end of the film the viewer and some of the characters believe that the statute is wrongheaded and should be repealed. The judge imposes the least possible sentence (a fine of one hundred dollars) to signal his disapproval of the proceedings. By defying the law and appealing to a higher

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her daughter by Henry, the future Elizabeth I, was bastardized but eventually succeeded to the throne as the best choice among available candidates, the others being foreign subjects or barred through some question about their own legitimacy. Elizabeth was arguably the greatest of England's rulers. She was certainly one of the most legalistically minded, since her claim to the throne derived as much from her recognition by Parliament as from her birth.

354. One commentator suggests that More's silence is treasonable in itself under the civil law as constructed by Henry's lawyers.

[S]ilence was no crime by common law, but the men who developed the law of treason under Henry VIII had civil law at their disposal, whether for their consciences or their contrivances; and indeed if important men were to be allowed to escape punishment for concealing their opinion, and their consultations with dissidents, no statutory enactment of constitutional opinions or principles could have any hope of success. In that world of experiment . . . the international notion that failure to disclose what was going on—clearly capable of being conceived as within the common-law offence of misprision of treason—was in itself a crime under the *lex luita maiestatis*, could be exploited opportunistically, and be carried . . . where the needs of the time took it.


355. The portrayal of More in *Anne of the Thousand Days*, *supra* note 353, is equally sympathetic, although More is clearly presented as more unsympathetic to Anne in that film than in *A Man For All Seasons*, *supra* note 324. Like most historians, playwrights and filmmakers have found it difficult to portray Sir Thomas in an unflattering light, given his unusual dual identity as lawyer and saint.

356. *Inherit the Wind*, *supra* note 22.

357. This reaction did not escape the Hays Office, which informed the producers of the film that "[a] story such as this violates that portion of the code which states that 'no film . . . may throw ridicule on any religious faith.' The material contains an attack on Christian doctrines and in general presents religious-thinking people in an extremely unfavorable light." GERALD GARDNER, THE CENSORSHIP PAPERS 194 (1987) (quoting a letter from Geoffrey Shurlock to Frank McCarthy). Shurlock's film memo indicated that the Hays Office insisted that the script undergo considerable revision before it could receive approval. That the play was based substantially on the transcript of the trial seems to have escaped Shurlock. *See id.* at 194–95.

358. *Inherit the Wind*, *supra* note 22. His reasons are partly political. As the Mayor points out to him, although the influx of money into town is welcome, "Hillsboro is a laughing stock."
authority—the power of human reason—Drummond’s client reaffirms the spirit that animates the First Amendment to the Constitution. 359

D. Irony and the Critique of Trial Procedure

1. The Use and Misuse of Evidence: Storytelling Through the Manipulation of the Rules of Evidence and the Use of Procedure 360

[O]nly a judge knows how much more a court is than a courtroom. It is a process and a spirit. It is the house of law. 361

One of the most effective methods of commenting on what seems to be manipulation of the legal system comes through an author’s demonstration of the attorney’s effective use of procedure to exclude damaging evidence and use of helpful evidence to tell a story favorable to his client. The attorney’s ability to manipulate the rules of evidence invariably leads to an ironic conclusion: either the accused who is really guilty is acquitted, 362 or the accused whose innocence is at least arguable is convicted. 363 The rules of evidence, which act as the limits on legitimate manipulation of the legal

359. Inherit the Wind is based on the John Scopes “Monkey” trial, held in Tennessee in 1926. Scopes was a high school biology teacher charged with violating a statute that forbade the teaching of the theory of evolution in Tennessee public schools. Convicted at trial, he appealed and won reversal of his conviction from the Tennessee Supreme Court. Scopes v. State, 289 S.W. 363 (Tenn. 1927). On the impact of Scopes, see generally Harry Kalven, Jr., A Commemorative Case Note: Scopes v. State, 27 U. CHI. L. REV. 505, 505–34 (1960). In some cases, one must defy the law in order to make law, a truth that Scopes’s lawyer, Clarence Darrow, knew well.

360. Procedure is that favorite nonlawyer’s bugaboo, the “legal technicality,” which allows the guilty to go free. Some films or plays are primarily about procedure; for example, the Japanese film RAN (Orion Pictures Corp. 1985), in which four witnesses retell the story of a rape, each from his own viewpoint and prejudices. Similarly, in an episode of Star Trek: The Next Generation, during Commander Riker’s trial for murder, each witness reconstructs the events leading up to the death as he or she remembers them, aided by the starship’s device called the holodeck, which translates their words into simulated reality so that all participants can observe them and come to their own conclusions. See Star Trek: The Next Generation (TNG): A Matter of Perspective (syndicated television broadcast, Feb. 12, 1990). In these cases there are two authors: the filmmaker and the witnesses, who reconstruct their realities within the film. The observers are thus observed (by the filmmaker and by the human viewer).

361. Judgment at Nuremberg, supra note 24 (opening statement of Colonel Lawson to the tribunal). Note that Lawson postulates that both “process” and “spirit” (the letter of the law and the philosophy animating it) are necessary for justice, an opinion not shared by the defense counsel, nor ultimately by the observer, although the judges and the author agree with him.

362. See Anatomy of a Murder, supra note 17; Jagged Edge, supra note 23.

363. See Judgment at Nuremberg, supra note 24; The Andersonville Trial, supra note 52.
system, often seem to the layperson to promote the lawyer's or judge's own agenda, rather than the cause of justice.\textsuperscript{364} Persuasive storytelling in the courtroom depends to a large extent on what evidence the lawyer is permitted to advance in support of his contentions. Persuasive storytelling in the courtroom drama depends on the factual situations that the author presents to demonstrate the gap between what the observer knows or believes to be true and the evidence that the factfinders in the trial are allowed to consider.

Generally, the attorney uses evidence to support his version of the story. Likewise, the witnesses are evidentiary tools. In both \textit{Jagged Edge}\textsuperscript{365} and \textit{Witness for the Prosecution}\textsuperscript{366} the defendant is acquitted on the basis of written evidence manufactured for the purpose of providing that acquittal. In both films the defendant is actually guilty. In \textit{Jagged Edge} anonymous letters written by the defendant and sent to the defense attorney reveal the existence of a prior crime. In \textit{Witness for the Prosecution}, the defendant's wife writes love letters invented purely for the purpose of convincing the court that she has a lover and therefore a motive for wishing her husband's conviction. In fact, she engages in all this manipulation for the sake of a man to whom she pretends to be married legally\textsuperscript{367} and to whom she considers herself married morally. He, however, does not reciprocate the feeling. In \textit{The Big Easy},\textsuperscript{368} the defendant tampers with the evidence (itself capable of more than one interpretation) to manipulate the prosecution into dropping its charges. Through the depiction of these outside events, the filmmaker manipulates the reactions of the observer, who can no more ignore them in his assessment of the relative guilt or innocence of the characters than the jury can disregard testimony once it is given in the courtroom, even though the judge may charge the jury members to disregard it.

In \textit{Presumed Innocent}\textsuperscript{369} defendant Rusty Sabich, a prosecutor himself, is in danger of being convicted of murder through the evidence planted

\textsuperscript{364} On the inability of educated laypersons to understand the importance of procedural mechanisms, see generally the criticism of Rosalind Rosenberg's testimony in \textit{EEOC v. Sears, Roebuck & Co.}, 628 F. Supp. 1264 (N.D. Ill. 1986), aff'd, 839 F.2d 302 (7th Cir. 1988), and the evaluation of it in Thomas Haskill & Sanford Levinson, \textit{Academic Freedom and Expert Witnessing: Historians and the Sears Case}, 66 TEX. L. REV. 1629 (1988).

\textsuperscript{365} \textit{Jagged Edge}, supra note 23.

\textsuperscript{366} \textit{Witness for the Prosecution}, supra note 3.

\textsuperscript{367} "There is no one, there never has been anyone but Leonard." It is Christine, not Leonard, who is hopelessly in love, regardless of her statement to Robards early in the film that Leonard "worships the ground I walk on." While this statement can be seen as preparation for her actions later, it is also a statement of the truth as she sees it. Christine's truth-telling is never believed by anyone without a private motive for that belief. What makes her a bad witness for the defense—the lies that she offers to tell for her husband—ironically provides the means for acquitting him. Christine knows nothing about the blonde with whom Leonard visited the travel agency and for whom he plans to leave her.

\textsuperscript{368} \textit{The Big Easy}, supra note 54.

\textsuperscript{369} \textit{Presumed Innocent}, supra note 17.
by the real killer\textsuperscript{370} and is only freed because his police detective friend withholds vital evidence, a glass with Sabich's fingerprints on it. The incoming district attorney removes the detective from the case because prosecutors believe his friendship with the accused will entice him to misuse his position in the police department. The removal actually facilitates the detective's ability to help his friend, whom he begins to suspect of the crime. His explanation is that he took custody of the glass after it returned from the crime lab, by which time he was no longer on the case. No one ever asked him for the evidence, so he never volunteered it. The question of spoliation of evidence, while a minor point in the drama, nevertheless emphasizes the theme: "taking the law into one's own hands" to obtain justice. Turow's point is particularly ironic in that it is a police detective who "takes the law into his own hands," and a public prosecutor (an experienced officer of the court unable to help himself even though he understands the system completely) who benefits from the act and that the observers concur in the detective's decision. After the judge dismisses the charges, the detective gives Sabich the evidence, even though he is not entirely sure that Rusty is innocent. For him, actual guilt is irrelevant, since the victim, a manipulative and ambitious woman, was "bad news" to anyone involved with her.\textsuperscript{371} That the

\textsuperscript{370} The killer turns out to be the defendant's wife, who tells him that she would have come forward with the truth had she known that he would be tried and nearly convicted. Since he was originally in charge of the murder investigation, she believed he would discover her guilt and to protect her, label the investigation "unsolved." She successfully manipulates both him and the system. Significantly, she is a mathematician, and her actions are rationally planned to lead to this outcome. In the end, he does exactly that, telling the viewer "I couldn't take my son's mother away from him," just as his friend the police detective was not able to turn over evidence likely to condemn him in the eyes of the jury. Similarly, Raymond Horgan, Sabich's former boss, helped the presiding judge out of a moral and legal predicament several years before rather than reveal the judge's wrongdoing. In doing so, says Sabich's attorney, Horgan rescued a good man and restored a good legal mind to the bench. In a drama in which so many characters make their living from the law (which should represent the pursuit of justice), other emotions, most notably friendship, interfere to tip the scales toward outcomes that are morally just although not legally sanctioned.

\textsuperscript{371} Actual guilt is not irrelevant to Sabich, but he is unable to do anything effective with the truth he uncovers. For a believer in the system, this outcome is most bitter and most ironic. One commentator points out how effectively the film persuades the viewer of the appropriate position of women in society, thus manipulating observers to the extent that they never question Sabich's (uncorroborated) evidence about the real killer's identity. "Rusty Sabich is the only person aside from Barbara herself who knows that she is the guilty party (if, indeed, he has not fabricated her story)." Amelia Jones, "She Was Bad News": Male Paranoia and the Contemporary New Woman, 25/26 CAMERA OBSCURA 297, 314 (1991). This interpretation, however, seems unnecessarily cynical, suggesting as it does that Rusty has a continuing motive in lying about his guilt. It may be that he constructs an explanation of the crime that implicates Barbara in our eyes. There is no independent evidence that this is so, and the film gives observers no reason to believe that Rusty would deliberately implicate his wife in our eyes (there is no "other woman" apart from the victim; divorce is common in our society, and Barbara now has a job, negating any fear Rusty may have that he might have
defendant is innocent is both a validation of the act and ultimately irrelevant.

The defendant's innocence, however, is even more ironic because Turow's clear message, through the juxtaposition of title (Presumed Innocent) with process ("presumed guilty," even by one's friends, who know the flaws in the system) and ultimate outcome (dismissal of the charges without exoneration and public revelation of the guilty party) is that only the naive believe in the presumption of innocence. The knowledgeable realize that to achieve justice one must circumvent the procedural safeguards in the system. Ultimately, Sabich is revealed as naive because, like the observer, he has believed at bottom in the concept of the presumption of innocence. Until his personal entanglement in the system, he believes in its fundamental fairness, even though he knows some participants in it are dishonorable.

a. Determining the truth through contradictory storytelling

The courtroom drama thrives on the mechanism of offering contradictory stories by different witnesses and through the use of logic and irony, allowing the observer to determine a truth about the act in question. One good example of the use of contradictory storytelling to approximate truth comes in the Japanese film Ran,\textsuperscript{372} which retells the story of a rape through the recollections of four witnesses. Another example, the television series Star Trek: The Next Generation includes an episode in which witnesses retell the story of a sudden death through a holodeck recreation of each person's memories of the action.\textsuperscript{373}

b. The use of evidence in questionable cases

The possibility of reversal and retrial in Reversal of Fortune\textsuperscript{374} depends on the ability of the defense team to convince the Rhode Island Supreme Court to agree to hear new evidence. For the appellate defense team, the search for new evidence is equivalent to the search for admissible evidence. Only heretofore undiscovered evidence is relevant to the result the team seeks—the reversal of von Bulow's conviction. Ironically, the evidence on which the team focuses is actually evidence that was already introduced at

to pay alimony; Rusty does not seem either paranoid or insane enough to concoct such a story, etc.).

\textsuperscript{372} RAN, supra note 360.

\textsuperscript{373} Star Trek: The Next Generation (TNG): A Matter of Perspective, supra note 360; see also supra note 360.

\textsuperscript{374} REVERSAL OF FORTUNE, supra note 26. I want to make clear that in my discussion of this film, as well as in my discussions of other docudramas, I am talking about the characters in the movies, rather than any real individuals on which they may be based.
trial: the evidence of the insulin-coated syringe. The "new evidence" is thus actually a new interpretation of the syringe evidence, or rather, a retesting and reevaluation of the actual presence of insulin, showing that insulin is not in fact present. The team's search for other evidence showing that others besides von Bulow had access to insulin goes awry when a potential witness, claiming to have witnessed von Bulow's stepson taking possession of drugs, asks Dershowitz for payment in exchange for his testimony. When Dershowitz refuses, the witness takes revenge, concocting a falsified tape that indicates that Dershowitz actually agreed to the payment. This "evidence" puts Dershowitz in professional danger until he can show that the tape is manufactured. Ironically, to try to obtain the result he wants, the witness has "changed the rules" on Dershowitz, the very process that Dershowitz advocates in another scene. In that exchange, one of his assistants suggests that the "rules" will not allow Dershowitz to pursue the line of defense he favors. "Then we change the rules," he responds.

By focusing on the planning and execution of the act, through a retelling and renaming of the act in Anatomy of a Murder, or on the planning and execution of a successful defense, through manipulation of the prosecution's case in Witness for the Prosecution, these courtroom dramas also emphasize the importance of storytelling, not only for the viewer enjoying the film, but for the lawyer attempting to persuade a factfinder of her version of the facts. Truth telling in these stories is rarely a defense. Only the lawyer's skill or some extraneous act allows the defendant to be acquitted. The selective presentation of facts and the use of evidence rules can be more important to the outcome of the case than the uncovering of the truth. Indeed in Witness for the Prosecution, the primary witness hands the jury the truth, but the jury finds it impossible to believe. So she manufactures a lie more palatable and more comfortable for them as they assess the facts they are given. Robards discredits both the truthtellers, the housekeeper Janet MacKenzie and Christine, through the rules of evidence. Although Janet knows both the victim and the defendant so well that the observers believe she is correct in her surmise that Leonard was present, Robards manages to manipulate the system sufficiently to discredit her testimony, both through direct physical evidence—her obvious hearing impairment—and through a demonstration of bias because Leonard is now the main beneficiary under Mrs. French's will, supplanting Janet. After he rests his

375. Anatomy of a Murder, supra note 17.
376. Witness for the Prosecution, supra note 3.
377. For example, see the suppression of key evidence by the defendant's friend in Presumed Innocent, supra note 17.
378. Witness for the Prosecution, supra note 3.
379. Notice that once we learn of Leonard's guilt, Janet's testimony is much more credible, even though on its own it is no more or less credible than before. We are persuaded
case, Christine (in disguise) provides him with new evidence to impugn her testimony. To get the evidence admitted, Robards cites a case in which the presiding judge, as a prosecutor, was overruled and the defense allowed to present new evidence.

