



76

WHY DO LEGAL
DRAMAS OFTEN
IGNORE THIS VITAL
PART OF THE
JUSTICE SYSTEM?



Donald Trump holds court during his criminal jury trial in Manhattan.

Photo via AP; Illustration by Sara Wadford/ABA Journal

Photo courtesy of MovieStillsDB; by Michael M. Santiago/Pool

THE JURY IS OUT

BY VICTOR LI

In mid-April, as jury selection began for *The People of the State of New York v. Donald J. Trump*—a case that resulted in a conviction of the former president on all 34 counts of falsifying business records to conceal that he paid hush money to porn star Stormy Daniels—there were many questions on the minds of legal and political commentators everywhere.

Could the prosecution and defense really find 12 impartial Manhattan residents who could put whatever biases and personal feelings toward Trump aside to render a just verdict?

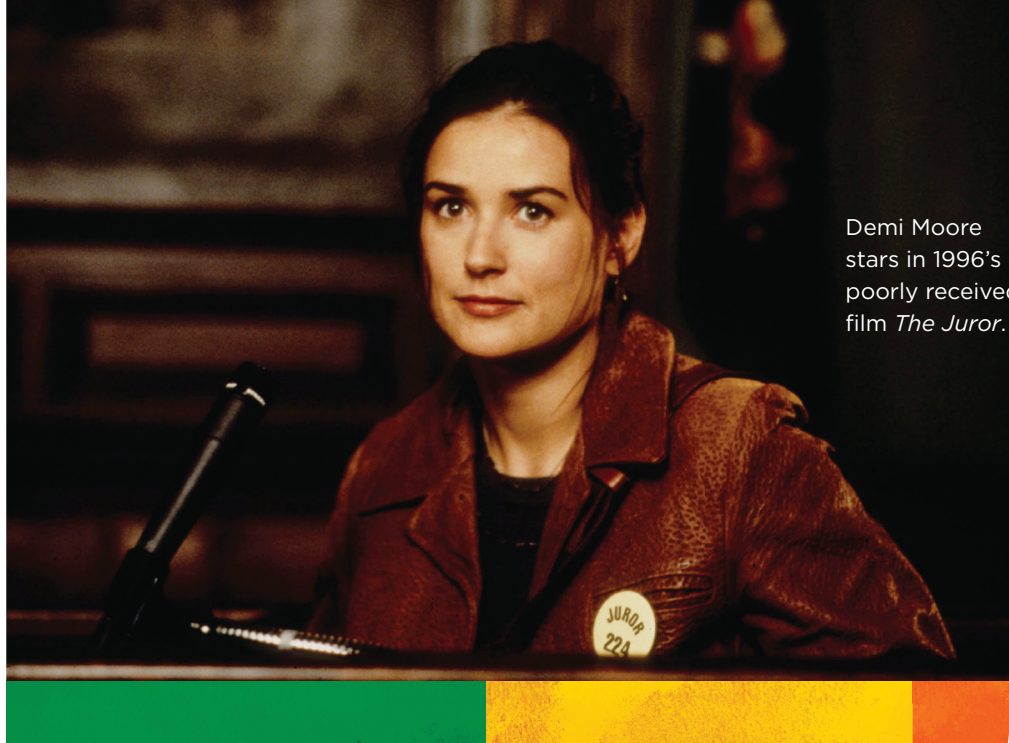
And a question for some people (presumably those who had watched a few too many movies and TV shows in which rogue jurors manage to hijack deliberations in order to deliver a verdict or result that suits their agenda): What could happen if the jury pool were tainted, and the 12 included one or several people who were not on the up-and-up?

It's no surprise that when it comes to how juries and jurors are portrayed in pop culture, the narrative of the juror with an agenda is one of the dominant tropes out there.

Perhaps the other major archetype of the jury in pop culture is the one established by *12 Angry Men*. Originally a television script that has since been adapted into films, plays and even a stage musical and has been



12 Angry Men portrays the contentious deliberations of jurors trying to reach a verdict.



Demi Moore stars in 1996's poorly received film *The Juror*.



1995's box office bomb *Jury Duty* starring Pauly Shore and Tia Carrere parodied some themes from *12 Angry Men*.

parodied and referenced by countless others, *12 Angry Men* examines jurors deliberating, weighing the evidence, talking through their differences and taking their oaths seriously.

