

Ten Great Courtroom Dramas

And What We Can Learn From Them

A Birmingham Business and Property Courts Event

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1 It is great pleasure to welcome you this evening to this event organised by Birmingham Business and Property Courts Forum. Most lawyers will admit that, at least to some extent, they were motivated in their choice of career by cinematic depictions of lawyers at work. There are so many legal dramas that a book has been published discussing 69 of them, giving each a rating of between one and four gavels.¹ In the US, and for all I know in the UK, you can take courses on the depiction of lawyers in popular culture.²

2 Alas, the celluloid or stage fantasy soon gives way to reality, and when we re-watch the films that inspired us in later life, we spend our time spoiling the enjoyment of others by pointing out inaccuracies in procedure or modes of address, and generally insisting:

“It’s not like that.”

It is so much harder reading documents in real time than in a carefully cut montage sequence, in which you know when you have found something significant because of the orchestral crescendo that has built in the background.

3 This evening, however, I am hoping to re-connect fantasy law and the reality of the litigated experience, by looking at ten great courtroom dramas, and considering whether they have any lessons to offer the practising lawyer.

No 1: The Castle (1997)

4 We begin with *The Castle*, a 1997 Australian comedy directed by Rob Stitch shot in 11 days on a budget of A\$750,000. The film centres on the Kerrigan family who live in a suburb of Melbourne, and who find their family home threatened by a compulsory purchase order so that the neighbouring airport can be expanded. The Kerrigans hire a local lawyer, Dennis Denuto, to fight their cause.

5 In an immortal scene, Denuto appears in Federal Court to challenge the constitutionality of the order, to be asked by the judge whether he is relying upon any particular legal authority. After floundering around, he picks up a copy of the Australian Constitution, and tells the judge “this is a blatant violation of the Constitution of the Commonwealth of Australia, and, when it comes to violation, they don’t come any bigger”. When the Judge asks “what section of the Constitution has been breached?”, Denuto replies:

¹ Paul Bergman and Michael Asimov, *Reel Justice: The Courtroom Goes to the Movies* (2006).

² Michael Asimow and Shannon Mader, *Law and Popular Culture* 2nd (2013).

“What section? There is no one section. It’s just the vibe of the thing.”

- 6 When asked to be more specific, he takes the Judge (at random) to a section allowing the Federal Government to pass laws relating to copyright, before concluding:

“It’s the vibe of it. It’s the Constitution. It’s *Mabo*, It’s justice. It’s law. It’s the vibe and, ah, no, that’s it. It’s the vibe. I rest my case.”

- 7 It is difficult to capture how deeply that scene has penetrated the Australian legal psyche in cases in which one party seeks to support their case by some form of written instrument – a contract, a statute, a regulation – but is unable to point to any specific words doing so. Generally, lawyers invoke the film to critique an opponent’s arguments. For one among many examples, in *Royal Flying Doctor Service (Queensland Section) Limited v Australia Nursing and Midwifery Federation*,³ the Judge noted:

“The Respondent submitted that they had acted in accordance with the Act and the Order and that the Applicant’s claims that ‘there is no lawful basis for protected action’ are made without reference to any section of the Act. The Respondent compared the application to the submission in the famous Australian film *The Castle*, submitting it was tantamount to ‘it’s the vibe, Your Honour.’”⁴

- 8 In *Freeman v The Queen*⁵ Guy Reynolds SC almost fell into a *Castle* reference by accident, submitting “there is a tendency, I would suggest, that is manifest in the decisions of the courts below to overread *Cachia* to look, as it were, at the atmospherics – I am trying not to use the word ‘vibe’ - of the case rather than to what it actually says.”

- 9 And when making submissions in support of an application for permission to appeal to the High Court of Australia in *East v The Queen*⁶ in relation to the scope of s.19 of the Police Powers and Responsibility Act, Neil Stubbins submitted the Act’s scope was “restricted to the extent of the principle that a man’s home is his castle ...”, Justice Kiefel responded:

“I was hoping you would not say that, I thought we would hear about the vibes”.

- 10 So, lesson number 1 is beware of the vibe. However, while waiting outside the court, Daryl Kerrigan meets Lawrence Hammill, who has come to watch his barrister son perform in court in a different case. They strike up an unlikely friendship, and it turns out Hammill is a retired QC with an interest in constitutional law who offers to come

³ *Royal Flying Doctor Service (Queensland Section) Limited v Australian Nursing and Midwifery Federation* [2023] FWC 3025, [22].

⁴ See also Judge Warwick Neville in *Moyland & Shearer* [2023] FedCFamC2F 1202, [138(c)]: “This and other arguments discussed below, came awfully close to the notorious ‘vibe’ submission from the iconic Australian film, ‘The Castle.’”

