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DELIBERATION AND DISSENT: *12 ANGRY MEN* VERSUS THE EMPIRICAL REALITY OF JURIES*

VALERIE P. HANS**

INTRODUCTION

12 Angry Men is one of my favorite films, a movie I've seen many times and have enjoyed sharing with family, friends, and students. I watched it again recently with my thirteen-year-old son. Despite the movie's melodramatic dialogue, dated stereotypes, and Freudian allusions, my son thought it was "pretty good." What, I ask, was most interesting about it? "In the beginning almost all of them thought he was guilty, but in the end he was found not guilty. And he could have done it, you don't know. But if you don't know, you've got to vote not guilty."

The dramatic turnaround in the jury room is also part of its great appeal to me, as is the whodunit question that is left dangling at the end. The lonely dissenter played by Henry Fonda, who insists that the jury talk about the evidence before he will agree to convict, produces heated exchange and debate. In the process of their collective reasoning about the evidence, alternative accounts emerge, ones that individual jurors had not considered earlier. Jurors who were initially certain become uncertain, then switch to the other side. The movie's dramatic enactment of the jury's discussion shows the power of the dissenter and illustrates the great promise of group deliberation. It also emphasizes the point that in our system of justice, uncertainty about guilt means acquittal.

Fifty years later, the movie still appeals, as evidenced by this anniversary issue of the *Chicago-Kent Law Review*. It is used in classrooms to help

* This article had its origins in a fantastic panel celebrating the 50th anniversary of the movie *12 Angry Men*, organized by Nancy Marder for the American Association of Law Schools conference, January 5, 2007. I thank Nancy Marder for encouraging me and other colleagues to reflect on this iconic representation of the American jury. I also thank Zachary Hans Bend for sharing his insights about the movie with me. Data collection for the hung jury project discussed in this article was supported by Grant No. 98-IJ-CX-0048, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. Any opinions expressed or conclusions drawn from these data in the current article are mine and do not express the positions or policies of the U.S. Department of Justice or the National Center for State Courts.

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educate students across the United States about the jury system.¹ But what of its depictions of the jury deliberation process and the role of the dissenter? Are these portrayals more satisfying myth than empirical reality?

When the movie was released in 1957, it's safe to say that most Americans knew little about the inside of a jury deliberation room and what went on there. Juries did not represent the community at large. Women and minorities served infrequently, and there were barriers to their service in many jurisdictions, providing some reality-based justification for the movie's limitation to white men. Supreme Court opinions proclaiming the constitutional necessity of a jury drawn from a representative cross-section of the community were years away.²

What is more, there was practically no systematic information about jurors and jury trials. The policy debate during the 1950s over whether it was wise to continue to support the institution of the jury was conducted with little actual knowledge about how the jury operated in practice.³

In the fifty years since *12 Angry Men* first aired, a vibrant field of jury studies has developed. Jump-started in the 1950s with a Ford Foundation-sponsored research project on the American jury system, sociolegal scholars took up the task of examining the operation of the jury.⁴ Research has examined jury behavior and decision making using multiple methodologies, including post-trial interviews with jurors; observations of jury trials; questionnaires given to judges, attorneys, and jurors; mock jury experiments; and even a handful of tapings of actual jury deliberations. These

1. For example, the American Jury Project of the Constitutional Rights Foundation Chicago includes exercises incorporating the film. CRFC, Jury Deliberation, http://www.crfc.org/americanjury/lessons/jury_deliberation/angry_men.html (last visited Apr. 7, 2007). It has also been employed in the United Kingdom for educational purposes. BFI, Education Teaching Resources, <http://www.bfi.org.uk/education/teaching/witm/recommended/twelveangry.html> (last visited Apr. 7, 2007).

