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Fictionalized Criminal Law and Youth Legal Consciousness

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I. INTRODUCTION

At the beginning of *Discipline and Punish: The Birth of the Prison*, Michel Foucault describes in lurid detail the public execution of Robert-François Damiens following Damiens’s unsuccessful assassination attempt of Louis XV of France in 1757.¹ Such festivals of death were not uncommon in eighteenth-century Europe.² Jack Sheppard, for example, the notorious burglar, robber, and thief, renowned for his multiple escapes from confinement, was hanged at Tyburn in 1724 before 200,000 onlookers—a third of London’s population at the time.³

Although the public character of punishment and its infliction of physical pain and suffering were originally central features of penalty, “[p]unishment . . . gradually ceased to be a spectacle”⁴ and became directed toward the soul rather than toward the body.⁵ The last public execution in France took place in Versailles in 1939.⁶ In the United States, the last public execution occurred in Kentucky on August 14, 1936, before a crowd of 20,000.⁷

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1. MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF A PRISON 3–6 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977).
 2. See JEAN KELLAWAY, THE HISTORY OF TORTURE AND EXECUTION: FROM EARLY CIVILIZATION THROUGH MEDIEVAL TIMES 6 (2003).
 3. *Id.* at 47.
 4. FOUCAULT, *supra* note 1, at 9; see also Anton Blok, *The Symbolic Vocabulary of Public Executions, in HISTORY AND POWER IN THE STUDY OF LAW: NEW DIRECTIONS IN LEGAL ANTHROPOLOGY* 31, 46–52 (June Starr & Jane F. Collier eds., 1989) (discussing the decline of the “[t]heater of [p]unishments”); PIETER SPIERENBURG, THE SPECTACLE OF SUFFERING (1984).
 5. FOUCAULT, *supra* note 1, at 16; see also Avi Brisman, “Docile Bodies” or *Rebellious Spirits?: Issues of Time and Power in the Waiver and Withdrawal of Death Penalty Appeals*, 43 VAL. U. L. REV. 459, 489–90 (2009).
 6. KELLAWAY, *supra* note 2, at 138. Note that the guillotine continued to be used in France until 1977 and was not outlawed until 1981. *Id.*
 7. CHRISTOPHER S. KUDLAC, PUBLIC EXECUTIONS: THE DEATH PENALTY AND THE MEDIA 17 (2007). Note that lynchings and other extrajudicial punishments meted out by mobs continued in the United States well after the 1930s and into the 1960s. But even with respect to state-sanctioned punishment, one could argue that executions have not become completely private affairs. In 1994, Phil Donahue, creator and star of the tabloid talk show, *The Phil Donahue Show* (also known just as *Donahue*), attempted to receive permission to televise an execution in a North Carolina gas chamber. The convicted murderer, David Lawson, agreed, but the request was turned down by the North Carolina Supreme Court and the U.S. Supreme Court. Nolan Clay, *McVeigh Suggests Televised Execution Bomber Raises Issues of Fairness in Letter*, DAILY OKLAHOMAN, Feb. 11, 2001, at 1-A.

Similarly, before the execution of Oklahoma City bomber Timothy McVeigh, there was much discussion as to whether the execution would be broadcast on closed-circuit television to accommodate the large number of people who wanted to see him die. KUDLAC, *supra*, at 104; Jessica Reaves, *Closed-Circuit-TV Executions: A Step Too Far?*, TIME, Apr. 10, 2001, available at <http://www.time.com/time/nation/article/0,8599,105898,00.html>. McVeigh did not object to a closed-circuit telecast and even called for it to be televised nationally. KUDLAC, *supra*, at 104; Clay, *supra*. Ultimately, ten members of the victims’ families and survivors of the bombing witnessed the execution from a room beside the death chamber, with close to 250 survivors and victims’ relatives watching through a closed-circuit television feed in Oklahoma City. *McVeigh Execution: A ‘Completion of Justice,’* CNN.COM, June 11, 2001, <http://archives.cnn.com/2001/LAW/06/11/mcveigh.02/index.html>. Thus, while public executions in the United States are no longer “standard practice” with the “trappings of a sporting event, family picnic, or

Despite the retreat of “the great spectacle of physical punishment,”⁸ some would contend that Americans, in particular, possess “a fetishistic fixation with violence,”⁹ of which punishment is one form.¹⁰ As one commentator claims, “violence is an integral aspect of our culture.”¹¹ More than fifty years ago, Geoffrey Gorer argued that “violent death has played an ever-growing part in the fantasies offered to mass

carnival,” KUDLAC, *supra*, at 17, interest in the spectacle of public punishment has not entirely dissipated. In fact, individuals can easily watch and re-watch public executions from Iran, Iraq, North Korea, and other countries on YouTube.

8. FOUCAULT, *supra* note 1, at 14; *see also* SPIERENBURG, *supra* note 4; *cf.* Brisman, *supra* note 5, at 512 (questioning whether “the gloomy festival of punishment’ has indeed died out—whether ‘[p]unishment [has, in fact,] gradually ceased to be a spectacle[.]’—or whether its ‘visible intensity’ has just been transformed” (alterations in original) (quoting FOUCAULT, *supra* note 1, at 8–9)); Avi Brisman, *Film Review*, 12 CONTEMP. JUST. REV. 371, 373 (2009) (asking, within a review of the film UNTRACEABLE (Lakeshore Entertainment 2008), whether “punishment [has] always been a spectacle with only slight changes in stage, style, and medium”).
9. Avi Brisman, *Toward a More Elaborate Typology of Environmental Values: Liberalizing Criminal Disenfranchisement Laws and Policies*, 33 N.E. J. ON CRIM. & CIV. CONFINEMENT 283, 303 (2007).
10. According to Kudlac, “[s]tories about crime, law, and justice account for anywhere from a quarter to just under half of all stories in newspapers,” but that the media distinguishes between “crime incidents, which attract a lot of attention, and the punishment given to criminals, which does not attract as much interest.” KUDLAC, *supra* note 7, at 8.
11. KEVIN N. WRIGHT, *THE GREAT AMERICAN CRIME MYTH* 49 (1985). *See generally* DAVID FINKELHOR ET AL., U.S. DEP’T OF JUSTICE, OFF. OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, *CHILDREN’S EXPOSURE TO VIOLENCE: A COMPREHENSIVE NATIONAL SURVEY 1–2*, 7 (2009), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/227744.pdf> (finding that “most of our society’s children are exposed to violence in their daily lives [and more] than 60 percent of the children surveyed were exposed to violence within the past year, either directly or indirectly (i.e., as a witness to a violent act; by learning of a violent act against a family member, neighbor, or close friend; or from a threat against their home or school),” stating that “[c]hildren in the United States are more likely to be exposed to violence and crime than are adults,” and confirming that “for many children in the United States, violence is a frequent occurrence”); Bob Herbert, Op-Ed., *Women At Risk*, N.Y. TIMES, Aug. 8, 2009, at A19 (stating that “[w]e have become so accustomed to living in a society saturated with misogyny that the barbaric treatment of women and girls has come to be more or less expected”).

Note that some contend that attraction to violence and voyeurism is not peculiar to Americans. *See, e.g.*, MARK DANNER, *STRIPPING THE BODY: POLITICS VIOLENCE WAR xvii–xviii* (2009) (“Confronted with murder, death, destruction, we are compelled to stare: The instinct is part of what makes us human. . . . Violence horrifies us, transfixes us, draws the eye and ignites the passions; ‘overpowered by desire,’ we have no choice but to look. Traffic cops know it. Film directors know it. News producers know it. Its reality is built into our news, into what we understand to be news—‘if it bleeds, it leads’—and from there with our politics.”); Robert E. Shepherd, Jr., *Film at Eleven: The News Media and Juvenile Crime*, 18 QUINNIAC L. REV. 687, 690 (1999) (“The problem of the creation or reinforcement of public impressions about violent crime is exacerbated by the persistent nature of reporting, especially by television news, on crime in general and homicides in specific. It seems to be that ‘if it bleeds, it leads’ is a truly governing maxim on both local and network news shows. Yellow crime scene tape and flashing police lights are a constant image on local TV news, while O.J. Simpson, JonBenét Ramsey, and Jonesboro, Arkansas have been frequent visitors to our living rooms and dens through network TV news. Coverage of crime stories on television news has gone up dramatically while actual crime has remained relatively constant, or even gone down during the same time periods.”). *See generally* Noam Cohen, *Through Soldiers’ Eyes, ‘The First YouTube War,’* N.Y. TIMES, May 24, 2010, at B3 (“If you want to see the horror of war, you do not need to look far. There are sites aplenty showing the carnage, and much of the material is filmed, edited and uploaded by soldiers recording their own experiences.”).

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audiences—detective stories, thrillers, Westerns, war stories, spy stories, science fiction, and eventually horror comics.”¹² Today, the ways in which violence, including crime, death, execution, and punishment, can be experienced have expanded,¹³ lending further support to the contention that violence is as “American as Jesse James”¹⁴ (or “as American as pizza pie”¹⁵) and that murder is an “American pastime.”¹⁶

There has been vast scholarly attention to the ways in which crime, death, execution, punishment, and violence, more generally, have been depicted and experienced.¹⁷ For example, some have focused on the influence of mass media on public perception of crimes, with particular attention to the ways in which television (and to a lesser extent, print media) affects the fear of crime.¹⁸ Others have studied

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12. Geoffrey Gorer, *The Pornography of Death*, ENCOUNTER, Oct. 1955, reprinted in GEOFFREY GORER, DEATH, GRIEF, AND MOURNING 192, 197 (1965).
 13. Thirty years after Gorer, see *id.* at 192, Wright maintained that “[v]iolence is reinforced by violent sports, television, movies, and even Saturday morning cartoons.” WRIGHT, *supra* note 11, at 49. In 2010—twenty-five years after Wright—the ways and means by which violence is reinforced are even greater and more pronounced.
 14. See CHARLES SILBERMAN, CRIMINAL VIOLENCE, CRIMINAL JUSTICE 21, 25–27 (1978).
 15. EDWARD ABBEY, THE MONKEY WRENCH GANG 176 (Perennial Classics 2000) (1975).
 16. Bob Herbert, Op-Ed., *100,000 Gone Since 2001*, N.Y. TIMES, Aug. 14, 2007, at A23.
 17. See, e.g., Calvin Morrill et al., *Telling Tales in School: Youth Culture and Conflict Narratives*, 34 LAW & SOC’Y REV. 521, 521 n.1 (2000) (discussing how “lurid details of youth violence, as reported in the mass media, both repulse and draw audiences in much the same way as adult mass murders and other forms of extreme violence”); Franklin T. Wilson, *Identifying Large Replicable Film Populations in Social Science Film Research: A Unified Film Population Identification Methodology*, 1 J. OF CRIM. JUST. & L. REV. 19, 19 (2008) (claiming that the antisocial effect of viewing television and motion pictures outnumbers all other mass media research topics by at least four to one); cf. David Ray Papke, *The Impact of Popular Culture on American Perceptions of the Courts*, 82 IND. L.J. 1225, 1227 (2007) (noting that “criticisms of television’s impact started almost as soon as primetime network broadcasting in the late 1940s,” but commenting that “it is extremely difficult to gauge the impact of a particular pop cultural work or even a given type of work”).
 18. See, e.g., Mary Holland Baker et al., *The Impact of a Crime Wave: Perceptions, Fear, and Confidence in the Police*, 17 LAW & SOC’Y REV. 319 (1983); Sarah Eschholz, *The Media and the Fear of Crime: A Survey of the Research*, 9 U. FLA. J.L. & PUB. POL’Y 37 (1997) (reviewing the literature on the impact of television viewing on viewers’ perceptions of crime and violence in the society around them, and finding that regardless of falling crime rates in a given area, frequent television viewers continue to believe that crime was rampant); Shepherd, *supra* note 11, at 688 (discussing “the media and political hype about ‘super predators’ and ‘young thugs’”). See generally Avi Brisman & Alison Rau, *From Fear of Crime to Fear of Nature: The Problem with Permitting Loaded, Concealed Firearms in National Parks*, 2 GOLDEN GATE U. ENVTL. L.J. 255, 255 (2009) (discussing the television advertisements run by then-Vice President George H.W. Bush during the 1988 United States presidential race that attacked Democratic nominee, Michael S. Dukakis, as soft on crime); Sam Roberts, *All Crime Is Local In ‘08 Politics*, N.Y. TIMES, Sept. 16, 2007, § 4, at 12 (“There is a lag between the reality of crime and the perceptions of crime” (quoting Eli Silverman, retired professor at John Jay College of Criminal Justice of the City University of New York) (internal quotation marks omitted)). For a succinct, albeit somewhat dated, discussion of the relationship between the media and fear of crime, see JAY LIVINGSTON, CRIME & CRIMINOLOGY 29–49 (2d ed. 1996). Note that this phenomenon is not peculiar to the United States. See W.R. Dolmage, *Lies, Damned Lies and Statistics: The Media’s Treatment of Youth Violence*, 10 EDUC. & L.J. 1 (2000) (discussing ways in which the Canadian media has regularly distorted facts relating to criminal activity and youth crime, and especially youth crime as it relates to the safety of children in schools).

the impact of mass media violence on aggression and violence in society,¹⁹ with some concentrating on news shows,²⁰ some on sporting events,²¹ and some on fictional violence.²² In fact, the entire field of cultural criminology is essentially devoted to an examination of popular cultural constructions and mass media representations of crime and crime control.²³ Recently, scholars from a number of disciplines have suggested that the boundaries between “reality crime shows,” “crime news stories,” and “crime as entertainment” have blurred—that there is little or no difference

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19. See, e.g., Anne Allison, *Cyborg Violence: Bursting Borders and Bodies with Queer Machines*, 16 CULTURAL ANTHROPOLOGY 237 (2001); John P. Murray, *The Impact of Televised Violence*, 22 HOFSTRA L. REV. 809 (1994); see also William C. Bailey, *Deterrence, Brutalization, and the Death Penalty: Another Examination of Oklahoma's Return to Capital Punishment*, 36 CRIMINOLOGY 711, 711–34 (1998) (showing the media coverage of executions increases murder).
 20. Compare Kenneth A. Bollen & David P. Phillips, *Imitative Suicide: A National Study of the Effects of Television News Stories*, 47 AM. SOC. REV. 802 (1982) (finding that U.S. daily suicides increase significantly after highly publicized suicide stories appear on television evening news programs), with James N. Baron & Peter C. Reiss, *Same Time, Next Year: Aggregate Analyses of the Mass Media and Violent Behavior*, 50 AM. SOC. REV. 347 (1985) (questioning whether mass media violence triggers real-world imitation).
 21. See, e.g., David P. Phillips, *The Impact of Mass Media Violence on U.S. Homicides*, 48 AM. SOC. REV. 560 (1983) (finding that homicides in the United States increased after heavily publicized heavyweight championship fights).
 22. See, e.g., David P. Phillips, *The Impact of Fictional Television Stories on U.S. Adult Fatalities: New Evidence on the Effect of the Mass Media on Violence*, 87 AM. J. SOC. 1340 (1982); Charles K. Atkin & Charles Wood, *Effects of Realistic TV Violence vs. Fictional Violence on Aggression* (August 1976) (unpublished manuscript), available at <http://www.eric.ed.gov/PDFS/ED124979.pdf>.
 23. See, e.g., RAY SURETTE, *MEDIA, CRIME, AND CRIMINAL JUSTICE: IMAGES AND REALITIES* (2d ed. 1997); Gregg Barak, *Media, Crime, and Justice: A Case for Constitutive Criminology*, in CULTURAL CRIMINOLOGY 142 (Jeff Ferrell & Clinton R. Sanders eds., 1995); Jeff Ferrell, *Cultural Criminology*, 25 ANN. REV. SOC. 395 (1999).