In both examples, there is often a holdout juror who goes against the rest of the jurors and gets them to rethink their positions and change their minds. It's a compelling narrative, says Nancy Marder, professor of law and founding director of the Justice John Paul Stevens Jury Center at Chicago-Kent College of Law, albeit one that doesn't usually happen in real life. It also leads to a lot of what she calls "bad" movies involving jurors who end up taking the law into their own hands, like 1994's *Trial by Jury* or 1996's *The Juror*, the latter of which helped earn star Demi Moore a Golden Raspberry Award for Worst Actress.

"I understand why they would be about the holdout—it's a perfect vehicle for creating dramatic tension," Marder says.

"But in real life, hung juries are pretty rare occurrences."

Otherwise, juries tend to be portrayed passively, particularly in crime dramas and legal procedurals, where they often serve as an extension of the audience and a vehicle for the actors playing lawyers, judges or witnesses.

There have been films and TV shows that look at the process of

Nancy Marder notes that it's rare for trials to be derailed by rogue or holdout jurors.



jury selection and how lawyers try and get an advantage for their side. Most recently was *Jury Duty*, a fake reality show that premiered on Amazon Freevee. The show centered around a San Diego resident who serves on a jury—which includes actor James Marsden playing a version of himself—but is unaware that the case he's sitting on is fake and that everything is staged.

But that's about it. Why is it that such an important, fundamental part of our justice system is so often overlooked?

"Most people know a lot of lawyers, and you can go and watch courtroom dramas, but the jury is mysterious to people," says Jessica Silbey, a professor at Boston University School of Law and co-author of *Law and Popular Culture: A Course Book*.

She points out that juror deliberations are secret, and most Americans never have actually served on a jury, so they lack firsthand knowledge of what it's like. But because of its vital importance—the right to a trial by a jury of one's peers is even written into the Constitution—as well as the need to keep jurors protected and their deliberations confidential, pop culture plays a similar role in maintaining that secrecy.

“Juries are a mythic community or organization that play such an important role in American identity,” Silbey says. “The representation of jurors in popular culture, be it with this *Jury Duty* show or with films, is mythologized. The role that image plays in our popular consciousness of law is that it makes us feel responsible and engaged in the justice system in a way that helps us serve it.”

‘What say you?’

“No jury can declare a man guilty unless it’s sure.”
—Juror No. 8, *12 Angry Men*

There are a few pillars when it comes to law and pop culture that almost everyone knows and can make references to. Among them are *To Kill a Mockingbird*, *Perry Mason* and *Law & Order*.

And when it comes to juries, there’s *12 Angry Men*.

Originally written by Reginald Rose for the CBS anthology television series *Studio One*, “Twelve Angry Men”

12 Angry Men recently was adapted into a musical.

aired as a live production on Sept. 20, 1954. The three-act teleplay showed 12 jurors deliberating on the guilt of a defendant accused of murder. The initial vote is 11-1 in favor of conviction, with one holdout (Juror No. 8) who points out a few inconsistencies in the prosecution’s case. The jurors then talk through the facts of the case, and each “angry man” brings his life experience, views and beliefs to the table to make the case for why the defendant is either guilty or not. Eventually, after going through the evidence, wading through some personality conflicts and overcoming some inherent biases, the jurors poke more holes in the prosecution’s story and end up delivering a unanimous verdict of not guilty.

The production was well-received and immediately spawned a stage adaptation the following year and an Academy Award-nominated film in 1957 starring famed actor Henry Fonda. It’s been remade and readapted multiple times since then, including versions in India, Russia, Lebanon and China.

“*12 Angry Men* has been remade by so many other countries—even in countries that don’t have juries,” Marder says. “I think it really points to its staying power.”

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—Nancy Marder



In fact, its themes and tropes also have been referenced in multiple shows and movies, sometimes for comedic effect, such as a 1994 episode of *The Simpsons* in which Homer Simpson holds out during jury deliberations because he likes being sequestered in a hotel—a plot device also used in Pauly Shore’s 1995 critical and commercial flop *Jury Duty*.

“With *12 Angry Men*, you get a sense in that movie of the importance of gathering ordinary people together in a room and letting them talk out their differences and what an incredible collective wisdom emerges from that,” says Jeffrey Abramson, professor emeritus of law and government at the University of Texas at Austin. “It does a good job at showing how people from different walks of life take turns being the leader in the discussion.”

David Simpatico, a New York-based playwright who, along with composer and lyricist Michael Holland, adapted *12 Angry Men* into a theatrical musical, says the 1957 movie always has been a favorite of his. “It would come on once a year or so, and me and my family would watch it,” Simpatico says.

