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Law in the Plays of Elmer Rice
Randolph N. Jonakait

Abstract. While novels, short stories, television shows, movies, and classic dramas are often analyzed for insights into the law, modern plays are seldom similarly examined. The plays of Elmer Rice, however, should be discussed by those interested in our legal system. Rice, although now largely forgotten, was a leading playwright of the last century. He was a law school graduate, and his work often incorporated legal themes. His plays provide provocative commentaries about the law and raise dilemmas about justice and ethics that resonate today. This essay explores the interplay between plays and the law by examining the life and work of Elmer Rice.

Keywords: Elmer Rice, playwrighting, legal ethics, legal practice, censorship, bar exam, jury trials

Lawyers and academics analyze novels and short stories, movies, and television shows to gain insights into law, how popular culture regards law, and how to teach law, but seldom does the law-in-literature movement, except for a few classics, examine plays. This is understandable because plays have important limitations.

Literature can sometimes provide provocative or meaningful insights into the humans who operate in the legal system, but the comparative brevity of plays can limit extensive, realistic character development. That brevity, however, can also be a benefit in legal education. For example, the novel *A Frolic of His Own*, by William Gaddis, is filled with rich and often entertaining material about intellectual property law, personal injury suits, the relationship between law and justice and language and law, but it is highly unlikely that many law students, or law professors, will spend the time necessary to have a useful discussion about this subject matter, and the same is true generally for novels with legal themes. In contrast, because plays can be fully experienced in...
a relatively short period, everyone in a law school group can rather easily discuss any legal themes they contain.

The time constraints on plays often force them to utilize instantly recognizable figures, perhaps limiting their artistic merits, but this, too, has an advantage for law school use. If the audience can see those identifiable characters as people like themselves or people they know, the audience may see the situations the characters encounter not as merely abstract problems and conflicts, but as ones they or those around them may someday face. If a play's dilemmas are the kind that people in our legal system may confront, the play can help bring a better understanding of the human dimensions of legal problems and that consideration of such matters should consider the passions, ideals, weariness, frailties, and other qualities that people in our legal system actually bring to such conflicts. The plays and other writings of Elmer Rice are a case in point.

Elmer Rice, who lived from 1892 to 1967, wrote several novels and many short stories, essays, book reviews, and movie, television, and radio scripts. He directed and produced stage performances, helped run theater organizations, and was a noted civil libertarian. But first and foremost, Rice was a playwright. He was prolific and successful. About thirty of his plays were produced on Broadway, and some of his two dozen unproduced plays were published. When he was only 21, his 1914 On Trial stormed Broadway with its new techniques. In 1923, his expressionist, The Adding Machine, helped usher in a new dramatic era. His 1929 naturalistic, Street Scene, ran 601 performances and won the Pulitzer Prize. Dream Girl, a delightful comedy, was a hit in 1945. He wrote controversial plays of political comment, including We the People (1933), Judgment Day (1934), and Flight to the West (1940). More than four decades after his debut, Cue for Passion (1958) opened on Broadway. As a result of this career, a 1958 interview in the New York Times labeled him, not extravagantly, "Dean of Playwrights." A student of the theater, Robert Allan Davison has said, "Throughout a fifty-three-year career, Rice showed genius, talent, and wisdom in his exploration of universal and timeless issues through the finely wrought specifics of his drama. Among the forty of his plays produced or published during his lifetime are some of the finest and most innovative plays in the history of the American Theatre." 

Today, however, even though his plays are revived from time to time, Elmer Rice is largely forgotten, even by the play-going public. Rice, however, would not have been surprised because he felt that few plays had long lives.
However, it is unfortunate for those interested in examining the depictions of law in literature because, in addition to his other accomplishments, Rice was a law school graduate whose plays often addressed important legal themes.

WHY FEW PLAYS ENDURE

Elmer Rice recognized that while artistic masterpieces may always endure, the work of a first-rate playwright was less likely to last than the work of other, comparable writers. The major reason for this is because a play is written to be performed to a group audience, not merely published and read.

Producing a Play

Rice stressed that seeing a performance was an experience different from the mere reading of a play. He gave examples, the most famous of which is from Act II, Scene II of *Macbeth*. Macbeth has killed Duncan but he has not implicated the groomers as planned. Lady Macbeth scornfully leaves to do the deed. The stage directions say “Knocking within.” That direction is repeated over the next few lines. Lady Macbeth returns, and she, too, is now covered in blood. Rice continues:

> It is dramatic enough in the reading, but the full effect can be understood only when one sits in the theatre watching those two desperate figures in the cold predawn light, he already overcome with guilt and remorse, she hysterically intent upon the consummation of the crime. Then comes the knocking upon the locked gate of the castle; the inchoate fears of Macbeth and the cold disdain of his wife are punctuated by the repeated pounding. Who is there? Will the guilt be discovered? The words convey all that, of course, but they are immeasurably enhanced by the visible and audible situation. No one who has merely read the play can be aware of the intensity of this celebrated scene when it is enacted.

And as he noted, “a play that is unperformed quickly falls into oblivion from which it is seldom rescued.” A play’s production, however, is an expensive, complicated affair. It takes much money and the assembled talents of many besides the author, and each day a play runs, it continues to generate significant expenses. A new play almost always has to be instantly successful to last more than a brief time, and if its initial production does not succeed, it is
unlikely ever to be produced again. For a play to generate the necessary timely interest, it must almost always get favorable comments from the few critics attending opening nights and immediately attract an audience. As a result, few plays are initially produced, few will continue in production or be re-produced, and consequently, few will have the chance to endure. Since the producer knows he needs an immediate, sizeable audience to recoup his investment, Rice wrote that “his choice of plays to be produced is determined by his judgment of their potential popularity. This state of things does not make for the choice of plays of great depth or literary value.”

Books are different. Many more books are printed each year than plays are produced. Less money is required to publish a book than to produce a play. Novels, unlike plays, often survive, even though not immediately successful and even without favorable reviews. The reviews of a book do not appear at the same time, and while some book reviewers are more influential than others, a book may receive many reviews around the country with none being decisive. And since a distribution system is in place when a book is published, it continues to remain available after its publication date. Rice noted in his still-interesting 1959 book about the social structure of the theater, *The Living Theatre*, “Even if time is required to overcome adverse reviews, it costs nothing to keep the books on the shelves while the public demand develops.” Consequently, for books, unlike plays, positive word-of-mouth can build over months and years, bringing new audiences to a book long after it is published. Recently, I found at a flea market a book with a collection of many of the writings of W. Somerset Maugham, thought of by few today as a major writer. From time to time, I read the stories, novels, and other writings collected in that volume, and as result, the work, in some sense, still lives as does the work of many other writers, great and not so great, when someone today still reads one of their books.

Maugham, however, was also a successful playwright—he had ten plays produced in seven years with several of them running simultaneously in London. Few now have the opportunity to see those stage pieces. Without productions, those works, even if first-rate, cannot live. If he only wrote plays, Maugham’s name would be recognized by few today. Indeed, Maugham abandoned the theater because he thought that drama was too evanescent. He concluded in *The Summing Up*, a book of reflections, “that a prose play was scarcely less ephemeral than a news sheet” and abandoned the theater.
Writing for a Group Audience

Rice also stressed that a play requires writing for a group audience, and this limits quality. The author of a book seeks wide readership, but in an important sense, he really writes for an audience of one, the solitary reader who can choose where and when to read. That author has the freedom to determine at what level to pitch his writing. He can seek an audience of an academic, a trained professional, a serious reader, or a mass market. He can try for literary or intellectual merit and have a chance of finding the right readership. Many serious books result.

The dramatist’s audience, in contrast, requires a group of individuals assembled together at a particular time and place to experience the work together. Since theater-going is generally expensive, that group is largely limited to the upper economic class, and Rice thought that such audiences generally sought mere entertainment and were not particularly sophisticated, having on average less understanding of the art they are perceiving than concert-goers, visitors to art exhibitions, or readers of serious books. Furthermore, a play’s audience does not have an advantage of the book audience. The reader can always thumb back if something has been missed, but the playgoer has nothing comparable, and that requires the playwright to repeat important information for the audience, sometimes undercutting the artistic integrity of the work.

Equally important, Rice felt that the collective behavior of any group, including an audience, was different from the usual private reactions of the individuals who form the group. Writing in mid-career in an introduction to a British collection of some of his plays, Rice concluded that for whatever reason, those in a group “assume a uniformity of conduct, a sort of common denominator... which is far below the habitual level of the more intelligent... members of the group. [The dramatist] is handicapped by the low level of his audience, which imposes upon him the necessity of over-simplifying and over-emphasizing his points in order to make them at all.” Even so, Rice pronounced “that almost any play is considerably above the level of the audience which it attracts. Anyone who has listened to the comments of an audience, during or after the performance, can say without hesitation that at least one-half of those present have no definite notion of what the author has been driving at, or even what the play is about.” Rice, concluded: “Why, then, is the lot of the dramatist more unhappy than that of his fellow-artists? For the simple reason that he cannot address himself to the individual judgments of the
scattered few to whom he may have something to say. The very nature of his art demands an organisation of his audience, in space and in time. If he writes plays for the theatre, he cannot fail to take the theatre heavily into account; if he writes plays for the library, he is no longer wholly a dramatist.”

