

The Selective Use of Cinema in Criminal Justice Education

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This article provides a generalized analysis of the significant role that one medium of popular culture, the movies, is capable of playing in criminal justice education, particularly at the undergraduate level. The article should be viewed as a generalized, “survey” type of effort. Only glimpses of the possibilities are intended here. The universe of specific worthwhile teaching points and the number of movies (or at least specific scenes from them) that individual criminal justice instructors might personally choose to introduce to their students are as varied as the discipline itself. We also labor under the assumption that no one knows the intended course objectives quite like the teacher actually delivering the course. Therefore, the film material that one instructor might choose to best convey the desired message(s) will often be different from that which is more appealing to another teacher. A few examples of potential applications are supplied simply to *orient* more teachers toward the concept involved, and to suggest that with certain caveats the old adage that “things in the real world aren’t like they are in the movies” may ignore some valuable lessons that film really *is* capable of delivering.

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INTRODUCTION: PUBLIC PERCEPTION AND POPULAR CULTURE

From what sources does society obtain its understanding of the criminal justice system? How do students learn of the tasks, obligations, interactions and ethics of the players within its component parts? The origins and ongoing reference points of the general public’s understanding of these topics are not easy to pinpoint. Certain segments of the public may be able to directly tie knowledge to a college course, a periodical, or a documentary. Other segments may have anecdotal awareness supplied by personal friends or acquaintances employed within the system. However, for the most part, members of society build their notions from yet another and a slightly less conspicuous source. Ideas, particularly those related to criminal justice, are predominantly conveyed through the media of popular culture, most notably (historically) through movies (Hartman 1995).

Commentators have claimed that media dramatizations so often misrepresent and distort concepts relating to criminal justice, and the legal system in particular, that their deceptiveness

often negates their utility (Friedman 1989). Such accusations can easily be leveled at particular types of television programming, wherein fictional police officers, lawyers and judges are given unrealistic histrionic allowances (e.g. assorted TV cop shows, C.S.I. mutants, etc. and *Perry Mason*, *Matlock*, *The Practice*, *Law and Order*, *Judging Amy*). However, unspecific, wide sweeping criticisms may equally misrepresent products of popular culture such as mainstream cinema. The increasing sophistication of the average moviegoer combined with the sky rocketing costs of making and distributing a film almost necessitates, with few exceptions, that at least the *dramatic* model of movie be believable as well as relatively accurate (Hartman 1995).

Regardless of a movie's accuracy, teachers of criminal justice who summarily dismiss the educational value of such films are overlooking important points. First, a movie (particularly if commercially successful) can have an effect on public discourse, which can influence public opinion, which in turn can shape public policy. For example, consider *10 Rillington Place* (Columbia Filmways 1971) in which the finality of the death penalty, if imposed upon truly innocent persons "is a reality that must give pause to any capital punishment enthusiast (Bergman and Asimow 1996:48)." Second, movies increasingly tend to depict isolated elements of society's disposition. For educators to ignore this trend places a cap on a student's ability to understand how the components of society fit together collectively. Third, just as a juror is expected to suspend judgment until all evidence has been presented, educators ought to suspend blanket skepticism regarding the potential value of movies when they have never experimented with them in their classrooms. In this respect, "a desire for total accuracy is merely tunnel vision (Siegel 1990:44)."

Accordingly, an attempt is made herein to identify certain mainstream films that may act as effective backdrops for classroom teaching, particularly at the undergraduate level of instruction. The films supplied are organized and presented largely by their relationships to the three primary components of criminal justice, those being police, courts, and corrections. The list is by no means all-inclusive. We fully expect that a significant number of additional movies will quickly come into the minds of readers as being just as suitable, if not more suitable, for the purposes at hand. The point of this work, therefore, is not so much the creation of a particular list of criminal justice movies as the awakening (or perhaps renewal) of teacher awareness of the helpfulness of popular film in the classroom. Cinema is about imagination and creativity. What follows is merely one creative compilation illustrating how the authors imagine cinema can be utilized in the classroom to tap into the imagination of educators and students.

PART I. THE POLICE FUNCTION

It seems that no other component of the American criminal justice system has drawn as much movie making attention as the police. And in regard to at least one genre of police stories, the example productions are so countless that in our opinions a thorough listing of that particular grouping here is neither possible nor for that matter really helpful. We speak here of police films that portray the so-called "crimefighter image." These flicks are pretty obvious and easy to find. They are likely to be mainstream to the readers' own viewing experiences. Think *Dirty Harry* to the nth power. As the expression goes, there is one playing now at a theatre near you.

1. *Police Use of Force*

A common denominator in the crimefighter movie will be police use of force and more significantly, deadly force. Simultaneously, there may be exaggerations of officer abuse of a wide range of constitutional rights. Plus, police employment of technological gimmickry and tactical trickery seem now to be ever present. There is nothing wrong per se with use of films of this nature to aid discussions of certain important aspects of policing, but it is perhaps within this genre that the greatest discrepancies between truth and fiction are encountered. Therefore, in film making vernacular, the teacher's "cutting room" activities become extremely important.

On the other hand, as numerous police scholars and practitioners recognize, crimefighting is actually only a small measure of the universe of police activities. It is true that police roles are sometimes dangerous. At other times they are complex, ambiguous, and paradoxical. But, roles and responsibilities are often mundane, straightforward, and non-glamorous as well. Since mundane does not sell at the movies, educators are unlikely to find much in movie offerings portraying police in simple order maintenance or public service functions. Therefore, documentary type films may be needed as the resource in these under-depicted areas. Unfortunately, it is not a coincidence that the humorous approach taken by productions ranging from the early silent era *Keystone Kop* series (Mack Sennett, Keystone Film Co. 1912-1917) to *Smokey and the Bandit* (Universal Studios 1977-1983), or the more recent series of *Police Academy* releases (Warner Bros. 1984-1994) may seem at times to be the more prevalent alternative police depictions produced by the popular film industry.

Even so, there exists an additional body of popular film-making that raises important police issues without becoming over the top and perfectly ridiculous display of the crimefighter image. These film materials deal with the statistically more common, non-deadly applications of police force. Or, the police are seen in other encounters that may or may not be transgressions against civil rights and rules of law. For example, selected scenes from movies such as *Colors* (Orion Pictures 1988) starring Robert Duval and Sean Penn and *The Untouchables* (Paramount Pictures 1987) with Kevin Costner and Sean Connery, depict not only use of non-lethal force but also arrests, temporary investigative stops, and a variety of searches and seizures in fashions that can stir helpful classroom debates. As we will attempt to point out later, these particular works have utility in other topical contexts; but, for the moment, simply consider them as options containing scenes which show that excessive force is a relative thing.

In policing, some events are easily discernible to bystanders as coldly calculated, mean spirited police work. Other alleged excesses, however, arise during the course of police responses to all sorts of stimuli, including gravity of an offense and victimization, citizen provocation, resistance to arrest, and arousal of an officer's natural self-defense instincts. Therefore, some police actions or reactions may be more in the nature of spontaneous combustions that are neither clearly unreasonable nor indefensible. And likewise, some movies have the ability to convey "visual continuums" regarding police use of force and to assist discussions of how far is really too far. If Clint Eastwood's Harry Callahan seems to some viewers a ridiculous parody on police excessive force, is Sean Connery's Officer Malone a sublime one? Within the context of scenes involving these two men, just what are the exact parameters of police brutality, anyway? And, is brutality *ever* justified?

In *Dirty Harry* (Warner Bros. 1971), Callahan stomps on a leg wound he has inflicted on a bad guy. One is left to wonder if the wounding was intentionally done for the specific purpose of torturing out a confession (which for pretty obvious reasons is later deemed inadmissible in court). At the end of the movie, the average viewer's notions of justice are served when Callahan verbally baits the criminal into a deadly gunfight by using his now famous line, "do you feel lucky, punk? Well... do you?"

Aside from teaching exclusionary rule consequences, Eastwood's portrayal allows students to vividly view what Carl B. Klockars has identified as "The Dirty Harry Problem," wherein police are constantly placed in situations in which good ends can be achieved only by dirty means....(Thus placing them)"in a genuine moral dilemma... a situation from which one cannot emerge innocent no matter what one does (Klockars 1983:428)." But, in slightly more subtle contrast, how might students view Sean Connery's portrayal of Officer Malone and *his* dirty trick in one particular scene from *The Untouchables*? Malone's character fakes the horrific "murder" of the corpse of a gangster who has already been killed, in order to terrorize Al Capone's bookkeeper into revealing evidence against his boss. Is this tactic great police work or rather an act of undue psychological brutality that ought to be categorized as clearly excessive and unreasonable? Or must Officer Malone take an additional step, such as further menacing the panic stricken book keeper by placing a gun to his head, before the conduct becomes overreaching and out of bounds? Which, by the way, Officer Malone does in the subject scene.