2. In an early case, *Thiel v. Southern Pacific Co.*, 328 U.S. 217 (1946), the U.S. Supreme Court discussed the importance of ensuring that no group was systematically excluded from the jury venire from which prospective jurors were chosen, concluding that such exclusions would weaken the jury system. Later cases elaborated the cross-section requirement. See *Duren v. Missouri*, 439 U.S. 357 (1979); *Taylor v. Louisiana*, 419 U.S. 522 (1975); *Peters v. Kiff*, 407 U.S. 493 (1972). See generally NANCY S. MARDER, *THE JURY PROCESS* 50–104 (2005).

3. See HARRY KALVEN, JR. & HANS ZEISEL, *THE AMERICAN JURY* 4–9 (1966).

Much of the criticism has stemmed from not more than the a priori guess that, since the jury was employing laymen amateurs in what must be a technical and serious business, it could not be a good idea. In comparable fashion, the enthusiasts of the jury have tended to lapse into sentimentality

Id. at 5.

4. See *id.* at v–viii; Valerie P. Hans & Neil Vidmar, *The American Jury at Twenty-Five Years*, 16 *LAW & SOC. INQUIRY* 323 (1991); Valerie P. Hans & Neil Vidmar, *Jurors and Juries*, in *THE BLACKWELL COMPANION TO LAW AND SOCIETY* 195 (Austin Sarat ed., 2004).

multiple methods have produced a substantial body of data about how juries function, and the findings are summarized in a number of places.⁵

One line of empirical research has examined the group deliberation process.⁶ That includes the process of persuasion and opinion change and the role of dissent on juries. This work allows us to judge how often, if at all, the “Henry Fonda” phenomenon is reflected in real juries. I draw generally on this body of research to explore how well *12 Angry Men*’s story of deliberation and dissent holds up to empirical scrutiny.

A National Center for State Courts (“NCSC”) project on hung juries in felony trials is particularly informative for this inquiry.⁷ I collaborated on this project with researchers from that organization. The aim of the project was to examine the factors that contributed to hung juries by comparing and contrasting hung juries with juries that reached verdicts. The study included approximately 3,500 jurors in four large, urban courts. The NCSC project asked jurors, once their trial was concluded, to provide their individual perceptions of the trial, their verdict preferences, and their perspectives on the dynamics of deliberations. Trial judges and attorneys also provided information about their views of the case.

In earlier analyses we conducted, the major factors that led to jurors’ first votes in these criminal trials were identified.⁸ The strength of the trial evidence in the case was the strongest predictor of juror judgments.⁹ This held true whether the analysis employed the judge’s or the jurors’ measurement of evidence strength. The stronger the evidence against a felony defendant, the more likely jurors were to vote guilty on the first ballot. A juror’s vote to acquit on the first ballot was also linked to his or her perceptions of the low credibility of the police testimony, the view that the law was not fair, and the perceived harshness of the consequences of a convic-

5. See, e.g., NEIL VIDMAR & VALERIE P. HANS, *AMERICAN JURIES: THE VERDICT* (forthcoming 2007); MARDER, *supra* note 2.

6. See, e.g., Dennis Devine et al., *Jury Decision Making: 25 Years of Empirical Research on Deliberating Groups*, 7 *PSYCHOL. PUB. POL’Y & L.* 622 (2001).

7. PAULA HANNAFORD-AGOR, VALERIE P. HANS, NICOLE L. MOTT & G. THOMAS MUNSTERMAN, *ARE HUNG JURIES A PROBLEM?* (2002), available at http://www.ncsconline.org/WC/Publications/Res_Juries_HungJuriesPub.pdf. Pages 29–40 provide details of the methodology.

8. *Id.* at 41–62. For the first-vote analysis, see Stephen P. Garvey, Paula Hannaford-Agor, Valerie P. Hans, Nicole L. Mott, G. Thomas Munsterman & Martin T. Wells, *Juror First Votes in Criminal Trials*, 1 *J. EMPIRICAL LEGAL STUD.* 371 (2004).

