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CONVENTIONAL WISDOM: THE COURTROOM TRIAL IN AMERICAN POPULAR CULTURE*

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The courtroom trial takes place not only in actual courthouses but also in literature, film, and television. And indeed, while only a minority of Americans have participated in or even watched a real trial, nearly all have read or watched multiple trials in the courthouses of popular culture. This pervasive engagement with fictional and symbolic courtroom trials must influence what the public expects both in actual courtrooms and in American society as a whole.

This essay has three parts. Part One seeks to establish how ubiquitous the image of the courtroom trial has been and remains in American literature, film, and television. Part Two explores the core features of this common pop cultural convention. Despite occasional variations, the core features conform to a standardized cultural picture of the courtroom trial. The convention is oversimplified, but it is nevertheless recognized and taken for granted by most Americans.

These first two parts include numerous references to specific novels, movies, and television shows. This extended referencing is not intended merely as a primitive accumulation of titles. The goal instead is to suggest an "intertextuality," that is, an echoing and interlocking among a large number of literary and visual works. In isolated cases the intertextuality includes specific citations and allusions; but more commonly, portrayals of the courtroom trial interrelate through their assimilation of

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features from earlier works and through a shared store of standard images.

Part Three critiques the courtroom trial convention and comments on its ramifications. What does the convention tell us about the courts, the legal profession, and American society in general? How should we think about the courtroom trial the next time we encounter it in a novel, a movie, or a television show? How should we respond to the "conventional wisdom" of the courtroom trial in American popular culture?

I. THE UBIQUITOUS COURTROOM TRIAL

The courtroom trial in American literature, film, and television is a bit like the new pop song described by critic and scholar Fredric Jameson. This new pop song, Jameson says, can never really be heard for the "first" time.¹ We hear a pop song with reference to countless similar songs. In the same vein, we read or see a courtroom trial in popular American culture with reference to countless others we have previously read or seen. The American courtroom trial image is so common in American literature, film, and television that we have most certainly read or seen "it" before.

A. Literature

In literature, one can trace courtroom trial imagery back to the beginning of the Republic. Charles Brockden Brown's *Wieland*,² a contender for the title of "first American novel," includes an extended trial of a man who had slaughtered his wife and children in the midst of religious exultation and frenzy. In the early nineteenth century, James Fenimore Cooper placed Natty Bumppo—heroic Leatherstocking himself—on trial in *The Pioneers*,³ only to shake his author's head when the trial he imagined degenerates into a brawl. In the decades immediately before the Civil War American popular fiction came fully into its own. A whole spate of popular novels appeared featuring hard-working young Protestants from the country who move to the city, study law, and defeat assorted connivers, liars, and their pettifoggers in courtroom trials.⁴ In the second half of the nineteenth century subsequently canon-

1. See FREDRIC JAMESON, SIGNATURES OF THE VISIBLE 29 (1990).

2. CHARLES BROCKDEN BROWN, WIELAND (1798).

3. JAMES FENIMORE COOPER, THE PIONEERS (1823).

4. For comments on the combination of legal and literary sensitivities in the Early Republic, see ROBERT A. FERGUSON, LAW AND LETTERS IN AMERICAN CULTURE (1984). On the specific subject of courtroom fiction in the early nineteenth century, see Maxwell

ized writers such as Herman Melville and Mark Twain included trials in certain of their works.⁵

After the turn of the century, "social justice" writers often cast lawyers as shysters and tools of big business. The courtroom in turn could seem a biased, unfair place. In Upton Sinclair's *The Jungle*,⁶ immigrant Jurgis Rudkus not only observes the horrors of the Chicago meat-packing industry but also fares badly whenever he ends up in court. In Theodore Drieser's *An American Tragedy*, Clyde Griffiths, the son of street evangelists, seems to be working his way to the top in a relative's collar factory, only to be condemned to death after a lengthy courtroom trial.⁷

While these novels and others struck a sober tone, assorted lawyers turned writers of popular fiction offered different perspectives. At the turn of the century, West Virginia lawyer Melville Davisson Post published several engaging collections of stories regarding fictional attorney Randolph Mason.⁸ Arthur Train, himself a lawyer and assistant district attorney, created Ephraim Tutt, a Manhattan practitioner who dressed in a top hat and old-fashioned cutaway and, prefiguring modern trends, liked to fill out his bourgeois identity with a big cigar. Tutt's exploits, rich in wry humor and courtroom trial success, appeared primarily in the *Saturday Evening Post*.⁹

Erle Stanley Gardner extended the tradition of successful popular novels with striking courtroom scenes. Himself a one-time solo practitioner in Oxnard, California, Gardner created the lawyer Perry Mason,

Bloomfield, *Law and Lawyers in American Popular Culture*, in *LAW AND AMERICAN LITERATURE: A COLLECTION OF ESSAYS* (A.B.A Comm'n on Undergraduate Educ. in Law and the Humanities ed., 1980).

5. Melville's exquisite *Benito Cereno* (1856) and *Billy Budd* (published posthumously, 1924) include courtroom proceedings. In Twain's *Pudd'nhead Wilson* (1894) an attorney successfully uses fingerprints to defend his twin clients and to identify the man who had murdered a judge, albeit with disastrous results.