With these views, it seems strange that Rice would continue to be a playwright," especially since his opinions about the limitations of theater audiences were really just a subset of a broader, deeply held belief about groups generally. He had a strong disdain for the juvenile gangs he had seen as a youth and said:

\[\text{[it] accounts for my antipathy to mobs or crowds. I believe that when an individual becomes a unit in a parade, a mass demonstration, a military organization, a convention, a religious assemblage, a sports event gathering, he functions on a lower intellectual and moral level than when he acts independently of group pressure and the fear of being a nonconformist. He is far more likely to respond to cliches and banal slogans, to howl down dissent, to engage in antisocial or even violent behavior. The egg-throwing heckler, the lynch, the trooper who shoots down strikers, the American Legionnaire who drops water-filled paper bags on the heads of passers-by may in private be a tolerably decent citizen. Anyhow, from the time I first ventured into the streets, I have distrusted and shunned crowds. The minority man I have always been is just a grown-up minority boy.}^{21}\]

Even with these pessimistic thoughts, however, Rice did not abandon the theater." He continued to write play after play, sometimes merely to entertain, sometimes to experiment with form, and sometimes to present ideas.\(^{25}\) He apparently saw drama’s inherent limitations as a challenge to surmount and, at least some of the time, he succeeded well enough to produce worthy plays.\(^{26}\) And this work often portrayed lawyers and the law in a provocative light, which is not surprising considering Rice’s legal background and experiences.

**EMER RICE AT NEW YORK LAW SCHOOL**

Rice went to law school by default. He said, “I still did not want to be a lawyer, but, as it seemed the only career open to me, I felt that I had better prepare for it.”\(^{27}\) He felt that without a college degree, he could not attend a university law school and concluded, “The only school open to me was New York Law
School.... That freestanding school, however, did have other attractions. Rice had to continue working while pursuing a legal degree, and New York Law School was close to his office and offered late-afternoon classes.

New York Law School made no pretense at a thorough or rounded legal education. Rice stated, "It was a trade, rather than a professional, school, which efficiently performed the practical job of drilling students in the rudimentary knowledge of law required for passing the state bar examinations." Efficient it was. His course of study was only two years. It was also boring, at least for Rice. "[T]he two-hour lecture sessions merely rehashed a textbook chapter that could be read and absorbed in half an hour. The basic text was, of course, *Blackstone's Commentaries*, in an edition copiously annotated and related to modern instances by George Chase, dean of the school. I was interested far more in the quaintness of Blackstone's eighteenth-century prose than in the legal principles he expounded."

Rice did find some enjoyment in property law with its holdovers from feudal times of complex land tenures but only because he "had read some novels with medieval settings, so this branch of the law seemed quite romantic. Not so with long discussions of what was and what was not adequate consideration for a contract. Negotiable instruments, to which we were introduced by a booming-voiced, very thin young man named Stout, I found excruciating."

Rice, however, did keep himself occupied in the classroom. Students were called upon alphabetically. He found that if he concentrated on the class for the ten minutes before he knew he would be reached, he could be ready when he had to speak and then was through for the session. "In fact, the classes were so large that sometimes your name was not reached at all." During those classes, he read nonlegal materials. "In two years I must have read hundreds of books. Most of them were plays, because I could finish a play in a two-hour session.... I read every play I could lay my hands on." This reading laid the groundwork for his subsequent career as a playwright, for "in all this reading I unconsciously learned a great deal about the technique of play construction."

And so, Elmer Rice, an appreciative man, did give his due to his alma mater but not for the rigor of his legal education. He graduated in 1912 from New York Law School cum laude, "evidence of the slight demand upon the student's attention and intelligence." Instead, he appreciated NYLS for another reason. "I shall always be grateful to New York Law School for the knowledge of literature I acquired there."
ELMER RICE'S LEGAL EXPERIENCE

Rice was bored by law school and not just because of the instructional method. He also found it tedious because he already knew much of the law discussed. He had, in essence, received a legal education before entering New York Law School.

Elmer Leopold Reizenstein, who later changed his last name to Rice, was born on September 28, 1892. His family lived on East 90th Street in Manhattan, and he was raised in that part of New York, a city that was much different from what it would shortly become. The present Manhattan skyline had not emerged. The still-standing Flatiron Building of twenty-one stories was not built until 1902. Elevators were rare, and telephones a luxury. Only one bridge crossed the East River; none crossed the Hudson, and tunnels into Manhattan did not exist. Horses, not motor vehicles, dominated the streets, and neighborhoods heard the calls of itinerant vendors, including that of the hokey-pokey man “who sold paper cones filled with shaved ice that was doused with brightly colored liquids....”

Although Rice was an avid reader, his formal education first stopped when he was fourteen because his family could no longer afford the schooling. After working in some commercial establishments—he and his family had always assumed that he would be a businessman—he became an office boy in the then well-known law firm of House, Grossman, and Vorhaus, where his cousin’s husband, Moses H. Grossman, was a senior partner. In addition to the named partners, the firm, located on lower Broadway near Trinity Church, had two junior partners and six or so salaried attorneys as well as three dozen employed as secretaries, stenographers, process-servers, and others, some of whom were preparing for legal careers.

Rice became a filing clerk in the firm, and to do his job he read the pleadings, affidavits, contracts, judgments, and other papers. Since the firm had “specialists in real estate, divorce, damage suits, bankruptcy, administration of estates, contracts, and criminal law,” he started to learn the fundamentals of law. He was promoted to a position where he answered court calendars and filled out procedural documents, which he described as “routine work, but it increased my knowledge of legal terminology and practice.” When he entered New York Law School, after getting a high school degree by passing exams given by the State Board of Regents, he found that he already knew much of what was being taught.
The knowledge he had gained in the law firm was valuable when it came to the bar examination, which he took in the summer after graduation. The exam had a substantive and procedural part. According to Rice, even the best minds often bogged down on the procedural portion, but he had little difficulty because he had been dealing with "complex, arbitrary procedural routines" for years. Furthermore, even the "substantive paper [was not] beyond the scope of a moderately retentive mind."41

He manifested his ambivalence about a legal career, however, in the form in which he answered the bar exam questions. "Some of my answers were in blank verse; others included jokes, limericks, quotations from Shakespeare, the Bible, Omar Khayyam and Lewis Carroll."42 He left having had a good time, and when he passed he suspected that "the examiners wanted to avoid coping with another of my papers."43

Although he had passed the bar examination, he had to wait a year to be admitted to the bar since he was then only twenty. He continued to clerk for House, Grossman, and Vorhaus, but he increasingly realized that he did not want to be an attorney. In theory, he saw the law as "a majestic instrument for the impartial administration of justice, the protection of the wronged, the reparation of injuries. Yet in practice I saw it used for the avoidance of debt by shady bankruptcy proceedings, the collection of damages by trickery and coercion, the breach of contractual obligations by dubious technicalities, the manipulation of divorces by cynical collusion."44 He then conducted a little quiz.

The trial of Police Lieutenant Charles Becker was dominating the headlines. Becker had hired four gunmen, "unforgettably named Lefty Louie, Whitey Lewis, Dago Rank and Gyp the Blood,"45 to kill Herman Rosenthal. After two trials, Becker was convicted and executed. He asked all the firm's lawyers if they had been Becker's lawyer, would they, if possible, have gotten Becker off on some technicality in the indictment. All but one answered yes. Rice understood the answers, for he knew that the lawyer's prime duty is to his client, but Rice felt that he could not adopt that attitude.

He was also disillusioned because he saw that law could be successfully practiced with little legal knowledge. "Trial work consisted largely in influencing juries; office work, in procedural maneuvering and in the negotiation of settlements and compromises. The prospect of a lifetime of such activities was dismal."46 The firm, however, also employed a legal scholar who never saw a client. Instead, he prepared briefs and answered legal questions from his colleagues. "His legal knowledge was highly respected, but personally he was
looked upon as eccentric and slightly comic, not a figure to inspire a youth who wanted to make something of his life.”

When he turned 21, he had his ethical fitness for bar membership scrutinized by the Character Committee of the Bar Association. (“I have sometimes suspected,” he wrote, “that its standards are not too exacting.”) In December 1913, he was sworn in as member of the bar of State of New York, a position he held for the rest of his life.

 Shortly thereafter, he made a not-too-serious error in the law firm. As he was about to be dressed down by the head of the firm, he admitted the error, said that law was not for him, and quit. When asked what his plans were, he replied that he had none but would probably try to be a writer. And that is what he became. Even later when he became discouraged and thought about giving up writing, he realized that a “return to the practice of law had no attraction for me.” Indeed, his practice of law was remarkably limited. Rice, an active opponent of censorship, was a member of the board of directors of the American Civil Liberties Union for more than 25 years. In the middle of the twentieth century, an award-winning Italian film, *The Miracle*, was denounced by the Catholic hierarchy and a license to exhibit the film in New York was denied because the movie was deemed “sacrilegious.” When the case challenging the action went to the Supreme Court, Rice helped write an amicus brief for the ACLU. As he rather proudly put it, “my only activity as a member of the bar!” The Supreme Court went on to declare the New York statute prohibiting the exhibition of sacrilegious films unconstitutionally vague.

