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**PEACE, POETRY AND PENTAGONESE**

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**LITERAL MEANINGS**

1. I've been trying to explain to my 9-year old what fundamentalism is. He reads enough of the news to have learned that we are at war with a "fundamentalist Islamic regime" in Afghanistan. But he has classmates who identify themselves as fundamentalist Christians; and given the enormous diversity of life in New York, he knows children who belong to each of the world's major religions and not a few of their sub-orthodoxies. Why is fundamentalism such a bad thing, he wants to know.
2. What a loaded question, I think to myself as I search for words that would help him understand my distrust of virtually all fundamentalist ideologies - ubiquitous though they be - without also conveying disrespect for his friends. Perhaps there are wiser ways, but I begin by unlinking the question of fundamentalism from any one religion and try to think about a general political meaning - for after all it is with politics that the trouble usually begins.
3. I think that fundamentalism most frequently reveals itself in a basic relation to language, what linguists might call the notion of transparency. That is, there is very little play between the literal word and the thing to which the word refers. For a common example, if "God" refers literally to the supreme deity, then it can never be metaphor. The word itself is holy, and the careless or playful use of that name constitutes blasphemy - what many call "taking the Lord's name in vain." In some traditions, writing or just saying God's name aloud is an act of hubris. Similarly, the proscription against iconography is a version of this literalism: there can be no human "play" with the representation of the divine.
4. This can also mean that there is not much room for creativity, figures of speech, irony, plays on words, or dissent. Hence, at various moments in American history, theatrical plays and fictional novels were frowned upon as antithetical to religious piety and moral sobriety. It will not be popular to say so, but the word "terrorist" has become such a word. Having no clearly delineated legal definition nor any agreed political meaning, it has become a kind of religious

concept, a bit like the protagonist in Harry Potter, the evil Lord Voldemort, whose name cannot be spoken - "you know who," he is called. As the U.S. Supreme Court once said of pornography, supposedly you know it when you see it. Such words are accorded talismanic, self-revealing, almost evangelical power. The invocation of such a word is used to rally people around the ultimate in good or evil, unimaginable horror or infinite wisdom. And so "terror" operates as a license for whatever justice-seeking or retribution-exacting follows. Rational thinking is suspended to some degree, however, because a word like terror signifies irrationality, and all that which cannot be imagined much less reasoned. Terror is that which cannot be expressed; hence it is not surprising that some think that the trials of terrorists must take place behind closed doors, unseen. A terrorist is one who, like terror itself, must be suppressed in any and all contexts.

5. Similarly, President Bush has referred to Al Qaeda members as The Evil Ones. Secretary of Defence Donald Rumsfeld has called them The Bad Guys - as though he were speaking to frightened children. As with terror, Al Qaeda is placed in an almost Biblical narrative, ready to be smote down and cast out. In this model, giving The Evil Ones so mundane a forum as a trial is like "courting" the devil. While this sort of embedded language has certainly galvanized the American public in a time of great crisis, I don't believe it's a useful model in the context of democratic secular governments trying to fight real political foes, particularly stateless enemies who are religious zealots in their own right. This sort of narrative obscures the adult reality that they are enemies, not viruses. They are humans not demons. They are criminals not extraterrestrials sent by Satan. And in that reality, there may be precious little comfort, but only practical constraint.
6. I passed a Protestant church this past Christmas. There was a sign in front that said: "The word became flesh and lived among us." I read such message as allegory; I understand it as poetic language. It encourages reverence for the well-chosen word, and urges care in placing one's thoughts into these little packages, these potent little missiles called words. The careless sound bite, the shattering nihilism of word-bombs that are then disclaimed as having meaning or consequence.
7. But there are many people who take the message that the "the word became flesh and lived among us" very literally indeed. In the state of California, for example, there is a drive to suppress all mention of race in any kind of official data collection (whether antidiscriminatory or not), as though racism will be eradicated with The Word. If adopted, this policy would make it difficult to enforce Fair Housing laws or to remedy school desegregation. And so the elimination of the words indicating ethnic or racial composition displace an intelligent conversation about the malleability and persistence of racial concepts, about the actual conditions and power relations that words try to but scarcely encapsulate.
8. The word is literally flesh to certain fundamentalist groups, like the church congregation in Alamogordo, New Mexico. Over New Year's, they burned volumes of Harry Potter books; they believe Harry literally encourages witchcraft.
9. As a lawyer, too, I think of certain so-called strict textualists, who assign very literal (or fundamentalist) meanings to the Constitution, and who therefore would limit its interpretation only to what the Founding Fathers actually said in 1787. As a politically engaged citizen, I think of an objectivist friend who hews to the words of Ayn Rand with passionate absolutism. (He used to quote Karl Marx with the same unyielding fervour. The only consistent thing about him is that he still has the nerve to call me a "cultural relativist.") Similarly, the eugenics of racial and biological determinism are fed by notions of blood or genes as sacrosanct. And when Mark Hunt, a former West Virginia state legislator, hired Clonaid (a company whose founders believe humans originated as clones of advanced extraterrestrials) to clone his 10-month-old son who