As such, when he got the opportunity to turn *12 Angry Men* into a musical, he jumped at the chance.

“People would ask if there was tap dancing in it and stuff like that,” Simpatico says. “But no, it’s not campy at all. Michael and I were both really on the same page about making sure we took the original story and script by Reginald Rose and following it closely.” Instead, Holland added a jazz-influenced score that mimicked the tone and rhythm of the original story, Simpatico says.



David Simpatico (left) and Michael Holland adapted *12 Angry Men* into a stage musical.

Of course, they were able to make some changes. The original story is about an all-white jury; the updated musical has six white men and six men of color. But they had to stick with male jurors per a stipulation from Rose’s estate.

“There are versions out there with women, and it’s fine. We were hired to adapt the play as it was,” Simpatico says.

“Also, we were really interested in looking at issues of toxic masculinity and fathers and sons and how does that impact around the table.”

Twelve Angry Men: A New Musical premiered at the Theater Latté Da in Minneapolis in June 2022 and opened in Sarasota, Florida, in May. Simpatico hopes it could lead to more productions down the line, maybe in Chicago or New York City. He thinks the musical’s central themes are timeless and will resonate with people—especially when it comes to the concept of American justice.

“It’s not a perfect system,” Simpatico says of jury trials. “It doesn’t operate the same for people of different colors. We talk about that and throw it into the mix. There is more than one system of institutional justice, depending on what your background is. But I think what the group goes



Jeffrey Abramson notes that a case can be won or lost on the basis of jury selection.





Bull, a show about a jury consultant, ran on CBS for six seasons.

through in order to get to a verdict requires them to listen and talk fully without their own baggage in the way. It is a flawed system, but if you do the work that you've been conscripted to do, then the system can work."

'Can you be a fair and impartial juror?'

"I'm an expert in what's called trial science. I study the jury's behavioral patterns. I know what they're thinking before they do."

—Jason Bull, *Bull*

Trials would be easy if you could just put 12 people on a jury that you know will take your side.

"In England, selecting a jury is where the case begins. In the U.S., selecting a jury is where the case ends," Abramson says. "What makes you a skillful lawyer is if you can design the jury in your favor."

As a result, jury consultants have become a ripe topic for pop culture. *The Runaway Jury*, a best-selling 1996 novel from John Grisham, explores the cat-and-mouse antics of a corrupt jury consultant who tries to stack the deck in favor of his client, a tobacco company, and a rogue juror who, along with his girlfriend, want to make that client pay. The book was adapted into a 2003 movie starring Gene Hackman as the jury consultant; Dustin Hoffman as the plaintiff's lawyer; and John Cusack and Rachel Weisz as the rogue juror and girlfriend, respectively.

Meanwhile, on the smaller screen, there was *Bull*, a show that ran on CBS from 2016 to 2022. Based loosely on "Dr. Phil" McGraw's earlier career as a trial consultant and head of Courtroom Sciences, the show centers around psychologist Dr. Jason Bull (Michael Weatherly), who uses his expertise in reading and profiling people to help lawyers find and pick jurors likely to be favorable to their side. Episodes often featured Bull picking up on nonverbal cues, body language and other forms of silent communication—not just to read potential jurors but also his clients to determine whether they were hiding something. He also has a team of investigators who can dig into people's backgrounds and computer experts who designed a predictive algorithm for selecting jurors.

"*Bull* was one of my dad's favorite shows," says Gia Gordon, a former communications professional who joined the show as a staff writer in 2020. "So I took a bit of pride in being able to join the staff as a writer."

Gordon says she was drawn to the show because it was different from the usual legal drama. "Usually, they look at lawyers or the judge," says Gordon, who is currently on the writing staff of *Law & Order*. "But *Bull* was the very first show that anchored its point of view around what juries think about and how important they are in setting the course of a trial for one side or the other."

While cautioning that she was on staff only during the last two seasons of the show and could not talk about the preceding four, Gordon says the show tried not to be too idealistic or cynical. Instead, they tried for a middle ground—in other words, "a comfortable place where some kind of interesting justice, as messy as it is, falls into place by the end of each episode.

"There's a comfort food element to episodic television. People fall in love with these characters and live with them once a week," she adds. "When it comes to legal shows like *Bull* and *Law & Order*, there is a similar part of that formula, which is that justice is messy, but it will still be delivered—at least it will by the end of the 44 minutes."

