

Trials and the movies

By: F. Dennis Saylor IV and Daniel I. Small © November 5, 2015



Movies and television shows featuring trials and other courtroom procedures have always been popular, and it is not surprising that, with the advent of modern technology, they have found their way into law school classrooms. In today's world, just about everyone who teaches trial advocacy (and we include ourselves) uses clips from movies or shows to illustrate a point.

But what can lawyers really learn from Hollywood?

Not much about the law, certainly. Hollywood dramas routinely depict courtroom occurrences that grossly violate the rules of evidence, procedure, ethics and even basic constitutional principles.

In the 1987 movie "The Untouchables," partway through the trial the judge switches the jury with another jury that was empaneled in another case (supposedly a federal divorce case).

In the 1957 movie "12 Angry Men," a critical piece of evidence is a knife that was never admitted or even offered by a party; a juror (played by Henry Fonda) went out and bought it on his own.

What about the questioning of witnesses in the courtroom? It's usually somewhat better, but almost never quite right, either. Hollywood isn't terribly concerned about the technical rules. In the 1959 movie "Anatomy of a Murder," the defense lawyer (played by Jimmy Stewart) baits the prosecutor, asks argumentative questions, tries to get inadmissible facts before the jury, and generally does just about everything but ask a proper question.

In the iconic 1962 movie "To Kill a Mockingbird," Atticus Finch interrupts his cross-examination of the accuser to conduct a brief direct examination of his own client, who is not even placed under oath.

So what do the movies get right? Let's start with the obvious: Hollywood knows how to tell a story. Most of the time, trial lawyers are trying to do the same thing. It's a real story, not a fake one, but it's a story nonetheless.

When Hollywood tells a story, it orients members of the audience so they can follow what happens. The time, setting, characters and whatever else the audience might need to understand the story are introduced. The movie typically doesn't start in the middle or the end, and if it does for some reason, it usually flashbacks pretty quickly to the beginning.

A surprisingly high number of lawyers don't do that. Maybe because they are too deeply immersed in the case, or maybe because they're not sufficiently able to put themselves in the shoes of the jury, they don't take the time to set the stage or explain things so that everyone can understand what is going to come next.

It sounds silly, but it's important: If you're trying a case, begin at the beginning.

Hollywood never ignores the central narrative. It's trying to tell a story. It wants the audience to understand it. It doesn't want the audience to feel overwhelmed or confused, or to stop listening.

Lawyers often forget that they, too, are trying to tell a story, and that it's important for the jury to be able to follow it every step of the way. Fortunately, trial attorneys have an opportunity to tell the story, right up front, in as clear and as chronological a fashion as they want. It's called the opening statement. But many lawyers lose sight of that and spend their openings instead talking about collateral issues or minor details.

Hollywood tells stories economically. It understands that it has about two hours to work with, and that people get easily distracted. Important facts are often established with a few (metaphorical) brush strokes. It doesn't really leave miles of film on the editing room floor anymore; it's all done electronically. But the idea is the same. Hundreds

of hours of film must be edited down to a two-hour movie. If a scene is extraneous, or detracts from what the director is trying to do, out it goes.

In the courtroom, lawyers sometimes spend large amounts of time establishing simple propositions (that may not even be disputed). Even if they aren't wasting time extravagantly, they often do so in little ways, such as with unnecessarily wordy questions or repetitive testimony. Lawyers should spend more time streamlining their cases in order to make sure they are telling their stories clearly and economically.

Finally, of course, Hollywood tells stories visually. It's hard to imagine a movie that consists of nothing but people talking to each other (with the possible exception of the 1981 film "My Dinner with Andre"). And it isn't just that the pictures are there; often they help tell a part of the story, with no dialogue or narration of any kind. Remember, movies began as silent pictures.

Obviously, a trial lawyer has limitations in the courtroom that television and movie directors don't have. Still, there's no reason not to include visual images whenever they might help the jury understand the evidence.

Imagine a trial about an automobile accident. Never mind the expensive video re-creation of the event (which may be useful, but remains terribly expensive). How about a map of the intersection? A satellite view? A street view? Photographs of the cars? Lawyers should not pass up opportunities to tell their stories with visual images whenever they can.

Trials are not movies, and the lessons Hollywood can teach only go so far. Moreover, a lawyer isn't likely to have a crew of 588 people and a budget of \$175 million (average numbers in Hollywood these days) to help prepare for trial.

Still, if you're careful, you can learn the right lessons from the movies.

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