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MOVIE JURIES*

Carol J. Clover**

Let us begin with a simple question: how does the camera look at juries in trial movies?¹ A “trial movie” can provisionally be defined as a plot in which the significant action bears directly or indirectly on a specific trial, in which some important part plays out in a courtroom, and in which the outcome of the trial coincides with the climax of the film.² The form is overwhelmingly Anglo-American, and, given its popularity, it is no surprise that academic lawyers have looked to it for an understanding of “popular legal culture.” Most discussions of trial movies have been thematic, treating films in the same terms as they might treat novels or stage plays. But what happens if we look at such films, and more particularly their juries, cinematically? What do the cinematics in trial movies tell us that we do not already know about the place of juries in the public imagination?

The some two hundred Anglo-American trial movies that I have reviewed (in connection with an in-progress book on trials and entertainment)³ are remarkably consistent in their inventory of jury shots. The run-of-the-mill trial movie shows us images of the jury filing in (and/or out), listening attentively, occasionally registering some emotion (disgust, horror), and, in the person of the foreman, rendering a verdict. The “listening attentively” shots are the most common, if only because Hollywood cinematographic protocol calls for establishing shots and reaction shots in certain set-ups, and in the courtroom, the jury is an indicated position and “listening attentively” fits

* The following is a brief summary of Professor Clover’s video presentation on the “jury cinematics” of trial movies.

** Carol J. Clover is Class of 1936 Professor of Humanities at the University of California, Berkeley. She teaches in the departments of Scandinavian (medieval studies) and Rhetoric (film).

1. Fuller versions of this essay, with references, have been published. Carol J. Clover, *God Bless Juries!*, in *REFIGURING AMERICAN FILM GENRES: HISTORY AND THEORY* 255, 255-77 (Nick Browne ed., 1988); Carol J. Clover, *Judging Audiences: The Trial Movie*, in *FILM STUDIES* 142, 142-64 (Christine Gledhill & Linda Williams eds., 1998).

2. Note that this definition excludes many lawyer movies and most movies in which a juror is threatened by the mob or falls in love with the defendant or whatever. Such films tend to fall into other plot types.

3. CAROL CLOVER, *TRIALS, LIES, AND MOVIES* (forthcoming 1999).

the bill.⁴ More telling, perhaps, is what we do not see. We seldom see jurors individually (when the camera does single one out, it is in a reaction shot, and the demeanor of the juror is understood to represent that of the group as a whole). We seldom see them anywhere but in the courtroom—not in hallways, elevators, or jury room. We almost never see them doing anything but being normally attentive; shots of the jury are remarkably contentless (in keeping with their function as reaction and establishing shots). We almost never see the jury close up; on the contrary, it is typically viewed at a distance and even indistinctly (because focus is on a lawyer in the foreground). Finally, and most significantly, we do not see the jury at any length. Most jury shots are held for three or four seconds at most, and in the standard trial movie, no more than a minute or two. There are some minor exceptions to these rules, but they are remarkably few and far between. The first and most important thing to be said about trial-movie juries, then, is that they barely exist. In the courtroom, juries are seen only briefly, and the work they do, their deliberation, is with very few exceptions avoided altogether. Within the film's universe, the jury is a kind of visual and narrative blank, viewed as so much human furniture when present, but mostly just absent.

This habit of avoiding the jury may seem a little odd in light of our public commitment to the institution and also in light of the ongoing discussion about its value. It seems odd that a culture as manifestly obsessed with jury trials as ours is (that obsession measured by film and television alone) should have so little interest in the actual decision process. It seems no less odd that our trial movies are so often critical of lawyers, judges, and law enforcement generally, but so rarely question the institution of the jury. (On this point, trial movies echo the bias of law jokes: lots about lawyers, almost none about juries.)⁵ So odd is the patterned avoidance of the jury as both a narrative issue and a visual subject that it wants an explanation. Is this a new development, or is it an abiding feature of the form?

One very early trial movie, the 1916 film *By Whose Hand?*,⁶ suggests an answer. In it, a woman is on trial for murder, but evidence keeps emerging that casts doubt on her guilt, and the film closes with a title exhorting the film audience to determine the truth: "YOU ARE

4. Establishing shots are used in new locations to set up the focal positions or rhetorical geometry of the scene to come. A reaction shot cuts away from the speaker to listener, if only to show that there is a listener.

5. So I am told by Marc Galanter.

6. *BY WHOSE HAND?* (Equitable Pictures 1916).

THE JURY! YOU DECIDE!"⁷ Question mark endings of one sort or another are not as unusual as one might think in trial movies, and early examples like this one put the lie to the common claim that the unclosed or "contingent" text is somehow postmodern. What interests us here, however, is the apostrophizing of the film viewer as trier of fact. Film scholars distinguish between diegetic and extradiegetic effects, the former located in the fictional world of the film (like the music Sam plays in *Casablanca*)⁸ and the latter somewhere beyond it (like the Phillip Glass score in *The Thin Blue Line*).⁹ What the ending of *By Whose Hand?*¹⁰ suggests is that we should extend our search for the missing jury *beyond* the diegetic out into the realm of the extradiegetic.

