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MAD ABOUT 12 ANGRY MEN

STEPHAN LANDSMAN*

The world of fifty years ago is gone. It may not be entirely forgotten, but much of what defined that time has disappeared. The automobile perhaps most vigorously promoted was Ford's Edsel. The admen shouted, "Once you've seen it, you'll never forget it."¹ But forget it the American public did, and astoundingly quickly. The toy craze of the era was the HulaHoop. It didn't vanish overnight but certainly has slipped from the Olympian heights where twenty million were sold in the first six months of production in 1958.² The "definitive" nighttime television program was *The Ed Sullivan Show* which featured a vaudeville format.³ Not only is Ed gone, but the vaudeville format as well. Storied sports franchises of the era have moved on. The Brooklyn Dodgers (named that apparently because "citizens of Brooklyn . . . had to duck and dodge the many Trolleys that crisscrossed the Borough of Brooklyn at the time"⁴) now bask in the sun of Los Angeles where they have been joined by the erstwhile Minneapolis Lakers. The majestic long-haul passenger trains of the 1950s have been replaced by overcrowded jetliners. And most significant of all, the bipolar geopolitical world of the time was dismantled along with the Berlin Wall when the Soviet Union collapsed and splintered into its constituent parts.

12 Angry Men is the product of a world that has vanished. It was originally conceived and mounted as a live television drama in 1954. Its format and length (fifty minutes total running time) were dictated by antiquated television technology that did not allow for pre-broadcast filming.⁵ Everything had to be done live, fast, and in a fairly straightforward manner

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1. The Edsel Pages, 1958 Edsels, <http://www.edsel.com/pages/edsel58.htm> (last visited Apr. 17, 2007).

2. Mary Bellis, Hula Hoop, http://inventors.about.com/od/hstartinventions/a/Hula_Hoop.htm (last visited Apr. 17, 2007).

3. Ron Simon, The Ed Sullivan Show, <http://www.museum.tv/archives/etv/E/htmlE/edsullivans/edsullivans.htm> (last visited Apr. 17, 2007).

4. Sports Encyclopedia, Brooklyn Dodgers, <http://www.sportsencyclopedia.com/nl/bdodgers/brooklyn.html> (last visited Apr. 17, 2007).

5. Russ Munyan, *Reginald Rose: A Biography*, in READINGS ON TWELVE ANGRY MEN 13, 13-14 (Russ Munyan ed., 2000) [hereinafter READINGS].

to meet the demands of the new medium. This yielded a condensed drama sketched in bold, simple strokes.⁶

At the urging of Henry Fonda, the television play was expanded by its author into a film script that was then made into a movie and released in 1957.⁷ The film industry that produced *12 Angry Men* faced profound challenges. It had been under intense government scrutiny since at least 1949, when the so-called “Hollywood Ten” had been hauled before Congress and refused to cooperate with the House Un-American Activities Committee. The industry’s reaction to this and other inquiries was a shameful effort to expel all those with prior communist associations from the movie business. Writers, directors, actors, and others with significant past ties to “red” organizations were placed on a blacklist enforced through the efforts of the major studios. Those on the list were denied all Hollywood employment. By contrast, those who cooperated in the government witch hunt by providing the names of individuals who had been involved with the Communist Party or other left-wing organizations during the 1930s and 1940s were exempted from the purge.⁸ Some of the medium’s finest artists, including Academy Award-winning director Elia Kazan and gifted actor Lee J. Cobb (who would co-star in *12 Angry Men*), named names and fed the paranoia sweeping Cold War America.⁹

Not surprisingly, the 1950s film industry committed itself to an effort to produce patriotic fare. One of the favorite themes in that effort was the dramatization of ways in which the United States was different from and superior to the Soviet Union.¹⁰ Sometimes that goal was thinly disguised, as in the 1956 science fiction classic *Invasion of the Body Snatchers*.¹¹ There a town was slowly taken over by exact duplicates of its original human inhabitants, produced from outer space pods. The new “humans” were committed to the subversion of the entire world and its conversion into a society of unfeeling, fanatically communal automatons. The film ended on a note of alarm as the town’s lone non-pod survivor vainly sought to warn

6. See Reginald Rose, *Creating the Original Story*, in READINGS, *supra* note 5, at 36, 38.

7. Henry Fonda approached the author, Reginald Rose, after the 1954 television show was aired, and the two agreed to co-produce a “full-length feature movie” based on the original script. Munyan, *supra* note 5, at 14.

