The University of Maryland School of Law presents

THE JURY AS TRUTH FINDER: FACT OR FICTION?
A Conversation

Tuesday, October 24, 2006
6 - 7:30 p.m.
500 West Baltimore Street
Baltimore, MD
“[T]he jury room is a most remarkable - and largely inaccessible - space in our society, a space where ideas, memories, viruses, and prejudices clash with the messy stuff of the big, bad world. We expect much of this room, and we think about it less often than we probably should.”
—D. Graham Burnett, A Trial by Jury

This program is funded in part by a generous grant from the France-Merrick Foundation to the University of Maryland School of Law’s Linking Law & the Arts Series.
The Jury as Truth Finder: Fact or Fiction?
Tuesday, October 24, 2006

PROGRAM

6 p.m.
Welcome
Karen Rothenberg
Dean & Marjorie Cook Professor of Law
University of Maryland School of Law

Panel Discussion
Moderator
Andrew D. Levy ’81
Brown, Goldstein & Levy

Panelists
D. Graham Burnett
Princeton University

The Honorable Deborah Eyler ’81
Maryland Court of Special Appeals

Question and Answer Session

Closing and Acknowledgments

8 p.m.
Opening Night Performance

TWELVE ANGRY MEN
A Play by REGINALD ROSE
Directed by SCOTT ELLIS
A ROUNDABOUT THEATRE COMPANY PRODUCTION

Hippodrome Theatre
12 North Eutaw Street
Baltimore, Maryland
“The verdict must be the considered judgment of each of you. In order to reach a verdict, all of you must agree. Your verdict must be unanimous. You must consult with one another and deliberate with a view to reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. During deliberations, do not hesitate to reexamine your own views. You should change your opinion if convinced you are wrong, but do not surrender your honest belief as to the weight or effect of the evidence only because of the opinion of your fellow jurors or for the mere purpose of reaching a verdict.”

- Maryland Pattern Jury Instructions (Criminal) 2:01
About the Panelists

**D. Graham Burnett** is a historian of science, and currently holds the Christian Gauss Fund University Preceptorship at Princeton University. He is the author of the 2001 book *A Trial By Jury*, a narrative account of his experience as the jury foreman on a Manhattan murder trial that the *New York Times* called “by turns humorous and dramatic...an irresistible book.” Professor Burnett earned a Ph.D. in the History and Philosophy of Science at Cambridge University. Before joining the Princeton faculty in 2001 he taught at Yale and was a Mellon Fellow in the Humanities at Columbia University. He has written essays and reviews for a variety of publications, including the *New Yorker*, the *Economist*, the *American Scholar* (where he serves on the editorial board), the *New York Times*, the *Times Literary Supplement*, and the *New Republic*.

**The Honorable Deborah Eyler (’81)** has served as a Judge on the Maryland Court of Special Appeals since 1997. A former Chair of the Maryland Judicial Commission on Pro Bono, she has served on the Civil Law and Procedure Committee and the Family Law Committee of the Maryland Judicial Conference. In private practice, Judge Eyler was a partner at Whiteford, Taylor & Preston, Chair of Baltimore County’s Trial Courts Nominating Commission, and a member of the Maryland State Bar Association’s board of governors. She is the recipient of the Maryland Legal Services Corporation’s Award of Special Recognition and the Maryland Pro Bono Resource Center’s Pro Bono Service Award. Judge Eyler is an Order of the Coif graduate of the School of Law, and holds a B.A. from New York University.

**Andrew D. Levy (’81)** is a partner at the Baltimore firm Brown, Goldstein & Levy, a long-time adjunct member of the University of Maryland School of Law faculty, and a Fellow of the American College of Trial Lawyers. Listed in *Best Lawyers in America* in both the Criminal Defense and Commercial Litigation categories, Mr. Levy is former Chair of the Maryland State Bar Association Criminal Law & Practice Section. He has received the Maryland Bar Foundation Professional Legal Excellence Award for Advancement of the Rights of the Disadvantaged, the University of Maryland School of Law Alumni Association’s Benjamin L. Cardin Public Service Award, and the Arc of Baltimore Stanley S. Herr Advocacy Leadership Award. Mr. Levy’s practice is focused on civil, criminal, and appellate litigation in both state and federal courts.

