THURGOOD MARSHALL: RAMPART AGAINST RACISM

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THURGOOD MARSHALL, ASSOCIATE JUSTICE of the United States Supreme Court—a most impressive title for a man born in Baltimore at a time when prospects for success among Black people were almost nonexistent. No one person has had as profound an effect on *de jure* racism as has this man who unceasingly seeks to end unjust laws and thereby destroy the shackles which bind the minds and hearts of Americans. Today's Black youth, products of a new militancy, erringly fail to mention his name when conversation turns to those Blacks who have been most prominent on the front line in the war against the bastions of ignorance and bigotry which are ". . . the last veil of illusion which enables men to pretend."[1] Long before Malcolm or Martin had realized there was a war, Thurgood Marshall was fully engaged in battle, and he continues to wage the good fight to this day.

Born in 1908, Marshall's only deterrents to being a grade school dropout, as were many other Black youths of the period, were parents who realized the liberating qualities of knowledge and education. Just a few blocks from the Harlem home where Marshall spent the first five years of his life stood a sign which best illustrates the obstacles to be eliminated before Black hopes and desires could be fulfilled — "This part of 135th Street guaranteed against Negro invasion."[2]

Although he was serious about the issues affecting oppressed people, young Thurgood Marshall was often given to mischief.[3] Author Arna Bontemps writes of Marshall the college undergraduate, "Harum-scarum youth, the loudest individual in the dormitory, and apparently the least likely to succeed."[4]

Despite his past raucous behavior, Marshall graduated cum laude in 1929 from Lincoln University in Pennsylvania. Shortly after graduation Marshall took a long look at the American scene and decided that he should do something to "straighten out all this business about civil rights."[5] Surmising his alternatives for accomplishing this task, Marshall decided that law would be his tool. Immediately Marshall's thoughts about law brought him face to face with the enemy which he was later to engage. Seeking entry to the all-white University of Maryland law school, bigotry summarily rejected the Black freedom fighter who was later to eliminate the laws which allowed such a policy to exist. Realizing the folly of starting the fight without weapons, Marshall then enrolled at the Howard University law school.

1. Pierce, *The Solicitor General,* Ebony, p. 67 (Nov., 1965).
2. *Id.* at 68.
3. A sign on the door of Marshall's college dormitory room welcomed all to the "Land of the Disinherited'. Mr. Marshall admits that he often got angry with the police and the school administration. In speaking of student strikes during his youth Marshall says, "You had to be careful of timing. You couldn't strike in the beginning of the year because there was a backlog of applicants to replace you and you couldn't act at the end of the school year because of marks." *Id.* at 69.
4. *Id.* at 67.
5. *Id.* at 68.

After studying at Howard under such notables as Charles Houston, William Hastie and Leon Ransom, Marshall graduated in 1933 magna cum laude and first in his class.

After graduation, Marshall was briefly in private practice in Baltimore, but shortly was lured away by an offer of NAACP president Arthur Spingarn to work with his organization as the special assistant counsel. With his new position came Marshall's first involvement with U.S. Supreme Court litigation. As the assistant special counsel to Charles Houston, Marshall participated in the preparation of a brief calling for the admittance of a Black man to the University of Missouri law school.[6] The brief argued against a state provision which denied admission to Black people on the grounds that separate state financing was dedicated for training Black people in graduate and professional schools outside the state. The high court favored the petitioners' refutation of such a provision and ruled that equal education must be provided within the state.

In 1938, Marshall assumed the helm of legal direction for the NAACP and a year thereafter the separate Legal Defense and Education Fund was initiated.[7]

As the Director for the Defense Fund, Marshall proffered a major blow for the suffrage rights of Black people.[8] In 1940 the state Democratic party of Texas refused to give the Black petitioner, in the case of *Smith v. Allwright,* a ballot so that he might vote in the primary nomination of Democratic candidates. The Democratic party's rationale for denying the petitioner a ballot was based on a resolution passed by a state convention of its party members which was limited to white citizens. Under the tutelage of Marshall and the Fund via their briefs and arguments, the Supreme Court saw the unconstitutionality of the respondents' rationale, and declared this "white primary" invalid as state action in violation of the Fifteenth Amendment.

