AN EXCERPT FROM
DISSECTING "ANATOMY OF A MURDER": THE AUTHOR, THE CRIME, THE NOVEL, AND THE FILM

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INTRODUCTION

In 1958, an Army lieutenant[1] was charged with murdering a saloon owner[2] in small-town Michigan's remote Upper Peninsula. His defense attorney[3]—the longtime former county prosecutor and frustrated author who had just been defeated in a re-election bid—faced, as opposing counsel, the very man[4] who had bested him. The lieutenant never denied killing the victim; in fact, the killing was observed by scores of witnesses, and the lieutenant later confessed and turned over the smoking gun to a sheriff's deputy. In defense of his actions, the lieutenant claimed he sought out the victim and killed him because the man had just brutally raped his wife.[5] Given the state of the evidence and having few viable alternatives, the defense counsel invoked the defense of irresistible impulse—a version of the temporary insanity defense that was so rare that it had not been used in Michigan in over seventy years.[6] After a spirited trial and two hours of deliberation, the jury of eleven men and one woman returned a verdict of not guilty by reason of insanity.

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1. First Lieutenant Coleman A. Peterson, fictionalized as First Lieutenant Frederick Manion.

2. Maurice "Mike" Chenoweth, fictionalized as Bernard "Barney" Quill.

3. John Voelker, a well-educated and gifted lawyer who was struggling financially and sought sanctuary in rugged woods and trout streams.

4. Marquette County Prosecuting Attorney Edward Thomas, fictionalized as Mitch Lodwick, who was assisted at trial by a high-profile prosecutor and Assistant Attorney General, Irving Beattie, fictionalized as Claude Dancer.

5. Charlotte Peterson, fictionalized as Laura Manion.

6. *See* Kimberley Reed Thompson, *The Untimely Death of Michigan's Diminished Capacity Defense: People v. Carpenter*, 82 MICH. BAR J. 17, 17–19 (2003).

Most parties and observers no doubt believed that the case of *People of the State of Michigan v. First Lieutenant Coleman Peterson*[7] would fade from memory, just as nearly every trial, even murder trials, do over time. Certainly, no one could have imagined that this seemingly obscure case would provide the inspiration for one of the greatest novels about a criminal trial[8] ever written, penned by the defense attorney himself,[9] and later, one of the most legendary and award-winning trial movies ever filmed.[10] But it did all of this and more. *Anatomy of a Murder*, both the novel and the film, is a lawyer's war story told on the grandest scale with sublime mastery. In fact, it is probably the best lawyer war story ever told.

The significance of the novel and film far surpass their extraordinary commercial success. Both realistically and unapologetically tackle foundational concepts of justice, truth, ethics, and community standards. Both challenge settled conventions and scrutinize some of our most basic assumptions, in part because of the accuracy with which they depict the law, the role of legal counsel, and the conduct of criminal trials. Both authentically expose the moral inadequacies of the criminal justice system and prompt thoughtful readers or viewers to reflect upon their own values and judgments.

Presented below are the twelfth and thirteenth chapters from my recent book, DISSECTING "ANATOMY OF A MURDER": THE AUTHOR, THE CRIME, THE NOVEL, AND THE FILM.[11] My book explores, in considerable detail, a broad range of topics involving *Anatomy of a Murder*. It tells the fascinating story of its author, John Voelker. It chronicles the actual, high-profile murder trial, in which he served as defense counsel. It explains how he adapted this

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7. People v. Coleman Peterson, No. 15987 (Marquette Circuit Court, 1952).

8. The Peterson trial, fictionalized as the Manion trial.

9. Voelker wrote under the pen name Robert Traver and named the defense-attorney character fashioned after himself, Paul Biegler.

10. "The film received seven Academy Award nominations, including Best Picture and Best Actor [for James Stewart] as well as Best Supporting Actor nominations for both George C. Scott and Arthur O'Connell, but won none in the year of the blockbusting 'Ben Hur,' which won a record haul. James Stewart did win the Best Actor award at the Venice Film Festival and the Best Actor Award from the New York Film Critics Circle for his superb performance. In June 2008, the American Film Institute selected 'Anatomy of a Murder' as the seventh best film in its courtroom drama genre Top Ten." Chris Whiteley, *Anatomy of a Murder (1959)*, HOLLYWOOD'S GOLDEN AGE, http://www.hollywoodsgoldenage.com/movies/anatomy_of_a_murder.html (last visited July 11, 2021). The film garnered a slew of other prestigious awards and award nominations, including winning the first Grammy awards for a jazz musical score and for a musical score composed by an African American, Duke Ellington. *Id.*

11. Originally published as EUGENE R. MILHIZER, DISSECTING "ANATOMY OF A MURDER": THE AUTHOR, THE CRIME, THE NOVEL, AND THE FILM (2019). All rights reserved. Reprinted by permission of the author and publisher. [Editor's note: these chapters have been reprinted in substantially the same form as they appear in the book, with only minor edits to conform citations to the latest edition of the Bluebook.]

real-life trial into a fictional form as a great novel, and how Otto Preminger later reimagined it as a great film. And it considers and analyzes the legal and ethical implications that arose in the greatest legal war story ever told. The chapters that follow next are part of that commentary section of this book.