 Although Rice did not want to practice law, what happened in court often did interest him, and his life in various ways intersected with courtrooms. When Moses H. Grossman became a judge, Rice, in a congratulatory note, suggested that Grossman inquire into the convicted miscreants’ backgrounds and reasons for their crimes before sentencing them. Grossman responded by inviting Rice to sit on the bench with him. The judge took Rice and a defendant to his chambers for the envisioned discussion, but “it was, of course, an utterly futile approach to a task that called for exhaustive probing by sociologists and psychologists, not a hurried fifteen-minute inquiry, with the questioner conscious of his congested calendar and the prisoner bewildered and inarticulate, suspecting perhaps that his was some new and subtle form of the third degree. After three or four of these abortive episodes, I pleaded pressure of business and departed.”
Sometimes during his many travels, he sought out foreign courtrooms. He visited a “People’s Court” in 1930s Russia, where he found “[t]he whole atmosphere was one of rough frontier justice.” Sometimes a courtroom was thrust upon him at an unusual time. Immediately after getting a Reno divorce, he went with the actress Betty Field to Arizona, which, unlike other states, had no waiting period to get married. The couple went to a justice of the peace situated in a vacant store. They had to wait, with Field conspicuous in mink among the locals, until a preliminary hearing in a murder case was over. The nineteen-year-old defendant, charged with killing his father, sat “grinning moronically, evidently pleased by the attention he was receiving. . . . His lawyer intimated that he had acted to save his thirteen-year-old sister from the father’s advances; the prosecutor suggested that it was jealousy that prompted the killing. It was hardly the perfect setting for a wedding!”

And the courtroom could provide analogies when he tried near the end of his life to explain his beliefs. For example, he stated that he had been skeptical of philosophy because he doubted that a finite mind could reduce the infinite to inclusive, understandable system. He went on to say, “I enjoy the dialogues of Plato, as I enjoy the transcript of a skillful cross-examination, or a lively debate; but it is a debate devoid of sporting interest, for the cards are stacked and you always know who is going to win.”

But his legal experience did have value for Rice in his career. While waiting for admission to the bar, he was frequently sent by his firm into courtrooms and saw famous trial attorneys of the day, including Francis L. Wellman, Dudley Field Malone, and Max D. Steuer, in action. He compared these trials to the theater:

> Often I was interested more in the behavior of some well-known trial lawyer than in the subject matter of the case, as one might go to see a star, no matter what the play. The analogy is close, for the conduct of a jury trial depends more upon the art of acting than upon the science of law. Frequently all the legal knowledge a trial lawyer needs is an acquaintance with the rules of evidence, which are fairly simple. The day is often won by obfuscation, trickery and histrionics.

Rice gained more familiarity with courts by assisting his firm’s trial attorneys, a resource he later drew on. “I sat at the counsel table, acquiring a knowledge of courtroom procedure that has been very useful to me as a dramatist.” And throughout his career starting with his first produced play, Rice recurrently used the courtroom in some of his dramas.
THE COURTROOM SETTINGS

While still an unproduced playwright, Rice was intrigued about writing a drama in which time went backward. He decided that that idea would not work, but a play might be effective if time’s movement had that appearance. For the framework to accomplish this, he picked a trial, and On Trial resulted. As each witness testified, the action dissolved into a reenactment of the testimony with the last witness relating events that had occurred chronologically first. While this flashback technique is now common, this was its first use in the theater, and although the play is little more than a melodrama, On Trial was a hit with a lengthy New York run and several touring companies. It garnered Rice, only 21 when the play opened in 1914, more than $100,000 (an enormous sum then), and granted him financial security.

A decade afterwards, a commentator of the Theatre Guild, Philip Moeller, stated, "On Trial was something of an event in the American theatre," and the noted critic Brooks Atkinson said in 1938 that On Trial, along with Rice's two most famous plays, The Adding Machine and Street Scene, "profoundly influenced the technique and thought of American theatre."

While a murder does occur in Street Scene, it contains no legal proceedings. The Adding Machine, on the other hand, includes a highly stylized portion of a trial. An Everyman, Mr. Zero, who for 25 years added receipts in a department store, is fired and kills his boss. In this expressionistic play, the resulting trial is not intended to be realistic but just another manifestation of the dehumanizing life of Mr. Zero. Zero cannot even control the most basic aspect of the proceeding. He wishes to plead guilty, but the law will not permit a guilty plea to a capital offense. The trial scene consists of Zero's impassioned, rambling speech, filled with the clichés of everyday life, to the jury. He complains about the obfuscations of the lawyers:

Them lawyers! They give me a good stiff pain, that's what they give me. Half the time I don't know what the hell they are talkin' about. Objection sustained. Objection overruled. What's the big idea anyhow? You ain't heard me do any objectin', have you? ... You got a right to know ... Them lawyers! Don't let 'em fill you full of bunk. All that bull about it bein' red ink on the bill file. Red ink nothin'! It was blood, see? I want you to get that right. I killed him ... I never said that I didn't kill him. But that ain't the same as bein' a regular murderer ... Answer yes or no. Yes or no, me elbow! There's some things you can't answer yes or no ... I'm just a regular guy like anybody else. Like you birds, now.
The jurors, having given no sign that they have even seen Zero, rise as one at his speech's conclusion and shout "Guilty." One commentator concludes about this scene: "Thus the law is impersonal, even indifferent, toward those it judges."

A brief courtroom scene occurs in the 1933 *We the People*, a sprawling play about the living conditions and tensions of the Depression. A young man involved in labor unrest has been convicted of murdering a police officer. The audience does not see the trial but instead, a motion to set aside the verdict. The defendant contends that he was framed by the police, and the judge, applying the law correctly it would seem, denies the motion concluding that the defendant is raising issues of credibility that were for the jury, not for the judge. After the motion is denied, the judge sentences the young man to be hanged.

Rice returned to a full-fledged courtroom drama in 1934 in *Judgment Day*. Set in a nameless Balkan country, the play was in reality a dramatization of Germany's Reichstag fire trial, and the workings of the law were not really the concern of *Judgment Day*. Instead, the play was an early screed against the dangers of Nazism—too early for many of the critics. Although the civil libertarian Arthur Garfield Hays, who had attended a Nazi trial and thought, if anything, Rice had "understated the extravagance of the actual proceedings," reviewers, with thoughts of war far off for most Americans, called it "unreal, exaggerated, and frenetically propagandistic." In 1937, however, the play was a success in London, but with the Nazi power increasing in Europe, "[s]cheduled productions in France and Holland were canceled at the insistence of the Hitler government. In Norway, performances were prevented by rioting, by the Norwegian Nazis."

Rice's 1954 play, *The Winner*, also featured a trial. An infatuated, older, married man dies leaving his estate to the young, penniless Eva Harold. The dead man's wife contests the will, and Eva struggles with her own private morality about whether she should seek or keep the money. The will contest centers the play and portrays a trial remarkably well, with the testimony sounding as if it might really have been given and the legal procedures ringing true. While the play is not dramaturgically innovative, the original production had one groundbreaking aspect that receives no explicit comment in *The Winner*. Rice cast a black man as the presiding judge. He did so, "for here was an opportunity, for once, to show a Negro who was not involved in a racial problem, but was functioning normally as a professional man." A few critics suggested that he arbitrarily drew race into the play, "whereas I had done
exactly the opposite, for there was not one reference to the judge's race. However, to my great satisfaction, I received the Canada Lee Foundation award 'for courage and leadership toward integration in the performing arts.'

While this casting decision was no doubt fueled by Rice's political and social views, it also may have partly stemmed from his early legal experience. He had made two close friends when he was clerking. One was James S. Watson, "a Jamaican Negro in his early twenties, a handsome man with very black glossy skin, a neat mustache and strong white teeth... I saw little of him in later years, but I did have the pleasure of speaking at a dinner at the Hotel Astor that honored the tenth anniversary of his election to the bench of the Municipal Court."

While these plays did use the courtroom as a setting, most of Rice's plays did not. Many of his plays, however, whether set in a court or not, made interesting comments on American justice and the roles and worth of lawyers.

**RICE, LAWYERS, AND JUSTICE**

Elmer Rice did not see American justice as perfect, and not surprisingly, his characters say both good and bad things about the American legal system. At the conclusion to 1933's *We the People*, a crowd gathers on the eve of the scheduled execution of Allen Davis, who has been convicted of murdering a police officer and who had previously served a sentencing for stealing coal for his family during the Depression. One character discusses the murder trial, saying,

> [others] will describe graphically the atmosphere of hysteria in which the trial was conducted. They will tell you how men of liberal political opinions were rigorously excluded from the jury. They will point out to you that the judge, admittedly an able jurist, is the son of the proprietor of a group of influential newspapers, which pre-judged the case and stridently demanded the boy's conviction. They will show you that throughout the trial constant emphasis was laid upon the social and political philosophy of Allen Davis, so that one may almost say that he was tried for his opinions, rather than for the crime with which he was charged.

