

The Sacrifice of Jean Kambanda:

A Comparative Analysis of the Right to Counsel in the
International Criminal Tribunal for Rwanda and the United States,
with emphasis on *Prosecutor v. Jean Kambanda*.

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For General Romeo Dallaire, whose valiant stand with 500 of his men saved the lives of countless innocents in Kigali, Rwanda, 1994.

Jean Kambanda sat quietly. The handsome forty-year old African was dressed in his familiar dark blue jacket and azure grey tie. His hands were folded in a gesture which, if not for the severity of the proceeding, might have been mistaken for indifference. Behind plain black eyeglasses and an immaculate beard, his soft eyes looked out with a professorial intensity. Legs crossed and reclining in his chair, he looked more bemused than concerned. Indeed, he could have been lightly chiding a young subordinate, or engrossed in an abstruse problem. There was an unmistakable air of eloquence and dignity in his movements...a painful and tragic élan.

Jean Kambanda sat quietly in his chair, relaxed.

He waited to hear his sentence for the genocide of 800,000 of his people...

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1. **Introduction:**

Since its inception, the International Criminal Tribunal for Rwanda (ICTR) has sought retribution for the victims of the Rwandan genocide. Throughout Africa and on three continents, the ICTR searches for heads of government, soldiers, and state officials who oversaw the worst genocide since Pol Pot's Cambodia. Like *Javert's* pursuit of *Jean Valjean*, one man was foremost in their mind. The sole person at the helm of Rwanda's government during the horrific genocide of 1994. During his tenure, in the short span of four months, over 800,000 men, women, and children were systematically and efficiently exterminated. Death camps were revived and churches were burnt down upon the heads of parishioners. Mass rape and the *ex utero*, a crime so deplorable that it was last practiced upon Native Americans at Sand Creek, once again bloodied the Rwandan landscape. When this bloodshed finally waned, to the shock of the international community, the man quietly disappeared. He was Jean Kambanda, the Prime Minister of Rwanda.

On the 9th of July in 1997, three years after the genocide, Jean Kambanda's haunted past returned with a vengeance. Following a seven week marathon stakeout involving shadowy U.S. forces, Kenyan police and United Nations ICTR investigators, over sixty armed men descended upon Nairobi in the dawn light, arresting Jean Kambanda and six of his entourage in "Operation NIKI" (Nairobi-Kaligi), seven hundred kilometers and two countries distant from Rwanda. Five days later, Kambanda was transferred to the secure United Nations Detention facility in Arusha, Rwanda, there to wait almost three months before the ICTR Prosecution team could prepare an indictment against him.

On the 10th of October, ICTR document 97-23-I was confirmed by Judge Yakov Ostrovsky. Kambanda was now to be held before the ICTR to answer for four of the most serious international crimes; genocide, conspiracy to commit genocide, complicity, and crimes against humanity. Operation NIKI was a success.

Born in 1955 in the heart of Rwanda, Jean Kambanda is perhaps the most unlikely genocidal dictator in modern history. Perpetually seen with a swarthy Quaker like beard in archaic black plastic glasses, and a camoflage jacket out of place with his urban chic

attire, Kambanda seemed a part, but not the whole of the violent government. A father of two children, Kambanda holds a degree in commercial engineering (banking) and began his career as a banker in the *Union des Banques Populaires du Rwanda* (The BPR, a Rwandan equivalent to the Bank of America). Proving highly skilled in this innocuous fiscal talent, Kambanda rose to chair the BPR, making him an influential, but by no means politically central figure. Never in the military, and without any formal political training, the height of Kambanda's political activity was his position as Vice-President of the Butare section of the *Mouvement Democratique Republique* (MDR), the Tutsi ruling party responsible for the genocidal atrocities. In this capacity, Kambanda's power might have been greater than it seemed. Though Butare is not the capital of the monarchy, it is certainly the richest city in Rwanda, home to the National University, and is the ancient capital of the Rwandan monarchy.

Following the assassination of the Prime Minister Agathe Uwilingiyimana in April 1994,ⁱ Kambanda seemed to leapfrog several senior heads of the MDR administration. Within days Kambanda was appointed the head of the Interim Government of Rwanda, an institution similar to Vichy France which immediately sanctioned the on-going massacres, and began devising new methods of ethnic cleansing. Kambanda was whisked to the "*Ecole Supérieure Militaire*" and "informed" of his nomination.ⁱⁱ Perpetually surrounded by a vanguard of Rwandan security forces, the formally quiet Kambanda proved a political natural...strumming up the youth militia and openly aggravating an already dangerous situation.

It was Jean Kambanda who masterminded the horrific three month Tutsi genocide of 1994 and ordered the holocaust in the Tutsi sanctuary of the Church of St. Jean. It was Kambanda who drew upon the vitality of the *Interahamwe*, an emotionally charged youth militia modeled after the Nazi Youth Corps. It was Kambanda's voice which soon echoed throughout the land on *Radio Television Mille Libres*, inciting ethnic violence and hatred. And it was Kambanda's bastion of history, intelligence, and popularity in Butare which proved decisive in the oncoming bloodshed.

And then...almost as quickly, Jean Kambanda vanished. Following the fortunate take over of Kigali by the war hardened RPF guerillas (the last bastion of moderate arms in Rwanda), the genocidal administration fled. Many first-world nations, Kenya and Cameroon among them, undoubtedly played host to their unwelcome and unknown visitors. Just as the upper echelon of Nazi leaders had fled in the aftermath of World War II, the vast body of leaders, scholars and soldiers responsible for the genocide left Rwanda, vanishing amidst the millions of refugees.

This paper is an epilogue of the story of Jean Kambanda. As first and foremost a legal discussion, it analyzes whether Kambanda's right to counsel was violated. In this regard, this paper compares the provisions of the right to counsel in the United States, and the ICTR. Secondly, as a critical essay, this paper queries whether Jean Kambanda's conviction was a result of political expediency. Was Kambanda immolated in the pyre of international relations, a sacrificial lamb to repair the waning power and legitimacy of the ICTR ? Finally, as a historical narrative, this paper is an analysis of the inconsistencies which plagued the International Criminal Tribunal from his arrest in Nairobi, till the passionate argument of his final counsel in the Appeals chamber of Judge Claude Jorda.

Prior to this layman's project, the aforementioned questions were, throughout Kambanda's appeal, thrown back and forth in academic literature like a dancer's *pas de deux*. That was almost four and a half years ago. Today, as the ICTR begins the process of finalizing it's case load and preparing a termination strategy, the story of Jean Kambanda is largely forgotten. No images of his face, nor press releases proclaiming his innocence are published. His image no longer adorns the billboards in Rwanda, and crowds do not protest outside the ICTR anymore. One wonders if these questions are thought of at all.

Alone with his thoughts, Jean Kambanda has had seven years, six days, and sixteen hours to think about them.

2. The Right to Counsel in the United States.

a. History.

In the United States of America, the Constitution guarantees the right to counsel through the Fifth, Sixth Amendments, and Fourteenth Amendments. Yet the modern right to counsel is an outgrowth of interpretation, and not a result of substantive provisions. The layman citizen may erroneously believe that for every criminal defendant, an attorney must be appointed or provided. Strictly speaking, the Constitution guarantees no such right. The constitutional right to counsel is only a fallback provision...a legal failsafe which historically intended to prevent only the most egregious “railroading” of a criminal proceeding strictly within the federal system. The words of the Sixth amendment actually refer to counsel almost in passing, and are the only mention of counsel anywhere in the Constitution.

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.*ⁱⁱⁱ

The right to counsel as we know it was not always so. The positive right to counsel truly emerged in the post-Gideon era of the early 1960’s, following the landmark case of *Gideon v. Wainwright*,^{iv} and it’s later Juvenile corollary, *In Re Gault*.^v Heretofore, felony adult counsel was only constitutionally mandated in the much smaller Federal system through the strictest interpretation of the Sixth Amendment.^{vi} As late as the 1930’s, counsel was regularly being denied in capital cases,^{vii} and virtually non-existent to state indigent defendants.^{viii} In 1942 the infamous *Betts v. Brady* case, in which Smith Betts was charged, tried, and convicted of robbery without assistance of counsel, was affirmed by the US Supreme Court.^{ix} For a time, *Betts* halted the preliminary forays into a Constitutionally mandated right to counsel.^x

Some twenty years later, Clarence Gideon broke into a ramshackle pool hall in Panama City, whose owner, by an odd quirk of fate, was named Strickland.^{xi} Convicted

without counsel, Gideon brought a writ *in forma pauperis* to the US Supreme Court, eventuating the now famous *Gideon v. Wainwright* decision. Under the masterful advocacy of Abe Fortas, whom Deputy Attorney General Bruce Jacob, then a very youthful twenty-seven year old, referred to as both “grave” and “charming”, Gideon eviscerated the *Betts* decision, creating a *de facto* right to counsel in state felony cases, and by implication all capital cases throughout the nation.^{xii}

From the rationale applied in *Gideon v. Wainwright*, it was but a legal stones-throw away to the modern-day doctrine of *Argersinger v. Hamlin*.^{xiii} Indeed, as stated in *Argersinger*, the United States Supreme Court had already incorporated more and more of the 6th Amendment through the 14th Amendment Due Process Clause.^{xiv} Five years after Gideon, the court held in *Duncan v. Louisiana*, that a jury-trial was fundamental to Due Process under the 6th Amendment.^{xv} *Duncan*, a young black teen had received two months in prison for “slapping” a white teenager on the elbow in a short and perfunctory bench trial.^{xvi} A year before, in *Washington v. Texas*, the Court had struck down a Washington statute forbidding a Criminal defendant to cross-examine his co-conspirators as invalid under the Confrontation Clause.^{xvii} Little was left of the 6th amendment to incorporate except of course, the bulk of the right to counsel in misdemeanor cases.

In 1972, just nine years after *Gideon v. Wainwright*, Justice Douglas wrote in *Argersinger v. Hamlin* that;

...absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.^{xviii}

Jon Argersinger, an indigent of Leon County, Florida had actually not received a sentence of imprisonment *per se*, but a \$500 dollar fine with the key provision that upon default, he was to be held for six months in custody.^{xix} Being indigent, he could not afford and attorney and of course, could not afford to pay the fine. As a result, Argersinger was immediately placed into custody. Roughly eight days after he was arrested, Argersinger’s Public Defender submitted a Habeas Corpus brief to the Supreme Court of Florida which, surprisingly, was immediately disposed of and resulted in his

release on bond. However, following a negative opinion three months later, the now thoroughly confused Argersinger was remanded into custody.