CHAPTER 12: THE JURY

The preceding observations about counsels' duties and ethical obligations highlight the critical role of the jury in the American legal system. Juries have an important but rather straightforward function: to find the facts and reach a verdict. The jury's fact-finding authority often includes resolving conflicting evidence and making credibility judgments about witnesses. The judge, on the other hand, is the sole source of the law, and the jury has no authority with regard to purely legal matters. Rather, the jury is required to accept the law as the judge instructs them and then apply it to the facts as they determine them to be. Once this is accomplished, the jury is tasked with reaching a verdict, which is essentially a straightforward and mechanical exercise with no apparent allowance for a juror to exercise extra-judicial discretion or personal sentiments. Jurors are told that if the evidence proves every element of a charge beyond a reasonable doubt, they must vote to convict. On the other hand, if one or more elements are not proven up to this standard, they must vote to acquit. In reaching a verdict, the jury is deliberately not informed that it has the authority to depart from the law as given to it by the judge, or to render a verdict that is inconsistent with that law.

In the film, Parnell McCarthy[12] pays tribute to the institutional responsibilities of juries with this soliloquy:

> Twelve people go off into a room: twelve different minds, twelve different hearts, from twelve different walks of life; twelve sets of eyes, ears, shapes, and sizes. And these twelve people are asked to judge another human being as different from them as they are from each other. And in their judgment, they must become of one mind - unanimous. It's one of the miracles of Man's disorganized soul that they can do it, and in most instances, do it right well. God bless juries.[13]

Under our system, it is for a jury to decide whether a defendant is guilty on behalf of the community. This responsibility is not left to a judge to

12. Paul Biegler's close friend who stayed off the wagon and served as co-counsel on the case, and was thereby redeemed.

13. ANATOMY OF A MURDER (Otto Preminger Films 1959).

determine as a legal proposition or a blue-ribbon panel to resolve through its special expertise. Nor is the task assigned to a computer to decipher by applying complex algorithms and equations.[14] Rather, it is a lay jury, comprised of the defendant's peers drawn from the community, that is entrusted with passing judgment on a defendant's guilt.

Some have suggested that a better alternative than lay jurors would be a panel of legal experts, perhaps composed of three judges. These critics argue that such a learned body would be less susceptible to emotion and prejudice. They also claim that experienced legal experts would be better equipped than untrained lay jurors to identify perjury and ignore the theatrics of counsel.

In his book *Troubleshooter*, Voelker responds to this criticism:

> [N]one of the many suggested jury reforms is itself free from the weaknesses which seem to be inherent in any system devised to reconcile the conflict of interests and personalities present in every trial. It appears that the human factor can be quite as much a problem to three learned judges as it can be to twelve illiterate ditch diggers. Susceptibility to flattery, considerations of self-interest, favoritism and prejudice, are human frailties which are [not] the exclusive attributes of the poor.[15]

Because jurors are legal novices and susceptible to unfair influences and passions, an elaborate system of trial rules and procedures has been instituted to help ensure fairness. Speaking again through McCarthy, Voelker recognized the purpose and function of the law's processes and procedures in this regard: "The very slowness of the law, its massive impersonality, its insistence upon proceeding according to settled and ancient rules—all this tends to cool and bank the fires of passion and violence and replace them with order and reason."[16]

Important among a trial's governing rules is the presumptive exclusion of potential jurors who have been exposed to unduly prejudicial hearsay evidence[17] and evidence of prior bad acts.[18] In the Peterson trial (and to a somewhat lesser extent in the fictionalized Manion trial), these restrictions

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14. In *Anatomy of a Murder*, Parnell McCarthy lauds the "wonderful elasticity of the law," and he reminds Biegler that "[j]ustice, you know, lad, cannot be measured with calipers . . . criminal trials are from their very nature intensely partisan affairs . . . the very opposite of detached scientific determinations." ROBERT TRAVER, ANATOMY OF A MURDER 159 (1st ed. 1958).

15. ROBERT TRAVER, TROUBLESHOOTER: THE STORY OF A NORTHWOODS PROSECUTOR 132–33 (1943).

16. TRAVER, ANATOMY OF A MURDER, *supra* note 14, at 63.

17. FED. R. EVID. 803.

18. FED. R. EVID. 404.

were often honored in the breach. For example, before the Peterson trial began, many if not all jurors knew about the defendant's jealous outbursts and that he was suspected by some of having previously inflicted the injuries on his wife. They also knew about Chenoweth's lecherous character and prior sexual assaults. Further, they knew about Mrs. Peterson's reputation for promiscuity and Chenoweth's explicit description of his consensual encounter with her.

It appears that neither the prosecution nor the defense was troubled enough about any of this extra-judicial knowledge to conduct a vigorous voir dire and exercise many, if any, challenges against prospective jurors. Perhaps counsel reasoned that everyone in the small community knew about this inflammatory evidence and a change in venue would be impractical. Perhaps Voelker and the prosecutors all believed they were the superior trial advocates and thus this prior knowledge possessed by the jury could be leveraged to their advantage. Perhaps Voelker thought that the best way for the community to express its collective conscience, which included the possibility of nullification, was through presenting to the jury a relatively unfiltered version of all the surrounding circumstances that were already known to them as members of the community.[19] Or perhaps it was simply that Voelker (and perhaps Thomas) did not challenge prospective jurors who had been exposed to facts that might influence their verdict because he was on friendly terms with many of them. Regardless of the reasons for counsels' passivity, legitimate concerns about the impact of inadmissible evidence upon a jury in Marquette County in the late 1950s resonate even more powerfully today, given the ubiquity of social media, fake news, and the incessant repetition of "breaking news" by 24-7 news providers.

While we will never be certain why counsel engaged in so little voir dire and exercised so few challenges, we do know that Voelker expressed conflicting attitudes about juries and their capacity to render a just verdict. In another of his published works, Voelker writes,

> I would still preserve the jury, of course, as the ultimate judges of guilt or innocence. But the present star system of trial, these thrilling courtroom battles of gifted professional pleaders seeking to build or enhance a reputation, to extend a record of conviction or acquittals, to gain some political notoriety or advantage—all this may tend to make an exciting show

19. Biegler says, "[I] also guess that men will never devise a better system of determining their clashes with each other and society. At least our jury system, for all its absurdities and imperfections, achieves a sort of rough democracy in action . . . ." TRAVER, ANATOMY OF A MURDER, *supra* note 14, at 246.