That is the explicit lesson of the 1962 film *Free, White, and 21*.¹¹ Based on the real trial of an African-American businessman charged with raping a Swedish woman who came to the United States to be a freedom rider, the film plays out in flashbacks.¹² It was shot according to the standard protocol of so-called classical Hollywood narration¹³ up to the final few minutes, at which point the prosecutor turns directly to us to deliver his summation.¹⁴ The defense follows suit, and so does the judge in his instructions to the jury (based, like all the dialogue in this film, on court transcripts). He concludes, "All right, ladies and gentlemen of the jury. You will retire to the jury room to consider your verdict. When you have reached your verdict. . . ."¹⁵ At this point the scene dissolves to the image of a clock face that fills the screen.¹⁶ After a short pause, an extradiegetic voice (male, distinctly not that of the judge) begins to speak directly to the film audience:

Ladies and gentlemen, you are the jury. When you entered this theater, you were given a subpoena, a summons that put you in the jury box in the case of the People v. Ernie Jones. The judge has charged you to render a judgment of guilty or not guilty on the question of consent. Greta Mae Hanson was free, white, and 21—the age of consent. If she did not consent, then it was rape, and Ernie Jones

7. *Id.*

8. *CASABLANCA* (Metro-Goldwyn-Mayer 1942).

9. *THE THIN BLUE LINE* (BFI/Third Floor/American Playhouse 1988).

10. *BY WHOSE HAND?* (Equitable Pictures 1916).

11. *FREE, WHITE, AND 21* (American International 1962).

12. *Id.*

13. For a full description of classical film narration, see DAVID BORDWELL ET AL., *THE CLASSICAL HOLLYWOOD CINEMA* (1985).

14. *FREE, WHITE, AND 21* (American International 1962).

15. *Id.*

16. *Id.*

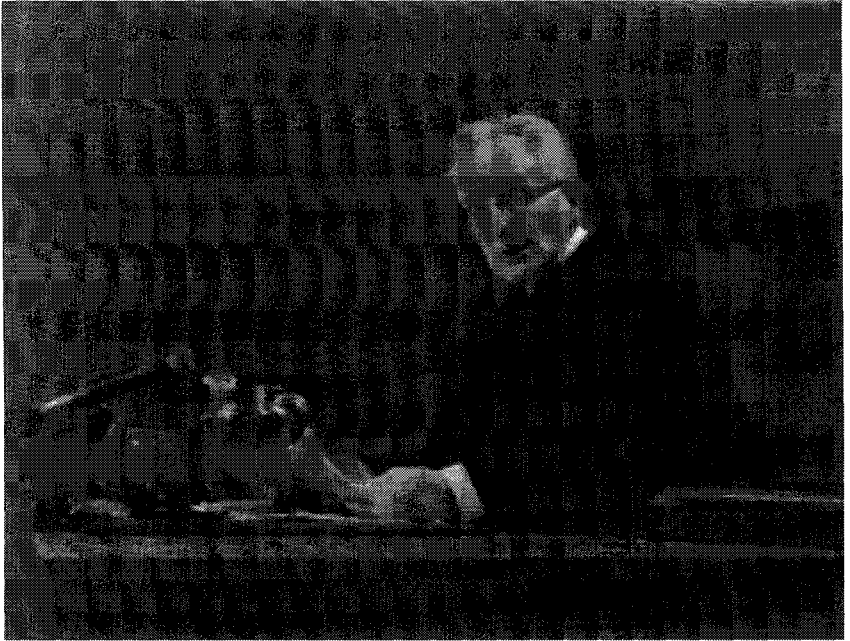


FIGURE 1. JUDGE INSTRUCTING THE JURY IN *FREE, WHITE, AND 21*

was guilty. If she consented, then Ernie Jones is not guilty and should leave the courtroom a free man. Now: weigh your conscience. Follow the instructions on your summons. See if your decision coincides with the actual verdict brought in by the jury in and for the State of Texas. You have approximately three minutes, while the management polls you, the jury!¹⁷

The voiceover ceases, and for three soundless real-time minutes we stare at this clock.¹⁸ When the time is up, the film cuts back to the courtroom and we hear a verdict of “not guilty.”¹⁹ Ernie Jones rises, faces the camera, and thanks us from the bottom of his heart.²⁰

*Free, White, and 21*²¹ is unusual, but hardly unprecedented. There are a number of films, particularly from the twenties and thirties, that invite audiences to participate in the verdict (these were sometimes tied to radio, newspaper, and magazine competitions). This is gimmicky stuff, but it also tells us something about film audiences’ understanding of where they fit into the films’ rhetorical geometry. This understanding carries over into “normal” trial movies, which jury-box

