

**“Actors, Lawyers, Audiences”**

by  
Thomas H. Vidal  
May 4, 1995

Drama is not merely performed upon the stage, it occurs everywhere. Drama simply models the human condition. It allows us to fully realize our humanity. Consequently one places a high value on this drama. To be more concrete, one dramatizes much of one's life. Mary McCarthy once said, "We all live in suspense, from day to day, from hour to hour; in other words, we are the hero of our own story." Ms. McCarthy realized the need for drama all of us share. We live for stories, and we love storytellers. That love is inescapable, it permeates the whole of our society. Even into the most sacred of these theaters, the courtroom.

The Courtroom is an artificial construct that is comparable to any well produced play. Our courtrooms are not merely places where legal disputes are heard, they are the forums for an extremely popular spectator sport. "This is about sales pitch, it's not going to be won by the law, it is going to be won by the lawyers."<sup>1</sup> That quotation, about jury trials, from Rob Reiner's film *A Few Good Men*, is the essence of litigation. The law alone is simply not adequate to win a court case; and, as the quotation suggests, the theatrical presentation is integral to the case. The legal dispute becomes a literary creation. Some of these stories are ones of human suffering; a lawsuit where one party is harmed by another, or where the wronged mother fights valiantly to retain custody of her child. Some are stories of David and Goliath; a lawsuit where an average citizen, one like "us", goes up against a corporate monolith. Some stories are about the clash of Titans; a lawsuit where the new righteous and virtuous group go up against the powerful group in power. This is the stuff of high drama which holds our interest in the same way that Homer did in

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<sup>1</sup> *A Few Good Men*. Dir. Rob Reiner. Castle Rock, 1993.

his works. In his *Odyssey*, we all rallied with Odysseus as he defended his home against the suitors who threatened it. As Homer captured our hearts and stimulated our minds, so do the law courts.

Aristophanes' understood this relationship in essence that existed between a dramatic defense and a rousing performance in theater. He realized the level of sophistication that was required of a juror. The ability to realize that what was unfolding before one's eyes was a play. He also believed that the Athenian jurors did not possess that level of sophistication. A point he adroitly demonstrates through his character Anticleon, in *The Wasps*. Anticleon is constantly trying to demonstrate to his father, Procleon, that the law courts are merely theatrical artifice, and that he is merely a slave. When Procleon wonders where all the money in Athens is going, Anticleon answers that it goes to the "people you elect to rule over you, because you are taken in by their speeches."<sup>2</sup>

Sent. FRAG.

ANOTHER SENT FRAG

How does that show the artifice?

My analysis will consist of examples of theatrical elements from some famous trials. These cases will come from a variety of categories, including: murder, profanation, corrupting the youth, citizen rights, and others. They will often model the archetypal stories mentioned previously. Sometimes they follow their own unique pattern; however, as unique as these cases appear to be they all could have come straight out of literature. Aristophanes noted the need for drama in his comedy *The Wasps* where he said, "Can you think of any living creature that is happier, more fortunate, more pampered, or more feared than a juror?"<sup>3</sup> Aristophanes' uses the lens of entertainment to demonstrate how the

<sup>2</sup> Aristophanes *The Wasps*, David Barrett tr. (Penguin Books, London: 1964), p. 62.

<sup>3</sup> *ibid.* p. 57.

people of the day felt about law and the law courts. Better than any history book, Aristophanes<sup>2</sup> gives us a true slice of Athenian life.

*The Wasps* <sup>was written for</sup> represents entertainment, and as such it exaggerates reality. The case examples are actual law suits, and as such we will see a more realistic version of court. This difference is really quite meaningless. If my argument is correct, then the courtroom scene will be a dramatic presentation. This dramatic presentation will differ only mechanically. A difference which is meaningless because it is not a function of humanity, it is a function of administration. It demonstrates that drama is drama with or without the stage. Perhaps, more interestingly, it will demonstrate litigation as the example, bar none, of *metatheater*.

