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### Special Issue on Terrorism and Civil Liberties

[Editors' note: Given the changed conditions in American society since the terrorist attacks on Sept. 11, 2001, we thought it would be appropriate to devote a section to the current debate concerning liberty and security. The first analyzes the case of Zacarias Moussaoui, known as the twentieth hijacker. This is followed by two pieces concerning the highly controversial issue of military tribunals for suspected terrorists. Then readers will learn of the importance of the Second Amendment, especially in light of the attacks, and this is followed by a commentary on a local student's run-in with the FBI. The final piece addresses juries in civilian courts and raises issues of competence there.]

### Introducing our Heroine, the Nazi

*By Cailin McGough, Senior, Political Science and Mass Communications*

Almost two weeks ago, the trial of Zacarias Moussaoui was at a standstill. While most of America discussed the latest episode of "The Bachelor," the civil rights savvy waited for the next move in a different kind of drama. It had all the right ingredients: conspiracy, name-calling, suspense, foreigners, defiance, and an outcome that hinged on the decision of one gray haired, so-called "Nazi."

Things got complicated last January when Moussaoui, a French citizen charged with conspiracy in relation to the Sept. 11 attacks, claimed his name could be cleared with the testimony of three men connected to the attacks, all of whom are in U.S. custody. To the prosecution's dismay, a judicial order came down requiring the US to figure out a way for Moussaoui to speak to the men, in spite of the security risk. Prosecutors scrambled to prove that this was a bad idea, but the order stood. With the government's refusal to comply, the ensuing sanction seemed clear. In an interesting alignment of interests, both prosecution and defense waited for the case to be dismissed.

On Oct. 2, the woman Moussaoui at one point labeled a "S.S. henchman"—more commonly known as U.S. District Court Judge Leonie M. Brinkema—came back with a surprise ruling. The case was not dismissed; rather, the prosecution was sanctioned in two ways that add another twist to the first civilian trial proceedings of an accused terrorist. In denying Moussaoui access to those who could possibly clear his name in the Sept. 11 attacks, the government lost its right to charge him in connection with 9/11, Brinkema explained. "It would simply be unfair to require Moussaoui to defend against such prejudicial accusations while being denied the ability to present testimony from witnesses who could assist him in contradicting these accusations,"

she wrote. In addition, using similar reasoning, she refused to allow the death penalty as a potential punishment in the case.

Considering the broad nature of the charged conspiracies it simply cannot be the case that Moussaoui, a remote or minor participant in “al Qaeda’s war against the United States” can lawfully be sentenced to death for actions of other members of al Qaeda, who perpetrated the Sept. 11 attacks, without any evidence that the defendant himself had any direct involvement in, or knowledge of, the planning and or execution of those attacks.

Brinkema should be applauded for not giving in to pressure from both sides. Had she taken the easy way out and dismissed the case, it would have provided the government with a reason to argue that it could not prosecute the case in civilian courts, and it would have given a possible future “trial” in a military tribunal greater legitimacy. In the current balancing act between security and civil liberties, Brinkema’s decision delivered a small victory for both sides. National security will not be at risk from a meeting of al Qaeda operatives (even under tight surveillance). Likewise, a defendant will not be prosecuted without the ability to present evidence in his defense.

This is the best scenario for justice to be delivered, some claim, because the government has a very strong case against Moussaoui, who has admitted being a part of the terrorist network with connections to Osama bin Laden. Charges of conspiracy—though unrelated to Sept. 11—can still be pursued and could likely put Moussaoui away for life. The day after Brinkema’s announcement, a *Washington Post* editorial on Oct. 4 urged the government not to pass up the opportunity to resolve the case “under favorable terms in federal court, having suffered minimal embarrassment and having protected the national security interests it insists are vital.”