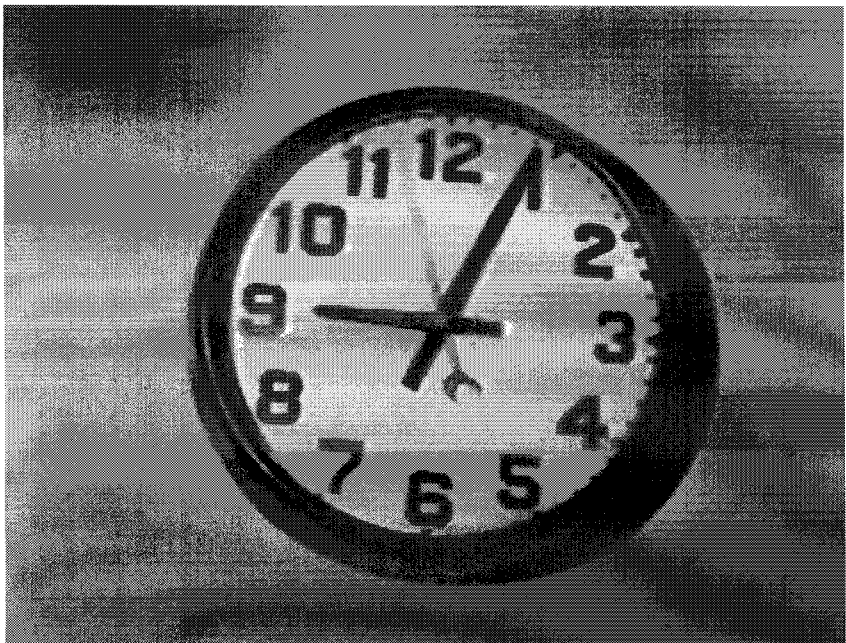
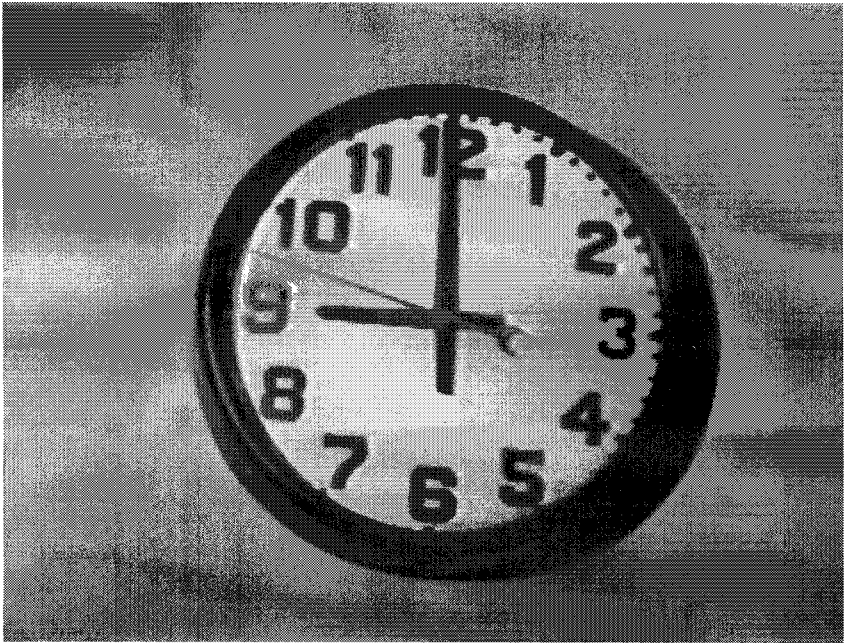
17. *Id.*

18. *Id.*

19. *Id.*

20. *FREE, WHITE, AND 21* (American International 1962).

21. *Id.*



FIGURES 2 & 3. CLOCKING THE AUDIENCE IN
FREE, WHITE, AND 21

the audience not directly, but indirectly, via a whole array of strategies, both narrative and cinematic.²²

Consider, as an intermediate example, the 1929 film *The Trial of Mary Dugan*.²³ This was MGM's first all-talking picture, and it is interesting to note that the studio chose for the honor not only a trial movie, but one that spends ninety-four of its ninety-six minutes in the courtroom.²⁴ The trial follows standard shooting protocol (showing the diegetic jury in establishing shots and reaction shots) until it arrives at the testimony of a showgirl friend of Mary's.²⁵ On the stand, the witness keeps directing her answers to the examining attorney, who is standing before her to her right, an arrangement that shows them both in semi-profile.²⁶ "Please address the jury," he keeps reminding her, with a bodily flourish directing her gaze away from himself to a focal point some forty-five degrees to her left.²⁷ Following his prompt, she turns directly to the camera and completes her testimony looking flatly into our eyes.²⁸ This happens no fewer than four times in her short stint on the stand, each a more brazen breach of classical cinematic protocol than the one before.²⁹ The point is driven home by the judge when, toward the end of the trial and film, he instructs the jury.³⁰ He says, pausing for emphasis,