The opinion of the United States Supreme Court in *Argersinger* was slightly problematic. While critical of the lack of counsel and lauded by the defense bar, it also left the door open to exceptions in the instances of fine, acquittal, or non-custodial sentencing.^{xx} The end result was that *Argersinger* required that counsel be appointed in the vast majority of misdemeanor cases where imprisonment was in fact sought, or practically, possible.^{xxi} Should a prosecutor seek imprisonment, the accused MUST have a counsel or a successful trial would be for naught. Should he actually receive imprisonment, counsel was undeniable. The court would earmark this rationale in *Scott v. Illinois*, as the basic *moyens vivre* for right to counsel jurisprudence.^{xxii} Counsel in felonies and capital cases counsel continued to be automatic.^{xxiii} In misdemeanors, should imprisonment occur counsel must have been supplied.^{xxiv} The basic framework of this rule, in it's entirety has not changed drastically in the past three decades.

b. Philosophy and Key Provisions of the American Right to Counsel.

Attorneys, lawyers, or their counterparts, have existed since the early fifth century B.C.^{xxv} The notion that all who desire it may have someone more versed or eloquent speak on their behalf is a concept which dates centuries before Christ, and is even paralleled in the Old Testament. God himself was fond of attorneys it seemed, as he instructed Moses to defer his own rather inadequate public speaking to his more loquacious relative Aaron.^{xxvi} However while the concept of "counsel" pervaded Western thought since the time of Pliny, the natural corollary of "appointed counsel" is a relatively new and amorphous philosophical concept. Indeed, in Ancient Greece, the opposite was true. Every Greek citizen was both a policeman and a prosecutor, and the arrester was also required to prosecute the case.^{xxvii}

In the United States, the right to counsel is by no means static, and is limited by American case law. Two forms of counsel right exist. The primary doctrine under the sixth amendment requires counsel to be present at any "critical stage" of a criminal

proceeding, and upon the commencement of adversarial judicial proceedings.^{xxviii} Though offense-specific,^{xxix} the Sixth Amendment right to counsel stems directly from the words of the Constitution itself and operates in a variety of circumstances. Within the context of a “critical stage” judicial proceedings are irrelevant. For instance, in *Escobedo v. Illinois*, the Supreme Court held that where a murder suspect was arrested, brought to a police station, denied access to his lawyer and his lawyer’s requests to see his client were studiously ignored, a Sixth amendment violation occurred, despite the lack of an actual indictment.^{xxx} *Vice versa*, the Sixth Amendment also creates a threshold at the commencement of adversarial judicial proceedings. This concept of “attachment” discussed in *Kirby v. Illinois*,^{xxxi} creates an mandatory attorney threshold after which Counsel must be present or appointed.^{xxxii} Following the indictment of a criminal defendant, one must have counsel.^{xxxiii} By the same token, following the termination of adversarial judicial proceedings theoretically counsel may no longer required, leading many academics to raise the question of whether parole hearing counsel is actually Constitutionally mandated.^{xxxiv} The more immediate question of appellate counsel has already been addressed. In *Douglas v. California*, the Supreme Court held that indigent defendants have an absolute right to an appellate counsel in the first instance,^{xxxv} yet their opinion did not touch upon the more complex problem of an indigent’s infinite right to appellate counsel. In any event the Sixth amendment right is a two-pronged positivist approach to attorneys. An indigent is entitled to counsel in any of two circumstances, first upon the commencement of an indictment, and secondly at any critical stage of the proceedings.

The second doctrine of counsel under the Fifth Amendment, is a prophylactic, or a protective and preventive rule.^{xxxvi} The famous *Miranda v. Arizona* decision draws upon the due process imperatives of the 5th amendment right against self-incrimination.^{xxxvii} Under the *Miranda* rule, the Fifth Amendment bars any evidence from “custodial interrogation” after an accused has been denied access to his attorney, or has failed to be informed of his *Miranda* right to counsel.^{xxxviii} However, it operates only in extremely limited circumstances, and frequently succumbs to the very nature of police expediency. For instance, where police officers had arrested a suspect, and began

(innocently?) to discuss the horrific dangers of leaving a loaded firearm within reach of a nearby school for disabled children, followed by the previously intransigent suspect confessing to the location of a shotgun, the Supreme Court held that this was not an “interrogation”, despite its obvious ulterior motives.^{xxxix}

The fifth and sixth amendment may operate independently, simultaneously, or not at all through a client’s waiver. The crux of these rights is that at certain pre-adjudicative stages counsel may be present, namely custodial interrogation. However practically, Miranda is an *ex post facto* rule. It operates as an exclusionary rule after a constitutional violation has occurred. Indeed, it would be a strange police officer who volunteered to halt the interrogation and continue while counsel is present.

The Philosophical rationale behind the right to counsel has been touched upon mainly by the courts. The general consensus is that society is not willing to bear the costs to legitimacy and fairness resulting from a lack of counsel.^{xi} While judicially and politically expedient, the right to counsel is described as “fundamental” to our legal system.^{xii} Put another way, in the short run counsel could be sacrificed in terms of expediency, but the long lasting effects upon the legitimacy and infrastructure of the judiciary would be irreparable and disastrous.^{xiii} In France and Germany, this rationale has been described as a simultaneous public interest to ensure that the legitimacy of the legal system is sacrosanct.^{xiiii} In the economic sense, this public interest in legitimacy coincides with the defendant’s interest to have a fair trial, in the same way a ship captain’s interest in a lighthouse coincides with a seaport’s interest in uninterrupted trade.

Philosophical rationales from the international perspective are scarce in academic literature. It is somewhat difficult for Americans to comprehend that in the vast majority of the world counsel is not provided, or differs from the United States defense counsel paradigm. In Europe, counsel was being provided some time before Gideon was born.^{xlv} In many circumstances, foreign legal systems without transpositions of the American counsel right function, albeit with a more Draconian overtones, rather expediently.^{xlv} It is also difficult for Western scholars to understand that in many nations and cultures, criticism of the indigenous legal system (which in many instances predates the United

States in general by several centuries), is considered bad form.^{xlvi} China's legal system, for example, bears strong relationship to the Ancient Tang Legal Code, an era of Chinese history which is viewed with great pride and reverence.^{xlvii} In France, the judge may routinely step into the role of counsel and examine a witness, or conduct independent investigations.^{xlviii} In the Kingdom of Saudi Arabia, a nation with "most-favored nation status", there actually is no counsel system at all, and the courts are based upon the ancient Islamic *sharia'a* tribunal.^{xlix} Vice versa in France and Germany, the wish of the defendant to proceed *pro persona*, is irrelevant. A defendant is not only appointed but required to have an attorney in his criminal proceeding.¹

This brief diatribe describes some of the inherent problems in comparing the right to counsel. However comparison by itself is always helpful...as it allows the researcher to better understand his own system, as well as another. The adage of *Nosce te ipsum, Know Thyself*, coined by the famous lawyer Socrates,ⁱⁱ refers not to self-awareness but to understanding of others, and indeed, a cavalier disdain for oneself. This is the essence of comparativism, not without a certain tragic irony that Socrates himself, was convicted and sentenced to death *pro per*.

3. **The Right to Counsel in the ICTR.**

a. Substantive Provisions.

The International Criminal Tribunal for Rwanda is governed by a statute enacted under the auspices of Security Council Resolution 955 in 1994.^{lii} This statute, in addition to laying out the general order of the Tribunal and its mission, guarantees the right of counsel under Article 20(4)(d).^{liii} The relevant language of this article states;

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:...

...(d)To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and

without payment by him or her in any such case if he or she does not have sufficient means to pay for it,^{liv}

The right to counsel is also supplemented through Article 2 of the “Directive on the Assignment of Defense Counsel”,^{lv} in a codification similar to the United States *Miranda* rule. However unlike *Miranda*, Article 2 applies to any person detained upon the authority of the Tribunal. The detainee need not be an accused, but may also be merely a suspect of an investigation, or even a potential witness.^{lvi} Article 2 is a sweeping rule reaching beyond the *Miranda* doctrine, and allows counsel in myriad situations involving police or prosecutor interrogations. The actual language of Article 2 reads as follows;

(A) Without prejudice to the right of an accused to conduct his own Defence, a suspect who is to be questioned by the Prosecutor during an investigation and an accused upon whom personal service of the indictment has been effected shall have the right to be assisted by Counsel provided that he has not expressly waived his right to Counsel.

(B) Any person detained on the authority of the Tribunal, including any person detained in accordance with Rule 90 bis, also has the right to be assisted by Counsel provided that the person has not expressly waived his right to Counsel.

(C) All references in this Directive to suspects or accused shall also be understood to apply to any persons detained on the authority of the Tribunal.^{lvii}

Finally, Rule 65 of the “Rules Covering Detention of Persons Awaiting Trial or Appeal” specifically delineates the absolute right to have contact with counsel while incarcerated.^{lviii} Like similar provisions in United States state prisons, and particularly the federal regulatory code relating to the right of counsel within the federal prison system,^{lix} Rule 65 grasps the fundamental principle that access to counsel within detention is just as paramount as access in a court setting.

b. In Practice.

‘Legal assistance’, obviously refers to the assistance of a competent general counsel versed in international or domestic criminal defense. However certain

implications arise in the context of the ICTR not paralleled in domestic case law. The traditional requirement of admission to a state bar would seem woefully inadequate within the context of a genocide trial. At least in the United States, all lawyers duly admitted to the bar are deemed to have the requisite knowledge, or be able to attain the requisite knowledge, to litigate any potential case.^{lx} The ICTR, of course, differs in this assessment. Like an attorney who owes a duty of candor both to his client and the court, the ICTR has dual duties to the people of Rwanda, as well as the defendants before it's auspices.^{lxi} In response the ICTR has implemented several procedures ensuring that appointed counsel is adequately trained to litigate on an indigent's behalf.

Article 13 of the Directive on Defense Counsel requires that appointed counsel be duly admitted to a bar for at least 10 years, speak either English or French (in most cases it behooves the attorney to speak both in addition to *Kinyarwande* and Swahili), and appear before the Tribunal prior to appointment.^{lxii} Form IL2, utilized as the preliminary screening for defense counsel by the Office of the Registrar, also requires the counsel-to-be to list his relevant experience in Criminal Law, International Humanitarian Law and Human Rights.^{lxiii}

The process for being called to the bar of the International Tribunal is actually relatively simple. Counsel submits his Form IL2 and supporting documents, which, if found sufficient, are accepted by the ICTR Registry. From there his name, curriculum vitae, expertise and nationality are placed on a Defense Counsel list. This list of various Defense counsel represents the major legal systems of the world.^{lxiv} Additionally, the list also comprises both Practitioners in International law, domestic criminal defense lawyers, local attorneys, and academics. The defendant selects his counsel from the list and forwards this information to the Registrar. At that point the Registrar may appoint an indigent defendant's selected counsel, deny him the right to counsel, or appoint him a temporary counsel for one month. However, as stated by United Nations Press Release, several inconsistencies arise. Foremost is the fact that an organ of the court is selecting an accused counsel for him, creating a rarely publicized conflict of interest. Secondly, the Registrar of the ICTR is under orders to assign counsel prudently with regard to cost!^{lxv}

Cost is an interesting issue in and of itself. The ICTR Registry has been quoted as budgeting an approximate total of 5 million dollars for defense counsel fees.^{lxvi} By comparison, Professor Richard Dieter of the Death Penalty Information Center has testified that in Texas, it costs approximately 2.3 million dollars to run a capital case,^{lxvii} and in at least one case, the costs of mounting a favorable capital defense reached 2.9 million dollars.^{lxviii} Obviously the ICTR is not Texas, but a much more complex forum. The inadequacies of 5 million dollars are obvious and striking.

