

# Law Students Go to the Movies II: Using Clips from Classic Hollywood Movies to Teach Criminal Law and Legal Storytelling to First-Year Law Students

Philip N. Meyer with Catlin A. Davis

## I. The Interpenetration of Law and Popular Culture: 20 Years Later

Over 20 years ago, I wrote about what I then labeled the “interpenetration”<sup>1</sup> of law and popular culture. I borrowed the term from Buddhism. It struck me then, as it does now, that the boundaries between legal storytelling practice and popular storytelling practice are permeable; legal storytelling practice is not autonomous. Although the aesthetics and conventions of legal storytelling, including courtroom litigation storytelling, are somewhat different and adhere to evidentiary rules and procedural constraints, legal storytelling is heavily influenced and affected by popular storytelling, and vice versa. As a result, the stories themselves inevitably bleed from one domain into the other: Legal stories influence entertainment and art, providing the subject matter for popular films, but simultaneously fictional literature, television programs, and commercial Hollywood movies reverse-engineer the structure and aesthetics of many stories told in the courtroom. Indeed, the narrative architecture and substance of many popular stories, especially plot-driven Hollywood entertainment movies (and, these days, perhaps long-form television serials as well) profoundly influence many of the stories now presented in the courtroom.

In some types of cases, the ways that evidence is presented in the courtroom and reconstructed in the jury room to fit verdict categories are intentionally shaped to fit narrative templates prefigured by popular cultural stories. Just as musicians typically borrow (and often steal without attribution) pieces of melodies and lyrics from other songsters, effective litigation attorneys often borrow shamelessly from popular culture (including movies, television, advertising, entertainment, journalism, and literature).

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1. Philip N. Meyer, “*Desperate for Love II: Further Reflections on the Interpenetration of Legal Popular Storytelling in Closing Arguments to a Jury in a Complex Criminal Case*,” 30 U.S.F. L. REV. 931, 931 (1996).

These “framing” stories often embody or emphasize shared cultural mythologies, notions of character, basic plot structures, and fundamental understandings of how our world works. Storytelling in the courtroom is sometimes shaped inside the shells of other framing stories, fitting together like nested Matryoshka Russian dolls.

Beginning, perhaps, in complex evidentiary and high-profile litigation of the second half of the twentieth century, excellent trial and appellate attorneys—including recognizable figures such as Gerry Spence suing Kerr-McGee, Inc. for punitive damages on behalf of Karen Silkwood,<sup>2</sup> or Johnny Cochran defending O.J. Simpson<sup>3</sup>—drew intuitively and often intentionally on “popular” stories and cine-myths that could be readily understood, consumed, and digested by juries and judges.

New technologies employed creatively in the courtroom augmented this approach, sometimes making trials look and feel more like the movies, radio plays, and television programming. As techniques of presentation became more sophisticated, stories from outside the law have migrated back into the law—suggesting how evidence might be shaped and transformed into a story.

Years ago, scholarly acknowledgment of the interpenetration between legal and popular storytelling seemed transgressive. But now it seems apparent to many scholars, me included, that lawyers are, in large measure, popular storytellers—truthful and meticulous storytellers confined to aesthetic and rule-bound conventions and constraints, but popular storytellers nevertheless—who can learn from the techniques of other professional storytellers.

Initially, in several law review articles, I went on an anthropological dig into courtroom trials in Connecticut and into reviewing transcripts of famous trials and arguments—“deep dives” exploring the interpenetration of legal and popular storytelling practices.<sup>4</sup>

When I returned to the classroom, I incorporated storytelling practices and popular stories (especially movies) directly into my doctrinal pedagogy. My purpose, of course, was not to make my students into creative artists or film critics. Rather, my decision to incorporate popular movies was based upon my fundamental belief that it is important, initially, to provide courses that emphasize legal storytelling and the interaction of “law” and “facts.”

Simply put, law school, especially the doctrinal courses during the first year, tips the legally determinate and factually indeterminate world of most trial

2. See MICHAEL S. LIEF, H. MITCHELL CALDWELL & BEN BYCEL, *LADIES AND GENTLEMEN OF THE JURY: GREATEST CLOSING ARGUMENTS IN MODERN LAW* 119-58 (1998) (providing background on *The Estate of Karen Silkwood v. Kerr-McGee, Inc.* trial and Gerry Spence’s closing argument from the trial).
3. See, e.g., Transcript of Record, *People v. Simpson*, No. BA097211 (Cal. Super. Ct. L.A. County Jan. 25, 1995) (noting Johnny Cochran’s opening statement).
4. See generally Philip N. Meyer, “*Desperate for Love*”: *Cinematic Influences Upon a Defendant’s Closing Argument to a Jury*, 18 VT. L. REV. 721 (1994); Meyer, “*Desperate for Love II*,” *supra* note 1; Philip N. Meyer, “*Desperate for Love III*”: *Rethinking Closing Arguments as Stories*, 50 S.C. L. REV. 715 (1999).