8. On the “Hollywood Ten” and the blacklist, see VICTOR S. NAVASKY, NAMING NAMES (1981); Munyan, *supra* note 5, at 21–22; Jeffrey M. Shaman, On the Waterfront: *Cheese-Eating, HUAC, and the First Amendment*, 20 CONST. COMMENT. 131 (2003).

9. See DAVID A. COOK, A HISTORY OF NARRATIVE FILM 476 (2d ed. 1990); Shaman, *supra* note 8, at 138–40.

10. See David Ray Papke, *Law, Cinema, and Ideology: Hollywood Legal Films of the 1950s*, 48 UCLA L. REV. 1473, 1487 (2001).

11. *INVASION OF THE BODY SNATCHERS* (Allied Artists 1956) (directed by Don Siegel and starring Kevin McCarthy, Dana Wynter, King Donovan, and Carolyn Jones).

passing motorists. The connection between the pods' soulless ways and life under communism is hard to miss. A more straightforward exploration of American superiority was presented in the 1961 film *Judgment at Nuremberg*.¹² There, American justice at its most decent and fair-minded (embodied by Spencer Tracy playing an American judge from Iowa) was contrasted with totalitarian (albeit Nazi) lawlessness (in the form of judges from the Third Reich). Released in the period between these two classics, and accompanied by scores of other similarly themed movies, *12 Angry Men*, unsurprisingly, devoted itself to exploring the superiority of the American justice system. It served this function so well that it was honored with the American Bar Association's first award to a feature film.

There are at least a dozen reasons why we might consider placing *12 Angry Men* on the refuse heap of history along with the Edsel, HulaHoop, and Soviet Union—things that a changing world rendered outmoded:

ONE: The film embraces the prevailing view of its era about the necessity for a strong, quiet hero to come to the rescue of his hapless companions or community. This was the oft-repeated theme of the era's westerns where the lone ranger or man in the "white hat" rode out of nowhere to save those in distress. In *12 Angry Men* the lone hero was Juror #8. Without his intervention the jury's deliberations would have failed and an eighteen-year-old boy would have been condemned to die.

Juror #8 was played by Henry Fonda, who also served as the film's producer. Fonda had made a career of playing strong, quiet heroes like the eponymous *Young Mr. Lincoln*,¹³ the Christ-like Tom Joad in *Grapes of Wrath*,¹⁴ and the brave Wyatt Earp in *My Darling Clementine*.¹⁵ Here Fonda became the man in the white suit, a very different sort of man than his fellow jurors (a point intimated in the film's opening sequence when he is pictured standing alone as the other jurors mill about the cramped jury room).

Juror #8 is self-effacing and wise. He is manly and intellectually superior. Whether he is facing down a raging Lee J. Cobb (Juror #3—the messenger service man) or convincing the coldly rational E.G. Marshall (Juror

12. JUDGMENT AT NUREMBERG (United Artists 1961) (directed by Stanley Kramer and starring Marlene Dietrich, Spencer Tracy, Burt Lancaster, Richard Widmark, Maximilian Schell, Judy Garland, Montgomery Clift, Werner Klemperer, and William Shatner).

13. YOUNG MR. LINCOLN (Twentieth Century-Fox Film Corp. 1939) (directed by John Ford and starring Henry Fonda).

14. THE GRAPES OF WRATH (Twentieth Century-Fox Film Corp. 1940) (directed by John Ford and starring Henry Fonda).

15. MY DARLING CLEMENTINE (Twentieth Century-Fox Film Corp. 1946) (directed by John Ford and starring Henry Fonda, Victor Mature, Grant Withers, and Walter Brennan).

#4—the stockbroker), he is up to the task.¹⁶ He is above the law and unconstrained by its limits. Where the evidence produced by the defense is inadequate, he goes out and does his own investigating. In a single evening's walk he finds the exact duplicate of the supposedly unique murder weapon and, thereby, obtains the proof that persuades the first of his eleven co-jurors to switch his vote.

