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# The Good, the Bad, or the Indifferent: '12 Angry Men' in Russia, Part of Symposium: The 50th Anniversary of '12 Angry Men'

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# THE GOOD, THE BAD, OR THE INDIFFERENT: *12 ANGRY MEN* IN RUSSIA

STEPHEN C. THAMAN\*

## INTRODUCTION

Sidney Lumet's 1957 film, *12 Angry Men*, based on the screenplay by Reginald Rose,<sup>1</sup> is an icon of Hollywood cinematography and, in all countries where it has been shown, has become the emblem of the American jury trial as an anti-authoritarian institution based on democratic consensus-building.<sup>2</sup> But it is possible that the film has had no greater overseas impact than in Russia for a variety of reasons.<sup>3</sup> The first of these reasons is the fact that the jury trial has played a major role in the creation of the judicial self-consciousness of the Russian people since it was first introduced by Tsar Alexander II in 1864 as part of the great judicial reforms following the abolition of serfdom in 1861. Juries were praised by liberal and left-wing critics when they engaged in jury nullification to acquit revolutionary activists, normal people charged with crimes such as violations of the passport laws, which jurors felt were unjust, or people for whom the jury had sufficient sympathy to want to spare them a sentence of forced labor in exile in Siberia.<sup>4</sup> But it was also criticized in the great Russian literary classics for its unjust convictions of the innocent.<sup>5</sup> Thus, the jury in Russia, like the

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1. Reginald Rose, *Twelve Angry Men*, in *FILM SCRIPTS TWO* 156 (George P. Garrett, O.B. Hardison & Jane R. Gelfman eds., Irvington Publishers 1989) (1972) (screenplay version of the film *12 ANGRY MEN* (Orion-Nova Productions 1957)).

2. Indeed, jury deliberations, such as occurred in the film, would seem to be an ideal example of Habermas's "democratic procedure," which "creates an internal connection between pragmatic considerations, compromises, discourses of self-understanding and justice and lays the foundation for the idea that under conditions of problem-oriented flow of information and appropriate working of information reasonable and fair results can be obtained." JÜRGEN HABERMAS, *FAKTIZITÄT UND GELTUNG: BEITRÄGE ZUR DISKURSTHEORIE DES RECHTS UND DES DEMOKRATISCHEN RECHTSSTAATS* 359–60 (4th ed. 1994) (author's translation).

3. In Spain it has been called "the best film ever made about the members of a jury" and a shot from the film appears on the cover of a recent book on juries in film. See JUAN-LUIS GOMEZ COLOMER, *EL PERFIL DEL JURADO EN EL CINE* 36 (2005).

4. SAMUEL KUCHEROV, *COURTS, LAWYERS AND TRIALS UNDER THE LAST THREE TSARS* 65–71 (1953).

5. In this sense, the Russian critiques parallel those of the American jury, at once praised for its nullification of unjust British laws in pre-Revolution times yet condemned for its failure to condemn the

jury in the U.S. and the individual jurors in *12 Angry Men*, has struggled for its reputation between three competing receptions: the “good” body that protects citizens against arbitrary justice, the “bad” manifestation of ignorance and prejudice in the population that perpetrates miscarriages of justice, or just the “indifferent” group of citizens that errs due to gullibility, impatience, or inattentiveness.

Part I of this essay will discuss the interplay of literature and criminal justice in pre-Revolution Russia—especially in relation to Fyodor Dostoevsky’s *The Brothers Karamazov*<sup>6</sup> and Leo Tolstoy’s *Resurrection*,<sup>7</sup> but also in the short stories of Anton Chekhov, for this is the cultural soil upon which the film *12 Angry Men* was received in Soviet Russia when it was first screened in 1961. Part II of this essay will discuss the reception of the film in Soviet Russia in 1961 and the impact it had on Soviet-era citizens in their understanding of American and Soviet criminal justice.

The resurrection of the jury trial in Russia in 1993 and its expansion throughout Russia in 2001–2003 (following the passage of the 2001 Code of Criminal Procedure) has led to a new relevance of the Lumet film in contemporary Russia. Part III of this essay will discuss the current revival of *12 Angry Men* on stage and screen in Russia and the former Soviet Republics, most notably in the stage production directed by Viacheslav Dolgachev in Moscow and the forthcoming film by one of Russia’s premier filmmakers, Nikita Mikhalkov. Finally, in Part IV, I will discuss the film itself in relation to Russian jury trial procedure, and whether such a scenario as that in the Lumet-Rose screenplay could happen in contemporary Russia. A short conclusion will draw together the threads of Parts I through IV of the essay.

## I. THE RECEPTION OF THE JURY IN PRE-REVOLUTION RUSSIAN LITERATURE

The jury trial was introduced by Alexander II in Russia in 1864 as part of the judicial reforms that followed his liberation of the serfs in 1861. Although the institution was implanted mainly in the capital cities of St. Petersburg, Moscow, and Kiev, and did not spread throughout the Empire, it was hailed as one of the most progressive reforms ever attempted in the

lynchings and other crimes against black Americans in the late nineteenth and early twentieth centuries. See Albert W. Alschuler & Andrew G. Deiss, *A Brief History of the Criminal Jury in the United States*, 61 U. CHI. L. REV. 867, 873–74, 889–90 (1994).

6. FYODOR DOSTOEVSKY, *THE BROTHERS KARAMAZOV* (Richard Pevear & Larissa Volokhonsky trans., Everyman’s Library 1992) (1880).

7. LEO TOLSTOY, *RESURRECTION* (Louise Maude trans., Oxford University Press 1999) (1899).

Russian Empire. Juries acquitted in upwards of fifty percent of all cases, often in the exercise of jury nullification—such as in the notorious case of Vera Zasulich, who attempted to kill a Tsarist official after he had abused a revolutionary prisoner.<sup>8</sup>

In classic Russian literature, however, the jury was not described as a heroic institution, but a fallible one which convicted the innocent. The classic example of this is Leo Tolstoy's novel *Resurrection*, in which the Russian nobleman Nekhlyudov sits on a jury in the case of Katya Maslova, a prostitute he had consorted with in the past and who was, along with others, charged with the robbery-murder of one of her clients. The jury convicts Katya in a majority verdict influenced by their carelessness, their eagerness to complete their work expeditiously to get on with their lives, and their lack of care in evaluating the evidence—factors at work in *12 Angry Men* which are only overcome by the efforts of Juror #8, played by Henry Fonda. But the Tolstoy novel not only condemns the jury, but also the entire judicial system. The presiding judge leaves out one of the most important instructions and the jury is inattentive in its deliberations:

The resolution was taken not because everybody agreed upon it, but because the president, who had been summing-up at such length, omitted to say what he always said on such occasions, that the answer might be, "Yes, guilty, but without the intent of taking life"; because the colonel had related the story of his brother-in-law's wife at such great length; because Nekhlyudov was too excited to notice that the proviso "without intent to take life" had been omitted, and thought that the words "without intent" nullified the conviction; because Peter Gerasimovich had retired from the room while the questions and answers were being read; and chiefly because, being tired, and wishing to get away as soon as possible, all were ready to agree to the decision which would soonest bring matters to an end.<sup>9</sup>

In typical Russian fashion, the juror who contributed to Maslova's unjust conviction repents and expiates his guilt by going with her into Siberian exile.<sup>10</sup>

In Fyodor Dostoevsky's classic, *The Brothers Karamazov*, Dmitriy Karamazov is wrongfully convicted of the murder of his father by a jury, thus prefiguring the plot of *12 Angry Men*, in which the defendant is also charged with patricide. Unlike in *Resurrection*, however, the novel does not explore the deliberations of the jury, nor any other reason for the miscar-

8. KUCHEROV, *supra* note 4, at 214–25.

9. TOLSTOY, *supra* note 7, at 91.

10. For a novel based on an amazing true story of an Austrian juror who participated in the erroneous conviction of an innocent person and helped organize his escape from prison, see KATHARINA ZARA, *DIE GESCHWORENE* (2002).

riage of justice other than the jury's succumbing to the more convincing arguments of the prosecutor.

In *Resurrection* one has a plot which could have been susceptible to the impact of a strong and persuasive "Juror #8," even in the person of Nekhlyudov, but none appeared and the uninvolved or distracted jury convicted without passion and went about its business. Although *12 Angry Men*, according to the version of the prosecution, involves a heated argument between father and son and therefore, arguably, a crime of passion, the lack of assuredness as to the identity of the slayer takes the case out of the realm of jury nullification, which so characterized pre-Revolution Russian jury practice. In practice, pre-Revolution Russian juries would often acquit in murder cases involving crimes of passion, yet, again in typical Russian fashion, the juries often wanted the defendant to admit the killing before they would do so.<sup>11</sup>

## II. THE RECEPTION OF *12 ANGRY MEN* IN THE SOVIET ERA

The jury trial was abolished by Lenin and the Bolsheviks in 1917 and was gradually replaced by a mixed court of one professional judge and two "people's assessors" who were jointly responsible for deciding all questions of law, fact, guilt, and punishment.<sup>12</sup> Yet, as in many countries with such a system, currently referred to as a mixed court, the lay judges do not serve as an effective counterweight to the professional judge. In Russia they were criticized derogatorily as being "noddors" who always followed the opinion of the professional judge.<sup>13</sup> Soviet justice was virtually unaware of acquittals, for trial judges and the obedient lay members of court would either rubber-stamp all charges brought to court or send them back to investigative officials to disappear, rather than sully the reputation of law enforcement with a public acquittal.<sup>14</sup>

Although the jury trial had been absent from the Russian scene for forty-four years before *12 Angry Men* was screened, the pre-Revolution

11. See BOBRISHCHEV-PUSHKIN, *EMPIRICHESKIE ZAKONY DEIATEL'NOSTI RUSSKOGO SUDA PRISIAZHNYKH* 207 (1896); N.P. TIMOFEEV, *SUD PRISIAZHNYKH V. ROSSII. SUDEBNYE OCHERKI* 23-24 (1881). Timofeev also tells the story of a sympathetic peasant woman who was on trial for trying to poison her tyrant husband. Jailhouse lawyers told her to admit her guilt and the jury would surely acquit. She stubbornly asserted innocence and was found guilty. When asked about her unwise decision, she told her fellow cellmates that she preferred exile and hard labor to her "unwanted forced labor" with her husband. *Id.* at 24-25.

12. Stephen C. Thaman, *The Resurrection of Trial by Jury in Russia*, 31 *STAN. J. INT'L L.* 61, 65, 67 (1995) [hereinafter Thaman, *Resurrection*].

13. *Id.* at 67.

14. See Peter H. Solomon, Jr., *The Case of the Vanishing Acquittal: Informal Norms and the Practice of Soviet Criminal Justice*, 39 *SOVIET STUD.* 531, 547 (1987).

institution was still known to the people, especially in the works of Dostoevsky and Tolstoy but also, strangely enough, in one of the most popular novels of the time, Il'f and Petrov's *Twelve Chairs*, written in 1928, which was made into one of Russia's most popular films. In the novel (and film) the hero, Ostap Bender, coins the winged phrase "Ladies and gentlemen of the jury, the ice is breaking."<sup>15</sup>

Lumet-Rose's *12 Angry Men* was screened for the first time publicly in 1961 in Soviet Russia.<sup>16</sup> In a review of that year, entitled "Court of the Indifferent,"<sup>17</sup> the film was not interpreted as a battle between "good" and "evil" but between "good" and "irresponsibility and passivity."<sup>18</sup> The majority of the jury was likened to the general American public, and Juror #8 was described as an outsider and compared with Sidney Lumet and other left-leaning Hollywood filmmakers of the time who were forced out of film and had to make their living in television.<sup>19</sup> Many Russians were also aware that Lumet's cameraman in the film was Boris Kaufman, the brother of legendary Soviet agit-prop filmmaker Dzigha Vertov, who had emigrated to Hollywood.<sup>20</sup>

Notwithstanding the criticism in the aforementioned article, many of the older lawyers and jurists I interviewed in 1993 and 1994 during the period in which the jury trial was reintroduced in Russia were strongly influenced by the film and this influence led them to be supporters of the reintroduction of the jury trial in Russia.<sup>21</sup> On the other hand, young intellectuals during the "thaw" of the 1960s focused on the film not for its juridical value, but for its example of how one person could stand up to the majority and prevail.<sup>22</sup>

It is not, however, beyond the pale of speculation that the 1961 filming did have some influence in the juridical discussions before the Khrushchev "thaw" was replaced by the "stagnancy" of the Brezhnev period.

15. "Led tronul'sia, gospoda prisiazhnye zasedateli." See IL'IA IL'F & YEVGENIY PETROV, DVENADTSAT' STUL'EV 49, 52 (2005).

16. Certificate of Permission 1079/61, Apr. 20, 1961. The film was dubbed by Mosfil'm Studio in Moscow.

17. Nina Solov'eva, *Sud ravnodushnykh*, ISKUSSTVO KINO, No. 4, 1961, at 93, 93-95.

18. *Id.* at 94.