Not forgetting his commitment to "straighten out . . . civil rights,"[9] Marshall attacked racism wherever it reared its ugly head. Throughout the late Thirties and early Forties, the Defense Fund often handled five hundred cases at a time.[10] These cases were in such diverse areas as transportation, where the Fund had the segregation of interstate bus passengers declared unconstitutional,[11] to housing, where in *Shelley v. Kraemer,* Marshall attacked racism in its lair and made real the cliche: 'you have to live with a person to know him.' Through Marshall's arguments, racially restrictive housing covenants were declared unconstitutional as violative of the equal protection clause.[12]

After arguing successfully in *Sweatt v. Painter* and *McLaurin v. Oklahoma* for the equal entry and use of facilities in formerly all-white institutions of higher education,[13] Marshall concluded that these singular conquests in defining separate but equal were akin to Hercules fighting the mythical Hydra. Deciding to confront the issue of school segregation, Marshall assembled his forces for the development of a plan by which to defeat this most dire of obstacles. The plan was to make one major attack to eliminate segregation on all levels of public education.

6. Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938).
7. The American Annual, at 650 (1968).
8. Smith v. Allwright, 321 U.S. 649 (1944).
9. *The Solicitor General, supra* note 1.
10. Sandler, *Thurgood Marshall: Advocate On The Bench,* Res Ipsa Loquitar, Fall, 1967.
11. Morgan v. Virginia, 328 U.S. 373 (1946).
12. Shelley v. Kramer, 334 U.S. 1 (1948).
13. Sweatt v. Painter, 339 U.S. 629 (1950); McLaurin v. Oklahoma State Regents for Higher Education, 339 U.S. 637 (1950).

In 1952 the nation's high court granted certiorari for five cases to be argued together on the issue of school segregation.[14] Assembling a contingent of 75 historians, sociologists, and psychologists, the Defense Fund met with this history making group in September, 1953 to assist Marshall in the quest which was to change the course of social events in this country.[15] After extensive preparation, Marshall and his colleagues were prepared to argue the issue of school segregation which was presented under the single title of *Brown v. Board of Education.*[16] One of Marshall's opponents in argument was John W. Davis, one time Solicitor General and then known as the "Dean of American Law."[17] Fighting as adamantly to win in this case as he had fought in prior ones, Marshall's skill in achieving a victory in *Brown,* by causing school segregation to be outlawed, prompted many to praise him as "the leading constitutional lawyer in the country."[18] J. Lindsay Almond, a former attorney general, past governor of Virginia, and another opponent of Marshall's in one of the five *Brown* cases, says: "Whenever people prejudiced against him come to me, I tell them Thurgood Marshall is one of the ablest lawyers I've ever come to combat with in court."[19] "Mister Civil Rights," as Marshall had come to be called,[20] established such a fine record as an advocate, that judges would descend from the bench to congratulate him for his excellent courtroom presentations.[21]

When he first came to the NAACP, Marshall shared a two room office with staff lawyer Edward Dudley, research assistant Robert Carter, part time volunteer Constance Motley, and two secretaries. At the end of Marshall's tenure in 1961, the Defense Fund occupied a suite containing six private offices and claimed seven full-time and eighty cooperating attorneys.[22]

As chief counsel for the Defense Fund, this Black liberation fighter won twenty-nine of thirty-two cases argued before the U.S. Supreme Court. He was undoubtedly a man, who as Constance Baker Motley has said, "fulfills the legend that the time makes the man or the man makes the times."[23] Continuing to fulfill his legacy of accomplishment, Marshall became a federal court judge for the second circuit in 1961.

Turning from his offensive posture in attacking unjust laws, Marshall moved to positions of power through which he could enforce the laws as they stood. Seven years after decisions such as *Brown,* Marshall was beginning to realize that he had constructed paper tigers without teeth.[24] Marshall's time on the bench best illustrates that his sometimes seeming irreverance for laws extended only to those with obviously unjust purposes. While he unfalteringly kept sight of his belief in civil rights for all citizens, he consistently upheld government activity and abided by precedent in cases not endangering civil liberties.