According to Shelli Garson, vice president and director of research and analytics at EmotionTrac, shows like *Bull* and *Lie to Me*—a crime drama that ran on Fox from 2009 to 2011 starring Tim Roth as an expert in body language and microexpressions that allows him to function as a proverbial human lie detector—are pretty accurate when it comes to describing what jury consultants actually do.

EmotionTrac uses artificial intelligence and video recording to analyze facial expressions and emotional responses to help lawyers determine how potential jurors respond to them, their clients and their arguments.

"The truth is, we are doing much deeper dives on juries," Garson says. "*Bull* was able to re-create members of a jury and then see how they pass judgment on everything—and that

is what we test in real life. From the opening to the closing.”

But unlike *Bull*, EmotionTrac does its work before the trial, and their consultants are not holed up in a room with tons of television screens reading and reporting on empaneled jurors in real time.

“I don’t even know if judges would allow something like that,” EmotionTrac co-founder Aaron Itzkowitz says.

Nevertheless, Garson points out that shows like *Bull* and *Lie to Me* do a good job at highlighting a part of trial science that often takes a back seat to the law and facts.

“In terms of pop culture, we have added a humanistic quality to trial science. It’s called ‘the human condition.’” Garson says. “That’s what I talk a lot about. It’s not the facts and figures, it’s about the humanity and the trend that they present with. The kinds of attitudes they’re going to share. Are they going to like you? You know what? That’s important. Maybe back in law school, they might say, ‘It doesn’t matter if they like you or not, you’re going to prove it to them.’”

‘Thank you for your service’

“This is what happens when you get 12 people too stupid to get out of jury duty. You end up with a bunch of unemployed, brain-dead idiots! Tell me, What would it take here? Did he have to stab the guy eight times?”

—Helen Gamble, *The Practice*

For crime procedurals and dramas like *The Practice*, *Law & Order*, *The Good Wife* and others, juries and jurors usually play a passive role and often serve as an expository device.

“The institution of the jury was very useful to us as TV writers,” says Peter Blake, a former attorney who wrote for *The Practice*, served as executive producer of *The Good Doctor* and created the Amazon series *El Candidato*. “Our lawyers could explain the case to them at the same time they were explaining it to the audience.”



Law & Order (left), *The Practice* (right) and EmotionTrac’s Shelli Garson (below)

Jill Goldsmith, a former Chicago public defender who moved to Hollywood and got a job writing for *NYPD Blue* before joining the writing staff of *The Practice*, points out that if the story takes place from the jury’s perspective, then they can hear the evidence the way they would if they were on the jury.

“In essence, the audience becomes the 13th member of the jury,” says Goldsmith, who also has written for *Ally McBeal*, *Boston Legal* and *Law & Order*. “The audience is deciding the same way the jury is. They might not know the absolute truth since they just hear the evidence the way the attorneys present it.”

But Adam Perlman, a former lawyer who has written for *Billions*, *The Good Wife* and *The Newsroom*, notes that it’s rare for legal dramas to take the point of view of the jury.

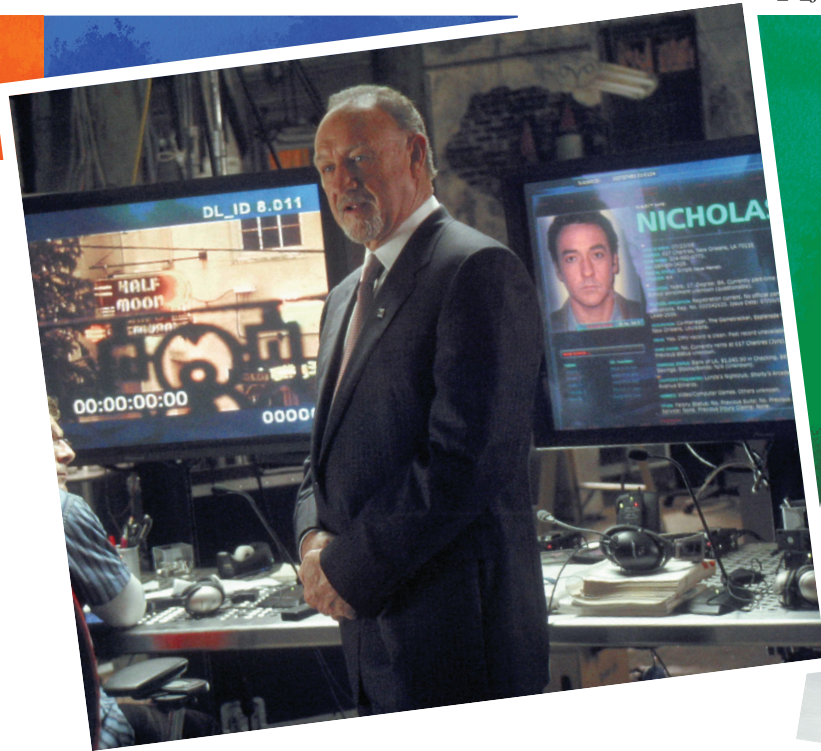
“The jurors’ perspective is not one that television is invited to incorporate,” Perlman says. “If you’re focused on the prosecutors, defense attorneys or defendants, then the jury seems like something other—a force that you either can’t control or one you need to control, not something you’ll necessarily get inside or understand.”

