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## Reel Justice - The Courtroom Goes to the Movies

Paul Bergman

Michael Asimow

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## BOOK REVIEW

### REEL JUSTICE — THE COURTROOM GOES TO THE MOVIES

By Paul Bergman and Michael Asimow. Andrew and McMeel, 1996.

REVIEWED BY: BRUCE D. QUICK\*

Famous last words! I promised myself, and my legal assistant, Hazel Ashworth, that I would never, even in my weakest moment, ever agree to write another Law Review article, and that she would never have to type another footnote.<sup>1</sup>

Just when you thought it was safe to go back into the water . . . .<sup>2</sup> But this is not really a Law Review article; this is a book review. I confess that when the Editor in Chief provided me with the book in question and advised me to “just look at the book” and if I did not want to do the book review, I could keep it, I secretly had no intention of writing the book review. I began reading the book, became interested, and finished it. Alas, I now feel compelled “to do the right thing.”<sup>3</sup>

I suspect I was given the book because the students at the North Dakota Law School believe that Professor Lockney and I need some new material. They are presumably tired of seeing snippets from the movie *My Cousin Vinny* and *Anatomy of a Murder*, which have found their way into our criminal trial advocacy class over the past five years.

Well, I am pleased to notify all of you attorney types who happen to enjoy movies about trials of an excellent resource for your library. This book, *Reel Justice — The Courtroom Goes to the Movies*,<sup>4</sup> is written for both lawyers and non-lawyers alike (although I cannot imagine any non-lawyer paging through a Law Review for any reason, especially perusing book reviews). The co-authors, Paul Bergman and Michael Asimow, who are professors at the UCLA School of Law (who do not include their own biographies or photographs, unless Bergman and Asimow look

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\* Attorney at Law, Vogel, Kelly, Knutson, Weir, & Hunke, Ltd., 502 First Avenue North, Fargo, North Dakota 58107 USA.

1. There is just something about Law Review articles that seems to cry out for footnotes and citations. It was not easy to find a case law citation for this paragraph, but see *Snyder's Drug St., Inc. v. North Dakota St. Bd. of Pharmacy*, 219 N.W.2d 140, 143 (N.D. 1972), in which Chief Justice Erickstad begins a North Dakota Supreme Court appellate decision with the words: “Famous last words!”

2. Loosely quoted from the movies “Jaws I, II, and III.”

3. This is not an actual quotation but there is a recent movie called “That *Thing* You Do” and an older astronaut movie called “The *Right* Stuff”.

4. PAUL BERGMAN & MICHAEL ASIMOW, REEL JUSTICE — THE COURTROOM GOES TO THE MOVIES (1996).

a lot like Woody Allen and Humphrey Bogart), have picked sixty-nine trial movies by searching for the "great classics of the genre" but also some "not-so-great trial movies that present interesting legal and ethical issues."<sup>5</sup>

They have also ranked each movie on a scale of one to four gavels. Their ranking system is based on "the quality, dramatic power, and authenticity of the trial scenes in the movie. Four gavels is a classic, three is good, two is just okay, and one means ask for a new trial."<sup>6</sup>

The authors generally provide a summary of "the story" followed by a legal analysis of the various issues that may have arisen during the movie. They often conclude with a segment entitled "trial brief." It is the authors' intention, and I believe they do it well, to advise the reader when Hollywood is bending the rules "to inject drama or humor into trial movies."<sup>7</sup>

They also attempt to answer the moviegoer's "unanswered questions" after they see trial movies. Was the plot legally plausible? Can the attorney do that? Did the judge properly rule on the various objections and why? For example, in the classic *Inherit The Wind* the authors explain the story, which involves the State of Tennessee passing a criminal statute which forbade any public school teacher from teaching that man descended from a lower order of animals. The local biology teacher violated the law only to be criminally prosecuted by a three-time presidential candidate who was hired by the local prosecutor for this purpose. The national media descended upon the town and the newspaper hires a famous trial lawyer to conduct the defense. Despite brilliant cross-examination of the prosecutor, who takes the stand as an expert on the bible, the jury convicts the teacher. The judge requires a minimal sentence of a \$100 fine and the fill-in prosecutor has a stroke and dies. In the legal analysis of the movie, the authors discuss the wisdom of change of venue (which was not requested); the purpose of jury selection (which was used here for long speeches by both attorneys); jury nullification in a criminal case; and finally, many of the evidentiary rulings, including the testimony by the opposing counsel as an expert witness.

Of course, *Inherit the Wind* is a recreation of the Scopes monkey trial that actually occurred in Dayton, Tennessee, in 1925. The ACLU advertised for a teacher willing to cooperate in a challenge of the statute, and apparently the local businessmen thought that a trial would bring them national attention. The teacher was actually a football coach who never taught evolution but generally discussed football during biology

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5. *Id.* at xviii.

6. *Id.*

7. *Id.*

class. The football coach/teacher was never actually called as a witness because he knew nothing of evolution, and the school boys who testified about the incident in question had to be coached. The fill-in prosecutor was obviously William Jennings Bryan and Clarence Darrow was retained by the ACLU to defend Scopes. As in the movie, Darrow actually called Bryan to the stand as an expert on the bible, but the judge struck the entire cross-examination as irrelevant. Both sides agreed that the jury should receive a directed verdict of guilty and neither side made closing arguments. Bryan lived five days after the trial having arranged for publication of his summation before he died. On appeal, the Tennessee Supreme Court reversed the conviction but upheld the statute.<sup>8</sup> The Court recommended that the case not be retried in the interests of "peace and dignity of the state" and it was not.<sup>9</sup> This statute remained on the Tennessee books until it was repealed in 1967, but the football coach was the only person ever prosecuted under it.