Christine's truth telling results in an accusation of perjury not only through Robards's cross-examination but also through her own (intentional) efforts. Robards induces her to identify the paper on which the letters were written as her own through what he thinks is a clever trick. She is in fact waiting somewhat impatiently for him to ask the right question so that she can identify the paper and get on with her plans. The admission that Robards hopes will be so damaging to the prosecution's case is indeed the truth and is indeed damaging. She did write the letters. But she has manufactured the contents to create the atmosphere for disbelief in her story that Leonard committed the crime. This is the only testimony she gives that might be considered a lie, although Leonard interrupts her frequently to shout, "Lies, all lies! Why are you saying these things, Christine?" Instead, she relies on mistaken though predictable inferences by the jury, judge, and witnesses.

The judge also contributes to the irony by cautioning Christine not to compound her supposed perjury. Although she has not yet perjured herself, except by implication, she eventually does commit a perjury by omission to get the letters into evidence. She does not tell the whole truth about them, allowing the jury's inferences indirectly to do for Leonard what her testimony cannot. Because both prosecution and defense filter the evidence through a series of carefully-worded questions, Christine's truths emerge characterized as lies, showing how easily the rules of evidence can defeat the purpose of the legal system, which is to discover truth and dispense justice. Further, Christine, as the major truthteller in Witness for the Prosecution, is as adroit a manipulator as Leonard and more adroit than either the prosecution or the defense. She makes the observer acutely aware that what matters in a court of law is what the lawyer can introduce into evidence.

Irony extends to the type of evidence available in Witness for the Prosecution to exonerate the defendant. The blood types of victim and killer are both type O, which the defense reveals to the surprise of the prosecution, although the prosecution is correct in believing that the blood on the killer's clothes is that of the victim. In some sense this is the right result because her testimony is flawed; she could not have heard Leonard's voice, even though she deduced his presence.

380. What she says, however, is "I wrote the letters." She makes no statement concerning the truth of their contents, nor does Robards ask her beyond asking whether she knows anyone named "Max."

381. Nor can she, since under cross-examination she is limited to answering the defense's questions, unless they ask her an open-ended question.
the truth is irrelevant; what matters is what either side can legally introduce into evidence.

While the author is presenting a story and attempting to persuade the observer of its philosophical truth, the observer is attempting to discern the objective truth from among several different stories being told by the characters. In most cases, the observer cannot have objective knowledge or personal knowledge of the act since this knowledge would interfere with the goal of the drama, which is to point out the difficulty of determining truth.382 The author’s control of the “evidence” (the words and action of the drama) attempt to limit the observer’s options in terms of extracting meaning from the drama (Booth’s “stable irony”). The observer may extract a meaning from the drama other than that intended by the author, but if he was presented with no “evidence” to support that view, his extracted meaning is illegitimate, therefore “inadmissible.”

2. Putting the Law on Trial: Legal Ethics, Storytelling, and the Re-definition of the Law

"If the law supposes that," said Mr. Bumble, ... “the law is a[n] ass—
a[n] idiot."383

In some dramas the magnitude of the defendant’s guilt acts as a further philosophical problem for the attorney. How far may the attorney redefine or stretch the existing law in order to obtain the desired verdict? In Anatomy of a Murder,384 the defendant freely admitted that he committed the crime. The question at issue is what degree of guilt attaches to his act? Does the defendant have a legal excuse for his conduct? In such cases storytelling becomes an essential part of the defense, as demonstrated successfully by the attorneys in Anatomy of a Murder and Adam’s Rib385 and unsuccessfully by the lawyer in The Andersonville Trial.386 But the effectiveness of the storytelling, measured against what the observers know or suspect about the

382. Robin Winks observes that the Agatha Christie classic THE MURDER OF ROGER ACKROYD (1926), relying as it does on misdirection, misinterpretation, and unwarranted inference or inattention by the reader, would be difficult to translate to the screen. See WINKS, supra note 31, at 38–39. Filmmakers, however, have successfully brought several of Christie’s other novels to the screen, including WITNESS FOR THE PROSECUTION, supra note 3, and MURDER ON THE ORIENT EXPRESS, supra note 204. Winks is concerned primarily with the mystery novel, in which identity is more important than procedure. As I point out in Corcos, supra note 66, procedure can be made entertaining if it is a “howdunit” rather than a “whodunit.”
384. ANATOMY OF A MURDER, supra note 17.
385. ADAM’S RIB, supra note 20.
386. The Andersonville Trial, supra note 52.
fidelity of the story to the truth amplifies their suspicions concerning the fit between law and justice. The other side of the coin is the critique of some laws that are either unjust (the defendants in Judgment at Nuremberg are charged with the enforcement of unjust laws, for example) or no longer bear any relationship to current mores.

Attorney Paul Biegler, like other attorneys mentioned in this article, claims not to care whether the man is "innocent" in any moral sense, but whether the law can excuse his act. But like the lawyers in Reversal of Fortune, Jagged Edge, and The Paradine Case, in the privacy of his own room late at night, Biegler worries about his complicity in helping a guilty man go free.

Although the lawyer who undergoes a crisis of conscience in these dramas may be the prosecutor or the defense attorney, the prosecutor has a more difficult time because according to accepted tenets of legal ethics, the prosecutor must do justice while the defense attorney has a much wider latitude in which to operate. His or her function is to try to obtain an acquittal for the client. In order to fulfill his ethical obligations, he must sometimes tell himself as well as others a convincing story about duty, honor, or the likelihood of his client’s innocence. By contrast, the prosecutor must not prosecute someone he knows to be innocent.

The tension between duty and ethics is obvious in such films as The Big Easy and, notably, The Andersonville Trial. Colonel Chipman, the

387. JUDGMENT AT NUREMBERG, supra note 24.
388. REVERSAL OF FORTUNE, supra note 26.
389. JAGGED EDGE, supra note 23.
390. THE PARADINE CASE, supra note 29.
391. According to the ABA Model Rules of Professional Conduct:
   [t]he prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause; (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel; (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing; (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense.

   MODEL RULES OF PROF’L CONDUCT R. 3.8 (2002). According to the comment, "[a] prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence."


392. Sandy Stern, in PRESUMED INNOCENT, supra note 17, is nearly unique among cinematic lawyers in his approach to Sabich’s defense. He uses his considerable skill and knowledge to his client’s advantage. The observer never knows whether he believes that Sabich is innocent or whether it matters to him.

393. THE BIG EASY, supra note 54.
394. The Andersonville Trial, supra note 52.
prosecutor in *The Andersonville Trial*, believes he has a very weak case against Captain Wirz, given the facts and existing military law. He therefore wishes to introduce the crime of failure to obey a higher law, the law of humanity, as the crime that Captain Wirz is guilty of violating. The presiding judge refuses to allow this characterization of the charges, and Chipman backs down, disappointed. Muses the prosecutor, "[t]here are causes more important than a man's conscience" (Wirz's very defense).

The defense lawyer in *The Andersonville Trial* acts as Chipman's conscience, accusing him of being in exactly the same position as the defendant and of acting in exactly the same way. "You know in your heart that you condemn [Wirz] for carrying out the orders of his military superiors. But this court will have no part of that argument. So what then do you do but withdraw it?" Likewise, both the head of the tribunal and Chipman's associate tell him flatly that his legal and military career will be doomed if he tries to argue an issue that the court has forbidden. Yet this disobedience to authority seems to be the only avenue that will lead to a conviction. Any hope that Wirz has of acquittal is predicated on Chipman's obedience to authority, so that any independent action on the prosecutor's part may doom the very act necessary to bring about the result he desires.

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395. For a statement of military law governing the Union Armies during the Civil War, see FRANCIS M. LIEBER, APPENDIX: INSTRUCTIONS FOR THE GOVERNMENT OF ARMIES OF THE UNITED STATES IN THE FIELD, in ROBERT N. SCOTT, AN ANALYTICAL DIGEST OF THE MILITARY LAWS OF THE UNITED STATES 441 (1873). Lieber states specifically that "[m]en who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another, and to God." *Id.* at 444. Lieber's adherence to the principles of humanitarian law familiar to modern readers suffuses the instructions with a charity that was in direct contrast to many of the brutalities carried out by both sides.

396. Francis Lieber, the nineteenth-century scholar and legal philosopher, drafted a military code for the use of the Union Army, including recommended rules for the treatment of prisoners of war. In his work he emphasized the correspondence between his code and the accepted rules of warfare in international law. See FRANK FREIDEL, FRANCIS LIEBER: NINETEENTH-CENTURY LIBERAL 327–30 (1947). General Halleck, the General in Chief of the Union Armies, had 5000 copies printed and distributed. *Id.* at 329.


398. Chipman wishes to condemn Wirz for following his superior’s orders; Chipman himself will be condemned if he does not follow the orders of the military tribunal.

399. Chipman does eventually argue the "higher moral authority" issue successfully and with leave of the court. By that time, the viewer has so much sympathy for Wirz that he condemns Chipman’s action.

400. Among the crimes of which Wirz is accused is that of conspiracy. Significantly, no other defendant or co-conspirator is ever mentioned. Wirz is convicted of and hanged for a crime for which at least two perpetrators are necessary. Even though the men on the tribunal understand the necessity of his acts in the furtherance of his country’s objective, they condemn him. Compare this film with the possibility that George Washington and other American revolutionaries would have been tried as traitors had the British won the war against the American colonies.
In *Adam's Rib*, defense attorney Amanda Bonner uses the law to obtain an acquittal of her admittedly guilty client by appealing to the jury's sense of equity and by retelling the client's story to expand the application of the law of self-defense, previously available only to men in similar situations. The observer begins by believing Doris guilty of the crime and even sees her commit it, but ends by considering her innocent. This change in opinion is because Amanda Bonner's effective recasting of Doris's act as excusable, even necessary. *Adam's Rib* forces the observer to demand the manipulation that will allow Doris's acquittal because he likes her and does not like her husband or the legal system which would condemn her.

While the film is a comedy, sometimes descending into slapstick, both Amanda's courtroom antics and her husband's reaction raise serious questions about the role of law and the possible miscarriage of justice exemplified by the case. Amanda's appeal is to equity in this situation (although equity is not an accepted concept in the criminal law). Adam's appeal is to the letter of the law; the client is literally guilty of assault and the reckless use of a handgun. Through comparison and analogy, Amanda manages to convince the jury that women contribute as much as men to society, and in some cases much more. Adam's appeal is to justice; he maintains that a man in similar circumstances would be equally culpable. Amanda and Adam represent the two sides of the conflict that the viewer feels. Like

401. *Adam's Rib*, supra note 20. In other comedic films, irony plays a part in expressing dissatisfaction or criticism of the legal system. For example, in the farce the TALK OF THE TOWN (Columbia Pictures 1942), Supreme Court nominee Ronald Colman becomes the instrument of accused criminal Cary Grant's successful escape and subsequent exoneration. Post points out that the nominee only becomes morally and ethically fit for the job when he abandons the letter of the law to embrace its spirit. Robert C. Post, *On the Popular Image of the Lawyer: Reflections in a Dark Glass*, 75 CALIF. L. REV. 379, 381–82 (1987).


403. *Adam's Rib*, supra note 20. The victim is wounded in trying to escape his wife's assault; he trips and falls and ends up in the hospital with a broken leg. *Id.* When Adam learns that his wife will represent the defendant, he drops a tray of glasses in full view of all the dinner guests at the Bonners' party.

404. Molly Haskell's classic work *From Reverence to Rape: The Treatment of Women in the Movies* (2d ed. 1987), studies the changing attitudes of audiences and filmmakers toward ambitious and successful women. In particular, women like Katharine Hepburn's Amanda Bonner demonstrate that public taste was already changing from admiration of independent women in the 1930s to support for the "wife and homemaker" image popularized in the late 1940s and 1950s. Amanda is the partner in the marriage who makes the compromises necessary to salvage her relationship with Adam (although the film ends by suggesting that she may decide to run for political office against her husband).

405. *Adam's Rib*, supra note 20. Adam gets his revenge on his wife by making her believe that he is crying over their breakup and likely divorce. When he admits that he was only pretending, she understands his point, that men and women must be treated equally in social and behavioral situations as well as before the law, or true equality is impossible.
most questions brought before a court, the issue in \textit{Adam's Rib} can be and is argued effectively from both sides.\(^{406}\)

The storytelling in \textit{Inherit the Wind}\(^{407}\) involves the Biblical story of Genesis as well as the defendant’s story of a search for truth. Early in his defense, Henry Drummond attempts to attack the law against the teaching of evolution through an expansive, figurative reading of the Bible, much as the prosecutor in \textit{The Andersonville Trial}\(^{408}\) wishes to redefine his approach to encompass the question of duty to a higher law than one’s military superior. Drummond’s approach is misguided, since his opponent is a nationally-recognized authority on the Bible. Finally, he abandons this line of attack and puts Brady on the stand to defend a literal reading of the Bible, a reading that Drummond demonstrates, through a lawyerly reading of this religious text, would allow for coexisting beliefs in both God and Darwin. While he succeeds in ridiculing both the anti-evolution law and Matthew Brady, neither the jury nor the judge is persuaded. In fact they should not be; Bert Cates has violated the law, which is vulnerable not on constitutional but only on philosophical grounds. In no speech is Drummond’s real belief in the legal system more evident than in his reply to Brady concerning the relative importance of “right” and “truth.” Shouts Brady, “Does right have no meaning to you, sir?” While standing near the jury box, Drummond replies coolly, “Realizing that I may prejudice the case of my client, I must tell you that right has no meaning for me whatsoever . . . . But truth has meaning . . . as a direction!”\(^{409}\) Drummond has faith that the legal system and his knowledge of it will allow truth to prevail, and he is ultimately proven correct to a degree,\(^{410}\) but not in that courtroom and not on that day. His brutal cross-examination of Brady results in Brady’s fatal heart attack, which represents also a figurative death for the law Cates has violated. Thus, Drummond and his beloved legal system are the instrument of death for another man whose life was the law as well.

\textit{Judgment at Nuremberg}\(^{411}\) posits a basic question about the nature of justice in the legal system. Do judges serve to do justice to the one, as Judge
Heywood from *Judgment at Nuremberg* opines, or to the many? Should they uphold the letter of the law or its spirit? Janning has abandoned the spirit of the law in order to uphold the letter; is he therefore more guilty than the others who never shared his ideals? He certainly believes so. Should a judge resign his position when he no longer believes in the sanctity of the laws he has sworn to uphold? Certainly Judge Heywood believes that Janning should have resigned and protested the development of the Nazi system. But is Heywood's hindsight a valid gauge? Until his tenure on the war crimes tribunal, he has never been an appointed judge, who could arguably remain in power precisely to try to mitigate the effects of unfair laws, as the defense believes is an acceptable course. Is the application of what amounts to an ex post facto law—the imposition of the United States-dictated Nuremberg Principles to the losers in a conflict—a fair and equitable solution? What is the difference between declaring illegal an existing and traditional relationship between two people (the "Feldenstein" case) and declaring illegal an existing and traditional relationship between the judges and the people (the "Nuremberg Principles")?

The defense attorney Rolph puts the question succinctly when he questions the very essence of the law being applied: is it rooted in natural right? or expediency? His cross-examination of a jurist who resigned rather than apply the Nuremberg laws demonstrates the difficulty of discerning the line that the prosecutor charges Janning and the others with having crossed. The jurist charges that Janning knew that "everybody knew" sterilization was being used as a political weapon, and Rolph demands specific evidence of this knowledge. When the jurist cannot supply it, Rolph has essentially discredited him. Yet the tribunal seems to give much weight to this man's opinion when it decides that the knowledge of the misuse of the sterilization

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412. The judges in *The Star Chamber* (20th Century Fox 1983), certainly believe it is better to stay in power and attempt to change the system from within.

413. The Feldenstein case is a fictional proceeding brought against the witness and her friend Mr. Feldenstein for violating laws prohibiting a relationship between "Aryans" and "Jews."

414. *Judgment at Nuremberg*, supra note 24. The Nuremberg Laws of 1933 represented the first time that a government actively used sterilization as a weapon against political opponents, although its targets seemed to be "mental defectives" and "undesirables." The Nuremberg Principles of 1948 represented the first time that governments used international law (redefined as the law of mankind) against political opponents.

415. In contrast, both Madame Berthold and her servants assure Judge Heywood that "nobody knew . . . we didn't know about the camps." Heywood has even more difficulty with this statement, given outside the courtroom, even though Madame Berthold tells him that her husband, an honorable man who attempted to overthrow Hitler for other reasons, could not have lived with the knowledge had he known. The professional military routinely "live with" knowledge of incredible cruelty about which the non-military can only speculate. As a human being, Heywood believes the jurist above Madame Berthold, even though she presents him with "evidence" to support her statement and the jurist does not.
laws was so pervasive that no one could have escaped it. Yet as a general matter, witnesses who cannot give specific examples to support an opinion are not persuasive.

