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### 12 Angry Men Is Not an Archetype: Reflections on the Jury in Contemporary Popular Culture

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*12 ANGRY MEN* IS NOT AN ARCHETYPE: REFLECTIONS ON THE  
JURY IN CONTEMPORARY POPULAR CULTURE

DAVID RAY PAPKE\*

INTRODUCTION

Fifty years after its initial release, *12 Angry Men* (1957) remains an important cinematic and political work. Davis, the juror played superbly by actor Henry Fonda, is a genuine American hero who is determined to respect and honor reasoned deliberation. The other jurors, played by some of the best actors of the 1950s, come alive as character types and then interact in intense, gripping ways. More so than any other, the film is an inspiring dramatic commentary on the jury as an embodiment of popular sovereignty and on the possibility of justice under law. But alas, *12 Angry Men* is fundamentally atypical as a pop cultural portrayal of the jury.

Using *12 Angry Men* as a point of reference, this essay explores the portrayal of juries in contemporary American popular culture. In Part I, I begin with a few words on what I mean by “popular culture,” lest there be any confusion regarding my understanding of the phrase. In Part II, I examine the standard portrayal of juries in popular culture. In Part III, I underscore the ways the portrayal of the jury in *12 Angry Men* differs from the norm, concluding that the film is unique in the realm of popular culture. In conclusion, I suggest that while *12 Angry Men* invites us to envision the jury as a fundamental building block for American life, the standard contemporary portrayal of the jury is instead a sobering suggestion of how we have actually come to see juries in the context of our increasingly attenuated and formalistic democracy.

I. POPULAR CULTURE IS MORE THAN “POPULAR”

My first offering of a law school course titled *Law and Popular Culture* included a major surprise. During most of the semester my students and I enjoyed critiquing law-related films, television shows, and works of inexpensive fiction. It was a delight to compare the presentations of law

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and legal institutions in popular culture with what we considered real-life law and legal institutions, and we were able in the process to hone our own sense of what law and justice under law should be. But then the students began shaping and writing their term papers, and I realized that all along, different understandings of the core concept of “popular culture” had been operative in the class. I vowed in any future undertakings to make my own understanding of “popular culture” clear at the outset.<sup>1</sup>

For me, “popular culture” is most profitably understood as the commodities and experiences produced by the culture industry for mass consumption. This definition, then, points to something more specific than merely “the popular.” If you enjoy baking bread or collecting coins, these are happy and stimulating activities, and you could find many others who enjoyed the same activities. Books and videos on baking bread and collecting coins might qualify as “popular culture” under my definition, but actual bread making and coin collecting would not. As “popular” as these two pursuits are, they are not commodities and experiences produced by the culture industry for mass consumption.

None of this is to say, meanwhile, that “popular culture” as I have defined it is without immense economic and cultural importance. Since assuming something resembling modern form in the final decades of the nineteenth century,<sup>2</sup> the culture industry has grown by leaps and bounds. It employs thousands of workers and generates an amazing variety of films, radio programs, recorded music, television shows, and works of fiction. Much of this production is superficial and will not endure for the ages, but Americans nevertheless have an extraordinary amount of popular culture from which to choose for their escape, entertainment, and even education.

Furthermore, American popular culture is a major presence on the world stage. Varieties of American popular culture are available almost everywhere on the planet, and consumers in the majority of foreign countries are familiar with American movie stars, cartoon characters, and pop singers. The American culture industry, with good reason, frets about

1. For considerations of the various ways “popular culture” might be understood, see generally MASS MEDIA AND SOCIETY (James Curran & Michael Gurevitch eds., 3d ed. 2000); POPULAR CULTURE: AN INTRODUCTORY TEXT (Jack Nachbar & Kevin Lause eds., 1992); JOHN STOREY, AN INTRODUCTORY GUIDE TO CULTURAL THEORY AND POPULAR CULTURE (1993); Ray B. Browne & Pat Browne, *Introduction to THE GUIDE TO UNITED STATES POPULAR CULTURE 1* (Ray B. Browne & Pat Browne eds., 2001).