Scholarly inquiries into, and analysis of, the portrayal and production of crime, criminals, justice, juvenile delinquency, prison, prisoners, and violence in film, television, cyberspace, popular music, comic books, and other popular culture texts are by no means the exclusive domain of cultural criminology. Examples of such research by individuals who may or may not embrace the moniker “cultural criminology” or “cultural criminologist” (or whose work may predate the development of “cultural criminology” as a sub-field of criminology) include, for example, CHARLES R. ACLAND, *YOUTH, MURDER, SPECTACLE: THE CULTURAL POLITICS OF “YOUTH IN CRISIS”* (1995); MICHAEL ASIMOW & SHANNON MADER, *LAW AND POPULAR CULTURE* (2004); PAUL KOOISTRA, *CRIMINALS AS HEROES: STRUCTURE, POWER, AND IDENTITY* (1989); Frankie Y. Bailey & Donna C. Hale, *Popular Culture, Crime, and Justice*, in POPULAR CULTURE, CRIME, & JUSTICE 1 (Frankie Y. Bailey & Donna C. Hale eds., 1998); *CONSTRUCTING CRIME: PERSPECTIVES ON MAKING NEWS AND SOCIAL PROBLEMS* (Gary W. Potter & Victor E. Kappeler eds., 2d ed. 2006); David Kidd-Hewitt, *Crime and the Media: A Criminological Perspective*, in CRIME AND THE MEDIA: THE POST-MODERN SPECTACLE 1 (David Kidd-Hewitt & Richard Osborne eds., 1995); *MEDIA, PROCESS, AND THE SOCIAL CONSTRUCTION OF CRIME: STUDIES IN NEWSMAKING CRIMINOLOGY* (Gregg Barak ed., 1995); P.A. Perrone & Meda Chesney-Lind, *Representations of Gangs and Delinquency: Wild in the Streets*, 24 SOC. JUST. 96 (1997); *REPRESENTING O.J.: MURDER, CRIMINAL JUSTICE, AND MASS CULTURE* (Gregg Barak ed., 1996); Kenneth D. Tunnell, *Reflections on Crime, Criminals, and Control in Newsmagazine Television Programs*, in POPULAR CULTURE, CRIME, & JUSTICE, *supra*, at 100.

between a fictionalized version of crime and a non-fictionalized version²⁴—and have debated the effect and significance of such indistinctness.²⁵

24. This may be especially true with the “ripped-from-the-headlines” plots of the original *Law & Order*, which was canceled in May 2010 after twenty seasons on the air. See Alessandra Stanley, *Law & Order: Soon to Be Gone but Not Forgotten*, N.Y. TIMES, May 17, 2010, at C1; see also Donald E. Shelton et al., *A Study of Juror Expectations and Demands Concerning Scientific Evidence: Does the “CSI Effect” Exist?*, 9 VAND. J. ENT. & TECH. L. 331, 334 (2006) (stating that “[m]ore of the recent media representations of the courtroom are based on actual cases, reflecting a seeming fascination with our criminal justice process,” and noting the “ripped from the headlines” plots of *Law & Order*).
25. See Ferrell, *supra* note 23, at 405, 408; see also Jeff Ferrell, *Cultural Criminology*, in CONTROVERSIES IN CRITICAL CRIMINOLOGY 71, 75–76 (Martin D. Schwartz & Suzanne E. Hatty eds., 2003) (“Today the production and consumption of mediated meaning frames not only the reality of crime, but of crime control as well. Contemporary policing can in fact hardly be understood apart from its interpenetration with media at all levels. As ‘reality’ crime and policing television programs shape public perceptions, serve as controversial tools of officer recruitment and suspect apprehension, and engender legal suits over their effects on street-level policing, citizens shoot video footage of police conduct and misconduct—some of which finds its way, full-circle, onto news and ‘reality’ programs.”); Stuart Henry & Dragan Milovanovic, *Constitutive Criminology*, in CONTROVERSIES IN CRITICAL CRIMINOLOGY, *supra*, at 57, 60 (arguing that “crime shows, crime drama, crime documentaries, crime news, crime books, crime films, crime precautions, agencies of criminal justice, lawyers, and academic criminologists. . . . contribute[] to the continuous co-production of crime by exploiting the relations of power and by perpetuating the discourse of crime”).

Much discussion of late—in both academic journals and in the popular press—has surrounded the “CSI effect,” which is the supposed impact of the popular CBS crime drama, *CSI: Crime Scene Investigation*, and its spin-offs (e.g., *CSI: Miami* and *CSI: New York*). See, e.g., Simon A. Cole & Rachel Dioso-Villa, *CSI and Its Effects: Media, Juries, and the Burden of Proof*, 41 NEW ENG. L. REV. 435, 435–36 (2007) (concluding that “there is little support for the gravest of the CSI Effects, which is that jurors who watch *CSI* are wrongfully acquitting criminal defendants in cases lacking forensic evidence or that they are wrongfully convicting defendants based on an unrealistic belief in the infallibility of forensic science,” and considering possible alternative explanations for the media attention to the CSI effect, and discussing the claim that the CSI effect has altered the burden of proof); Craig M. Cooley, *The CSI Effect: Its Impact and Potential Consequences*, 41 NEW ENG. L. REV. 471, 493, 501 (2007) (arguing that “the entertainment media’s distorted representation of forensic science has placed forensic science’s credibility in serious jeopardy,” and suggesting that, while forensic science crime dramas have increased the forensic science community’s exposure and popularity, which may lead to more government funding for forensic sciences and crime laboratories, “these shows may prove more detrimental than beneficial to forensic science” because “the misleading images of forensic science portrayed by these shows will potentially: (a) hamper the effectiveness of crime labs; (b) increase the likelihood prosecutors will make unreasonable requests to crime lab personnel; and (c) increase the chances forensic examiners will fabricate evidence, offer unjustifiable opinions in order to support a prosecutor’s unreasonable request, or maintain the unrealistic perception forensic science can somehow accurately answer all questions relating to a crime”); J. Herbie DiFonzo & Ruth C. Stern, *Devil in a White Coat: The Temptation of Forensic Evidence in the Age of CSI*, 41 NEW ENG. L. REV. 503, 507 (2007) (arguing that “[t]he oft-debated question whether the CSI Effect favors prosecutors or the defense is arguably far less important (particularly since the Effect may cut in either direction under different circumstances) than the adverse consequences either variant has on the process of evaluating the corpus of evidence at trial,” and contending that “the most significant problem posed by the CSI Effect is the misleading presentation of forensic evidence in the guise of scientific truth”); Thomas Hughes & Megan Magers, *The Perceived Impact of Crime Scene Investigation Shows on the Administration of Justice*, 14 J. CRIM. JUST. & POPULAR CULTURE 259, 270–71 (2007) (finding that circuit court judges in Kentucky: (1) perceived an increased demand for and distorted perception of forensic evidence on the part of fact finders since these shows have become popular; (2) did not perceive an increased use of forensic evidence; (3) perceived an impact of shows like *CSI* upon the behavior of defense and prosecution counsel in general and in the area of jury

While there may be some question as to whether the lines separating “crime news stories” and “crime dramas” really have become fuzzy, hazy, or otherwise imprecise, there is a difference between the ways in which fictionalized *crime* is depicted in television and film, and the way in which *criminal law* is portrayed in fictional television programs and films. Whereas the former is “glorified,” the latter is (frequently) “glorified.”²⁶ In other words, whereas *crime* in television dramas and movies is made to seem more gruesome and more prevalent than it actually is,²⁷ *criminal law* is frequently exulted—the system is typically portrayed as accurate, efficient, streamlined, and transparent;²⁸ the specific laws are often regarded as unquestionably just,²⁹ and the “good guys” are acquitted (as is the case in such legal

selection, in particular; and (4) did not perceive the impact of the technological representations in criminal investigation shows as affecting significantly on convictions); Deborah Landry, *Faux Science and the Social Construction of a Risk Society: A Burkean Engagement With the CSI Debates*, 9 J. INST. JUST. & INT'L STUD. 145, 153 (2009) (stating that “[t]he possibility of a *CSI Effect* suggests a loss of faith in the criminal justice system, a core feature of risk whereby the state no longer promises to protect its citizens,” arguing that “[l]imiting one’s research to examining the *CSI Effect* or the aesthetic qualities of *CSI* without considering the complex communication of ideologies of crime and social control in our everyday lives is problematic,” and illustrating “how mass media circulate[s] explanations of manufactured risks and deliver[s] messages of security that citizens may otherwise not knowingly experience firsthand”).

26. See, e.g., Michael Mann, *The “CSI Effect”: Better Jurors Through Television and Science?*, 24 BUFF. PUB. INT. L.J. 211, 237 (2005) (stating that “[t]here is little reality in . . . television crime dramas . . . , but they portray the American criminal justice system in a light that most Americans are happy to accept”); David Ray Papke, *Law, Cinema, and Ideology: Hollywood Legal Films of the 1950s*, 48 UCLA L. REV. 1473 (2001) (arguing that American legal films from the late 1950s and early 1960s glorified lawyers, courtroom trials, and the rule of law in general, thereby depicting a cinematic ideology, and explaining that this production of law-related ideology derived from not only the nation’s long-standing legal faith but also from a determination in the 1950s to contrast Americanism with the perceived Communist menace). But see Norman Rosenberg, *Hollywood on Trials: Courts and Films, 1930–1960*, 12 LAW & HIST. REV. 341, 343–65 (1994) (employing the term “law noir” to refer to a subset of the “film noir” genre that presents a critical view of American life, its institutions, and the courtroom process).
27. See KUDLAC, *supra* note 7, at 10 (stating that crime-based television shows and movies contain a disproportionate amount of murder); see also Alex Altman, *What to Expect When You’re Going to Jail*, TIME, Aug. 25, 2009, available at <http://www.time.com/time/nation/article/0,8599,1918384,00.html> (discussing how popular culture and movies lead many to believe that to survive in prison, one has to pick a fight immediately upon incarceration).
28. See generally Editorial, *Crime Scene Imperfection*, N.Y. TIMES, Feb. 21, 2009, at A20 (reporting little evidence of accuracy and reliability in most forensic methods and asserting that “high-tech forensic perfection is a television fantasy, not a courtroom reality”).
29. For example, most television crime dramas do not involve New York’s disastrous Rockefeller drug laws or the 100-to-1 rule—the federal law imposing tougher penalties on defendants convicted of selling the crack form of cocaine than those caught selling the powdered form of the drug. There has been recent criticism of and efforts to overturn the infamous Rockefeller drug laws. See, e.g., Jake Mooney, *A \$20 Bag, and What Might Have Been*, N.Y. TIMES, Mar. 1, 2009, at CY2; Jeremy W. Peters, *Legislation to Overhaul Rockefeller Drug Laws Advances Swiftly*, N.Y. TIMES, Mar. 1, 2009, at A20; Jeremy W. Peters, *Assembly Votes to End Rockefeller Drug Laws*, N.Y. TIMES, Mar. 5, 2009, at A25; Jeremy W. Peters, *Paterson Is Said to Seek Narrower Overhaul of Drug Laws*, N.Y. TIMES, Mar. 11, 2009, at A26; Editorial, *Rational Sentencing*, N.Y. TIMES, Oct. 25, 2007, at A24; Editorial, *Rockefeller Laws: An End in Sight*, N.Y. TIMES, Feb. 9, 2009, at A22.

films as *Amistad*, *My Cousin Vinny*, and *To Kill a Mockingbird*), exonerated (*In the Name of the Father*), or find redemption (*Shawshank Redemption*).³⁰

If fictionalized crime and violence can and often do result in real-life aggressive behavior,³¹ what are the effects of depictions and portrayals of criminal law?³² Do representations of the criminal justice system as efficient and effective counteract the fear of crime fomented or caused by crime news stories, or somehow mitigate, retard, or discourage the aggression and violence that can follow the consumption of fictionalized crime and violence? Does fictionalized criminal law affect different segments of the population in different ways? If fictionalized representations of violence in popular entertainment are to blame for (or are a cause of) violent acts by youth,³³ what is the impact of fictionalized representations of criminal law and the criminal justice system—where lawyers are portrayed as people of integrity committed to deserving clients, courtroom trials are depicted as fair and as resulting in impartial decisions, and the law, in general, is presented as closely allied with justice³⁴—on youth?

