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Elyse Pepper

*St. John's University School of Law*

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# THE CASE FOR “THINKING LIKE A FILMMAKER”: USING LARS VON TRIER’S *DOGVILLE* AS A MODEL FOR WRITING A STATEMENT OF FACTS

*Elyse Pepper\**

## INTRODUCTION

There’s just something about a movie. The anticipation that takes hold when the lights dim, the crowd hushes, and the credits roll. We know a story is coming. A “story”—“what happened” to these people, in this place, at this time. It’s an outstretched hand, a gift from the filmmaker to us, the audience.

Although legal writers likewise convey what happened to particular people, in a particular place, at a particular time, few lawyers, and fewer law students, view the “stories” they tell from a filmmaker’s perspective. The “what happened,” as told through a brief’s “statement of facts,” is to be gotten over with, related as rapidly and innocuously as possible. The statement of facts is rarely conceived by the writer or received by the reader as a “gift.”

But it should be. Legal writing educators and members of the bench and bar highlight the importance of the client’s “story.” That cases are won on facts not law is an adage handed down from generation to generation.<sup>1</sup> Why, then, the dearth of formal instruction on how to tell the court “what happened”? The deficiency in the law school curriculum is indisputable. A review of well-known legal writing texts reveals only limited treatment of fact-writing.<sup>2</sup>

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\* © 2008, Elyse Pepper. All rights reserved. Professor of Legal Writing, St. John’s University School of Law. This Article is based on a presentation given at *Once upon a Legal Time: Developing the Skills of Storytelling in the Law* Conference, co-sponsored by the Legal Writing Institute and The City Law School, London, United Kingdom, July 18–20, 2007. I would like to thank Professors Patricia Grande Montana and Robert A. Ruescher for their invaluable comments.

<sup>1</sup> Robert H. Jackson, *Advocacy before the Supreme Court: Suggestions for Effective Case Presentations*, 37 A.B.A. J. 801, 803 (1951) (“[M]ost contentions of law are won or lost on the facts.”); Alex Kozinski, *The Wrong Stuff*, 1992 B.Y.U. L. Rev. 325, 330 (“There is a quaint notion out there that the facts don’t matter on appeal—that’s where you argue about the law; facts are for sissies and trial courts. The truth is much different. The law doesn’t matter a bit, except as it applies to a particular set of facts.”).

<sup>2</sup> Even some of the most respected first-year texts by the most renowned authors devote only a handful of pages to fact-writing, whether for predictive or persuasive purposes. See e.g. Gertrude Block, *Effective Legal Writing for Lawyers and Law Students* (5th

And the lack of mastery at the law school level has lasting implications. So many seasoned litigators who can effortlessly reconcile contradictory precedents, find support for arcane legal propositions, and recite chapter and verse from the *Bluebook*, struggle mightily when faced with the prospect of drafting the fact section. The results are predictable: briefs with lackluster fact presentations.

In all fairness, the study of law is appreciably different from the study of character, plot, and pacing. Most students who choose law school from among the graduate educational options do not inherently view themselves as creative types.<sup>3</sup> Law school does not aim to produce screenwriters and filmmakers. But it should produce legal writers who can convey their clients' stories in a compelling and sympathetic way. Incorporating movies as teaching tools within the Legal Writing curriculum may be a way out of the dilemma.

Movies can help law students make the connection between storytelling and legal outcomes. Indeed, the films that captivate us as an audience tell the very stories we must communicate as advocates. The narrative, structure, and style of a film can serve as a model for conveying a story in a legal context. Using Lars von Trier's 2003 film, *Dogville*, this Article explores the philosophy and process of crafting a series of events into a persuasive statement of facts. Examining the film's storytelling techniques and borrowing many of them allows the advocate to build a convincing narrative that will further the logical reasoning advanced in the brief's argument section.

*Dogville* is an ideal vehicle for discussing Applied Legal Storytelling.<sup>4</sup> The film recounts the tale of the relationship between the

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ed., Found. Press 1999) (three pages); Michael D. Murray & Christy H. DeSanctis, *Legal Research and Writing* (Found. Press 2005) (twenty-two pages); Richard K. Neuman, *Legal Reasoning and Legal Writing: Structure, Strategy and Style* (5th ed., Aspen Publishers 2005) (twenty-three pages); Diana V. Pratt, *Legal Writing: A Systematic Approach* (4th ed., Thomson/West 2004) (twenty-six pages); Mary Bernard Ray & Jill J. Ramsfield, *Legal Writing: Getting It Right and Getting It Written* (4th ed., Thomson/West 2005) (three pages); Helene S. Shapo et al., *Writing and Analysis in the Law* (4th ed., Found. Press 2003) (ten pages).

<sup>3</sup> On the other hand, Garret Epps, the Orlando John and Marian H. Hollis Professor at the University of Oregon School of Law, made a convincing case for teaching creative writing as a way to improve legal writing skills. See Garret Epps, Presentation, *Why Am I in Here While You're Out There?: Teaching Creative Writing to Law Students* (London, U.K., July 19, 2007).

<sup>4</sup> "Applied Legal Storytelling" refers to ways in which "everyday lawyers can utilize elements of mythology as a persuasive technique in stories told directly to judges—either via bench trials or via legal writing documents such as briefs—on behalf of an individual

inhabitants of a Depression-era Colorado town and a young woman, whose flight from neighboring gangsters forces her to seek asylum within its borders. The power clash between the townsfolk and the refugee, the transformation of plain, but decent, people to ruthless exploiters of the unfortunate, and the excessive reprisal of the victim, expose the cruelty of human nature.<sup>5</sup>

Poignant as the narrative of *Dogville* is, it is the film's restraint that serves as a critical example to the legal writer. Its cinematic style highlights the rawness of the story. It is narrated, much like a fable, and shot on a "black-box set" (a virtually bare stage with few props). The juxtaposition of the film's inflammatory substance with its minimalist form makes the audience experience the incident—participate, rather than observe—in much the way legal writers should inspire their readers.

Moreover, *Dogville* is an especially useful model from which to create a cinematically-inspired statement of facts because there are, as in any legal dispute, two plausible sides to the story. Thus, recasting the film in the context of a case, and applying its narrative and cinematic techniques, produces two distinct stories: one on behalf of the young woman, and the other on behalf of the townsfolk. Both stories draw in the reader so that he or she experiences the circumstances from the advocate's perspective, and ultimately goes into the argument prepared to agree with the advocate's analysis.

Part I of this Article introduces movies as a persuasive medium. Part II examines the value of movies as teaching tools in the law school context. Part III breaks down *Dogville* and demonstrates how it might be used to create two Statements of Facts in a fictionalized criminal case. Part IV recaps the lessons learned from using a film as a model for fact writing.

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client in everyday litigation." Ruth Anne Robbins, *Harry Potter, Ruby Slippers and Merlin: Telling the Client's Story Using the Characters and Paradigm of the Archetypal Hero's Journey*, 29 Seattle U. L. Rev. 767, 771 (2006).

<sup>5</sup> *Dogville* supports a number of interpretations, including, among others, a biblical perspective recounting the battle between the Old Testament morality of retribution and the New Testament morality of forgiveness, a political view criticizing American attitudes toward immigration practices and slavery, and a psychological reading centering on perversion and voyeurism. See Andrea Brighenti, *Dogville, or, the Dirty Birth of Law*, 87 Thesis Eleven 96, 97, 103 (Sage Publications 2006).

## I. MOVIES EMBODY THE ART OF PERSUASION

### A. Telling the Court "What Happened" in a Legal Dispute Is Critical to Success

If effective advocacy consists of telling the court not only *how your client can win*, but *why your client should win*,<sup>6</sup> the story the legal writer presents to the court is paramount.<sup>7</sup> Understanding what happened, why it happened, and how it happened motivates the court to rule in favor of one side over the other.<sup>8</sup> Indeed, "it may be impossible for humans to understand a human's behavior except as part of a story."<sup>9</sup> Particularly in our common law system, lawyers and judges rarely discuss a legal issue "without connecting it to some story, real or hypothetical."<sup>10</sup>

Developing the story for the court is so important because, as Prof. Llewellyn explains, "rules *alone*, mere forms of words, are worthless."<sup>11</sup> Rather, "the concrete instance, the heaping up of concrete instances, the present, vital memory of a multitude of concrete instances, is necessary in order to make any general proposition, be it rule of law or any other, *mean* anything at all."<sup>12</sup> Accordingly, even when there is a "statistical correlation between what

<sup>6</sup> Karl N. Llewellyn, *A Lecture on Appellate Advocacy*, 7 J. App. Prac. & Process 174, 188 (2005); Jacques L. Weiner, Jr., *Ruminations from the Bench: Brief Writing and Oral Argument in the Fifth Circuit*, 70 Tulane L. Rev. 187, 194 (1995).

<sup>7</sup> "The job of the advocate is to take the raw data of the client's story and reformulate it to conform to [an 'Idealized Cognitive Model'] and, therefore, to structure for the legal decisionmaker a sense of the situation that suggests only one specific outcome." See Steven L. Winter, *The Cognitive Dimension of the Agon between Legal Power and Narrative Meaning*, 87 Mich. L. Rev. 2225, 2272 (1989).

<sup>8</sup> Although the world of law still "does not overtly recognize 'narrative' as a category in the process of legal adjudication," legal scholars are beginning to realize that "both the questions and the answers in . . . matters of 'fact' depend largely on one's choice (considered or unconsidered) of some overall narrative as best describing *what happened* or *how the world works*." Peter Brooks, *Narrativity of the Law*, 14 L. & Literature 1, 1 (2002) (quoting Anthony G. Amsterdam & Jerome Bruner, *Minding the Law* 111 (Harv. U. Press 2000)).

<sup>9</sup> John Luebsdorf, *The Structure of Judicial Opinions*, 86 Minn. L. Rev. 447, 455 (2001).

<sup>10</sup> *Id.* at 456. It bears emphasizing that the legal writer must focus on "the role of both tellers and listeners in determining how a story goes together, and what it means, and how stories become effective in their listener's reaction to them, and participation in them." Brooks, *supra* n. 8, at 3.

<sup>11</sup> Karl N. Llewellyn, *The Bramble Bush: On Our Law and Its Study* 12 (Oceana Publications, Inc. 1960).

<sup>12</sup> *Id.*; see Richard K. Sherwin, *Law Frames: Historical Truth and Narrative Necessity in a Criminal Case*, 47 Stan. L. Rev. 39, 71 (1994) (arguing that "acausal 'happenings' take and leave us nowhere. . . . Without coherent stories, judgment becomes impossible.").

the evidence describes and the defendant's characteristics,"<sup>13</sup> without "a story," lawyers and judges resist imposing liability.<sup>14</sup> Rather, it is the "design, intention, and meaning" of a narrative that permits a court to side with the plaintiff or the defendant.<sup>15</sup> Thus, although it may be true that "[a] judge decides for ten reasons/nine of which nobody knows,"<sup>16</sup> the advocate can be certain that the persuasiveness of the story played no small part in the decision.