Unfortunately, compromise is not a concept that fits well with the administration’s image of the war on terror. While the government will take terrorists “dead or alive,” as President Bush announced shortly after the attacks in New York and Washington, it seems to prefer them dead, and Brinkema’s sanctions have negative consequences for the nature of the government’s case. Moussaoui is the first—and only—person charged in connection with the Sept. 11 attacks. Given the tough stance Bush and Rumsfeld have adopted in the treatment of suspected terrorists—or “killers,” as Bush called the Guantanamo detainees—it’s not surprising that anything short of a death sentence will do. A compromise, even one that lands a terrorist behind bars for life, could come across as too lenient.

Indeed, in response to Brinkema’s ruling, Paul J. McNulty, the United States Attorney in Alexandria, offered this defense on behalf of the Justice Department Oct. 3: “The interests of justice require that the government have the opportunity to prove the full scope of the conspiracy alleged in the indictment, which included the brutal attacks on Sept. 11, 2001,” he said.

Only six days after Brinkema’s ruling, the government appealed to the notoriously conservative Fourth Circuit Appeals Court claiming injury from the sanctions. The appeal, which was heard in early December, may bring out the much bigger problems that Brinkema so deftly sidestepped. Constitutional questions about the extent to which the rights of a defendant should be preserved when faced with national security concerns will need to be addressed. Obviously, there are no easy answers. The trial could drag on for months, or, alternately, could vanish from the courts, reappearing in a military tribunal. There, with the scales tipped in favor of protecting national security, Moussaoui could be left high and dry. With proceedings out of the public eye, a verdict could come quickly, but at the cost of a fair trial.

Frank W. Dunham Jr., the chief federal public defender assigned by Brinkema to represent Moussaoui, told the *Post* that he would fight the appeal. “We made our position clear

before that we thought Judge Brinkema gave [the government] an opportunity to preserve national security and still proceed with the case,” he said Oct. 14.

Brinkema has managed to keep the ball in her court, but there is no guarantee that the case will be played out under her watch. A three-judge panel consists of a Clinton appointee and a pro-government conservative. The final member has in the past supported national security, but also has shown support for defendants’ rights.

Add these three to the cast of characters, and take note of the feisty legal dialogue. With the government bypassing Brinkema’s effort to resolve the latest conflict, it appears this drama is likely to continue for some time.

## **Errors in “Trials and Errors”**

### **Or, why you don’t hire the Army band to play at your wedding**

*By Caitlin Carlson, Junior, Law and American Civilization*

An old adage holds that military justice is to justice as military music is to music. This is most clearly illustrated in the proposed system of military tribunals for suspected terrorists.

Shortly after the attacks on Sept. 11, President Bush created a system of military commissions to try al-Qaeda members. The government will conduct the trials with a panel of military officers, and normal guarantees of due process, evidentiary rules, and attorney-client privilege will not apply.

In an op/ed piece published in the *Washington Post*, former deputy solicitor general Philip Allen Lacovara argues that military tribunals should function in largely the same way as normal civilian courts. While that would be a vast improvement, the real issue is not the guidelines and rules for military tribunals, but their mere existence.

Lacovara points out three major weaknesses with military tribunals. The first problem is the lack of attorney-client privilege, which is necessary to ensure justice. Without secrecy, defense counsel cannot prepare an adequate defense, and prisoners may not reveal information to their lawyer that they do not want repeated. Additionally, accused terrorists will not feel comfortable speaking freely to their attorneys, and may not reveal information that could prove their innocence of the crimes of which they are accused. Currently, the government may elect to suspend attorney-client privilege at its sole discretion.

A second problem with military tribunals is that evidentiary rules are unfair. Unlike civilian criminal prosecutions, where prosecutors are required to turn over all information they have to the defense attorney, government lawyers may withhold any evidence they choose. If the military determines that concealing the evidence is necessary to protect United States interests, it may withhold even evidence that could prove a defendant’s innocence. Additionally, hearsay or illegally obtained evidence may be admitted, something, which is not permissible in normal courts. Tribunal judges may even consider evidence, which was not presented under oath, and which was not mentioned in the courtroom. This is clearly an unfair rule. It amounts to giving the government permission to try people on the flimsiest of evidence, some of which the government should never have had access to in the first place. And because the final arbiter of the tribunals’ rulings is the President, it is virtually guaranteed that no appeal will be successful, if the convicted terrorist is even permitted to make one.

