

Garden State CLE presents:

A POPCORN CLE

Learning From Lawyer Movies:

Ethics & Professionalism



Lesson Plan

Chapter 2

The Importance of Witness Preparation

Doyle- Raizner, LLC,

Attorneys at Law



Ethical/Professionalism Issues presented:

RPC 1.1 Competence

A lawyer shall not:

- **(a) Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence.**
- **(b) Exhibit a pattern of negligence or neglect in the lawyer's handling of legal matters generally.**

Chapter 3

A Civil Action (1998)

John Travolta
Robert Duvall

Directed by Steven Zaillian



Ethical/Professionalism Issues presented:

Lack of preparation for witness cross-examination (RPC 1.1)

Violation of the fundamental rules of cross-examination

Body language and demeanor

[Note lighting used to enhance *film-noir* atmosphere in the clip]

Chapter 4

Witness for the Prosecution (1957)

Tyrone Power
Charles Laughton

Directed by Billy Wilder



Ethical/Professionalism Issues presented:

Lack of preparation for witness cross-examination (RPC 1.1)

Violation of the fundamental rules of cross-examination

Body language and demeanor

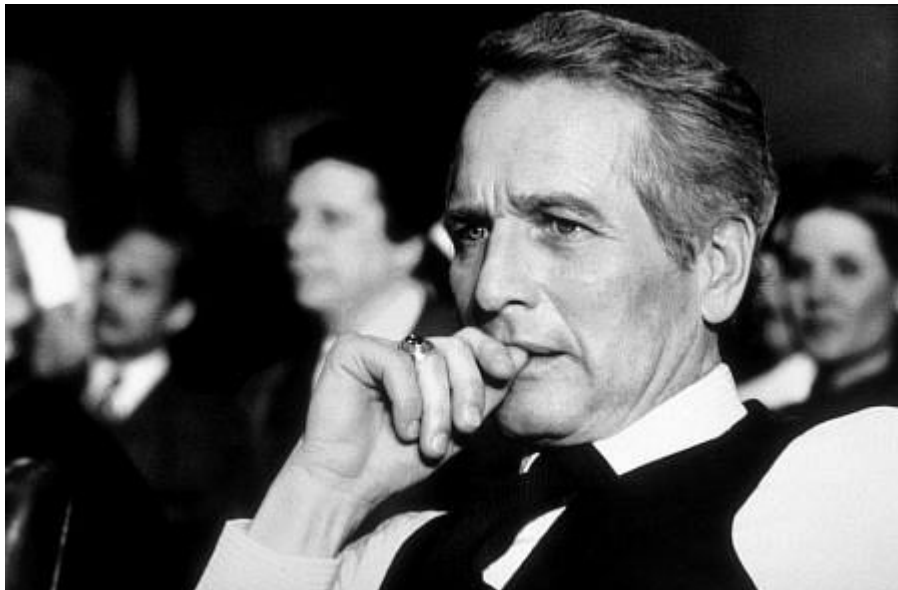
[Note lack of attention to witness holding her hand to her ear]

Chapter 5

The Verdict (1982)

Paul Newman
James Mason

Directed by Sidney Lumet



Ethical/Professionalism Issues presented:

Lack of preparation for witness cross-examination (no deposition) (RPC 1.1)

Tell your witness to not volunteer during an answer.... anything....ever!!

Violation of the fundamental rules of cross-examination

Body language and demeanor - [Note lighting used to enhance *film-noir* atmosphere in the clip]

Notes: Attorney on direct – did not ask the last logical question, thereby setting the trap

Attorney on cross failed to quit while ahead early in the examination.

Chapter 6

Presumed Innocent (1990)

Harrison Ford

Raul Julia

Directed by Alan J. Pakula



Ethical/Professionalism Issues presented:

Lack of preparation by prosecutors for witness cross-examination (RPC 1.1)

Excellent, low-key cross-examination – Attorney knows the answer to all the questions before he asks them – note technique how attorney requests that witness explain directly to the jury.