Even if some viewing members of the class are inclined to believe that either or both of Malone's tactics are just too extreme, think of the additional optional discussion topics given the historical "Prohibition Era" setting of the movie in post-*Weeks v. U.S.*, but pre-*Wolf v. Colorado* and *Mapp v. Ohio* Supreme Court jurisprudence. Did not the exclusionary rule arrive in historical phases that we would wish our students to recognize? Would a modern day law and order oriented court recognize any constitutional standing of Capone to challenge evidence derived from police abuse of his employee, rather than abuse of Capone himself? Are there any Section 1983 or *Bivens* actions present in the movie's script? Let's see...is Malone a state or a federal law enforcement agent, given the game of musical officer chairs he seems to be playing?¹

2. Police History and Corruption

Perhaps readers have by now noticed something of a recurring phenomenon. Is it mere coincidence that so far we have already mentioned a *Callahan*, a *Malone*, two *Seans* and a *Connery*? Does this mean that every cop has to belong to the same ethnic group, in this case Irish? Well, maybe so... at least in certain places and times past. Are police often prisoners of their pasts? Samuel Walker has said "The history of the police is extremely relevant to understanding the police today, (and).... Many current (police) problems have long histories."² This premise is arguably true not only with regard to disturbing levels of police brutality, but in other historical patterns of behavior relative to police politics, discriminatory administrative practices regarding hiring and promotion decisions, and in some instances police corruption. Thus, one might consider the use of two highly popular and financially successful movies that actually do not even carry predominately police themes. But each film contains one or two specific scenes illustrating the historical origins of some troublesome reincarnations.

Gangs of New York (Miramax Films 2002) is true to its setting between 1846 and 1863 and depicts a highly political and ethnically charged atmosphere surrounding the local sheriff's office, as well as city marshals, constables, and police "on the take." Similarly, in *Far and Away* (Universal Pictures 1992) Tom Cruise and Nicole Kidman are cast as two young late-19th century Irish immigrants who are introduced into a neighborhood where local Irish ward bosses control everything and everyone, including the police. At least two scenes in the movie would seem to accurately depict historical accounts of spoils system politics in early American city police agencies. Only male members of the same ethnic group as the bosses are allowed access into policing (and probably promotions as well). And, officers are clearly shown to work primarily at the arbitrary and self-serving whims of their patron sponsors and the well connected, while providing the physical muscle necessary to keep such persons in power.

If the forgoing films help toward an understanding of the early American police era, what then of subsequent eras commonly referred to as the reform and professional eras, respectively? The professional era might really be viewed as just a second wave of reform commencing in the late 1950's, early 1960's timeframe. *The Untouchables* would seem to exemplify the initial reform period, both in terms of its setting during 1920's Prohibition and the reform agenda of that period. Although Elliott Ness is a federal agent rather than a local city cop, his values mirror that of reformers such as August Vollmers. Therefore, use of a little poetic license in the classroom can probably be excused with a only a bit of qualifying advance disclosure to students. True to the reformers' thinking, Ness wants to eliminate political influence, establish an idealistic mission of public service, and raise police personnel standards and ethics, and as several scenes in the movie depict he sets about recruiting his team of officers along these lines. Other scenes revolving around Chicago police officers provide insights into a sinister code of silence and the self-preservation tactics employed by dirty and brutal cops that unfortunately reflect occasional police scandals unearthed more recently, such as the Rampart Division episodes in Los Angeles.

Moving along into the professional era, we might suggest a look at *L.A. Confidential* (Warner Bros. 1997), while considering parlaying it in some way with scenes from the original TV show *Dragnet* (NBC 1951-1959) for help in discussions of so-called "California professionalism" and Chief William Parker's efforts to reform the Los Angeles Police Department of the 1950's. While a transformation of the department did occur, Parker's administrative style and its corresponding impact upon the street styles of the rank and file is often cited in studies of negative police community relations (Walker 1992).

Serpico (Paramount 1973), with Al Pacino, is a police movie classic regarding these topics. *Serpico* is old now, and a significant number of young people may be unfamiliar with its contents; but, they may be intrigued by it because Pacino continues to enjoy acting notoriety. *American Gangster* (Universal 2008) hits largely the same themes, as Russell Crowe's crusading cop is cast against not only Denzel Washington's Harlem drug lord but also fellow officers who are awash in corrupt and extortionist behaviors. These films segue into the next topic areas.

3. Police Subculture and Personality

Most undergraduate police survey courses contain curriculum on police subculture and personality characteristics. The police have traditionally socialized their young far beyond

similar efforts made within other occupations. Those who study the police also have recognized that at times a negative consequence of these processes is the isolation of young officers into the ranks of the exiting “thin blue line” formed by fellow officers holding get tough attitudes toward law enforcement and treasuring, as a core value, loyalty to one another. *Training Day* (Warner Brothers 2001) contains material along these lines. A note of caution may be in order here. Academic freedom notwithstanding, this film (and others alluded to herein) at times exemplify some of the very deepest levels of police deviance. In some teachers’/ viewers’ minds specific scenes may be deemed unsuitably dark and raw, not to mention the possibility of unfairly stereotyping mainstream police officers. Qualifying comments or warnings to students, perhaps in advance of a showing, should be a consideration of the teacher.

Reflect at this point on *Colors*, which contains content that is probably much more typical of policing as a whole. It’s depiction of the mentoring of the rookie cop (Sean Penn) by the savvy, veteran field training officer, (Robert Duval) qualifies it quite nicely for sub-culture analysis. *Colors* also provides insights into the “police personality.” It illustrates yet another continuum of sorts, that being the metamorphosis of the young street officer from the highly authoritarian, gung-ho, kick ass “enforcer” type into the calmer, well balanced, pragmatic, and wisely cautious veteran. Duvall’s vet, as opposed to Penn’s rookie, correctly appreciates that the term “bad guys” is a relative one. He also knows and displays the realization that there is both a life and a family outside of policing, and that both are to be enjoyed in the journey toward greater personal happiness and career fulfillment.

4. Police Community Relations

With regard to police community relations, one suggested film for use might be the recent academy award winner, *Crash* (Lion Gate Films 2005). Once again, a bit of discretion may be in order in selection of the exact excerpts to be employed. Like *Training Day*, this film is very graphic in spots. A sort of smorgasbord of intertwined sub-plots and characters, parts of the film reveal central themes of racial and gender conflict, both within police agencies and in external contacts with minority members of the public. Various scenes may serve to enhance discussions of discriminatory attitudes and practices of some police officers based upon profiles and stereotypes. While certainly containing material depicting extreme police deviance, one of the final scenes, in which a racist cop risks his own life in coming to the rescue of a young black woman he has previously victimized, illustrates the phenomenon of paradox in the police personality. And, on this occasion at least, the police officer’s better angels prevail.

Police community relations and professionalism are complex and multifaceted topical areas. *In the Heat of the Night* (United Artists 1967), with Sidney Poitier and Rod Steiger, illustrates not just racism in a general sense, but also more specifically that which may be present within law enforcement circles themselves. It also shows how at times police feel political pressure to clear crimes by arrest even though the evidence against an accused may be relatively weak. Scenes with Tyne Daly and Clint Eastwood in *The Enforcer* (Warner Bros. 1976) exemplify sexism within policing. And finally, *The French Connection* (20th Century-Fox 1971) can provide insights into agency rivalries and the drug interdiction setting.

PART II. AMERICAN CRIMINAL COURTS

Cinematic themes depicting the prosecutor, defense attorney, the judge and the jury, collectively illustrate aspects of the criminal justice system which are often unseen by non-lawyers, and often only vaguely illustrated to students while still in criminal justice programs (or even law schools for that matter).

1. Prosecutors and Their Roles

Criminal justice students are often theoretically taught to understand criminal justice, and the adversarial system in general, as being the byproduct of two well prepared advocates putting forth their best efforts in the courtroom. While this notion is aspiratory, it overlooks the reality that lawyers are not cut from the same cloth. Furthermore, such concepts often evolve into images of combat, sports, and sex metaphors that create a hierarchy of reasoning in which competition is placed higher than seeking justice and behaving in an ethical manner (Thornburg 1995). While cinematic depictions of prosecutors may not always explicitly tell audiences that competition is potentially contrary to assuring justice, the audience can easily extrapolate such lessons. Films can be used to teach such lessons regarding the true nature of the prosecutorial function: (1) the prosecutor's duty to seek justice, which is both constitutionally mandated and professionally encouraged, and (2) the prosecutor's obligation to refrain from engaging in overzealous presentation on behalf of the state.

Duty to seek justice - Critical to the prosecutor's duty to seek justice is the use of discretion in prosecuting, as illustrated in *Boomerang* (20th Century Fox 1947), a movie in which a prosecuting attorney goes against prevailing governmental and public desires by not only considering the dropping of a murder charge but also by publicly exposing the weaknesses in the police case. The movie can be used to illustrate the great discretionary power conferred upon prosecutors, a power that not even a judge is typically able to overcome.

However, prosecuting attorneys are governed by rules of law and professional conduct that set the boundaries that must be maintained to insure that convictions are obtained in a just manner. For example, disclosure of exculpatory evidence is fundamental to the prosecutor's duty to seek justice (*Brady v Maryland* 373 U.S. 83 and ABA Model Rules of Professional Conduct 2002, Rules 3.3, 3.8). Selected scenes from some noted dramatic films have illustrated how this principle can be ignored (*In the Name of the Father*, Universal Pictures/Hell's Kitchen 1993 and *Jagged Edge*, Columbia Pictures 1985, depicting a prosecutor who secretes a police file naming a witness who is potentially key to the defense).