> for the bystanders and sensational newspapers and TV but has damn little to do with the business at hand: the quest for Truth and Justice.[20]

We also know, from reading Voelker's journals, that he believed sex crimes were especially endemic and challenging in places like the Upper Peninsula. Years before the Peterson case, Voelker wrote in his journal about his "theory . . . [that] the North . . . is more likely to have the worst crimes of unbridled sexual passion . . . the long, lonely, frigid winter; the slow unlocking of the earth; spring, the emotion—churning smell of damp earth—the rape."[21] Add to these environmental influences the troubling reality that alleged sex crimes are sometimes more difficult to resolve because they go unreported, lack corroboration, or involve little more than a credibility contest between the prosecutrix and the defendant. Perhaps Voelker concluded that jurors drawn from the local area are better suited to cope with the institutional and practical inadequacies of a criminal trial, and thus they were more capable of satisfactorily addressing alleged sex offenses that occur there.

Voelker's faith in the Peterson jury may reside in his confidence in the good judgment of his fellow Yoopers. The Peterson case occurred in the 1950s in a socially conservative area. The mores of that time and place would seem to be incompatible with the enlightened idea that a woman such as Mrs. Peterson could be a rape victim rather than an adulteress. Mrs. Peterson had a reputation for promiscuity. She was drinking and consorting "barefooted" with her alleged rapist just before the attack while her husband was absent. She accepted a ride from her alleged rapist to her home, which was within easy walking distance of the tavern, alone and late at night. Her panties were missing and perhaps she did not wear any. The novel and film explore whether a woman in these circumstances could have been raped and, if she were, whether anyone would believe her.

This was bold subject matter for that time, but for Voelker at the Peterson trial it was more than a mere fictional device or an opportunity for social commentary. Voelker counted on the jury being open to the possibility that Mrs. Peterson was raped as the premise for his defense strategy. Perhaps, given the hand he was dealt, Voelker, like Biegler, had no choice but to embrace the idea that a rape occurred. The fact remains, however, that the defense argued that the victim raped the defendant's wife and, ultimately, this strategy achieved an acquittal. The film, and especially the novel, do not draw

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20. ROBERT TRAVER, SMALL TOWN D.A. 186–87 (Crest Books newly rev. ed. 1961) (1958).

21. John Voelker, John D. Voelker Papers (1948–1950) (on file with the Central Upper Peninsula and Northern Michigan University Archives at the Northern Michigan University).

a firm conclusion about whether Mrs. Manion was raped. It is left to the reader and the viewer to make a judgment about whether a rape occurred, and whether this even matters in determining whether Lieutenant Manion should be convicted of murder.

Throughout Voelker's works, he recognizes that the criminal justice system's central purpose is to resolve issues about guilt and punishment through reason based on principle, rather than brute force relying on power.[22] The justice system tamps down emotion, replacing passion with order and sound judgment. Fundamental to this understanding of the law and how it operates is the idea that when a jury determines guilt and a judge imposes a sentence, retribution replaces revenge as the legitimate objective of punishment.

Retribution is a venerable and well-accepted basis for criminal sanctions. A retributivist would contend that a guilty murderer justly deserves to be punished,[23] and that "it is morally fitting that an offender should suffer in proportion to [his] . . . culpable wrongdoing."[24] Accordingly, retribution is inflicted by a legitimate public authority, restores the common good and the individual, and protects against over-reaching by the state. Revenge, in contrast, is inflicted by private persons, motivated by a desire to humiliate the offender, and aggrandize the punisher, and facilitates over-reaching by a person acting on this impulse. One could question whether the jury acquitted Lieutenant Manion/Lieutenant Peterson based on passion and emotion rather than reason and the law. If the former is what actually happened, the jury abdicated its assigned and proper role by exacting revenge on the victim rather than imposing retribution on the victim's killer.

Another matter relating to the jury verdict should be briefly mentioned. For a host of reasons discussed earlier, most readers are likely to root for Biegler and thus welcome the jury's decision to nullify. But consider that the most powerful source of this sentiment is probably that the reader, like the jury, dislikes the victim and what he did far more than it dislikes the defendant and what he did. This greater antipathy toward the victim is bolstered by the favorable relationship that the defense counsel has established with the jury and the prosecution team has failed to achieve. These pro-defense sentiments are further magnified for the reader in the book because the story of the trial

22. *See, e.g.*, ROBERT TRAVER, LAUGHING WHITEFISH 63 (2011).

23. *See* IMMANUEL KANT, THE PHILOSOPHY OF LAW: AN EXPOSITION OF THE FUNDAMENTAL PRINCIPLES OF JURISPRUDENCE AS THE SCIENCE OF RIGHT 198 (W. Hastie trans., T. & T. Clark 1887) (1796) (addressing the "desert of [a murderer's] deeds").

24. Russell L. Christopher, *Deterring Retributivism: The Injustice of "Just" Punishment*, 96 NW. U. L. REV. 843, 860 (2002).

is told from Biegler's subjective perspective. While this favorable attitude toward the defense might seem benign with regard to the prosecution of Lieutenant Manion, a thoughtful reader might be less sanguine about how different kinds of irrelevant, superficial, or objectionable considerations or attitudes could influence jurors in other cases. What if the jury's decision to nullify was instead predicated on the defendant's or the victim's race or ethnicity? Suppose it rested based on a party's religious persuasion, gender, or political affiliation? Imagine the intensity of a reader's outrage if prejudice or racism led to the conviction of an innocent person.