The authors take a similar approach, more or less, to discussing the other sixty-eight trial movies mentioned in their book. The movies are organized into eight sections:

**The Story You Are About to See is True . . .** — Although there are other true crime movies in other sections of the book, there are eleven movies discussed here which include *Inherit the Wind*, *Judgment at Nuremberg*, and *A Man for All Seasons*.

**Men in Uniform** — The trial movies collected here deal with the system of military justice and include classics such as *Breaker Morant*, *The Caine Mutiny*, as well as more current movies such as *A Few Good Men*.

**The Lighter Side of Lawsuits** — As the title implies, the trial movies here are generally satires, and the best of the lot is *My Cousin Vinny*.

**Heroic Lawyers and Clients** — The movies in this category are designed to improve the perception of lawyers and include *To Kill a Mockingbird*, *In the Name of the Father*, and *Philadelphia*.

**Don't Become Too Attached to Your Client** — Not too many non-criminal cases in this category, although the trial movies discussed here address not only romantic involvements but also friendship. The movies discussed here include the classic *Witness for the Prosecution* and *The Jagged Edge*.

**It's Nothing but a Bunch of Circumstantial Evidence** — There are some great trial movies in this category including *A Place in the Sun*, *Fury*, and *Presumed Innocent*.

**Unusual Judges and Jurors** — This includes two of the all-time classics, *Anatomy of a Murder*, and *Twelve Angry Men*.

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8. *Scopes v. State of Tennessee*, 289 S.W. 363, 367 (1927).

9. *Id.*

**Dollars and Sense** — The majority of the civil cases found their way into this category including *Libel*, *Kramer v. Kramer*, and *Miracle on 34th Street*.

Of the sixty-nine movies analyzed, all but eleven deal with criminal law in some way. I am frankly baffled as to why more trial movies have not been written about probate, tax law, mortgage foreclosures, and the like, but I suspect that Rumpole of the Bailey is right when he states:

When I was called to the Bar, too long ago now for me to remember with any degree of comfort, I may have had high-flown ideas about general practice of a more or less lush variety — divorcing duchesses, defending stars of stage and screen from imputations of unchastity, getting shipping companies out of scrapes. But I soon found that it's crime which not only pays moderately well but which is also by far the greatest fun.<sup>10</sup>

I certainly do not mean to suggest to the non-criminal law practitioners that practicing criminal law is any more interesting than drafting contracts, probating estates, or answering complex tax questions, but perhaps some of you may wish to volunteer for the federal court appointment list.

I was surprised by the number of Academy Award nominations and Academy Awards that trial movies have collected over the years. Of the thirteen "four gavel winners," all but one (*Libel*, a non-criminal case) was either nominated for or received Academy Awards. The four gavel list is as follows:

*Anatomy of a Murder*  
*Breaker Morant*  
*The Caine Mutiny*  
*Fury*  
*Inherit the Wind*  
*Judgment at Nuremberg*  
*Libel*  
*The Life of Emil Zola*  
*A Man for All Seasons*  
*My Cousin Vinny*  
*To Kill a Mockingbird*  
*Twelve Angry Men*  
*Witness for the Prosecution*

Of the remaining fifty-eight movies, another twenty-four also received

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10. JOHN MORTIMER, *THE TRIALS OF RUMPOLE* (1988).

Academy Award nominations and Awards or both.

In addition to summarizing the story of the movie and providing analysis, the authors also offer four sidebars throughout the book:

- Women Trial Lawyers in the Movies
- The Hearsay Rule
- Circumstantial Evidence
- Character Evidence

In three of these “digressions” the authors explain, in layman’s language, various niceties of the hearsay rule, the rules against bad character evidence introduction, and an explanation of circumstantial evidence. (Where was this stuff in law school?) The fourth sidebar discusses the stereotypical treatment women trial lawyers often receive in the movies.

For those attorneys who believe we do not need a book about trial movies to explain the abuses that Hollywood inflicts on these movies to encourage attendance, let me offer the following. A number of these movies are based, sometimes literally, often loosely, on true events. I found it extremely interesting, for example, to read the true facts of the movie *The Accused*, which details the attempts of a victim of a gang rape to seek justice against the barflies who cheered on the rapists.

And come on — do all of us really know all the ins and outs of the rules of evidence? For example, in the analysis of my favorite, *My Cousin Vinny*, the authors explain that Vinny’s girlfriend, Mona Lisa, would be eligible to testify as a mechanic even though her background was that of a hairdresser:

Of course, half the cast turns out to be expert mechanics. Vinny, Mona Lisa, the FBI agent, and Trotter [prosecutor] all sound like they should be maintaining the *Starship Enterprise* rather than doing hair or trying cases. They may explain why it’s so difficult to get a decent tune-up these days; qualified mechanics are writing movies or practicing law.<sup>11</sup>

In short, I would recommend that you pick up a copy of this book, and, as importantly, rent as many of these movies as possible. As an aside, I have always wanted to write a book about a true crime case, but I may have to be satisfied with simply writing a book review of a book about the true crime genre.

Fortunately, this book predates all of the O.J. books and what I presume will be all of the O.J. movies. I suspect a sequel will be necessary.

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11. BERGMAN & ASIMOW, *supra* note 4, at 107.