2. See JAMES CULLEN, THE ART OF DEMOCRACY: A CONCISE HISTORY OF POPULAR CULTURE IN THE UNITED STATES 90 (1996).

the need to protect its products. The stealing of popular culture and the unauthorized selling of it in foreign countries is common.<sup>3</sup>

While these concerns with cultural piracy are legitimate, I am more concerned in this essay with the patterns and configurations of pop cultural products in and of themselves and with what these patterns and rhythms might tell us about American society. It would be too simple to treat popular culture as simply a window on our lives; as noted, it is a commercial product. But still, the culture industry does attempt to produce films, television shows, and inexpensive fiction that will resonate with viewers, listeners, and readers. The producers of popular culture would in general like to provide characters, protagonists, and heroes with whom the audience might identify.<sup>4</sup> Hence, we might use popular culture as an indirect indicator of what the public or some large segment of the public is thinking. If we are willing to contemplate popular culture critically, we might extract insights from it regarding common attitudes and expectations.

## II. THE JURY IN POPULAR CULTURE

A large portion of American popular culture is law-related, and an especially common event in law-related popular culture is the courtroom trial. Classic films from the 1950s such as *Witness for the Prosecution* (1957), *I Want to Live* (1958), *Anatomy of a Murder* (1959), and *The Young Philadelphians* (1959) featured courtroom trials.<sup>5</sup> More recent Hollywood dramas such as *The Accused* (1988), *A Few Good Men* (1992), and *A Time to Kill* (1996), as well as comedies such as *My Cousin Vinny* (1992), *Liar, Liar* (1997), and *Legally Blonde* (2001), continue the trend. On television, series such as *L.A. Law* (NBC 1986–94), *Ally McBeal* (FOX 1997–2002), and *The Practice* (ABC 1997–2004) always portrayed one or more of their lawyer characters litigating in each episode, and current series such as *Law & Order* (NBC 1990–present), *Boston Legal* (ABC 2004–present), and *Shark* (CBS 2006–present) do the same. Authors of inexpensive fiction are similarly enamored with courtroom proceedings. In the early twentieth century, widely read lawyers/authors such as Melville Davisson Post and

3. See generally Eric Priest, *The Future of Music and Film Piracy in China*, 21 BERKELEY TECH. L.J. 795 (2006); Peter K. Yu, *From Pirates to Partners: Protecting Intellectual Property in China in the Twenty-First Century*, 50 AM. U. L. REV. 131 (2000).

4. In a discussion of legal ethics in popular culture, William H. Simon suggests that pop cultural works “seem to depend strongly on the imaginative identification of the audience with their heroes.” William H. Simon, *Moral Pluck: Legal Ethics in Popular Culture*, 101 COLUM. L. REV. 421, 440 (2001).

5. I offered my thoughts on law-related films of the 1950s in David Ray Papke, *Law, Cinema, and Ideology: Hollywood Legal Films of the 1950s*, 48 UCLA L. REV. 1473 (2001).

Arthur Train made fictional litigators into heroes and eagerly displayed the heroes' successes in the courtroom.<sup>6</sup> In the present, courtroom proceedings are common in the best-selling fiction of such lawyer/authors as John Grisham, Lisa Scottoline, and Scott Turow.<sup>7</sup>

Experienced litigators and trial court judges sometimes have no tolerance for popular culture of this sort. The proceedings seem to them oblivious to or even disdainful of what the litigators and judges know to be the way trials really work.<sup>8</sup> But lay consumers are not similarly stymied by these works. They have watched or read about dozens, perhaps hundreds or even thousands of courtroom trials and in the process brought the pop cultural trial fully within their ken.<sup>9</sup>

The standard pop cultural trial has a familiar collection of major players. They surely include an august judge who sits on high, rules on motions, and attempts with mixed success to maintain order in his or her courtroom.<sup>10</sup> Then, too, we encounter distinctive defendants and litigants, who, as one might expect, have cases and causes that are the antithesis of routine. And of course there are lawyers—lots of lawyers. They tend to be even more striking than other characters and are much more in control of the proceedings than real-life litigators. Often, the lawyers' cases parallel or relate to issues in the lawyers' own lives. In the film *Philadelphia* (1992), for example, attorney Joe Miller, played by Denzel Washington, has to overcome his own prejudices against homosexuals as he represents gay lawyer Andrew Beckett, played by Tom Hanks. Or in best-selling novel *The Rainmaker* by lawyer-turned-novelist John Grisham,<sup>11</sup> fictional

6. For treatment of Post's and Train's works, see, respectively, Francis M. Nevins, *From Darwinian to Biblical Lawyering: The Stories of Melville Davison Post*, 18 *LEGAL STUD. F.* 177 (1994); Francis M. Nevins, *Mr. Tutt's Jurisprudential Journey: The Stories of Arthur Train*, 19 *LEGAL STUD. F.* 57 (1995).

