

# Hello Mr Clips<sup>1</sup>

by Paul Bergman

Popular legal culture, especially courtroom films and television shows, is more than momentary entertainment. Many people derive much of their legal knowledge from these sources. Fictional and fictionalized legal stories help to shape popular attitudes about such matters as the content and fairness of legal rules, the activities of lawyers, judges, police officers and other legal actors, and the functioning of the justice system. Considering scenes from courtroom films as cultural artifacts that can serve as teaching tools, this essay examines how one might analyse films' impact on their audiences.

Early in my career as a law professor (which cynical readers might deride as a "gap career"), I lamented that I had become a lawyer and not an archaeologist. In classrooms and group presentations, archaeologists can enthral audiences with displays of gruesome body parts, shards of old pots or other spiffy visual treats. But as a law professor, I had trouble identifying dramatic tangible objects. Abstract legal principles such as due process of law and the right to cross examination could neither be waved around a classroom nor displayed on power-point slides!

Perhaps this festering envy of archaeologists explains why I began to incorporate clips from courtroom movies and TV shows in such American law school courses as trial advocacy and evidence (in the US, evidence courses generally focus on formal rules of trial whereas trial advocacy courses focus on rhetorical skills). Clips are visual, often dramatic and engaging. And whether or not students are familiar with the sources of the clips, the scenarios are likely to reflect widely-shared attitudes that I can usefully analyse and dissect with students. According to an ancient aphorism, "Those who can, do. Those who can't, teach." Perhaps my career has given rise to a third section of the aphorism: "Those who can't teach, show film clips."

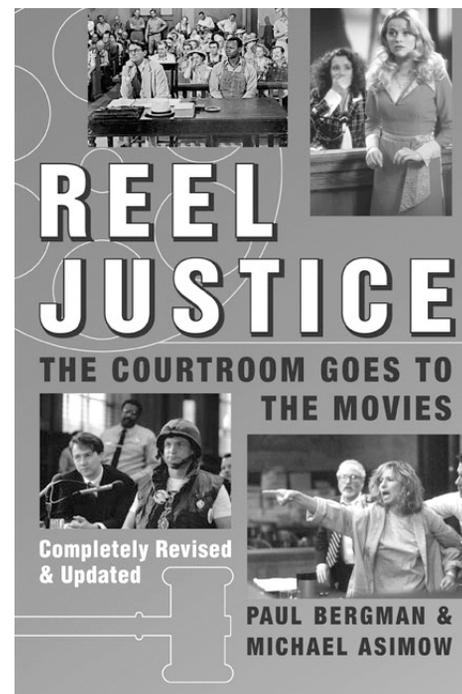
My classroom clip-based teaching led me to write about the social meaning and legal accuracy of courtroom films and television shows. This gave rise to a book (Bergman and Asimow, *Reel Justice: The Courtroom Goes to the Movies*, Andrews McMeel, 2nd ed 2006) and a number of papers and articles stretching back to 1996, the most recent of these being "Rumpole and the Bowl of Comfort Food" in

*Lawyers in Your Living Room! Law on Television* (ed Asimow, ABA Press, 2009).

It has also led me to present film clip-based lectures such as the one I was privileged to give at the Institute of Advanced Legal Studies in May, 2011. This article grows out of that presentation.

## BASIC LEGAL PRINCIPLES

Courtroom film-makers are generally far more interested in telling stories that produce suspense, laughs or drama than they are in technical legal accuracy. But if they are to engage audiences, films in the courtroom genre have to depict legal processes that mass audiences can recognise based on their everyday experiences. If courtroom films can reasonably serve as cultural artifacts, then, they should incorporate the basic trappings of what the Anglo-American culture considers necessary ingredients of a fair trial. And while film makers are quite happy to distort courtroom processes to fit the needs of their stories, few films dare tamper with the basic rights that the Anglo-American system of justice considers to be sacrosanct and inherent in a fair trial process.