About *Twelve Angry Men*

Excerpts from *A Trial By Jury*  
by D. Graham Burnett

The Jurors

I have on my desk at this moment twelve five-by-seven ruled index cards. On each of them the same two words appear: “not guilty.” . . . By dint of these . . . inscriptions, made in silence in a few tense moments, Monte Virginia Milcray walked out of Part 24 of the New York State Supreme Court, got into the elevator, and descended to the cold wetness of Center Street a little before noon on February 19, 2000. . . .

The twelve cards represent the potent residue of the most intense sixty-six hours of my life, a period during which I served as the foreman of a jury charged to decide whether Monte Milcray was guilty of murdering Randolph Cuffee. During that period, twelve individuals of considerable diversity engaged in a total of twenty-three hours of sustained conversation in a small, bare room. We ran the gamut of group dynamics: a clutch of strangers yelled, cursed, rolled on the floor, vomited, whispered, embraced, sobbed, and invoked both God and necromancy. . . .

During significant stretches in this trying time, we considered two weeks of testimony in *The People of New York v. Monte Virginia Milcray* and struggled to understand two things: what happened in Cuffee’s apartment on the night of August 1, 1998, and what responsibilities we had as citizens and jurors.

. . . I am [telling this story] for several reasons, among them two in particular: first, because there are things to be learned from the way events unfolded (about people, about the law, about justice, about truth and how we know it), and second, because the jury room is a most remarkable – and largely inaccessible – space in our society, a space where ideas, memories, virtues, and prejudices clash with the messy stuff of the big, bad world. We expect much of this room, and we think about it less often than we probably should.

. . . If one learns anything from a criminal trial under the adversary system, it is that sincere folk can differ vehemently about events, and that there is seldom any easy way to figure out what actually went on.

Together, then, were two professional historians, two ad-copy writers, a globe-trotting Gen-X software developer, an industrial-vacuum-cleaner repairman with a rodeo tattoo who moonlighted in car-stereo installation, an interior decorator, an ‘independent marketing executive’ and part-time security guard, an actress (but was she also a bartender?), the manager of certain commercial enterprises owned by the ‘Mattress King of Miami’, and a couple of others of less clear occupation. Twelve citizens, twelve different characters.

The deliberations were theirs as much as mine. This story, however, is mine alone. Like a witness, I am fallible; I shall surely misremember things. And even if my memory were perfect, what retelling, in a string of words, is not a distressing distortion of the cluttered thickness of things as they happen?

Trials are about this.

The “Facts”

Randolph Cuffee took the first wound in the chest. And though the chief medical examiner asserted that the incision – vertical, about an inch in length, just to the right of the midline of the sternum – would have required only a “moderate” degree of force, the pathology report drew attention to a noticeable bruise at the top of the cut.

A look at the murder weapon made this easier to understand. The knife (a legal, black-handled folding model with a vicious profile) featured a small metal tab about the size of a shirt button, which stuck out from the side of the blade, opposite the cutting edge, near the handle. Holding the closed knife at the ready placed this stud under the thumb, where it could be used to push the blade into an open and locked position. It was therefore possible to open the knife with one hand.

Possible, not easy. This was not a switchblade; no springs launched the blade. In fact, the maneuver required a certain manual dexterity and strength, since the four fingers had to pin the closed knife against the heel of the hand and draw the handle down into the palm at the same time that the thumb, in opposition, swung the blade (by means of the stud) into readiness; the action could be speeded by a deft snap of the wrist.