7. See generally David Ray Papke, *Re-Imagining the Practice of Law: Popular Twentieth-Century Fiction by American Lawyer/Authors*, in 7 *LAW AND POPULAR CULTURE* 243 (Michael Freeman ed., 2005).

8. I had the opportunity to compare pop cultural trials and real-life ones while teaching in the Indiana Graduate Program for Judges in the 1990s and included some of the comparisons in David Ray Papke, *The American Courtroom Trial: Pop Culture, Courthouse Realities, and the Dream World of Justice*, 40 *S. TEX. L. REV.* 919 (1999).

9. The scholar Carol J. Clover points out that citizens of foreign countries, due to their exposure to American popular culture, also develop a familiarity with American courtroom norms. For example, students at the University of Barcelona could say more about the workings of American courts than about Spanish ones. See Carol J. Clover, *Law and the Order of Popular Culture*, in *LAW IN THE DOMAINS OF CULTURE* 97, 97–98 (Austin Sarat & Thomas R. Kearns eds., 1998); see also Peter Bowal, *A Study of Lay Knowledge of Law in Canada*, 9 *IND. INT'L & COMP. L. REV.* 121, 139–41 (1998).

10. For a thoughtful commentary on the image of the pop cultural judge, see generally David A. Black, *Narrative Determination and the Figure of the Judge*, in 7 *LAW AND POPULAR CULTURE*, *supra* note 7, at 677.

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

lawyer Rudy Baylor overcomes his own bitterness and cynicism as he represents deserving parties in their suit against a conniving insurance company.

Juxtaposed with these interesting judges, defendants, and lawyers, pop cultural juries have a decidedly less engaging presence. Viewers and readers encounter certain common and predictable jury motifs, a “motif” being understood as “a conspicuous element, such as a type of incident, device, reference, or formula, which occurs frequently . . . .”<sup>12</sup> The jury motifs help consumers of popular culture situate themselves within selected works, but they do not individually or collectively invite much reflection on the jury and its efforts.

Customarily, we first meet the pop cultural jury within the context of the trial itself rather than in voir dire or in a preliminary hearing. In particular, we usually see or read about the jurors for the first time when the attorneys deliver their opening statements. Unlike jurors in the 1950s, during which *12 Angry Men* was produced, today’s pop cultural jurors are likely to include women as well as men and African Americans as well as Caucasians, and in films and television shows, routine shots pan these good folks as they sit in the jury box. Carol J. Clover would call these “‘listening attentively’ shots.”<sup>13</sup>

The actors attempt to squeeze everything possible out of their tiny acting assignments, but for the most part, efforts to look interested and pensive during opening statements and, for that matter, throughout most of the pop cultural courtroom trial are doomed. The chief reason is that the overarching presentation of the jury is as an institutional aggregate. In fact, assembled pop cultural juries often seem more a part of the setting than important agents in the plot. Individual jurors in this sense are only pieces in a suite of “human furniture.”<sup>14</sup>

While contributing to the courtroom setting and helping to make it recognizable, pop cultural juries also seem at points to disappear. Perhaps this is predictable during the direct examinations and cross-examinations, which involve intense exchanges between lawyers and those on the stand. Shots of the jury during these exchanges would hurt the drama. In other instances such as the sidebar conference, meanwhile, the jury must disappear in order for the motif to be believable.

Janet Malcolm, writing for a book on law and narrative, describes a sidebar conference as “the sotto voce discussion between the trial judge and

12. M.H. ABRAMS, A GLOSSARY OF LITERARY TERMS 169 (7th ed. 1999).

13. See Carol J. Clover, *Movie Juries*, 48 DEPAUL L. REV. 389, 389 (1998).

14. *Id.* at 390.

the competing trial lawyers in which the conflicting claims of narrative and legal procedure—of stories crying out to be told and the law’s constraints on their telling—are argued and adjudicated.”<sup>15</sup> Malcolm notes that real-life lawyers participating in sidebar conferences routinely step out of fierce adversarial roles and calmly discuss their business because they are “[o]ut of the hearing of the jury.”<sup>16</sup> For their part, judges are also more at ease. Most would prefer it if evidentiary and procedural questions were answered in advance through pretrial hearings and through motions in limine,<sup>17</sup> but at least when the jury is not present, judges are freer to express doubts and ask genuine questions.