You are the sole judges of the facts in this case, of the guilt or innocence of this woman. You are not here to say who killed Edgar Rice. Your sole function is to determine the guilt or innocence of Mary Dugan. The jury will now retire and reach a verdict.³¹

Before this speech, he was looking in another direction, but with the word "*You*," he turns emphatically to the camera and looks us straight in the eye, a position he holds until he is done.³²

What makes this example and others like it (there are many) intermediate is that although they do not speak to us directly (as the voice-over in *Free, White, and 21*³³ does when it asks for us to submit our

22. See *infra* notes 50-54 and accompanying text.

23. *THE TRIAL OF MARY DUGAN* (Metro-Goldwyn-Mayer 1929).

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *THE TRIAL OF MARY DUGAN* (Metro-Goldwyn-Mayer 1929). The protocol in question is the "invisible camera" rule, which prohibits actors from looking directly at the lens.

30. *Id.*

31. *Id.*

32. *Id.*

33. *FREE, WHITE, AND 21* (American International 1962).



FIGURE 4. LAWYER TELLING WITNESS TO ADDRESS THE JURY
(THE TRIAL OF MARY DUGAN)



FIGURE 5. WITNESS ADDRESSING THE JURY
(THE TRIAL OF MARY DUGAN)

verdict, or as the final intertitle of *By Whose Hand?*³⁴ does when it charges us to be the jury and decide), they do address us visually. Direct visual address can not help but catch our attention. Lest we miss the point, *The Trial of Mary Dugan*³⁵ makes it clear by repeatedly naming the addressee in such shots: “you” (looking at us) “the jury.”³⁶

Not that clear signs of second-person address, either auditory or visual, are necessary. Perhaps because our positioning is a given, most films just get on with it. But even rule-obedient trial movies have ways of gesturing toward an extradiegetic jury. One such gesture is the empty jury-box topos, dramatically used in recent times by *Presumed Innocent*.³⁷ The film opens with the shot of the vacant courtroom.³⁸ Our vision pans ever so slowly to the right until it arrives at the jury box.³⁹ We pause. Then, at an almost imperceptible rate, we start moving forward. The empty, ornate chairs of the jury loom ever larger in our vision, and as the credits crawl over them, we hear a man’s voice intone:

I am a prosecutor. I am a part of the business of accusing, judging, and punishing. I explore the evidence of a crime and determine who is charged, who is brought to this room and tried before his peers. I present my evidence to the jury, and they deliberate upon it. They must determine what really happened. If they cannot, we will not know whether the accused deserves to be freed or punished. If they cannot find the truth, what is our hope for justice?⁴⁰

What is most striking about the voiceover is its incantatory tone. It is as though we, the spectators, are being ushered into the empty courtroom, directed to the empty chairs, and sworn in. Two hours later, we will revisit this scene—same shot of the empty courtroom and jury seats, voiceover in the same monotone.⁴¹ The time in between we spend not in the courtroom, but following the fortunes of the speaker, District Attorney Rusty Sabich (Harrison Ford) as he investigates the murder of his colleague Carolyn Polhemus (Greta Scacchi) with whom, it emerges, he had been having an affair.⁴² In fact, the finger of suspicion begins to point to him: the blood type

34. *BY WHOSE HAND?* (Equitable Pictures 1916).

35. *THE TRIAL OF MARY DUGAN* (Metro-Goldwyn-Mayer 1929).

36. *Id.*

37. *PRESUMED INNOCENT* (Warner Bros. 1990).