### *B. Films Do an Excellent Job of Telling "Legal" Stories*

Without doubt, films "satisfy our need for a compelling story."<sup>17</sup> But films with legal and jurisprudential issues as their subject matter are particularly resonant narratives because they involve stories about "what precipitates trouble and . . . what redresses trouble."<sup>18</sup> It is through the stories these movies tell that we come to see individuals as "heroes, villains, tricksters, stooges . . . and that we come to see situations as victories, humiliations, career opportunities, tests of character, menaces to dignity (and so forth)."<sup>19</sup> Films that examine the way law works in society "provide a unique mechanism for structured critical reflection on the dynamics of legal cultural storytelling."<sup>20</sup> They illustrate that audiences think "imagistically and visually."<sup>21</sup> And largely because "imagistic storytelling appeals to emotions and instinctual responses that are the primary targets of rhetorical persuasion,"<sup>22</sup> law movies endure. Not only do they inspire successive generations of filmmakers, but they linger in the minds of those who have seen them.<sup>23</sup>

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<sup>13</sup> Lubesdorf, *supra* n. 9, at 455.

<sup>14</sup> *Id.*

<sup>15</sup> Brooks, *supra* n. 8, at 4.

<sup>16</sup> Steven L. Winter, *supra* n. 7, at 2225 (citing W.S. Merwin, *Asian Figures* 65 (Atheneum 1973) (Chinese proverb)).

<sup>17</sup> James R. Elkins, *Popular Culture, Legal Films, and Legal Film Critics*, 40 *Loy. L.A. L. Rev.* 745, 789 (2007).

<sup>18</sup> *Id.* (quoting Amsterdam & Bruner, *supra* n. 8, at 45).

<sup>19</sup> *Id.*

<sup>20</sup> Philip N. Meyer, *Visual Literacy and the Legal Culture: Reading Films as Text in the Law School Setting*, 17 *Leg. Stud. Forum* 73 (1993).

<sup>21</sup> Philip N. Meyer, *Law Students Go to the Movies*, 24 *Conn. L. Rev.* 893, 904 (1992).

<sup>22</sup> *Id.*

<sup>23</sup> Between 1933 and 2005, no fewer than 240 movies in which a lawyer or the legal process was integral to the plot were released in the United States. See Wendy R. Leibowitz, *Lawyers in the Movies*, <http://www.wendytech.com/index.htm> (accessed Feb. 22, 2008).

Movie-goers and lawyers alike think of Spencer Tracy and Dick York in *Inherit the Wind*<sup>24</sup> when the phrase the “Scopes Monkey Trial” is uttered. We see Spencer Tracy and Maximilian Schell in *Judgment at Nuremberg*<sup>25</sup> when we think of the famous World War II tribunal. The image of Ron Silver and Jeremy Irons in *Reversal of Fortune*<sup>26</sup> springs to mind when we hear the names “Alan Dershowitz and Claus von Bulow.” And most of us picture John Travolta as Jan Schlichtmann in *A Civil Action*<sup>27</sup> when we remember the high profile cases against W.R. Grace and Beatrice Foods. Hollywood’s leading lights, from Katherine Hepburn<sup>28</sup> to Al Pacino,<sup>29</sup> have brought and continue to bring fictional lawyers to life year after year.<sup>30</sup> The storytelling capabilities of these films along with their “[p]opular images of lawyers, criminals, and the

<sup>24</sup> *Inherit the Wind* (United Artists 1960).

<sup>25</sup> *Judgment at Nuremberg* (United Artists 1961).

<sup>26</sup> *Reversal of Fortune* (Warner Bros. 1990).

<sup>27</sup> *A Civil Action* (Touchstone Pictures 1998).

<sup>28</sup> Hepburn played Amanda Bonner in *Adam’s Rib* (MGM 1949).

<sup>29</sup> Pacino has played lawyers on three occasions: Arthur Kirkland in *And Justice for All* (Columbia Pictures 1979), John Milton in *The Devil’s Advocate* (Warner Bros. 1997), and Roy Cohn in *Angels in America* (HBO 2003).

<sup>30</sup> A small sampling includes: Jim Carey as Fletcher Reede, *Liar, Liar* (MCA/Universal Pictures 1997); George Clooney as Miles Massey, *Intolerable Cruelty* (Universal Pictures 2003); Tom Cruise as Lieutenant Daniel Kaffee, *A Few Good Men* (Columbia Pictures); Mitch McDeere, *The Firm* (Paramount Pictures 1993); Matt Damon as Rudy Baylor, *The Rainmaker* (Paramount Pictures 1997); Robert De Niro as Harry Fabian, *Night and the City* (Twentieth Century-Fox 1992); Robert Duvall as Tom Hagen, *The Godfather* (Paramount Pictures 1972); Jerome Facher, *A Civil Action* (Touchstone Pictures 1998); Harrison Ford as Rusty Sabich, *Presumed Innocent* (Warner Bros. 1990); Gene Hackman as Jedediah Tucker Ward, *Class Action* (Twentieth Century-Fox 1991); and Avery Tolar, *The Firm* (Paramount Pictures 1993); Tom Hanks as Andrew Beckett, *Philadelphia* (TriStar Pictures 1993); James Mason as Ed Concannon, *The Verdict* (Twentieth Century-Fox 1982); Matthew McConaughey as Jake Tyler Brigrance, *A Time to Kill* (Warner Bros. 1996); Paul Newman as Frank Galvin, *The Verdict* (Twentieth Century-Fox 1982); Jack Nicholson as Jonathan Fuerst, *Carnal Knowledge* (AVCO Embassy Pictures 1971); Gregory Peck as Atticus Finch, *To Kill a Mockingbird* (Universal Pictures 1962); Joe Pesci as Vincent Gambini, *My Cousin Vinny* (Twentieth Century-Fox 1992); Keanu Reeves as Kevin Lomax, *The Devil’s Advocate* (Warner Bros. 1997); Kevin Spacey as D.A. Rufus Buckley, *A Time to Kill* (Warner Bros. 1996); Jimmy Stewart as Paul Biegler, *Anatomy of a Murder* (Columbia Pictures 1959); and Denzel Washington as Joe Miller, *Philadelphia* (TriStar 1993).

Actresses play attorneys on the big screen less frequently. *E.g.* Glen Close as Teddy Barnes, *Jagged Edge* (Columbia Pictures 1985); Jessica Lange as Ann Talbot, *Music Box* (TriStar Pictures 1989); Susan Sarandon as Reggie Love, *The Client* (Warner Bros. 1994); and Emma Thompson as Gareth Peirce, *In the Name of the Father* (Universal Pictures 1993). They do, however, play legal assistants and law students, *e.g.*, Julia Roberts as Erin Brockovich, *Erin Brockovich* (Universal Pictures 2000), and as Darby Shaw, *The Pelican Brief* (Warner Bros. 1993); and Sandra Bullock as Ellen Roark, *A Time to Kill* (Warner Bros. 1996).

legal system help people to understand, or think they understand, the reality these images depict."<sup>31</sup>

*C. Films Do a Markedly Better Job of Telling the  
Client's Story Than Briefs and Opinions*

Ironically, stories told for entertainment purposes in movies are frequently more convincing than stories told for much higher stakes. Although it is true that many films based on actual events contain fictionalized scenes that intensify the drama, and the advocate cannot similarly augment the record,<sup>32</sup> it is not necessarily the added material that enhances persuasiveness. Rather, it is the specificity of the situations in movies and the details the filmmaker cultivates that drive home the reality of the circumstances. That level of detail and specificity is often lacking in the legal versions of events.

Two recent films, *North Country*<sup>33</sup> and *Monster*,<sup>34</sup> are illustrative. *North Country* is based on the first class-action sexual harassment lawsuit, *Jenson v. Eveleth Taconite Co.*<sup>35</sup> It tells the story of a young mother who applies for and gets one of the first iron-mining jobs available to women in Minnesota. She and her fellow female miners are threatened, insulted, belittled, ogled, fondled, and physically attacked by their male co-workers and supervisors. The film depicts how the women are treated, on the one hand, as sexual objects and, on the other, as interlopers who are entitled to no civility, much less respect. Through dialogue, shot selection, lighting, music, and pacing, the film makes palpable the anguish of a mother who desperately wants to support her children, and is willing to fight hatred, violence, and humiliation to do it.

For example, from her first moment on the job, when her new supervisor christens her "his bitch," to the day she quits after that same supervisor forces her down on a mountain of taconite, his hands around her neck, his pelvis melded to hers, the slurs—

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<sup>31</sup> Richard K. Sherwin, *Nomos and Cinema*, 48 U.C.L.A. L. Rev. 1519, 1520 (2001).

<sup>32</sup> See Mary Ellen Gage, *The Impossible Takes a Little Longer*, 44 Albany L. Rev. 298, 308 (1980) (laying bare the challenge of reconciling professional ethics with the demands of a client. "The law may be stretched, hut how far? The facts may be dressed up, but how much?").

<sup>33</sup> *North Country* (Warner Bros. 2005).

<sup>34</sup> *Monster* (Newmarket Films 2003).

<sup>35</sup> *Jenson v. Eveleth Taconite Co.*, 139 F.R.D. 657 (D. Minn. 1991), *aff'd*, 130 F.3d 1287 (8th Cir. 1997).



“Rats,” “Cunts,” and “Blowjobs”—follow Josey Aimes (the fictional Lois Jenson) wherever she goes. Sometimes they are whispered as she passes by the rows of lunch tables filled with male miners in the break room. Sometimes they are scribbled in colored chalk on the dank walls of the mine’s passageways. Ultimately they are scrawled in excrement, four feet high, on every visible surface in the women’s locker room.

The threats against the women escalate in a scene in which, after months of pleas from women miners who suffer perpetual bladder infections from the inability to relieve themselves when out of locker-room range, management finally provides a portable toilet. Josey’s co-worker Sherrie steps inside to use it, but before she can get out of her work jumpsuit, several male co-workers start to rock the structure back and forth. Although it is arguable that it all begins as fun, the men continue to rock more and more violently, and Sherrie starts to panic when she cannot keep her balance as the structure tips over onto its side. A stream of waste and chemicals from the toilet empty out on to her, and the men exult in their victory. It is more than a symbolic gesture of their feelings for all the women at the mine.