A third problem with military tribunals is that they are closed to the public, and more importantly to members of the press. The press has long been considered the fourth branch of

government, charged with the responsibility of monitoring government actions and reporting back to the citizens. Without such oversight, a tribunal could do essentially anything it wanted, even violate its own rules—flimsy as they are—and no one would be wiser. Press oversight is important because there is already a much greater chance that the rights of defendants will be abused.

In his column, Lacovara argues that military tribunals should be amended to give defendants these basic due process rights. This, however, does not go nearly far enough. There are still major problems with the whole idea of military tribunals.

For one thing, there is no jury, merely a body of three to seven military officers sitting as judges. Far from requiring a unanimous verdict for a finding of guilty, a two-thirds vote will suffice to send a person away for life. Additionally, the adversarial process found in civilian courts cannot function if the “jury” is biased. Most likely, tribunal judges will see their compatriot, a fellow army officer on one side of the courtroom, and a man accused of heinous crimes on the other, possibly accompanied by a civilian attorney. No reasonable person could argue that the tribunal members could make an unbiased judgment.

Another major problem with tribunals is that there is no independent appellate oversight. Appeals are directed to the Justice Department, and the final arbiter of justice is the President of the United States who created the tribunals in the first place. This is clearly unfair. Federal appellate courts are staffed by judges who serve life terms, a constitutional provision that specifically makes them immune to political pressure. Additionally, it is unimaginable that the president who created the tribunals will ever find that a trial was conducted unjustly.

Lacovara certainly makes some very good points. Clearly the egregious faults that he points out must be remedied. Nevertheless, there are additional steps that must be taken, namely having an impartial jury and an independent appellate process. In order for tribunals to be truly fair, these defects cannot remain unchanged.

Of course, if these issues were remedied, there would be no substantial difference between a military tribunal and a normal civilian criminal proceeding. And this brings us to the overall problem with military tribunals—their very existence.

If the government cannot guarantee a fair trial in a military tribunal, and changing the tribunal to ensure fairness would leave no distinction between it and a normal civilian trial, there can be no justification for the tribunal in the first place. Tribunals, therefore, are completely unnecessary. They can be fair only if they are identical to a criminal trial, and there is thus no reason why we should be spending time and money for dual, identical systems. Terrorist suspects should be tried in civilian courts, the same as all other criminals.

There will be those who will claim that a civilian trial will not guarantee a conviction. This is a good thing: innocent people should never be imprisoned. However, courts have a conviction rate of above 90 percent. Juries are by no means “soft on crime” in general, and considering the nature of the terrorism cases, any jury would be virtually guaranteed to convict a suspected terrorist. While this is not a good thing—everyone deserves an unbiased jury—it should serve to quiet the fears of those who feel that terrorists will soon be walking among us.

The only solution to an unfair system is either to amend or end that system. This means for military tribunals amending them means ending them.



## **Feigned Justice**

### **Why the Administration's Rules for Military Tribunals are Deceptive and Deficient**

*By Joe Esmont, Junior, Political Science and History, Co-Editor of the Journal*

On Mar. 21, 2002, Defense Secretary Donald Rumsfeld issued guidelines for military trials to “ensure that any [individual] receives a full and fair trial before a military commission.” A thorough analysis of these seemingly fair rules shows that they are full of unreasonable loopholes and may even be ignored at the government’s will.\*

First, an important point must be made about the relevance of the Supreme Court’s Due Process jurisprudence. As Justice Stevens reaffirmed in the unanimous part of *Quill Corporation v. North Dakota* (1992), “the ‘touchstone of Due Process is fundamental fairness.’” If the administration’s argument that it need not follow the Constitution were taken at face value, failure to abide by court-established due process would not be unchallengeable proof of an unfair trial. However, just as the Supreme Court must pay due deference to the executive’s military decisions, the President of the United States in convening tribunals must give weight to the judiciary’s opinion on fair trials.

