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# JURY JOKES AND LEGAL CULTURE

Valerie P. Hans\*

## INTRODUCTION

The use of juries is declining,<sup>1</sup> and many citizens have never served on one.<sup>2</sup> However, a cottage industry in jury jokes flourishes. This Article explores the popular culture about juries through systematic analysis of a body of jokes about the jury system that was collected from a variety of print and online sources. It considers what these jokes tell us about popular perceptions of the jury as an institution, as well as what they suggest about views of the legal system in a broader sense.

After describing several themes of jury jokes that emerge in our analyses, this Article analyzes how the messages from jury jokes differ from, add to, undermine, or confirm what we encounter from other sources of knowledge about juries. Marc Galanter's landmark book, *Lowering the Bar: Lawyer Jokes and Legal Culture*, used lawyer jokes as a window into legal culture about the legal profession.<sup>3</sup> Similarly,

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1. The third issue of volume one of the *Journal of Empirical Legal Studies* is dedicated entirely to the declining rate of trials. See, e.g., Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459 (2004) (showing declines over time in federal and state trial rates); Brian J. Ostrom et al., *Examining Trial Trends in State Courts: 1976–2002*, 1 J. EMPIRICAL LEGAL STUD. 755 (2004) (finding that both jury and bench trials in state courts declined over the previous two decades, even though state court dispositions as a whole increased).

2. Survey-based estimates indicate that approximately one-quarter (24%) of all Americans have participated on a jury. See REGINA A. CARSON, HARRIS INTERACTIVE, JUST UNDER THREE IN FIVE AMERICANS BELIEVE JURIES CAN BE FAIR AND IMPARTIAL ALL OR MOST OF THE TIME 1 (2007), available at <http://www.harrisinteractive.com/vault/Harris-Interactive-Poll-Research-Just-Under-Three-in-Five-Americans-Believe-Juries-2008-01.pdf>.

3. MARC GALANTER, *LOWERING THE BAR: LAWYER JOKES & LEGAL CULTURE* 249–53 (2005) [hereinafter GALANTER, *LOWERING THE BAR*] (describing the relationship between lawyer jokes, the increasing role of law, and other aspects of legal culture).

this Article employs jokes about jurors and juries as a source of popular culture, beliefs, and expectations about the jury system, which can then be compared and contrasted with images of the jury derived from other sources.

### A. *The Jury in Popular Culture*

Juries are regularly portrayed in popular culture, including in novels, true crime stories, movies, TV shows, news broadcasts, and legal humor of all sorts.<sup>4</sup> Commentators, however, have observed that, with one notable exception, jurors' characters are not very well developed in plots, stories, and other accounts. For example, Jeffrey Abramson noted that "jurors appear mostly in stock and supporting roles such as the bribed or intimidated juror in a Mafia trial, the planted juror in a big tobacco lawsuit, the juror in mid-vendetta or love affair, and the juror out of his league or over his head."<sup>5</sup> An analysis of the visual depiction of juries in two hundred Anglo-American trial movies found:

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 . . . . We seldom see jurors individually . . . . We seldom see them anywhere but in the courtroom and shots of the jury are remarkably contentless . . . . 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 . . . .<sup>6</sup>

The movie jury's blankness serves well to draw the audience in to be what Carol Clover calls "extradiegetic triers of fact."<sup>7</sup> As the audience, we come to the trial movie genre to judge both the film and the case at the center of the movie. We observe the jury, yet we also constitute the jury. David Papke pointed out that the camera work

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4. See Jeffrey Abramson, *The Jury and Popular Culture*, 50 DEPAUL L. REV. 497, 498-500 (2000) (describing common narratives in contemporary novels and movies that depict civil jury trials); see also Carol J. Clover, *Movie Juries*, 48 DEPAUL L. REV. 389, 389-90 (1998) (describing the depiction of juries in Anglo-American trial movies); Gwyneth E. Hambley, *The Image of the Jury in Popular Culture*, 12 LEGAL REFERENCE SERVICES Q. 171, 172-73, 182, 186, 190, 196 (1992) (describing popular media depictions in movies, television, novels, and nonfiction books); David Ray Papke, *12 Angry Men is Not an Archetype: Reflections on the Jury in Contemporary Popular Culture*, 82 CHI.-KENT L. REV. 735, 739-42 (2007) (describing popular culture depictions of the jury).

5. Abramson, *supra* note 4, at 498.

6. Clover, *supra* note 4, at 389-90.

7. *Id.* at 404.

“put[s] viewers at least fleetingly into the jury box and [invites] us to vicariously judge the case at hand.”<sup>8</sup>

The notable exception to the rule that jurors mostly remain in the background is the most famous jury movie of all, *Twelve Angry Men*,<sup>9</sup> a movie that focuses uncharacteristically but memorably on the deliberation process. Although not a box office or critical success at the time of its release, the movie developed a reputation and a following.<sup>10</sup> Its dramatic portrayal of the transformative potential of jury deliberation is compelling, and the movie is regularly shown to high school and college students to educate, entertain, and inspire.<sup>11</sup>

This remarkable exception aside, a recent analysis indicates that the “juror’s lot is a hapless one in most popular films. Everything starts innocently enough, with a naïve citizen dutifully responding to a summons for jury duty. The situation, however, degenerates speedily, with the juror being threatened, harassed, and assaulted by [M]afia hit men and various and sundry criminals.”<sup>12</sup> Indeed, in a number of popular movies, including *Runaway Jury*, *Jury Duty*, *Trial by Jury*, and *The Juror*, the juror-heroes must violate the law to survive.<sup>13</sup>

It’s not surprising, then, that popular comedy portrays citizens as doing their level best to avoid jury duty. Evasion of jury service is a common television trope.<sup>14</sup> In a *30 Rock* episode, Liz Lemon (played by Tina Fey) is called for jury duty in New York and comes to court dressed in a Princess Leia outfit, certain that her outlandish dress will get her bumped from the jury pool.<sup>15</sup> The judge and the clerk find her acceptable.<sup>16</sup> After all, she is well within the bounds of normality for

8. Papke, *supra* note 4, at 741.

9. *12 ANGRY MEN* (Onion-Nova Productions 1957).

10. See Nancy S. Marder, *Introduction to the 50th Anniversary of 12 Angry Men*, 82 *CHI.-KENT L. REV.* 557, 558 (2007) (providing the movie’s background and introducing a special issue devoted to considering the movie on the occasion of its Fiftieth anniversary).

11. See *id.* at 557–58 & n.4.

12. *LAW AND POPULAR CULTURE: TEXT, NOTES, AND QUESTIONS* 231 (David Ray Papke et al. eds., 2007) [hereinafter *LAW AND POPULAR CULTURE*].

13. See *id.* at 251.

14. For a listing of episodes or story arcs that feature a character who has been called for jury duty in television, see *Jury Duty*, TV TROPES, <http://tvtropes.org/pmwiki/pmwiki.php/Main/JuryDuty> (last visited Jan. 16, 2013) (“He may either look for ways to wriggle out of it, or do the civic thing and attend the trial. Or both, of course. If, in the course of the deliberation, he actually goes against consensus opinion on what the verdict should be, he may become a Rogue Juror. If played for comedy, the character may learn about jury sequestration and try to milk as much out of it [as possible] by prolonging the jury deliberations.”). Selected examples from comics, film, radio, and literature are also provided on the tvtropes.org website. See *id.*

15. *30 Rock: The Funcooker* (NBC television broadcast Mar. 12, 2009), available at <http://www.youtube.com/watch?v=bBuNvyo4j54>.

