

THE ARTIST'S SEARCH FOR JUSTICE IN
THE JUSTICE SYSTEM:
A DISCUSSION OF REPRESENTATIVE FILMS OF
SIDNEY LUMET AND WORKS FROM THE WORLD OF
LITERATURE ON THE LAW

SHARON A. SOUTHER*

INTRODUCTION.....	687
THE ROLE OF THE JURY.....	690
THE MORAL VS. THE IMMORAL ATTORNEY	691
BACK-STORY AND EMOTIONAL COMPLEXITY	693
THE LONG ARM OF THE LAW	699
THE PRICE OF SEEKING THE TRUTH AT ALL COSTS.....	701
NAMING NAMES — THE MORAL CHOICE TO INFORM.....	703
THE REASONABLE MAN VS. THE IDIOSYNCRATIC MAN	704
THE DOLPHUS RAYMOND CHARACTER	706
THE LEGAL SYSTEM'S POTENTIAL TO DESTROY ITS PARTICIPANTS ..	708
KEEPING SECRETS — THE ATTORNEY-CLIENT PRIVILEGE	711
THE MORAL VS. THE IMMORAL JUDGE.....	711
THE SYSTEM ON TRIAL	713

INTRODUCTION

“Just to go simply and tell the truth.”¹ Since he was a child growing up on the Lower East Side of Manhattan, the acclaimed American film director Sidney Lumet has had a lifelong fascination with the law. He has long felt it to be his mission to tell the truth about what he sees in the tension between the legally and the morally just result. As he puts it, “I grew up very poor in the roughest sections in New York, and you simply become very interested in justice because you see an awful lot of injustice

* Fordham University School of Law, J.D., 1981; LL.M., Intellectual Property and Information Technology Law, Fordham University School of Law, 2007. The author wishes to acknowledge the encouragement and guidance of Thane Rosenbaum, John Whelan Distinguished Lecturer in Law and Director of the Fordham Law Forum on Law, Culture & Society at Fordham University School of Law, whose course on Law and Literature provided the inspiration for this article. ©2007 Sharon A. Souther.

¹ *The Charlie Rose Show: A Conversation about the Film “Night Falls on Manhattan”* (PBS television broadcast May 14, 1997) (transcript No. 1899, 6).

around.”² From the time he pitched pennies with friends on the corner, only to be chased by a policeman who then pocketed the pennies, Lumet has been keenly aware of the split between what those in authority can and should do, but sometimes fail to do.³ According to Lumet, “I get interested . . . as soon as authority makes a mistake.”⁴ He firmly believes that:

if the law doesn't work, nothing can work in a democracy. It's the basis of everything. Then you come to that separation between law and justice. As every lawyer knows, sometimes they don't go together. Lawyers find themselves using literal legalities to, in a sense, evade the justice of the situation. It's that kind of complexity, where there is a separation between the law and what justice actually is that fascinates me so.⁵

Lumet was once asked whether he thought it was an accurate statement that, through viewing his films, one could conclude that “our present legal system works many times to crush truth, and if truth is revealed, it's at a really kind of terrible price, as in *Prince of the City* or *Serpico*. If we do find the truth, it's a kind of a miracle, as in *The Verdict*”⁶ His response: “I think it's completely accurate, and all of this within the framework of, as far as I know, one of the best legal systems in the world.”⁷ Despite the daunting prospect of searching for the truth in such challenging circumstances, however, Lumet is resolute about the need for the attempt. When asked recently whether it is the artist's job to point out the truth if it is in the end unknowable and the search for it will ultimately be futile,⁸ Lumet responded by saying that the “primary thing is the process,” and that “a belief in the search for the truth is the most important thing.”⁹ Consequently, he views himself as a director who focuses on “the inner life”¹⁰ and the struggle of characters to come to terms with the conflicts that these moral dilemmas in the search for the truth represent. Ultimately, he sees much of the material in his movies about the justice system as autobiographical in nature: “For me . . . that

² *The Law According to Lumet*, in SIDNEY LUMET: INTERVIEWS 147, 147-148 (Joanna E. Rapf, ed., 2006). See generally http://en.wikipedia.org/wiki/Sidney_Lumet and <http://movies.ign.com/articles/307/307220p1.html> for background on Sidney Lumet.

³ Sidney Lumet, Comments at the Fordham Law Forum on Law, Culture & Society: Strip Searches, the Body Politic and the Price of Post-9/11 Security (Apr. 11, 2006), available at <http://law.fordham.edu/audiovideo/ce-culture2.mp3> (last visited Oct. 4, 2007) [hereinafter Lumet Comments].

⁴ *The Charlie Rose Show: A Conversation with Filmmaker Sidney Lumet* (PBS television broadcast Mar. 21, 2006) (transcript at 1).

⁵ *The Law According to Lumet*, in SIDNEY LUMET: INTERVIEWS, *supra* note 2, at 146.

⁶ *Id.*

⁷ *Id.*

⁸ Lumet Comments, *supra* note 3.

⁹ *Id.*

¹⁰ *The Charlie Rose Show: A Conversation with Filmmaker Sidney Lumet*, *supra* note 4, at 5.

personal struggle toward self-knowledge in a world that doesn't help you to it is there all the time."¹¹

From the time he was a child, Lumet contends, he was taught about the moral responsibility of those in authority to do what is right. When asked to identify the source of his "seriousness of purpose" on this issue, he replied:

Just from having been a good, solid poor Jewish boy. That gets you into it. I was brought up in an essentially orthodox household. The Jewish ethic is stern, unforgiving, preaching, moralistic. And I guess it starts you thinking like that at an early age. Just like being a good Jesuit.¹²

The above ethic referred to by Lumet can get its adherents into trouble when untempered by compassion and an understanding of the essentiality of a moral component to the equation, qualities that are reflected both in Lumet's work and in his life.¹³

As a teenager during World War II, Lumet followed that moral path. At seventeen, he dropped out of Columbia University after one semester (after a stint as a child actor) to enlist in the British Army radar service after he was rejected by the Marine Corps due to his poor eyesight. He served on the Burmese front for five years.¹⁴ During his time in the service, Lumet underwent an experience that, I believe, had a profound effect on his emerging sense of conscience as an artist and a human being, and helped to inform his belief that "we live daily with moral choices every single second. Some are small, some are big."¹⁵ He recently recounted for the first time a story of being on a train back from Calcutta with soldiers from his unit after a day's leave. As the train left the station, he said, a soldier in the car in front of him leaned out of the car and swept up a twelve year-old Indian girl who had the misfortune to be standing near the departing train. He took her into the car, then sold her to his companions on the train on the way back to camp. When Lumet got up from his seat to try to intervene, a soldier much larger than he refused to let him pass and told him to sit back down. Lumet recalled asking himself

¹¹ Sidney Lumet: *The Reluctant Auteur*, in SIDNEY LUMET: INTERVIEWS, *supra* note 2, at 118.

¹² *What's Real? What's True?*, in SIDNEY LUMET: INTERVIEWS, *supra* note 2, at 64.

¹³ See *infra* for analysis of Shylock in Shakespeare's play *The Merchant of Venice*. Shylock's obsession with the legally versus the morally correct result in his court case—the award of a pound of the defendant's flesh in satisfaction of a debt—is fueled by the prejudice he has experienced his entire life at the hands of Venetian Christians. His hatred and jealousy render him a caricature of one who would abide both by the spirit as well as the letter of the law, and he is ultimately consumed by it. WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE* act 4, sc. 1.

¹⁴ *A Conversation with Sidney Lumet*, in SIDNEY LUMET: INTERVIEWS, *supra* note 2, at 92.

¹⁵ Lumet Comments, *supra* note 3.

"What can I do? Can I do anything?" Because he believed that "[n]o matter what I would have done . . . I would have failed," as he was no match for the soldier in the doorway, he sat down without a word. The soldiers in the car eventually let the girl off the train before arriving at the camp. Significantly, Lumet opined, "Now that's a major point in your life. That's a major moral decision [and] . . . I failed . . . I chose not to fight . . . what is still humiliating to me in this day is my process at that time . . . the choice of not fighting . . . those processes are what we amount to."¹⁶

It is with this remarkable backdrop in mind that I wish to consider the parallels between themes and choices of material in a selection of Lumet's movies about the justice system and in a selection of works of literature that address various issues that arise in the justice system. Both Lumet and the authors of the works discussed herein shine their spotlight on ethically charged issues such as the morality of the lawyers and judges, the emotional, complex, and perhaps idiosyncratic (and therefore unreasonable) clients before the bar, the not-so-easily explained practices of naming names and keeping secrets, the dangers of seeking the truth at all costs, the perils of fighting within the system despite its propensity to destroy its participants, and the possibility of opting out of the system altogether when it seems beyond repair. Throughout this exploration, I will focus on how Lumet and the authors try to bridge the frequently enormous gap between legally and morally correct results by telling the truth, which, it seems, can be a very complicated task.

