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Imagining the Criminal Law: When Client and Lawyer Meet in the Movies

J. Thomas Sullivan
University of Arkansas at Little Rock William H. Bowen School of Law, jtsullivan@ualr.edu

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BIEGLER: Thank you very much, Your Honor, we now have another rebuttal witness. The defense calls Mary Pilant to the stand.

DANCER: Your Honor, we must protest this whole affair. The noble defense attorney rushes out to a secret conference and now the last minute witness is being brought dramatically down the aisle. The whole thing has obviously been rigged to unduly excite the jury. It's just another one of Mr. Biegler's cornball tricks.

BIEGLER: Your Honor, I don't blame Mr. Dancer for feeling put upon. I'm just a humble country lawyer trying to do the best I can against this brilliant prosecutor from the big city of Lansing.

THE COURT: Swear the witness.

—James Stewart as defense attorney
Paul Biegler in Anatomy of a Murder

The American criminal justice system, operating in an adversarial format, imposes very difficult burdens on the criminal defense lawyer. The constitutional guarantee of effective representation and ethical rules requiring that counsel represent the client diligently and loyally obligate defense attorneys representing individuals—even those charged with the most
heinous offenses, or possessing the most unsavory, vicious, or evil character—to discharge their obligations almost without regard to these unhappy realities of crime and criminals.\textsuperscript{5} At the same time, the public, and particularly social critics and political commentators, demand that those same attorneys remain uncorrupted, even untainted, by their association with clients.\textsuperscript{6}

Criminal defense attorneys are ethically compelled to maintain the communications of their clients in confidence—including admissions of guilt for unspeakable, horrible acts\textsuperscript{7}—even when virtually everyone else believes these communications should be disclosed in at least some circumstances.\textsuperscript{8} Criminal defense attorneys are criticized by other attorneys, cli-

5. Consider Justice Black’s exhortation:
Undivided allegiance and faithful, devoted service to a client are prized traditions of the American lawyer. It is this kind of service for which the Sixth Amendment makes provision. And nowhere is this service deemed more honorable than in case of appointment to represent an accused too poor to hire a lawyer, even though the accused may be a member of an unpopular or hated group, or may be charged with an offense which is peculiarly abhorrent. Von Moltke v. Gillies, 332 U.S. 708, 725–26 (1948).

6. In extreme cases the taint of corruption is so severe that attorneys are prosecuted, or at least sanctioned, for their improper involvement in the affairs of their clients. This problem arose in the Gambino Crime Family prosecutions, see United States v. Gambino, 838 F. Supp. 749, 751–52 (S.D.N.Y. 1993), where the Government sought and obtained the forced disqualification of John Gotti’s counsel, Bruce Cutler, based on a series of allegations involving the nature of his relationship with the client and co-indictees. The disqualification case is United States v. Locascio, 6 F.3d 924, 931–34 (2d Cir. 1993). The extensive litigation involving Gotti and including that involving his attorney, Bruce Cutler, is noted in United States v. Gotti, 171 F.R.D. 19, 22 n.1 (E.D.N.Y. 1997). Cutler was also held in contempt of court for violating the trial court’s order restricting counsel’s extrajudicial statements regarding the case. United States v. Cutler, 58 F.3d 825 (2d Cir. 1995). Counsel told the press that the Government had “thrown the Constitution out the window,” among other things. Id. at 829. The character of compromised lawyer was embodied in Robert Duvall’s portrayal of Tom Hagen in the Godfather series. See Godfather (Paramount 1972); Godfather II (Paramount 1974); Godfather III (Paramount 1990).

7. Rule 1.6 of the Model Rules of Professional Conduct protects client confidentiality, providing that counsel “shall not reveal information relating to the representation of a client unless the client consents after consultation” with limited implied exceptions.

8. Consider, for instance, FOX News Channel show host Bill O’Reilly of The O’Reilly Factor who filed an ethics complaint against defense lawyers who represented defendant David Westerfield, who was ultimately convicted of capital murder and sentenced to death for the murder of a neighborhood child. O’Reilly’s complaint stemmed from the claim that Westerfield’s lawyers had approached prosecutors and offered to disclose the location of the child’s body in return for a life sentence. Rebuffed when police located the body without information supplied by the defense, they proceeded to defend Westerfield at trial by arguing that other individuals could have been responsible for the child’s murder in light of the evidence, which was circumstantial, and by attacking the moral character of the child’s parents. See Cathy Young, A Lawyer’s Obligation When the Client Is Guilty, B. GLOBE, Sept. 23, 2002, available at http://www.reason.com/cy/cy092402.shtml.
The institutions of the law—the legal profession, the courts, and the operation of the criminal justice system—are important sources of comment for the creative artist. Unlike other subject matter common to visual arts, such as landscape, the human form, the translation of emotion, and stories of the human experience or the simple still life, the law exists for the community as a functioning part of its life that must be comprehended in the context of human conflict and its resolution. Traditionally, the law is most intimately a subject for the novelist and short story writer in providing a framework for consideration of interpersonal, and often impersonal, reaction of individuals and a system designed to ensure social order.

