

Book Reviews

Lessons from the Silver Screen: Must-See Movies for Military Lawyers

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Introduction

A longstanding tradition of *The Army Lawyer*, the *Military Law Review*, and other legal journals is to provide regular reviews of books of interest to the legal community. Book reviews steer readers toward literature that enhances professional development, provides information on a novel area of law, or provokes thought concerning legal, political, or ethical issues. Whether the reader chooses to download a book onto an electronic device or simply thumb through a paperback, the value of reading has not diminished in this electronic era, nor has the value of book reviews.

This article takes a different tack, however, by reviewing another form of popular media: film. Evidence abounds that military lawyers love to watch movies. Walk into a typical Army legal office and shout, “You can’t handle the truth!”¹ Chances are, people will know what you are talking about. The multiple overseas deployments of the past several years have also had the collateral effect of developing a new generation of film buffs. Watching DVDs on a portable player or laptop computer is a great way to endure the inevitable lulls of a protracted deployment.

Movies can provide more than entertainment, however. Movies can educate and inspire. Movies also enjoy certain advantages over books. It takes two, maybe three hours to watch a movie, whereas most people will require many more hours to read a book. Furthermore, movies allow a group experience, conducive to subsequent debate and discussion. No wonder many law schools find ways to weave popular film into their curriculum.²

What follows is a review of five films that every military lawyer should watch. These movies were carefully selected with several criteria in mind: they must entertain as well as educate; they must exemplify the best of the medium in terms of acting, directing, and cinematography; and they must relate directly to the practice of law in the military.³ The goal is to entice the reader to see these movies by highlighting their salient points and discussing their relevance to the contemporary practice of military law. These films also provide an excellent foundation for a professional development class that combines a screening with a follow-on discussion (and, of course, hot buttered popcorn).

*Judgment at Nuremberg*⁴

What difference does it make if a few political extremists lose their rights? What difference does it make if a few racial minorities lose their rights? It is only a passing phase.

First on the list is a military courtroom drama with a twist—this time, the judges are the accused. As the title suggests, this classic is set during the post–World War II tribunals in Nuremberg. Rather than recount the trials of Nazi party leaders and military officers, however, *Judgment at Nuremberg* is based on the true story of three German judges tried for war crimes.

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¹ A FEW GOOD MEN (United Artists 1992).

² See Francis M. Nevins, *Using Fiction and Film as Law School Tools*, in LEGAL EDUCATION FOR THE 21ST CENTURY 177–85 (Donald B. King ed., 1999), available at <http://tarlton.law.utexas.edu/lpop/etext/nevinsusing.htm>.

³ Furthermore, all of these movies are readily available on DVD for under twenty dollars. See, e.g., <http://www.amazon.com> (last visited July 14, 2009). In selecting these five films, the author consulted several sources: fellow judge advocates; the American Film Institute’s list of top courtroom dramas; and several prominent film guides. See AFI’s 10 Top 10, Top 10 Courtroom Drama, <http://www.afi.com/10top10/crdrama.html> (last visited Aug. 6, 2009); HALLIWELL’S FILM GUIDE (John Walker ed., 8th ed. 1991); ALUN EVANS, BRASSEY’S GUIDE TO WAR FILMS (2000). Additionally, in the author’s opinion, these films also are notable for their entertainment value and straightforward teaching points for military lawyers.

⁴ JUDGMENT AT NUREMBERG (United Artists 1961). Although nominated for eleven Academy Awards, the film ultimately earned two: one for best adapted screenplay (Abby Mann) and a Best Actor trophy for Maximilian Schell as defense attorney Hans Rolfe. See EVANS, *supra* note 3, at 109.

The Nuremberg trials have been widely praised as an unprecedented application of the rule of law in the aftermath of warfare; the Nuremberg tribunal's first chief prosecutor, Robert H. Jackson, described them as "one of the most significant tributes that Power has ever paid to Reason."⁵ *Judgment at Nuremberg*, however, takes place when the tribunal and its prosecutions are becoming politically inconvenient. As the movie opens, the Nuremberg trials have been going on for two years. The U.S. Government is realizing the strategic value of maintaining a good relationship with Germany at the dawn of the Cold War. Against this backdrop, Judge Haywood (Spencer Tracy) finds himself presiding over a difficult and unpopular trial. The prosecution is arguing that the three defendants actively participated in the crimes of the Nazi party by carrying out the "Nuremberg laws." Indeed, the judges are charged with murder. The most sympathetic of the three defendants is Ernst Janning (compellingly portrayed by Burt Lancaster), a respected legal scholar who nonetheless sentenced seemingly innocent defendants to harsh punishment, even death, in enforcement of Hitler's Nuremberg laws.