19. *Id.* at 95.

20. Boris Kaufman, [http://en.wikipedia.org/wiki/Boris\\_Kaufman](http://en.wikipedia.org/wiki/Boris_Kaufman) (last visited Aug. 27, 2007).

21. A mere mention of the name of the film became emblematic in the generation of the 1960s as an uncontroverted argument in support of a more democratic form of criminal justice. See Sergey Mitrofanov, *Kino o prisiazhnykh*, POLITICHESKIY ZHURNAL KUL'TURA, June 26, 2004, <http://www.politjournal.ru> (last visited Sept. 25, 2006).

22. Interview by Natalya Makarova with Naum Kleyman, Founder and Director, Moscow Museum of Film (Dec. 6, 2006). On the other hand, Kleyman feels the film is more important today, for at the time it seemed like it was a "fairy tale dream" which had no relevance to Soviet life. *Id.*

R.D. Rakhunov wrote in 1959 about the necessity of expanding the number of lay assessors to six and allowing them to decide the guilt question alone without involvement of the judge and, later in 1965, suggested expanding the number of assessors to twelve, thus making the institution tantamount to the pre-Revolution jury.<sup>23</sup> In 1967, G.Z. Anashkin, Chairman of the Judicial College on Criminal Affairs of the USSR Supreme Court, followed suit and suggested turning the guilt question over to “a great number of assessors.”<sup>24</sup>

After 1967 such discussion of jury trials disappeared for around twenty years, until the late *perestroika* years under the leadership of Mikhail Gorbachev. Indeed, a great majority of the members of a working group in the Institute of State and Law—which in 1989 suggested a return to the jury trial—also dominated the group of jurists who wrote the Concept of Judicial Reform in 1991, which made the reintroduction of the jury trial a governmental policy.<sup>25</sup> These members were old enough to have seen *12 Angry Men* in 1961 and to have been profoundly influenced by it.<sup>26</sup>

### III. THE REINTRODUCTION OF TRIAL BY JURY IN 1993–2003 AND THE RE-AWAKENED INTEREST IN *12 ANGRY MEN*

In 1993 the jury trial was preliminarily reintroduced in nine of the eighty-nine political constituents of the Russian Federation.<sup>27</sup> The institution was finally extended to all of Russia, except the Chechen Republic, in 2002–2003. The new Russian jury has jurisdiction in cases of aggravated murder and assorted other crimes subject to the jurisdiction of the second-level courts of original jurisdiction, variously called regional courts, territorial courts, republican supreme courts, or capital city courts. The jury, as in the U.S., is composed of twelve citizens chosen from voter registration lists, but a guilty verdict may be reached by a majority composed of seven of the jurors' votes, as long as they have tried to reach unanimity over a period of three hours. The verdict is not the laconic “guilty” or “not guilty” of the Anglo-American legal sphere, but is composed of a list of questions

23. See SAMUEL KUCHEROV, *THE ORGANS OF SOVIET ADMINISTRATION OF JUSTICE: THEIR HISTORY AND OPERATION* 355 (1970).

24. *Id.* at 359.

25. Thaman, *Resurrection*, *supra* note 12, at 69–74.

26. I confirmed this hypothesis with telephone calls on January 21, 2007 to Professor Inga Mikhaylovskaya and former Vice President of the Russian Constitutional Court Tamara Morshchakova at their homes in Moscow. Mikhaylovskaya said that the film was a “great success” when it was shown to full theaters in 1961 and made a great impact on jurists and non-jurists alike. The film also made a lasting impression on Morshchakova.

27. See Thaman, *Resurrection*, *supra* note 12, for a comprehensive description of the 1993 jury law and its implementation in the first year of jury trials in the nine regions.



relating to the elements of the crime and guilt to which the jury must give “yes” or “no” answers. Finally, a verdict of not guilty may be appealed by both the prosecutor and the aggrieved party or victim, which is not allowed in the U.S.<sup>28</sup>

Needless to say, the reintroduction of trial by jury led to a re-awakened public interest in the institution, for it was hoped that trial by jury would humanize the Soviet criminal justice system by allowing for acquittals in cases in which the evidence was insufficient to acquit, and even jury nullification in cases where the jury felt the prosecution power was inappropriately exercised. Indeed, the authors of the 1993 jury law structured the question list to allow a finding of not guilty even if the jury decided that the charged crime had been committed and the defendant was responsible for its commission.<sup>29</sup>

Books dealing with the pre-Revolution jury were published and old treatises on the Tsarist jury were re-published. The great German theater director Peter Stein directed an eight-hour production of Aeschylus’s *Oresteia*—in which the third part, the *Eumenides*, ends in a jury trial of Orestes for the murder of his mother Klytemnestra—which was performed in the Theater of the Soviet Army in 1995 and clearly played on the new Russian jury experiences.<sup>30</sup>

Finally, in 2002, Viacheslav Dolgachev presented a stage version of *12 Angry Men* in Moscow at the New Dramatic Theater, featuring well-known actor Viacheslav Nevinniy, Sr., as the Lee J. Cobb figure, and his son, Viacheslav Nevinniy, Jr., as Juror #4, the figure played by Edmund Marshall.<sup>31</sup> The production was a great box-office success and is still part of the theater’s repertoire, though Nevinniy, Sr., is ill and has been replaced. Oddly enough, one critic saw that the audience sympathized more with Nevinniy, Sr., in his role as the abrasive Juror #3, than Mikhail Ka-

28. See also Stephen C. Thaman, *Comparative Criminal Law and Enforcement: Russia*, in 1 ENCYCLOPEDIA OF CRIME & JUSTICE 207, 210–13 (Joshua Dressler ed., 2d ed. 2002) [hereinafter Thaman, *Comparative Criminal Law*].

29. On the institution of jury nullification before the Revolution and under the 1993 jury law, see Stephen C. Thaman, *Questions of Fact and Law in Russian Jury Trials: The Practice of the Cassational Courts Under the Jury Laws of 1864 and 1993*, in 72 REVUE INTERNATIONALE DE DROIT PÉNAL 415, 439–47 (2001).

30. See Olga Rusanova, *Masters of the Stage: Yuri Lyubimov, Peter Stein, Oleg Yefremov*, RUSSIAN CULTURE NAVIGATOR, [http://www.vor.ru/culture/cultarch19\\_eng.html](http://www.vor.ru/culture/cultarch19_eng.html) (last visited Aug. 27, 2007). I saw this performance in 1994 in Moscow.