The floor is turned over to the condemned man's girlfriend who states that he is innocent and had been framed "[b]ecause when a policeman is killed, somebody must be punished. If they cannot find the one who did it, then they..."
must punish someone else. That is why they have punished Allen. And because he has been to prison for stealing coal. Yes, and I will tell you another reason why. Because he is not willing to be poor. That is his crime."

Despite these comments, the play is not so much about the legal system as about the existing social order. It concludes with a professor stating, "We are the people, ladies and gentlemen, we—you and I and everyone of us. Let us cleanse it and put it in order and [make] it a decent place for decent people to live in!" The play ends here ambiguously. The ultimate fate of Davis is not stated. The audience can have hope, perhaps is intended to have hope, that somehow the American justice system will save Davis, but there is no certainty.

*Judgment Day*, the 1934 dramatization of the Reichstag fire trial, contains little ambiguity in its condemnation of the Nazis. But it does contain some conflicting comments about American justice. Conrad, a defendant's brother, seeks to intervene in the trial. He had moved from the nameless foreign country where the play is set to the United States when he was sixteen and became a lawyer in Illinois. One of the judges asks him, "Do they hang people there from the limbs of trees as they do in the streets of New York?" Conrad starts to reply, "Not in New York, Your Lordship. It's only in—" and Judge Sturdza cuts in, "Don't contradict. I have seen photographs."

A little bit later, a defense counsel seeks to have another defendant, who has been removed, re-admitted to the courtroom. The prosecutor states, "An assassin has no rights."

Conrad: In America an accused person is considered innocent until he is proven guilty.
Judge Tsankov: We are not interested in the sentimentalities of the democratic philosophy.
The Prosecutor: It is not news to us that Americans do not understand the art of government.
(Murmurs of approval)

The sham of a trial that results certainly illustrates that in a repressive, dictatorial society, while the forms of justice may be maintained, the rule of law has no meaning. Several years later with America now more clearly seeing the possibility of war, Rice again had one of his characters ponder the role of law in that troubled world. In *Flight to the West*, which opened in December 1940, with the war raging in Europe but the United States warily on the sidelines, a young man who has been an idealistic pacifist is returning from Europe to the
United States to begin a law practice. What he has seen in Europe makes him doubt his principles: "What the hell am I doing, anyhow, putting around with a fool examination in international law, when those bloody bastards in the sky are systematically making all laws obsolete?" Idealism gives way. He decides to become a pilot in case America needs defending.

Rice, however, also had lawyer characters that opted for idealism. In *Dream Girl*, a romantic comedy, the father of the main character, Georgina Allerton, is a lawyer. Her brother, who has a law degree, is now reading manuscripts for a publisher. His mother complains about his choices, but the father interrupts, "Law, as it's practiced today, is hardly the profession for an idealist." But the father has his own idealism. He is about to go before the Supreme Court to argue a case on behalf of a religious sect that has been prosecuted for arguing in favor of polygamy. His wife inquires about the size of the fee, but he is acting pro bono: "I'm handling the case as a matter of principle. Free speech, freedom of religion."

Mrs. Allerton: ... George, doesn't anybody ever walk into your office who's been run over by a millionaire's limousine or who's robbed a bank and is willing to give you—to give you half—to get him—get him out of it? ... Georgina: Why, Mother, aren't there enough ambulance-chasers and police-court shysters without Dad becoming one? Allerton: Thank you, Georgie. *(He kisses her.)*

But this idealism is meant to be amusing. Georgina is a young woman who lives in her dreams, a trait she seems to have learned from her idealistic father, and does not find happiness until she seizes opportunities in the real world.

While Rice touches on these various legal themes, he considered more in depth another one—the often difficult intersection between the private life and public duties of the lawyer. In the romantic comedy, *The Winner*, he discusses why a lawyer, who might be a decent person, may have to do things that appear less than decent for a client. Martin Carew represents Irma Mahler, who is trying to break her dead husband's will, which grants his money to Eva Harold. Carew, who is personally intrigued by Eva, tries to explain to her before the trial that he will have to attack her publicly: "A bright girl should be able to understand that a lawyer's professional duties often require him to do things that may be personally distasteful to him." She replies, "I didn't know a lawyer wasn't supposed to have any decency." After some brutal questions in the legal proceeding, the judge says: "Well, Miss Harold, in cross-examining..."
an adverse witness an attorney is allowed a great deal of latitude. He is under oath to serve his client to the best of his ability and that obligation must override any consideration for the feelings of the witness."

But this decent layperson does not understand. After the trial, Carew, referring to the judge’s words about a lawyer’s obligations, tells Eva he knows that she is not the kind of woman he has attempted to portray in court. She protests, and he says, “How can you be such a fool! There’s nothing personal in what—” She interrupts, “Then if you don’t even believe what you’re saying about me, that makes you out an even worse heel!”

The exploration of the intersection between private and public lives is not just peripheral in Court of Last Resort but at its heart. Trial judge Lawrence Swain is informed that he has been nominated for the federal Court of Appeals, which seems but a stepping stone for him to the Supreme Court. Professionally, he is a man of high ideals. A law student interviewing Swain about the nomination mentions a commencement address that the judge had given:

I was just about ready to drop out of law school. I’d read and heard so much about what’s wrong with the practise of law: the conniving and finagling, the fee-splitting and ambulance chasing and shysterism, that I was pretty well fed up with the whole thing. Then I heard you describe what the lawyer’s true function is: to aid in the administration of justice, to redress wrongs, to help the injured and defend the innocent; to uphold not only the statutory law but the moral law, and above all to remain ever faithful to private trust and public duty. . . . Anyhow, it made me decide that the practise of law can be something very fine, after all.

The judge says that the keyword is “integrity,” and the play indicates that Swain has lived his successful public life following this precept. His private life has been different. His marriage has had everything but love, and his wife is about to leave him. His son is alienated from him. His brother commits suicide to remove the burden he had been on the judge. When Swain learns what his brother has done he calls himself a “monster,” but his sister-in-law rejects that label and says, “Only a self-absorbed calculating careerist, who lets nothing stand in the way of self-advancement, not even the feelings or the happiness of the lives who stand closest to him.”

And throughout the play, Swain has to confront actions he took as a young man when he got an even younger girl pregnant. She wanted to have the baby and raise it by herself, but he convinced her to have an abortion and procured the illegal procedure for her. As a result, she was not able to have children and
led a troubled life, sometimes kidnapping children she sees as neglected. His mentor tells Swain that he is not responsible for her actions, and Swain states, “Not directly, no. But does that give me a clean bill of health? To begin with, two criminal acts. Having relations with a female under the age of consent—in other words, statutory rape. And procuring an abortion.” The mentor responds: “If every one of those laws was strictly enforced, our jails wouldn’t be half big enough, and our business offices would be understaffed.” When it is suggested that he procured the abortion because it was best for the girl, Swain replies, “That’s what I told her. And tried to make myself believe too. But I was just rationalizing my concern about the possible effects upon my coming marriage and budding career.”

Later he asks whether he has the right to conceal from the confirmation process his connection with the girl. He’s told that no one under the Constitution has to incriminate himself, but he responds that he is not talking about legal rights: “I’m talking about personal ethics.” He has a duty, he continues, when the Chair asks if there is anyone who has anything to say against him to respond: “Yes, gentlemen of the Judiciary Committee. I have something to say against him. He seduced a high school student, sent her to a quack abortionist, robbed her of her motherhood, ruined her life, turned her into a jailbird. And while he sits high in the judgment seat, she sits behind bars.” The only way to the integrity he publicly proclaims is to withdraw, which is what he does.

There is much here for discussion in law school classes and elsewhere. Should Swain turn down the appellate judgeship because of acts from a generation or more before? Does it matter what the motivations for those acts were? Does it absolve him that many other people would have acted as he did? It seems clear, however, that Swain withdraws not just because he took long-ago actions that were crimes but because he has come to realize that in private life he not only was, but continues to be, a failure. How should such private failings affect assessments of public performance? If he is correct in withdrawing from the nomination, should he resign from his present position? Would such private failings affect an assessment of him as a lawyer? Is there something about his membership in the legal profession that compels the judgments? Would they be different, for example, if he were a doctor or a CEO?

Court of Last Resort, however, contains more than this for discussion. A lawyer mentions how a prosecutor had asked for a harsh sentence. Swain responds: “Yes, these young D.A.’s [sic]. I’ve seen so many of them in action. They must have feelings, must have some understanding of human
weaknesses and human needs. Yet to them, an accused person seemed to be not a fellow creature, but a faceless nonentity, a pawn in their game of self-advancement. Prosecution becomes synonymous with persecution, and a trial to them is merely a form of ruthless inquisition."