6. UPTON SINCLAIR, *THE JUNGLE* (1906).

7. THEODORE DRIESER, *AN AMERICAN TRAGEDY* (1925). *An American Tragedy* was dramatized by Patrick Kearney in 1926. The novel also inspired *A Place in the Sun* (Paramount 1951), a movie starring Montgomery Clift as the defendant and Raymond Burr as the brutal prosecutor.

8. See Francis M. Nevins, *From Darwinian to Biblical Lawyering: The Stories of Melville Davisson Post*, 18 *LEGAL STUD. F.* 177 (1994).

9. A good collection of Tutt stories is *The Adventures of Ephraim Tutt* (1930). For a Tutt "autobiography" and "casebook," respectively, see ARTHUR TRAIN, *YANKEE LAWYER: THE AUTOBIOGRAPHY OF EPHRAIM TUTT* (1943) and *MR. TUTT'S CASE BOOK* (1936). A recent secondary treatment of Train is Francis M. Nevins, *Mr. Tutt's Jurisprudential Journey: The Stories of Arthur Train*, 19 *LEGAL STUD. F.* 57 (1995).

who in eighty novels never failed to save his client *and* find the guilty party, usually in a concluding courtroom trial. "Call it corn if you want," Gardner said, "but corn is the great staple that helps us to live."¹⁰

In the present, the tradition of popular lawyer-authors lives on. Hardly a week passes without a lawyer novel on the best-seller lists. Works such as Scott Turow's *Presumed Innocent*,¹¹ and John Grisham's *A Time to Kill*¹² and *The Rainmaker*¹³ include powerful courtroom trials.

B. Film

Beyond literature, no shortage of screenwriters, directors, and producers have given us films with courtroom trials. Rennard Strickland had argued that trials were ideal for the early film industry because the courtroom converted easily into a comparable set and also because this set afforded the particular points of light and sound which were desirable given limited technology.¹⁴ Elmer Rice's *The Trial* was a hit in 1914, was filmed again in 1917 and 1928 in the silent era, and then became a talkie titled *On Trial*.¹⁵

The development of a more modern film technology enhanced rather than precluded courtroom trials in film, and as the 1930s gave way to the 1940s, Hollywood studios frequently featured courtroom trials in major productions. *Fury*,¹⁶ *Young Mr. Lincoln*,¹⁷ *Knock on Any Door*,¹⁸ and the delightful *Adam's Rib*¹⁹ included courtroom trials. In the latter, husband and wife lawyers played by Spencer Tracy and Katharine Hepburn square off in the courtroom, and one of Hepburn's witnesses, a muscular woman from the circus, hoists Tracy above her head. Order in the court, please.

During the 1950s and early 1960s, a period that law professor and

10. Quoted in David Ray Papke, *Erle Stanley Gardner and His Amazing Perry Mason Machine*, JURIS DR., Aug.-Sept. 1973, at 29. Useful biographies of Gardner are DOROTHY B. HUGHES: *ERLE STANLEY GARDNER: THE CASE OF THE REAL PERRY MASON* (1978) and ALVA JOHNSTON, *THE CASE OF ERLE STANLEY GARDNER* (1947).

11. SCOTT TUROW, *PRESUMED INNOCENT* (1987).

12. JOHN GRISHAM, *A TIME TO KILL* (1989).

13. JOHN GRISHAM, *THE RAINMAKER* (1995).

14. See Rennard Strickland, *Bringing Bogie Out of the Closet: Law and Lawyers in Film*, GARGOYLE (University of Wisconsin Law School alumni magazine), Spring 1990, at 4.

15. *ON TRIAL* (Warner Brothers 1939).

16. *FURY* (Metro-Goldwyn-Mayer 1936).

17. *YOUNG MR. LINCOLN* (Twentieth Century Fox 1939).

18. *KNOCK ON ANY DOOR* (Columbia 1949).

19. *ADAM'S RIB* (Metro-Goldwyn-Mayer 1949).

mystery writer Francis M. Nevins calls the "Golden Age" of the law film, courtroom scenes were parts of some of the best Hollywood had to offer.²⁰ *Witness for the Prosecution*,²¹ *Anatomy of a Murder*,²² *Judgment at Nuremberg*,²³ and *To Kill a Mockingbird*²⁴ are films with courtroom scenes all cinema aficionados should screen if not own.

The "Golden Age" may be over, but in more recent years Hollywood has continued to mount films with elaborate and significant courtroom scenes.²⁵ Particularly interesting works include but are by no means limited to *The Verdict*,²⁶ starring Paul Neuman as a boozy, burned-out personal injury lawyer; *Jagged Edge*,²⁷ in which Glenn Close plays a defense attorney who disastrously falls in love with her client; and *Philadelphia*,²⁸ in which an attorney played by Tom Hanks and his own attorney played by Denzel Washington fight back against a law firm that fires people with AIDS. In all of these movies and dozens more, trial scenes are vehicles for moving the cinematic stories forward or bringing them to the conclusion.