There has also been recent criticism of and efforts to address the disparities in penalties for possession or sale of crack cocaine at the federal level. See, e.g., Editorial, *100-to-1 Rule*, N.Y. TIMES, Nov. 15, 2007, at A32; Editorial, *Fairness in Drug Sentencing*, N.Y. TIMES, May 1, 2009, at A22; Editorial, *Justice in Sentencing*, N.Y. TIMES, Dec. 12, 2007, at A34; Solomon Moore, *Rules Lower Prison Terms In Sentences For Crack*, N.Y. TIMES, Nov. 2, 2007, at A16; David Stout, *Retroactively, Panel Reduces Drug Sentences*, N.Y. TIMES, Dec. 12, 2007, at A1; Editorial, *Toward Drug Case Justice*, N.Y. TIMES, Feb. 9, 2008, at A14. Congress recently addressed this disparity, lowering the difference in sentencing from 100:1 to 18:1. See Fair Sentencing Act of 2010, 21 U.S.C. § 801 (2006 & Supp. IV 2010); ACLU, *President Obama Poised to Sign Bill Reducing Cocaine Sentencing Disparity After House Passage* (July 28, 2010), <http://www.aclu.org/drug-law-reform-racial-justice/president-obama-poised-sign-bill-reducing-cocaine-sentencing-disparit>.

30. AMISTAD (DreamWorks SKG 1997); MY COUSIN VINNY (20th Century Fox 1992); TO KILL A MOCKINGBIRD (Universal Pictures 1962); IN THE NAME OF THE FATHER (Universal Pictures 1993); THE SHAWSHANK REDEMPTION (Castle Rock Entertainment 1994).
31. See works cited *supra* note 19; Steven J. Kirsh, *Cartoon Violence and Aggression in Youth*, 11 AGGRESSION & VIOLENT BEHAV. 547, abstract, 555 (2006) (reviewing the literature “concerning the effects of animated violence on aggressive behavior in youth” and finding that while comedic elements in cartoons camouflage animated violence, thereby reducing the negative effects of violent imagery on aggressive behavior, “aggressive behavior towards peers increases following the viewing of non-comedic violent cartoons”).
32. See, e.g., Papke, *supra* note 17, at 1231–33 (noting research on the impact of court- and law-related popular culture on actual proceedings and, more generally, on what Americans think of their legal institutions); Angeliqe M. Paul, *Turning the Camera on Court TV: Does Televising Trials Teach Us Anything About the Real Law?*, 58 OHIO ST. L.J. 655, 656 (1997) (stating that “[b]ecause the majority of Americans have had no personal experience with the legal system, and . . . get their information about the world solely from television, the portrayal of justice on television is extremely important not only to the continued viability of the legal system, but also to the individual’s understanding of that system.” (footnotes omitted)); Kimberlianne Podlas, *Please Adjust Your Signal: How Television’s Syndicated Courtrooms Bias Our Juror Citizenry*, 39 AM. BUS. L.J. 1, 7, 15, 24 (2001) (investigating the effects of frequent viewing of simulated daytime courtroom shows on men and women called for actual jury service, and finding that the viewing of daytime television was more important than exposure to real-life courts in the shaping of what polled jury duty survey respondents expected of their courts).
33. Mary Bucholtz, *Youth and Cultural Practice*, 31 ANN. REV. ANTHROPOLOGY 525, 533–34 (2002).
34. See generally *supra* notes 28–30.

Drawing on my ongoing ethnographic research of the legal consciousness (i.e., the ways people understand, imagine, and use the law, as well as their attitudes and feelings towards the law³⁵) of youth in the Red Hook neighborhood of Brooklyn, New York, this article offers some observations about how fictionalized depictions and portrayals of criminal law affect youths' perceptions of the legal system, as well as the role that youth imagine for law and legal institutions in their community and their own place in working with institutions and agents of formal social control.³⁶ While my research has not focused specifically on the role of fictionalized criminal law in the development of youth legal consciousness—and while my sample is not large enough to draw generalizations about youth, in general, or Red Hook youth, in particular—this article is intended as a springboard for future research into how youth experience and respond to fictionalized criminal law and presents some initial thoughts about what is not shown or depicted in fictionalized criminal law.

Part II of this article describes the ethnographic setting of my research—the Red Hook neighborhood of Brooklyn, New York—and summarizes my research questions and qualitative research methods. In Part III, this article turns to a discussion of how a subset of my subject population—Red Hook Youth Court trainees—have experienced and responded to two examples of fictionalized criminal law, the films *Legally Blonde* and *12 Angry Men*. Part IV takes a bit of a turn, making note of what is *not* shown or depicted in fictionalized criminal law, considering the possible effects that these perspectives and omissions may have, and suggesting duties and responsibilities for legal scholars, educators, and practitioners (including those presenters and audience members at New York Law School's symposium, *The Media and Criminal Law: Fact, Fiction, and Reality TV*) in light of these effects.³⁷

II. RESEARCH AT THE RED HOOK COMMUNITY JUSTICE CENTER

Since June 2007, I have been conducting fieldwork at the Red Hook Community Justice Center (RHCJC), located near the center of Red Hook, a mixed-use

35. See generally SALLY ENGLE MERRY, *GETTING JUSTICE AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING-CLASS AMERICANS* (1990); Patricia Ewick & Susan S. Silbey, *Conformity, Contestation, and Resistance: An Account of Legal Consciousness*, 26 *NEW ENG. L. REV.* 731 (1991); Susan F. Hirsch, *Feminist Participatory Research on Legal Consciousness*, in *PRACTICING ETHNOGRAPHY IN LAW: NEW DIALOGUES, ENDURING METHODS* 13 (June Starr & Mark Goodale eds., 2002); Tracey L. Meares et al., *Seeing Crime and Punishment Through a Sociological Lens: Contributions, Practices, and the Future*, 2005 *U. CHI. LEGAL F.* 289; Jacqueline Mraz, *Of Law and the Tears of Things: Notes on the Varieties of Legal Consciousness*, 20 *POL. & LEGAL ANTHROPOLOGY REV.* 101 (1997); Laura Beth Nielsen, *Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment*, 34 *LAW & SOC'Y REV.* 1055 (2000); David M. Trubek, *Where the Action Is: Critical Legal Studies and Empiricism*, 36 *STAN. L. REV.* 575 (1984); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 *BUFF. L. REV.* 1 (1990).

36. See also Avi Brisman, *Hegemony, Resistance, and Youth E.C.H.O.'s "Drug Dealing: It's Not Worth It" Campaign*, in *SECOND ANNUAL INTERNATIONAL CRIME, MEDIA & POPULAR CULTURE STUDIES CONFERENCE PROGRAM* 30 (2010), <http://ebookbrowse.com/2010-icmpcs-conference-program-pdf-d47274234>.

37. Symposium, *The Media and Criminal Law: Fact, Fiction, and Reality TV*, 55 *N.Y.L. SCH. L. REV.* 941 (2010–11).

neighborhood in South Brooklyn located on a peninsula in the New York Harbor.³⁸ Red Hook is a disadvantaged neighborhood, with more than seventy percent of its 11,000 residents living in public housing projects, close to one-third of the men and women in the labor force unemployed, nearly one-fourth receiving public assistance, and over sixty percent of families with young children reporting incomes below the federal poverty line.³⁹ Launched in June 2000 and operating out of a refurbished parochial school that had been empty since the 1970s, the RHCJC is the nation's first multi-jurisdictional community court. Community courts—a type of problem-solving court—attempt to address neighborhood-specific problems, such as low-level criminal cases (including “quality-of-life” offenses such as prostitution and vandalism), domestic violence, drugs, and landlord-tenant disputes by trying to change the behavior of litigants with strategies based on therapeutic jurisprudence rather than just adjudicating facts and legal issues and determining guilt or innocence. At the RHCJC, a single judge (Judge Alex Calabrese) hears cases that under ordinary circumstances would appear in three different courts—civil court, family court, and criminal court. Such a consolidation purportedly allows court players to search for and identify the root causes of an individual's or community's problems and to offer coordinated, rather than piecemeal, responses.⁴⁰ Thus, for example, in criminal court at the RHCJC, Judge Calabrese can choose from an array of sanctions and services at his disposal. While he may employ standard sentences such as jail time or fines, he can also select from a menu of alternative sanctions, including community restitution projects, on-site job placement, educational workshops and GED classes, and domestic violence, drug treatment, and mental health counseling.

In addition to serving as a problem-solving court with a therapeutic jurisprudential slant and as a model for community courts in Australia, Canada, and the United Kingdom, the RHCJC serves as a community center, offering a wide range of programs for neighborhood residents, some of whom have no cases pending. These programs include (or have included): (1) Youth Court, where teenagers resolve actual cases involving their peers (e.g., assault, fare evasion, truancy, vandalism); (2) Youth Expanding Community Horizons by Organizing (Youth ECHO), a teen leadership and community organizing program in which Red Hook youth develop a message campaign about an issue affecting their lives (such as policing and jails, school, drugs, and health); (3) Police-Teen Theater Project (PTTP), a program that brings Brooklyn

38. See Avi Brisman, *Food Justice as Crime Prevention*, 5 J. FOOD L. & POL'Y 1, 14 (2009).

39. *Id.* at 15.

40. See GREG BERMAN & JOHN FEINBLATT, *GOOD COURTS: THE CASE FOR PROBLEM-SOLVING JUSTICE* (2005); Greg Berman & John Feinblatt, *Problem Solving Courts: A Brief Primer*, 23 LAW & POL'Y 125 (2001); “What Is a Traditional Judge Anyway?” *Problem Solving in the State Courts*, 84 JUDICATURE 78 (Greg Berman ed., 2000). *But cf.* Jeffrey Fagan & Victoria Malkin, *Theorizing Community Justice Through Community Courts*, 30 FORDHAM URB. L.J. 897 (2003); Victoria Malkin, *The End of Welfare as We Know It: What Happens When the Judge Is in Charge*, 25 CRITIQUE OF ANTHROPOLOGY 361 (2005); Victoria Malkin, *Community Courts and the Process of Accountability: Consensus and Conflict at the Red Hook Community Justice Center*, 40 AM. CRIM. L. REV. 1573 (2004); Victoria Malkin, *Problem-Solving in Community Courts: Who Decides the Problem?* (2003) (unpublished manuscript) (on file with the *New York Law School Law Review*).

teenagers and New York Police Department (NYPD) officers together to learn about acting, improvisation, and theater; (4) Rites of Passage, a program for young people (ages eleven through eighteen) that addresses issues young people face as they move through puberty, and which helps them develop positive self-images and a more comprehensive and healthier understanding of gender and gender relations in contemporary society; (5) a summer internship program that places juvenile offenders in positions with non-profit organizations, elected officials, and governmental entities (such as city council, the district attorney's office, and Legal Aid); (6) a mentoring program for juvenile offenders; (7) a GED program; (8) an AmeriCorps program (for ages eighteen through sixty-eight); and (9) the Red Hook Youth Baseball League.⁴¹

My research examines what young people know about the law and justice generally, as well as the nature and extent of their "legal literacy."⁴² My main objective has been to explore how youth perceive law enforcement and courts, and how they conceive of justice and fairness. While youth come to the RHCJC for a number of reasons, I am interested in how youth develop ideas about law and justice from *indirect* interaction with the legal system via their experiences with the RHCJC. My work thus focuses on the youth who do not have any cases pending—who come to the RHCJC voluntarily, rather than after an arrest—to participate in the community organizing, development, empowerment, leadership, and artistic programs noted above. I seek to discover not only how legal consciousness is shaped by the different kinds of non-punitive experiences the youth have with the RHCJC, but also how those unique experiences indirectly mold or define the substantive nature of their legal consciousness. Accordingly, my research investigates whether the youth involved with programs at the RHCJC (especially those involved with Youth Court, Youth ECHO, and the PTTP) associate the law and its agents—i.e., law enforcement—with safety and protection or disruptiveness and intrusiveness, or some combination thereof. My study attempts to uncover how experiences with the RHCJC influence

41. Although a number of hybrid community court-community center projects are now underway across the United States and abroad, see *Community Court Case Studies*, CENTER FOR CT. INNOVATION, <http://www.courtinnovation.org/index.cfm?fuseaction=page.viewPage&pageID=642&nodeID=1> (last visited Mar. 31, 2011), to the best of my knowledge, no other institution combines an element of formal social control (the court) with quite as large an assortment of non-punitive programming under the same roof. Indeed, as RHCJC staff have explained to me, the reason the RHCJC is called the Red Hook Community *Justice Center*, rather than the Red Hook Community *Court*, is to emphasize its non-carceral, non-legal services and opportunities for residents of Red Hook. Yet because the RHCJC is a locus for the resolution of criminal cases and civil disputes, as well as a site for "an array of unconventional programs that engage local residents in 'doing justice,'" *Red Hook Community Justice Center: What Is It?*, CENTER FOR CT. INNOVATION, <http://www.courtinnovation.org/index.cfm?fuseaction=Page.ViewPage&PageID=572¤tTopTier2=true> (last visited Mar. 31, 2011), those who enter the building for reasons unrelated or peripherally related to legal matters still encounter signs and symbols of law, such as walking through metal detectors and passing by the courtroom. Law, then, permeates the experience of the youth involved in programs at the RHCJC, but does not drag them through the doors of the RHCJC. This renders it a convenient, intriguing, and timely place to study legal consciousness—especially as institutions modeled on the RHCJC continue to take hold. *Id.*

42. See Hirsch, *supra* note 35, at 16.

youths' views of courts—e.g., as just, fair, and capable of reaching “the right” decisions and imposing appropriate sanctions, or as institutions of inequality where “justice” is meted out on the basis of race, class, and age.

In order to answer my research questions, I have relied primarily on participant observation and informal, unstructured, and semi-structured interviews. Participant observation has entailed accompanying program directors on recruiting trips to various local high schools, observing the interview process for positions in the various programs, attending meetings, events, and proceedings associated with different youth programs, and helping to chaperone fieldtrips to museums and colleges. I have “hung out” and “rapped” with the security officers at the entrance to the RHCJC—the first staff that visitors to the RHCJC encounter—and have tried, at all times, to pay attention to how youth, their families, and RHCJC staff interact with each other, as well as talk to each other and talk among themselves about the RHCJC, in particular, and courts and law, more generally.