Years ago during a trip abroad, Director Otto Preminger screened *Anatomy of a Murder* at the Russian Academy of Film. Preminger was taken aback by the audience's outrage over the jury's decision to acquit the defendant. Many in attendance told Preminger it was inconceivable that such an obviously guilty person like Lieutenant Manion could be found not guilty and set free, or that this outcome could be considered acceptable or just. Preminger responded that the jury's verdict was attributable to the presumption of innocence accorded to Lieutenant Manion and every other defendant in American courts. The audience was left unsatisfied by this explanation.[25]

The Russian viewers' steadfast disapproval of the verdict is understandable given that the justification for it offered by Preminger badly misses the point and does not address their objections. Of course, Lieutenant Manion, like any criminal defendant in an American criminal court, is entitled to the presumption of innocence. This principle means that the defendant will be found guilty only if the initial presumption of innocence he is to be accorded is rebutted and overcome by proof of guilt beyond a reasonable doubt. Thus, understood correctly, Manion's acquittal cannot be attributed to or explained by the presumption of innocence. Indeed, one really has nothing to do with the other. Rather, the jury's verdict of not guilty by reason of insanity expresses its collective judgment that Lieutenant Manion should be acquitted notwithstanding the overwhelming evidence of his guilt that superseded his presumptive innocence.

The idea of jury nullification was seemingly foreign to Russian sensibilities. Perhaps this should not be too surprising, as there appears to be something distinctively American about the public's receptivity of jury nullification. It is fundamentally reassuring to most citizens of a nation born of a desire for self-governance, individual liberty, and free expression, that a

25. John Fidler, *Anatomy of a Murder*, SENSES OF CINEMA (Mar. 2013), http://www.sensesofcinema.com/2013/cteq/anatomy-of-a-murder.

jury composed of one's peers has the capacity to nullify and thus say "no" to the government. Jury nullification protects against political and prosecutorial overreaching, and it leaves important judgments about standards of behavior to be determined by community sensibilities rather than political elites or legal experts. But these benefits come with potential costs. Jury nullification can foster lawlessness and make the law less certain and predictable. It can facilitate our most evil inclinations. It can undermine the very system of justice established by the community through its laws and rules and assigned to juries to apply and enforce.

In *Anatomy of a Murder*, Voelker invites the reader to consider which legally irrelevant sentiments and prejudices should be allowed as a basis for jury nullification, and which should be prohibited. And, just like individual jurors at a criminal trial, each reader must confront these questions from a uniquely personal perspective. What forms of prejudice and bias should be permitted? What role should situational ethics play? Which values are absolute, and which are relative? These troubling questions may leave the perceptive reader feeling uncertain and uncomfortable, which seems to be exactly what Voelker intended.

These conflicting impulses help explain why jury nullification exists in a sort of legal limbo in the American criminal justice system. Jury nullification is not prohibited by the law, and yet judges rarely charge juries that they possess such power even when the defense requests that they be so instructed. Defense counsel can directly appeal to the jury in closing argument that it should nullify, but judges have the authority to limit such entreaties. Voelker recognizes that in most successful cases of jury nullification, the defense must present a passible even if ultimately unconvincing legal peg, such as insanity, to achieve an acquittal. This approach facilitates jury nullification by subterfuge, insofar as the jury nullifies based on an extraneous rationale that is inconsistent with the judge's instructions to it. While presenting the issue of jury nullification in all its glory in *Anatomy of a Murder*, Voelker also exposes its many lurking dangers. Characteristically, Voelker presents both sides but leaves it to the reader to reach his own conclusions.

Although Voelker supports and occasionally champions the advantages of an adversarial trial played out before a jury, at other times he expressed grave reservations:

> [I have an] uneasy suspicion, growing into a conviction, that our present system of determining criminal guilt or innocence is in many respects imperfect . . . . [I]t is remarkable and also disheartening to realize how much depends upon the lawyers in the trial of a criminal case; upon the D.A. and

> his legal opponent, their relative competence or incompetence, whether they are on the ball or not. Too often, I feel, the result in the trial of a given case depends entirely too much upon this theoretically irrelevant factor. I have a companion grievance. Most big criminal trials in our day have become nothing more or less than a talent show, a forensic duel between two glittering legal personalities—however thrilling the duel or compelling the personalities—with the judge reduced to a master of ceremonies and the bewildered jury frequently awarding the prize to the side which puts on the better show. This would all be very well and even amusing if it did not happen to involve vital interests of the public as well as the fate of an anxious defendant. As it is we happen to be dealing with a clash between two of the most pressing concerns of our lives: the public welfare and the freedom and liberty of an individual human being.[26]

Voelker's novel and Preminger's film identify these concerns without offering a firm judgment about the efficacy of juries. The novel and movie, each in their own way, are authentically descriptive portrayals of the criminal justice system, which afford the layman an intimate peek behind the curtain. The reader and viewer observe lawyers with varying degrees of competence performing critical tasks and pushing the envelope in service of a desired verdict. They see the judge preside over the trial with no investment in the outcome, focusing solely instead on ensuring that the proper procedures are followed. It is likely that readers identify most closely with the jurors, who are legal novices thrust into a pivotal role at a criminal trial. Often a confused and bamboozled lot, jurors are called upon to decide important matters they seem ill-equipped to address, especially after being entertained and perhaps misled by the opposing counsels' theatrics and histrionics.