died in 1999... well, this, too, is a form of fundamentalism, a fetishism of the body if not of words. “[comparison to belief in Jesus]” says the Clonaid website.

10. If religion comes from the Latin word *religere*, to bind back together, then fundamentalism is at root a way of ensuring that one’s present life forms a bridge between past and future. Most faith does this, I think - links our forebears (whether founding, mythic, or ancestral) to the promise of a predictable future (whether in generations to come or in an afterlife). Most faiths, including the secular, probably share this basic sense of hope or longing that what we have known in the past will carry us toward a stable future. Even contract law is a way of directing present action so as to link past promises with future expectations; commercial “good faith” and trust in the market are no less ways of protecting ourselves against the chaos of the unknown.
11. But belief tends to become fundamentalist when it hardens into an expectation of guaranteed outcome. When the present becomes too strictly fixed as that bridge between past and future, the rigidity of ancient injunction takes over as the only true path to salvation in the world-beyond-now. This fixedness of destiny, this sense of outcome being fated, is in general tension with aspects of freedom. Divine (or constitutional) predetermination of what shall be imposes constraints on thought, channels behaviour, and may limit either individual or collective will. Whether this is a disciplining positive or a repressive negative depends on what is at stake, but it is always complex. The very notion of progressivism in American politics, of course, including Martin Luther King’s framing of the civil rights movement, goes back to early American convictions that one’s “manifest destiny” lay in carrying forward a pure (or puritanical) version of the Biblical past, and ferrying it in a steady line of upward progress toward the perfection of God’s promised New Jerusalem.
12. The discussion with my son wanders broadly. Almost as an aside, he queries me about a newspaper article he’s found in which the publisher of The Sacramento Bee was booed off the stage by California State University students when she raised concerns about post-9-11 limits on civil rights and liberties. There is little new or nice, I tell him, about college students heckling speakers they don’t like; but what is peculiarly inverted about this story is that the students seemed to be protesting what was essentially a defence of the very right to protest.
13. Unremitting loss is what most often drives the fundamentalist desire to preserve ancient, pre-modern, or just the-last-four-months-of history and enshrine it for the future - even if it means turning the present into a state of absolutist conformity. In that sense, fundamentalism is frequently the by-product of an inability to accept the finality of death or other great crisis. The angry refusal to let go of grief, in turn, can fuel blind acts of repression.
14. We have never been a nation able to grieve easily or properly - to turn off the yammering on CNN and the yelling on Fox, disconnect the telephone, surround ourselves with friends and come to terms with the magnitude of this tragedy. But we must do something like that in order to move on unencumbered and outspoken, rather than trying to stop time by mutely uncritical allegiance to that day - that unified, yes, but horrifically frozen moment in our lives.
15. Otherwise, things fall apart, as Chinua Achebe put it, in times of great despair. The American nightmare that began with the bombing of the World Trade Center and the Pentagon, has, like an earthquake, been followed by jolt after jolt of disruption and fear. In the intervening months, yet another aeroplane crashed, this time into a residential section of New York City. Anthrax contamination succeeded in closing, for varying lengths of time, all three branches of government. From the tabloids to The New York Times, major media outlets have had their centres of operation evacuated repeatedly. The United States Postal Service has been tied in knots. Hundreds of anthrax hoaxes have stretched law enforcement beyond all capacity. Soldiers guard all our public buildings.

