

FROM THE PRESIDENT

CYNTHIA HUJAR ORR

The Fourth Estate: A Vital Component of Our Justice System

It is alleged that Jordan Brown, 11 years old, shot his father's fiancée in the back of the head with his shotgun and then trundled off to elementary school with his sister. He will be exposed to life imprisonment without parole in an adult prison unless he admits the offense. At least that is the effect of the judge's order, which refuses to transfer him to juvenile court. In Pennsylvania, anyone accused of murder, regardless of age, is charged as an adult and, if underage, must demonstrate they should be tried in juvenile court.

Of course, it is ridiculous that an 11-year-old should ever be subjected to adult incarceration, let alone for the rest of his life. But what is even more disturbing about the Brown case is the way that the media and the court apparently accepted the police theory as a given. For the media, his guilt was a foregone conclusion. One reporter pressed me to agree with as much.

I cannot understate the importance of the media to the fair administration of justice; to the exposure of official corruption and mendacity; to the revelation of government abuses of power; and to the call to reform ill-conceived or poorly implemented laws. Without a strong Fourth Estate,¹ we would suffer at the whim of powerful public officials, unchecked prosecutors who exercise their discretion in the dark, and corrupt governments worldwide.

I am not referring to the tabloid journalists who sacrifice their integrity for publication sales, or to the radio talk shows that are driven by controversy for its sake. These do not serve the public interest. A democracy can only survive with an informed public. The public is diverted, not served, by McCarthyism. Joseph McCarthy imagined Communists in our government just

like partisans accused DOJ lawyers who previously provided legal services to accused terrorists of aiding terrorism and conflicts of interest. Those lawyers did the right thing, the honorable thing. The media did too.² I am referring to the men and women delivering quality, well-researched, investigative reporting; those who throughout history stick their necks out for what is right.

Because times are changing and print media is waning in popularity, some worry that objective and informed investigative journalism is dead. This has never been the case. The world continually shrinks. In the 1920s it was the industrial revolution, and a then new *Time* magazine touted summaries of all news stories in 400 words or less for the busy professional. Now we have blogs, Facebook, Twitter, buzz, news comedy shows, and more.

The same complaints about data overload and the speed of modern life are no excuses to discard good investigative journalism. The reporters from the *Christian Science Monitor*, the Center for Public Integrity, and NPR keep the public informed about current events in a manner that we can trust. ABC News' Brian Ross and his investigative team continue to break important stories about the CIA's torture activities. Shanna Druckerman and Juju Chang of *20/20* champion the innocence of Hannah Overton, the wrongly imprisoned mother of five.

Newspapers have also been good enough to keep their solid, intelligent, and fact-oriented reporters on staff as well. Lisa Olsen and Rick Casey, at the *Houston Chronicle*, have investigated and reported cases of wrongful convictions/executions in death penalty cases. Not a popular thing to do in Texas. John McCormick at the *San Antonio Express News* has written objectively about criminal cases as well. They do their homework, often courageously publicizing the system's shortcomings and failures.

I am in Atlanta, Ga., as I write this. And I am about to meet colleagues for dinner just off of Centennial Olympic Park. How many of you remember that Richard Jewel was pilloried in the press and irreparably damaged by the allegations that he bombed the Olympics there? He was the first "person of interest" in a criminal investigation. Without tough and thorough investigative journalists, the tabloid media would have allowed the government to get away with that. A recent blog-inspired, televised news report, *CNN.com with Stephanie Chen*, criticized the practice and exposed it for what it was — the public bullying of someone against whom law enforcement had no evidence.

Without such responsible media, we would see only perp walks, mug shots, and arrests of the merely accused. The public can be adequately informed of potential dangers without declaring the case concluded before trial. Without responsible investigative journalism, the public would forget that there is a presumption of innocence. This is a meaningful right upon which we all should insist — the Fourth Estate included.