16. See *id.*

a Manhattan jury pool.<sup>17</sup> In contrast, the hero in Pauly Shore's comedy film *Jury Duty* aims to be selected as a juror on an extended trial so that he can take full advantage of the jury's sequestration in an upscale hotel.<sup>18</sup>

Many popular portrayals focus on the criminal jury, but civil litigation themes are the focus of a small set of contemporary best-selling books and popular movies. Abramson identified what he called the "populist" narrative, found in movies like *A Civil Action*, *Erin Brockovich*, and *The Runaway Jury*, in which "as much as the common people would prefer to stay out of politics and off juries, sometimes they are simply needed to clean out a corrupt system."<sup>19</sup>

These media depictions are supplemented by campaigns that are sponsored by courts and other legal groups to promote jury service. One American Bar Association promotional poster featured a well-known actor: "In real life the jury decides the ending. Answer the call to jury service. Harrison Ford did."<sup>20</sup> In contrast, advertising campaigns by business and insurance groups and the American Tort Reform Association use litigation horror stories to emphasize the dangers inherent in incompetent and runaway juries.<sup>21</sup> In sum, when it comes to different forms of popular culture, the portrayal of juries is something of a mixed and jumbled bag. Citizens avoid jury duty like the plague. When they serve, they often find it challenging. The occasional juror-hero emerges, but the most common images of jurors and juries found in popular culture tend to be bland, superficial, and stereotypical. It is rare to see jury service depicted as a profound, engaging, and moving civic experience.

### B. Jokes as a Form of Popular Culture

Where do jokes fit in the picture of the jury that has emerged in popular culture? Jokes constitute a unique slice of popular culture and are a distinctive form of humor. Robert Hetzron provided a helpful working definition: "A *joke* is a short humorous piece of oral liter-

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17. *See id.*

18. *JURY DUTY* (TriStar Pictures 1995).

19. Abramson, *supra* note 4, at 498.

20. *See Commission on the American Jury Project*, AM. B. ASS'N, [http://www.americanbar.org/groups/justice\\_center/american\\_jury.html](http://www.americanbar.org/groups/justice_center/american_jury.html). (last visited Jan. 16, 2013).

21. *See* Stephen Daniels, *The Question of Jury Competence and the Politics of Civil Justice Reform: Symbols, Rhetoric, and Agenda-Building*, 52 *LAW & CONTEMP. PROBS.* 269, 284-92 (1989) (bringing attention to the negative portrayal of civil juries in business and insurance industry advertising campaigns); *see also* WILLIAM HALTON & MICHAEL McCANN, *DISTORTING THE LAW: POLITICS, MEDIA, AND THE LITIGATION CRISIS* 150-51, 223-24 (2004); VALERIE P. HANS, *BUSINESS ON TRIAL: THE CIVIL JURY AND CORPORATE RESPONSIBILITY* 50-52 (2000).

ature in which the funniness culminates in the final sentence, called the *punch line*.”<sup>22</sup> Hetzron quoted the speechwriter James C. Humes, who analogized a joke to a balloon: “[Y]ou pump [the humorous anecdote] up with details, and then puncture it with a punch line.”<sup>23</sup> Professors Patricia Ewick and Susan Silbey further noted that jokes typically include a juxtaposition of competing elements that together create a capricious and surprising result.<sup>24</sup> In their view, the joke

is realized when the weaker of the combatants, the “controlled,” wins this competition. This feature of the joke pattern imparts the quality of justice.

... [A] joke always provides a glimpse of a world up-ended, “the leveling of hierarchy, the triumph of intimacy over formality, of unofficial values over official ones.”<sup>25</sup>

By imagining victories of the downtrodden, jokes can express the contradictions within social structure and thus have change-making potential.<sup>26</sup> Alternatively, jokes may serve to reinforce the legitimacy of law: “[T]he up-ended world tends to be righted quickly, all the more secure for having been mocked.”<sup>27</sup> Ewick and Silbey found both subversions and affirmations of law in the humorous stories told by their research participants.<sup>28</sup>

Analyzing jury jokes, like assessing depictions of the jury found in other forms of popular culture, may lead us to a clearer understanding of the political, social, and cultural meaning and significance of the institution of the jury.<sup>29</sup> Jury jokes may have direct effects that also deserve study. A diet of jury jokes may frame how juries make sense of the evidence, the parties, and the entire experience of jury service. Lawyers might tap into popular culture to develop stories that juries

22. Robert Hetzron, *On the Structure of Punchlines*, 4 HUMOR 61, 65–66 (1991).

23. *See id.* at 66 (quoting JAMES C. HUMES, *PODIUM HUMOR: A RACONTEUR’S TREASURY OF WITTY AND HUMOROUS STORIES* 5 (1975)) (internal quotation marks omitted).

24. *See* Patricia Ewick & Susan S. Silbey, *No Laughing Matter: Humor and Contradictions in Stories of Law*, 50 DEPAUL L. REV. 559, 561 (2000) (describing the sociology of humor, and analyzing humorous stories their research participants told about the law).

25. *Id.* at 561 (quoting Mary Douglas, *Jokes*, in *RETHINKING POPULAR CULTURE: CONTEMPORARY PERSPECTIVES IN CULTURAL STUDIES* 291, 297 (Chandra Mukerji & Michael Schudson eds., 1991)).

26. *See id.* at 563.

27. *Id.* at 573.

28. *Id.* at 571. Ewick and Silbey theorized that “Americans see the law as both sacred and profane, transcendent and very much a part of the truck of everyday life. As such, it derives its power by straddling the everyday and the sublime.” *Id.* People’s “funny stories” help them navigate these contradictions of law. *Id.*

29. *See* LAW AND POPULAR CULTURE, *supra* note 12, at 231–86.

will find convincing. Finally, popular culture's portrayals of the jury may influence how judges, litigators, and legislators treat the jury.<sup>30</sup>

## II. INSPIRATION: *LOWERING THE BAR*

Marc Galanter's innovative work on lawyer jokes inspired the current project. In a number of law review articles, he examined different dimensions of the corpus of jokes about lawyers and the law.<sup>31</sup> Galanter's lawyer jokes project culminated in his masterpiece, *Lowering the Bar*. In these remarkable works on jokes about law and the legal profession, Galanter analyzed the themes that emerge from the most common circulating jokes on lawyers. He identified two broad groupings of jokes. One set reflects jokes about lawyers' actions: as inveterate liars and corrupters of discourse, as economic predators, as fomenters of conflict, as betrayers of trust, and as enemies of justice.<sup>32</sup> A second set emphasizes the poor character of lawyers and how society reacts to them. Lawyers are identified as friends of the devil, as morally limited, as objects of derision, and as worthy candidates for death.<sup>33</sup>

Galanter persuasively argued that lawyer jokes reveal and reinforce the "jaundiced view" of law.<sup>34</sup> In the jaundiced view, too much law, too many lawyers, and an explosion of litigation are destroying the country.<sup>35</sup> Jokes reinforce and shore up the jaundiced view, a perspective wholly inconsistent with much empirical evidence about litigation. Marshalling this empirical evidence in a number of highly cited and influential law review articles, Galanter has convincingly demonstrated that the claims about excessive law, an overabundance of lawyers, and a ruinous litigation explosion are more myth than reality.<sup>36</sup>

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30. See Valerie P. Hans & Juliet L. Dee, *Media Coverage of Law: Its Impact on Juries and the Public*, 35 AM. BEHAV. SCI. 136, 142-46 (1991) (identifying multiple influences of media depictions of law on jurors and juries).