E. Irony, Constitutional Issues, and Justice

In some dramas the author concentrates on the question: are constitutional guarantees and procedural devices substantive protections against wrongful conviction, or are they mere symbols? Nowhere is this question more obvious than in dramas about war crimes, such as Judgment at Nuremberg \footnote{Judgment at Nuremberg, supra note 24.} and The Andersonville Trial. \footnote{The Andersonville Trial, supra note 52.}

1. The Use of Procedural Devices: The Right Against Self-Incrimination

Nonlawyers tend to infer from a defendant’s silence that he is guilty; therefore, most nonlawyer defendants want to testify to give their versions of the story. Much as in real life, the characters in dramas want to be the “heroes” or “victims” of their stories. \footnote{Note the opening of David Copperfield in which David speculates on whether he will emerge as the hero of his own life story. See Charles Dickens, David Copperfield (1943). Is there, given the author’s didactic purpose, any doubt that he will, or that this sentence is ironic in the extreme?} Likewise, many people are flattered to be “judges” of others; the observer’s position of ultimate judge allows him to take center stage as well as to place himself in the position of whatever character he feels the most sympathy with.

A lawyer in a courtroom drama, however, must deal with the fact that a defendant on the stand is in an extremely vulnerable position. By the same token, a defendant who remains silent during the trial seems guilty to the nonlawyer who does not understand the concept of burden of proof.

Initial interviews may consist of the lawyer’s probing accompanied by the client’s silence or reluctance to participate in his defense. The lawyer in The Paradine Case \footnote{The Paradine Case, supra note 29.} takes his client’s silence for consent to the line of defense he has chosen. Only when the defendant learns on the witness stand that her lover has killed himself does she reject him and his defense and confess. The judge cautions her to consider the import of the statements she is making, but she ignores him. This misunderstanding leads to arguments in the prison and again in the courtroom concerning the conduct of her defense.
Likewise, in *Judgment at Nuremberg,* defense attorney Rolph misunderstands the nature of his client’s silence. Of all the defendants, this man, Ernst Janning, is most closely associated with the rule of law under Hitler because he is a noted scholar and jurist. He clearly understood the nature of his cooperation with the Nazi government and the meaning of his silence and lack of criticism during that period. He refuses to enter any plea or respond to the presiding judge’s questions. An embarrassed Rolph rises to speak for him, while looking back with concern at his client. Janning’s silence indicates his carefully considered reluctance to defend his actions; a reluctance that leaves his young attorney to develop his own plan of action.\(^{421}\)

Eventually Rolph attempts to influence Janning by admitting that he hates his role as advocate in these proceedings, but wants to salvage a shred of dignity “for the German people.”\(^{422}\) He argues to Janning, the absolutist whose jurisprudential writings have focused on the supremacy of that higher law to which all jurists should attempt to conform, that America committed atrocities during the war equal to those of the Holocaust. “I could show you a picture of Hiroshima and Nagasaki. Thousands and thousands of burned bodies . . . women and children . . . Is *that* their morality?”

Rolph ultimately attempts to persuade Janning of the necessity of mounting a defense by appealing to his patriotism, calculating that such an approach will be more effective than an appeal to self-preservation. But Rolph misunderstands Janning’s patriotism, which will not allow the man to use his love of country as a defense to a charge of abetting genocide. When Janning finally takes the stand,\(^{423}\) he renounces love of country as an excuse for his actions, stating that love of country requires the acknowledgement of guilt rather than the proclamation of innocence.\(^{424}\) To the question of why he participated, Janning can only answer that he answered the call of patriotism, equating love of justice with love of country and love of country with

\(^{420}\) *Judgment at Nuremberg,* supra note 24.

\(^{421}\) See *Ingo Muller, Hitler’s Justice: The Courts of the Third Reich* (Deborah Lucas Schneider trans., 1991) (discussing the role of judges in the Third Reich by arguing that both postwar Germany’s nationalist notions of self-preservation and the lack of any alternative source for jurists prevented any real punishment of judges associated with the Hitler regime).

\(^{422}\) *Judgment at Nuremberg,* supra note 24.

\(^{423}\) Consider the better-than-average acquittal percentages of guilty cinematic defendants who take the stand. Acquitted: Jack Forrester (*Jagged Edge*), Leonard Vole (*Witness for the Prosecution*), Doris Attinger (*Adam’s Rib*), and Frederick Manion (*Anatomy of a Murder*). Convicted: Elena Paradine (*The Paradine Case*), Ernst Janning (*Judgment at Nuremberg*), and Captain Wirz (*The Andersonville Trial*).

\(^{424}\) The question of what constitutes patriotism is at the heart of both *Judgment at Nuremberg* and *The Andersonville Trial.* Both films seem to suggest that the definition ultimately depends on who is doing the defining.
loyalty to the government in power.425 He abandons any opportunity he has of saving himself through legal argument, though it has been his life, in order to salvage what is left of the legal philosophy that is its basis.

After rejecting his counsel’s line of defense, Ernst Janning attempts to explain his actions.426 This testimony consists of his attempt to explain the infamous “Feldenstein case,” a symbol of the evil wrought by the Nazi legal system. Both words and actions have combined to build toward his testimony, which presents the author’s interpretation of the rise of Hitler and the circumstances under which the Holocaust was possible. As Janning speaks, he retakes control of his destiny, which he had reluctantly relinquished to his attorney, and his personal relations, which had become enmeshed with those of the other defendants.427 By abandoning his defense, Janning purges himself of what he considers to be the crime of collaboration. What convinces Janning to speak is not his own peril, but Rolph’s rough, nearly hysterical cross-examination of a woman whom Janning had sentenced to prison for engaging in “relations” with a Jewish friend of her family. Janning admits that he had made up his mind before hearing any testimony in the case, and for this, if for nothing else, he has abandoned all right to call himself a judge.428 Rolph, who has framed the issue as one of “who shall

425. “Informers” used the same analysis during the “Red Scare” of the 1950s. See VICTOR NAVASKY, NAMING NAMES (1980).

426. JUDGMENT AT NUREMBERG, supra note 24. His explanation corresponds in great part to the theory advanced by some historians of Weimar Germany that the Nazi movement grew directly from serious weaknesses both in the Weimar Constitution and in the German economy of the interwar period. See MARTIN BROSZAT, DIE MACHTERGREIFUNG (1984) (reexamining the thesis and translated as HITLER AND THE COLLAPSE OF WEIMAR GERMANY (1987)). Since Janning is identified in the film as one of the theorists responsible for the drafting of the Weimar Constitution, his responsibility for the crimes of Nazi Germany is personal and professional on two levels: personal as a participant in the framing of the constitution and as a participant in the judicial system and professional as a theorist and legal philosopher and as the representative of the judicial system.

427. JUDGMENT AT NUREMBERG, supra note 24. Janning makes clear that he feels he has nothing in common with the other defendants, whom he regards as either weak-minded or venal. By taking the stand, he separates himself from them. By taking responsibility, not only for his personal actions but for the actions of Germany, he becomes the patriot that Rolph has urged him to become, although not in the way Rolph has suggested. Rolph wants Janning to defend himself by excusing himself. Janning realizes that only by accepting responsibility can he and Germany put the specter of Nazi Socialism behind them.

428. The witness is the only one Rolph cannot impeach because her actions were motivated purely by friendship. He succeeds in pointing out that a fellow jurist who appears as a prosecution witness signed the loyalty oath of 1934, just as Lawson, the Allied prosecutor, succeeds in impeaching a defense witness by showing she joined the Nazi Party in 1933, which was long before it became mandatory. As Judge Heywood learns to his dismay in interviewing Germans in and out of the courtroom, nearly everyone “collaborated” to some extent. In that, everyone is guilty, and no one wishes to be punished, or to punish others. The question of relative guilt or innocence, of how much collaboration is inexcusable, and how much collaboration is necessary simply to survive (and is therefore excusable) is suggested,
judge the judges?” refuses to abandon the cause until Janning rejects him orally in the courtroom.

Captain Wirz, the defendant in *The Andersonville Trial*,\(^{429}\) desperately wants to explain his actions, to tell his story to men he believes will understand the military realities. As the trial concludes and he realizes that his attorney will not put him on the stand, he bursts out, “This legal game has been played back and forth, and I am to die . . . .”\(^{430}\) Do the defendants in *Judgment at Nuremberg*,\(^{431}\) all judges, escape the death penalty precisely because they understand the “legal game?” Several of them may also believe that those sitting in judgment on them understand the realities of their situation in Nazi Germany. Indeed, an American senator attempts to explain the political realities brought on by the Berlin crisis by telling Dan Heywood, the presiding judge of the tribunal, that the Allied Powers need the support of the German populace to carry out their mercy mission to relieve Berlin.\(^{432}\) Although he denies any attempt to influence the outcome of the trial, he insists that no one in Germany wants to see such judicial proceedings continue and that they are bad public relations and ultimately bad policy. Heywood is thoughtful, but unmoved, and the trial continues. In the final scene, Rolph reiterates this opinion by betting Heywood that within several years all the defendants will be free. Rolph is correct; the public opinion that served to pass the laws that the judges enforced vindicates them again. Not one of the defendants serves out the entire tribunal term.

In *Presumed Innocent*,\(^{433}\) Rusty Sabich clearly wants to testify; the tension between him and his defense attorney arises from a disagreement about how the trial should be conducted. Whether or not Stern believes Sabich is immaterial, although he is reluctant to let Sabich testify. Sabich, the experienced prosecutor, tells him “I always knew I had a winner when the defendant refused to testify. The jury wants to hear me say I didn’t do it.” Stern,

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430. The likening of the trial to both a game and a battle (singularly appropriate in the case of Captain Wirz) is common. In his interview with Polly Biegler, Lieutenant Manion hazards a guess that he was “crazy” when he shot Barney Quill and asks, “Am I getting warmer,” which is an allusion to the children’s game of “Hot and Cold.” Later, the judge listens in chambers to arguments by both sides on a point of law, makes his decision, and then announces, “Skirmish over. Let’s return to the field of battle.” *ANATOMY OF A MURDER*, supra note 17.
432. Heywood seems singularly unable to comprehend the enormity of the war, or the task before him and his colleagues. His first remark on viewing the ruins of Nuremberg is “I didn’t know it was so bad.” *Id.* The “it” that he didn’t know was so bad seems at first to be the destruction of Germany. Later, we see clearly that it is the ruin of an entire society, and by extension, an entire way of life.
the experienced defense attorney, has a different assessment of silence. He convinces Sabich to take the Fifth Amendment before the grand jury, although Sabich, like Claus von Bulow in *Reversal of Fortune*, takes the traditional stand of the innocent defendant, that he has nothing to fear and that his silence only makes him appear guilty. Throughout both the film and the novel, the tension between the two attorneys contributes to the feeling of unease and uncertainty about the purpose of the proceedings. Sabich is concerned with his own exoneration, sensing that anything less than complete certainty as to his innocence will be fatal to his career and personal life. Stern simply wants an acquittal and will use any means to get it, even procedural "tricks" that protect all defendants equally.

In some dramas the tension between individual rights and group rights is the focus of the action. *Skokie* and *Never Forget*, films about Holocaust survivors confronting Holocaust deniers, force the observers to consider to what extent free speech rights can and should allow the expression of unpopular opinion. The constitutional guarantees that the public normally associate with "attractive" parties (civil rights workers, for example) are here invoked in support of "unattractive" plaintiffs. In *Skokie*, neo-Nazis request permission to march through an Illinois town heavily populated by concentration camp survivors. In *Never Forget*, a Holocaust survivor confronts accusations of group libel as he attempts to document and defend his own experiences in the camps.

2. The Right to a Speedy Trial and Justice

The framers of the United States Constitution drafted the Sixth Amendment as a remedy for the perceived miscarriage of justice that routinely occurred when magistrates failed to hear cases within a reasonable length of time and those accused could not meet the demand for bail.


435. *Presumed Innocent*, supra note 17. This view is shared by many nonlawyers who equate "taking the Fifth" or arrest with guilt, expressed in remarks such as "If he didn’t do it, why did they arrest him?" or "If she won’t testify, she must have something to hide." In spite of their professed cynicism, many nonlawyers believe the system works, that the police do not arrest without probable cause, and that the innocent are acquitted. Procedural guarantees such as the right against self-incrimination seem to nonlawyers to be lawyers' tricks designed only to aid the guilty. Scott Turow's triumphantly ironic novel explores this attitude through its treatment of Sabich's feelings of isolation once he is indicted.


440. See U.S. Const. amend. XI.
Both the head of the military tribunal in *The Andersonville Trial*\(^{441}\) and the civilian judge in *Judgment at Nuremberg*\(^{442}\) refuse to consider postponing the trial.\(^{443}\) It is quite likely that in both cases, the defendants would have been acquitted had the trials been held several years later once tempers had cooled and memories faded. In both cases a speedy trial seems to have promoted the values of the Sixth Amendment at the expense of justice.\(^{444}\)

In addition, in many dramas the defendants seem unlikely to get a fair trial for reasons apart from the evidence against them or flaws in the legal system. For one thing, a "jury of his peers" seems an unlikely possibility for many courtroom drama defendants. In general, these defendants are clearly "aliens" or outcasts to some degree. Literal aliens are Elena Paradine in *The Paradine Case*, an Eastern European refugee,\(^{445}\) and Leonard Vole, the defendant in *Witness for the Prosecution*, an American settled in England after the war whose wife is also an alien (she is a German refugee).\(^{446}\) Claus von Bulow in *Reversal of Fortune* is a German aristocrat and attorney married to an American woman who is much wealthier than himself.\(^{447}\)

Some defendants are outcasts because of their professions. Frederick Manion, in *Anatomy of a Murder*, is an Army officer posted to a small northern Michigan town during peacetime. His profession and his wife's unquestionable attractiveness to the opposite sex set them apart from the

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\(^{441}\) *The Andersonville Trial*, supra note 52.

\(^{442}\) *Judgment at Nuremberg*, supra note 24.

\(^{443}\) The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution in the case of *The Andersonville Trial*. Political realities forced the decision in *Judgment at Nuremberg*.

\(^{444}\) Civil liberties are frequently infringed during time of war as they were during the Civil War. See Mark E. Neely, Jr., *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (1991). Civil liberties do not apply to military personnel as they do to civilians, nor do they apply extra-territorially. At least one federal judge applied them, however, in a criminal case in West Berlin. See *Herbert J. Stern, Judgment in Berlin 63 passim* (1984). Judge Stern took the position that the rights guaranteed under the United States Constitution were appropriately extended to any defendant in a United States court, no matter what its geographical location. *Id.* *Judgment in Berlin* (New Line Cinema 1988), was filmed with Martin Sheen in the role of Judge Stern. In one interesting passage, Judge Stern actually likens a criminal case to a play.

In some ways a criminal case is like a play in two or three acts. First there are the preliminaries—hearings into whether there is probable cause to hold the defendant for trial and pretrial motions. Act One. Then comes the trial. Act Two. Finally, if it is a three-act play, sentencing. During each act a lawyer occupies center stage. He is both producer and director, both chief writer and star performer. In the end, if there is a jury, a select audience of twelve will vote their pleasure.

*Stern*, supra, at 62–63.

\(^{445}\) *The Paradine Case*, supra note 29.

\(^{446}\) *Witness for the Prosecution*, supra note 3.

\(^{447}\) *Reversal of Fortune*, supra note 26.
local citizenry. Captain Wirz in The Andersonville Trial is both a for-

eigner and an Army officer from the losing side. As Germans and mem-

bers of the Nazi party, the judges in Judgment at Nuremberg represent the

losing side in the war as well. Although they are citizens of the country in

which the trial takes place, the system that tries them represents an alien

legal culture and rules of law arguably invented after the fact. The Nurem-

berg defendants are, in addition, clearly of much higher socioeconomic

status than several of the judges or officers in the courtroom.

Some defendants are outcasts because of social differences. Lizzie

Borden in The Legend of Lizzie Borden and Jack Forrester in Jagged

Edge are both wealthy and powerful local citizens. Some create the at-

mosphere that sets them apart: although he is a hometown boy, Bert Cates's

intellectual leanings isolate him from his neighbors in Inherit the Wind.

Bert assumes he will be convicted and spends comparatively little time wor-

rying about justice in the courtroom.