THE ROLE OF THE JURY

As a young director fresh from the world of 1950's television, Lumet's first big screen project was the classic legal drama *12 Angry Men*.¹⁷ Led by the foreman, the jurors move from a superficial assumption of the defendant's likely guilt to a deeper understanding of the circumstances of the crime. During the course of their deliberations, the jurors must grapple with their own preconceptions and prejudices, at times arguing vehemently over aspects of the evidence that they either believe implicates or exonerates the defendant. Using subtle camera angles and lighting techniques, Lumet created an atmosphere of claustrophobia to convey to the audience the sense of suffocating pressure under which the deliberations took place.¹⁸ Ultimately,

¹⁶ *Id.*

¹⁷ *12 ANGRY MEN* (Orion-Nova Productions 1957).

¹⁸ *What's Real? What's True?*, in SIDNEY LUMET: INTERVIEWS, *supra* note 2, at 56-57;

the jury finds the defendant not guilty in a result that is "both legally and morally correct."¹⁹

In his movie *The Verdict*,²⁰ Lumet revisits the question of the role of the jury in the legal process. This time, the test for the jury is not challenging their own preconceptions, but facing the corruption inherent in a system that permits *ex parte* communications between the judge and the well-heeled, well-staffed defense team, and the consequent pressure on the parties to settle, despite the merits of their cases. In the end, the jury wants to believe the plaintiff's attorney, Frank Galvin, a down-on-his-luck alcoholic who sees this case as his last chance at salvation. For all of their lives, the members of the jury have viewed the legal system as a sham, believing that they "can't fight City Hall" against the likes of Edward Concannon's white shoe Boston Brahmin firm. Once in the jury box, however, they understand that they may be able to do something right for Galvin's client, who is left in a persistent vegetative state by the malpractice of the defendants. The jury ultimately finds for the plaintiff in a verdict that would likely be overturned for various reasons in a real trial court, as Lumet is well aware. Nonetheless, Lumet believes that, particularly within a fictional piece, it is acceptable to take liberties²¹ in an effort to echo the message of *12 Angry Men*: "those who are bearing the legal responsibility of our lives are therefore in a way bearing the moral responsibility as well."²²

THE MORAL VS. THE IMMORAL ATTORNEY

In *The Verdict*, Lumet also examines the emotionally complex world of Frank Galvin, the promising young attorney betrayed in his own attempt to uncover corruption at his former firm and eventually reduced to a life of boozing and ambulance chasing.²³ Years later, Frank is desperate for a win, so it seems almost inevitable that he will take the settlement offered by the defendant hospital. On the verge of accepting the money, Frank goes to visit Deborah Anne Kay, the patient incapacitated in a botched anesthetic procedure. As he takes her Polaroid picture, Frank undergoes a transformation concurrent with the black surface of the developing film image. As the woman's picture comes into focus, so does Frank's role as her voice, her only means left of

SIDNEY LUMET, MAKING MOVIES 81 (1996).

¹⁹ THANE ROSENBAUM, THE MYTH OF MORAL JUSTICE: WHY OUR LEGAL SYSTEM FAILS TO DO WHAT'S RIGHT 13 (2004).

²⁰ THE VERDICT (Twentieth Century Fox 1982).

²¹ *The Law According to Lumet*, in SIDNEY LUMET: INTERVIEWS, *supra* note 2, at 145.

²² *What's Real? What's True?*, in SIDNEY LUMET: INTERVIEWS, *supra* note 2, at 64.

²³ THE VERDICT, *supra* note 20.

UNIVERSITY OF MICHIGAN LIBRARY

communicating to the world outside her silenced body. He truly becomes her lawyer and sets out on the road to spiritual recovery, regardless of the outcome of the case, because he is finally doing the right thing.

The role of the moral attorney is not, however, for the faint of heart. As Frank soon learns, the machinery of the institution that he opposes will slowly but surely try to grind him up. The immoral defense attorney, Concannon, tries every procedural trick in the book, both ethical and unethical, to undermine Frank's case and frame the lawsuit as an attack on the defendants and a "rank obscenity."²⁴ Frank eventually overcomes his self-doubt and fear to successfully represent his client. In the process, he exchanges roles with the priest who should represent the moral position, and is portrayed against a musical score evocative of his religious childhood²⁵ while delivering a sermon-like summation to the jury, exhorting, "[a]ct as if thee had faith.' Faith will be given to you. If we are to have faith in justice we are only to believe in ourselves and act with justice."²⁶

Charles Dickens excelled at painting portraits of immoral authority figures, who abounded in his mid-19th century London. Upper-class aristocrats and mid-level bureaucrats alike are depicted as intolerant of and insensitive to the plight of the poor and the dispossessed. In particular, Dickens portrays lawyers as immoral parasites vacuuming the life out of their clients. In *Bleak House*,²⁷ attorney Tulkinghorn made a career of convincing his clients to entrust their secrets to him and, once he wrested the details from them, used those secrets to enrich himself at their expense. Attorney Vholes is depicted in vampire-like fashion — pale, gaunt, lifeless, and dressed in black — the epitome of the blood-sucking creature poised to siphon his naïve client Richard Carstone's very essence from him.

In Harper Lee's *To Kill a Mockingbird*,²⁸ the role of the moral attorney is played by Atticus Finch. Atticus's dilemma is somewhat different: he is asked to take the case of a black man nobody wants to represent in a criminal case everyone knows he is destined to lose. Wrongly accused of rape, but destined to be convicted in a climate in which the political outcome surpasses both the legal and the moral result, Tom Robinson doesn't have a chance and Atticus knows it. Nevertheless, Atticus takes the case because, as

²⁴ *Id.*

²⁵ LUMET, *supra* note 18, at 174-75.

²⁶ ROSENBAUM, *supra* note 19, at 12 (quoting THE VERDICT, *supra* note 20)).

²⁷ CHARLES DICKENS, BLEAK HOUSE (rev. ed., Penguin Books 2003) (1853).

²⁸ HARPER LEE, TO KILL A MOCKINGBIRD (Warner Books 1982) (1960).

he tells his daughter Scout, "if I didn't I couldn't hold my head up in town, I couldn't represent this county in the legislature, I couldn't even tell you or Jem not to do something again."²⁹ Unlike Frank Galvin, Atticus is a man with a steady moral compass. Frank is lost and must find himself again. Atticus has long ago learned "a simple trick . . . You never really understand a person until you consider things from his point of view . . . until you climb into his skin and walk around in it."³⁰

In the movie *Daniel*,³¹ Lumet brought to the screen the character of another moral attorney, that of Jacob Ascher, the lawyer that Paul and Rochelle Isaacson turn to for help with their espionage case. Ascher must ultimately oversee the fate of the Isaacsons' children after the Isaacsons are jailed, tried, convicted and executed. Throughout their ordeal Ascher, unlike Atticus, naively maintains his belief in the justice system. In a world where, as with Atticus, there is no split between the professional and the private, Ascher is a man of God as well as of the law. "He perceived in the law a codification of the religious life."³² For Lumet, as for Doctorow, Ascher epitomized the fusion, as opposed to the disconnect, between law and justice.

BACK-STORY AND EMOTIONAL COMPLEXITY

Lumet is conscious of the fact that his characters frequently come to the table burdened with a "back-story," despite the law's concern only with the findings of fact at issue (to the exclusion of much informative material deemed prejudicial or irrelevant). Whereas the law prizes the reasonable, the quantifiable, the concrete, and the certain, the other side of the back-story coin is the concept of emotional complexity, with its emphasis on the idiosyncratic, the irrational, the unreasonable, and the subjective. For an artist such as Lumet, the back-story is essential to a fleshing out of the character in question, for it is only through an understanding of that back-story that the character's emotional complexity can generally be understood and put in context.

In *The Pawnbroker*,³³ Sol Nazerman is a Holocaust survivor who is unable to express his overwhelming feelings of grief and loss at

²⁹ *Id.* at 75.

³⁰ *Id.* at 30.

³¹ DANIEL (Paramount Pictures 1983) (based on E.L. DOCTOROW, *THE BOOK OF DANIEL* (Plume 1996) (1971)).