To say that Juror #8 is too good to be true is an understatement. He is a hero of monumental proportion. Everything he does and says is right. The message conveyed is that ordinary mortals are hard-pressed to manage on their own when sitting on a jury. This is an odd message for a film allegedly intended to extol the virtues of America's jury system.

TWO: The movie's anti-bureaucratic, Wild West hero is a vigilante who takes the law into his own hands. He is compelled to do so because all of the court's officers have failed at their jobs. The police appear to have done a shoddy investigation. They have ignored fundamental forensic analysis regarding the nature and angle of the victim's wounds. They have paid no heed to warning signs about their lame and near-sighted witnesses. The prosecution has been overzealous and has failed to consider the potential flaws in its case.¹⁷ The defense seems to have been incompetent, and Juror #8, more or less, says so: "It is also possible for a lawyer to be just plain stupid, isn't it?"¹⁸ The droning judge appears bored by the proceedings and shows no sign of concern that a fair result be achieved.

If the proceedings are going to be saved, it is only by the exertions of someone who chooses to work outside the law. That is exactly what Juror #8 does. He transgresses the rules; conducts his own search for evidence; brings that new, untested, evidence before his fellow jurors; and with it seizes control of the deliberations.¹⁹ The lesson seems to be that a vigilante for justice may use any means to get the "right" result. Such a lesson runs counter to the core ethos of jury trial—that fair procedure in open court should serve as the sole basis for a decision by twelve disinterested citizens.

THREE: Inescapably interwoven with the themes of the lone hero and the vigilante, is a belief in a paternalistic solution to the problem of justice—everything will come out all right if we trust in the good father. Most of the jurors in *12 Angry Men* behave like children in search of parental

16. For the names of the actors who played the various jurors, see Leslie Halliwell, *Twelve Angry Men Is a Cinematic Success*, in READINGS, *supra* note 5, at 118, 120–21.

17. Russ Munyan, *Characters and Plot*, in READINGS, *supra* note 5, at 27.

18. *12 ANGRY MEN* (Orion-Nova Productions 1957), *quoted in* David Burnell Smith, *Twelve Angry Men Presents an Idealized View of the Jury System*, in READINGS, *supra* note 5, at 97, 98.

19. Smith, *supra* note 18, at 100–01 (citing criticism of Alan Dershowitz).

guidance. At almost every turn the movie seems to suggest how important a good father is and how much damage is done when a father is either absent or abusive. The defendant is accused of murdering his father. The film hints that the boy's father was a physically and psychologically abusive parent. The last jury holdout for conviction is Juror #3 (Lee J. Cobb) who is the prisoner of his failed relationship with his son. He too has been an abusive father, and the result has been violence and schism in his family. The harm suffered is not just to his child but to Juror #3 himself. He has been blinded to human decency and sobs uncontrollably when he comes to that realization near the movie's conclusion.

In the end, the jury is guided to the proper decision by its two primary father figures, Henry Fonda and the old, retired man who sits next to him at the jury table (Juror #9, played by Joseph Sweeney). Their wisdom and insight are essential to the jury's success. Juror #9 makes the crucial observation that the alleged eyewitness to the crime had marks on the bridge of her nose indicating that she usually wore glasses (though, in her vanity, she did not wear them on the witness stand). He argues, quite convincingly, that it is unlikely she was wearing her glasses when she was awakened, looked out her window, and thought she saw the boy stab his father. This, added to Fonda's arguments, wins the day, and the film seems to imply that all will be well if we trust in "good" fathers. This echoes the title of a popular television show of the era, *Father Knows Best* (though, in that series the title had an ironic overtone).

FOUR: 12 Angry Men reflects the prevailing sexism of America in the 1950s. The film is, literally, about twelve angry men. There are no women in roles of responsibility. In fact, there are virtually no women at all. The movie shows us a man's world where men do everything and women do little more than serve as witnesses.