31. See Marc Galanter, *Changing Legal Consciousness in America: The View from the Joke Corpus*, 23 CARDOZO L. REV. 2223 (2002); Marc Galanter, *Lawyers in the Laboratory or, Can They Run Through Those Little Mazes?*, 4 GREEN BAG 251 (2001); Marc Galanter, *Anyone Can Fall Down a Manhole: The Contingency Fee and Its Discontents*, 47 DEPAUL L. REV. 457, 463-67 (1998); Marc Galanter, *The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes, and Political Discourse*, 66 U. CIN. L. REV. 805, 807, 816-17 (1998).

32. GALANTER, *LOWERING THE BAR*, *supra* note 3, at 16. In addition to these two broad groupings, Galanter described two other categories of lawyer jokes: the first is about demographic groupings of lawyers and the second consists of meta-jokes about lawyer jokes. *Id.* at 17.

33. *Id.* at 16.

34. *Id.*

35. *Id.*

36. Two of Galanter's pieces on litigation were included in law librarian Fred R. Shapiro's 1996 listing of the most heavily cited law review articles of all time. See Fred R. Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751, 767-70 tbl.1 (1996) (listing

In the course of his research accumulating jokes about lawyers, Galanter encountered a modest number of jokes about jurors and juries. *Lowering the Bar* includes six different jokes about the jury.<sup>37</sup> Using these as a springboard, Marc Galanter and I created a Jury Jokes Project to explore themes present in these and other humorous narratives about the jury. This Article presents the first opportunity to introduce the themes we have discovered thus far in this collection of jury jokes.

### III. THE DATABASE OF JURY JOKES

We began by identifying the jokes about juries and jurors from research materials gathered by Galanter over the years for *Lowering the Bar*. He noted that his “archive is an unsystematic sample” that overrepresents the most frequent lawyer jokes in circulation during the preceding two decades, and oversamples jokes that he found worthwhile because they bore on particular subjects of interest.<sup>38</sup> We expanded the collection using library searches of books on legal humor to locate additional jokes specific to jurors or the jury. Many of these duplicated the jokes in Galanter’s jokes archive. We then added to the print database with online searches and visits to online joke sites, using the search terms “jury jokes” and “juror jokes.” Again, many jokes found online were similar to versions located in print and in Galanter’s jokes archive. As a result, we have collected approximately three hundred examples of jokes about the jury, many of them repetitive variations on a small number of distinct jokes, and these comprise our database. In contrast, the corpus of lawyer jokes is much more extensive. In fact, Galanter concluded from his research that “[a]t the turn of the twenty-first century, between five hundred and one thousand jokes about lawyers were circulating in the United States.”<sup>39</sup>

If jokes are consistently found in printed sources, then they are often circulating.<sup>40</sup> That gives us some reassurance that the broad

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as number thirteen: Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC’Y REV. 95 (1974); and as number sixty-five: Marc Galanter, *Reading the Landscape of Disputes: What We Know and Don’t Know (And Think We Know) About Our Allegedly Contentious and Litigious Society*, 31 UCLA L. REV. 4 (1983).

37. GALANTER, *LOWERING THE BAR*, *supra* note 3, at 37, 53, 56 (2 jokes), 236–37, 242–43. *Lowering the Bar* also features one cartoon that pictures a jury, although the cartoon is more directly a spoof on the lawyer who is shown speaking: “I urge this jury not to let the evidence prejudice you against my client.” *Id.* at 37.

38. *Id.* at 21.

39. *Id.* at 15.

40. *Id.* at 25 (“I conclude that when a joke is told a lot, it will turn up in print a lot. . . . I think it is safe to conclude that if an item turns up in print repeatedly it is probably circulating orally.”).



themes that are identified by this Article are present in currently circulating jokes about the jury. However, the present database of some three hundred examples of jokes is modest; therefore, we do not know about historical trends, national or international patterns, currency, or the dispersion of jury jokes.<sup>41</sup>

Perhaps a more significant limitation is that a collection of printed or online jokes does not inform us about the social context of the joke-telling. Who (if anyone) tells these jokes? In what settings are they conveyed, and with what emotional affect? Jokes do not have a single, invariant meaning. They can be told in a way that communicates shared self-mockery, celebratory amusement, or even hostility. The print is cold; we can't discern from it the range of meanings that the listeners attribute to the joke or to the joke-teller.

Narrative jokes of the sort included in this project are limited in other ways. They are quite short, so the development of character, such as it is, is largely one-dimensional and does not reflect humanity in all of its complexity. Notably, jokes are undoubtedly slanted toward critique rather than appreciation.<sup>42</sup> Thus, we would expect them to disproportionately emphasize the foibles and problems of trial by jury rather than the strengths and benefits. The jury jokes corpus does not disappoint on that score.

Other characteristics of jokes, however, enable them to reflect social perceptions of social actors and institutions—in our case, legal actors and legal institutions. To work, jokes depend on shared and enduring perceptions. Galanter also pointed out that, because “jokes may carry messages that are not fully apparent to teller and listener, they may evade the censorship that would screen out open expression of scandalous and reprehensible views.”<sup>43</sup>

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41. Whether jokes about juries or other forms of lay participation occur with any frequency in countries outside the U.S. is an open question. I have learned of a handful of classic Russian jury jokes. Interestingly, these jokes generally reflect the theme of “Common Sense Justice.” See *infra* Part IV. Personal communication, Sergei Pashin, Moscow, Russia, October 27, 2011. In correspondence I had with lawyers, jury researchers, and others in Japan and Korea, two countries that recently introduced new systems of lay participation, they told me that they were unaware of any circulating jokes about these new systems. Japan Times writer Setsuko Kamiya recalled, however, that “during the five-year preparation period leading up to the launch of the [Japanese lay participation] system in 2009, the [Japanese] Justice Ministry sometimes had ‘Rakugo’ comic storytellers tell stories about the new system when they held events to promote it . . . . [T]he idea was to introduce the system in a way that was easy for the audience to understand.” Email from Setsuko Kamiya, writer, Japan Times, to author (Apr. 10, 2012, 1:03 AM) (on file with author).

42. See GALANTER, *LOWERING THE BAR*, *supra* note 3, at 26 (making a similar point about lawyer jokes).

43. *Id.*

## IV. JURY JOKE THEMES

Several general groupings and themes have emerged in our analysis of jury jokes. One early discovery is that many jokes that feature juries are targeted at lawyers or the law itself; the jury is a convenient foil, a handy mechanism to highlight the questionable character of lawyers or the folly of the law. It is possible that this emphasis in the jokes was related to the fact that the first group of jokes in the project was a set of jokes collected for *Lowering the Bar*. But the similarity of Galanter's jury jokes to those found in other print and online sources provides some evidence that the dominance of law and legal themes is not simply due to the origins of the project. Juries are marvelous vehicles for making fun of the law. They exemplify the failings of the legal system through their own poor performance. Alternatively, they can serve as a partial corrective to what is portrayed as the deeply problematic enterprise of law.

