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Fully Informed Jury Association
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AMERICAN JUROR

Jury Has The Right to Judge the Facts and the Law

Judges may not deprive or misinform the Jury of acting on their own Authority to decide both the fact and the law in all cases: The is a dissent in the Sparf & Hansen Case, 1895.

(Sections omitted to allow for printing space in this issue. I have tried to preserve the relevant comments of this excellent dissent. We must always remember and give thought to the fact that in many decisions by the Supreme Court (which is comprised of fallible humans just like you and I, after all), there were significant dissenting opinions - often prescient. Many subsequent SCOTUS decisions have had their legal foundations and supporting axioms firmly established by earlier dissents in cases where the majority had ruled against the later-recognized correctness of the thinking of those dissenting opinions. - ed.)

Sparf & Hansen v. U S, 156 U.S. 51 (1895)

Mr. Justice GRAY, with whom concurred Mr. Justice SHIRAS, dissenting.

Mr. Justice SHIRAS and myself concur in so much of the opinion of the majority of the court as awards a new trial to one of the defendants by reason of the admission in evidence against him of confessions made in his absence by the other. But from the greater part of that opinion, and from the affirmance of the conviction of the other defendant, we are compelled to dissent, because, in our judgment, the case, involving the question of life or death to the prisoners, was not submitted to the decision of the jury as required by the constitution and laws of the United States.

The defendants requested the judge to instruct the jury that 'under the indictment in this case the defendants may be convicted of murder or manslaughter or of an attempt to commit murder or manslaughter; and if, after a full and careful consideration of all the evidence before you, you believe beyond a reasonable doubt that the defendants are guilty either of manslaughter, or of an assault with intent to commit murder or manslaughter, you should so find your verdict.' The judge refused to give this instruction, and the defendants excepted to the refusal.

And finally, in answer to the juror's direct question, 'Then there is no other verdict we can bring in, except guilty or not guilty?' the judge said: 'In a proper case, a verdict for manslaughter may be rendered, as the district attorney has stated; and even in this case you have the physical power to do so; but, as one of the tribunals of the country, a jury is expected to be governed by law, and the law it should receive from the court.' The juror then said: 'There has been a misunderstanding amongst us. Now, it is clearly interpreted to us, and no doubt we can now agree on certain facts.' Thereupon a verdict of guilty of murder was returned against both defendants, and they were sentenced to death, and sued out this writ of error.

The judge, by instructing the jury that they were bound to accept the law as given to them by the court, denied their right to decide the law. And by instructing them that, if a felonious homicide by the defendants was proved, there was nothing in the case to reduce it below the grade of murder, and they could not properly find it to be manslaughter, and by declining to submit to them the question whether the defendants were guilty of manslaughter only, he denied their right to decide the fact. The colloquy between the judge and the jurors, when they came in for further instructions, clearly shows that the jury, after deliberating upon the case, were in doubt whether the crime which the defendants had committed was murder or manslaughter; and that it was solely by reason of these instructions of the judge that they returned a verdict of the higher crime.

It is our deep and settled conviction, confirmed by a re-examination of the authorities

Dissent continued on page 4

"For more than six hundred years–that is, since Magna Carta, in 1215, there has been no clearer principle of English or American constitutional law, than that, in criminal cases, it is not only the right and duty of juries to judge what are the facts, what is the law, and what was the moral intent of the accused; but that it is also their right, and their primary and paramount duty, to judge of the justice of the law, and to hold all laws invalid, that are, in their opinion, unjust or oppressive, and all persons guiltless in violating, or resisting the execution of, such laws."
- Lysander Spooner, Essay on Trial by Jury, 1852

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Iloilo Marguerite Jones
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From the Executive Director

August, 2007 Helena, Montana

Dear Friends,

I hope you have plans to hand out literature or speak, or both, on Jury Rights Day.