Although as a federal court judge he was in a position which enabled him to put power behind some of the laws which he had helped make a reality, Marshall suffered the loss of flexibility he once had as the NAACP chief counsel. However, his legal wit, insight, and candor did not suffer as

14. Brown v. Board of Education, 347 U.S. 483 (1954).
15. *Advocate On The Bench, supra* note 10.
16. Brown v. Board of Education, *supra* note 14.
17. *Advocate On The Bench, supra* note 10.
18. *The Solicitor General, supra* note 1 at 73.
19. *Id.* at 76.
20. *Advocate On The Bench, supra* note 10.
21. *May It Please The Court,* Time, p. 19 (Dec. 21, 1965).
22. *The Solicitor General, supra* note 18 at 72.
23. *Id.* at 73.
24. CBS Television Presentation — *Mr. Justice Douglas.* During this presentation Justice Douglas asserts that because President Eisenhower was unwilling to foresake his prestige, the effect of *Brown v. Board of Education* was not allowed to progress as rapidly as it could have.

is evidenced in his dissent in *U.S. v. Fay.*[25] This case involved the search of a man's apartment by law enforcement officers who didn't have a warrant to do so. The subsequent trial and appeal of the man occurred after the decision in *Wolf v. Colorado,* 338 U.S. 25, which held that evidence produced by unreasonable searches was admissible in a state court regardless of federal law, but before *Mapp v. Ohio*[26] which overruled the *Wolf* case by making the Fourth Amendment applicable to the states. The issue to be decided was whether *Mapp* should be applied retroactively.

Marshall in dissent reasoned that *Mapp v. Ohio* was not intended to be exclusive to incidents occuring after the 1961 decision, and that the Supreme Court actually did consider the issue of retroactivity. Marshall suggested that the lower court was erroneous in advancing the deterrence of illegal searches and seizures as the primary intent of the *Mapp* decision, because it ignored the intent of *Mapp* to overrule *Wolf v. Colorado.*

In analyzing the history of retroactive application, Marshall notes that the Court has made decisions and applied its meaning retroactively to other cases. Such was the situation when the Supreme Court relying on *Gideon v. Wainwright,* 372 U.S. 335, reversed a 1959 Ohio conviction based on a guilty plea entered without counsel. In further analyzing the application of *Mapp,* Marshall points out that retroactivity has also been applied to many involuntary confession cases, and that the sole difference between the confession cases and the *Mapp* situation is that applying *Mapp* in a retroactive manner would entail the overruling of prior precedence.

Answering the lower court judges' assertion that the state of New York has an interest in the application of *Mapp* to past cases, Marshall states that constitutional rights are beyond a balancing of interests and may not be bargained away.

A decision which has been labeled Marshall's most adroit majority opinion as a federal court judge was given in the case of *Hetenyi v. Wilkins.*[27] The crime involved the murder of Hetenyi's wife. Hetenyi was arrested and subsequently tried on three occasions for the same crime. Always the evidence presented against the defendant was found to be circumstantial, but Hetenyi was finally given a sentence of forty years to life imprisonment.

Mr. Marshall's decision held that the Due Process Clause dictates restrictions on the power of the state to reprosecute.

Challenging tradition, Marshall observed that the Supreme Court had seldom invalidated a decision of a state court on the grounds that it exceeded constitutional limitations, but he reasoned that sufficient authority for overriding this state court decision could be found in Supreme Court opinions allowing double jeopardy claims against a state.

Always one to face issues which could easily be procedurally avoided, Marshall made no exceptions in the *Hetenyi* case. Marshall dealt in depth with contradictions which seemingly appeared through comparisons of this decision to the one given in *Palko v. Connecticut,* 302 U.S. 319. The difference between the cases Marshall reasoned, resided in the fact that in *Palko* the state was in the wrong. It appealed not on the conviction it got, but on the basis of not having gotten a conviction at all. In *Hetenyi,* the appellant had merely petitioned for a writ of habeas corpus after being imprisoned without due process of law.

25. U.S. v. Fay, 333 F. 2d 12 (1964).
26. Mapp v. Ohio, 367 U.S. 643 (1961).
27. Hetenyi v. Wilkins, 348 F. 2d 844 (1965).

Illustrating depth and compassion as well as reliance on matter-of-fact legal reasoning, Marshall resorted to principles which he would rely on in future decisions as a justice. He found that reprosecuting the appellant after the completion of the first trial was in effect 'cruel and unusual'. At the end of an exacting four year tenure on the appeals court, Marshall had adjudicated approximately 450 decisions.