The story the district court tells when certifying the class, however, is clinical—devoid of the circumstances’ sensibilities:

Sexually explicit graffiti and posters were found on the walls and in lunchroom areas, tool rooms, lockers, desks, and offices. Such material was found in women’s vehicles, on elevators, in women’s restrooms, in inter-office mail, and in locked company bulletin boards. Women reported incidents of unwelcome touching, including kissing, pinching, and grabbing. Women reported offensive language directed at individuals as well as frequent “generic” comments that women did not belong in the mines, kept jobs from men, and belonged home with their children.<sup>36</sup>

Nor does the appellate court’s opinion, affirming the mine’s liability for sexual discrimination and sexual harassment, do more than allude to what the plaintiffs endured:

[M]ale-focused references to sex and to women as sexual objects created a sexualized work place. *Id.* These references included graffiti, photos, and cartoons that male employees, including

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<sup>36</sup> 139 F.R.D. at 663. Even assuming that the *North Country* scenes described above were fictionalized to some extent, the court’s act of omitting the explicit words and events contained in the record—sanitizing the opinion—strips it of any force.

bargaining unit and salaried employees such as foremen, displayed throughout Eveleth Mines. *Id.* at 879–880. Other references included “verbal statements and language reflecting a sexualized, male-oriented, and anti-female atmosphere.” *Id.* at 880. . . . In one incident, a male employee pretended to perform oral sex on a sleeping female co-worker. *Id.* at 880. Other incidents involved men touching women in an objectionable manner. *Id.* Some women were presented with various sexual materials. *Id.* Judge Kyle concluded “the presence of sexual graffiti, photos, language and conduct . . . told women that *the sex stereotypes reflected in and reinforced by such behavior were part and parcel of the working environment at Eveleth Mines.*” *Id.* at 884.<sup>37</sup>

In stark contrast to the diffident portrayal by the court, the film conveys in a single scene the “sexualized, male-oriented, and anti-female atmosphere” that was “part and parcel of the working environment at Eveleth Mines.”<sup>38</sup> In that scene, at a meeting of the mine’s union brotherhood, Josey stands to address the membership about the working conditions she and her female co-workers face. The camera follows her—one lone woman—as she tentatively walks to the front of the room, which is packed to overflowing with male miners. With their eyes boring into her, their mouths set in anger, their arms folded in intractability, an underlying hum of hostility gives voice to the obstacle these women faced.

The film *Monster* presents an even greater divergence between the story told by the filmmaker and the story told by the legal writer. The film recounts the story of serial killer Aileen Wuornos, a highway prostitute who murdered seven clients, and who was sentenced to capital punishment in Florida. Although the film takes a moderately sympathetic view of Wuornos’s childhood, during which she was sexually abused and forced into prostitution to survive, it nevertheless holds her accountable for her actions. She is portrayed as a vengeful murderer; she is not justified in taking the lives of the men who preyed on her. Through close-ups of Wuornos’s facial expressions, shots of her posturing with her

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<sup>37</sup> *Jenson v. Eveleth Taconite Co.*, 130 F.3d 1287, 1292 (8th Cir. 1997) (emphasis added). Admittedly, the appellants gave the Eighth Circuit very little to work with. In the fifty-three-page brief on appeal, there were but two single references to specific offensive acts. See *Jenson v. Eveleth Mines*, No. 97-1147 (8th Cir. Mar. 8, 1997) (on file with Author). Appellants described how one female miner was given a dildo named, “Big Red,” *id.* at 3, and how a foreman approached another female miner, who was sitting in a truck with a male co-worker, and asked her if they had been “fucking.” *Id.* at 44 n. 43.

<sup>38</sup> *Id.*

weapon, and the monotone of her narration, the audience experiences the character's chilling ruthlessness as she executes one victim after another.

For example, Wuornos brings a customer who has given her a ride in exchange for sex out to a clearing in the woods. She spreads a tattered army blanket on the ground, and he starts to undress. She, on the other hand, watches him while smoking a cigarette, flicking her lighter with nervous energy. She tells him how a family friend raped her when she was a child. Her customer sits on the blanket, his trousers off, and looks at her. When she sees his face turned toward her in confusion, she tells him that she's not a "hooker." He gets up, gets dressed, and tells her that he's still willing to give her a ride. His confusion grows as she tells him that she doesn't need a ride because she's going to take his car. She laughs and pulls out a heavy silver pistol. They both look at the gun. He takes two steps back and puts his hand in his pocket. This is the situation in which Wuornos revels. She is in control and she relishes her victim's unease. He pulls his car keys out of his pocket, but, before he can give them to her, she aims the gun and shoots him in the stomach. He falls backward onto the ground, pleading for her to stop. Wuornos fires five more times in rapid succession, while he looks up at her. Then she strides away, full of fury despite the pleasure she took in the killing.

In contrast, the State's appellate brief in *Wuornos v. Florida*,<sup>39</sup> reads exactly like the police report from which it was taken. "The Statement of the Case and Facts" begins with the description of the death of a victim:

#### THE DEATH OF CHARLES HUMPHREYS

The southwest section of Marion County where the body of Charles Humphreys was found is on Highway 484, just west of 1-75 (R 528). It was at the end of a cul-de-sac (R 530). Humphreys was 6' ½" tall and weighed 200 pounds (R 595). He worked as an investigator for H.R.S., in child protective investigations (R 531). He did not carry a weapon in his job. No weapon was found at the scene (R 535). The day before his body was discovered he was in Wildwood, in Sumter County, conducting an investigation. His family reported him missing (R 532). His supervisor at H.R.S. identified his body (R 531). His body was fully clothed when found (R 535). His pants were zipped and his belt was buckled (R 544). No evidence was found at the

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<sup>39</sup> 644 So. 2d 1012 (Fla. 1994).

scene to indicate he had engaged in sexual activity (R 535). An I.D. case, with the badge missing, was found off Highway 27 (R 536). Police association cards, credit cards and papers concerning Humphreys's Oldsmobile Firenza were also found (R 537). A spent .22 caliber casing was found, as well (R 538). Bullets were removed from Humphreys's body during autopsy and examined (R 541). A cartridge case found with Humphreys's personal property had been fired in Wuornos's 9 shot .22 (R 634). Humphreys's briefcase was reported missing (R 543). It was recovered in a storage facility rented by Aileen Wuornos (R 541). It was opened using Humphreys's social security number (R 542). There was *one* wound to the upper part of the right arm (R 587). The *other* wound was to the right wrist (R 588). There was a donut abrasion on the right side of the abdomen consistent with a gun barrel being shoved into the body.<sup>40</sup>

Certainly, the drama inherent in the story, so effectively transmitted in the film, could be similarly "dramatized" on paper. There is no conceivable reason for the government to begin its story with a geographical description of Highway 484. Similarly, the height and weight of the victim, even if not extraneous information, is insufficiently important to appear so prominently in the presentation. The government does not even mention the wounds on the body until the very last part of the statement. There is nothing in the description of Charles Humphreys's death that even alludes to the heinousness of the killing and the monstrosity of the killer.<sup>41</sup> Indeed, the list of "facts" provided to the Florida Supreme Court in this recitation is merely a series of unconnected events; it tells no story at all.

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<sup>40</sup> Ans. Br. of Appellee at 1, *Wuornos v. Fla.*, <http://www.law.fsu.edu/library/flsupct/81059/81059.html> (Fla. Dec. 1, 1993).

<sup>41</sup> The Statement of the Case and Facts then chronicles the deaths of two other men, Troy Burress and David Spears. Those discussions are similarly bland. The apathy with which the prosecution presents this part of the story is all the more anomalous, because the latter part of the Statement of the Case includes Wuornos's confession, including the details of the circumstances surrounding each of the murders. *See id.* at 3-19.

## II. MOVIES MAKE EXCELLENT TEACHING TOOLS

### A. Films Have a Place in the Law School Curriculum<sup>42</sup>

We live in an age of “pervasive visual communication.”<sup>43</sup> Although there is limited empirical research documenting the precise visual learning abilities of law students,<sup>44</sup> legal educators agree that law students come to the academy well equipped to absorb knowledge through visual storytelling.<sup>45</sup> And film, more than virtually any other visual medium, can engage law students’ visual, interactive learning styles.<sup>46</sup> Films resonate with their audiences

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<sup>42</sup> There is no consensus on this point. Although at least twenty-five law schools, including my own, have upper-class electives in which films constitute the narrative of the course, many faculties do not see the value of using film in the law school classroom.

<sup>43</sup> Fred Galves, *Will Video Kill the Radio Star? Visual Learning and the Use of Display Technology in the Law School Classroom*, 2004 U. Ill. J.L., Tech. & Policy 195, 202 (2004); see Richard K. Sherwin et al., *Law in the Digital Age: How Visual Technologies Are Transforming the Practice, Theory, and Teaching of Law*, 12 B.U. J. Sci. & Tech. L. 227, 236 (2006) (“Storytelling in popular culture today is increasingly visual. Digital pictures, conveyed through television, movies, videos, CD-ROMs, DVDs, the Internet, and traditional print media, have come to dominate our entertainments, our politics, our news, and our methods of education, and now they are infusing law practice as well.”).

<sup>44</sup> Professor Robin Boyle has conducted learning styles studies with first-year law students at St. John’s University School of Law since 1998. See e.g. Robin A. Boyle & Rita Dunn, *Teaching Law Students through Individual Learning Styles*, 62 Albany L. Rev. 213 (1998); Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. Detroit Mercy L. Rev. 1, 20 (2003). Those studies found that anywhere from 8% to 22% of the St. John’s students tested were “high visual learners.” See Boyle, *supra* n. 44, at 20; Boyle & Dunn, *supra* n. 44, at 228.

<sup>45</sup> Galves, *supra* n. 43, at 202 (noting that modern law students are raised within an age of “pervasive visual communication,” absorbing much of their information through visual imagery); Philip N. Meyer & Steven L. Cusick, *Using Non-Fiction Films as Visual Texts in the First-Year Criminal Law Course*, 28 Vt. L. Rev. 895, 897 (2004) (noting that, through the proliferation of visual narratives in television and movies, law students are “bathed and swaddled in endless popular stories”); Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 Seattle U. L. Rev. 1, 35 n. 91 (1996) (“Visual learning techniques provide a pertinent illustration of techniques that . . . may augment and reinforce the learning of many students weaned on television and movies.”). Thus, although books are certainly still relevant in the law school classroom, “[v]isual learning begins very early [and frequently] continues into . . . higher education.” Galves, *supra* n. 43, at 202 n. 22. Law students are receiving more information visually than ever before. *Id.*

<sup>46</sup> Edward Rubin et al., *A Conversation among Deans from “Results: Legal Education, Institutional Change, and a Decade of Gender Studies” Harvard Journal of Law & Gender Conference, March 2006*, 29 Harv. J. L. & Gender 465, 482 (2006). Katherine Bartlett, Dean of Duke Law School, recognized the phenomenon after the law school invested heavily in video technology to augment classroom instruction. Twenty-five years ago, Dr. Howard Gardner, Hobbs Professor of Cognition and Education at Harvard University Graduate School of Education, identified spatial-visual intelligence as one of eight “intelligences” in his groundbreaking work, *Frames of Mind: The Theory of Multiple Intelligences* (Basic Bks. 1983).

so profoundly for three basic reasons. First, they invite the viewer on a journey.<sup>47</sup> Second, they provoke a particular response from the viewer.<sup>48</sup> Third, they convince the viewer of a truth.<sup>49</sup> In other words, by virtue of the filmmaker's intention, a movie draws the viewer off the sidelines and into the story. Thus, using movies as teaching tools would make the study of law far more accessible to students.