According to the Secretary’s directive, witnesses may testify under an assumed name, without oath or affirmation, while the defendant is excluded from the proceeding. The ability to refuse an oath is particularly disturbing, as the only reason to do that is to avoid perjury charges if you lie.\*\*

Especially difficult is that if the defendant is absent, he may not be informed of anything the witness says. He cannot tell his attorneys that the witness was bitter and frustrated by years of failure to convert the “[expletive deleted]” Muslim, or that they had been worst enemies since a girlfriend left one for the other in college. Even the most diligent attorney might not be able to discover that on his own, especially if the witness is under an assumed name.

The jury of three to seven military officers raises a rather important issue in and of itself. In *Burch v. Louisiana* (1979), the Supreme Court ruled that a non-unanimous verdict of six jurors could not be reconciled with due process. Notably, the partial concurrences were from the liberal bloc, who felt that the law used in the prosecution was also unconstitutional. The tribunal rules take both the jury size and the percentage of jurors who must concur to convict well below the *Burch* standard. The jury may consist of as few as three people, and the tribunals can convict with a mere 67 percent of the jurors voting to convict, well below the 83 percent that *Burch* held unconstitutional. Simply put, it is far easier to convince two out of three jurors than the unconstitutional five out of six, especially combined with the fact that the prosecutors handpick the jurors.

Two provisions of the tribunals are even more disquieting. The commission members may change the charged offense to find the defendant guilty of something he was not even charged with, and the government is allowed to break its own rules without reprisal. Nor is at all conducive to the “fair trial” that Rumsfeld told us the department would conduct.

One section of the directive allows the commission to adjust the language of the charged offense in order to find the accused guilty. The only caveats are that the charge cannot be “substantially” different, and the change of wording cannot increase the seriousness of the offense. The problem is the definition of “substantially.” There may be no substantive difference

between finding someone was a planning an al Qaeda-affiliated attack to a finding they were planning an Islamic Jihad-affiliated attack or an attack by an unknown terrorist group. However, is there a substantial difference between attempted terrorism and attempted murder, since attempted murder would never be an offense a tribunal could try someone for? In addition, invoking this clause shows that the government has not met its burden of proof, and it allows the commission to find those guilty of charges they may not even have been asked to defend themselves against, not to mention it encourages the theoretically neutral jurors to seek out ways to convict.

Worst of all is the section on tribunal rules. In relevant part, it reads that: “This Order . . . does not create any right, benefit, or privilege, substantive or procedural, enforceable by any party, against the United States. . . . Failure to meet a time period specified shall not create a right to relief.” In plain English: “No matter how unfair we are, or how many years we hold you after being declared innocent, no one can make us follow the rules we made up.”

Primarily it is worrisome because the administration felt the need to make the rule at all. If a football team argued that it should make the calls instead of the referees, it would be jeered. Even if the team somehow successfully made the argument, every victory becomes tainted: “what would have been if that play in the third quarter had been called pass interference?” or “was that evidence *really* relevant?”

Additionally, the claim is dubious in the effect it has on rulings. Judges do not like to be overruled. Therefore, they tailor their arguments to higher-court precedent. However, in this case above their heads is the Secretary of Defense, the person who gave the order to prosecute in the first place. Since there is, via this section, no way for the trial to make its way to the civilian courts, the presiding officer will likely err excessively on the side of the government. The question is, of course, whether the courts will agree to be bound by the executive proclamation.

In conclusion, the military tribunal rules only seem on the surface to provide for the fair trials of “illegal enemy combatants.” As we have seen, due process jurisprudence marks some of the provisions as faulty, while others, such as those regarding witness examination, consistency of charges with the verdict, and enforceability of the rules lend credence to critics’ claims that the military tribunal rules are inconsistent with a fair trial as we know it.