In 1965, Marshall was appointed U.S. Solicitor General. In his new post, Marshall's enforcement powers had grown even further, for his job called for him to decide which cases the U.S. government should take to court and who would argue them. Of the 150 or so cases reviewed by the nation's highest court, half of them involved the government. Of those cases initiated by the government, the first Black Solicitor General chose to argue nineteen of them.[28] During his first year he won eight of the eleven cases he argued, three of the victories being in the area of civil rights.

Marshall's two-year tenure as the Solicitor General gained him an in-depth knowledge of the inner workings of the government's legal machinery. However by then it became apparent to many that the nation was being prepared for something which would put the name of Thurgood Marshall alongside those select few whose memory would go undaunted by the passage of time.[29] His government position, his twenty-five years in the vanguard of the civil rights court battles, plus his tenure on the Court of Appeals made Marshall one of the best prepared individuals ever to be considered for service as a U.S. Supreme Court justice. Probably only one or two other living men have argued as many cases before the U.S. Supreme Court — and perhaps less than a half dozen men in the history of this country.[30] Aside from his fathering the civil rights court battles, a cause disfavored by a goodly portion of those in power,[31] it was almost inconceivable that reasonable opposition could be found to Marshall's nomination as a convener in the august halls of the Supreme Court.

However, dedication to egalitarian ideals such as that harbored by Marshall proved too large a threat to those who would have maintained the status quo. Spearheaded by Senators Stennis and Ervin, the battle was on to deny congressional confirmation to the court of this Black legal giant.[32] After extended congressional debate, rivaling the fervor exuded by the possible nomination of Abe Fortas as the first Jewish chief justice of the high court, 'Mr. Civil Rights' became the first Black man to preside on the U.S. Supreme Court bench.

As a member of the 'Warren Court', this son of the American Black experience presided with some of the country's great legal minds, the majority of which had ideas about civil liberty and due process similar to his own. Along with his colleagues, Justice Marshall extended the involvement of the federal government in the areas of race relations, make-up of legislatures, voting qualifications and rights of the accused. [33] The posture of the court was of utmost benefit to Black and poor people at a time when the federal government was the only vehicle indicating any wish to further the rights of the disenfranchised.

28. N.Y. Times, June 14, 1967, at 32, col. 2.
29. N.Y. Times, June 14, 1967, at 1, col. 8.
30. N.Y. Times, June 14, 1967, at 18, col. 1.
31. N.Y. Times, June 14, 1967, at 1, col. 8.
32. 90th Cong. Rec. 24583 (1967) (remarks of Senator Ervin).
33. *Last Days Of The Warren Court*, U.S. News and World Report, p. 77 (Oct. 21, 1968).

During the 1967 congressional battle over Marshall's confirmation as Supreme Court Associate Justice, there was vehement argument from those opposing Marshall about the alleged danger of a philosophical imbalance by appointing another "liberal" to the court.[34] Noticeably those same voices were not heard to espouse the dangers of philosophical imbalance during the court confirmation fights of the Seventies as the 'scales of justice' tipped *strongly in favor of court appointees who expectedly would unfurl the banner* of "conservatism."[35] Now as a member of a court, the majority of which do not see the constitution as a "living document,"[36] Justice Marshall, who once invariably voted with the court majority on constitutional questions, is now better known for his dissents.[37]

Toward the end of the court term in 1972, Marshall took advantage of an infrequent opportunity to concur in a civil liberties decision wrought by the "Nixon Court." The court in adjudicating three cases together met the issue of whether the death penalty was cruel and unusual punishment for crimes involving murder and rape, and found that it was.[38]

In the first case, William Furman, a Black man, killed a householder *while seeking to enter the home at night. Furman was twenty-six years old* and had finished only the sixth grade in school. Pending trial, he was committed to the Georgia Central State Hospital where a unanimous staff diagnostic conference concluded that he had a "mental deficiency, mild to moderate, with psychotic episodes associated with convulsive disorder."

Lucious Jackson, also Black, was the object of the second case. Twenty-one year old Jackson was convicted of raping a white woman. Unlike Furman, Jackson is of average education and average intelligence. He was diagnosed as not having any perceivable mental deficiences although it was said that he had problems caused by environmental influences. Jackson was a convict who had escaped from a work gang in the area where the crime was committed.

Elmer Branch, the last appellant in this triumvirate decision was also convicted of rape. The record was barren of any medical or psychiatric evidence showing injury to the woman as the result of an attack. Branch was found to be of borderline mental deficiency and well below the average I.Q. of Texan prison inmates. He had the equivalent of five and a half years of elementary education.