These minutiae proved significant. Could Monte Milcray – half naked, lying on his back, his legs
“scooped” into the air and flailing (one clamped under each of Cuffee’s arms as Cuffee lowered himself into the missionary position over him) – have reached down to the slim tool pocket on the outside right leg of his overalls, liberated the knife clipped there, and then, in the narrow space between their bodies and the futon, executed this one-handed feint and gotten the knife to open?

Put aside the other questions: How could he then have maneuvered the knife (in his right hand) into the space between his torso and that of his alleged attacker, who was at that moment supposedly bearing down on him with all his weight? How, from this awkward position, did Milcray manage such a clean strike? He left not a scratch anywhere else on Cuffee’s chest, and yet buried the blade so deeply that the little thumb stud significantly bruised the surrounding tissue. How, in the process, did Milcray manage to make a deep gash on his own left shin? And this, curiously, without making any tear in the left leg of his pants?

Put all those questions aside. Ask simply, could he have opened the knife with one hand in that tight corner of the small room with a large man attempting to sodomize him?

The prosecutor ridiculed the idea, taking up the knife (people’s exhibit 7) and waving it around the court while badgering the defendant for particulars. In the videotaped testimony, taken shortly after he confessed to the stabbing, Milcray had used the word “flick” to describe how he opened the knife. For emphasis and dramatic effect, the prosecutor now gave the closed knife a histrionic flick and showed that it remained closed.

From the stand, Milcray – his disarmingly high, effete voice and Southern accent giving him an almost solicitous air – began to gesture helpfully, while trying to explain: “No, not like that, you got to . . .”

“Like this?” asked the prosecutor, making another ineffectual flail.

“No, you got to . . . together . . . flick the wrist and use the stud . . . .”

“Well,” cooed the prosecutor, drubbing away at the closed knife with his thumb, and pumping his arm as if he were shaking off a Gila monster, “maybe I’m not so good at it as you. . . .”

Of this there could be little doubt.

Go back eighteen months. On August 2, 1998, around four o’clock in the afternoon, two officers from Manhattan’s Sixth Precinct took turns kicking at the door of apartment number one at 103 Corlears Street, a white brick building on the west side of the street between Christopher and West Tenth. When they forced the door (without splitting the jamb or unseating the latch), it opened in and to the right, stopping against a low coffee table and revealing a shallow studio that extended about fifteen feet to each side, but was perhaps only twelve feet deep. Holding back the young man who had brought them to the site, the officers entered the room.

Draped over the dark futon couch before them, and trailing onto the floor to their right, lay two blankets, one a cream-colored knit coverlet, the other a cheap quilted bedspread. Blood spatters stained both. Later, the officers would disagree on the lighting, but they concurred that the television was not on, and that the curtain of the single, street-facing, ground-level window to their right was opaque and closed, with the exception of a small opening in the lower left corner.

Causing this aperture was the lifeless hand of an African-American male, about six feet tall and slightly under two hundred pounds. The body lay facedown, the head wedged between the arm of the futon and the radiator under the window, the legs splayed into the middle of the room. Rigor mortis had cemented a tableau of the victim’s final gesture: the right arm reaching up to the sill, surely an effort to pull himself to the window and call for help. Under the left arm lay a wig of long, dark, kinky hair. The body was naked.

The officers testified that they did not approach the figure or check for vital signs. Twenty-odd stab wounds along the right side of the victim’s spine, neck, and head persuaded them from across the room of what the assistant medical examiner would confirm several hours later: Randolph Cuffee, “Antigua,” a habitué of the Watusi Lounge, and a familiar face in the other gay bars of the West Village, was dead.

Not, however, until later, when crime-scene investigators pulled the stiffened body into the middle of the room and rolled it over, did anyone see the wound that actually killed him – that thin and nearly bloodless slit at his sternum, which, reaching two and a half inches into the thoracic cavity, had just
“nicked” (in the word of the chief medical examiner) the upper arch of the aorta. Within minutes of the blow, misplaced blood would have filled the sac around the heart, choking off its beat, a condition known as an “acute traumatic cardiac tamponade.” It is as if the heart drowns. Immobility follows, and death shortly thereafter.