Disclosure of case law may also in some instances be inherent in the prosecutor's professional duty. In *Anatomy of a Murder* (Columbia Films/Carlyle 1959) George C. Scott portrays a prosecutor who in one scene misleads inquiry regarding prior recognition of a particular form of insanity defense (irresistible impulse) within Michigan state case law. Bergman and Asimow (1996:235) describe the prosecutor's failure to disclose applicable case law as manifestly a violation of ethical standards, for a prosecutor's responsibility is to seek an outcome in conformity with the law rather than a notch in the state's belt.

Overzealous Presentation – While somewhat related to the duty to seek justice, overzealous presentation relates more to the form or style of prosecution than to substantive issues involving the decision to prosecute and disclosures made to the defense. While attorneys are obligated to zealously advocate, this directive does not entitle prosecutors to engage in “over the top” demonstrations of evidence or in jury argument.³ Extremes in trial conduct, such as the violent destruction of a boat oar before the jury in an attempt to imply the manner in which the defendant might have struck a murder victim (*A Place in the Sun*, Paramount Pictures 1951) is perhaps an overreaching appeal to juror emotions (Bergman and Asinow 1996:213). Furthermore, overblown personal denunciations of a defendant such as those leveled by a politically ambitious Georgia prosecutor at a northern Jewish defendant in *They Won't Forget* (Warner Bros. 1937) are prohibited because they seek to have the jury make its decision on the basis of jury bias rather than the actual evidence in the case. While such tactics may have been par for the southern courtroom course during the movie's 1920's setting, they would not find acceptance over timely objection today (Bergman and Asinow 1996:225). Thus, the film not only makes the primary point regarding prohibited prosecutorial zeal, it serves as a history lesson in the evolution of legal processes during periods of changing social consciousness.

2. Defense Attorneys and Their Roles

The Sixth Amendment entitles criminal defendants to legal representation, including court appointed counsel in cases of indigency.⁴ While the scope of legal entitlement after trial has been a controversial source of litigation (Krantz and Branham 1991), cinematic depictions tend to focus primarily on defense lawyers at trial and in the pre-trial stages. A survey of such films reveals two predominant themes: quality of representation, and ethics of representation. Movies detailing the quality of representation provided to criminal defendants tend toward categorization as images of (1) incompetent representation, (2) inexperienced counsel, and (3) zealous advocacy. Obviously, the categories overlap, as inexperience may be the primary factor in incompetence.

Images of Incompetent Counsel - While defendants are constitutionally entitled to assistance of counsel, cinematic portrayals poignantly illustrate the legal reality that such an entitlement is no guarantee of effectiveness of counsel.⁵ Unfortunately, it is difficult in some instances for appointing judges to find competent counsel for indigent defendants, most notably in capital cases which involve lengthy and complex appeals. Movie images may focus attention on the causes and consequences of incompetent representation, whereby society is not only reminded that justice often involves high stakes, but that nothing is as great a threat to individual liberty and sometimes life itself as a bad lawyer.

As movies like *Boomerang* illustrate, defendants are often penniless and have to settle for whomever the judge appoints. On the other hand, consider *Suspect* (Columbia/Tri Star Pictures 1987), which illustrates how even good lawyers, serving as public defenders, can become burned out by formidable case load and inadequate resources. Also, at work is the reality that virtually all their clients are guilty, and that “victory” is normally limited to negotiation of a decent plea agreement. In short, motivation is lacking because inspirational case are rare (Bergman and Asimow 1996:257).

Whether a defense lawyer is court appointed or a public defender, inadequate representation potentially places the defendant's life and/or liberty in peril. When this occurs, a jury of the defendant's peers may be his or her only hope. *Twelve Angry Men* (United Artists/Orion-Nova 1957), starring Henry Fonda, illustrates that juries are capable of detecting incompetent counsel. Despite instructions to the contrary, sometimes the jury's insuppressible human insight, which goes beyond the evidence presented at trial, can potentially be the defendant's last true line of defense. For as Bergman and Asimow state, "Fonda (during jury deliberations) points out that he (the defense lawyer) was probably appointed to a case for which he was paid little and had nothing to gain....He barely cross-examined the prosecutions witnesses, (and)....All of the inconsistencies were identified by jurors, not by counsel at trial (1996:267)."

Images of Inexperienced Counsel - The 1968 California decision of *Smith v. Superior Court* (68 Cal. 2nd 547), affirming in part the right of the defendant to be represented by the counsel of his choice, or to represent himself even though inexperienced, was dramatized in *The Onion Field* (Black Marble 1979).⁶ The idea that a defendant should be able to determine who serves as his attorney (whether the attorney has adequate experience or not) is the basis for most movies depicting images of inexperienced lawyers. In fact, depicting the inexperienced defense lawyer as an underdog tends to be one of the most popular genres of modern cinema. The tale of the underdog lawyer who contends with great obstacles (self-doubt, skilled adversaries, a difficult judge, little evidence that supports his client or a weak defense theory) has been repackaged many times and told each time with a different spin. Sometimes the main appeal of the underdog may be that he is portrayed by a popular celebrity who audiences love to cheer for (*The Young Philadelphians*, Warner Bros. 1959, starring Paul Newman). Sometimes the appeal of the inexperienced lawyer is that he serves as the comedic relief and cause of high jinx (*My Cousin Vinny*, 20th Century Fox 1992, starring Joe Pesci). The inexperienced, underdog lawyer has also been used in dramas to challenge institutions of power, such as exposure of brutal prison conditions (*Murder in the First*, Warner Bros. 1994), starring Kevin Bacon and Christian Slater, and prevalent social attitudes, such as racism (*A Time to Kill*, Warner Bros. 1996, starring Samuel L. Jackson and Matthew McConaughey).

Tales of the inexperienced lawyer are valuable in that they illustrate to moviegoers and criminal justice students alike the importance of a defense lawyer taking a stand and facing adversity in the zealous representation of his or her client. In this sense, such movies are also instrumental in teaching students who hold aspirations of becoming lawyers principles that are difficult to illustrate in a traditional classroom environment. But how far an attorney can afford to take inexperienced zeal is debatable. Thus, it is important that all students in watching such depictions be guided by their teachers toward contemplation of the following: Underdog lawyers generally win in the movies. However, if the underdogs were to lose, would they still be righteous inexperienced lawyers or would they be accused of acting incompetently and providing ineffective assistance of counsel? We submit that the later is more likely and that some attention focusing on the answer to this question (and the stressful nature of criminal defense work) is appropriate within the lecture hall.⁷

Zealous Advocacy - While not addressed with the same frequency as quality of representation, cinema also depicts the related issues pertaining to the ethical requirement that

defense counsel zealously advocate on behalf of a criminal defendant. While effective assistance of counsel may be constitutionally mandated, that legalistic directive means little without a coexisting professional ethic amongst lawyers. Movies like *To Kill a Mockingbird* (Universal International 1962) illustrate the ethical obligation of an attorney to provide counsel even to those who may be most despised by a certain community. Gregory Peck's portrayal of defense attorney Atticus Finch is the classic film in point. Perhaps symbolically filmed in black and white, the movie features Finch as a southern white lawyer appointed to represent a black man accused of perhaps the most egregious of offenses in the Jim Crow South. Although unable to secure his client's acquittal before an all white jury, Finch's refusal to roll over and play dead in representation of his client is the epitome of adherence to the code of professional responsibility. The film provides a wonderful American history lesson and a touching story for other reasons as well.

Yet, to just what exact lengths should a zealous advocate ultimately be willing to go? Sir Thomas More, the patron saint of lawyers, is depicted in *A Man for All Seasons* (Columbia/Highland 1966) as willing to face more than just social ostracism, but persecution, prison and even death itself in his pursuit of justice.⁸ As much as movies depict altruistic and professional conduct, they often illustrate what lawyers should not do. Films like *The Letter* (Warner Bros. 1940), in which an attorney purchases and conceals evidence to prevent conviction of his client, illustrate how individual zeal when combined with duty of loyalty to one's client can, in and of itself, become criminal behavior.

3. *The Judge*

It is the fundamental duty of the judge to ensure that the accused's due process rights are preserved (ABA Code of Judicial Conduct 1999). "Justice means a fair trial, in court, with lawyers, flags and an *impartial judge* and jury.... These simple themes have never been sounded more convincingly than in *The Ox-Bow Incident* (Bergman and Asimow 1996: 250)," with its old west setting and vigilante, lynch mob justice story line.