In *Anatomy of a Murder*, Voelker and Preminger lay bare the many deficiencies of the American jury system without prescribing or even advocating for a preferable alternative. Indeed, the lesson may be that the present system, despite its many flaws and frailties, may be the best we can ever hope to create. To paraphrase Winston Churchill, a jury trial is the worst forum for deciding guilt except for all those other forums that have been tried from time to time.[27] Or, as Voelker puts it in his book *Troubleshooter*, "Conceding the many weaknesses of the present jury system . . . I still rather lean to the tentative conclusion that there has not yet been found a better or

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26. TRAVER, SMALL TOWN D.A., *supra* note 20, at 184–85.

27. *See* THE OXFORD DICTIONARY OF QUOTATIONS 221 (Elizabeth Knowles ed., 6th ed. 2004) ("Democracy is the worst form of Government except all those other forms that have been tried from time to time.").

more democratic way for men to determine legally their clashes with each other and with society."[28]

CHAPTER 13: WAS JUSTICE SERVED?

The most compelling and complicated question Voelker poses in *Anatomy of a Murder* is whether Lieutenant Manion was justly acquitted even though he was legally guilty.[29] The answer may turn on one's definition of "justice." *Black's Law Dictionary* defines "justice" as the "fair and proper administration of laws."[30] This definition presumably encompasses both processes and outcomes and is achieved by "[p]rotecting rights and punishing wrongs using fairness."[31] As Voelker puts it, a criminal trial is about "big things like truth and justice and fair play."[32] *Anatomy of a Murder* reveals that specifying and achieving substantive justice is often a far more difficult proposition than merely ensuring procedural compliance.

Professors Asimow and Mader have observed:

> Many lawyers are uncomfortable with notions of substantive justice because they understand how difficult it is ever to find out the truth, especially about events that occurred in the past. Who is telling the truth, who is lying? What did happen, for example, between Barney Quill and Laura Manion or between Laura and Lt. Manion? What was Lt. Manion's state of mind when he gunned down Quill? We, the audience, never find out, because the movie lacks the customary flashbacks to the bloody events. Neither do Biegler, Dancer, Judge Weaver, or the jurors. Lawyers are also uneasy discussing substantive justice because, in the real world, human behavior defies easy representation; there are at least two sides to every question worth talking about. Even when we claim to be certain about what happened, it can still be hard to know for sure what would be a "correct," "just," or a "moral" response.[33]

Evaluated in terms of process and outcomes, the Manion trial is at once an unqualified success and an abject failure. Clearly Lieutenant Manion was

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28. TRAVER, TROUBLESHOOTER, *supra* note 15, at 133.

29. *See generally* MICHAEL ASIMOW & SHANNON MADER, LAW AND POPULAR CULTURE 36 (2d ed. 2013) (examining the application of the "unwritten law" to the jury's decision in *Anatomy of a Murder*).

30. *Justice*, BLACK'S LAW DICTIONARY (Bryan A. Garner ed., 7th ed. 1999).

31. *What is Justice?*, THE LAW DICTIONARY, https://thelawdictionary.org/justice (last visited Nov. 7, 2021).

32. TRAVER, ANATOMY OF A MURDER, *supra* note 14, at 396.

33. ASIMOW & MADER, *supra* note 29, at 31.

provided all his procedural rights, and then some, at his trial. Biegler and the judge made sure that the defendant received every protection afforded by the rules of evidence and trial practice. Lieutenant Manion clearly had a competent counsel who zealously represented him. Had Lieutenant Manion been convicted of murder, he would have no apparent basis for reversal. The goal of procedural justice was thus fully satisfied, and this seems to be a comparatively straightforward objective to assess and accomplish.

The trial utterly fails to achieve substantial justice, however, insofar as the defendant was not held criminally accountable for his homicidal conduct. Regardless of Lieutenant Manion's precise motivations for killing Quill, we know that he was not legally insane. Accordingly, at best he was guilty of the lesser-included offense of voluntary manslaughter,[34] and at worst of premeditated murder.[35] Given that Lieutenant Manion was legally guilty of a felony homicide, but was acquitted, he was neither held responsible for his crime under the law nor was he proportionally and retributively punished for it. A reader or viewer is left to resolve why he has rooted so hard for Biegler to prevail despite his client's obvious guilt and the resulting failure of the system to achieve substantive justice.

Both Voelker in his novel and Preminger in his film conspicuously elevate procedural compliance above substantive justice. The point is made especially clear in the final courtroom scene in the movie when the jury's verdict is announced. The camera is positioned behind the bench and views the courtroom from the perspective of the trial judge. When the jurors enter, they are called to stand shoulder to shoulder before the bench and face the camera. Thus, when the jury foreman announces the verdict, he is addressing the viewer and the judge, who is the final arbiter of procedure but is not invested in the result. Lieutenant Manion and Biegler are seen behind the jury and in the background, almost blending into the first row of the gallery. Mrs. Manion is not even in the courtroom; instead, she waits outside in a car, once again clad in her preferred attire of tight slacks, high heels, and no girdle. After the verdict is announced in court, the camera stays with a static long shot from behind the judge. There is no jump cut to a close-up that captures the reaction

34. "Manslaughter" is defined as "[t]he unlawful killing of a human being without malice aforethought." *Manslaughter*, BLACK'S LAW DICTIONARY, *supra* note 30. "Voluntary manslaughter," a lesser-included offense charged at the Peterson trial, is defined as "[a]n act of murder reduced to manslaughter because of extenuating circumstances such as adequate provocation (arousing the 'heat of passion') or diminished capacity." *Voluntary Manslaughter*, BLACK'S LAW DICTIONARY, *supra* note 30.