<sup>1</sup> The essay's title is a respectful play on the classic James Hilton novel *Goodbye Mr Chips* and the delightful films based on it, and does not imply that the author claims any resemblance to the endearing character of Mr Chips.

For example, film characters accused of crimes virtually always receive a jury trial if they demand one. Jurors may be tainted by racial prejudice or other improper motives, as in *To Kill a Mockingbird* (1962) and *12 Angry Men* (1957); mobsters may frighten them into voting for unjust acquittals (*Trial by Jury* (1994)); and judges may improperly influence their verdicts (*Let Him Have It* (1991)). However, the right to trial by jury is so embedded in the culture that audiences would be unlikely to become emotionally involved in a story in which a cine-defendant is denied a jury trial.

Indeed, one of the most important civic virtues of courtroom films and TV shows may be that they portray jury trials as a frequent method of dispute resolution. Ask the average person to identify a single feature that best typifies the unique contribution to justice of the Anglo-American system of justice, and “trial by a jury of one’s peers” may well be the most frequent response. Yet even if we limit the field to criminal cases, jury trials are in reality rare events compared to the number of cases resolved before trial (often through guilty pleas) or through bench trials. By contrast, legal disputes in films almost always result not merely in trials, but in jury trials. In this way, courtroom films may help maintain the general attitude that jury trials are at the center of our legal solar system.

Courtroom films also reinforce the popular image of Anglo-American trials as lawyer-centered. Judges and jurors are essential elements of cine-trials. But they usually are passive characters, reacting to evidence and arguments. Whether they are heroic (Atticus Fish in *To Kill a Mockingbird*, Abraham Lincoln in *Young Mr Lincoln* (1939) and Henry Drummond in *Inherit the Wind* (1960)); hysterically effective (Vinny Gambini in *My Cousin Vinny* (1992)); or corrupt (Andy Griffin in *They Won’t Forget* (1937) and General Broulard in *Paths of Glory* (1957)), cine-lawyers are the principal characters whose decisions and actions drive stories forward. Especially compared to their civil law relatives, common law attorney-centred trial processes are far better suited to film makers’ story-telling needs.

Lawyers’ *mano a mano* cross examinations of frightened or combative witnesses, and their emotional closing arguments, offer fertile ground for drama or comedy. Classic examples of the former include prosecutor Claude Dancer’s disastrous cross examination of Mary Palant in *Anatomy of a Murder* (1959) and defence lawyer Lieutenant Kaffee’s devastatingly effective cross examination of Colonel Jessop in *A Few Good Men* (1992). The jury often functions as a stand-in for film audiences. When lawyers present arguments to judges and juries, the filmmakers’ intended recipients are usually the films’ viewers. Consider for example Jonathan Wilks’ anti-capital punishment argument in *Compulsion* (1959) based on Clarence Darrow’s closing argument in the Leopold and Loeb “thrill-killing” case.

The lawyer-centredness of trials reflected in countless films and TV shows may help to explain why the

widespread uproar over the 1995 acquittal of celebrity defendant O J Simpson on double murder charges died down rapidly and resulted in virtually no changes to the American criminal justice system (one change suggested by many legal commentators was an end to the requirement of a unanimous verdict). Though the verdict may have been contrary to the great weight of the evidence, experts and lay people alike agreed that Simpson’s defence team far out-performed the shoddy prosecutors. Conditioned by the lawyer-centred system they see reflected in pop culture, audiences may well have accepted that the superior performance of Simpson’s lawyers was itself a legitimate contributor to his acquittal.

## RABBITS AND HATS

Professional training provided by law schools or the legal profession tends to portray trials as exercises in logical persuasion. Novice lawyers learn to develop arguments by linking discrete items of evidence to abstract legal elements and organising the lot into rational stories.