⁵ *Freeman v R* [2001] HCA Trans 33.

⁶ *East v R* [2009] HCA Trans 157.

out of retirement to argue the case before the High Court of Australia. Denuto, sitting behind him, sees the lawyers on the other side passing up a succession of notes to their QC during argument, and decides to do the same. His first note reads “would you like a glass of water?” The next:

“That was bloody brilliant.”

- 11 Needless to say, Hammill wins the day and the Kerrigans’ home is saved. So, what more further lessons can we learn? I will offer you three possibilities:
- a. Sometimes, a KC does make all the difference?
 - b. Or good lawyers, like good wine, only get better with age?
 - c. Or in court, always ask yourself “is my note really necessary?” Although it’s all done on WhatsApp these days, I’m told.

No 2: *Erin Brockovich* (2000)

- 12 *Erin Brockovich* is a film based on a real case and real lawyers: Edward L Masry, played by Albert Finney, and the titular Erin, the most famous paralegal in the world played by Julia Roberts. In 1993, Masry and Brockovich filed a class action suit against the Pacific Gas and Electric Company on behalf of residents of the town of Hinkley, California alleging that they had been seriously harmed by contamination of the water supply. In 1997, by which time they had been joined by two large law firms and had 648 clients, they obtained a US\$333 million settlement following a private arbitration. Masry’s share was worth US\$40m.
- 13 *Erin Brockovich* has many lessons for lawyers, in both its real and imagined form.
- 14 The successful combination of the old and cynical Masry, and the young and passionate Brockovich, reminds us that there is a place for both experience and wide-eyed enthusiasm in litigation, preferably working together. One of the great adjustments of judicial life is that you tend to have rather more exposure to experience than youthful enthusiasm! Erin is not even a qualified lawyer but a self-trained paralegal from an unconventional background. Yet she has human and tactical insights aplenty. She reminds us that however big the team, and whatever the background or experience of any particular lawyer, everyone has something to offer.
- 15 The film is also an important reminder that law is ultimately a people business, and a good lawyer is generally a people person. That is Erin’s particular skill – whether flirting with the clerk at the Water Board to get access to the data which provides the basis of their case, or knowing the names and contact details of all 600 clients when challenged by Pacific’s lawyer as to who they are.
- 16 She is also a demon negotiator, in a world in which a good settlement is even more important than a good trial. At the second negotiation with Pacific’s lawyers, she asks them what value they would place on their own vital organs, before telling them that the water they have been drinking in Masry’s office comes from Hinkley’s supply. We are told that a number of water companies may be facing claims over allegations of unauthorised sewage discharges. It would be interesting to see the colour of the water

served at any settlement meetings.

No 3: *My Cousin Vinny* (1992)

- 17 *My Cousin Vinny* is an American comedy directed by Jonathan Lynn, and starring Joe Pesci and Marisa Tomei. Lynn is English, and studied law at Pembroke College, Cambridge. Quite how much of that experience he brought to bear in *My Cousin Vinny* can only be a matter of conjecture.
- 18 As you will know, the film centres around two New York students who find themselves in the wrong place at the wrong time, and charged with armed robbery in Alabama. They reach out to Vinny Gambini, one of the students' cousins and an aspirant personal injury lawyer, to come and defend them. Vinny brings his fiancée, auto-mechanic Mona Lisa Vitto, with him.
- 19 Due to his ignorance of procedure and courtroom etiquette, Vinny has a series of disastrous encounters with trial judge Chamberlain Haller, to the point where he spends a night in gaol for contempt. But gradually Vinny's nous wins over the Judge and destroys the prosecution case. A climactic scene comes when he puts his by now thoroughly disenchanted fiancée on the stand, asks for her to be declared hostile. He then uses her automotive knowledge to show that the tire tracks left by a car fleeing the scene had come from a different model to the apparently similar car the students were driving.
- 20 *My Cousin Vinnie* has a large number of legal fans. Judge Richard Posner of the US Court of Appeals for the Seventh Circuit, in his *Law and Literature*,⁷ described the film as:

“particularly rich in practice tips: how a criminal defense lawyer must stand his ground against a hostile judge, even at the cost of exasperating the judge, because the lawyers primary audience is the jury, not the judge; how cross-examination on peripheral matters can sow serious doubts about a witness credibility; how props can be used effectively in cross-examination (the tape measure that demolishes one of the prosecutions eyewitnesses); how to voir dire, examine, and cross-examine expert witnesses; the importance of the *Brady* doctrine ... how to dress for a trial; contrasting methods of conducting a jury trial; and more.”
- 21 In a 2019 decision, *Novato Healthcare Center v National Labor Relations Board*,⁸ Chief Judge Merrick Garland, then the Chief Judge of the United States Court of Appeals for the District of Columbia and later Attorney General of the United States, began his decision by stating:

“In 1992, Vincent Gambini taught a master class in cross-examination”.
- 22 Garland went on to quote extensively from Vinny's cross-examination when he had challenged a witness's evidence as to how many minutes passed between the time the students were seen entering the store and the time he heard a gunshot by reference to the time it would take to prepare a breakfast of grits and eggs.