\* Unfortunately, because of length requirements, we shall not examine the equally troubling issues in the structure of the tribunals, such as the Secretary of Defense being both prosecutor and the last appeals stop and the power of the “jury” to see all prejudicial evidence in order to decide if it is prejudicial and that therefore they should not see it.

\*\* Affirming the truth of your statement instead of swearing to it is a way of getting around religious convictions against swearing. Either subjects you to perjury charges if you lie – something that cannot happen if you cannot do neither.

## **“Once Upon a Time...”**

### **Myths and Fables from the Anti-Gun Lobby**

*By Mark J. Griffin, Junior, Sociology, Criminal Justice*

Even though many elected Democratic politicians believe otherwise and would have the American electorate agree with them, the Second Amendment is still a vital and relevant fixture in the US Constitution. Charlton Heston said the Second Amendment was every American’s “first freedom.” But that freedom is being attacked. Anti-gun advocates have infested every form of government in the United States all the way up to the U.S. Capitol. These senators,

representatives, governors and mayors, aided and abetted by a biased news media, spread myths, and often times lies, demonizing guns and those who support the Second Amendment, which reads:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

For over one hundred years those words of the Second Amendment did not invite argument because their meaning was clear. The right to keep and bear arms is a right given to the individual to protect his family, property, and freedom. Unfortunately, in 2003 gun control proponents no longer feel that this particular amendment applies to America. Organizations ranging from the Brady Campaign to the NAACP feel that innocent, law-abiding American citizens should not be allowed to own a firearm. It is sad to note this because the framers of the Constitution and the Bill of Rights could not have disagreed more.

Patrick Henry said that “three million people, armed in the holy cause of liberty . . . are invincible by any force which our enemies can send against us.” Thomas Jefferson proclaimed that “no free man shall be disbarred the use of arms.” Richard Henry Lee wrote, “To preserve liberty it is essential that the whole body of people always possess arms.” Benjamin Franklin wrote that true danger to our freedom comes from those who are willing to yield true freedom for the illusion of safety. In *U.S. v. Miller* (1939) the Supreme Court noted that these framers and fathers of the Constitution are “approved commentators.” Their opinions were essential back then and are useful today. Concerning the right to keep and bear arms, their beliefs could not be any clearer.

In talking about the Bill of Rights, James Madison said that the amendments “relate first to private rights.” Today the Bush administration with Attorney General John Ashcroft realize the importance of the Second Amendment and its “plain meaning and original intent” to protect individual rights. Even the courts in the federal judiciary have begun to concur that the Second Amendment is a right given to the individual. In the case *U.S. v. Emerson* (2001), the U.S. Court of Appeals for the Fifth Circuit affirmed that the right to keep and bear arms is given to the individual American.

The banner cry of the anti-gun supporter is, “More guns mean more crime, and less guns mean less crime.” As good as this may sound it could not be farther from the truth. The people saying these words are at best ignorant of the facts and at worst bold-faced liars. In their attempt to disarm the American populace, gun control supporters want to add more and more laws that will eventually block the sale of any firearm due to the impossibility for anyone to legally comply with such laws. These attempts are both ruthless and smart. By definition criminals do not obey laws, either moral or statutory ones. Therefore the senseless addition of extraneous gun laws will only impede the sale of firearms to law-abiding, innocent citizens, and not the criminal who could care less about such laws.

After the events of 9/11, the anti-gun lobby attacked gun ownership with renewed vengeance. They attempted to use fear as their main ally to further their campaign. Somehow Islamic terrorists armed at 30,000 feet with box cutters and a distorted knowledge of God meant that stiffer and harsher gun control laws were needed. Does that make sense?