The emergence of film—the movies—in the past century has been particularly important for creative artists focusing on the law as a subject matter for discussing the human experience. Film, as opposed to the written text, permits the creative artist to translate and transmit the story in very immediate terms to a mass audience. Perhaps because film as an art form is so inextricably linked to the American and Western experience, it has been


10. Even jurors may criticize the work of lawyers, as this exchange from the filmed version of Twelve Angry Men suggests:

JUROR SEVEN: Look, the kid had a lawyer, didn’t he? He presented his case, not you. How come you got so much to say?
JUROR FIVE: Look, lawyers aren’t infallible, you know.
JUROR SEVEN: Baltimore, please, uh, uh.
JUROR EIGHT: He was court-appointed.
JUROR SEVEN: Now, what’s that supposed to mean?
JUROR EIGHT: Well, it could mean a lot of things. Could mean he didn’t want the case, or he resented being appointed. It’s the kind of case that brings him nothing, no money, no glory, not even much chance of winning. That’s not a very promising situation for a young lawyer. He’d really have to believe in his client to put up any kind of a good case and as you pointed out a minute ago, obviously he didn’t.

TWELVE ANGRY MEN (United Artists 1957). The film has been described as perhaps “the best film about jury deliberations ever made,” based on many insights about the realities of the jury system. PAUL BERGMAN & MICHAEL ASIMOW, REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES 268 (1996) (containing an excellent bibliography of legal and related sources for the films included in their discussion). Whether citizens should eventually be permitted to view jury deliberations in actual cases is now a serious issue for professional and public debate based on a recent decision by a Texas judge to permit filming of jury deliberations in a death penalty trial. See Dee McAree, Jurors’ I.D.s To Be Sealed in Missouri, NAT. L.J., Dec. 9, 2002, at A1. The trial court’s decision to permit videotaping was reversed by the Texas Court of Criminal Appeals on the prosecutor’s petition for writ of mandamus. State ex rel. Rosenthal v. Poe, 98 S.W.3d 194 (Tex. Crim. App. 2003).
peculiarly sensitive to the institutions of the law that have been created and nurtured by the history of Western societies. Neither the law itself nor its institutions could exist in a vacuum apart from human and social contexts or experience. Creative artists have seized upon legal stories in the creation of movies that inform and entertain their audiences by focusing on the ways in which law, lawyers, and legal issues become intertwined with or dominate the lives of the characters they create or portray.

Just as film audiences may learn from filmmakers, the writers, directors, actors, and cinematographers are able to create art that informs lawyers and other actors in the legal system about how film viewers may perceive them. Of course, it is equally true that filmmakers may create wholly unreal pictures of the legal system and the work of lawyers that distort, rather than inform film viewers of this process. That is likely true of all artistic attempts to explain reality or nature to the masses. Nevertheless, successful films—whether artistically successful, financially successful, or both—likely contain important truths for those within the law and its institutions, regardless of whether those “truths” are technically accurate or false. In imagining the law, they may represent “truths” in the sense that perception is often as important as reality.

For almost all nonlawyers and many lawyers alike, there is a mystical quality about the operation of the law in practice that seems to contradict the purity of its principles. The law may promote justice as a goal, yet it is clear that injustices in individual cases or circumstances are accepted as inevitable consequences of the need to assure stability in the operation of the legal system. One of the most difficult propositions for nonlawyers and many

11. For instance, Woody Allen’s parody of the political prosecution in his film *Banananas* (United Artists 1971), offers a range of outlandish cliches about the trial process—including former Federal Bureau of Investigations Director J. Edgar Hoover testifying disguised as a large African-American woman and explaining that he was forced to adopt disguises because he had “many enemies”; a court reporter whose transcription is not only flawed, but totally misrepresents the testimony of a witness; and a gagged and restrained defendant (Allen, playing Fielding Melish, President of San Marcos, who is charged with the attempted overthrow of the United States) conducting his own defense, whose garbled cross-examination induces a key witness to break down and admit she has lied on the stand. *Banananas* offers a comical alternative to the real trial of the infamous “Chicago Seven,” charged with inciting a riot at the 1968 National Democratic Convention. See United States v. Dellinger, 472 F.2d 340 (7th Cir. 1972).