⁷ Richard Posner, *Law and Literature* (3rd) Harvard University Press), 446-7.

⁸ *Novato Healthcare Center v National Labor Relations Board* F 3d No 17-1221 (DC Cir 2019).

- “Q. Well, how much time was they in the store?
- A. Five minutes.
- Q. Five minutes? Are you sure, did you look at your watch?
- A. No.
- Q. Oh, oh, I’m sorry, you testified earlier that the boys went into the store, and you had just begun to make breakfast, you were just ready to eat, and you heard a gunshot. . . . So obviously it takes you five minutes to make breakfast.
- A. That’s right. . . .
- Q. Do you remember what you had?
- A. Eggs and grits.
- Q. Eggs and grits. I like grits too. How do you cook your grits? You like ‘em regular, creamy, or al dente?
- A. Just regular, I guess.
- Q. Regular. Instant grits?
- A. No self-respecting Southerner uses instant grits. I take pride in my grits.
- Q. So, Mr. Tipton, how could it take you five minutes to cook your grits, when it takes the entire grit-eating world twenty minutes?
- A. I don’t know. I’m a fast cook I guess.
- Q. I’m sorry Are we to believe that boiling water soaks into a grit faster in your kitchen than on any place on the face of the earth?
- A. I don’t know.
- Q. Well, perhaps the laws of physics cease to exist on your stove? Were these magic grits? . . . Are you sure about that five minutes? . . .
- A. I may have been mistaken.”

- 23 The film has also appeared in a judgment in this jurisdiction, Sir Peter Jackson’s very moving decision in *Father v Mother*.⁹ In the kind of emotionally and intellectually challenging case which Family judges deal with on a daily basis, Sir Peter heard a case in which a young’s boy father wanted the boy – referred to as Sam - to come and live with him in Scandinavia. Sam wanted to go, but his mother wanted Sam to continue living with her and his stepfather. Sir Peter set out his reasons for concluding that Sam should continue to live with his mother in the form of a letter to Sam. Sir Peter’s letter expressed the hope that Sam would come to understand the reasons why he had made that order, and concluded:

“Lastly, I wanted to tell you that your dad and I enjoyed finding out that we both love the film *My Cousin Vinny*, even if it might be for different reasons. He mentioned it as an example of a miscarriage of justice, while I remember it for the best courtroom scenes in any film, and the fact that justice was done in the end.”

⁹ *Father v Mother* [2017] EWFC 48.

- 24 So, what lessons can we learn from *My Cousin Vinnie*? I am going to suggest three.
- 25 First, as in all professional contexts, appearances do matter. Court hearings are, for the most part, formal settings and lawyers should always dress accordingly. None of Vinny's early outfits did him any favours. Although he did pull off the "grits" cross-examination in a purple suede tuxedo.
- 26 Second, witnesses who appear hostile may turn out to be very helpful – as Mona Lisa did, when her evidence about the effects of independent rear suspension and "Positraction" swung the case.
- 27 And finally, don't give up just because you think you are on the wrong side of the Judge at the start of the case. Keep doing what you need to do, and in due course your perseverance and force of argument may win them round. And even if they don't, you will have done your best.

No 4: *To Kill A Mockingbird* (1962)

- 28 *To Kill A Mockingbird*, the 1962 film based on Harper Lee's 1960 novel, presents us with the ultimate lawyer hero – Atticus Finch. His universal appeal crosses the political spectrum, inspiring Michal Gove and Baroness Shami Chakrabarti among others.¹⁰ Atticus is in many ways an unlikely legal hero – he loses the pro bono murder case he takes on, before a racist jury. And his innocent client is killed in prison. *Mockingbird* presents a story of ill-fated idealism, but it has inspired many into law, and illustrates a key mission of law in tackling discrimination and injustice, even if not always successfully.
- 29 The intervening 60 years have seen rather greater debate in the U.S. about whether Atticus truly represents a legal ideal, or someone whose participation in an unjust society helped to legitimise that system. Some also suggest he is a hypocrite, pointing to the fact that he does not report Boo Radley to the police for killing Bob Ewell, pretending Ewell fell on a knife.¹¹ Whatever might be said of Atticus, he is a far worthier role model than the thoroughly uninterested Judge Taylor, who comes out of the hearing very badly. You will find very few judge-heroes in cinema. Judge Dredd doesn't count.
- 30 Atticus is in many ways a contradiction. At times he is utterly pragmatic, telling us "never, never, never on cross-examination ask a witness a question you don't already know the answer to was a tenet I absorbed with my baby food". On other occasions he is the ultimate idealist, telling the jury:

"There is one way in this country in which all men are created equal – there is one human institution that makes the pauper the equal of a Rockefeller, the stupid man the equal of an Einstein and the ignorant man the equal of any college president. That institution, gentlemen, is a court Our courts have their faults, as does any human institution, but in this country our courts are the great levellers, and in our courts all men are created equal."

