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| **MY TAKE** | | | |
| ***John Denvir***, who teaches constitutional law at USF Law School, is editor of Legal Reelism: Movies as Legal Texts, available at local bookstores or through [amazon.com](http://www.amazon.com).            **"**  But skilled lawyering has no **necessary connection** to justice.  **"**                **"**  We might not always choose the **"right" side** because sometimes it’s hard to decide which side is right, but we should still find the **fight against injustice** central to our professional role. .  **"** |  |  | The Ecstasy and the Agony  by John Denvir    It would be nice if the relationship between the practice of law and justice were as simple as that between the practice of medicine and health. After all, doctors by following the dictates of their profession always know they are promoting health, or at least fighting disease. But it’s not that easy for lawyers; "good" legal practice (in the sense of skilled advocacy) can just as easily promote injustice as justice.  Lawyers are "tricksters": people who use their imagination to change our perceptions of reality. Lawyering is intellectually exciting work and often is well-rewarded financially. That’s the ecstasy of legal practice. But skilled lawyering has no necessary connection to justice. Tricksters in mythology and folk tales like Hermes and Br’er Rabbit and Coyote tend to be amoral characters. But few lawyers feel comfortable with the moral stance of amorality– the whole "hired gun" thing. That’s the agony.  Let me illustrate my thesis by discussing my favorite movie lawyer -- Polly Biegler (James Stewart) in Otto Preminger’s "Anatomy of a Murder." The film follows Biegler through a tough murder case from beginning to end. The case involves the trial of Lieutenant Manny Manion (Ben Gazarra), who kills a bar owner who has allegedly raped Manion’s wife Laura (Lee Remick).  Orthodoxy tells us the lawyers "find" the law and the facts of a case, but good lawyers know that metaphor doesn’t do justice to the art of lawyering. Lawyers "create" as much as find both the facts and the law. Biegler certainly helps create the "facts" of the murder when he gives his client "the lecture" in which he expertly (but indirectly) instructs Manion to retell the events leading up the to homicide within the story line of "temporary insanity" which is the only narrative which will permit the the jury to acquit him. Biegler also has to "script" the proper role for his client’s sexy wife; she has to put away the high heels and tight sweaters to play the role of injured victim and loyal spouse.  Later Biegler discovers that Manion’s psychiatrist has framed his testimony within the context of the "irresistible impulse" version of the temporary insanity defense. That presents a problem since Biegler knows that the State of Michigan doesn’t accept the "irresistible impulse" theory. But Polly (and his sidekick J. Parnell McCarthy) are not to be deterred by "black letter law"; they spend a night in the county law library, which yields a long forgotten 1884 Michigan Supreme Court case which approves the irresistible impulse theory.  My favorite scenes in the movie are those in which Polly’s nemesis Claude Dancer (George C. Scott) examines and Polly cross-examines the prosecution’s chief witness about the interactions between Laura and the bar owner the night of the rape. The issue is whether Manion’s wife will be perceived by the jury as a slut hoping to be picked up by the deceased or an innocent housewife about to be abducted by a rapist. It’s nothing less than magical how two skilled trial lawyers use the same facts to craft stories which lead the jury to diametrically opposed conclusions. (It reminds me of the O.J. Simpson trial where Marcia portrayed the defendant as a wife-beater while Johnny was busy painting him as a victim of a racist police force.)  Polly wins the trial. Was justice done? Within the "letter of the law," probably not; it appears that Lieutenant Manion took his revenge on the rapist coldly and calmly. But within the larger context of the "unwritten law," perhaps justice was done since it also appears that Mrs. Manion was raped. The simple fact of the matter is that the "justice" of the result seems irrelevant to Polly. He would have been just as happy (and just as deadly) prosecuting Manion. After all, he had been County prosecutor for twenty years. For Polly, the trial’s the thing.  We don’t sense much of the tension between lawyering and justice in "Anatomy of a Murder’ because the facts of the homicide are morally ambiguous. We may not approve of Manion’s revenge, but we hardly see it as a grave injustice. But this is not always the case.  Consider a story told by Gerry Spence–a type of real-life Polly Biegler. After winning a big trial for an insurance company, Spence and his wife enter a grocery store to buy provisions for a celebration. Suddenly Spence notices that the old man in the check-out line in front of him was the plaintiff in the suit he had just won. Spence can’t hide from himself the fact that the man had not lost because his lawsuit was unjust, but because his lawyer was less skilled than Spence. Spence knows that his trickster skills had made the difference in the case– and this time in favor of injustice. There’s the agony.  Spence tells the story to explain his decision from there on only to represent "little people" against corporate power. Spence no longer agonizes. That’s fine by me. But often it’s not that simple. First of all, does representing the "little guy" always put you on the side of justice? Sometimes the corporation might be in the right. Secondly, justice is not the only claim on a lawyer’s skills. There’s also the need to earn a living. Not all lawyers are like Spence, who probably earns even more money as a plaintiff’s lawyer than he did as a defense lawyer. I’m not sure Spence’s story much helps that young law graduate who only can get work doing discovery at a large personal injury defense firm.  Still I think Spence has the right approach. We all have to morally "own" our legal practice. We might not always choose the "right" side because sometimes it’s hard to decide which side is right, but we should still find the fight against injustice central to our professional role. And sometimes we might find that we can’t be on the side of justice as we see it because we have other moral claims upon us (like supporting a family or paying off loans), but we should never let let those claims blind us to the importance of the question "which side are you on?".  **Would you like to comment on this article? 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