9. HANNAFORD-AGOR ET AL., *supra* note 7, at 47–50; see also Theodore Eisenberg, Paula L. Hannaford-Agor, Valerie P. Hans, Nicole L. Waters, G. Thomas Munsterman, Stewart J. Schwab & Martin T. Wells, *Judge-Jury Agreement in Criminal Cases: A Partial Replication of Kalven and Zeisel’s The American Jury*, 2 *J. EMPIRICAL LEGAL STUD.* 171 (2005).

tion in the case.¹⁰ Perhaps surprisingly, demographic factors were not consistently related to juror first-ballot votes. Instead, their importance varied with the location of the trial and the type of case.¹¹

Because the study examined the perceptions of multiple jurors in specific trials, we were able to compare jurors in the majority with those who dissented on the first ballot. Thus we were able to analyze the perspectives and experiences of those who initially dissented from the majority as well as those who hung the jury. Are you there, Henry Fonda?

I. MAJORITIES RULE

The first general conclusion of the collected jury research is that “majorities rule.” In some early research from the 1950s, Kalven and Zeisel asked jurors in two urban courts about their first-ballot votes.¹² Kalven and Zeisel then reconstructed the pattern of first-ballot votes and displayed it alongside the final verdicts reached by the jury. Although the numbers were small, the pattern was obvious: the final verdict was strongly related to the first-ballot vote. When the jury’s first-ballot vote showed predominant majorities for one side or the other, the jury verdict was usually consistent with the majority’s initial preference. This majority rule phenomenon has been replicated multiple times in studies with diverse methodologies, including studies like that of Kalven and Zeisel with self-reported votes of actual jurors and mock jury research projects conducted in the scientific laboratory.¹³ It’s also common in other decision making groups.¹⁴

The relationship between initial individual preferences of jurors and the final verdicts of the jury can be easily seen in Figure 1, based on data collected in the hung jury project of the NCSC.

10. Fairness of the law is examined in more depth in Paula L. Hannaford-Agor & Valerie P. Hans, *Nullification at Work?: A Glimpse from the National Center for State Courts Study of Hung Juries*, 78 CHI.-KENT L. REV. 1249 (2003).

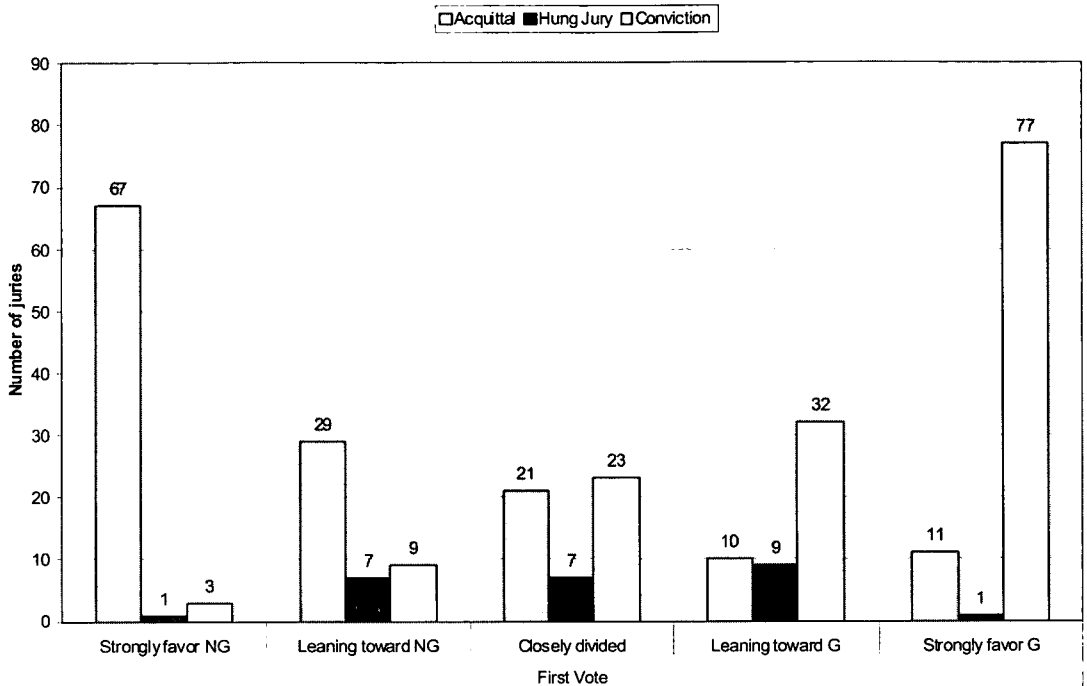
11. See Garvey et al., *supra* note 8, at 380–95.