It is fire season here in Montana. Dry heat, coupled with lightening strikes and lots of forest in inaccessible places, has resulted in much smoke. As I write this, Suzy and I are here in the office, looking out at a country dimly visible through thick veils of smoke. If we go outside, we can smell the smoke. There are times when I think that as well, many people of this nation view it through a veil, not of smoke, but of accepted misinformation and indoctrination. If one more person tries to tell me about my "Constitutional" rights, I may decide to write up a card to hand out, explaining the difference between human rights and Constitutional protection of those rights, many of the latter which we seem to have misplaced. I hear people talk about government "rights" instead of the fact that government cannot have rights: only people have rights.

I just came back from speaking a few places, and as usual, I was surprised at what people did not know about jury authority, and most happily surprised by how many people wanted more information on what they could do to get on a jury! At one talk, I began asking if anyone could have imagined just 25 years ago that we would be living with the usurpations we presently experience from the government of our nation. Some of the younger people became very upset when older people recalled things they had been able to do as youngsters! In fact, I ran out of literature, because so many young people wanted literature to share. I am hoping to make a video, and a web video, for younger audiences. I think this is the population we really need to reach.

Thank you to everyone who helped with the speaking events, and to each of you who has been handing out literature, writing letters, speaking at events or on the radio, and to everyone who is supporting FIJA efforts. There are a number of recent cases where juries have refused to convict, and I am delighted that more people understand their authority as a juror to render a verdict based on conscience. Way to go!

The first printing of the new "Who Owns Your Body?" brochure should be out in a few weeks, and you will all be receiving a copy soon. We can now send the newsletter to you via the internet, as a file you can open with Adobe Reader software, which is free to download. If you would like to receive your newsletter through an e-mail to you, let Suzy know and she will add you to the list. Of course, if you are happy to download the newsletter from the web site, or read it there, that is fine as well. We are adding more to the web site weekly, and working on a lot of upgrades for it. Remember to use the forums on the web site to post ideas, news, and to stay informed of events and issues. Your posts to the site are always welcome. I will try to get the new brochure posted to the web site within the next month as well.

One of my favorite quotes in the sidebar to the left. We are hoping to have the funds to complete a special, gift-quality edition of the first Chapter of Lysander Spooner's Essay on Trial by Jury, before the end of this year. I thought the lead article, which is excerpts from a dissent to the Sparf and Hansen opinion, very worthwhile reading.

We are preparing packets to send out to all state contacts for Jury Rights Day. Material is also available from the Supply Shop on our web site at www.fija.org. If you would like material to hand out on Jury Rights, Day, check with your state contact, go to the web site, or contact us here at the office.

For Justice and Liberty,
Iloilo Marguerite Jones, Executive Director

THE JURY BOX

Hello FIJA,

I hope you can help me. I have been called for jury duty again. I was also called last year and I lost three day's work on a stupid traffic case where the cop was clearly just trying to bully some money out of some poor guy who had changed lanes in a way the cop did not like. No one was hurt, there was no accident, no injuries, no property damage, nothing. Just some bully cop doing more stupid stuff to innocent working people. And the judge was backing up the cop, and so was the city attorney, of course. They probably get part of the take, I bet. Just a guy who changed lanes on a solid white line.

I don't have time to take off work to serve on a jury, or even to go to be grilled by some judges and lawyers about my life and work and what I read and all, just so they can tell me to come back tomorrow or to go home. The puny pay stinks, and every day I don't work means I don't get paid, because I am a small independent contractor. Where I live, we get $15/day if we show up for jury duty. That, I think, is a crime itself. Then the judge tells you where to sit, what to think, to be quite, not to talk to anyone else, and you get treated worse than some real criminal by all the court people. I felt like I got treated like I was about eight, like in school, where they boss you around and treat you inhuman. I got the feeling the judge would just as soon the jury would disappear through the floor. The city attorney tired to make all nicey-kissy with us, and the poor guy was there by himself, trying to say he made a mistake, but could not afford the fine. He was mostly scared of the judge, who was as mean to him as he was to the jury group.