In practice the assigned counsel system has led to substantial confusion. The most publicized and embarrassing occurrence took place when the astoundingly inept Court Administrator Dr. Agwu Okali, in a botched attempt to geographically balance the Defense Counsel list, placed an arbitrary moratorium upon French and Canadian lawyers.^{lxix} Dr. Okali of course overlooked the fact that both countries happen to be the largest French speaking nations in the world.^{lxx} This startling unilateral advance of geopolitical Affirmative Action by Dr. Okali was described by Professor David Tolbert, the former *Chef de Cabinet* to the President of the ICTY and his senior legal advisor, as both “arbitrary” and “nonsense”.^{lxxi}

This situation reached a head following a detainee hunger strike led by former teacher and *bourgmestre* Jean Paul Akeyasu.^{lxxii} In response, (and not a little bit abashedly) Dr. Okali, bowing to both internal and international pressure, ceased his moratorium. The Okali-led affirmative action plan died quickly, Akeyasu and his cohorts began eating, and the Defense Counsel list currently includes Nicolas Tiangaye of the Central African Republic, Patrice Monthe of Cameroon, Johan Scheers of Belgium, and David Hooper for the United Kingdom. The ICTR however, never truly recovered from this piercing loss of legitimacy.

Within such a small tribunal such as the ICTR, there is generally very little room for mistakes of great significance. Certainly no defendant has ever been without counsel as a result of a clerical error, as has happened frequently in United States courts, and

continues to this day. With only fifty-five defendants and twenty-one of the most skilled legal scholars in the world as Judges, mistakes are few and far between. Questions, if they arise, are usually constrained to the law. The crux of this paper is where these two issues collide, the right to counsel as a matter of law, and how far it comparably stretches within the political practices of the ICTR adversely effected the Trial of Jean Kambanda.

In most nations which involve an appointed counsel system, (the United States and the United Kingdom for example), the indigent defendant may not pick and choose his attorney.^{lxxiii} He may discharge an attorney at his own behest, but the arbitrary selection of defense counsel is prohibited. These concerns generally arise within the context of an indigent defendant vociferously (but perhaps not unreasonably) requesting a counsel of his own race. An indigent defendant generally has no right to a certain counsel, but simply counsel in and of himself.^{lxxiv} In that respect, the ICTR differs from the norm. An indigent defendant personally selects his or her own lawyer from a list of several hundred highly qualified lawyers representing the major legal systems of the world.^{lxxv} It is then the Registrar's determination whether or not the selection will be appointed.

This departure from the norm has led to some legal confusion. Jean Paul Akeyasu, a teacher and convicted genocidal leader, selected a counsel from the list which was not granted. On appeal, he argued that his denial of specific counsel was tantamount to denial of counsel in it's entirety. This logic was dealt with at length by the appellate chamber, holding that a balance must be struck between a defendant's "right to counsel of his own choosing" and tribunal resources.^{lxxvi} The court held that an indigent defendant has no right to "specific counsel" despite the choice implied in selection, but rather is only entitled to counsel in it's most general meaning.

4. Jean Kambanda's Counsel.

The context in which counsel was finally appointed to Jean Kambanda are complex. Following his arrest in July and for the nine months following, Jean Kambanda communicated to the Registry that he did not seek legal counsel, though he would request it if it became truly necessary. The decision to proceed *pro persona*, within the vast body

of criminal law, is a weighty one and almost always recorded within the trial transcript. Certainty when an attorney is involved in a limited sense, as here, the decision to proceed *pro persona* raises several attorney duties independent of the client's wishes.^{lxxvii} Indeed, in many countries including the United States, a decision to proceed pro per must be acknowledged by the court at the outset.^{lxxviii} The ICTR has a similar procedure known as “*Renonciation temporaire au droit à l’assistance d’un conseil de la defense*,” literally translated a “Temporary Renunciation of the Right of Assistance of Counsel. This document Kambanda signed following a communication to the Register in October, but is not noted in the Trial Court opinion.^{lxxix}

Given the relative important of a pro per decision, one might imagine it would be duly recorded. Yet in Trial Chamber judgment it is completely ignored. There is no legal, nor practical explanation of this oversight. Indeed, if one were to simply read the opinion, it would be difficult, if not impossible, to infer that Jean Kambanda had appeared not once, but twice before the ICTR pro per, and had signed a waiver of counsel rights. The entire procedural history as redacted by Judge Kama contains no hint of the lack of counsel;

1. Jean Kambanda was arrested by the Kenyan authorities,...on 9 July 1997... On 16 July 1997, Judge Laity Kama, ...ordered the transfer and provisional detention of the suspect Jean Kambanda at the Detention Facility of the Tribunal for a period of thirty days, pursuant to Rule 40 bis of the Rules. ...

2. On 16 October 1997, an indictment against the suspect Jean Kambanda, prepared by the Office of the Prosecutor, was submitted to Judge Yakov Ostrovsky, who confirmed it, issued a warrant of arrest against the accused and ordered his continued detention.

3. On 1 May 1998, during his initial appearance before this Trial Chamber, the accused pleaded guilty to the six counts contained in the indictment, ...^{lxxx}

This could, potentially be explained away if a pro per decision is recorded at some later stage in the opinion. However in the entire judgment of the Trial Chamber, the decision to proceed pro per is never recorded, and Kambanda's objections to the new counsel never noted. The Trial Chamber, records only a short discussion of Kambanda's

“unequivocallness” of his “guilty plea”. As Professor Russell-Brown noted in her discussion of Kajelijeli, for almost 147 days Kajelijeli was without counsel in flagrant violation of international law.^{lxxxii} Consider then, that Jean Kambanda, perhaps the most culpable of defendants, was without counsel for almost *four months* !

The appeals chamber, in stark contrast stated;

Between 18 July 1997, the date of his arrest, and March 1998, the Appellant did not wish to be represented by counsel, reserving his right to such assistance until he expressly said that he felt it necessary. On 11 August 1997, in a letter to the Registry, he declared that he wished to waive his right to be represented by counsel, which waiver he confirmed verbally during the Trial Chamber hearings on 14 August and 16 September 1997. On 18 October 1997, the Appellant submitted a document entitled "Renonciation temporaire au droit à l'assistance d'un conseil de la défense" (Temporary Waiver of My Right to Defence Counsel), in which he once again confirmed his waiver in writing.^{lxxxiii}

The appeals chamber further noted that following the plea agreement, he appeared before the chamber three times without assistance of counsel, totaling five times he had appeared pro per before the Trial chamber.

Throughout this process, Kambanda alleged that though he repeatedly requested Counsel Sheers,^{lxxxiii} and the Registry insisted upon assigning him a little known Cameroonian Defense Counsel named Oliver Michael Inglis.^{lxxxiv} Little information is available regarding his selection, though in a later appellate opinion Kambanda would allege that Inglis, a Cameroonian Defense counsel, had been a friend of the Deputy Prosecutor for over thirty years.^{lxxxv} It was under Inglis’s counsel that Kambanda pled guilty and was sentenced to life imprisonment, the most severe punishment the ICTR may confer.

5. Jean Kambana’s Plea – The Trouble with Inglis.

a. The Plea.

A plea of guilty in the ICTR is generally considered a mitigating circumstance for the purposes of sentencing.^{lxxxvi} A rapid plea of guilty at the outset of litigation, which gives no inference of strategy by the accused to secure the “best of a bad situation” is

considered even more mitigating.^{lxxxvii} Indeed, in many instances such a plea might be one of the final shreds of hope for an ICTR defendant. The ICTR has, after all, far out shadowed its predecessor the International Criminal Tribunal for Yugoslavia in severe sentences.^{lxxxviii} More practically the Rwandan *Gacaca* courts (domestic tribal versions of the ICTR), found that a rapid guilty plea within the context of genocide ameliorates the obviously abrasive racial environment, as well as overcoming evidence problems in the post-genocide era.^{lxxxix}

Eulogies of guilty plea's aside, the western procedure of pleading guilty has long been criticized in domestic academe as inept and dictatorial.^{xc} Such claims rise to a new level of severity when litigated in the context of elite legal fora, such as the ICTR. Pleas in international law are of far greater import, and their effects upon sentencing more profound than in the domestic arena. As aforementioned, a swift and painless guilty plea may be the last weapon a defendant has against the scathing wrath of an angry chambers.

Rule 62 of ICTR Rules of Procedure and Evidence governs the legal sanctity of pleas.^{xcii} It parallels the general school of thought regarding pleas, which hold that for a plea to survive appellate review, it must be free and voluntary, unequivocal, informed, and based on sufficient facts. This four pronged test requires each element to be verified in open court by the Trial Chambers, through a semi-interrogative questioning by the Chamber Judges. This verification is outlined in Rule 62(v),^{xcii} and was carried out in Jean Kambanda's trial, but also notably in the plea of Omar Serushago, the violent *Interahamwe* squad leader in Gisenyi.^{xciii}

The plea of Jean Kambanda, as opined by the trial court, was verified by Judge Kama.^{xciv} Though descriptive of the questions and affirmative answers, no explicit language save the Trial Court's actual verdict of "guilty" was mentioned in the opinion. The court's complete discussion of the incident consists of the following;

The Chamber, nevertheless, sought to verify the validity of the guilty plea. To this end, the Chamber asked the accused:

(i) if his guilty plea was entered voluntarily, in other words, if he did so freely and knowingly, without pressure, threats, or promises;

(ii) if he clearly understood the charges against him as well as the consequences of his guilty plea; and

(iii) if his guilty plea was unequivocal, in other words, if he was aware that the said plea could not be refuted by any line of defence.

7. The accused replied in the affirmative to all these questions. On the strength of these answers, the Chamber delivered its decision from the bench as follows:

"Mr. Jean Kambanda, having deliberated and after verifying that your plea of guilty is voluntary, unequivocal and that you clearly understand its terms and consequences,..."^{xcv}

So far, so good. Little dispute exists over a recorded interrogation by the eminent jurist Laity Kama.^{xcvi} Justice Kama goes on to discuss some of the underlying principles of international law, and the statutory framework of the tribunal, before beginning to discuss the case in earnest.^{xcvii} The crux of this paper emerges when Laity Kama begins to discuss the plea agreement and affidavit signed by Kambanda and his Counsel Inglis. The Trial records that this document entitled "Plea Agreement between Jean Kambanda and the OTP" was signed on April 28th 1998.^{xcviii} However, the Appeals Judgment notes that, at the earliest, Kambanda did not have ANY counsel until the 25th of March, 1998,^{xcix} only *thirty-four days* before the plea agreement was signed, and just *twenty-four* working days before the plea agreement was signed with Counsel Inglis. Thus Jean Kambanda not only agreed to a plea stratagem (which was obviously unsuccessful), assembled a plea agreement, and conducted relatively complex crisis bargaining having a lawyer for the grand total of less than four weeks.