31. Alisa Nikol'skaia, *Dva-Nevinnyy-Dva*, [http://www.selavi.ru/smotr/2002/2002\\_nd\\_12.htm](http://www.selavi.ru/smotr/2002/2002_nd_12.htm) (last visited Aug. 27, 2002). Ironically, the Russian name *Nevinniy* appears to be an old version of the word *nevinovnyy*, which means “not guilty.” I got to know Viacheslav Nevinniy, Sr., in 1992–1993 when he was acting in a production of Gogol’s *The Gamblers*, directed by Sergey Yurskiy, for which my wife was the business manager. He is a big, extraordinarily comical character actor who is well-known to all Russians.

linichev, who played Juror #8, the Henry Fonda role. Yet the critic, Oleg Trufanov, noted,

[The play] addresses itself to the man on the street, in whom sympathy only arises with difficulty. There is too little of this spirit of the saviour in the modern world, especially there is insufficient among us, and an American screenplay comes to help, and is playing in Russian at the New Dramatic Theater.<sup>32</sup>

Dolgachev presented the play to the collected judges of Moscow City Court in 2002 before the jury trial was finally introduced in that court in early 2003,<sup>33</sup> and later in 2005 in an action entitled “Jury Trial: Psychological Phenomenon or Politics?” to professors and law students from various Moscow law schools, which was followed by a student essay competition addressing the topic.<sup>34</sup>

Also in 2002, three simultaneous mock jury trials were staged in St. Petersburg in anticipation of the introduction of the jury trial in the city that hosted the Vera Zasulich trial and many of the most renowned pre-Revolution jury trials. As a part of the training of the jurors, they were shown a complete subtitled version of Lumet-Rose’s *12 Angry Men* to illustrate the difference between American and Russian jury trials. The mock juries, not surprisingly, acquitted the suspect and also said they were “angry” because of the lack of a unanimity requirement in the Russian jury trial.<sup>35</sup>

Finally, Oscar-winner Nikita Mikhalkov<sup>36</sup> produced a remake of *12 Angry Men* in 2005 (simply titled *12*), which will be shown at the 2007 Venice Film Festival.<sup>37</sup> Mikhalkov, who directed the stage version of the play as his first work as a student of theater,<sup>38</sup> has adapted the story to suit

32. Oleg Trufanov, DOM AKTERA, No. 72 (2002) (reviewing Viacheslav Dolgachev’s mise-en-scène of *12 razgnevannykh muzhchin*).

33. Telephone interview by Natalya Makarova with Viacheslav Dolgachev (Dec. 10, 2006).

34. *Aktsiia*, KUL’TURA, Feb. 24–Mar. 2, 2005.

35. Galina Literat, *Prisiazhnye zasedateli: gotovnost’ nomer odin*, NEVSKOE VREMIA, Oct. 31, 2002, available at <http://www.nv.vspb.ru/cgi-bin/pl/nv.pl?art=129739728>. The trials were presided over by Yelena Levina, a Saratov lawyer, who defended in the third modern Saratov jury trial in 1994, which I observed, see Thaman, *Resurrection*, *supra* note 12, at 234–36, and many more thereafter.

36. Mikhalkov won the Oscar for best foreign-language film for his film *Burnt by the Sun*. (*Utomlennyi sol’ntsem*). Indeed, the co-authors of the script for *12 Angry Men*, Vladimir Moissenko and Aleksandr Novototskiy, are also co-authoring the sequel to *Burnt by the Sun* as well as the successful new Russian film, *Vozvrashchenie*. Fil’m za 5 nedel’, [http://www.trite.ru/projects\\_in.mhtml?PubID=119](http://www.trite.ru/projects_in.mhtml?PubID=119) (last visited Aug. 27, 2007).

37. See Andrey Vandenko & Aleksandr Ivanishin, *Odin razgnevannyi muzhchina*, ITOGI, No. 27, [http://www.itogi.ru/Paper2006.nsf/Article/Itogi\\_2006\\_07\\_02\\_00\\_4917.html](http://www.itogi.ru/Paper2006.nsf/Article/Itogi_2006_07_02_00_4917.html) (last visited Aug. 27, 2007); La Biennale di Venezia, <http://www.labiennale.org/en/cinema/festival/program/en/14372.1.html> (last visited Aug. 27, 2007). Nikita Mikhalkov won a “special lion” for overall work at the 64th Venice International Film Festival at which *The 12* was presented. La Biennale di Venezia, Official Awards, <http://www.labiennale.org/en/news/cinema/en/78166.html> (last visited Sept. 30, 2007).

38. *12*, [http://www.trite.ru/projects\\_in.mhtml?PubID=124](http://www.trite.ru/projects_in.mhtml?PubID=124) (last visited Aug. 27, 2007).

Russian conditions. The defendant will be a young Chechen fighter, considered by many to be a hero, who is accused of killing his Russian stepfather. The youth thus is a minority, much like the Puerto Rican boy in the original screenplay.

Mikhalkov filmed his version in Krasnodar Territory, which is also in the Caucasus, because of the difficulties of filming in Chechnya itself, but he hopes for the premiere to be held in Chechnya.<sup>39</sup> The last stage of filming was in the village of Aderbeevka and was composed of re-enactments of battles in the Chechen war, consisting of a kind of flashback of the experiences of the defendant in the case. The jury will deliberate in a large basketball court in a school and will act out much of the alleged testimony in this space.<sup>40</sup> Mikhalkov claims that all twelve of his jurors have new personalities, different from those in the Rose-Lumet production.<sup>41</sup>

The year of 2006 has also seen a stage production of *12 Angry Men* in Tbilisi, the capital of the Republic of Georgia. Although the directors, Robert Sturua and Revaz Chkhaidze, preserve much of the 1950s stylistics (unlike Mikhalkov), they do add a few of their own innovations. Before the start of the play a voice from "Heaven" warns the jurors that they have the awesome task of deciding whether someone will be sentenced to death or not and to exercise great care. This offstage "god" also intervenes in the discussions at times. Finally, Sturua and Chkhaidze have interludes where the twelve jurors move to what seems like a football field and line up in formations that mirror their positions in the jury deliberations.<sup>42</sup>

39. Mikhalkov knows Chechnya from filming there in prior years, claims himself to have Caucasian blood, and considers it also his "home." Vandenko & Ivanishin, *supra* note 37.