16. Almost four thousand Americans have died in planes, collapsing buildings or of anthrax toxin since that morning in September; tens of thousands more have lost their jobs. Some 5000 Arab residents between the ages of 18 and 33 have been summoned for interrogation by the FBI. And twenty million resident aliens live suddenly subject to the exceedingly broad terms of a new martial law. Even while we try to follow the president's advice to pick ourselves up in time for the Christmas shopping season, punch-drunk and giddily committed to soldiering on as before, we know that the economic and emotional devastation of these events has only begun to register.

## **FREE ASSOCIATIONS**

17. As the enormity of the destruction settles in and becomes less dreamlike, more waking catastrophe, American society begins to face those long-term tests that inevitably come after the shock and horror of so much loss. We face the test of keeping the unity that visited us in that first moment of sheer chaos. We face the test of maintaining our dignity and civility in a time of fear and disorder. Above all, we face the test of preserving the rights and freedoms in our Constitution and its Bill of Rights.
18. Few in the United States question the necessity for unusual civil measures in keeping with the current state of emergency. But a number of the Bush Administration's new laws, orders and policies are deservedly controversial: the disregard for international treaties and conventions; strict controls on media reports about the war; secret surveillance and searches of citizens' computers; widespread ethnic profiling; indefinite detention of non-citizens; offers of expedited American citizenship to those who provide evidence about terrorists; and military tribunals with the power to try enemies in secret, without application of the usual laws of evidence, without right of appeal, yet with the ability to impose the death penalty. Although there have been leaked reports that the Administration is thinking about conforming the tribunals to at least the minimal standards of due process, as of this writing, no such qualification has actually occurred.
19. Opportunity for legislative or other public discussion of these measures has been largely eclipsed by the rapidity and relative lyricism with which most of them have been pushed into effect. This speed, one must accede, is in large part an exigency of war. The sudden fluidity of speech for which Mr. Bush is so often credited is perhaps the product of a concerted effort to attempt to reign in a rather blunt and starkly corporate style. In any event, the president has successfully enlarged the power of the executive to an unprecedented extent, while limiting both Congressional input and the check of the judiciary.
20. Overall, we face one of the more dramatic Constitutional crises in United States history. First, while national security mandates some fair degree of restraint, blanket control of information is in tension with the Constitution's expectation that freedom of a diverse and opinionated press will moderate the tyrannical tendencies of power. We need to have some inkling of what is happening on the battlefield in our name. On the domestic front, moreover, the First Amendment's protection of free speech is eroded if even peaceful dissent becomes casually categorized as dangerous or unpatriotic, as it has sometimes been in recent weeks. This concern is heightened by the fact that the war has been framed as one against "terror," - against unruly if deadly emotionalism - rather than as a war against specific bodies, specific land, specific resources. Again, a war against terrorism is a war of the mind, so broadly defined that the enemy becomes anybody who makes us afraid. Indeed what is conspicuous about American public discourse right now is how hard it is to talk about facts rather than fear.