Some of the best law-related popular culture, for example, the television series *Law & Order*, stages sidebar conferences in chambers and extracts tense drama from the staging. But, in general, law-related popular culture moves the sidebar conference back into the courtroom. Lawyers stand immediately before the bench and argue loudly about matters that would surely prejudice one another’s cases. This can be engaging, but for it to be in any way plausible, the jury must disappear. It would break the flow of the narrative if the judge asked the jurors to temporarily leave the courtroom. Hence, the jury is virtually vaporized, only to reappear when the sidebar conference is complete.

Perhaps the most appealing portrayal of juries in contemporary popular culture occurs at the time of closing arguments. As with the other parts of the pop cultural courtroom trial, closing arguments are hardly faithful to real life. In many actual courtrooms closing arguments are routine and have time limits. In the pop cultural courtroom, by contrast, the arguments are always dramatic and passionate. What’s more, in film and television, the camera works in ways that enhance the viewer’s vicarious involvement with the drama.

Think of the classic *To Kill a Mockingbird* (1962), arguably the most popular law-related film of all time. During the closing argument, the mythical Atticus Finch, played by Gregory Peck, looks at the jurors in the county courthouse of Maycomb, Alabama, and the jurors, simple men with suspenders and earnest faces, look back at Finch. The camera shows us how the jurors look to Finch, but, then, in a specialized version of the shot-

15. Janet Malcolm, *The Side-Bar Conference*, in *LAW’S STORIES: NARRATIVE AND RHETORIC IN THE LAW* 106, 106 (Peter Brooks & Paul Gewirtz eds., 1996).

16. *Id.* at 108.

17. See Papke, *supra* note 8, at 927.

reverse shot sequencing so common in Hollywood films,<sup>18</sup> the camera shows how Finch looks to the jurors. In the reverse shots, the jurors' shoulders and the backs of their heads are visible in the foreground of the frame.

Or consider the appealingly wacky *Ally McBeal*. In almost every episode one lawyer or another from Ally's firm takes a case to trial, and John Cage, a member of the firm played by Peter MacNicol, is supposedly legendary among Boston litigators. More idiosyncratic than even his professional colleagues, Cage prepares for trial by listening to Barry White tapes! When he is at trial, we invariably see him looking at the jurors and then the jurors looking at him. The shot-reverse shot occurs time and again. As with *To Kill a Mockingbird* and countless other law-related films and television shows, this camera work has the effect of putting viewers at least fleetingly into the jury box and of inviting us to vicariously judge the case at hand.

When the closing arguments are over, the pop cultural jury files out of the courtroom, but in ninety-nine out of one hundred films, television shows, and works of inexpensive fiction, viewers and readers do not accompany them. A few anxious hours or even several days in pop cultural time may pass as viewers and readers wait for the jury to return, but in this interim, the focus is almost always on the litigants and their lawyers. When the jury finally does return, the foreman hands a slip of paper to the bailiff, who hands it to the judge, who looks at the slip of paper before returning it to the bailiff, who returns it the foreman. The foreman then reads the verdict, and while the litigants and their lawyers collapse or celebrate, the pop cultural jury disappears for all time. Unlike *12 Angry Men*, which includes an interesting scene showing key jurors striding down the courthouse steps and back into their daily lives,<sup>19</sup> we do not in most of popular culture even see the jurors conclude their arduous service.

As the pop cultural consumer exits the cineplex lot for the drive home, she is unlikely to think back to the jury in the film she has just seen. As the pop cultural consumer finishes the last page of a courtroom thriller and turns off the light, he rarely falls asleep pondering the jury in the tale he

18. For an illuminating discussion of shot-reverse shot camera work using *Casablanca* as an example, see ROBERT B. RAY, A CERTAIN TENDENCY OF THE HOLLYWOOD CINEMA, 1930–1980, at 53–55 (1985).