C. Television

The success of films with courtroom scenes no doubt alerted television producers to the potential appeal of shows with something comparable. Several of the earliest prime-time television shows—shows from the late 1940s and early 1950s—used fixed courtroom sets and were shot before live studio audiences. The producers went back and forth between fact and fiction, in retrospect searching for a genre that would capture and hold the viewing public's imagination. *The Black Robe*,²⁹ for example, presented cases borrowed from New York City's Night Court, with lawyers, parties, and witnesses sometimes playing them-

20. See Francis M. Nevins, *Law, Lawyers and Justice in Popular Fiction and Film*, HUMAN. EDUC., May 1984, at 4.

21. WITNESS FOR THE PROSECUTION (United Artists 1957).

22. ANATOMY OF A MURDER (Columbia 1959).

23. JUDGMENT AT NUREMBERG (United Artists 1962).

24. TO KILL A MOCKINGBIRD (United Artists 1962).

25. John Denvir has edited two fine collections of articles related to legal films: *Legal Reelism: The Hollywood Film as Legal Text*, 15 LEGAL STUD. F. 195 (1991) and LEGAL REELISM: MOVIES AS LEGAL TEXTS (1996). For lively treatments of 70 legal films, see PAUL BERGMAN & MICHAEL ASIMOW, REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES (1996).

26. THE VERDICT (Twentieth Century Fox 1982).

27. JAGGED EDGE (Columbia 1985).

28. PHILADELPHIA (Tristar 1992).

29. *The Black Robe* (NBC television series, 1949-50).

selves. On one occasion an actual "perp" turned himself in because of an appeal made on the show. In *They Stand Accused*³⁰ an Illinois assistant attorney general selected the cases and briefed participants beforehand. Although the defendants' roles were played by actors, actual lawyers played themselves, and Chicago attorney Charles Johnston assumed the role of presiding judge. At the end of each show people chosen from the audience rendered a verdict.

This period of experimentation, with its intriguing blend of fact and fiction ended in the 1950s,³¹ but the courtroom trial hardly disappeared from prime-time television. Producers turned increasingly to series featuring an individual or small group of fictional lawyers who at the same time on the same night each week represented clients, dug up evidence, and customarily won victory in the television courtroom.³² *Perry Mason*³³ became the most popular show of this type, but other skilled litigators came both before and after Perry: Sam Benedict, Billy Jim Hawkins, Clinton Judd, Abraham Lincoln Jones, Owen Marshall, Tony Petrocelli, and the indomitable Preston and Preston, to name only a half dozen.

Almost all of these lawyers did primarily criminal work, and even the occasional civil trial took on the trappings of a criminal proceeding, with one of the parties in effect being the defendant. A recent example of the "Mason-esque" show and one with great, sometimes unfathomable appeal is *Matlock*.³⁴ *Matlock*, played by the superannuated Andy Griffith, was effective as both a detective and a trial lawyer.

In the 1980s a different type of lawyer show inspired by the im-

30. *They Stand Accused* (Dumont television series, 1949-52).

31. One might argue that contemporary simulated courtroom shows, most of which appear on day-time television, are descendants of earlier television programs blending fact and fiction. During the fall of 1998 at least five such shows were popular: *Judge Judy*, *Judge Joe Brown*, *Judge Mills Lane*, Ed Koch's version of *The People's Court*, and the quite curious *Judge Wapner's Animal Court*.

32. Treatments of legal and courtroom shows on prime-time television include Steven D. Stark, *Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes*, 42 U. MIAMI L. REV. 229 (1987) and Charles Winick & Mariann Pezzella Winick, *Courtroom Drama on Television*, J. COMM., Fall 1974, at 67-73. A recent volume with eleven essays on individual prime-time legal shows and six more on types of legal programming is *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE* (Robert M. Jarvis & Paul R. Joseph eds., 1998).

33. *Perry Mason* (CBS television series, 1957-66).

34. *Matlock* (NBC and ABC television series, 1986-95). See Gail Levin Richmond, *Matlock*, in *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE*, *supra* note 32 at 55 (attempting to explain *Matlock's* appeal).

mensely successful *L.A. Law*³⁵ also peppered the small screen with courtroom trials. In *L.A. Law*, the narcissistic Los Angeles practitioners of course had plush offices, expensive cars, and too much casual sex, but they at least once—and sometimes two or three times per episode—went to court.³⁶ Members of fictional firms or government law offices in *The Trials of Rosie O'Neill*,³⁷ *Civil Wars*,³⁸ and *Reasonable Doubts*³⁹ also found their cases on television dockets. Lawyers of the current *Law & Order*⁴⁰ and *The Practice*⁴¹ are also skilled in the courtroom; and in testimony to the ongoing popular appeal of courtroom drama, the latter won the 1998 Emmy for best dramatic series.

Beyond recognizable “lawyer shows,” many other prime-time series featuring cops, doctors, and others include a lawyer character or two and send those characters routinely to the courthouse. *Hill Street Blues*,⁴² for example, included a public defender played by Veronica Hamel. *Picket Fences*⁴³ set in the fictional Rome, Wisconsin almost always concluded in the courtroom with Judge Henry Bone, played by Ray Walston, presiding. And *Chicago Hope*⁴⁴ included an attorney played by Peter McNicol who represented hospital interests in court until he was killed in street violence. Fortunately for his fans, the same McNicol has reappeared as attorney John Cage in *Ally McBeal*.⁴⁵ He is the only one of Ally’s colleagues with a remote toilette-flusher—he likes a fresh bowl—and he also has his firm’s best courtroom skills. My goodness, he even gets jurors to chant in unison the chief concept he has emphasized in his case.