Also revealed when the body was moved: two braided leather whips and two unrolled condoms, one inside the other.

The Instructions

The judge explained the standard of proof. The state must prove its case beyond a reasonable doubt. Did we hear that? This did not mean mathematical certainty, but simply beyond the doubt of a reasonable person. ‘Is there anyone here,’ the judge continued, ‘who would hold the state to an unreasonable standard?’

In my heightened state I felt a strange, somewhat manic delight. Most of my academic life had been spent studying the history of what people found reasonable – from alchemical conjurations to statistical facts. The history of science is, in a way, the history of what proofs have counted as ‘reasonable’ in different communities at different moments. To agree on what is true – about nature, about God – has again and again proved a tall order, and the standard of ‘the reasonable man’ was, I knew, yet another invention (like the laboratory, the footnote, the College of Cardinals) to make the difficult task of truth-seeking a little easier in certain contexts – courts of law in particular. It was a much-contested question, this business of who-all was ‘reasonable,’ and what, precisely, such a person looked like. There was a history here.

But there I was. No time to pontificate, to re-monstrate, to have a seminar. My ponderous classroom musings on Pascal or the Enlightenment were not welcome. I had to act as if I knew what ‘reasonable’ meant, or raise my hand. For a moment the very thing seemed to be made real and hover before me. The ideal of the mind. Reason. Now we would all be reasonable. No more epistemological fretting or historicist relativism – the greatest abstraction in human affairs had just taken shape and entered the room. I kept my hand in my lap. If all the others thought they were going to be reasonable, then, hell, I thought, I can be just as reasonable as anybody else.

The Trial

From the first moments of the prosecution’s opening statement, the strange nature of the proceedings made a deep impression. How did it happen, I wondered, that a practice of truth-seeking had evolved to divide the job up in all these curious ways? The asking of questions was reserved to those who would play no role in judging the answers, while we, the jury, who were supposed to try to figure out what had gone on, had to remain absolutely silent. . . . Our enforced silence was the most difficult thing. How could one even begin to investigate a problem without being able to engage it directly?

The Deliberations

...[I]n deliberations I would realize that others, too, found themselves fascinated by the possibility of ever more tangled stories – conspiracies, missing persons, Milcay taking the fall to protect, say, one of these witnesses we had just heard. Who knew? Now, as I look back, some of the hypotheticals we entertained (however briefly) have about them a feverish and fantastical quality. Such are the perils of the imagination in a trial: the sense of drama goads one to raise the dramatic ante; to conceive of fantastic resolutions worthy of the setting, the cast, the deeds. But not only that. This sort of reasoning – compounding improbabilities, dreaming up still more intricate motivations and counterplots – has, I think, much to do with a deep, shared idea about the nature of truth and the means of reaching it: namely, a sense that getting to the bottom of things should be hard work, should be difficult, should lead through long and knotty webs. Philosophers may wield Ockham’s cold razor in the pursuit of the true (cut out everything but the necessary), using it to slice the tangled bits of life to the floor, but most of us would rather set to work with another sort of epistemological tool, more labor-intensive, more creative, better able to work with those tangles. Ockham’s knitting needles?

This is not necessarily bad. After all, the truth is usually hard-won, complicated, and time-intensive; or, at least, there are as many truths like this as there
are simple ones. Once let loose in a jury, however, such a worthy veridical work ethic can lead to the collective construction of giant follies. Everyone wants to do all the work, resist anything that looks too easy. More than one case, I suspect, has been resolved — to the general perplexity of lawyers, judges, and observers — by the operation of this earnest principle in the jury room: take the long route to reach the truth; no shortcuts, no matter how obvious they seem.

* * *

We associate truth with knowledge, with seeing things fully and clearly, but it is more correct to say that access to truth always depends on a very precise admixture of knowledge and ignorance. This is nicely captured by the traditional figure of justice, a blindfolded woman holding a scale. With her balance she can assess certain things, with her eyes closed she cannot see certain other things. True justice depends as much on her blindness as on her ability to discern.