12. KALVEN & ZEISEL, *supra* note 3, at 462.

13. Devine et al., *supra* note 6, at 701.

14. See Reid Hastie & Tatsuya Kameda, *The Robust Beauty of Majority Rules in Group Decisions*, 112 PSYCHOL. REV. 494 (2005).

Figure 1. Relationship between First Ballot Vote and Final Jury Verdict



In Figure 1, the “first vote” ranges from juries with first-ballot votes that strongly favored not guilty (on the far left of the figure) to juries with first-ballot votes that strongly favored guilty verdicts (on the far right of the figure). One can see the dominance of the first-ballot vote: 77 of the 89 juries with strong majorities for guilt convicted the defendant; and 67 of the 71 juries with strong majorities for not guilty acquitted the defendant. Weaker majorities or closely divided juries showed a more variable pattern. Thus we can conclude that majorities rule, and the stronger the majority the more likely it is to prevail.

But there are two caveats. First, the relationship between the jury’s first-ballot vote and its final verdict may be overstated because it is not uncommon that a jury’s first vote is taken after a period of discussion. In the NCSC study, for example, just two out of every ten jurors said they took a first-ballot vote right at the start of deliberations.¹⁵ Another four out

15. Valerie P. Hans, Paula L. Hannaford-Agor, Nicole L. Mott & G. Thomas Munsterman, *The Hung Jury: The American Jury’s Insights and Contemporary Understanding*, 39 *Crim. L. Bull.* 33, 47 (2003).

of every ten took a vote early in the deliberations. The remaining four out of every ten jurors said that their first vote did not occur until the middle or later stages of jury deliberations. Therefore, a substantial amount of social influence probably occurred before the first-ballot vote was taken. Similar results were found by researchers Marla Sandys and Ronald Dillehay, who conducted a telephone survey with jurors after their service and asked about the timing of their first-ballot votes.¹⁶ Their study found that jurors often reported deliberating for a time before the first-ballot vote. These early interchanges preceding the first vote could already have influenced jurors, creating more consensus than there was originally.

II. DISSENTERS OCCASIONALLY PREVAIL

The second caveat is that majorities don't always win, just most of the time. We observe 14 cases, or 5% of the total number of 307 jury trials included in this analysis, in which jurors reported that minorities persuaded majorities to shift their verdicts. We might label these the *12 Angry Men* cases. They are much more likely to be cases in which the minority is arguing for acquittal rather than conviction. In 11 instances in the 89 jury trials (or 12%) with a strong majority for conviction on the first ballot, the jurors arguing for acquittal were able to persuade their convicting colleagues to acquit on the first count/most serious charge. In 3 additional cases in the 71 trials (or 4%) with a strong majority favoring acquittal on the first ballot, a minority favoring conviction persuaded an acquittal-majority jury to convict. The asymmetry in the number of cases suggests that it is easier to raise a reasonable doubt than to eliminate reasonable doubt.¹⁷

Dennis Devine and his colleagues surveyed the available research on deliberating jurors, and obtained more evidence that dissenters occasionally prevail. They reviewed mock and actual jury research studies that examined the link between first-ballot or initial votes and final verdicts. Summarizing the patterns they found, they concluded that the verdict favored by the jury's majority was likely to be the final verdict in 90% of the cases, leaving 10% for initial dissenters to win or hang the jury.¹⁸ What is more, like the NCSC study, there was some asymmetry in the power of the dissenters, depending on whether they favored the prosecution or the defense.

16. See Marla Sandys & Ronald C. Dillehay, *First-Ballot Votes, Predeliberation Dispositions, and Final Verdicts in Jury Trials*, 19 LAW & HUM. BEHAV. 175 (1995).