40. See *id.*; Nozhu gorla prisiazhnogo, [http://www.trite.ru/projects\\_in.mhtml?PubID=14t](http://www.trite.ru/projects_in.mhtml?PubID=14t) (last visited Sept. 10, 2007). Of course there were no flashbacks in Lumet's film and the reenacting of the crime was limited to the pacing of the old man's steps to the window, the stabbing motion, etc. To me, the basketball court idea is an eerie reminder of the massacre by Chechens of hundreds of schoolchildren in Beslan, North Ossetia, on September 1, 2004. One of the flashbacks has the Chechen rebels attack a civilian population. See Eto budet triller, [http://www.trite.ru/projects\\_in.mhtml?PubID=153](http://www.trite.ru/projects_in.mhtml?PubID=153) (last visited Sept. 10, 2007).

41. Pervye kadry, [http://www.trite.ru/projects\\_in.mhtml?PubID=130](http://www.trite.ru/projects_in.mhtml?PubID=130) (last visited Sept. 10, 2007). One of the actors, Aleksey Petrenko, has said that it will be as different from the Rose-Lumet production as *The Magnificent Seven* was from *Seven Samurai*. '12 razgnevannykh muzhchin' na novom konoyazyke Mikhalkova, <http://222.rian.ru/review/20060531/48843369-print.html> (last visited Aug. 27, 2007).

42. Nina Bezirganova, *Dvenadtsat' razgnevannykh muzhchin skazali: 'Net!'*, SVOBODNAIA GRUZIA, May 30, 2006. The use of sport fields by both the Georgians and Mikhalkov could be a not-so-subtle way to characterize jury trial as a kind of "sporting theory of justice." Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice* (1906), reprinted in ROSCOE POUND AND CRIMINAL JUSTICE 57, 73 (Sheldon Glueck ed., 1965).

## IV. 12 ANGRY MEN AND THE REALITY OF RUSSIAN JURY TRIAL

A. *Death Penalty Issue*

The “life or death” struggle of the jury in the Rose-Lumet text could no longer happen today in Russia. From 1993 through 1996 Russian juries sentenced defendants to death for aggravated murders, the most common charges with which they dealt.<sup>43</sup> Because of increasing criticism of the death penalty, many of these death sentences were commuted to life imprisonment by President Yel'tsin's “clemency committee.” In 1996, however, President Yel'tsin issued a moratorium on executions upon Russia's signing of the European Convention on Human Rights and its entry into the Council of Europe. Courts continued to sentence defendants to death, however, until the Russian Constitutional Court declared in 1999 that no death penalties could be imposed until jury trials were expanded beyond the nine original regions and territories to all of Russia's eighty-nine constituent political entities.<sup>44</sup>

Even from 1993 through 1996 the death penalty was never mandatory, as it was in the Rose-Lumet text.<sup>45</sup> Juries could find the defendant guilty of aggravated murder, yet vote for “lenience” and thus remove the death penalty from the table.<sup>46</sup> Thus, the jury would not have had to “nullify” in Russia if they felt the defendant was guilty yet did not want him or her sentenced to death. They could just issue a grant of “lenience.” The same, of course, is true in contemporary death penalty cases in the U.S. In most of the thirty-eight states which have the death penalty and the federal system, juries decide the issue of death or life imprisonment in a separate sentencing proceeding, which normally gives them great discretion.<sup>47</sup>

43. Indeed, Article 20 of the Russian Constitution grants the right to jury trial for anyone facing capital punishment. See Thaman, *Comparative Criminal Law*, *supra* note 28, at 215.

44. Only this year is jury trial supposed to extend to Chechnya. Some Russians think that the death penalty will then again be possible, but they ignore the moratorium, President Putin's avowed opposition to capital punishment, and the fact that Russia would likely be suspended from the Council of Europe.

45. Indeed, the trial judge tells the jury he will impose the death sentence if they convict. Rose, *supra* note 1, at 163.

46. The 1993 jury law had two types of lenience: ordinary and “special.” Ordinary lenience would make a death penalty impossible and “special” lenience would require the trial judge to sentence to less than the statutory minimum, which would have been less than eight years under the Penal Code in force at that time. Thaman, *Resurrection*, *supra* note 12, at 122, 126–27. The jury rules in the 2001 Code of Criminal Procedure only provide one type of lenience, but they also would eliminate the death penalty. UGOLOVNO-PROTSESSUAL'NYY KODEKS ROSSIYSKOY FEDERATSII [UPK] [Code of Criminal Procedure of the Russian Federation] art. 349.

47. A few states treat the jury's verdict as only a recommendation, however, and allow the judge to impose death notwithstanding. This practice has been upheld by the U.S. Supreme Court in *Spaziano v. Florida*, 468 U.S. 447, 463–64 (1984).

### B. *The Lack of Unanimous Verdicts*

At first blush, the drama of Juror #8 turning around an entire jury and convincing them to acquit when their initial vote was 11–1 for guilty could not happen in Russia. As was the case before the Revolution, Russian juries can convict with a simple majority of seven of the twelve votes. The one twist in Russia, however, is that the jury, both before and after the Revolution, had to deliberate for three hours to try to reach a unanimous verdict before they were allowed to return one based only on a majority of the votes.<sup>48</sup> Would the eleven just have waited three hours giving lip service to the Henry Fonda character before convicting?

Russian critics have noted that the Rose-Lumet production preserves the famous three unities of Greek tragedy documented by Aristotle: the unity of time, place, and plot; and because the films of Mikhalkov and Lumet-Rose do not exceed three hours, there would at least be a three-hour time frame for such a drama to take place.<sup>49</sup> The alternative of waiting three hours would not have been favored, however, by the juror who had tickets to the baseball game.<sup>50</sup>

### C. *Issue of Jury Nullification*

#### 1. Nullifying the Sanction in Cases Involving Crimes of Passion

The jury in Lumet-Rose's *12 Angry Men* does not exercise jury nullification in order to avoid the death penalty when it acquits the defendant. Even though the defendant allegedly had a heated argument with his father on the evening of the homicide, no member of the jury suggested acquitting contrary to the facts because the crime was committed in the heat of passion. The entire film focuses on the evidence and its weaknesses or contradictions, not on avoidance of the severe sanction of death through mercy or nullification.<sup>51</sup> Pre-Revolution Russian juries did not have the opportunity

48. Thaman, *Resurrection*, *supra* note 12, at 125.

49. Valeriy Kichin, *Suzhety po miru kochuiut—Na ekrany nakatila novaia volna remeykov*, ROSSIYSKAIA GAZETA, Mar. 24, 2006, <http://www.rg.ru/2006/03/24/syujeti.html>, notes that Mikhalkov's film only takes two hours (the Rose-Lumet film also does not exceed two hours). Indeed, in the Georgian stage production, the deliberations start at seven o'clock p.m.—the same time that the play starts—and end when the play ends. Bezirganova, *supra* note 42. Dostoevsky in *The Brothers Karamazov* has the jury return a verdict of guilty with no recommendation of mercy within a mere hour, which would presumably be a unanimous verdict due to the Russian rules. DOSTOEVSKY, *supra* note 6, at 752–53.