The jokes are organized loosely into a small set of themes, which emerged as they were reviewed and analyzed. The first two categories point to the failures of individual jurors ("Not the Best and the Brightest") or juries ("Underperforming Juries"). In contrast, the third theme celebrates the wisdom of the jury ("Common Sense Justice") as a method of doing justice in spite of the law. Other jokes contrast juries with judges, lawyers, and the lessons of the law, usually to the detriment of all.

A. *Not the Best and the Brightest*

The first set of jokes we label Not the Best and the Brightest. These jokes showcase the poor character, low intellect, and lack of civic responsibility on the part of the individuals who serve on juries. As Mark Twain once quipped, "We have a criminal jury system which is superior to any in the world; and its efficiency is only marked by the difficulty of finding twelve men every day who don't know anything and can't read."<sup>44</sup>

There is a substantial set of jokes devoted to identifying or proposing methods people use or might employ to get out of jury duty. Two legal humor books focus exclusively on the subject, offering various amusing techniques for evading jury service.<sup>45</sup> For example:

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44. Gerd Hurm, *A "Noisy Carnival": Parodies and Burlesques of Fourth of July Rhetoric*, in *THE FOURTH OF JULY: POLITICAL ORATORY AND LITERARY REACTIONS 1776-1876*, at 239, 249 (Paul Goetsch & Gerd Hurm eds., 1992) (quoting Mark Twain, *After-Dinner Speech: Meeting of Americans* (July 4, 1873)).

45. MINNIE DIX, *150 REASONS WHY I CAN'T SERVE ON JURY DUTY* (1999); DAN DUSTIN, *HOW TO AVOID JURY DUTY: A GUILT FREE GUIDE* (1986).

I can't serve on jury duty because . . . I am either senile or mentally incompetent. I forget which.<sup>46</sup>

Consider the following joke, which combines two popular ideas, the seemingly universal drive to get out of jury duty and the limited understanding of the prospective juror, with a delicious swipe at the integrity of the legal profession:

A man was chosen for jury duty who very much wanted to be dismissed from serving. He tried every excuse he could think of but none of them worked. On the day of the trial he decided to give it one more shot. As the trial was about to begin he asked if he could approach the bench.

"Your Honor," he said, "I must be excused from this trial because I am prejudiced against the defendant. I took one look at the man in his blue suit with those beady eyes and that dishonest face and I said 'He's a crook! He's guilty, guilty, guilty!' So your Honor, I can not possibly stay on this jury!"

With a tired annoyance, the judge replied, "Get back in the jury box. That man is his lawyer."<sup>47</sup>

This joke skewers everyone. In addition to the common trope of the citizen's attempts to evade jury duty, the man equates the lawyer with a dishonest crook. The judge is also suspect in that he fails to explore the possibility of juror bias and seems resigned to the obviousness of the lawyer's dishonesty.

Juror bias is combined with avoidance of jury duty in the following joke popularized by comedian Sarah Silverman:

I got jury duty notice . . . you have to fill it out and send it in and they select you randomly . . . There's nothing funny about jury duty . . . jury duty? I mean, I don't want to do it, you know? So I'm filling out this form and everything, and my friend is like, "Well, why don't you write something really, like, inappropriate on the form like, 'I hate chinks?'" . . . I wanted to do it, but then I'm like, I don't want people to think I'm racist or something, I just want to get out of jury duty. So I just filled out the form, and I wrote, "I love chinks." And who doesn't, really?<sup>48</sup>

Like the racist prospective juror above, jury jokes themselves offer an opportunity to traffic in stereotypes. Legal humor books from the early twentieth century, when women and racial minorities were almost entirely absent from real juries,<sup>49</sup> include a small number of

46. DIX, *supra* note 45, at 54–55.

47. Victoria Abreo, *Getting Out of Jury Duty*, BELLAONLINE, <http://www.bellaonline.com/articles/art42311.asp> (last visited Jan. 26, 2013).

48. *Late Night with Conan O'Brien* (NBC television broadcast July 11, 2001).

49. See NEIL VIDMAR & VALERIE P. HANS, *AMERICAN JURIES: THE VERDICT* 66–67, 71–74 (2007) (describing historical changes in the composition of the jury).

jokes with all-woman or all-black juries. The old jokes with women jurors proclaim their supposed unsuitability for jury duty because of their simple-mindedness, or because of their preoccupation with female matters that the law considers irrelevant. A joke from a 1915 compendium of legal humor envisioned this conversation between two women called to serve as grand jurors:

“Mabel, I’m drawn on the grand jury.”

“So am I, Gertrude.”

“Our responsibilities will be heavy.”

“I realize that. What shall we wear?”<sup>50</sup>

Likewise, a woman juror misunderstands the difference between criminal and civil law, paying attention to the injustice dealt to the woman plaintiff:

Mrs. Hunter was called to serve for jury duty, but asked to be excused because she didn’t believe in capital punishment and didn’t want her personal thoughts to prevent the trial from running its proper course. But the public defender liked her thoughtfulness and tried to convince her that she was appropriate to serve on the jury.

“Madam,” he explained, “This is not a murder trial! It’s a simple civil lawsuit. A wife is bringing this case against her husband because he gambled away the \$12,000 he had promised to use to remodel the kitchen for her birthday.”

“Well, okay,” agreed Mrs. Hunter, “I’ll serve. I guess I could be wrong about capital punishment after all!”<sup>51</sup>

Of course, despite the attractions of avoiding jury service, jurors’ avarice or desire for fame may serve to counteract their natural tendencies. For instance:

QUESTION: How many conscientious jurors does it take to reach a verdict?

ANSWER: One, and eleven others who can’t wait to get home to see themselves on the evening news.<sup>52</sup>

In this early twentieth-century joke, an Irish jury is full of drinkers, true to stereotype. Irish whiskey and the lack thereof play a significant role in achieving a verdict:

50. GUS C. EDWARDS, *LEGAL LAUGHS: A JOKE FOR EVERY JURY* 399 (2d prtg. 1915).

51. *Jury Duty*, JOKES-FUNNIES.COM, <http://www.unwind.com/jokes-funnies/profession/jury-duty.shtml> (last visited Jan. 17, 2013). Setting aside the preposterous lawsuit, which surely is presented for laughs, there is a perplexing combination of criminal and civil law in this recounting. Public defenders represent criminal defendants rather than parties in civil suits of the sort envisioned in this joke, suggesting, perhaps, that the joke’s author was likewise in the dark about the details of civil versus criminal litigation. Or, fidelity to law is beside the point.

52. DUSTIN, *supra* note 45, at 10.

A gentleman who once served on an Irish jury tells an amusing story of his experiences. When the hearing was over and the jury retired to their room to consider their verdict they found that they stood eleven to one in favor of an acquittal, but the one happened to be a very complacent old gentleman who rested his chin upon the head of a thick bamboo cane and announced defiantly that he was ready to stay there as long as any of them.

The hours dragged on, evening arrived, and the old gentleman obstinately held out. The other jurors wearily arranged themselves to make a night of it. From time to time the old gentleman would contemplatively suck the head of the cane.