13. See, e.g., Burton v. Dormire, 295 F.3d 839, 848 (8th Cir. 2002). In *Burton*, the court admitted:

Burton’s habeas petition troubles us because his legal claims do not provide him an adequate foundation upon which to present his considerable claims of factual
lawyers alike, relates to moral guilt of criminal defendants and ethical propositions that require defense attorneys to ignore guilt, or in some cases, limit their tactical options based upon evidence of guilt.\textsuperscript{14} The trial itself often seems less a search for truth to nonlawyers than a game couched in undisclosed rules and technical language.\textsuperscript{15} In short, the law and its institutional manifestations provide the exact source of dilemma and conflict that enable creative artists to tell fascinating and often compelling stories. When this happens on film, we are the beneficiaries of great movies. Lawyers and

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innocence. Though our jurisprudence offers Burton no relief, we express the hope that the state of Missouri may provide a forum (either judicial or executive) in which to consider the mounting evidence that Burton’s conviction was procured by perjured or flawed eyewitness testimony. In the final analysis, Burton may well be guilty, but the new evidence he has unearthed suggests his case at least deserves a second look.

\textit{Id.} at 849. Because Burton presented his claims of actual innocence in the federal habeas corpus process but could not link them to a violation of a federal constitutional right or protection, the federal courts were not authorized by statute or tradition to order relief from his state court conviction, even if persuaded of his factual innocence. \textit{Id.} at 848–49.


15. Justice White characterized the role of the criminal defense lawyer in his concurring opinion in \textit{United States v. Wade}, which involved the question of a suspect’s right to counsel at a lineup. Justice White described the roles of the prosecution and defense in rather stark contrast:

Law enforcement officers have the obligation to convict the guilty and to make sure they do not convict the innocent. They must be dedicated to making the criminal trial a procedure for the ascertainment of the true facts surrounding the commission of the crime. To this extent, our so-called adversary system is not adversary at all; nor should it be. \textit{But defense counsel has no comparable obligation to ascertain or present the truth}. Our system assigns him a different mission. He must be and is interested in preventing the conviction of the innocent, but, absent a voluntary plea of guilty, we also insist that he defend his client whether he is innocent or guilty. The State has the obligation to present the evidence. \textit{Defense counsel need present nothing, even if he knows what the truth is}. \textit{He need not furnish any witnesses to the police, or reveal any confidences of his client, or furnish any other information to help the prosecution’s case}. If he can confuse a witness, even a truthful one, or make him appear at a disadvantage, unsure or indecisive, that will be his normal course. Our interest in not convicting the innocent permits counsel to put the State to its proof, to put the State’s case in the worst possible light, regardless of what he thinks or knows to be the truth. Undoubtedly, there are some limits which defense counsel must observe but more often than not, defense counsel will cross-examine a prosecution witness and impeach him if he can, even if he thinks the witness is telling the truth, just as he will attempt to destroy a witness who he thinks is lying. In this respect, as part of our modified adversary system and as \textit{part of the duty imposed on the most honorable defense counsel}, we countenance or require conduct which in many instances has little, if any relation to the search for truth.

non-lawyers blend together in the movie audience to offer the filmmakers the full range of emotional and intellectual response for which they strive.

There are many aspects of law and lawyer-based film stories that may be studied: common elements that may be examined for comparison and contrast. Issues, characters, or discrete conflicts may dominate the story told, and the greatest law or lawyer-based films will undoubtedly include well-drawn characters, troubling legal issues, and, of course, the well-known elements of interpersonal conflict that one might readily associate with an "adversarial" system of justice. For the most part, the great law or lawyer-based films focus on some aspect of criminal or civil litigation and implicate the contradictions inherent in the adversarial system. In contrast, transactional lawyering has been mostly ignored by filmmakers—just as it has been by litigators. The great law and lawyer-based films test the audience, just as the adversarial system itself tests the community and those who work within the courts.

One common element of particular importance to the filmmaker has reflected the same concern of legal practice: the formation of the attorney-client relationship—the core factor in the idealistic construct in which counsel undertakes representation of the client and assumes the obligation to champion the client’s cause or interests. In many great law and lawyer movies, the filmmaker’s introduction of the client to the lawyer mirrors, in important ways, the introduction of the layperson to the law and to its primary institution—the legal system.


17. Noting this discrepancy, one writer states: Movies about lawyers focus on litigators, rather than on, say, transactional lawyers or lawyers who work in non-legal fields. Based on Hollywood’s narrow focus, both the general public and people who might be inclined to become lawyers may assume (if they have no information to the contrary) that lawyers are litigators, period.

