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American Trial Films and the Popular Culture of Law

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American Trial Films and the Popular Culture of Law

By Jessica Silbey

The legal trial has been central to the United States' public sphere since the country's founding. Transparent justice was a critical governmental reform of the new nation, and the public trial with its commitment to more evenhanded representation for both sides of the dispute reinforced the promise of justice for all. Even before national independence, the famous trials of the Boston Massacre, where Captain Preston, four British soldiers and several Bostonian civilians stood trial for murder, were hallmarks of equal justice to be witnessed by the New England community. John Adams and Josiah Quincy, still both young lawyers, defended the accused against the charges amid an incendiary climate of revolution. The New England community witnessed two local leaders, whose personal and political interests lay with the Sons of Liberty and not the British, heroically marshal the rules of law and insist on their fair application to successful acquittals. John Adams famously said that his defense at the trials of the Boston Massacre was

one of the most gallant, generous, manly and disinterested Actions of my whole Life, and one of the best Pieces of Service I ever rendered my Country. Judgment of Death against those Soldiers would have been as foul a Stain upon this Country as the Executions of the Quakers or Witches, anciently

(Corbly, 2009, pp. 213–214).

Although not all public trials were previously fair or just, as the Salem trials in Adams's quote references, the new nation's commitments to transparency, evenhandedness, and equal justice was evident in its early events, writings, and the representations of those events.

The public trial was (and remains) an opportunity to educate people about law and justice, about the basic commitments to the rule of law, and to provide people (through jury service and witness testimony) the opportunity to participate in the system and rendering of judgment. Through participation, citizens take responsibility for communal judgment and a political system that decrees and enforces civil and criminal liability by participating in the decision making that inflicts both. More than two centuries later, the United States remains as committed to open courthouses and access to justice as ever, although the struggle for equal justice evolves as our cultural norms of and barriers to equality and freedom change (Resnik & Curtis, 2011). Whereas at the founding, concerns over equal justice revolved around political allegiances, and preferences were strong for local community members as against "outsiders," today that struggle includes more complex dimensions that revolve around diverse identities and a commitment to inclusivity that includes class, race, gender, sexual orientation, and national origin.

Despite shifting grounds for equal access claims, the place of the public trial has not diminished in the United States. It is a focal point for debates about individual and national issues, both between discrete parties and about systemic wrongs and institutional challenges. Consider that a single criminal trial may be about the culpability for the death of a person as much as about policing practices (racial profiling, coerced confessions, or injuries caused when apprehending suspects), racial and gendered hierarchies (when race or sex differences are part of the underlying facts of the case), and justifiable defenses (such as self-defense or accident). The public courtroom trial is an opportunity to debate issues that animate our cultural identities as

society members: we are free but remain accountable and responsible for one another's welfare through democratic processes structured through law.

So it is no surprise that our public courtroom trial is a common feature of our popular cultural forms: books, magazines, radio, film, television, and varied visual arts. Paul Revere's engraving of the Boston Massacre [Insert 1], produced weeks after the event, was considered one of the most effective forms of pro-independence communications that shaped public opinion (some call it "propaganda," as its purpose was to persuade—it is not an accurate depiction of the events and was accompanied by a poem credited to Revere).



Figure 1. Paul Revere's Engraving of the Boston Massacre

Newspaper accounts of sensational trials were in high demand, as evidenced by contemporary readership and response to the reporting, which started as early as the Reconstruction. One such magazine, called *Day's Doings*, was founded in June 1868 and was devoted to "current events of romance, police reports, important trials, and sporting news." (Mott, 1938, p. 44) Other forms of popular legal news reporting included serialized radio coverage and editorial cartoons (see Insert 2 below of Carey Orr cartoon from the *Chicago Tribune* in reference to the 1925 case of *Tennessee v. Scopes*). Popular press coverage spilled over into the streets, drawing crowds at the courthouses such as the one pictured below in response to the Loeb-Leopold case. (Larson, 2008)



[3] He's Always Seeing Things. (Orr in the *Chicago Tribune*)

Figure 2. Carey Orr cartoon, *Chicago Tribune*, 1925



Figure 3. Photograph from outside courthouse in Chicago during Loeb-Leopold trial

These popular cultural representations of law and justice reinforce the legal trial's own ideological commitments—public scrutiny as a measure to ensure democratic accountability—especially as the popular cultural forms themselves are idealized, simplified, and rendered iconographic over time. The lawyer-hero or crusading attorney, the villain-judge or mob jury, the jury-as-liberator or “blind” (independent) judge, and the trial-as-mystery “whodunit,” are

expected tropes in the popular forms of the courtroom drama in American culture. These popular forms and the stories they tell about the relationship between our legal systems and the citizens accountable to it reinforce everyday beliefs about law and justice in society. As Naomi Mezey writes, quoting from Antonio Gramsci's *Prison Notebooks*: "Culture deeply informs our common-sense assumptions, and . . . common sense is at once a product of the culture in which we live and a form of ideology. It is 'the conception of the world which is uncritically absorbed by the various social and cultural environments in which the moral individuality of the average man is developed'" (Mezey, 2015, p. 41).