Finally he fell asleep, and the cane dropped heavily to the floor. Then one of the jurymen picked it up and found, to his surprise, that it was nearly full of Irish whiskey. The eleven passed the cane round, relieved it of its contents, and then awakened its slumbering owner. Slowly he lifted the cane to his mouth, looked at his watch, and then arose with the announcement, "Boys, I'm afther changin' me moind."<sup>53</sup>

The most common jury joke features the "Bribed Juror." In approximately sixty versions in the database, the Bribed Juror joke combines the lack of acuity of the juror with the questionable integrity of the lawyer:

Shultz, a lawyer, bribed a man on the jury to hold out for a charge of manslaughter, as opposed to the charge of murder which was brought by the prosecution. The jury was out for nearly a week before they returned to court with the manslaughter verdict. When Shultz paid the juror, he asked him if it had been hard to persuade the other jurors to get the charge of manslaughter.

"Sure did," the juror replied, "all the others wanted to acquit him."<sup>54</sup>

Interestingly, in this joke, the bribed juror serves as a partial, if unwitting and oblivious, corrective to another source of corruption in the legal system. Of course, we do not know whether the defendant is actually guilty or not guilty of the crime of murder, but the joke presumes the man's guilt given the lawyer's decision that a bribe was required to produce a manslaughter verdict for his client. The trope of jurors as a corrective to corrupt lawyers resonates with another set of jokes I describe below, which highlights the jury's Common Sense Justice.<sup>55</sup> But the Bribed Juror joke can be read as a broader attack on the quality of the jury's decision making, in which a majority of

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53. EDWARDS, *supra* note 50, at 240.

54. *Bribe the Jury*, THE BARTEND, <http://www.thebartend.com/jokes/LawyerJokes.php?id=5362> (last visited Jan. 17, 2013).

55. See *infra* Part IV.C.

earnest citizens, convinced of the innocence of a defendant, are successfully swayed by a dull-witted juror who is incapable of understanding what the corrupt lawyer was trying to accomplish.

In another iteration, however, the *Bribed Juror* joke is refashioned to target “red necks,” a switch that eliminates the anti-lawyer character of the joke.

A guy was on trial for murder and if convicted, would get the electric chair. His brother found out that a red neck was on the jury and figured he would be the one to bribe. He told the red neck that he would be paid \$10,000 if he could convince the rest of the jury to reduce the charge to manslaughter. The jury was out an entire week and returned with a verdict of manslaughter.

After the trial, the brother went to the red neck’s house, told him what a great job he had done and paid him the \$10,000.

The red neck replied that it wasn’t easy to convince the rest of the jury to change the charge to manslaughter. They all wanted to let him go.<sup>56</sup>

The switching of the major character or target of a joke is a common phenomenon. As Marc Galanter wrote: “In the course of oral transmission, jokes are modified by tellers, mostly inadvertently and/or incrementally, but sometimes deliberately to adapt a joke to new circumstances or even new topics.”<sup>57</sup> As a comparison of the two renditions illustrates, replacing the lawyer with the defendant’s brother shifts the meaning of the joke. The corrupt jury now serves as a corrective to unscrupulous people (in this case the defendant’s brother).

In the following joke, an incompetent juror, sleeping away during the judge’s charge to the jury, gets the last laugh. His slumber seems to be an apt reaction to the judge’s overbearing manner.

The lawyer for the prosecution had finished his closing argument, and the judge, a pompous and long-winded individual, was charging the jury.

He was in the midst of an unusually long and tedious address when he suddenly noticed that one of the jurymen had fallen asleep. The indignation of his honor was boundless. Rapping sharply on his desk he awakened the slumberer, who seemed not at all abashed at being thus caught napping. After glaring at him angrily for a few moments, the magistrate in his most sarcastic tone said:

“So that’s the way you attend to your duty, is it? You’re a fine specimen to have on a jury. Do you think your opinion will be of

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56. *Redneck Jury*, COLLECTION OF 1000+ FREE FUNNY JOKES ONLINE, <http://www.justfunnies.com/jokes/307.html> (last visited Jan. 17, 2013).

57. GALANTER, *LOWERING THE BAR*, *supra* note 3, at 23.

any value when I send you out to determine the fate of this prisoner?"

"Yes, sir," said the juror quietly, "I think so."

"Oh, you do, do you?" shouted the exasperated judge. "Pray, tell me, sir, how long have you been sleeping?"

"I don't know, your Honor," was the reply. "How long have you been talking?"<sup>58</sup>

The juror's limitations operate to counteract the judge's perversion of ordinary language, fitting with a key theme Galanter identified in the lawyer jokes corpus—sleeping jurors are bad, but the law is worse.<sup>59</sup>

### B. *Underperforming Juries*

Juries decide in a group, of course, and incompetent or biased individuals might be effectively neutralized by the more skilled and sensible members of their juries. Or, the jury as a whole can fall short. The theme of Underperforming Juries is common in jury jokes. These jokes are found in the earliest compendiums of lawyer jokes and in online collections of jokes, indicating their currency.

The tendency of the jury to acquit obviously guilty defendants is the thrust of some common jokes, illustrated by the following two examples:

"Your Honor," said the jury foreman solemnly, "we find that the man who stole the \$20,000 is not guilty."<sup>60</sup>

And:

Judge—"The jury will now render their verdict."

Foreman of the Jury—"We find the culprit Not Guilty, but we recommend him not to do it again."<sup>61</sup>

Of course, legal culpability might be distinct from justice, as perceived through the jurors' eyes. But in the two examples above, the jokes work by juxtaposing the foreman's statement of the obviousness of a defendant's guilt with the jury's apparently short-sighted verdict. In the following joke, the defendant reveals the error in the jury's acquittal by admitting his guilt to his lawyer:

After a laborious two-week criminal trial in a very high profile bank robbery case, the jury finally ended its 14 hours of deliberations and entered the courtroom to deliver its verdict to the judge.

58. EDWARDS, *supra* note 50, at 65.

59. See GALANTER, *LOWERING THE BAR*, *supra* note 3, at 31.

60. SID BEHRMAN, *THE LAWYER JOKE BOOK* 36 (1991).

61. RAY SCRUGGS, *TEN HUNDRED LAUGHS: A COMPILATION OF AFTER DINNER STORIES AND AMAZING ANECDOTES* 60 (1928). Interestingly, there is a hint that the jury might be considering the equities of the situation, as in the Common Sense Justice jokes. See *infra* Part IV.C.

The judge turns to the jury foreman and asks, "Has the jury reached a verdict in this case?"

"Yes we have, your honor," the foreman responded.

"Would you please pass it to me," The judge declared, as he motioned for the bailiff to retrieve the verdict slip from the foreman and deliver it to him.

After the judge reads the verdict himself, he delivers the verdict slip back to his bailiff to be returned to the foreman and instructs the foreman, "Please read your verdict to the court."

"We find the defendant NOT GUILTY of all four counts of bank robbery," stated the foreman.

The family and friends of the defendant jump for joy at the sound of the "not guilty" verdict and hug each other as they shout expressions of divine gratitude. The defendant's attorney turns to his client and asks, "So, what do you think about that?"