³² DOCTOROW, *supra* note 31, at 119. See also the conduct of the character Rabbi Yonah in NINA JAFFE, *IN THE MONTH OF KISLEV* (Library Binding ed., Viking Juvenile Press 1992), in which the wise rabbi dispenses both legal and moral justice in the context of a Hanukkah dispute over the alleged theft by hungry children of the aroma of a holiday feast.

³³ *THE PAWNBROKER* (American Int'l Pictures 1965).

the murders of his family in the Nazi death camps. He desperately tries to shut out the memories of that horrific experience by leading an emotionally stunted existence, gravitating between indifference and contempt for the residents of Harlem with whom he has chosen to surround himself. For Lumet, "[t]his is a man who is in such agony that he must feel nothing or he will go to pieces."³⁴

Similarly, in Camus's *The Stranger*,³⁵ Meursault is found guilty of murder by a jury that, in an ironic twist, uses his own back-story to convict him. Meursault behaves oddly by first failing to cry at his mother's funeral, then later that day having sex with a woman in his office to whom he has been attracted, and then taking her to see a comedy at the movie theater. Thus, it is a logical leap for the jury in this case to accept the prosecutor's argument that "the emptiness of . . . [Meursault's] . . . heart" is tantamount to "an abyss threatening to swallow up society."³⁶ According to Meursault, "my callousness inspired in [the prosecutor] a horror nearly greater than that which he felt at the crime of parricide."³⁷ Concluding that Meursault's indifference toward his mother contributed to her death, the prosecutor was able to convince the jury that "a man who is morally guilty of killing his mother"³⁸ would be equally culpable in the murder of his Arab assailant by first shooting him, arguably in self-defense, but then continuing to pump four more bullets into his lifeless body as he lay on the ground before him. Because Meursault's lawyer fails to embrace his client's back-story and to explain the possible mitigating circumstances of grief over the death of his mother that could have led to a traumatized Meursault's idiosyncratic response in that moment, characterized by Meursault as "knocking four quick times on the door of unhappiness,"³⁹ the jury cannot comprehend his response as any other than that of a depraved murderer.

Lumet's other movies are filled with similarly emotionally complex characters. He is especially preoccupied with portraying the emotional depth and inner conflict of police officers. In the movie *Serpico*,⁴⁰ the title character, an idealistic young cop, finds himself increasingly isolated by his uncompromising search for integrity on the job. His physical transformation from mainstream cop to societal outsider (by going from the short haired, clean-

³⁴ *Films and Filming*, in SIDNEY LUMET: INTERVIEWS, *supra* note 2, at 15.

³⁵ ALBERT CAMUS, *THE STRANGER* (Vintage Int'l ed., Random House 1989) (1942).

³⁶ *Id.* at 101.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 59.

⁴⁰ *SERPICO* (Paramount Pictures 1973).

shaven uniformed officer on patrol to undercover detective to long haired, bearded, hippie-clothed rebel wearing an earring and other jewelry), coupled with his own life choices (studying Spanish at NYU, taking ballet classes, listening to classical music, and most importantly, refusing to take money on the job), alienate him not only from his fellow cops but also from his own childhood friends. One such friend chides Serpico for not coming around to see him, saying "Old neighborhood not good enough for you anymore, Frank?"⁴¹ Serpico is shot and nearly killed when his fellow detectives, angry at his continuing refusal to go on the take and his intention to speak out about police corruption, abandon him on a drug bust in a manner that suggests to the audience he has been the victim of a setup.

Lumet went on to make *Prince of the City*,⁴² another story about the impact of police corruption on one man who thinks he can manipulate the system but instead ends up manipulated by it. Detective Danny Ciello struggles with the question of just how far he can go to save himself without having to turn in his friends and fellow detectives. His self-doubt and pain at what he must inevitably do give us a window into the emotionally complex world of this man for whom nothing is black and white, but only shades of gray. Trapped by his own decisions, Danny must live with their consequences. Over the course of the movie, Lumet signals Danny's increasing sense of loneliness as he wrestles with his moral dilemma. At the outset of the movie, for example, the background scenes are filled with action and noise, while the score is very complex. By the end of the movie, however, the background activity has been drastically simplified, the sound has been turned down, and the music has been reduced to a single, plaintive saxophone, emblematic of Danny's utter isolation.⁴³ Lumet chose this project because of

the paradox that is central to the novel [by Robert Daley, who would later write *Tainted Evidence*,⁴⁴ the basis for Lumet's movie *Night Falls on Manhattan*⁴⁵]: appearances are deceiving . . . all the characters are filled with contradiction . . . [including] the prosecutors who accomplish legitimate and important work but who nevertheless sometimes do dishonest things and also exploit people. There is not a single character in this film who does not surprise us in the end The basic idea [is one] worthy of a Greek tragedy, whereby a man finds himself in a

⁴¹ *Id.*

⁴² *PRINCE OF THE CITY* (Orion 1981).

⁴³ LUMET, *supra* note 19, at 96-97, 180, 182-83.

⁴⁴ DALEY, ROBERT, *TAINTED EVIDENCE*. (1993).

⁴⁵ *NIGHT FALLS ON MANHATTAN* (Paramount Pictures 1997).

situation that he cannot control; rather, the situation controls him.⁴⁶

Danny's journey recalls that of Sophocles' Oedipus, who thought he could manipulate fate by leaving Corinth only to find in the end that fate had been controlling his destiny all along.⁴⁷ As Lumet later commented, "[W]e're not in control of the result and we don't know what the result is going to be, ever. The only thing we are in control of is our own behavior."⁴⁸

One could argue with Lumet's last statement after reading Melville's novella *Billy Budd, Sailor*.⁴⁹ In *Billy Budd*, a momentary loss of control ends up costing Billy his life. Claggart, master-at-arms aboard the H.M.S. *Bellipotent*, falsely asserts that Billy exhibits mutinous tendencies. However, due to a speech impediment, Billy is unable to respond to the spiritual violence of Claggart's lie. Instead, Billy lashes out and, with one punch, kills Claggart. Billy typifies the disabled defendant — if he is innocent, why doesn't he somehow indicate that fact without resorting to physical violence? We know, and Captain Vere knows, that Billy is innocent. Yet there is no effort to mitigate the circumstances surrounding Claggart's death at Billy's hand. Billy must pay, and pay with his life, to assuage Captain Vere's fear that he will otherwise be perceived as an ineffectual leader incapable of enforcing a strict military code in time of war. Once again, as in the novel and film versions of the *Daniel* story, discussed in detail below, as well as in *To Kill a Mockingbird*, the political trumps both the legal and the moral.

Billy's victim is also an emotionally complex character. Claggart remains an enigma, clearly despising Billy yet never telling him, or us, why. Is it jealousy? Melville hints at this several times: first, when Claggart paraphrases the proverb "Handsome is

⁴⁶ A *Conversation with Sidney Lumet*, in SIDNEY LUMET: INTERVIEWS, *supra* note 2, at 82. Lumet's latest film, *BEFORE THE DEVIL KNOWS YOU'RE DEAD* (Michael Cerenzie Productions 2007), examines similar themes, as evidenced by the plot outline: "When two brothers organize the robbery of their parents' jewelry store the job goes horribly wrong, triggering a series of events that sends them, their father and one brother's wife hurtling towards a shattering climax." *Before the Devil Knows You're Dead*, IMDB, <http://www.imdb.com/title/tt0292963/> (last visited Sept. 10, 2007).

According to one viewer who attended a recent screening, "[This movie] is by far the darkest film Lumet's ever made. In fact one of the darkest movies I've ever seen in terms of character . . . Sidney Lumet has created a modern day Greek Tragedy in suburban New York, every character is cynical, greedy and flawed and it is a joy to watch each character deal with that personally and with each other." Posting of greatwarrior587-1 to <http://www.imdb.com/title/tt0292963/#comment> (Jan. 26, 2007).

⁴⁷ SOPHOCLES, *OEDIPUS THE KING* (Penguin Books 1991).

⁴⁸ *The Charlie Rose Show: A Conversation about the Film "Night Falls on Manhattan"*, *supra* note 1, at 6.

⁴⁹ HERMAN MELVILLE, *Billy Budd, Sailor*, in *BILLY BUDD, SAILOR AND OTHER STORIES* (Revised Classic ed., Bantam Books, 1984) (1962).

as handsome does"⁵⁰ when Billy accidentally spills his soup in Claggart's path; second, when Claggart is described as a madman "of the most dangerous sort, for their lunacy is . . . protectively secretive . . . [and] whatever its aims may be — and the aim is never declared — the method and the outward proceeding are always perfectly rational;"⁵¹ and¹ third, asking whether "anybody [would] seriously confess to envy? Something there is in it universally felt to be more shameful than even felonious crime."⁵² Is Claggart jealous of Billy? Probably, but we will¹ never know for sure.