I. THE FIRST MEETING OF CLIENT AND LAWYER

*I'm your lawyer, ma'am.*

—Lincoln to Mother Clay in *Young Mr. Lincoln*  

In the Depression-era, idealistic portrayal of Abraham Lincoln in his early career as practicing lawyer in Illinois, filmmaker John Ford depicted the introduction of the naive Clay family to Lincoln in much the same way that we might idealistically hope that any lay client will initially confront the legal system. Shortly after the arrest of the Clay brothers, Lincoln appears at the scene while an angry mob is assembling to take revenge on the apparent murderers of a well-known, if not necessarily well-liked, local townsman, Scrub White. In a dramatically slow-paced moment contrasting with the frenetic action of townspeople, Lincoln calmly persuades Mrs. Clay, her daughter-in-law, prospective daughter-in-law, and grandchild gathered about her, of the need for immediate action to prevent the lynching of her sons. When Mrs. Clay is left wholly alone to deal with this situation, she asks Lincoln who he is, and he responds with assurance that he is her lawyer.

Lincoln, of course, does much more than volunteer to represent the Clays in that moment. He proceeds to disarm the mob intent on hanging them with a combination of simple reason and humor, along with his promise to physically challenge anyone unwilling to accept his suggestion that they let him earn his trial fee prior to exacting their punishment. Lincoln was portrayed in the film winning the rail-splitting contest at the county fair earlier on the day of Scrub White’s murder—clearly indicating

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18. Released by Twentieth Century Fox in 1939.
20. One unnamed character in the mob advises: “What they need is a taste of the rope.” Mob violence and lynchings are frequently depicted in films set on the frontier. The classic film about vigilante justice, *THE OX-BOW INCIDENT* (20th Century Fox 1943), graphically depicts a lynching and its aftereffects on the mob. Clint Eastwood’s character is saved from a lynching in *HANG 'EM HIGH* (United Artists 1968), and ultimately becomes a deputy whose perspective is changed when the trial judge orders two youthful offenders to hang over his recommendation of leniency. In *TO KILL A MOCKINGBIRD* (Universal Int’l Pictures 1962), defense counsel Atticus Finch stands up to a mob intent on lynching his client, although the mob is actually disarmed by the presence of Finch’s children, Jim and Scout, when Scout begins to converse with one member of the mob whose son is a classmate of hers and who, himself, has been represented by Finch. And in *THE SONS OF KATIE ELDER* (Paramount Pictures 1965), the mob threatens to take the prisoners of an inexperienced deputy torn by loyalty to the sheriff whom the prisoners have been accused of killing.
to the film audience that he was capable of protecting his clients with more than well-chosen words.

The introduction of the Clay family to the legal system and their lawyer reflects the Depression-era need for reassurance in the promise of justice in the law. Following a lengthy period of economic despair during which the law and its institutions had been a primary oppressor of masses of Americans through foreclosure and during which bank robbers achieved popular glamour in the eyes of many poorer citizens, John Ford may well have sensed that poorer Americans needed to see the law and its institutions as fair and protective, rather than as instruments of the wealthy.21

Ford’s Lincoln sets a high standard as the champion for the unprivileged accused cast into the uncertainties of the legal system. Depicted as inexperienced in the courtroom, unsophisticated, and self-taught by reading law books, Lincoln is portrayed in sharp contrast to the polished Stephen Douglas, who seemingly offers advice to both the prosecution and trial judge while avoiding being directly drawn into the case. But witnessing Lincoln’s mastery of his circumstances, the film’s audience in that period just prior to the world being drawn into world war likely walked out of the theater with two important responses to the film: First, Lincoln represented the idealistic view of the lawyer as faithful to his clients’ interests and competent in their representation—concepts that remain basic to professional ethical norms; and second, Lincoln himself represented the triumph of the common man, born into relative poverty, but able to achieve greatness through motivation and education.22

The lawyer as a heroic figure appears to be largely confined to either an earlier period of filmmaking or in representations of earlier periods in American history. Lincoln’s Depression-era counterpart, Atticus Finch (portrayed by Gregory Peck), in To Kill a Mockingbird,23 reflects a similar, idealized view of the lawyer as pivotal figure in the community who champions the cause of the unpopular client. Atticus agrees to defend Tom Robinson, an African-American charged with the rape of a young white woman in a segregated Southern town. He does so with dignity probably outstripping the comprehension of the all-male jury that convicts his client despite the destroyed credibility of the complaining witness and her father—poor

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21. Ford also directed THE GRAPES OF WRATH (20th Century Fox 1940), based on John Steinbeck’s classic Depression-era novel of the same title. Henry Fonda, who portrayed Lincoln in Young Mr. Lincoln, was cast as the protagonist, Tom Joad, in the 1940 Grapes of Wrath release.

22. Lincoln is not portrayed as particularly hard-working, a fact that might have appealed to an audience that had learned that hard work, even when available, did not necessarily lead to economic success or security.