This process of accretion, by which lawyers slowly assemble small bricks of circumstantial evidence into what they hope judges and jurors will accept as a wall, is at odds with the dramatic images of trials that courtroom movies typically provide. In cine-trials, lawyers are often more than the center of the action. They often become magicians, suddenly altering a trial’s direction with evidence pulled from a hidden bag of tricks. While real lawyers, unlike cine-lawyers, have to follow the rules, real lawyers also have to recognise and respond to the expectations that popular culture has likely created in many viewers’ minds – that trials are filled with dramatic revelations and actual lawyers possess similar dramatic skills to their fictional counterparts.

The brilliant musical film *Chicago* (2002), which won the Academy Award as Best Picture, typifies the misleading images of trials that courtroom films so frequently provide. Roxie Hart is charged with murdering Fred Casely. Roxie is guilty; she killed Casely after he gloated about convincing her to sleep with him by falsely promising that he could make her a stage star. Famous defence lawyer Billy Flynn creates not only an equally false self-defence story, but he also develops a phony personal history for Roxie that will make the jurors sympathise with her plight. While in prison awaiting trial, Roxie is thrilled by the media attention accorded to her as the latest glamorous accused murderess. But as her trial is about to get underway, Roxie whispers to Billy that she’s scared. Billy assures her that she has nothing to worry about.

As the scenes morph seamlessly between the colourful world of a circus and the subdued hues of the actual trial, Billy explains musically that trials are just a form of entertainment. Roxie has nothing to worry about because Billy is the star ringmaster, and the jurors will never be able to see the truth because Billy will “put sequins in their eyes.”

The character of Billy Flynn is based on New York defence lawyer William Fallon. Fallon was known as the “mouthpiece for the mob” in the first two decades of the 20th century. Fallon’s epic courtroom defences disdained truth. But so successful was Fallon that he represented 126 defendants charged with murder, and secured an acquittal every time (see *Super Lawyers: America’s Courtroom Celebrities* (2000) and Fowler, *The Great Mouthpiece*, (1931)).

The film *The Mouthpiece* (1932) memorializes one of Fallon’s actual courtroom stunts. Fallon’s mob client is charged with committing a murder-by-poison. During his closing argument, Fallon uncaps the bottle of deadly poison that the prosecution had placed in evidence and drinks it down. Fallon then sits calmly in the courtroom while the jury deliberates. When the jurors realise that Fallon is unaffected by the bottle’s contents, they return a not guilty verdict. Fallon quickly rushes to a nearby room in which medical personnel immediately pump his stomach.

*Criminal Court* (1946) portrays an equally dramatic courtroom stunt. Defence lawyer Steve Barnes becomes increasingly frustrated during cross examination by his inability to undermine the prosecution eyewitness’ perjurious testimony. The eyewitness testifies that he stood calmly by while the defendant walked up and shot the victim, who was standing only a few feet away. Barnes is so agitated that he eventually screams that he has to take justice into his own hands. Barnes pulls a gun out of his jacket pocket and waves it in front of the eyewitness, seated just a few feet away. The eyewitness (and everyone else in the courtroom) dives for cover. Barnes then asks the jurors to get up and look at the eyewitness cowering behind a chair, pointing out that “there’s the man who claims not to have jumped at the sight of a gun.” The defendant is of course acquitted.

Defence lawyer Earl Rogers, Fallon’s equally famous Los Angeles contemporary, pulled off this courtroom stunt while representing Alfred Boyd. The clip raises an interesting issue of relevance. Is the courtroom behaviour of the eyewitness rationally related to how he might have reacted in a public street?

The point of using clips such as these in my law courses is not to teach students that acceptable courtroom advocacy includes drinking poison and waving guns at witnesses. Rather, especially when reinforced repeatedly by popular culture, scenes such as these tend to produce expectations in jurors, clients, witnesses and even lawyers themselves that showmanship, dramatic flair and flashy, expensive visual exhibits are necessary aspects of an effective trial presentation. If today’s litigators spend almost as much time and energy on presentation techniques as on the merits of their legal claims, popular culture may be partially to blame.