“\textit{When I was a child, they used to claim all history was knowable, if you could catch up with the light emitted by the body and traveling eternally in space. ‘Light prints,’ they talked about, better evidence than fingerprints. An intriguing idea. But Einstein said it wasn’t possible. The past is always gone, retrieved only, ultimately, in the filaments of memory.”}

\begin{flushright}
- Scott Turow, \textit{The Laws of Our Fathers}\end{flushright}
While Article III’s cap on Supreme Court original jurisdiction implicitly safeguarded the role of local juries, the next paragraph of Article III did so more explicitly: ‘The Trial of all Crimes . . . shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed.’

These words failed to satisfy Anti-Federalists. Why, these men asked, did Article III guarantee juries in criminal cases but not civil ones? By negative implication, did Article III abolish civil juries in federal court? Whenever a local jury in a state court civil case resolved a certain matter of fact, would a faraway Supreme Court claim a general right to disregard the factual finding on appeal? If not, why did the preceding paragraph of Article III ominously vest the distant Court with ‘appellate Jurisdiction, both as to Law and Fact’? As for federal criminal trials, where Article III did indeed promise juries in ‘all’ cases, why did the text say merely that the trial would be held somewhere in the crime-scene state without promising that the jury would be drawn from the precise locality – the common law vicinage – where blood had been spilled? And what about the need to provide for grand juries in criminal cases?

These Anti-Federalist questions and criticisms had bite because late-eighteenth-century America placed great faith in her juries, civil and criminal, grand and petit. Before 1776, colonial jurors had stood shoulder to shoulder with colonial assemblymen to defend American self-governance against a formidable alliance of unrepresentative imperial officers and institutions – King George, his ministry, the English Privy Council and its Board of Trade, Parliament, colonial governors, and colonial judiciaries. Few Americans had ever voted for any of these imperial officers or served in any of these imperial institutions. But ordinary colonists could and did vote for colonial assemblies and vote in colonial juries. In the 1760s and 1770s, Americans used these republican strongholds to assail imperial policies and shield patriot practices. In response, British authorities tried to divert as much judicial business as possible away from American juries – toward colonial vice admiralty courts for customs cases and English courts for certain crimes committed by the king’s officers in America.

Revolted, Americans revolted. High on their list of reasons, according to the Declaration of Independence, was that the king and Parliament had aimed to ‘depriv[e] us, in many Cases, of the Benefits of Trial by Jury’; had claimed a right to ‘transport[] us beyond Seas to be tried for pretended Offenses’; and had sought to shield British murderers who shed blood on American soil via a regime of ‘mock Trial’ far from the scene of the crime. Every state constitution after independence contained multiple guarantees of jury trial. These documents also democratized other parts of state government whose colonial precursors had been largely or wholly unrepresentative: governorships, executive councils, and judiciaries. Henceforth, all branches of government would represent the people themselves more or less directly. But jurors would continue to represent the people more rather than less directly – with lower property qualifications than for most other forms of government service and no informal requirements of legal training or professional attainment. Juries were, in a sense, the people themselves, tried-and-true embodiments of late-eighteenth-century republican ideology.

Thus, when Anti-Federalists accused the Federalists of undermining the good old jury, this was a charge that mattered. . . .

***

Of the five amendments in the Bill of Rights that did not directly invoke ‘the people,’ three explicitly referred to the closely related idea of the ‘jury.’ The Fifth Amendment guaranteed a role for federal grand juries, the Sixth Amendment elaborated the parameters of federal criminal-trial juries, and the Seventh Amendment preserved certain entitlements to and of civil juries.