¹⁰ *The Guardian* 11 July 2015.

¹¹ Tim Dark, "Lawyers, Ethics and *To Kill A Mockingbird*" (2001) 25 *Philosophy and Literature* 127.

- 31 It will not come as a surprise that the book has been referred to over 65 times in US courts. Not all of those references are reverential. In *Potter-Miller v Reed*, Presiding Judge Smith said of a litigant in person’s appeal:¹²

“In her wide-ranging and largely irrelevant statement of facts ... the appellant failed to make any argument or citation of legal authorities”

To which there is a footnote:

“Appellant’s passing and cryptic reference to *To Kill A Mockingbird* does not constitute a citation of legal authority”

- 32 *Mockingbird* offers some lessons for life as well as for law. In *Lavery v Lavery*,¹³ in a case addressing a ruinous dispute over a family company in Northern Ireland, His Honour Judge McFarland observed:

“Harper Lee in *To Kill a Mockingbird* attributes Jem Finch with the words that:

‘you can choose your friends, but you sho’ can’t choose your family an’ they’re still kin to you no matter whether you acknowledge ‘em or not, and it makes you look right silly when you don’.

Both the Petitioner and the Respondent may wish to reflect on this.”

No 5: *A Few Good Men* (1992)

- 33 *A Few Good Men* began life as a 1989 play written by Aaron Sorkin, creator of *The West Wing*. It was filmed in 1992 with an all-star cast including Tom Cruise, Jack Nicholson, Demi Moore, Kevin Bacon and Kiefer Sutherland. As you know, it centres on the court-martial of two marines accused of murdering a fellow marine, William Santiago, at a military base in Guantanamo Bay. It gradually becomes apparent that the victim died as a result of a bullying culture established by the base’s commanding officer, Colonel R Jessup, by which under-performing soldiers were subject to a hazing called a “code red” to induce them to apply for a transfer.
- 34 Sorkin was inspired to write the play by the experiences of his sister, a lawyer who did a three year stint in the US Navy Judge Advocate General’s Corps. She found herself sent to Guantanamo Bay to defend a group of marines who had nearly killed a fellow marine called William *Alvarado* in a hazing incident. The incident took place after Alvarado had written to his Congressional representative to report that a fellow marine had fired shots into Cuba. When the marines realised that Alvarado was in serious trouble, they immediately called for help and he made a full recovery. The marines argued that the hazing reflected an implied order from a superior officer called a “Code Red”. They won honourable discharges. A number of them later sued

¹² *Potter-Miller v Reed* 690 SE 2d115 (2000).

¹³ *Lavery v Lavery* [2020] NICH 8, [20].

the film company for defamation, an event reported by the US entertainment publication *Variety* under the headline “A Few Litigious Marines”.¹⁴

35 Although inspired by real life events, at least from the perspective of civil litigation, *A Few Good Men* is, in many ways, a lesson in how not to conduct a case. Case preparation seems to involve walking around a room holding a baseball bat or hoping a cocktail of alcohol and self-pity will produce inspiration. There is an expectation that it is possible to win a case on cross-examination alone without supporting material – Tom Cruise’s Lieutenant (JG) Kaffee appears not to have read Lord Leggatt’s judgment in *Gestmin* on the inherent superiority of documentary evidence.¹⁵ There have been numerous real life attempts to emulate the achievement in that case of winning a case by causing a witness to lose their temper, but it is generally a highly counterproductive tactic. And while none of that should matter, because the film is superb entertainment, it, and films like it, can create wholly artificial expectations of what cross-examination can achieve and how it should be conducted.