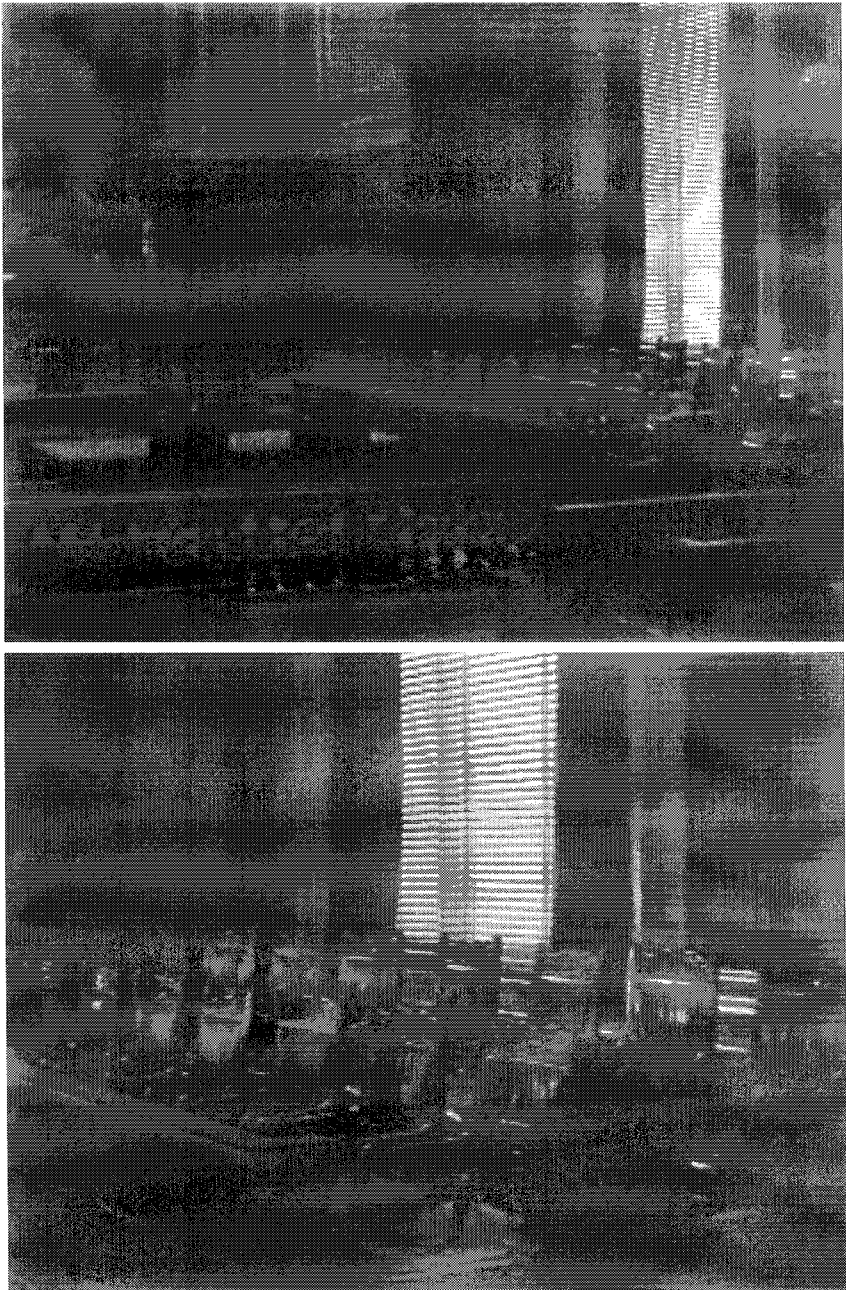
38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*



FIGURES 6 & 7. TWO MOMENTS IN THE TRACKING SHOT THAT OPENS *PRESUMED INNOCENT*.

matches his and a wineglass found in her apartment has his fingerprints on it, as well.

The visualized story roams into Sabich's obsessive relationship with Carolyn, into his home life with his wife Barbara (Bonnie Bedelia) a woman angry about her husband's affair with Carolyn and dissatisfied with her role as bedmaker (she is at work on a dissertation but it's slow going) into his relation with his own lawyer, and into the District Attorney's political ambitions and shady connections.⁴³ Even when we finally arrive in the courtroom, some eighty minutes into the film, our narrative and cinematic focus remains stubbornly on Rusty and his lawyer Stern (Raoul Julia) as we approach the bench with them, go to chambers with them, and so on.⁴⁴ When it comes down to it, Sabich's own "work" is pretty much the work of the jury, which is to say pretty much our work—at least until some point in the last third of the film, when something seems to dawn on him that does not dawn on us. At that moment, he splits off from us, leaving us behind with the (unseen) diegetic jury, with whom we "vote," in the end, for a verdict of not guilty—not because we positively know otherwise, but simply because the prosecution did not meet the standard of reasonable doubt. The fact that we subsequently learn who really did it (Sabich's wife) does not mean that we have finally transcended our role as jurors in the rhetorical economy of the film; it only means that we are jurors who learned more after the fact, as jurors sometimes do. (*Presumed Innocent*⁴⁵ lets us off easier than films like *Anatomy of a Murder*,⁴⁶ in which we realize we are jurors who may have screwed up, or *Witness for the Prosecution*,⁴⁷ in which we learn we are jurors who surely *did* screw up.)⁴⁸ Our position and our predicament are slammed home in the film's closing scene, which returns us to the scene (same courtroom, same empty jury seats) and the sound (same flat voiceover) of the opening, the only difference being that this time the voice tells us, in effect, that the search for justice sometimes fails.⁴⁹ At no time during the film's two hours do we so much as catch a

43. PRESUMED INNOCENT (Warner Bros. 1990).

44. *Id.*

45. *Id.*

46. ANATOMY OF A MURDER (Columbia Films/Carlyle 1959).

47. WITNESS FOR THE PROSECUTION (VA/Theme/Edward Small 1957).

48. Both defense-oriented narratives, ANATOMY OF A MURDER and WITNESS FOR THE PROSECUTION invite us to believe in the innocence of the accused, overwhelming evidence to the contrary notwithstanding. In the ambiguous ending of the former, it would seem that the acquitted man was probably guilty. In the quite clear ending of the latter, it is perfectly clear that the accused did in fact commit the murder of which he was just acquitted. Both endings turn on the reversal of narrative expectation.