Consider first-year law students' experience with authority. When students begin their studies, many of them misunderstand the casebooks used in Torts, Contracts, Property, and Civil Procedure. They believe that the material printed in them was written to teach them the substantive law.<sup>50</sup> They forget that casebooks contain excerpts from real opinions that decided real disputes between real people.<sup>51</sup> In essence, from the beginning of their law school career, students divorce legal disputes, and in particular, the people who experience them, from legal doctrine.

Yet when the real life events that give rise to legal disputes are presented independent of the casebook, students empathize with the parties, spot the legal issues, and apply substantive law in response.<sup>52</sup> This is especially true when situations implicating legal issues are presented in movies.<sup>53</sup>

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<sup>47</sup> See Suzanne Shale, *The Conflicts of Law and the Character of Men: Writing Reversal of Fortune and Judgment at Nuremberg*, 30 U.S.F. L. Rev. 991, 997 (1996).

<sup>48</sup> See Walkyria Monte Mór, *Reading Dogville in Brazil: Image, Language and Critical Literacy*, 6 Language & Intercultural Commun. 124, 126–127 (2006) (noting that this process parallels "'literacy,' defined as a socially constructed critical practice of reading, as the interpretative ability of the viewer is constantly stimulated to respond, resulting in enhanced critical abilities").

<sup>49</sup> Robert McKee, one of the foremost authorities on screenplay writing, explains that storytelling in film is "the creative demonstration of truth." Robert McKee, *Story: Substance, Structure, Style, and the Foundations of Screenwriting* 113 (HarperCollins Publishers 1997).

<sup>50</sup> R. Lawrence Dessem, *Pretrial Litigation Law, Policy & Practice* 12 (4th ed., Thomson/West 2007).

<sup>51</sup> *Id.* (discussing the disconnect students experience between the actual disputes underlying the cases of *Erie Railroad v. Tompkins*, 304 U.S. 64 (1938), and *Hansberry v. Lee*, 311 U.S. 32 (1940), and the legal doctrines those cases teach).

<sup>52</sup> Dean Katherine Bartlett observed that law students better understand the motivation and perspective of individuals involved in leading U.S. Supreme Court cases after watching video documentaries about them. In fact, according to preliminary testing done at Duke, students who viewed the videos "gain[ed] a deeper understanding of both the factual and analytical aspects of the cases." Rubin et al., *supra* n. 46, at 482.

<sup>53</sup> According to Steven Lipkin, movies, and, in particular, docudramas, "convince us that it is both logical and emotionally valid to associate cinematic proximity with moral truth." Steven N. Lipkin, *Real Emotional Logic: Persuasive Strategies in Docudrama*, 38 Cinema J. 68, 82 (1999).

That phenomenon should not be surprising. As Professor Sherwin has noted, “[l]aw is more than a system of rules and the fear of predictable consequences. It is a world made up of meanings that are drawn from shared texts and practices. It is a normative world, which means that embodied within it is a moral point of view, a normative vision.”<sup>54</sup> The powerful synergy between legal stories and film stems from their common ground. Both law and cinema are “theaters of conflict, spectacles through which we understand essential aspects of our humanity and society.”<sup>55</sup> As one scholar has remarked on the strength of film to unearth legal issues:

At its best, a movie can take the shadow of justice and injustice and, with its enlarged images flickering across the screen, remind us that law in the final analysis is a human enterprise, that there is a human cost behind both our failures and our successes. Films can return us to occasions which have tested the law—and tested it in the most human of terms. . . . Film not only tells us what kind of community we have become but is also capable of helping us understand what kind of community we ought to become . . . .<sup>56</sup>

Of course, not all movies are suitable vehicles for studying law.<sup>57</sup> But many films accessible to students raise universal themes inherent in the analysis of law and society.<sup>58</sup> Moreover, many movies address the issues that underlie lawsuits in every court in the country. Films that tell stories about, among other things, human rights,<sup>59</sup> civil rights,<sup>60</sup> racial discrimination,<sup>61</sup> sexual harassment,<sup>62</sup> divorce,<sup>63</sup> murder,<sup>64</sup> capital punishment,<sup>65</sup> in-

<sup>54</sup> Sherwin, *supra* n. 31, at 1526.

<sup>55</sup> Shale, *supra* n. 47, at 991.

<sup>56</sup> Rennard Strickland, *The Hollywood Mouthpiece: An Illustrated Journey through the Courtrooms and Back-Alleys of Screen Justice*, in *The Lawyer and Popular Culture: Proceedings of a Conference* 49, 58 (Fred B. Rethman & Co. 1993) (available at <http://tarlton.law.utexas.edu/lpop/etext/conf/strickland.htm>).

<sup>57</sup> *E.g.* *American Pie* (Universal Pictures 1999); *The Exorcist* (Warner Bros. 1973); *Pi* (Live Entertainment & Mediaworks Inc. 1998).

<sup>58</sup> See Mór, *supra* n. 48, at 127 (noting how, according to film realist Jean-Louis Comolli, cinematic images “duplicate[d] the ‘real’ itself, as [a] part of a social machine seeking to reproduce economic, ideological and symbolic values”).

<sup>59</sup> *Hotel Rwanda* (United Artists 2004).

<sup>60</sup> *Mississippi Burning* (Orion Pictures 1988).

<sup>61</sup> *To Kill a Mockingbird* (Universal 1962).

<sup>62</sup> *North Country* (Warner Bros. 2005).

<sup>63</sup> *Kramer vs. Kramer* (Columbia Pictures 1979).

sider trading,<sup>66</sup> corporate misfeasance,<sup>67</sup> products liability,<sup>68</sup> freedom of speech,<sup>69</sup> freedom of religion,<sup>70</sup> and fraud,<sup>71</sup> help students connect law to life.

*B. Films Have a Particular Significance in  
the Legal Writing Classroom*

It has been well documented that the first-year legal writing course focuses on legal analysis, to the exclusion of almost everything else.<sup>72</sup> The conventional IRAC approach, used to some degree in virtually every first-year writing program, doesn't even consider components other than the legal issue, the rule of law, the application of the rule of law to the factual scenario presented, and the legal conclusion.<sup>73</sup> Thus, when first-year legal writing students are asked to discuss what happened in a precedent case or to explain why a particular result should occur under a new set of circumstances, they list a series of unconnected events—some relevant, some irrelevant. Students have great difficulty seeing that convincing a reader is dependent in large part on telling a story, shaping those events so they have a particular meaning.<sup>74</sup> Instead, students recite the "facts."

I drive home the absurdity of the disconnect between "facts" and "story" in my legal writing classes with the following hypothetical:

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<sup>64</sup> *A Time to Kill* (Warner Bros. 1996).

<sup>65</sup> *Dead Man Walking* (Gramercy Pictures 1995).

<sup>66</sup> *Wall Street* (Twentieth Century-Fox 1987).

<sup>67</sup> *The Insider* (Buena Vista Pictures 1999).

<sup>68</sup> *The Rainmaker* (Paramount Pictures 1997).

<sup>69</sup> *The People vs. Larry Flynt* (Columbia Pictures 1996).

<sup>70</sup> *Inherit the Wind* (United Artists 1960).

<sup>71</sup> *Catch Me if You Can* (Dreamworks 2002).

<sup>72</sup> See Jeffrey D. Jackson, *Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses?* 43 Cal. W. L. Rev. 267, 303 (2007) ("[T]he doctrine of legal writing classes focuses on 'best practices' and legal strategy and is devoted in large part to analysis and reasoning.").

<sup>73</sup> Moreover, "logical arguments are persuasive not because of something inherently true about logic, but rather because the audience values and responds to logical arguments." Steven D. Jamar, *Aristotle Teaches Persuasion: The Psychic Connection*, 8 Scribes J. Leg. Writing 61, 62 (2002). An argument's premise must be drawn from "the experience and values of the audience." *Id.*

<sup>74</sup> Brooks, *supra* n. 8, at 4 (explaining that narratives do not "simply recount happenings; they give them shape, give them a point, argue their import, proclaim their results").



Your study group is meeting in the Cafeteria at noon, but by 12:15 one member, Pricilla, is still missing. Ten minutes later, Pricilla stumbles into the Cafeteria. Her clothes are torn, she has a cut on her forehead, and she's dragging her backpack. Do you cry, "quick—what are the facts?" Of course not. You cry, "Pricilla—what happened?!"

Bringing movies into the classroom can heal the rift.<sup>75</sup> Not only are films "part of the universe of meaning-making in which we all live," but they "suppl[y] at least some of the narratives and the storytelling styles that situate our being in a normative world."<sup>76</sup> Thus, movies can serve as a bridge to understanding the purpose and process of a story.

Moreover, film narrative follows accepted conventions, and, as a persuasive presentation, a film shares characteristics with a legal argument.<sup>77</sup> A finished film reflects the conscious choice of a storyteller who takes a point of view and supports it.<sup>78</sup> As Professor Philip Meyer explains, like filmmakers, "[l]awyers tell imagistic narratives constructed upon aesthetic principles . . . that control the formulation of plot-structure in commercial cinema. . . .