This film benefits from the credibility lent by its author, Abby Mann, who served three years in the Army; the movie uses actual Army Signal Corps footage when the prosecution details the atrocities of the Nazis in concentration camps.⁶ Furthermore, *Judgment at Nuremberg* showcases a true all-star cast, in the best tradition of the Golden Age of Hollywood; Spencer Tracy, Marlene Dietrich, Maximilian Schell, Burt Lancaster, Judy Garland, and Montgomery Clift turn in memorable performances.⁷ Although the dialogue and pace of this film echo a stage drama more than a modern film, the compelling performances, superb screenplay, and tight cinematography will draw in a contemporary audience.

Though produced nearly fifty years ago, *Judgment at Nuremberg* deals with issues that modern military lawyers will readily recognize. Hardcore international law practitioners can have a field day discussing the legitimacy of the tribunal and the propriety of charging the judges with murder and other war crimes. The beauty of this film, however, is that any judge advocate can relate to themes wholly independent of the mechanics of the International Military Tribunal itself.

One such theme is that of the duty of a government lawyer. Like judge advocates, the defendants had simultaneous duties toward their government and toward the rule of law.⁸ A primary defense of the judges at trial in this film is that as public servants, they fulfilled their duty to execute the laws as dictated by their leader, Adolph Hitler—"My country, right or wrong." The tribunal (and the viewer) must ask the next question: Should judges adhere to a higher duty to abide by the rule of law, versus the law of a dictator with no regard for human rights? In retrospect, especially given the brutal laws executed by the Nazi judges, the answer seems simple: The judges should have recognized the perversion of justice created by the Nuremberg laws, and either resigned or refused to enforce them.

Nevertheless, any judge advocate who has disagreed with a commander over a course of action can understand the difficulty of such a position. The Army's Rules of Professional Conduct tell us to give competent advice, but to accept the decisions of Army officers because these decisions "are not as such in the lawyer's province."⁹ The only exception is if the lawyer "has reason to know that *the Army* may be substantially injured by the action of an officer . . . that is in violation of law or directive."¹⁰ In that instance, if the officer "insists upon action" and the lawyer has exhausted his options, he "may terminate representation In no event shall the lawyer participate or assist in the illegal activity."¹¹ In some instances, then, a lawyer's higher duty to the law is congruent with his duty as a judge advocate to represent and protect the Army. A *Nuremberg* viewer should consider whether the Nazi judges' loyalty to their country was congruent with, or at odds with, their duty to uphold the Nuremberg laws.

Intertwined with that theme is the notion of national emergency justifying behavior that might otherwise be condemned. The defense argues that a convergence of internal and international pressures threatened the very survival of Germany. Resigning from the bench or other demonstrated disloyalty would disrupt a key pillar of government, thereby jeopardizing national security even more. Thus, the judges believed themselves justified in carrying out their nation's laws, confident that the resolution of this national crisis would allow them to return to a more just execution of their duties.

⁵ INTERNATIONAL MILITARY TRIBUNAL, 2 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL 99 (photo. reprint 1995) (1947) (opening statement of Justice Robert H. Jackson, Chief of Counsel for the United States, Nov. 21, 1945).

⁶ See Obituary, *Abby Mann*, TELEGRAPH, Mar. 29, 2008, available at <http://www.telegraph.co.uk/news/obituaries/1583183/Abby-Mann.html>.

⁷ Not to mention a pre-*Star Trek* appearance by William Shatner as an Army JAG captain. HALLIWELL'S FILM GUIDE, *supra* note 3, at 597.

⁸ See, e.g., U.S. DEP'T OF ARMY, REG. 27-26, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS para. 6 (pmb1.) [hereinafter AR 27-26] ("A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.").

⁹ *Id.* R. 1.13 cmt. (Army as Client).

¹⁰ *Id.* (emphasis added).

¹¹ *Id.* R. 1.13(d).