The Trial Film: A History of Film and Law

The courtroom drama, or "trial film," is one of the original genres of American film, dating from 1907, only a decade after the birth of cinema (Clover, 1998, p. 259; Silbey, 2007, p. 131). The visual dramatic narrative form of the trial is now also widely experienced on television, be it fictionalized (e.g., *Law and Order* [NBC, 1990 to present]), *The Good Wife* (CBS, 2009–2016), in "reality" as courtroom television (*The People's Court* [1981 to 1993], Judge Judy [1996 to present]), or with cameras in the courtroom (the first televised trial being of the rape trial of the New Bedford Six, which was made into the 1988 film *The Accused*) (Carr, 1989; Rangel, 1984; Silbey, 2009, p. 61). Telling legal stories through moving pictures is commonplace now given the ubiquity of cameras and the image-dominance of our culture and information transmission. But even from the earliest days of film, law was a focus of the cinematic narrative—with its climax in the courtroom trial. Viewers (experiencing the story as jurors and judges) were and continue to be pulled to participate in the critical decision making of the trial through the special relationship that film creates through its viewing. Indeed, the legal trial is particularly well suited to representation in and through film because the trial film combines the authoritative mechanisms of film with law, both of which are grounded in the confidence of the individual viewer (or "witness") to attest to the world as they see it or "know" it.

The American courtroom trial and the art of cinema share epistemological approaches that contribute to their mutual dominance in popular culture. Both stake claims to an authoritative form of knowledge based on the indubitable quality of observable phenomena. And both proceed through narrative devices (telling and retellings from multiple perspectives) that sustain the authority of visual perception by increasing the self-awareness of viewers and witnesses to the contingencies of the stories being told. And yet most films, trial films included, play on the problem of knowing through sight. When audiences watch film, they are aware that they are not "seeing" reality unfold before them; they are seeing a story being told or reenacted through images and sound. And yet their experience of the film is as if the events were happening in front of their eyes. This is cinema's pleasure and its magic (Bazin, 1967, pp. 13–14). This experience of oscillation between reality and representation emboldens viewers to feel as if they know the difference. Films often reveal their own storytelling mechanisms—special effects, flashbacks, multiple points of view, God's-eye perspectives—challenging viewers to critique the visual story they are seeing as manufactured, however powerfully affecting. Moviegoers learn that films do not reveal a world but construct one. And this knowledge empowers them to judge the story being told and to question the images and worldview it projects.

Cinema's play on the hermeneutics of seeing/knowledge and critique/judgment, parallel those of the courtroom jury trial. As with film, the trial process is based on the believability and privileged status of observable phenomena—on seeing, bearing witness, and judging. Also like film, legal processes are self-reflexive. The essence of the trial is the existence of debatable stories, facts that fit into conflicting versions of events, all being retold and represented for an audience asked

to compare and judge their relative faithfulness to a past reality. Trials and their verdicts are then themselves appealable and exposed to retellings that may have equal or greater persuasive force. This process exposes law's own fictions of determinacy and finality, ideological commitments that political order requires.

Despite the contingencies of both legal and filmic accounts, both law and film are nonetheless authoritative representational forms. Both are perceived to tell a particularly persuasive account of "what happened" because they fortify the "knowledge" produced (a verdict or a filmic rendition of an event) with the practice of first-person witnessing, reflexivity and self-critique, and the accumulation and sorting of multiple perspectives. The recursive structure of legal judgments makes room for the existence of hope and future change, an opportunity for those who may experience exclusion to eventually be heard by those with power. This is critical for law's authority to bind its subjects and allows witnesses and jurors to accede to its dominion. Similarly, film viewers enjoy the feeling of being (filmic) jurors and experiencing the confidence of rendering the right verdict (or identifying the wrong one). Although many trial films are not based on true stories, the stories told generally about law and its relationship to justice through film nonetheless ring true for these same reasons.

The inherent affinity of film and law, grounded in shared storytelling strategies, may explain the enduring popularity of the cinematic courtroom drama. As a genre, however, it has evolved over the decades with our shifting cultural preoccupations and transforming sociopolitical relations. In the early days of cinema, before sound, courtroom dramas were a kind of mystery genre, unraveling the story of "whodunit" through a play of appearance and disappearance. *Falsely Accused!*, a 1907 film, may be the first trial film, inaugurating the genre with particular themes and structures that exist today. *Falsely Accused!* opens with the murder of an inventor and the false accusation that his daughter committed the crime. The daughter's boyfriend, inspecting the crime scene, finds a motion picture camera, which was miraculously running during the commission of the murder. He develops the film, revealing the true murderer, and rushes it to the courthouse to show to the judge and jury. The revelatory experience of the film jury and the film audience coincide—both "see" the evidence that reveals the truth of the defendant's innocence and the identity of the true murderer. That the missing piece of evidence is itself on film strengthens the authority of and affinity between visual knowledge and legal knowledge. And yet the film, as with the law, also gestures toward its constructedness by highlighting its capacity for persuasive illusions (she was almost convicted after all), and its own partiality (the "whole" story on film or in law is an impossibility). The self-reflexivity of *Falsely Accused!* enables both a critique of film's fictive nature and the expectation that film may be an objective form of knowledge. Spectators understand that they are viewing a filmic *point of view* and thus are invited to judge what they see. Thus, as early as 1907, film is both evidence and a story of evidence, about the relationship between knowledge, justice and the contingencies of both in the visual medium. The hundreds of trial films that follow contain similar marks of the genre.

