REEL TO REAL

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I have long believed that many of the most important aspects of so-called legal reasoning can best be conveyed through use of everyday examples that illustrate how all of us reason as lawyers just to get through the day.¹ Here's another story in that vein.

Imagine you are a concerned parent worried about your child's exposure to too much sex and violence in contemporary films. You wish your life were organized so that you could either pre-screen each movie before allowing your child to watch or at least so that you and your child could sit down and view films together. Alas, however, you must work for a living, so you have no choice but to resort to a crude approach. Knowing that your judgments won't always agree with those of the Motion Picture Association of America, you nonetheless adopt a rule that your child may see no movie with an R rating. This might mean that some of your favorite films, Bull Durham and The Big Easy, are off limits at this point. But your daughter is only twelve and she'll have plenty of time to check these out in later years. This you find a small price to pay to avoid case-by-case discussion of the many films in the Friday the 13th series or those spawned by the horror film Texas Chainsaw Massacre. For the most part, your daughter knows you are serious about this rule, and she seldom kicks up a fuss.

During her seventh grade year, however, just after she turns thirteen, your daughter comes to you with a request. Her history class is doing a unit on the Holocaust. She has been assigned to write a report on non-Jews who played a key role in saving those who might otherwise have fallen victim to Nazi destruction. To help with her research for this project, she asks if she might see Steven Spielberg's classic film, Schindler's List, a movie that unsurprisingly has an R rating.

You have at least three options. You could note the rating, apply your longstanding rule and simply say no. Or, you might conclude that your daughter having turned thirteen is grounds for abandoning past practice and either letting her see whatever she wants or opting for case-by-case determination. You find none of these approaches appealing. You don’t want to open the floodgates to movie trash, but you are quite reluctant to stand in the way of what seems a valid educational experience. What you need then is a way to say yes that ultimately doesn’t really change things going forward. In short, you want to grant an exception. And, for the first time in a long while, you must pause and ask yourself exactly what it is about Schindler's List that leaves you willing to let your daughter watch even though it is one of the most upsetting movies ever screened.

You realize, of course, even as you are asking yourself your precise reasons for saying yes, that you already have two ways to go down your chosen path. You could try “Ok, honey, as long as we watch together you can, just this once, see an R rated film.” Or you could be more ambitious and try to add “just this

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¹ For an early example, see Jeremy Paul, A Bedtime Story, 74 VA. L. REV. 915 (1988).
once because this film is . . . [fill in blanks here with “high quality, or educational, or connected to a school paper”] we will let you see it.” The former approach seems risky because you know you’ll never be able to stick to “just this once” when faced with an upset daughter who comes back at you with “what about when I saw Schindler’s List?” Yet the latter is equally risky since whatever formulation you try will be subject to later debate about whether a subsequent film can be shoe-horned within it. As you ponder your first parental encounter with the idea of precedent, a crisis arises at work, and you have no choice but simply to say yes, honey; it’s ok this time and move on.

Sure enough it’s as early as that summer, while your daughter remains thirteen, that she invites several of her girl friends to spend the night. They are all sleeping in your basement where you have the large screen T.V. One of your daughter’s friends suggests they watch the Demi Moore film, G.I. Jane, which happens to be available on premium cable that night. This film about an intrepid young woman’s extraordinary efforts to become a Navy Seal also has an R rating, and includes some rather brutal scenes. You are excited by the idea that this group of almost adolescent girls wishes to learn more about a woman’s efforts to traverse an important social barrier. But your next reaction is that if you permit this, you’ll have no standing ever to say no again. So you say no. Surprisingly, your daughter lets it be. Years later you’ll ask her why.

In the meantime, it’s not long until your daughter is back at you again. During the fall of eighth grade, her American History teacher assigns her a paper on the reasons for the resignation of President Nixon. Once again, she suggests a film as a source of research. This time it is Oliver Stone’s rather tawdry, over-dramatized production Nixon, which at least has the redeeming feature of starring Anthony Hopkins in the title role. Now you are in a quandary. At first glance it seems that all the same ingredients for saying yes to Schindler’s List are present here as well. It’s a historical film. There’s another school paper. And the foul language and other offensive aspects are true to life, not thrown in to titillate the audience.

Moreover, you are certain that if you say no to Nixon, your daughter will be quick to label you a hypocrite. There’s no earthly basis, she’ll point out, on which to argue that Nixon is more violent, more upsetting or less appropriate for children than Schindler’s List. Hence, if you say no to Nixon your daughter will accuse you of having all along been trying to censor her movies for quality rather than trying to protect her from things she’s not yet old enough to see. You have potential counterarguments. Evaluation of the films can be done on a sliding scale weighing high quality against potentially inappropriate content. But this is going to be awfully hard to explain to an eighth grader trying to get a leg up on her classroom competition. “Ok, honey” seem to be your daughter’s words of the year.