23. TO KILL A MOCKINGBIRD, supra note 20. Gregory Peck was awarded an Academy Award for Best Actor for his performance.
whites whose only status in the community appears to be based on their ability to manipulate the criminal justice system. Just as Lincoln quickly assumed the role of champion of the naive, impoverished Clay family, Atticus readily fills a similar role with regard to his client’s family and the larger black community.

The film devices used in portraying these idealized attorney-client relationships are striking: Both lawyers defend their clients against mobs intent on lynching the accused; both visit the families of their clients in their homes, rather than in their law offices; and for both lawyers, the obligation to defend their unpopular clients is accepted with dignity in scenes in which they are approached by a presiding judge concerned about the quality of justice. These films draw bright lines in which defense counsel are invariably honorable and courageous; their clients able and willing to trust them without reservation. The interaction between the lawyer and client’s family cannot be minimized, and this element of the attorney-client relationship is particularly important in actual practice because so often the client is incarcerated and it is the family that conducts business with the defense attorney. For instance, it is the death row inmate’s grandmother (played by Ruby Dee) who travels by bus from Florida to Harvard in an effort to enlist law professor Paul Anderson (portrayed by Sean Connery) in her grandson’s effort to escape execution in *Just Cause.*

Anderson betrays a not uncommon characteristic of the law teacher’s profession as he declines to become involved because of other commitments and the long period that has passed since he actually practiced law, rather than debating the merits of capital punishment. He is goaded into taking the case by his far-younger wife, a former prosecutor—now caseworker—in the juvenile system who strikes the right chord when she tells him that it would be good for him to get “a little dirty” by getting back into court.

24. *JUST CAUSE* (Warner Bros. 1995). The involvement of family often raises difficult, but ethically straightforward issues for the lawyer and client. In *A PLACE IN THE SUN* ( Paramount Pictures 1951), George Eastman (played by Montgomery Clift) faces a murder prosecution when a young woman, pregnant as a result of their brief sexual liaison, dies in a boating accident when he fails to save her. His romantic attentions had already been diverted to Elizabeth Taylor, a wealthy socialite, suggesting a motive for murder. Her family, concerned about Clift’s relative poverty and lack of social standing and eager to avoid scandal in their small town, retains a lawyer for him. At the first meeting between Clift and the lawyer, he is pointedly advised by the father that counsel has been instructed to leave his daughter out of the case. This type of encroachment on counsel’s ability to represent an accused is ethically condemned, although certainly not unknown. See, e.g., Bruce v. Estelle, 536 F.2d 1051, 1061 (5th Cir. 1976) (involving a situation where family-retained counsel was instructed not to raise insanity defense despite defendant’s extended history of mental illness and prior hospitalizations).
This element of trust between a lawyer and client is also apparent in Stanley Kubrick’s drama of military injustice, *Paths of Glory*,\(^\text{25}\) in which the ineptitude and arrogance of the French Army’s conduct in World War I is portrayed in sharp contrast to the fate of its front line soldiers. When a French corps is unable to dislodge a German position, the “anthill,” in a brutal frontal assault on German trenches, the commanding officer orders a summary court martial of randomly selected soldiers for cowardice. Colonel Daks (portrayed by Kirk Douglas), the immediate commander of the unit failing to complete the assault, is the foremost criminal defense attorney in pre-war France. He refused to be relieved of his command after challenging the orders to take the anthill as irresponsible because of his intense loyalty to his men. When the court martial is announced, Colonel Daks offers to substitute himself for his men as the officer responsible for the failure of the assault, but his offer is rejected. Daks then agrees to defend the three soldiers selected for symbolic, yet very real, capital punishment imposed because of the cowardice of their units. Even after Daks advises the defendants that their trial will be held the following day, one of the men expresses his unquestioning faith that Daks will be able to save them. The film suggests that the loyalty that underlies the attorney-client relationship is drawn from the loyalty of the men to their commanding officer and his loyalty to them.

There is no suggestion of the cynicism that marks portrayals of the attorney-client relationship in more contemporary settings. Yet, in these films a common theme is that the lawyer undertakes representation of innocent, rather than guilty, clients.\(^\text{26}\)

**II. THE ISSUE OF GUILT**

Almost all lawyers confront the question from nonlawyers, and often from other lawyers, of how the criminal defense attorney can represent a client known to the lawyer to be guilty. That issue is almost central in the public consciousness when considering the criminal justice process. The notion that a lawyer may ethically, but untruthfully, argue the factual innocence of the guilty client is inherently troubling, even within the legal profession, much less for citizens less directly invested in the criminal justice process.