35. *L.A. Law* (NBC television series, 1986-94).

36. In an episode of *L.A. Law* that aired originally on January 14, 1993, fictional attorneys Arnie Becker and Daniel Morales successfully defended a dominatrix whose customer had died of a heart attack while hanging by his heels. Literally cross-referencing pop cultural works with courtroom trials, the business partner of the deceased blurted, “This was tremendous—just like *12 Angry Men*, *To Kill a Mockingbird*, and *Inherit the Wind*.” *L.A. Law* (NBC television series, Jan. 14, 1993).

37. *The Trials of Rosie O'Neill* (CBS television series, 1990-92).

38. *Civil Wars* (ABC television series, 1991-93).

39. *Reasonable Doubts* (NBC television series, 1991-93).

40. *Law & Order* (NBC television series, 1990-Present).

41. *The Practice* (ABC television series, 1997-Present).

42. *Hill Street Blues* (NBC television series, 1981-87).

43. *Picket Fences* (CBS television series, 1992-96).

44. *Chicago Hope* (CBS television series, 1994-Present).

45. *Ally McBeal* (Fox television series, 1997-Present).

D. The Ramifications of Pop Cultural Ubiquity

Overall, this cavalcade of courtroom trials in American literature, film, and television has had the effect of what cultural studies scholars call "naturalizing the text." That is, most American readers and viewers take the renderings of courtroom trials for granted. They read about and watch courtroom trials without critically reflecting on them. The courtroom trial is a motif that delivers "meaning," and "meaning" is received without critical reflection. Americans are at ease with literary and cinematic courtroom trials, and they can use them to clarify their values, reinforce their moral standards, and even shape their identities.

Things are not necessarily the same in all cultures. During 1986-87, I spent a wonderful Fulbright year at Tamkang University in Taiwan, and in the course of the year I watched my share of Taiwanese prime-time television. Despite only rudimentary Chinese, I could recognize on the small screen certain equivalents of American prime-time genres: the soap opera, the comical family or pseudo-family situation comedy, and the police drama, albeit with more Kung-Fu kicks than gunshots. What was missing? I never saw any significant prime-time courtroom trials. Such prime-time programming would have seemed strange or foreign to Taiwanese viewers. The characters, actions, and signs of the courtroom trial would not have resonated with their society and culture.

A greater resonance perhaps presently exists in the cultures of Europe. Anecdotal evidence suggests both Spaniards and Swedes know more about American criminal justice and trials than they do about their own systems' comparable undertakings.⁴⁶ The reason is the fictive portrayal of American legal processes in fiction, film, and especially television and the concomitant export of these cultural works.

Given the much-discussed globalization of culture, it is possible that the American pop cultural trial will eventually circle the globe. The French might be worried about the impact of Disney products, and with Quasimodo rescuing Demi Moore in the form of a cartoon gypsy in the very shadow of Notre Dame, they have a reason to grouse. Yet, ideologically speaking, the exportation of the American vision of a courtroom trial may be even more significant. The collective text of the American pop cultural courtroom trial carries with it a concomitant message regarding the process and form of state-supervised justice.

46. See Carol J. Clover, *Law and the Order of Popular Culture*, in *LAW IN THE DOMAINS OF CULTURE* 97 (Austin Sarat & Thomas R. Kearns eds., 1998).

II. THE COURTROOM TRIAL CONVENTION

What exactly is the image of the courtroom trial in American fiction, film and television? Surely there are variations. The portrayal is not so fixed as to be identical in all cases. However, a convention, a stereotype, or something approaching a fixed cultural form emerges. Consideration of the convention's setting, characters, and plot—all traditional literary concerns—will help bring the convention into higher relief.⁴⁷

A. Setting

The setting is in fact the courtroom itself and not the larger courthouse. Sometimes, as for example in the film *Kramer vs. Kramer*⁴⁸ or the television series *The Defenders*,⁴⁹ external shots of the courthouse building first establish locale. The camera takes us up staircases and elevators and through hallways and conference rooms. But ultimately we reach the courtroom, and that is where the most significant drama takes place.

The courtroom itself is most commonly wood-paneled and well-upholstered, one comparable to a courtroom in an older federal courthouse but a far cry from the peeling paint and hard plastic chairs found in many urban courtrooms. In the background are huge doors (sometimes used for dramatic entries and exits), decorative lights mounted on the walls, local and especially national flags, and most certainly stern-faced men in uniform. The judge's bench stands like an altar at the exact center-front and rises above, suggesting something higher and truer. Defense and prosecution tables are symmetrically stationed, and the jurybox and rows of seats behind the bar, respectively, are the balcony and orchestra seating.

With actual trials in mind, scholars have for decades commented on the similarities between the courtroom and the stage.⁵⁰ The pop cultural

47. Some might take issue with this approach, at least with regard to television. John Fiske and John Hartley, for example, argue that the tools of literary criticism are not appropriate for television criticism. Written works are permanent, narrational, prone to abstraction, clear, and mono-vocal, the authors suggest, while television is ephemeral, episodic, specific, concrete, and dramatic. See JOHN FISKE & JOHN HARTLEY, *READING TELEVISION* 15 (1978). "Its meanings are arrived at by contrasts and by the juxtaposition of seemingly contradictory signs and its 'logic' is oral and visual." *Id.*

48. *KRAMER VS. KRAMER* (Columbia 1979).