Finally, to demonstrate the timelessness of this argument, I will highlight some modern examples of both theatrical courtroom scenes, and real ones. In the end it will be clear that twenty-five hundred years have not changed the practice of law in any real sense. Drama is still drama, whether in comedy or in the least regarded authentic trial. Although, by this time, the reader may be wondering whether there is actually a difference between a theatrical trial and real one. Perhaps this is the importance of my work, to blur the distinction between theater and reality. After all, is not all the world a stage itself?

The trial of Socrates is an amazingly dramatic piece. At Seventy years old Socrates had literally experienced both the best of times and the worst of times. He lived through the Periclean Age, the pinnacle of Athenian power and influence; through the defeat of Athens in 404 BC, oligarchic revolution, and restoration of democracy.<sup>4</sup> Socrates was indicted in 399 BC, by Meletus, for corrupting the young and not believing in the gods in

<sup>4</sup> G.M.A. Grube *The Trial and Death of Socrates* (Hackett Publishing, Indianapolis: 1975) p. 1.

This is padding

so is this

irrelevant

not clear what your argument is

whom the city believes. The defense, as recorded in Plato's "Apology", is oddly brilliant.

It was, however, completely ineffective. His defense was a dare. Socrates has been accused of asking for his execution through his defense. As evidence they point to his irreverence to the jurymen, and his lack of any emotional appeal. The evidence points to a different story altogether. The evidence shows a Socrates that was justified before the eyes of the god. The evidence shows a Socrates who dared the Athenian jurymen to challenge that god, by executing him. Socrates was an intellectual to the end, as evidenced by his defense, and he paid for it.

How does this contradict the reception of his performance? he so upset the jurymen?

Socrates defense was not theatrical in any sense of an emotional appeal, but Socrates was very well aware of the courtroom artifice. In opening up his defense,

Socrates says, "I do not know, men of Athens, how my accusers affected you; as for me, I was almost carried away in spite of myself, so persuasively did they speak." Even as an intellectual, Socrates, could not help but fall into the performance aspect that is required of a defense. His appeal to the jury is to demonstrate the entertainment value of the prosecution's speech. A speech that was so good that even I, the defendant, was nearly convinced. How he managed to not be convinced by such a performance was the substance of his case. If Socrates had stopped with that single line, he would have had a

Why is there a contradiction between intellectual and performance? sentence FRAG.

better chance of winning his case. In the remainder of his defense he spoke down to the jury. It was not even a matter of "kissing up" to the jury, he spoke to them as if they were the ones on trial.

Isn't he saying the speech was persuasive? when is the entertainment value?

WHY?

HOW

DONT USE STANG

Very well then, I must surely defend myself and attempt to uproot from your minds in so short a time the slander that has resided there so long. I wish this may happen, if it is in any way better for you and me, and that my defense may be successful, but I think this very difficult and I am fully aware of how difficult it is.

Even so, let the matter proceed as the god may wish, but I must obey the law and make my defense.<sup>5</sup>

That quotation, the end of Socrates', introduction says it all. The example is not of lofty speech to average men, it is one of blatant disrespect. He essentially tells the jury that the god will decide his case, they have no power. A certain slap in the face if the jury understood his meaning. His first sentence is the only one in the entire defense where he even pretends that the jury members are his equals, and it only got worse after that previous quotation. It is so obvious to Socrates that he is innocent, he fails to even see that the jury might not really be sure. It looks as if Socrates was bored by the whole situation, as if it were a waste of his precious time. A fact the jury probably found quite insulting. Throughout his defense he continued to insult the jury.

[Chariophon] went to Delphi at one time and ventured to ask the oracle - as I say, gentlemen, do not make a disturbance - he asked if any man was wiser than I, and the Pythian replied that no one was wiser.<sup>6</sup>

One can only imagine what the jury felt after hearing that. To suggest to those of whom are judging one's case that one is wiser than all other men, while quite dramatic, is nothing less than suicide. Here is where scholars might suggest that Socrates was looking for death. I do not believe it is. In some odd way, Socrates was an innocent, perhaps naive, man. If the oracle said that he was the wisest, then he was—and everyone would accept it. Unfortunately, the people of Athens were looking for blood; they were not interested in the truth, they wanted Socrates to grovel. He never did, not even after he was convicted on the charges of corrupting the young and not believing in the gods in whom the city believes. After his conviction he became downright belligerent. After Meletus

<sup>5</sup> ibid. p. 23.