The duty of a judge is often complicated by questions of philosophical jurisprudence. From ridiculous to sublime one might compare the fed up judges of *The Star Chamber* (20th Century Fox 1983), who meet in secret alliance to extra-judiciously remove criminals from society through contract murders, with judges who simply allow their personal philosophical viewpoints to dictate outcomes of cases in their courts. Further, consider next *Judgment at Nuremberg* (United Artists/Roxlom 1961). Set within the context of German judges placed on trial following World War II for enforcing Nazi law, it raises profound questions such as when, if ever, should a judge refuse to enforce a law because he/she believes it to be unjust or immoral? For example, Bergman and Asimow (1996:23) quite correctly observe that American judges for many years presided over trials and rendered judgments against Americans charged with violations of racial segregation laws that punished miscegenation. Therefore, by drawing parallels between the judges of the respective nations, they in turn question whether German judges were eventually held accountable primarily because of bias against the *source* of the "unjust laws," *Hitler's* arch evil *Third Reich*.

A judge's use of his or her discretionary powers is further complicated (as illustrated in *Act of Murder* Universal International 1948) when the case deals with "mercy killing" or other

controversial questions of public policy that often incite religious and philosophical debates.

4. *The Jury*

The jury system is a defining factor of American jurisprudence and its sociological importance to a democratic society is invaluable. Though cinema has occasionally addressed issues pertaining to the sanctity and importance of the jury (e.g. movies about jury tampering such as *Trial by Jury* (Morgan Creek 1994) and *The Juror* (Columbia Pictures 1996), no film has addressed as many aspects of criminal jury dynamics as the previously mentioned *12 Angry Men*. *Runaway Jury*, released in 2003, contains good scenes that help illustrate both selection and deliberation processes, but its setting within the civil rather than criminal court system is a qualifying if not disqualifying feature.

Too frequently, jurors have been portrayed as almost childlike, naïve to an extreme and easily duped by trial attorneys. A part of this image may be the result of so-called jury scenes that really do not focus attention on the dynamics of actual deliberations. The members of the jury only receive quick panning shots while seated in the courtroom listening to witnesses, and more significantly, to lawyers and arguments plainly designed to play almost entirely on emotions. Such depictions of the jury tend not to give jurors as a whole appropriate credit for intelligence and independence of thought. In short, jurors become marginalized when compared to the theatrics played out by the real “stars” of the show, the lawyers. While *12 Angry Men* grants its jurors far too much leeway in terms of sleuthing out facts not in evidence, it at least gives the jury top billing over lawyers (and even judges) for a change. Also, an 18 year old Puerto Rican defendant facing an all white, middle aged male jury makes the film an interesting springboard to discussions of jury composition.⁹

5. *The Mind of the Accused*

The world of forensic psychology offers a vast array of concepts that have increasingly found their way into the courtroom, and conversations of society at large.¹⁰ Such concepts, when brought into the courtroom, fundamentally ask the fact finder (either judge or jury) to step into the minds of the accused through the use of expert witnesses and data from the behavioral and social sciences. While cinema will undoubtedly continue to depict how new psychological issues come to play in the courtroom and the administration of justice, movies have already made substantial progress into the subject matter. Consider, for example, (1) competency to stand trial, and (2) the insanity defense.

Competency to Stand Trial - Before the accused can stand trial for an alleged crime, he or she must be mentally competent.¹¹ Competency entails the ability of the defendant to testify and provide counsel with information necessary to construct a defense in a sufficiently coherent manner. Additionally, it helps assure that trials proceed in an orderly manner without the disruptions that might hinder the judicial process. Finally, it serves another policy interest, the normative principle of punishment, which states that defendant should know why he or she is being punished, which, of course, requires that the defendant understands what is occurring at trial (Bergman and Asimow 1996:299).

Nuts (Warner Bros.1987), starring Barbra Streisand and Richard Dreyfus, is an effective film that depicts potential issues relating to competency hearings. It displays the dilemma facing

attorneys in pre-trial preparations involving an emotionally disturbed client (Bergman and Asimow 1996:300). This is an acute problem experienced by almost all defense attorneys at some point in their careers.

The Insanity Defense - For over 75 years cinema has pondered the question of whether a defendant who commits a horrible crime deserves to die regardless of his mental state (e.g. *M, Nero* Film 1931). American jurisprudence has struggled with the exact same question.¹² Contrary to depictions like *Anatomy of a Murder*, defendants found not guilty by reason of insanity *usually* have to serve sufficient time in a medical facility to ascertain that they are no longer threats to either themselves or others. (This last point is important, because it seems that a so-called *temporary* insanity defense is also more anecdotally recognized by many students, the notion perhaps pervading that in a great number of cases the defendant is found to be insane at the time of the crime but miraculously cured by the time of trial, and therefore he ought to be released). The “M’Naughten Rule” and the “irresistible impulse” tests have been the predominant foci of cinematic depictions of the insanity defense (Bergman and Asimow 1996:238).

The M’Naughten Rule has a number of variations in the respective jurisdictions applying it. Essentially it means the inability of a defendant to comprehend the nature and quality of his act and/or to distinguish right from wrong.¹³ The irresistible impulse test, as illustrated in *Anatomy of a Murder*, means an impulse to commit a criminal act which cannot be overcome because mental disease has destroyed the free will and power of self control of the defendant.¹⁵ This test is a broader one than the M’Naughten Rule, and a defendant in jurisdictions recognizing it may avoid criminal liability even if he/she does understand the nature of the act committed and is likewise able to appreciate its wrongfulness. (Is it any wonder then that defense attorney Jimmy Stewart sought to find this broader test within the substantive case law, and that prosecutor George C. Scott sought to conceal its existence)? Although the title paradoxically suggests otherwise, *Compulsion* (Twentieth Century Fox 1959) may serve for illustration of the M’Naughten Rule rather than the irresistible impulse test.

The limitation of most films that depict the mental state of the defendant is that the entire movie hinges on whether the lack of mens rea defense theory is successful. Fortunately, movies like *Primal Fear* (Paramount Pictures 1996) take the depiction of psychiatry, psychology, and evidence in a new direction. By illustrating the complexities and deceptions which can occur when lawyers and mental health professionals delve into mental disorders (e.g. multiple personality disorder), *Primal Fear* is a psychological thriller and a thought provoking medium about a slick defense attorney who takes on the high profile murder case of a seemingly guileless alter boy, only to get taken himself in the process.

PART III. CORRECTIONS AND PUNISHMENT

Cinema has the amazing ability to act both as a mirror and an x-ray. Perhaps nowhere is this more evident than in cinematic depictions of corrections and punishment. Like a mirror, movies sometimes show viewers/students reflections of their personal opinions, beliefs, attitudes and values, etc. which they may not have previously recognized. Like an x-ray, cinema allows us to see into dark and obscure places and make our own personal observations. In this sense,

cinema allows the viewer to experience events first-hand and to afterwards think and act accordingly. To many this may be the ultimate power of motion pictures. In terms of corrections and punishment, this is most poignantly illustrated by cinematic depictions of prison life and the death penalty. On the other hand, the inventory of films dealing with community based corrections is limited, and we therefore address these type works only in brief.

1. Community Corrections

Why are there seemingly so few films dealing with community corrections? This question bears some attention, we believe, simply because the majority of persons under some form of correctional sentence are those who are on either probation or parole. Our supposition is that film marketing considerations are responsible for the dearth of popular movies. Probation and parole simply do not provide the glamour, excitement or adventure factors that American cinema viewers are looking for.

While attempts may be made to overcome viewer lethargy through an offering labeled as a “thriller,” reality necessarily takes a hit. For example, in *Double Jeopardy* (Paramount 1999) Tommy Lee Jones is cast as a parole officer who is successfully enlisted in his parolee’s quest to track down and extract justice/revenge upon her husband. Hubby, it seems, has faked his own death and framed the wife for murder in order to be with another woman. Jones’ character evolves more into a cop-like role rather than that of parole officer, doubtless in an effort to sell the movie. The film also misrepresents the actual legal aspects of the defense of double jeopardy.

Straight Time (Warner Bros. 1978), starring Dustin Hoffman, would provide a more accurate picture of the relationship between parole officer and parolee, as well as the difficulties parolees encounter in being successfully assimilated back into society. Also, through hyperbole and humor, films like *Bananas* (United Artists 1971) reflect society’s cynicism about probation, and *Raising Arizona* (20th Century Fox 1987), through Nicholas Cage’s portray of a recidivist convenience store robber who is constantly in and out of jail, evidences the popular notion that parole is a revolving door. While some scholars may be inclined to summarily dismiss these latter offerings as simply silly, they nevertheless facilitate social observation while simultaneously making us laugh (Gordon 1992). Behind every shenanigan there is generally a grain of truth. It is from such often inconspicuous origins that society tends to form its attitudes and perceptions of the criminal justice system.

2. Prison: Life on the Inside

For centuries scholars have debated the purpose of punishment. Commentators have asserted various rationales (deterrence, incapacitation, social defense, rehabilitation, and retribution). While cinema does not bring this debate any closer to a conclusion, it valuably contributes to the dialog by presenting thought-provoking images of both brutality and catharsis.

Images of Brutality - Films such as *Brubaker* (20th Century Fox 1980) and *Murder in the First* raise questions about the interrelationship between prison conditions and brutality.¹⁴ Furthermore, they ask the viewer to ponder whether prison brutality is cruel and unusual punishment,¹⁵ and whether prisoner procedural rights are adequately protected.¹⁶ *American Me* (MCA/Universal 1992) also plumbs the insides of prison subcultures and flushes out gang

violence as an understandable byproduct of such alternate societies.