49. *The Defenders* (CBS television series, 1961-65).

50. See John E. Simonett, *The Trial as One of the Performing Arts*, 52 A.B.A. J. 1145 (1966); Milner S. Ball, *The Play's the Thing: An Unscientific Reflection on Courts Under the Rubric of Theater*, 28 STAN. L. REV. 81 (1975); Janice E. Schuetz & Kathryn Holmes Snedaker, *Courtroom Drama: The Trial of the Chicago Eight*, in *COMMUNICATION AND*

courtroom, a hyper-real setting of sorts, literally becomes a stage. Actors compare working in a film or television courtroom scene to working in a play, one with a fixed set. The actress Portia de Rossi is one example.⁵¹ The broadcast of *L.A. Law* in de Rossi's native Australia inspired her to attend law school.⁵² She did not finish her legal studies, but she did become a lawyer in *Ally McBeal*.⁵³ "The courtroom is a great forum for an actor," she says. "There's very little interaction between you and the people you're speaking to. It's almost like doing theater."⁵⁴

Variations of the august, stage-like courtroom setting come in keeping with authors' and producers' efforts to establish region, time, and ultimately atmosphere. A recognizable southern subtype, for example, is always plagued by the heat. Southern courtroom trials seem never to take place in winter or in air-conditioned courthouses. In novels such as John Grisham's *A Time to Kill* or movies such as *To Kill a Mockingbird* or *Inherit the Wind*,⁵⁵ everyone sweats. The trial participants and others tiredly fan themselves. Indeed, in *Inherit the Wind*, the prosecutor even moves that those present be allowed to remove their suit coats.

A second regional subtype is what the scholar John Brigham dubs the "Los Angeles courtroom."⁵⁶ The subtype maintains the symmetry of the standard type, and the judge is still perched on high. However, the room itself is smaller and less ornamented. In *L.A. Law* itself the courtroom suggests a faster, leaner legal process. The grandeur of the traditional courtroom setting is sacrificed for something more functional.

In the future, the "Los Angeles courtroom" may become the norm; we may adopt a cultural setting that speaks of and for a more superficial society of style and appearance. For the present, though, the more traditional setting remains dominant. It reigns in even the most contemporary of pop cultural artifacts: *Law & Order*, *The Practice*, and *Ally McBeal*.

LITIGATION: CASE STUDIES OF FAMOUS TRIALS 217 (Janice E. Schuetz & Kathryn Holmes Snedaker eds., 1988).

51. Jefferson Graham, *Portia de Rossi*, USA TODAY, Oct. 16, 1998, at E11.

52. *See id.*

53. *See id.*

54. *Id.*

55. INHERIT THE WIND (United Artists 1960).

56. John Brigham, *L.A. Law*, in PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE, *supra* note 32, at 26.

B. Characters

Characters march into these cultural courtrooms full of fear, anger, confusion, and determination. They also arrive in one predictable category or another. Readers and viewers can immediately place and process them under the rubrics of judge, jury, prosecutor, defense counsel, and defendant. Just as the overall image has been naturalized, so too have the categorized *dramatis personae*.

Judges are customarily the most one-dimensional of the characters, often amounting to little more than a caricature. Occasionally a judge will become a significant character, as for example, in Howard Goldfluss's novel *The Judgment*,⁵⁷ in which the judge turns out to be the murderer. Sometimes a judge such as Judge Bone in *Picket Fences* appears frequently enough to break through the caricature. But writers or producers hoping to make a judge a larger, more developed character run the risk of undermining the judge for purposes of the courtroom scenes. *Courthouse*⁵⁸ tried to bring a range of judges to life, but the series was canceled after the airing of only a handful of episodes. The judge, robed and sitting on high, is to symbolize justice or, at least, the state's ability to referee the struggle at hand.

With only an isolated exception, the jury, like the bench, also does not provide fully developed, human characters. *Suspect*⁵⁹ is the exception that illustrates the rule. In the movie, a public defender, somewhat improbably played by Cher, receives both secret trial tips and even clandestine investigative services from a juror played by Dennis Quaid. Love blooms as well, as the legally trained wants to shout, "mistrial, mistrial." Fortunately perhaps, jurors are only present in most pop cultural trials to appraise the competing stories, sort things out, and decide *as a body*. The jury is to represent the people generally as it makes up its mind.

At an early point in American history this may actually have been what happened. When Alexis de Tocqueville, the minor French aristocrat and author, visited the United States in the 1830s, he was powerfully struck by both the importance of jury duty for individual jurors and by the American jury trial as a political institution.⁶⁰ Today cases rarely go before a jury, what with plea-bargaining, negotiated settlements, and

57. HOWARD GOLDFLUSS, *THE JUDGMENT* (1986).

58. *Courthouse* (CBS television series, 1995).

59. *SUSPECT* (Columbia/Tristar 1989).

60. See ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 280-87 (Phillips Bradley ed., Alfred A. Knopf 1945) (1835).

so on. Even when a trial actually occurs, the judge is likely to preside without a jury, especially on the civil side. If the jury continues to have crucial importance, it is as a part of the convention, in which a jury is virtually mandatory.