Interviews have offered a way to follow up the work done through participant observation and ask about program particulars, the RHCJC as a whole, and the ways the subjects conceive of and envision the law. Where possible, I have interviewed youth program participants at various stages of their involvement in their programs (usually at the beginning of participation in the program, sometime during program participation, and again at the end), which has been crucial to understanding how youth comprehend, perceive, and conceive of law, courts, and law enforcement, as well as explore how their understanding changes over time.⁴³ Interviews with RHCJC staff have been vital for understanding the various programs' mission statements, curricula, funding sources, and recruitment strategies, as well as the “ethical climate” of the court, which may affect the values and practices of RHCJC staff and, as a result, those of the youth in RHCJC programs.⁴⁴

III. YOUTH RESPONSES TO FICTIONALIZED CRIMINAL LAW

As mentioned in the previous parts, I have spent a significant amount of time with the youth involved in the Red Hook Youth Court—almost one hundred percent

43. My research is ongoing, so it is not possible to provide a precise figure for the number of interviews I have conducted. I would estimate, however, that as of December 2010, I have informally interviewed a little over 125 youth court trainees and members (at least once) since fall 2008. That estimate includes only youth involved in the Red Hook Youth Court program, and not those involved in the Youth ECHO program or the PTPP. My research began before fall 2008, but it was more exploratory prior to that time.)

I have probably had at least one follow-up informal interview with approximately forty percent of these trainees and members. I have conducted in-depth, semi-structured interviews (lasting thirty minutes to one hour) with about ten to fifteen percent of the total number of trainees and members that I have informally interviewed. The quotations that appear in this article are taken from my in-depth, semi-structured interviews. At this juncture, I have conducted semi-structured interviews with these individuals only once. Again, please note that these estimates do not reflect informal, unstructured, and semi-structured interviews with Youth ECHO members and PTPP participants.

44. See David B. Wilkins, *Everyday Practice Is the Troubling Case: Confronting Legal Ethics*, in *EVERYDAY PRACTICES AND TROUBLING CASES* 68, 97 (Austin Sarat et al. eds., 1998).

of whom identify as either black, non-Hispanic, or Hispanic, and close to fifty percent of whom live in public housing.⁴⁵ It is within the context of my research on the Red Hook Youth Court that I have begun to consider the impact of fictionalized criminal law on youth legal consciousness. Before turning to specific fictionalized representations of criminal law (and the legal system, more generally) and the ways in which youth involved with the Red Hook Youth Court have responded to such fictionalized representations, a few words about youth court programs are in order.

Youth courts—also known as teen courts, peer juries, and student courts⁴⁶—are juvenile diversion programs designed to prevent the formal processing of juvenile offenders (usually first-time offenders) within the juvenile justice system.⁴⁷ Youth court offenders (called “respondents” at the Red Hook Youth Court, as part of the effort to avoid the stigma of official processing for criminal and delinquent behavior⁴⁸) are typically individuals between eleven and seventeen years of age who have been charged with misdemeanor or status offenses such as assault, disorderly conduct, fare evasion, harassment, possession of marijuana, possession of a weapon, theft (including shoplifting), truancy, and vandalism (including graffiti).⁴⁹ The goal of youth court is to hold offenders accountable for their actions, encourage them to take responsibility for their transgressions, offer them opportunities to make restitution for violating the law, and provide them with “fair and beneficial” sanctions that try to address the underlying reasons for their behaviors (e.g., counseling, mediation, mentoring, substance abuse evaluations and treatment, tutoring, and other educational support).⁵⁰

45. This information is based on an ongoing survey of youth court trainees that I have conducted with a researcher at the RHCJC since fall 2008.

46. JEFFREY M. SCHNEIDER, HAMILTON FISH INST. ON SCH. & CMTY. VIOLENCE, *YOUTH COURTS: AN EMPIRICAL UPDATE AND ANALYSIS OF FUTURE ORGANIZATIONAL AND RESEARCH NEEDS* 5 (2008), available at http://hamfish.org/Publications/Serial/HFI_Youth_Courts_Report.pdf.

47. *Id.* at 5, 7; Wendy Povitsky Stickle et al., *An Experimental Evaluation of Teen Courts*, 4 J. EXPERIMENTAL CRIMINOLOGY 137 (2008).

48. See, e.g., Stickle et al., *supra* note 47, at 137, 140. Stickle and colleagues, however, also point to research that has found that, “instead of taking away the negative label, diversion programs simply change the label. . . . Youth going through TC may see the program as providing official labels. If these youth are put in front of their peers they may feel embarrassed. TC may be stigmatizing rather than reintegrative, a possibility that should be examined in future research.” *Id.* at 153, 154 (citing Charles E. Frazier & John K. Cochran, *Official Intervention, Diversion from the Juvenile Justice System, and Dynamics of Human Services Work: Effects of a Reform Goal Based on Labeling Theory*, 32 CRIME & DELINQ. 157, 159 (1986)).

49. SCHNEIDER, *supra* note 46, at 7; see also Stickle et al., *supra* note 47, at 137. At the RHCJC, youth between the ages of fourteen and eighteen hear cases of respondents between the ages of ten and eighteen. I have found that the average age of the youth hearing the cases is fifteen; respondents tend to be the same age or younger, although I have never encountered a respondent who was younger than twelve. Note that, while youth courts may hear a wide range of cases, certain types of offenses are more common in some youth courts than others—usually for demographic reasons. For example, the Red Hook Youth Court tends to receive a lot of fare evasion and truancy cases, and very few dealing with trespassing. The Staten Island Youth Court hears a lot of shoplifting cases, as well as cases involving marijuana, weapons possession, and graffiti.

50. See SCHNEIDER, *supra* note 46, at 7, 9, 11; Stickle et al., *supra* note 47, at 138–40; see also Deborah Kirby Forgays & Lisa DeMilio, *Is Teen Court Effective for Repeat Offenders? A Test of the Restorative Justice Approach*, 49 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 107, 116 (2005).

The hope is that youth courts will help protect youth offenders from contact with seasoned or “hard core” offenders (who are prosecuted and punished in regular juvenile court or adult criminal court) and help youth offenders avoid the negative repercussions of a juvenile court record (because offenders who successfully complete their youth court sanctions and who continue to stay out of trouble will frequently have their records expunged).⁵¹ In addition, youth courts offer some relief to the overburdened juvenile justice system without increasing recidivism.⁵²

As of 2006, there were more than 1250 youth courts represented in almost all fifty states, processing more than 100,000 cases a year.⁵³ While youth courts possess some degree of variability,⁵⁴ they tend to follow one of four models: the adult judge model, the youth judge model, the peer jury model, or the youth tribunal model. As Stickle and colleagues explain:

The adult judge model is the most commonly used model nationally among [youth courts]. Youth are assigned to the roles of defense and prosecuting attorneys, clerk, bailiff, and jury. The adult judge presides over the hearing and has minimal involvement. Attorneys provide opening and closing statements and question the offender. The jury is responsible for deciding on appropriate sanctions for the offender. The youth judge model runs similarly to the adult judge model but uses a youth judge rather than an adult judge. The peer jury model does not involve attorneys. The jury members directly question the offender, under the supervision of an adult judge, and are responsible for providing sanctions. The final model, the youth tribunal model, uses three or four youth judges to question the offender and determine

51. See Stickle et al., *supra* note 47, at 139–40.

52. See SCHNEIDER, *supra* note 46, at 7, 9, 29; Stickle et al., *supra* note 47, at 137–39 (describing how the popularity of youth courts is “rooted in their effort to curb the pattern of repeat offending that is so familiar to juvenile offenders,” and explaining that “[o]ffenders also have the opportunity to have their record expunged if they stay out of trouble and successfully complete their sanctions. Essentially these youth are given the opportunity for a second chance, where they can learn from their mistakes and move forward without having an official record”). According to Schneider, “[y]outh courts divert about 9% of the juvenile arrests that would otherwise have to be handled by the traditional, overburdened juvenile system and they accomplish all of this on an average budget of less than \$50,000.” SCHNEIDER, *supra* note 46, at 5.

53. SCHNEIDER, *supra* note 46, at 9. Stickle and colleagues, citing 2002 data, claim that youth court programs “process nearly 100,000 cases per year.” Stickle et al., *supra* note 47, at 137. Schneider, citing 2004 data, claims that “110,000 to 125,000 youth offenders are served in youth court programs each year.” SCHNEIDER, *supra* note 46, at 9, 29. Given the rapid growth of youth court programs—to the point where it is now referred to as a “national movement”—it seems safe to surmise that the figures from both sources underestimate the current number of programs, cases, and offenders served. Stickle et al., *supra* note 47, at 137, 138.

54. Cf. SCHNEIDER, *supra* note 46, at 20 (stating that “[y]outh courts may have great variability in what they are called and, to some extent in their behaviors, but there are more similarities than differences when it comes to processing cases, bring them through the system, imposing sanctions, and following the sanctions through to their completion”).

sanctions. No jurors or attorneys are present for this type of hearing. An adult supervisor is in the room to oversee the hearing.⁵⁵

Regardless of the model, in virtually all youth courts, the youth offender must admit to involvement in the offense and must agree to participate in the hearing.⁵⁶ And in all youth courts, youth who are not part of the criminal justice system play a role in hearings or proceedings.⁵⁷

The Red Hook Youth Court combines elements of the youth judge model and the peer jury model, and consists of a peer jury, a youth judge, a youth bailiff, and two youth attorneys—one representing the community, called the “Community Advocate,” and one representing the offender/respondent, called the “Youth Advocate.” In a typical proceeding, the Community Advocate begins with an opening statement, describing to the jury (usually consisting of eight youths) the ways in which the offender/respondent’s actions could have negatively affected the community. The Youth Advocate, who has previously spent time meeting with and interviewing the offender/respondent, then presents an opening statement stressing the offender/respondent’s positive qualities. After the opening statements, the offender/respondent takes the stand and is given the opportunity to tell his or her side of the story or to make any statements he or she would like to make. The jury then questions the offender/respondent about the offense and his or her actions, behavior, and demeanor more generally, including his or her relations to parents, teachers, and peers. The jury seeks to understand the person, as well as the offense (and the circumstances around, and potential reasons, for it). After jury questioning, the judge, bailiff, Community Advocate, and Youth Advocate are permitted to ask questions. The Community Advocate and Youth Advocate then issue their closing statements (with the former stressing the potential negative impact of the offender/respondent’s actions on the community and the latter emphasizing the offender/respondent’s positive qualities). The jury then deliberates privately to review the facts of the case and the

55. Stickle et al., *supra* note 47, at 138 n.1 (citing TRACY M. GODWIN, PEER JUSTICE AND YOUTH EMPOWERMENT: AN IMPLEMENTATION GUIDE FOR TEEN COURT PROGRAMS 13–14 (1998)); *see also* SCHNEIDER, *supra* note 46, at 12 (“There are four general models of youth courts: adult judge, youth judge, youth tribunal, and peer jury. Frequently, youth courts adopt one of the four models or a combination of them. In [one study], the adult judge was the most frequently adopted model.”).

56. SCHNEIDER, *supra* note 46, at 9 n.2; Stickle et al., *supra* note 47, at 139, 143.

57. SCHNEIDER, *supra* note 46, at 7, 29 (“[Y]outh courts offer youth, who are not part of the criminal justice system, a chance to participate in the decision-making process for stopping juvenile delinquency and improving the juvenile justice system. . . . Youth courts provide volunteers with opportunities to have ‘hands-on’ experience in the legal system as well as to participate in a personal growth event.”); Stickle et al., *supra* note 47, at 139 (“[V]olunteers may also benefit from their involvement with the [youth court]. Youth volunteers take an active role in providing consequences for the illegal actions of their peers.”). Note, however, that some youth who play a role in the hearings and proceedings were, at one point in time, offenders/respondents. Indeed, many youth courts actively encourage and recruit offenders/respondents to participate in youth court hearings and proceedings as judges, jury members, bailiffs, and lawyers after the completion of their sanctions. *See, e.g.*, SCHNEIDER, *supra* note 46, at 16; Forgays & DeMilio, *supra* note 50, at 116; A.R. Shiff & D.B. Wexler, *Teen Court: A Therapeutic Jurisprudence Perspective*, 32 CRIM. L. BULL. 342 (1996); Stickle et al., *supra* note 47, at 140.

characteristics and attributes of the offender/respondent, and to determine what sanction, if any, is appropriate for the offender/respondent.⁵⁸

In order to serve on the Red Hook Youth Court, interested youths must fill out an application (which includes an essay), participate in a group interview, complete a fifteen-week training course (with classes and workshops held after school twice a week for two hours), and take a bar exam. Youth who pass the bar exam and who have had good attendance at the training sessions are invited to become “members.” The training course includes a wide range of classes and workshops led by RHCJC staff and court officers, including Legal Aid Society lawyers who work at the RHCJC, assistant district attorneys who work at the RHCJC, and AmeriCorps volunteers stationed at the RHCJC. Some of the classes and workshops are specific to youth court and cover such topics as restorative justice; offenses, consequences, and sanctions; understanding the youth offender; courtroom demeanor; roles of (youth) court personnel (e.g., judge, bailiff, jury, foreperson, community advocate, and youth advocate); and opening and closing statements. Other classes and workshops are broader in scope and have applicability beyond youth court (e.g., critical thinking, objectivity, and precision questioning).

For most training sessions, I sit in the back of the room observing the lessons and the trainees’ questions, comments, and answers. Occasionally, I assist the facilitator or join the youth in one of their games and activities associated with a particular lesson. I have also led the training sessions for offenses, consequences, and sanctions, as well as for the roles of court personnel.