practitioners upside down. As Jerome Bruner suggested, litigation practice is in many ways a literary enterprise, not an analytical science<sup>5</sup>; Langdell got it wrong—lawyers are storytellers, and outcomes are often determined by effective and truthful storytelling based upon the meticulous introduction, presentation, and arrangement of complex factual evidence into stories.<sup>6</sup>

Consequently, as I wrote in this journal over twenty-five years ago,<sup>7</sup> it is necessary to shatter the formalist doctrinal shell that encases first-year law students, and open students to an awareness of the complexity, singularity, and maddening indeterminacy of “facts” and how, in turn, facts are shaped into “stories.” To do so, I employ movie clips to teach doctrinal law and expose students to legal storytelling practice. I cast students into various legal roles, provide “the law” (statutes and cases), and then have the students apply the law to the oftentimes slippery, complex, and typically ambiguous facts depicted in the clip. Nothing, to my mind, better enables first-year law students to understand and appreciate the interactions between law and fact at the core of criminal law practice than this simple methodology.

In this essay, I explain how I use an illustrative visual hypothetical in my first-year criminal law course. I have enlisted the assistance of a third-year student, Catlin Davis, as commentator. Catlin was a student-consumer of this pedagogy in my criminal law class during her first year. I asked her to write a candid commentary about this representative cinematic hypothetical from the course.

## II. “The Watery Grave” from George Stevens’ “A Place in the Sun”

I employ a complex and ambiguous story sequence from George Stevens’ masterful “A Place in the Sun”<sup>8</sup> (based upon Theodore Dreiser’s novel, “An American Tragedy”<sup>9</sup>) as a review problem as we shift from studying the *actus reus* (a voluntary act that causes the social harm set forth in a criminal law statute) to the *mens rea* components of various crimes.

5. See generally JEROME BRUNER, *MAKING STORIES: LAW, LITERATURE, LIFE* (2002) (exploring the fundamental, dynamic relationship between law and literature).
6. See Christopher Columbus Langdell, *Harvard Celebration Speeches*, 3 *LAW Q. REV.* 118, 123-24 (1887) (viewing law as a science composed of materials and principles that can be wholly contained in books).
7. See Philip N. Meyer, *Convicts, Criminals, Prisoners, and Outlaws: A Course in Popular Storytelling*, 42 *J. LEGAL EDUC.* 129, 132 (1992) (“We watch and read stories to shatter the formalist shells in which law school tends to encase students, and thus to open the students up once again to the discontinuity and inexplicability of the lives they will encounter as lawyers.”).
8. *A PLACE IN THE SUN* (Paramount Pictures 1951). In class, I show a fifteen-minute clip from the movie that begins with George leaving a party at the Vickers’ summer home to meet his pregnant girlfriend Alice, and ends after Alice has drowned and George emerges from the lake. This excerpt is marked as “Scene 8 -Watery Grave” in the Scene Selections on the movie DVD”.
9. THEODORE DREISER, *AN AMERICAN TRAGEDY* (1925).

*A. The Law*

Before class, students review the California criminal homicide statutes (excerpted in Joshua Dressler's criminal law casebook<sup>10</sup>). We discuss the elements of murder in California.<sup>11</sup> Specifically, we analyze the definition of malice aforethought (express malice and implied malice); this is the mens rea element required for all levels of murder in California.<sup>12</sup>

I then cast students in the role of assistant prosecutors and assign them the task of determining whether George Eastman can be charged and successfully prosecuted for murder in California for the killing of his former girlfriend Alice.

*B. The Evidence*

Poor boy George Eastman (Montgomery Clift) has come West to work at his rich uncle's factory. He is given a job on the factory line. He becomes romantically involved with Alice Tripp (Shelley Winters), a girl who works at the factory. She becomes pregnant; George is the father. George, however, soon falls in love with the boss's beautiful daughter, Angela Vickers (Elizabeth Taylor). He visits with her at Loon Lake at the Vickers' opulent summer home, and they declare their love for each other. Unexpectedly, Alice comes to the lake and demands that George marry her immediately or she will expose him (and her pregnant condition) to Angela and to the Vickers family. George agrees to marry her. But the marriage office is closed on Labor Day, and George takes Alice on a picnic trip to a deserted portion of Loon Lake.