<sup>6</sup> ibid. p. 25.

another sent for

This sounds to me as if you are supporting the thesis of p. 4

So you're saying he was naive & foolishly told the jury the truth that he was smarter than they?

EXTRA VAGANT CLAIM  
This is a harmless remark in a society that believes events occur at the gods' will

I don't think so

assessed the penalty of death, Socrates was given the opportunity to assess his own penalty.

He assesses the penalty of death. So be it. What counter-assessment should I propose to you, gentlemen of the jury? Clearly it should be a penalty that I deserve, and what do I deserve to suffer or to pay because I have deliberately not led a quiet life but have neglected what occupies most people: wealth, household affairs, the position of general or public orator or the other offices, the political clubs and factions that exist in the city? I thought myself too honest to survive if I occupied myself with those things.<sup>7</sup>

Which flows in particular  
How was it brilliant if he was a naive peasant?

Socrates was trying to die a martyr, he was trying to demonstrate the flaws that existed within Athens. Socrates was too intellectual to understand that his symbolic death would prove nothing to anyone. He died alone. His defense was brilliant, but it was far too lofty. He failed to market his case, and he failed to save his life.

He changed the life of Plato  
Who changed the lives of everyone raised in the west  
So I wouldn't dismiss his achievement  
So Bl. Heby

The perfect counter example to Socrates' defense is that of Euphiletus. Euphiletus was tried for murder some time between 400 and 380 B.C. Eratosthenes had seduced Euphiletus' wife, and Euphiletus caught them together. Under the law, Eratosthenes was justified in killing Euphiletus for seducing his wife, and that is just what he did. That law, however, states further that the slaughter must be on no other grounds than the seduction. The family of Eratosthenes alleged that there was some other motive, and had Euphiletus charged with murder. Euphiletus, of course, denied this, and the case was tried.<sup>8</sup>

Euphiletus used the drama of the situation to his advantage, and sold his story to the jury. So it is thought, there is actually no record of a verdict for this case nor is the prosecution's case in existence. He paints the picture of a man who was wronged, and pleads the jury to look from his perspective:

<sup>7</sup> *ibid.* p. 38.

<sup>8</sup> Kathleen Freeman, *The Murder of Herodes and Other Trials from the Athenian Law Courts* (W.W. Norton and Company, New York: 1963) p. 43.

I would give a great deal, members of the jury, to find you, as judges of this case, taking the same attitude towards me as you would adopt towards your own behavior in similar circumstances.... What I have to prove, I take it, is this: that Eratosthenes seduced my wife, and that in corrupting her he brought shame upon my children and outrage upon me, by entering my home.... I did not commit this act for the sake of money, in order to rise from poverty to wealth, nor for any other advantage except the *satisfaction* allowed by law.<sup>9</sup> [emphasis added]

One could nearly see Euphiletus weeping in the courtroom forum, over his very moving *proem*. His defense, true to its introduction, remains at the level of his audience, the jury. Euphiletus appeals to their emotions. He treats the jury with respect and as if they were his social equals or better. It is the same respect that a playwright considers his audience to be deserving of; oddly enough, this forum's audience was not there by choice. They were there to be entertained though, whether they expected it or not. In addition to appealing to the jury, he appeals to the law itself. When confronted, Eratosthenes admitted his guilt. Upon so doing, he asked Euphiletus to take financial recompense for the damages rather than his life. To which Euphiletus replied: "It is not I who shall kill you, but the law of the State, which you, in transgressing, have valued less highly than your own pleasures."

This surely deserves comment

Euphiletus paints himself as a hero, one whose own desires are subordinate to that of his State. At this point one can see the jury sitting at the edge of their seats eagerly awaiting for their wronged hero to exact justice, to avenge himself. In order to serve the jury's need for climax, he said, "Thus, members of the jury, this man met the fate which the laws prescribe for wrong-doers of his kind."<sup>10</sup> Although the justice was savage, the jury probably felt his appeal and gave him their votes. If nothing else, then because of the

What does this mean?