Images of Catharsis - Yet despite the brutality, cinema has not neglected to depict prison as a place that, in spite of hardships, can bring about catharsis and self-actualization. *Bird Man of Alcatraz* (Norma Prods.1962) displays a man sentenced to life in prison for murder and has been called one of the most effective illustrations of inmate rehabilitation. While in prison, the film's lead character, Robert Stroud becomes not only an expert in raising birds, but also a kinder, gentler human being. He is published in scientific journals and is described by the prison doctor as a genius. *Bird Man* also effectively undermines the notion that harsh punishment is always part of an ordered system of justice. For as Christopher Meade observes, although Stroud becomes a monument to the reality of rehabilitation in certain cases, the movie ends by telling its viewers that Stroud has remained in prison for 53 years, with his parole being denied each year (Meade 1996:755).

Shawshank Redemption (Castlerock 1994) effectively illustrates how despite walls, bars, fences, and brutish guards or wardens (symbols of hopelessness and oppression), inmates are able to find previously unknown sources of inner personal strength. Yet, unlike other "triumph of the spirit" stories, *Shawshank Redemption* never lets the viewer forget that hope is a dangerous thing and that, inherently, prison is a place where human beings are savaged on a daily basis and hope is easily stripped away.

And for a more lighthearted version of the catharsis theme, perhaps consider *Greenfingers* (MGM 2000), a film based upon the true story of a group of British prisoners who turn themselves into prize winning gardeners. The leader of this clan is incarcerated for manslaughter in the killing of his own brother. As the story develops (simultaneously with his growing expertise in the cultivation of flowers and other plants) he discovers that he no longer views himself as a horrible and worthless "taker of life" but rather as a valuable "giver of life" who does have the potential for accomplishing good in the outside world.

3. The Death Penalty: Tales of Opposing Narratives

The death penalty is an ancient form of punishment still imposed by a majority of the states and the federal government for specified crimes. Methods of execution vary according to jurisdiction, and the constitutionality of this form of sentence has been debated in and addressed by courts throughout the nation (Wallace and Roberson 2005). In his call for opponents of the death penalty to utilize new and more effective depictions of the death penalty, Christopher Meade (1996) poignantly explains the importance of narratives:

Narrative is one of the primary ways in which people make sense of the world, and as Robert Cover notes "no set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning." As such, these popular culture narratives help illuminate the role that the death penalty plays in America (p. 735).

Cinema provides such depictions in the form of (1) narratives of guilt, (2) narratives of innocence, (3) narratives of spiritual journey, and (3) narratives of race or gender. Understanding such narratives provides criminal justice students with a more sophisticated

conceptualization of the many and varied aspects of the death penalty.

Narratives of Guilt - In such works a brutal murder occurs. The murder both symbolizes a breach in the normative social order and signals a crisis in which society collectively experiences a profound sense of disorder. Since the goal of a narrative is to illustrate a direction which can restore social order and resolve the breach of the social norm, “narratives of guilt” teach that eliminating the killer is both a critical component in ending unlawful killing and restoring the sense of societal equilibrium which was disrupted by the occurrence of the murder (Meade 1996). In such films the viewers’ horror is exacerbated by the fact that the murderer kills innocent unsuspecting Christian families (*In Cold Blood*, Columbia Pictures 1967)¹⁷ or the murder kills for something as trivial as pocket change (*The Executioner’s Song*, Lawrence Schiller 1982).¹⁸ Both films depict illogical, motiveless crimes that give the audience few, if any, reasons to let the killer live.

Narratives of Innocence - These works portray stories about possibly innocent defendants. In contrast to “narratives of guilt,” such movies depict the death penalty not as a remedy to a breach in social order, but rather as the ultimate symbol of chaos. For example, in *True Crimes* (Warner Bros. 1999) Clint Eastwood plays a journalist assigned to interview a death row inmate who comes to question the man’s guilt just hours before his execution. Likewise, in *The Life of David Gale* (Universal 2003) title role actor Kevin Spacey is convicted of a rape and murder he did not commit. Once again, a probing reporter (played by Kate Winslet) casts doubt not only on an individual defendant’s guilt, but on an entire state’s (Texas) systemic approach to the death penalty. Because of its ability to cause viewers to reexamine their position on the death penalty, *I Want to Live!* (United Artists 1958) has been called the most powerful anti-death penalty film ever made (Bergin and Asimow 1996:13). Not only does the film raise the specter of execution of a possibly innocent defendant, but its scenes graphically allow viewers to actually observe the killing. As Bergin and Asimow put it:

People who favor the death penalty never see the gory details of life on death row. They don’t see the suffering imposed on the defendant from the ups and downs of the legal process or of the strain imposed on prison personnel who must wait for the death row phone to ring. They don’t have to deal as governors, attorneys, and judges must with the increasingly desperate last minute habeas corpus petitions. They don’t get to peek at the macabre details of the execution process itself (p. 13).

Two films from England, based on true events involving controversial executions of mentally challenged defendants, illustrate the power of “narratives of innocence” to effect public policy. Both of the deceased defendants were eventually granted posthumous pardons based upon continuing reviews of the evidence in the cases; therefore, the irrevocability of the death penalty when imposed on an innocent person is one of the most powerful arguments against its imposition. *10 Rillington Place* (Columbia/ Filmways 1971) thus tells the story of a man framed for murder and sent to the gallows largely as the result of a possibly false confession. *Let Him Have It* (British Screen 1991) relates the 1952 case of Derek Bentley, a 19 year-old who was hanged for participating in a robbery attempt during which his juvenile accomplice killed a police

officer. Unlike Bentley, the younger trigger man was not sentenced to die. The events dramatized in *10 Rillington Place* and *Let Him Have It*, ultimately led to the abolition of capital punishment in Britain (Bergman and Asimow 1996: 26-30, 48-49).

The 3rd Party Spiritual Journey: Humanization and Typicality Effects - A third type of narrative deserves special attention due to its use in the critically acclaimed film *Dead Man Walking* (Polygram Film Prods. 1995). Though they both may be effective in their own right, narratives of guilt and innocence tend to advocate either pro-death penalty or anti-death penalty messages. *Dead Man Walking* stands apart from such films because the movie does not espouse the polarized rhetoric from either the anti-death penalty or pro-death penalty camp.¹⁹ Rather, *Dead Man Walking*, for the lack of a more descriptive term, engages in a “third party spiritual narrative.” This form of narrative can be broken down into distinct parts and deserves the special attention of those who have interest in the death penalty.

First, according to Roberta Harding, such death penalty stories require a strong principal character who is also a condemned inmate (Harding 1996). In *Dead Man Walking*, Matthew Poncelot and an accomplice, while under the influence of drugs, discover two teenagers in a parked car. The teenage boy, Walter Delacroix, is bound and forced to watch as Poncelot and his accomplice repeatedly rape Hope Percy, his girlfriend. Eventually, Walter is shot in the head and Hope is repeatedly stabbed, shot and left dying. After being captured, Poncelot is arrogant and unrepentant. Effectively, Poncelot is introduced to the audience as subhuman and monstrous. Such initial impressions are reinforced by Hope Percy’s father, who describes Poncelot to Sister Prejean as “not a person [but] an animal . . . God’s mistake.”

Second, these death penalty narratives require a secondary character, who interacts with the condemned and undergoes a personal spiritual transformation (Harding 1996:1169). The secondary character (Sister Prejean) discovers that beneath the inmate’s “monster facade” there still is a human being. Recognition of this fact enables the secondary character to transcend spiritually, resulting in reassessment of *her* humanity and capacity for compassion (Harding 1996:1172). These deeper personal reflections in turn strengthen the humanization of the condemned inmate, for as Harding further explains:

Despite [Poncelot’s] severe character flaw, his apparent lack of remorse, and his continuous “gamesmanship,” Sister Helen is able to look beyond what many people label “monstrous” and locate a human being worthy of our compassion and love, because he, like us, is a member of the human race (p. 1174).