Some defendants are multiple outcasts. The Rosenbergs, for example, in Daniel are alienated because of their religion, ethnic heritage, social and

intellectual categorization (Americans have traditionally never trusted or valued the intellectual elite), and because of the crime they are accused of

having committed, which symbolizes total rejection of the American way of life. Bruno Richard Hauptmann may or may not have been responsible

for the kidnapping and death of the Lindbergh baby, but his accent and background, like that of the anarchists Sacco and Vanzetti, works against

him. The hysteria of the masses in the streets traditionally seeps into the

American film courtroom, as it does in real life.

Thus, defense lawyers in these dramas are faced with the additional

burden of making their clients seem as attractive and inoffensive as possible, which is not an easy task when the defendant has an accent, is of a dif-

ferent race (To Kill a Mockingbird), a different socioeconomic class (par-
particularly in the case of women defendants such as Lizzie Borden, or accused of committing a crime that seems more heinous because of her gender (Doris Attinger in Adam’s Rib).

F. Expert Witnesses and the Effective Use of Testimony for Storytelling

*My Cousin Vinny* presents the case of an attorney qualifying an expert witness hostile to his case who also seems, because of her sex, to be an unlikely expert in the field. To discredit the expert testimony of the prosecution regarding tire tracks and the identity of the perpetrator, Vinny is forced to call his former girlfriend, an out-of-work hairdresser who also works in her father’s garage. The contrast between the traditional (the identity of the prosecution’s witness) and the nontraditional (Vinny’s girlfriend) is obvious not only because of the difference in gender but also because of the difference in profession, in manner (Vinny’s girlfriend is sufficiently hostile to prompt the judge to wonder whether she will be helpful to the case), and in the sophistication of the two lawyers’ approaches. Vinny’s ability to elicit the needed testimony from his witness directly contradicts the observer’s expectations of him (a conflict of belief) because he has shown nothing but incompetence to this point. He attributes his courtroom victory to the expert testimony and to his knowledge of civil procedure, the one course whose content he grasped in law school. That content consists precisely of the kind of “legal technicalities” to which laypersons object because it smacks of trickery and deceit on behalf of guilty clients. Irony of impersonation combines with dramatic irony to obtain the acquittal of innocent persons, though their lawyer seems inept and their case thoroughly mishandled. While observers applaud Vinny’s victory, they are slightly uncomfortable with the haphazard nature of his advocacy and wonder whether other acquittals have as much accidental good fortune associated with them.

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457. *The Legend of Lizzie Borden,* supra note 17. The problem works in reverse for the prosecutor in *The Accused,* supra note 123. She must overcome not only the traditional prejudice against sexually promiscuous complaining witnesses but also the woman’s rebellious and somewhat uncooperative attitude.


G. The Outcome of the Trial, Legal Ethics, and the Limits of the Legal System: Irony and Retribution

Lawyers should never marry lawyers. This is called inbreeding and leads to idiot children . . . and more lawyers.

—Kip, to Amanda, in Adam's Rib

1. Conflicts of Belief: The Canons of Legal Ethics as a Roadblock to Justice

The canons of legal ethics are those rules of discipline intended to guide attorneys through the tortuous conflicting responsibilities they owe to society, the legal system, and their clients. Yet the canons seem to lead cinematic attorneys into precisely those ironic situations in which their actions are most likely to be misconstrued, even as they comply completely with their professional code. Conflicts of belief emerge most clearly in dramas about the professional ethics of lawyers. Those ethical, fictional lawyers who believe the legal system and justice can be reconciled have difficulty in many courtroom dramas when circumstances challenge their beliefs. Often observers sympathize with them, long after concluding that the lawyers are doomed to disappointment. The author, however, may surprise the observer, as in Anatomy of a Murder, by jerking him back to idealism after giving him a heavy dose of cynicism. The contrast between what seems likely to be the outcome of the dramatic action (injustice) because of what observers consider "immoral" or "unethical" behavior on the part of the attorney and what observers believe should happen to ensure justice results in another type of conflict of belief. If in addition, the observers believe the author or filmmaker agrees with them and not with the objectionable behavior of the character, this add a further layer of conflict of belief to the mix. Observers recognize that agreement when the author adds a further dimension of poetic justice or retribution as the climax of the drama. In this way, Witness for the Prosecution and Presumed Innocent manipulate their conflicting opinions about the nature of law and the possibility of justice in a way that Anatomy of a Murder does not.

460. ADAM'S RIB, supra note 20.
461. ANATOMY OF A MURDER, supra note 17.
462. WITNESS FOR THE PROSECUTION, supra note 3.
463. PRESUMED INNOCENT, supra note 17.
464. ANATOMY OF A MURDER, supra note 17.
Jagged Edge is a good example of the author’s use of the canon of legal ethics to illustrate both the protections and the dangers inherent in the advocacy system. Prosecutor Tom Krasny knowingly violates the canons of legal ethics twice in the film, once to convict a man he knows is innocent, and once (ironically) to convict a man he firmly believes to be guilty. In the first case, he is successful as long as his colleague Teddi Barnes remains silent, itself a violation of legal ethics, which she does to the extent of abandoning the practice of criminal law for the relative safety of the corporate world. Upon re-entering criminal practice, Teddi violates the canons once again to accuse Krasny of the first instance of wrongdoing once her own client is acquitted.

Teddi’s re-entry into criminal law provides the means for the downfall of both Krasny and her own client. Jack is actually the instrument of his own destruction as he pressures Teddi’s corporate law firm into pushing her to take the case. Krasny’s prosecution of Jack fails because, having discovered Krasny’s violation of the canons, Teddi accuses him in open court. In the ensuing pandemonium, the judge dismisses the case because of Krasny’s misconduct. Teddi’s revelation of Krasny’s unethical act results in the very outcome he tried to avoid. Teddi’s attempted expiation of her own first violation of the canons by her revelation of Krasny’s duplicity and her own assistance in the conviction of an innocent man results in the acquittal of a murderer. She eventually realizes this when she discovers evidence of Jack’s guilt at his home. Once certain of his guilt, Teddi feels compelled to right this wrong. Like lawyers in many other dramas, she faces a conflict between her legal responsibility to her client and her moral responsibility to society. She allows Jack to discover that she knows of his guilt and waits for his attack on her. In self-defense and to right the immoral (as opposed to the

465. JAGGED EDGE, supra note 23.
466. The evidence exonerating Styles, the innocent man, is eyewitness evidence, ironically the least reliable kind of evidence. The evidence exonerating the defendant in Jagged Edge is evidence of the defendant’s prior crime but presented in such a way that it seems as though he could not be guilty.
468. JAGGED EDGE, supra note 23. She accuses him first in the judge’s chambers, but she has no intention of backing up her accusation with proof. Krasny realizes this and challenges her by saying, “Name the case.” Id. It is difficult to understand what Teddi expects to accomplish by accusing Krasny without intending to provide proof.
469. After engaging in an intimate relationship with Jack—itself questionable ethical behavior—Teddi removes the evidence that she finds from the house and hides it in her own home. It is interesting to consider whether this act is technically theft, the protection of a client without his knowledge, or something else.
illegal) wrong she has facilitated by following the canons, Teddi eventually kills her former client.\textsuperscript{470}

\textit{The Big Easy}\textsuperscript{471} presents among other issues, a prosecutor’s failure to reveal personal involvement with a defendant, in this case a police officer accused of accepting bribes and protection money. Although the officer, Remy McSwain, is innocent of this particular charge, the prosecutor points out that he is guilty of other crimes, ranging from illegal parking to complicity in extortion.\textsuperscript{472} Remy obtains the services of the most successful defense attorney in New Orleans, who tells Remy (honestly) that the best he can do is a misdemeanor plea bargain with a short jail sentence.\textsuperscript{473} For Remy, the loss of his career as a police officer, based on an act committed by “everybody else as well,” is too horrible to contemplate. To obtain dismissal of the charges, he destroys the evidence against him.\textsuperscript{474} \textit{The Big Easy} clearly unfolds the story of incredible police corruption against a backdrop of hopelessness and cynicism.\textsuperscript{475} Although this drama has some ironic elements, not the least of which is Remy’s frequent bribe-taking (which he justifies by telling district attorney Anne Osborne that he and his colleagues are “all that stand” between the people and chaos), it is not ultimately an ironic film. The audience is meant to be pleased with the ending: the murderers die in a gruesome manner aboard the ship which is the focus of their illegal activity, Remy renounces his former practices, Anne forgives him, and they marry.

In \textit{Presumed Innocent},\textsuperscript{476} \textit{Jagged Edge},\textsuperscript{477} \textit{The Big Easy},\textsuperscript{478} \textit{The Andersonville Trial},\textsuperscript{479} and \textit{Judgment at Nuremberg},\textsuperscript{480} the prosecutors are all ex-

\begin{enumerate}
\item \textsuperscript{470} Note also that Teddi’s expiation of her violation of her legal responsibility is carried out (unsuccessfully) in private (in the judge’s chambers) and in public (successfully, in the courtroom to benefit individuals—her client and the innocent man whom Krasny successfully prosecuted—as well as society). Her expiation of the moral wrong she feels she has committed is carried out in private to benefit society and avenge the two dead victims.
\item \textsuperscript{471} \textit{THE BIG EASY, supra note} 54.
\item \textsuperscript{472} “Face it, Remy—you’re just not one of the good guys anymore.”
\item \textsuperscript{473} This attorney, like Sandy Stern (in \textit{Presumed Innocent, supra note} 17), is a good example of the clever and skillful lawyer who is also ethical. He presses his advantage in court as far as he can legally to obtain his client’s acquittal, but he will not compromise the law for Remy.
\item \textsuperscript{474} \textit{THE BIG EASY, supra note} 54. The evidence is a videotape, purporting to show Remy’s acceptance of protection money from a local bar owner. In reality, Remy was simply following up on another officer’s request to see the bar owner; this particular officer was one of those involved in the protection racket.
\item \textsuperscript{475} See \textit{id}. Most clearly evinced by Remy’s defense attorney, Lamar Parmantel, who cheerfully introduces his erstwhile opponent to some of the successful drug dealers in the city in an effort to help her win a different case.
\item \textsuperscript{476} \textit{Presumed Innocent, supra note} 17.
\item \textsuperscript{477} \textit{JAGGED EDGE, supra note} 23.
\item \textsuperscript{478} \textit{THE BIG EASY, supra note} 54.
\item \textsuperscript{479} \textit{The Andersonville Trial, supra note} 52.
\end{enumerate}
pected to “do justice” rather than to represent a client zealously. In each case the prosecutor must be reminded by another character (usually the defense attorney) that he is not “doing justice” but pursuing a vendetta.  

Adam’s Rib presents opposite views of the meaning of law and the role of lawyers. Adam Bonner, a plodding and devoted assistant district attorney, angrily tells his wife “the law means what it says” and that her defense of her client is a travesty of justice. The problem comes in determining what that meaning is. For Adam, the law “is the law, right or wrong”; for Amanda, a higher law requires the advocate to pursue the course of redefining or retelling a client’s story if existing law does not promote a just result. Neither is completely right nor completely wrong. Great breakthroughs in law result from an advocate’s courage in pushing the law to its limits, as Amanda does, or from the act of redefining and revocabularizing the law. Justice can also result from an advocate’s devotion to the letter of the law, as in many First Amendment and civil rights cases.

480. JUDGMENT AT NUREMBERG, supra note 24.

481. “Doing justice” is a primary responsibility of all attorneys in the European Community. See CODE OF CONDUCT FOR LAWYERS IN THE EUROPEAN CMTY. R. 1.1 (1988). In this it seems to emphasize the role of the lawyer as an officer of the court more strongly than does the ABA code in regard to defense attorneys.

In a society founded on respect for the role of law the lawyer fulfills a special role. His duties do not begin and end with the faithful performance of what he is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he is trusted to assert and defend and it is his duty not only to plead his client’s cause but to be his advisor. Id.

482. ADAM’S RIB, supra note 20.

483. Observers are not certain with which side the authors more closely align themselves.

484. One real-life example is Supreme Court Justice Ruth Bader Ginsburg’s successful use of the Fourteenth Amendment. See Reed v. Reed, 404 U.S. 71 (1971) (arguing invalidity of an Idaho statute requiring probate courts to prefer the appointment of a male over a female executor when both candidates stood in the same relationship to the deceased). While other attorneys had previously used a Fourteenth Amendment analysis to argue sex discrimination cases, Ginsburg was one of the first attorneys to use the technique successfully with regularity.

485. See, e.g., Gideon’s Trumpet, supra note 14; Judge Horton and the Scottsboro Boys, supra note 57; Roe v. Wade (NBC television broadcast, May 15, 1989).
2. Conflicts of Belief and the Retrial of the Convicted Defendant: Reversal of Fortune

Is he the Devil? If so, can the Devil get justice?

—"Sunny von Bulow," about her husband, to the observer, in Reversal of Fortune

Almost alone among courtroom dramas, Reversal of Fortune \( ^{487} \) depicts the attempt of a defendant to get his conviction reversed. \( ^{488} \) The "fortune" in this case refers to the literal fortune which Claus von Bulow has lost through conviction and stands to regain should it be overturned and the figurative (bad) fortune that has condemned him, which he seeks to reverse through legal exoneration. For any defendant in his situation, the chances of success are slim. Claus's "fortune" increases his chances through the lavish expenditure of money, influence, and the luck he has in attracting a clever, persistent attorney.

His attorney also sees Claus's fortune as a mechanism to free two other clients, also convicted, on death row. Desperate to help them, Dershowitz informs the audience that "[a] lawyer prays for an innocent client. Finally... finally... I get two, and they're both gonna get zapped." Although he believes von Bulow is guilty, he convinces his student associates and some

\[\text{486. Reversal of Fortune, supra note 26.}\]

\[\text{487. Reversal of Fortune also deals with a "real" case brought to the screen (unlike Anatomy of a Murder, supra note 17, based on a real case but heavily fictionalized) and with a case in which the principal participants are still alive (unlike The Legend of Lizzie Borden, supra note 17). Thus the storytelling in Reversal is much more subtle, a tribute to the skill of lead attorney Dershowitz, who in this case is both observer and observed. The only really jarring note is the voice-over of Glenn Close as Sunny von Bulow; it makes the observer uncomfortably conscious of the artificiality of the story's reconstruction.}\]

\[\text{488. Reversal of Fortune, supra note 26. While some films discuss the quest "for a new trial," very few show the mechanisms by which lawyers achieve it, primarily because of the absence of sensational or dramatic events prompting a retrial; the process is long, tedious, and frequently unsuccessful. Far more common are films depicting wrongful conviction and eleventh-hour reprieves for condemned murderers, followed by complete exoneration. See, e.g., Call Northside 777 (20th Century Fox 1948). 489. Reversal of Fortune, supra note 26. In one scene he badgers a young law student into participation, abetted by the wheedling of the others in the room, by acknowledging that although von Bulow is probably guilty, he did not get a fair trial either procedurally or constitutionally. While this approach may justify Dershowitz's participation on the grounds of legal ethics, his student has at least as much right to object to participation on moral grounds. Nonlawyers viewing this scene can well consider it evidence that all lawyers, even Harvard Law School professors, use fine words to conceal dishonorable motives. As a professional responsibility, teachers are fond of telling students who ask how one can ethically refuse to defend a client, "everyone is entitled to a defense, but not necessarily yours." Model Rules of Prof'l Conduct R. 1.16 (2002).}\]
colleagues to participate in attempting to reverse the conviction out of devotion to the legal system.\textsuperscript{489}

Through a combination of flashbacks, voice-overs, and interrogations, Dershowitz and his associates attempt to discover enough new evidence to construct a unified story that will allow the Rhode Island Supreme Court to reverse the conviction.\textsuperscript{490} He objects to the von Auersperg's "private case" against von Bulow and accuses them of turning over only evidence unfavorable for Claus to the prosecution. He consistently avoids Claus's attempts to tell his "story," however, until Dershowitz has constructed a legal case he thinks will persuade the court. "Never let a client explain," he tells Claus. "[I]t puts them [sic] in an awkward position—lying." For his part, Claus seems not to understand this; like Rusty Sabich in \textit{Presumed Innocent},\textsuperscript{491} Claus wants to tell his story, but his audience is unwilling to listen. His general sophistication contrasts with his seemingly naive assumption that Dershowitz will accept his protestations of innocence because he is a "gentleman." Dershowitz does not quite know what to make of his client; their backgrounds are so dissimilar that even though they are both attorneys, they seem to find no common ground. At one point, von Bulow tells Dershowitz that he has nothing to hide, no matter where Dershowitz's investigations may take him. "That's what an innocent man would say," responds Dershowitz. Yet later he accuses Claus of mistrusting the legal system and attempting to purchase a verdict by manipulating both his attorney and the process. "You'd sacrifice me!" Dershowitz announces with apparent surprise. Yet von Bulow has already been through the legal system, and if he is innocent, he has no reason to trust it further. The repetition of the process may seem to him only to promise a repetition of the unsatisfactory result.

