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Twelve Angry Men—and Counting

Sidney Lumet, director of *Twelve Angry Men*, died a few months ago. *Twelve Angry Men* lured many a young soul into criminal defense work. Justice Sotomayor said the movie inspired her. Henry Fonda jurors and innocent criminal defendants are the exception, not the rule. And a racist rant by a juror does not change the evidence in the case.

John Dean is teaching a legal ethics course based on his experiences during Watergate and, one presumes, the lessons learned from his four months in the hoosegow. Watergate hatched ethics courses in law schools around the country because Dean asked Congress during his testimony, “How in God’s name could so many lawyers have gotten involved in something like this?” The educational scope might have been narrowed

a tad if Dean had simply answered the question himself. As White House Counsel who saw tapes doctored and burglars hushed by cash, he surely had some insights.

Casey Anthony, the bar-hopping mother of a toddler, was acquitted of the murder of young Caylee. Law professor Karin Moore explained

that verdict with great aplomb: “It’s an injustice to make the leap that Casey is a killer just because she’s a liar.” That leap is but a baby step if she’s lying about the murder. As near as I can figure, the last time Casey saw Caylee, the tot was trotting down to the neighborhood swamp with a bottle of chloroform, a few Hefty trash bags, duct tape and some stickers. Am I my daughter’s keeper? Casey mulled that question for 31 days

before the wacky grandmother reported Caylee missing. Those who believe Casey Anthony is innocent are still lighting candles for Lizzie Borden. Her parents were, of course, chopped to pieces by a wandering burglar who went unnoticed in Fall River, Mass., as he carried two large Hefty bags from the Borden home.

The three events have one common thread: The commentary by lawyers put the profession’s ethical tin ear on display. In each of the situations, the legal profession emerged in defense of the party about whom the public mutters, “What, are you kidding?” Talking legal heads pop up to seize the morally superior ground with their usual assurances that the plebian masses lack the cognitive skills to understand the jury system, the benefits of hearing from former White House lawyers who throw their Republican president under the bus, and the complexities of reasonable doubt. Our codified ethics have an underdog theme. The tin ear comes from application of the code: Not all underdogs are created equal.

I rue the day Gregory Peck donned that seersucker suit to play Atticus Finch. Oh, the world could use a few more Attici Finches. However, those Finches need to be equal opportuni-

ty advocates, stepping in to defend injustices when the underdog’s conduct is ideologically icky to most in the profession. For example, where have all the lawyers been as Congress and the White House vilified McKinsey & Co. for releasing a study that indicated one-third of U.S. businesses will “definitely” or “probably” stop offering insurance to employees in 2014 when Obamacare takes effect? McKinsey’s integrity was attacked until it released its unassailable data. Where are all the lawyers now that Standard & Poor’s is being investigated by the DOJ and the SEC after it downgraded the credit rating of the United States? Why is it that we never heard a peep about Attorney General Eric Holder’s failure to disclose during his confirmation hearings that he and his firm represented Guantánamo detainees?

The ethical tin ear reigns because the universal tenets of our profession are not so universal. Those tenets apply when we are ideologically comfortable. The rights to a defense, a jury of peers, and a second chance are limited by the ethical tin ear to those who fall within certain political parameters.

Count on unlimited resources for Casey Anthony, but defending McKinsey? You ask too much. We will listen to John Dean on ethics, but we really don’t want to hear from fellow Nixon special counsel Chuck Colson, whose work post-prison is changing lives. Learning about his Prison Fellowship would be CLE hours well spent. But that faith-based stuff is too much to endure. Former Attorney General Alberto Gonzalez was driven out of office for firing four U.S. Attorneys. Mr. Holder remains unscathed as he stonewalls on subpoenas on everything from Operation Fast and Furious gun deals to side-switching by DOJ lawyers.

Taking on the unpopular cause is the stuff of Atticus Finch. Today, a tin-eared legal profession spots injustice and steps up only when its unilateral analysis deems such to be politically expedient. Ideological inconsistency in our noble work has killed the mockingbird.

Taking on the unpopular cause is the stuff of Atticus Finch. But today, a tin-eared legal profession steps up only when politically expedient.



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