## ETHICS V JUSTICE

Lawyers and professional legal associations generally take ethical rules very seriously. But if popular culture is any

indication, lawyers who break ethical rules can be heroes. At least they can be heroes when they break the rules in order to achieve what audiences perceive as just outcomes.

*Chicago* offers a good example. The film’s audiences are likely to regard Billy Flynn as the film’s hero, even though he put forward a completely phony defense for Roxie Hart. But Roxie’s victim was a miserable lowlife who lied his way into her bed. Billy Flynn is thus more a rescuer of a pitiable damsel in distress than a dishonest lawyer who pulls a fraud on the court.

The beloved comedy *My Cousin Vinny* (1992) offers another example of a lawyer-hero who has to flout ethical rules to achieve justice. Brash and inexperienced New York lawyer Vinny Gambini comes to a small Alabama town to represent his cousin Bill against a murder charge. Bill and Stan were driving cross-country to attend UCLA when they were arrested for killing a convenience store clerk. It’s a case of mistaken identity. When Vinny comes to court dressed inappropriately and unaware of how to enter a not guilty plea, Judge Haller questions Vinny about his background. To remain on the case, Vinny has to repeatedly lie about his inexperience and lack of credentials. But audiences are more than willing to forgive Vinny’s ethical gaffes. When he unexpectedly mounts a great defence, and Stan’s experienced public defender stumbles through his opening statement, it’s obvious that justice depends on Vinny’s representing both defendants.

Arthur Kirkland remains the greatest Unethical Hero of them all. In *And Justice for All* (1979), evil Judge Fleming blackmails public defender Kirkland into defending Fleming against a rape charge. Fleming has always been abusive towards Kirkland and his “cockroach” clients, but when Fleming gets into trouble he turns to Kirkland. On the eve of trial, Fleming gloats to Kirkland that he’s guilty, and tells Kirkland that the phony evidence he’s concocted will assure an acquittal. In court the next morning, Kirkland goes ballistic. His opening statement tells the jurors that Fleming “should go right to f..ing jail... The son of a bitch is guilty.” As the courtroom spectators (and impliedly the film’s viewers) applaud, Kirkland makes the iconic charge that “This whole system is out of order” as he’s forcibly ejected from the courtroom.

Abstract rules have meaning only insofar as judges and jurors are willing to apply them to concrete events. Films such as these reflect popular attitudes that ethical rules frequently function as unneeded technicalities that frustrate rather than promote justice.

## CROSS EXAMINATION

The late famous American football coach Vince Lombardi once said that “Winning isn’t everything, it’s the only thing.” Viewers of courtroom films and TV shows might say much the same about cross examination. In popular culture, cross examination more than any other phase of trial dictates a trial’s outcome.

In *Anatomy of a Murder* (1959), Army Lieutenant Manion is charged with murdering Barney Quill. Manion admits that he shot and killed Quill, who lived in his tavern in a rural area about a mile up the road from the trailer in which Manion lived with his wife Laura. Manion's defence is a form of insanity called irresistible impulse. Manion claims that he came home late one night to find out from Laura that Quill had raped and beaten her. Unable to control his response, Manion walked to the tavern, gunned down Quill, and called the police when he realised what had happened.

Icy prosecutor Claude Dancer attacks Manion's claim of temporary insanity, and does well until he meets his doom while cross examining surprise defense witness Mary Palant. Dancer had undermined the defense's rape claim by emphasising Manion's inability to produce Laura's torn panties, which would have been at the rape scene had her rape story been true. Suddenly, Mary Palant, who works at Quill's tavern, appears in court with the torn panties. Palant testifies that she had found the panties the day after Quill was killed at the bottom of Quill's laundry chute. Dancer rushes at Palant with the ferocity of a bull charging a matador. Cross examining, Dancer calls Palant a jealous liar who testified in order to get even with Quill for ending their love affair and starting up with Laura Manion. Stunned by the accusation, Palant reveals that Quill wasn't her lover, but her father. The disastrous pie-in-the-face answer produces a not guilty verdict.