When the first person narrative form of filmmaking took hold in the 1920s and 1930s, before the advent of sound or "talkies," the trial film incorporated the omniscience of the film form with the intimacy and subjectivity of the first-person protagonist. Interestingly, the collision of these two perspectives became the well-known but nonetheless surprising "unreliable narrator"—the feature of film storytelling that exposes the storyteller as untrustworthy. Recent examples of this narrative feature in films about law and justice include *The Usual Suspects* (1995), *Primal Fear* (1996), and *Memento* (2000). *Rashomon* (1950) by Akira Kurosawa is often cited as the quintessential film about unreliable narrators as it features witnesses, victims, and accused criminals telling the same story from diverging perspectives ending with a film viewer unsure

who to believe. This feature of narrative film had its heyday in the early 1930s, between the two world wars, when crime, poverty and the growing urbanization of America put pressure on the promise of law and peaceful order. Fritz Lang's *M* is one example from this period, a trial film that features mob justice and organized crime replacing the judge and jury. The main character appears to be an unsympathetic serial killer who, only at the end, is revealed to be mentally ill. Neither the lawless mob nor the eventual courtroom trial effectively condemn or excuse the killer because both are interrupted by interjections from the mothers of the victims who instead condemn the bystanders who condone the violence and disorder around them. This is a nod to the unraveling of Europe (the film was originally made in Germany and then brought to the United States when its director emigrated shortly thereafter). It is also an explicit call for moral responsibility of community members to each other.

Fritz Lang's *Fury* (1936) repeats this style and structure. It stars Spencer Tracy as Joe, a vigilante hero whose near death by an angry, arsonist crowd sows seeds of revenge, leading him to plant evidence and frame the mob leaders for his "murder." For a time, the film audience believes that Joe perished in the arson. Newsreel footage accompanied by pictures of the burning building and a terrifying shot of his face framed by a window engulfed in flames confirm the protagonist's demise. But then the audience sees him skulking around the edges of scenes, manipulating the district attorney and conspiring with his brothers to assist in the conviction of mob members for a crime that was never committed. As the film points to its own mode of storytelling (visual evidence of past events) to undermine the truth of those stories (the visual evidence misleads rather than clarifies) the audience becomes skeptical of other truth-telling devices, such as the courtroom trial. Joe's plot to use the legal system against his attackers and pervert its promise of truth and justice, a plot that nearly succeeds until he relents and makes a stunning entrance in the courtroom, reflects the problem of an unreliable protagonist, the uncertainty built into all trial systems that rely on credibility determinations, and the inherent opacity of the cinematic form. Norman Rosenberg describes the trial films from this time as "law noir," sharing features with "film noir," a film style characterized by chiaroscuro elements and the criminal underside of the postwar America (Rosenberg, 1994). These films criticize the law's capacity for truth (rejecting institutional order) and feature cowboylike heroes who take justice into their own hands. These heroes do not inspire confidence because the justice they affect is idiosyncratic and relies on rare or unusual acts of courage. And yet the legal system is no savior either. Other trial films that share these features include the well-known *Young Mr. Lincoln* (1939) by John Ford and *The Paradine Case* (1947).

Classical Hollywood style was an antidote to film noir (Bordwell, 1985, p. 370). In style and substance the films of this time reflected a restoration that followed the Second World War and featured heroes who work with the law rather than against it to right identifiable wrongs. Films of this time, beginning with *Adam's Rib* (1949) and continuing with *Twelve Angry Men* (1957), *Compulsion* (1959), *Inherit the Wind* (1960), and *To Kill a Mockingbird* (1962), created some of the most memorable and heroic lawyer characters on screen; these films also launched hopeful commentaries about the off-screen American legal system as it was dramatically evolving to more generously provide civil rights and civil liberties to all Americans. In contrast to the skepticism that pervaded the representations of law in the 1930s and 1940s, these later films portray a more hopeful vision of American law and justice. *Adam's Rib* is a groundbreaking film for women in the law and on screen at a time when equal rights for women remained elusive. It is also one of the few comedic trial films of the time, featuring dueling heroes as dueling lawyers (and spouses) arguing about the injustice of gendered roles and the place of tradition in justifying legal rules. *Twelve Angry Men* glorifies the jury process and the contribution of every man in our justice system. *Compulsion*, based on the Loeb and Leopold case from 1924, develops the argument begun in *Fury* about mental health, criminal culpability,