In the training sessions for roles of court personnel, I frequently begin by distributing a handout that asks the trainees to describe what they think the roles of the jury, jury foreperson, bailiff, and judge are in both youth court proceedings and in “traditional” or “regular” or adult criminal court proceedings. I also ask the trainees to describe what they think the roles of the public defender/defense attorney and the prosecutor/district attorney are in adult criminal court, as well as what they think of the roles of the community advocate and youth advocate are in youth court. Before discussing the trainees’ conception or perception of these court players and the similarities and differences between criminal court personnel and youth court personnel, I show the trainees several clips from *Legally Blonde*,⁵⁹ the Robert Luketic comedy starring Reese Witherspoon as “Elle Woods,” the stereotypically rich, blonde, materialistic Delta Nu sorority sister who enrolls in Harvard Law School in an attempt to win back her preppy boyfriend.⁶⁰

58. See Stickle et al., *supra* note 47, at 139.

59. *LEGALLY BLONDE* (Metro-Goldwyn-Mayer 2001).

60. For a description of the role of “Elle Woods,” played by Reese Witherspoon in *Legally Blonde*, see, for example, Anna M. Archer, *From Legally Blonde to Miss Congeniality: The Femininity Conundrum*, 13 *CARDOZO J.L. & GENDER* 1 *passim* (2006); Christine Alice Corcos, “We Don’t Want Advantages”: *The Woman Lawyer Hero and Her Quest for Power in Popular Culture*, 53 *SYRACUSE L. REV.* 1225, 1267–70 (2003); James C. Foster et al., *Almost Too Good to Be True: Counter-Narratives in Four Films About Women Lawyers*, 40 *U. TOL. L. REV.* 643, 652–54 (2009). For a less-than-complementary review of *Legally Blonde*, see A.O. Scott, *A Rich Ditz Has Both Brains and the Last Laugh*, *N.Y. TIMES*, July 13, 2001, at E20.

First, I show the trainees a few clips in which Elle, who is serving as an intern for her professor, interacts with Brooke Taylor Windham, a famous fitness instructor—and former Delta Nu—accused of murdering her billionaire husband, Hayworth Windham. Next, I show Elle’s cross-examination of Chutney, Brooke’s stepdaughter, who has testified that she saw Brooke standing over Windham’s dead body, covered in his blood. (Brooke has fired her attorney—Elle’s professor—and has hired Elle to represent her, even though she is still a law student.)

On average, less than fifty percent of the trainees have seen *Legally Blonde*, although most of them have heard of it and know that it is a comedy.⁶¹ Regardless of whether the trainees have seen the film in full, the trainees understand that the trial is a dramatization and that it differs from what transpires in the “real world”—even if their notions of “real-world” criminal trials may be based on fictionalized accounts, such as television’s *Law & Order*.⁶²

Nevertheless, the clips provide an opportunity to distinguish between fictionalized (or dramatized) criminal law and real-world criminal law and, more fittingly, to identify the ways in which criminal court (both fictionalized and real-world) differs from youth court.⁶³ With respect to comparisons between Hollywood and real-world criminal courts, the trainees and I use the clips to explore the trial as a source for narrative

61. This comes as little surprise. Most of the trainees had not even reached the age of ten when the film was released in 2001. *Legally Blonde*, INTERNET MOVIE DATABASE, <http://www.imdb.com/title/tt0250494/> (last visited Mar. 31, 2011).

62. I have not asked trainees how or why they know that the trial in *Legally Blonde* is a dramatization and not an accurate or realistic depiction of real-world courtroom proceedings. While part of the answer may lie in the fact that the film is labeled a “comedy”—whose purpose is humor, rather than “life as it is”—the fact that Elle’s “special knowledge of trends in shoe fashion and hair perm technology” helps to win the case certainly does not confuse matters. Steve Greenfield, Guy Osborn & Peter Robson, *Genre, Iconography and British Legal Film*, 36 U. BALT. L. REV. 371, 383 n.59 (2007); see also Michael Asimow, *Popular Culture and the Adversary System*, 40 LOY. L.A. L. REV. 653, 681 (2007); cf. Robert A. Clifford, *Popular Media Paints Unrealistic Portrait of Lawyers (. . . And What We Can Do About It)*, CBA REC., Jan. 2005, at 44 (arguing that Elle’s successes in *Legally Blonde* and *Legally Blonde 2* were instances of “plain dumb luck” and that “reality is far removed from this picture”).

Note that some commentators have expressed concern that the propensity with which defense attorneys win cases on television and in film misrepresents the real-world success rates of even the top defense attorneys and creates unreasonable expectations—defendants assume that they will be represented by an Atticus Finch or Perry Mason who will achieve the same results. See, e.g., Papke, *supra* note 26, at 1480.

Such concerns may be legitimate (although I have yet to encounter similar complaints that “triumph-of-the-underdog sports movies” create unrealistic expectations of weaker or perennially losing sports teams and franchises). A.O. Scott, *In This Remake of an '80s Martial Arts Fable, It's Jacket On, Jacket Off*, N.Y. TIMES, June 11, 2010, at C8. That said, I do not think Elle’s victory in *Legally Blonde* distorts youth court trainees’ perception of defense attorney success rates; the kids know that Elle is a caricature. Perhaps more importantly, guilt-innocence is not something that happens in youth court and the youth advocate does not try to “win” the case—meaning that one can pick and choose elements from *Legally Blonde* to analyze without having to engage in a lengthy discussion about defense attorneys’ actual likelihood of victory in real-world cases.

63. I certainly make no claims to be the first or only person to use *Legally Blonde* as a teaching device. See, e.g., Timothy W. Floyd, *Moral Vision, Moral Courage, and the Formation of the Lawyer's Professional Identity*, 28 MISS. C. L. REV. 339, 357 (2009).

resolution,⁶⁴ as well as issues concerning confessions on the stand⁶⁵ and the scope and timing of cross-examination.⁶⁶ But the film is actually more instructive (at least in the context of youth court training) for fleshing out the roles of youth court personnel.

For example, in the film, the jury plays a minimal role with most of the action surrounding the prosecution, the defense, the judge, and the witnesses. In youth court, the jury takes an active role, asking the bulk of the questions and serving a sentencing function (rather than trying to determine guilt or innocence). The advocates in youth court, including the Community Advocate and the Youth Advocate, offer opening and closing statements and can pose questions to the respondent, but usually do so only after the jury has finished with its questioning.

In the film, the judge rules on issues of fact and issues of law, and spends most of her time interacting with counsel.⁶⁷ In youth court, there are no issues of law and the judge does not “rule” on anything. Rather, he or she instructs all courtroom personnel and audiences, maintains an orderly and professional environment in the courtroom, responds to requests for recess, redirects court personnel if questions are inappropriate (e.g., biased) or if there is a need to repeat questions, and may also pose questions to the respondent.

In the film, the bailiff is nowhere to be seen;⁶⁸ in youth court, the bailiff introduces the cases, instructs audience members and the respondent where to sit, assists the judge in maintaining courtroom decorum, poses questions to the respondent, and can serve as a tiebreaker for the jury, if necessary. And in the film, Brooke, the defendant, does not take the stand;⁶⁹ in youth court, the respondent is the only person to take the stand because there are no witnesses in youth court proceedings.

Legally Blonde provides a means for conveying two other lessons to youth court trainees. First, while Elle’s courtroom behavior is implausible and leaves much to be desired—except for the acquittal that she secures, that is—Elle’s interaction with Brooke, the defendant, is laudatory. During preparations for trial, Brooke refuses to provide an alibi.⁷⁰ Elle visits Brooke in prison, wins Brooke’s trust, and elicits the alibi from her: Brooke was having liposuction on the day of the murder.⁷¹ But because public knowledge of this procedure would ruin Brooke’s reputation as a fitness instructor—and because Brooke would rather go to prison for life than be exposed as

64. See, e.g., DANA POLAN, *POWER AND PARANOIA: HISTORY, NARRATIVE, AND THE AMERICAN CINEMA, 1940–1950*, at 21–22 (1986); Rosenberg, *supra* note 26; Papke, *supra* note 26, at 1480 (“[A]ctual trials do not necessarily have coherent story lines. Testimony and evidence are not parts of one big, emerging puzzle as they are in a Hollywood film.”).

65. Andrea Kupfer Schneider, *Cooperating or Caving In: Are Defense Attorneys Shrewd or Exploited in Plea Bargaining Negotiations?*, 91 MARQ. L. REV. 145, 145 (2007).

66. For a discussion of cross-examination in film, see, for example, Asimow, *supra* note 62, 680–83.

67. *LEGALLY BLONDE*, *supra* note 59.

68. *Id.*

69. *Id.*

70. *Id.* at 53:53.

71. *Id.*

a fraud—Elle promises to keep Brooke’s secret safe and to find another way to convince the jury of her innocence.⁷² Placing the respondent at ease and securing his or her trust is paramount, I tell the trainees, and Elle’s integrity—demonstrated by her unwillingness to reveal the alibi to other members of the defense counsel, despite severe pressure to do so—is worthy of emulation.

Second, in real-world criminal trials, cross-examination is often used to impeach the credibility of the testifying witness in order to lessen the weight of unfavorable testimony. While Elle succeeds in getting Chutney to admit a lie on the stand,⁷³ this is not the role of the youth court jury—or any other youth court player. Understandably, the temptation to do so may arise—especially in instances where the youth court hears separate cases involving respondents who committed an offense together (such as shoplifting or truancy) and whose versions of the facts differ. But the goal of questioning in youth court is to understand the underlying reasons for the behavior in order to prevent future offenses (of this nature) by determining a “fair and beneficial” sanction—one that helps, rather than harms, the respondent and that offers reparation to the community. Juxtaposing Elle’s cross-examination with proper youth court questioning protocol enables youth court trainees to better understand the individual roles of youth court personnel and the overall mission of youth court.

According to Professor David Ray Papke, “the pop cultural trial does not have to be ‘accurate’ in order to teach us something about law.”⁷⁴ As I describe above, youth court trainees tend to know that *Legally Blonde* does not faithfully depict the roles of real-world court players or the processes and inner-workings of real-world courts and trials—and thus my class provides an opportunity to flesh out differences between Hollywood and real-world criminal courts and the unique features of youth court proceedings. A different dynamic unfolds when the trainees view *12 Angry Men*⁷⁵ in a class on “objectivity.”⁷⁶ With the exception of the opening and closing shots, virtually the entire film takes place in the jury room where twelve jurors debate the guilt or innocence of a poor, minority teenage boy from a city slum charged with murdering his father—a crime for which the penalty is death.⁷⁷ Initially, eleven jurors

72. *Id.*

73. *Id.*

74. David Ray Papke, *The American Courtroom Trial: Pop Culture, Courthouse Realities, and the Dream World of Justice*, 40 S. TEX. L. REV. 919, 931 (1999).

75. 12 ANGRY MEN (Orion-Nova Productions 1957).

76. I have not led this training session on “objectivity,” although I often assist the facilitator and participate in the discussion about the film and about the importance of “objectivity” and “fairness.” In this session, the trainees define and discuss the term “objectivity”; consider “objectivity” in the context of the roles of the judge, jury, and bailiff; contemplate the impact of decision making that is or has been affected by personal feelings or prejudice; and participate in exercises where they attempt to identify biased and unbiased questioning.

77. In the film, the jury is instructed that a guilty verdict will be accompanied by a mandatory death sentence. 12 ANGRY MEN, *supra* note 75, at 00:02. In contemporary real-world criminal cases, the guilt/innocence phase occurs separately from the sentencing phase.

vote to convict, with “Juror # 8” (played by Henry Fonda)⁷⁸ the sole dissenter. Juror # 8 slowly convinces the rest of the jurors that the case is not cut and dry. After much heated debate, the jury votes to acquit.

Initially, the trainees tend not to be too interested in the film.⁷⁹ After all, “it was like an old-time movie—it was black and white,” said one trainee,⁸⁰ involving “a bunch of white dudes sitting around a table talking,” as another trainee described it.⁸¹ But soon, the trainees become enthralled and want to know whether the film is a good representation of what transpires in jury rooms—with some trainees curious about the “techniques” the jurors use to reach their decision (e.g., voting with a show of hands, voting by a secret ballot, passing notes between jurors, reading notes taken at trial, reexamining evidence, asking each other questions), and others fixated on the debate, which is, at various times, acrimonious, fierce, impassioned, and reasoned.

Papke claims that, more so than any other film, *12 Angry Men* is “an inspiring dramatic commentary on the jury as an embodiment of popular sovereignty and on the possibility of justice under law.”⁸² Papke asserts that *12 Angry Men* conveys a powerful message—that individuals “can and should overcome their differences and reason together. . . . Pop cultural works about romantic action heroes or women in peril might provide escape, but *12 Angry Men* truly edifies. It is unique in the way it prompts us to believe in juries and, by extension, in our fellow man.”⁸³ Although

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78. *Id.* at 00:11. Apart from two of the jurors swapping names while leaving the courthouse (Juror # 8, played by Fonda, identifies himself as “Davis” and Juror # 9, played by Joseph Sweeney, introduces himself as “McArdle,” *id.* at 01:34), no names are used in the film: the defendant is referred to as “the boy,” and the two witnesses are referred to as “the old man” and “the lady across the street.” *Id. passim.*
79. It bears mentioning that, when it was initially released, *12 Angry Men* received favorable reviews. *See, e.g.,* A.H. Weiler, *Screen: ‘12 Angry Men’; Jury Room Drama Has Debut at Capitol*, N.Y. TIMES, Apr. 15, 1957, available at <http://movies.nytimes.com/movie/review?res=9f02e3de1730e23bbc4d52dfb266838c649ede&scp=1&sq=A.H.%20Weiler,%20Screen:%20%2712%20Angry%20Men%27%3B%20Jury%20Room%20Drama%20Has%20Debut%20at%20Capitol&st=cse> (last visited Mar. 31, 2011) (stating that “[i]t makes for taut, absorbing and compelling drama that reaches far beyond the close confines of its jury room setting,” and concluding that it is “powerful and provocative enough to keep a viewer spellbound”). While it did not fare particularly well at the box office—in part because of the advent of color and widescreen productions—and while it lost all three Oscar nominations to *THE BRIDGE ON THE RIVER KWAI* (Horizon Pictures 1957)—history has treated the film quite well. *A.B.A. Journal* ranked it second in its article, *The 25 Greatest Legal Movies*—behind *TO KILL A MOCKINGBIRD*, *supra* note 30. Richard Brust, *The 25 Greatest Legal Movies*, A.B.A. J., Aug. 2008, at 38.
80. Interview with K., Red Hook Cmty. Justice Ctr., in Brooklyn, N.Y. (June 22, 2010) (on file with the *New York Law School Law Review*).
81. Field Notes of Avi Brisman, Red Hook Youth Court Training Session (Nov. 3, 2008) (on file with the *New York Law School Law Review*). During the discussion about the film, the facilitator usually points out that contemporary juries are likely to be comprised of both men and women of different races and ethnicities. For a discussion of the jury in popular culture, see David Ray Papke, *12 Angry Men Is Not an Archetype: Reflections on the Jury in Contemporary Popular Culture*, 82 CHI.-KENT L. REV. 735, 737–42 (2007), noting, in particular, that “[u]nlike jurors in the 1950s, during which *12 Angry Men* was produced, today’s pop cultural jurors are likely to include women as well as men and African Americans as well as Caucasians.” *Id.* at 739.
82. Papke, *supra* note 81, at 735.
83. *Id.* at 746.