Why Dershowitz should be offended that von Bulow might be "breaking the rules" when he admits he is doing so himself is open to speculation. Through the trial, Dershowitz repeatedly re-evaluates his most cherished principles and abandons or modifies some of them. Although he admonishes his associates to play by the "rules" (in not paying off a witness, for example), he objects to those rules that might put him in jeopardy. When a witness accuses him of offering money for perjured testimony and presents the district attorney with a tape of their conversation purporting to prove this, Dershowitz is enraged. "It's on the tape, Alan," says an associate. "I don't care . . . it's not what I said. If the rules don't work, we change them."

Eventually the two shift positions. When Dershowitz finally asks von Bulow for "the whole truth," von Bulow dismisses the idea that such a thing is possible. "I don't know the whole truth." Of course he is right; no one

\textsuperscript{490.} \textit{Reversal of Fortune}, supra note 26.

\textsuperscript{491.} \textit{Presumed Innocent}, supra note 17.
does. The legal system aimed at discovering reality is really capable only of disseminating stories about versions of reality.

3. Legal Ethics and the Acquittal of the Guilty Client: Anatomy of a Murder, Jagged Edge, Witness for the Prosecution, and Others

Who would protect you then, the laws all being flat?492

In many dramas, such as Anatomy of a Murder493 and Presumed Innocent,494 the lawyer gains his objective—the exoneration of his client—through legitimate manipulation of the legal system.495 Nonlawyers fail to perceive that legitimacy because they do not understand the attorney's code of professional responsibility. They therefore view the lawyer's success in obtaining an acquittal for a seemingly guilty client as support for the proposition that the legal system is thoroughly corrupt. The lawyer's zealous representation is the very evidence that demonstrates to nonlawyers that attorneys are interested only in winning the case rather than in pursuing justice. Nonlawyers find it difficult to reconcile their view that in the abstract, the purpose of the law is to promote justice with their hope that should they go to trial, they will prevail (or rather, once their interests are involved, they equate their sense that another has done them an injustice with justice in the abstract). They view a vigorous defense of a guilty client, in particular, as equivalent to a legal fraud.496 The author explores the contrast between these two groups to advance his own critique about the legal system.

The acquittal of a guilty client through this means is particularly upsetting to the observer, especially when the observer is certain that the client is not only guilty but also is likely to profit from the crime.497 Thus, many dramas that show the acquittal of the guilty party also show retribution, even though the retribution comes not through the routine operation of the legal system but through individual action on the part of another person in

492. A MAN FOR ALL SEASONS, supra note 324.
493. ANATOMY OF A MURDER, supra note 17.
494. PRESUMED INNOCENT, supra note 17.
495. In at least one instance the prosecutor obtains a conviction by persuading the court to admit a line of attack it had previously refused to consider, even though the presiding judge makes clear that it may cost the prosecutor his career.
496. This is real-life irony, in the sense that such an opinion can only be held by people who see only their side and fail to appreciate the irony.
497. In some cases the conviction of the defendant shocks because from the observer's point of view he is morally innocent (INHERIT THE WIND, supra note 22) or at least not appreciably more guilty than those who try him (The Andersonville Trial, supra note 52).
the film or through accident.⁴⁹⁸ In Witness for the Prosecution,⁴⁹⁹ for example, the retribution comes at the hands of the defendant’s wife, who has engineered the acquittal; in Jagged Edge⁵⁰⁰ it comes at the hands of lawyer Teddi Barnes herself, acting as both advocate and victim. She realizes her success has allowed a guilty person to go free. Her realization of the truth sets the murderer on her track, and in order to right a moral wrong as well as protect herself, she shoots him when he enters her home.

In Witness for the Prosecution,⁵⁰¹ Sir Wilfred Robards deliberately describes Christine as Vole’s executioner, but her act is an act of passion, not premeditation. The analogy is morally, though not legally apt, since she did not plan the act and seized the only weapon available. If the knife had not been available, she would have attacked him in some other manner, although probably not fatally. But it is morally acceptable, since the process through which the state acts, an eye for an eye, is the process that her mind goes through immediately before she attacks Leonard. Robards’s use of the words “She executed him,” demonstrates that the canny old barrister recognizes that the law and justice are not necessarily equivalent, although the English legal system attempts to persuade the observer otherwise.⁵⁰² The observer hopes that Robards will offer a successful defense of Christine.⁵⁰³ The man to whom words are all-important, because they persuade a fact-finder of the legal outcomes he desires, has deliberately used a term of art, execution, to describe the opposite act.⁵⁰⁴

Rusty Sabich is in somewhat the same position at the end of Presumed Innocent;⁵⁰⁵ an officer of the court who knows the identity of the killer but who can say nothing. His inability to speak comes from his practical knowledge of the legal system and his personal inability to sacrifice his son’s happiness. Unlike Teddi Barnes he cannot even eliminate the killer in self-defense, though significantly he stands in a closer personal relationship to her than does Teddi to Jack Forrester.

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⁴⁹⁸ “Accident” is always planned in the drama, however, because it is the creation of the author. The author’s point is often that the legal system runs amuck, and that justice often prevails in spite of and not because of the legal system.
⁴⁹⁹ Witness for the Prosecution, supra note 3.
⁵⁰⁰ Jagged Edge, supra note 23.
⁵⁰¹ Witness for the Prosecution, supra note 3.
⁵⁰² Sometimes human passion creates a more equal justice than human reason.
⁵⁰³ Will the truth lead to her acquittal for murder? Possibly, because Robards will present the truth, that it was a crime of passion, and at the most involuntary manslaughter, not murder.
⁵⁰⁴ Note that legal murder (execution), while pronounced in a public forum, always takes place elsewhere in modern times. Christine’s private act takes place in the courtroom.
⁵⁰⁵ Presumed Innocent, supra note 17.
In *The Paradine Case*,\(^{506}\) the defendant gives up the fight and dismisses her attorney, bringing retribution upon herself. In *Anatomy of a Murder*\(^{507}\) and the *Legend of Lizzie Borden*,\(^{508}\) however, both based on real cases,\(^{509}\) the guilty party goes free, presumably enjoying the fruits of the crime.\(^{510}\) In *Reversal of Fortune*,\(^{511}\) neither the observer nor the lawyer is certain of the defendant’s guilt.\(^{512}\) Among all the films discussed, the most ironic in terms of ending, therefore ultimate message are *Witness for the Prosecution*,\(^{513}\) *Judgment at Nuremberg*,\(^{514}\) *Presumed Innocent*,\(^{515}\) and *Anatomy of a Murder*.\(^{516}\)

4. *Critique of Legal Ethics Through the Irony of Impersonation*

In the courtroom drama, irony of character or impersonation manifests itself primarily in language, because language is so basic to the law. Language is one of the two types of evidence relied on by both the lawyer and

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Lizzie Borden was tried last month . . . and just as every lawyer in the country expected, was acquitted in short order. As the case went to the jury there was absolutely nothing against her. The trial was simply a police miscarriage. The people’s case was a tissue of improbabilities—we do not think it too strong to say impossibilities.


510. The alert observer will appreciate this irony.
512. In any case, the point is muted because the film focuses on the workings of the legal system. This is the very system that is the subject of criticism in *Anatomy of a Murder*, *Jagged Edge*, and *Witness for the Prosecution*. This film is probably one of the best analyses of the philosophical reasons for the structure of the United States criminal law system. Compare with *Judgment at Nuremberg*, supra note 24, a mini-treatise on the responsibility of human beings to obey a higher law, or *A MAN FOR ALL SEASONS*, supra note 324, in which the focus is also on the duty to obey one’s conscience rather than the state.

516. *ANATOMY OF A MURDER*, supra note 17.
the observer to infer meaning (the other is action). In the courtroom drama, speech is conduct, but conduct is also speech. Further, casting one of the characters in the drama as the defendant intensifies the irony, as the character plays not only himself but also “the accused.” Courtroom dramas often use the irony of impersonation to criticize the lawyer’s code of ethics. The irony of impersonation is one of the author’s most powerful devices. Through the contrast between words and actions, either in or out of the courtroom, an author can bring into question the very values that form the foundation of the code: zealous representation of the client balanced with fidelity to the truth. Indeed, these opposing values cause ethical conflicts for attorneys every day. Irony of impersonation can also illuminate the actions of other characters, witnesses, for example, demonstrating how they manipulate or are manipulated by the legal system.

Many courtroom dramas use irony of impersonation to show the lawyer not as a champion of justice but as a perverter of the system. Tom Krasny’s repeated ethical violations show him to be more interested in ends than in means, making him an unprofessional, self-righteous prosecutor in Jagged Edge. Teddi Barnes has equally important ethical concerns, but the observers find her a more sympathetic character than Tom, because they know her full story. They understand her attraction to Jack Forrester. The observers know she has urged him to be honest with her and them. She seems to have tried to play by the rules and both won and lost, and so has society. The judges in the film The Star Chamber dispense justice outside the legal system they are sworn to uphold precisely because they have lost faith in it. The contrast between their in-court activities as ostensible defenders of the system and their extracurricular vigilantism serves as the underlying irony for the entire film.

The author can also show the manipulation of the lawyer by another character: Sir Wilfred Robards in Witness for the Prosecution is manipulated by both Christine and Leonard Vole. The contrast between “seeming” and “being” is the basis for all irony in the courtroom drama. Robert Boies Sharpe points out that while the experience of seeing an actor play a character who takes on another character within the play is fairly common, the “third level, impersonation within impersonation within impersonation” is fairly uncommon and can be construed as “highly artificial contrivance.” A notable exception is that of Christine Vole in Witness for the Prosecu-

517. Jagged Edge, supra note 23.
518. Id. Of course we cannot know whether he is guilty; otherwise we would have no mystery and the story would have a quite different point.
519. The Star Chamber, supra note 412.
520. Witness for the Prosecution, supra note 3.
521. Sharpe, supra note 102, at 38.
She first appears as Leonard’s loving wife, then as his enemy, but still his wife; then as his enemy and no longer his wife; then (in a short scene) as an accuser of herself; and finally as his deceived lover. With each successive level of impersonation, her motives seem clearer, but are in reality less discernible. It is apt (and ironic) that the character of Christine Vole is an actress. Observers are thoroughly confused because they do not sense for whom to feel sympathy. The observers are like the jury; they like Leonard Vole, but do not really believe him. The observers do not like Christine, but believe her. They need a reason to acquit Leonard although his story seems unbelievable, and Christine provides them with a believable lie. Compare Robards’s difficulty in finding a believable story with Biegler’s statement to Manny in *Anatomy of a Murder* that in order to acquit him, the jury needs a “legal peg” on which “to hang” its decision.

The Adam and Amanda relationship in *Adam’s Rib* also demonstrates the limitations of the legal system as well as the inequality of power between men and women in American society. The inequality of men and women in society is so great that even two lawyers married to each other cannot work it out. Doris’s ability to live within the framework of the marriage she has entered into with Warren demonstrates the necessity for adjusting the holders of power; Amanda’s inability to work out a satisfactory solution to her marriage problem shows that society offers little room for such individualism. Despite the fact that the marriage seems to be a genuine

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523. Robert Post makes an interesting comparison between actors and lawyers in his article, *supra* note 401, in which he suggests that while we readily accept the “insincerity” of actors playing a role for money, we do not accept the “insincerity” of lawyers doing the same in a courtroom.

If our acceptance of the acting profession demonstrates that we have come to acknowledge that role-playing is an integral aspect of modern experience, our excoriation of lawyers illustrates that this acceptance has definite limits. The performances of the lawyer are hidden, and hence they obliterate the distinction between the performing self and the true or innate self. But in this the lawyer is merely representative of the concealed performances we must all undertake every day. We would like to believe that we are the master of our many roles, rather than the reverse, but the persistent and unsettling example of the lawyer will not let us rest easy in this belief... [T]he intensity of the animosity we bear toward lawyers may come precisely from the fact that they are so very threatening to our need to believe that we possess stable and coherent selves.

Post, *supra* note, at 403. It may also be that nonlawyers are neither stupid nor profound; they simply know the difference between a role played for entertainment value in which the goal is the representation of and commentary on a semblance of justice, in which everyone including the observer enters into the fiction, and a role played for life or death stakes, in which the goal is not a pleasant or intellectually stimulating evening, but at the least, the approximation of justice.

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contract, allowing pursuit of a career for each party, Adam begins with and retains more power than does Amanda to control their relationship. As she vigorously pursues the defense of her client, the film portrays him as patient and long-suffering, undergoing professional and personal defeat, even ridicule. Ultimately he emerges as the defender of the existing legal system, as he asserts that she wants, not equality, but special treatment for her client. Because he frames the question as one of equality rather than equity, his rules seem logically to apply. Both he and the authors characterize Amanda’s request that her client’s situation be seen as the result of historic unequal treatment, addressable only through equitable means, as special pleading. Because he is a man and a member of the legal establishment (an assistant district attorney), he can survive even the harassing cartoons published about him in the newspaper. Amanda is the victim of ironic impersonation herself when she tells her secretary, “We all make the rules” concerning appropriate social behavior. While she may believe that and convince the jury that it can make a new rule to cover Doris Attinger’s situation, the fact is that Adam and his colleagues, the legal establishment, make the rules. Amanda has carved out a narrow exception to the rule, not a new rule itself.526

5. The Lawyer as Dupe

In Love Among the Ruins,527 the barrister charged with defending an elderly woman against a breach of promise suit has a great deal of trouble managing her and his feelings for her, since he believes that she is in fact guilty of having promised to marry the young man in question and then reneging on that promise. He bases his belief on his own short-lived relationship with her, believing that she abandoned him after having promised to marry him. The client (not uncoincidentally an actress), seeing the difficulty he is having in defending her, creates a persona that will allow him to mount an acceptable defense. In open court she behaves as irrationally as possible, allowing the judge to decide that she is temperamentally incapable of under-

526. Cavell attributes Amanda’s courtroom victory to her ability to establish an uneven playing field. CAVELL, supra note 402. The deck is stacked against Adam not through Amanda’s cleverness, but through the author’s willingness to allow legal leniency. The judge allows her to question prospective jurors about their attitudes toward sexual equality, unlike the judge in INHERIT THE WIND, supra note 22, who cautions Drummond against asking questions about evolution. Amanda is allowed to bring evidence of female equality, even superiority, by calling successful career women to the stand. Drummond’s scientific witnesses are all barred. In this way, the drama is less a courtroom thriller than a morality play, and its critique is correspondingly weakened. Adam recognizes this from inside the play, when after one of Amanda’s courtroom turns, he addresses the jury with the words, “What we have seen here is a performance.”

527. Love Among the Ruins, supra note 92.
standing the importance of the promise to marry. The barrister succeeds in persuading the judge to find for his client. Only later does he discover not only that she made it possible for him to win the case by changing the circumstances of the defense (by in effect allowing herself to be thought incompetent, though she is quite clearly not) but also that his behavior, not hers, prevented their marriage so many years before.

In *Music Box*, the audience has the example of a lawyer who abandons her client after being dumped. The attorney in question is defending her father, who is accused of war crimes. As she carries out her own investigation of the case, the audience sees the dangers inherit in the attorney’s representation of a family member or close friend. Her loyalty to her father creates a barrier to a clear understanding of her client’s best interests. Finally faced with the truth, that her father is very likely guilty, she makes the “moral” choice with which the audience is expected to sympathize. She leaves him to his fate, severing both her personal and professional relationships with him. Yet another attorney, less personally involved and consequently less motivated to find the “truth,” would have served his interests more effectively.

H. The Jury System and the Rendering of the Verdict

The author may elaborate on his critique of the legal system either by showing the actual questioning of the jury or by showing the jury’s deliberations. The scenes may be amusing or serious, but they often serve to communicate the impression that “a jury of one’s peers” may be neither possible nor desirable.

Henry Drummond has a great deal of difficulty finding potential jurors temperamentally able to overlook the religious implications of his client’s actions in *Inherit the Wind*.