I know about those recent cases where juries have refused to convict those tax protesters and those dope users. Good for them I say, because I don't think the government has any business messing with people who are not hurting anybody, or making anyone give money by armed robbery, which is what it is. But I don't get called in for any cases like that. If I thought I could get on some gun or tax case and save anyone from jail, I might feel better, but they just want me to find people guilty of breaking traffic laws or something equally as insane. How come the government can force me to go to court, then just tell all the jurors what to do and there is no reason for us to be there, because we are supposed to take orders from the judge? What can I do? Fred N.

Dear Fred N.,

Thank you for contacting us. We have a nearly foolproof strategy for avoiding jury duty.

But first, let me explain the way the jury system works and why it is so important that citizens serve as jurors. The jury is the only real power we the people have over the political process. The political process passes laws. Some (many) of those laws are oppressive, stupid, unconstitutional, unfair, unjust. They violate people's rights.

Trial by jury was included in the Bill of Rights because the Founders understood this. They intended that the jury was to be empowered to vote their consciences. They intended that the jury was, as it had traditionally been, the judge of the facts (evidence) and the judge of the merits of the law itself. If the jury (or any individual member) decides that they cannot in good conscience convict the defendant, for whatever reason, they don't have to. They can vote not guilty even if the defendant is clearly "guilty" of violating the letter of the law. Prosecutors and judges hate this, but it is true, and there is nothing they can do about it. A prospective juror wanting to get seated, has to be circumspect in how they answer the questions. For more information, check out our web site at www.fija.org.

If, after reading and pondering this, you still wish to avoid jury duty, all you need to do, during voir dire (jury selection) is let it be known that you know all about jury nullification, or the power of jurors to judge the law, and that you intend to do just that. That ought to do it.

Best of luck, Don Doig FIJA Co-Founder

"No one can read our Constitution without concluding that the people who wrote it wanted their government severely limited; the words 'no' and 'not' employed in restraint of government power occur 24 times in the first seven articles of the Constitution and 22 more times in the Bill of Rights." ~ Rev. Edmund A. Opitz (1914-2006) American minister, author

"Too many Americans have twisted the sensible right to pursue happiness into the delusion that we are entitled to a guarantee of happiness. If we don't get exactly what we want, we assume someone must be violating our rights We're no longer willing to write off some of life's disappointments to simple bad luck." ~ Susan Jacoby (1945-) American author

Constitutional rights may not be infringed simply because the majority of the people choose that they be." ~ Supreme Court of the United States Source: Westbrook v. Mihaly 2 Cal. 3d 756

"In questions of power, then, let no more be said of confidence in man, but bind him down from mischief by the chains of the Constitution." ~ Thomas Jefferson (1743-1826), US Founding Father, drafted the Declaration of Independence, 3rd US President

"For what avail the plough or sail, Or land or life, if freedom fail?" ~ Ralph Waldo Emerson (1803-1882) Source: "Boston" Stanza 15

Five Words that Spell Liberation – Rebirth of Reason by Luke Setzer http://www.rebirthofreason.com

"The time of oracles and monarchs with swords has passed, but Gordian knots remain very much with us. In our country, you can enjoy a great deal of freedom to rule yourself rather than have a dictator rule over you. But this freedom of action does not stop people from attempting to rule over you with their Gordian knots ... of argumentation. They want to bind you in their Gordian knots of argumentation. They want to deceive you into thinking you cannot move without their 'permission.' They usually start by sticking their noses, uninvited, into your business. ... Fortunately, you do not need to respond at all to these modern successors of Gordius. Your life and your time belong to you. This means that, by right, you can employ the modern successor of the Alexandrian sword. I call it the sword of liberation. It consists of five words: I do not need you." (03/19/07)

"Can the real Constitution be restored? Probably not. Too many Americans depend on government money under programs the Constitution doesn't authorize, and money talks with an eloquence Shakespeare could only envy. Ignorant people don't understand The Federalist Papers, but they understand government checks with their names on them." ~ Joseph Sobran (1946-) Columnist

Dissent continued from page 1

under the responsibility of taking part in the consideration and decision of the capital case now before the court, that the jury, upon the general issue of guilty or not guilty in a criminal case, have the right, as well as the power, to decide, according to their own judgment and consciences, all questions, whether of law or of fact, involved in that issue.