36 The reality is that the cross-examination in legal drama is scripted – when Aaron Sorkin is involved, superbly so – but the real life cross-examiner does not have that luxury. Sometimes, however, the Judge does. In the summer of last year, I tried a case which had a rather technical element of working out the use to which a whole series of aero-engine parts had been put, by reference to the codes used on shipping orders. I will set out, without further comment, my exchanges with one of the counsel in closing:

“1 ... Your Lordship will see that the
2 evidence from Mr Loret was that if something
3 was shipped to an AOG store or AOG code, that
4 provides a good starting point, and in my
5 submission that makes sense because the code
6 shows that the unit was actually shipped to an
7 AOG store.
8 MR JUSTICE FOXTON: So as a starting point
9 I should read the codes?
10 MR CAPLAN: Yes.
11 MR JUSTICE FOXTON: I have wanted to ask
12 this question in a courtroom for a very long
13 time, Mr Caplan, but did you order that code
14 read?
15 MR CAPLAN: I was going to say when it
16 comes to another bit of my submissions they
17 can’t handle the truth, but you have pre-empted
18 me. Perhaps I will say that later. I did not
19 order the code read, no.”

No 6: *Twelve Angry Men* (1957)

¹⁴ *Variety* 21 February 1994.

¹⁵ *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), [2020] 1 CLC 428.

- 37 *Twelve Angry Men* is a 1954 TV play famously filmed with Henry Fonda as “Juror No 8” in 1957. It is ironic that what is often regarded as one of the great courtroom dramas shows us very limited time in court, and we never see a lawyer. The heroes are members of the public – somewhat surprisingly they are all men, even though women sat on juries in New York from 1937. When the jurors retire, they initially vote 11-1 in favour of conviction, Fonda the hold-out. By testing the evidence, he gradually talks the others around or exposures the prejudices of certain jurors: one influenced by his poor relationship with his son who is a similar age to the defendant, another through racial prejudice.
- 38 If the play had been set in England and Wales after 1967, when majority verdicts were introduced,¹⁶ it would have been very short indeed, and Fonda and co home by teatime. By contrast, in 2020 the United States Supreme Court in *Ramos v Louisiana* held that the right to trial by jury guaranteed by the Sixth Amendment to the Constitution required a unanimous verdict. A conclusion reached, ironically, on a 6-3 majority.
- 39 The film teaches us the importance of a careful evaluation of evidence. But it may go rather too far. Fonda challenges the testimony of one witness who claims to have heard a fight and then run to his door to see the defendant leaving the building, pointing to the slow and laboured manner in which the witness approached and left the witness box. In a breach of his jurors’ oath, Fonda produces his own evidence by showing how easy it is to buy a switchblade of the kind the defendant had purchased and which was found near the body. The noise of passing trains casts doubt on what another witness heard. The problem is no one ever sits back – as judges and jurors are told to do – and asks, “while something can be said about each piece of evidence individually, what about their collective weight?”
- 40 The film has been referenced in US decisions, in which it has been found to offer something for both sides on the importance of a single juror. In *USA v Ramos*,¹⁷ a conviction was challenged because one juror – “Juror 13” – was dismissed during deliberations. The Court split, but each thought their decision was supported by *Twelve Angry Men*. Judge Stuart Kyle Duncan, dissenting, held that the dismissal of Juror 13 did not render the conviction unsafe. He recalled that Fonda, as Juror No 8, had exposed the racial bias of Lee J Cobb, Juror No 3, “noting not every holdout juror is Henry Fonda. Some may be Lee J. Cobb.” But the majority overturned the conviction, Judge James Graves responding:

“The dissenting opinion’s reference to the play/movie *Twelve Angry Men* is surprising. Obviously, it is a fictional jury, but if we indulge the reference for the moment, it supports the majority opinion, not the dissenting opinion. It demonstrates the importance of each juror to the outcome of a case and the fact that one juror can sway the other eleven. Had the judge in that play eliminated Juror No. 8 early on, as many of his fellow jurors would have supported at the

¹⁶ By the Criminal Justice Act 1967.

¹⁷ *USA v Ramos* No 17-41274, Fifth Circuit Court of Appeals.

time, the defendant would have been convicted. Instead, one by one, Juror No. 8 convinced the other to acquit. While *Twelve Angry Men* is fictional, the fact that one juror can influence the others and should not be lightly eliminated from the panel is not.”

- 41 *Twelve Angry Men* is oft-parodied. In episode of *The Simpsons*’ called “The Boy Who Knew Too Much”, Homer Simpson is the “hold out” juror in a case against Mayor Quimby’s son, Fred. He is not inspired by a search for truth, but the desire to continue enjoying the luxury hotel in which the jury has been sequestered. Homer’s attempt at Henry Fonda rhetoric rather gives the game away:

“I’m only doing what I think is right. I believe Freddy Quimby should walk out of here a free hotel.”

- 42 But the best parody is Tony Hancock’s timeless version, in which Hancock and Sid are members of a jury and Hancock is elected jury foreman. To inspire his fellow jurors who are keen on a quick conviction, Hancock tells them:

“Does Magna Carta meaning nothing to you? Did she die in vain?”