On the 4th of September 1998, just six months after he had been appointed counsel, Jean Kambanda was sentenced to life in prison by a unanimous panel of Judge Laity Kama, Judge Lennart Aspegren, and Judge Navanethem Pillay.

b. The Trouble with Inglis.

This paper does not dwell upon the strategic and tactical inadequacies of Counsel Inglis' crisis bargaining. Whether Inglis was simply confused the day he signed an Affidavit condemning his client to die in prison, or malicious, is irrelevant. The core issue is that Kambanda's appointed Defense counsel signed an affidavit which proved the Prosecution's case. Among the more damning things the affidavit discussed were relived by Judge Kama in his opinion;

Jean Kambanda acknowledges that as Prime Minister of the Interim Government of Rwanda from 8 April 1994 to 17 July 1994, he...exercised de jure and de facto authority over senior civil servants and senior officers in the military...^c

Jean Kambanda acknowledges that on 3 May 1994, he was personally asked to take steps to protect children who had survived the massacre at a hospital and he did not respond. On the same day, after the meeting, the children were killed. He acknowledges that he failed in his duty to ensure the safety of the children and the population of Rwanda...^{ci}

Both of these affirmations indicate that Kambanda and his Counsel not only agreed to factual conclusions but legal conclusions as well. Counsel Inglis essentially allowed the Prosecutor to prove their case before it began. For example, the legal conclusion of *de jure* and *de facto* authority, by its very nature, is an incredibly complex litigation and not one which can be sidestepped at the outset by a mere signed document. Yet Inglis's damage was far from done.

In the Pre-sentencing transcript of Jean Kambanda, the Trial Prosecutor stated clearly that "We believe that this offence merits nothing less than the maximum, maximum punishment".^{cii} The keystone of the Prosecutor's argument was the damning admissions made by Jean Kambanda in his affidavit. However following direct

questioning by Judge Muna into the Accused's cooperative nature the Prosecutor responded to interrogation with a startling admission;

“ JUDGE PILLAY: My interest is not what he told you in confidence or what your informers told you. I am interested in whether the accused made any public statement speaking out on the truth of the events in Rwanda.

MR. MUNA: Not to my knowledge, not to my knowledge, Your Honour.”

Thus the senior prosecutor, responsible for eulogizing Kambanda's cooperation and admissions, was unable to cite any public statements by Kambanda to that effect. To complicate matters further, Counsel Inglis's own pre-sentencing statements dwelled upon myriad factors which, if not for his preliminary admission of guilty, might well have functioned as affirmative defenses. Inglis' argument that Kambanda may have been coerced to become Prime Minister, and was continually surrounded by a vanguard of armed Defense ministry bodyguards isolating him from private contact, might have played well in a Trial setting.^{ciii} Yet this directly contradicted the affirmation which Inglis himself had signed. Thus the confused Chambers were, on the one hand, confronted with a signed affidavit indicating *de jure* authority but simultaneously met with Counsel Inglis counter-vailing argument of coercion.

In the most bizarre of his statements, Inglis began quoting laudatory letters from genocide survivors, including a self-stylized fan who was “a collector on autographs of persons who really have done something positive for their people and the future of mankind.” The most frank determination of Counsel Inglis's obvious inept manner may be had from a short transcript of the first question Judge Pillay asked of him;

JUDGE PILLAY: Mr. Inglis, you refer in your brief to a document that you say the accused wrote in November, 1995, in Nairobi.

MR. INGLIS: Pardon?

JUDGE PILLAY: I am referring to your brief.

MR. INGLIS: Yes?

JUDGE PILLAY: In which you are-- make mention of a document written by the accused in November'95 you say called-- well it is a document about peace and reconciliation in Rwanda. Do you know that? It is in your brief here, I am referring to-- do you want the page, page 4?

MR. INGLIS: Yes.

JUDGE PILLAY: But you didn't put up this document and you don't tell us anything about the contents of that document, and you don't tell us why the Chamber should somehow take that into consideration as mitigatory so if we don't know, if we don't know the contents of the documents, we can only speculate on its contents. It may be another-- is it another plan for genocide or is it some exciting plan for peace? So if you are in a position can you tell us, give us some idea of what the accused's position is with regards to peace and reconciliation in Rwanda and how-- and whether he sees any role for himself in the process of peace and reconciliation in Rwanda?

MR. INGLIS: What role he played?

JUDGE PILLAY: So that's my one question in relation to this document and the accused's thoughts on peace and reconciliation in Rwanda and whether he sees any role for himself in that? So that's the one part of my question and the other is can you explain how a prison sentence of 2 years is going to help the healing process?

As the pre-sentencing hearing progressed, it became apparent that Counsel Inglis was defending Kambanda through allegations of coercion and a “puppet” government. However defense in a pre-sentencing hearing is to no avail. Having been convicted of genocide, Kambanda was in a position analogous to that of an In-Custody Felony Defendant in a California Arraignment (Where the Judge must, without regard to defenses or allegations, assume the crime is true). Affirmative defenses or pleas of diminished capacity are extraneous in a pre-sentencing hearing. Yet Inglis had one final card up his sleeve.

In a final surreal, if not Charles Dodson-esque bit of advocacy,^{civ} Counsel Inglis cited the Ugandan Penal Code. The crux of his argument was that if Uganda mitigated capital punishments to five years, and life imprisonment to two years, could not the ICTR accept the same rationale? Thus Inglis implicitly argued that Kambanda could, plausibly, receive the same punishment for multiple genocide convictions as if he sold 16 ounces of marijuana in Salt Lake City, Utah.^{cv} Consider the obviously estranged statement;

The case now before your Trial Chamber is repeat [replete] with mitigating factors that tell in favour of a sentence of two years, two years imprisonment, if you follow the general practice regarding prison sentences in Rwanda in the interest of justice and with a view to reconciliation among the people

This statement, which found its basis in Article 83 of the Ugandan Penal Code, neglected to mention that Uganda was not replete (forgive the pun) with judicial legitimacy itself. Having survived its own horrific genocide at the hands of Idi Amin, and led by the dictator-President Lt. Gen. Yoweri Kaguta Museveni (who appoints the entire judiciary), Uganda's legal system would, in the layman's view, have been a second-string choice for citation in a pre-sentencing hearing on genocide.

Kambanda's plea was accepted. The Trial Court, sentenced Kambanda to life imprisonment on the 4th of September 1998, six years ago.

6. The Appeal.

a. Prelude.

Four days after sentence was passed, Kambanda filed a notice of appeal through his erstwhile Counsel Inglis.^{cv} Four days after this notice, Kambanda applied to dismiss Inglis, and change his defense counsel.^{cvii} At some point later, (the appeals judgment is unclear) Counsel was substituted, and Kambanda was appointed a new defense counsel in the form of Tjarda Eduard van der Spoel and Gerard Mols, both experienced attorneys who has since appeared in both the ICTR and the International Criminal Tribunal for Yugoslavia. Within weeks a solidified appeal was lodged, alleging incompetence of counsel, denial of the right to counsel, and a motion to set aside the plea of guilty and request a new trial.

At the outset, it appeared that Tjarda van der Spoel was undoubtedly a more expert counsel.^{cviii} Unlike the rather passive Mr. Inglis, whose ill fated plea bargain led to Kambanda's life sentence, Tjarda Van der Spoel proved a different animal. Van Der

Spoel's defense team immediately began appellate skirmishes with the Prosecutors, supplanting motions with further motions eventually running into the hundreds of pages. There were, the appellate court noted with a twinge of chagrin, appendices to motions which ran into the hundreds of pages.^{cxix} These appendices were, of course, met with equal literary vehemence by the Prosecutor's office, which began a campaign to bolster the Kambanda judgment. At a certain point, there were three reply's to a single document, a treatise awkwardly entitled A "Reply to the Prosecutor's Response on the Appellant's Brief of 2nd of May 2000".^{cx}

In the final analysis, Kamanda's eight count appeal of the Trial Court Judgment was an indictment of the ICTR itself. In the brief span of three pages, Van der Spoel argued that the Trial Chamber denied Kambanda his right to counsel, did not investigate the plea thoroughly, based the plea itself on an insufficient factual basis, illegally detained Kambanda outside the Arusha complex, and failed whatsoever to analyze the guilty plea as a mitigating circumstance.^{cx} The crux of this appeal revolved around Inglis and the Trial Chamber itself. Van der Spoel's appeal was a condemnation of the proceedings and a blunt analogy to the Trial Chamber of the ICTR as a politically motivated lynch-mob. Van der Spoel harped upon the right to counsel, arguing that the Registry denied him the right to Counsel Sheers, intentionally substituting the inept Inglis.

The severity of the allegations were such that the Prosecution itself filed an Objection to the right-to-counsel arguments,^{cxii} and the Registry (in an unprecedented and subjective *amicus*) filed a "Reply" against Van der Spoel's allegations.^{cxiii} Never in the history of the ICTR had the Registry sought to intervene in the Criminal process, and it has never sought intervention since. Van der Spoel's allegations threatened Registrar Okali's very legitimacy, and sensing his own power was becoming suspect, Okali lashed out as only a threatened tyrant can. Okali's own legal vanguard actually moved the Appeals Chamber to dismiss Kambanda's case on the basis that appointment of a counsel is not an justiciable legal stance.^{cxiv} This legal posture and presence, unheard of in modern international law, continues to undermine the Registers own objectivity. Okali,

inept himself, also created an embarrassing situation again by appearing highly subjective in his ostensibly non-legal position. The entire affair was equivalent to a Federal Court Clerk functioning as an ex officio state *amicus* for a United States Attorney.

In October of 2000, many replies, counter-replies, and objections later, the appeals court under the deific figure of Justice Jorda,^{cxv} disposed of the appeals grounds and affirmed the judgment of the Trial court. Citing a host of documents including the European Convention for the Protection of Human Rights, Justice Jorda stated “*the right to free legal assistance by counsel does not confer the right to choose one’s counsel.*”

b. The Mistake.