The question of the right of the jury to decide the law in criminal cases has been the subject of earnest and repeated controversy in England and America, and eminent jurists have differed in their conclusions upon the question. In this country, the opposing views have been fully and strongly set forth by Chancellor Kent in favor of the right of the jury, and by Chief Justice Lewis against it, in People v. Croswell, 3 Johns. Cas. 337; by Judge Hall in favor of the right, and by Judge Bennett against it, in State v. Croteau, 23 Vt. 14; and by Chief Justice Shaw against the right, and by Mr. Justice Thomas in its favor, in Com. v. Anthes, 5 Gray, 185.

The question of the right of the jury under the constitution of the United States cannot be usefully or satisfactorily discussed without examining and stating the authorities which bear upon the scope and effect of the provisions of the constitution regarding this subject. In pursuing this inquiry, it will be convenient to consider, first, the English authorities; secondly, the authorities in the several colonies and states of America; and lastly, the authorities under the national government of the United States.

By Magna Charta, no person could be taken or imprisoned or deprived of his freehold or of his liberties or free customs, unless by the lawful judgment of his peers, or the law of the land, - 'nisi per legale judicium parium suorum, vel per legem terrae.' Accordingly, by the law of England, at the time of the discovery and settlement of this country by Englishmen, every subject (not a member of the house of lords) indicted for treason, murder, or other felony had the right to plead the general issue of not guilty, and thereupon to be tried by a jury; and, if they acquitted him the verdict of acquittal was conclusive, in his favor, of both the law and the fact involved in the issue. The jury, in any case, criminal or civil, might indeed, by finding a special verdict reciting the facts, refer a pure question of law to the court; but they were not bound and could not be compelled to do so, even in a civil action.

But the mistake does not diminish the force of Lord Bacon's statements that, wherever an attaint did not lie, the 'judgment of the jury, commonly called 'verdict,' was considered as a kind of gospel'; and that the reasons why an attaint did not lie in a capital case were not only that two juries, the indictors and the triers, had passed upon the case, but chiefly that juries, in cases of life and death, should not be discouraged, or act timidly, by being subjected to suit and penalty if they decided in favor of life.

John Milton, in his Defence of the People of England, after speaking of the king's power in his courts and through his judges, adds: 'Nay, all the ordinary power is rather the people's, who determine all controversies themselves by juries of twelve men. And hence it is that when a malefactor is asked at his arraignment, 'How will you be tried?' he answers always, according to law and custom, 'By God and my country'; not by God and the king, or the king's deputy.' 8 Milton, Works (Pickering's Ed.) 198, 199, The idea is as old as Bracton. Bract. 119.

In the reign of Charles II, some judges undertook to instruct juries that they must take the law from the court, and to punish them if they returned a verdict in favor of the accused against the judge's instructions. But, as often as application was made to higher judicial authority, the punishments were set aside, and the rights of juries vindicated.

The reasons are more fully brought out in Bushell's Case, in 1670, not mentioned in the text of Lord Hale's treatise, and doubtless decided after that was written. William Penn and William Mead having been indicted and tried for a similar offense, and acquitted against the instructions of the court, Bushell and the other jurors who tried them were fined by Sir John Howell, recorder of London, and Bushell was committed to prison, in like terms, for not paying his fine, and sued out a writ of habeas corpus. Penn and Mead's Case, 6 How.