Does George have a nefarious murder plan in mind? He stalls out the car some distance from the lake. (Is this to be the getaway car that cannot be identified?) He lies about his name to the boat rental agent. He takes Alice, who, he knows, does not swim and is profoundly fearful of water, out onto

10. JOSHUA DRESSLER & STEPHEN P. GARVEY, *CRIMINAL LAW CASES AND MATERIALS* 256-58 (7th ed. 2016).
11. *See id.* (defining murder in California, and laying out the different elements and degrees of the crime).
12. *Id.* at 256-57. Under CAL. PEN. CODE § 188 (West 2018), "Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, when . . . the circumstances attending the killing show an abandoned or malignant heart."

the lake in a small rowboat. (She grabs for him fearfully as she steps into the boat.) The two then argue heading out onto the lake. George's emotions apparently swing in different directions to the accompaniment of a dramatic musical underscore that, along with Clift's acting abilities, strongly intimates the ambivalence of what George is feeling (e.g., his hatred for Alice at one moment, his sadness and remorse at another, and even his willingness to accept the moral consequences of his acts resulting in Alice's pregnancy). George finally agrees to marry Alice. But Alice then declares that she knows George does not love her, and that he wishes she were dead. She stands up in the boat, and the boat tips over. George is next seen emerging from the water at a later time. He is alone. Alice has, apparently, drowned.

Is this murder or merely a tragic accident? How do students "read" the facts of the visual story? How do students analyze the mens rea and actus reus elements of the crime of murder under the California penal statute and apply these elements of the crime to the complex and ambiguous facts depicted in the clip? What factual inferences can be plausibly made from the images and dialogue?

### *C. The Legal Setup*

Initially, I cast students into the role of assistant prosecutors. I ask whether George can be prosecuted for murder (first-degree murder, second-degree murder, or, perhaps, the lesser included crime of manslaughter) under the California Penal Code. What arguments would they make? What stories would they tell, based upon the facts depicted in the clip, to support their legal analysis?

Here is a partial inventory of the issues typically raised in class discussions as students attempt to fit together the interaction of law with the complex and ambiguous facts, constructing persuasive versions of the legal story based upon the evidence.

**1. Mens rea:** Does George have the mens rea of "malice aforethought" required to prosecute him for murder? How is "malice aforethought" defined in the statute? What "facts" indicate that he had malice? What are the facts that seem to show that he did not? How do you make inferences based upon the visual "cinematic" depictions of actions, and upon the characters' spoken words (dialogue)? What stories (plots) would you tell (construct) based upon this evidence? If George, indeed, has malice aforethought, is it "implied" or "express" malice? What is the difference? How does this legal difference change the story told? Does it matter that he may have changed his mind and decided **not** to kill Alice at the moment she falls into the water? Does this change of heart extinguish or somehow mediate his liability? Can it even be argued based upon the evidence that he "premeditated" and "deliberated" the killing, and is therefore guilty of first-degree murder under the California Penal Code? How might this legal argument be made and what story would be told?

**2. Actus reus:** Did George commit a voluntary act that caused the social harm (the killing of Alice)? If so, what specifically was this act (these acts)? When, specifically, did the act(s) occur? Is there a causal link between act(s) and outcome? How would prosecutors make the argument about concurrence between actus reus and mens rea? What, specifically, is the time frame of the crime? Is George guilty of attempted murder, and if so, when? Didn't George, in the end, get precisely the result that he intended, even if events did not happen the way he planned? Why does this matter?

**3. More questions about causation:** Did Alice cause her own death? That is, were her own actions in the boat, which led it to tip over, the "proximate cause" of her death, rather than George's actions (or inaction)? Can the defendant effectively make this argument (tell this story) based upon the acts depicted on the screen? What is the prosecutor's counterargument?

**4 Alternative theories:** Can George be charged with manslaughter? Voluntary or involuntary? How many counts of murder/manslaughter can George be charged with under the California Penal Code? (That is, can he also be charged for the killing of the fetus?) Did George have a duty to rescue Alice based upon his special relationship with her?

**5. Prosecutorial ethics:** Although this exercise is intentionally focused on creative legal storytelling practice, and the interaction of law and facts, the class inevitably discusses the "ethics" of charging decisions based exclusively upon the "evidence" depicted in the clip, supplemented with the "back story" of events in the narrative preceding the clip. Is there sufficient evidence at this point to justify charging George with any crime? What further evidence needs to be developed through additional investigation to prove these charges beyond a reasonable doubt, confirming the narratives developed in the exercise?

#### *D. Telling the Story*

I ask students acting as prosecutors to try telling specific portions of the story to a jury in a "mock" closing argument. What would their theme be? How would the plot be sequenced and constructed? I also ask: What additional evidence would you like to introduce at trial to support the prosecutor's version of the story, and how would you employ this evidence in your closing argument? What counterstory do you anticipate that the defendant's attorney will tell? What additional evidence do you anticipate that the defendant's attorneys will introduce at trial supporting their version of the story? How would you respond to this evidence?