The much-maligned Jewish merchant of Venice, Shylock, must also wrestle with his own demons while he lacks of control of his emotions. Scorned and spit upon all his life as an infidel outsider by the Christian Venetians, Shylock, blinded by hatred, finally seizes his opportunity to exact revenge for his mistreatment by using the law as the instrument of punishment. Caricatured as the legalistic, harsh and unrelenting Jewish moneylender, Shylock's life is so devoid of any love or mercy to moderate his feelings, having suffered even the death of his wife and the defection and betrayal of his own daughter, that he is literally starving for relief. Regarding the bond he seeks from Antonio, Shylock recognizes its uselessness to him, yet is so hurt at being rebuffed in his commercial efforts to procure Antonio's friendship, he nonetheless warns, "If it will feed nothing else, it will feed my revenge,"⁵³ and later chants in fury, "I will have my bond, I will have my bond . . . I will have my bond."⁵⁴ Still later, after offered an opportunity to show leniency by Portia, disguised as the merciful but unsympathetic judge, Shylock persists in his quest for legal justice and thereby revenge: "I crave the law."⁵⁵ He is ultimately so consumed by his own rage at his mistreatment that he is incapable of accepting the offer of redemption made to him by Portia. Shylock consequently loses everything, and yet society condemns him without trying to imagine what it must have been like to walk a mile in his shoes.

The character of Daniel Lewin in Lumet's movie *Daniel*⁵⁶ and in Doctorow's novel *The Book of Daniel*⁵⁷ reflects the epitome of emotional complexity — that of a young man struggling to come

⁵⁰ *Id.* at 27.

⁵¹ *Id.* at 30.

⁵² *Id.* at 31.

⁵³ SHAKESPEARE, *supra* note 13, at act 3, sc. 1.

⁵⁴ *Id.* at act 3, sc. 3.

⁵⁵ *Id.* at act 4, sc. 1.

⁵⁶ DANIEL, *supra* note 31.

⁵⁷ DOCTOROW, *supra* note 31.

to terms with the politically motivated execution of his parents for espionage. Doctorow chose to write the story in disjointed form, jumping back and forth from past to present in an effort to convey the sense of fragmentation and emotional paralysis (reflected in his abusive treatment of his own young family) that Daniel experiences from his inability to move beyond his unresolved past. In *Daniel*, Lumet deliberately changed the filters on his lenses to film all the scenes of Daniel's childhood in an amber tone symbolic of, on the one hand, a warmer, happier time but also, in my view, to suggest the glue-like attributes of the resin that captured insects in prehistoric eras and essentially froze them in time. He then removed those filters to shoot the scenes in the present between Daniel and his suicidal sister Susan, conveying by the resulting cold blue pallor a sense of the emotional death the characters were experiencing. As the movie progressed, and Daniel pursued his quest for the truth about his parents, Lumet gradually changed filters and reduced the amber and blue effects, so that by the end of the film, the scenes were being shot in natural color to reflect Daniel's ability to reconcile past and present and heal as a result of his truth-seeking.⁵⁸

Like Daniel, Sol Nazerman in *The Pawnbroker*⁵⁹ is frozen in a limbo between past and present, unable to express his true feelings about the loss of his family and therefore reduced to taking his frustration out on those around him in a classic transference of emotion. He is not a likeable man, but that is a result of his back-story, his devastation at this loss and his inability to process and articulate those feelings of grief and rage. In the movie, Lumet had to conceive of a way to show on film the process of an individual dealing with suppressed memory. As he describes it:

the central question [was] . . . how does memory work when we are denying it, fighting its rush forward into our consciousness? I found the answer by analyzing my own mental process when something I didn't want to deal with came bursting through to overwhelm the present. After a lot of thought, I realized that the suppressed feeling kept recurring in longer and longer bursts of time, until it finally emerged fully, dominating, taking over all other conscious thought.⁶⁰

In response to this editing dilemma, Lumet pioneered the use of subliminal images (by using what he referred to as "quick

⁵⁸ LUMET, *supra* note 18, at 92.

⁵⁹ THE PAWNBROKER, *supra* note 33.

⁶⁰ LUMET, *supra* note 18, at 158-59.

shock cuts" of split-second duration)⁶¹ to show how the horrific memories of the Holocaust that Sol was trying so hard to ignore insisted on forcing themselves into the forefront of his memory as ever-longer flashbacks. These flashbacks were initially short because it was too overwhelming for Sol to experience them outright, but increased in length as part of a painful yet unavoidable healing process. Lumet gradually enlarged the time that these flashbacks were exposed onscreen, until he was able to replace the present with an uninterrupted scene of Sol's past terror and grief at the sight of his family being taken away in the train that would carry them to their concentration camp and eventual death.⁶²

The name Lumet chose for this process, "quick shock cuts," inevitably calls to mind the technique and vocabulary of Doctorow's novel, *The Book of Daniel*.⁶³ This novel is replete with references to electricity and electric shock in an effort literally to jolt Daniel and the reader into consciousness about the events in Daniel's past and the grisly execution of his parents (which, in the case of his mother, takes an excruciatingly long time to complete, symbolic of the magnitude of the lie that sentenced her to the electric chair in the first place and of the strength of her resistance to it.)⁶⁴ Daniel's life has been short-circuited in the way that our central nervous system is incapacitated when nerve impulses cannot pass across damaged synapses. Once the nerve endings are healed, the neurological current can begin flowing properly again. Once Daniel can complete his journey, the electricity that killed his parents can metaphorically begin flowing uninterrupted again, ironically restoring his life to him.

THE LONG ARM OF THE LAW

Lumet also focuses on how far-reaching the long arm of the law is. In *Daniel*,⁶⁵ he examines (as did Doctorow) the question of "[w]ho pays for the passions and commitments of the parents? The children, who never chose those passions and commitments."⁶⁶ In this case, that long arm not only destroys the

⁶¹ *Films and Filming*, in SIDNEY LUMET: INTERVIEWS, *supra* note 2, at 15.

⁶² LUMET, *supra* note 18, at 159-60.

⁶³ DOCTOROW, *supra* note 31.

⁶⁴ The repeated failed attempts to electrocute Rochelle before finally succeeding offer a counterbalance to the single punch that Billy Budd delivers to Claggart. See DOCTOROW, *supra* note 31, at 12. In Billy's case, the magnitude of Claggart's lie is reflected in the power of Billy's deadly blow.

⁶⁵ DANIEL, *supra* note 31.

⁶⁶ LUMET, *supra* note 18, at 57. Lumet examined the same question in his film *Running On Empty*, in which a child of 1960's radicals, long-term fugitives as a result of their anti-war activities, must choose between exposing his parents' past conduct or

parents but also reaches, and destroys, the next generation, who suffer the consequences of burying the truth. Susan is ultimately spiritually murdered as a result of that toxic embrace, while Daniel can save himself only by a commitment to unearthing the truth, regardless of the cost. At first Daniel tries to externalize his sister's breakdown and his mistreatment and rejection of his wife, son and step-parents, unaware that he is simply on the run from a collision with the truth, or in his case, with what will come as close to the truth as he is going to get. It is only when Daniel faces the challenge to confront the truth, whatever it might be, that he even has a chance at resolution.

The confrontation with the truth, regardless of cost, is also central to the play *Oedipus the King*.⁶⁷ Oedipus tries to escape the frightening prophecy in his past through self-exile from Corinth, thinking he can thwart the gods and escape his fate, but is unable to move forward with his life in Thebes, despite marriage, fatherhood and kingship, because of the secret buried in that past. It should be clear to everyone in Thebes that all is not right in their universe — the king has been murdered, the crops are failing, disease and pestilence are rampant. Yet they deny the obvious imbalance in their lives and look the other way instead of pursuing the truth surrounding King Laius's death. Once Oedipus tries to do what is right and makes a commitment to finding the truth, no matter the cost, it is too late. Unlike Jocasta, who sees what is on the horizon and tries to deny it, Oedipus is figuratively blind to the horrors that await him at the end of his quest. The toxic spill from his parents' secret eventually percolates to the surface to literally blind him and to destroy him and his family.

