

MURDER ONE: THE ADVERSARY SYSTEM MEETS CELEBRITY JUSTICE

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Murder One was a pathbreaking legal drama created by Steven Bochco.¹ In soap opera fashion, each episode built upon the previous ones so that a single story—the “Goldilocks Murder Case”—consumed the entire first season. Each episode asked the questions “who killed Jessica Costello?” and “how do skillful criminal defense lawyers represent a client in a difficult case?” Always in the background lurked some larger questions: “how does the American legal system determine the truth about what really happened?” and “can the adversary system deliver in a case of celebrity justice?”

The serialization approach made for gripping drama. It turned television into a truly different experience, more like reading a serialized novel of Charles Dickens, than the customary neatly packaged one-hour story. Serialization permitted Bochco to tell a story in vastly greater depth than could be achieved during a one-hour television show or even a mini-series or a two-hour movie. However, the disadvantages of serialization were obvious: viewers who missed earlier shows found it difficult to catch up, which undoubtedly limited the size of the audience. (The availability of *Murder One* on DVD now makes it far easier and more pleasurable for fans of legal drama to experience or re-experience this outstanding series). Moreover, the approach limits the possibilities of successful syndication.²

Nevertheless, viewers who stayed with the entire 23-episode first season of *Murder One* surely found the experience riveting and unforgettable. *Murder One* was, and is, one of the most deftly plotted, best characterized, and most gripping legal dramas in television history. The story builds to almost unbearable tension by the final episode—a smashing conclusion that won’t be revealed here. The series explores every phase of the criminal justice legal process in fascinating detail. The lawyers on both sides of *Murder One* are skilled and ethical professionals and decent human beings. They fight hard but fair. Lawyers and the justice system could ask for no more favorable representation.

The first season of *Murder One* takes us through every twist and turn of the prosecution of Neal Avedon for the murder of Jessica Costello. We ponder bail motions, countless hard-fought evidence rulings, arguments over cameras in the courtroom, negotiations over the jury questionnaire, skillful direct and cross-examination, closing arguments, post-trial motions, the whole shebang. Most of two episodes is devoted to the cat and mouse game of jury selection, each side trying to get the judge to dismiss a juror for cause to avoid wasting a peremptory challenge or to bluff the other side into accepting the juror. Normally, of course, there’s never time in legal TV or movies to explore this time-consuming legal

¹ For an in-depth analysis of *Murder One*, which discloses much more about the plot of the series than this essay, see Jeffrey E. Thomas, “Murder One,” in *Prime Time Law* (Robert Jarvis & Paul Joseph eds.) (1998).

² *Murder One* also had to contend with murderous competition from *E.R.* in its first season and *Seinfeld* in its second season.

minutia. In fact, real life pre-trial and trial proceedings can be unbearably tedious. But they are never tedious in *Murder One* and Bochco milks every one of them for great dramatic effect.

The Costello case.

The “Goldilocks murder case” is about the rape and strangulation murder of 15-year old Jessica Costello. Jessica slept with a lot of prominent men and she took a lot of drugs. The story is set against a backdrop of the corrupt and hedonistic culture of the Los Angeles entertainment community, personified by the sleazy producer Gary Blondo. News reporters sleep with lawyers to get hot info, cocaine is everywhere, sex is bought and paid for, and there’s nothing really wrong with bedding down with a gorgeous teenager if you don’t get caught.

Who killed Jessica? There are numerous suspects (Jessica’s diary is packed with the names of the famous, none of whom would care to be outed), and a great deal of misdirection (including several false confessions). Among the possible killers:

Defendant Neal Avedon is a famous actor and teenage heartthrob who has a serious drug and alcohol problem of his own. Neal slept with Jessica on the night she was murdered and was known to enjoy choking his partners during sex. In fact, he’d been convicted of strangling a swan at the Bel Air Hotel which had annoyed him. Based on this circumstantial evidence and Neal’s false statements to the police, the DA decides charges him with Jessica’s murder. Later, plenty of additional evidence surfaces against Neal, including testimony that he actually confessed to his drug rehab therapist, Graham Lester, late on the night of the homicide.