In assessing Swain, we should weigh that we have seen him act with consideration and understanding in his sentencing, and we can assume that he treats all those who come before him similarly. Yet at least he suggests that his private life makes him unfit to be an appellate judge. How, then, should we see his harsh attitude towards prosecutors who act without an understanding of human weaknesses and human needs? Would his assessment, would ours, change if we found that these prosecutors acted with appropriate consideration in their private lives? If, however, we would assess their public actions as prosecutors the same no matter what their private lives, why shouldn’t Swain as a judge just be assessed on his public life?

_Court of Last Resort_ raises this and other issues, but a play does not raise them, for at least in the view announced by Rice, _Court of Last Resort_ is not a play. Even though it has been published and even though it has been praised, it has never been produced. On the other hand, Rice’s _Counsellor-at-Law_ also raises a number of the issues presented by _Court of Last Resort_, which is unreServedly serious, often in a more entertaining form. The frequently funny _Counsellor-at-Law_ has not only been produced but been produced many times, including recently in New York City. In addition, the movie version of _Counsellor-at-Law_ captures the play quite well so a large audience can come close to seeing something like the play on video. And _Counsellor-at-Law_ is a play worth examining.

**COUNSELLOR-AT-LAW**

_Counsellor-at-Law_ is set in a law office. Rice states that while the play is not autobiographical or based upon real people or events, he must have drawn upon his experiences at the law firm of House, Grossman, and Vorhaus, or as he puts it, it was “undoubtedly suggested by my years of servitude.” The play is large, pulsating with activity and interweaving plots and subplots, but centers on one of the two partners in the firm, George Simon, and Rice recognized that the casting of that role was crucial. Rice had seen Muni Weisenfreund portraying a gangster in a Yiddish play and the actor, who’d since changed his name to
Paul Muni, took the leading role. The critics lavishly praised Muni's George Simon, and the original *Counsellor-at-Law* was a success, running for 412 performances, a number that does not count one memorable night behind bars.

The warden of the New York prison, Sing Sing, asked for a performance for the inmates. With some trepidation, the cast and director agreed. Rice, in his autobiography, says that Muni was superb, tactfully gliding over lines about crime and criminals. "Throughout, the laughter and the applause were thunderous. The emotional strain left the actors limp. They all agreed that it was an experience they would not have wanted to miss, but one they would not want to go through again." A few days later, Rice received a critique from Inmate No. 81–284, who stated that George Simon was a figure familiar to the prisoners, a person who fights their battles. The convicts, he said, appreciated "the varying shades with which Elmer Rice portrayed the grimness of life. . . . Two thousand men in the audience. Two thousand human problems. All reflected in the struggles, the objectives, the hopes and the failures of George Simon and his company. That was the reason for the spontaneous and prolonged applause of Sing Sing's population for *Counsellor-at-Law.*"

The casting of George Simon presented a much different problem for Rice at the height of McCarthyism in the early 1950s. Rice was to present *Counsellor-at-Law* on television with the contract giving him “maximum casting and other production participation.” When he suggested Lee J. Cobb, Edward G. Robinson, Sam Wanamaker, Jose Ferrer, and John Garfield, he was told by the ad agency representing the sponsor, the Celanese Corporation, that all were unacceptable because each was listed in a recently published book that charged people in the entertainment field with pro-Communist leanings. All but Garfield, in any event, were unavailable, but Rice concluded that he was an excellent choice. Garfield had testified under oath that he was not a Communist, but still the ad agency said that he was too controversial to be cast.

Rice decided to withdraw and publicly released a letter to the sponsor, which said in part:

As an anti-Communist . . . I have repeatedly denounced the men who sit in the Kremlin for judging artists by political standards. I do not intend to acquiesce when the same procedure is followed by political commissars who sit in the offices of advertising agencies or business corporations. . . . It has been broadly hinted to me that if I took this step and made my reason public, I could expect reprisals: in other words, the banning of my own plays on the air waves. That is a risk I am prepared to run. I could not live happily with myself
if I allowed economic considerations to deter me from exposing an ugly blot
upon American life and ugly threat to American liberty.96

In light of the resulting publicity, the ad agency told Rice that it wanted him
back with the agency’s head assuring Rice that from then on “casting would
be determined by fitness and not by political considerations.”97

Certainly, this aspect of Counsellor-at-Law’s history should still speak to us.
The threats to free speech Rice, the civil-libertarian, realized come not just
from the government. As he stated, he was a “militant opponent of censorship,
whether by official action or by the unofficial pressure exerted by special-
interest groups.”98 He recognized what may be even more true now: private
efforts to stifle speech may pose a greater danger than governmental impinge-
ments, as his fights against blacklisting indicated. He said, “Direct censorship
was easier to combat, for official acts were usually subject to review by the
courts, which evinced an ever-increasing tendency to support the free-speech
guarantees of the Bill of Rights. Private organizations were harder to deal
with, even when their ‘persuasion’ implied economic or political reprisal, a
type of pressure to which businessmen and officeholders are highly respon-
sive.”99 He saw this second kind of censorship increasing. “[T]here has been a
growing threat to freedom of expression, in all the arts, from ‘pressure
groups,’ a generic term for organizations of all sorts—ecclesiastical, profes-
sional, economic, nationalistic, racial, patriotic—which attempt, by persusa-
ion or threats of reprisal, to suppress anything that might be regarded as even
remotely detrimental to the special interests of the group”100

This history, of course, does not make Counsellor-at-Law worth seeing
today, but the play’s intrinsic merits do. Writing 34 years after it was first per-
formed, Professor Robert Hogan, in The Independence of Elmer Rice, said,
“Without being a masterpiece, [Counsellor-at-Law] is certainly first-rate.”101 In
the 1970s, when the play was again produced in New York, reviewers did label
it a masterpiece, retaining its original vigor and capturing the vitality of mod-
ern office life.102 And in 2004, when the Pecadillo Theater Company staged the
Counsellor-at-Law, the New York Times critic said, “In Counsellor-at-Law it has
found a play that throbs with New York life and brims with touchstones of
another time . . . but that also retains relevance to ambition and success in the
21st century. It has a hero worth rooting for, a healthy dose of sacred and pro-
fane love, some sharp jabs at class difference, villains who merit a hearty hiss
and plenty of New York attitude and humor.”103
Comparatively few, however, have seen, or will see, this play. Luckily, however, a close substitute is widely available. Shortly after the original production of *Counsellor-at-Law*, the play was made into a movie. After Paul Muni refused the part, John Barrymore was cast as George Simon. Rice concluded that “Barrymore was quite wrong for the part and had many shaky moments, but his magnetic quality mitigated his deficiencies.” Others have had more praise for Barrymore; Leonard Maltin’s 2006 *Movie and Video Guide* states that it was “one of his greatest performances.” In any event, most of the original New York cast repeated their roles, and since Rice did the screenplay, the movie, directed by William Wyler in his first major assignment, embodies the play quite well. Indeed, Professor Michael Asimov has said, “I believe that *Counsellor-at-Law* is one of the finest movies ever made about law and lawyers.” The film was a popular success and is now available on video.

The play is certainly wonderfully crafted. The many characters swirl in their different lives. A young lawyer fruitlessly pursues a woman. The woman instead pines for her boss. The switchboard operator indulges in amusing flirtations that turn out to have a dark side. We see a varied law practice involving crimes, bankruptcies, wills, corporate lobbying, personal injuries, breach of promises, and negotiations with the Italian Consulate. We are introduced to many of those affected by this practice, including the jilted woman, the mother of a radical who has been arrested and then the radical himself, and a woman who has just been acquitted of murder. We meet, of course, George Simon and his partner John P. Tedesco, but also Simon’s mother, wife, and stepchildren. We hear telephone conversations about speeches, insider trading, and receiverships.

To manage the many subplots with their eddying exits and entrances took great skill, but Rice was a master craftsman. His autobiography states, “Craftsmanship is essential to every art, to the drama most of all. The best work of all great dramatists displays high technical proficiency.” He worked hard to attain this ability. Even though Rice’s first produced play was a success, he did not conclude that he truly knew how to construct a play. Instead, he recognized that he was lucky to have stumbled on an effective device, and such luck could not be counted on. “Obviously if I was to be more than a one-shot playwright—a common figure—I must not only have something to write about, but must also learn how to write.” He delighted in solving the problems a play presented. Near the end of his career, he stated, “I have never lost my interest in technical innovation, partly to counteract the constricting effect that Ibsen has had upon the drama, partly because I enjoy setting myself
The result in *Counsellor-at-Law*, Professor Frank Durham stated, "is stage carpentry ... by a master craftsman."  