State Tr. 951; Bushell's Case, Vaughan, 135, 6 How. State Tr. 999; 1 Freem. 1; T. Jones, 13.

At the hearing thereon, Scroggs, the king's serjeant, argued: 'It is granted that, in matters of fact only, the jury are to be judges; but, when the matter of fact is mixed with matter of law, the law is to guide the fact, and they are to be guided by the court. The jury are at no inconvenience, for if they please they may find the special matter; but if they will take upon them to know the law, and do mistake, they are punishable.' 1 Freem. 3.

But Bushell was discharged from imprisonment, for reasons stated in the judgment delivered by Sir John Vaughan, chief justice of the common pleas, after a conference of all the judges of England, including Lord Hale, and with the concurrence of all except Chief Justice Kelyng. Vaughan, 144, 145; 1 Freem. 5; Lord Holt in Groenvelt v. Burwell, 1 Ld. Raym. 454, 470.

In that great judgment, as reported by himself, Chief Justice Vaughan discussed separately the two parts of the return: First, that the acquittal was 'against full and manifest evidence'; and, second, that it was 'against the direction of the court in matter of law.'

It was in discussing the first part that he observed 'that the verdict of a jury and evidence of a witness are very different things, in the truth and falsehood of them. A witness swears but to what he hath heard or seen; generally or more largely, to what hath fallen under his senses. But a juryman swears to what he can infer and conclude from the testimony of such witnesses, by the act and force of his understanding, to be the fact inquired after, which differs nothing in the reason, though much in the punishment, from what a judge, out of various cases by him, infers to be the law in the question before him.' Vaughan, 142.

After disposing of that part of the return, he proceeds as follows: 'We come now to the next part of the return, viz.: That the jury acquitted those indicted against the direction of the court in matter of law, openly given and declared to them in court.

a. 'If the meaning of these words, 'finding against the direction of the court in matter of law,' be that if the judge, having heard the evidence given in court (for he knows no other), shall tell the jury, upon this evidence, the law is for the plaintiff, or for the defendant, and you are under the pain of fine and imprisonment to find accordingly, then the jury ought of duty so to do. Every man sees that the jury is but a troublesome delay, great charge, and of no use in determining right and wrong, and therefore the trials by them may be better abolished than continued; which were a strange new-found conclusion, after a trial so celebrated for many hundreds of years.

a. 'For if the judge, from the evidence, shall by his own judgment first resolve upon any trial what the fact is, and so knowing the fact shall then resolve what the law is, and order the jury penally to find accordingly, what either necessary or convenient use can be fancied of juries, or to continue trials by them at all?

a. 'But if the jury be not obliged in all trials to follow such directions, if given, but only in some sort of trials (as, for instance, in trials for criminal matters upon indictments or appeals), why then the consequence will be, though not in all, yet in criminal trials, the jury (as of no material use) ought to be either omitted or abolished, which were the greater mischief to the people than to abolish them in civil trials.

a. 'And how the jury should, in any other manner, according to the course of trials used, find against the direction of the court in matter of law, is really not conceptible.' Vaughan, 143, 144.

He then observes: 'This is ordinary, when the jury find unexpectedly for the plaintiff or defendant, the judge will ask, how do you find such a fact in particular? And upon their answer he will say, then it is for the defendant, though they find for the plaintiff, or econtrario, contrario, and thereupon they rectify their verdict. And in these cases the jury, and not the judge, resolve and find what the fact is. Therefore always, in discreet and lawful assistance of the jury, the judge's direction is hypothetical, and upon supposition, and not positive and upon coercion, viz.: If you find the fact thus (leaving it to them what

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ROSENTHAL CASE

San Francisco, Friday May 25th - The government's prosecution of Ed Rosenthal was frustrated as half a dozen witnesses flatly refused to testify against Ed. One by one, the witnesses told Judge Breyer that they would not testify in view of the sham nature of the trial. Each was told that they were in contempt of court and could be jailed for refusing to testify.