<sup>9</sup> *ibid.* p. 43-44.

<sup>10</sup> *ibid.* p. 47.



seriousness of adultery. He did not even fail to make an appeal on this point, when he said, “Of this, I am an example—I, who now stand in danger of losing life, property, everything, because I have obeyed the laws of the State.”<sup>11</sup> His pleas did not fall on deaf ears.

The defense, of course, is not the only side in a lawsuit, and the prosecution must be equally dramatic in presenting their case. Thus, my next example is a case against a step-mother, on the charge of poisoning. The story behind the case itself is quite fascinating, lending to its very own drama. The father of the prosecutor was poisoned and killed by his very own wife, his second wife. This all happened while the prosecutor was still a boy, and he waited to file charges until he came of age. The defendant, being a woman, was not allowed to testify in court, so her oldest son by the deceased takes up her defense. To put the whole matter more simply, the prosecutor and speaker for the defense were half-brothers. The relationship itself lends itself to theatrical situations, one can easily imagine this being the subject of any number of talk-shows: “This week on Oprah, brother versus brother—family members who kill.” Perhaps the author is waxing somewhat dramatic (pun intended), but on today’s tabloid television nearly anything is possible. This case certainly demonstrates my point.

Young as I am, and still without experience of litigation, I am placed by this event in a position of terrible difficulty. Either I have to disobey the injunction laid on me by my father, that I should seek vengeance on his murderers; or if I do seek vengeance on his murderers, I am driven into a feud with those with whom it is least desirable—my half-brothers and their mother.<sup>12</sup>

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<sup>11</sup> *ibid.* p. 52.

<sup>12</sup> *ibid.* p. 86.

As you said  
it is not  
known how  
the case  
was decided

His opening line is simply brilliant. In that quotation he describes himself as the poor soul who is bound by honor to his father, to feud with his family. The situation is distasteful, but he must proceed. He must avenge his father. From a dramatic standpoint, it keeps getting better. When ever he refers to the deceased, he is careful to point out that it is the defendant's father as well: "If I prove that their mother did by intention and forethought cause the death of our father..."<sup>13</sup> The prosecutor continues to play on this relationship. In his complaint at procedure of the defense, he questions his half-brother's motives. "Does he believe that filial piety lies not in betraying his mother?"<sup>14</sup> he asks. The case turns around this twisted relationship between two half-brothers, their father, and a mother of one of the two. The case could have come from Euripides himself.

The next story is one of a man accused of sacrilege. The defendant in this case, who's name is unknown, is a large landowner. He is charged with destroying a stump of a sacred olive-tree. These trees, and even their stumps, were protected under law because it was believed that they were propagated direct from the tree originally presented by Athena.<sup>15</sup> The offense is technically one against the treasury, but the thought that his offense was against Athena adds a certain religious literary aspect to the case.

In his defense he is portrayed as a man of the world. He is a large land-owner with no need to cheat in small matters. He lived peaceably, and did all his duty to the state. He knows of the inquisitiveness of his neighbors, of any slave's hostility to his master, of the motive of the accuser in bringing the charge, of motive in general when fixing a crime on

<sup>13</sup> *ibid.* p. 87.

<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.* p. 181.

Why?  
— This is not the opening line

This is out of Archy's  
ACTUALLY -  
the ORESTEIA

the guilty person.<sup>16</sup> Woven together in what could be the story of a minor character in a Homeric Epic. Or, depending on the outcome of the trial, a Euripidean tragedy. In either case the defense was made skillfully and demonstrates the theatrical forum of the law court.