and retribution, featuring Orson Welles himself as Clarence Darrow, who appeals for mercy on behalf of the defendants. *Inherit the Wind*, like *Compulsion*, is based on a true story and embodies the American innovation of the separation of church and state and religious liberty. *To Kill a Mockingbird* features Gregory Peck as Atticus Finch, who fights against insurmountable odds for racial justice in the Jim Crow South. These films exemplify the political philosophy of liberal legalism by rooting the promise of the American justice system in the determined and enlightened individual, which contrasts with trial films of prior decades in which the legal-hero as vigilante was an uncertain bet (Kamir, 2006, p. 115, 178). The difference between these civil-rights era legal heroes and those from the law noir period is in their enduring commitment to institutional change despite short-term setbacks. They portray the lawyer, juror, or witness who is placated by participating in the legal system, recognizing that justice occurs in the aggregate and over time as long as it is open to all. Despite alternative film styles during this same period, Classical Hollywood (and the courtroom drama) dominated the film industry with its “present[ation of] psychologically defined individuals as its principal causal agents” as Robert Stam says, quoting film theorist Jean-Louis Baudry (Stam et al., 1992, pp. 186–87). Doing so, it perpetuated the notion of the world (in and beyond film) as coherent and predictable, its constructed reality based on the individual’s righteous participation and influence.

These patterns of American justice in trial films persist through the decades. Consider films from the 1990s and 2000s, films such as *A Civil Action* (1998), *Erin Brockovich* (2000) or *North Country* (2005). All are squarely in the Classical Hollywood tradition, their stories based upon independent-minded, determined heroes who fight against long odds and whose skepticism of law is undone by the filmic (and juridical) experience of truthful revelation at trial. These legal heroes prevail in a tainted legal system by making a difference through their participation. Consider also how many of these recent trial films are “based on a true story”: these are docudramas that, when combined with the Classical Hollywood style, effectively perpetuate a belief in the existence and power of this social justice advocate. And although many of these films are not obviously self-reflexive in their film form, each film climaxes around a visual revelation: a found document (*The Verdict*, *Erin Brockovich*), a testifying witness (*A Civil Action*), or a discovered identity or hidden event (*North Country*). The film’s indices of “truth”—achieving a just verdict through visual revelation and witnessing—further the film’s epistemological authority as it tells a story of law through the visual sense. The truth told is both that seeing is knowing, and as each viewer bears witness to law’s achievement of justice on film, that the righteous participation of individuals is what is required.¹

Common Themes and Scenes in Trial Films

The visual tropes in American trial films are familiar and consistent. They help build and sustain the trial film genre as predictable for viewers, who learn to expect a certain satisfaction from the climactic courtroom scene. For example, trial films typically open with an establishing shot of the courthouse, its cupola, wide steps, and columns. Sometimes the film’s beginning contains patriotic statues (Lady Liberty, George Washington, Abraham Lincoln) reminding the viewer of national values that animate our legal system. The grand house of law resembles a house of worship. It is both daunting and promising. It is also inviting. The camera usually pans up from a street view, looking at the steps, to the courthouse or statue from a street perspective, positioning the viewer as an eventual entrant and citizen in the house of law.

In contrast to these opening shots, the film scenes that follow inside the courthouse tend to be more chaotic, animated by the bustle of people’s everyday business, crowded corridors and the hum of paper and keyboards. The chaos foreshadows a problem in the house of law: disorder in

need of fixing. Sometimes these further scenes infuse humanity into the otherwise inanimateness of stone and metal—laughter and conversation, embraces and concerned faces—a recognition that the promise of justice requires human intervention. Eventually, the viewer reaches the courtroom, which may be shot symmetrically down the center focusing on the flag or the judge, suggesting the promise of order to come; sometimes it is shot askew, with a focus on the public attendees in the galley or a particular lawyer, suggesting there is work to be done to reach a fair result. Either way, the opening frames of these trial films set up the central dynamic of order and justice, law and institutions, everyday citizenship and lofty goals.

The core of the film focuses on evolving perspectives on a particular dispute between people over events in the past. The film camera's various perspectives in the courtroom accomplishes at least three things. First, these positions invite and establish the authority of the film viewer to judge the dispute and render a verdict. Inevitably at some point in the film, the camera will position the viewer in the jury box, on the witness stand, behind the judge's bench, or over the shoulder of the trial attorney (all positions that are potent with critical decision-making duties). The trial's promise as a cohesive and satisfying process and the law's promise of justice lie in the confluence of these positions experienced by the film viewer. The experience is of the many perspectives that culminate in a fair judgment manifested in a justifiable trial verdict.

Second, the camera cues the revelation of clandestine facts or relations from or between characters in the film, facts and relations that once outed by the trial process enable a just conclusion. By framing the film's character in a single head shot, for example, and then cutting swiftly from one character to another, the camera discloses psychic relationships between the thoughts, lives, and situations of the featured persons, encouraging the viewer to understand the connections as relevant for the trial at hand. This kind of relational composition is common in films as a suturing device, but in trial films these technical devices contrast with the inhuman and inanimate beginnings of law (buildings, statues, and flags). Now filled with faces, often close-ups of emotional expressions and gestures, the house of law is imbued with the significance of individual human lives as represented by the uncovered relationships between people in the house of law.

Finally, the camera also acts as a perspective lens, zooming and reverse zooming, panning and rotating, providing a sense of coherence and omniscience within the courtroom able to see the situation from diverse angles. The camera here represents the ideal of justice—providing distance for objectivity, close-ups for intimacy and emotion, zoom shots for pointed commentary—in order to evaluate the case from all possible positions and to put the problem in an objective light. The camera is not mimicking the human eye as a witness but as a machine and an institution, without personal bias or desire but programmed objectivity, historical memory, and the patience of time. In this way, the ideal of justice is a combination of the human, technological, and institutional.