Papke is careful to point out that *12 Angry Men* deviates from the standard pop-cultural portrayal of the jury,⁸⁴ he situates *12 Angry Men* within the broader context of pop-cultural courtroom trials, which, he maintains, “invite confidence in the rule of law” and “suggest a dream world of justice.”⁸⁵ As Papke explains,

the greatest impact of pop cultural portrayals of courtroom trials involves our societal understanding of law as a large, abstracted concept. The pop cultural trial serves as a symbol of law. The symbol obfuscates inequalities of race and class. It assures us that legal representation is available and effective. It probes facts and uses objectivity to reach fair decisions. It inspires and reassures rather than boring or alienating. The pop cultural courtroom trial does not create reality but rather portrays, symbolizes, and serves up an acceptable version of reality under a rule of law. Americans may not be particularly law-abiding, but we do like to think of ourselves as a people living by the rule of law.⁸⁶

My findings comport with Papke’s observations: *12 Angry Men* inspires confidence in the trainees about the rule of law—or, to borrow Professor Norman Rosenberg’s language, the film suggests an “affirming view of the law” for the trainees.⁸⁷ K., for example, a fourteen-year-old African American girl, described how *12 Angry Men*

84. Papke, *supra* note 74, at 922. Normally, jurors are “undeveloped as individual characters. . . . [U]sually, we do not get to know jurors, and the jury serves more as collective character, one representing the people and decision-making.” *Id.* The portrayal of the jury in *12 Angry Men*, Papke explains, differs from the pop-cultural norm in two ways. First,

individual jurors come alive as characters [in *12 Angry Men*], and the jury appears almost exclusively in the deliberation room rather than the courtroom. A handful of other pop cultural works also include one or both of these features, but no other pop cultural work employs these features so effectively to endorse the jury as an institution.

Papke, *supra* note 81, at 742. Second, Papke argues that *12 Angry Men*

deviates from the standard pop cultural work featuring a jury . . . in its willingness to actually portray the jurors deliberating. . . . Viewers can watch the jurors learning to deliberate and then bringing what they have learned to bear. Only a handful of other films attempt something comparable, but the other films neither strive for the same endorsement of deliberation nor approach *12 Angry Men*’s winning portrayal of deliberation in action.

Id. at 745. Papke acknowledges that films such as *SUSPECT* (TriStar Pictures 1987), *TRIAL BY JURY* (Morgan Creek Productions 1994), *THE JUROR* (Columbia Pictures 1996), *JURY DUTY* (TriStar Pictures 1995), and *RUNAWAY JURY* (Regency Enterprises 2003) either individuate jurors or show deliberations, Papke, *supra* note 81, at 743–48, but none of them instill faith in the jury system—none “conveys the message that law leads to justice . . . [and] that democracy is most possible under a rule of law.” Papke, *supra* note 26, at 1484.

85. Papke, *supra* note 74, at 920; *see also* Papke, *supra* note 26, at 1486 (“[Hollywood legal films of the 1950s] are ‘golden’ in terms of not only the quality of their screenwriting, directing, and acting but also their presentations of lawyers, trials, and law in general. The films endorse the rule of law; they inspire belief in that rule of law. . . . The legal process—even in the Hollywood film—does not always get things right; it does always deliver justice. But still, all the films speak to the *possibility* of justice under a rule of law.” (emphasis added)).

86. Papke, *supra* note 74, at 931–32.

87. Rosenberg, *supra* note 26, at 346.

showed “the importance of not being afraid to stand alone”⁸⁸—a statement that resonates with Rosenberg’s comment that *12 Angry Men* presents the “jury-room debate” as a legal process that “provides a unique forum for overcoming both individual passions and interpretive difficulties,”⁸⁹ as well as Papke’s assertion that the jurors in *12 Angry Men* “have demonstrated that under a genuinely honored rule of law, one can overcome bias and personal demons.”⁹⁰ For *K.*, *12 Angry Men* is compelling because of its similarities to youth court jury deliberations:

[J]ust [as] in our deliberations, it showed what it’s like to deliberate and if someone has a different opinion how they have to, like, speak their mind about it so that everyone else can know and we don’t give the wrong sanction—so that we continue to give fair and beneficial sanctions.⁹¹

When I asked *K.* about her television viewing habits, *K.* admitted to watching *Law & Order* and *Crime Scene Investigation (CSI)*—programs that she said “are fake . . . they don’t really, like, tell you what it’s like to be one of those people [lawyers, judges].”⁹² When I pressed *K.* and inquired why she believed that *Law & Order* and *CSI* were “fake,” she replied without equivocation, “[I]t’s scripted, it’s a TV show. . . . [Y]ou get the feeling it’s not a very real situation . . . like, things like that could happen but in this case, it’s just an actor.”⁹³ *K.* thought, on the other hand, that both the process and the result in *12 Angry Men* were realistic.⁹⁴ With respect to the jury deliberations, *K.* stated that *12 Angry Men* “shows how, like, jurors, like, argue to get their point across.”⁹⁵ With respect to the end result—the jury’s decision to acquit the accused—*K.* stated, “I think that—that kind of thing happens in real life because in a regular courtroom, as opposed to this courtroom [youth court], if a juror has reasonable doubt you can’t . . . sentence that person—they’ll just be found not guilty.”⁹⁶

88. Interview with *K.*, *supra* note 80.

89. Rosenberg, *supra* note 26, at 346.

90. Papke, *supra* note 26, at 1484 (footnote omitted).

91. Interview with *K.*, *supra* note 80.

92. *Id.*

93. *Id.*

94. *Id.* According to Papke, “[t]he jury is used much less frequently than most Americans realize, and the public manifests a troubling disdain for jury duty. Many Americans try every trick imaginable to avoid serving on a jury, and in some jurisdictions sheriffs have had to climb into their vehicles, head to the malls, and literally round up jurors.” Papke, *supra* note 81, at 747–48 (citing Susan Carol Losh et al., “Reluctant Jurors”—*What Summons Responses Reveal About Jury Duty Attitudes*, 83 JUDICATURE 304 (2000)). I did not ask *K.*, nor have I queried other youth court trainees or members, about their beliefs about the frequency of jury trials.

95. Interview with *K.*, *supra* note 80.

96. *Id.*

S., a fourteen-year-old Hispanic girl,⁹⁷ became very animated when discussing the jury in *12 Angry Men*:

I like the way they deliberate and the way that they've really put their—their self into the situation and they really think outside the box, that they don't only think about what happened in the case, but they like they also read between the lines and figure out, “is this really true?” and, like, they see the scene in their head. Like, that's what I liked. And then the anger, and the frustration just coming out of trying to figure out if the kid was really innocent or guilty.⁹⁸

When I asked S. whether *12 Angry Men* was realistic and whether it was a good reflection of what she thought happened in real-world jury deliberations, S. thought there might a bit too much drama in *12 Angry Men*—or that there is not quite that much drama in real jury deliberations—but replied: “I think it's honestly, like, a somewhat good reflection. . . . [I]t reflects the ways where it's supposed to. . . . It highlights the points where a court jury really reacts in trying to figure out if a person is guilty or innocent.”⁹⁹ S. added that, notwithstanding the dramatization, the jury deliberations in *12 Angry Men* represented how people should take the time to consider a case¹⁰⁰—a position that bolsters Papke's contention that “even though viewers and readers know these trials are ‘only’ entertainment, pop cultural trials help develop and fortify certain beliefs.”¹⁰¹

JC and CP, both sixteen-year-old African American boys,¹⁰² were less effusive about *12 Angry Men* than K. and S., but both seemed to find the film instructive for their positions as youth court members. For example, JC stated: “Everybody [the jurors in *12 Angry Men*] was just saying, too, you know, ‘the kid is bad’—like, they didn't really pay attention to what about the kid . . . it was one person [Fonda] that was saying, that, ‘oh, you know, you should actually, like, give it a listen’”¹⁰³ In particular, JC seemed to think that the film was relevant in “deliberation situations like the debate about what to do when it comes down to sanctions.”¹⁰⁴ Similarly, CP did not make any connections between jury deliberations in *12 Angry Men* and real-world jury deliberations—or draw any inferences about what real-world jury deliberations are like or should be like from *12 Angry Men*. But, like JC, CP seemed to feel that the film germane for youth court purposes:

97. Interview with S., Red Hook Cmty. Justice Ctr., in Brooklyn, N.Y. (June 15, 2010) (on file with the *New York Law School Law Review*).

98. *Id.*

99. *Id.*

100. *Id.*

101. Papke, *supra* note 74, at 920.

102. Interview with JC, Red Hook Cmty. Justice Ctr., in Brooklyn, N.Y. (June 29, 2010) (on file with the *New York Law School Law Review*); Interview with CP, Red Hook Cmty. Justice Ctr., in Brooklyn, N.Y. (June 30, 2010) (on file with the *New York Law School Law Review*).

103. Interview with JC, *supra* note 102.

104. *Id.*

I think it was a perfect model of consensus thinking, or building. I feel like it was a great way to show people, like the trainees, that this is what it's like deliberating and this is what y'all should be like. Y'all don't always have to agree, but the fact that y'all are able to say *why* y'all disagree or y'all agree is better to help y'all understand each other and if you're understanding each other, y'all are able to find level ground to vote on a sanction for it.¹⁰⁵

Whereas *JC* and *CP*'s comments suggest that *12 Angry Men*, at the very least, arouses excitement about youth court and provides a paradigm for how to behave as youth court jury members, *K*'s and *S*'s reactions to and impressions of *12 Angry Men*, as well as those of other youth court trainees and members, seem to support Papke's and Rosenberg's comments that the film inspires confidence in the rule of law, more generally, and the criminal justice system, more specifically. Conversations and interviews with other youth court trainees and members have revealed a little more—the *ways in which* and the *reasons why* the film has this “law affirming” effect.

Many, if not most, of the kids with whom I interact have had negative interactions with law enforcement personnel or have family, friends, and neighbors who have had negative experiences with the criminal justice system and the NYPD. While only a small percentage of the youth court trainees and members have themselves been arrested, most of them have been stopped by the police at some juncture, virtually all of them know people who have been arrested, and many have relatives or know people who either are or have been incarcerated. Thus, many of the youth court trainees enter the training with negative or tepid feelings about law enforcement and the criminal justice system¹⁰⁶—perceptions that are consistent with the literature on “legal cynicism.”¹⁰⁷

105. Interview with *CP*, *supra* note 102.

106. Youth in other programs at the RHCJC often express distrust and lack of confidence in law enforcement and the criminal justice system at the outset of their participation in RHCJC programs and many continue to possess negative or lukewarm perspectives on law enforcement and the criminal justice system throughout and after their involvement in RHCJC programs. In my dissertation, I am exploring the tension between these stated beliefs and youths' willingness to voluntarily participate in pro-social, “pro-law” programs at an institution of formal social control.

107. See, e.g., TOM R. TYLER & YUEN J. HUO, TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS xiv–xv (2002) (Russell Sage Found. Ser. on Trust Ser. No. 5); Lawrence D. Bobo & Devon Johnson, *A Taste for Punishment: Black and White Americans' Views on the Death Penalty and the War on Drugs*, 1 DU BOIS REV. 151 (2004); Richard R.W. Brooks, *Fear and Fairness in the City: Criminal Enforcement and Perceptions of Fairness in Minority Communities*, 73 S. CAL. L. REV. 1219 (2000); Rod K. Brunson, “Police Don't Like Black People”: African-American Young Men's Accumulated Police Experiences, 6 CRIMINOLOGY & PUB. POL'Y 71 (2007); Patrick J. Carr et al., Keating, *We Never Call the Cops and Here Is Why: A Qualitative Examination of Legal Cynicism in Three Philadelphia Neighborhoods*, 45 CRIMINOLOGY 445 (2007); Jennifer E. Cobbina, Jody Miller & Rod K., *Gender, Neighborhood Danger, and Risk-Avoidance Strategies Among Urban African-American Youths*, 46 CRIMINOLOGY 501 (2008); John Hagan & Celesta Albonetti, *Race, Class, and the Perception of Criminal Injustice in America*, 88 AM. J. SOC. 329 (1982); Robert J. Sampson & Dawn Jeglum Bartusch, *Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences*, 32 LAW & SOC'Y REV. 777 (1998); Richard Scaglion & Richard G. Condon, *Determinants of Attitudes Toward City Police*, 17 CRIMINOLOGY 485 (1980); Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 OHIO ST. J. CRIM. L. 231 (2008).

While *12 Angry Men* “inspire[s] confidence and . . . proffer[s] encouraging lessons about law in American life,”¹⁰⁸ and its overall effect is to instill “pride and commitment regarding what juries can do and what they represent,”¹⁰⁹ the film does not begin this way. At the start of the film, the criminal justice system does not come across as accurate, efficient, fair, or streamlined (the way it does in many examples of courtroom legal dramas). The defendant’s life (and justice, more generally) is in an exceptionally precarious position and racial prejudice is explicit.