The defendant looks around the courtroom slowly with a bewildered look on his face and then turns to his defense attorney and says, "I'm real confused here. Does this mean that I have to give all the money back?"<sup>62</sup>

In another set of Underperforming Juries jokes, the jury resists the law's command to enter a verdict, deciding not to "interfere" in a dispute:

The jury was out for three hours in a very dramatic case. A husband had shot his wife's lover, but only grazed his arm. The jury returned to the jury box and everyone in the courtroom awaited the verdict with bated breath.

The foreman of the jury, Mr. Tepperman, stood up. The judge asked the foreman whether they had reached a verdict.

"Yes," shrugged Mr. Tepperman, "we decided not to butt in!"<sup>63</sup>

Jewish names, such as Tepperman, regularly appear in the historical corpus of jury jokes. Similarly, jokes explicitly invoke ethnic, racial and other stereotypes using all-Jewish juries, all-black juries, and illiterate juries. In the following joke, the Jewish foreman Mr. Tepperman is replaced with an entirely Jewish jury:

An all-Jewish jury is trying a case. They deliberate their verdict and return to the courtroom. "Mr. Foreman," the judge demands, "has the jury reached a verdict?"

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62. *Bank Robbery*, JOKE BUDDHA, <http://www.jokebuddha.com/Guilty/recent/10> (last visited Jan. 17, 2013).

63. BILL ADLER, *FIRST, KILL ALL THE LAWYERS: LEGAL PROVERBS, EPITAPHS, JOKES, AND ANECDOTES* 80 (1992).



“Well your Honor,” the foreman replies, “we have discussed the matter from all angles. Mr. Levy felt it was a shame the crime was committed and Mrs. Goldberg thought the defendant was such a nice boy. Then Mr. Finklestein reminded us . . .”

“Yes yes,” the judge interrupts. “But what is your verdict?”

“Our verdict,” the foreman declares, “is we shouldn’t mix in.”<sup>64</sup>

These jokes about Jewish jurors raise a question about whether they are about juries or instead about Jews, who are shown as hesitant to perform their civic duty. On the other hand, the latter joke, featured in a book on the “therapeutic power of Jewish wit and humor,” shows Jewish jurors carefully evaluating the equities of the situation as they reach the decision not to “mix in.”

In one of the rare jokes featuring the civil as opposed to the criminal jury, we observe an uneducated jury that can’t perform simple arithmetical operations:

An illiterate jury having spent many hours in reaching a verdict, one of the jurymen was asked what the trouble was:

“Waal,” he said, “six on ‘em wanted to give the plaintiff \$4,000, and six on ‘em wanted to give him \$3,000, so we split the difference and gave him \$500.”<sup>65</sup>

Similarly:

“[T]he only difference between TV juries and real juries is 50 IQ points.”<sup>66</sup>

Jokes about black jurors were rare and not readily apparent in contemporary joke collections, including online sources.<sup>67</sup> In the case of women, Jewish, Irish, and black jurors, the jokes attribute jury underperformance to the presence of these “unsuitable” kinds of people. Hence the jokes seem to focus more on identity issues than on jury underperformance per se.

### C. *Common Sense Justice*

In contrast to the jokes that emphasize jurors’ individual or collective limitations, another set of jokes highlights the jury’s common sense and its attention to the justice of the situation. In this narrative,

64. HARVEY MINDESS, *LAUGHTER AND LIBERATION* 48–49 (1971).

65. MARSHALL BROWN, *WIT AND HUMOR OF BENCH AND BAR* 511 (1899).

66. Abramson, *supra* note 4, at 499 (reporting a joke told to legal scholar Jeffrey Abramson by insurance broker Robert Daddario, implying that TV juries have the IQ advantage) (internal quotation marks omitted).

67. Nonetheless, subterranean racism may erupt in other forms of humor. See Gregory S. Parks & Danielle C. Heard, “Assassinate the Nigger Ape!]: Obama, Implicit Imagery, and the Dire Consequences of Racist Jokes, 11 *RUTGERS RACE & L. REV.* 259 (2010) (discussing cartoons and other racist humor targeting President Barack Obama).

the jury operates as a major corrective within a problematic legal system, one in which biased or pompous judges insist on strict application of absurd or unfair laws, and conniving lawyers try to trick the jury. In these Common Sense Justice jokes, the jury prevails and justice is done:

The fact that our imperfect jury system usually works is perhaps best illustrated by the story of the Tennessee jury that was empaneled in the criminal trial of a man charged with stealing a mule.

As the proof developed in the trial, the evidence was rather overwhelming that the man in fact did steal the mule. But the proof also showed that the defendant was basically an honorable and decent fellow who was really down on his luck and desperately needed the mule to help him on his family farm.

After deliberating, the jury returned and the foreman announced the verdict: "Not guilty, but he has to give back the mule."

The wise and learned judge said, "ladies and gentlemen of the jury, I must reject your verdict. It is an inconsistent verdict, and I must request that you resume your deliberations and return a consistent verdict."

The jurors looked at one another and then filed back into the jury room.

Five minutes later they returned.

"Have you reached another verdict?" inquired the judge.

"Yes, we have, Your Honor," reported the foreman. "Not guilty and he can keep that mule!"<sup>68</sup>

This joke is currently circulating, as shown by a New York Times reader's online response to a 2011 opinion piece on the subject of jury nullification.<sup>69</sup> The reader wrote:

I couldn't find the reference, but in school we were told that a very poor man whose family was starving stole a pig from a rich man. The jury said, "Not guilty if he returns the pig." The judge refused to accept that verdict, so the jury reconvened and returned with, "Not guilty and he can keep the pig."<sup>70</sup>

A variant on the Common Sense Justice theme also shows the jury acting as a counterweight to a flawed legal system. In this regularly

68. *Who Gets the Mule?*, ROY HERRON & L. H. "COTTON" IVY, TENNESSEE POLITICAL HUMOR: SOME OF THESE JOKES YOU VOTED FOR 89 (2000).

69. Paul Butler, Op-Ed., *Jurors Need to Know that They Can Say No*, N.Y. TIMES (Dec. 21, 2011), [http://www.nytimes.com/2011/12/21/opinion/jurors-can-say-no.html?\\_r=0](http://www.nytimes.com/2011/12/21/opinion/jurors-can-say-no.html?_r=0).

70. Michael Wolfe, Comment to *Jurors Need to Know that They Can Say No*, N.Y. TIMES, (Dec. 21, 2011, 9:09 AM), [http://www.nytimes.com/2011/12/21/opinion/jurors-can-say-no.html?\\_r=0](http://www.nytimes.com/2011/12/21/opinion/jurors-can-say-no.html?_r=0).

circulating joke, the overly clever lawyer's grandstanding effort to hoodwink the jury fails in glorious fashion.

A noted criminal defense lawyer was making the closing argument for his client accused of murder, although the body of the victim had never been found. The lawyer dramatically turned to the courtroom's clock, and pointing to it, announced, "Ladies and gentlemen of the jury, I have some astounding news. I have found the supposed victim of this murder to be alive! In just ten seconds, she will walk through the door of this courtroom."

A heavy quiet suddenly fell over the courtroom as everyone waited for the dramatic entry.

But nothing happened.