No 7: *Legally Blonde* (2001)

- 43 And now to one of my guilty pleasures. *Legally Blonde* is a feel-good comedy directed by Robert Luketic and starring Rees Witherspoon as Elle Woods, a sorority girl from a party school who seeks to win back her unworthy preppy boyfriend by applying for the Juris Doctor law degree at Harvard University. She applies to Harvard, notwithstanding her father’s view that “law schools are for people who are boring, ugly, and serious.” Perish the thought.
- 44 There, she overcomes embarrassment and scepticism, winning a prestigious internship, and then taking over the defence in a high-profile murder trial. It was based on a novel by Amanda Brown, inspired by her experience of being a fashion-obsessed law student at Stanford Law School. In a case of life imitating art, she wrote the novel on pink paper with a pink furry pen, and an agent picked the script out of a pile for that reason.
- 45 Much of my interest in *Legally Blonde* stems from the drama of the classroom rather than the courtroom. Growing up, I had been fascinated by a film and TV series set at Harvard Law School called *The Paper Chase*, based on a novel by John Jay Osborn Junior, who went on to become a law professor at the University of Miami, UC Berkeley and the University of San Francisco. In their different ways, *Legally Blonde* and *The Paper Chase* make the important point that studying law is meant to be hard work, but those who put in that hard work will find it rewarding. SLIDE 33 In her first class, Woods and her fellow law students are reminded by Professor Stromwell of Aristotle’s observation that:

“Law is reason free from passion.”¹⁸

46 However, in her speech as valedictorian, Elle questions that observation, declaring:

“On our very first day at Harvard, a very wise Professor quoted Aristotle: ‘The law is reason free from passion’. Well, no offence to Aristotle, but in my three years at Harvard, I have come find that passion is a key ingredient to the study and practice of law – and of life. It is with passion, courage of conviction, and a strong sense of self that we take our next steps into the world, remembering that first impressions are not always correct. You must always have faith in people. And, most importantly, you must always have faith in yourself.”

While I never thought I would say this, I think that is a case of:

“Elle Woods 1; Aristotle 0”.

47 The trial scenes are rather more outlandish, although great fun. Elle overcomes those who persistently under-estimate her, chauvinism and harassment to become lead counsel for the defence, and, under the supervision of a licensed attorney, pulls off a spectacular acquittal.

48 And in jurisdictions across the world, law students working in university law clinics under the supervision of qualified solicitors and barristers, are providing superb support to litigants who are otherwise without legal representation. A survey performed by Law Works for the Law Society looking at the position in 2020¹⁹ found that over 3,000 students took part in pro bono programmes in 2019-2020, that figure being a significant underestimate of the total because the survey only captured responding institutions. 77 of the 78 law schools who replied carried out pro bono work. All the students were supervised by qualified lawyers, 81% by qualified solicitors and 31% by qualified barristers, and student surveys reported high levels of satisfaction with CLE (clinical legal education) as a learning experience, and a means of equipping them for practice. There are many lawyers who had their first experience of an actual client in a CLE context, acting in a small dispute rather like Elle’s appearance in a case to gain custody of her hairdresser’s dog. Although, unlike Elle, none of them would ever make the mistake of passing themselves off as a qualified lawyer.

49 In the film, when Elle is seeking permission from the trial judge to conduct the defence, she cites Massachusetts Supreme Judicial Court Rule 3.03 to support her. That rule allows senior law students, who have one year or less to go on their law degree, with the written approval of their Dean to appear *pro bono* in civil and criminal cases under the general supervision of a qualified lawyer. Harvard Law School students working at its law clinics regularly appear in the Massachusetts courts under this provision²⁰ – although I doubt any have ever won a case by knowing that no one who just had a perm will take a shower.

¹⁸ August Immanuel Bekker (ed), *Completed Works of Aristotle* (1831-357) III.1287a32.

¹⁹ Law Works, *Law School Pro Bono and Clinic Report 2020*.

²⁰ [Clinics in Action - Harvard Law School | Harvard Law School](#)

No 8: *The Lincoln Lawyer* (2011 film, 2022-, series)