As Rice recognized, however, solid, even innovative, construction by itself does not make a good play, and *Counsellor-at-Law* is a good play. It succeeds by using stereotypical characters, but Rice maintained that drama depends on stereotypes, which fill the greatest plays such as "[a]ll those unfunny clowns of Shakespeare, those faithless nobles and faithful servants." Similar clichés, he contended, could be found in Molière, Shaw, Sheridan, and other great dramatists. He continued:

\[
\text{How can it be otherwise? The playwright has two hours and about 25,000 words to work with. Within these limitations, he must introduce his characters, establish their relationships, engineer their movements and tell a story! How much does that leave for minute dissection of character? If his stereotypes are shrewdly sketched, he provides the audience with pleasure of recognition, or even identification, which is one of the values of theatre.}
\]

What truly matters is how the playwright uses the inevitable stereotypes, and in *Counsellor-at-Law* Rice pulls off quite a feat. The playwright usually has to make a choice. If he wants to portray a panorama of life, he generally can only rely on clichéd characters to give the audience the needed recognition and identification for the many stories. If he wants to present a person with more depth, he generally has to isolate that character from much of life's many activities. *Counsellor-at-Law*, however, succeeds on both levels. While it fails to lift some of its players, most notably Simon's stepchildren, above mere triteness, *Counsellor-at-Law* wonderfully presents a panoramic view of the office life because each of the office characters, Professor Robert Hogan correctly states, "speaks in his own incredibly real idiom, revealing himself in a vivid phrase or gesture, evoking belief and recognition. Almost every one has a life of his own, both inside and outside the business concerns of the office." The result, as Michael Asimov concludes, is that *Counsellor-at-Law* "effectively captures the harsh and stressful nature of law practice."

That by itself makes for a still-worthy play, but Rice has done more by lifting one of the characters, George Simon, above mere clichés to show a complicated, contradictory man in something like a real environment. As Frank Durham states, "George Simon and his personal and professional problems are not hermetically sealed off from the world but are intimately involved in the life and the lives that touch him and of which his life is but one." Simon
struggles, not always successfully, to lead the life he believes in despite the influence of the broader world around him. Hogan’s praise may be overstated, but it has merit: “George Simon . . . is as memorable a victim of the rat race as is Willy Loman.”

Asimov observes, “Simon is no saint. . . . He’s a complicated and enigmatic character.”

Counsellor-at-Law allows us to see into a real human being, something few plays with its sweep have done. This portrait is so successful that it is easy to overlook that the play also presents important issues. Anthony Palmieri summarizes some of them: “The themes of racial prejudice, puritanical morality, and moral hypocrisy are integrated within the plot. The shortcomings of the system of justice and of those who practice law are revealed . . . police brutality and the evils of the work ethic are exposed.”

Simon, as with Judge Swain, is a professional success, but his private life is a failure. Simon’s marriage is a disaster, and there is a hint that his career is the cause. Simon’s mother tells his wife Cora that Simon has worked hard from the time he was boy and that is how he became successful. Cora responds, “Yes, of course. But now that he’s achieved success, there’s really no longer any necessity for it.” Mrs. Simon then points out, “It’s his nature. You can’t change his nature.” But unlike in Court of Last Resort, we learn that this marriage was not really worth having, that Simon should not really be with Cora. And as the play ends, we see that Simon’s work will be the salvation that helps him cope with his personal unhappiness. Indeed, Simon seems to be the embodiment of an aphorism of Rice that was quoted at the playwright’s funeral: “I don’t despair . . . I try again.”

While the play does weave many things into its plot, the plot’s core centers on a professionally unethical act Simon has done. Years before he had suborned perjury, which he acknowledges: “Technically I am as guilty as hell, and any judge that didn’t say so wouldn’t be fit to be on the bench.” This act requires disbarment, but is that fair? Simon laments, “Once, mind you, once in eighteen years—yes, and with a thousand opportunities to get away with murder—once I overstepped the mark.”

Rice here presents one of his recurrent themes—the harm an inflexible law can do to justice. It was in his first success, On Trial, which, after the flashbacks, concludes in the jury room where one juror states to a holdout:

But rendering justice means something more than applying hard and fast rules of law. I’ll grant you that the letter of the law declares that if one man kills
another, the penalty must be death. But we’ve got to get beneath the letter—we
must get at the spirit. We’re not machines, you know. There’s more to this case
than a mechanical application of the Penal Law. We’ve got to attack this from
the human standpoint.\textsuperscript{123}

It recurs fifty years later in \textit{Court of Last Resort}. Judge Swain has had to
impose a sentence that he considers too harsh. Swain discusses with the
defense attorney the only recourse for mitigation, an unlikely conditional par-
don from the governor, and says, “It just seems too bad that every individual
must be squeezed into the strait jacket of the law, without regard to human
considerations.”\textsuperscript{124}

Later in the play, we find out that Swain’s brother, a lawyer, was disbarred
because of a manslaughter conviction stemming from a brief altercation. The
sister-in-law tells Swain that her husband’s life had been wrecked in ten
seconds. Swain replies that the Bar Association had no choice because disbar-
ment was mandatory for a felony conviction. She shouts back, “Yes, manda-
tory! An iron law that takes no account of circumstances, no account of the
human equation or of the shattering effects upon a human soul. Law! What is
law—an instrument of justice or a destroying juggernaut?”\textsuperscript{125}

Anthony Palmieri notes, “Rice himself seems always to have felt that it is
the spirit of the law that should be upheld, not its letter.”\textsuperscript{126} But the situation in
\textit{Counsellor-at-Law} is more complicated than just a consideration of the harsh
effects of an inflexible law. Simon’s unethical action was taken not for personal
gain but to serve justice. The guilty verdict he prevented would have required
a life sentence, and that mandatory punishment would have fit neither the
criminal nor the crime. Simon maintains that his professionally wrong act was
done “to prevent a conviction that nobody wanted, not the judge, nor the dis-
trict attorney, nor the jury; but that the law made inevitable.”\textsuperscript{127} Knowing that
it was unethical, Simon did what his personal morality told him was right. If
he hadn’t done it, he “never would have had a night’s sleep.”\textsuperscript{128} Rice, then, pre-
sents the audience with the question whether Simon was doing right even
though it was unethical. And if so, what should the consequences be for a mor-
ally right, but unethical, action?

And when we see Simon as a possibly real human being—passionate and
contradictory, who does both selfless and selfish deeds—we might understand
that a real-life resolution of the ethical problem is not merely an abstract exer-
cise, as it so often is in the classroom. Instead, we can see how the future of lives
are at stake, and we might ask if a legal dilemma should ever be resolved without an empathetic understanding of the impact on the people who will be affected. When we see Simon as a possibly real human, we can better understand why the unethical act occurred—he saw his client not merely as an abstraction but as a person who was about to suffer unjustly unless Simon violated professional standards—and perhaps we can then better understand how we might behave when presented with such a dilemma. We might better grasp that not easily resolvable ethical and moral choices might also confront us someday. We may see that ethical choices are complex because humans are complex.

While it is clear that Simon had violated the code of lawyerly conduct, the attorney Francis Clark Baird, who seeks the disbarment, is on the surface acting ethically. Knowing that Simon has acted outside of professional norms, Baird seems to be serving the profession and the public by seeking to hold Simon accountable. But Baird’s action is not really taken from such motives; he is just vengefully seeking to break Simon for private, spiteful reasons. How should such an act, publicly ethical but privately reprehensible, be judged?

Finally, audience members ought to leave the theater weighing their own reactions. Simon seeks to resolve his problem through unsavory methods. If the playgoer roots for Simon, as the Times critic suggests, what does that say about the importance of ends and means? Perhaps because the play is so well constructed with the presentation of at least one fascinating, flawed human being, the play does not seem to shout out these questions, and they can be ignored. But the play does present them skillfully, yielding no ready answers to dilemmas which really have no simple solutions. That makes them all the more worth confronting, and Counsellor-at-Law all the more worth seeing and discussing in law schools.

CONCLUSION

The plays of Elmer Rice are largely forgotten. Few lawyers and legal academics examine his work, and that is too bad. As one commentator suggested, his “study of law has contributed to his success as a playwright[,] and he] combines a passion for justice with an accuracy of observation.” His work contains interesting comments on American justice and the roles of lawyers. He examines a subject worth examining, the interrelationship of an individual’s private and public life in the legal profession. He questions which should take priority when an inflexible law conflicts with justice, and how a person who subverts such a law to serve
justice should be judged. In *Counsellor-at-Law*, his most accessible work today relating to law, he presented a lawyer as a complete human being, with merits and failings, and presented dilemmas that are always worth considering and debating.

One of the commentators on Rice's career concludes, "The American theater indubitably has been a little healthier because a youngster named Elmer Leopold Reizenstein one day decided to give up the practice of law and make the stage his career." Rice gave up the law, but those of us still in the field can benefit by examining his plays.
moved to tears oneself by the apparent distress of a beautiful actress.” Elmer Rice, *The Living Theatre* (New York: Harper and Brothers, 1959), 17 [hereafter *The Living Theatre*].