Through his in-depth analysis, Justice Marshall delved into history in bringing to contemporary minds the origins, meaning and intentions of the

34. 90th Cong. Rec. 24636 (1967) (remarks of Senator Holland). During the course of debate the Senator included a reprint of an article by James J. Kilpatrick, entitled, *Marshall's Appointment Upsets Court Balance.*
35. N.Y. Times, May 22, 1969, at 37, col. 1; N.Y. Times, Oct. 22, 1971, at 1, col. 7. In these articles Justices Warren Burger, Lewis Powell and William Rehnquist are lauded by the conservative members of the Senate Judiciary Panel.
36. 90th Cong. Rec. 24643 (1967) (remarks of Senator Eastland), refers to Mr. Marshall as a believer in the Constitution as a "living document" because of Marshall's alleged stance as a judicial activist.
37. See Marshall's dissents in: Williams v. Florida, 399 U.S. 78 (1970) Justice White's majority opinion found the six man jury constitutionally adequate; Wyman v. James, 400 U.S. 309 (1971) Justice Blackmun's majority opinion concluded that the home visitation to welfare recipients was "a reasonable administrative tool" and violated no rights guaranteed by the Fourth Amendment; James v. Valtierra, 402 U.S. 137 (1971) Justice Black's majority opinion sustained a California referendum requirement for low-income public housing; Law Students' Civil Rights Research Council v. Wadmond, 401 U.S. 154 (1971) Justice Stewart's majority opinion upheld a New York state screening process requiring Bar applicants to have "good moral character"; Kastigar v. United States, 406 U.S. 441 (1972) Justice Powell's majority opinion allowed the United States to compel testimony from an unwilling witness who invokes the Fifth Amendment privilege against compulsory self-incrimination by conferring immunity from use of the compelled testimony and evidence derived therefrom in subsequent criminal proceedings; Adams, Warden v. Williams, 407 U.S. 143 (1972) Justice Rehnquist's opinion for the Court allows a policeman who makes a reasonable investigatory stop to conduct a limited protective search for concealed weapons when he has reason to believe that the suspect is armed and dangerous; United States v. Caldwell, 408 U.S. 665 (1972) Justice White speaking for the Court effectively disarmed the testimonial privilege of newspaper reporters in cases being investigated by the grand jury.
38. Furman v. State of Georgia; Jackson v. State of Georgia; Jackson v. State of Texas, 403 U.S. 952 (1972).

phrase 'cruel and unusual punishment.' To paraphrase Marshall, the issue for decision in this case was whether capital punishment is 'a punishment consistent with the self-respect of a civilized people.'[39] Citing a bevy of acts, an infraction of which was cause for inflicting capital punishment,[40] Marshall traces the elimination of certain crimes from the capital category as civilization progressed. [41] Analyzing *seriatim* the six purposes conceivably served by the imposition of capital punishment,[42] he sapiently exposed the casuistical reasoning of the death penalty proponents. Confronting the question of whether the 'common conscience' of America's people truly feel the death penalty is cruel and unusual punishment, the justice answers that even without questioning the face reliability of public opinion polls, one must question the answers given to such polls based on the knowledge of the death penalty possessed by the citizenry.[43] For surely many persons would change their opinion of the penalty if they understood that:

> ". . . the death penalty is no more effective a deterrent than life imprisonment, that convicted murders are rarely executed, but are usually sentenced to a term in prison; that convicted murderers usually are model prisoners, and that they almost always become law abiding citizens upon their release from prison; that the costs of executing a capital offender exceed the costs of imprisoning him for life; that while in prison, a convict under sentence of death performs none of the useful functions that life prisoners perform; that no attempt is made in the sentencing process to ferret out likely recidivists for execution; and that the death penalty may actually stimulate criminal activity."[44]

Expressing deep confidence that the American public would not support purposeless retribution, Marshall further supports the stalwart logic of his argument by citing the discriminatory application of the penalty against certain identifiable classes of people — namely the Black and the poor.