In light of recent national debate over government conduct in the War on Terrorism,¹² a contemporary viewer will readily recognize an enduring theme. At what point does national emergency justify government action that, in another context, may be criticized as inhumane, even illegal? In *Judgment at Nuremberg*, the defense argued that the “enemy was gripping our throats” in a manner that justified the most extreme measures to ensure the nation’s survival. History, and this film, ultimately disagreed with that notion.

*The Caine Mutiny*¹³

[T]here are four ways of doing things aboard my ship: The right way, the wrong way, the Navy way, and my way.

As the title indicates, this film is about a crime—mutiny—and its aftermath. Codified at Article 94 of the Uniform Code of Military Justice, mutiny and sedition have traditionally been “characterized as the gravest and most criminal of the offenses known to the military code.”¹⁴ Mutiny also stands apart from simple insubordination in that it requires the principal to act “in concert with any other person.”¹⁵ In other words, mutiny is the perfect subject for a maritime and courtroom drama like *The Caine Mutiny*.

Up front, the film carefully points out that no mutiny has ever taken place on a U.S. Navy vessel. Indeed, the film is based on a work of fiction: a novel of the same title by Herman Wouk.¹⁶ Rather than a violent uprising, the mutiny in this story is based on a series of small events that call into question the captain’s judgment and fitness for duty. The film opens with the protagonist, Ensign Willie Keith, eagerly graduating from Officer Candidate School and certain he will work on a battleship or destroyer. To his dismay, he is assigned to the U.S.S. *Caine*—a minesweeper that has seen better days. The hull sports rust, and military standards and courtesies seem to have deteriorated as much as the *Caine* herself. After a rough start with the *Caine*’s captain, Ensign Keith welcomes the arrival of the new captain, Lieutenant Commander (LCDR) Queeg (Humphrey Bogart). Soon, however, Queeg’s “eccentricities” and questionable decisions alarm Keith and his fellow officers. Lieutenant Thomas Keefer suggests to the Executive Officer (XO), Lieutenant Stephen Maryk, that Queeg may be suffering from a mental disorder, namely, “acute paranoia.” The XO starts to document LCDR Queeg’s actions and his behavior seems increasingly bizarre, culminating with an overblown investigation into a quart of stolen strawberries. Shortly after, Queeg appears to freeze as the ship navigates through a dangerous storm; the XO (having been previously briefed on “Article 184” by Keefer)¹⁷ relieves the captain and steers the *Caine* to safety.

At this point, the setting changes from the *Caine* to dry land as Maryk and Keith face a court-martial. After eight other lawyers turn down the case, Lieutenant Greenwald (adeptly portrayed by a young Jose Ferrar) takes up Lieutenant Maryk’s defense, even though he thinks that what he has done “stinks.” Lieutenant Keefer, who has avoided charges because he was absent from the bridge when Maryk took over, is reluctant to testify that he suggested to Maryk that Queeg was mentally unstable (thereby possibly incriminating himself in the process). Despite his open disdain for his clients, Greenwald zealously defends them to the point of pushing Queeg to the brink of a breakdown on the stand. Unlike two of the other films discussed in this article, *The Caine Mutiny* does not end with a firing squad; Greenwald wins his case and his clients are fully acquitted. This doesn’t keep him from tossing a glass of champagne in Keefer’s face—the man he considers “the real author of the *Caine* mutiny.”¹⁸

¹² See, e.g., *The Torture Question: Is Torture Ever Justified?*, Frontline, PBS, <http://www.pbs.org/wgbh/pages/frontline/torture/justify/> (Oct. 18, 2005) (debating the use of torture in the “ticking time bomb” scenario).

¹³ *THE CAINE MUTINY* (Columbia Pictures 1954).

¹⁴ Kevin M. Kelly, Comment, “*You Murdered Queeg*”: *Lawyers’ Ethics, Military Justice, and The Caine Mutiny*, 1991 WIS. L. REV. 543, 543 (May/June 1991) (quoting WILLIAM WINTHROP, 2 *MILITARY LAW AND PRECEDENTS* 892 (2d ed. 1896)).

¹⁵ UCMJ art. 94(a)(1) (2008).

¹⁶ HERMAN WOUK, *THE CAINE MUTINY* (1951).