The six witnesses were Debbie Goldsberry, James Blair, Etienne Fontan, Evan Schwartz, Brian Lundeen, and Cory Okie. Five other witnesses were excused by the court on technical grounds.

"I told them I could not participate and go against the wishes of the community," said Goldsberry.

Judge Breyer thanked the witnesses for their dignified conduct and asked whether they would change their mind about testifying if sent to jail. The judge dismissed them after they said no and ordered them to reappear on Tuesday, May 29th at 8 AM.

The trial is expected to conclude on Tuesday with jury instructions and closing arguments. The defense has declined to present any witnesses, citing the court's tight restrictions on permissible testimony.

Kudos to all of the witnesses who refused to testify. Their performance was a credit to the medical marijuana movement and yet one more reminder of the bankruptcy and immorality of the current US Dept of Justice and its war on marijuana.

D. Gieringerm, Cal NORML

"The great object is that every man be armed. Everyone who is able may have a gun."
~ Patrick Henry (1736-1799) US Founding Father
Source: in the Virginia Convention on the ratification of the Constitution, June 14, 1788

"All and everybody, this is my claim, fifty feet on the gulch, cordin to Clear Creek District Law, backed up by shotgun amendments."
~ Anonymous Gold Miner
Source: wooden post during California gold rush, c. 1849, Quoted in John Umbeck, "Might Makes Rights: A Theory of the Formation and Initial Distribution of Property Rights", Economic Inquiry, Vol. 19 (January 1981), p. 50; from C. Shinn, Land Laws of Mining Districts (John Hopkins University Press, 1984), p. 558.

"Suppose one little old lady in ten carries a gun. Suppose that one in ten of those, if attacked by a mugger, succeeds in killing the mugger instead of being killed by him ~ or shooting herself in the foot. On average, the mugger is much more likely to win the encounter than the little old lady. But ~ also on average ~ every hundred muggings produces one dead mugger. At those odds, mugging is an unprofitable business ~ not many little old ladies carry enough money to justify one chance in a hundred of being killed getting it. The number of muggers declines drastically, not because they have all been killed but because they have, rationally, sought safer professions."
~ David Friedman
Source: Hidden Order: The Economics of Everyday Life (New York: Harper, 1996), p. 299

Dissent continued from page 5

to find), then you are to find for the plaintiff; but if you find the fact thus, then it is for the defendant.' But he is careful to add that 'whatsover they have answered the judge upon an interlocutory question or discourse they may lawfully vary from it if they find cause, and are not thereby concluded.' Pages 144, 145.

It is difficult to exhibit the strength of Chief Justice Vaughan's reasoning by detached extracts from his opinion. But a few other passages are directly in point:

a. 'A man cannot see by another's eye, nor hear by another's ear; no more can a man conclude or infer the thing to be resolved by another's understanding or reasoning; and though the verdict be right the jury give, yet they, being not assured it is so from their own understanding, are forsworn, at least in foro conscientiae.' Page 148.

a. 'That decantatum in our books, 'ad quaestionem facti non respondent judices, ad quaestionem legis non respondent juratores,' literally taken, is true; for if it be demanded, what is the fact? The judge cannot answer it; if it be asked, what is the law in the case? The jury cannot answer it.' He then explains this by showing that upon demurrers, special verdicts, or motions in arrest of judgment 'the jury inform the naked fact, and the court deliver the law.' 'But upon all general issues, as upon not culpable pleaded in trespass, nil debet in debt, nul tort, nul disseisin in assize, ne disturba pas in quare impedit, and the like, though it be matter of law whether the defendant be a trespasser, a debtor, disseisor, or disturber, in the particular cases in issue, yet the jury find not (as in a special verdict) the fact of every case by itself, leaving the law to the court, but find for the plaintiff or defendant upon the issue to be tried, wherein they resolve both law and fact complicately, and not the fact by itself; so as though they answer not singly to the question what is the law, yet they determine the law in all matters, where issue is joined and tried in the principal case, but [i. e. except] where the verdict is special.' Pages 149, 150.