17. See Robert J. MacCoun & Norbert L. Kerr, *Asymmetric Influence in Mock Jury Deliberation: Jurors' Bias for Leniency*, 54 J. PERSONALITY & SOC. PSYCHOL. 21 (1988).

18. Devine et al., *supra* note 6, at 690.

The critical threshold of success, in terms of the number of individual jurors required to reach a verdict, differs for conviction and acquittal. Based on data from the collected studies of initial pre-deliberation votes and final group verdicts, Devine and his colleagues estimated that if ten or more jurors in a twelve-person jury believed that the defendant was guilty, the jury was highly likely to convict. If seven or fewer jurors supported conviction, the jury was likely to acquit. In between, with eight or nine jurors favoring a guilty verdict, it is a “toss-up” and either verdict might result.¹⁹ Expressed in percentages, there is a threshold between .75 and .83 for conviction, and between .67 and .50 for acquittal. Devine and his colleagues appropriately caution that these critical thresholds are based largely on mock jury research and may not translate directly to the context of real juries, where undoubtedly there is more incentive to reach a verdict. Because of the short deliberation time allowed in some mock jury research projects, and because mock jurors don’t have as much determination to reach a verdict because there are no real-world consequences, hung juries in mock jury research are common.²⁰

III. DELIBERATIONS MATTER

The movie *12 Angry Men* starts by showing lay participation at its worst. The discussion is cursory. The jurors exchange insults and put-downs. The comments about the trial and the defendant reflect snap judgments and prejudice. In short, the men are really bad jurors.²¹ But the deliberation transforms the men into thoughtful jurists who consider the evidence more deeply and reason through it to their collective verdict.

12 Angry Men’s emphasis on the power of deliberation finds support in the empirical research on jury deliberations. Researchers have discovered that juries work in different ways, some organizing their discussions more around the verdict and others focusing more on the evidence. These divergent approaches have been labeled the verdict-driven and evidence-driven deliberation styles.²² In the verdict-driven style, the jury typically starts with a vote. Then, jurors align themselves with others who voted the same way and discuss the trial evidence in terms of how it supports their preferred verdict. Polling is frequent in verdict-driven deliberations.

19. *Id.* at 692.

20. *See id.* at 690–93.

21. Nancy S. Marder, *Why 12 Angry Men? (1957): The Transformative Power of Jury Deliberations*, in *SCREENING JUSTICE—THE CINEMA OF LAW* 157, 160–61 (Rennard Strickland, Teree E. Foster & Taunya Lovell Banks eds., 2005).

22. REID HASTIE, STEVEN D. PENROD & NANCY PENNINGTON, *INSIDE THE JURY* 163–65 (1983).

In evidence-driven deliberations, jurors are more apt to talk generally about the trial evidence, working to develop a common understanding of the facts. Evidence-driven juries tend to take their first vote later in the deliberation compared to verdict-driven juries. They are also more likely to be able to reach a unanimous verdict in the case.²³ The NCSC study confirmed previous research showing that juries who vote earlier are more likely to hang.

Jury deliberation about the evidence allows jurors to pool their information and contrast their construals of the trial testimony, offering opportunities for jurors to correct memory errors and mistaken interpretations.²⁴ The group discussion helps jurors individually and collectively to clarify their positions and conclusions, and increases their certainty that they are reaching the right verdict.²⁵

Empirical study also shows that the benefits of deliberation are greatest with a diverse group of people who bring different perspectives to bear on the common task.²⁶ Professor Samuel Sommers conducted an experiment in which he compared the decision making of racially mixed or all-white mock juries.²⁷ He found that racially mixed juries deliberated longer about a wider range of information and were more accurate in their comments about the case. This advantage was not only because of the behavior of blacks in the racially mixed juries. Compared to the all white juries, whites in racially mixed juries were more systematic and accurate, bringing up more issues in the deliberation. Thus whites behaved differently when they were in homogeneous and mixed juries.