You know that I have many olives on the Plain, and many burnt stumps on my other farms—stumps which, if I had wanted to do such a thing, it would have been much safer for me to cut down and destroy, and then to have worked over the ground: the number of trees made it so much the less likely that the crime would come to light, But actually I value these as highly as my other property, thinking that the danger is the same to me for both.<sup>17</sup>

The defendant is speaking plainly enough for any tribunal, but he is keenly aware of the theatrical forum before him. His appeals are to this larger power of gods, although he does so without reference. The presentation is one of respect to the gods, and to the State: "I value these as highly as my other property". There is no evidence of how this trial was judged, but one can assume that the defendant was acquitted, that he sold his case. *why?*

Corrupting the youth, murder, and sacrilege, a motley crue of court cases that are eclectic at best. It is an anthology within which the constituents have little to do with one another, save for one thing. They, all of them, exemplify the courtroom artifice. They exemplify the theater we call "law court." Aristophanes was keenly aware of this, and he had little respect for this revered institution that was merely a stage. Of this disrespect, he wished to convince he fellow Athenians. *The Wasps* itself is theater within theater. At the most abstract level it is, itself, a court case; he argues, to his contemporaries, that they are being deluded by another form of slavery. Underneath that abstraction lies the artificial construction of theater; his work becomes a play. This work of entertainment is itself a

<sup>16</sup> *ibid.* p. 187.

<sup>17</sup> *ibid.* p. 185.

How do you know?

- I don't see the gods' institution here  
 EARLIER YOU CLAIMED THAT SOC. ALLENATED EYES  
 THE JULY 57  
 APPEALS APOLLO

?  
 ?

perhaps the law case AGA 1851 the dog but some not the whole play

court case. Aristophanes is trying to win a prize for the quality of his play. Thus, the play itself is a persuasive construct. At the lowest level of abstraction is the performance of this play. The audience become the jurors and the actors the lawyers. Lawyers which try to persuade the jurors of the playwright's success at entertaining. Three levels of abstraction: a courtroom, within a courtroom, within a courtroom, or a theater, within a theater, within a theater. He tries to prove his case to three different juries, and he tries to entertain three different audiences. All of it is artificially constructed, and each level plays off the others, and at anyone point nobody but Aristophanes truly knows where they stand.

- sent.  
FRAG

The same principle is at work in the courts of law. A perfect example, comes from the People versus O.J. Simpson. The Simpson trial has attracted the hearts and minds of America. It can be imagined that this trial is the modern day version of a Homeric epic. Like Homer epics, everyone knows every aspect of the trial. People from all walks of life can be heard discussing the trial at length: O.J. cannot be guilty, it is definitely someone else. Perhaps Simpson had an accomplice? Maybe, Simpson was framed by his house-guest or by the racist police detective. Maybe the detective and the house-guest planned the entire thing together? This is America's shared experience, it is modern literature. The lawyers are the performers, they use the theatrical construct to drag us around this way, and that. They are the only ones who know the script.

The same levels of abstraction occur in this courtroom battle. The trial itself, at the highest level of abstraction, entertainment next, and the performance thereafter. With no level looking any different than any other. Is one watching a play, or a trial? Is this truth or fiction? Aristophanes' is still correct after 2,500 years. The courtroom is only a stage, but

that they are only being entertained? Again I turn to the Simpson trial. Recent events demonstrate the Simpson jury is made entirely of "Procleons". They think they are in power, and they demonstrate their power by threatening the judge. Of course, Anticleon explains the truth in the situation:

But if they get really scared—oh, then they'll offer you the whole of Euboea, they'll promise you seventy-five bushels of wheat all round.—But you never got it did you? Five bushels was all they dished out in the end, and barley at that: a pint at a time, and then only if you could prove your ancestry.<sup>18</sup>

Whether Aristophanes is right about juries' delusions of grandeur or not, they are at the very least entertained. Entertained by a legal system, both then and now, that is possessed by the theatrical artifice we call drama. Again I am reminded that all the world is a stage and we are but actors upon it.

B — aw for course

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<sup>18</sup> Aristophanes *The Wasps*, David Barrett tr. (Penguin Books, London: 1964), p. 63.

**About Mr. Thomas H. Vidal:**

Thomas H. Vidal works in the Los Angeles office of Abrams Garfinkel, Margolis, Bergson, LLP where he handles civil trials and appeals in state and federal court for businesses, technology companies, entertainment professionals, entrepreneurs, and individuals.

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