The dark and mysterious Richard Cross (brilliantly played by Stanley Tucci) is a prominent philanthropist. Cross is having an affair with Jessica’s older sister Julie, a troubled woman with plenty of her own problems. Cross owned the building in which Jessica lived and was spotted in the building on the night of the murder by a security camera. In fact, Cross was the first one charged with Jessica’s murder. However, the prosecutor drops the case after Cross comes up with an alibi—one that becomes increasingly shaky. Cross purports to be supportive of his friend Neal Avedon and pays for the defense, but somehow he keeps interfering. For example, he marries Julie just before she is to deliver testimony that will devastate his reputation—thus allowing her to claim marital privilege. Cross always seems to have some sort of hidden agenda—for example why is he manipulating Teddy’s associate Justine Appleton? Why is he paying the medical expenses of the brother of Graham Lester’s nurse (both the nurse and Lester himself supply key testimony against Avedon)? What happened, exactly, when Hoffman’s investigator (Davie Blaylock) is killed after he seems to get too close to Cross? Hoffman loathes Cross, but cannot seem to get rid of him.

Then there’s Graham Lester, the shady psychiatrist who runs the drug rehab center in Malibu where Avedon is being treated. Four of his patients come forward and testify that he had drugged and raped them. And let’s not forget the sinister and arrogant Portalegre family. Father Roberto and son Eduardo are probably heavily into the cocaine business and Eduardo has definite rape issues. With so many suspects and clues aplenty, *Murder One* exploits the familiar and always pleasurable who-dun-it genre with great skill.

The lawyers: Teddy Hoffman and Miriam Grasso

The first season of *Murder One* centers on the character of Ted Hoffman, played with great authority by Daniel Benzali.³ Hoffman is a highly respected Los Angeles criminal defense attorney. He has consummate skills and is supported by highly capable investigators and loyal associates (who vie to be his second chair). If you're in trouble, you want Teddy—if you can afford him. And he costs plenty. (In the second season, with Hoffman gone, his firm has zero cash flow) Like all great lawyers, Hoffman has terrific judgment about people and great intuition and instincts. He is a master tactician. He can handle the press quite capably, but as Teddy sees it, the clients are the celebrities, not the lawyers. He is highly ethical (at least until we see him at his most desperate in episode 23) and respectful of his adversaries.

Unlike such matinee idols as James Woods, James Spader, Sam Waterston or the glamour pussies on *L. A. Law* or *The Practice*, Hoffman is distinctly unglamorous and even a bit ugly (one reviewer compared him to Shrek) and he doesn't fool around. He is all business, but he is very good at his business. He doesn't suffer fools lightly and is often rude or abrupt to people he dislikes or disrespects, such as Detective Arthur Polson, the tenacious (but also ethical) police officer assigned to the Jessica Costello investigation.

Most pop cultural attorneys are single and unlucky in love, but Hoffman seems at first to have an excellent and fulfilling personal life. His marriage to Annie Hoffman is solid and supportive, although, like all lawyers he frequently misses dinner or rushes out during intimate moments after an urgent phone call. Similarly, Teddy is very close to his daughter Lizzie. While he's frequently gruff and dismissive in his professional life, that never comes through at home.

Yet the life of a trial lawyer places tremendous stress on personal relationships. A major trial, whether it is coming up or in process, is the 800 pound gorilla in a lawyer's life. The trial consumes the lawyer 24-7. The stakes for their clients and for themselves are extremely high—life in prison without possibility of parole is on the table in *Murder One*—and civil cases often bet the client's ranch. With a major trial in the offing, the lawyers work insane hours and the phone never stops ringing. The clients are untruthful and over-emotional, and they won't do as they are told. The decisions and gambles become agonizingly difficult, and the stress levels are off the charts. It's hard to be considerate of others when you're in the crucible of trial.