19. Two of the jurors, who had known each other only by their juror numbers, go so far as to exchange names before going their separate ways. “With this closing introduction, they replace their juror numbers with their names, and in doing so, they leave behind their role as jurors, and resume their role as men.” Nancy S. Marder, *Why 12 Angry Men? (1957): The Transformative Power of Jury Deliberations*, in SCREENING JUSTICE—THE CINEMA OF LAW 157, 167 (Rennard Strickland, Teree E. Foster & Taunya Lovell Banks eds., 2006).



just completed. The jury motifs in the pop cultural courtroom trial help establish the setting and serve as valuable pacing devices, but these motifs are not particularly bountiful sources of meaning. Writers and producers do not fail to bring the jury to life; rather, they for the most part do not attempt to do so. Overall, the jury is not that important in contemporary popular culture.

### III. THE UNIQUENESS OF *12 ANGRY MEN*

*12 Angry Men* does not comport with the standard pop cultural portrayal of the jury. In particular, individual jurors come alive as characters in the film, and the jury appears almost exclusively in the deliberation room rather than the courtroom. A handful of other pop cultural works also include one or both of these features, but no other pop cultural work employs these features so effectively to endorse the jury as an institution. Indeed, *12 Angry Men* inspires pride and commitment regarding what juries can do and what they represent. One scholar maintains *12 Angry Men* suggests that “jury deliberations may even provide a microcosm of a larger democratic process.”<sup>20</sup>

Turning first to the individuation of jurors, we come to an issue of major importance. American popular culture and especially the Hollywood cinema are almost always character-driven. The characters themselves need not be complex or particularly original, and some have a detectable flatness about them. Others are stock characters; that is, they are recognizable types that appear repeatedly in selected genres or common media. Yet whatever the depth of the characters, they routinely serve as an engine for their works. Writing about the law-related films *Judgment at Nuremberg* (1961) and *Reversal of Fortune* (1990), the critic Suzanne Shale said, “It is always a character who takes steps, a character who makes choices, a character’s responses that drive the story forward or spin it around in new directions. It is a character who overcomes, a character who changes or learns.”<sup>21</sup>

*12 Angry Men* finds a place in this tradition via its successful presentation of individualized and quite striking characters. Henry Fonda is of course the star of the film, and his portrayal of the juror named Davis is superb. In addition, each of the eleven other jurors brings a recognizable character type to life. Members of the ensemble include but are not limited to a prickly immigrant who understands the American system better than

20. Norman Rosenberg, *Hollywood on Trials: Courts and Films, 1930–1960*, 12 LAW & HIST. REV. 341, 347 (1994).

21. Suzanne Shale, *The Conflicts of Law and the Character of Men: Writing Reversal of Fortune and Judgment at Nuremberg*, 30 U.S.F. L. REV. 991, 999 (1996).

the native-born Americans, an older man whose personal sensitivities to the needs and vanities of the elderly are crucial in the deliberations, and a bigot whose racism is so deeply engrained that he cannot imagine it to be anything other than common sense. Especially engaging is Juror #3, played by Lee J. Cobb. He had tried earlier in life to teach his own son to be tough and to stand up as a man, but one day in the midst of an argument, the son punched his father. The two came to hate one another, and by the time of the jury deliberations in *12 Angry Men*, they had not spoken for years. In the course of the film it becomes painfully obvious to the other jurors, and then to Juror #3 himself, that he wants to convict the defendant in order to deliver vicarious punishment to his own son.

To be sure, a handful of other films with juries in them have also developed the character of one of more jurors, but none of those other films develops the character of the jurors *as jurors*. The films instead present the individuated jurors as the types of figures one would find in other pop cultural works. The developed jurors, in other words, just happen to be jurors. In part because of this, these other films miss the opportunity to say anything important, much less anything inspiring, about the jury process.

A case in point is the film *Suspect* (1987). The film begins when a judge in Washington, D.C., commits suicide and his secretary is found murdered. A homeless deaf-mute played by Liam Neeson is arrested for the murder, and public defender Kathleen Riley, played by Cher, draws the difficult assignment of representing him. The trial appears to take place in federal court instead of the more likely Superior Court for the District of Columbia, but this is only one of the many curious and unusual features of the film.