Trial films usually have one of two possible endings. The first is that the legal process forces the revelation of a secret truth that enables justice to be done. This happened in the first trial film *Falsely Accused!* when the film camera reveals the murderer, in *Fury* when Joe presents himself to the court at this own murder trial, in *The Verdict* when a witness breaks down and admits to changing the number on a form, and in *A Few Good Men* when Daniel Caffy effectively cross-examines Colonel Jessup who admits to ordering the hazing of a marine. Like a puzzle piece gone missing, the legal process and the trial help put everything back together, perpetuating law's reputation as a means toward revelation of and judgment on the whole truth. The other possible ending is a disappointment of justice, when the trial process frustrates the search for truth, not because it is unknown to the audience but because the law cannot or will

not accommodate it. These films end with a sense that law is ever present but flawed and that audiences acquiesce to it, because what choice do they have? In these films, viewers are left with hope that another time and a new hero may succeed where the present has failed. Intriguingly, viewers are not left with anarchic thoughts or cursing the impossibility of justice, because they have been taught through the film to identify right from wrong and the difference between the abuse and justifiable use of power. The films suggest that the failings are temporary and that change is eventually possible within the bounds of the law.

Most trial films are in the first category, glorifying the legal process as an ultimate arbiter of truth and justice. *Twelve Angry Men* is an often cited as a quintessential example of this genre (although to be sure the film did not expose guilt or innocence only the frailty of the prosecution's case) (Marder, 2007). *A Civil Action* is an example of the latter category, where the fallen hero-attorney fails to win the case against the companies who contaminate drinking water and cause leukemia deaths. *A Civil Action* identifies the wrongdoers, characterizing them as evil and greedy. But the trial lawyer fails in court to prove culpability. Nonetheless, although the lawsuit does not end with a liability judgment, we learn later than an Environmental Protection Agency investigation does. The plaintiffs do not get justice in a court of law, but the wrongdoers were eventually punished (albeit off screen and in a postscript). In both trial film narratives, the audience becomes aware of the truth either at the end of the trial or despite it. In the latter case, the issue is not who did it and why but whether the law will eventually account for the truth, as a well-functioning justice system should. In both narratives, the law is an endlessly recursive and discursive practice. It is omnipresent and perpetual despite whether or not individual cases always right identifiable wrongs. This is not a representation of law as tyrannical but of a society that cannot imagine sustainable human civilization and ordered liberty without law, even if it sometimes fails the viewer's sense of justice. It is a rare courtroom drama whose message is truth at all costs, even anarchy (e.g., foregoing law for self-help or other kinds of retribution). And it is even a rarer courtroom drama in which the legal system lacks any redeeming qualities. These two narratives in trial films represent the dominant representation of law and justice. Together they constitute and sustain the ideology of the rule of law as a key principle that serves and is serviced by the everyday citizen.

Trial Films as Truth Tales

Although many trial films are based on true stories, the docudrama or reality television courtroom series has become a popular trend. Even in prior decades, trial films based on fact were wildly popular. Consider *Young Mr. Lincoln* (1939), *Anatomy of a Murder* (1959), *Compulsion* (1959), *Inherit the Wind* (1960), *Helter Skelter*, (1976), *The Verdict* (1982), *Reversal of Fortune* (1990) *In the Name of the Father* (1993), *A Cry in the Dark* (1998), and *North Country* (2005) to name a few. Films that resemble documentaries include *Paradise Lost: The Child Murders at Robinhood Hills* (2000), *The Staircase, Murder on a Sunday Morning* (2001), *Capturing the Friedmans* (2003). And recent television series based on court cases include *Making a Murderer* (2015), *The Jinx: The Life and Deaths of Robert Durst* (2015), and *People v. O.J. Simpson* (2016). This subset of trial films is not necessarily popular because they are based on fact (although that is surely part of the attraction), but because they exemplify since the birth of cinema the central ties that bind filmic worldmaking to legal worldmaking: by relying on the incontrovertibility of observations from testifying witnesses (viewers) to tell stories, they simultaneously convince audiences that no story is undeniable. And yet, the overwhelming influence of both cinema and law in our culture is that each claim to narrate the definitive story.

These trial films based on true stories, or “truth tales,” often contain documentary features—black and white footage, handheld cameras, first-person narratives, and interviews in the style of investigatory journalism. These features index informational and factual transparency, the purpose of which is to cultivate the viewer’s trust regarding the film’s truth value. But theorists of documentary film explain how these formal features say nothing about the inherent truth of the film’s narrative (Nichols, 1992, pp. 32–33). These features are well-recognized codes whose purpose is to tell the viewer that the film is based on fact, despite the contextualization of the facts that produce variations of the depictions of the historical event. Moreover, when the truth tales are based on well-known or knowable historical trials, their focus is not on “whodunit” or the discovery of a long-sought piece of evidence to confirm the legal verdict or exonerate the defendant. These are famous stories with famous endings. Instead, these truth tales demonstrate the inevitability of multiple stories that explain or describe a past event, even one that culminates in a legal trial whose goal is to render accurate and just judgments about the truth of what happened. In this way, truth tales are a kind legal appeal, recharacterizing past events in a new light or demonstrating the relevance of past trials for present times.