35. "Premeditated," in the context of premeditated murder, is defined as a murder "[d]one with willful deliberation and planning; consciously considered beforehand." *Premeditated*, BLACK'S LAW DICTIONARY, *supra* note 30.

of the defendant or Biegler. And the camera does not linger; the scene ends shortly after the verdict is announced. The effect is that at the climax of the trial, the defendant, his wife, and his counsel are portrayed as afterthoughts. The content of the verdict, and its impact on the parties, is assigned less importance than the stylized combat that preceded it and the way it is announced. Preminger accepts—he even embraces—the irreducible ambiguity of objective reality, and he focuses instead on how the legal system processes this. In Preminger's film, as in Voelker's novel, substance is subordinate to procedure.

Indeed, the preeminence of proper procedure over substantive justice resonates throughout the novel and the film. Biegler's introspective reflections about his maneuvers involving "the Lecture,"[36] for example, are confined to ensuring procedural compliance and do not concern substantive truth or guilt. The same preeminence of procedure is emphasized in the many other adversarial machinations by counsel involving witness examination and objections thereto. The judge, for his part, presides over the trial and rules on objections like a good umpire; he does not care who wins but rather is focused on ensuring that the rules of the game are properly applied and enforced. The priority of process over substance is an attitude that is widely shared within the legal the community. It is also denigrated by many in the public as "loophole chasing" that can subvert justice. The scrupulous adherence to

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36. [Biegler navigates the razor's edge of leading his client to assert an insanity defense without overtly suggesting the defense, which would have been ethically prohibited, with a rhetorical ploy familiar to defense lawyers, which he disingenuously refers to as, "the Lecture." Speaking through Biegler, Voelker writes:

> The Lecture is an ancient device that lawyers use to coach their clients so that the client won't quite know he has been coached and his lawyer can still preserve the face-saving illusion that he hasn't done any coaching. For coaching clients, like robbing them, is not only frowned upon, it is downright unethical and bad, very bad. Hence the Lecture, an artful device as old as the law itself, and one used constantly by some of the nicest and most ethical lawyers in the land. 'Who, me? I didn't tell him what to say,' the lawyer can later comfort himself. 'I merely explained the law, see.' It is a good practice to scowl and shrug here and add virtuously: 'That's my duty, isn't it?' Verily, the question, like expert lecturing, is unchallengeable. I was ready to do my duty by my client and he sat regarding me quietly, watchfully, as I lit a new cigar.

TRAVER, ANATOMY OF A MURDER, *supra* note 14, at 35. *See generally* Richard C. Wydick, *The Ethics of Witness Coaching*, 17 CARDOZO L. REV. 1, 26–27 (1995) (explaining that Biegler employs "the Lecture" to avoid being reported and disciplined, and to avoid the appearance of dishonesty); Erin C. Asborno, *A Guide to the Ethical Preparation of Witnesses for Deposition and Trial*, A.B.A. (Dec. 13, 2011), https://www.americanbar.org/groups/litigation/committees/trial-practice/articles/2011/121311-ethics-preparation-witnesses-deposition-trial (referring to "the Lecture" as striking the "delicate balance between our duty to clients and our ethical obligations to the court"). "The Lecture" is discussed at length in Chapter 10 of *Dissecting "Anatomy of a Murder"*, *supra* note 11.]

process at the expense of substance, as reflected in *Anatomy of a Murder*, has several important implications. It reveals and informs society's values and preferences. It shapes who we are and what we deem important. It helps explain why the reader and viewer are not disappointed, let alone outraged, by the defendant's acquittal, as were the Russian viewers who considered this result to be a miscarriage of justice. And it influences public attitudes about lawyers and the justice system. Procedural justice reigns supreme, and this objective was fully served at Lieutenant Manion's trial.

While jury nullification may seem as being at odds with a preference for process over substance, it is in fact wholly consistent with this. Jury nullification is allowed under the rules of the American justice system. If nullification were procedurally prohibited, the trial rules would insist that the judge have the power to substitute a guilty verdict for an acquittal where the evidence clearly proves the defendant's guilt beyond a reasonable doubt. But in both the Peterson and Manion trials, the judge is helpless to intervene and find the defendant guilty even if he felt compelled to do so in the interests of justice. Likewise, the prosecutor has no authority to contest an acquittal, even in cases when the jury obviously nullifies. A not guilty verdict based on jury nullification is accepted by all because it comports with proper procedure, and not because it achieves substantive justice.

Next, consider whether Lieutenant Manion's acquittal served justice in a broader sense of the term, i.e., when the idea of justice is removed from a strictly legal construct. The great philosopher St. Thomas Aquinas wrote that "justice" is a virtue, a good habit, whereby a person has a constant and ready will to give each his due.[37] Voelker puts it this way in *Troubleshooter*:

> [B]y and large, it has been my observation that the twelve-man jury somehow tends, in the majority of cases, to achieve a fair average of a sort of rough justice. One does not use calipers when daring to talk about Justice. And, too, what strikes one as a just or an unjust verdict depends a lot on one's point of view.[38]

Regarding this idea of substantive and rough justice, a few admittedly superficial observations are now offered about the abstract question of whether each of the major players received "his or her due," or what here will be referred to as true or poetic justice.

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37. ST. THOMAS AQUINAS, SUMMA THEOLOGICA, Pt. I-II, Q. 90, Art. 1 (Fathers of the English Dominican Province trans., 2d ed. rev. 1920).

38. TRAVER, TROUBLESHOOTER, *supra* note 15, at 133.

First, consider whether Chenoweth/Quill received what was due to him. We suspect that he is a serial rapist, but he was never convicted. We know that once he was dispatched, he could never rape again. With regard to his encounter with Mrs. Peterson/Manion, we believe that he is either a violent sexual predator or an incorrigible and indiscreet adulterer. In either case, he seriously transgressed the community's mores and sensibilities. He was killed by someone who ostensibly defended his wife's honor and was indirectly victimized. In a final and ironic twist, he consistently boasted about his prowess with firearms, but he is shot to death with his pistol within reach. The actual jurors, as well as readers and viewers, are left to ponder whether, all things considered, the victim got what he deserved. The answer may be uncomfortably visceral and difficult to reconcile with a properly formed conscience.