- 50 This film and, so far, two streaming series are based on Michael Connelly's series of novels about LA lawyer Mickey Haller who initially has no office, and practises law from his Lincoln Navigator car – chauffeur-driven, you will be pleased to hear, rather than trying to run a legal practice hands-free. The character of Micky Haller is based on two real-life attorneys:
- a. David Ogden, a friend of Connelly's who worked at a number of courthouses and locations around the LA area, and hired a driver to make his work more efficient.
 - b. And Dan Daly, a Florida defense attorney. He drove himself to court but listened to audio tapes of cases. In the finest tradition of US law, he later told a journalist: "There was very little time that wasn't billed while I was driving."
- 51 One possible lesson from Haller's success is that it is ultimately your lawyering which matters, not how luxurious your office is. In many ways Haller is almost a precursor of the remote lawyer of the pandemic and post-pandemic era, using technology to interface from remote locations. Views seem to be shifting on whether lawyers benefit or suffer by working out of the office. And while Haller does not have a prestigious office, he does have a prestige car. I wonder how "The Lada Lawyer" would have gone down with the denizens of LA crime.
- 52 There other perils of practising out of your car beyond loss of contact with fellow lawyers. Haller's papers are often stolen – as they were, for example, in season 2 of the series based on the novel *The Fifth Witness*. I am still waiting for Haller to be taken to task for his failure to take the steps required by the GDPR or the Code of Conduct to preserve the confidentiality of client material. Perhaps that will be the centrepiece of the next season.

No 9: *Witness for the Prosecution* (1958)

- 53 Most courtroom dramas are set in a US legal context, reflecting the dominance of US legal as well as popular culture. *Witness for the Prosecution* is a rare exception. The film is based on an Agatha Christie short story written in 1925²¹ which Christie later turned into a play. As well as two film versions, there is a long-running production of the play at London's County Hall in which twelve members of the audience play the part of the jury.
- 54 The legal hero is Sir Wilfred Robarts KC, a cigar smoking, monocle-wearing Old Bailey Hack and in many ways a precursor of Rumpole. Robarts is defending Leonard Vole, accused of murdering a wealthy widow. Vole's wife gives damning evidence against him for the prosecution, but it later emerges that this was part of a complicated plan, Voles' wife fabricating evidence to discredit her own testimony and making sure the evidence found its way to Robarts. The plot reflects the real danger that we sometimes attach more negative weight to evidence which is damaged in cross-

²¹ "Traitors Hands" published in *Flynns*, in the edition of 31 January 1925.

examination than positive weight to evidence which is not. Lord Justice Scrutton in *Hobbs v CT Tinling & Co* pointed out the fallacy in this approach:²²

“But by destroying that evidence you do not prove its opposite. If by cross-examination to credit you prove that a mans oath cannot be relied on, and he has sworn he did not go to Rome on May 1, you do not, therefore, prove that he did go to Rome on May 1; there is simply no evidence on the subject.”

- 55 A key moment in the film – an invention of the screen-writers Billy Wilder and Harry Kurnitz – comes when Robarts cross-examines the wife, bluffing her into believing that the papers he is holding in his hand are incriminating letters, when he later reveals them to be an invoice for some “extremely becoming Bermuda shorts”.
- 56 This may be based on an incident involving Sir Edward Marshall Hall KC, who bluffed a witness in a breach of promise case by pretending to have the original form of a telegram submitted to the Post Office, when in fact it had been destroyed, and Hall had created another by sending his own telegram.²³ Alan Dershowitz recounts a similar event in his career in *Letters to a Young Lawyer*.²⁴ Surreptitious tape recordings were available of various compromising conversations between a police officer and Dershowitz’s client, but not of one particular conversation when the defendant said the officer had promised he would not be prosecuted or made a witness in relation to the particular crime he was eventually charged with if he provided certain information. Dershowitz began readings conversations of the transcripts of the taped conversations to the officer, and, in the course of doing so and “without missing a beat”, carried on reading what was not in fact a transcript of a tape, but his client’s account of what had been said but not recorded. When the Judge found out that Dershowitz had bluffed the officer into an admission, he accused him of “reprehensible practice.” Dershowitz was able to respond with the example of “Honest Abe” Lincoln, no less, who once cross-examined a witness who claimed to have observed a crime by moonlight by suggesting he was holding an Almanac which showed there was no moon at the time in question: it being suggested he was variously holding some old calendar, a Almanac for the wrong year, or that the Almanac did not contain the relevant information after all.
- 57 In Dershowitz’s case, the Court of Appeals commented generally on the exemplary conduct of all the advocates.²⁵ Dershowitz was clearly right to suggest that there is an element of bluff in all cross-examination, but the line is a difficult one to draw.

No 10: Miracle on 34th Street (1947, 1994)

- 58 I want to conclude with *Miracle on 34th Street*, one of the greatest Christmas films. The definitive, black and white version, was released in 1947, starring Maureen O’Hara, Edward Gwenn as Kris Kringle/Santa Claus and a very young Natalie Wood. In 1994, the film was remade with Richard Attenborough as Kris Kringle.

²² *Hobbs v CT Tinling & Co* [1929] 2 KB 1, 21. On the case see Foxton, *The Life of Thomas E Scrutton* (Cambridge University Press 2013), 300-301.

²³ Edward Marjoribanks, *The Life of Sir Edward Marshall Hall* (Victor Gollancz Ltd 1929), 86-87.