21. Indeed the very name of the agency recently established to calm our fear - the Office of Homeland Security - has a chilly ambiguity about it. The word "homeland" has burrowed its way into ordinary conversation and multiplied with astonishing rapidity. It is not just the curious name of an office merging police and intelligence functions. It is a lowercase reference to purple mountains' majesty and all those fruited plains. Suddenly, "America the Beautiful" has become some sort of bad translation from the German. Like "Fatherland" or "empire," labels channel unspoken allegiances. I wonder about the line-drawing such an odd term was calculated to evoke - it sounds at once intimate and abstract - like the good-guy quadrant in some strategic computer game? Like the Bush team's attempt to sound mythic? Like some effort to denationalize and fuse enemy status with that of domestic criminality - as in home-wreckers, home invaders, domestic abusers? "Homeland Security" is the new office of what they keep calling "psy-op" after all.
22. Psy-op, or psychological operations, is apparently the same technique used to reduce Manuel Noriega to a quivering mass of submission: U.S. military purportedly blared relentless, sleep-defying hard rock at the building where he was holed up and I guess eventually he came out with his hands up. It's a strategy used by all sides in any given new age conflict, even Al Qaeda. In a National Public Radio broadcast, Dr. Gerald Post, an advisor to the CIA and professor of something called "political psychology," described an Al Qaeda handbook found on one of the defendants in the first world trade center bombing. He discussed passages in which operatives are advised to "blend in," to stay clean-shaven, not to talk too much over coffee, and to pay their parking tickets in a timely fashion. Perhaps it was not Dr. Post's intended result, but I found myself extremely alarmed. The bottom line of his advice seemed to be that you can trust no one, so just call the FBI about every move your suspiciously average neighbours make. I felt the seduction of that suspicion (six or seven overly-clean-cut colleagues who have offended me over the years immediately leapt to mind) and yet also (as a terse coffee-drinker who always pays her parking tickets on time) a deep fear of the same.
23. In a struggle that is coloured by a degree of social panic, we must be very careful not to allow human rights to be cast as an indulgence. There is always a certain hypnosis to the language of war - the poetry of the Pentagon a friend calls it - in which war means peace, and peace-mongering invites war. In this somewhat inverted system of reference, the Christian iconography of the bleeding heart does not beat within the corpus of law but rather in the bosom of those whose craven sympathies amount to naive and treacherous self-delusion. Everywhere one hears what, if taken literally, amounts to a death knell for the American dream: rights must be tossed out the window because "the constitution is not a suicide pact."
24. But accepting rational reasons to be afraid, the unalloyed ideology of efficiency has not only chilled free expression, but left us poised at the gateway of an even more fearsome world in which the "comfort" and convenience of the h-tech totalitarianism gleam temptingly; a world in which our American-ness endures only with hands up! so that our fingerprints can be scanned, and our nationalized-identity scrutinized for signs of suspicious behaviour.
25. This brings me to the second aspect of our Constitutional crisis - that is, the seeming endorsement by a majority of Americans of encroachments upon freedom from unreasonable searches and seizures. The establishment of the new Office of Homeland Security and the passage of the so-called USA Patriot Act have brought into being an unprecedented merger between the functions of intelligence agencies and law enforcement. What this means might be clearer if we used the more straightforward term for intelligence -that is, spying. Law enforcement agents can now spy on us, "destabilizing" citizens not just non-citizens. They can gather information with few checks or balances from the judiciary.