The biggest problem involves a lobbyist for the milk industry named Eddie Sanger. Played with a smirky smarminess by Dennis Quaid, Sanger becomes a member of the jury. From the time of voir dire we know complications will follow. Riley and Sanger begin flirting and sparking with one another, and any real-life prosecutor worth his or her salt would surely have observed this and sought to strike Sanger from the jury. Hollywood voir dire, meanwhile, is a different matter, and Sanger becomes a member of the jury. Then, with his ardor for Riley ever growing, he begins giving her secret tips regarding matters she should investigate and how her defense is being received by fellow jurors. Sanger even sneaks out of the courthouse to find evidence, and on one occasion—while the trial is ongoing—he saves Riley from shadowy assassins. Sanger, in short, morphs

into a romantic action hero. He and Riley identify the true perpetrator,<sup>22</sup> and the two can finally share their affection for one another in the full light of day. As Amazon reviewer Gary F. Taylor said, “Any one [sic] even remotely conversant with the law will find the story so full of loopholes that it is more than a little ridiculous . . . .”<sup>23</sup>

If problems ensue when a producer attempts to develop an individual juror into a romantic action hero, the producer could instead consider presenting the individual juror as a victim, perhaps even as a victim who throws off her victimhood. In *Trial by Jury* (1994), Valerie Alston, a single mother played by Joanne Whalley-Kilmer, is willing to serve on the jury in the trial of a Mafia boss named Rusty Pirone because, as she tells her son, it is her “duty.” However, an ex-cop named Tommy Vesey, played by William Hurt, tells Alston her son’s life is in danger unless she votes “not guilty.” The defendant somehow manages to abduct Alston and rape her while the trial is ongoing, but she nevertheless holds out against conviction in the jury deliberations, ultimately producing a hung jury. Subsequently, the district attorney learns of Alston’s role in the deliberations, suspects she has been intimidated, and begins investigating. Acting on the advice of Tommy Vesey, who had become smitten with Alston before dying in a gun battle, Alston decides her only hope is to seduce and kill Pirone. He, in turn, tries to suffocate her, but Alston manages to ice pick him to death.

In the surprisingly similar *The Juror* (1996), Demi Moore plays Annie Laird, a juror in another Mafia trial. A creepy character known as “The Teacher,” played quite convincingly by Alec Baldwin, first tells Laird she must find the defendant not guilty or her son and friends will die.<sup>24</sup> Shortly thereafter, he ups the ante by telling Laird she must also convince the other jurors to acquit. The assignment is difficult because when the jury takes its initial vote, the panel stands 10–2 for conviction. Somehow, the newly disingenuous Laird carries out her assignment, rivaling Henry Fonda’s Davis character in *12 Angry Men* in her ability to persuade fellow jurors eager to convict. Then, as if poor Laird has not suffered enough, it becomes clear that “The Teacher” has become infatuated with her. Only at the end, after “The Teacher” has killed a dozen people along the way, does Laird save the day. “The Teacher” goes to Guatemala to kill Laird’s son, but Laird manages to kill him first.

22. The presiding judge in the trial, one Matthew Helms played by John Mahoney (Frasier’s Dad!), turns out to be responsible for the deaths with which the film began.

23. Posting of Gary F. Taylor, gftbiloxi@yahoo.com, to Internet Movie Database (IMDb), Suspect (1987), <http://www.imdb.com/title/tt0094082/usercomments> (May 18, 2005).

24. As “The Teacher” puts it, “The grey suits want you to love the law, but can the grey suits shield you from a guy like me?” *THE JUROR* (Columbia Pictures Corp. 1996).

Valerie Alston and Annie Laird are jurors who distinguish themselves from their fellow jurors, but, even more so, Alston and Laird are women in severe danger. In keeping with the “women in peril” genre, so familiar in made-for-television films screened on Sunday evenings, both women rise to remarkable heights, save their children, and see that justice is done. Somewhere along the line, however, viewers might, with good reason, lose track of the fact that the films are about juries and jury trials.

The second major way *12 Angry Men* also deviates from the standard pop cultural work featuring a jury is in its willingness to actually portray the jurors deliberating. Indeed, Nancy Marder characterizes the film as “a tribute to the deliberative process.”<sup>25</sup> Viewers can watch the jurors learning to deliberate and then bringing what they have learned to bear. Only a handful of other films attempt something comparable, but the other films neither strive for the same endorsement of deliberation nor approach *12 Angry Men*’s winning portrayal of deliberation in action.