The smirking lawyer continued, "The mere fact that you were watching the door, expecting the victim to walk into this courtroom, is clear proof that you have far more than even a reasonable doubt as to whether a murder was actually committed." Tickled with the impact of his cleverness, the cocky lawyer confidently sat down to await acquittal.

The jury was instructed, filed out, and filed back in just ten minutes with a guilty verdict.

When the judge brought the proceedings to an end, the dismayed lawyer chased after the jury foreman: "Guilty? How could you convict? You were all watching the door!"

"Well," the foreman explained, "Most of us were watching the door. But one of us was watching the defendant, and he wasn't watching the door."<sup>71</sup>

#### *D. Juries, Legal Actors, and the Law: Jury Jokes as a Contrast or Foil*

In the jokes already presented, juries are sometimes portrayed as a corrective to the vagaries of the law. Another set of jokes compares and contrasts the jury with professional legal actors, either the legally trained judge or lawyers. Juries do not fare well in this set of jokes, but the legal professionals suffer a worse fate. Thus, these jokes offer juries up to highlight the failings of legal actors and the problems of law itself.

The following joke features a jury of lawyers, using the setting to emphasize the corruption of ordinary discourse by legal practitioners.

A judge in a semi-small city was hearing a drunk-driving case. The defendant, who had both a record and a reputation for driving under the influence, demanded a jury trial.

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71. JESS M. BRALLIER, *LAWYERS AND OTHER REPTILES* 64-65 (1992).

It was nearly 4 P. M. And getting a jury would take time, so the judge called a recess and went out in the hall looking for anyone available for jury duty. He found a dozen lawyers in the main lobby and told them that they were a jury.

The lawyers thought this would be a novel experience and so followed the judge back to the courtroom. The trial was over in about 10 minutes and it was very clear that the defendant was guilty.

The jury went into the jury room, the judge started getting ready to go home, and everyone waited. After nearly three hours, the judge was totally out of patience and sent the bailiff into the jury-room to see what was holding up the verdict.

When the bailiff returned, the judge said, "Well, have they got a verdict yet?"

The bailiff shook his head and said, "Verdict? Hell, they're still doing nominating speeches for the foreman's position!"<sup>72</sup>

Yes, the overqualified jury is just as useless as the underqualified one.

Some jokes compare legally trained judges with juries. In some, juries win; for example, in Groucho Marx's famous quip, "I was married by a judge. I should have asked for a jury."<sup>73</sup> In contrast, judges and juries both come out poorly in the following joke:

A defendant was asked if he wanted a bench trial or a jury trial. "Jury trial," the defendant replied.

"Do you understand the difference?" asked the judge.

"Sure," replied the defendant, "[t]hat's where twelve ignorant people decide my fate instead of one."<sup>74</sup>

The educational benefits of jury service have been lauded since Tocqueville's time.<sup>75</sup> The famous French political thinker wrote in 1835 about how participating as a juror educated citizens about self-government and the rule of law:

The jury, and more especially the civil jury, serves to communicate the spirit of the judges to the minds of all the citizens; and this spirit, with the habits which attend it, is the soundest preparation for free institutions. . . . It invests each citizen with a kind of magistracy, it makes them all feel the duties which they are bound to discharge toward society; and the part which they take in the Government.<sup>76</sup>

72. *Jury Trial*, JOKES.NET, <http://www.jokes.net/jurytrial.htm> (last visited Jan. 17, 2013).

73. See RONALD IRVING, 'THE LAW IS A ASS': AN ILLUSTRATED ANTHOLOGY OF LEGAL QUOTATIONS 100 (Duckbacks 2001) (quoting Groucho Marx).

74. *Jury Trial*, SHORT HUMOR JOKES (Feb. 12, 2008), <http://miteshasher.blogspot.com/2008/02/short-humor-jokes-jury-trial.html>.

75. See ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 284-91 (Henry Reeve trans. 2d ptrg. 1889); see also JOHN GASTIL ET AL., THE JURY AND DEMOCRACY: HOW JURY DELIBERATION PROMOTES CIVIC ENGAGEMENT AND POLITICAL PARTICIPATION 14-15 (2010).

76. TOCQUEVILLE, *supra* note 75, at 288-89.

But in sharp contrast to these lofty educational benefits, the law is seen as a school for cheating in this common joke:

After serving a week on a jury, a man was asked:

“You must have listened to so much law in the past week that you are almost a lawyer yourself now.”

“Yes,” said the juror, “I am so full of law that I’m going to find it hard to keep from cheating people after I get back to business.”<sup>77</sup>

Jury jokes are a potent vehicle for poking fun at the law.

## V. JURY JOKES: INSIGHTS FOR LEGAL CULTURE

It’s time to take stock. What do the jury jokes we have analyzed suggest about the cultural significance of the jury trial? Like much of popular culture’s portrayals, the jurors and juries that populate the joke universe are largely one-dimensional caricatures. The Not the Best and the Brightest and Underperforming Juries jokes highlight the jury’s individual and collective failings, reinforcing popular concerns about the accuracy and fairness of jurors and juries. The prominence of jury jokes about evading jury service echoes the frequency of the topic in other jury portrayals in popular culture. Indeed, humorous techniques for shirking jury duty commonly circulate on the Internet, in blogs, and even on Twitter.<sup>78</sup>

As for the jury’s other limitations, some academic and popular commentators express doubt about whether a group of lay people chosen from the public at large is capable of understanding the evidence and the law, and then applying the law to the evidence.<sup>79</sup> Elites are more likely to voice these concerns, with the exception of trial judges, who regularly preside over jury trials and are largely positive about the decision-making strengths of the jury.<sup>80</sup>

The jokes’ themes of jury incompetence are generally at odds with the conclusions of empirical jury research. More than fifty years of research indicates that juries are generally capable fact-finders, whose

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77. GALANTER, LOWERING THE BAR, *supra* note 3, at 37.

78. See, e.g., Marshall R. Isaacs, *The Idiot’s Guide to Getting Out of Jury Duty*, SUMMARY JUDGMENT (Mar. 13, 2009), <http://theunifiedcourtsystem.blogspot.com/2009/03/idiots-guide-to-getting-out-of-jury.html> (offering a trial lawyer’s advice) (last visited Jan. 17, 2013); Justin Becker, *How to Get Out of Jury Duty*, ASKMEN, [http://www.askmen.com/money/how\\_to\\_60/98\\_how\\_to.html](http://www.askmen.com/money/how_to_60/98_how_to.html).

79. See, e.g., JEROME FRANK, COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE 134–37 (2d prtg. 1950) (criticizing jury competence); FRANKLIN STRIER, RECONSTRUCTING JUSTICE: AN AGENDA FOR TRIAL REFORM 111–12 (1994) (raising doubts about jury competence).