He then observes that 'to this purpose the Lord Hobart in Needler's Case against the Bishop of Winchester is very apposite,' citing the passage quoted near the beginning of this opinion; and concluded his main argument as follows:

a. 'The legal verdict of the jury, to be recorded, is finding for the plaintiff or defendant; what they answer, if asked, to questions concerning some particular fact, is not of their verdict essentially, nor are they bound to agree in such particulars; if they all agree to find their issue for the plaintiff or defendant, they may differ in the motives wherefore [therefor], as well as judges, in giving judgment for the plaintiff or defendant, may differ in the reasons wherefore they give that judgment, which is very ordinary.' Page 150.

That judgment thus clearly appears to have been rested, not merely on the comparatively technical ground that upon the general issue no matter of law could come in question until the facts had been found by the jury, nor yet upon the old theory, that the jurors might have personal knowledge of some facts not appearing in evidence, but mainly on the broad reasons that if the jury, especially in criminal trials, were obliged to follow the directions of the court in matter of law, no necessary or convenient use could be found of juries, or to continue trials by them at all; that though the verdict of the jury be right according to the law as laid down by the court, yet, if they are not assured by their own understanding that it is so, they are forsworn, at least in foro conscientiae; and that the 'decantatum' in our books, 'ad questionem facti non respondent judices, ad quaestionem legis non respondent juratores,' means that issues of law, as upon demurrers, special verdicts, or motions in arrest of judgment, are to be decided by the court; but that upon general issues of fact, involving matter of law, the jury resolve both law and fact complicately, and so determine the law.

It thus clearly appears that upon that trial, one of the most important in English history, deeply affecting the liberties of the people, the four judges of the king's bench, while differing among themselves upon the question whether the petition of the bishops was a libel, concurred in submitting that question, as a question of law, to the decision of the jury, not as umpires between those judges who thought the paper was a libel and those judges

who thought it was not, but as the tribunal vested by the law of England with the power and the right of ultimately determining, as between the crown and the accused, all matters of law, as well as of fact, involved in the general issue of guilty or not guilty.

Lord Somers, in the opening pages of his essay on 'The Security of Englishmen's Lives or the Trust, Power, and Duty of the Grand Juries of England' (first published in 1681, and republished in 1714, towards the end of his life, after he had been lord chancellor), lays down in the clearest terms the right of the jury to decide the law, saying: 'It is made a fundamental in our government that (unless it be by parliament) no man's life shall be touched for any crime whatsoever, save by the judgment of at least twenty-four men, - that is, twelve or more, to find the bill of indictment, whether he be peer of the realm or commoner; and twelve peers or above, if a lord, if not, twelve commoners, to give the judgment upon the general issue of not guilty joined.' 'The office and power of these juries is judicial. They only are the judges from whose sentence the indicted are to expect life or death. Upon their integrity and understanding the lives of all that are brought into judgment do ultimately depend. From their verdict there lies no appeal. By finding guilty or not guilty they do complicately resolve both law and fact. As it hath been the law, so it hath always been the custom and practice, of these juries, upon all general issues, pleaded in cases, civil as well as criminal, to judge both of the law and fact.' 'Our ancestors were careful that all men of the like condition and quality, presumed to be sensible of each other's infirmity, should mutually be judges of each other's lives, and alternately taste of subjection and rule, every man being equally liable to be accused or indicted, and perhaps to be suddenly judged by the party, of whom he is at present judge, if he be found innocent.'