Finally, in an indictment of the Court, Justice Marshall discounts that anyone familiar with past Supreme Court decision could be surprised at the racism inherent in the imposition of the penalty. He recounts that the Court invited just such action when they held "That committing to the untrammeled discretion of the jury the power to pronounce life or death in capital cases is (not) offensive to anything in the Constitution."[45]

By greatly weakening this pernicious penalty, Marshall and his colleagues in majority removed a malefic yoke from the minds of the Black accused, for as Justice Marshall observed — 2066 of the 3859 people executed in America since 1930, were Black.[46] Due to the diligence of the Court in the death penalty decision, one more weapon has been removed from the hand of "blind justice."

Unfortunately, major decisions do not always favor the powerless and oppressed. In a decision entailing separate situations,[47] the court reviewed the cases of three appellants who had been convicted respectively of assault with a deadly weapon, burglary in a dwelling, and grand larceny before separate Oregon juries, all of which returned less than unanimous verdicts. The vote in the case of two of the appellants was eleven to one, while the vote in the third was ten to two, the minimum requisite vote under Oregon law for sustaining a conviction. The appellants sought review upon the claim

39. *Id.* at 2765.
40. *Id.* at 2775.
41. *Id.*
42. *Id.* at 2779.
43. *Id.* at 2789.
44. *Id.*
45. *Id.* at 2790.
46. *Id.*
47. Apodaca v. Oregon, 406 U.S. 404 (1972).

that conviction by a less than unanimous jury violates the right to trial by jury in criminal cases specified by the Sixth Amendment and made applicable to the States by the Fourteenth.[48] In denying the appellants' claim, the Court majority relies in part on a decision in which the court had previously held that the Constitution does not require twelve man juries.[49] The Court now holds that the unanimous verdict, while a historical and traditional fixture, does not rise to the level of a constitutional requirement nor does the Sixth Amendment's jury trial right include a "reasonable doubt" standard of proof.

Well aware that the effect of the majority opinion is to allow any tribunal bearing the label 'jury' to be constitutional, Marshall attacks the rationale which allowed this 'Pandora's box of legalities' to be opened. Laying clear the fallacy of believing that a nonunanimous jury can effectively decide guilt beyond a reasonable doubt, Justice Marshall departs from constitutional theorization to deal with the reality of the facts presented in the cases. In the second case heard, in which the prosecutor had tried and failed to persuade all of the jurors of the defendant's guilt, Marshall observes:

> "In such circumstances, it does violence to language and to logic to say that the government has proved the defendant's guilt beyond a reasonable doubt."[50]

Defending against the majority opinion's trammeling of due process, Marshall notes that even if a jury has tried and failed to reach a unanimous verdict, prevailing notions of double jeopardy allow a new trial to be held.

The irrationality of the majority opinion was succinctly illustrated when Justice Douglas observed that the Court has always held that verdicts in civil trials must be unanimous but by the decision in *Apodaca* the majority require that a lesser standard be used for stripping a man of his liberty than is required to deprive him of his property.[51] Justice Marshall acknowledged the observance of his dissenting brothers, that the less-than-unanimous rule has danger of excluding minority group participation in the decision. Adding to this, Marshall states:

> "It should be emphasized, however, that the fencing-out problem goes beyond the problem of identifiable minority groups. The jurors whose dissenting voice is unheard may be a spokesman, not for any minority viewpoint, but simply for himself — and that, in my view, is enough."[52]

Now as a veteran member of the Supreme Court tribunal, this man born of oppression but not bent by it, towers as the embodiment of all that Black Americans and indeed progressive thinkers everywhere can view with pride. For as he once acquitted himself with dignity and courage while standing before the bench, he can now be regarded with equal veneration as he sits upon it. Every step Marshall takes has taken America one step closer to fulfilling the democratic ideal. Facing an onslaught of injustices, Thurgood Marshall has dedicated his life to forwarding the higher ideals of the U.S. Constitution, and to making clear that the concept of "three-fifths a person" was the product of an imperfect era.[53] Today he stands as a living monument dedicated to the goal that all citizens must be equal before the law or justice is not done.

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48. *Johnson v. Louisiana* was decided with *Apodaca v. Oregon*. It held that the Fourteenth Amendment does not require a unanimous verdict in order to give effect to the requirement that guilt be proven beyond a reasonable doubt.
49. Williams v. Florida, 399 U.S. 78 (1970).
50. Apodaca v. Oregon, *supra* note 47.
51. *Id.*
52. *Id.*
53. U.S. Const. art. 1, § 3.