<sup>75</sup> Quite a bit has been written about the use of literary narrative technique in the context of teaching legal advocacy. See e.g. AALS Sec. Leg. Writing, Reasoning & Research, Annual Meeting Program, *Developing the 5th McCrate Skill—The Art of Storytelling*, 26 Pace L. Rev. 501 (2006); Linda H. Edwards, *The Convergence of Analogical and Dialectical Imaginations in Legal Discourse*, 20 Leg. Stud. Forum 7 (1996); Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 Rutgers L.J. 459 (2001); Philip N. Meyer, *Vignettes from a Narrative Primer*, 12 Leg. Writing 229 (2006) [hereinafter *Vignettes*]; Philip N. Meyer, *Retelling the Darkest Story: Mystery, Suspense, and Detectives in a Brief Written on Behalf of a Condemned Inmate*, 58 Mercer L. Rev. 665 (2007) [hereinafter *Darkest Story*]. Cinematic storytelling style, however, is different from, and in many respects, more effective than literary technique when telling a court the story. See Philip N. Meyer, *Why a Jury Trial Is More Like a Movie Than a Novel*, 28 J.L. & Socy. 133, 134 (2001) [hereinafter *Jury Trial*] (arguing that trial advocates are influenced most often by the oral and visual storytelling styles of Hollywood filmmakers, rather than the literary styles of novelists). Not only are we entrenched in a "post-literate storytelling culture" dominated by popular cinema, *id.*, but films create a complete universe for the viewer in ways that novels cannot. The audience enters a shared reality when watching a film; readers, on the other hand, construct their own independent vision of the novelist's description. Unlike film, literature leaves much to the individual imagination. A successful brief, however, draws a court into a specific universe; it welcomes the court to a shared reality—the one that favors the advocate's client.

<sup>76</sup> Sherwin, *supra* n. 31, at 1526.

<sup>77</sup> Lipkin, *supra* n. 53, at 68–69 (Docudrama "functions as a moral truth in its representation of the actual people, places, event, and actions at its source but also proffers an argument highly appealing to its audience . . .").

<sup>78</sup> See Mór, *supra* n. 48, at 126 (noting that filmmakers adopt methods intended to "elicit a particular reaction from the viewer").

We speak and think filmically. We have much to learn from visual storytellers working the same popular cultural turf."<sup>79</sup>

### *C. Legal Writers Should Adopt the Cinematic Storytelling Techniques of Filmmakers*

Appreciating the storytelling value of films is not enough. Before legal writers can effectively use movies as a model for fact writing, they must first understand the particular narrative structure and cinematic methodology filmmakers employ. Filmmakers rely on three elements to achieve synergy between the audience and themselves: the dramatic structure of the story, the characters who live the story, and the cinematic language used to tell it.

#### *1. The Dramatic Structure*

From a narrative perspective, films embrace the principle of causality<sup>80</sup>—in other words, every story event happens for a reason, and the reason is evident from the events depicted on screen.<sup>81</sup> Employing causality ensures that the filmmaker tells the story in an intentional, rather than random, way.<sup>82</sup> The filmmaker connects one event to another, building to a conclusion that cannot be denied.<sup>83</sup>

<sup>79</sup> Philip N. Meyer, *Visual Literacy and the Legal Culture: Reading Film as Text in the Law School Setting*, 17 *Leg. Stud. Forum* 73, 91 (1993).

<sup>80</sup> Shale, *supra* n. 47, at 1005 (explaining how E.M. Forster illustrated the difference "between flat narration and meaningful story as the difference between recounting 'the king died, and then the queen died' and 'the king died, and then the queen died of grief'").

<sup>81</sup> See David Bordwell, *The Way Hollywood Tells It: Story and Style in Modern Movies* 15 (U. Cal. Press 2006) (explaining our innate ability to comprehend movie narratives because they are a "heightening and focusing of skills we bring to understanding everyday social life—connecting means to ends, ascribing intentions and emotions to others, seeing the present as stemming from the past").

<sup>82</sup> Shale, *supra* n. 47, at 998.

<sup>83</sup> I compare the process of building a story to cooking. Certain dishes can be assembled randomly, in any order, without connection to the other ingredients. For instance, boiled potatoes, cream, and butter add up to mashed potatoes whether the cook adds the butter to the potatoes first and the cream second, or vice versa. On the other hand, as Prof. Sheila Simon explains, a lasagna must be assembled in a particular order. See Sheila Simon, *Brutal Choices in Curricular Design: Top 10 Ways to Use Humor in Teaching Legal Writing*, 11 *Persps.* 125, 125 (Spring 2003). If, instead of building alternate layers of noodles, sauce, and cheese, the cook piles all the noodles in the bottom of the pan, then pours on all the sauce, and tops the sauce with all the ricotta, the result will be, at least, disappointing. What emerges from the oven will not be a "lasagna." See *id.* (discussing how she illustrates the layering analogy with photographs of her husband serving lasagna in regular, disorganized and blender formats"). Facts must be handled like lasagna, not mashed

Further, film narratives draw from the very experiences and values of their audiences,<sup>84</sup> which allows viewers to not only recognize and identify with the characters and circumstances in the film, but also to collaborate with the filmmaker in interpreting the story.<sup>85</sup> Thus a film is a joint enterprise by the filmmaker and the viewer, which results in a shared understanding of “what happened.”

Commercial films, moreover, adhere to a conventional formula.<sup>86</sup> Renowned screenwriter William Goldman instructs novice writers that “[s]creenplays are three things: ‘structure, structure, structure!’”<sup>87</sup> Indeed, although “[w]hat makes a story interesting is creativity, what makes it believable is form.”<sup>88</sup> Robert McKee takes a similar position: “A story’s event structure is the means by which you first express, then prove your idea . . . without explanation.”<sup>89</sup> Story structure is critical, in large part, because it creates “an environment that is favorable for the mind to rely on . . . .”<sup>90</sup> Such an environment, Jerome Bruner explains, contains “rules not only about the propositional content of an utterance but about required contextual preconditions, about sincerity in the transaction, and about essential conditions defining the nature of the speech act . . . .”<sup>91</sup>

The well-established paradigm is that of the “hard” Three-Act narrative structure.<sup>92</sup> Act I is the “set up” or the “hook,” in which the characters and their goals are introduced.<sup>93</sup> An “inciting incident,”<sup>94</sup> something that drastically changes the protagonist’s life, triggers the dramatic action of Act I. Act II is the “complication” or

potatoes.

<sup>84</sup> Meyer, *Jury Trial*, *supra* n. 75, at 138 (discussing how Hollywood storytelling convention “enforces rather than defies the conventional shared understandings and the morality of the audience”).

<sup>85</sup> See Mór, *supra* n. 48, at 125–126 (discussing how the viewer moves from an observer to a co-producer of an image).

<sup>86</sup> Bordwell, *supra* n. 81, at 28.

<sup>87</sup> Mickael Rozwarski, *Life or Movie: Which Comes First?* 17 (Universal Publishers 2002).

<sup>88</sup> *Id.* (quoting Carlos De Abreu & Howard Smith, *Opening the Doors to Hollywood, How to Sell Your Idea, Story, Book, Screenplay, Manuscript* 170 (Crown Publishers, Inc. 1995)).

<sup>89</sup> McKee, *supra* n. 49, at 113.

<sup>90</sup> Rozwarski, *supra* n. 87, at 22.

<sup>91</sup> *Id.* at 22–23 (quoting Jerome Bruner, *Acts of Meaning* 63 (Harv. U. Press 1990)).

<sup>92</sup> Bordwell, *supra* n. 81, at 28; Meyer, *Jury Trial*, *supra* n. 75, at 141; see Syd Field, *Screenplay: The Foundation of Screenwriting* 16 (MJF Bks. 1994).

<sup>93</sup> Shale, *supra* n. 47, at 998.

<sup>94</sup> Rozwarski, *supra* n. 87, at 24.

"confrontation,"<sup>95</sup> in which the protagonist confronts a "catalyst,"<sup>96</sup> and struggles with "the forces of antagonism."<sup>97</sup> A "climax" occurs in the middle of Act II,<sup>98</sup> just as the protagonist is on the verge of taking control for the first time.<sup>99</sup> Act III is the "resolution," when the protagonist either achieves or falls short of the goal, and the conflict is settled.<sup>100</sup>

The Three Act Structure engages the viewer in a "carefully articulated mental and emotional experience."<sup>101</sup> A "set up" provides the background needed to understand the story that follows and to develop an attachment to the characters.<sup>102</sup> A "complication" deepens the viewer's interest by "changing the terms" of the set up, thus raising the emotional stakes.<sup>103</sup> A "resolution" settles the questions raised in the First and Second Acts, ultimately inviting the viewer to "recall the path the protagonists have taken and measure their success or failure."<sup>104</sup> The Three Act structure ensures that storytelling will be "the creative demonstration of truth."<sup>105</sup>

## 2. The Characters Who Live the Story

Commercial filmmakers realize that the audience must recognize and identify with the characters who tell the story.<sup>106</sup> Absent that connection, there can be no collaboration between the viewer and the storyteller. At a minimum, the protagonist must be someone with whom the audience can sympathize.<sup>107</sup> The audience must be able to identify with the characters' goals. "Hollywood stories are ones in which the leading characters are propelled into

<sup>95</sup> *Id.* at 22.

<sup>96</sup> *Id.* at 24.

<sup>97</sup> Shale, *supra* n. 47, at 998 n. 23.

<sup>98</sup> Rozwarski, *supra* n. 87, at 24. Some screenplay gurus instruct that Act II should culminate in "what has come to be called the 'dark moment' or 'darkest moment.'" Bordwell, *supra* n. 81, at 29.

<sup>99</sup> Rozwarski, *supra* n. 87, at 24.

<sup>100</sup> Shale, *supra* n. 47, at 1015.

<sup>101</sup> Bordwell, *supra* n. 81, at 42 (attributing the comment to Kenneth Burke in *The Psychology of Form*, Counter-Statement 31 (U. Chi. Press 1957)).

<sup>102</sup> *Id.* at 41 (discussing Kristen Thompson's analysis of plot structure).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 41–42. Thompson refers to the viewer's assessment of the protagonist's achievement as the "epilogue."

<sup>105</sup> McKee, *supra* n. 49, at 113.

<sup>106</sup> See Shale, *supra* n. 47, at 1001–1002.

<sup>107</sup> *Id.*; Meyer, *Jury Trial*, *supra* n. 75, at 138.

some personal odyssey, in pursuit of something they desire. By the journey's end, their experiences will have changed them in a significant way."<sup>108</sup>

As David Bordwell explains, the characters who populate Hollywood films "struggle to solve a clear-cut problem or to attain specific goals."<sup>109</sup> These characters are "discriminated individual[s] endowed with a consistent batch of evident traits, qualities, and behaviors."<sup>110</sup> Thus, films that resonate best are about recognizable characters resolving the "human conflicts" that their "incompatible goals and incommensurate values" create.<sup>111</sup> They are the films that force the protagonist to make the kinds of "hard choices and difficult decisions" we would rather not have to make.<sup>112</sup>

### 3. *The Cinematic Storytelling Language*

Because film so closely approximates reality, "it can communicate a precise knowledge that written or spoken language seldom can."<sup>113</sup> Filmmakers take advantage of the medium's unique connotative abilities by making deliberate cinematic choices<sup>114</sup> about casting, shot composition<sup>115</sup> (including distance, focus, angle, movement, lighting, and point of view), film texture and color,<sup>116</sup> sound,<sup>117</sup> and montage.<sup>118</sup> These cinematic "codes"<sup>119</sup> are integral to the viewer's perception of the story.