Having spotted one who seems easygoing about his relationship with the Almighty (he admits that his wife does the churchgoing for both of them), Drummond asks him some questions designed to elicit his opinions on evolution. Objects prosecutor Matthew Brady, “He’s trying to make us forget the law breaker and put the law on trial!” Drummond replies matter-of-factly, “We’ve already established that [he] isn’t working very hard at religion. Now for your sake I’m trying to establish that he’s not working very hard at evolution.” Interjects the bemused subject of the conversation, “I’m just workin’ at the feed store.”

In *The Legend of Lizzie Borden*, the enormity of the crime provides Lizzie with her most persuasive defense and contributes to her acquittal.

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529. *Inherit the Wind*, *supra* note 22.
She is a prominent member of the community, quiet, church-going, and above all female. Most of the community, including the all-male jury, cannot believe that such a person would commit so brutal, open, and apparently motiveless a crime, although they cannot think of another suspect. In fact, Lizzie's arrest follows quickly upon the discovery of the crime. The jury made up solely of men acquits her, probably because the specter of condemning a woman to the gallows is too much for them. Her attorney does not mount much of a defense apart from putting Lizzie on the stand to deny her guilt, nor does he suggest other, more likely suspects beyond mentioning the existence of other relatives with pecuniary motives, to raise doubt in the jury's minds. The lack of motive on Lizzie's part, although not an essential element of the prosecution's case, serves to persuade the jury that she was unlikely to be guilty. The only motive hinted at that they might possibly understand is that of economic gain, and the prosecutor makes little of it. Although the Bordens were wealthy, they did not live elaborately or even comfortably. They did not, for instance, have indoor plumbing. Lizzie might have committed the murders to obtain the money she needed to “escape” from Fall River. She had already spent the inheritance from her

531. Here the irony is that a legal system so heavily weighted against women acquits a woman of a crime that she probably committed.

On Aug. 11, 1892, Lizzie Borden was arrested for the murders of her father and stepmother. Ten months later, she went on trial in New Bedford. The jury waited for what they perceived to be a decent interval, just over an hour, before freeing her. “It will be with a certain relief to every right-minded man or woman who has followed the case,” crowed the editorial page of The New York Times, “that the jury at New Bedford has not only acquitted Miss Lizzie Borden of the atrocious crime with which she was charged, but has done so with a promptness that was very significant.

See Cantwell, Lizzie Borden Took an Ax, N.Y. TIMES, July 26, 1992, at 19. The relationship between pretrial publicity and a fair trial, or between the outcome of a trial and subsequent discovery that the defendant may not have been guilty, is another theme often touched on in films, although usually not examined thoroughly. But see ABSENCE OF MALICE, supra note 15.

532. The Legend of Lizzie Borden, supra note 17.

Everyone in the house—but for Emma, who was out of town—had been retching for days. Only Mrs. Borden consulted a doctor. On Aug. 3 she told Dr. Seabury W. Bowen she suspected poison. He suspected warmed-over fish (meals often made repeat appearances at the Borden table) and offered to take a look at the rest of the family. Mr. Borden, angry because his wife had been wasting money on a doctor, ordered him away from his door.

Cantwell, supra note 530, at 19.

533. The Legend of Lizzie Borden, supra note 17.

534. “Andrew Borden, who began as an undertaker and ended as a bank president, was rich enough for a high perch but too stingy to claim it.” See Cantwell, supra note 530, at 19.

535. The Legend of Lizzie Borden, supra note 17. “[T]here were no bathtubs, and the water closet in the basement was seldom visited. It was easier to empty the morning slop pails in the backyard.” See Cantwell, supra note 530, at 19.
mother on a trip to Europe and seems in the film to long to travel. Thus, the prosecution's story—that Lizzie committed the murders from an apparently confused set of motives—is sufficiently unpersuasive to allow the jury to acquit, even though no other likely suspect is available.

The film *Twelve Angry Men* deals entirely with a jury deliberation in a murder trial. Through an examination of each juror's prejudices the author presents the strengths and weaknesses of the jury system. As the lone dissenter from a guilty verdict, Henry Fonda insists that the jury re-examine the evidence presented with a critical eye, mulling over the stories told by prosecution and defense and questioning whether they are: (1) coherent and (2) believable—that is, whether they correspond with what the jurors know about the world. Each juror has a different type of expertise necessary to examine the evidence, and Fonda guides each toward the "right" (that is, the just) decision: an acquittal.

1. Irony and the Verdict

Irony in the outcome of the trial depends on the interaction of the characters; the contrast between juridical procedural devices and the purpose of the trial—which is primarily to resolve the problem of guilt or innocence, and only secondarily to determine truth; and the conflict between the perceptions of the observer and the intent of the author. The outcome of the

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536. *The Legend of Lizzie Borden*, supra note 17. Although she might have longed to, she did not travel. After her acquittal, she moved to a larger house in the center of town and lived quietly. *See* Cantwell, supra note 530, at 42. *See generally Lincoln*, supra note 508.

537. *Twelve Angry Men*, supra note 187. Reginald Rose wrote the 1955 play, which also had a stage version called *Twelve Angry Women*, done by Sherman L. Sergel.

538. None of the characters, except for those played by Henry Fonda and Joseph Sweeney, have names. Each is identified by his juror number or by a descriptive phrase such as "old man" by the foreman and the other members of the jury. While Fonda plays an architect and seems in terms of status to be from a higher socioeconomic class than the other jurors, his remarks and conversations with other jurors as well as his demeanor make it clear that the author intends him to represent "Everyman," the great hope of the jury system.

539. In this happy circumstance, the film is an allegory of how the jury system is supposed to function, although it bears little relation to reality. *See* Douglas G. Smith, *Structural and Functional Aspects of the Jury*, 48 ALA. L. REV. 441 (1997). The "communal" verdict based on both the expertise and the prejudices of twelve independent jurors affirms the film's message about the essential "fairness" of the legal system, although the fact that Fonda, as the best-educated person on the jury, leads the others to the "right" result may also hint at a kind of elitism: are we to conclude that only well-educated people make open-minded jurors? If so, what of the increasing evidence that those who actually do serve on juries are the least informed, least interested members of society, empanelled only because they lack the luck or the guile to avoid jury duty? *See*, e.g., Newton N. Minow & Fred H. Cate, *Who Is an Impartial Juror in an Age of Mass Media?*, 40 AM. U. L. REV. 631 (1991).

540. Real life continues to be more ironic than any fictional drama. Michael Levine, the killer of a Shaker Heights, Ohio, executive, was ruled insane and committed to a mental
Trial is one of the surest tests of the author's personal set of beliefs regarding the legal system. This set of beliefs should be tested against the following: (1) whether the author suggests that another legal order is preferable; (2) whether the author suggests that retribution in the case of a "not guilty" verdict is likely (either through another trial or through private action by one of the characters); (3) whether the author suggests that a change in the law is likely; and (4) whether the author suggests that another outcome is likely because another person will be charged with the crime (justice will triumph in the end through the workings of the legal system).

2. Irony and Retribution: The Value of the System

The legal system fails in some way in almost every courtroom drama, although the characters manage to mete out some semblance of justice to the guilty eventually (either through revenge or through the dramatization itself). Few of these films accept what lawyers generally accept: the premise that the procedural safeguards in the system are what validate it. Ultimately, they demonstrate a distrust of the system founded on a distrust of its participants, be they lawyer, accused, judge, or jury member. The popular drama Suspect, in which a defense attorney repeatedly engaged in ex parte meetings with a jury member, demonstrates to what extent the public distrusts the ability of the legal system to provide justice to the poor and disadvantaged, even though in this case the attorney is defending a homeless man accused of murder. The possibility that the accused in Suspect will be acquitted is inversely proportional to the willingness of his attorney to break the rules.

3. Challenges to the Legal Order

In Becket, Archbishop of Canterbury, Thomas à Becket, is bound to uphold the ecclesiastical legal system, and therefore, found himself in mortal conflict with the English King Henry II who wanted total control of those aspects of religious life which interacted with the secular. Like Thomas More, Becket held a temporal office that caused him the conflict of interest which tortured his conscience. Like More, Becket was canonized by the Catholic Church. As portrayed in the films, both men would have relished the irony of that canonization, since both men were intensely secularized until shortly before their deaths.

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Institution in 1979. He applied for release on the grounds that he was no longer insane. A federal judge agreed, and Levine was freed on June 22, 1993, having never spent a day in prison for his crime. He is reported to be planning to write a book about the murder, any profits from which he would apparently be allowed to keep. See Michael SanGiacomo, State To Sue Levine for $600,000 for His Care, CLEV. PLAIN DEALER, Dec. 2, 1993, at 1A.

541. SUSPECT, supra note 232.
542. BECKET, supra note 324.
543. Like Thomas More, Becket held a temporal office that caused him the conflict of interest which tortured his conscience. Like More, Becket was canonized by the Catholic Church. As portrayed in the films, both men would have relished the irony of that canonization, since both men were intensely secularized until shortly before their deaths.
appealed to a higher authority, Henry's feudal overlord, for redress for his grievances, and obtained it. The overlord, Louis VII of France, granted Becket sanctuary, then negotiated a settlement between the Archbishop and his King.\textsuperscript{544} According to the modern view of legal authority, Henry was quite right in wanting control and uniformity of the system, but the subsequent murder of Becket—an illegal act—set his cause back centuries. In both Becket's and Thomas More's cases, the law is the instrument of the main character's death. It executed those for whom the observer feels sympathy and exacerbates his opinion that the link between the law and justice is tenuous at best.\textsuperscript{545} In \textit{A Man for All Seasons},\textsuperscript{546} More at least has a procedurally defensible trial (according to the fashion of the time). Becket has none precisely because no forum is mutually agreeable to him and to the king.

I. The Irony of Victory: International Law and Accountability in the Courtroom Drama

Dramas such as \textit{The Andersonville Trial},\textsuperscript{547} \textit{Judgment at Nuremberg},\textsuperscript{548} and \textit{The Star Chamber}\textsuperscript{549} offer the observer the opportunity to consider the shortcomings of the existing legal system and the advisability of making radical changes in the legal order. Both \textit{The Andersonville Trial} and \textit{Judgment at Nuremberg} involve the prosecution of war crimes.\textsuperscript{550} The defense

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544. In a bit of real life irony, this King of France was the first husband of Henry's wife Eleanor and had divorced her because she bore him only daughters. He married twice more before fathering a son, the maritally confused Philip Augustus, while Eleanor, twelve years her new husband's senior, produced six sons (among them Richard the Lionhearted and John, the signer of Magna Carta) as well as five daughters in the next fifteen years. The divorce cost the kingdom of France a good deal of land, since Eleanor was in her own right the Duchess of Aquitaine, a region much larger and wealthier than the land Louis held as King. Yet under the feudal system, Henry, Duke of Normandy and Aquitaine owed the French king an allegiance he could not lightly avoid.

545. In films such as \textit{LADY JANE} (PARAMOUNT PICTURES 1985), the depiction of the condemnation and death of Jane Grey for treason is more horrifying because although Jane did accept the crown at the behest of her parents and counsellors, she quickly renounced it when the rightful queen entered London.

546. A \textit{MAN FOR ALL SEASONS}, \textit{supra} note 324.

547. \textit{The Andersonville Trial}, \textit{supra} note 52.


549. \textit{The Star Chamber}, \textit{supra} note 412.

550. The specific crimes of which Wirz is accused include mistreatment of war prisoners, specifically forbidden by Lieber's \textit{Instructions}. See LIEBER, \textit{supra} note 395, at 344. "Prisoners of war are subject to confinement or imprisonment such as may be deemed necessary on account of safety . . . [They] shall be fed upon plain and wholesome food, whenever practicable, and treated with humanity." \textit{Id.} “A prisoner of war who escapes may be shot, or otherwise killed in his flight; but neither death nor any other punishment shall be inflicted upon
mounted in each case is that of military necessity and alternatively of mutuality. The defendants in these films note that the prosecutors have committed equally brutal acts, but because they were the victors in the conflict, they are not on trial. The bright line between acceptable incarceration of military prisoners and violation of the law of war (The Andersonville Trial) or acceptable treatment of civilian populations and genocide (Judgment at Nuremberg) simply does not exist; thus, the moral dilemma encountered by the Spencer Tracy character Judge Dan Heywood in Judgment at Nuremberg is heightened by his consideration of the possibility that he might in similar circumstances have considered committing the same acts as the defendants. The irony of the trial of the judges in Judgment at Nuremberg is not lost on the Judge or his colleagues. The judge in any society is burdened with the responsibility of dispensing justice according to both the spirit and the letter of the law. What ought he to do when they are in conflict? Can he reconcile the necessity to uphold his oath of allegiance to his government (the letter) with the oath of allegiance to the Law (the spirit)? In particular these films force the observer to consider the questions: who is the criminal? who is the victim? by what set of rules should the defendant be judged? In The Andersonville Trial, the presiding judge of the military

him simply for his attempt to escape, which the law of war does not consider a crime." Id. at 451.

Another highly ironic film involving war crimes is Robert Shaw’s The Man in the Glass Booth (American Film Theatre 1975), inspired by the trial of Adolf Eichmann. In this film the “man” is actually a Jew who attempts to expiate his feeling of guilt for having survived the war by claiming to be a Nazi and admitting to nonexistent crimes. In this sense, Heywood is literally part of a “jury of one’s peers.” But see LIEBER, supra note 395 (introducing the idea that “unnecessary or revengeful destruction of life is not lawful”); INGRID D. DELUPIS, THE LAW OF WAR 123 (1987). “States began, around the middle of the last century, to issue codes for conduct in war reflecting more humanitarian ideas.” DELUPIS, supra, at 123. The Nuremberg code under which the defendants in Judgment at Nuremberg are tried was a new phenomenon, born of the self-reflection of the victors of World War II. See WERNER MASER, NUREMBERG: A NATION ON TRIAL 33–39 (1979) (describing the negotiations leading to the agreement on the Charter of the International Military Tribunal).

551. In this sense, Heywood is literally part of a “jury of one’s peers.” But see LIEBER, supra note 395 (introducing the idea that “unnecessary or revengeful destruction of life is not lawful”); INGRID D. DELUPIS, THE LAW OF WAR 123 (1987). “States began, around the middle of the last century, to issue codes for conduct in war reflecting more humanitarian ideas.” DELUPIS, supra, at 123. The Nuremberg code under which the defendants in Judgment at Nuremberg are tried was a new phenomenon, born of the self-reflection of the victors of World War II. See WERNER MASER, NUREMBERG: A NATION ON TRIAL 33–39 (1979) (describing the negotiations leading to the agreement on the Charter of the International Military Tribunal).

552. One of the judges is not convinced by the evidence or the validity of the “moral code” under which the defendants are tried and votes for acquittal.

553. The Andersonville Trial, supra note 52. Military law of the time recognized that, except in cases of clear illegality, subordinates were expected to follow the orders of their superior officers. The assumption of legality thus preserved both military discipline and prevented a rash of pointless and vindictive courts martial after a war.

[1]It is a nice question still, of how far a soldier may plead justification for an act done by the order of a superior officer, which order may prove to be illegal; or be excusable for hesitating to yield obedience to such order, upon the presumption, that it is contrary to law. These questions, however, when presented to courts-martial, are to be considered in relation to military discipline, and not always referred to as a consideration of personal rights; and therefore, courts-martial would probably extend the principle of exculpation under the plea . . . .
tribunal strongly cautions the prosecutor not to question the defendant's duty to obey orders of a superior officer. The trial degenerates into the clash of two concepts of duty: the duty of the defendant to obey orders and the duty of the defendant to defy those orders in the name of humanity. Ultimately the prosecutor prevails, and the tribunal convicts the defendant on the grounds eventually prevailing at the Nuremberg trials, although the tribunal previously indicated that such an approach was unacceptable. The defense attorney has few procedural rules available to him in introducing testimony favorable to his client, but the prosecutor also has problems introducing testimony.\(^5\) Again, it is likely that the defendant would have had a more sympathetic hearing today than at the time of the trial (August 1865) or if he were tried before a civilian jury.\(^5^5\) Military justice, however, allows for the suspension of those safeguards that would have promoted a fair trial and a possible acquittal for the defendant.