49. PRESUMED INNOCENT (Warner Bros. 1990).

glimpse of the jury actually trying the case—an omission all the more striking in light of the attention lavished on the empty seats in the beginning and again at the end. The point could hardly be clearer: *we* are it. *Court TV* and CNN viewers will recognize the empty jury-box as an image routinely used to advertise and to introduce coverage of current trials.

But let us turn from Mercedes strategies to Hyundai ones. Most trial movies and trial television dramas neither address us directly nor present us with a yawning jury box. But if we watch closely, we see that even the most run-of-the-mill examples have their own cinematographic strategies for positioning us as an outboard jury. Consider, to pick a couple of examples almost at random, *The Accused*⁵⁰ and a trial sequence from the television serial *Law & Order*.⁵¹ Here we see the workaday strategy of trial movies. In both cases, the lawyers, in their closing arguments, look not quite at the camera, but just below it, shifting their gaze methodically between a point very slightly to the right of the camera and a point very slightly to the left of it, and so on, back and forth. In short, they come as close as one can to looking at us,⁵² without actually doing it—off just enough to meet the terms of the invisible-camera rule. Lest we miss the point, we see the backs of heads in our foreground—the heads of our fellow jurors in the front row. No one looks at us or calls us jurors, but we are jury-boxed as squarely by this “not quite” strategy as we were by the blunt strategies of *The Trial of Mary Dugan*,⁵³ *Free, White, and 21*,⁵⁴ and a host of other films, starting in 1906, that reach out directly to put us in our place.

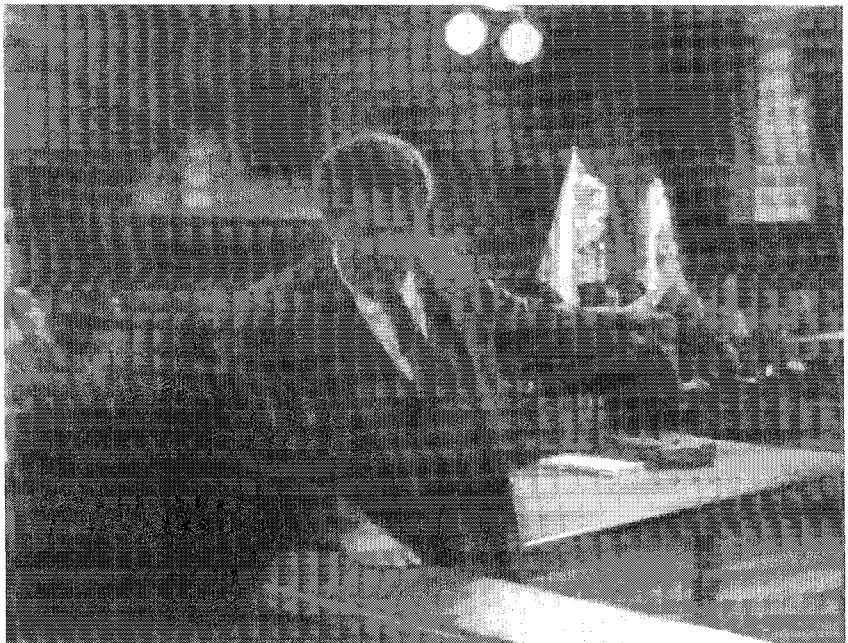
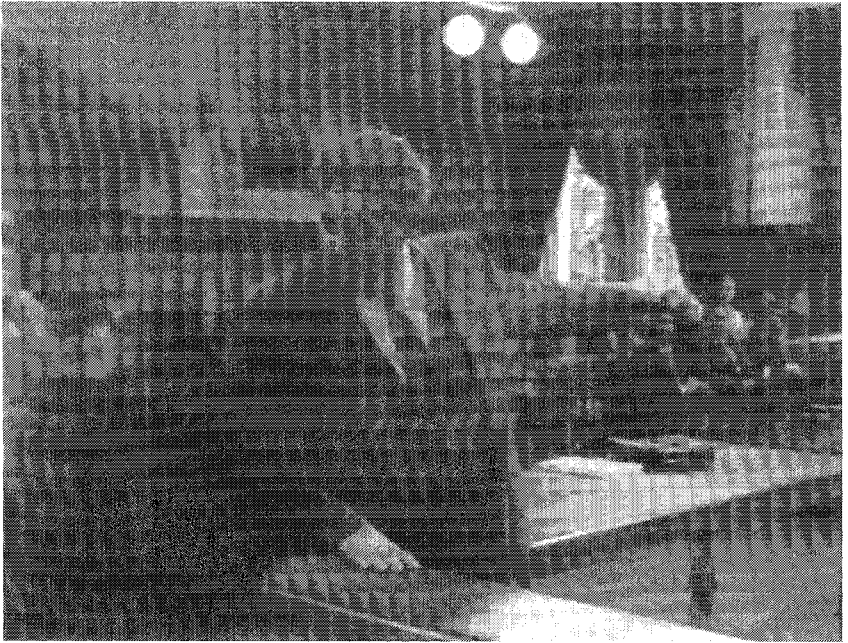
50. *THE ACCUSED* (Paramount Pictures 1988). The 1998 film based on the New Bedford rape trials.