26. Morton Halperin, a defence expert who worked with the National Security Council under Henry Kissinger, worried, in The New Yorker magazine, that if a government intelligence agency “thinks you’re under the control of a foreign government, they can wiretap you and never tell you, search your house and never tell you, break into your home, copy your hard drive, and never tell you that they’ve done it.” Moreover, says Halperin, upon whose own phone Kissinger placed a tap, “Historically, the government has often believed that anyone who is protesting government policy is doing it at the behest of a foreign government and opened counterintelligence investigations of them.” [Jeffrey Toobin, “Crackdown,” The New Yorker, November 5, 2001, p.56 at 60]
27. This expansion of domestic spying highlights the distinction between punishing what has already occurred and preventing what might happen in the future. In a very rough sense, agencies like the FBI have been concerned with catching criminals who have already done their dirty work, while agencies like the CIA have been involved in predicting or manipulating future outcomes - activities of prior restraint, in other words, from which the Constitution generally protects citizens.
28. The third and most distressing area of Constitutional concern has been Mr. Bush’s issuance of an executive order setting up military tribunals that would deprive even long-time resident aliens of the right to due process of law. The elements of the new order are as straightforward as trains running on time. The president would have the military try non-citizens suspected of terrorism in closed tribunals rather than courts. No requirement of public charges, adequacy of counsel, usual rules of evidence, nor proof beyond a reasonable doubt. The cases would be presented before unspecified judges, with rulings based on the accusations of unidentified witnesses. The tribunals would have the power to execute anyone so convicted, with no right of appeal. According to polls conducted by National Public Radio, The Washington Post, and ABC News, approximately 65% of Americans wholeheartedly endorse such measures.
29. “Foreign terrorists who commit war crimes against the United States, in my judgement, are not entitled to and do not deserve the protections of the American Constitution,” says Attorney General John Ashcroft in defence of tribunals. [NYT, Nov. 15, 2001, p. A1] There are a number of aspects of that statement that are worrisome. The reasoning is alarmingly circular in Ashcroft’s characterization of suspects who have not yet been convicted as “terrorists.” It presumes guilt before adjudication. Our system of innocent-until-proven-guilty is hardly foolproof, but does provide an essential, base-line bulwark against the furious thirst for quick vengeance, the carelessly deadly mistake - albeit in the name of self-protection.
30. It is worrisome, too, when the highest prosecutor in the land - Attorney General John Ashcroft - declares that war criminals do not “deserve” basic constitutional protections. We confer due process not because putative criminals are “deserving” recipients of rights-as-reward. Rights are not “earned” in this way. What makes rights rights is that they ritualize the importance of solid, impartial and public consensus before we take life or liberty from anyone, particularly those whom we fear. We ritualize this process to make sure we don’t allow the grief of great tragedies to blind us with mob fury, inflamed judgements and uninformed reasoning. In any event, Bush’s new order bypasses not only the American Constitution but the laws of most other democratic nations. It exceeds the accepted conventions of most military courts. (I say all this provisionally, given that the Bush administration is urging the enactment of similar anti-terrorism measures in Britain, Russia, and that troublesome holdout, the European Union.)
31. As time has passed since the order was published, a number of popular defences of tribunals have emerged: we should trust our president, we should have faith in our government, we are in a new world facing new kinds of enemies who have access to new weapons of mass destruction. Assuming all this, we must wonder if this administration also questions whether *citizens* who are

thought to have committed heinous crimes “deserve” the protections of American citizenship. The terrorist who mailed “aerosolised” anthrax spores to various Senate offices is, according to the FBI, probably a lone American microbiologist. Although we have not yet rounded up thousands of microbiologists for questioning by the FBI, I wonder if the government will be hauling them before tribunals - for if this is a war without national borders, the panicked logic of secret trials will surely expand domestically rather than contract. A friend observes wryly that if reasoning behind the order is that the perpetrators of mass death must be summarily executed, then there are some CEO’s in the tobacco industry who ought to be trembling in their boots. Another friend who works with questions of reproductive choice notes more grimly that that is exactly the reasoning used by those who assault and murder abortion doctors.