26. This cynicism is often displayed by lawyers in movies. For example, in *True Believer* (Columbia Pictures 1989), the former “cause” lawyer (played by James Woods), now a burned-out drug lawyer reduced to spewing platitudes about the Fourth Amendment, is confounded by his client’s innocence because of his apparent inability to prove it. He is kept on track by his idealistic law clerk (portrayed by Robert Downey, Jr.) whose energy and initiative contrast sharply with counsel’s sloppiness.
The differing expectations of client and counsel with regard to the significance of moral and legal guilt are pointedly illustrated in a scene from the film *Tom Horn*, with Steve McQueen playing the title role in this idealized story. Horn, a former Army scout on the frontier, has been enlisted by a group of ranchers to stop cattle rustling. His expertise as a "stock detective" proves a source of trouble for a community moving toward civilization; his violent style, while effective, is simply too effective and too final. Eventually, Horn is set up by the politically savvy local marshal, Joe Bell, who attempts to extract an admission that Horn is responsible for the particularly notorious killing of a fourteen-year-old boy with what is termed a remarkable shot—presumably one which Horn was capable of making. As Bell and Horn talk in the marshal’s office, the local newspaperman, hidden in an adjacent room, attempts to record Horn’s comments. He will later testify inaccurately at trial—whether deliberately or simply as a result of error—that Horn made highly inculpatory, even prideful admissions of guilt.

Horn’s close friend in the rancher’s association, John Coble, hires an attorney, Birch, to represent Horn at the quickly-scheduled trial. Coble warns Horn that the politically-ambitious prosecutor intends to use the case as a show trial on which to base his campaign for elected office. When Horn first meets his lawyer, he asks Birch directly about the question central in his mind to his defense—the issue of his guilt.

HORN: Do you think I killed that boy?

BIRCH: That question will never come up between us.

HORN: Why not? It’s going to come up in court . . . . When do I go to trial?

BIRCH: They’re bringing in a judge and swearing in a jury right now.28

For the character Tom Horn, and undoubtedly for many in the audience, Birch’s response is troubling. There is the sense that the lawyer should be concerned about his client’s guilt or innocence because the jury undoubtedly will be. Yet, Birch, like many criminal defense lawyers, avoids the issue, perhaps as a way of remaining free from the critical knowledge that would impair his ability to provide a defense.

Everyone knows that guilt is an issue central to the criminal justice process, but the process itself may also be central, explaining why we have exclusionary rules and protections against being compelled to testify. The search for truth, as Professor Alan Dershowitz has observed, may be mis-

28. *Id.*
leading because there are many "truths" that may be pursued.\textsuperscript{29} Many defense attorneys appear to agree with Birch that any admission of guilt by the client will compromise representation. In fact, however, the defense is obliged only not to suborn perjury, and Horn's admission, if any, would only have precluded Birch from offering testimony known to be false.

But even experienced lawyers often struggle with this problem. Lincoln, for example, eventually asks Mrs. Clay which of her sons killed Scrub White. When she declines to answer, he continues in their defense at trial, even to the point of forcefully interrupting the prosecution in its attempt to compel her to disclose the identity of the killer while under oath. In essence, Lincoln not only represents potentially conflicting interests in defending both of her sons, but also obstructs the prosecution in its pursuit of factual truth by representing Mrs. Clay herself, even informally, in open court.\textsuperscript{30}

The issue of guilt plays an ironic role in the ultimate question of justice dispensed in \textit{Breaker Morant},\textsuperscript{31} an Australian film examining the prosecution of three Australian soldiers by the British command as a political strategy designed to facilitate an end to the Boer War. Morant (played by Edward Woodward) is a highly regarded horse-breaker and poet who orders the execution of Boer prisoners pursuant to an unwritten order, but also apparently out of revenge for the killing and mutilation of Captain Hunt, his prospective brother-in-law, during an unsuccessful surprise raid on a Boer outpost. Morant and his subordinate, Hancock (portrayed by Bryan Brown), are also responsible for the deliberate killing of a German missionary suspected of being a Boer spy. When their naive co-defendant, who had no part in the act, learns that Morant and Hancock were responsible for the missionary's death but that their counsel has mounted a convincing alibi—Hancock was actually "visiting" two different Boer housewives for sexual liaisons at the alleged time of the missionary's killing—the co-defendant says that they must tell their attorney. But Morant and Hancock exhibit a common reluctance to admit factual guilt to their attorney—likely fearful that he would betray them to the military court. In the end the three are acquitted of the missionary's murder, but convicted on the other counts, even though the execution of the Boer prisoners was clearly ordered by the British command. Thus, they are convicted on the counts on which they were legally not culpable and acquitted on the charge for which they were factually guilty.