You can always lead the orchestra best when you know all the music...cross-examiner knew the answer to every single question in advance. It also allows for argumentative questions as well.

Chapter 7

Find Me Guilty (2006)

Vin Diesel
Peter Dinklage

Directed by Sidney Lumet



Ethical/Professionalism Issues presented:

RPC 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

Dialogue taken directly from the trial transcript

Prosecutor is not an ordinary advocate – His duty to not to merely seek convictions but to seek the truth and do individual justice in individual cases.

Note effectiveness of closing based upon calm, logic, muted emotion and sincerity. Attorney humanizes his client for the jury.

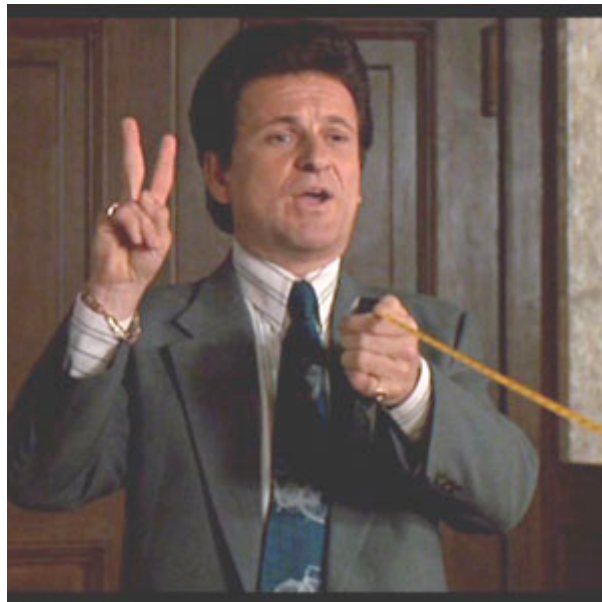
Chapter 8

My Cousin Vinny (1992)

Joe Pesci

Marisa Tomei

Directed by Jonathan Lynn



Ethical/Professionalism Issues presented:

Court room conduct and contempt in the face of the court – Rule 1:10-1

(Note how Judge Patricia R. LeBon Clip from Burlington Superior Court refuses to be provoked by an obstreperous defendant)

Reality: In New Jersey, the judge would be in more trouble than the attorney

Judicial comment on clothing is improper (bias) – Young lawyers especially must learn to carefully listen and concisely respond to the court

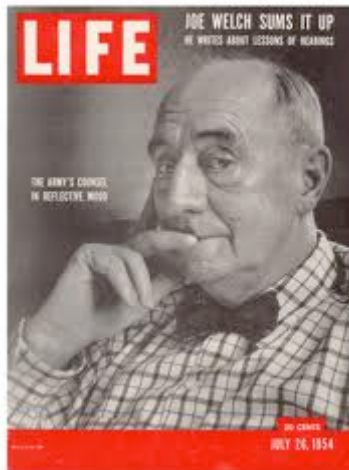
Note effectiveness of in-court demonstration on perception issue (should be done with consent of court)

Chapter 9

Point of Order (Documentary) (1964)

Sen. Joseph McCarthy
Joseph Welch, Esq., Hale and Dorr, Attorneys

Directed by Emile de Antonio



Ethical/Professionalism Issues presented:

Army-McCarthy Hearings of April 1954

Note the extemporaneous nature of the statement in defense of the reputation of Fred Fisher, presented by a truly gifted, natural actor who, ironically performed better in court than on film.

This exchanged began the quick end of Senator McCarthy's career, ending in a censure by the full Senate.

Chapter 10

Anatomy of a Murder (1959)

Jimmy Stewart

George C. Scott

Directed by Otto Preminger



Ethical/Professionalism Issues presented:

Unprofessional conduct by both sides (probably contempt in the face of the court) – No colloquy between counsel without leave of the court – all remarks always go directly to the court

Note subtle bribe in chambers and acceptance of it by the judge!

Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

- A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge should not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of office to advance the private interests of others; nor should a judge convey or permit others to convey the impression that they are in a special position of influence. A judge shall not testify as a character witness.

Chapter 11

Gideon's Trumpet (1980)

**Henry Fonda
Lane Smith**

Directed by Robert L. Collins



Ethical/Professionalism Issues presented:

Dialogue taken from trial transcript

No colloquy between counsel without leave of the court – all remarks always go directly to the court.

Natural first question on cross: “What were their names?”

Defense Attorney avoids asking the last logical question in order to leave plenty of topics for closing argument.

Chapter 12

The Lincoln Lawyer (2011)

Matthew McConaughey

Marisa Tomei

Directed by Brad Furman



Ethical/Professionalism Issues presented:

The relationship an attorney develops with court staff, sheriff officers and other workers at the court house can make your experience at the court house heaven or living hell.

It costs you nothing to smile, be friendly and nice, especially in areas of family relationships.

Try to avoid bribing public officials. It always leads to disbarment when you get caught.

Chapter 13

Inherit the Wind (1960)

Spencer Tracey
Fredric March

Directed by Stanley Kramer



Ethical/Professionalism Issues presented:

The art of persuasion fundamentally depends on communication. Use words and phrases that even small dogs and municipal court judges can understand. The biggest word you should ever use in court is "delicatessen".

Chapter 14

And Justice for All (1979)

Al Pacino
Jack Warden

Directed by Norman Jewison



Ethical/Professionalism Issues presented:

The entire premise of the movie is inconsistent with RPC 1.6

RPC 1.6. Confidentiality of Information

- (a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c), and (d).
- (b) A lawyer shall reveal such information to the proper authorities, as soon as, and to the extent the lawyer reasonably believes necessary, to prevent the client or another person:
 - (1) from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm or substantial injury to the financial interest or property of another;

Summation raises issues under RPC 8.4

RPC 8.4. Misconduct

It is professional misconduct for a lawyer to:

- **(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;**
- **(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;**
- **© engage in conduct involving dishonesty, fraud, deceit or misrepresentation;**
- **(d) engage in conduct that is prejudicial to the administration of justice;**
- **(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;**
- **(f) knowingly assist a judge or judicial officer in conduct that is a violation of the Code of Judicial Conduct or other law;**
- **(g) engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.**

Note issues related to expression of personal beliefs to the jury during opening statement and personal attack on the prosecutor, reference to inadmissible evidence (twice), violation of RPC 1.6, *et seq.*

Note: "Henry T. Fleming" is the same name as the protagonist in [The Red Badge of Courage](#).

Chapter 15

Twelve Angry Men (1957)

**Henry Fonda
E.G. Marshall**

Directed by Sidney Lumet



Ethical/Professionalism Issues presented:

Note that the jury is asked to base its verdict on an exhibit that was not introduced in evidence during the trial. This is a cautionary tale in this era of FACEBOOK, GOOGLE, LEXIS and other home digital resources.

Chapter 16

A Few Good Men (1992)

Tom Cruise
Jack Nicholson

Directed by Rob Reiner



Ethical/Professionalism Issues presented:

Stop all the yelling, already! It sounds like Jersey City Municipal Court when Judge Yengo presided. (See generally *In re Yengo*, 72 NJ 425 (1977). Actually, it is a good idea, on occasion, to let an articulate witness keep on talking. In fact, never interrupt a guy on cross-examination who is busy confessing to the crime your client was accused of committing.

Tell the witness, “I ask the questions here...you answer them.” Or ask the judge to instruct the witness to refrain from asking questions.

Chapter 17

Young Mr. Lincoln (1992)

Henry Fonda
Ward Bond

Directed by John Ford



Ethical/Professionalism Issues presented:

RPC 1.7 Conflict of Interest: General Rule

- (a) **Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:**
 - (1) **the representation of one client will be directly adverse to another client; or**
 - (2) **there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.**

This clip was based upon a trial that occurred in 1939 where Lincoln used a 19th century version of judicial notice to win an acquittal for his clients. Apart from the clear conflict, notice how Lincoln can control every aspect of the action because he already knows the answer to every question. This is the key element to dramatic and successful cross-examination.