Second, consider whether Lieutenant Peterson/Lieutenant Manion received what was due to him. Knowing that the defendant was not insane, the question then becomes whether he should have been acquitted via jury nullification despite his legal guilt? This is not a case of a jury disapproving of an unjust law, suspecting prosecutorial misconduct, or believing that the defendant has already been sufficiently punished.[39] Rather, the decision here to nullify involves an exercise of each juror's individual judgment, expressed collectively, and informed by community standards, relating to equities and moral privileges. In other words, the jury tasked itself with deciding whether the defendant has the right (or more properly, should have the right) to defend his wife's honor and kill her alleged rapist? A related question is whether the jury, as the representatives of the community, should have the leeway to apply their sensibilities about a just result in an ad hoc fashion when deciding whether the defendant should be convicted of murder or be excused for acting on this impulse? Further, was the blunt instrument of a criminal jury trial an efficacious means for dispensing justice under all of the circumstances? Voelker does not answer these questions, but he compels the thoughtful reader to confront them by weaving these issues, unconcealed and seamlessly, throughout the story he tells. These kinds of questions remain as relevant today as they were when Lieutenant Peterson was tried.

Third, consider whether Voelker received what was due to him. He zealously represented his ungrateful, deadbeat client. His conduct most probably comported with the letter of the law. He vanquished his dishonorable political rival. He became wealthy and was celebrated. He was able to support

39. *See generally* JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 7–10 (8th ed. 2018) (discussing traditional bases for jury nullification).

his family and live well. His writings were widely read. But all these laudable ends and his good fortune were derived from his successful defense of a guilty murderer. Assuming Voelker administered "the Lecture" to Lieutenant Peterson, as Biegler did to Lieutenant Manion, his deliberate actions intentionally resulted in the fabrication and presentation of a successful but fictious claim of insanity. Voelker challenges the reader to question whether his alter ego Biegler served justice in his defense of Lieutenant Manion. One cannot help but imagine that Voelker, in moments of quiet self-reflection, may have asked himself the same question.[40]

During the film's final scene, Biegler and McCarthy arrive at the trailer park to execute a promissory note to guarantee payment by Lieutenant Manion of the substantial remaining balance of Biegler's legal fees. As we recall, the Manions, having been possessed by an irresistible impulse, have fled the area. Upon learning this, Biegler informs McCarthy, now his law partner, that they need to meet with their newest client, Mary Pilant. Biegler and McCarthy have been retained by Pilant to be the executors of her late father's estate, whose assets include the Inn in which he was shot to death by their erstwhile client. McCarthy, expressing a combination of thoughtful consideration and understated bemusement, remarks to Biegler that this is "poetic justice for everybody."

McCarthy's pronouncement about poetic justice is hardly an off-hand comment. "Poetic justice" is a common expression that is synonymous with certain aspects of the natural law. Professor John Barton has explained,

> [Old Testament Prophets] who use the notion of poetic justice are implicitly appealing to a human consensus about what sort of acts are just and unjust, which is not logically derived from the revelation of moral norms by God, but rests on ideas about ethics formed by reason—which one might conveniently refer to as natural law. . . . For the moral principles which rational men can recognize are not other than the principles on which God himself works when judging the actions of men.[41]

Human consensus about what is just and unjust suggests that each of the major players in the novel and film were punished in accordance with the natural law, i.e., poetic justice. Proverbially speaking, Mrs. Manion received

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40. In his novel, Voelker concedes that Biegler and the defendant "used" each other—"[the defendant] got his freedom and [Biegler] got whatever it is [he] got." TRAVER, ANATOMY OF A MURDER, *supra* note 14, at 435.

41. John Barton, *Natural Law and Poetic Justice in the Old Testament*, 30 J. THEOLOGICAL STUD. 1, 13 (1979).

sexual attention, albeit more than she bargained for—"what goes around comes around." The sexually violent, gunslinging tavern owner, Barney Quill, got paid in his own coin—"he who lives by the sword dies by the sword." The smarty-pants prosecutor, Dancer, proves to be too smart for his britches and sets himself up for humiliation at the end of the trial—"pride goeth before the fall." The defendant, Lieutenant Manion, was set free only to run away with his flirtatious wife who will torment him with a jealous rage all the days of his life, and so he will live miserably ever after—"Better a small corner in the attic than a whole house with a quarrelsome wife." And Mary Pilant, the quiet and hardworking illegitimate daughter of the victim, who turns over the crucial piece of evidence against her violent father based on principle, is bequeathed his estate—"and the meek shall inherit the earth."

Even the minor players in Biegler's circle received their due. McCarthy stayed on the wagon and uncovered crucial legal precedent and evidence while serving as Biegler's associate on the Manion case. He was thereby redeemed and reclaims his dignity, and he can again practice the profession he loves. Maida, Biegler's chronically underpaid secretary, continued to work diligently for Biegler motivated by loyalty and the faint hope that Lieutenant Manion would someday pay his legal fees. After the trial, Mary Pilant hired Biegler and McCarthy as executors of Quill's estate, thus assuring that Maida will at last be financially compensated for her faithful service.

Each of the above-mentioned characters received what McCarthy would call poetic justice. But what about Biegler? He is by far the most difficult character to pin down. We can surely agree he performed the honorable role of a defense counsel with acumen and skill. But his efforts resulted, as he intended, in the acquittal of a guilty murderer. As a consequence of his defense of Lieutenant Manion, Biegler was ultimately retained by an honorable, paying client—Mary Pilant. Could this amount to poetic justice for Biegler? Perhaps it is enough to say that all things considered, Biegler got what he deserved: a respectable and honorable client whose interests he could honorably assert and defend.