It is a world where most of the action is "manly." Violent confrontational argument is the most frequent mode of discourse. The threat of physical violence lurks just below the surface of several of the most important exchanges in the jury's deliberations. As is stereotypically the case, the men have to get mad to get the job done. The deliberations sometimes feel more like a struggle for dominance than rational analysis.

FIVE: It is an odd sort of legal triumph that is achieved in the film. The case does not come out right because of the system but rather in spite of it. If the point of the movie is to extol the American way, it may not be out of line to ask exactly what is there that is worthy of being extolled. In *Judgment at Nuremberg* it is clear that the audience is being invited to see the American judge as superior to his German counterparts. The squabbling

jury in *12 Angry Men* does not seem particularly superior to anyone. Juror #8 is a superior man, but unless there is some magical guarantee that he will be present in each gathering of twelve (a proposition that has religious or at least mystical overtones), there is little in the system that deserves our praise or warrants our allegiance.

SIX: The jurors themselves are presented in terms that might warm the heart of a tort reformer desirous of showing us why we should not trust juries. The jury is saddled with an out-and-out bigot, Juror #10, the garage owner (Ed Begley). Near the end of the film he launches into an overtly racist diatribe in an effort to turn the tide against acquittal. The group also includes at least four jurors who are timid followers or shallow sycophants incapable of thinking for themselves. The bank clerk, Juror #2 (John Fiedler), seems afraid of his own shadow and in thrall of the will of the majority. When asked why he voted guilty he says, "Nobody proved otherwise." Juror #6, the housepainter (Edward Binns), says he lets his boss do most of the thinking. Juror #7 is so concerned about getting to the ball game that, eventually, he changes his vote just to be done with the deliberations. The advertising man is Juror #12 and seems to change his vote with every shift in the wind. He actually changes sides three times striving to do the popular and safe thing.²⁰

The rest of the jurors are a more complex lot but far from reliable decision makers. Juror #3 is so angry about his son that he lets his feelings destroy his ability to deliberate rationally. Juror #1, the foreman, is so thin-skinned that criticism leads him to threaten to give up his responsibilities. More than half the jurors do not seem to be up to the task. As luck would have it, a strong and decent leader appears, but left to their own devices this group is as likely to get it wrong as right.

SEVEN: The film is blithe in its assumption that racist prejudice will be rejected. The jurors literally turn their backs on the garage man (Juror #10) when he finishes his hate-filled speech. But that conclusion feels more like a threat ignored rather than one overcome. The race hater buckles in cowardly fashion when confronted by his "enlightened" neighbors. That is not exactly how race hate was overcome in the 1950s and 1960s in America.²¹

EIGHT: In fact, juror prejudice was far from unknown in the 1950s. The era was marred by jury decisions reflecting bias and paranoia. Through most of the decade those accused of communist activities were likely to face the strongest sort of jury hostility. Julius and Ethel Rosenberg were

20. See Halliwell, *supra* note 16, at 121.

21. For the racial climate of the 1950s and 1960s, see JUAN WILLIAMS, *EYES ON THE PRIZE: AMERICA'S CIVIL RIGHTS YEARS, 1954-1965* (1988).

convicted of atomic-weapons-secrets espionage and sent to the electric chair in a case where the prosecutors (Irving Saypol and Roy Cohn) knowingly and repeatedly sought to enflame juror prejudice against “reds.” While the case against Julius was fairly convincing, the one against Ethel was shockingly weak.²² In Smith Act prosecutions, where the government pursued those it claimed had illegally worked for the communist cause, there was not a single acquittal until 1955 when a jury in Cleveland finally rejected vague and poorly supported government accusations.²³ Though prejudice was very real in the 1950s, it does not appear much in the film.

NINE: The film’s defendant faces a capital murder charge. Although several of the jurors eventually express some discomfort with this fact, eleven were ready, on the first vote and without a moment’s discussion, to expose a boy of eighteen to the death penalty. Juror #8 reminds his fellow jurors of the life and death consequences of their choice, but for both the majority and the film such a result is not particularly troubling so long as the defendant has had a fair hearing. This cavalier attitude toward execution undoubtedly reflects the attitude of the times but is troubling to the modern viewer, whether a particular foe of the death penalty or not.