This pattern faithfully reflected the broader legal culture of post-Revolutionary America. During the 1760s and 1770s, the British Empire had repeatedly sought to evade local jury trials via expanded uses of juryless admiralty, vice admiralty, and chancery courts and via laws authorizing trials in England for crimes committed in America. In response, the colonists had demanded an end to all such evasions. In 1765, delegates representing nine state assemblies met in an intercolonial Stamp Act Congress.
In a few weeks Ted Kennedy’s nephew will go on trial in Florida for rape. After the evidence is in and the jury begins deliberation, there will remain, I suspect, some doubt as to whether William Kennedy Smith or his accuser told the truth. Despite the ambiguity, however, the jury will decide.

Then something interesting will happen. By convention, the jury’s verdict will be considered the truth. If the jury say “guilty,” Smith will be declared a rapist. If it says not guilty, we will say that the charges were “thrown out.” This is a convention with great legal force. If the jury acquits, and I, unsatisfied, recklessly persist in calling him “rapist,” I will be guilty of libel.

A civilized society needs such conventions to resolve the unresolvable. Even though we know that the ultimate truth can never be known, we ask 12 ordinary citizens for their opinion and make that our truth.”

- Charles Krauthammer, “The Case of Hill v. Thomas”
Washington Post, 10/18/91
One of the few things that humanity has agreed upon for most of history is that its laws descend directly from the gods. . . . And yet, for all the insistence that heavenly laws were cast in stone and divine judgments unerring, one question always caused turmoil – namely, to whom, down on earth, had the right to judge been delegated? The priests who veiled their various scrolls and statutes invariably argued that only they could interpret their secrets, backing up the claim with further revelations as and when required. Monarchs were not less assertive, and constantly sought to interfere with the religious mysteries of justice. Some even argued that the power lay elsewhere. Among the Hebrews, for example, an old tradition prescribed that homicides should be tried by common people, and although Judah’s priests established something close to a theocracy after 722 BC, their oldest myth of all characterized the ability to tell good from evil as every human being’s birthright. The story of the Fall was not, admittedly, a ringing endorsement of the power to judge – Adam and Eve had, after all, paid for their apple with sorrow, sweat, and death – but it was certainly a start.

The law has become so closely associated with reasoned deliberation that it is sometimes hard to think of criminal trials as anything other than inquiries – but they have always performed a function that goes far beyond that of establishing who did what to whom. The first judges were priests whose punishments were as sacrificial as they were penal, and the law has ever since asserted the power most proper to gods: the ability to rebalance a cosmos knocked out of kilter. Since the days of ancient Athens, there is no wrong that it has not somewhere claimed to right – even when no human defendant has been available to carry blame. The first judges were priests whose punishments were as sacrificial as they were penal, and the law has ever since asserted the power most proper to gods: the ability to rebalance a cosmos knocked out of kilter. Since the days of ancient Athens, there is no wrong that it has not somewhere claimed to right – even when no human defendant has been available to carry blame. In the courts of early modern Europe, creatures from beetles to bulls were regularly prosecuted, defended, and condemned at public expense. English juries for several centuries returned homicide verdicts against mischievous objects from haystacks to locomotives.

Lawyers discovered new categories of criminal, from traitors to werewolves, whenever popular passion or private fear required. The long arm of the legal process even reached into the grave: for well over half a millennium, the bodies of dead criminals were brought into court to be accused by witnesses, defended by advocates, and, if convicted, punished by the public executioner.

Several ideas run through [the history of the criminal trial], but one simple theme could be said to link them all: the tension inherent in the criminal process between the desire to punish and the fear of making a mistake. Courts have collectively spilled at least as much blood as the people they condemned, but they have always aspired to more than violence. The oldest laws yet to be discovered, enacted by Babylon’s King Hammurabi in the eighteenth century BC, worried about injustice to the extent that false witnesses were to be punished as harshly as those who were properly convicted. And although the sword of righteousness has been in play since King Solomon, confronted with two women claiming the same child, threatened to slice it in two and wisely surmised that the impostor was the one who agreed, Justice has wielded another tool for even longer. Four and a half thousand years ago, when Hammurabi’s dynasty was unknown and Athens’ Golden Age shimmered as far in the future as it now lies buried in the past, the priests of Egypt were already venerating the goddess Ma’at, whose scales measured out justice for the dead. In the Hall of Two Truths, watched by a horrid hybrid of cat, crocodile, and hippopotamus named Am-Mit, she would place the hearts of those who had just died on one pan, and drop the feather of truth onto the other. If the feather sank, the departed soul would gain entrance to the Kingdom of the Dead. But if it rose, outweighed by the heart’s burden to deceit, Am-Mit would be fed – and its owner would be abandoned to oblivion.