The prosecutor in *The Andersonville Trial* presents a picture of dramatic irony in his zealous examination of witnesses in this drama of human rights. His behavior comes close to inhumanity in its brutality and argumentativeness as he probes deeper and deeper for what he has already decided is the truth, in spite of the opposition of both his co-counsel and the chief judge of the tribunal. He prosecutes as a military man, but applies a code higher than military justice to the actions of the defendant.\(^5^6\) The irony extends to the specter of a trial for actions carried out by a military court against a military man (from the losing side), actions which in the ordinary course of events up to that time would have been regarded either as necessary in war or as necessary to preserve order in the military. The members of the tribunal, as military men, might well have done, and perhaps did, the

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To disobey an unlawful command of a superior officer is undoubtedly lawful; but this must be understood, for its true and practical intent, to be limited to such orders as are plainly and palpably in violation of the well known customs of the army or the law of the country, and not in cases in which the question of legality is merely doubtful or undecided. In every case then in which an order is not clearly in derogation of some right or obligation created by law, the commands of a superior must meet with unhesitating and instant obedience.


554. *The Andersonville Trial*, supra note 52. At one point the head of the tribunal snaps at the prosecutor that the court will hear no more testimony on a particular point and furiously orders him to move on with his case-in-chief.

555. The ideal for Captain Wirz would be a jury of southerners.

556. Military justice in this context may be an oxymoron. Although the prosecutor eventually wins his battle to introduce a natural law prosecution into the court, it is unclear what he would have done, as a military man, if the chief judge had refused to allow him to proceed with that angle of attack. The defense attorney is so stunned by the judge's ruling that he seems incapable of mounting any objection. It is unlikely that he could have appealed successfully in any case. Wirz's fate was sealed from the moment of his arrest.
same things as Captain Wirz. Only the defense lawyer, Mr. Baker, symbolically is out of uniform, and his are indistinct loyalties. He admits he is from Baltimore, “a city of divided loyalties,” and volunteers his creed: “I take my cases when I find them, subject to one condition, that I must feel that there’s a shade, the smallest shade of doubt as to a man’s guilt.”\footnote{Compare with Alan Dershowitz’s comment in \textit{Reversal of Fortune}, supra note 26, concerning his willingness to defend Claus von Bulow because of the interesting constitutional questions arising out of the first trial.} The defense available under civilian law—that of mitigating circumstances—can be advanced only by a civilian lawyer, not a military one.

Given the political realities in post-Civil War, post-Lincoln assassination America, and in post-Nazi Germany, the likelihood of acquittal for either Wirz or the Nuremberg defendants is minimal. It might be argued that this is just because in both cases the defendants are guilty according to the moral code of the victors. Given that reality, however, is the court in Nuremberg any less a kangaroo court than those the defendants are accused of running? The ultimate fate of the defendants in \textit{Judgment at Nuremberg} is different from Captain Wirz’s only because the judges in \textit{Judgment at Nuremberg} had no power to enforce the sentences. A military officer prosecutes the defendants, and the sentences must be carried out by the United States, British, French, and Soviet military, who ultimately release the prisoners for political reasons.\footnote{Not one officer is still serving his sentence. One may speculate on the reasons for their release. Political realities? The need to readmit West Germany into the family of nations? Several characters debate the wisdom of punishing Germany too much for the war. Political necessities clearly dictated a legal resolution of the question of guilt and just as clearly dictated the cancellation of that resolution. Do the judges in \textit{Judgment at Nuremberg} go free because they are so much higher up in the ranks of authority than poor Captain Wirz? But consider the fate of seven Japanese leaders, including Admiral Tojo, who were executed after similar proceedings were held in Tokyo from 1946 to 1948. \textit{See generally} Richard H. Minear, \textit{Victors’ Justice: The Tokyo War Crimes Trial} (1971).}

Much of the irony in \textit{The Andersonville Trial}\footnote{\textit{The Andersonville Trial}, supra note 52.} arises from the very circumstances of the trial. Told that the prisoner had attempted to commit suicide, the chief judge orders the military guard to take steps to ensure that such a thing will not happen again. A suicide would deprive the court of its opportunity to condemn and execute Wirz. Fascination with the question at the beginning of the trial: “Is it possible for Captain Wirz to be acquitted?” quickly turns to horror as the observer realizes that a fair trial is not even a possibility. Someone must pay for the atrocities committed at Andersonville, and Wirz’s superiors are untouchable. The horror is heightened as the judges and the lawyers go through their required dance to give the illusion that a fair trial is possible. Justice must be thought to be done, even if it is
not done.\textsuperscript{560} In \textit{The Star Chamber},\textsuperscript{561} the Michael Douglas character, a trial court judge, discovers that his colleagues are engaged in private vengeance against defendants whom "a legal technicality" has allowed to go free. These same judges, who would condemn citizen vigilantes to prison for these kinds of acts, carry them out themselves, believing that they can no longer ensure justice if they follow the law. The judges reconcile their internal debate over the questions posed by \textit{Judgment at Nuremberg}\textsuperscript{562} in one of the ways that both the Spencer Tracy character and the viewer consider—by abandoning their oaths as judges to affirm their membership in the human race. But in \textit{The Star Chamber},\textsuperscript{563} the Douglas character, and by implication the viewer, must condemn this choice. He is the instrument of revenge against the judges for their private acts in what they consider the public good.\textsuperscript{564} At the end of the film, he has arranged with the police to capture the judges, but the viewer suspects that he intends to be instrumental either in their defense or in the furtherance of their aims.

\section*{J. Procedural Devices and the Abandonment of the Existing Legal Order}

\textit{Murder on the Orient Express}\textsuperscript{565} uses the device of the jury ("twelve good men and true," in the words of one character) to mete out justice to a murderer technically beyond the reach of the law.\textsuperscript{566} The vigilante character

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{560.} Compare with Chief Justice Lord Hewart's famous and often (mis)quoted dictum: "[A] long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done." The King v. Sussex Justices, \textit{ex parte} McCarthy, I K.B. 256, 259 (1924) (Lord Hewart, C.J.). In \textit{The Andersonville Trial}, the defense counsel charges that his client is a scapegoat and cannot get a fair trial given the "temper of the times." Compare the Wirz trial with the Demjanjuk trial in Israel and the Bosnian court's trial of two Serbs accused of war crimes in March of 1993. John Caniglia, \textit{Demjanjuk Documents Lead U.S. to Others: New Cases Surge This Year Alleging Nazi Collaboration}, CLEV. PLAIN DEALER, Oct. 21, 2002, at A1.
\item \textsuperscript{561.} \textit{The Star Chamber}, \textit{supra} note 412.
\item \textsuperscript{562.} \textit{Judgment at Nuremberg}, \textit{supra} note 24.
\item \textsuperscript{563.} \textit{The Star Chamber}, \textit{supra} note 412.
\item \textsuperscript{564.} Another movie in which a judge carries out acts of private vengeance and is eventually killed by his targets is the one based upon Agatha Christie's mystery \textit{And Then There Were None} (published in the United Kingdom as \textit{Ten Little Niggers} and subsequently in the United States as the only marginally less objectionable \textit{Ten Little Indians}). AGATHA CHRISTIE, \textit{Ten Little Niggers} (1939); \textit{Agatha Christie, Ten Little Indians} (1940). The judge acting secretly summons nine persons whom he knows to be guilty of heinous crimes to a remote island, where he proceeds to murder them in appropriate ways. The last remaining victims finally manage to do in the judge in self-defense, the ultimate irony.
\item \textsuperscript{565.} \textit{Murder on the Orient Express}, \textit{supra} note 204.
\end{itemize}
\end{footnotesize}
of the action is somewhat tempered by the characters’ attachment to the “jury of his peers” technique developed by the English legal system over centuries. By employing some of the traditional means of the English system used in determining the truth—the gathering of evidence, the “trial” albeit in absentia of the accused, the judgment by twelve persons who have heard the evidence, and the subsequent execution of the convicted man—the author subtly enforces the idea that the system can provide justice. But by allowing the prosecutors, the jury, and the executioners to be the same twelve characters, the author points out that the justice provided is really available only if the legal system is in a sense “perverted,” that is, if the participants abandon procedural safeguards for moral certainties. Yet, given the isolated universe in which the action occurs (a snow-stalled train somewhere in the Balkans, a region notorious for political and legal chaos), can the characters justify the creation of their own legal system in order to carry out what they perceive to be justice? What, after all, is the law but norms agreed upon by the majority to resolve disputes?568

The detective who takes charge of the case, a truly disinterested observer, interviews all the characters and sorts out the stories told by each one, none of which is entirely true, but all of which taken together allow him to postulate two solutions to the case. One is a “truth,” explaining the murder of the victim as an execution of a guilty person untouchable by the law but clearly condemning the action of the characters as deliberate, premeditated homicide. The other is a “truth,” which uses the evidence manufactured by the characters to mask their motive and the victim’s guilt and to create a spurious murderer allowing the twelve executioners to go free. The motive is still the unprovability of the victim’s guilt (revenge), but it is not particularized. The detective presents both of these explanations to the twelve and to the two other characters uninvolved in the death. By “voting” on the explanation, all fifteen adopt the second explanation as the reality.569


567. MURDER ON THE ORIENT EXPRESS, supra note 204. Agatha Christie uses a similar device in AND THEN THERE WERE NONE (20th Century Fox 1945).

568. The philosophical problem that remains unstated is that the “defendant” has no opportunity to object to the proceedings. In that, the author presents another irony: a situation in which justice can only be said to be done in such a case when an individual’s rights are ignored. This observation leads to a further conundrum: can justice be said to be done when the outcome dictates the procedure? Ultimately, is justice what human beings agree upon, or does it have a meaning outside what might be transitory human consensus?

569. MURDER ON THE ORIENT EXPRESS, supra note 204. The “alternative legal system” device is used with great success in nonlawyer television programs such as Counterstrike (BBC television broadcast, 1969), Mission: Impossible (CBS television series, 1966–73), and The Man From UNCLE (NBC television series, 1964–68). In each case the characters act outside the bounds of the law to mete out justice, usually to evildoers who intend harm to the accepted legal system. Observers might find these programs threatening were it not for the
Clearly, the author intends to persuade the observer that a great many truths never emerge, either through the workings of the legal system or through extrajudicial means. Ultimately, the characters in *Murder on the Orient Express* abandon the legal order only after it abandons them.

The filmed version of *Murder on the Orient Express*\(^570\) emphasizes both the jury system (in its use of a symbolic jury—twelve participants in the murder of the victim) and the shortcomings of the legal system (the victim masterminded the abduction and murder of a child, but was never tried for the crime; his accomplice was convicted and executed instead).\(^571\) The success of *Murder on the Orient Express* and similar films emphasizing the failure of the legal system to provide justice spotlights the ease with which viewers abandon their fidelity to that system when it clashes with their sense of fundamental justice and fairness. Like *The Star Chamber,\(^572\) Extremities,\(^573\) and even such seemingly lighthearted excursions into the mystery genre as the black comedy *Deathtrap,\(^574\) Murder on the Orient Express*\(^575\) clearly shows lawyers the objections that nonlawyers have to the workings of the legal system.\(^576\)

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\(^570\) MURDER ON THE ORIENT EXPRESS, supra note 204.

\(^571\) According to the novel, however, "by means of the enormous wealth [Cassetti] had piled up and by the secret hold he had over various persons, he was acquitted on some technical inaccuracy." AGATHA CHRISTIE, FIVE COMPLETE HERCULE POIROT NOVELS 163 (Avenel 1980) (quoting from *Murder on the Orient Express*, originally published on its own in 1933).

\(^572\) THE STAR CHAMBER, supra note 412.

\(^573\) EXTREMITIES (Atlantic 1986).

\(^574\) DEATHTRAP (Warner Bros. 1982).

\(^575\) MURDER ON THE ORIENT EXPRESS, supra note 204.

\(^576\) *The Star Chamber* highlights the escape of guilty individuals "because of a legal technicality" (usually a procedural error of some sort). *Extremities* represents the impotence that many feel toward both their rapist-attackers and the legal system that seems to condone or excuse the attacks. *Deathtrap* allows the viewer to see not only the poetically just end of the conspirator-murderers at each other's hands, but also the use of their plot as a money-maker for one of the sympathetic characters in the play.

*Extremities* and *Deathtrap* also allow the observer to mimic the role of the judge or jury in his or her reactions to the story being told. The author's manipulation of the observer's impressions of the protagonist in each play is a mechanism necessary to impart the "lesson" the author wishes to teach. In both *Extremities* and *Deathtrap*, the author forces the observer to alter his opinion of the main character. The rape victim revenging herself on her rapist in *Extremities* is sympathetic, but her brutality makes the observer question his own sympathy for her. The murderer/protagonists in *Deathtrap* are executioners for each other, and their deaths are poetically justified; but the surviving character's use of their work (the
justifiable in this way pose the philosophical question of the limitations of public justice differently; does the "prosecutorial" stance of the detective validate the story? And does the "jury" which hears his two explanations and selects one validate the result?\footnote{577}

1. The Use of Other Procedural Devices

In some dramas the accoutrements of the legal system act to provide a quasi-legitimate backdrop to alternative means of determining the truth. Some playwrights and filmmakers use specific aspects of pretrial and trial procedure to communicate their stories without subscribing to the entire panoply of the courtroom drama. The procedural devices are normally imaginary on the part of one or more of the characters, since a real trial is not in progress. Rather, they are attempting to establish the guilt or innocence of another character, carry out an investigation of a crime, or administer justice outside the existing legal system.

2. The Imaginary Trial

In the drama *Guilty Conscience*,\footnote{578} the authors, Richard Levinson and William Link, created a murderous criminal defense attorney, Arthur Jamison, who plots the imminent demise of his blackmailing wife Louise through various means by imagining the act, then "holding the trial in advance, creating an opponent and then trying to beat him," and looking for flaws in his alibi or the scheme. Most of the action takes place in the lawyer's home in which he interrogates and is interrogated by a prosecutor, his other self. The major error in his logic, not apparent until the final scene, is that in creating an opponent who resembles him so closely he makes it less, rather than more, likely that he will uncover any problems with his murderous plot.

Some of the irony in *Guilty Conscience* is not immediately evident; the audience must wait until the resolution of the drama before understanding successful murder plot) for her own benefit (the plot for a hit Broadway play, the very goal that one of the murderers had made for himself) makes the observer somewhat uneasy. As the presumably disinterested third party in the drama, as well as the person through whom the truth becomes known, should she ethically profit from their crime?

\footnote{577}{Even bad courtroom dramas ("revenge dramas") make this point sufficiently persuasively to justify their existence.}

\footnote{578}{*Guilty Conscience*, supra note 149. The "guilty conscience" of the title is clearly ironic in that the would-be murderer has no conscience. What worries him is not the murder itself but getting away with murder. He admits to himself that in case of trial, a "not guilty" verdict is unacceptable. He wishes to be considered completely innocent.}
the authors' point. Levinson and Link are masters of illusion; they divert the audience’s attention and manipulate their reactions throughout by the skillful use of Jamison’s storytelling ability, the invention of various scenarios for his wife’s death, and the confusion of dream and reality. Among Jamison’s scenarios are his wife’s murder during a faked burglary and her death “by natural causes” at their remote summer home. Finally, he loses himself in speculation over the possibility that his wife Louise and his mistress Jackie meet and decide to murder him instead. He masterfully demonstrates to them the error in their plan, again through the use of a “trial” in which he plays prosecutor to Louise’s defendant. Still imagining himself a very clever fellow, he identifies the weak links: Jackie’s overconfidence and Louise’s desperation. Finally aroused from his reverie, he considers himself lucky that the two women have never met. Without knowing it, he has discovered their plot; he is both less and more intelligent than he thinks he is. The drama ends with his murder at Louise’s hands and the agreement between the women that Jackie will provide Louise with an alibi for the time of the murder.

In another Levinson and Link drama, *Rehearsal for Murder*, a playwright uses the device of an investigation, disguised as a new play, to trap a killer into betraying himself. Playwright Alex Dennison creates an elaborate fiction, using his actor and producer friends, to convince his fiancee’s killer that he suspects it is one of them. He compounds the illusion by hiring the killer, an out-of-work actor, to impersonate the police officer who actually investigated the death and determined it was a suicide. Thus, the killer becomes both observer and observed (both the players and the audience observe his reactions, and in addition, the real police officer appears and secrets himself offstage to take note of the proceedings, and with the players, takes on the role of juror). The use of irony of impersonation, represented by Dennison’s friends and by the killer, magnifies the impact of the “play within a play” that serves to create the imaginary world in which justice is served, because the real world did not serve it. The guilty man’s confession

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579. Indeed, the ending is somewhat ambiguous. Because Arthur successfully imagines the plot that Louise and Jackie concoct to kill him, and successfully establishes its flaws, we must wonder whether the women will be caught or whether the district attorney and the police are less intelligent than Arthur.