12 Angry Men, of course, doesn't strike us as a very diverse group. To start with, it's all men and includes no black jurors. Yet within this sameness, distinctions and differences emerge. Professor Phoebe Ellsworth observes that although the jurors are twelve white men, the film "powerfully communicates the ideal of jury diversity. It is one of its central messages."²⁸ High- and low-status men, with different backgrounds and ethnicities and wealth: "Each juror has a distinctive point of view, and each makes a different contribution, often based on his own experience."²⁹ Once

23. HANNAFORD-AGOR ET AL., *supra* note 7, at 13, 65.

24. Phoebe C. Ellsworth, *Are Twelve Heads Better than One?*, 52 LAW & CONTEMP. PROBS. 205, 206, 217 (1989).

25. *See generally id.*

26. *Id.* at 205; VIDMAR & HANS, *supra* note 5, at ch. 3; Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. PERSONALITY & SOC. PSYCHOL. 597 (2006).

27. *See Sommers, supra* note 26.

28. Phoebe C. Ellsworth, *One Inspiring Jury*, 101 MICH. L. REV. 1387, 1401 (2003).

29. *Id.* at 1402.

the case discussion gets going in earnest, the men's comments derived from their divergent perspectives enrich the deliberation and cause other jurors to rethink some of their original assumptions.

Like the *12 Angry Men* movie version, real life jurors have much opportunity to affect others during deliberation. The ability of jurors to influence one another is confirmed by an analysis conducted with the NCSC hung jury data. The analysis examined when jurors reportedly began leaning toward one side or the other during the trial.³⁰ Twenty percent of the jurors said that they started leaning toward a side during the jury's final deliberations. Even more significantly, most jurors (62%) said that they had changed their minds at some point during the trial or the deliberations, with about a quarter of the jurors saying that they changed their minds during the jury deliberation.³¹ Yes, majorities dominate, yet all of this evidence about opinion change and the role of deliberations indicates that jurors' opinions are more fluid than the majority rule principle might suggest.

The power of dissenters and the quality of deliberation are both enhanced by the typical requirement that jurors agree unanimously on a final verdict.³² In juries required to reach unanimity, jurors understandably pay more attention to those who hold minority views; furthermore, those attempting to argue a minority position participate more in the discussion and have more influence.³³ Juries that are required to be unanimous begin more frequently with general discussion of the evidence, characteristic of evidence-driven as opposed to verdict-driven juries.³⁴

IV. FOCUS ON THE DISSENTERS: WHO ARE YOU, HENRY FONDA?

It's worth looking at the dissenters in more detail. The NCSC study of hung juries included a number of items that measured jurors' individual preferences. Jurors were asked which side they favored before deliberations commenced, how they voted on the first ballot, how they voted on the final ballot, and the vote split on the group's first and final vote for the most serious charge. The study also asked for a "one-person jury" verdict: "If it were entirely up to you as a one-person jury, what would your verdict have been in this case?"

30. HANNAFORD-AGOR ET AL., *supra* note 7, at 63.

31. *Id.* at 64.

32. Valerie P. Hans, *The Power of Twelve: The Impact of Jury Size and Unanimity on Civil Jury Decision Making*, 4 DEL. L. REV. 1, 23-27 (2001); HASTIE ET AL., *supra* note 22, at 32.

33. Hans, *supra* note 32, at 23-24; HASTIE ET AL., *supra* note 22, at 32.

34. HASTIE ET AL., *supra* note 22, at 164-65.

Nicole Waters and I analyzed the one-person jury responses, and discovered some interesting patterns.³⁵ Thirteen percent of the jurors admitted that if it were up to them individually, they would have reached a verdict different from that of their jury.³⁶ Nearly half of all the juries in the NCSC study included at least one of these divergently-thinking jurors. Whether individual jurors acquiesced to the majority, going along to enable a verdict, or held out, causing a hung jury, was associated with whether the one-person jury verdict favored conviction or acquittal. About one-third of the jurors who reported that if it were up to them they would have acquitted, but the jury's majority favored a conviction, ultimately hung the jury. By way of contrast, just thirteen percent of jurors who privately favored conviction but were on juries with majorities that favored acquittal became holdouts who hung the jury.³⁷ Thus, as with the asymmetrical pattern of majority rule discovered earlier, the Henry Fonda-style jurors who favor acquittal in the face of otherwise unanimous conviction among colleagues are more apt to hold out.