The balance remains the most potent image of justice in the Western world . . . as it has migrated into modern Europe from Egypt and Babylon, via Jews, Greeks, Romans, and barbarians.
The age-old dream of perfect justice is, however, as mythical today as it was when ancient Egypt’s gods weighed the hearts of the dead against the feather of truth. Juries are obviously fallible. Someone has to resolve the irresolvable, however, and the crucial question is whether any alternative is likely to command more confidence and respect. Both history and logic counsel caution in that regard. The inquisitorial system, honed by men far more learned than ever stepped into an English jury box, generated crazed jurisprudence that regularly brought werewolves, corpses, and animals to justice and killed witches at a rate that dwarfed that of England. And although the nature of the superstitions may have changed, the risks of professionalizing justice remain. The questions most commonly disputed at a criminal trial are whether witnesses are credible and whether beliefs or doubts are reasonable, and such issues demand social legitimacy rather than fiendish cleverness. Reliance on professionals is therefore as much an act of faith as is confidence in the jury, simply because there is no ironclad basis for asserting that they know the answers. The only comprehensive comparison of judges and juries, admittedly based on data that is now half a century old [Kalven and Zeisel, The American Jury (1966)], showed than in three criminal trials out of four, each would have reached the same verdict. In the one quarter of cases where they disagreed, judges were more than six times as likely to support conviction, but the relative leniency of the jurors was only exceptionally based on outright mistake of fact or law. It arose because they took a different view of the evidence, believed different witnesses, and, ultimately, were more inclined to give some defendants the benefit of the doubt. Only the assumption that more people should be convicted says that they were unreasonable to do so.

The ultimate justification for the jury system is that portrayed so compellingly in Sidney Lumet’s Twelve Angry Men (1957). The film, shot in real time inside a New York jury room, concerns a murder charge against a young Hispanic defendant. At the beginning of the film, eleven jurors, eager to get home on the hottest day of the year, agree that he is clearly guilty. Only Henry Fonda insists on pausing before sending him to the electric chair. His colleagues explain why there is no point, with sorrow, anger, or impatience, but even as they are doing so their own failings become apparent. As the doubts multiply, clarity turns to uncertainty. One by one, they change their minds – until they conclude that the defendant is not just presumptively innocent, but actually not guilty. The movie appeals to sentiment rather than reality – so much so that barristerial legend in England credits it with bumping up acquittal rates whenever it is screened – but it contains a message of solid importance. Jurors may not be oracles, infallible and omniscient, but diversity allows their failings at least potentially to cancel each other out. The prejudices and stupidities of like-minded professionals are less likely to – and those of one judge never can.

“You are not partisans. You are judges – judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.”

Linking Law & the Arts

The University of Maryland School of Law’s Linking Law & the Arts program has two complementary aims: use theater and art to help address complex legal, social and public policy issues, and use the lens of law and society to help the public better understand theater and art. Funded in part by a generous grant from the France-Merrick Foundation, the program has examined the intersection of law, art, and society by convening academic symposia, hosting panel discussions, soliciting original works of scholarship and art, and publishing educational materials and web sites. For more information about the University of Maryland School of Law’s Linking Law & the Arts program, including video clips of past events and accompanying educational materials, visit www.law.umaryland.edu/arts.

For more background information on the jury and the play Twelve Angry Men visit www.law.umaryland.edu/jury.