<sup>108</sup> Shale, *supra* n. 47, at 997. This is often referred to as the "mythic journey," modeled on scholar Joseph Campbell's theory: a hero from the ordinary world is called on to undertake an adventure; he enters a "special world" of trials, allies, and enemies"; after winning a "supreme ordeal," the hero returns to ordinary life "transformed." Bordwell, *supra* n. 81, at 33.

<sup>109</sup> David Bordwell, *Narration in the Fiction Film* 157 (1985).

<sup>110</sup> *Id.*; Bordwell, *supra* n. 81, at 29–30 ("Every . . . character must have a flaw . . . [and] conquer it. Hence the *character arc*.").

<sup>111</sup> Shale, *supra* n. 47, at 999.

<sup>112</sup> *Id.* at 1001.

<sup>113</sup> James Monaco, *How to Read a Film* 161 (3d ed., Oxford U. Press 2000) (available at <http://www.readfilm.com>).

<sup>114</sup> *Id.* at 162.

<sup>115</sup> *Id.* at 195.

<sup>116</sup> For example, a "grainy" image is associated with a "truthful" one. *Id.* at 194.

<sup>117</sup> *Id.* at 212.

<sup>118</sup> The way the shots of a film are put together to tell the story is also called "editing" or "cutting," the most familiar examples of which are the jump-cut, the fade, and the dissolve. *Id.* at 216, 225.

<sup>119</sup> *Id.* at 175. "Codes are critical constructions—systems of logical relationship—derived after the fact of film." *Id.* The combination of cinematic codes, culturally derived codes, and codes shared with other arts "make up the syntax of film." *Id.* at 179.

### III. USING *DOGVILLE* AS A MODEL FOR FACT-WRITING

What follows is a multi-step method for bringing the story of *Dogville* to life in a fictional murder case, *State of Colorado v. Grace Margaret Mulligan*. After viewing the film, discussing it, identifying the underlying themes and competing viewpoints, the class will be ready to draft two "Statements of Facts": one for the prosecution, and the other for the defense.

#### A. Step 1: View the Movie as a Group and Assign a "Statement of Facts"

Although it might seem counterproductive, it is worth watching *Dogville* as a class.<sup>120</sup> The film's unflinching examination of human nature evokes an intense response from the audience, and often viewers will visibly react and interact non-verbally during the movie.<sup>121</sup> Moreover, despite the movie's traditional linear Three Act structure, which is underscored by chapter titles segueing between sequences, *Dogville* is atypical in its look and sound. That, too, elicits special attention. Thus, a communal viewing experience is a more complete viewing experience.

The film tells the story of a young woman, Grace Margaret Mulligan, who comes to a small town seeking a safe haven from gangsters. Although they are disinclined to accept her at first, the townspeople grudgingly agree to give her shelter in exchange for work. But as the stakes get higher and it becomes riskier for the townspeople to hide her, they exploit, and, ultimately, enslave her. She takes her revenge at the end of the film, by killing everyone in the town and burning it to the ground.

The staging of the film is one of its most arresting aspects. The entire film takes place on an open black stage, with white chalk lines and labels marking out the town's various buildings, roads, and points of interest, much like a blueprint. There are no

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<sup>120</sup> Group viewing also ensures that everyone sees the entire film, under the same circumstances, without any disruptions. However, because the film is long—almost three hours—it might be necessary to schedule a special screening time.

<sup>121</sup> The film was excoriated by more than a few critics who perceived it as an attack on America for, among other things, its presence in Iraq. See Bo Fibiger, *A Dog Not Yet Buried: Or Dogville as a Political Manifesto*, 16 P.O.V.: Danish J. Film Stud. (U. Aarhus) 56 (2003). "Through his contrived tale of one mistreated woman, who is devious herself, von Trier indicts as being unfit to inhabit the earth a country that has surely attracted, and given opportunity to, more people onto its shores than any other in the history of the world. Go figure." *Id.* (quoting Todd McCarthy's review in *Variety*).

walls or ceilings—the audience sees everything that happens at any given time, unless the camera deliberately focuses the viewer’s attention on a specific action.

Striking, too, is the film’s use of a narrator who alternates between an on-and-off-screen presence. He provides a running commentary throughout the film—an inside track designed to let the audience believe it is getting the whole story. Yet through the ironic tone and text of the narration, the filmmaker evaluates every action that occurs and puts it in its proper context.

Because so many components are at play in *Dogville*, it is helpful to have students concentrate their attention on one of the three Acts. They should take notes during the film about what they see on screen (shot composition, shot sequencing, staging, and special effects), what they hear (dialogue, narration, sound effects, and music), and what they feel while watching that particular Act. Instruct them to list the characters with whom they sympathize and why, and ask them to note the legal themes, crimes, and defenses they notice. Before the following class, have each student write a “typical” “Statement of Facts.”

### *B. Step 2: Explore What Really Happened in Dogville*

Before discussing the events that transpired in each Act of the film, share some of the fact statements drafted by the students. A student might produce an accurate, but shapeless, factual presentation like this:

#### STATEMENT OF FACTS

Grace Margaret Mulligan, the daughter of a gangster from Georgetown, arrived in the Rocky Mountain town of Dogville on March 12, 1932. She was on the run from a notorious band of gangsters. Tom Edison, Jr. offered her shelter in the town, and she accepted. She provided services to the townspeople of Dogville in return for their protection. Over time, however, when police officers repeatedly came to Dogville to arrest her, the townspeople forced Grace to increase her working hours and submit to sexual assaults. She attempted to escape from Dogville by paying the local truck driver to smuggle her out of town in the back of his pickup. But she was discovered and apprehended, and subsequently chained to a fly wheel, which she had to pull behind her as she fulfilled her obligations to the townspeople. When the citizens of Dogville no longer knew what to do with her, Tom called her father who, along with his subordi-

nates, came to bring her back to Georgetown. After speaking with her father, Grace reconsidered her treatment by the people of Dogville. She concluded that they had acted reprehensibly, and without any excuse. When given the opportunity, she shot Tom and allowed her father's men to destroy the town.

Discuss the following points about the factual recitation with the class:

- Whether the Statement reflects either Grace's or the State's perspective.
- Whether the Statement raises any justification for what happened to Grace or the townspeople.
- Whether the Statement conveys any of the emotion they felt while watching the film.

To emphasize the distinction between what they saw and what they wrote, have the students explain what happened in the film, Act by Act. Focus their discussion on the dramatic structure of the film, the legal themes underlying the story, the characters' different points of view, and the visual and aural effects that caught their attention.

### ***1. My Students' Reaction to Act I: The Hook***

The students first commented that the inhabitants of Dogville were a ragtag collection of characters. Although a retired medical doctor lived in the middle of town, most of the residents appeared to be poor and uneducated. Moreover, it was immediately apparent to the students that Dogville was a lonely place, isolated at the edge of an impassable mountain. Life was hard and unsentimental in Dogville. There was little generosity, curiosity, or social grace among the townsfolk. The people of Dogville didn't "take nothin' from nobody," and aimed to keep it that way.

They all recognized that the inciting incident occurred when Tom Edison, Jr., the son of the retired physician, heard gunshots from the neighboring village of Georgetown. He discovered Grace, a distraught but elegant young beauty, on the run from gangsters. Tom brought Grace back to his home to see if he could help her. From their whispered conversation, which the students pointed out emphasized the air of secrecy surrounding the meeting, Tom learned that Grace feared the gangsters would kill her if she re-



turned to Georgetown. Tom suggested the people of Dogville would hide her, but Grace was skeptical that they would compromise their own safety for her. "They are good people," Tom responded, and he assured her that she "ha[d] a lot to offer Dogville."

The students easily identified Grace as a fish out of water. She is sensitive, where Dogvillians are cold. She comes from a privileged background, where Dogvillians barely scrape by. She openly admits her vulnerability, where Dogvillians take pride in their self-sufficiency. Yet, the students also saw the possibility of an alliance between Grace and the townspeople. Despite their differences, Grace and the people of Dogville shared a basic humanity, which bonded them together. By the end of Act I, the students sympathized with Grace who epitomized "good" as opposed to the "evil" gangsters. They admired the heroic Tom who had become her redeemer. Finally, the students expressed cautious optimism that the community would keep Grace's presence in Dogville a secret.

## ***2. My Students' Reaction to Act II: The Complication***

At Tom's urging, the townspeople gave Grace sanctuary for a trial period, during which she proved her worth to them as a babysitter, tutor, apple picker, cleaner, gardener, and home health aide. After the probationary phase ended, the community members voted to allow Grace to stay. Thus, by the Fourth of July, an unusual equilibrium settled over Dogville. As the townspeople gathered together for the annual picnic, it was evident that these were the very best days in Dogville.

The students became anxious when police officers intruded on the celebration, looking for Grace. The officers claimed that Grace was a fugitive from justice: subject to arrest for bank robbery. All the picnickers' eyes followed the officers as they nailed a "WANTED" poster with Grace's likeness to a tree. The students said that they empathized with the townspeople when the police warned them that anyone found harboring Grace would be subject to severe penalties.

Few, if any, of the townspeople believed that Grace was a bank robber. Indeed, they pointed out, Grace was with them in Dogville at the time the robberies were staged. Nevertheless, the students recognized the catalyst, which would upset the delicate balance Grace and the townspeople had established. The students

were alert to the new power shift, when the community questioned whether Grace should be allowed to stay.

The students were taken aback by Tom's suggestion that the town exploit Grace's precarious position. He told Grace that rather than visit each home or place of business once a day, she would now have to make two visits and do twice as many chores, for half the wages she received before. Further, her chores would no longer be limited to superficial tasks—she would now be expected to uproot trees in the apple orchard, change an invalid's urine-soaked bedding, and scrub garage floors on her hands and knees. Nevertheless, Tom reasoned, this arrangement was in her best interest, since it had become much riskier for the town to hide her and she had more of an incentive to want to remain hidden. Grace agreed to the new terms.

The students were dismayed to see Grace at the mercy of everyone in Dogville. Her vulnerability brought out the worst in the townspeople, as they threatened her, both explicitly and implicitly, with exposure. The students lost all sympathy for the townspeople when they berated her for any small mistake, for taking a shortcut through the gooseberry bushes, for arriving a minute or two after the church bell had rung. They interpreted Grace's upright posture and resolute facial expressions as stoicism. They commented on the cinematic effects that the filmmaker used to convey the absurdity of the circumstances: an accelerated film speed to show Grace mindlessly racing from one job to another, the superimposition of the Roman numerals and pendulum of a grandfather clock over the sequence to illustrate time flying by, and the ringing of the church bell every ten seconds to punctuate Grace's transition from one task to another.