According to the US Bureau of Alcohol, Tobacco and Firearms (BATF), gun sales increased dramatically after the events of 9/11. Many Americans learned that protecting themselves and their families meant utilizing every available option open to them, especially their constitutional right to keep and bear arms. But even before 9/11 the rise of gun ownership has been growing every year since 1990. Privately owned firearms have increased on an average of 5.3 million per year during the 1990s, according to the BATF. But the Uniform Crime Reports,

a statistical survey of violent crime compiled by the Department of Justice every year, notes that violent crime has been declining every year since 1991. When comparing these two facts, it becomes clear that the rise of gun ownership is linked to the declining (not increasing) of violent crime. So the proclamation, “More guns means more crime” really resounds with a dissonant clang.

A huge problem afflicting the gun control advocates besides their ideology is their representatives. When people like Rosie O’Donnell denounce gun ownership and cry for more gun control laws, and then allow and encourage their personal bodyguards to carry firearms, we can see the biggest flaw of the anti-gun lobby: hypocrisy. According to anti-gun supporters, gun ownership by the average American should not be encouraged and should be outlawed, but the famous and powerful are exempt from such constraints. Bill Clinton, Edward Kennedy, Dianne Feinstein, Charles Schumer are some of the most notable hypocrites ever to champion the gun control cause while enjoying *armed* Secret Service and police protection. Is there a problem here? The people of America will not be fooled and deceived forever. Those politicians who would trample the rights of Americans have begun to learn that they will not remain in office if they continue to do so. The 2000 and the 2002 elections show that Democrats are losing their foothold on the necks of American citizens. And this will continue to happen because the people will not tolerate their freedoms, guaranteed to them in the Constitution, being stripped away.

## **An Investigative Misunderstanding**

***By Cailin McGough, Senior, Political Science and Mass Communications***

I’m not really sure what the FBI is doing these days, but they must be keeping busy. A few weeks ago a pair of agents rolled up in front of a private boys’ school in Baltimore to check up on the latest terrorist lead.

John McLean, a 12-year-old student at Boys Latin, had been conducting research for a report on his chosen topic: the Chesapeake Bay Bridge. Using the Internet to dig up basic statistics about the structure’s financing and physical components, he submitted questions to the Maryland Transit Authority’s Web site. The inquiry raised flags with the MTA, who referred the situation to the FBI. In the end, everyone laughed off the misunderstanding—the student, his teacher, his parents and the principal. After all, John was only doing his project. Likewise, the agents were only doing their job.

Though this particular incident is somewhat humorous, it raises a serious and complicated question: in the post-Sept. 11 world, where should the line be drawn when investigating suspicious behavior in the name of security to protect the right to privacy?

To be fair, advances in technology caused setbacks in privacy long before everyday Americans lost sleep over possible terrorist plots. Over the decades, software allowed more and more information to be tracked, revealing where people preferred to shop and what products they most often purchased. Marketers devoured the information, using it to further cater to potential customers, but for the most part such tracking was regarded as harmless. The advent of the Internet provided another means for information gathering. Occasionally, news would break about Web-related offenses: file sharing, child pornography, and so on. But the general rule was that if you steered clear of such activities, you would be left alone. Monitoring certain sites was intrusive, perhaps, but if the FBI showed up on your doorstep, you probably knew why.

Today the rules are different. The USA Patriot Act, introduced shortly after Sept. 11, increased the surveillance powers of the executive branch, including enhanced ability to track e-

mail and Internet usage. Today looking into certain public information—as young John McLean did—can be enough to arouse suspicion. In her recent book *Silencing Political Dissent*, Nancy Chang argues that section 216 of the Patriot Act does not go far enough in placing restrictions on the tracking of Internet usage. Under the act, courts are required to order the installation of devices to track telephone and Internet “dialing, routing, addressing, and signaling information” when a government attorney decides the information is relevant to an ongoing investigation. It does not allow tracking of content.

