ABBOTT KOLOFF
A ring of truth to biker's story B1

Back to School '94
• Calendars • New programs
Section F

PARSIPPANY
Jordan lawyers deal for kids' return A3

SCRAMBLR
You could win $200 in our word game A8

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OPINION

Judge in Morristown had no right to criticize a jury

BY KENNETH ELLMAN

ELLMAN

I was shocked when I read through the vending machine the headline of "Judge scolds jury for acquittal in DWI crash." I could not move my hands fast enough to search for a quarter and purchase the Daily Record.

I assumed the headline must be pandering.

Well, the headline appears to be true. A judge of our Superior Court, an honored and vital position in our society, attacked the right of an accused to a jury trial.

Let us make no mistake as to the meaning of Judge Herbert Friend's words if the court is quoted correctly.

He attacked a jury of our citizens because they discharged their obligations fairly and impartially. The jury may have discharged their duties differently than Judge Friend would have, but nonetheless faithfully.

The jury is not accused by Judge Friend of being bribed, drunk, prejudiced or dishonest. A judge can remove a juror from the honored panel, for "juror misconduct."

But there was no juror misconduct and no removal occurred.

What is the charge against the jury? The jury stands accused of finding in favor of a citizen who happens to be a defendant. The jury stands accused of disagreeing with Judge Friend. The jury stands accused of disagreeing with the police and prosecutor. This is the crux of the matter.

A community is held together by a belief in justice. It is a philosophy that whatever faults our neighbors have they will not permit a significant wrong to go uncorrected. A wrong is just as great and some would say much greater for an innocent citizens to be punished as it is for a guilty one to go free.

We trust in our neighbors, because we trust in ourselves. It is better for us, the people to make the decision, right or wrong, than for an elevated group of legal "professionals" to rule our courts and prisons. This is the essence of democracy and of common sense.

It is why we elect our presidents, and government and do not have them forced upon us or inherit them.

We make, suffer, benefit, and are responsible for the community we live in. We make the decision and we pay the price, good or bad.

The responsibility is upon our shoulder where it belongs. We are the jury. The jury comes from us.

Electrician, truck driver, nurse, teacher, baker, writer, radio announcer, doctor, plumber, the multitude of our people.

While the television and detective stories may pretend that justice is in the hands of the police or prosecutor, the truth leaves it where it belongs, final justice is in a "jury of our peers."

Juries rule on what they believe, not what the judge or anyone else wants to hear.

I was not present at the trial and did not hear the evidence. I don't pretend to know who was guilty of what or who is to blame.

But there were 12 persons representing me as a jury and as my neighbors. There was a skilled prosecutor with an array of police at his disposal presenting evidence of guilt and examining and cross-examining witnesses.

There was a learned and highly skilled judge of the Superior Court to ensure evidence is fairly and constitutionally presented and that the jury process is protected from tampering or misconduct.

There was a search for the truth by the crucible of trial.

When Judge Friend attacks the jury, he attacks the trial. He attacks our institution of justice that lets us all sleep a little better at night.

The jurors don't have to worry about their career in government, their reputation among their professional legal peers, nor do they seek the approval of such.

Unlike the prosecutor or police, and in some cases a court, who may want another plaque or notch on the wall to show their prosecutorial diligence, jurors just want to answer a question for their community as best as they can.

They don't get a raise or promotion when they go back to work for what they did as a jury. This separate and impartial jury is all that protects us, all of us, from being free or behind bars.

If at any time either the prosecutor or defense attorney or the judge believed the jury was being subverted or was incompetent a juror could and should have been removed even in the middle of a trial. This clearly did not occur.

We must assume that jurors were not removed or disqualified because all parties recognized the jurors were honorable and faithful to their oath.

The jurors who decided the issue were not friends, enemies or employees of the court, they were not friends, enemies or employees of the police or prosecutor and they were not friends, enemies or employees of the defendant.

They were jurors of the people, selected at random as our Constitution requires. They had no ax to grind and no vested interest.

They were participating in one of the finest acts of being American.

If a just prosecution fails do not blame a judge or a jury when a guilty person goes free. If evidence of guilt was not properly or convincingly presented it is due to the failure of the government not of the jury, judge or our cherished legal system.

Should we want a jury to convict when they evidence fails, just because a police officer or prosecutor wants it to?

Should we want a jury to convict when the evidence fails, just because a policemen or prosecutor wants it to?

Should a jury be afraid of the police, prosecutor or a judge? I say no.

It is not for the jury or a judge to present the evidence, take sides, or help a prosecutor or defendant.

Absent a finding of juror misconduct, our jury did what we asked it to. It heard the evidence of the police, prosecutor and defendant and made a decision.

The court is reported as saying it would never select any of the panel for jurors if they were called to serve again.

It appears we as citizens are now on notice. When we disagree with the police or prosecutor or a judge we may not be allowed to serve as jurors.

Our service of jurors is dependant upon our decision being acceptable to the judge or police.

Judge Friend could not have said that.

For that is the speech of tyranny, not of a judge of the Superior Court of New Jersey.

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