This exercise is effective as a simulation because of the complexity of "facts"—seemingly infinite and conflicting interpretations (inferences) may be made based upon the images depicted on the screen that can be shaped into compelling and truthful stories.



### III. Catlin Davis's Commentary on "The Watery Grave"

"The Watery Grave" provides a deep reservoir of content for our assistant prosecutor roles. Its countless ambiguities affect many elements of the different homicide crimes. To successfully charge George for Alice's death, we must craft the facts in a way that plausibly demonstrates each element of the crime in question. Moreover, to convict George, we must convince the jury of each element beyond a reasonable doubt. In other words, to fulfill our assistant prosecutor roles, we must transform the film's ambiguous facts into a cohesive and persuasive story that the jury will find compelling. Arguing that George *may* have killed Alice will not be enough to convict him.

My classmates and I approached this exercise from diverse perspectives based on our intuitions, gut feelings, and understandings of an assistant prosecutor's duty. Some people hoped to convict George of the most severe crime possible because they believed he was guilty, or because they thought it a prosecutor's job to bring the harshest charges possible. Other students aspired to remain objective; they hoped to learn the *true* crime George committed. And still others believed in George's innocence and wanted to avoid applying any of the statutes to his situation.

Despite our knee-jerk responses, most of us evaluated George's potential guilt in the same systematic fashion. We started with the most extreme homicide crime, first-degree murder, and explored the likelihood of proving all elements of this crime at trial. Can the facts be framed, organized, and revealed in a way that will convince the jury that George killed Alice willfully, deliberately, and with premeditation? After analyzing the likelihood of convicting George of first-degree murder, we moved to the second-most severe crime, second-degree murder, and repeated the same analysis until we had analyzed George's potential guilt under all of the California homicide crimes. In the end, most of us chose to charge George with the crimes supported by our best stories, the stories we found to be most true.

Some students, however, pushed themselves and chose to pursue a charge that required a more creative story, or a story that they knew would be harder to make the jury believe. These students wanted to test their persuasive powers. They wanted to see if they could push themselves to craft a narrative of the case that supported a first-degree murder charge, even if the story for second-degree murder or voluntary manslaughter might be easier to tell. Despite my choice to pursue charges that fell within the narrative I found to be most "true," or most reflective of George's actual guilt, I am not opposed to my classmates' alternative approach. Just because one story may be more unlikely, or more challenging to convince the jury to believe, does not necessarily mean that it is less true.

Class discussion flourished as we explained, debated, and tried to persuade our peers to appreciate our charges and narratives concerning George's guilt. Based on the different facts students highlighted, George appeared callous and calculating one minute and then frightened and confused the next. People

heightened his culpability by highlighting his deceitful acts (stalling out the car and signing with a pseudonym when renting the boat), or they downplayed his guilt by highlighting his redeeming acts (George accepting his fate and resolving to marry Alice). Most of the discussion about *which* crime George should be charged with boiled down to our evaluation of George's intent. We fought over the mens rea George possessed by basing our arguments on different inferences derived from the facts.

As we continued crafting our complex stories of the case to adequately address the film clip's different legal issues (questions of mens rea, actus reus, causation, etc.), many of us reflected on our adversarial court system. We returned to our initial knee-jerk reactions concerning the purpose of prosecuting George and our personal opinions regarding his potential guilt. We remained unsure whether we as assistant prosecutors were supposed to craft the most persuasive story for the strictest punishment possible, and let the defense tell the story of an innocent George, or if we were supposed to tell the *true* story of George's guilt by charging him with the crime we found most objectively reasonable. I want more rules to guide the story crafting process so I will know I am telling an appropriate story that is fair to George, to the court, and to Alice.

Ultimately, the in-class exercise of charging George allowed us to use our creativity in class—an uncommon occurrence during the first year of law school. Significantly, the exercise also helped us realize the seriousness of crafting stories for our clients. With George, we were playing with fictional facts and with fictional people. Yet someday in the near future, many of us will find ourselves engaging in this same narrative crafting, but with real clients facing real punishments.

#### **IV. Conclusion**

Numerous visual hypotheticals derived from popular movies can be employed to teach many of the various subject matters in the basic first-year criminal law course, emphasizing the complex interaction of law and fact and introducing students to the art of legal storytelling. These "clips" and storytelling exercises do not replace the traditional doctrinal coverage in the course, but serve as a complement to the cases. The visual hypotheticals and storytelling exercises make the classes come alive. And I cannot imagine teaching this course without them.