The problem, Chang asserts, is that the section does not discuss the difference between the technical dialing and routing of the message and the content of the message. While dialing information does not reveal content in telephone communications, address and content are one and the same in e-mail messages. Likewise, the act fails to distinguish whether Web sites visited by a user constitute “dialing, routing, addressing, and signaling information” or “content.”

In the case of the Baltimore student, the usage had not been flagged as a result of FBI surveillance; rather, the MTA brought it to the bureau’s attention for further investigation. But as *Baltimore Sun* columnist Michael Olesker concludes in his Oct. 21 article about the incident, all of this leaves one question: “How did the FBI stumble onto the information? Are there agents who spend their days monitoring millions of private messages?” (Even if the MTA had not passed on the information.)

The answer to Olesker’s question may be less complicated than it seems. As Chang’s book explains, Section 216 also allows the government to install the Carnivore tracking system, which processes all kinds of Internet activity. After it is installed on an Internet service provider, Carnivore “devours all the communications flowing through the ISP’s network—not just those of the target of surveillance but those of all users—tracking not just information but content as well,” Chang writes. It doesn’t seem like too much of a stretch to assume that such a system could have registered an alert after recording McLean’s visits to Web sites and the content of his inquiries (even without the MTA).

Whereas once it was necessary for law enforcement officials to actually enter a person’s home to gather private information about them, now such information can often be obtained by tracking a person’s activity, and the content of their e-mails, online. Whereas a physical search requires a warrant, monitoring of Internet usage—which could arguably be more telling—does not even require reasonable suspicion. In effect, all checks are removed from process of online information gathering.

At a time when Americans fear their values are under attack, the right to privacy should be guarded even more closely. Instead, the loosening of restrictions on Internet monitoring has only served to make privacy even more vulnerable. Americans may be willing to concede some rights in the name of security, but the choice should be theirs. When people have committed no illegal activity, they should not have to worry that one day the FBI will show up at their door because of an online misstep.



## **Open Minds or Empty Minds? Juries and Justice** *By Justin J. Zimmerman, Senior, English*

Consider the absurdity of the following concept. Twelve persons, probably without any prior contact with courts or the judicial system, are randomly chosen to sit together and listen to evidence, often of a highly complex nature. Afterward they will deliberate in secret and return a verdict that affects the liberty or property or even life of persons who have appeared before them. The jurors receive no training for this task, nor are they required to give reasons for their decisions. Each person is responsible to his or her own conscience but to no higher authority. At the conclusion of the trial, each member disappears from the judicial scene and may never ever serve on a jury panel again.

—Leonard Decof, Dean of International Academy of Trial Lawyers

In 1991, even after the repeated viewing of videotape depicting a man being struck fifty-six times with steel batons, a California jury failed to convict the four defendants clearly shown in the images of that film. Even the mayor of the city where this savagery took place publicly expressed his angry disbelief upon hearing the verdict: “Today the jury told the world that what we all saw with our own eyes was not a crime.”

In 1992, a woman was awarded \$2.7 million in compensation for severe burns she sustained as a result of spilling her coffee on her lap. A jury held McDonald’s, the restaurant from where she purchased the coffee, responsible for her injuries.

In 1999, a Florida jury ordered the tobacco industry to pay \$145 billion in punitive damages. One of the plaintiffs, a 44 year-old nurse, claimed she “had no idea there was anything wrong with cigarettes at all.”

In 2003, in a dental malpractice suit, a jury awarded a woman \$360,000 for the pain and suffering of her mother who had died three years earlier of kidney failure. The verdict was based largely on the plaintiff’s “expert witness,” a non-board certified dentist.

This summer, despite overwhelming evidence including DNA samples corroborated by several witnesses’ testimonies placing the defendants at the scene with a knife, a Maryland jury rendered a verdict of “not guilty.” During deliberation members of the jury made the following statements: “I didn’t see any DNA on those pants.” “If the victim had so much internal bleeding, how come no blood was on his shirt?”

Although acquitted of the murder charge, the defendants were convicted of possession of a deadly weapon, assault, and riot. Incidentally, the foreman of this jury was asleep during the testimony of the medical examiner.