In films and television shows with courtroom trials, an effort is made to place the readers and viewers in the jurybox. In particular, directors use shots from behind the jurors' backs, often with the jurors' shoulders and heads in the foreground. Viewers for a moment or two watch testimony, arguments, and especially opening and closing statements as jurors. Viewers are assigned, at least temporarily, to cultural jury duty.

Turning to the lawyer characters, either prosecutors or defense lawyers could be heroes. However, since World War II it has more frequently been the case that the heroic lawyer sits at the defense table. Certainly Perry Mason fits the bill. In the previously mentioned novels, as well as in 3,000 fifteen-minute radio dramas, a handful of movies starring Warren Williams, 271 one-hour television shows broadcast between 1957 and 1965, and even subsequent made-for-television movies, Perry Mason always defended the innocent and made the prosecution look bad in the midst of doing so.

And Mason of course is hardly the end of it. Most of the heroic lawyers in the "Golden Age" of the law film, that is, the 1950s and early 1960s, were defense lawyers. Gregory Peck's portrayal of defense lawyer Atticus Finch in *To Kill a Mockingbird*, to cite only one example, was apparently so powerful as to inspire career choices and lead to a spirited defense when one reckless law professor raised questions about Finch's ethics.⁶¹ On prime-time television during the 1950s and 1960s almost all of the lawyerly heroes also were defense lawyers.

Reflecting on this phenomenon, Nova University law professor Anthony Chase has suggested a certain disavowal of McCarthyism might be involved. Individual rights had been abused during the anti-Communist witch-hunting of the late 1940s and early 1950s, and the culture was now providing fictional defense lawyers who might have been welcome among the actual defendants of a few years earlier.⁶² A responsible, tough defense lawyer "ready to go to the wall for his unpopular client

61. When law professor Monroe Freedman published a 1992 article questioning Atticus Finch's professional and personal ethics, outraged lawyers wrote to the *Legal Times*, *New Jersey Law Journal*, and other publications harshly criticizing Freedman's interpretation. CLAUDIA DURST JOHNSON, *TO KILL A MOCKINGBIRD: THREATENING BOUNDARIES* 18-19 (1994).

62. Anthony Chase, *Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys*, 1986 AM. B. FOUND. RES. J. 281, 285 (1986).

might make sense both as a reaction against what McCarthyism's supporters had been allowed to get away with as well as, perhaps, shared national denial by Americans ashamed of the way civil liberty had recently been sold out."⁶³

Only recently has the heroic prosecutor resurfaced. Marlee Matlin in *Reasonable Doubts* was in fact a prosecuting attorney, as are Sam Waterston and the other attorneys in the *Law & Order*. Before I became familiar with that show, I joked that it should be called "Order & Law," with the detectives from the first half of the show representing "order" and the district attorneys in the second half standing for "law." This was wrong. The show really is about "law and order" in the sense of tracking down, catching, prosecuting, and convicting criminals. Whether the minor trend toward heroic prosecutors will continue remains to be seen. We might eventually locate heroism at the literary and cinematic prosecutor's table.

As for the defendants and litigants in the courtroom trial, they play a surprisingly limited role. To be sure, an author or producer can bring a defendant to life. Who can forget the gripping portrayal of a murder defendant played by Susan Hayward in the classic *I Want to Live!*?⁶⁴ But more commonly, at least in popular novels, movies, and television shows, the attorneys tend to be the most developed characters. Often they are involved personally, moralistically, or politically with the defendant or at least with the cause or issue represented by the case. The episode of *The Practice*, which aired on October 18, 1998, is a good case in point. One member of the fictional Boston firm at the center of the series represented her former law professor at trial, and another represented in a separate case a man she met and dated through the personals. Both defendants stood charged with murder. As viewers, we were invited to identify with the attorneys in the courtroom proceedings and more generally. Would Lindsey show her favorite professor what a fine lawyer she had become? Would Eleanor face the fact that she herself had been attracted to a man who perhaps cut off another woman's head and then carried it around in a gym bag?

One interesting subtype of defendant, parenthetically, is the person with a law degree. In John Grisham's *The Partner*,⁶⁵ Gulfcoast attorney Patrick Lanigan is tracked down in Brazil and brought back to Mississippi for trial, but he has prepared an airtight defense in advance and is

63. *Id.*

64. *I WANT TO LIVE!* (United Artists 1958).

65. JOHN GRISHAM, *THE PARTNER* (1997).

able to cop a plea. In Scott Turow's *Presumed Innocent*,⁶⁶ prosecutor Rusty Sabich is tried by prosecutors Nico Della Guardia and Timmy Molto for allegedly murdering prosecutor Carolyn Polhemus. The abundance of prosecutors notwithstanding, the novel and the movie it spawned offer the intriguing conversion of a prosecutor into a defense lawyer by virtue of the prosecutor's own prosecution! While as a prosecutor Sabich dreaded trying cases before Larren Lyttle, a pro-defendant judge, Sabich is gleeful when Lyttle is assigned to his case. Indeed, Lyttle's role in the case turns out to be even more helpful than Sabich anticipated.