51. *Law & Order* (NBC television broadcast).

52. This camera strategy is known as “modified frontality.”

53. *THE TRIAL OF MARY DUGAN* (Metro-Goldwyn-Mayer 1929).

54. *FREE, WHITE, AND 21* (American International 1962).



FIGURES 8 & 9. THE DEFENSE ATTORNEY'S SUMMATION IN
THE ACCUSED.

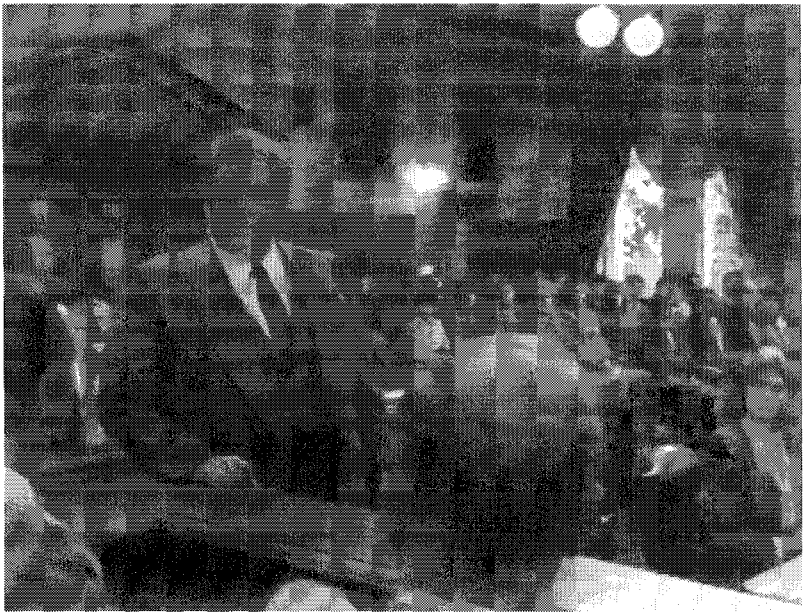


FIGURE 10. THE DEFENSE ATTORNEY'S SUMMATION IN *THE ACCUSED*.



FIGURE 11. THE PROSECUTOR'S SUMMATION IN *LAW & ORDER*.



FIGURE 12. THE PROSECUTOR'S SUMMATION IN *LAW & ORDER*.

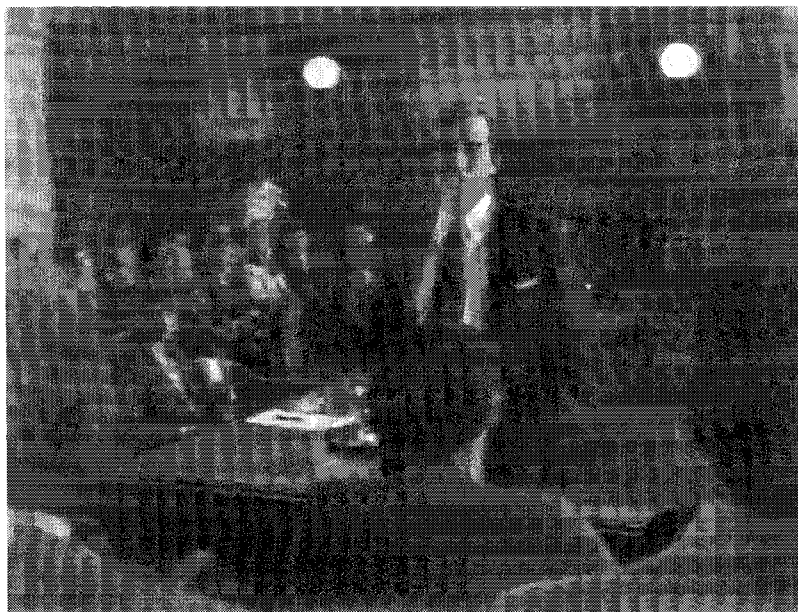


FIGURE 13. THE PROSECUTOR'S SUMMATION IN *LAW & ORDER*.