Finally, in such stories, the culmination of all these distinctive parts allows the secondary character to act as a surrogate conscience for the audience (Harding 1996:1169). In the words of Harding, “Because of the superb dramatic performance by Susan Sarandon, the viewer truly experiences the progression Sister Helen makes in her quest to obtain and ensure human treatment for all (condemned persons) (p. 1174).” Thus, while narratives of innocence ask viewers (students) to see themselves as the condemned *innocent*, “third party spiritual narratives” have the power to create viewer (student) identification with a *guilty* defendant through the eyes of the self-actualized. Though the viewer’s ultimate opinion about the death penalty may not be changed, providing the audience with an alternative perspective of the defendant and an identity

apart from that of “monster stereotype” is more likely to alter the viewer’s initial impression and formulated assumptions about the death penalty.²⁰

Reappraisal in light of new information and from a new perspective is known as a *typicality effect*, which in the context of the death penalty represents “the extent to which opinions about the death penalty are shaped by a general notion of who a murderer *is* (Meade 1996:757).”²¹ Research suggests that typicality effects are relevant, especially in a death penalty case because “proponents of capital punishment are likely to think that the death penalty is appropriate for a ‘typical’ murderer, as opposed to an ‘atypical’ one” (Meade 1996:757). Accordingly, during sentencing hearings, giving juries and/or judges any information that sets the defendant apart from the so-called typical murderer may well impact punishment outcomes (Meade 1996:758).²²

Race, Gender and the Death Penalty - Scholars of the death penalty have discussed the role of race and gender (Coyne and Entzeroth 1994). A survey of death penalty literature suggests that gender does not play a comparable role to race in the imposition of the death penalty.²³ In comparison, four major studies in the last 15 years have suggested that the race (of the victim and/or the race of the defendant) is a significant factor in the imposition of death. These studies have been used collectively to advance allegations that the status quo discriminates against black males (Coyne and Entzeroth 1994:133-157). While non-believers may attempt to interpret these studies differently, the apparent disparate treatment between black and white defendants has not been conclusively explained. The lack of such an explanation has resulted in an increasing amount of concern by a growing number of people within the legal profession who believe that capital punishment is not creating order out of chaos but instead is discriminately singling out individuals for society’s harshest punishment.²⁴ One would assume that cinema would have addressed this notion effectively, but it has not (Meade 1996:748-750). Surprisingly, cinematic depictions of the death penalty have tended to focus more on gender (specifically women on death row) than on race.

It has been more than 45 years since Susan Hayward portrayed the death row inmate Barbara Graham in *I Want to Live!* Perhaps no film has effectively injected gender into the death penalty genre with as much impact as this narrative of innocence. Although, in recent years there has been an attempt to reintroduce viewers to gender issues that may be associated with this form of punishment. *Reflections in the Dark* (New Horizons 1995) starring Mimi Rogers, and *Last Dance* (Touchtone Pictures 1996) starring Sharon Stone, both discuss gender from a woman’s perspective. While feminist legal studies offer an interesting “lens” through which the death penalty can be examined (Castronguay 1993), one might question cinema’s recent fixation on such “women’s stories.” As previously noted, women represent a very slight portion of the death row population in the United States, and are rarely executed. Accordingly, it seems fair to conclude that cinematic depictions of gender and the death penalty have, so far, emphasized women's stories while failing to illustrate the apparent disparate treatment which occurs between men and women on death row. Market influences may help to explain this phenomenon and more will be said about consumer related factors shortly.²⁵

The role of race in the administration of the death penalty has become one of the most important issues in the modern capital punishment debate (Harding 1996:1177). Nevertheless,

cinematic depictions of the death penalty have, as of yet, failed to address either of two issues which are at the core of debate on race and capital punishment: first, what is the role of race in the administration of the death penalty, and second, why black males are disproportionately represented on death row.²⁶ In fact, a survey of the death penalty films reveals that most tell the stories of condemned inmates who are either white males or white females.

While Hollywood has made films involving the execution of black prisoners, the focus of these stories has tended to center of the lives of prison guards. For example, *The Green Mile* (Warner Bros. 1999), another narrative of innocence starring Tom Hanks, is a story mostly about the lives of guards on death row leading up to the execution of a wrongly accused man. In *Monster's Ball* (Lion Gate Films 2001) a racist guard reexamines his attitudes while falling in love with the African American wife of the last man he executed. Regarding the extensive focus on white defendants in film, Harding explains, "While this is not an inaccurate depiction of the composition of the current death row population, because the majority of condemned inmates are white, it is misleading because most death row populations include black and other minority condemned inmates (Harding 1996:1177)." Commentators like Meade contend that there is a need for new narratives focusing on race and the death penalty which movie makers have, apparently, been reluctant to make (Meade 1996:751).

However, at least one film, *A Time to Kill*, provides hope that moviemakers may be growing closer to discussing the role of race and the death penalty in a more focused manner. While it does not directly focus on the administration of the death penalty or that black males are disproportionately represented on death row, *A Time to Kill* (based on the book by John Grisham) is a well-made movie that takes a multi-faceted approach to the issue of race in the death penalty. Accordingly, it provides five insights that are of value in discussing the death penalty. First, it effectively depicts the unequal treatment that occurs when the victim of a crime is black and when the victim is white. Second, it shows how death penalty cases can evolve into political chess matches in which the life of a condemned black man can be overshadowed by third party special interests groups. Third, it offers a general reminder of the tenacity with which some states have historically pursued the death penalty. Fourth, it shows how difficult it can be for a defendant to afford a qualified attorney (let alone an expert witness). Fifth, it illustrates the role race can play in coloring the attitudes and impressions of jurors.

CONCLUSION: PARTING CAVEATS

Products of popular culture have a distinct potential that, while increasingly recognized by scholars, has not until now been provided a theoretical domain in which they can be better explained and understood. Make no mistake, however, the utility of cinema as a valuable resource in the pedagogical repertoire of instructors is not limited to its attention grabbing value, although that benefit may be considerable at times. As illustrated in the context of criminal justice, cinema can also be used to explore the reaches of a wide variety of highly important and controversial topics within the discipline and other related disciplines. In short, criminal justice is abundant with cinematic illustrations, and its particular power of narrative can be harnessed to enhance learning in the lecture hall. While by no means diminishing cinema's positive attributes, the following are caveats for teachers regarding its use in the classroom.

1. The Role of the Educator

It is incorrect to assume that cinema can make an educator's job any easier. To the contrary, the success of a cinema-based course greatly depends on the educator's class management skills and the ability of the educator to open students' minds. Most students have spent their lives watching movies predominantly for their entertainment value. While not displacing its entertainment value, cinema in the classroom requires students to act both as academic and critical consumers of popular culture. Educators thus face the challenge of teaching students how to examine movies in ways that may seem foreign, if not awkward. Furthermore, to some students analyzing narratives, typicality effects, and the importance of focus point in story telling may not appear relevant to their future professional aspirations.

Training students to become connoisseurs of popular culture requires professors who are more than experts in their field. The successful use of cinema in the classroom probably requires a less formal teaching style and dialog between educators and pupils as well. Professors who are perceived by students as stilted, pedantic, and unapproachable are unlikely to generate the level of student comfort that is required for the most effective use of cinema.

2. Academic Frustration with the "Consumer Factor"

Movies, as products of popular culture, are often made to appeal to various classes of mass consumers. Moviemakers are certainly more concerned with box office receipts and video sales than with appeasing the needs of educators. Consequently, academicians may at times become somewhat frustrated that the "consumer factor" often determines: (1) which narratives become movies,²⁷ and (2) the manner in which narratives are presented.²⁸

3. The Exclusive Use of Cinema in Educational Curriculum

Most courses utilizing products of popular culture probably do not use movies as the primary and required course materials (Meyer 1992:894). Due in part to the "consumer factor," and the belief that cinema is most effective when used as a component in teaching, this article does not advocate the exclusive use of cinema. To the contrary, movies are likely to be more effective when used in tandem with other teaching materials and techniques deemed by the instructor to be productive to student learning. And besides, careful film editing is an absolute must for no other reason than time constraints. There is simply insufficient classroom time to rely primarily on film with the resulting omission in delivery of essential curriculum material that would necessarily follow.

4. The Dangers of Hidden "Agendas"

Educators, in selecting cinema, should be vigilant in the recognition of personal agendas, whether those agendas are their own or those of the moviemakers. Both moviemakers in telling stories and teachers in selecting and explaining stories facilitate drama. While drama may help to enhance student critical thinking skills and/or simply garner student attention, educators should be aware of the abuse that can occur when they select movies that, intentionally or unintentionally, advance a particular cause. Cinema should not be used as a soapbox to instill a particular ideology into students, anymore than the privilege of a lectern should be employed as the bully pulpit or for exercises in demagoguery. Following sincere self reflection, teachers must be forthright in recognizing and, if necessary, in disclosing their own biases, and provide help in student recognition of potential biases apparent in the filmmaker.²⁹ And, finally, teachers

should encourage students not necessarily to believe the rhetoric of the narrative, but rather to identify the rhetoric of the narrative and to objectively evaluate its merits.

ENDNOTE

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NOTES

1. Broadly stated, 42 U.S.C. Sec. 1983 is essentially a federal statute providing civil remedies for violations of individual rights protected by the United States Constitution or other federal statutes by “persons acting under color of state law.” In the context of policing, this generally applies to violations of individual rights perpetrated by individual state or local law enforcement officers. In specific situations where the violations are deemed to be a result of either formal or de-facto policies of local governmental entities, such as cities and counties, those entities may likewise incur civil liability. A so-called *Bivens* action (named after the U.S. Supreme Court decision in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 383 (1971) is a comparable civil remedy against federal law enforcement officers, and under similar policy driven circumstances against the federal government itself. Unlike Sec. 1983 lawsuits, *Bivens* actions do not arise under a federal statute, but rather are a judicially created remedy recognized in the case by the U.S. Supreme Court. Sean Connery’s Officer Malone was a local Chicago policeman, but he was part of a taskforce composed of both local and federal officers and supervised by a federal officer. Is Malone working “under color of state law” or is he a federal agent as well. He was enforcing federal rather than state statutes. Even absent determination of an absolutely correct legal answer, *The Untouchables* provides a means to teach students about these causes of action, their similarities and dissimilarities.
2. Walker, Samuel, *The Police In America*, 2nd Ed. 1992, p.4.
3. *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974) addresses the question of whether

improper comments made by a prosecutor during closing arguments violates due process, and also explores the remedy for such comments. However, for comparative analysis also see *Darden v. Wainwright*, 477 U.S. 168 (1986) for the position that not all emotionally charged prosecutorial rhetoric is disallowed.