¹⁷ According to Lieutenant Keefer, Article 184 of Navy Regulations states, “It is conceivable that most unusual and extraordinary circumstances may arise in which the relief from duty of a commanding officer by a subordinate becomes necessary, either by placing him under arrest or on the sick list”

¹⁸ As a side note, the “villain,” Lieutenant Keefer, is played by Fred McMurray. Viewers will likely recognize him for a more popular role as the father on *My Three Sons*. See Turner Classic Movies, Biography for Fred MacMurray, <http://www.tcm.com/tcmdb/participant.jsp?spid=119195> (last visited Aug. 12, 2009).

Like many military courtroom films, *The Caine Mutiny* brings up several issues of professional responsibility.¹⁹ Lieutenant Greenwald finds his personal feelings in conflict with his duty to represent the clients he believes to be guilty. Any current or former trial defense counsel can readily identify and empathize with Greenwald's situation. The Army's Rules of Professional Conduct for Lawyers directly acknowledge this situation, stating that "[m]ostly all difficult ethical problems arise from conflict among a lawyer's responsibilities to clients, to the law and the legal system and to the lawyer's own interest in remaining an upright person."²⁰ As a seasoned lawyer, he is able to set those feelings aside and concentrate on zealously defending Lieutenant Maryk.

Greenwald's zealous representation raises other issues, however. To defend Maryk, he must not only impeach the testimony of a military psychiatrist, but he must do all he can to make Queeg appear to be mentally unstable. His rigorous cross-examination does the trick, but after the trial Greenwald is disgusted by what he has done. Although the novel deals with this conflict in more detail,²¹ the film provides enough to engender debate among judge advocates. Arguably, his conduct skirts the boundaries of Rule 3.5, Impartiality and Decorum of the Tribunal.²² As the commentary states, "Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants."²³ The counterargument would be that his conduct falls within the permissible boundaries of zealous representation; after all, impeaching a witness's credibility is a common and accepted trial tactic. Any judge advocate who has prosecuted or defended a Soldier will have an opinion on the propriety of Greenwald's actions.

On a different note, the film is also noteworthy for its treatment of mental illness. The film leaves no doubt as to the captain's obvious missteps and shortcomings. A modern audience will identify, as did the captain's staff, his behavior as possible symptoms of post-traumatic stress disorder (PTSD), paranoid personality disorder, or any of a number of other diagnoses out of the DSM-IV.²⁴ In light of rising suicide rates in the past few years, the Army has stepped up training on identifying and addressing signs of mental illness.²⁵ A judge advocate viewer must ask, did the accused take appropriate steps, given the circumstances? Perhaps one answer lies in a crucial scene, where the staff has an opportunity to warn a senior admiral about Queeg's behavior, but back off when Lieutenant Keefer loses his nerve. The film makes it clear that mutiny must be a last resort. The viewer is left to consider whether Lieutenant Maryk had exhausted his options before making that choice.

*Breaker Morant*²⁶

It's a new war for a new century. I suppose this is the first time the enemy hasn't been in uniform. They're farmers. They're people from small towns. And they shoot at us from houses and from paddocks. Some of them are women, some of them are children, and some of them are missionaries . . .

Shortly after a well-respected army captain is brutally killed by enemy insurgents, three soldiers stand trial for murdering detainees. At their court-martial, the defense proffers several arguments: "take no prisoners" orders from higher headquarters; confusing rules of engagement; and self-defense. On the other hand, the prosecution contends that a conviction is necessary to show the local population that the army punishes its own for war crimes.

¹⁹ For the sake of storytelling and dramatic pacing, ethical guidelines are usually glossed over or ignored altogether in film and television, sometimes to the point of incredulity. See, e.g., *SUSPECT* (Tri-Star Pictures 1987) (depicting a public defender (Cher) who has an affair with a jury member (Liam Neeson) with seeming impunity).

²⁰ AR 27-26, *supra* note 8, para. 6 (pmb1).

²¹ See Kelly, *supra* note 14, at 560-64 (thoroughly analyzing the ethical issues raised by Greenwald's tactics as depicted in the novel).

²² AR 27-26, *supra* note 8, R. 3.5.

²³ *Id.* (commentary).

²⁴ AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (4th ed. 2000) [hereinafter DSM-IV-TR]. Paranoid personality disorder is defined as "a pattern of pervasive distrust and suspiciousness of others such that their motives are interpreted as malevolent." *Id.* at 690. Post-traumatic Stress Disorder is defined as "the development of characteristic symptoms following exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or physical injury," among other possible traumas. *Id.* at 463. Examples of PTSD symptoms that Queeg displays are irritability, hypervigilance, and "outbursts of anger." *Id.* at 468.