11. *Id.* at 19. Rice also illustrated his point with the play *Sherlock Holmes*, which he saw in his youth. Professor Moriarty is about to trap Holmes in a room, when Holmes douses the light. Moriarty tells his henchmen to follow the lit cigar Holmes has been smoking. When the lights are switched back on, Holmes has escaped. He put the cigar on the sill of one window and escaped out the other. “It may all sound rather ridiculous, but it would be impossible to exaggerate the effect it had upon the audience. Shivers and exclamations of apprehension were followed by relief that expressed itself in delighted laughter and sustained applause. I saw the play in 1911... but I shall never forget... the excitement of that scene.” *Id.* at 18.

12. See *The Living Theatre*, supra note 10 at 28.

13. *Id.* at 114.

14. *Id.* at 227.


16. The playwright, however, has an advantage over the novelist in being able to experience how his audience reacts to his work. In *The Master*, a fictionalized life of Henry James, James, who has had many novels published, is waiting for a play of his to open. “He had never, in all the years, seen anyone purchase or read one of his books. And even if he had witnessed such a scene, he would not have known the effects of his sentences. Reading was as silent and solitary and private as writing. Now, he would hear people in the audience hold their breath, cry out, fall silent.” Colm Toibin, *The Master* (New York: Scribner, 2004), 10. Of course, when the play bombs, as did James’ drama, the playwright does not necessarily have a pleasurable experience.

17. See *The Living Theatre*, supra note 10 at 27-28: “Other works of art may be enjoyed not only by individuals, but in private. ... [I]f it is considered subversive or indecent, and hence socially unacceptable, it may be read and displayed in a locked room behind drawn blinds. But the essence of a dramatic performance is that it is public. ... This, of course, makes it subject to many forms of public scrutiny, influence, supervision and regulation, covering matters that are fiscal, political, religious, social or governmental by nature and have little or nothing do with drama as an art.”

18. See *Id.* at 272 (“Important information must usually be conveyed two or three times before it is fully grasped, as most dramatists are well aware”). See also *Id.* at 277: “This temporal and physical collective assemblage makes it imperative that the play, both in creation and in performance, be immediately apprehensible. There is no lingering, no turning back. The audience must move forward with the performers, and what is not instantly grasped is forever lost.”

19. *Id.* at 27: “But plays are written to be communicated to a numerous group gathered in one place at one time. The organization and assemblage of the group call for a special set of procedures, and the difference between a collective response and an individual response is not only one of degree, but one of kind.”

20. Elmer Rice, “Introduction” in *Other Plays and Not for Children: Being Four Plays* (London: Victor Gollancz Ltd., 1935), 18–20 [hereafter Rice, “Introduction”]. See also Robert Hogan, *Independence of Elmer Rice* (Carbondale, IL: Southern Illinois University Press, 1965), 103 (“The intelligent few usually think that a play’s simplified statement accurately represents the author’s deepest thought upon the matter, and so they leave the theatre to write in little magazines reviews which affirm that the playwright is a boob”).


22. Writing near the end of his career, Rice stated that he never regretted his choice of a career as a writer, but added:

Whether or not I would choose the theatre if I were at the beginning of my career today, I cannot say. Always dominated by commercialism, the professional theatre in America has
succumbed to it almost entirely. Rocketing costs have increased its dependence upon an audience that is likely to be better equipped with money than with taste. ... [T]he theatre as an art must be returned to its artists. . . .

There are hopeful indications that the transition is in progress, but it will be a long, arduous process, in the course of which the existence of the serious playwright will be precarious. (Elmer Rice, Minority Report: An Autobiography [New York: Simon & Schuster, 1963], 471 [hereafter Minority Report])

23. Id. at 36.
24. Maugham also stressed the effect the audience has on the playwright. He, too, saw that the collective reaction of the audience that would vary from the private reactions of the separate individuals, concluding that material that would not offend or shock each one individually can offend the collective body. Furthermore, when assembled as a group, its members only want limited ideas. An audience "likes novelty, but a novelty that will fit in with old notions, so that it excites but does not alarm. It likes ideas, so long as they are put in dramatic form, only they must be ideas that it has itself had, but for want of courage has never expressed." He maintained that if the individual attendees' intellects were graded from A to Z with Z the most intellectual, then the mental capacity of the audience would be at the letter O and that is almost impossible to present original, meaningful ideas in a play when the mental capacities of the audience varies so widely. As a result, Maugham pronounced, plays are generally minor art. Maugham, supra note 15 at 561-63. Such conclusions led Maugham to stop writing plays.
25. Rice said about his output that it "suggests . . . the possibility that if the quantity had been less the quality might have been greater. . . . But the sad truth is that I have written as well as I could." See Minority Report, supra note 22 at 470.
26. See Durham, supra note 8 at 100 ("[S]omehow Elmer Rice never lets his hackwork intrude upon his sincere and fervent dedication to the theater as a place of art and enlightenment."). Cf. Minority Report, supra note 22 at 266, where Rice says that a play he wrote "did not satisfy me; nothing I have written has. Complete satisfaction would destroy incentive. It is the hope of doing better next time, of eventually achieving perfection, that is the perpetual spur."
27. See Minority Report, supra note 22 at 71.
28. Id.
29. Id. at 78.
30. Id. at 82.
31. Id.
32. Id.
33. Id. at 86.
34. Id. at 87.
35. Id. at 82.
36. See Id. at 164-65, where Rice states that in the early 1920s:

I obtained a court order changing my name from Reizenstein to Rice, a step I had long contemplated. Not only was Reizenstein an awkward name for a writer, but it was a nuisance to have a name that was continually misspelled and mispronounced and almost impossible to make understandable on the telephone. Further, as an American born of American parents, I saw no reason for hanging on to a foreign-looking name with which I had no associations or emotional ties. . . .

There were those who charged me with wanting to conceal my Jewish antecedents. No such consideration every entered my mind. I have never paraded my origin, but I have never tried to deny it, either. . . .

I have taken an active part in combating anti-Semitism in many of its ugly manifestations, but it has been my good fortune never to have been personally affected by it.
37. Id. at 16.
38. See Id. at 44 ("[I]t had always been taken for granted that I was to become a businessman.").
39. Id. at 68.
I am not suggesting that the law offers nothing better. It has been my good fortune to know intimately many lawyers who are men and women of high intelligence, erudition, integrity and social vision, and who devote much of their time to human betterment. But in my youth I was inevitably conditioned by my environment. Had my associates been more stimulating or admirable, my response might have been different. Yet I doubt that I would ever have developed a real enthusiasm for the practice of law. (Id. at 91–92)
condensations and a dozen devices which, to the conservative must seem arbitrarily fantastic. . . . [In the expressionistic play] we subordinate and even discard objective reality and seek to express the character in terms of his own inner life. An X-ray photograph bears no resemblance to the object as it presents itself to our vision, but it reveals the inner mechanism of the object as mere photographic likeness can not." See Minority Report, supra note 22 at 198–99. Frank Durham says that The Adding Machine "was, and is, a major American work. If Rice had written nothing else, his place in American drama would be secure." Durham, supra note 8 at 54. Robert Hogan states that the play "remains still fresh and theatrical." Hogan, supra note 20 at 36. Rice, however, said that expressionistic "plays puzzled, bored or outraged audiences long accustomed to the well-made realistic play. As far as I know, no expressionistic play ever achieved any substantial popular success and the movement (if it can be called that) was shortlived." The Living Theatre, supra note 10 at 124. Even so, Rice reported that the play "has had innumerable productions" throughout the world, and "[i]nterest in its production seems to be constant." Minority Report, supra note 22 at 199.


63. Id. at 85.

64. See Palmieri, supra note 9 at 64.

65. See Minority Report, supra note 22 at 335.

66. Hogan, supra note 20 at 71. Far-left commentators had different criticisms. The Daily Worker concluded, "Judgment Day fails because it does not expose fascism as the last stage of a decaying capitalism. Rice continues to promote bourgeois ideology even while he critiques it." See Heuvel, supra note 8 at 150, summarizing Sender Garlin, "Change the World," Daily Worker, Sept. 18, 1934, at 5.

67. See Seven Plays by Elmer Rice, supra note 62 at vii. Rice stated that "he learned that the Nazis had included my published works in a book-burning, the highest honor ever paid me." Minority Report, supra note 22 at 373.

68. See Minority Report, supra note 22 at 439. Rice continued, "To complete my gratification, the presentation was made by Alan Paton, author of Cry, the Beloved Country, for whom I had the highest admiration." Earlier in his career, Rice was part of a boycott of the National Theatre in Washington because it refused to admit blacks. For several years, professional touring companies refused to play the National. Eventually the theater capitulated and allowed blacks in its audience. Rice stated, "The financial loss to actors, playwrights and producers had been heavy, but it is to the credit of the theatrical profession that there were few who did not think this important victory in the nation's capital well worth the price." Id. at 382.

69. Id. at 67.

70. Elmer Rice, We the People (1933) in Other Plays and Not for Children: Being Four Plays by Elmer Rice (London: Victor Gollanz Ltd., 1935), 413–14 [hereafter We The People].