580. *Rehearsal for Murder* (CBS television broadcast, May 26, 1982). The meaning of this title is not entirely clear. The “rehearsal” corresponds to the protagonist’s activities in organizing his friends to put on a play. The “murder” is less comprehensible. The out-of-work actor caused the woman’s death during an argument, so he is guilty of manslaughter, not murder. If the potential murder is that of the killer or one of the actors by the protagonist, that is, if the protagonist is trying to “railroad” someone, then the title indicates that the authors think the playwright’s action is morally somewhat questionable. The resolution, however, the police officer’s arrest of the killer, is not ironic.
clearly implies that there will be no trial because it is not necessary for a
determination of moral guilt.\textsuperscript{581}

The play \textit{Trap for a Lonely Man},\textsuperscript{582} which has been filmed several
times, most recently as \textit{Vanishing Act},\textsuperscript{583} suggests the use of an official in-
vestigation disguised as a play, again to trap a killer. In each version\textsuperscript{584} the
killer initially files a missing persons report on his or her spouse with the
police, then reacts in horrified fascination as an imposter materializes,
claiming to be the spouse. The device is necessary presumably because the
killer is too clever to admit guilt and the police have no justifiable legal
basis on which to make an arrest that is likely to lead to a conviction. Once
again the emphasis is on the limitations of the legal system: its inability to
provide justice through the procedural means which serve as constitutional
safeguards.

Finally, in the film \textit{M},\textsuperscript{585} the defendant, a child murderer, is tried by a
jury of his peers, all criminals themselves. The irony of his condemnation
by persons no better and no worse than himself points out better than many
jurisprudential treatises both the limitations and the advantages of the jury
system. This jury of his peers returns one to a consideration of the question
above: what does this language mean? Is it to be taken literally or figu-
rationally? And are the authors of these dramas really constitutional theorists
ironically disguised as entertainers?

K. Conflicts of Belief: Irony, the Instruments of Justice, and Faith in the
System

In the films discussed in this article, the legal system by itself does not
provide retribution for judicial errors. Retribution is left to individuals or to
fate, according to the author’s pleasure, but it is bound up with legal ethics,

\textsuperscript{581} See generally Corcos, supra note 66.
\textsuperscript{582} ROBERT THOMAS & LUCIENNE HILL, \textit{TRAP FOR A LONELY MAN: A PLAY IN THREE
ACTS} (1964).
\textsuperscript{583} \textit{Vanishing Act} (CBS television broadcast, May 4, 1986).
\textsuperscript{584} Several versions of the play have been filmed including \textit{Honeymoon with a Stranger}
(also called \textit{Deadly Honeymoon}) (ABC television broadcast, Dec. 23, 1969), \textit{One of My\nWives Is Missing} (ABC television broadcast, Mar. 5, 1976), and \textit{Vanishing Act}, supra note
587 (scripted by Levinson and Link). The play has also been adapted for the Broadway stage
as \textit{Catch Me If You Can}. See Pat H. Broeski, \textit{Outtakes: Deja Vu Again}, \textit{L.A. TIMES}, May
11, 1986, at 14. For the likely identification of \textit{Deadly Honeymoon} as the film \textit{Honeymoon With
a Stranger}, see LEONARD MALTN’S \textit{TV MOVIES AND VIDEO GUIDE} 476 (1988). The only
vaguely ironic title (provided by Levinson and Link) is \textit{Vanishing Act}, which describes both
the presumed action of the missing wife, and the action of her murderous husband in dispos-
ing of the body. Finally, it may also allude to the alternative reality created by the investigat-
ing officer and his friends, which “vanishes” suddenly as soon as the husband gives himself
away.
\textsuperscript{585} \textit{M}, supra note 212.
guilt and innocence, and questions about the legitimate workings and purpose of the legal system.

Although he wins the case, Robards predictably is not the instrument of justice in *Witness for the Prosecution*. Because the client is guilty, the observer demands and expects retribution. The legal system has failed, but the moral system must succeed. Christine is destined to be the instrument of justice when she learns the extent of Leonard’s manipulation of her. When she learns that Leonard plans to leave her, she stabs him in a fit of passion in the nearly deserted courtroom. The witnesses are a couple of police officers, Robards, his colleagues, and the nurse.

In *Anatomy of a Murder*, an equally sophisticated film, the client is equally guilty and the lawyer equally successful. The cool sophistication of the defendant contrasts eerily with the backwoods atmosphere and simple pleasures of the town, although a pall of secrecy and passion hovers over many of the characters in the drama. Retribution does not come during the course of the drama, although one suspects that given Manion’s selfish and manipulative behavior, sooner or later justice will catch up with him. Polly, a former prosecutor recently turned out of office, never gets paid, although Manion has given him a promissory note. His secretary has urged Polly not to take the case without payment up front, but Polly’s friend Parnell is so eager to be involved in this interesting prosecution that he urges Polly to take the case, even without talking to the defendant first. When Polly first speaks to Mrs. Manion, Parnell excitedly urges him in the background, “Is it about her husband? Tell her you’ll take the case!” Manion’s calculated use of the legal system to eliminate an enemy without punishment tests but fails to destroy Polly’s faith in the system and gives him a reason to continue his legal practice, much as the Vole case does for Sir Wilfred Robards in *Witness for the Prosecution*.

Parnell, the alcoholic who abandoned his legal practice years ago, dries out and joins Polly as a partner in a newly revitalized practice. Although the trial ends in an acquit-


587. This poses an interesting ethical problem. Because Robards and his colleagues are witnesses to the crime, is their willingness to defend her ethical? Or in the case of *R. v. Christine Helm, aka Christine Vole*, will they be the new “witnesses for the prosecution”? The nurse is in a confidential relationship with Robards, but not with Christine, and eliminating Robards and the lawyers, is the only possible untainted witness.


589. He has, as the prosecution points out, a history of violence.

590. The lawyer has secured the note in the hope of extracting payment later. He is not the first person to discover that some promises are not worth the paper they are written on, even when a lawyer draws them up.

591. As the film ends, Polly does get the prospect of making some money by administering an estate for the benefit of a very pretty daughter, and the observer hopes that Polly makes a great deal of money and that he finds himself a wife in the process.
tal, the observer feels the conflict between the law and justice that is so disturbing. To restore his faith in the system, the filmmaker allows Polly to have his own faith restored, with the promise of personal and professional happiness in the future.\footnote{592}

Both \textit{Anatomy of a Murder}\footnote{593} and \textit{Witness for the Prosecution}\footnote{594} are ultimately hopeful films whose irony extends to the outcomes the observer can predict beyond the end of the film. The outcomes manipulate the observer as well as the actors in the drama.\footnote{595} The author’s belief that justice will ultimately prevail though the system is flawed is demonstrated in the renewed energy of the two lawyers, Polly Biegler and Wilfred Robards.

L. Irony and the Creation of a New Legal Order

\begin{quote}
\textit{Even though the arc of the moral universe is long, it bends toward justice.}\footnote{596}
\end{quote}

The use of irony to critique the existing social and legal order is an extremely old device. Robert Boise Sharpe identifies Shakespearean and contemporary drama as “ironic predominantly in a social sense. Not that they are, in modern terminology, ‘socially conscious’ attacks on the actual social structure of late Elizabethan and early Jacobean England, but rather that they constitute attacks on the literary idealization of the world’s social standards.”\footnote{597} Shakespeare transformed these crude oafs . . . Hamlet the cruel and crafty Dane, Othello the murderous blackamoor, Lear the senile king of a primitive Britain, Macbeth the rough and bloody Scot . . . by his magic into great Renaissance gentlemen all. “Could a really great man do these things?” If Shakespeare did not ask himself this question in words, he does ask it through these plays; and the appalling answer brought his age’s greatest secular ideal

\begin{footnotes}
\item[592] The novel is both more cynical and more explicit. Traver makes it quite clear that the relationship between Polly Biegler and Mary Pilant will probably end in marriage and that Mrs. Manion will probably leave her husband, either through her own actions or more violently.
\item[593] \textit{Anatomy of a Murder}, \textit{supra} note 17.
\item[594] \textit{Witness for the Prosecution}, \textit{supra} note 3.
\item[595] Is justice done in \textit{Anatomy of a Murder}? The jury acquits Manion according to an accepted legal theory on the basis of evidence legally presented by the defense. The law is satisfied, but are we?
\item[597] \textit{Sharpe, supra} note 102, at 66–67.
\end{footnotes}
crashing about his head. For his plays say "Yes!" and their audiences believe. 598

The "great secular ideal" is the rule of law and the modern playwright's appalling answer to the inquiry, "Could a really great lawyer do these things?" brings into question the entire system intended to resolve the conflict between the ideal of justice and the practice of law.

One of the most fertile areas for discussion of alternative legal systems and irony is science fiction. Films such as 1984599 and Fahrenheit 451600 show the co-option of the protagonist into a state with a highly developed legal order intended to restrain rather than foster individual liberties, a legal order which redefines the good of society as the good of the ruling class and protects that class against challenge through its "re-education" of the majority for whom the legal system should exist. Again, one may question what constitutes a legitimate legal order. How much consensus is required to legitimate the system? And how voluntary must it be? Part of 1984's irony stems not from the subject or its treatment by the author, but from the fact that only in a society radically different from that portrayed could George Orwell have written and disseminated his vision of modern society. Similarly, Ray Bradbury in Fahrenheit 451 uses the print medium to express his vision of a post-apocalyptic society in which print is forbidden. 601

The courtroom, however, is not a favored locale for science fiction writers.602 The assumption seems to be that legal systems will have either

598. Id. at 70.
599. 1984 (Columbia Pictures 1956).
600. FAHRENHEIT 451 (Universal Pictures 1966). The title comes from the temperature at which paper burns. RAY BRADBURY, FAHRENHEIT 451 (1953).
601. These dramas, however, derive their irony from the circumstances in which they were written. A drama such as Philip K. Dick's BLADE RUNNER, supra note 47 (in its original form Do Androids Dream of Electric Sheep?) juxtaposes human and artificial life forms to emphasize the different ways in which we can ask what makes a person human—a philosophical construct, physical laws and their interpretations, or legal recognition of that humanity. The film actually deals only with one portion of the novel, the main character's hunt for and destruction of "replicants," artificially-created humanoid whose purpose in society is to carry out dangerous tasks on other worlds for humans whose genetic and physical abilities have deteriorated after a presumed holocaust.
abandoned the idea of the trial as it exists currently in human legal systems, or that the trial will have lost its central importance, allowing the real determination of guilt and punishment to take place either at a different stage of the process or through different means altogether.

IV. CONCLUSION: IRONY AND THE LEGAL SYSTEM

Given that they have so many frightening observations to convey about the relationship between law and justice, why are courtroom dramas involving ironic conclusions, such as the eventual acquittal of a guilty party, so fascinating and so eternally popular? Dramas showing the exoneration of the innocent, the recovery of a life's purpose by the attorney, and the conviction of the guilty serve a cathartic purpose. They make the observer feel safe and allow him to confide his trust in one of the few acceptable public means of achieving justice in society. But courtroom dramas that hint that life is not what it seems, that sometimes the guilty go free and the innocent suffer, and that sometimes justice runs amuck correspond more nearly with the observer's perception of reality. Sir Wilfred Robards's high-minded statements about the interest of the British legal system in truth seems either cynical or naive to those defendants who cannot get a hearing because they cannot claim the protection of the laws, or who cannot, because of procedural niceties, introduce the evidence that would exonerate them. The good guys win sometimes, and the legal system is supposed to ensure that outcome. But sometimes the bad guys are smarter, more powerful or bolder, and observers need to remember to spot the weaknesses and

some years ago. See Christine Corcos, Close Encounters of the Legal Kind: Law, Justice, and Star Trek (on file with the author).

603. One of the earliest of courtroom dramas is Oresteia, in which Apollo defends Orestes against a charge of murder. It is arguably still the best example of a courtroom drama contrasting law and justice. See Youmans, Howland, & Saunders, Questions and Answers, supra note 299, at 198-99.

604. See A Cry in the Dark, supra note 16; And Justice for All (Columbia Pictures 1979); Judge Horton and the Scottsboro Boys, supra note 57; The Wrong Man, supra note 16; To Kill a Mockingbird, supra note 14.

605. See The Star Chamber, supra note 412; The Verdict, supra note 49; True Believer, supra note 57.

606. See Indict and Convict, supra note 308; Judgment at Nuremberg, supra note 24.

607. This may in part explain the popularity of television series or films concerned with revenge for perceived wrongs against others, as typified by western series such as The Rifleman (ABC television series, 1958-63), Zorro (ABC television series, 1957-59), The Lone Ranger, supra note 568, and even Bonanza (NBC television series, 1959-73), and private investigator series such as City of Angels (USA television broadcast, 1976); Harry O (ABC television series, 1974-76); Mickey Spillane's Mike Hammer (CBS television series 1984-87); The Rockford Files (NBC television series, 1974-80); or The Equalizer, supra note 564 (note the essential solitude of the title characters). While these characters may have honest friends on the police force, their major concerns are crooked cops or a legal system that does
to analyze the failures. The acquittals of the defendants in films such as *Anatomy of a Murder*,\(^608\) *Jagged Edge*,\(^609\) *The Legend of Lizzie Borden*,\(^610\) *Witness for the Prosecution*,\(^611\) and *Reversal of Fortune*\(^612\) remind viewers that while lawyers believe that it is better to allow "ten guilty men to go free than to convict one innocent man"\(^613\) on the assumption that the legal system ensures that this does not happen too often to be socially destructive, nonlawyers believe that it happens so often that it defines society. The courtroom drama makes the observer re-examine the amount of truth and relevance in each of these beliefs. One must place one's faith in imperfect human institutions because they are the only ones available. But one must continue to try to improve them by examining their shortcomings as well as their successes. In this effort irony serves the storyteller well.

The self-knowledge exhibited by courtroom dramas such as the ones discussed in this article is part of what D.C. Muecke calls the "General Irony" operative in the world:

There is a General Irony in many other fundamental and unresolvable oppositions which life confronts us with and before which we can only say that there is much to be said for and against both sides. Every virtue has its vice, and every vice its virtue. Youth is a wonderful thing but it is wasted on the young, as Shaw said. We value stability and look for change; discipline is necessary—is freedom less so? We are both individuals and members of our solidarity. The body is sometimes wiser than the mind, the heart a truer guide than the head; but these truths reason teaches. Take no thought for the morrow, but save for a rainy day. Be yourself, and mend your manners. Be moderate in all things, including moderation. For him who sees no possibility of reconciling such opposites the only alternative is irony: a sense of irony will not make him any the less a victim of these predicaments but will enable him in some degree to transcend them.\(^614\)

People learn more from failures than successes because failures can be a kind of success in forcing a person to re-examine his assumptions. Failures shake one's complacency and self-confidence. They remind one that

\(^{608}\) *ANATOMY OF A MURDER*, *supra* note 17.
\(^{609}\) *JAGGED EDGE*, *supra* note 23.
\(^{610}\) *The Legend of Lizzie Borden*, *supra* note 17.
\(^{611}\) *WITNESS FOR THE PROSECUTION*, *supra* note 3.
\(^{612}\) *REVERSAL OF FORTUNE*, *supra* note 26.
\(^{613}\) *See* United States v. Doyle, 130 F.3d 523, 538 (2d Cir. 1997).
\(^{614}\) MUECKE, *supra* note 106, at 77.
life is uncertain and that truth is elusive. The Scots verdict "not proven" should always have a place in the legal system and in the court of public opinion as long as human beings continue fallible and flawed. Ironically then, the dramas in which the guilty go free are the most intellectually stimulating because they challenge the notion of what constitutes fundamental fairness in court and remind one that law and justice are not necessarily synonymous. The films which depict the lawyer as either hopeless idealist or fool force the observer, no matter what his formal training in the law, to reconsider what values one hopes to elevate to preeminent status in society. Naturally, other readings of these dramas are possible, just as other versions of the stories lawyers tell exist. But an ironic interpretation lends itself to more than casual speculation about the author's beliefs about the relationship between law and justice; it forces one to confront those beliefs in oneself.

Dramatic irony forces the viewer to consider the connection between law and justice. In some cases it may be necessary to acquit the guilty to preserve the higher ideals of the legal system, and ultimately the rights of all. That may be the greatest irony and the greatest message of all.

615. The Scots verdict "not proven" has been construed to mean "Not Guilty, but don't do it again." See 12 OXFORD ENGLISH DICTIONARY 708 (2d ed. 1989).