

# GETTING THE INSIDER'S STORY OUT: WHAT POPULAR FILM CAN TELL US ABOUT LEGAL METHOD'S DIRTY SECRETS

by

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*I said there is no justice as they led me out the door and the Judge said,*

*"This isn't a court of justice, it's a court of law."*

*Line From a Hilly Bragg song, "Waiting on Remand," Worker's Playtime (1988)*

*In this paper, the authors seek to use the insights gained by viewing and thinking critically about a range of Hollywood films to better illuminate the disciplinary blindspots of law. Both law and film are viewed as social institutions, engaged in telling stories about social life. Hollywood films are often critical of law and legal institutions. Law is dismissive of its representation within popular culture. However, the authors argue that law disregards cinematic criticism about itself at its peril and that there is much to learn by taking cinematic portrayals of law very seriously—not as representations of the truth of law, but as analogies for how law itself operates in constructing truth. Indeed, the authors conclude by arguing that law requires a better conception of itself as a culturally productive institution. Law, like film, is not simply engaged in the finding of truth, but also more fundamentally in the making of meaning.*

## I. INTRODUCTION

Hollywood has long been obsessed with law, truth, and justice. In particular, Hollywood cinema has sought to trouble the correspondence between law and justice that is presumed by most traditional approaches to legal institutions and theory. A classic opposition between law and justice is found in films such as *Adam's Rib*, *Mr. Smith Goes to Washington* and *The Man Who Shot Liberty Valance*. The films work by creating a slippage between what is cinematically represented as the essential truth of a matter and a lesser, limited or distorted truth that the law is able to grasp. The dramatic tension turns on the desire that the "whole truth" be revealed so that justice may be done. More recent films that trade (sometimes ambiguously) upon this particular dichotomy include *The Thin Blue Line*, *Theina and Louise* and *The Insider*. Sometimes a heroic protagonist (like a Karen Silkwood or an Erin Brockovich) is able to save the day, stitching together the threads of law and justice through extraordinary perseverance and at great personal cost. Often, however, the legal system is seen as beyond

redemption. *Outlaw* films, like *Unforgiven* or *Thehna and Louise*, dictate that whatever measure of justice is to be seen will be in the hands of the characters.

Legal academics have also been troubled by these questions for some generations. Beginning with the insights of the legal realists in the first part of the last century, scholars have sought to point out the slippages between the ideals of law and its operation from many different perspectives. Film-critics and law and economics scholars may find themselves united on little else, but their critiques of the operation of formal legal doctrine have the same source. The discipline of law, as we describe below, has remained, in some aspects, remarkably resilient to these critiques.

In the paper that follows, we seek to use the insights gained by viewing and thinking critically about a range of Hollywood films to better illuminate some of the more shadowy corners of our own discipline. While we are not suggesting that film-makers have any better access to "truth" about law than law professors, we do suggest that thinking about how both "justice" and the "real" are constructed in film will help us to see parallel processes at work in the legal world. The paper begins with a two part introductory section, in which we present the conceptual problematic of the paper and review the extant scholarship on law and film. In the second section, we examine three dimensions along which a new critical cinematic legal methodology might be constructed. Ultimately, we argue that the discipline of law disregards cinematic criticism about itself at its peril. Indeed, we suggest that there is much to learn by taking cinematic portrayals of law very seriously, not as representations of the "truth" of law, but as analogies for how law itself operates in constructing truth.

## II. THE DISCIPLINE OF LAW AND ITS CRITICS

### A. Law, Truth and the Question of Meaning

This paper takes its inspiration (and its title) from the recent Hollywood film (based on a "true story") in which a recently fired executive of a tobacco company is convinced to go public with vital inside information concerning the tobacco industry's purposeful manipulation of the addictive properties of nicotine in their cigarettes by a deeply committed and strategically adept producer for the CBS news program 60 Minutes. Despite the producer's heroic efforts, the legal maneuverings of "big tobacco" manage to obstruct the public airing of the insider's interview. The interview is finally aired only when all the information has already become available to the public and the credibility of the "insider" has been virulently attacked in a personal smear campaign. While we will have more to say about this film later, by way of introduction we would simply like to point out that the story of *The Insider* directs our attention to a number of issues which we are troubled by. Among other things, the film reveals the deep interpenetration between the institutions of popular culture (here, the world of news-magazines and "infotainment") and law and invites us to consider the role of the legal system in the search for "truth."

At a most fundamental level, both this paper and the film are about

unpacking the role(s) law plays in the construction of social meaning. While both law and film are institutions which have historically enjoyed, in David Black's phrase, a "license to arbitrate the social imaginary," in neither case is this process particularly transparent. That is, the processes through which these institutions shape our perceptions of the meaning of things are neither generally acknowledged nor well understood. Legal institutions form a significant part of the terrain on which struggles over meaning take place and yet this paper will argue that scholars are hampered in their ability to effectively account for the social role of law because the discipline of law doesn't have an adequate conception of itself as a "meaning-making" or "truth-finding" institution. The Hollywood film industry is not similarly constrained, and we will argue that rather than dismissing movies about law for their lack of technical veracity (*c.f.*: the "hearsay rule" did not work that way; a cross examining lawyer would never ask a question to which she didn't know the answer), we may look to films such as *The Insider* for the insights they provide into our disciplinary blindspots. In the second part of this paper, we will identify and explore three insights related to the construction of meaning: the role of narrative; the role of "brute perception;" and the implications of audience reception and multiple readings. To some extent, these insights track arguments which have for some time been made by critical legal scholars, feminists, critical race theorists and others. However, in this paper, we seek not only to build on these critiques, but also to push them more firmly to the centre of public dialogue concerning both law's claims to legitimacy and its meaning-making function.

Our collaboration had its origins in an interdisciplinary project at the University of British Columbia, a project whose main ambition has been to examine a range of contemporary challenges to the process by which legal knowledge is constructed, and thereby, to influence our collective understandings of the nature of that knowledge. One of the guiding premises of that project is that despite considerable amount of social and legal change over the course of the past several decades if not the past century, conventional representations of the discipline of law have remained remarkably unchanged. From the outside, legal institutions, the practice of law and the law itself appear to have been dramatically transformed, yet from the inside (inside law schools, and to a lesser extent, courtrrooms and law offices) the parameters of the discipline appear to have strayed little from their nineteenth century positivist roots. Even at the beginning of the 21st century, in the Canadian law schools where we spend our days, the law is conventionally understood as an autonomous, self-contained system of rules; to study the "law" means to study legal doctrine as found primarily in case law and statute; legal reasoning is taught as the primary "method" through which legal doctrine is articulated and discussed. The method of legal reasoning is presented as analogous to scientific reasoning; it is expected to aspire to the same standards of objectivity and coherence.