4. The Sixth Amendment of the Constitution provides that “in all criminal prosecutions, the accused shall enjoy the right...to the assistance of counsel for his defense.” Leading cases on the evolution of the right to counsel include: *Gideon v. Wainwright*, 372 U.S. 335 (1963), recognizing that among the fundamental rights of persons, guaranteed by the Fourteenth Amendment, is the Sixth Amendment right to be represented by counsel when a person is being tried in a state felony court (including the indigent); *Argersinger v. Hamlin*, 407 U.S. 25 (1972), holding that all defendants upon whom a jail sentence is actually imposed are entitled to be represented by counsel, and that the state must provide one if the defendant is indigent; *Alabama v. Shelton* 535 U.S. 654 (2002), holding that a suspended or probated sentence of incarceration likewise invokes the constitutional right to court appointed counsel during the prosecution of the offense. To hold otherwise could result in an un-counseled conviction forming the basis for later deprivation of liberty if probation is revoked.
5. The Sixth Amendment does not explicitly provide for “effective” assistance of counsel. Nevertheless, the Supreme Court has held that there is a constitutional standard for effective assistance of counsel. Prisoners’ rights advocates, however, claim that the Court’s rulings in the following leading cases provide insufficient opportunity for remedy: *Strickland v. Washington*, 466 U.S. 668 (1984), which established a two-part test for ineffective assistance of trial counsel: (1) counsel was not functioning as the counsel guaranteed by the Sixth Amendment; and (2) counsel’s errors were so serious that they deprived the defendant of a fair trial. However, it was determined that it is the defendant’s burden to show a reasonable probability that, if it were not for counsel’s errors, the outcome would have been different. In this last regard, also see, *U.S. v. Cronin*, 466 U.S. 648 (1984) regarding effective assistance of counsel within the context of inexperienced counsel.
6. Based upon a true story, *The Onion Field* exemplifies the ability of both pro se defendants and bad defense lawyers to gum up the court system. It also shows the power of cinema to evoke public outcry. *The Onion Field* created so much public outrage that the California parole board canceled the parole release date of one defendant in the case. “Parole in ‘Onion Field’ Case Denied,” Los Angeles Times (September 7, 1994, Metro Section, p. 3, col. 5).
7. Also see ABA Model Rules of Professional Conduct, Rule 1.1 (2002).
8. Related articles: William Kinsella, “Thomas More: A Man for Our Time,” 29 Catholic Lawyer 323 (1985); Herbertus Herbruggen, “The Process Against Sir Thomas More,” 99 Law Quarterly Rev. 113 (1983).
9. In *Ring v. Arizona*, 536 U.S. 584 (2005) the U.S. Supreme Court ruled that in capital

cases juries and not judges must determine existence of aggravating or mitigating circumstances in the context of imposition of the death penalty. Also, the issue of race in jury composition and the use of peremptory challenges remains a legal controversy. Relevant cases include the following: *Batson v. Kentucky*, 476 U.S. 79 (1986) holding peremptory challenges to a venire based on race violates the defendant's 14th Amendment rights and *Miller-El v. Dretke*, 545 U.S. 231 (2005) to similar effect; *JEB v. Alabama ex. rel. TB*, 114 S.Ct. 1419 (1994), extending *Batson* to the use of gender in peremptory challenges.

10. Consider Battered Woman Syndrome, Post Traumatic Stress Disorder, Black Rage/Urban Survival Syndrome, Repressed Memory Syndrome, etc. See generally, Alan Dershowitz, *The Abuse Excuse: And Other Cop-Outs, Sob Stories and Evasions of Responsibility* (1994).
11. The legal standard for competency to stand trial is developed in *Dusky v. U.S.*, 362 U.S. 402 (1960), holding the test of a defendant's competency to stand trial is (1) whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and (2) whether he has a rational as well as a functional understanding of the proceeding against him. It is not enough that he is oriented to time and place and has some recollection of events.
12. Some leading cases developing the judicial parameters of the insanity defense include: *Durham v. U.S.*, 214 F.2d 862 (D.C. Cir.1954), holding that when the lack of mental capacity is raised as a defense, the law presumes that the defendant is sane, but as soon as some evidence is introduced, sanity must be proved beyond a reasonable doubt as part of the State's case; *MacDonald v. U.S.*, 312 F.2d 847 (D.C. Cir. 1962), holding that mental illness includes any abnormal condition of the mind which substantially impairs behavior control; *Jones v. U.S.*, 463 U.S. 354 (1983), addressing how long those acquitted by reason of insanity may be hospitalized. "The varying tests reflect society's uncertainty about how to detect mental illness, and whether to incarcerate or execute people who commit criminal acts as a result of mental illness (Berman and Asimow 1996;238)."
13. *Black's Law Dictionary*, 6th Ed., West Publishing Co., 1990.
14. While there is no agreement as to the causes of prison violence, three theories predominate. One position holds that since inmates are violence-prone individuals who generally use force to get their way, prisons are congregation grounds for such behavior. A second view is that prisons convert people to violence by exposing them to overcrowding, depersonalization and threats of homosexual rape. Still another view is that prison violence stems from mismanagement, inadequate supervision, and a lack of security measures. See, Larry J. Siegel, *Criminology* 4th ed., 476 (1992).
15. Cruel and unusual punishment and the overall conditions of a prison have increasingly become the focus of litigation. For general example, see *Lee v. Tahash*, 352 F.2d 970 (8th Cir. 1965), holding that prison treatment is unconstitutional when it shocks the general conscience and is fundamentally unfair; and *Estelle v. Gamble*, 429 U.S. 97

(1976), holding that the deliberate indifference to an inmate's right to have medical care violates the Eighth Amendment.

16. Inmates do have the opportunity to seek legal remedies. See, *Gilmore v. Lynch*, 319 F.Supp. 105 (N.D.Cal. 1970), holding that prisons must have an adequate law library available to inmates. Furthermore, inmates do have limited due process rights. See generally: *Wolff v. McDonnell*, 418 U.S. 539 (1974); *Walpole v. Hill*, 472 U.S. 445 (1985).
17. "Truman Capote's account of Richard Hickock and Perry Smith's murder of the Clutter family in Holcomb, Kansas in 1959 (Meade 1996: 739)."
18. "Norman Mailer's account of the story of Gary Gilmore, the first man executed in the United States after the hiatus in executions resulting from *Furman v. Georgia* and ending with *Gregg v. Georgia* (Meade 1996:735)."
19. In this sense, director Tim Robbins' adaptation differs from Sister Helen Prejean's novel. Sister Prejean's book of the same title is an eyewitness account of her experience with capital punishment and her involvement with death row inmates at Louisiana's Angola Penitentiary. Sister Prejean, a Catholic nun, is an outspoken opponent of the death penalty. What makes Robbins' film so unique is that, while depicting Sister Prejean's experiences, the story appears to intentionally not bring the viewer to an ultimate conclusion as to whether the death penalty is just or unjust. See generally, Sister Helen Prejean, "Dead Man Walking: A Sharing of a Journey," 3 Geo. J. on Fighting Poverty 69 (1995).
20. *Dead Man Walking* achieves this not only by providing the viewer the opportunity to see Sister Prejean's perspective, but also by allowing the viewer to evaluate the facts and circumstances from the perspective of both victims' parents, prison staff on death row, and Poncelot's mother and younger brothers.
21. See also C. Lord et. al., "Typicality Effects in Attitudes Toward Social Policies: A Concept Mapping Approach," 66 J. Personality & Soc. Psychol. 658, 664-65 (1994).
22. Also consider *Woodson v. North Carolina*, 428 U.S. 242 (1976), declaring *mandatory* death penalty statutes unconstitutional and requiring individualized sentences, and *Coker v. Georgia*, 433 U.S. 584, (1977), discussing *proportionality* as a limit on punishment in the context of executing convicted rapists. Both cases argue that a sentencing statute is constitutionally suspect where its language allows for "blanket categorization" of defendants for punishment without consideration of individual case and defendant circumstances.
23. By this comment, we are not implying that gender does not play an important sociological role in examining the death penalty and how it is applied. To the contrary, it debatably shows a sexist attitude which typically favors protecting women from the death penalty. Relatively few women have been sentenced to death or executed in the United

States. According to Victor L. Streib (2005) and the Death Penalty Information Center, only 2.8% of the persons executed from the colonial times to the present have been women, and as of January 1, 2006, there were 55 women on death row constituting 1.5% of the total death row population of 3,373. Coyne and Entzeroth (1994) found that between 1977 and 1994, only 1.63% of death row candidates were females. According to Bureau of Justice Statistics at the end of 2004, of the 3,314 persons then on the nation's death row only 52 (1%) were women. Since 1976, when *Gregg v. Georgia* lifted the legal moratorium imposed upon the death penalty, 1,026 (and counting) executions have occurred. Of that number 11 females have been executed. See, <http://www.deathpenaltyinfo.org/executions.php>.