He cites a 2010 episode of *The Good Wife* as a rare example of the jury getting a significant chunk of airtime.

“It was an excellent departure from the norm,” says Perlman, who graduated from New York University Law School in 2008 and practiced law for about 16 months before departing for a career in writing. “It was a really successful attempt at showing how juries don’t see all of the things we think they do.”

When jurors do become an important part of the plot, it’s usually because they did something illegal, like in the 1987 film *The Untouchables*, in which Al Capone is found to have bribed the entire jury in his case, or the 2014 *Law & Order: SVU* episodes where the jury foreperson falls in love with the defendant, accused murderer William Lewis, and eventually helps him escape from prison.

Occasionally, there will be an episode in which the jury outright refuses to follow the law because they disagree with it, sympathize with the defendant or are outraged by the prosecution’s tactics—a phenomenon known as jury nullification. A 1997 episode of *Law & Order* saw jurors refuse to convict members of a right-wing militia group while lawyers on *The*



Juries have pivotal scenes in *Runaway Jury* (left) and in a 2010 episode of *The Good Wife* (right).



Practice often would advocate for jury nullification in court (without outright telling jurors to ignore the law and their oaths, which they couldn't ethically do).

But those instances are far rarer in real life. Silbey, who worked for a trial judge early in her legal career, says that in her experience, jurors tend to take their jobs seriously and rise to the occasion when it's time for them to deliberate.

"Jurors usually get it right," she says. "You see them follow complex legal instructions and terms like *mens rea*, proximate cause—really complicated rules that lawyers drafted and lawyers understand best. But they end up following those instructions, which are really hard, and usually come to the right result."

When they get it wrong—or at least when they deliver a verdict that many people disagree with—that's when a lot of the talk starts up about jurors being stupid, uninformed or



American Crime Story: The People v. O.J. Simpson portrayed the divisive trial and verdict in the ex-football star's case.

incompetent. Perhaps the quintessential example was the acquittal of O.J. Simpson in 1995 on double-murder charges despite strong DNA and circumstantial evidence pointing to his guilt. Simpson, whose death in April brought back a lot of memories and emotions for people old enough to remember the "trial of the century," ended up being found liable by a separate civil jury for wrongful death.

Silbey argues that people who are quick to condemn verdicts they disagree with are doing so from their vantage point. They might have access to information and evidence that the jury does not, or they might not be looking at the evidence the way the jury is.

"For the O.J. case, we really don't know what happened in that jury room," Silbey says. "We do know that there were people that didn't trust the cops, and they didn't trust the investigation. Regardless of whether or not O.J. was guilty, they thought the evidence was tampered with."

"I've heard the '12 people too stupid to get out of jury duty' line, and I've always hated that," Goldsmith adds. "Serving on a jury is one of the most important things you can do. So much is riding on it, and you have a real effect on people's lives."

Perlman agrees, throwing in another jury cliché—that jurors are just mindless rubber stamps.

"There's the old saying about how prosecutors could indict a ham sandwich," he says. "There might be a tiny bit of truth to that, but not really. A lot of jurors feel they are doing something important and take it seriously."

Perlman adds that jury duty is often seen as a boring and thankless job that is a huge inconvenience to most people.

"If anything, we probably do not incentivize people to serve on juries nearly enough," Perlman says. "It would be helpful if we made serving on juries feel more empowering. In theory, TV and film could help, but they would probably have to focus more on education than entertainment, and that's not necessarily the point of those formats." ■