Be they documentaries or films based on true stories, “truth tales,” are already self-conscious in form and content of the undeniable fictiveness of all stories and of law’s conspiratorial role in crafting them. This urges the audience not to ask what they know about the characters and their history from film (as tell-all films promise and trials as adjudicative processes must) but instead to question the diverse and controversial role of law in perpetuating certain stories over others. These trial films about true stories are not about revealing a truth (whatever that may be) but instead are about the production of truths through law as merely temporary resting places for trial verdicts, constellations in the process audiences learn to respect as the rule of law.

The truth tale’s cultivated expectation of historical accuracy through its documentary features, when combined with its self-consciously fictive form, produces a film viewer and a legal citizen who hopes for but feels free to critique the legal process that promises justice. This viewer-citizen is made aware of historical and cultural contingencies that limit law’s application. As time passes and stories accumulate about the same case (be it O. J. Simpson, or Leopold and Loeb), the legal verdict loses its significance as the “final word” on the matter at issue and instead viewers become comfortable with messier and more open accounts of history. The audience to multiple versions of the same story understands that law is not a teleological system (its goal being the uncovering of the truth each side is fighting over) but a pragmatic process motivated by contemporary and often contradictory circumstances that change over time. Although these truth tales initially cultivate a desire for exposure and discovery based on the ideological correlation in film and law between truth and perception, the self-conscious form of the film and the law as portrayed through each enables the audience to critique the desire for certainty and truth. Audiences of truth tales can say they know only what the film constructs and that the law is the same. While audiences appreciate the rule of law’s requirement for static verdicts at specific moments, truth tales that are trial films reveal the changing significance of legal verdicts through time.

Ultimately then, trial films generally and truth tales specifically are about the difficulty and duty of judging. The roots of early film exist in even the most recent of legal docudramas—the unity of sight and knowledge (an issue of evidence and knowledge production) and of being seen and counted (an issue of subjectivity and the ideological importance of each individual participant). The authority of law and film is based mainly on these strategies of reflexivity that recuperate criticism of their contingent form and portray the future as open to opportunities for inclusion. While both film and law rely on the incontrovertible observations from testifying witnesses (or viewers) who tell their stories, these stories that purport to be documentary or authentic

renderings of real events manage to convince their audiences that all stories are particular and no story is incontestable (Silbey, 2007). As such, these truth tales sustain the authority of law as made and remade by those who subject themselves to it—an evolving process of ordering that functions because viewers participate in it. In other words, popular cultural renderings of law serve the dominion of the rule of law itself.

The Future of Trial Films

In the 21st century, cameras in the courtroom and digital access to courtroom proceedings have flourished. Narrative forms of legal stories have also remained popular. Consider the podcast *Serial* (2014), a spin-off of nationally broadcast *This American Life* radio show, about the true case of convicted murder Adnan Syed whose trial in the year 2000 was riddled with ethical and legal problems (Raptopoulos, 2014). The podcast was one of the first podcasts to be national; it was widely popular across the United States and has been downloaded over 80 million times (Mallenbaum, 2015). In addition to retelling the story of the murder investigation and trial, the podcast is a meta-commentary on the ability of any story to tell a definitive account of past events when faulty memory and conflicting experiences are inevitable and when forensic evidence is subject to interpretation. Co-creator Sarah Koenig describes the format “as old as Dickens” (Raptopoulos, 2014) and yet when *Serial* won the Peabody Award in 2015, Director of the Peabody Awards Jeffrey Jones exclaimed that the podcast showed “how new avenues and approaches to storytelling can have a major impact on how audiences understand truth, reality and events.” (Mullin, 2015) Director Jones’s comment may be true about internet podcasts in particular, but it is not true as regards narrative forms concerning law and justice over the past hundred years. Questioning the possibility of telling “the definitive story” for the purpose of legal authority and justice is precisely what courtroom dramas have been doing since their inception in the early 1900s.

Likewise, the wide acceptance of news cameras in the courtroom and the proliferation of citizen journalism (e.g., blogs and Twitter accounts) facilitates more discussion and debate about current legal affairs. Many law blogs are not only for lawyers, law students, or legal researchers but, as posts and comments thereto demonstrate, are geared toward everyday citizens with interest in particular cases, events, claims of injustice, or law reform.² As the *American Bar Association Journal* reports, law blogs have “democratized information” (McDonough, 2015). When the information is about law, the democratization expands the perceptions of negotiated control and authority as between local, state, and federal governments and each individual subject to the legal system.

The future of the representations of justice in film, and of the courtroom drama in particular, can be best understood by studying cinema’s history, form, and capacity to shape our expectations of ourselves and our community through imagination and reflection. More generally, the future of law and popular culture requires understanding how stories and accounts of people’s lives and communities make sense to and mobilize social and political movements. Art and politics have always been intertwined. The American trial film is one particular intertwining that focuses on the courtroom proceeding and the everyday citizen’s role in affecting justice through it.