A striking example is the drama *Runaway Jury* (2003). It is adapted from a novel by John Grisham.<sup>26</sup> A graduate of the law school at the University of Mississippi and a one-time practitioner in Southaven, Mississippi, Grisham abandoned the practice of law when *The Firm*,<sup>27</sup> his second novel, became a best seller and was made into a film starring Tom Cruise. During the following decade Grisham surpassed all others as a master of law-related pop fiction, and, indeed, his novels about legal cases and lawyers sold over sixty million copies during the 1990s—more volumes than those sold by any other American author during the decade.<sup>28</sup> When Hollywood adapted *The Runaway Jury*, it not only dropped “The” from the title but also made an intriguing, substantial change in the story line. In Grisham’s novel, a widow sues a tobacco company for causing her husband’s death with its products, but in the film, a widow sues a gun manufacturer after one of its guns is used to kill the widow’s late husband.

In both the novel and the film, the jury appears in both the courtroom and in deliberations outside the courtroom, but readers and viewers are hardly invited to reflect on the potential and importance of a genuine deliberative process as they are with *12 Angry Men*. In *Runaway Jury*, the high-powered jury consultant Rankin Fitch, played in the film by veteran actor Gene Hackman, investigates potential jurors for the defendant and

25. Marder, *supra* note 19, at 166.

26. JOHN GRISHAM, *THE RUNAWAY JURY* (1996).

27. JOHN GRISHAM, *THE FIRM* (1991).

28. Hubert Huang, *Runaway Jury*, *SF STATION*, Feb. 13, 2005, <http://www.sfstation.com/runaway-jury-a1039> (last visited Aug. 17, 2007).

tries to influence jurors once the case goes to trial. Rankin seems likely to succeed given his track record of manufacturing the jury verdicts his past clients have wanted. But unfortunately for Rankin, one Nicholas Easter, played in the film version by John Cusack, slips onto the jury. His mission is to lead the jury to a verdict for the plaintiff, and although Easter does not have Rankin's staff and technology, Easter is every bit as resourceful as his opponent. The jurors emerge as a rather pathetic lot, and their assorted secrets and needs make them exceedingly vulnerable to manipulation. With good reason, the tagline for the film is "Trials are too important to be decided by juries."<sup>29</sup>

In the end, *12 Angry Men* not only separates itself from the standard pop cultural portrayal of the jury but also distinguishes itself from pop cultural works such as *Suspect*, *Trial by Jury*, *The Juror*, *Jury Duty*, and *Runaway Jury*. While these works individuate jurors and/or show jury deliberations, they all fail to convey the powerful message of *12 Angry Men*. Individual men, the latter tells us, can and should overcome their differences and reason together. This exercise in popular sovereignty, the film suggests, is central in a system providing justice under law. Pop cultural works about romantic action heroes or women in peril might provide escape, but *12 Angry Men* truly edifies. It is unique in the way it prompts us to believe in juries and, by extension, in our fellow man.

#### CONCLUSION

*12 Angry Men* is an atypical pop cultural portrayal of the jury. It does not resemble standard pop cultural portrayals of juries, and the film even distances itself from other films, television shows, and works of inexpensive fiction that individuate juries and present actual jury deliberations. Bearing in mind the suggestion made early in this essay that popular culture indirectly indicates the public's attitudes and expectations, the overall pop cultural portrayal of juries may indicate that the public has abandoned its sense of the jury as an important manifestation of popular sovereignty.

The modern jury did not come into being at any single point in time, but "it was the legal tradition developed in England following the Norman Conquest in 1066, from which the American jury system most directly draws its heritage."<sup>30</sup> After the Conquest, earlier systems of trial by ordeal

29. Internet Movie Database, *Runaway Jury* (2003), <http://www.imdb.com/title/tt0313542/> (last visited Apr. 23, 2007).

30. Randall T. Shepard, *Jury Trials Aren't What They Used to Be*, 38 IND. L. REV. 859, 860 (2005).

and combat were gradually put aside. “By 1229, the jury trial was the normal mode of proof in all criminal proceedings.”<sup>31</sup> In the new system, a body of men was summoned from the neighborhood to seek the truth, and these jurors were initially free to investigate cases on their own. Only in the 1600s did these investigations cease, and then, as England experienced the earliest throes of modernization, witnesses and jurors took on distinct and separate roles. Witnesses came to testify to what they took to be the truth, while jurors decided cases. To some extent, the very qualifications for witnesses—some valuable knowledge of the events at hand—could disqualify them as jurors, men who were charged with making neutral, independent judgments.