In fact, the media should next rally behind the 2009 National Academy of Sciences report calling for corrections in forensic science. For too long prosecution "experts," merely voicing their subjective and absolute views, testified by essentially saying, "Believe



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me, he's guilty." In innumerable areas they have passed off non-validated conclusions as science. No, it has not been established that every person's fingerprints are unique. No, it is not true that hairs can be accurately compared microscopically. The use of mitochondrial DNA established that such comparisons were demonstrably wrong 50 percent of the time.

The reply of prosecutors, who attempt to get courts to accept such mediocrity as a substitute for proof beyond a reasonable doubt, is that courts have been admitting such evidence for decades. However, the courtroom is clearly a poor substitute for rigorous science. NACDL has condemned the admission of unproven science in our criminal courts and invites our brothers and sisters in the media to lend their support to this needed improvement in the criminal justice system. After all, the Fourth Estate is a vital part of our criminal justice system.

Notes

1. The Fourth Estate refers to the press. Attributed to Edmund Burke, the term was used during a parliamentary debate. "Burke said there were Three Estates in Parliament; but, in the Reporters' Gallery yonder, there sat a Fourth Estate more important far they all." THOMAS CARLYLE, ON HEROES AND HERO WORSHIP AND THE HEROIC IN HISTORY (1841). "A Fourth Estate, of Able Editors, springs up; increases and multiplies irrepressible, incalculable." THOMAS CARLYLE, THE FRENCH REVOLUTION: A HISTORY (1837).

2. While Fox News facilitated the attack on these patriots, the *New York Times*, Ted Olson, and conservative and liberal law firms praised them. ■

SPECIAL ELECTION ANNOUNCEMENT

NACDL's Board of Directors will hold a special election to fill an anticipated vacant seat on the Board. The election will be held at the next regularly scheduled meeting of the Board of Directors in Toronto on August 14, 2010.

Responsibilities: The Board of Directors manages the business and affairs of the Association.

Eligibility: Any qualified member of the Association who is authorized to vote may submit his or her name as a candidate for the Board of Directors. Candidates must state the year and jurisdiction of their bar admission, must indicate whether they are members in good standing of their respective bar, and must disclose if they are under indictment or information for any felony or crime involving moral turpitude.

Process: Any member wishing to submit his or her name as a candidate for the position of Director shall submit a statement of qualifications, not to exceed 500 words. The statement of qualifications should include a description of any past service to the Association (including meetings attended, recruitment efforts, and committee work) and to the legal profession. Curriculum vitae may also be provided. The statement of qualifications must be received by August 2, 2010, and should be sent to Daniel Weir, Elections Registrar, NACDL, 1660 L Street NW, 12th Floor, Washington, DC 20036 or submitted by e-mail to daniel@nacdl.org. Candidates will be responsible for confirming that their materials have been received.

Each candidate will be given the opportunity, if he or she so chooses, to speak briefly regarding his or her qualifications at the meeting of the Board of Directors in Toronto prior to the commencement of the voting. Appearance is optional and no negative inference shall be drawn if a candidate does not attend.

Voting will be conducted by secret ballot. The elected Director will serve the remainder of the current term, which expires at the Annual Meeting on July 30, 2010.

2010 NACDL Election Notice: Nominations

The Nominating Committee is pleased to announce the following slate of candidates for Officers and Board Members

OFFICERS

FOR PRESIDENT-ELECT

Lisa M. Wayne

FOR FIRST VICE PRESIDENT

Steven D. Benjamin

FOR SECOND VICE PRESIDENT

Jerry J. Cox

FOR TREASURER

Theodore Simon

FOR SECRETARY

E. G. "Gerry" Morris

BOARD OF DIRECTORS

Christopher W. Adams

Sara Azari

Brian H. Bieber

Jay Clark*

Evan A. Jenness*

George Henry Newman

Timothy P. O'Toole*

Maria H. Sandoval

Gail Shifman*

Edward J. Ungvarsky

Steven M. Wells

Christie N. Williams

William P. Wolf

* Indicates current Board member nominated for 2nd consecutive full term

For election information or candidate statement of qualifications visit www.nacdl.org/elections.