\textsuperscript{29} See \textsc{Alan M. Dershowitz, Reasonable Doubts} 34-48 (1996).
\textsuperscript{30} None of these ethical irregularities, however, prevents him from representing the Clays and, given their evident poverty—Mrs. Clay pays Lincoln after the trial with a small sum of money, "all she has"—no one else might have even taken the case. See \textsc{Young Mr. Lincoln}, \textit{supra} note 19.
\textsuperscript{31} \textsc{Breaker Morant} (S. Australian Film Corp. 1980).
In these films questions of moral guilt and the duty owed the client by defense counsel are raised by the filmmakers describing the complexity of the attorney-client relationship. The formation of the relationship, in life as in film, is difficult because of the almost artificial or illusory precept upon which it rests—that the lawyer is obliged to represent the client she knows to be guilty. In reality, clients are not so unsophisticated as to believe counsel’s performance will not be impaired or affected by knowledge that they are morally and legally guilty. This fact compounds the problem of representation because clients offer false and often wholly incredible explanations to avoid admitting guilt, whether to counsel or in trial.

What is ultimately fascinating is the situation in which both counsel and client recognize the problem of moral and legal guilt and manage to work around it, the situation in which the filmmaker seizes upon the conflict of perception that most troubles the lay audience. The reality is that lawyers do represent guilty clients, and often, not without personal regret. Following his successful defense of a young naval officer charged with seizing control of Captain Queeg’s (depicted by Humphrey Bogart) command in The Caine Mutiny, defense counsel (portrayed by Jose Ferrer) approaches the officer (played by Van Johnson) and his friends at the victory celebration in a very guarded and disparaging manner. Asked why, counsel responds directly, prefacing his statement with his personal judgment that Queeg’s officers had acted improperly:

I got a guilty conscience. I defended you, Steve, because I found the wrong man was on trial. So I torpedoed Queeg for you. I had to torpedo him, and I feel sick about it.

III. THE LAWYER’S MINDSET

If clients, like the audience, are concerned that defense lawyers will not represent them aggressively if they disclose their own moral guilt, the culpable client will also likely be troubled about whether counsel will provide aggressive representation in any circumstances. This is a common theme in films, often arising in the context of the first meeting of client and lawyer, and fairly typically is depicted when clients attempt to dominate the initial interview. For example, in the realistic classic Anatomy of a Murder, the defendant accused of murder, Lieutenant Manion (played by Ben Gazzara) pointedly asks defense counsel Paul Biegler (depicted by James Stewart) whether he can “handle” the case. In his masterful portrayal of the

32. THE CAINE MUTINY (Columbia Pictures 1954).
33. Id.
34. ANATOMY OF A MURDER, supra note 1.
former prosecutor forced into private practice by electoral defeat, Stewart shrewdly replies that perhaps no one can “handle” the case if it means getting Manion “off.” But Manion’s character, clearly narcissistic and manipulative, pushes further, demanding to know of Biegler’s experience in defense work. Biegler replies with actor Stewart’s classic deadpan delivery, “Not very much.”

The situation portrayed, in which the prospective client attempts to size up counsel during the process of entering into the attorney-client relationship, has appeared in other films. In Breaker Morant, the Australian soldiers charged with murder learn that the counsel (portrayed by Jack Thompson) appointed by the British court to represent them has no criminal experience and little trial experience. The counsel’s obvious disdain for his clients and discomfort in being cast in the role of counsel in a capital case are apparent in the exchange, yet throughout the remainder of the film, his work earns the respect of his clients, the experienced prosecuting counsel, and the British officers orchestrating the sacrifice of the three Australians to further the prospects for a peace conference. The metamorphosis of counsel and his relationship with his clients is suggested at the end of the film when Morant entrusts counsel with his letters and publication of his last poems, observing: “We poets crave immortality.”

This theme also appears in My Cousin Vinny. In perhaps the most hilarious scene in a film treating almost every aspect of criminal defense work with scathing humor, Vinny (depicted by Joe Pesci) is taken to his clients’ prison cell for his initial meeting with them. While his cousin remains asleep, Vinny attempts to establish the relationship with the co-defendant, Stanley, who mistakenly assumes that Vinny has appeared for the purpose of obtaining sexual favors from him. Once his cousin (played by Ralph Macchio) awakens, Vinny is able to start the process over. But the hilarity continues as he is forced to disclose that he has no criminal law experience, no trial experience, and that he passed the bar examination on his sixth attempt. Nevertheless, Vinny is prepared to undertake representation in a capital case involving two innocent defendants—one of whom is family—presumably with an eye toward gaining some valuable courtroom experience.