But nothing up until that point distressed the students as much as the sight of the men of Dogville forcing themselves on Grace, as a condition of their silence, with their children in the very next room, and their wives within hearing distance. That was, for the students, the point at which Grace ceased to be a member of the community and became a piece of property.

Even when Grace decided that enough was enough, and borrowed \$10.00 from Tom to pay the truck driver, Ben, to smuggle her out of Dogville in the flatbed of his truck, the students were not reassured. After the truck rumbled along for a short while, it stopped and Ben lifted up the tarp covering her. The students braced themselves when Ben climbed into the back, rolled on top of Grace and, despite her protests, exacted "extra payment" in the

form of sexual intercourse. Yet, as the truck pulled back onto the road, and Grace was lulled to sleep, the students relaxed a little bit. When Grace woke as the truck stopped, and the students thought that the long ride was over, they got another surprise. A dog barking; it was the watchdog, Moses—and we all understood that she was back in Dogville.

The students recalled that their hearts sank at the climax, when the tarp covering the flatbed was flung back and Grace was exposed. The townspeople surrounded the truck, like hunters encircling their prey. The filmmaker had effectively raised his viewers' hopes and crushed them, right along with Grace's.

The students reported feeling numb when they saw the townspeople make Grace their prisoner. Using an old flywheel, the bell from the door of the general store, the chains that guarded the gooseberry bushes, and Moses's iron collar, the townspeople fashioned what they call an "escape protection mechanism." The students mentioned that the hollow sound of the hammer hitting iron drove home the horror of the townspeople's act, as the collar was fastened around Grace's neck and she was shackled to the flywheel, which she dragged behind her as she labored for the inhabitants of Dogville. But by the end of Act II, every student was outraged; every student wanted justice for Grace.

### ***3. My Students' Reaction to Act III: The Resolution***

The students expressed how frustrated they were by the time the Third Act opened; they wanted to take matters into their own hands. Winter had come again. Grace had more-or-less resigned herself to a life of servitude, yet her presence still discomfited the townspeople. Tom, in particular, had trouble facing her, since his accusation that she took the \$10.00 missing from his father's medicine cabinet to facilitate her escape precipitated her imprisonment. He resolved that the town had to dispose of Grace, and persuaded the community to turn her over to the gangsters for a reward.

The students truly had no idea what to expect when the gangsters' shiny black cars rolled into Dogville. They were disgusted by Tom's obsequiousness toward the men in sleek black suits and fedoras, and uncomfortable with how keyed up the townsfolk, who anticipated an execution, were. The students were as surprised as the townspeople to learn that Grace's father was the leader of the gangsters, and he was incensed to find her shackled. She was im-

mediately freed and ushered into the back of her father's limousine.

Although Grace tried to excuse the townspeople who had wrongly imprisoned and enslaved her, neither her father nor the students were moved. Her father pointed out that she accepted behavior from the citizens of Dogville that she would never accept from herself, because she was arrogant and considered herself superior to them. She had to choose whether to remain in Dogville or to leave with him and run his organization.

The students said they were fascinated when Grace left the car to consider her options. As she looked at the townspeople, who hovered anxiously in the background, the full moon, hanging very low in the sky, emerged from behind a cloud and illuminated the town. That shift in light allowed her to finally see Dogville for what it was: a miserable place, filled with miserable people, no better than those she had known at home. She realized that their conduct toward her was reprehensible and committed without any conceivable excuse. It dawned on her that she had a duty to "put [the town to rights] . . . for the sake of humanity, itself." Through the narration of Grace's thought process, the students were able to reason along with her. They agreed that Grace's odyssey was complete; she had been transformed by her experience.<sup>122</sup>

But Grace's next action stunned all the students. She authorized the gangsters to destroy Dogville, and they methodically gunned down the citizens. Grace executed Tom with a shot to the back of his head. Dogville went up in flames; Moses, alone, survived.

When considering whether Grace was guilty of murder, the students debated if she was justified or if she should be excused. They could not agree about whether she had consented to her conditions in Dogville. What they did agree on was that Grace made the kind of "hard choices and difficult decisions" we would rather not have to make.<sup>123</sup> Even those who thought she made the wrong choice could understand why she felt she had to make it.

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<sup>122</sup> See Shale, *supra* n. 47, at 997.

<sup>123</sup> *Id.* at 1001.

*C. Step 3: Shape the Statement of Facts in State of Colorado v. Grace Margaret Mulligan into a Compelling Story*

The key to transitioning from the kind of factual recitation that the students wrote before the class analyzed the story told by the filmmaker and the kind that best serves the argument is focusing on the two distinct points of view—Grace’s and the State’s—in a homicide prosecution.<sup>124</sup> Assign half the class to prosecute Grace and the other half to defend her. Remind the students that, although both fact presentations arise from the same events, those incidents and events must be made to “combine in a meaningful way,” which leads to opposite outcomes.<sup>125</sup>

Raise the legal points of view each side must convey. For example, Grace’s story must express that although the homicides may not have been justified, the brutality Grace endured excuses some of her culpability. In contrast, the State must convince the reader that even under the most extreme conditions, revenge is not acceptable in our legal culture. Emphasize the underlying themes each side must communicate: Grace must impress upon the reader the fundamental right to bodily integrity, and the consequences of perpetuating a society unaccountable for its actions, while the State must stress the devastating effects that flow from embracing foreign cultures, and the risks associated with undertaking to rescue those in need.<sup>126</sup>

Both sides should use the Three Act narrative structure in creating the story. Ensure that the students set up the Statement of Facts with a “hook,” a “complication,” and a “resolution.” Have them double check for an “inciting incident,” a “climax,” and the protagonist’s “transformation.” Stimulate the students’ memories of the cinematic effects that helped them to interpret the story—particularly those that prompted them to shift their sympathies. Ask them to recall what about the tone of the narration, the cam-

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<sup>124</sup> One commentator has noted that “[i]n every murder case, . . . there are only two issues: Did the deceased deserve to die and, if so, was the defendant the person to do it?” Winter, *supra* n. 7, at 2272 n. 163 (attributing the quote to Professor Herbert Wechsler, made in the course of the author’s first year class in criminal law).

<sup>125</sup> Brooks, *supra* n. 8, at 3 (discussing how the “narrative glue” used in two stories based on the same “facts” can either send a man to prison for rape or release him because the sex was consensual).

<sup>126</sup> McKee refers to the theme as “the Controlling Idea.” McKee, *supra* n. 49, at 115. The Controlling Idea “shapes the writer’s strategic choices . . . it must be expressible in a single sentence.” *Id.*

era work, the sound effects, and the editing moved them in one direction or the other.

Finally, encourage each side to turn its "bad facts" to its advantage. In other words, the advocates for both the State and Grace must accept that neither the townspeople nor Grace behaved like model human beings. All the characters in the film are flawed.<sup>127</sup> But that is what makes what happened in *Dogville* so realistic—and so suitable for telling a legal story.<sup>128</sup> Below are two annotated model Statements of Facts, the first on behalf of Grace, and the second on behalf of the State. The annotations on the right side of each table highlight the advocate's intentions in telling the story. They make explicit the narrative, thematic, and cinematic techniques adapted from the film. In other words, the annotations explain the choices an advocate might make in telling each version of the story to the court.

#### ANNOTATED MODEL #1 (GRACE'S BEHALF)

<p style="text-align: center;"><b>STATEMENT OF FACTS</b> <b>(or What Happened to Grace</b> <b>in the Township of Dogville)</b></p> <p style="text-align: center;"><b>PROLOGUE</b></p> <p><b>Overview:</b> Grace Margaret Mulligan fled to the Rocky Mountain town of Dogville from nearby Georgetown, just moments before a mob of gangsters roared up Canyon Road in hot pursuit. She arrived breathless and terrified, looking for sanctuary. But after a year in the town, during which she had been raped repeatedly by most of the townsmen, imprisoned by an iron collar attached to a 50 pound fly wheel, and forced to perform hard labor, she had to accept that Dogville was far from a safe haven.</p>	<div data-bbox="732 803 993 1086" style="border: 1px solid black; padding: 5px;"> <p>The <b>Overview</b> sets the tone for the Statement of Facts, just as the Prologue's narration foreshadows the tragedy of the film with the line: "This is the sad tale of the township of Dogville."</p> </div> <div data-bbox="732 1121 993 1324" style="border: 1px solid black; padding: 5px;"> <p>The use of <b>subheads</b> mirrors the film's use of chapter titles to break the story into manageable pieces for the reader.</p> </div>
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<sup>127</sup> As one commentator has observed, "the town of Dogville has two faces, which reveal themselves alternatively through 'tiny changes of light.'" Brighenti, *supra* n. 5, at 99. They hint at "fundamental moral ambivalence: on the one hand, the town is a poor but dignified rural community . . . on the other hand it is a ragged place, full of vices, ignorance, bestial appetites and gross behaviours." *Id.*

<sup>128</sup> The goal here is to have the legal reader "live[ ]' the story-experience, [so to] engage in the process of constructing meaning out of another's experience. Through this process, the audience can achieve a measure of understanding and empathy." Winter, *supra* n. 7, at 2277.

### ACT I: THE HOOK

**Grace Arrives in Dogville:** Grace's only family was her father—a notorious gangster. But she had rejected her father's ways in favor of an honest life, which had put her in jeopardy. That is why Grace was grateful to come upon Tom Edison, Jr., the local philosopher of Dogville, who promised to protect her from the violent men who were on her trail. True to his word, he convinced his community to give Grace a chance to prove herself worthy of residing in Dogville, through hard work and good fellowship. After two weeks of providing services to nearly every Dogvillian, they voted unanimously to let her stay.

### ACT II: THE COMPLICATION

**Grace Is Exploited and Enslaved:** Shortly thereafter, the tide began to turn. At the Independence Day celebration, a police officer reported that Grace was wanted by the FBI for bank robbery. Although the crimes had occurred when Grace had been working with, and for the families of Dogville, members of the community began to reconsider their bargain with Grace. Recognizing her vulnerability and, indeed, her dependence upon them, the townspeople unilaterally changed the arrangement. Encouraged by Tom, they demanded that Grace work twice as many hours for half her pay. In return, they would keep her presence in Dogville a secret from police and others who might come looking for her. With no meaningful choice, Grace complied.