The intense stress of the monster Avedon case cracks the Hoffman home wide open. Lizzie is briefly abducted and that's the beginning of the end. False rumors circulate that Hoffman is having an affair with Francesca Cross, the glamorous ex-wife of the mysterious Richard Cross. Annie detests living on the front pages of the tabloids. She loathes Avedon and all the sleaziness that

³ During the second and last season of *Murder One*, Benzali was replaced by Anthony LaPaglia who played Jimmie Wyler, the new leader of the firm. Wyler left the DAs office and went over to the defense side after Roger Garfield spitefully failed to promote him. At least to me, LaPaglia was better looking but not within light years of Benzali's convincing and commanding presence. During the second season, each story extended for several episodes rather than an entire season. The second season of *Murder One* lasted for 16 episodes and was dropped by ABC because of low ratings. This essay discusses only the 23 episodes of *Murder One* that comprised the first season.

surrounds the case and oozes into their home. Finally, she just can't tolerate it any more and announces that she wants a separation. Soon she files for divorce. Teddy's precious family disintegrates before his eyes—right in the middle of the biggest case of his life. We eavesdrop in on excruciating sessions with a family counselor and brutal financial negotiations between the spouses and their lawyers. As the first season finally ends, it's possible that Teddy and Annie might reconcile, but it's way too soon to tell.⁴

In the Costello case, Hoffman is up against a skilled and committed prosecutor, Miriam Grasso. Grasso is an ethical professional who often clashes with her ethically challenged boss, DA Roger Garfield. The personal relationship between Grasso and Hoffman is friendly and respectful, but in the courtroom it is intensely adversarial. Yet Grasso understands that a prosecutor must serve as a minister of justice as well as an agent of law enforcement. In one of the many satellite (or "B") cases handled by Hoffman's firm during the early episodes of *Murder One*, the defendant had killed another man in a bar fight 15 years before, probably in self defense. He fled California and lived an exemplary life, but when he returns to LA many years later he is nabbed and put on trial for murder. The lawyers from Hoffman's firm argue to Grasso that the case should be dismissed in the interests of justice. Overruling the decision of her subordinate, Grasso agrees to drop the case.

As it does with Hoffman, the Avedon case consumes Grasso's entire life. In the middle of the trial, Grasso's husband (a securities lawyer) drops dead. (He knew he was having ominous heart problems, but felt he had to complete a merger before he could find time to get to the doctor). Grasso barely misses a beat (although she and Hoffman exchange tearful hugs in the underground courthouse garage). It's the biggest trial of her life too. She can grieve later.

The adversary system and celebrity justice

The real subject of *Murder One* is the adversary system of criminal justice. The heart of the adversary system is the clash of opposing lawyers, each zealously representing a client. Attorneys do not believe that their responsibility is to help find the truth about past events. Often, it is in the interest of one or both lawyers to obscure the truth. Under the adversary system, it is their ethical responsibility to do so as long as they play by the rules.

Rather than seeing themselves as truth-revealers, lawyers understand that their job is to represent the client zealously and work the process for all it is worth. The lawyers—not the judge—make the tactical decisions, such as whether to go to trial or plea bargain, or determining what are the issues, who are the witnesses, or how to present their theory of the case. A neutral arbiter (either the jury or the judge) makes the ultimate decision without receiving any informational inputs other than those that the attorneys choose to provide. The judge is a relatively passive figure, enforcing the rules, deciding evidence issues, and making the lawyers behave. If the lawyers are incompetent, it isn't the job of the judge to bail them out. If one side has vastly more resources than the other, it isn't for the judge to try to equalize things. The premise of the adversary system is that all-out conflict between the lawyers, channeled by a complex and detailed

⁴ During the second season, the show's excuse for dumping Benzali is that he has taken a leave from law practice and is spending time with Annie trying to repair their marriage.

set of procedural rules, is most likely to reveal the truth about past events and assure a just outcome. This, in other words, is “procedural justice.”

In contrast, the inquisitorial system used in most civil law countries is intended to reveal the truth, not encourage lawyerly games. While each country has its own version of the inquisitorial system, its premise is the truth is most likely to be revealed by an investigation supervised and conducted by judges. There are many fewer rules restricting the investigation than are present under the adversary system and many fewer rules of evidence. The inquisitorial defendant, for example, is expected to provide testimony (whereas adversarial defendants are told not to cooperate with the police and seldom testify at the trial). Both prosecutors and defense lawyers are expected to participate in the search for truth, not use the process to score adversarial points or to obscure the truth. The judge dismisses the case if, at any stage of the investigation, the dossier suggests that dismissal is appropriate. At the trial,⁵ the judge, not the attorneys, runs the show. Usually the trial is largely designed to determine the appropriate penalty, not to determine whether the defendant should be convicted or acquitted.⁶ Most civil law countries don’t use juries, although most use lay assessors (similar to grand jurors) to sit with the judge to determine the ultimate outcome. The inquisitorial system, in other words, pursues “substantive” rather than “procedural” justice.