On the whole these experiences of both clients and counsel in their initial efforts to establish professional relationships are neither pleasant, nor conducive to the development of the trust thought to be essential to successful representation. But Manion in Anatomy of Murder, and Morant and his co-defendants in Breaker Morant are not morally innocent; they have committed the acts for which they have been charged. In this sense the cynicism

displayed when they question counsel's qualifications may, in fact, flow from their inability to accept that their lawyers will actually represent them despite their guilt, or perhaps, because of it. *My Cousin Vinny* is quite different, precisely because the two young men arrested in Alabama and charged with the capital murder of a convenience store clerk are truly guilty of nothing greater than shoplifting a can of tuna, and of doing that inadvertently.

For the filmmakers, however, the problem of counsel's competence and commitment to aggressive representation may be related more to the commonly-held perception of the lay public—the majority of the movie audience—that the defense lawyer will not be comfortable in representing a guilty defendant than to the question of the client's actual guilt. So, in *My Cousin Vinny*, the clients' faith is not strengthened by realization of their own innocence; instead, they face the very real prospect of being convicted of a capital crime for which they are not responsible at all. Yet, the legacy of cynicism about the criminal justice system and the motivation of its actors spills necessarily into the anxiety about counsel's ability and willingness to perform. Vinny's own credibility is not established until his first success in cross-examination, at which point Stanley dismisses the inept public defender (played by Austin Pendleton) he had opted for instead of Vinny.

IV. CONCLUDING THOUGHTS

Film both reflects and influences society. If an increasingly skeptical view of the role of the criminal defense attorney has emerged over time in American and Western film, this attitude likely reflects some degree of truth about public perceptions. Clearly, the major events of the middle of the twentieth century generated widespread public doubt about the integrity of our institutions. The end of World War II forced Western societies to address the problems of genocide and Antisemitism that crystallized in our understanding of the Holocaust. The use of atomic weapons to end the Pacific war have left lingering doubts about the consequences of mass war, if not about the efficacy and, perhaps, justification for their use against Japan. In this country the problems of race were implicit in the civil rights movement; the legitimacy of war as a tool of foreign policy was the focus of

37. The atrocities of World War II are examined in a number of excellent films, including *Judgment at Nuremberg* (United Artists 1961) (depicting trial of Nazi judges for forced sterilization and imposition of death penalty for political purposes); and *Prisoners of the Sun* (Village Roadshow Pictures 1990) (illustrating prosecution of Japanese officers for execution of Australian airmen taken prisoner). For a view of Japanese military justice during the war, see *The Highest Honor* (New World Pictures 1982) (dramatizing the trial and execution of Australian commandos).
bitter division over American policy in Vietnam; and legal institutions were battered by the illegalities disclosed in the Watergate investigation.

In light of the dramatic events that dominated American life in the middle of the twentieth century, it would be surprising if film did not reflect uncertainty or cynicism toward a legal system dependent upon the "fiction" that underlies the role of the criminal defense attorney. In life, as in film, a client's inability to believe that his criminal defense lawyer will represent him faithfully and competently, even if aware of his guilt, is significant in our understanding of the relationship of lawyers and lay people. Whether any professional code will ensure the adequacy of his representation in the client's own case may be a concern central to the plot—as in Anatomy of a Murder—or only collateral in the development of the story. What is likely is that, for the most part, the inherent goodness of Lincoln and Atticus Finch is reserved for history, both in films and in our collective consciousness. This might mean that the adversarial system is due for reconsideration, if not revision. It may also mean that we have lost our innocence as an audience and society or that the problem of moral and legal guilt will remain a difficult one for clients, lawyers, and filmgoers struggling to understand how the defense attorney can represent a guilty defendant.

Nevertheless, filmmakers continue to tweak these issues in ways designed to further reflect on the criminal law and its practitioners while entertaining us. In doing so, they humanize the criminal lawyer in often remarkable ways, suggesting that the promises made by the system of justice are so ideal that we lawyers should at least continue the struggle to ensure justice under the law and not surrender to the cynical expectations of a jaded public. In The Great Muppet Caper, Miss Piggy is arrested and falsely charged with a jewel theft. Kermit, her true love, disguises himself in a suit and artificial mustache and, claiming to be her lawyer, Rosenthal, visits her in jail. Although Piggy has been in custody only a short time, her use of jailhouse slang—"cooler," "big house," "stir," "squealer," and "slammer"—"that's the lingo we use here in the joint"—is disconcerting to Kermit. When she essentially rationalizes her newly-adopted language as a necessary response to her new accommodations, he replies that he knows that underneath this façade of hardened inmate, she remains the same "beautiful, sensitive, vulnerable woman I was out with the other night, the one who scarfed down all that caviar."

Kermit reminds us that defense lawyers may also have tender hearts and remain idealistic even in the face of realities that tempt us toward cynicism.