TEN: In empirical terms *12 Angry Men* is dubious. Juries generally decide in the direction of their first vote. A single juror almost never holds out, let alone turns eleven opponents around.²⁴ The film’s striking dramatization of such an event encourages a naïve notion about what group decision making is like.

ELEVEN: Film critic Pauline Kael has noted that Henry Fonda’s Juror #8 is portrayed as the ideal liberal champion, “lean, intelligent, gentle but strong.”²⁵ His mission is the liberal project writ small—to save a child of the slums from the social forces conspiring to crush him. Juror #8 uses his superior intellectual ability to meet the challenge. He is the sort of character liberals could easily identify with and carries out an agenda with which they could fully sympathize. In a time when intellectuals were being characterized as “eggheads” (a term much utilized by Richard Nixon to attack Adlai Stevenson in the 1952 presidential campaign),²⁶ Juror #8 reminded

22. On the Rosenbergs’ case, see RONALD RADOSH & JOYCE MILTON, *THE ROSENBERG FILE: A SEARCH FOR THE TRUTH* (1983).

23. See STANLEY I. KUTLER, *THE AMERICAN INQUISITION: JUSTICE AND INJUSTICE IN THE COLD WAR* 182 (1982).

24. See Valerie Hans, *Deliberation and Dissent: 12 Angry Men Versus the Empirical Reality of Juries*, 82 CHI.-KENT L. REV. 579, 584 (2007).

25. Frank R. Cunningham, *Justice and Democracy Depend on Liberalism and Reason*, in READINGS, *supra* note 5, at 67, 71 (quoting PAULINE KAEL, *I LOST IT AT THE MOVIES* (1965)).

26. See Wikipedia, *Egghead*, <http://en.wikipedia.org/wiki/Egghead> (last visited Apr. 17, 2007).

those of liberal sympathies about liberalism's achievements and value. That reminder feels self-congratulatory and dated today.

TWELVE: It should be recalled that the film was a failure at the box office. It did not appeal to a broad public. British film critic Leslie Halliwell described its fate in England:

I first encountered it as manager of the Ambassador, Slough. I played it from Monday to Wednesday, one cold week in February. We did moderately with it, and a few patrons commented that it was a film they'd remember; but we trebled the daily income at the end of the week with a double bill of Audie Murphy and Abbott and Costello.²⁷

Its true audience was an "art house" crowd rather than mainstream viewers.²⁸ My sixteen-year-old rolled his eyes when I told him I was writing about it. One of his favorite television shows, *The Simpsons*, made fun of its naivety about human motivations. Homer Simpson was called to serve on a jury and became its lone holdout. Here is the dialogue leading to the first vote:

Homer: So "if" we don't all vote the same way, we'll be "deadlocked" and have to be "sequestered" in the Springfield Palace Hotel . . .

Patty: That's not going to happen, Homer.

Jasper: Let's vote, my liver is failing.

Homer: . . . where we'll get a free room, free food, free swimming pool, free HBO—ooh, Free Willy!

Skinner: Justice is not a frivolous thing, Simpson. It has little, if anything to do with a disobedient whale. Now let's vote.

Homer: Uh, how are the rest of you voting?

Everyone: Guilty.

Homer: Okay, fine. How many S's in "innocent"?

Everyone: Aw.

Homer: I'm only doing what I think is right. I believe Freddy Quimby should walk out of here a free hotel.²⁹

So why do I love this movie and celebrate its fiftieth anniversary? I don't have twelve reasons, just two or three, but they make all the difference.

In my research I came across a quote from the great French filmmaker and critic, François Truffaut, who, commenting on *12 Angry Men*, said, "[We] experience intensely the feeling, not of something done, but of

27. See Halliwell, *supra* note 16, at 121.

28. Cunningham, *supra* note 25, at 71 (quoting movie critic Pauline Kael).

29. *The Simpsons: The Boy Who Knew Too Much* (Fox television broadcast May 5, 1994), quoted in Naomi Mezey & Mark C. Niles, *Screening the Law: Ideology and Law in American Popular Culture*, 28 COLUM. J.L. & ARTS 91, 131–32 (2005).

something being done.”³⁰ This is a film about deliberations, about the process of examining evidence and weighing it. Here we watch as what, on its face, appears unassailable is shown to be doubtful. That is the essence of the jury process. It is what courts and lawyers, when doing their best work, hope will be the product of the adjudicatory process. In the film, jurors are called together to do this work and we watch them do it.