Most of what leads jurors to dissent is linked to their view of the quality and strength of the evidence. Dissenters see the police testimony as not credible, or see the prosecution's case as weak.³⁸ Similarly, the law may be seen as unfair.³⁹ Other factors that create dissent and hung juries, though, are related to jury deliberation procedures. One important variable is when votes are held in the deliberation. If voting occurs early in the deliberation, juries have more trouble reaching a final verdict.⁴⁰ Compared to jurors who privately dissent but eventually go along with the jury's group preference, holdouts who ultimately hung the jury reported that they had more time to express their views, but felt less influential.⁴¹

It's interesting to speculate about why jurors who privately would decide one way conform to the majority, permitting their jury to reach a publicly unanimous verdict. To fulfill the jury's role, its members must reach consensus. So, individual jurors at odds with the wishes of a strong majority have to decide whether to conform or to dissent, and if the latter, how strongly and persistently to dissent, even to the point of hanging. In his role

35. Nicole L. Waters & Valerie P. Hans, *Jury Deliberations: The Road to a Verdict*, paper presented at the annual meeting of the Law & Soc'y Ass'n (July 7, 2006) (unpublished manuscript, on file with the authors).

36. HANNAFORD-AGOR ET AL., *supra* note 7, at 69.

37. Waters & Hans, *supra* note 35, at 14.

38. *Id.*

39. See Hannaford-Agor & Hans, *supra* note 10, at 1272-76.

40. HANNAFORD-AGOR ET AL., *supra* note 7, at 65.

41. Waters & Hans, *supra* note 35.

as the dissenting juror in *12 Angry Men*, Henry Fonda did something of this sort. Finding that all the other jurors initially voted for conviction, he asked the jury to engage in an hour of discussion of the case. He promised that if he hadn't convinced anyone else by that time that more discussion was merited, he would go along with the majority and vote with them to convict the defendant.⁴² This example from *12 Angry Men* hints at the general phenomenon, found in the empirical research, in which individual dissenting jurors agree not to disagree so that the jury may deliver a verdict.

CONCLUSION

Many aspects of society have changed dramatically over the last fifty years. Yet most features of the American jury system remain the same. True, it has been democratized; juries are now much more representative of the community than they were a half century ago.⁴³ Juries—and judges too—decide a lower proportion of criminal and civil cases than they did in earlier times; plea bargaining and settlements between the parties now resolve the vast majority of cases.⁴⁴ Despite the introduction of trial innovations designed to improve decision making, American adversary jury trial procedures and the jury decision-making process strongly resemble juries and trials of fifty years ago.

Likewise, the wisdom and insights of *12 Angry Men* find support in empirical studies of the contemporary jury. The value of diversity in promoting vigorous and fruitful discussion and the power of jury deliberation in forcing deeper thinking are both reinforced by social science studies of decision making. Majorities usually rule, but both jury research and the fictional jury depicted in *12 Angry Men* confirm the possibility of a minority prevailing against an otherwise unanimous majority. That possibility makes it important to preserve the requirement that all jurors must agree on a final verdict. I conclude that Henry Fonda, or someone like him, sits today on an American jury.

42. Reginald Rose, *Twelve Angry Men*, in *FILM SCRIPTS TWO* 156, 178, 213 (George P. Garrett, O.B. Hardison & Jane R. Gelfman eds., Irvington Publishers 1989) (1982) (screenplay version of the film *12 ANGRY MEN* (Orion-Nova Productions 1957)).

43. MARDER, *supra* note 2, at 26–29; VIDMAR & HANS, *supra* note 5, at ch. 3.

44. Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 *J. EMPIRICAL LEGAL STUD.* 459, 460–67, 492–94 (2004).