80. See Valerie P. Hans, *Attitudes Toward the Civil Jury: A Crisis of Confidence?*, in VERDICT: ASSESSING THE CIVIL JURY SYSTEM 248, 261–65 (Robert E. Litan ed., 1993) (summarizing judges’ opinions about the civil jury).

verdicts often overlap with those that a professional judge would give. Reassuringly, the major determinant of the jury's verdict is the strength of the evidence in the case.<sup>81</sup> Similarly, civil jury damage awards are strongly linked to the degree of injury suffered by the plaintiff.<sup>82</sup> Although jury verdicts tend to reflect the public's sentiments and thus can serve as a vehicle for community prejudice, representative and diverse juries that engage in thorough deliberation help to counteract some of these biases.<sup>83</sup>

When research scholars explore jury competence, they tend to focus on the jury's ability to decide complex cases.<sup>84</sup> In contrast, jokes portray jurors baffled by simple trials.<sup>85</sup> Clear and convincing evidence should be a straightforward matter to understand and interpret, yet the joke jury inevitably reaches the legally and factually incorrect result. In sum, the Not the Best and the Brightest and Underperforming Juries jokes resonate with themes about jury incompetence present in other forms of popular culture and in a minority of scholarly literature. The jokes are, however, at odds with what a significant amount of research suggests about the actual performance of American juries.

The vast majority of jokes concern the criminal jury, reflecting a tendency to visualize the legal process in terms of the criminal model. When members of the public think about juries, the criminal jury rather than the civil jury typically comes to mind. Jurors and members of the public often use criminal law terminology to describe civil case outcomes—a party is “guilty” and must pay damages, for example. So perhaps it is not surprising that criminal juries dominate jury jokes. Yet over the last few decades, the civil jury has become more controversial than the criminal jury. The “runaway” civil jury has been explicitly featured in advertising campaigns trumpeting a litigation explosion, which in turn has led to legislative efforts to limit civil liability and to circumscribe jury decision making about liability and damages.<sup>86</sup> Thus, the relative absence of the civil jury from the publicly available jury jokes corpus is noteworthy. It is possible that the broad dissemination of litigation horror stories, a number of which

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81. VIDMAR & HANS, *supra* note 49, at 339 (summarizing research studies that find that the strength of evidence in a trial is the most important determinant of the jury's verdict).

82. See Valerie P. Hans & Valerie F. Reyna, *To Dollars from Sense: Qualitative to Quantitative Translation in Jury Damage Awards*, 8 J. EMPIRICAL LEGAL STUD. 120, 122 (2011) (summarizing research studies that show significant positive relationships between the severity of plaintiffs' injuries and damage awards).

83. See VIDMAR & HANS, *supra* note 49, at 339–41.

84. *Id.* at 153–55

85. See *supra* Part IV.A.

86. See Daniels, *supra* note 21, at 270; see also HALTOM & McCANN, *supra* note 21, at 172, 297–98.

have turned out to be fictional, has served a similar purpose to jokes in poking fun at civil juries.<sup>87</sup>

We noted earlier that jury jokes continue to be told even though the proportion of cases decided by jury trial has radically declined. Jury jokes, it seems, will survive the shrinkage of the institution. Galanter found that even in India, a nation with no current jury system, there are jokes about lawyers arguing their cases before juries.<sup>88</sup>

In contrast to the jokes that emphasize the individual and collective limitations of the jury, the Common Sense Justice jokes, and jokes that compare juries to judges and lawyers, often emphasize the jury's humanity and superiority to the mechanical and even tainted character of law. Earlier we described a populist narrative that Jeffrey Abramson identified in movies such as *A Civil Action*, *Erin Brockovich*, and *The Runaway Jury*. In these films, ordinary citizens who are generally inclined to avoid civic engagement must nonetheless become involved to solve problems that the law is incapable of addressing. In a similar fashion, Stephan Landsman wrote about the movie *12 Angry Men*, "The message conveyed is that ordinary mortals are hard-pressed to manage on their own when sitting on a jury. . . . If the proceedings are going to be saved, it is only by the exertions of someone who chooses to work outside the law."<sup>89</sup> In *12 Angry Men*, justice is done not because of law, but in spite of it.<sup>90</sup> Both the populist narrative and this reading of *12 Angry Men* bear a striking resemblance to the thrust of Common Sense Justice jokes, in which ordinary citizens serve as a corrective to tainted or limited law.

Interestingly, the Common Sense Justice jokes are consistent with some of the empirical work on juries. The research shows that juries apply their general ideas about "total justice" to fact-finding, even when it deviates from the strict application of the legal rules.<sup>91</sup> Research shows that juries tend to inject sentiments into the law prima-

87. HALTOM & McCANN, *supra* note 21, at 173, 296, 298.

88. GALANTER, *LOWERING THE BAR*, *supra* note 3, at 254. There have been compelling accounts of the operation of the jury system in India, including its abolition in 1960. See Jean-Louis Halpérin, Lay Justice in India, Address at the Popular Justice Conference: Beyond Judges and Juries (Mar. 25, 2011) (presentation available at [http://www.droit.ens.fr/IMG/pdf/Lay\\_Justice\\_in\\_India\\_1.pdf](http://www.droit.ens.fr/IMG/pdf/Lay_Justice_in_India_1.pdf)) (describing the circumstances under which the jury in India was abolished); see also ELIZABETH KOLSKY, *COLONIAL JUSTICE IN BRITISH INDIA: WHITE VIOLENCE AND THE RULE OF LAW* 217–21 (2010) (describing the troubled early history of jury trials in India).

89. Stephan Landsman, *Mad About 12 Angry Men*, 82 CHI.-KENT L. REV. 749, 752 (2007).

90. *Id.*

91. See, e.g., NORMAN J. FINKEL, *COMMONSENSE JUSTICE: JURORS' NOTIONS OF THE LAW* 78 (1995); LAWRENCE M. FRIEDMAN, *TOTAL JUSTICE* 147 (1st paperback ed. 1985); Valerie P. Hans, *Juries as Conduits for Culture?*, in *FAULT LINES: TORT LAW AS CULTURAL PRACTICE* 80, 89, 91–92 (David M. Engel & Michael McCann eds., 2009).

rily when the evidence is closely balanced, rather than when the evidence strongly supports one outcome or the other.<sup>92</sup> In contrast, the jury jokes present more extreme pictures of outright jury nullification.

## VI. CONCLUSION

What do these jokes say about law and the legal system? Many jury jokes reinforce the “jaundiced view” of law and lawyers as described so compellingly by Marc Galanter in *Lowering the Bar*. In the jokes showing negative portrayals of juries, the jury system is seen as part of a generally corrupt process. The Common Sense Justice jokes applaud the jury’s ability to rise above the law to do justice, yet also offer critiques of the law on the books. These jury jokes frequently show lawyers as tricksters, with juries in the role of a partial corrective. But in these jokes, juries often promote justice by declining to follow the law, which further reinforces skepticism about the law.

The largely negative thrust of jury jokes might have been expected because jokes typically criticize rather than celebrate. But I conclude by speculating that such jokes might also serve to relieve some of the individual and cultural apprehensions associated with the jury as an institution.<sup>93</sup> The jury is a unique body that corrals ordinary citizens into service and grants them an extraordinary amount of power, albeit temporarily. Jokes about evading jury duty and about the foibles of individual jurors speak to individual anxieties that citizens may feel when faced with the prospect of jury service, as well as to broader societal fears about the powers we have allocated to this unique democratic institution.

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92. Hans, *supra* note 91.

93. In a similar vein, the authors of *Law and Popular Culture* ask an intriguing question about movies that feature jurors at risk: “[A]re films with imperiled jurors really about the lack of power of the jurors? Or are they perhaps about our cultural anxiety that an individual juror may in fact have too much power and abuse that power?” See LAW AND POPULAR CULTURE, *supra* note 12, at 280.