Like Daniel and Oedipus, Lady Dedlock in *Bleak House*⁶⁸ thinks that she too can conceal a secret from her past — the illegitimate birth of her daughter. Despite years of keeping the secret of that birth and the love affair that produced it, she is eventually threatened with exposure by Tulkinghorn, her own husband's lawyer, in an inversion of the conventional legal paradigm that entrusting important secrets to a lawyer is beneficial to the client. She thinks she can escape her past, but does not realize until it is too late that by trying to bury the truth, she has only planted the seeds of her own destruction, and tragically dies at the gates of her lover's final resting place, a Potters' Field in a

leaving them behind forever in order to lead a normal life. RUNNING ON EMPTY (Lorimar 1988). LUMET, *supra* note 18, at 14.

⁶⁷ See SOPHOCLES, *supra* note 47.

⁶⁸ DICKENS, *supra* note 27.

seedy London neighborhood.

THE PRICE OF SEEKING THE TRUTH AT ALL COSTS

Lumet also examines from the perspective of every participant in the justice system the consequences of pursuing the truth at all costs in his film *Night Falls on Manhattan*.⁶⁹ Sean Casey is a former police officer who has put himself through law school at night and now works as a young idealistic Assistant District Attorney. He idolizes his father, himself a career police officer with the NYPD. After his father is critically injured in an on-the-job shooting at a drug arrest gone bad, Sean successfully prosecutes the shooter for his father's injuries and for other officers' deaths and is elevated to District Attorney. When allegations surface about extensive police corruption, he ignores advice from his predecessor, who tells him "Don't worry about it,"⁷⁰ and instead vows in his first press conference to "follow the evidence wherever it leads," saying "[t]he law applies to everyone equally Did that person break the law . . . ? All will be equal before the law,"⁷¹ never thinking that the search for the truth will lead him to discover his own father's concealed misconduct. At one point, Sean meets with his predecessor, who gives him a lesson in moral relativism, telling him, "What you're searching for you're not going to find You'll be better than most, and that is what you're going to have to be satisfied with."⁷²

His father's secret surfaces after Sean persists in his search for the original warrant in the case. Sean must now confront the moral dilemma of how to deal with his father's misdeed — the forgery of an arrest warrant to replace the original expired warrant he was supposed to execute at the drug bust the night he was shot. If Sean reveals the existence of the original warrant turned over to him by his father and later discovered by his girlfriend Peggy (who happens to work for the convicted drug dealer's defense attorney),⁷³ his father, an honest cop not involved in the corruption Sean has been investigating, will go to jail and the

⁶⁹ NIGHT FALLS ON MANHATTAN, *supra* note 45.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ This scene from *Night Falls on Manhattan* is reminiscent of the scene in *The Verdict* when Frank Galvin's friend Mickey discovers evidence of Frank's girlfriend Laura Fischer's covert alliance with the defense attorney in the form of a paycheck for her snooping services. *Id.*; THE VERDICT, *supra* note 20. Laura feeds information about Frank's case to Concannon's firm, unlike Sean's girlfriend Peggy Lindstrom, who gives the warrant back to Sean without telling her boss Sam Vigoda. She has compromised her professional ethics because, as she says, "I work for him; I'm in love with you," yet her conduct is not easily categorized as right or wrong. NIGHT FALLS ON MANHATTAN, *supra* note 45.

murderous drug dealer Sheik Mahmud-Bey will go free. Without realizing that his father has decided to confess his misdeed to the judge in the case and that the judge, understanding the implications of such a revelation, has decided to issue a false, back-dated warrant to replace the forged one, Sean destroys the original warrant, saying that this "wasn't supposed to happen to me."⁷⁴ Immediately afterwards, the judge calls Sean to say that he has spoken to his father, that he remembers issuing the updated warrant to him (which they all realize is patently false) and that he has located it and will provide it to Sean for his records the following Monday.

Sean meets with Sam Vigoda, the drug dealer's defense attorney, and tells him he is going to resign, saying that he now owes the judge, his father owes any number of people, and he also owes Peggy, who in turn now owes her boss for not bringing him the warrant, concluding, "It'll go on forever."⁷⁵ To his surprise, the lawyer, whose own daughter has died from a drug overdose, says he is not sure he would have used the warrant even if Peggy had given it to him because "I was after dirty cops, I got dirty cops. Why should I let that animal back out on the street?"⁷⁶ The D.A., the judge, the police officer and both the defense attorneys are all honorable, decent people trying to do what is right, yet each of them is complicit in covering up a lie, in burying the truth, the result of which is that the drug dealer stays in jail while the father's forgery goes unpunished.

What, then, is the morally correct result? Are these individuals all morally compromised? The system would undoubtedly say yes, but Lumet's film suggests that this is perhaps too easy an answer to a very complex question. In a realization similar to Daniel's epiphany at Disneyland — when he recognizes after meeting with a demented informant Selig Mindish at the teacups ride⁷⁷ that the real truth is not black and white — Sean finally understands that Vigoda was right, and that "[t]hings never work out as simply as you want them to."⁷⁸ In his subsequent speech to the incoming class of new assistant district attorneys, a wiser Sean exhorts them to believe in the system, to care, and to take the risks inherent in the job they are about to undertake.

⁷⁴ NIGHT FALLS ON MANHATTAN, *supra* note 45.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Lumet recalls being "moved at the Academy Award tribute when [Elia Kazan, the director famous for giving names to the House Un-American Activities Committee during the McCarthy blacklist era] seemed absolutely senile. 'It's as if he were saying, 'Okay, does that do it? Is that what you want me to do?' Weird.'" *An Interview with Sidney Lumet*, in SIDNEY LUMET: INTERVIEWS, *supra* note 2, pp. 184-5.

⁷⁸ NIGHT FALLS ON MANHATTAN, *supra* note 45.

NAMING NAMES — THE MORAL CHOICE TO INFORM

Another moral dilemma, both on-screen and off, is the question of informing, or naming names. Danny Ciello faces such a dilemma in *Prince of the City*.⁷⁹ Caught up in an investigation of police corruption, he first tries without success to rationalize each step on his journey to becoming an informer, thinking he can manipulate the system, engineer the result and avoid giving up his friends. In the end he must capitulate to that system. Lumet confesses to being forced to re-examine his own beliefs regarding this type of behavior over the course of making the film:

For me, having been raised in a working-class environment, my family was poor, my attitude toward a stool pigeon was automatic, going beyond any logical distinction between the criminal and the political. An informer was an informer; it was that simple. I needed to make this film for my attitude to change.⁸⁰

Lumet makes a distinction here, however, between informing for criminal reasons versus political reasons, even though both can have devastating consequences. Recalling that he “escaped being blacklisted . . . at the beginning of the 1950’s . . . by sheer luck,” he said that while making the movie, “I slowly realized that I had lived through this type of situation myself, and it became painful for me.”⁸¹ By the end of filming, he came to the conclusion that, while naming names in a criminal investigation aimed at stamping out evils like drug trafficking is not as easily condemned as he initially thought, “squealing on someone for political reasons is a betrayal of democracy.”⁸²

Two years after making *Prince of the City*,⁸³ Lumet explored the question of the consequences of informing for political reasons in the movie *Daniel*,⁸⁴ a fictional account of the Rosenberg trial. Depicting the atmosphere of fear prevalent in the McCarthy era, Lumet focused on two situations in particular — the naming of the Isaacsons by their own friend Selig Mindish, and the exhortation by the rabbi in prison to give up in turn the names of their friends to avoid execution for the sake of their children. Just

⁷⁹ PRINCE OF THE CITY, *supra* note 42.

⁸⁰ A *Conversation with Sidney Lumet*, in SIDNEY LUMET: INTERVIEWS, *supra* note 2, at 85.

⁸¹ *Id.*

⁸² *Id.* Lumet also explored the refusal to name names in his recent film FIND ME GUILTY (Bob Yari Productions 2006). Jackie DiNorscio explained why he chose to go to trial on RICO charges instead of turning state’s evidence, saying: “I’d rather go to jail for a thousand years than to rat on any of my friends.” *The Charlie Rose Show: A Conversation with Filmmaker Sidney Lumet*, *supra* note 4, at 2.

⁸³ PRINCE OF THE CITY, *supra* note 42.

⁸⁴ DANIEL, *supra* note 31.

as the unethical bishop in *The Verdict*⁸⁵ admonishes Frank Galvin to take the settlement, the rabbi, another man of God, likewise abandons his moral duty and encourages them to sell out in an unholy compromise. Selig's informing is reprehensible to Daniel, until he realizes in his conversation with Selig's daughter that, from her family's point of view, his parents were not necessarily innocent and that she holds his parents accountable for her own father's ruination. The rabbi's urging to name names, on the other hand, is even more reprehensible, because he is their spiritual advisor and should appreciate the moral significance of their principled decision not to be complicit in such betrayal.