Chapter 18

The Caine Mutiny (1954)

Humphrey Bogart
Jose Ferrer

Directed by Edward Dmytryk



Ethical/Professionalism Issues presented:

Showing required deference and respect to the lying witness. Again, note the latitude given the witness to further impeach himself. Sometimes, it's much better to keep your own mouth shut.

Note total control of witness. No opportunity provided to rehabilitate himself or explain his answers.

Chapter 19

To Kill a Mockingbird (1962)

Gregory Peck
Frank Overton

Directed by Robert Mulligan



Ethical/Professionalism Issues presented:

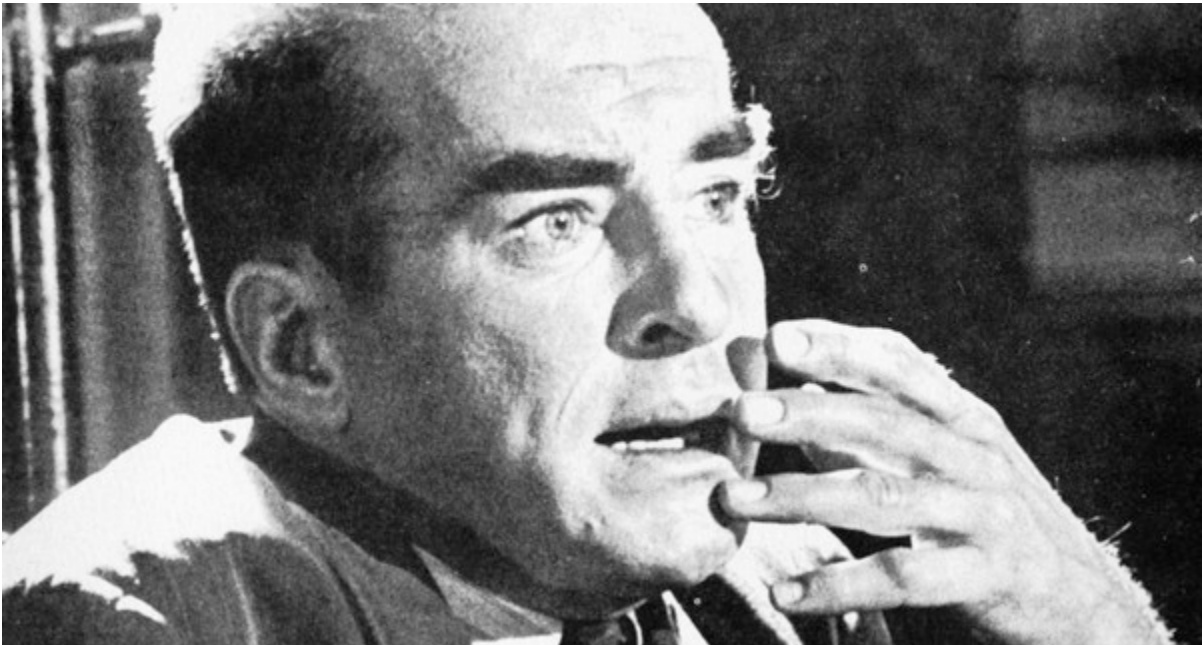
As a professional, you should never mail it in, especially in a hopeless case. Notice the subdued yet impassioned delivery before a jury that could not care less about his arguments and can't wait to convict.

Chapter 20

Judgment at Nuremberg (1961)

**Spencer Tracey
Maximilian Schell**

Directed by Stanley Kramer



Ethical/Professionalism Issues presented:

The cross-examining a mentally sub-normal person brings with it special problems related to professionalism. The advocate walks a fine line between needlessly embarrassing the witness and impeaching him.