

# A Matter of Perspective

Reviewing *Rashomon* (Daiei Motion Picture Company, 1950), directed by Akira Kurosawa. Japanese, with English subtitles.

By James C. Milton

As trial lawyers, we have experienced the phenomenon -- two or more witnesses to the same event, describing the event from different perspectives. This phenomenon shows the subjective nature of witness testimony. There is no one, true, objective truth as to what occurred when the handshake deal was made, when one car bumped into another, or when the scalpel was applied to the patient. But even we, as trial lawyers, can forget this phenomenon when engaging in depositions and trial, sometimes becoming frustrated when the story is told from perspectives that differ from our own client's story.

This is the theme of the classic movie *Rashomon*, a post-war Japanese film considered by many to be one of the greatest films of its generation. It might be the first time that a film featured cinematography involving direct shots of the sun. With contrasting scenes from a deep forest and a rural temple during a rainstorm, the film provides excellent visuals that work well with its black-and-white format.

The film contains a rather dark retelling of a classic morality tale of good versus evil. As with any quality retelling of such a tale, it becomes difficult at times to know who really is evil and who might be good. When the priest refused to believe "that man would be

so sinful," the commoner responded, "Suit yourself. But is there anyone who's really good? Maybe goodness is just make-believe.... Man just wants to forget the bad stuff and believe in the made-up good stuff. It's easier that way." [51:14]

Through the different perspectives of multiple witnesses, the film tells the story of a murder trial in which the audience hears a confession of rape. Overarching themes of honor impact the perspectives offered by each witness -- some witnesses protecting their own honor, and others protecting the honor of another. Some of the societal attitudes described in the film can most definitely be described as old fashioned. The audience hears a fairly modern response to bullying, only to be rewarded with more conflict.

Some of the witnesses are lying, whether out of self-preservation, protection of honor, or protection of pride. Others are simply telling the story from a different perspective. The characters have a common response to learning of the conflicting testimony. "It's human to lie. Most of the time we can't even be honest with ourselves." [38:40] In this film, the audience is asked to weigh lies told to protect honor against lies told to protect one's pride. Just as the audience is prepared to condemn the lies told from pride, it is learned that perhaps some of the lies told

from pride might be more acceptable than others.

But to some extent the witnesses' so-called lies might be nothing more than witness bias.<sup>1</sup> If the lie is told from the perspective of pride, it is possible that the witness could be misremembering some attitude or verbal inflection, tilted in favor of one narrative rather than another because of the innate bias toward oneself or one's selfish interests. The film portrays a trial of some sort, but the audience does not hear the witnesses' oath, nor do we hear a description of applicable penalties for perjury. Indeed, this trial presents a confession of rape with seemingly no consequences, as well as testimony derived from supernatural sources. The witnesses may be less focused on their perceived obligations of honesty and completeness, and instead may be focused on a particular narrative. Perhaps the witnesses have selected the easy path, forgetting the "bad stuff" and believing "the made-up good stuff," as

suggested by the commoner.

In listening to the narratives, it is difficult to tell which version is the truth, which versions are altered by perspective, and which are altered by deceit. The priest sums it up: "It's horrifying. If men don't trust each other, this earth might as well be hell." The commoner responds, "In the end, you cannot understand the things men do." [1:20:00]

As lawyers, we are trained to be critical listeners, even distrustful listeners. And we listen almost daily to conflicting testimony from witnesses who hold different perspectives, biases, or motivations. We may not understand "the things men [and women] do." But perhaps we need not be as dire in our outlook as the priest in this film, viewing our circumstances in the worst possible light, simply because we have learned not to "trust each other." Indeed, by the end of the film, the priest might have changed his view.

The movie is available for purchase on Amazon Video for \$19.99.

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<sup>1</sup> Witness reliability is a frequent topic for scholarly works directed at trial lawyers. For a quick analysis of issues impacting witness reliability, see Laura Engelhardt, *The Problem with Eyewitness Testimony: A Commentary on a Talk by George Fisher and Barbara Tversky*, 1 *Stanford J. Legal Studies* 25 (1999), <https://agora.stanford.edu/sjls/images/pdf/v1i1.pdf> (accessed Feb. 14, 2016).

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