32. “There are situations when you do need to presume guilt over innocence,” one citizen from Chattanooga told The New York Times [NYT, Nov. 18, 2001]. Conservative talk show host Mike Reagan (and son of President Ronald Reagan) leads the pack in such boundlessly-presumed guilt by warning that you might think the guy living next door is the most wonderful person in the world, you see him playing with his children, but in fact “he might be part of a sleeper cell that wants to blow...you...AWAY.” [Nov. 14, 2001, WBRO, Providence, RI, The Mike Reagan show]. We forget, perhaps, that J. Edgar Hoover justified sabotaging Martin Luther King and the “dangerous suspects” of that era with similar sentiment.
33. In addition to the paranoia generated, the importance of the right to adequate counsel has been degraded. Attorney General Ashcroft’s stated policies include allowing federal officials to listen in on conversations between suspected terrorists and their lawyers. And President Bush’s military tribunals would not recognize the right of defendants to choose their own lawyers.
34. The tribunals also challenge the right to a speedy, public and impartial trial. More than 1000 immigrants have been arrested and held, approximately 800 with no disclosure of identities or location or charges against them. This is “frighteningly close to the practice of ‘disappearing’ people in Latin America,” according to Kate Martin, the director of the Center for National Security Studies. [NYT Oct. 30, 2001, p. B1].
35. Finally, there has been an ominous amount of public vilification of the constitutional right against self-incrimination. Such a right is, in essence, a proscription against the literal arm-twisting and leg pulling that might otherwise be necessary to physically compel someone to testify when they do not want to. It is perhaps a rather too-subtly-worded limitation of the use of torture.
36. While not yet the direct subject of official sanction, torture itself has suddenly gained remarkable legitimacy. Callers to radio programs say that we don’t always have the “luxury of following all the rules”; that given recent events, people are “more understanding” of the necessity for a little behind-the-scenes roughing up. The unanimity of international conventions against torture notwithstanding, one hears authoritative voices - for example, Robert Litt, a former Justice Department official - arguing that while torture is not “authorized,” perhaps it could be used in “emergencies,” as long as the person who tortures then presents himself to “take the consequences.” Harvard Law School Professor Alan Dershowitz has suggested the use of “torture warrants” limited, he insists, to cases where time is of the essence.
37. Most alarming of all, a recent CNN poll revealed that 45% of Americans would not object to torturing someone if it would provide information about terrorism. And according to polls conducted by National Public Radio, The Washington Post, and ABC News, approximately 65% of Americans wholeheartedly endorse such measures through the vehicle of President Bush’s recently ordered military tribunals. The figures also show that many of those same Americans seem to feel that such measures will affect only a few non-citizens, and that the real subject of

such tribunals will be Osama bin Laden. “They had to do it this way because you can’t make a law against just one person,” opines a friend.

38. Yet there are about twenty million non-citizen residents in America. By the terms of President Bush’s order of November 15, all those people are now effectively living under martial law. I think that’s a tad overboard; although for the sake of argument, I will concede that my opinion is presently in the minority. Rather, I wish to pursue my concern that the practical divide between “aliens” and “citizens” is a very thin one, one that is melting away quickly beneath the sun of this go-for-the-throat, to-hell-with-human-rights rage.
39. If Osama bin Laden is the icon by which non-citizens are deprived of Constitutional protections, my sense is that OJ Simpson has re-emerged as the justification for doing the same to certain citizens. “We wouldn’t want Johnnie Cochran defending Osama,” I keep hearing. “He’d end up in Florida, playing golf with OJ.”
40. The Simpson case, a wholly anomalous piece of bread and circus, has come to symbolize a widely-shared and unfortunately politicized understanding of the criminal justice system. “OJ” means: the misuse of public resources, the helplessness of prosecutors, the predatory-ness of defence lawyers in particular and of trial lawyers generally, the cravenness of judges, and the bias of black jurors. The case remains an object lesson in the sensational potential of reality TV. And in the fallout, the English language gained an ugly new phrase – “playing the race card” - that has been used to pulverize any constructive discussion of race or civil rights since.
41. The problem is that this rendering of the Simpson case is deeply misleading. And its reappearance in the context of whether Osama bin Laden should be tried or just “offed” is dangerous.
42. To back up a bit: When Simpson was acquitted of murdering Ron Goldman and Nicole Brown Simpson, the big question was why a very racially mixed jury (it intrigues me that people always think of that jury as “all black,”) acquitted him when the whole rest of the world wanted to hang him. Most people blamed the supposed stupidity of the jurors. But I think Simpson was acquitted not so much because defence lawyers befuddled the wits of the jury - however much the media bemoaned Alan Dershowitz’s and Johnnie Cochran’s theatre - but more because the prosecution’s chief witness, officer Mark Fuhman, lied on the stand, was caught at it, and was ultimately convicted of perjury for it. There really are very few cases where you can ever get a conviction if the credibility of a major prosecution witness is as shaky as that.
43. Moreover, people who live in Los Angeles - the jury pool in other words - were perhaps more aware than the rest of the nation of the Los Angeles Police Department’s history of flagrant frame-ups, particularly racialized ones. The now-notorious revelations of corruption in the LAPD’s Rampart Division grew out of this precise concern: hundreds of criminal cases had to be dismissed in Los Angeles in the last few years because of officers so eager to convict that they suppressed relevant evidence, or relied too heavily on snitches intent upon plea bargaining their way to lighter sentences, or lied, or framed or even attacked mostly minority defendants.
44. To this day, few people recognize the relation between the attitudes of the jury pool in the Simpson case and the Rampart scandal. I don’t wish to settle whether this kind of so-called “jury nullification,” also amounts to reasonable doubt or not. My only point is that the practiced corruption - of lowered evidentiary standards, of self-interested witnesses, of other such shortcuts to conviction - poisons not just individual cases but the public trust and perception of fairness upon which all else rests.