The critical error in Van der Spoel’s argument was his failure to base Inglis’ incompetence as an independent ground of appeal. The inadequacy and incompetence of Counsel Inglis received remarks only in passing. Though the incompetence was noted and implicitly argued as tantamount to legal denial of counsel, Justice Jorda’s masterful writing disposed of Inglis’ behavior, ruling on the appeal as a matter of law, without dwelling on facts. Justice Jorda legally and elegantly sidestepped the painful task of cutting apart Counsel Inglis and granting Kambanda the new trial to which he was obviously entitled. Without a full argument that Counsel Inglis was incompetent, and only an argument that Kambanda was denied his right to a specific counsel Jorda opined;

*...in the Appellant’s briefs and oral statements the problem of his counsel’s inadequacy **never figured as an argument, let alone an independent ground of appeal** [emphasis added]. The Appellant’s allegations on this point are at the very least confused. It is true that in his statement the Appellant did cite, for example, the insufficient number of meetings with his counsel and the latter’s lack of interest in and knowledge of the case file[40]. The Appeals Chamber nevertheless finds that **the Appellant has not succeeded in showing his Counsel to be incompetent on the basis of solid arguments and relevant facts** [emphasis added]. Rather, the Chamber has before it documents proving that counsel for the*

Appellant carried out the functions of his office in the normal manner[citation omitted]. The Appeals Chamber therefore cannot accept the Appellant's allegations and concludes that he has not been able to demonstrate the existence of special circumstances capable of constituting an exception to the waiver principle.

c. Strategy and Politics.

There is no right to a “specific counsel” in any context. If Van der Spoel had argued that Kambanda had no counsel, or that Inglis’s incompetence had deprived him utterly of counsel, Jorda would have been forced to confront Inglis’s inadequacy and enter into a *de novo* factual determination. However, by arguing a *specific* right to a *specific* counsel,^{cxvi} Jorda was able to eradicate Van der Spoel’s best argument as a matter of law, and not of substantive facts. Van der Spoel committed the strategic error of allowing Justice Jorda to fight on the ground of his own choosing. By placing the appellate battlefield in theoretical international law, Van der Spoel, despite his brilliance, was outgunned.^{cxvii}

With the bulwark of Van der Spoel’s arguments destroyed, the backbone of the appeal began to break. The secondary grounds of unlawful detention and invalidity of the guilty plea, were all premised upon the central argument of lack of a specific counsel (Kambanda was denied his specific counsel, therefore his plea could not have been informed, or voluntary). Jorda’s succinct disposal of the central premise broke Van der Spoel’s charge. By allowing Jorda to take ‘the high ground’ and eradicate his central argument as a matter of law, Van der Spoel’s secondary arguments, powerful though they were, could not stand up to Jorda’s eviscerating scrutiny. Van der Spoel’s argument was premised in facts, not the law. Jorda’s opinion was entirely the law, dwelling sporadically on facts.

7. The Clash in Counsel Rights.

a. The United States vs. The ICTR.

Thomas Jefferson once cribbed a quote from the “Tryal of Stafford”. Writing with a Virginian’s intellectual disdain for all things north of Charlottesville, Jefferson sarcastically noted the common (Yankee?) Judge’s *moyens* as *boni judicis est ampliare jurisdictionem*, or ‘good justice is broad jurisdiction’.^{cxxviii} Jefferson, was stalwart in his distrust of the “despotic” judiciary and vehement in his belief that political corruption rendered it vulnerable to dictatorial tendencies.^{cxxix} His fears were echoed by many philosophers, both ancient and modern. In the mid 19th century William Carpenter wrote of the inhumanity of the Chancery Court,^{cxx} while Jefferson’s paradigm of vulnerability was obviously drawn from Hobbes overarching disdain for most things human and culpable...particular judges.^{cxxi} Sadly, it seems that, at least in the international arena, some of this distrust is not unfounded.

Would the plea of Jean Kambanda be accepted in the United States ? In the United States the *Strickland v. Washington* rule, holds that the right to counsel is synonymous with the right to a competent counsel.^{cxxii} But despite the existence of this claim, U.S. courts are loath to dwell upon the trial behavior of attorneys. In American jurisprudence, one may go extremely far before having the scarlet letter of “incompetence” emblazoned upon an attorney’s coattails. The courts have upheld the sanctity of a proceeding where counsels has become progressively deaf and blind,^{cxxiii} visibly intoxicated and reeking of alcohol,^{cxxiv} and in one bizarre case arising from *Jackson v. State*, where Counsel had in fact “*been so overwhelmed and discomfited by his own inept performance that he was "driven into an infantile hysterical tantrum which was tantamount to a disturbed child eluding a bully but exclaiming his humiliation while doing so [he] climaxed his unskilful performance with a serious series of ambidexterous arm swings and an audible rhythmical crescendo [sic] of, (quote) 'Fiddle Sticks, Awe Poot'.*”^{cxxv} Inglis performance would have been accepted as sub-par, but perhaps a U.S. Appeals court would also have determined incompetence.

Could Inglis’s performance be some sort of strategic gamble ? Unfortunately, an argument that Inglis was attempting to spare Kambanda the threat of multiple life sentences is inadequate. The ICTR is not a domestic court. The forlorn hope of Parole is in vain. If Kambanda was to receive one life sentence, his punishment would be identical to a sentence of forty life sentences. Similarly, why would Inglis rely solely on the guilty plea as the chief grounds of mitigation. In the case of *Gérard Ntakirutimana*, a trial convicted *Genocidaire* and murderer, the Trial Chamber sentenced him to a mitigated punishment of twenty-five years.^{cxxvi} Georges Ruggiu, a Belgian who plead guilty to incitement to genocide was sentenced to two concurrent terms of 12 years.^{cxxvii} Both *Ruggiu* and *Ntakirutimana* had substantial mitigatory facts, including character evidence, youth, and families. While gambles are prevalent in United States courts, they are infrequent in the context of the ICTR, where stakes are far greater.

Rationally, if Jean Kambanda was already facing life-imprisonment, *what did he have to lose by pleading not guilty* ? Judge Kama of the Trial Chamber noted with substantial sarcasm that “*Both Counsel for Prosecution and Defence have urged the Chamber to interpret Jean Kambanda’s guilty pleas as a signal of his remorse, repentance and acceptance of responsibility for his actions. The Chamber is mindful that remorse is not the only reasonable inference that can be drawn from a guilty plea.*” This would indicate that even with an inference of remorse and repentance, there was no significant advantage to pleading guilty at the outset...might Kambanda have been better off in a trial ?

Unfortunately for comparison, this is precisely the sort of “second-guessing” U.S. Courts are strenuously opposed too. While severe sixth amendment infractions will result in appellate reversal, it is an infrequent judge who will depart from the norm, and enter into the mind of a trial lawyer to determine adequacy. A presumption of competence pervades Sixth amendment jurisprudence,^{cxxviii} and as discussed at length in the American Jurisprudence Trials Encyclopedia, there is a veritable plethora of errors which did not result in reversal.^{cxxix}

b. The Final Analysis.

In the Book of Genesis, Abraham is instructed by God to make a sacrifice of his only son Issac, as a symbolic gesture of his faith.^{cxxx} Recognizing that only through the purest sacrifice could both faith and Abraham's own resolve be secured, the Almighty duped the Prophet into securing a lasting connection between the Heavens and himself. In the same vein, Kambanda became the Issac of an unforgiving political climate. His unsuccessful appeal was a direct result of the need for a sacrificial lamb to calm the rising tide of Rwandan intransigence and United Nations angst. It was Kambanda himself who foresaw his own seemingly sacrificial position in a letter to the Registry;

...permit me to cast doubt over certain practices surrounding my trial and the illusion that some people seem to entertain of having found the sacrificial lamb which will erase the responsibilities of others in the extermination of the Rwandan people...

Both Judge Laity Kama and Justice Claude Jorda were painfully cognizant of the fact that Jean Kambanda, despite his guilt or innocence, symbolized the genocide. However innocent in the eyes of the law Kambanda might be, however inept and deplorable his Counsel's conduct was, Jean Kambanda's face had become intransigently imbedded in the Rwandan psyche. A swift and brutal punishment would undoubtedly provide closure to the thousands of victims of genocide in Rwanda, allowing the country to take a large step forward toward healing and reconciliation. This brutal but effective paradigm of symbolism, is prevalent in history and philosophy. The symbol of violence is destroyed at the behest of the kind master. Indeed, political philosopher Niccolo Machiavelli noted this rationale in his treatise "The Prince" concerning the execution of violent Baron Ramiro d'Orco.^{cxxxii} Both Kama and Jorda, exquisitely trained scholars of law and history would recognize this analogy and the implications of offering up Kambanda to the bloodthirsty masses.

Kama and Jorda were also cognizant of a more pressing threat. Since 1999, the Rwandan people's dissatisfaction with the ICTR has manifested itself in political intransigence, protests, and even criticism from the United Nations and abroad.^{cxxxii} In November of 1999, several months before the appeal, a peaceful assembly of genocide survivors had implanted itself outside the diminutive ICTR facility, and protested the release of Attorney Barayagwiza, a genocidal colleague of Kambanda. Rwanda itself had refused to appear at the United Nations General Assembly until the Barayagwiza issue was resolved, and had suspended all cooperation with the ICTR forthwith.^{cxxxiii}

At the outset of the ICTR venture, relations between Kigali and the UN's judicial forward base were tenuous. Kambanda was ostensibly caught between a Gargantua and Pantagruel-esque combat. The Rwandan people had long been amazed at the arrogance of the United Nation's intervention in their judicial process. It was UN Secretary General Annan who had refused to augment troops in a last effort to stem the beginnings of the genocide.^{cxxxiv} Despite the last minute valiant efforts of UN peacekeeper General Romeo Dallaire, and 500 of his troops, it was the United Nations which allowed the mass slaughter of innocent men women and children.^{cxxxv}

In order to preserve and strengthen the ties between the UN ICTR, and the government of Rwanda, and regain the legitimacy they had lost, the Court needed a sacrifice. Like Issac, blood needed to be spilt in order to preserve what justice was left. The Prime Minister of Rwanda, a highly recognizable face and symbol of the genocide, seems perfect to portray as the ICTR's *piece de resistance*...and a clear symbol that the ICTR was "on the side of Rwanda".

8. Conclusion:

At the close of many scholarly essays and law review articles, it behooves the researcher to dwell upon the greater implications of his research. Many authors choose at this juncture to discuss the ramifications of their thesis upon a field of law. Like a student's stone cast into a pond of jurisprudence, these authors write of their ripples upon the face of the water. Other writers seek to critique the state of the law, and instead choose to discuss the pond in its entirety. Still others disregard the pond and the water, and instead delve deep into the heart of their thesis, and analyze the stone.

This layman researcher feels there can be no joy in any of these tasks. He concludes, with some sadness, that Jean Kambanda deserves to remain where he is. Sacrificial though Kambanda's fate might seem, the suffering to the people of Rwanda should its injuries be reopened, and her healing wrenched to a halt, would be too destructive to bear. Too many good men have perished in an effort to halt or heal the troubles of Rwanda, to allow its anguish to resurface. This troubled land where the peaceful Pygmy *Twa* once walked, where the last remaining mountain gorillas scatter amidst gunfire, and orphaned children with bodies torn and mangled by explosives, play in the street, has endured enough.

Kambanda is, of course, not innocent. Inconsistencies and politics aside, as a matter of natural justice, he undoubtedly belongs in prison. But as many a Public Defender might say, "Is this truly the way to go about it?" Perhaps there is an alternative route which neither hurts Rwanda, nor sacrifices the natural justice of Jean Kambanda. Yet in the final analysis, it would take greater minds than I to imagine it.