50. Rose, *supra* note 1, at 170.

51. Historically American juries refused to convict when they were aware a mandatory death sentence would follow. See generally *McGautha v. California*, 402 U.S. 183, 199 (1971).

to “nullify” the death penalty,<sup>52</sup> but did acquit contrary to the facts to spare a defendant from the deprivations of forced labor (*katorga*) in Siberian exile.<sup>53</sup>

In *The Brothers Karamazov*, Dmitriy Karamazov is tried by a jury for the murder of his father, thus paralleling the plot in *12 Angry Men*. Although Dostoevsky does not bring us into the jury deliberations, he has a juror make the following remark about the facts:

“It would be a shame and a disgrace not to acquit him!” the official went on exclaiming. “Suppose he did kill him, but there are fathers and fathers! And, finally, he was in such a frenzy . . . Maybe he really did just swing the pestle and the old man fell down. . . . If I were the defense attorney, I’d have said straight out: he killed him; but he’s not guilty, and devil take you!”<sup>54</sup>

## 2. Nullifying for Reasons Unrelated to the Case or the Defendant

The intense heat suffered by the jury in *12 Angry Men*, it being the “hottest day of the year,”<sup>55</sup> might have led a pre-Revolution jury to acquit contrary to the facts, or nullify, just to escape the non-air-conditioned deliberation room.<sup>56</sup> When Juror #7 in *12 Angry Men* announces that “this better be fast” so that he can go to the baseball game,<sup>57</sup> a situation arises where jurors could convict or acquit because of the inconvenience of having to endure a long period of deliberation in which the jurors can effectively discuss the weight and consistency of the evidence.<sup>58</sup>

### D. *The Rules of Evidence*

A modern Russian jury would not have had the information about the defendant’s prior record that so influenced the pro-guilt faction of the jury in the Lumet-Rose film.<sup>59</sup> In Russia, a defendant’s prior record is not ad-

52. Capital cases were heard by military courts during most of the pre-Revolution period of jury trial. KUCHEROV, *supra* note 4, at 201–11.

53. *Id.* at 70–71.

54. DOSTOEVSKY, *supra* note 6, at 751–52.

55. Rose, *supra* note 1, at 164.

56. In summer months in Russia, the temperature sometimes reached 40° centigrade in the courtroom. Former Moscow Prosecutor N.P. Timofeev recalls jurors acquitting four consecutive defendants on such a day and, when all those jurors were challenged on the following day, juries still acquitted in eleven of sixteen subsequent cases due to the heat. TIMOFEEV, *supra* note 11, at 147.

57. Rose, *supra* note 1, at 170.

58. In *Resurrection*, Tolstoy has the jurors, who originally are leaning towards acquitting the heroine Katya Maslova, give in to the aggressive arguments of the foreperson for a guilty verdict because “the jurymen were getting tired, and preferred to take up the view that would bring them sooner to a decision and thus liberate them.” TOLSTOY, *supra* note 7, at 89.

59. As Juror #7 notes,

missible, even if the defendant testifies in his or her own defense.<sup>60</sup> In the first modern jury trial in Riazan' Province, the defendant was charged with strangling an old man who wouldn't sell him vodka. In his statement to the police, he claimed he could not have strangled the man, because he had no fingers, for he had lost them due to frostbite when he had passed out drunk in winter in sub-zero weather. The prosecutors were then unable to introduce evidence that the defendant had strangled another man in Moscow Region several years earlier with his digitless hands and had done time for murder as a result.<sup>61</sup>

It is also interesting that Juror #8, the Henry Fonda character, is frustrated because he could not ask questions left unasked by the prosecution and defense:

According to the testimony the boy looks guilty. Maybe he is. I sat there in court for six days listening while the evidence built up. You know everybody sounded so positive that I started to get a peculiar feeling about this trial. I mean nothing is that positive. I had questions I would have liked to ask. Maybe they wouldn't have meant anything. I don't know. But I started to feel that the defense counsel wasn't conducting a thorough enough cross-examination. He let too many things go. Little things.<sup>62</sup>

In Russian jury trials, the jury is given statutory authority to ask questions,<sup>63</sup> and this practice is now becoming more widespread in the U.S.<sup>64</sup>

I mean this kid is five for oh. Look at his record. He was in children's court when he was ten for throwing a rock at his teacher. At fifteen he was in reform school. He stole a car. He's been arrested for mugging. He was picked up twice for knife-fighting. He's real swift with a knife, they said. This is a very fine boy.

Rose, *supra* note 1, at 191.

60. UPK art. 355(8). In the U.S., in general, prior convictions—even sometimes for juvenile adjudications—are admissible to impeach the defendant's credibility if she takes the stand and testifies. As an example, see FED. R. EVID. 609.

61. See Thaman, *Resurrection*, *supra* note 12, at 200–01.

62. Rose, *supra* note 1, at 197.

63. UPK art. 355(4). At times jurors have been quite active in questioning in Russia when the prosecutor and defense lawyer were seen as not having adequately performed this function. See Thaman, *Resurrection*, *supra* note 12, at 106.

64. While the court in *State v. Doleszny*, 844 A.2d 773 (Vt. 2004), found that a majority of courts that have ruled on the issue find that juror questioning of witnesses aids in the ascertainment of truth and overall achievement of justice, *id.* at 778–79 (citing *United States v. Collins*, 226 F.3d 457, 464–65 (6th Cir. 2000)), it noted that Mississippi and Nebraska have ruled that juror questioning is prohibited in all cases, *id.* at 780 (citing *Wharton v. State*, 734 So. 2d 985, 990 (Miss. 1998)), and that Minnesota and Texas have done so in criminal cases, *id.* (citing *State v. Costello*, 646 N.W.2d 204, 214 (Minn. 2002)).