THE REASONABLE MAN VS. THE IDIOSYNCRATIC MAN

One of the most common concepts in the law is that of the reasonable man standard. From the first day of law school, the concept of the reasonable man standard is trumpeted as the yardstick for civil and criminal conduct. The behavior of this fictional John Q. Bland is, in reality, not especially worthy of emulation — he is the kind of person who does not intervene to rescue a drowning victim and who dictates the personal tastes of the whole community when it comes time to censor material for controversial content. Yet he is the standard by whom we judge the entire spectrum of human behavior. Harper Lee ridiculed the reasonable man standard in *To Kill a Mockingbird*⁸⁶ by showing just how unreasonable it was to have the jury use it to evaluate the conduct of Tom Robinson. When Tom ran away from the Ewell home after Mayella was seen by her father while trying to kiss Tom, he was in fact acting like any reasonable black man in 1930's Maycomb County would have acted in that circumstance because he was terrified of being accused of attacking a white woman.

In *The Pawnbroker*,⁸⁷ Lumet subconsciously knew that he would get a similar reaction when he filmed the shooting scene outside the pawnshop, which was located in Spanish Harlem in New York City. As he describes the action immediately following the gunshot:

When the shots went off inside the pawnshop, neighborhood people were walking by. They were unaware a movie was being made. We just decided to fire the gun and let it happen. Whether it's through my own knowledge of the city or something else I can't explain. I had the confidence to know something extraordinary would happen — and it did. As soon

⁸⁵ THE VERDICT, *supra* note 20.

⁸⁶ LEE, *supra* note 28.

⁸⁷ THE PAWNBROKER, *supra* note 33.

as the shots went off, everybody disappeared — which, of course, is perfectly logical in that neighborhood. I had a police car standing by, we cued it, and as soon as it came in, so did the people. They knew if they showed up after the police, they wouldn't be called as witnesses.⁸⁸

What might have been a reasonable response for residents of a neighborhood with better relations with the police, *i.e.*, to show up as soon as they heard the sounds of the gunshots, was an inherently unreasonable one for the residents of this neighborhood.

How does the justice system respond to the individual who behaves unreasonably, who does not conform to the reasonable man standard? It judges him to be alien, to be strange, and it treats him accordingly. The cast of literary characters exemplifying this trait are legion. In *The Stranger*,⁸⁹ Meursault typifies the unreasonable idiosyncratic man. He does not cry at his own mother's funeral and he spends a romantic, seemingly carefree afternoon with a new girlfriend the same day. Therefore, when he encounters the knife-wielding Arab and he shoots him not once, but five times, even after the assailant is defenseless on the ground, the jury concludes from his apparently apathetic response to his own mother's death that he is a cold-blooded killer, and sentences him to death as well. There is no attempt, even by his own lawyer, to try to explain his reaction to his mother's death as one of disabling shock, trauma or grief, and so he is held accountable for failing to live up to the reasonableness standard of that community, which would have required him to show conventional emotions and sadness at his mother's passing.

In *Billy Budd*,⁹⁰ Billy defies the stereotypical reasonable man standard when he refuses to deny Claggart's false allegations of mutinous behavior and instead delivers a single deadly blow in absolute silence. His response is so out of character for that of an innocent man that the question of mitigation is barely even considered, despite all that the hastily summoned drumhead court-martial and Captain Vere know about Billy's sterling character, reputation and most importantly, disabling speech impediment.

In *The Merchant of Venice*,⁹¹ Shylock is the quintessential outsider. He is a Jew in a Christian world; he is a moneylender in a world that looks down on and spits at members of his profession;

⁸⁸ Sidney Lumet: *Letting it Happen*, in SIDNEY LUMET: INTERVIEWS, *supra* note 2, at 65-66.

⁸⁹ CAMUS, *supra* note 35.

⁹⁰ MELVILLE, *supra* note 49.

⁹¹ SHAKESPEARE, *supra* note 13.

he is a father betrayed by his own daughter, who has gone through all Shylock's money and has sold his late wife's ring for a monkey on a whim while partying with a Christian man. That sense of betrayal, spiritual violence at his mistreatment and rage at his inability to summon any respect or dignity from the Venetians he encounters reduces Shylock to a state of blind hatred and rage. He is so utterly disabled by his predicament that he cannot hope to come across as anything but strange and unreasonable. In the end, he literally goes from the stiff-necked plaintiff, as legalistic, rule-oriented and stubborn as the plaintiff Feivel in *In the Month of Kislev*,⁹² to the criminal defendant, charged as "an alien" with attempted murder.⁹³

Frank Serpico is a typical idiosyncratic Lumet character. He doesn't fit the stereotype of a New York cop. He has long hair and a beard and dresses like a hippie, he studies ballet and listens to classical music, and most importantly, he refuses to take money in a culture where taking payoffs is portrayed as an integral part of the job description. The system does not know how to respond to him. Supervisors resist his calls for any investigation of corruption, they only reluctantly promote him despite his excellent record, and nobody wants to work with him because they perceive him as different. In the end, the system essentially engineers his ambush on a drug raid so they can get rid of him. In addition to being emotionally complex (his back-story includes a lifelong dream to be a police officer so he can help people, and a crushing disappointment at his realization of the pervasiveness of on-the-job corruption), Frank is clearly perceived as unreasonable. At one point, even his own friend who works for the higher-ups in the Mayor's office and is trying to help him get his investigation authorized tells Frank how "off-putting" his behavior is to those who are trying to help him.⁹⁴

Doctorow also portrays the Isaacsons, particularly Rochelle, in the same vein when he describes Daniel's meeting with Ascher's wife, who bitterly criticizes his parents for being so uncooperative in their defense and ruining her husband's health as a result of the ensuing additional stress brought on by their difficult and unreasonable behavior.⁹⁵

THE DOLPHUS RAYMOND CHARACTER

Some people take one look at how the system grinds up its

⁹² NINA JAFFE, *supra* note 32.

⁹³ SHAKESPEARE, *supra* note 13, at Act 4, sc. 1.

⁹⁴ See SERPICO, *supra* note 40.

⁹⁵ DOCTOROW, *supra* note 31.

idiosyncratic parties and say "No thanks." They refuse to participate, to be complicit in its machinations. The archetype of this character is Dolphus Raymond in *To Kill a Mockingbird*.⁹⁶ Dolphus is the richest man in Maycomb, but he cannot abide the racist attitudes of the townspeople, so instead of trying to fight City Hall, he opts out. He has a relationship with a black woman, chooses to live on the outskirts of town with their children, and will not attend the trial of Tom Robinson, which is portrayed as the biggest social as well as legal event in town. He believes that the system is rigged and refuses to waste his time on it, participate in it in any way or even acknowledge it. By choosing another pathway to moral justice, Dolphus Raymond engages in his own form of silent protest.

In *The Trial*,⁹⁷ Joseph K. has an encounter with a priest who, ironically, has no faith in the system. The priest tells Joseph K. a parable about the mysterious Court that has charged him with an unnamed offense.⁹⁸ The message of the parable is that, if the system is unjust and corrupt, it is a waste of life to continue to participate in it. When Joseph K. tells the priest that he feels he can at least speak openly with him as opposed to anyone else associated with the Court, even his own lawyer, the priest responds, "Don't be deluded You are deluding yourself about the Court."⁹⁹ Joseph K.'s increasingly intense efforts to defend himself and manage his case ironically only serve to draw more negative attention to himself and hasten his eventual execution.

In *Bleak House*,¹⁰⁰ John Jarndyce knows all too well the disastrous consequences of getting sucked into the endless Chancery Court proceedings in the legendary case of *Jarndyce and Jarndyce*, which drove his own ancestor to suicide. As old Tom Jarndyce described the Chancery experience before blowing his brains out with a pistol, "it's being ground to bits in a slow mill; it's being roasted at a slow fire; it's being stung to death by single bees; it's being drowned by drops; it's going mad by grains."¹⁰¹ It is a small wonder that John Jarndyce has decided even before the story begins to opt out of the case. Wanting nothing to do with the proceedings, he dutifully pays whatever legal fees are associated with it without ever entering the Court to check on its progress, preferring instead to focus on what he can control in his

⁹⁶ LEE, *supra* note 28.

⁹⁷ FRANZ KAFKA, *THE TRIAL* (Willa & Edwin Muir trans., Schocken Books 1984).

⁹⁸ *Id.* at 213-15.