²⁵ See, e.g., C. Todd Lopez, *Vice Says Mental Health More Than Stopping Suicides*, ARMY NEWS SERV., July 31, 2009, available at <http://www.army.mil/news/2009/08/03/25400-vice-says-mental-health-more-than-stopping-suicides/>.

²⁶ *BREAKER MORANT* (Roadshow Entertainment 1980).

This scenario could describe a number of cases stemming from the Iraq war. Soldiers from the Fourth Infantry Division were court-martialed for drowning an Iraqi man, allegedly motivated in part by the death of a captain in their battalion a few days before.²⁷ Two years later, in the trial of Soldiers for murdering detainees, the commanding general of the 101st Airborne Division was accused of issuing a “kill all military age males” order.²⁸ Nevertheless, this scenario is actually a synopsis of the plot of *Breaker Morant*—a true story, set during a war that occurred 100 years ago, on another continent, fought by soldiers from another country. The modern viewer will marvel at the enduring nature of the moral and legal issues faced by military leaders adapting to guerrilla warfare at the dawn of the twentieth century.

Set during the Boer War in what is now South Africa, *Breaker Morant* uses flashbacks, interspersed with scenes of the present day, to narrate the court-martial of Harry “Breaker” Morant, Peter Handcock, and George Witton.²⁹ Morant is a lieutenant with the Bushveldt Carbineers, an Australian unit operating under the control of the British army. His best friend, Captain Hunt, is ambushed and wounded during a patrol. When the patrol returns and reports that Hunt is missing, Morant immediately says, “Avenge Captain Hunt.” As the trial unfolds, the viewer learns more about the events that led to the charges. Morant is first motivated by discovering a prisoner wearing a khaki uniform, ostensibly that of Captain Hunt. This leads to the first execution—explained later by an order that “all prisoners wearing khakis will be shot.”³⁰ Next, Morant assembles a firing squad to dispose of a group of six Boer prisoners, even though they surrendered under a white flag. The final act in question involves a German missionary whom Morant saw speaking to the Boer prisoners, despite his orders not to. A flashback depicts Handcock riding after the missionary, who is later found shot. Adding to the drama and suspense, the details of these events are revealed very gradually during the tense courtroom scenes.

Any former trial defense counsel will identify with the defense counsel, Major J.F. Thomas. Prior to being appointed to defend all three Carbineers, his only legal experience was in land conveyances and wills. Nonetheless, he launches a volley of forceful legal arguments: the trial is unconstitutional, because the accused are Australian, not British; the defense just received the evidence, so the trial must be delayed; the defendants were following orders from Lord Kitchener that all prisoners be shot; and the defendants did what they had to do against an undisciplined insurgency who themselves disregarded the laws of war. Despite his lack of courtroom experience, Major Thomas proves to be an effective litigator, skillfully exposing biases in prosecution witnesses and forcefully arguing that the defendants are mere scapegoats, used by the British government to hasten a peace treaty and end to the war.³¹ Major Thomas’s selection as defense counsel seems to validate some critics of today’s U.S. Army, who contend that the least experienced attorneys are called upon to handle the most serious cases.³² Thomas’s skillful handling of the case demonstrates the counterpoint, however—that according to our rules of professional conduct, Army lawyers are deemed competent absent contrary evidence.³³

The average viewer/lawyer looking for more lessons learned will find many in *Breaker Morant*. This film has garnered renown not only for its superb acting and direction, but for the abundance of moral and ethical issues it confronts in a frank, straightforward manner. Indeed, *Breaker Morant* has been the subject of many scholarly articles that dissect its plot and discuss in detail concepts such as professionalism³⁴ and heroism.³⁵

For the military lawyer, however, the film *Breaker Morant* remains especially relevant because of its parallels with the issues faced by today’s Soldiers. The passing of a century has seemingly done little to clarify the legal dilemmas that arise in

²⁷ See, e.g., NATHAN SASSAMAN, *WARRIOR KING* (2009) (describing this event, among others, from the battalion commander’s point of view).

²⁸ See, e.g., Raffi Khatchadourian, *The Kill Company*, *NEW YORKER*, July 6 & 13, 2009, at 41, 50.