The small man sits on the edge of his bed. His dark skin and orange jumpsuit are searing against the white starched walls of his small cell. Back hunched, eyes downcast, almost closed, hands on his knees. It is impossible to tell whether he is asleep, meditating, or merely waiting. The fluorescent tube-light above him buzzes and snaps, and his fingers remove the black plastic eyeglasses and massage his tired temples. A bell sounds and the lights in his hallway shut off with a thump of steel. Jean Kambanda does not move as he is plunged into darkness.

His eyes close on his 1,825th day.

ⁱ The valiant Agathe Uwilingimimana was the moderate Hutu Prime Minister who masterminded the peace accord between the leading factions of Rwanda, and the only person who, conceivably, could have averted the Genocide. Ostracized by her own party, immediately following the assassination of the Rwandan President, her Belgian guard were massacred and she was murdered.

ⁱⁱ REDACTED TRANSCRIPT, PRESENTENCING HEARING, *Prosecutor v. Kambanda*, ICTR 97-23-I, 03/09/1998, Pg. 41, lines 16-20 (1998) available at <http://157.150.221.3/main.htm>. (Last accessed July 18th 2004).

ⁱⁱⁱ U.S. CONST. amend VI.

^{iv} *Gideon v. Wainwright*, 372 U.S. 335 (1963).

^v *In Re Gault*, 387 U.S. 1 (1967).

^{vi} See e.g., Stacey L. Reed, *A Look Back at Gideon v. Wainwright After Forty Years: An Examination of the Illusory Sixth Amendment Right to Assistance of Counsel*, 52 DRAKE L. REV. 47, 48 (2003).

^{vii} *Powell v. Alabama*, 287 U.S. 45, 56 (1932) (Rape was a capital crime in Alabama at the time).

^{viii} Consider the sheer lack of any indigent defense. The first two public defender systems in the United States were in Los Angeles County and New York City, arising in 1914 and 1918 respectively. They were initially intended not to zealously advocate for indigent defendant's rights, but to supplement the prosecution service by speeding along cases. See, Charles J. Ogletree and Yoav Sapir, *Keeping Gideon's Promise: A Comparison of the American and Israeli Public Defender Experiences*, 29 N.Y.U. REV. L. & SOC. CHANGE 203, 205 (2004).

^{ix} *Betts v. Brady*, 316 US 455, 461-62, (1942).

^x Joseph Stambaugh, Note, *Alabama v. Shelton: One Small Step for Man, One Very Small Step for the Sixth Amendment's Right to Counsel*, 31 PEPP. L. REV. 609, 623 (2004).

^{xi} Bruce R. Jacob, *Memories and Reflections about Gideon v. Wainwright*, 33 STENSON L. REV. 181, 184 (2003) (*Strickland v. Washington* is the corollary right-to-counsel rule that holds that a right to counsel is synonymous with the right to a competent counsel).

^{xii} Bruce R. Jacob, *Memories and Reflections about Gideon v. Wainwright*, 33 STENSON L. REV. 181, 251 (2003).

^{xiii} *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

^{xiv} *Argersinger v. Hamlin*, 407 U.S. 25, 27 (1972).

^{xv} *Duncan v. Louisiana*, 391 U.S. 145, 149-50 (1967) (Justice White holding that where a demand for a jury trial is denied for a misdemeanor punishable by two years in jail [Note this is in the Civil law system], Constitutional Due Process has been violated).

^{xvi} *Duncan v. Louisiana*, 391 U.S. 145, 147 (1967).

^{xvii} *Washington v. Texas*, 388 U.S. 14, 16 (1967)

^{xviii} *Argersinger v. Hamlin*, 407 U.S. 25, 38 (1972)

^{xix} Reply Amicus Curiae Brief for Appellant at 3, *Alabama v. Shelton*, 535 U.S. 654 (2002) (National Association of Criminal Defense Lawyers, Counsels of Record Steven Duke and Thomas F. Liotti).

^{xx} See e.g., *Scott v. Illinois*, 440 U.S. 367 (1979) and *Alabama v. Shelton*, 535 U.S. 546 (2002). Also see, Joseph Stambaugh, Note, *Alabama v. Shelton: One Small Step for Man, One Very Small Step for the Sixth Amendment's Right to Counsel*, 31 PEPP. L. REV. 609, 629-32 (2004) (Providing a fair overview of some of the problems with the *Argersinger* rule, from which these two cases are drawn).

^{xxi} See, Alfredo Garcia, *The Right to Counsel Under Siege: Requiem for an Endangered Right?*, 29 AM. CRIM. L. REV. 35, 52 (1991) (Discussing *Argersinger* and Justice Clark's cynical remark regarding the Supreme Court's "fetish for indigency". This citation requires a reasonable inferential leap that the vast majority of cases are misdemeanors punishable by imprisonment, not felonies.); Also see, the second and third sentence of Justice Rehnquist's opinion in *Scott v. Illinois*, 440 U.S. 367 (1979).

^{xxii} *Scott v. Illinois*, 440 U.S. 367 (1979).

^{xxiii} See, 18 U.S.C.A. § 3005 (West Supp. 2004) (the statutory right to counsel in capital and treason cases) and Bruce R. Jacob, *Memories and Reflections about Gideon v. Wainwright*, 33 STENSON L. REV 181, 251 (2003) (discussing the automatic counsel implication of *Gideon*).

^{xxiv} Polina R. Bodner, *Constitutional Law – Imposition of a suspended sentence in a misdemeanor case invokes a defendant's sixth amendment right to counsel – Alabama v. Shelton*, 535 U.S. 654 (2002), 37 SUFFOLK U. L. REV. 211, 215 (2004) (citing to *Alabama v. Shelton*).

^{xxv} Eileen A. Scallen, *Classical Rhetoric, Practical Reasoning, and the Law of Evidence*, 44 AM. U. L. REV. 1717, 1722 (1995) (Professor Scallen is of the opinion that one of the first "advocate" theorists was Corax of Syracuse).

^{xxvi} 2 Exodus 4:10-14. ("And Moses said unto the LORD, O my Lord, I am not eloquent, neither heretofore, nor since thou hast spoken unto thy servant; but I am slow of speech, and of a slow tongue...And the anger of the LORD was kindled against Moses, and he said, Is not Aaron the Levite thy brother? I know that he can speak well.")

^{xxvii} Eileen A. Scallen, *Classical Rhetoric, Practical Reasoning, and the Law of Evidence*, 44 AM. U. L. REV. 1717, 1722 (1995)

^{xxviii} Amanda N. Montague, *Recognizing all Critical Stages in Criminal Proceedings: The Violation of the Sixth Amendment By Utah in Not Allowing Defendants the Right to Counsel at Parole Hearings*, 18 BYU J. PUB. L. 249, 249 (2003).

^{xxix} David J. D'Addio, *Dual Sovereignty and the Sixth Amendment*, 113 YALE L.J. 1991, 1991 (2004) (citing to *Texas v. Cobb*); Also see, *Texas v. Cobb*, 532 U.S. 162 (2001).

^{xxx} *Escobedo v. Illinois*, 378 U.S. 478, 490-491 (1964) (Note however that *Escobedo* was decided two years prior to *Miranda* and the same interrogation would be summarily barred under the Fifth Amendment right to counsel).

^{xxxi} *Kirby v. Illinois*, 406 U.S. 682, 688 (1972).

^{xxxii} Beth G. Hungate-Noland, *Texas v. Cobb: A Narrow Road Ahead for the Sixth Amendment Right to Counsel*, 35 U. Rich. L. Rev. 1191, 1193 (2002).

^{xxxiii} *Kirby v. Illinois*, 406 U.S. 682, 689-90 (1972) (Justice Rehnquist stating “The initiation of judicial criminal proceedings is far from a mere formalism. It is the starting point of our whole system of adversary criminal justice.... It is this point, therefore, that marks the commencement of the ‘criminal prosecutions’ to which alone the explicit guarantees of the Sixth Amendment are applicable...”.)

^{xxxiv} See generally, Amanda N. Montague, *Recognizing All Critical Stages In Criminal Proceedings: The Violation of the Sixth Amendment by Utah in Not Allowing Defendants the Right to Counsel at Parole Hearings*, 18 *BYU J. PUB. L.* 249 (2003).

^{xxxv} *Douglas v. California*, 372 U.S. 353, 357 (1963) (but note the court’s dictum “But where the merits of **the one and only** appeal [emphasis added] an indigent has as of right are decided without benefit of counsel..”)

^{xxxvi} Steven J. Eagle, *Planning Moratoria and Regulatory Takings: The Supreme Court’s Fairness Mandate Benefits Landowners*, 31 *FLA. ST. U. L. Rev.* 429, 474 (2004).

^{xxxvii} Timothy P. O’Neill, *Rethinking Miranda: Custodial Interrogation as a Fourth Amendment Search and Seizure*, 37 *U.C. DAVIS. L. REV.* 1109, 1110 (2004) (Discussing the murky relationship between the 5th Amendment and the Miranda right to counsel as a problem akin to Fermat’s Last Theorem).

^{xxxviii} Kirsten Lela Ambach, *Miranda’s Poisoned Fruit Tree: The Admissibility of Physical Evidence Derived from an Unwarned Statement*, 78 *WASH. L. REV.* 757, 762 (2003).

^{xxxix} *Rhode Island v. Innis*, 446 U.S. 291 (1980); Also see, Charles E. Glennon and Tayebe Shah-Mirani, *Illinois v. Perkins: Approving the Use of Police Trickery in Prison to Circumvent Miranda*, 21 *LOY. U. CHI. L. J.* 811, 830 n42 (1990) (stating verbatim testimony of the officers was “At this point, I was talking back and forth with Patrolman McKenna stating that I frequent this area while on patrol and [that because a school for handicapped children is located nearby,] there’s a lot of handicapped children running around in this area, and God forbid one of them might find a weapon with shells and they might hurt themselves. Officer McKenna: I more or less concurred with him [Gleckman] that it was a safety factor and that we should, you know, continue to search for the weapon and try to find it. Officer Williams: He [Gleckman] said it would be too bad if the little--I believe he said a girl--would pick up the gun, maybe kill herself. At this point in the conversation, Innis requested that the officers turn the car around so he could show them the location of the gun. Id.”)

^{xl} *Gideon v. Wainwright*, 372 U.S. 335, 344 (1967) (discussing the rationale behind the right to counsel); Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathic, Heroic Public Defender*, 37 *U.C. DAVIS L. Rev.* 1203, 1209 (2004) (discussing why public defenders defend).

^{xli} *Kimmelman v. Morris*, 477 US 365, 374 (1986).