As noted above, almost all of the youth court trainees are either black, Non-Hispanic, or Hispanic; most of them are poor. Many of them identify with the defendant although he appears for only a few seconds at the beginning of the film. For example, when I spoke with *I*—a fifteen year-old African American youth court member¹¹⁰—more than eight months after he watched *12 Angry Men* in his training session, the film had continued to have a profound effect on him. As *I* explained:

Some of them [the jury members] were racists and the other guy [Fonda], like, he gave the kid a chance. Like, he [Fonda] said that anything could happen. . . . [J]ust ‘cause he’s black, it doesn’t mean he [the accused] did it. Anything could happen, he gave the kid a chance. And I feel—I feel that was cool of him. I feel that that was what youth court was about—not jumping to conclusions.¹¹¹

It is worthy of note that *I*. (who is African American) remembers the defendant as “black”; in the film, the accused in the film is not black, although he is referred to as a member of a minority group. Aside from the issue of race and ethnicity, the theme of a “second chance” came up a number of times in speaking with *I*. (as it has in conversations with other youth court trainees and members).¹¹² According to *I*:

I think [*12 Angry Men* is] realistic ‘cause I think . . . some racism goes around the world still and there’s some people that really—they try to give people chances ‘cause it’s their life they’re talking about, ‘cause imagine you was in their place, you wouldn’t want that happening to you. . . . Everybody deserves a second chance I got a lot of second chances in my life. When I was in the sixth grade, I used to screw up a lot. My parents used to get mad at me I’m still on the verge of screwing up, but I’m trying to change my life around. That’s another reason why I joined the youth court—to change my life around.¹¹³

108. Papke, *supra* note 74, at 920.

109. Papke, *supra* note 81, at 742; *see also* Rosenberg, *supra* note 26, at 346 (describing how “*Twelve Angry Men* suggests that jury deliberations may even provide a microcosm of a larger democratic process”).

110. Interview with *I*, Red Hook Cmty. Justice Ctr., in Brooklyn, N.Y. (June 23, 2010) (on file with the *New York Law School Law Review*).

111. *Id.*

112. The concept of youth court as a “second chance” appears in scholarly literature on youth courts as well. *See, e.g.*, Stickle et al., *supra* note 47, at 139; Alan Freer, Recent Legislative Development, *Utah Youth Court Diversion Act*, 1999 UTAH L. REV. 1151 (“Essentially, Youth Court is a ‘second chance’ system where youth participants, rather than juvenile courts, determine appropriate disciplinary measures for youth guilty of minor offenses.”).

113. Interview with *I*, *supra* note 110.

I. very much sees himself in the character of the accused—as a teenage minority given another opportunity. But *I.* also regards himself as a member of youth court performing the role of Juror # 8 (Fonda)—creating an alternative to punishment for a young person who has run afoul of the law:

I don't like injustice, discrimination, and people who jump to conclusions. . . . I like the part [of youth court] when, like, you give the kids chances to do better. Instead of going to criminal court, like, they could just come to youth court and get sanctioned by their peers . . . Nobody's being hard on them or nothing like that—no adults. . . . [Youth court] is a second chance for juveniles to turn their lives around. . . . [W]e're not here to judge them. We're here to help them so that they don't make the same mistakes over and over.¹¹⁴

While I would agree that youth court does give young people a “second chance,” it is interesting that *I.* believes that this is what Juror # 8 did in *12 Angry Men*. It would, perhaps, be more accurate to describe Juror # 8 as planting the seeds of doubt or working to overcome personal bias and racial and ethnic animus. After all, if the accused in *12 Angry Men* did not commit the crime, he does not need a “second chance,” he just needs a sufficiently patient and open-minded jury to consider the relative strengths and weaknesses of the witness testimony and evidence presented against him. But this is somewhat beside the point. The more important matter is that while some youth court trainees and members regard *12 Angry Men* as realistic because they can identify with the accused, for many of them *12 Angry Men* arouses confidence in the rule of law (or, at least, in criminal justice processes) and inspires them to believe that they can play a part in the system and in achieving justice. In the next Part, I consider what is *not* shown or depicted in fictionalized criminal law and consider the possible impact of these perspectives and omissions. I also suggest ways in which members of the legal professions might respond, knowing that the general public's (i.e., those without formal legal training) legal literacy and legal consciousness may well be heavily informed by fictionalized accounts of criminal law and legal proceedings.

IV. THE EFFECT OF WHAT IS NOT DEPICTED IN FICTIONALIZED CRIMINAL LAW

My subject population probably watches the same amount of television as, if not more than, the average high school student.¹¹⁵ I do not know what percentage of their total time watching television is devoted to courtroom legal dramas or whether

114. *Id.* *I.*'s comments evoke those of Stickle and colleagues, who explain, “the [youth court] process is seen as beneficial, because the sanctions are handed down by the offender's peers rather than an intake officer. The youth is receiving judgment by his/her peers, similar to an adult jury trial—a right typically not extended to juveniles.” Stickle et al., *supra* note 47, at 139.

115. Philip Kasinitz, *Red Hook: The Paradoxes of Poverty and Place in Brooklyn*, in CONSTRUCTIONS OF URBAN SPACE 253, 270 (Ray Hutchinson ed., 2000) (“[W]ith the decline of *local* public spaces, semi-public spaces, and institutions, Red Hook Houses residents, particularly youth, spend an enormous amount of time in the arms of mass media. Video tape, cable TV (the Red Hook Houses were among the first places in Brooklyn wired for cable), and rap music all make connections across physical space, presenting an homogenized and trans-local, if ghetto-specific, set of images.”).

this percentage is greater than or less than that of the average high school student. Virtually all of the youths who come to the RHCJC (whether they are involved with youth court or another youth program) can, at the very least, list a couple of “crime” or “crime-related” programs or courtroom legal dramas.¹¹⁶ And some have suggested (without prompting) that shows such as *Bones*, *CSI*, *Law & Order*, and *Numb3rs* had incited an interest in becoming a private investigator or FBI agent.¹¹⁷ I also do not know how frequently my subject population watches films (rather than television programs) that fall into the fictionalized crime or fictionalized criminal law genre. Finally, I have not examined how white, affluent youths respond to *Legally Blonde* and *12 Angry Men*, or any other film for that matter. Thus, there is nothing randomized about my study.

That said, based on the research that I have conducted, I believe I can make two statements about what does *not* appear in fictionalized criminal law and can speculate as to what effect this might have and what we (presenters and audience members at New York Law School’s symposium, *The Media and Criminal Law: Fact, Fiction, and Reality TV*,¹¹⁸ as well as practitioners and educators, more generally) might do about it.

First, there is a lot of plea bargaining in criminal justice,¹¹⁹ but relatively little on television and in film. As Papke writes, “Hollywood creates an idealized courtroom and courtroom proceeding, one which has little to do with the tawdry physical

116. *Law & Order* and *CSI* tend to be programs with which the youth are most familiar and are most likely to watch. Youth court members also indicated that they watch *Bones* (Fox Broadcasting Company Sept. 13, 2005), *Street Court* (Strand Creative Group Sept. 21, 2009), and various programs on the truTV network (Turner Broadcasting System, Inc.).

117. Scholars who have studied the “*CSI* effect” have described the impact of forensic science crime dramas on educational and career pursuits. See works cited *supra* note 26; Cooley, *supra* note 25, at 486 (stating that forensic science crime dramas “have ignited an unprecedented interest in forensic science at all levels of education,” but cautioning that “the onslaught of college students pursuing forensic science degrees (currently and in the future) is troublesome”).

118. Symposium, *The Media and Criminal Law: Fact, Fiction, and Reality TV*, 55 N.Y.L. SCH. L. REV. 941 (2010–11).

119. See, e.g., THOMAS H. COHEN & TRACEY KYCKELHAHN, U.S. DEP’T OF JUSTICE, FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 2006 (2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fdluc06.pdf> (finding that defendants plead guilty in ninety-five percent of all cases); ANGELA J. DAVIS, ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR 43 (2007) (“[P]lea bargaining is one of the most pervasive practices in the criminal justice system. Almost all criminal cases are resolved with a guilty plea by the defendant.”); MALCOLM C. YOUNG, THE SENTENCING PROJECT, COMMENTS AND RECOMMENDATIONS SUBMITTED TO THE UNITED STATES SENTENCING COMMISSION FOR THE 2005–2006 AMENDMENT CYCLE 3 (2005) (noting the high rates of guilty pleas across all jurisdictions, but pointing out that there is some variance with respect to the type of offense and that drug offenses represent the conviction category most likely to be resolved with a plea bargain); Timothy Lynch, *The Case Against Plea Bargaining*, REG. MAG., Fall 2003, at 24 (“Fewer than 10 percent of the criminal cases brought by the federal government each year are actually tried before juries with all of the accompanying procedural safeguards noted above. More than 90 percent of the criminal cases in America are never tried, much less proven, to juries. The overwhelming majority of individuals who are accused of crime forgo their constitutional rights and plead guilty.”).

settings and bureaucratic realities of sentence-threatening and plea-bargaining that dominate most urban courthouses.”¹²⁰

Second, problem-solving courts are becoming more and more prevalent.¹²¹ While the Red Hook Community Justice Center’s multi-jurisdictional community court represents just one type of problem-solving court, most problem-solving courts, in some way, symbolize a shift in the purpose and scope of courts, as well as in the nature legal proceedings and representation. Although we have experienced an abundance (some might say, *over*-abundance) of television programs about small claims courts and other low-level courts (e.g., *Curtis Court*,¹²² *Divorce Court*,¹²³ *Judge Hatchett*,¹²⁴ *Judge Joe Brown*,¹²⁵ *Judge Judy*,¹²⁶ *Judge Mathis*,¹²⁷ *Judge Mills Lane*,¹²⁸ *The People’s Court*,¹²⁹ *Power of Attorney*,¹³⁰ *Texas Justice*¹³¹), we have yet to encounter a single show about problem-solving courts.¹³²

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120. Papke, *supra* note 26, at 1478; *see also* Papke, *supra* note 74, at 926 (contrasting the importance of plea bargaining in the real-life criminal process with its virtual absence in pop culture); Papke, *supra* note 81, at 737 (“A large portion of American popular culture is law-related, and an especially common event in law-related popular culture is the courtroom trial.”). *See generally* Papke, *supra* note 17, at 1231 (“The average adult American routinely normalizes courtroom scenes from cheap fiction, film, and television; he or she easily brings the courtroom scene within his or her ken. When Americans read about, listen to, or watch popular courtroom drama, it all makes perfectly good sense to them. We appreciate pop cultural courtrooms as not only places that determine guilt and innocence but also sources of lessons about life in general. The courtroom is one of our most familiar and best-liked cultural conventions.”).
121. *See, e.g.*, Anthony C. Thompson, *Courting Disorder: Some Thoughts on Community Courts*, 10 WASH. U. J.L. & POL’Y 63, 63 (2002) (stating that problem-solving courts “have burst onto the judicial landscape almost overnight”).
122. *Curtis Court* (King World Productions, Inc. Sept. 11, 2000).
123. *Divorce Court* (20th Century Fox Television Aug. 30, 1999). *Divorce Court* has actually had three lives in syndication: 1957–1969; 1985–1992; and 1999–. *Divorce Court*, INTERNET MOVIE DATABASE, <http://www.imdb.com/title/tt0133300/> (last visited April 8, 2010); *Divorce Court*, INTERNET MOVIE DATABASE, <http://www.imdb.com/title/tt0094443/> (last visited April 8, 2010); *Divorce Court*, INTERNET MOVIE DATABASE, <http://www.imdb.com/title/tt0282291/> (last visited Apr. 8, 2010).
124. *Judge Hatchett* (Sony Pictures Television Sept. 2000). *Judge Hatchett* aired from 2000–2008. *Edward L. Kenney, Hatchett: There’s Still Work to be Done*, NEWS J. (Wilmington, Del.), Jan. 18, 2010, *available at* 2010 WLNR 1136073.
125. *Judge Joe Brown* (Paramount Domestic Television Sept. 1998).
126. *Judge Judy* (Paramount Television Sept. 16, 1996).
127. *Judge Mathis* (Syndicated Productions Sept. 29, 1998).
128. *Judge Mills Lane* (Paramount Television Aug. 17, 1998).
129. *The People’s Court* (R.C. Entertainment Fall 1981).
130. *Power of Attorney* (Twentieth Century Television Aug. 20, 2000).
131. *Texas Justice* (Fox Television Jan. 2001). *Texas Justice* aired for four-and-a-half seasons—from January 2001 until September 2005. *Texas Justice*, INTERNET MOVIE DATABASE, <http://www.imdb.com/title/tt0282332/> (last visited Apr. 8, 2010).
132. *See generally* Michael M. Epstein, *Judging Judy, Mablean and Mills: How Courtroom Programs Use Law to Parade Private Lives to Mass Audiences*, 8 UCLA ENT. L. REV. 129 (2001) (discussing the aforementioned television programs).

I am not suggesting new programs, such as *Law & Order: Plea Bargaining* or *Judge Alex Calabrese*—a reality-television show about how a single judge at the RHCJC presides over criminal, family, and housing court cases. But I do think that we need to be attuned to *the ways* in which the general public (those without legal training) learns about legal processes, more generally, and the criminal justice system, more specifically; we need to be aware of *what* they learn and its impact—how it affects their legal consciousness.