Pop culture's message that cross examination is the key to winning and losing at trial is reflected in countless films. In the comedy *Legally Blonde* (2001), glamorous first year law student Elle Woods improbably channels Perry Mason. Cross examining the prosecution eyewitness in a murder trial, Elle uses her knowledge of permanent hair dos to goad the witness into confessing that she was the murderer. And in *A Few Good Men* (1992), neophyte Navy lawyer Lieutenant Kaffee defends two Marines charged with deciding to carry out a hazing that led to a soldier's death. Aggressively cross examining base commander Colonel Jessep, Kaffee demands that Jessep tell the truth. After famously screaming that Kaffee can't handle the truth, Jessep shouts out that he ordered the Marines to haze the soldier in order to maintain military discipline.

Conditioned by scenes such as these, jurors may be forgiven for expecting attorneys to wring murder confessions out of adverse witnesses every time they cross examine, perhaps even in a breach of contract trial. Yet the typical reality is that cross examinations produce few fireworks and even fewer dramatic revelations. The contrary images that pop culture often presents should caution lawyers of the risk they run every time they embark on cross examination. Even if cross examiners don't unwittingly elicit additional damaging evidence, they may harm their cause simply by failing to produce bombshell helpful revelations.

## TRIAL ADVOCACY

Litigators can develop trial advocacy skills through such means as talking to mentors and reading through treatises and trial transcripts. They can also analyse cine-lawyers' courtroom strategies.

Return to *Anatomy of a Murder*, and re-consider Claude Dancer's disastrous cross examination of Mary Palant in the context of *chronology*. Chronology is a key story feature, because the order in which events occur often determines the inferences that flow from those events. Yet Palant is able to surprise Dancer (and audiences) because the film cleverly conceals the true chronology. Re-arranging the key portions of Palant's story in chronological order, the events are these: 1. Palant is Barney Quill's daughter. 2. A madman comes into the tavern and guns down her father in cold blood. 3. The next day, Palant is as usual sorting the laundry when she finds the torn panties. Does this story make sense? Isn't it likely that Palant took at least a day or two off from work, to grieve and arrange a funeral? If so, perhaps she didn't find the torn panties in the laundry chute until a day or two after her father was killed, giving Manion (or an accomplice) plenty of time to toss them down the chute in order to give credence to the rape claim. Whatever conclusion you draw, the point is that the chronology eliminates the possibility of a dramatic revelation and reveals possible inferences that its absence conceals.

Finally, Dancer's disastrous cross examination in *Anatomy of a Murder* illustrates a classic bit of strategic advice to litigators: "Never ask a question to which you don't know the answer." Dancer asks Palant, "You were living with Quill, weren't you?" "You were Barney Quill's mistress, weren't you?" Alas, poor Dancer asked these questions in total ignorance of the father-daughter relationship. Actual lawyers may not meet with disaster every time they ask a question to which they don't know the answer. But they should learn a lesson from the fate that awaits rule-breaking cine-lawyers, who virtually always do!

## CONCLUSION

Teaching with clips from courtroom films and TV shows can not only enliven a classroom or other presentation, it can also enhance the shelf life of teaching. When you analyse clips with students, students often continue to deconstruct courtroom scenes on their own, long after a course has ended. They think about a courtroom scene's accuracy, and about whether they agree with the cine-lawyer's strategy. As a law instructor, I'm happy when students come back and tell me about something I said in class that proved helpful. But I'm ecstatic when they tell me about a courtroom scene that they've analysed. That's when I most feel like an archaeologist. 🍷

**Paul Bergman**

*Professor of Law Emeritus, UCLA Law School*