²⁴ Alan Dershowitz, *Letters to a Young Lawyer* (Basic Books, 2001), chapter 30.

²⁵ *USA v Huss, Spiegel, Smillow* 482 F.2d 38 (2nd Cir) 1972.

59 The plot involves a well-known New York department store, Macy's, which hires a very convincing Santa Klaus for its toy department, only for the individual concerned to claim he is the real thing. Following a psychological evaluation, attempts are made to commit Mr Kringle to a mental health institution. When I first saw the film, I was reminded of the observation of Chico Marx when Groucho takes him through a complicated business contract ("the party of the first part shall be known in this contract as the party of the first part.") and which included a sanity clause:

"You can't fool me. There ain't no sanity clause."²⁶

60 The case comes before Judge Henry X Harper, Kringle's defence being that he really is Santa Klaus. Harper is told by his political agent that if he rules that Santa Klaus does not exist, he can kiss goodbye to re-election. Kringle's attorney subpoenas the prosecutor's son to confirm his belief that Santa Klaus must exist, because his father had told him so, and would not lie. Judge Harper decides that governmental authority is needed to confirm that Kringle is recognised as the real Santa Klaus. That comes from a somewhat surprising source, when the US Postal Service decides to rid itself of many thousands of letters addressed to Santa Klaus by delivering them all to Kringle at the courthouse. Harper rules that "since the U. S. Government has seen fit to recognize Mr. Kringle as Santa Claus, this court will not dispute it. Case dismissed."

61 There are a number of lessons from *Miracle on 34th Street*.

62 First, the scenes in which the Judge and his election agent discuss the effect of a committal order on the Judge's re-election process remind us how fortunate we are to have avoided an elected judiciary in this jurisdiction.

63 Second, the court scenes serve as a reminder that judges prefer a route to an answer which can avoid the need for decisions on matters of social and political controversy, and a good advocate will always try and offer them one. Judge Harper's approach when asked early on to give a ruling on whether Santa Klaus exists is "the court will keep an open mind" on the issue.

64 Third, the Judge adopts a "one voice" approach to the issue of determining who the real Santa Klaus is, deferring to the view of the US government. That is the approach which the courts adopt when they are asked to decide who between two competing factions are the government of a particular country – most recently between the Maduro and Guido factions in Venezuela.²⁷

65 In some cases, it is possible to pass difficult decisions of this kind to a foreign law. A well-known example is *Bumper v Metropolitan Police Commissioner*.²⁸ One of the issues was whether the Arul Viswathana Swamy Temple and an artefact in the Temple known as the Sivalingam - a "carefully fashioned stone object representing a phallus"

²⁶ *A Night at the Opera* (1935).

²⁷ E.g. *Maduro Board of the Central Bank of Venezuela v Guido Board of Central Bank of Venezuela* [2021] UKSC 57, [2023] AC 156.

²⁸ *Bumper v Metropolitan Police Commissioner* [1991] 1 WLR 1362.

- had title to sue for stolen artefacts before the English court. Mr Justice Iain Kennedy at first instance held that both the Temple and the Sivalingam could sue here because they had legal personality under Indian law. The Court of Appeal upheld his decision with regard to the Temple, and did not find it necessary to consider the position of the Sivalingam – the late JG Collier suggesting that this was “no doubt out of delicacy and good taste.”²⁹

- 66 Collier asked, “should we not also allow Santa Claus in, since he has been given legal personality in Finland”, and contrasted the decision with that of the Court of Appeal in *Arab Monetary Fund v. Hashim*³⁰ that a body created by a treaty between foreign states, who had endowed it with legal personality, could not sue or be sued in the English courts. Collier observed “it is respectfully submitted that this is a farcical situation, and that for creating it the English judiciary is undeserving of the adoration which in India is accorded to a phallus.”

Closing credits

- 67 With what must be one of the most inventive and insulting comments by an academic on the judiciary, it is time for the closing credits to roll. Thank you to the Birmingham Business and Property Courts Forum for organising this event, Pinsent Masons LLP for hosting it, and to all of you for coming.
- 68 And I want to conclude by introducing a forthcoming attraction – like *The Godfather II*, one of those rare occasions when the sequel is even better than its predecessor. Mr Justice Andrew Henshaw took over from me as Judge in Charge of the Commercial Court on 1 September. It is a great pleasure to be able to introduce him to you this evening. I know he is very keen to continue the close ties between the Commercial and Circuit Commercial Courts, and that he looks forward to returning to Birmingham soon.

²⁹ JG Collier, “Of Temples and Phalluses and Suchlike Things” (1992) 51(1) CLJ 39-41.

³⁰ *Arab Monetary Fund v. Hashim* [1991] 2 AC 114 (reversed by the House of Lords on other grounds).