Just as the mass media tend to depict violence and crime as more prevalent (as discussed in Part I), fictionalized criminal law tends to portray *the trial*—where everyone gets to tell his or her story and where defense attorneys have unlimited resources to track down witnesses and locate evidence—as normative. The fact is that *the trial* is a rarity¹³³—something that often comes as a shock to youth and adults appearing in court for the first time. For example, one Red Hook Youth Court member, *C.*, who had been arrested and brought before the Family Court at the Red Hook Community Justice Center¹³⁴ prior to participating in youth court, explained:

When I first was going to court, I thought that I would have a jury and all this thing and all this grand stuff and I came up. Then it was just like, okay, there's a prosecutor here, there's a judge there, and then there's the legal aid guy there. For the first day of court they give you a legal aid. Then it was like, okay, 'do this, do this, do that, do this, do that, plead this, and say this and say that' and then 'this will happen to you and that would happen to you.' Then they're in court talking about me and my fate and then I'm not understanding everything that they're saying, all I'm hearing is 'say this and that and you'll get this and that' and I'm like, 'okay, so why is this good if I'm gonna get probation?' and then it was like 'cause it'll just be off your record.' . . . That's the reality of it. . . . I think it is less personal and it's more—it's more business and . . . it's less about you and it's more about just getting done with you, like, just getting—like, okay, you did this, just—in hopes that you don't do it again, here's a punishment.¹³⁵

When I asked *C.* why he thought there would be a jury for his case, he explained that most of what one learns, one learns from television: "I've never actually been to court until that actual time. You see stuff on TV, you know. . . . I kind of thought it would be something like that."¹³⁶

133. See Papke, *supra* note 74, at 926 ("[W]e of course have to acknowledge what most movies, television series, and novels do not mention: the great majority of cases never get to trial. Charges are dropped, sentences are threatened, and pleas are bargained."); Rosenberg, *supra* note 26, at 365 (stating that films such as *12 Angry Men* and *The Young Philadelphians* are "popular legal texts that unabashedly celebrate court trials for providing closure to controversial stories and, through the magic of courtroom process, for enunciating translations that seem to represent, fairly and accurately, the stories from daily life").

134. Interview with *C.*, Red Hook Cmty. Justice Ctr., in Brooklyn, N.Y. (June 30, 2010) (on file with the *New York Law School Law Review*).

135. *Id.*

136. *Id.*

C.'s comments are not atypical for either youth in family court or adults at criminal court. Both come to court expecting a version of the adversarial system that they have seen on television or in film.¹³⁷ But they encounter something different¹³⁸—and something potentially much more different at a problem-solving court with a therapeutic jurisprudence orientation.

Elsewhere, I have begun to explore whether the less adversarial nature of problem-solving courts (especially those with a therapeutic jurisprudence philosophy) helps to mitigate litigants' shock of being in court, whether the system disrupts their perception of courts (or disappoints them, if they were expecting a trial), or whether they even notice the difference.¹³⁹ My point here is that if fictionalized criminal law—in both television and film—presents a version of criminal law and legal proceedings that stands in contrast to the realities of real-world criminal law and legal proceedings, then I think we owe it to ourselves, to our profession, and to our

137. A number of scholars have confirmed my own findings in this regard. See, e.g., Valerie P. Hans, *Law and the Media: An Overview and Introduction*, 14 *LAW & HUM. BEHAV.* 399, 399 (1990) (explaining that, “[b]ecause a relatively small proportion of the public has direct experience with the justice system, public knowledge and views of law and the legal system are largely dependent on media representations” (citing *JUSTICE AND THE MEDIA: ISSUES AND RESEARCH* (Ray Surette ed., 1984))); Kimberlianne Podlas, “*The CSI Effect: Exposing the Media Myth*,” 16 *FORDHAM INTELL. PROP. MEDIA & ENT. L.J.* 429, 443–44 (2006) (“Since most people do not read statutory or scholarly legal resources, they tend to learn about the law from secondary sources. . . . [M]ost people learn about law from the media, and specifically, television. . . . Television is also our principal source of popular legal culture. Although only a few people have ever entered a courtroom, millions have seen one on TV.” (footnotes omitted)); Shelton, *supra* note 24, at 333 (“Throughout mediated society, individuals and groups form a wide range of perceptions about ‘crime,’ ‘criminals,’ and the ‘administration of justice’ that often vary based on demographics and life experiences. These perceptions are influenced by the different ways in which the interplay between criminals, witnesses, victims, and crime-fighters are portrayed in both fiction and nonfiction alike. In turn, the mass communications or representations of these perceptions construct a cultural awareness of adversarial justice that transcends or is bigger than any alleged “*CSI effect*,” mixed or otherwise, acting alone. . . . [A]ny increased expectations and demands imposed by jurors on the legal system are legitimate, and constitutionally based, reflections in jurors of changes in popular culture and that the criminal justice system must adapt to and accommodate, rather than criticize or question, the jurors’ expectations of and demands for scientific evidence.” (footnote omitted)); see also Papke, *supra* note 74, at 932 (“[T]he real trial has been supplanted ideologically by the pop cultural trial. Most Americans have never participated in or even witnessed an actual trial, but virtually all adult Americans have hundreds, perhaps thousands of times, watched or read a portrayal of a pop cultural trial.”); Papke, *supra* note 17, at 1231 (“Given the large amount of court-related popular culture and the way lay Americans easily bring this material within their perception and understanding, we might reasonably expect court-related popular culture to have an impact. We might anticipate that court-related popular culture would affect what Americans want and expect from their real-life courts. We might even wonder if the popular culture could alter Americans’ sense of what constitutes justice and whether it is likely to be achieved in our system.”).

138. As Papke writes, “[t]he pop cultural courtroom is a familiar form of meaningful drama. Foreign visitors are sometimes totally bewildered by the pop cultural courtroom trial, but Americans know well the path the pop cultural courtroom trial will follow. Indeed, resourceful writers can sometimes play off our familiarity with the pop cultural courtroom trial.” Papke, *supra* note 74, at 926.

139. Avi Brisman, *Judicial Decision-Making in Problem-Solving Courts: A Case of “Kadi-Justice”?* (Mar. 19, 2010) (unpublished manuscript) (on file with the *New York Law School Law Review*).

clients to be cognizant of and sensitive to the ways in which both crime and criminal law are depicted in popular media and the ways in which they are fictionalized.

Papke contends that “[t]he image of the trial may in fact be the most important civic image in the dominant ideology. If the ubiquitous pop cultural portrayals of courtroom proceedings inculcate troubling attitudes and expectations, we should be prepared to take steps to guard against this development.”¹⁴⁰ Papke offers recommendations for what can be done in the courtroom, what can be done in the community, and what can be done in the den and family room. With respect to the first—to practices and procedures in real-life courthouses—Papke urges us

to be mindful of the possible impact of popular culture on jurors and [to] tailor instructions to jury pools and questions in voir dire accordingly. The Honorable Patricia D. Marks . . . uses clear instructions and careful questions to make sure jurors in her courtroom are not unduly influenced by popular culture and to excuse those potential jurors who cannot grasp the differences between pop cultural courts and real ones.¹⁴¹

With respect to the second, Papke states:

In the community as opposed to the courthouse, lawyers, courthouse personnel, and especially judges should be much more systematic in teaching the general public how the courts work. Many judges of course already speak regularly to school and community groups, but to an even greater extent public education could be recognized as a formal duty of the bench. In explaining how the courts work, judges could be especially determined to distinguish actual courts from those in the cinema and on television.¹⁴²

And finally, Papke asserts:

I think Americans have to approach their popular culture more critically. After a hard day at the office or around the home, many of us just want popular culture to wash over us, removing our frustrations and disappointments and allowing us to escape, but, given the pervasiveness and influence of popular culture, this attitude is dangerous. Educators should teach us how to challenge our popular culture, and we should take those lessons to heart. When we are watching a television show or a DVD in our dens and family rooms, we should intellectually wrestle with what we are watching. Popular culture can actually be more entertaining and edifying if we critically examine it. And, furthermore, ‘court potatoes’—mindless consumers of court-related popular culture—do not make particularly valuable jurors and citizens or especially interesting colleagues and friends.¹⁴³

140. Papke, *supra* note 17, at 1233–34 (2007).

141. *Id.* at 1234. Recently, U.S. Supreme Court Associate Justice Sonia M. Sotomayor stated that, when she was a lower-court judge, she would, at times, refer to *12 Angry Men* “to instruct jurors how not to carry out their duties” because the film “is so far from reality.” Kirk Semple, *The Movie That Made a Justice*, N.Y. TIMES, Oct. 18, 2010, at A23.

142. Papke, *supra* note 17, at 1234.

143. *Id.* Elsewhere, Papke makes a similar call for greater critical engagement with law-related films. Papke, *supra* note 26, at 1481.

I endorse Papke's recommendations and agree with Robert A. Clifford that "[t]he recent fascination with the country's legal process speaks to a hunger to understand its workings"¹⁴⁴—a craving that we should seek to satisfy. I especially support Papke's contentions that judges (both in the courtroom and out of it) should endeavor to educate the general public about how the legal system can and does work—a position that comports with my belief that courts should *teach*.¹⁴⁵ But I would underscore that there should be a place for a consideration of, or recognition of, the depictions and fictionalizations in criminal justice proceedings themselves; I would add that this type of discourse and dialogue should take place before a defendant even appears before a judge (even in the few minutes before a public defender might have with his client so that criminal defendants are prepped and less likely to expect proceedings in line with those on television and in film), as well as in arenas outside the legal system, such as in classrooms and at after-school programs (especially if those programs are law related, like youth court). Doing so would not only improve general lay understanding of the criminal justice system and prepare individuals in the event that they are arrested, but it might also spur some to work towards making improvements in and to the system.

C.'s impersonal experience with the judge, the prosecutor, and his own counsel, as well as his sense of a lack of agency, has stimulated his ongoing desire to participate in the Red Hook Youth Court: "I feel like—like this is really why I want to stay in youth court—to prevent stuff like that from happening."¹⁴⁶ But *C.* is the exception—an individual whose unfortunate experience encouraged him to work to help others avoid similar incidents and encounters. We should not wait for individuals to have negative experiences and we cannot hope that those who do will have the same motivation as *C.* If programs like *Bones*, *CSI*, *Law & Order*, and *Numb3rs* can spark individuals' interest in becoming judges, lawyers, private investigators, or FBI agents, then perhaps greater attention to the disparities between fictionalized criminal law and real-world realities might prompt some to seek a role in ameliorating the shortcomings of the criminal justice system.

V. CONCLUSION

The specific kinds of contact and experiences individuals have with the law or criminal justice personnel tends to shape their legal consciousness; yet individuals—especially youth—often experience the law in a multitude of direct and indirect ways. They can develop ideas about the law and justice more generally from direct interaction with the legal system; from the interaction of family, friends, and neighbors with the legal system; and from formal institutions, such as schools or churches. They can also

144. Clifford, *supra* note 62, at 45 ("We cannot hold these [legal processes] secret. It is through openness and honesty, through communication, that we will instill that trust in others.")

145. See Avi Brisman, *The Pedagogical Imperative of Justice Ruth V. McGregor*, 42 ARIZ. ST. L.J. 361 (2010).

146. Interview with *C.*, *supra* note 134.

develop ideas about the law and justice from “Stop Snitching” campaigns,¹⁴⁷ outlaw images portrayed by rap artists,¹⁴⁸ and, as noted above, from news stories and other forms of mass media.¹⁴⁹ While findings from my ethnographic research suggest that direct interaction with the legal system,¹⁵⁰ narratives from family, friends, and “associates” with the legal system, and news stories¹⁵¹ tend to have the greatest impact or influence on youth legal consciousness generally and perceptions of criminal law in particular, this article has attempted to show how youth do respond to fictionalized criminal law. Much can be gained by exposing youth to representations of criminal law in television and film and, where possible, talking to them about such depictions and how such representations may differ from real-world legal proceedings and experiences.

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147. See, e.g., Carr et al, *supra* note 107, at 450 (discussing “immersion in a subculture that validates deviant behavior and is antagonistic toward the rule of law”); Julie Bykowicz, *Producer Says Education, Not Intimidation, Is Sequel’s Focus: “Snitching 2” Out Soon*, BALT. SUN, Dec. 20, 2007, at 1B; Andrew Jacobs, *Newark Battles Murder and Its Accomplice, Silence*, N.Y. TIMES, May 27, 2007, § 1, at 1; *Ariz. Woman’s Face Branded with ‘Snitch’ for Helping Police*, ASSOCIATED PRESS, June 23, 2007, available at <http://www.policeone.com/gangs/articles/1283319-Ariz-womans-face-branded-with-snitch-for-helping-police/>; Pat Reavy, *‘Code of Silence’ on Rise?*, DESERET MORNING NEWS, May 14, 2007, at B01; Matthew W. Warren, *Whitewashing a Cartoon Rat’s Message on Snitching*, N.Y. TIMES, July 18, 2008, at B2.
148. See, e.g., Jeff Ferrell, *Criminalizing Popular Culture*, in POPULAR CULTURE, CRIME, AND JUSTICE, *supra* note 23, at 71, 71–81; Mary E. Pattillo, *Sweet Mothers and Gangbangers: Managing Crime in a Black Middle-Class Neighborhood*, 76 SOC. FORCES 747 (1998); see also Jon Caramanica, *Facing Times With Plenty of Swagger*, N.Y. TIMES, Oct. 2, 2008, at E1.
149. See *supra* notes 17–25 and accompanying text.
150. African American youth are disproportionately arrested in comparison to their proportion of their population, and there are major disparities in the extent of involvement of minority youth—especially African American youth—compared with white youth in the juvenile justice system. See SCHNEIDER, *supra* note 46, at 24.
151. In particular, news stories involving instances of police harassment and brutality, such as the assault and sodomizing of Abner Louima in 1997, the 1999 killing of Amadou Diallo, and the Sean Bell shooting incident of 2006, have tended to attract the attention of urban minority youth and affected their perceptions of the criminal justice system. See, e.g., PHILIPPE BOURGOIS, IN SEARCH OF RESPECT: SELLING CRACK IN EL BARRIO xxi (2nd ed. 2003); Al Baker, *One Year After Acquittal in Sean Bell, Lives Remain in Limbo*, N.Y. TIMES, Apr. 25, 2009, at A15; Anne Barnard, *Renaming a Street, and Reliving the Bell Case*, N.Y. TIMES, Apr. 20, 2009, at A20; John Eligon, *Sharpton and 7 Others Guilty in Sean Bell Protest*, N.Y. TIMES, Oct. 9, 2008, at A34. See generally Brent Staples, *Even Now, There’s Risk in ‘Driving While Black’*, N.Y. TIMES, June 15, 2009, at A20 (stating that “[t]he experience of being mistaken for a criminal is almost a rite of passage for African-American men”).