

Critical Essay on "Twelve Angry Men"

Critic: Bryan Aubrey

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Criticism about: Reginald Rose (1920-2002)

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There must be many playgoers or moviegoers who come away from a performance or showing of *Twelve Angry Men* filled with images of themselves acting as the heroic Juror Eight. They, too, when their time came, would be calm and rational in the jury room and motivated only by a desire for justice, and they would gradually, through their integrity and persistence, persuade the other eleven jurors to adopt their viewpoint. It is, of course, natural for the audience to identify with the hero, but people may not realize that this aspect of *Twelve Angry Men*, in which one juror persuades eleven others to change their positions, is fiction, not reality. The truth is that in real life, no one would be able to act out the admirable role of Henry Fonda (or Jack Lemmon, who played Juror Eight in the 1997 remake of the movie).

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The dynamics of group behavior simply do not work that way. In the 1950s, a study of 255 trials by the Chicago Jury Project turned up no examples of such an occurrence. The study, in which microphones were placed in the jury room to record deliberations, found that 30 percent of cases were decided, either for conviction or acquittal, on the first ballot. In 95 percent of cases, the majority on the first ballot persuaded the minority to their point of view. In other words, the way a jury first casts its vote preferences is the best predictor of the final verdict. This conclusion has been confirmed by much research in jury behavior over the past half-century. So if *Twelve Angry Men* had been true to life, the defendant would almost certainly have been convicted. In group situations such as jury deliberations, there is simply too much pressure on a lone individual to conform to the view of the majority. The Chicago Jury Project showed that in the 5 percent of cases in which the original minority prevailed, there were always three or four jurors who held their minority views from the start of deliberations. (The results of the Chicago Jury Project are reported in "Twelve Angry Men Presents an Idealized View of the Jury System," by David Burnell Smith.)

In cases where one juror persists in maintaining his or her view against the majority, the result will be a hung jury, although research on juries suggests that hung juries are more common when there is a sizable minority rather than a minority of one. There is also a body of opinion within the legal profession that indicates that in cases where a lone juror opposes the majority, the holdout is unlikely to resemble Juror Eight in *Twelve Angry Men*, who is devoted to justice and acts with integrity. In fact, such a juror is more likely to be the opposite, a stubborn and antisocial person who, for some reason, feels driven to oppose the majority, sticking

to his or her opinion when there is no evidence to support it. In a review of the play in the Michigan Law Review, Phoebe C. Ellsworth summarizes this view:

The juror who opposes the majority is seen as essentially unreasonable. . . . The majority jurors, on the other hand, are seen as reasonable, willing to spend time sifting through the issues and listening carefully to the arguments of the minority even if the initial verdict is 11-1 and they have enough votes to declare a verdict.

If this aspect of *Twelve Angry Men* is more fiction than truth, the play does raise other issues that are as relevant for the criminal justice system today as they were in the 1950s. The most important of them is the nature of eyewitness testimony. At first, the jurors in *Twelve Angry Men*, with one exception, accept the eyewitness testimony at the trial at face value. This testimony is crucial to the case for the prosecution, and the jurors do not think to question the old man's claim that he saw the murdered man's son fleeing or the testimony of the woman across the street, who said that she actually saw the murder being committed. The jurors repeatedly refer to this testimony as the "facts" of the case, and near the end of the play, Juror Four even says that the woman's account of what she saw is "unshakable testimony." Juror Three adds, "That's the whole case."

The jurors in the play are conforming to what most people, when called to jury duty, believe--that eyewitness testimony is extremely reliable. The truth is rather different. Many studies have shown that eyewitness testimony is often unreliable, with an accuracy rate of only about 50 percent. Some experiments have shown even lower percentages for accurate identification, such as the 41.8 percent reported in Brian Cutler and Stephen Penrod's *Mistaken Identification: The Eyewitness, Psychology, and the Law*.

It seems that despite what people believe, humans do not have a good ability to identify people they may have seen for only a few seconds. Eyewitnesses have been shown to be especially poor at making interracial identification (in the film, a white man and a white woman identify a Hispanic individual). Research has also shown that people in stressful situations have less reliability of recall than those in nonstressful situations. Obviously, witnessing a murder is almost by definition a stressful situation. In addition, people find it harder to recall information about a violent event than about a nonviolent one.