71. Id. at 415.

72. One of Rice's projects that did not come to fruition might have made an interesting commentary on law and the social system. He dramatized Ira Wolfert's novel, Tucker's People. "Dealing ostensibly with the numbers racket in Harlem, it had an underlying theme that appealed strongly to me: the thesis that the main difference between the racketeer and the businessman who ruthlessly cuts down his weaker competitors is that the latter can always find legalized methods to achieve his ends, whereas the racketeer, who is engaged in an illegal activity, is forced to resort to violence." Minority Report, supra note 22 at 403. See Palmieri, supra note 9 at 164, who says about this project: "Nowadays we differentiate between crime and what we call "white-collar crime." Evidently Rice saw what American society is only beginning to see: that both these ills come from the same poison in the body politic. Although
Rice worked hard at the play, his toil went for naught—mainly because the producer quarreled with Paul Lukas, whom he wanted for the lead, and then could not find a satisfactory replacement.”

73. See We the People, supra note 70 at 418.

74. Hogan, supra note 20 at 69, said that reviewers criticized We the People for not tying up the ends. Hogan continues, “[T]o have written a pat ending would have been to kowtow to the artificial rules of commercial dramatic construction rather than to keep faithful to the strong illusion of actuality which the play up to the ending evokes. Like life, the play presents no pat and ready answers.”


76. Elmer Rice, Flight to the West (New York: Coward-McCann, 1940), 94.


78. Later in the play, we learn that Georgina wanted to be an actress while her father wanted her to be a lawyer, and Georgina did attend law school for one term. Id. at 502. It is not surprising that Rice would have a young woman go to law school for he was an early feminist. In 1913, before On Trial, he co-wrote two plays that were not produced. The first explored “the conflict between a woman’s domestic life and her career—a troublesome question even fifty years ago. A small-town wife and mother, outraged by civic corruption, runs for mayor, is elected, but is forced by the deterioration of her marriage to relinquish office.” See Minority Report, supra note 22 at 94. The second play, The Seventh Commandment, again “was a feminist play, this time an attack upon the double standard of morality, the social code that condemns in a woman what it condones in a man.” The woman leaves her loveless marriage but can’t obtain a divorce. She lives openly with her lover, but “the social pressures are too great; at length they are driven apart.” Id. at 95.


80. Id. at 95.

81. Id. at 95.


83. Id. at 63.

84. Id. at 49.

85. Id. at 66.

86. Id. at 41.

87. He, however, might not be quite as considerate of his fellow judges. He tells Congressman Samuel Holman, his mentor, that he does not like sentencing, has avoided sitting in criminal term as a result, and looks forward to appellate work that will have no sentencing. Holman asks, “Isn’t that just passing the buck and letting someone else do the dirty work?” Swain replies: “In a way, it is. But there’s a difference between acquiescing in something that’s distasteful and in doing it yourself. I like a good beef-steak, but I wouldn’t go into a slaughterhouse and kill a steer. And although I recognize the necessity of garbage disposal, I’d hate like hell to be an employee of the Sanitation Department. Call it hypocritical or cowardly or squeamish or whatever you like, but there is a difference—psychological, at least, if not moral. Anyhow, I hope this is my last involvement in a criminal case.” Of course, Swain is not a butcher or garbageman but a judge. Does it say something about his integrity that although a judge, he wishes to avoid its unpleasant aspects and therefore increase these unpleasant aspects for his fellow judges? Id. at 13.

88. See accompanying text infra at notes 124–25.

89. Robert Hogan, supra note 20 at 141, writing in 1965, stated that Court of Last Resort “seems to me the finest and strongest [drama] that Rice has written in the last twenty-five years.” Robert Allan Davison, supra note 9 at 3, concludes: “Court of Last Resort is a compelling play that gets better on second reading, a play that promises to be still better in viewing. . . . It is a play that explores . . . profoundly the moral implication of freedom and personal choice.”

90. See Minority Report, supra note 22 at 278.

91. A 1942 revival, again starring Muni, ran for another 258 performances. See Palmieri, supra note 9 at 14.

92. See Minority Report, supra note 22 at 285.
93. Id. at 285.
94. Id. at 430.
95. Garfield, under the name Jules Garfield, while not in the cast on opening night, later had a small role in the original production. Id.
96. Id. at 431.
97. Id.
98. Id. at 417. Towards the end of his life, Rice stated, “The censorship situation in the United States is one with which I happen to be particularly familiar, because for more than twenty-five years I have been a member of the board of directors for the American Civil Liberties Union, and chairman of its affiliate, the National Council of Freedom from Censorship. I have also served on the anti-censorship committees of the Authors League of America and of the P.E.N. Club.” See Living Theatre, supra note 10 at 281. See Palmieri, supra note 9 at 24, quoting New York Times, July 11, 1956, at 10:

Rice’s commitment to freedom of expression was total, and he never hesitated to do battle in its defense once an enemy was known, no matter who that enemy might be or what his power. For example, in 1931 he denounced J. S. Sumner (secretary of the New York Society for the Suppression of Vice and a leader in the movement for censorship of the stage), Cardinal Hayes (Catholic Archbishop of New York), and Dr. William Thomas Manning (Episcopal Bishop of New York) for their puritanical views on stage decency. In 1936 he resigned . . . his position as regional director of the [Federal Theater Project] because of governmental censorship . . . . In 1945 he resigned as director of the New York City Center because of the banning of Tria. In 1953 he protested the ban on The Moon is Blue. In 1955 he urged amnesty for sixteen communists imprisoned under the Smith Act. In 1956 he attacked the “subtle censorship” by pressure groups, which represented, in his view, a serious menace to “complete freedom of expression.”

99. See Minority Report, supra note 22 at 417.
100. Living Theatre, supra note 10 at 285. Rice identified another nongovernmental threat to free speech that is tied up with the changing nature of communications. While the spread of communications media such as movies, radio, and television may have broadened forms of speech, such speech is increasingly under corporate control. Rice contended that as more and more writers were salaried, their independence correspondingly decreased. He thought that this led to “economic censorship,” breeding conformity and limiting free speech. For a summary of Rice’s views on these matters, see Heuvel, supra note 8 at 111. If that was true when he wrote in 1952, the problem may now be larger with increasing concentration of certain media in fewer and fewer hands. On the other hand, perhaps because of the Internet, some new forms of communication have opened that allow many more now to communicate without economic censorship.

101. See Hogan, supra note 20 at 63. See also Palmieri, supra note 9 at 113 (“Counsellor-at-Law deserved its success. It is an excellent play, both in audience appeal and in artistry.”).
102. Cited in Heuvel, supra note 8 at 177.
104. Minority Report, supra note 22 at 333.
107. See Minority Report, supra note 22 at 122. Three decades earlier, Rice had stated: “[T]he importance of technique is too often ignored. I believe it to be not merely the framework of art, but almost its very essence. I know of no great artist who is not a superlative craftsman. For it is craftsmanship that channels the tumultuous flow of fantasy and gives body and form to the nebulous stuff that dreams are made of.” See Rice, “Introduction,” supra note 20 at 8.
109. Id. at 141. See also Palmieri, supra note 9 at 194 ("throughout his career Rice remained an innovator").
110. Durham, supra note 8 at 82.
111. Minority Report, supra note 22 at 121 ("a good theatrical craftsman is not necessarily a worthy dramatist").
112. Quoted in Hogan, supra note 20 at 98-9.
113. Durham, supra note 8 at 84.
114. Michael Asimov, "Bad Lawyers in the Movies," 24 Nova Law Review 533, 572 (2000) [hereafter Asimov, "Bad Lawyers"]. He also said that the movie of the play "is both the first film about law firms and one of the very few to treat law firms in a balanced manner." Asimov, Embodiment, supra note 106 at 1342.
115. See Durham, supra note 8 at 86.
116. See Hogan, supra note 20 at 151.
117. See Asimov, supra note 114 at 572.
118. See Palmieri, supra note 9 at 114.
121. See Counsellor-at-Law, supra note 119 at 272.
122. Id. at 262.
123. Elmer Rice, On Trial, in Seven Plays by Elmer Rice (New York: Viking Press, 1950), 53. Frank Durham contends that this speech in On Trial embodies one of Rice's firmest beliefs, one that appears often in all sorts of his plays: "Man is not a 'machine.' If impersonal law and the goodness of the heart clash, the law must give way." Durham, supra note 8 at 23. Rice said that his life's goal was "freedom. Freedom in my work, freedom of thought and action, freedom as a member of society, freedom in personal relationships." See Minority Report, supra note 22 at 470. Rice also said, "I believe that most serious writers have one basic theme or concept, reflecting some obsession, some compulsion, some inner conflict." Id. at 394.
124. See Court of Last Resort, supra note 9 at 40.
125. Id. at 62.
126. See Palmieri, supra note 9 at 114.
127. See Counsellor-at-Law, supra note 119 at 262.
128. Id.
129. Cf. Weisberg, supra note 5 at 17 ("We can read literature to better understand concrete human elements of law that conventional legal texts obscure, and thus can use literature to educate lawyers—to deabstract and 'humanize' them.").
130. See Van Gelder supra note 103.
132. See Palmieri, supra note 9 at 198.