²⁹ Any fan of 1980s television will recognize Edward Woodward (who plays Morant), as “The Equalizer.” If Handcock looks familiar, it may be from actor Bryan Brown’s role as Tom Cruise’s mentor in *Cocktail*.

³⁰ The prosecution contends that this order meant to shoot only those who wore khakis with “intent to deceive.”

³¹ Indeed, Lieutenant Witton’s memoir uses the same term in its title. GEORGE WITTON, *SCAPEGOATS OF THE EMPIRE: THE TRUE STORY OF BREAKER MORANT’S BUSHVELDT CARBINEERS* (Angus & Robertson 1982) (1907).

³² See Katie Couric, *Sexual Assault Permeates U.S. Armed Forces*, CBS NEWS, Mar. 17, 2009, available at <http://www.cbsnews.com/stories/2009/03/17/eveningnews/main4872713.shtml> (quoting one former judge advocate’s opinion: “what we see in the JAG court is [sic] very inexperienced, brand spanking new lawyers”).

³³ One could argue that special rules should apply for defense counsel in capital cases. Although the American Bar Association states that its guidelines for capital cases apply to military proceedings, neither the *Manual for Courts-Martial* nor AR 27-26 expressly adopt these guidelines. See AM. BAR ASS’N, *GUIDELINES FOR THE APPOINTMENT AND PERFORMANCE OF DEFENSE COUNSEL IN DEATH PENALTY CASES 2* (rev. ed. 2003), available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/deathpenaltyguidelines2003.pdf>.

³⁴ Drew L. Kershen, *Breaker Morant*, 22 OKLA. L. REV. 107 (1997) (reviewing in detail the themes of integrity and professionalism throughout the film).

³⁵ Michael Asimov, *When Lawyers Were Heroes*, 30 U.S.F. L. REV. 1131 (1995–1996).

asymmetric warfare. Shifting from status-based to conduct-based rules of engagement requires Soldiers to engage in highly discretionary judgments of hostile intent and proportionality.³⁶ Both the Boer War and Operation Iraqi Freedom have highlighted the heightened responsibility this places on senior commanders to ensure that rules of engagement are clear, understandable, and properly disseminated through the ranks. Clarifying “take no prisoners” or “kill all military-age males” orders not only spares lives, but also keeps otherwise good soldiers—like Breaker Morant—out of the courtroom and on the battlefield.

*Paths of Glory*³⁷

There are few things more fundamentally encouraging and stimulating than seeing someone else die.

Fans of film classics like *The Shining*,³⁸ *2001: A Space Odyssey*,³⁹ and *Full Metal Jacket*⁴⁰ may be surprised to learn that visionary director Stanley Kubrick laid the foundation for these films early in his career with the critical success *Paths of Glory*. Although it stars legendary American actor Kirk Douglas, *Paths of Glory* is set amidst the French army’s trenches during World War I. More poignantly than *Breaker Morant*, *Paths of Glory* explores the concept of punishing soldiers to maintain good order and discipline—in this case, to deter other soldiers from acts of cowardice.

The film begins by depicting a common plot device in war films: the senior officer who chases ambition at the cost of his subordinates’ lives. General Mireau, ordered on a virtual suicide mission to attack a German position called “The Anthill,” initially balks until he realizes the career benefit to be gained through a successful mission. Seemingly oblivious to the real cost to his soldiers—and his good fortune to stay far back from the frontlines—he cheerfully walks through the trenches early in the film, asking soldiers if they are “ready to kill more Germans.”

In contrast, Colonel Dax is immediately ill-at-ease with the mission, briefing General Mireau that at least sixty percent of his men will probably be killed. Nonetheless, Dax agrees to carry out the mission. As the battle wages, however, the ferocity of the German counterattack pins an entire company in its trenches. Furious at their “cowardice,” Mireau orders the regiment to fall back and convenes a general court-martial, stating, “If those little sweethearts won’t face German bullets, they’ll face French ones!”

Colonel Dax, who before the war was one of the best criminal lawyers in France, is appointed defense counsel for three soldiers—one from each company.⁴¹ Similar to *Breaker Morant*, the so-called trial is hastily thrown together with a predetermined result. Dax rails against the system, emphatically pointing out the defects in the proceeding—“no written indictment,” “no witnesses,” “no record of trial,” and “no access to evidence,” concluding that “this court-martial is a disgrace—not the battle.” Despite his valiant efforts, however, the trial marches inexorably toward its only possible verdict.