We often ask of law whether it succeeds at judging and organizing society. We ask: “Is this law good?” or “Does this law work as intended?” A way of judging law’s success is if instead of dominance and oppression law’s application is understandable and honorable in its distribution of benefits and burdens. As Lief Carter and Tom Burke have written, “[T]he whole point of the rule of law is to set standards of governance that transcend individual moral feelings” (Carter &

Burke, 2007, p. 3). A central question of legal reasoning therefore is not whether everyday people like the result law provides but whether the reasons provided for the result make the best sense. Good stories make good sense. The law will rarely make good sense when relying on formal logic or legal reasoning instead of recognizable and moving narrative forms.

To be sure, popular cultural stories are not more ethically upstanding than law is inevitably oppressive (Brooks & Gewirtz, 1998, p. 16). Both stories and law act on us. Both constitute us as subjects, shaping our expectations and desires, implicating us in the moral points made. “Narratives do not stand outside social authority—they are part of it” (Binder & Weisberg, 2000, p. 23). One only needs to explore the reaction to popular stories such as *Serial*—which has led to a post-conviction hearing for the defendant decades after his last appeal (Phillip, 2015)—as evidence of how stories effect social and political change. By studying stories and the diversity of story forms—through film, literature, television, the internet—we understand how consumers and audiences are worked on and how they might work on others by and through culture. Law’s result—be it a verdict, a penalty, a loss of life or liberty—may feel different in kind than an effect of a popular story told in film or elsewhere; however, the point is that the way they both legitimate their force is through rhetorical persuasion. Both can liberate or oppress. When the stories are legal stories their power is at an apex.

Courtroom dramas and other popular legal stories are as effective a form of political mobilization today as any form of political literature and art through the ages. Stories situate us in culture and communities. A good story does more: it involves its audience and brings them along to participate in—even embrace—its conclusion. “Literature is, like law, an arena of strategic conflict” (Binder & Weisberg, 2000, p. 19). Cultural critics and social justice advocates must attend to the appropriation and reconfiguration that law and popular culture accomplish as part of their mutually dependent reasoning (Id, p. 27). Alert to historical truths, to “unauthorized myths or stereotypes that circulate through culture like . . . contagion” (Id., p. 23), to the audience members who command attention and power and in whom the story lives and grows, stories (narrative reasoning) “organiz[e] and speak[] the world” (Id., p. 14). So in asking whether the law succeeds—whether it is good—we are also necessarily asking whether the story it tells is good, whether its reasoning accounts to and for us, and whether the world it calls into being is one we could comfortably inhabit. This is a question that concerned most courtroom dramas and early popular renderings of law and legal proceedings. It would be surprising if the future of popular cultural legal forms, especially the American trial film and its variations in mass media, deviated from this dominant tradition. Building awareness of the law’s power to tell definitive stories of guilt or innocence, truth or justice, these popular stories also empower their audiences to be critics of unreasoned oppression and to constitute themselves as engaged citizens with the opportunity to shape the law’s reach.

Review of the Literature and Disciplinary Approach

The study of law and popular culture explores ways in which law is a discursive practice and a form of rhetoric that constitutes a community of speakers and listeners (White, 1984, 1990; Johnson & Buchanan, 2001). As a discipline it disclaims the autonomy of law and recognizes that law’s power is best understood as deriving from its fact of being situated within (or as part of) contemporary culture.

The study of law and popular culture has its roots in other interdisciplinary legal studies, such as law and history, law and economics, law and philosophy—each of which helped legitimize the idea of the interdisciplinary of law itself (Silbey, 2002). The study of law and popular culture has

strong roots in the law and literature movement. As an infant, the study of law and literature was the study of representations of law in “great books,” the subfield that has become known as “law-in-literature” (Id., p. 141). Law-in-literature analyzes literary texts, such as Dostoyevsky’s *Crime and Punishment* or Herman Melville’s *Billy Budd*, for how these texts describe law (Weisberg, 1984, 1988). As a content analysis, law-in-literature is distinct from law-as-literature, which is a study of discursive persuasion and the constitution of a community through language (Silbey, 2002, p. 146; Levinson, 1982). Pioneers of the law-as-literature movement include James Boyd White, whose seminal book in the field describes law as an art that is literary and rhetorical in nature, a way of establishing meaning and constituting community in language. By “rhetoric,” White means

the study of the ways in which character and community—and motive, value, reason, social structure, everything, in short, that makes a culture—are defined and made real in performances of language . . . As the object of art is beauty and of philosophy truth, the object of rhetoric is justice: the constitution of a social world.

(White, 1984, p. xi)

As White’s work emphasizes, studying law as a discursive practice that constitutes a community is a study of social relations. Too often, the cultural analysis of law—law *in* or *as* literature, for example—omits the analysis of the subject of law, the citizen on which law acts and who acts on behalf of it. Locating the construction of that citizen in the text (as an effect of representational practice) or through the text (as a result of reception theory) emphasizes the political nature of all cultural production.