⁹⁹ *Id.* at 213.

¹⁰⁰ See DICKENS, *supra* note 27.

¹⁰¹ *Id.* at 71.

life, namely, the protection of his wards and other poor and helpless individuals.

In Lumet's world, the Dolphus Raymond role is assumed by Artie Sternlicht in *Daniel*.¹⁰² Artie spends his time taking drugs and spouting radical philosophy, personifying Timothy Leary's summons to the 1960's generation: "Turn on, tune in and drop out." Artie is convinced that the only way to resist the corruption of the system is to refuse to participate in it at all, telling Daniel:

Your folks didn't know shit. The way they handled themselves at their trial was pathetic. I mean they played it by *their* rules. The government's rules The whole frame of reference brought them down because they acted like defendants at a trial [and didn't take a stand against complicity in their own demise]. [I]f they find me guilty I will find them guilty, and if they find me innocent, I will still find them guilty.¹⁰³

THE LEGAL SYSTEM'S POTENTIAL TO DESTROY ITS PARTICIPANTS

We see the consequences of not opting out and instead being consumed by the system in the tragic demise of Jarndyce's ward Richard Carstone, who starts out as a happy, carefree young man and ends up driven to an early death, having wasted away obsessing over the daily supervision of the *Jarndyce* case, which has *inextricably ensnared him*. Richard's descent into madness and death mirrors the plight of all who fail to heed Tom Jarndyce's warning about attending to cases in the Court of Chancery: Miss Flite speaks of her relatives' wasting away while "expect[ing] a judgment;"¹⁰⁴ Mr. Gridley recounts how his life has been ruined by his own lawsuit,¹⁰⁵ and seemingly every character touched by the Court's proceedings must eventually seek the medical attention of Dr. Allan Woodcourt, for they have all been sickened by their association with their cases. Miss Flite tries to warn Esther and Ada of the destructive effect the Court has had on her family and of the similar effect she fears it is beginning to have on Richard:

[It can d]raw people on, my dear. Draw peace out of them. Sense out of them. Good looks out of them. Good qualities out of them. I have felt them even drawing my rest away in the night I know what will happen. I know, far better than they do, when the attraction has begun. I know the signs, my dear. I saw them begin in Gridley. And I saw them end. Fitz-Jarndyce, my love . . . I saw them beginning in our friend the Ward in Jarndyce. Let someone hold him back. Or he'll be

¹⁰² DANIEL, *supra* note 31.

¹⁰³ DOCTOROW, *supra* note 31, at 151.

¹⁰⁴ DICKENS, *supra* note 27, at 566.

¹⁰⁵ *Id.* at 249-52.

drawn to ruin.¹⁰⁶

Kafka's Joseph K. provides another example of the individual who voluntarily enters the system confident of his eventual victory only to become mired in and destroyed by it. As he gradually becomes aware of his own burgeoning obsession with his case and the system's all-consuming hold and consequent negative effect on him, he also starts to wonder why his lawyer Huld seems so ineffectual at advancing his case. As Joseph K. tries to fire Huld, he says, "I was never so much plagued by my case as I have been since engaging you to represent me." Huld replies, "After a certain stage in one's practice . . . nothing really new ever happens."¹⁰⁷ Huld openly admits to Joseph K. that he has treated him with negligence, saying "it's often better to be in chains than to be free,"¹⁰⁸ thus intimating that any freedom Joseph K. may experience is really illusory, because once the legal system has taken an interest in him, he is finished.

One of the sorriest literary cases of an individual gradually destroyed by the legal system is that of Bartleby in *Bartleby the Scrivener*.¹⁰⁹ The young law writer, reduced to a shadow of a human being from his initial high-strung, manically efficient persona, gradually retreats into an invisible cocoon from the claustrophobic bricked-up law offices around him, staring into space and repeating the mantra "I would prefer not to" in response to every request his employer makes of him. The employer is so unnerved by Bartleby's behavior that he doesn't press him to do any work, eventually moving his offices rather than persisting in his attempts to evict Bartleby. It is only after Bartleby dies in prison, having been removed by the employer's successor from the law offices he has refused to vacate voluntarily, that his former boss learns Bartleby had at one time worked in the Dead Letter Office in Washington, D.C. While there, he had read so many sad stories of lives lost or ruined because of failed communications that he essentially had a nervous breakdown and had to leave. Bartleby's employer feels a keen sense of responsibility at what he senses is his complicity in Bartleby's death, and yet it is the legal system as a whole that Melville indicts for draining the life out of Bartleby and all who labor in the profession. Indeed, in *Bleak House*, John Jarndyce refers to the status of the Jarndyce will as "a dead letter"¹¹⁰ when describing the

¹⁰⁶ *Id.* at 566-67.

¹⁰⁷ KAFKA, *supra* note 97, at 187.

¹⁰⁸ *Id.* at 189.

¹⁰⁹ Melville, *supra* note 49, at 95-130.

¹¹⁰ DICKENS, *supra* note 27, at 118.

history of the Chancery proceedings in the case to Esther for the first time, while Dickens depicts a sadly similar end for the solitary young law writer (and Lady Dedlock's past lover) Nemo (meaning "nobody"), who worked intensely every night until shortly before his death in a manner of a light bulb that burns brightest just before it burns out entirely.¹¹¹

In *Daniel*,¹¹² Susan Isaacson has spent so much time immersed in the quest for the truth behind her parents' legal case that she is eventually swept up in its emotional vortex and consumed by it in the course of trying to re-investigate and re-litigate the case in the court of public opinion. As the story opens, an emotionally disconnected Daniel visits his sister in the psychiatric hospital where she has been committed in an effort to understand what has driven her to attempt suicide. He is in so much pain himself as a result of the spiritual violence both of them have experienced that he has difficulty relating to her obsession with the case because they have processed the same event in diametrically different ways.

While her entrapment in the case eventually drains the life from her as it does from both Richard Carstone and Bartleby, Daniel reacts more like Meursault does to the event of his mother's death.

As a director with a keen eye for detail and a sense of the importance to the story of what is left unspoken onscreen, Lumet struggled while editing his footage of Daniel's sister Susan in order to convey just how devastating her parents' story had become for her as well as for Daniel. When he filmed their first meeting, Lumet initially focused on events from Daniel's point of view. That made it more difficult to convey the intensity of Susan's overwhelming pain in their second encounter, so he went back and re-cut it.

There were two scenes where Daniel visits his sister in a psychiatric hospital. The second scene, where he carries his now catatonic sister around the room, wasn't as moving as I'd hoped. I eventually realized that nothing was wrong with the scene. The problem lay in the way the first scene between them had been edited: the scene had emphasized *him*. As a result, the second scene provided no new revelation about him. It seemed redundant. After the first scene was recut to emphasize the *sister's* pain, both scenes played much better. She was very moving in the first scene, and we still had something new to discover about Daniel [and the first stirrings of his emotional

¹¹¹ *Id.* at 154-181.

¹¹² DANIEL, *supra* note 31.

re-birth] in the second.¹¹³

KEEPING SECRETS — THE ATTORNEY-CLIENT PRIVILEGE

Still another legal concept scrutinized and criticized in Lumet and in literature is that of secret-keeping as exemplified by the attorney/client privilege. *Bleak House*¹¹⁴ attacks that privilege, having attorney Tulkinghorn threaten to expose Lady Dedlock's secret — an early affair and illegitimate child. Although he is in the business of keeping secrets, Tulkinghorn threatens to use those secrets, in which he theoretically takes no partisan interest, to reveal rather than conceal information that is both embarrassing and painful to his own client's relative. In the end, his extortionate behavior leads to his own murder, but not without causing the death of Lady Dedlock and the incapacitation of her husband, who would have forgiven her the secret with which Tulkinghorn spiritually murdered her. In *Night Falls on Manhattan*,¹¹⁵ the number of secrets and lies told concerning the original warrant that Sean's father replaced with a forgery mounts until it seems that all the characters' lives are shot through with deceit. The very act of keeping a secret, sanctioned by the law, in this case is used to turn the law on its head. The irony is that the person whose secret information they all misappropriate for their own ends technically belongs to Mahmud-Bey, the convicted drug dealer, who stays in prison unaware of these developments that could legally, but not morally, be used to help him get out of prison.

THE MORAL VS. THE IMMORAL JUDGE

There are certain judges in literature, on film and in life who take their vow to uphold the law and dispense true justice to heart. In the real world, Benjamin Cardozo and Learned Hand are two such judges. Their opinions reflect a sense of justice tempered with compassion (and an acknowledgment of reality) that many judges either are unaware of or choose to ignore.¹¹⁶ The Chancellor in *Bleak House* presides heedless and uncaring over a domain mobbed by litigants seeking justice, yet those who enter would do well to heed the admonition over the Gates of Hell in

¹¹³ LUMET, *supra* note 18, at 165.