24. Such concerns were contributing factors in the American Bar Association's February 3, 1997 decision to call for "a moratorium on executions in this country until jurisdictions implement policies to ensure that death penalty cases are administered fairly, impartially, and in accordance with due process. See, <http://www.abnet.org/media/feb97/death.html>.
25. The so-called "consumer factor" may include several elements, some of which are discussed in greater detail in note 27, *infra*.
26. See generally: *Furman v. Georgia*, 408 U.S. 238 (1972), where racism was thought by some of the justices to be one of the factors that supported holding that the death penalty was unconstitutional as administered; *McCleskey v. Kemp*, 481 U.S. 279 (1987) discussing evidence which suggests racism plays a role in the capital litigation process; and M. Ross, "Is the Death Penalty Racist?," 32 Human Rights Quarterly (1994).
27. Why did Hollywood make two movies about the execution of women, when relatively few women are sentenced to death row, and even fewer are ever executed? Why has Hollywood been reluctant to address the notion that the criminal justice system discriminates against young black men in its imposition of the death penalty? The "consumer factor" suggests that the answer lies in the disparity of commercial appeal of the two subjects. Sharon Stone was at one time one of America's leading female box office draws. In contrast, three quarters of the United States have been reported as supporting capital punishment and have been statistically shown to reject morality arguments. See, Hans Zeisel & Alex M. Gallup, "Death Penalty Sentiment in the United States," 5 J. Quantitative Criminology 285, 299 (1989).
28. Thus, even if one agrees with scholars like Meade (1996:753) that changing the "focus point" (i.e. when to start telling the story) is the key to creating more effective anti-death penalty narratives, prevalent social attitudes suggest that such "new and improved" narratives would (with the exception of isolated demographic groups) likely lack general appeal in the arena of popular culture.
29. For example, while the films of Oliver Stone may have a place in a course addressing the Vietnam conflict and the Cold War, we suspect most people would agree that exclusive reliance on his cinematic depictions do not constitute a completely accurate representation of the subject matter. Similarly, in the context of a course dealing with the

death penalty, if a professor who is personally opposed to the death penalty selects only narratives of innocence, and excludes all other forms of death penalty narratives, he or she may (intentionally or unintentionally) be propagating an anti-death penalty agenda.

REFERENCES

- Asimow, Michael. 1996. "When Lawyers Were Heroes," 30 *U.S.F.L. L. Rev.* 1131.*
- Bergman, Paul and Asimow, Michael. 1996. *Reel Justice, The Courtroom Goes to the Movies*. Kansas City, Missouri: Andrews and McMeel.
- Castronguay, Kay. 1993. "Consistent Life Ethic and the Death Penalty," 14 *Hamline J. Pub. L. & Pol'y* 147 *
- Coyne, Randal and Entzeroth, Lyn. 1994. *Capital Punishment and the Judicial Process*. Durham, North Carolina: Carolina Academic Press.
- Dershowitz, Alan. 1994. *The Abuse Excuse: And Other Cop-Outs, Sob Stories and Evasions of Responsibility*. Boston, MA.: Little, Brown and Co.
- Friedman, Lawrence M. 1989. *Symposium on Popular Legal Culture: "Law, Lawyers, and Popular Culture,"* 98 *Yale L.J.* 1579. *
- Gordon, J. III. 1992. "Humor in Legal Education and Scholarship," 1992 *B.Y.U.L. Rev.* 313.*
- Harding, Roberta M. 1996. "Celluloid Death: Cinematic Depictions of Capital Punishment," 30 *U.S.F.L. Rev.* 1167.*
- Hartman, Dianne. 1995. "Helping the Media Educate the Public," 24 *Colo. Law.* 269.*
- Herbruggen, Herbertus. 1983. "The Process Against Sir Thomas More," 99 *Law Quarterly Rev.* 113.*
- Kinsella, William. 1985. "Thomas More: A Man for Our Time," 29 *Catholic Lawyer* 323.*
- Klockars, Carl B. 1983. *Thinking About Police*, McGraw-Hill, New York, N.Y.
- Kratz, Sheldon and Branham, Lynn S. 1991. *The Law of Sentencing, Corrections and Prisoners' Rights, 4th ed.* St. Paul, Minn.:West Publishing Co.
- Lord, C., Deforges, D.M., Fein, S., Pugh, M.A., and Lepper, M.R. 1994. "Typicality Effects in Attitudes Towards Social Policies: A Concept Mapping Approach." *Journal of Personality and Social Psychology* 66: 658.
- Meade, Christopher J. 1996. "Reading Death Sentences: The Narrative Construction of Capital Punishment," 71 *N.Y.U.L. Rev.* 732.*

- Meyer, Philip N. 1992. "Law Students Go to the Movies," 24 *Conn. L. Rev.* 893.*
- "Parole in Onion Field Case Denied." 1994. *Los Angeles Times*, September 7, p. 3, col. 5.
- Prejean, Helen. 1995. "Dead Man Walking: A Sharing of a Journey," *Geo. Journal on Fighting Poverty* 3: 69.
- Ross, M. 1994. "Is the Death Penalty Racist?," *Human Rights Quarterly* 32:
- Shaffer, Thomas L. 1981. "The Moral Theology of Atticus Finch," 42 *U.Pitt. L. Rev.* 181.*
- Shale, Suzanne. 1996. "The Conflicts of Law and the Character of Men: Writing Reversal of Fortune and Judgment at Nuremberg," 30 *U.S.F.L. Rev.* 991.*
- Siegel, Larry G. 1992. *Criminology* 4th ed. Belmont, CA: Thomson/Wadsworth.
- Streib, Victor L. 2005. "Death Penalty for Female Offenders, January 1973 – December 31, 2005 (PDF). Death Penalty Information Center @ <http://www.deathpenaltyinfo.org/article.php?did=230&scid=24>.
- Thornberg, Elizabeth G. 1995. "Metaphors Matter: How Images of Battle, Sports, and Sex Shape the Adversary System," 10 *Wisconsin Women's L.J.* 225.*
- Wallace, Harvey and Roberson, Cliff. 2006. *Principles of Criminal Law*, 3rd ed. Boston, Mass.: Allyn and Bacon.
- Walker, Samuel. *The Police in America*, 2nd ed. New York, N.Y.: McGraw-Hill
- Zeisel, Hans and Gallup, Alex. 1989. "Death Penalty Sentiment in the U.S." *J. Quantitative Criminology* 5:285.

CASES CITED

- Argersinger v. Hamlin*, 407 U.S. 25 (1972).
- Batson v. Kentucky*, 476 U.S. 79 (1986).
- Brady v. Maryland*, 373 U.S. 83 (1963).
- Coker v. Georgia*, 428 U.S. 153 (1976).
- Darden v. Wainwright*, 477 U.S. 168 (1986).
- Donnelly v. DeChristoforo*, 416 U.S. 637 (1974).
- Dunlop v. U.S.*, 165 U.S. 486 (1987).

Dusky v. U.S., 362 U.S. 402 (1960).
Durham v. U.S., 214 F.2nd 862 (1954).
Estelle v. Gamble, 429 U.S. 97 (1976).
Furman v. Georgia, 408 U.S. 238 (1972).
Gideon v. Wainwright, 372 U.S. 335 (1965).
Gilmore v. Lynch, 319 F.Supp. 105 (1970).
Gregg v. Georgia, 428 U.S. 238 (1976).
JEB v. Alabama ex.rel. TB, 114 S. Ct. 1419 (1994).
Jones v. U.S., 463 U.S. 354 (1983).
Lee v. Tahash, 352 F.2nd 970 (1965).
Mapp v. Ohio, 367 U.S. 1081 (1961).
McClesky v. Kemp, 481 U.S. 279 (1987).
McDonald v. U.S., 312 F.2nd 862 (1987).
Miller El v. Dretke, 545 U.S. 231 (2005).
M'Naughten Case, 8 Eng. Rep. 718 (1843).
Powell v. Alabama, 287 U.S. 45 (1932).
Rhodes v. Chapman, 452 U.S. 337 (1981).
Ring v. Arizona, 536 U.S. 584 (2002)
Strickland v. Washington, 466 U.S. 668 (1984).
U.S. v. Cronic, 466 U.S. 648 (984).
Walpole v. Hill, 472 U.S. 445 (1985).
Weeks v. U.S., 232 U.S. 383 (1914).
Weems v. U.S., 217 U.S. 349 (1910).

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Wolf v. Colorado, 338 U.S. 25 (1949).

Wolff v. McDonald, 418 U.S. 539 (1974).

Woodson v. North Carolina, 428 U.S. 242 (1976).