^{xlii} See, e.g., Daniel E. Kirsch, *The Prosecutor Circumvents the Sixth Amendment Right to Counsel with a simple “Wink and Nod”*, 69 *MO. L. REV.* 553, 553 (2004) (Consider Kirsch’s thesis that the incursion into *Miranda* in *United States v. Johnson*, are too costly for society)

^{xliii} Erik Luna, *A Place for Comparative Criminal Procedure*, 42 *Brandeis Law Journal* 277, 313 (2004) (discussing the “docile” nature of British defense counsel, though how one would refer to Sir Matthew Hale as “docile” is certainly beyond this researcher).

^{xliv} Hon. Earl Johnson, *Will Gideon’s Trumpet Sound a New Melody? The Globalization of Constitutional Values and It’s Implications For a Right to Equal Justice in Civil Cases*, 2 *SEATTLE J. SOC. JUS.* 201, 208 (2003).

^{xlv} Erik Luna, *A Place for Comparative Criminal Procedure*, 42 Brandeis Law Journal 277, 313-4 (2004)

^{xlvi} See, George C. Thomas, *Improving American Justice by Looking at the World: A Review of Criminal Procedure: A Worldwide Study*, Edited by Craig M. Bradley, 91 J. CRIM. L. & CRIMINOLOGY 791, 791 (2001) (Reviewing Craig M. Bradley, CRIMINAL PROCEDURE: A WORLDWIDE STUDY. Discussing the fact that American criminal scholarship is decidedly insular).

^{xlvii} Wallace Johnson, *Status and Liability for Punishment in the T'ang Code*, 71 CHI.-KENG L. REV. 217, 217 (1995)

^{xlviii} See, George C. Thomas, *Improving American Justice by Looking at the World: A Review of Criminal Procedure: A Worldwide Study*, Edited by Craig M. Bradley, 91 J. CRIM. L. & CRIMINOLOGY 791, 810 (2001) (Reviewing Craig M. Bradley, CRIMINAL PROCEDURE: A WORLDWIDE STUDY. Discussing the powers of French and German judges).

^{xlix} See, AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL PRESS RELEASE, MDE 23/005/2003, *Saudi Arabia: An Urgent Reform of the Criminal Justice System is Needed*, ¶ 3 (2003) also see, Mary Carter Duncan, *Playing By Their Rules: The Death Penalty and Foreigners In Saudi Arabia*, 27 GA. J. INT'L & COMP. L. 231, 244 (1998) (This researcher feels honor bound to note, that while cognizant of the need for reform in the Saudi Arabian justice system, to quote the vernacular, an Islamic scholar Mary Carter Duncan ain't).

¹ Erik Luna, *A Place for Comparative Criminal Procedure*, 42 Brandeis Law Journal 277, 312 (2004).

ⁱⁱ Margaret Chon, *Transforming Talks: Public Dialogue about Social Justice in a Post 9-11 Age*, 1 SEATTLE J. SOC. J. 13, 20, n.6 (2002) (discussing Socrates).

ⁱⁱⁱ U.N. SCOR, 49th Sess., 3453rd mtg. at 1, S/RES/955 (1994) (Security Council Resolution 955 hereinafter *ICTR Statute*).

^{liii} *ICTR Statute* at 12, Art. 20(4)(d).

^{liv} *ICTR Statute* at 12, Art. 20(4)(d).

^{lv} THE REGISTRAR, INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, *Directive on Assignment of Defense Counsel*, available at <http://www.ictor.org/default.htm>, hereinafter *ICTR Defense Counsel Directive*. (Last accessed July 14, 2004).

^{lvi} THE REGISTRAR, INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, *Directive on Assignment of Defense Counsel*, available at <http://www.ictor.org/default.htm>, hereinafter *ICTR Defense Counsel Directive*. (Last accessed July 14, 2004).

^{lvii} THE REGISTRAR, INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, *Directive on Assignment of Defense Counsel*, available at <http://www.ictor.org/default.htm>, hereinafter *ICTR Defense Counsel Directive*. (Last accessed July 14, 2004).

^{lviii} THE PLENARY SESSION JUDGES, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, *Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal*, available at <http://www.ictor.org/default.htm>, hereinafter *Detention Rules*. (Last accessed July 14, 2004).

^{lix} 28 C.F.R. 543.12 (2004); *Also see*, Federal Bureau of Prisons, 2004 LEGAL RESOURCE GUIDE TO THE FEDERAL BUREAU OF PRISONS, at 37, available at http://www.bop.gov/ipapg/legal_guide.pdf (last accessed July 14, 2004).

^{lx} See, MODEL RULES OF PROF'L CONDUCT, Rule 1.1, Comment 2 (2004).

^{lxi} *ICTR Statute*, Preamble, at 2.

^{lxii} *ICTR Defense Counsel Directive*, Article 13.

^{lxiii} LAWYERS AND DETENTION FACILITIES MANAGEMENT SECTION, INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, *Form I-L 2*, available at, <http://ictr.org/ENGLISH/ldfms/il2e.doc>. (Last accessed July 25, 2004).

^{lxiv} ASSIGNMENT OF DEFENCE COUNSEL, RIGHTS OF DEFENDANT, ICTR COMMEMORATIVE WEBSITE, available at, <http://ictr.org/commemoration/faq/faq-2.asp>. (Last accessed July 25, 2004).

^{lxv} See, UNITED NATIONS PRESS RELEASE, UN DOC AFR/111 L/2901, *Rwanda Tribunal Registrar Says Detainees Hunger Strike Unwarranted*, October 27th 1998, available at <http://www.un.org/News/Press/docs/1998/19981027.afr111.html>

^{lxvi} See, UNITED NATIONS PRESS RELEASE, UN DOC AFR/111 L/2901, *Rwanda Tribunal Registrar Says Detainees Hunger Strike Unwarranted*, October 27th 1998, available at <http://www.un.org/News/Press/docs/1998/19981027.afr111.html>

^{lxvii} JOINT COMMITTEE ON CRIMINAL JUSTICE, TESTIMONY OF RICHARD DIETER, *The Costs of the Death Penalty* at 5, March 27th 2003, available at <http://www.deathpenaltyinfo.org/MassCostTestimony.pdf>

^{lxviii} JOINT COMMITTEE ON CRIMINAL JUSTICE, TESTIMONY OF RICHARD DIETER, *The Costs of the Death Penalty* at 5, March 27th 2003, available at <http://www.deathpenaltyinfo.org/MassCostTestimony.pdf>

^{lxix} David Tolbert, *The ICTY and Defense Counsel: A Troubled Relationship*, 37 NEW ENG. L. REV. 975, 981 (2003).

^{lxx} David Tolbert, *The ICTY and Defense Counsel: A Troubled Relationship*, 37 NEW ENG. L. REV. 975, 981 (2003).

^{lxxi} David Tolbert, *The ICTY and Defense Counsel: A Troubled Relationship*, 37 NEW ENG. L. REV. 975, 981-2 (2003).

^{lxxii} XINHUA ENGLISH NEWSPAPER, *UN Court Insists Counsel Rules as Most Detainees*, Oct. 27th 1998, available at WESTLAW 1998 WL 19491235 (last accessed July 15, 2004).

^{lxxiv} Major Joshua E. Kastenber, *The Right to Assistance of Counsel in Military and War Crimes Tribunals: An International and Domestic Law Analysis*, 14 Ind. Int'l & Comp. L. Rev. 175, 206 (2003).

^{lxxv} ASSIGNMENT OF DEFENCE COUNSEL, RIGHTS OF DEFENDANT, ICTR COMMEMORATIVE WEBSITE, available at, <http://ictr.org/commemoration/faq/faq-2.asp>. (Last accessed July 25, 2004).

^{lxxvi} *Prosecutor v. Akeyasu*, Appeals Chamber Judgment, ICTR-96-4-T, ¶ 60 (2001). *Also See*, Major Joshua E. Kastenberg, *The Right to Assistance of Counsel in Military and War Crimes Tribunals: An International and Domestic Law Analysis*, 14 IND. INT'L & COMP. L. REV. 175, 206 (2003).

^{lxxvii} 23-SEP L.A. Law. 66, Los Angeles Lawyer September, 2000 Departments, *Lawyer's Duties When Preparing Pleadings or Negotiating Settlement for In Pro Per Litigant*, Departments Ethics Opinion No. 502, Los Angeles County Bar Association Professional Responsibility and Ethics Committee

^{lxxviii} Orange County Lawyer, November, 2003, Column, A Criminal Waste of Space, *Improper Persona*, William W. Bedsworth, 45-NOV OCLAW 40 (A Justice's cynical thoughts on the pro per process in general)

^{lxxix} *Kambanda v. Prosecutor*, ICTR 97-23-A, ¶ 16 (2000), available at <http://ictr.org/default.htm>. (Last accessed July 14, 2004.)

^{lxxx} *Prosecutor v. Kambanda*, ICTR 97-23-S, ¶ 1-3 (1998).

^{lxxxi} Sherrie L. Russell-Brown, *Poisoned Chalice?: The Rights of Criminal Defendants Under International Law, During the Pre-Trial Phase*, 8 UCLA J. INT'L L & FOREIGN AFF. 127, 162 (2003).

^{lxxxii} *Kambanda v. Prosecutor*, ICTR 97-23-A,

^{lxxxiii} *Kambanda v. Prosecutor*, ICTR 97-23-A,

^{lxxxiv} Truthfully, little is known about Oliver Michael Inglis except that at some point in time, he represented Jean Kambanda. Despite this researcher's efforts to secure some sort of information from him, he appears to have disappeared following the Kambanda appeal.

^{lxxxv} FORMER RWANDAN PRIME MINISTER WHO PLEADED GUILTY TO GENOCIDE INSISTS UPON THE LAWYER OF HIS CHOICE, INTERNEWS, October 14th 1998, available at, http://www.internews.org/activities/ict_r reports/ICTRnewsOCT98.html#1014a (Last accessed July 25, 2004) (AUTHOR'S NOTE: The grammatical error "pleaded" is not mine but is from the source document).

^{lxxxvi} *Prosecutor v. Kambanda*, ICTR 97-23-S, ¶ 52-3 (1998).

^{lxxxvii} *Prosecutor v. Kambanda*, ICTR 97-23-S, ¶ 53-4 (1998).

^{lxxxviii} Compare, *Prosecutor v. Cesic*, ICTY 97-23-S (2004) (Sentencing Ranko Cesic, a member of the Bosnian-Serb Police Reserve Unit, who pled guilty to murdering seven prisoners under his care and ordering two brothers to rape each other to 17 years in prison) with *Prosecutor v. Ngeze*, ICTR 97-27-S ¶ 1094 (2003) (In which Hassan Ngeze, who was acquitted of genocidal murder charges, was sentenced to life imprisonment for incitement and conspiracy and crimes against humanity charges).

^{lxxxix} Danielle Tully, *Human Rights Compliance and the Gacaca Jurisdictions in Rwanda*, 26 B.C. INT'L & COMP. L. REV. 385, 393 (2003).

^{xc} Julian A. Cook III, *All Aboard! The Supreme Court, Guilty Pleas, and the Railroad of Criminal Defendants*, 75 U. COLO. L. REV. 863, 866 (2004).