E. *Russian Paradigms: Nullification of the Guilty, Conviction of the Innocent*

Whereas in Lumet-Rose's film, good triumphs over the petty, the racist, and the indifferent (inasmuch as Juror #8 finally convinces the jury to follow the law in relation to reasonable doubt), in Russian history, the "good" seems more to be related to the exercise of nullification of cruel sentences, unjust laws, or, depending on your political point of view, revolutionary opposition to Tsarism. Although classic Russian literature sometimes alludes to jury acquittals as being an exercise of Christian mercy,<sup>65</sup> the great Russian writers more often immortalize cases where the jury errs by convicting the innocent. Both Dmitriy Karamazov and Katya Maslova were innocent, yet convicted and sentenced to *katorga*. In *The Brothers Karamazov*, Dostoevsky describes the jurors, and it is not a pretty picture:

But I do remember who the twelve jurors consisted of: four of our officials, two merchants, and six local peasants and tradesmen. In our society, I remember, long before the trial, the question was asked with some surprise, especially by the ladies: "Can it be that the fatal decision in such a subtle, complex, and psychological case is to be turned over to a bunch of officials, and even to peasants?" and "What will some ordinary official make of it, not to mention a peasant?" Indeed, all four of the officials who got on the jury were minor persons of low rank, gray-haired old men—only one of them was a little younger—scarcely known in our society, vegetating on meager salaries, with old wives, no doubt, whom they could not present anywhere, and each with a heap of children, perhaps even going barefoot; who at most found diversion in a little game of cards somewhere in their off hours, and who most assuredly had never read a single book. The two merchants, though of grave appearance, were somehow strangely silent and immobile; one of them was clean-shaven and dressed in German fashion; the other had a little gray beard and wore some medal around his neck on a red ribbon. There is nothing much to say about the tradesmen and peasants. Our Skotoprignyevsk tradesmen are almost peasants themselves, they even handle the plow. Two of them were also in German dress, and perhaps for that reason looked dirtier and more unseemly than the other four. So that indeed the thought might well enter one's head, as it entered mine, for example, as soon as I took a look at them: "What can such people possibly grasp of

65. Chekhov has a gardener say, upon hearing that a thief was acquitted,

In my opinion, gentlemen, I always greet judgments of acquittal with enthusiasm. I do not fear morality and justice when they say "not guilty," and, on the contrary, I feel satisfaction. Even when my conscience tells me that, having acquitted a criminal, the jurors made a mistake, nevertheless I feel enthusiasm. Judge yourself, gentlemen: if judges and jurors believe more in *man*, than clues, physical evidence and arguments, then isn't this *faith in man* in itself not higher than any common sense? This faith is accessible only to those few, who understand and feel Christ.

ANTON CHEKHOV, *Rasskaz starshego sadovnika*, in 7 SOBRANIE SOCHINENIY 404, 405 (Moscow, Khudozhestvennaia Literatura 1956) (author's translation).



such a case?" Nevertheless their faces made a certain strangely imposing and almost threatening impression; they were stern and frowning.<sup>66</sup>

In *Resurrection* as in *12 Angry Men*, however, one gets to know the personalities of the jurors, for Tolstoy enters into the deliberation room. There is the kindly merchant, the colonel, the Jewish clerk, a member of a workmen's collective (*artel'shik*), not to speak of the upper-class representatives, Pyotr Gerasimovich and the hero, the nobleman Nekhlyudov. Yet there is no Henry Fonda figure here. Nekhlyudov, who has been a client of the defendant Katya Maslova, a prostitute, is embarrassed to express his opinion, and both he, the kindly merchant, and others erroneously think they are acquitting Maslova—in part due to the erroneous judicial instructions, which did not inform the jurors that they could find her guilty of supplying the deadly opiate “without intent to kill.”<sup>67</sup> Although the dull-witted peasant jurors are often the butts of high literary criticism,<sup>68</sup> their accomplices are the judges, who are in a hurry to finish cases, erroneously instruct the jury, fail to exercise their discretion to set aside unjust verdicts,<sup>69</sup> or are just insensitive to any human emotions. The routinized, cold judge is best described by Chekhov:

And judicial error under today's court procedure is very possible, and nothing in it is surprising. People, who have an official, business relationship to the suffering of another, like judges, police, doctors, with time and due to habit, get hardened to such an extent, that they cannot likely relate to their clients other than formally; from this perspective they are no different from the man who in a farm slaughters sheep and veal and doesn't notice the blood. With formal, soulless relationships to persons, in order to deprive an innocent person of all rights to existence and sentence him to forced labor, a judge only needs one thing: time. Only time to observe whatever formalities for which a judge is paid his salary, and then—all is over.<sup>70</sup>

66. DOSTOEVSKY, *supra* note 6, at 659–60.

67. TOLSTOY, *supra* note 7, at 83–91.

68. After Dmitriy Karamazov is convicted, one spectator says, “Yes, sir, our peasants stood up for themselves.” DOSTOEVSKY, *supra* note 6, at 753. In *Resurrection*, it was mentioned that the real reason a prosecutor asked for a continuance in a difficult case was “that if they were tried by an educated jury they might possibly be acquitted. So by agreement with the president, the case was to be tried at the coming session in a provincial town, where there would be more peasants, and therefore more chances of conviction.” TOLSTOY, *supra* note 7, at 26.

69. See, e.g., TOLSTOY, *supra* note 7, at 90–91 (describing a scene where the judge that casts the deciding vote on whether to set aside the verdict bases his contrary decision on a superstitious numerological basis).

70. ANTON CHEKHOV, *Palata No. 6*, in 7 SOBRANIE SOCHINENIY, *supra* note 65, at 127.

F. *Prejudice and the Treatment of Minorities by Russian Juries*

If we assume the defendant in *12 Angry Men* was Puerto Rican<sup>71</sup> and reflect on the seeming hatred on the part of Juror #3 against “slum kids” and his ranting desire to be the defendant’s own personal executioner,<sup>72</sup> we have hit on an issue that is present in current Russian jury cases and is clearly going to be reflected in Mikhalkov’s remake.

The Russian Constitutional Court recently decided that it did not violate the law to have Russian soldiers charged with murder of Chechen civilians tried before a military jury outside of Chechnya, thus effectively excluding Chechen participation among the jurors—both because the jury system had not yet been extended to Chechnya and because the law limits military jury trials to certain specified courts, none of which is in Chechnya. Although there have been cases where Chechens have been convicted that have made the news,<sup>73</sup> the most disturbing cases are those in which Russian juries have acquitted Russian defendants of hate crimes against non-Russians on several occasions. The most high-profile case of this type that has led to multiple acquittals is that of Eduard Ul’man and four others who were tried for murdering six Chechen civilians during the Chechen War before a jury in the North Caucasus Military Court. They were acquitted by a jury, and the Russian Supreme Court reversed the acquittal on August 26, 2004. Ul’man and his codefendants were again acquitted on May 25, 2005.<sup>74</sup> The Military Panel of the Supreme Court of the Russian Federation (“SCRF”) reversed the second acquittal on August 30, 2005.<sup>75</sup> Two Russian servicemen accused of murdering three Chechen construction workers have also twice been acquitted by juries in the North Caucasus Military Court only to have the Military Panel of the SCRF overturn those acquittals as well.<sup>76</sup>

71. The line of Juror #10, “He don’t even speak good English,” which leads Juror #11 to correct him, Rose, *supra* note 1, at 246, is emblematic of the problem of racism, which is usually a rebuff of the ignorant and intolerant.