Upon reflection, perhaps Biegler was mistaken when he admonished Lieutenant Manion during their first meeting that the unwritten law is a "myth." It might instead be that the unwritten law, or poetic justice as McCarthy puts it, is an omnipresent subtext that ultimately will win out. In this regard, *Anatomy of a Murder* is not unlike Dostoevsky's great novel *Crime and Punishment*. There, a guilty murderer eludes human justice only to be pursued by the furies of his conscience executing the unwritten law. Among the secondary precepts of the unwritten law is "thou shall not murder," "thou shall not commit adultery," "thou shall not steal," and "thou shall not bear

false witness under oath." Lieutenant and Mrs. Manion have collectively violated all of these tenets. In the end, they received the poetic justice they deserved in accord with the unwritten law.

In the preface of his movie *The Ten Commandments*, Cecil B. DeMille said, "This is a story about those who try to break the laws of God but find they are broken, instead, by them."[42] Poetic justice, what others may call irony or karma, is a real concept. It strikes sure and true in *Anatomy of a Murder*, even when human justice waivers. Indeed, extra-juridical poetic justice—the so-called unwritten law—ultimately triumphs in *Anatomy of a Murder*. It prevails even against the court's dogged attempt to adhere to the law's formal rules and procedures, which at the Manion trial seem to be designed to frustrate poetic justice.

Returning again to the film's final scene at the trailer park, where Biegler and McCarthy learn that their client and his wife have skipped town without paying their legal bills. Biegler looks down at the mess they left behind and picks up a broken high-heel shoe. He examines it briefly and then hooks it over the rim of a large trash barrel. McCarthy offers his remarks about poetic justice and they both leave. The camera remains fixed on the trash barrel and the shoe. This is the film's final, lasting image.

Perhaps this is a stretch, but the image of the broken shoe perched on the trash barrel seems imbued with symbolism. It evokes a broken sole (soul) that is banished from the idyllic environs of Big Bay (heaven, or perhaps paradise) and destined for eternal damnation in a garbage dump (hell). This sole is relegated to the trash heap because, in its ruined condition, this is where it deserves to be. Even if all the supernatural allusions are eliminated, the natural law recognizes that all things are finite—"ashes to ashes and dust to dust." For Mrs. Manion's shoe, its unceremonious banishment to a landfill is a fitting end to its sordid, earthly existence. The shoe, and what it symbolizes, receives the poetic justice that it deserves.

McCarthy's pronouncement about poetic justice suggests that this concept is not bounded by the four walls of a courtroom and the jury's official verdict. True justice, in other words, cannot be fully attained under man's law. Rather, it is found beyond the written law, and at times despite it. It is incapable of being fully realized solely through the formal rules of procedure and counsel's faithful adherence to them. And it encompasses much more than a slavish and narrow insistence on right and wrong, as often these concepts are difficult to discern with clarity and are infused with subjectivity. Voelker, through McCarthy, might be suggesting that we, as mere mortals, lack the capacity to

42. THE TEN COMMANDMENTS (Cecil B. DeMille Production 1956).

comprehend, let alone administer, true justice with all of its complexities and imponderables. For us, as for the participants at the Peterson trial and the characters in *Anatomy of a Murder*, perhaps it is simply that justice is what actually happens, and in the end, everyone gets at least as much of it as they deserve.

CONCLUSION

Anatomy of a Murder tells a story "gleaned from an examined life" and drawn from experience in one of the central arenas in which truth, or what passes for it in an imperfect world, is "exposed or obscured"—the courtroom.[43] *Anatomy* instructs that for all of its rules and formalities, the criminal justice system is a rather rudimentary endeavor in which juries and judges usually try to do the right thing, and which is sometimes difficult to evaluate. It is also a human endeavor, and thus invariably and unavoidably flawed.

While *Anatomy of Murder* lays bare many of these shortcomings and raises important questions about the law and justice, it also reaffirms that defendants generally get a fair shake when they enter a criminal courtroom charged with a serious crime. Human history tells us that this is not an insignificant or modest achievement.

Had Voelker not served as defense counsel at the Peterson trial, he would have been incapable of writing *Anatomy of a Murder.* Had he not written his great novel, Preminger could not have made his great film. Had the novel and film never been written and produced, this would have been a true injustice.

I cordially invite you to explore my book in its entirety and embark on the thrilling journey that is *Anatomy of a Murder*.[44] The book examines and analyzes—it dissects, if you will—*Anatomy* in significant detail. It tells the fascinating story of its author, John Voelker. It recounts the 1952 murder in Big Bay, Michigan, and community attitudes about the crime. It chronicles the actual, high-profile murder trial, in which Voelker served as defense counsel. It explains how Voelker adapted this real-life trial into a fictional form as a great novel. And it looks back on the production of the groundbreaking film that his novel inspired.

In addition to this largely historical assessment, this book considers several discrete legal and ethical issues the novel and film raise, including the

43. The quoted language is taken from an excerpt from the book's Foreword, eloquently written by Frederick M. Baker, Jr., Secretary-Treasurer of the John D. Voelker Foundation, and a good friend of John Voelker.

44. I am proud that this book is the first work published by the newly established Ave Maria School of Law Press.

implications of a criminal attorney "explaining the law" to a client in a manner that may "suggest" a dubious defense. It also reflects upon broader questions, such as the proper role of juries and the impact of community standards in a criminal trial. It evaluates the capacity of the criminal justice system to achieve true justice within the context of what Voelker called the "settled procedures and ancient rules" of the law. And ultimately—it chronicles the greatest legal war story ever told.