^{xc} THE REGISTRAR, INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, *Rules of Procedure and Evidence*, available at <http://www.ictr.org/default.htm>, hereinafter *ICTR Defense Counsel Directive*. (Last accessed July 14, 2004) (Rule 62).

^{xcii} THE REGISTRAR, INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, *Rules of Procedure and Evidence*, available at <http://www.ictor.org/default.htm>, hereinafter *ICTR Defense Counsel Directive*. (Last accessed July 14, 2004) (Rule 62(v)).

^{xciii} Theresa Marie Clark, *Transplant Justice?: The Efficacy of a Purely Common Law Concept in the International Criminal Forum*, 9 BUFF. HUM. RTS. L. REV. 75, 100 (2003); *Also see, Prosecutor v. Serushago*, ICTR 98-39-S, ¶ 25(viii) (1999).

^{xciv} *Prosecutor v. Kambanda*, ICTR 97-23-S, ¶ 7 (1998).

^{xcv} *Prosecutor v. Kambanda*, ICTR 97-23-S, ¶ 5-7 (1998)

^{xcvi} Could there have been ? Laity Kama was, after all, the foundation of the ICTR. Kambanda was undoubtedly the pinnacle of a highly illustrious career. As the first President of the ICTR and the most profoundly expert jurist on the African continent, Kama was a hero to many. His memorial was attended by ICTR judges, and was mourned by Kofi Annan himself. Was Kambanda's plea his own hubris ?

^{xcvii} *Prosecutor v. Kambanda*, ICTR 97-23-S, ¶ 8-38 (1998)

^{xcviii} *Prosecutor v. Kambanda*, ICTR 97-23-S, ¶ 39 (1998)

^{xcix} *Prosecutor v. Kambanda*, ICTR 97-23-S, ¶ 19 (1998)

^c *Prosecutor v. Kambanda*, ICTR 97-23-S, ¶ 39(ii) (1998)

^{ci} *Prosecutor v. Kambanda*, ICTR 97-23-S, ¶ 39(ix) (1998)

^{cii} REDACTED TRANSCRIPT, PRESENTENCING HEARING, *Prosecutor v. Kambanda*, ICTR 97-23-I, 03/09/1998, Pg. 19, lines 13-15 (1998) available at <http://157.150.221.3/main.htm>. (Last accessed July 18th 2004).

^{ciii} REDACTED TRANSCRIPT, PRESENTENCING HEARING, *Prosecutor v. Kambanda*, ICTR 97-23-I, 03/09/1998, Pg. 22, lines 6-12 (1998) available at <http://157.150.221.3/main.htm>. (Last accessed July 18th 2004).

^{civ} Charles Dodson was, of course, the mathematical prodigy who is most famous for his surreal tale, "Through the Looking Glass", colloquially known as "Alice in Wonderland" under the *nom de plume* of Lewis Carroll.

^{cv} UTAH CODE ANN. § 58-37-8 (2004).

^{cvi} *Kambanda v. Prosecutor*, ICTR 97-23-A, ¶ 3 (2000).

^{cvii} *Kambanda v. Prosecutor*, ICTR 97-23-A, ¶ 20 (2000).

^{cviii} Van der Spoel was not simply a good lawyer, he was a great one. His motions, undoubtedly prepared by off-counsel, did little except sap the energy of the Prosecution team, which eventually ended with almost five Prosecutor's (Including the formidable Carle del Ponte) scurrying to answer motions created by the two-man Kambanda defense team.

^{cix} *Kambanda v. Prosecutor*, ICTR 97-23-A, ¶ 7 (2000).

^{cx} REPLY TO THE PROSECUTOR'S RESPONSE ON THE APPELLANT'S BRIEF OF 2 MAY 2000, *Kambanda v. Prosecutor*, ICTR 97-23-A, available at <http://157.150.221.3/main.htm>. (Last accessed July 25th 2004).

^{cxⁱ} CONSOLIDATED NOTICE OF APPEAL, *Kambanda v. Prosecutor*, ICTR 97-23-A, available at <http://157.150.221.3/main.htm>. (Last accessed July 25th 2004).

^{cxⁱⁱ} PROSECUTOR'S OBJECTION TO THE APPELLANT'S CONSOLIDATED NOTICE OF APPEAL, *Kambanda v. Prosecutor*, ICTR 97-23-A, available at <http://157.150.221.3/main.htm>. (Last accessed July 25th 2004).

^{cxⁱⁱⁱ} REGISTRY'S REPLY TO RESPONDENT'S BRIEF, *Kambanda v. Prosecutor*, ICTR 97-23-A, available at <http://157.150.221.3/main.htm>. (Last accessed July 25th 2004).

^{cx^{iv}} REGISTRY'S REPLY TO RESPONDENT'S BRIEF, *Kambanda v. Prosecutor*, ICTR 97-23-A, ¶ 40-44, available at <http://157.150.221.3/main.htm>. (Last accessed July 25th 2004).

^{cx^v} Algerian born Claude Jorda was something of a prodigy in his early years. An *auditeur de justice* "low-level judge" at the age of 25 and Magistrate at 58, he rose swiftly through the French Judiciary, pausing briefly to be an Director of the National Magistrates School, and an under-Director for the Judiciary. In his capacity as a *Pro Tem* Appeals Court Justice for the ICTR, Justice Jorda actually took a step below his former position, as President of the International Criminal Tribunal for Yugoslavia. He has currently been elected, and is Judge of the International Criminal Court...making him ostensibly one of the eighteen most learned criminal minds in the world.

^{cx^{vi}} *Kambanda v. Prosecutor*, ICTR 97-23-A, ¶ 33-34 (2000).

^{cx^{vii}} See, Samuel B. Griffith, *Sun Tzu: The Art of War*, 131 (Oxford University Press 1963) (*Ground to which access is constricted, where the way out is tortuous, and where a small enemy force can strike my larger one is called 'encircled'.* Tu Mu, ...*Here it is easy to lay ambushes and one can be utterly defeated*).

^{cx^{viii}} See, Craig S. Lerner, *Impeachment, Attainder, And a True Constitutional Crisis: Lessons from the Strafford Trial*, 69 U. CHI. L. REV. 2057, 2100, note 75 (2002); and Pat McGuigan, *The Right of the People to Critique Judicial Rulings: Implications for Citizen Activism*, 22 OKLA. CITY U. L. REV. 1223, 1227 (1997).

^{cx^{ix}} Patrice Stappert, *A Death Sentence For Justice: The Feeney Amendment Frustrates Federal Sentencing*, 49 VILL. L. REV. 693, 723, note 14, (2004).

^{cx^x} Michael Lobban, *Preparing for Fusion: Reforming the Nineteenth-Century Court of Chancery Part I*, 22 LAW & HIST. REV. 389, 389 (2004).

^{cx^{xi}} Randy E. Barnett, *The Proper Scope of the Police Power*, 79 NOTRE DAME L. REV. 429, 481 (2004).

^{cx^{xii}} Mark D' Alelio, *The Degree of Separation: Should a Non-Participating Lawyer's Conflict Taint the Representation of Other Unconflicted Lawyers Rendering Their Representation Constitutionally Ineffective*, 37 SUFFOLK U. L. REV. 97 (2004); Also see, *Strickland v. Washington*, 466 U.S. 668, 686 (1984).

^{cx^{xiii}} *People v. Dean*, 328 N.E.2d 130, 132 (1975).

^{cx^{xiv}} *Skinner v. State*, 383 N.E. 2nd 307, 308 (1978).

^{cxxv} See, Gregory G. Sarno, Annotation, *Modern Status of Rules and Standards in State Courts as to Adequacy of Defense Counsel's Representation of Criminal Client*, 2 A.L.R. 4th 27, § 13[d] (2004) (citing to *State v. Jackson*); Also see, *Jackson v. State*, 540 S.W. 2d. 616, 617 (1976).

^{cxxvi} *Prosecutor v. Ntakirutama*, ICTR-96-17-T, Judgment and Sentence, ¶¶ 908 and 924 (2003).

^{cxxvii} *Prosecutor v. Ruggiu*, ICTR-97-32-I, Judgment and Sentence, ¶¶ Verdict (2000).

^{cxxviii} 82 AM. JUR. 2d Trials § 1

^{cxxix} 82 AM. JUR. 2d Trials § 1

^{cxxx} 22 *Genesis* 1.

^{cxxxi} Niccolo Machivalli, trans. W.K. Marriot, *The Prince*, Chapter VII (1515) available at, <http://www.constitution.org/mac/prince00.htm>, (Last Accessed July 25, 2004). (The story of Ramiro d'Orco is a prevalent allusion in political theory. As the legend goes, Alexander VI found Romagna in utter chaos, and appointed a very harsh dictator, Ramiro d'Orco to subdue it. D'Orco did so successfully, but with great violence. After setting up an equitable and just court system, Duke Alexander wished to proclaim himself kind and just while distancing himself from the violence at the hands D'Orco. Thus the townspeople of Romagna awoke one morning to find their hated overseer executed in the middle of the Piazza with a 'block' (perhaps Alexander's seal) and a bloody knife beside D'Orco's butchered carcass).

^{cxxxii} RWANDAN GOVERNMENT SUSPENDS COOPERATION WITH ICTR, Hirondelle News Agency, November 6th 1999, available at, www.hirondelle.org. (Last Accessed July 25, 2004).

^{cxxxiii} RWANDAN GOVERNMENT SUSPENDS COOPERATION WITH ICTR, Hirondelle News Agency, November 6th 1999, available at, www.hirondelle.org. (Last Accessed July 25, 2004).

^{cxxxiv} UN CHIEF RUES RWANDAN GENOCIDE RESPONSE, ABC NEWS ONLINE, March 27th 2004, available at, <http://www.abc.net.au/news/newsitems/s1075138.htm>. (Last accessed July 26, 2004).

^{cxxxv} See, ROMEO DALLAIRE, available at, http://www.canadians.ca/more/profiles/d/d_romeo_dallaire.htm (Last accessed July 26, 2004); Also see, THE GENERAL AND THE GENOCIDE, THIRD WORLD TRAVELLER, Winter 2002, available at, http://www.thirdworldtraveler.com/Heroes/Gen_Romeo_Dallaire.html (Last accessed July 26, 2004) (General Romeo Dallaire is perhaps the most tragic victim of the Rwandan Genocide. A true hero of Canada, his soldiers frantically struggled to save thousands of victims of genocide while disobeying orders from the United Nations Secretary General. Following the massacre of a Belgian bodyguard, his 3,000 man troop was cut to 500...leaving him in a condition similar to Leonidas at Thermopylae. Through his sole efforts, General Dailaire prevented the Rwandan Genocide from becoming a modern-day Holocaust. As a result of his experiences General Dallaire is in a continual state of post-traumatic stress, has attempted suicide once, and suffered from depression. He now is under the treatment of a therapist.)