Paths of Glory echoes many themes of the films already reviewed here, such as the pitfalls of battlefield justice, the fog of war, and weak leadership. A post-screening discussion could certainly focus on these issues, but could also benefit from examining one issue in detail—the value of general deterrence in maintaining military discipline. A corollary issue is whether it is just to ask a few people to face punishment for the acts engaged in by many, and whether there is any “fair” way to select the accused from all culpable parties.

Today’s *Manual for Courts-Martial* reflects the traditional reasons for inflicting punishment on a guilty servicemember: “rehabilitation of the accused, general deterrence, specific deterrence of misconduct by the accused, and social retribution.”⁴²

³⁶ See Khatchadourian, *supra* note 28, at 47–48.

³⁷ *PATHS OF GLORY* (United Artists 1957).

³⁸ *THE SHINING* (Warner Bros. 1980).

³⁹ *2001: A SPACE ODYSSEY* (MGM 1968).

⁴⁰ *FULL METAL JACKET* (Warner Bros. 1987).

⁴¹ Mireau initially wants to execute 100 soldiers, ten from each company; his superior officer convinces him instead to try one man from each company in the first wave. The practice of punishing a military unit by executing randomly selected individuals dates to at least Roman times. In the Roman Army, a unit was “decimated” when one out of every ten soldiers was executed as a form of punishment. After Antony’s defeat at Media, for example, Plutarch writes, “Antony, finding that his men had in a panic deserted the defence of the mound, upon a sally of the Medes, resolved to proceed against them by decimation, as it is called, which is done by dividing the soldiers into tens, and, out of every ten, putting one to death, as it happens by lot.” PLUTARCH, *ANTONY* (John Dryden trans. 1909) (75 C.E.), available at <http://classics.mit.edu/Plutarch/antony.html> (last visited Jan. 18, 2010).

⁴² *MANUAL FOR COURTS-MARTIAL*, UNITED STATES, R.C.M. 1001(g) (2008).

Given that Colonel Dax's clients face the firing squad, the only applicable sentencing philosophies are general deterrence and social retribution. Although, arguably, social retribution provides one reason for a death sentence (or, at the very least, General Mireau's desire for personal retribution), the overt reason for convening the court-martial was general deterrence. As one character states, "Troops crave discipline One way to maintain discipline is to shoot a man now and then."

In the context of the film, this general officer's statement is cold, even cruel. The average audience will doubtless find barbaric the seemingly arbitrary practice of selecting three men to "make an example" for hundreds of others. No wonder that *Paths of Glory* is often touted as an openly anti-war film.⁴³ Setting aside, however, the myriad injustices surrounding the "trial" (many of which are not even touched on here), the desire to maintain good order and discipline through general deterrence is an accepted, even encouraged, practice in the military to this day.

Compared to the average audience, judge advocate viewers will likely be able to compare this theme to their own experiences in the courtroom. Logic and practicality dictate that not every positive urinalysis or AWOL will be dealt with by general court-martial; nonetheless, commanders do need to bring certain cases to trial in order to maintain discipline. The discretion vested in commanders by the military justice system can make these decisions appear arbitrary to an outside observer. In *Paths of Glory*, the three defendants are chosen by their respective companies in three different ways. One man is chosen by lot; one man is identified as a "social undesirable"; and the third is selected by his commander because he witnessed the commander committing fratricide. Each method reflects a different shade of meaning of the word "unfair." Nonetheless, judge advocates, whether they agree with these methods or not, can find much to contemplate when comparing this regiment's desire for general deterrence with their own experiences with commanders and clients.

*The Best Years of Our Lives*⁴⁴

You know, I had a dream. I dreamt I was home. I've had that dream hundreds of times before. This time, I wanted to find out if it's really true. Am I really home?

This classic recounts the story of three veterans returning to a small Midwestern town from their tour of duty in World War II. Meeting up in a military terminal and hitching rides back to the United States, the three couldn't be more different—a decorated officer, a world-weary infantry first sergeant, and a seriously wounded, but upbeat, sailor (played by real-life veteran and double-amputee Harold Russell). Once they return home, however, it turns out that all three must deal with wounds, both physical and mental, inflicted by their war experience.