In each case, the jury was instructed by the judge to use reason, experience, and common sense to weigh the evidence and arrive at a verdict. This was his only instruction.

Since the Anglo-American jury system began under King Henry II in the twelfth century, inexperienced juries who failed to employ an adequate level of reason and common sense have caused many injustices. To better promote justice, a higher level of reason and experience must be required of jurors. The value of our right to a trial by a jury of our peers cannot be overestimated. It is this right that protects us from the tyranny of a single judge, jury and executioner. But we should likewise be protected from the tyranny of ignorance impaneled in an incompetent jury. Without an understanding of the fundamental principles of argument, a randomly selected group of twelve people are no better prepared to judge a civil or criminal case than a skateboarding contest. To better ensure justice, a jury must be acquainted with the rudimentary principles of argument and logic. This would produce more experienced and more

competent jurors. After a jury is selected, members should be familiarized with the basic principles of logic and argument and be required to take a short quiz on the material.

When preceded by the word jury, duty becomes, to many, synonymous with chore. Removing cat excrement from a litter box is a chore. Sitting in a jury box is, however, a moral obligation. (The very word *jury*, deriving from the Latin for oath, implies as much.) That moral obligation is a duty to administer justice. It is the sacred trust to render every one his due. It is a duty of immeasurable consequence.

Yet jurors are not familiar with information crucial to their duty. Even in the most menial vocations employees receive some form of orientation. A restaurant manager would not be so negligent as to not train a freshly hired waiter on mere trust that his previous experience and common sense were enough to guarantee that he would perform his duty well. A waiter at TGI Fridays is extensively trained and required to pass a test before he is trusted to carry a plate of quesadillas to a table. Should not a similar process be required of the twelve people who will decide the fate of another? Is serving justice less important than serving snacks?

If the judges for the world figure skating championship were pooled from the general public and left to decide the winner using only their varying levels of common sense and experience, outraged letters of protest by figure skaters everywhere would pour in by the truckload because these judges would be unqualified. The results of that competition would be at best conjecture, at worst capricious. However if these same judges were briefly schooled in the rudimentary elements of the sport, although they would still not be experts, they would cease to be quite so blatantly ignorant. After attaining a basic understanding of the subject, their judgment would be far more enlightened and far more just. A little education can go a long way. Uninformed judges cannot make informed decisions.

It may be argued that this amounts to an elitist practice. But jury members are already selected based on race, income, occupation, and education. Some lawyers work exclusively as jury selection consultants. They reject or accept potential jurors by means of profiling, searching for those who would be sympathetic to their point of view. Educating the members of the jury would actually counteract elitism by leveling the intellectual playing field. All jurors, regardless of their varying levels of education, would be taught the principles of logic and argument. They would learn how to discriminate between relevant and irrelevant evidence, how to recognize fallacies in lawyers' lines of questioning and closing arguments, how to follow a logical line of thought. Much of this instruction could be done in the "green room," the waiting area of prospective jurors. While they now watch Hollywood videos, they could instead view instructional videos that teach them the use of reason in the courtroom.

Training jurors would be no more elitist than training people for a driver's license. In both cases, reckless drivers and thoughtless jurors produce ruinous and irreversible results on life liberty and property. So just as prospective drivers are trained and tested before they are allowed a seat behind the wheel, jurors should be so trained and so tested before they are allowed a seat in the jury box.

In his Farewell Address, George Washington wrote, "Promote then as an object of primary importance, institutions for the general diffusion of knowledge. . . . [I]t is essential that public opinion should be enlightened." While a jury's impartiality is required by our Constitution in Article III and the Sixth Amendment, its enlightenment is not. Indeed, Justice Oliver Wendell Holmes once recognized that "the jury has the power to bring a verdict in the teeth of both law and fact." So we must do everything in our power to produce an enlightened jury. Justice must be blind, but it cannot be ignorant.