Readers of this essay no doubt will differ about the relative merits of the adversarial and inquisitorial systems of criminal justice, but Americans are irrevocably (and perhaps constitutionally) committed to the adversary system. If that system is ever to work as an instrument to deliver justice and truth, the attorneys must be well matched in terms of skill, experience, and resources. That precondition is often not met in practice because one side has more experienced attorneys and there is a large disparity in available resources. In addition, the judge must be competent, fearless, neutral, and wholly professional. In America, where judges are appointed for their political connections and subject to an electoral check, these conditions are often not met either.

However, the conditions are met in the “Goldilocks murder case” dramatized in *Murder One*. In that case, highly skilled and experienced attorneys engage in a mannerly but intense struggle. Each side plays by the rules. Each brings more than adequate financial resources to the table so that each side can engage investigators, researchers, jury consultants and other staff. Judge Bornstein is highly competent and controls her courtroom well, even though the camera is running. If ever there was a case in which the adversarial system should reveal the truth and provide justice, this is it. And, in the end, the adversarial system works—but only because of the incredible tenacity and brilliant intuition of Teddy Hoffman. It doesn’t get any better for the adversary system, but viewers should realize that actual criminal practice seldom bears much resemblance to the epic and richly financed struggle we see in *Murder One*.

Whether the adversary system can function as intended in cases of celebrity justice is a serious issue. The Neal Avedon prosecution is the ultimate celebrity case. Neal is a hugely popular teen-age heartthrob. He gets to spin the case his way in a televised interview by a Barbara Walters-like questioner. The

⁵ In many civil law countries, plea bargaining is not allowed. A trial occurs in every case.

⁶ See Stefan Machura’s essay on German judge shows in this volume.

interview was probably seen by many jurors. He is stalked by a crazy groupie who, for a while, seems like she might have killed Jessica. Richard Cross is a famous philanthropist with many interests in the entertainment business and great political connections. Graham Lester is rehab doctor to the stars. The Portalegres are super-wealthy Latin-Americans, perhaps drug dealers. Jessica and her friends sniffed and slept their way through the Hollywood community. Gary Blondo is a prominent producer whose Neal Avedon movie is about to hit the multiplexes. Television news is a constant companion in each episode and some of the broadcasters become bit players in the narrative. Secrets are leaked to the media. A broadcaster seduces one of Hoffman's associates in hopes that he'll tell her a tidbit or two. District Attorney Roger Garfield is running for governor (with heavy financial support from Cross), so the Avedon case is critically important to his political ambitions.

Because the Costello case is conducted in the scorching spotlight of celebrity-ship, the normal processes of adversarial trial are distorted. Cameras in the courtroom bring every sweaty detail into millions of living rooms. The jurors know all about the case (and have absorbed the attorneys' competing spins) long before they are selected for the panel. Two jurors are having an affair—and a news helicopter captures their backyard antics, requiring them to be kicked off the jury. The Costello case becomes the next monster media event trial, alongside OJ Simpson (whose criminal trial ended on Oct. 3, 1995, just a couple of weeks after *Murder One* premiered), Charles Manson, Michael Jackson, Kobe Bryant, Robert Blake, the Menendez brothers, Scott Peterson, Britney Spears, and numerous others of the past, present, and no doubt the future. In cases of celebrity justice, it is hard to have much confidence in the pristine assumption of the adversary system that the jurors will decide the case based solely on the inputs provided at the trial.

Conclusion

This essay will not reveal the true killer or the intricate plotting that closes out the first season of *Murder One*. I wouldn't dream of spoiling your pleasure. Rent the DVDs, settle back, heat up the microwave popcorn, and immerse yourself in the suspenseful Costello trial. Yes! Lawyers in Your Living Room!—perhaps the most skillful and the most entertaining lawyers you'll ever have the opportunity to welcome into your home.