The first sergeant is actually a well-off bank vice president with a loving wife (played with tenderness and class by Myrna Loy) and adoring children. His military tour, however, has left him impatient with the money-first practices of his bank, especially when it comes to granting GI Loans to returning servicemen. He also is quick to temper his moodiness with alcohol, which is played more comically (with the exasperated reactions of his wife) than tragically. The captain, who had hastily married a young singer/dancer before shipping off, returns to his bride's disappointment when he sheds his dashing uniform to return to civilian life as a soda jerk. Furthermore, he suffers vivid nightmares and flashbacks to his time in the ball turret of a fighter plane; nowadays, this would be labeled PTSD, although that term was unknown when this film was made.⁴⁵ Perhaps the film's most poignant portrait is that of young Homer Parrish. Externally upbeat, he demonstrates his agility with the hooks that now substitute for hands, lighting cigarettes and playing the piano. Behind closed doors, however, the effects of his disability are stark. One memorable scene unflinchingly depicts his father buttoning his pajamas after he has shrugged off his artificial arms. In addition, his cheerful demeanor belies his deep anxiety over the reaction of his family, and especially that of his young fiancée. Harold Russell won a well-deserved Best Supporting Actor Academy Award for his portrayal of Homer; he skillfully demonstrated both the capabilities of and the obstacles faced by wounded servicemen.⁴⁶

Although the film has a typical Hollywood ending, it is still eminently watchable for modern audiences. Acclaimed director William Wyler deftly blends humor and drama, providing both a story of struggle with one of hope and redemption through the love of the family and friends of each veteran. Military lawyers will additionally benefit from its sincere

⁴³ For example, the booklet accompanying the Metro-Goldwyn Mayer Home Entertainment DVD describes the film as "a searing indictment against the . . . ultimate folly of war."

⁴⁴ THE BEST YEARS OF OUR LIVES (The Samuel Goldwyn Company 1946).

⁴⁵ See DSM-IV-TR, *supra* note 24. The American Psychiatric Association classified "Posttraumatic Stress Disorder" as a mental disorder in 1980. See Nat'l Inst. of Health, Fact Sheet: Post-Traumatic Stress Disorder 1 (July 2007), available at <http://www.nih.gov/about/researchresultsforthepublic/PTSD.pdf>.

⁴⁶ EVANS, *supra* note 3, at 27.

portrayal of veterans' post-deployment issues. No movie before or since has so expertly portrayed every dimension of a veteran's re-integration into "normal" life after a combat deployment. Even more so than the obvious challenges faced by the double-amputee, the film accurately portrays the very real effects of PTSD. The captain returns a decorated "hero," only to face the very real, crippling effects of his nightmares and flashbacks. Although he has no external wounds, the film grants his mental trauma the same serious treatment and sympathy as the external wounds suffered by Homer Parrish. Such a depiction is ahead of its times, given the stigma and skepticism that still accompany diagnoses of mental illness in today's servicemembers.⁴⁷

Judge advocates viewing this film today will immediately remark on the lack of support for these veterans. As depicted in this film, the support of friends and family and the resilience of the individual are the only sources available to help these vets overcome their issues. Any judge advocate screening this film today should be able to identify the many services that each of these veterans could use in this Operation Iraqi Freedom/Operation Enduring Freedom era.⁴⁸ Furthermore, the humane portrayal of each veteran serves as a reminder of the humanity of the Soldiers we counsel.

Conclusion

Notwithstanding the vast body of literature discussing film as a serious art form, people go to the movies because they are fun. Whether your "home theater" is a sixty-inch flatscreen TV with surround sound or a sixteen-inch laptop screen in a trailer in Afghanistan, movies can transport you to another place and time. Next time you're deciding what to watch, reach for one of these five films. Not only is it a chance to blend recreation with professional development—it's an excellent excuse to break out some gummi bears.

⁴⁷ See Jennifer Clampet, *Counselors Help Combat Mental Health Stigma*, U.S. Army Homepage, July 15, 2009, <http://www.army.mil-news/2009/07/15/24394-counselor-help-combat-mental-health-stigma/>.

⁴⁸ For example, the Army created the Wounded Warrior Program to assist Soldiers dealing with physical disabilities and behavioral health issues. See <https://www.aw2.army.mil/index.html> (last visited Aug. 13, 2009).