When the American republic came into being, the new nation held onto the English jury trial and the concomitant understanding of jurors. In fact, the jury became one of the Republic’s most favored and representative institutions. The Frenchman Alexis de Tocqueville toured the United States in the 1830s, and he was as much taken with the jury as he was with any American institution, even declaring that a complete treatment of the jury “would fill a whole book . . . .”<sup>32</sup> De Tocqueville thought that the jury was, above all, a political institution and that “it puts the real control of affairs into the hands of the ruled, or some of them, rather than into those of the rulers.”<sup>33</sup> He sensed and, in his guarded way, promoted the understanding of the jury as an expression of democratic popular sovereignty. “The jury system as understood in America,” he said, “seems to me as direct and extreme a consequence of the dogma of the sovereignty of the people as universal suffrage.”<sup>34</sup> “The jury,” he insisted, “is both the most effective way of establishing the people’s rule and the most efficient way of teaching them how to rule.”<sup>35</sup>

De Tocqueville also seemed to sense the jury would not necessarily continue to occupy its exalted position,<sup>36</sup> and recent decades show his fears coming to life. The jury is used much less frequently than most Americans realize, and the public manifests a troubling disdain for jury duty. Many Americans try every trick imaginable to avoid serving on a jury, and in

31. Trisha Olson, *Of Enchantment: The Passing of the Ordeals and the Rise of the Jury Trial*, 50 SYRACUSE L. REV. 109, 172 (2000).

32. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 271 n.2 (J.P. Mayer ed., George Lawrence trans., Anchor Books 1969) (1835).

33. *Id.* at 272.

34. *Id.* at 273.

35. *Id.* at 276.

36. “[T]he jury is above all a political institution; it should be regarded as one form of the sovereignty of the people; when the sovereignty of the people is discarded, it too should be completely rejected . . . .” *Id.* at 273.

some jurisdictions sheriffs have had to climb into their vehicles, head to the malls, and literally round up jurors.<sup>37</sup>

The Chief Justice of the Indiana Supreme Court has noted how frequently contemporary comedians and satirists use the jury system as material.<sup>38</sup> He goes on to reference several episodes from *The Simpsons*, including one in which the blockhead Homer serves on a jury.<sup>39</sup> One could also reference a film such as *Jury Duty* (1995), starring Pauly Shore as a down-on-his-luck loser named Tommy Collins, who wants to serve on a jury for the pay, no matter how minimal. The film at points parallels *12 Angry Men*, especially with the jury's initial 11–1 vote to convict, but, unlike *12 Angry Men*, the goal in *Jury Duty* is parody. When Collins goes to the bathroom and takes too long, his fellow jurors punish him by electing him jury chairman, and we can all enjoy a laugh at the expense of the jury as institution. “[M]any in the public tend to view the jury as archaic, emotional, irrational, and unintelligent.”<sup>40</sup>

This essay, meanwhile, has not attempted to collect and address pop cultural works that in a sense directly attack the jury. The point at hand instead involves how little respect and importance contemporary popular culture accords to the jury. If justice is to be achieved, popular culture tells us time and again, the agents of that achievement are people other than the men and women in the jury box.

Might this cultural phenomenon in its own specialized way alert us to the increasingly attenuated and formalistic nature of American democracy? In most elections, a majority of eligible voters do not vote, and almost nobody would think of jury duty as a fundamental activity of democratic government. In order to participate meaningfully in a democracy, citizens must take themselves to be politically empowered. In order for popular sovereignty to manifest in juries, popular sovereignty must itself exist. When we are watching a film with a jury in it at the theater or following a comparable television show in our family rooms, we can continue to hope a figure like Henry Fonda's Davis will get his fellow jurors to think and talk together. We can hope for pop cultural juries that live up to their full potential. But even if tales of this sort are told, we should still have pronounced concerns about our increasingly apolitical and self-disenfranchised society.

37. See generally Susan Carol Losh et al., “Reluctant Jurors”—What Summons Responses Reveal About Jury Duty Attitudes, 83 JUDICATURE 304 (2000).

38. Shepard, *supra* note 30, at 861.

39. *Id.* at 861 n.15.

40. *Id.* at 861.