45. To bring this back to military tribunals, such trust-eroding “street justice” is precisely the “cure” now being proposed in the name of “avoiding” more OJ-like trials: indefinite detention in undisclosed locations, less than unanimous decisions to convict, execution without right of appeal, unidentified informants paid with promises of expedited American citizenship, undue weight to ethnic profiling, etc. And therein lies the unsettling meeting point between the fates of those who dwell in the “mean street” and those in the “Arab street.” People who have been marked as “suspect,” or “other,” regardless of whether they are citizens or non-citizens, understandably want - yes, even deserve - the Johnnie Cochrans of the world out there making sure the prosecution lives up to its burden of proof rather than just sending out a posse because a CNN poll says you did it.
46. I sometimes wonder if the role of defence attorneys has become too hard to see in our culture - it's such an ancient function. It's about becoming an extension of the defendant. A “mouthpiece” in the literal sense. It is democratizing to have an advocate who knows the law and, theoretically, at least, can present one's side as nominally well as the prosecution. Alas it is also true that none of this makes us feel better about the fact that celebrity status, extreme wealth and not-one-but-teams of lawyers can sometimes whip up a script - much like those hardworking Hollywood propagandists we are told the government has hired - that no one could resist.
47. What's that proverb about the exception proving the rule? It is as wrong-headed to think that OJ Simpson represents the mass of citizens who are viewed as suspect profiles (and who are overwhelmingly poor, who are already convicted with far too much dispatch, and who can rarely afford even one, never mind a dream team of lawyers) as it is to think that Osama bin Laden represents the twenty million resident aliens in the US, who if summoned before a military tribunal - just to begin with - would not have even the right to choose their own lawyers.
48. While fully acknowledging the stakes of this new war, I worry that this attitude of lawless righteousness is one that has been practiced in oppressed communities for years. It is a habit that has produced cynicism, riots and bloodshed. The always-urgently-felt convenience of torture has left us with civic calamities ranging from Abner Louima - a Haitian immigrant whom two New York City police officers beat and sodomized with a broom handle because they mistook him for someone involved in a barroom brawl - to Jacobo Timerman in Argentina to Alexander Solzenizhen in the Soviet Union - all victims of physical force and mental manipulation, all people who refused to speak or didn't speak the words their inquisitors wanted to hear, but who were “known” to know something. In such times and places, the devastation has been profound. People know nothing so they suspect everything. Deaths are never just accidental. Every human catastrophe is also a mystery and mysteries create ghosts, haunting, “blowback,” and ultimately new forms of terror.
49. The problem with this kind of “preventive” measure is that we are not mind-readers. Even with sodium pentathol, whose use some have suggested recently, we don't and we can't know every last thought of those who refuse to speak. Torture and “extracted” confessions are investments in the right to be all-knowing, in the certitude of what appears “obvious.” That certitude is the essence of totalitarianism. Those who justify it with confident proclamations of “I have nothing to hide, why should they,” overlap substantially with the class of those who have never been the persistent object of suspect profiling, never been harassed, never been stigmatized or generalized or feared just for the way they look.
50. The human mind is endlessly inventive. People create enemies as much as fear real ones. We are familiar with stories of the intimate and wrong-headed projections heaped upon the maid who is accused of taking something that the lady of the house simply misplaced. Stoked by trauma, tragedy and dread, the creativity of our paranoia is in overdrive right now. We must take