72. *Id.* at 272.

73. See, e.g., *Chechen Woman Convicted of Terrorism*, RADIO FREE EUROPE/RADIO LIBERTY NEWSLINE, Apr. 6, 2004, <http://www.rferl.org/newsline/> (last visited Apr. 17, 2007) [hereinafter RFE-RL].

74. Aleksey Sokovnin & Sergey Mashkin, *Viacheslav Ivan’kov opravdal opasenii obvineniia*, KOMMERSANT, July 19, 2005, at 3.

75. *Russian Court Quashes Servicemen’s Acquittal in Chechen Killings*, RFE-RL, Aug. 31, 2005.

76. *Chechen Official Deplores Acquittal of Russian Servicemen*, RFE-RL, Oct. 7, 2005. The first acquittal took place in June 2004 and the second acquittal on October 6, 2005. More recently, St. Petersburg juries have acquitted defendants in two cases in which murder based on racial hatred was charged. In March 2006, a jury acquitted a teenage boy of the murder of a nine-year-old Tadjik girl, Khursheda Sultanova, and in July 2006 a jury acquitted four young men of the murder of a twenty-nine-year-old Congolese student, Roland Eposak, to the cheers of some fifty supporters of the alleged killers.

The situation is not nearly as bad as it was in the U.S. South up until the Civil Rights Movement, where some have claimed that no white was ever convicted of crimes against blacks, such as the ubiquitous lynchings. Indeed, in the first modern jury trial, two Gypsies were acquitted of the murder of three Russians,<sup>77</sup> and my study of the first year of modern Russian jury trials turned up other acquittals of minorities; however, the situation may now be getting worse with the tensions of the Chechen war and the increase of chauvinistic and skinhead groups.<sup>78</sup> So *12 Angry Men*, especially in its new Russian remake, could be an excellent vehicle to educate the Russian public in a way that curtails what may be an ominous trend.

### G. *The Non-Finality of Acquittals*

In *12 Angry Men* the jurors fade away into the night, having saved the life of a young man who might have been guilty.<sup>79</sup> He may never be tried again for the same crime. In Russia, however, the ability of a jury to stop the fierce hand of a negligent or intolerant court system is nearly non-existent because judgments of acquittal are subject to appeal by the prosecutor and the victim or the homicide victim's family, and the Supreme Court of the Russian Federation has a record of reversing nearly every controversial acquittal that is returned by juries.<sup>80</sup> In all fairness, however, the Supreme Court has twice reversed the acquittal of Eduard Ul'man for the murder of five Chechens, and therefore attempted to, in a Rodney King-like fashion, give the state renewed chances to prove guilt.<sup>81</sup>

## CONCLUSION

*12 Angry Men* may be and may remain the jury film that has had the most impact in America and across the world, even though the framework of the plot no longer fits the juridical situation in the U.S., with bifurcated capital trials allowing a jury to convict and refuse to impose death, or in

Yelena Gorlanova, *Negry v Peterburge umiraiut sami*, GAZETA.RU, July 26, 2006, [http://www.gazeta.ru/2006/07/25/oa\\_209453.shtml](http://www.gazeta.ru/2006/07/25/oa_209453.shtml) (last visited Aug. 27, 2007).

77. Thaman, *Resurrection*, *supra* note 12, at 62, 231–33.

78. On a trial of skinheads for the murder of three Uzbeks and Tadzhiks, see Diana Igoshina & Yuliia Atopova, *Skinkhedy ubivali posle urokov*, GAZETA.RU., Jan. 26, 2004, [http://www.gazeta.ru/print/2004/01/26oa\\_110221.shtml](http://www.gazeta.ru/print/2004/01/26oa_110221.shtml) (last visited Apr. 17, 2007).

79. Toward the end of the film, Juror #8 says, "We may be trying to return a guilty man to the community. No one can really know. But we have a reasonable doubt, and this is a safeguard which has enormous value to our system. No jury can declare a man guilty unless it's *sure*." Rose, *supra* note 1, at 316.

80. On the massive reversal of jury acquittals, see Stephen C. Thaman, *Europe's New Jury Systems: The Cases of Spain and Russia*, in *WORLD JURY SYSTEMS* 319, 349 (Neil Vidmar ed., 2000).

81. See *supra* Part IV.F.

Russia, with its majority verdicts, lenience findings, and appealable acquittal judgments.

But the beauty of art, literature, and cinema is that a product of a by-gone age lives on, even though the times have changed, and continues to work its wonders in different ways with different audiences. Although many real jury trials have found a place in the collective memories of the American and Russian peoples, the trials of John Peter Zenger, Sacco and Vanzetti, the Rosenbergs, the Scottsboro Boys, O.J. Simpson in the U.S., and Vera Zasulich or Eduard Ul'man in Russia, great works of art will never die. It may be that *12 Angry Men* and other jury films, as well as the jury trials in Dostoevsky's *The Brothers Karamazov* and Tolstoy's *Resurrection*, and perhaps even Nikita Mikhalkov's remake of the Lumet film, will, in the long run, be the image of the, as it were, good, bad, or indifferent jury in more of our memories than will the historical cases.

But in the case of Russia, the jury is still out. A poll in May of 2006 determined that around 31% of those questioned felt that the introduction of the jury trial was a positive development and around 44% would recommend to their relatives to ask for a jury trial, rather than a trial by professional judges. Yet only 32% thought the jury trial was suitable for Russia, with 39% having the opposite view. Fifty-one percent thought it was tough for juries to be objective in today's conditions, and that it was "easy to buy or scare" jurors. Finally, 43% said they would try to avoid jury duty, and of the 38% that would not, 20% would fulfill their duty happily while 18% would with "indifference."<sup>82</sup> And so the stage seems to be set, again today, for a drama such as that in *12 Angry Men*, pitting the few conscientious against the indifferent masses, to see if the "ice can be broken."

82. Galina Bryntseva, *Led tronulsia, gospoda prisiazhnye zasedateli*, ROSSIYSKAIA GAZETA, May 18, 2006, available at <http://www.rg.ru/2006/05/18/prisazhnye.html>.