¹¹⁴ DICKENS, *supra* note 27.

¹¹⁵ NIGHT FALLS ON MANHATTAN, *supra* note 45.

¹¹⁶ See, e.g., Schmidt v. United States, 177 F. 2d 450 (2d Cir. 1950) (Hand, L., J.); United States v. Dennis, 183 F. 2d 201 (2d Cir., 1950) (Hand, L., J.), *aff'd on appeal*, 341 U.S. 494 (1951); Hynes v. N.Y. Cent. R.R. Co., 131 N.E. 898 (N.Y. Ct. App. 1921) (Cardozo, J.); MacPherson v. Buick Motor Co., 217 N.Y. 382 (N.Y. Ct. App. 1916) (Cardozo, J.).

Dante's *Inferno*: "Abandon hope, all ye who enter here,"¹¹⁷ for they will emerge altered, if not destroyed, by their misplaced faith in his administration of justice. As Dickens sees him,

[A]t the very heart of the fog, sits the Lord High Chancellor in his High Court of Chancery . . . sitting here . . . with a foggy glory round his head, softly fenced in with crimson cloth and curtains . . . outwardly directing his contemplation to the lantern in the roof, where he can see nothing but fog.¹¹⁸

In Billy Budd's case, Captain Vere is called upon to administer justice as the ship's captain after Claggart is killed before his eyes in a confrontation with Billy. Vere is so worried that he will be seen as powerless in the political fallout of the famous *Nore* mutiny¹¹⁹ that he capitulates to a cowardly and legalistic ruling that sentences Billy to death.

'War looks but to the frontage, the appearance. And the Mutiny Act, War's child, takes after the father. Budd's intent or non-intent is nothing to the purpose . . . ' 'Can we not convict and yet mitigate the penalty?' asked the sailing master. 'No, to the people the foretopman's deed, however it be worded in the announcement, will be plain homicide committed in a flagrant act of mutiny . . . Your clement sentence they would account pusillanimous. They would think that we flinch, that we are afraid of them . . . What a shame to us such a conjecture on their part, and how deadly to discipline.'¹²⁰

The judge in the movie *Daniel*¹²¹ is based on the judge in Doctorow's book, which in turn is based on the real-life story of the Rosenberg trial. In that trial, Judge Irving R. Kaufman presided over the federal district court trial of Julius and Ethel Rosenberg that resulted in not only their convictions but also their sentencing to death. In a political climate dominated by the McCarthy-era Red scare of post-World War II and fear of an atomic bomb attack, Judge Kaufman could have overturned their convictions or imposed a lesser sentence than the death penalty, but chose not to. The Case Summary Overview of Judge Kaufman's opinion denying defendants' application for a reduction in the death sentences he had previously imposed

¹¹⁷ DANTE ALGHERI, *THE DIVINE COMEDY*, vol. 1, canto III, line 9 (Henry F. Cary trans., P. F. Collier 1909).

¹¹⁸ DICKENS, *supra* note 27, at 14.

¹¹⁹ For a brief account of the *Nore* mutiny, see *Mutiny at the Nore*, NAPOLEONGUIDE, available at http://www.napoleonguide.com/navy_nore.htm (last visited Sept. 2, 2007).

¹²⁰ Melville, *supra* note 49, at 61. See also *Schenck v. United States*, 249 U.S. 47, 52 (1919) (Holmes, J.) ("When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right.").

¹²¹ DANIEL, *supra* note 31.

summarizes the case in language eerily evocative of the reasoning of both Captain Vere and the prosecutor in *The Stranger*:

The conviction was affirmed, and the court then refused to set aside the judgment. Defendants asked to have their sentence of death reduced, but the court denied their application. The court held that the sentences of death were warranted because the acts of defendants were treasonous, even though they were not actually charged with treason. The court held that the acts were committed during wartime, not peacetime, because defendants continued to provide information to the Soviet Union even after it became obvious that it was no longer an ally of the United States. The court held that a sentence of death was proper because their acts were equivalent to or worse than those of a murderer because they affected the safety of the citizens of the United States, and their acts were made worse by the fact that they were United States citizens, born and raised in the United States, and not foreign nationals.¹²²

THE SYSTEM ON TRIAL

Several of the novels discussed thus far take a comprehensive look at the justice system, in effect putting that system on trial. In *The Trial*,¹²³ Kafka exposes the bureaucratic machinery of the justice system, from the failure of the prosecutor to name the charges against Joseph K. with any clarity, to the ineffectual behavior of his lawyer, who spends the novel sick in bed, to the airless, claustrophobic atmosphere of the court that meets in the attic of a tenement on Sunday afternoons when most people are normally in church, to the inability to ever get to speak with the judges who decide his case. His only inkling as to what the judges might even look like is in the artist Titorelli's painting, in which the figure of the judge he paints includes an image of Justice that "looked exactly like a goddess of the Hunt in full cry."¹²⁴ Nothing is normal here, and as Joseph K. struggles in vain to get to the truth about his case, he only finds more and more confusion, misrepresentation and obfuscation. The gears of the machine continue to turn in insane auto-pilot fashion, finding him guilty because of something as arbitrary as "the line of his lips,"¹²⁵ inexorably grinding up Joseph K. in the end.

*Bleak House*¹²⁶ is an indictment of the justice system as well. From the literal, and metaphorical, fog surrounding the Chancery

¹²² United States v. Rosenberg, 109 F. Supp. 108 (S.D.N.Y. 1953).

¹²³ KAFKA, *supra* note 97.

¹²⁴ *Id.* at 147.

¹²⁵ *Id.* at 174.

¹²⁶ DICKENS, *supra* note 27.

Court itself at the beginning of the novel, to the morally bankrupt attorneys (and their spiritually violated law writers) who practice before the Court, to the crazed litigants who pursue their cases to the bitter end, the message of *Bleak House* is that no good can come of legal proceedings. Dickens proposes that the only way to avoid being destroyed by exposure to the system is to opt out of it altogether: in short, "there is not an honourable man among its practitioners who would not give — who does not often give — the warning, 'Suffer any wrong that can be done you, rather than come here!'"¹²⁷

Lumet in turn puts the legal system on trial in *The Verdict*,¹²⁸ focusing his lens on every aspect of the legal proceeding. He skewers unethical jurists like Judge Hoyle, who squeeze litigants before them into inappropriate settlements that bury the truth in order to clear their calendars and to accommodate lawyer acquaintances they are willing to meet with him *ex parte*. He exposes the ungodly dealings of the Church by airing their sacrilegious meddling in the settlement process in an unholy reversal of the lawyerly and the priestly functions. He attacks the politics of the big firms and the lawyers in their employ, settling every case possible on terms that ensure their clients will never be truly accountable in the court of public opinion, and skirting the rules of ethics when necessary to gain the legal upper hand, even if it means spying on their opponent. He lambastes unethical parties, like the doctors willing to pay the nurse to forge the medical chart to shield themselves from financial liability for their patient's adverse reaction to anesthesia and near-death as a result of their malpractice. He even chastises those who would stand in the shoes of the true client for their own economic advantage, in this case the family of the victim, Deborah Anne Kay, who wants the settlement money for themselves. Watching Lumet's view of the legal system unfold is a discouraging prospect. It is only in the end of the movie, when Frank Galvin achieves personal redemption by doing what's right, that Lumet shows an optimistic side of the story. By letting the jury of non-lawyers find for the plaintiff, he satisfies the hunger of the audience for a moral resolution to the story by allowing the case to be decided by a jury composed of average people, unlike Captain Vere, who had deemed "the people" unable to understand such a decision and had therefore excluded them from his secret drumhead court proceeding.

Like Frank Galvin, Sean Casey, Jacob Ascher, Atticus Finch

¹²⁷ *Id.* at 15.

¹²⁸ THE VERDICT, *supra* note 20.

and, ultimately, the wise Rabbi Yonah,¹²⁹ Lumet sees his mission as a search for the morally just, as well as the legally correct result. With each new movie about the justice system, he continues to succeed in that mission to, as he says, “[j]ust . . . go simply and tell the truth.”¹³⁰

¹²⁹ JAFFE, *supra* note 32, at 75.

¹³⁰ *The Charlie Rose Show: A Conversation about the Film “Night Falls on Manhattan,” supra* note 1, at 6.