Law professors and law students might also note that they might be asked to step forward in a pop cultural trial. In *Trial*,⁶⁷ a law school professor played by Glenn Ford is about to be fired because he has no trial experience, a standard that would doom many law professors to unemployment. The professor tries to save his job by representing a young defendant charged with murder, but he is fired in the middle of the case. Luckily for him, he is rehired for the sentencing hearing. He performs well, and his juvenile client only has to go to reform school. Two snotty law students fare less well in *Compulsion*.⁶⁸ Even with a lawyer played by Orson Welles, the law students each get life plus ninety-years for kidnapping and killing a child.

C. Plot

While setting and characters remain largely stationary in the pop cultural courtroom, the courtroom trial itself moves through time. This plot (or subplot if the courtroom trial is just part of a larger story) is, in essence, a sequence of actions and developments.⁶⁹ Here, too, the reader or viewer encounters the predictable. Almost always, the courtroom trial in American cultural works has two opening statements, a stretch of examinations and cross-examinations, two closing statements, and a jury verdict.

As for the opening statements, the prosecutor goes first and usually has something coherent and convincing to present. In fact, the prosecutor often bursts with confidence and bravado. Picture in this regard the

66. SCOTT TUROW, *PRESUMED INNOCENT* (1987).

67. *TRIAL* (Metro-Goldwyn-Mayer 1955).

68. *COMPULSION* (Twentieth Century Fox 1959).

69. Setting and characters, of course, do not stand separate and apart from the plot. Setting and characters are crucial in plot development, and plot development in turn clarifies, and enhances setting and characters.

sneering face of Hamilton "Ham" Burger, the prosecutor destined to be trounced weekly in the *Perry Mason* television series. The defense's opening statement, by contrast, is often more tentative, revealing uncertainties and creating doubt that the defense has any chance at all. For both statements in the visual media, close-ups of the faces of the prosecutor and defense counsel are abundant, and as noted earlier, viewers look often into the lawyers' faces as if stationed behind the jurybox.

At the end of the opening statements, communications professor Carol J. Clover points out, "[T]here is an abrupt shift of gears, almost a change of tense, as we enter the examination phase."⁷⁰ The syntactic story lines of the opening statements gives way to disordered, sometimes confusing fragments offered by the two sides. This stage of the courtroom trial, Clover says, is "narrative parataxis—a stretch of textual bits and pieces, without coordinating conjunctions, as causally unbound as possible."⁷¹

Put more colloquially, a scrambled, potentially exciting variety of drama unfolds. Physical pieces of evidence usually surface, but even more powerful is the cultural version of direct examination and cross-examination. Standing in the "well"—the flat, unadorned space at the foot of the bench and adjacent to the jurybox—the lawyers lead and grill witnesses, experts, and defendants. In some cases people on the stand are exposed as liars; in other cases they break down on the stand and either identify the guilty party or confess. Invariably, disputes occur as to whether particular questions or whole lines of questioning are permissible, and the judge must rule while both sides pout, gloat, and imply the other side is cheating. Clover describes the process as "an exercise in more-or-less anxious plot making and unmaking."⁷²

Eventually, though, the intriguing jaggedness smooths out, and we find ourselves reading, watching, and hearing closing statements. As with the opening statements, two lawyers tell coherent stories and make passionate pleas while staring intently into the eyes of the jurors. In the visual media we again have shots from behind the jurors designed to put us in their uncomfortable chairs. One illustration of how mandatory and how potentially powerful the closing statement can be came in the television series *Reasonable Doubts*. The deaf prosecutor Tess Kaufman, played by Marlee Matlin, stood before the jury and closed in sign, and an assistant tried to convert her passionate hand movements into spoken

70. Clover, *supra* note 46, at 103.

71. *Id.*

72. *Id.* at 107.

words.

With the closing statements complete, the courtroom trial in popular culture pauses. It does not change tense but rather stops for awhile. Lawyers confer with clients and discuss possible deals with one another. On television, fictional courtroom narratives give way to commercial ones. But then, in the final act, the jury delivers its verdict. Having chosen a chairperson and deliberated offstage, the jury shuffles back into the jurybox. Its chairperson hands the judge a mysterious piece of paper. What's on that paper anyway? The judge looks at the paper, returns it to the chairperson, and the latter reads the verdict. People in the courtroom swoon and exult. They hug and cry. Sometimes the judge must ask for calm before confirming the verdict and pounding the gavel one last time.

In the present, this core sequence is sometimes more complicated. In *The Practice* and shows of its ilk, cases are continued from week to week and even within a single episode there is cutting back and forth among different cases handled by members of the firm. It is remarkable that most of us have a visual literacy that allows the easy management of all this. Perhaps we are simply so familiar with the convention that pop cultural "case management" is routinely within our competence.

An argument can be made as a result of the complexity and multiplication of contemporary courtroom trial plots that the written or visual text is not as "closed" or as "tight" as it used to be. History professor Norman Rosenberg notes that an older closed text such as *Perry Mason* in which everything is resolved in the end actually registers as camp for many contemporary viewers.⁷³ But still, the conventional courtroom trial does routinely run its course. We may not know how things will end up, but we know the stages through which the trial will move. We can and do anticipate a verdict at the end. When in the written and cinematic versions of *Presumed Innocent* the case is dismissed, we feel deprived and unsettled. When in an isolated movie like *And Justice for All*⁷⁴ an attorney played by Al Pacino reveals his client's guilt in the opening statement and then begins screaming wildly in the courtroom, we encounter an image of the courtroom trial that is at least one in a thousand.