Cultural studies scholars tend to divide their analysis into the study of production, reception and representation (Johnson, 1986–1987). They may investigate the means by which a cultural object is produced, the ways in which an object is perceived and operationalized by its audience, and the manner in which it may be interpreted based on its particular formal structure (Ibid.). Thinking about the interdisciplinary endeavor of law and culture in these terms—these three points in the transmission, circulation, and exchange of cultural form—helps to address several weaknesses in the interdisciplinary field of law and popular culture, especially as it has grown and aspired to achieve the epistemological goals listed above.

Studies of law and popular culture sometimes fail to demarcate the terms of analysis. Both “law” and “culture” are ubiquitous terms in the literature and require definition for a methodologically appropriate beginning to any investigation. Law and literature scholars typically explore law as a language embodying and animating text, a distinct set of cultural practices that can be studied for their formal qualities and communicative and material effects. But law is, of course, much more than that (Silbey, 2002, p. 147). The nature of interdisciplinarity itself, to say nothing of the study of law and popular culture specifically, demands careful attention to the designation of subject matter under analysis. Demarcating terms and attending to the analytic methodologies of the disciplines from which to draw (including, for example, a focus on one of the modalities of cultural analysis described above: production, reception or representation) can foster productive and innovative scholarship.

The discipline of law and film is itself a subfield of law and popular culture. There are law and film scholars who are primarily concerned with the ways in which law and legal processes are represented in film, what might be analogized to “law-in-film” scholars (Chase, 2002; Denvir, 1996; Friedman, 1989). Exploring the contours of law and legal questions in film resembles

more familiar jurisprudential debates about how law should or should not regulate and order our worlds by critiquing the way it does so in the film (Kamir, 2006). There are also law and film scholars who investigate how law films constitute a legal culture beyond the film (i.e., how films' peculiar ways of world making shape our expectations of law and justice in our world at large) (Lucia, 2005; Silbey, 2001; Rosenberg, 1994). Some of these law and film scholars pay particular attention to film's visual embodiment of legal discourse in culture, focusing on the technology of the moving image (as opposed to the written text) as a uniquely powerful way of telling stories and creating (or sustaining) particular aspects of social relations (Lucia, 2005; Black, 1999). Other scholars focus on the way in which film, like law, is a means through which communities form and pass judgment, law being a process of judgment and film being a medium through which audiences are subconsciously made to judge the film characters and their actions (Kamir, 2006; Mnookin, 2005). In these latter approaches, fairly analogized to a film-as-law approach, film and law are compared as epistemological systems, formidable social practices that, when combined, are exceptionally effective in defining what audiences think they know, what they believe they should expect, and what they hope for in a society that promises ordered liberty.

The film-as-law approach to a cultural analysis of law through film engages most directly with a cultural studies methodology. Generally, the discipline of film studies approaches the institution of cinema in light of its history and its formal attributes. The history of cinema includes its history of production, circulation, and reception, all of which film scholars consider crucial to interpreting film texts and understanding film's role in society. The study of film's formal qualities (features of representation and production) would include attention to individual film's narrative arc, casting choices, visual patterns, and camera techniques as a way of interpreting the individual text and its place in a canon of like films (film genre). As discussed above in terms of the American trial film, the analysis of film as a cultural object, especially when about legal procedure and justice, helps explain how a film's audience and community (a feature of reception) participate in and sustain particular ideas and ideologies about law.

Links to Digital Sources

Digital sources on the Loeb-Leopold case include the following four websites:

[Famous Trials in American History.](#)

[University Archives.](#)

[Leopold and Loeb—Homicide in Chicago 1870–1930.](#)

[Introduction—Exhibit: Law in Popular Culture.](#) (digital collection of law and lawyers in popular culture)

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Falsely Accused! (Dir. D.W. Griffith, 1907).
Helter Skelter (Dir. Tom Gries, 1976).

In the Name of the Father (Dir. Jim Sheridan, 1993).
Inherit the Wind (Dir. Stanley Kramer, 1960).
The Jinx: The Life and Deaths of Robert Durst (Dir. Andrew Jarecki, Marc Smerling, and Zachary Stuart-Pontie, 2015).
Making a Murderer (Dir. Laura Ricciardi and Moira Demos, 2015).
Murder on a Sunday Morning (Dir. J-X de Lestrade, 2001).
North Country, (Dir. Niki Caro, 2005).
Paradine Case (Dir. Alfred Hitchcock, 1948).
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Serial (Dir. Sarah Koenig and Julie Snyder, 2014–2015).
The Staircase (Dir. J-X de Lestrade, 2004).
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Notes:

(1.) Of course this ideological effect of the trial film, like any ideology, is not monolithic but full of fissures. In fact, film's ubiquitous self-reflexive tendencies (telling stories through pictures about telling stories through pictures) can be a way both to comment on its illusion by pointing to its constructedness and provide a mode of resistance to the "myth of total cinema," as cinema theorist Andre Bazin has described it (Bazin, 1967, pp. 23–27).

(2.) For a list of the 2016 Blawg 100 Hall of Fame awarded by the American Bar Association and links to the law blogs, see http://www.abajournal.com/magazine/article/2013_blawg_100_hall_of_fame.