Spring of eighth grade comes quickly and your daughter, now fourteen, has another request. Her term paper for the second semester is on the assassination of President Kennedy. Once again she wants to turn to Oliver Stone for help. She can’t see any way that having said yes to Nixon you can now tell her she’s not permitted to watch JFK. Unfortunately, neither can you. You find the JFK movie a travesty. Although it may be a gripping story and fun to watch, it strikes you as phony history, rumor upon speculation. You are appalled that your daughter should be seeking guidance in Hollywood film when so many serious scholars have written on the subject. But what are you going to do now? It’s another historical film, another research paper and it’s not any more offensive than the previous two films. So you say yes again, although this time the word “honey” doesn’t pass so easily through your lips.

Summer comes and you can’t wait for a chance to put the R rated genie back in the bottle. Sure enough, your daughter provides an early opportunity. This year’s sleepover crowd checks out the pay cable offerings and finds Guy Ritchie’s recent version of Swept Away, starring Madonna and Bruce Greenwood. Your daughter knows what buttons to push with you. She points out how often she’s heard you talking about your admiration for Lina Wertmuller’s original version starring Giancarlo Giannini and Mariangela Melato. It’s one of the few movies that really explores the material basis of class relations, she’s heard you say on more than one occasion. “So if it’s so good for you, why can’t I see it?” she inquires. What you want to say is that the new version bears no resemblance to the old and is little more than one more excuse (as if she needed one) for Madonna to parade around on screen in a bathing suit. But you are trying to disengage rather than move to case-by-case movie adjudication. So you point out that this is not a historical film, it has no connection to school, and you just don’t want to talk about it any more. “Could I see it, if I use the movie as the basis for one of my summer essays for English?” she tries in a last gasp. No, you reply, and she gives up, but this time with a rather distinct huff suggesting that you may now be on record as ogre parent of the year.

Time marches on and for her fifteenth birthday her boyfriend (can you believe she has a boyfriend at fifteen?) buys her the DVD version of The Godfather. He’s seventeen (naturally) and it’s his all time favorite flick. The two of them plan to watch the movie together before, miraculously, going out to dinner with you to celebrate the occasion. Your misery deepens. You concede that The Godfather is one of the most impressive movies ever made. But it’s also one of the most violent and the scene with the severed horse head in the bed is enough to give most adults nightmares. You know, however, that you have been set up so that if you say no, your daughter will be embarrassed and made to look like a little kid in front of her older boyfriend. So you say yes again, hoping that you can limit the damage to a birthday exception and certain that you’ll sit down with your daughter and explain to her how disappointed in her you are that she put you in this position. Fortunately, she loved the film and seems entirely untroubled by watching the murder and mayhem.

Spring break rolls around (she’s in tenth grade now) and there’s a George Clooney film festival downtown. You thought maybe she’d go see one of the Batman extravaganzas, but no, her boyfriend wants to take her to see Three Kings. This all too realistic portrayal of war in the Persian Gulf earned widespread critical acclaim, but it’s just the kind of graphic violence from which you hoped your daughter would be spared until she was older. So reaching back to earlier days, you say no once again. “But I loved The Godfather,” she complains. “Everyone loves The Godfather,” you reply. And you leave it at that.
Alas, however, your goose has pretty much been cooked. By summertime, the downtown film festival is featuring Kevin Costner flicks. Strolling in, with an unmistakable gleam in her eye, your daughter asks to borrow some cash so that she might go with her girlfriends to see *Bull Durham*. I've got an idea, she adds quickly. You can come along too, as long as you sit way in the back as far away from us as possible. You know where this is headed, so you don’t even put up a fuss. As you sit in the dark, munching popcorn, you begin to wonder if you made any mistakes along the path that got you to this point. Should you at the outset have avoided the rule based approach that used R rated films as proxy for case by case judgment? Did you set a bad precedent when you said yes to *Schindler's List*? Did you misread the precedent set by *Schindler's List* when you said yes to *Nixon*? The list could go on and on, but the lights dim and soon you are wondering once again whether Crash Davis can break the minor league record for home runs.

When you get home, you call your sister, who happens to be a lawyer, and tell her the whole story. Your experience isn’t surprising, you learn; indeed, it reflects something very similar to what you might have learned about precedent had you gone to law school. Karl Llwellyn’s *Bramble Bush*, for example, teaches fledging lawyers that a precedent such as *Schindler's List* may be seen by one side (your daughter) as welcome while the other side (you) might find it unwelcome. Worse still the same precedent can be viewed broadly (historical movies are ok) or narrowly (very good historical movies tied directly to school projects are ok) depending on one’s point of view. Indeed, there’s very little about the best law school writing about precedent that isn’t already pretty well incorporated into your struggles over your daughter’s movie choices. If you don’t believe me, “you could look it up.”