73. Norman Rosenberg, *Perry Mason*, in *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE*, *supra* note 32, at 115.

74. *AND JUSTICE FOR ALL* (Columbia 1976).

III. SO WHAT?

After reflecting on the courtroom trial in American popular culture, law students, law professors, and lawyers might be inclined to comment first on how little this portrayal has to do with "reality." Most criminal charges, after all, are dropped or plea-bargained, and less than ten percent lead to a trial. Furthermore, in that minority of cases that do get to trial, the judge controls the lawyers and the lawyers control the laymen much more than one would ever anticipate from reading and watching the cultural convention. At trial itself defendants frequently avoid taking the stand in order to conceal past convictions. Dramatic revelations from witnesses or defendants on the stand are rare, and lawyers rarely break down a witness the way the lawyer played by Tom Cruise did with Jack Nicholson's Colonel Nathan Jessep in *A Few Good Men*.⁷⁵ Juries, meanwhile, almost always convict, and on the civil side of the docket they are almost extinct.

Various lawyers and legal commentators have written on the "inaccuracy" of courtroom trials in American fiction, film, and television, and their writings often border on indictments. The late Edward Bennett Williams, a famous trial lawyer, complained that the television series featuring Perry Mason and the like created unrealistic expectations among real-life clients. Even the best criminal defense lawyers, Williams stated, are lucky to win acquittals in a bare majority of their cases.⁷⁶ Jon L. Breen argues that the "accuracy" of a trial portrayal is one of the most important considerations in its critical evaluation. In a book surveying a whopping 421 novels with trials, he singles out for full rejection three with especially "horrible examples of inaccurate trial procedure."⁷⁷

Should this type of "reality aesthetic" control? Surely it has some degree of validity, and it is troubling when popular culture becomes a force in actual trials. Should the judge really have to alert jurors that defense counsel need not find the guilty party or prove the defendant is innocent? But at the same time, there is a different way to appraise the American pop cultural courtroom trial convention.

As suggested at the outset of this essay, the symbolic courtroom trial

75. *A FEW GOOD MEN* (Columbia/Tristar 1992).

76. Edward Bennett Williams, *The High Cost of Television's Courtroom*, 3 TELEVISION Q. 11, 16 (1964).

77. JON L. BREEN, *NOVEL VERDICTS: A GUIDE TO COURTROOM FICTION* (1984) (the novels singled out are William Ard's *Hell is a City*, Harold R. Daniels's *The Accused*, and Barbara Frost's *Innocent Bystander*).

is separate from neither American legal process nor society as a whole. It grows out of American culture in general, and it feeds back into it. It serves in fact as a variety of constitutive social language, that is, while drawing from our sentiments, values, and ideologies, the courtroom trial convention reinforces, shapes and directs. One cannot measure the impact with any precision, but the pop cultural convention likely affects lawyers' attitudes; the public's view of lawyers, courts, and society; and even American consciousness in the most general sense.

Among lawyers themselves, there is often a gnawing feeling that the practice of law was supposed to be something else. Could it be because the cases and performances of literary and cinematic courtroom lawyers are so much more exciting? The great majority of lawyers, after all, are not litigators, and, even among litigators, how many routinely have dramatic, significant cases which bristle with courtroom excitement?

If the courtroom trial convention in part explains professional melancholy, the convention may also contribute to the apparently burgeoning public hostility toward lawyers. Real-life attorneys, after all, never measure up to those heroic defense lawyers and occasional prosecutors who are so articulate in their opening and closing statements, who find spectacular evidence, and who can break down Jack Nicholson on the stand. The public, like lawyers themselves, may think less of actual lawyering because of the pop cultural convention.

Widening the frame, might it be as well that the courtroom trial convention contributes to the cult of the court and the on-going American belief in the rule of law? Some have said with the cynicism of a post-modern era, these traditional American attitudes have declined, but certainly they have not disappeared. The courtroom trial convention of American popular culture reinforces the ideas that courts work as institutions and that law in general can be trusted both in its articulation and application.

If the public believes the courts are functional and the law works, could it be that other, even more fundamental, factors in American life are thereby obscured? We all know that criminal justice works differently for some people than it does for others. Not by design but more by reality, the poor and people of color are most present in the criminal justice system as defendants, and most of them roll down the assembly line of plea-bargaining, sentencing-threatening, and the like. One would never guess from criminal trials in literature, film, and television that class and race were pronounced in criminal justice. If African Americans appear in pop culture criminal trials, for example, it is most likely that they will be lawyers and judges.

Finally, the courtroom trial has an impact on American consciousness in general, as elusive and complex as that concept might be. The convention, it seems likely, contributes to what has been characterized as the naive American Manichaeism, that is, our national tendency to see things as black or white, as right or wrong, as guilty or innocent. More subtle analyses or an appreciation of contradiction seem beyond most Americans.

In conclusion, it seems worthwhile to "denaturalize" the courtroom trial convention. We should raise it to the level of consciousness and critique it. We should put it under the microscope, wrestle with it, confront it, and demand that it come clean. Doing this is the kind of attention to cultural configurations and their material articulations that marks an active sociopolitical life. Think about how and why the courtroom trial convention works in literature, film, and television, and this thought, this criticism, will make you a little bit freer in mind and spirit.