Many experts believe that mistaken identity based on eyewitness testimony is a leading cause of wrongful convictions in the United States. In her book *Eyewitness Testimony*, Elizabeth F. Loftus discusses the issue in depth. She analyzes the famous and controversial Sacco and Vanzetti case in the 1920s, in which two men, Nicola Sacco and Bartolomeo Vanzetti, were convicted and executed for murder. It appears that eyewitnesses initially failed to identify either man as the perpetrator of the crime but later testified that they were certain of their identifications. (Loftus raises the possibility that they were improperly influenced by repeated questioning.) The jurors believed the eyewitnesses, despite plausible alibis presented by both defendants establishing that they were elsewhere at the time of the murder.

Loftus describes another case in which eyewitness testimony against the

accused was accepted by a jury, even when evidence pointing to the man's innocence far outweighed it. (The conviction was later reversed.) Loftus also discusses an experiment in which subjects were asked to play the role of jurors trying a criminal case. When eyewitness testimony was included in the experiment, establishing that someone saw the murder, the percentage of the fifty jurors voting for conviction rose from 18 percent to 72 percent. Then a variation in the case was introduced that has some relevance for *Twelve Angry Men*. The defense established that the witness had not been wearing his glasses on the day of the crime and had very poor vision. Therefore he could not have seen the robber's face. Even with this variation, 68 percent of jurors still voted for conviction. In *Twelve Angry Men*, it is a juror's realization that an eyewitness who wears glasses could not have been wearing them at the time she witnessed the crime that is the decisive factor in swinging the final three jurors to a vote of not guilty.

The legal system does have safeguards against misidentification by eyewitnesses. Since *Twelve Angry Men* was written, there has been a trend toward accepting expert testimony on the reliability of eyewitness identification. In such cases, an expert would advise the jurors on how much weight they should attach to the eyewitness testimony presented at the trial. Another legal safeguard is the right of the defense attorney to cross-examine an eyewitness. The attorney may ask questions about how long the eyewitnesses saw the defendant, what the lighting was like, how much stress they were under, the degree of certainty in their identification, and other relevant questions.

Such cross-examination requires a competent attorney. In *Twelve Angry Men*, the defense attorney's cross-examination of the witnesses is weak, according to Juror Eight, who says, "Somehow I felt that the defense counsel never really conducted a thorough cross-examination. Too many questions were left unasked." Juror Four agrees with him that the defense attorney was bad. In the 1957 film, this point is expanded. Juror Eight points out to Juror Seven that since the defense attorney was court appointed, he may not have wanted to take the case. There would have been neither money nor glory in it for him. In addition, he probably did not believe in the innocence of his client and so did not mount a vigorous defense. Thus, in *Twelve Angry Men*, the jury ends up doing the defense attorney's job for him, which is hardly an ideal situation.

Unfortunately, the inadequacy of defense counsel in death penalty cases is a persistent problem in the criminal justice system in the United States. On its website, the American Civil Liberties Union (ACLU) summarizes several death penalty cases in which inadequate representation has led to wrongful or dubious convictions. The reason for this is that capital cases are extremely complex and require expertise and experience on the part of the defense counsel, who must devote large amounts of time to the case. Because most defendants cannot afford a lawyer, the court provides them with one, but few states offer adequate compensation in such cases. The result, according to the ACLU, is that "capital defendants are frequently represented by inexperienced, often over-worked, and in many cases incompetent, lawyers." The ACLU cites one egregious example of a court-appointed lawyer in Alabama who was so drunk during a capital trial in 1989 that he was held in contempt and jailed.

The facts as presented by the ACLU suggest that the ability of the jurors in *Twelve Angry Men* to reach a just verdict despite the failures of the defense counsel is not replicated in real life. Although some playgoers

and moviegoers may feel that *Twelve Angry Men* vindicates the criminal justice system--because the right verdict is reached--it seems more accurate to view the play as an indictment of the system, since had it not been for the presence of the larger-than-life Juror Eight, justice would most certainly not have been served. The system was saved by one man, and that, sadly, is the stuff of fiction, not reality.

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