But what, then, are we to make of *12 Angry Men*, a trial movie that not only shows the jury, but shows almost nothing *but*.⁵⁵ It should be clear by now that for all of the respect that the film enjoys, it is something of an oddball in the tradition. Three facts may bring its difference into focus. The first is that it is based on a French original, *Justice est faite*.⁵⁶ A film about jurors' overdetermined reactions in a mercy killing case, *Justice est faite*⁵⁷ played the U.S. art-cinema circuit first in 1950 and again a couple of years later.⁵⁸ (Reginald Rose's teleplay of *12 Angry Men*⁵⁹ aired in 1953 and the film version was released in 1957.) A second fact to keep in mind about *12 Angry Men*⁶⁰ is that it was hardly a success in its day. Indeed, it was a box office mediocrity, not even close to the top ten grossing films of that year. Reviews were mixed, and not a few venture some version of the opinion that it was not a proper trial movie. Finally, the idea did not start a trend. There have been a few remakes and takeoffs (recognizable as such) but no new subgenre of jury dramas. The fact that it was cloned but never produced offspring attests rather eloquently to its problematic hybridity as far as genre is concerned. As a public, it seems, we prefer trial dramas that do not disturb our role as triers of fact, even if they are less smart and less well acted, and so it is that after this very small blip on a very long horizon, we reverted to the security of the traditional arrangement. In short, *12 Angry Men*'s⁶¹ jury-focus was an experiment conducted under the sign of European art cinema, and the film's present reputation is to a considerable extent the creation of academics and intellectuals after the fact. That reputation may be deserved, but I daresay it has somewhat deformed our perception of the place of the jury in cinema.

In the beginning of this presentation I proposed a definition of the trial movie as a plot in which the significant action bears directly or indirectly on a specific trial, in which some important part plays out in a courtroom, and in which the outcome of the trial coincides roughly with the climax of the film.⁶² To that definition we can now add that the trial movie is also a plot that both rhetorically and cinematically

55. *12 ANGRY MEN* (VA/Onion-Nova 1957).

56. *JUSTICE EST FAITE* (Silver Films, France 1950).

57. *Id.*

58. *Id.*

59. *12 ANGRY MEN* (VA/Onion-Nova 1957).

60. *Id.*

61. *Id.*

62. See *supra* note 2 and accompanying text.

positions its audience as extradiegetic triers of fact. In his classic work on the rise of the English novel,⁶³ Ian Watt proposed that the

novel's mode of imitating reality may be . . . well summarised in terms of the procedures of another group of specialists in epistemology, the jury in a court of law. Their expectations, and those of the novel reader, coincide in many ways. . . . The jury, in fact, takes the 'circumstantial view of life', which [may] be the characteristic outlook of the novel.⁶⁴

As with the novel, so with film, even more obviously so. The jury system has provided Anglo-American popular cinema with a subject matter and with a rhetorical geometry that is fundamental not only to trial movies, but to a variety of genres (notably the detective thriller) that are trial-derived but stand at some remove from the courtroom. When German film director Uli Edel, assigned to a trial movie in Hollywood, tells how he "had to learn to set up the courtroom scenes in such a way that the whole film audience participates as the jury would,"⁶⁵ he put into words a procedure that is normally just performed as a matter of course. (His remark also acknowledges either a different practice in Europe or, just as tellingly, no experience making trial movies there.)⁶⁶ The cinematics of trial movies not only bear him out, but gesture toward a silent contract of sorts between film and audience, an ongoing deal whereby we enter the theater prepared to double as audience and as outboard triers of fact, and, for better or worse, ready to judge the film both as a piece of cinema and as a piece of law.

It must be the film's presumption of an extradiegetic jury that explains why diegetic juries are so little seen and the process of their deliberation so consistently avoided in Anglo-American cinema: *we* are the jury, and any sustained representation of an opposite number within the diegesis would interfere with our habitual relation to the text. This analysis may also make some sense of the oft-lamented tendency of jurors to perceive real-life courtroom proceedings through the lens of scenarios from popular culture. (One could argue, given how many of those scenarios were born in the courtroom and, more generally, how deeply our most popular narrative forms have been imprinted by adversarial logic, that the chickens are merely coming

63. IAN WATT, *THE RISE OF THE NOVEL: STUDIES IN DEFOE, RICHARDSON, AND FIELDING* (1957).

64. *Id.* at 31.

65. *Magill's Survey of Cinema*, Salem Press, Feb. 2, 1999, available in DIALOG, File No. 299.

66. The trial movie is an overwhelmingly Anglo-American phenomenon. There are European examples, of course, but nowhere on the Continent is the trial movie the formula genre as it is in the English-speaking world.

home to roost. Call it reverse migration.) Finally, this analysis may explain why it is that in the world of law and politics, the jury can be the subject of critical debate, but in the world of popular culture, it remains for the most part serenely untouchable.