She rose before dawn:

- From 7:00 to 8:00, she read to Jack.
- From 8:00 to 9:00, she cleaned Ben's garage.
- From 9:00 to 10:00, she bathed and fed June.
- From 10:00 to 11:00, she babysat for Chuck and Vera.
- From 11:00 to 12:00, she tended to Dr. Edison's health.
- From 12:00 to 1:00, she picked apples in Chuck's orchard.
- From 1:00 to 2:00, she weeded the gooseberry bushes.
- From 2:00 to 3:00, she packed eye glasses in the factory.
- At 3:00, she began her rounds all over again.

The "inciting incident" occurs.

Legal readers expect Tom's promises will be broken.

The understated prose reflects the film's minimalism and the subtlety of the narration, it allows the reader to interpret the events and collaborate with the storyteller.

The use of the phrase, "Independence Day," rather than "Fourth of July," is ironic, like the narration.

Words like "bargain" and "unilateral" remind the reader of Grace's lack of negotiating power. This has become a contract of adhesion.

Any argument that Grace consented to her treatment must fail.

The method used to convey Grace's jam-packed schedule is adapted from the visual techniques used by the filmmaker. Like the double-time action in the film, the staccato sentences and repeated words and phrases express how overworked she is. Like the filmmaker's superimposition of the ticking clock over those scenes, the alignment of time slots illustrates the passage of time.

When she shuffled home each night, she still had obligations to fulfill, for virtually every one of her male employers now demanded that she satisfy his sexual needs. First, Chuck forced himself on her in exchange for keeping her hidden from the police. Second, Ben, the truck driver, whom Grace had paid to drive her out of Dogville, insisted on additional payment in the form of sexual intercourse, because Grace was a "dangerous load." Within weeks, almost all the men in Dogville could be found each night lined up at Grace's door waiting for their turn on top of her.

The quality of Grace's life deteriorated even further after she tried to escape from Dogville. Although Ben took money and sexual favors from Grace, he breached his promise to drive her away from Dogville, delivering her instead to the very townspeople she tried to escape. The community officially made her their prisoner, locking an iron collar around her neck and shackling her to a 50 pound fly wheel, which Grace was forced to drag behind her while she toiled for the citizens of Dogville. Coerced into physical labor, sexual labor, and with no end in sight, Grace understood that she could expect no kindness from anyone in Dogville. She would have fared no worse with the gangsters who had wanted to kill her.

### ACT III: THE RESOLUTION

**Grace Is Handed Over for Execution:** And sending Grace to her death was exactly what the townsfolk of Dogville had in mind. Having no more use for her, Tom contacted the men who had once offered him a considerable reward for Grace, and informed them that she was their captive in Dogville. However, when the gangsters, headed by Grace's own father, arrived to collect her, they were angered to find her shackled to the iron wheel. Stunned by this reaction, the Dogvillians had no choice but to release her. As she came face-to-face with her father, Grace realized that she had been deluding herself about the "good people" of Dogville. She saw them for who they were—people bereft of moral character; people who were a danger to other innocent souls who might happen upon them. Thus, she ended the life of the man who had betrayed his promise

The quid pro quo themes of sexual harassment cases are evident in this passage. The reader's distress at what Grace must endure increases.

The phrasing "their turn on top of her" paints a vivid picture of her repeated humiliation, which inspires moral outrage. By appealing to common values, the advocate draws the reader onto Grace's side.

The story reaches its "climax" with Grace's failed escape and capture.

"Locking" and "shackling" communicate the physical control the townsfolk now assert in the way that the sound of the hammer hitting the metal collar does in the film. Their domination over Grace is complete.

Phrases like "face-to-face," "deluding herself," and the ironic "good people of Dogville" convey the shift—like the shift in light caused by the moon's emergence. Grace has undergone the personal transformation that the reader expects. She is no longer complicit in her slavery—she is no longer a victim.



of protection, and allowed her father's men to destroy the town.

With Grace's realization that the people of Dogville posed a danger to others, the advocate establishes causality. Dogville caused its own demise. The consequences of doing nothing in the face of brutality are apparent. The reader is determined not to let another miscarriage of justice occur.

ANNOTATED MODEL #2 (STATE'S BEHALF)

STATEMENT OF FACTS (or What Happened to the Township of Dogville)

PROLOGUE

Overview: In the winter of 1933, Grace Margaret Mulligan wiped out the township of Dogville. First, she gave the order for an army of thugs to open fire on every child and all but one adult in Dogville. Second, she gave the order to burn down the dilapidated buildings and personal property left behind. Third, she picked up a revolver, and, with a single shot to the back of the head, murdered the only remaining citizen of Dogville—Tom Edison, Jr.—the young man who had given her sanctuary when she first arrived from Georgetown, lost, starving, and in a state of panic. After the smoke had cleared, only Moses, the watchdog, had survived Grace Mulligan.

ACT I: THE HOOK

The Community Rescues Grace: Grace had been received into the small, tight-knit community a year earlier. Accepting her story that she was on the run from mobsters, the people of Dogville hid her, gave her work, and risked their own safety by lying to the police when officers came looking for her. Even when the police informed the community that Grace was wanted by the FBI for a spate of recent bank robberies, the town protected her. In return, Grace babysat for Chuck and Vera's children, read to Jack who had lost his sight, nursed Tom Edison, Sr., the debilitated town doctor,

Like in the film and Grace's story, there must be an overview. Unlike in the film and Grace's story, however, the prosecution must set its context in a flashback—starting with the violence that destroyed the town. Sympathy for the townspeople comes only from Grace's excessive reprisal.

The prosecution's story also employs the technique of the chapter breakdown through subheadings. These titles, however, tell a much different "sad tale" than those in Grace's presentation do.

The "inciting incident" occurs when the community lets its guard down and takes the risk of allowing Grace in.

Depicting the townsfolk as pathetic (blind, debilitated, homebound, and old) undercuts their subsequent cruelty. They are to be pitied not feared.

cleaned truck driver Ben's garage, tended to Olivia's invalid daughter, June, and weeded Ma Ginger's gooseberry bushes.

Of course, life was far from idyllic in the Rocky Mountain town—it was, after all, the time of the Great Depression. Grace had to work hard to earn her place in the community. Coming from a privileged background, it was no doubt stressful for Grace to get used to physical labor and humiliating to undertake chores that she considered beneath her. She was unused to the boorish behavior of the men of Dogville, who tried to grope her on occasion. Yet, when Chuck initiated a sexual encounter, Grace didn't fight him off. Rather, she acquiesced to sex with him and most of the other women's husbands on a regular basis.

#### ACT II: THE COMPLICATION

**The Community Discovers a Theft:** It was only after Grace absconded with Dr. Edison's \$10.00, that the community realized its predicament. Instead of protecting Grace from danger, it should have been protecting itself from Grace. Upon discovering that she had tried to smuggle herself out of town by hiding in the bed of Ben's truck, the townspeople put her under lock and key until they could decide how best to deal with her.

#### ACT III: THE RESOLUTION

**The Community Returns Grace to her Family:** After a town meeting, the community agreed that Grace should return to Georgetown. Tom contacted Grace's father who arrived with his subordinates to collect her. Although there was some tension as the parade of limousines rolled up Canyon Road onto Elm Street, for the townspeople really did not know what was in store for Grace, they felt somewhat relieved to have come up with a solution that benefited everyone concerned. After Grace came face-to-face with her father, however, it was clear that the community would receive no thanks for its effort. Indeed, Grace proclaimed that "if there were one place this world would be better off without," it was Dogville. Without further ado, she obliterated the town.

Likewise, the hardscrabble nature of the Depression conveys their inescapable cycle of poverty, and reflects the scenic minimalism. Grace's highfalutin ways are to blame for her inability to conform to the town's old-fashioned standards.

The prosecution turns the sexual encounters to its advantage: Grace was not exploited; she is a "loose woman" who benefited from her liaisons.

The prosecution's story is how Grace betrayed Dogville's trust. They fell prey to an opportunist who exploited them. Ten dollars may be a trifling amount to a spoiled, rich girl, but it is a sizeable sum to poor working folk.

The phrase "lock and key" reflects the townspeople's view that they are the wronged parties here.

The prosecution establishes causality also. It is Grace's inability to conform to the code of her adopted community that forces the community to eject her. Grace, not the community, is responsible for her demise.

The townspeople are rightfully indignant, which is evident in the film's narration and acting.

The last line jolts the reader into recognizing Grace's revenge, in the same way the rapid machine-gun fire startles the viewer as the gangsters methodically kill everyone in town. It offends the moral values of the reader, inviting the reader to condemn Grace.

## CONCLUSION

There is little dispute that advocates rely on narrative to persuade. Steven Winter emphasizes that “narrative corresponds more closely to the manner in which the human mind makes sense of experience than does the conventional, abstracted rhetoric of law.”<sup>129</sup> The persuasive power of storytelling is in its ability to take experience and “configure it in a conventional and comprehensive form.”<sup>130</sup>

Yet, it is the screenwriting master, Robert McKee, who most effectively articulates the advocate’s mission when he explains:

An artist must have not only ideas to express, but ideas to *prove*. Expressing an idea, in the sense of exposing it, is never enough. The audience must not just understand; it must believe. You want the world to leave your story convinced that yours is a truthful metaphor for life. And the means by which you bring the audience to your point of view resides in the very design you give your telling. As you create your story, you create your proof; idea and structure intertwine in a rhetorical relationship.<sup>131</sup>

McKee pinpoints the critical goal shared by those writing for a movie audience and those writing for a legal audience, but also clarifies that the “design [of the] telling” is the means by which to convince every audience.

Movies are indeed fast becoming our common language, and we instinctively “think in pictures.”<sup>132</sup> Thus, legal writers would do well to develop cinematic storytelling skills. But doing so in a vacuum is a daunting exercise. Basing a statement of facts on a film by, first, adopting the Three Act Structure that advances the themes expressed in the narrative, second, creating recognizable characters with whom an audience can identify, and, third, applying a modified cinematic language, permits a legal writer to understand both the philosophy and the process of telling a story cinematically.

Movies like *Dogville*, which address changing relationships, power shifts, and the consequences that accompany those shifts,

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<sup>129</sup> *Id.* at 2228.

<sup>130</sup> *Id.*

<sup>131</sup> McKee, *supra* n. 49, at 113.

<sup>132</sup> Meyer, *supra* n. 79, at 91.

contain core legal themes intimately familiar to advocates. Deconstructing the way in which filmmakers tell these stories, allows us to reflect on effective methods of persuading an audience. Examining how filmmakers present meaningful, thematic narratives, rather than disjointed recitations of events, provides new insight into a more successful collaboration with the legal reader. The power of cinematic storytelling is undeniable. Legal writers ignore that power at their clients' peril.<sup>133</sup>

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<sup>133</sup> Shale, *supra* n. 47, at 994.