a deep collective breath and be wary of persecuting those who conform to our fears instead of prosecuting enemies who were and will be smart enough to play against such prejudices.

51. In grief, sometimes we merge with the world, all boundary erased in deference to the commonality of the human condition. But traumatic loss can also mean – sometimes - that you want to hurt anyone in your path. Anyone who is light-hearted, you want to crush. Anyone who laughs is discordant. Anyone who has a healthy spouse or child is your enemy, is undeserving, is frivolous and in need of muting.
52. When I served as a prosecutor years ago, I was very aware of this propensity among victims, the absolute need to rage at God or whoever is near - for that is what great sorrow feels like when the senses are overwhelmed. You lose words and thus want to reinscribe the hell of which you cannot speak. It is unfair that the rest of the world should not suffer as you have.
53. This is precisely why we have always had rules in trials about burdens of proof, standards of evidence, the ability to confront and cross-examine witnesses. The fiercely evocative howls of the widow, the orphan, the innocently wronged - these are the forces by which many a lynch mob has been rallied, how many a posse has been motivated to bypass due process, how many a holy crusade has been launched. It is easy to suspend the hard work of moral thought in the name of Ultimate Justice, or even Enduring Freedom, when one is blindly grief-stricken. “If you didn’t do it then your brother did,” is the underlying force of blood feuds since time began. If you’re not with us, you’re against us, is the dangerous modern corollary to this rage.
54. I have many friends for whom the dominant emotion is anger. Mine is fear, and not only of the conflagration smoldering throughout the Middle East. I fear no less the risks closer to home: this is how urban riots occur, this is how the Japanese were interned during WWII, this is why hundreds of “Arab-looking” Americans have been attacked and harassed in the last months alone.
55. I hear much about how my sort of gabbling amounts to nothing but blaming the victim. But it is hardly a matter of condoning to point out that we cannot afford to substitute some statistical probability or hunch for actual evidence. We face a wrenching global crisis now, of almost unimaginable proportion, but we should take the risks of precipitous action no less seriously than when the grief with which we were stricken drove us to see evil embodied in witches, in Jews, in blacks or heathens or hippies. Perhaps our leaders have, as they assure us, more intelligence about these matters than we the people can know at this time. I spend a lot of time praying that they are imbued with greater wisdom. But the stakes are very, very high. We cannot take an evil act and use it to justify making an entire people, an entire nation or an entire culture the corpus of “evil.”
56. Give the government the power to assassinate terrorists, comes the call on chat shows. Spare us a circus of long public trials, say the letters to the editor.
57. I used to think that the most important human rights work facing Americans would be a national reconsideration of the death penalty. I could not have imagined that we would so willingly discard even the right of habeas corpus. I desperately hope we are a wiser people than to unloose the power to kill based on undisclosed “information” with no accountability.
58. We have faced horrendous war crimes in the world before. World War II presented lessons we should not forget, and Nuremberg should be our model. The United States and its allies must seriously consider the option of a world court. Our greatest work is always keeping our heads when our hearts are broken. Our best resistance to terror is the summoning of those principles so suited to keep us from descending into infinite bouts of vengeance and revenge with those

who wonder, like Milton's Stygian Counsel: "Will he, so wise, let loose at once his ire,/Belike through impotence, or unaware,/ To give his Enemies their wish, and end/ Them in his anger, whom his anger saves/ To punish endless...."