The movie, as Truffaut says, is about “something being done.” It is, in other words, about a process. The true hero of the piece is the deliberative mechanism that the law sets out to foster. Give-and-take is at its heart. Its answers may be tentative, but the way they have been fashioned validates them in an uncertain world. Psychologists, like Tom Tyler, tell us that, both as participants and as onlookers, the way we most often assess fairness of a result is through the quality of the adjudicatory process. Here we watch a decision win validation through an honest process.³¹ That is about as good a job as we can do. We may succeed or fail to get the right answer, but the effort legitimizes our system. I believe it also ennobles us as we must meet the world’s challenges, not with violence or rhetoric but with legally structured debate based on evidence. What is ultimately on trial is not an eighteen-year-old boy, or even a jury, but the human ability to live under the rule of law. The winners are the law and the men who have preserved it. They have met the challenge and transcended their limits as individuals. Twelve acting together have achieved more than any one could have.

The film also reminds us that the truth is not self-evident. It is contingent and must be struggled over. Here we see the struggle personified, and we are moved. Dignity arises out of the effort to do the best possible job when a clear answer does not exist. That dignity is enhanced when a body of men undertakes the effort knowing that there is a risk that they may fail. It is not at all clear that the defendant is innocent. What the jury concludes is that there is reasonable doubt about his guilt. When we can accept such doubt, we honor our best instincts and resist the temptation to impose too simple a solution on a complex reality.

The director, Sidney Lumet, said of his film, “This is not a tract. This is not a pro-jury or anti-jury thing. It’s . . . about human behavior.”³² The truly impressive artistry of the movie lies in its ability to capture human behavior. The icy precision of E.G. Marshall’s stockbroker, the crassness

30. Reginald Rose, *The Challenges of Screenwriting the 1957 Film Version*, in READINGS, *supra* note 5, at 40, 42 (quoting FRANÇOIS TRUFFAUT, *THE FILMS IN MY LIFE* (1978)).

31. See Tom R. Tyler & Hulda Thorisdottir, *A Psychological Perspective on Compensation for Harm: Examining the September 11th Victim Compensation Fund*, 53 DEPAUL L. REV. 355, 376–83 (2003).

32. Cunningham, *supra* note 25, at 80 (alteration in original).

of the salesman played by Jack Warden, the silly pride of Martin Balsam's foreman, and the repulsive bigotry of Ed Begley's garage owner, all ring true and register with the viewer. But the film is not so much about individual human behavior (or performance) as about group action. The real brilliance of the piece is found in the ensemble work of the cast. They appear to listen to each other and to react to each other. Their interactions personify the triumph of the group—the point that the film sets out to make. We see the group grow and change before our eyes, in order to rise above its individual constituent parts. This is what juries can and often do. Lumet and his actors don't just tell us this; they show us. Here, Lumet captures an almost intangible reality.

Will *12 Angry Men* endure? I don't know. It has, however, been repeatedly revived since it first aired on television in 1954. In each iteration it has continued to have something to say to us about the human ability to rise above the self to do justice. In 1991, Shun Nakahara, a Japanese director, decided to remake the film as a comedy in which the central joke was the wild improbability of a group of Japanese with the particular foibles of their society—extreme politeness, deference to hierarchy, and an overwhelming desire to avoid confrontation—ever working together as a jury. To almost everyone's surprise the movie, though played for laughs, ended up suggesting that Japanese citizens too can rise to the challenge of dispensing group justice.³³ *12 Angry Men* seems to have found something universal and good in human nature. That is an insight to cherish and recall.

33. The film is described and discussed in Kent Anderson & Mark Nolan, *Lay Participation in the Japanese Justice System: A Few Preliminary Thoughts Regarding the Lay Assessor System (saiban-in seido) from Domestic Historical and International Psychological Perspectives*, 37 VAND. J. TRANSNAT'L L. 935, 937 (2004).