Lord Chief Justice Holt declared that 'in all cases and in all actions the jury may give a general or special verdict, as well in causes criminal as civil, and the court ought to receive it, if pertinent to the point in issue; for if the jury doubt they may refer themselves to the court, but are not bound so to do.' Anon. (1697) 3 Salk. 373. And upon the trial of an information for a seditious libel, while he expressed his opinion that the paper was upon its face a criminal libel, he submitted the question whether it was such to the jury, saying: 'Now you are to consider whether these words I have read to you do not tend to beget an ill opinion of the administration of the government.' Tutchin's Case (1704) 14 How. State Tr. 1095, 1128. Although he concluded his charge with the words, 'If you are satisfied that he is guilty of composing and publishing these papers at London, you are to find him guilty,' yet, as Mr. Starkie well observes, 'these words have immediate reference to the ground of defense upon which Mr. Tutchin's counsel meant to rely, namely, that the offense had not been proved to have been committed in London; and cannot be considered as used for the purpose of withdrawing the attention of the jury from the quality of the publication, upon which they had just before received instructions; and, indeed, to suppose it had so meant would prove too much, since, if so, the jury were directed not to find the truth of the innuendoes.' Starkie, Sland. & L. 56.

The later history of the law of England upon the right of the jury to decide the law in criminal cases is illustrated by a long conflict between the views of Mr. Murray, afterwards Lord Mansfield, against the right, and of Mr. Pratt, afterwards Lord Camden, in its favor, which, after the public sentiment had been aroused by the great argument of Mr. Erskine in Dean of St. Asaph's Case, was finally settled, in accordance with Lord Camden's view, by a declaratory act of parliament.

Upon the trial of Owen, in 1752, for publishing a libel Mr. Murray, as solicitor general, argued to the jury that if they determined the question of fact of publication, the judge determined the law. But Mr. Pratt, of counsel for the defendant, argued the whole matter to the jury; and, although the publication was fully proved, and Chief Justice Lee told the jury that, this being so, they could not avoid bringing in the defendant guilty, they returned and persisted in a general verdict of acquittal. 18 How. State Tr. 1203, 1223, 1227, 1228; 29 Parl.

Dissent continued to last page

"Another source of power in government is a military force. But this, to be efficient, must be superior to any force that exists among the people, or which they can command; for otherwise this force would be annihilated, on the first exercise of acts of oppression.

Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any band of regular troops that can be, on any pretense, raised in the United States.

A military force, at the command of Congress, can execute no laws, but such as the people perceive to be just and constitutional; for they will possess the power, and jealousy will instantly inspire the inclination, to resist the execution of a law which appears to them unjust and oppressive."
~ Noah Webster (1758-1843) American patriot and scholar, author of the 1806 edition of the dictionary that bears his name, the first dictionary of American English usage. Defined the militia similarly as "the effective part of the people at large." Source: An Examination of the Leading Principles of the Federal Constitution, Philadelphia, 1787

"God forbid we should ever be twenty years without such a rebellion. The people cannot be all, and always, well informed. The part which is wrong will be discontented, in proportion to the importance of the facts they misconceive. If they remain quiet under such misconceptions, it is lethargy, the forerunner of death to the public liberty. ... And what country can preserve its liberties, if it's rulers are not warned from time to time, that this people preserve the spirit of resistance? Let them take arms. The remedy is to set them right as to the facts, pardon and pacify them. What signify a few lives lost in a century or two? The tree of liberty must be refreshed from time to time, with the blood of patriots and tyrants. It is its natural manure." ~ Thomas Jefferson (1743-1826), US Founding Father, drafted the Declaration of Independence, 3rd US President Source: November 13, 1787, letter to William S. Smith, quoted in Padover's Jefferson On Democracy

"Congress has not unlimited powers to provide for the general welfare, but only those specifically enumerated." ~ Thomas Jefferson (1743-1826), US Founding Father, drafted the Declaration of Independence, 3rd US President

"Those who expect to reap the blessings of freedom must, like men, undergo the fatigue of supporting it." ~ Thomas Paine (1737-1809) Source: Common Sense, February 14, 1776

American Juror Q & A

Hi FIJA,

Can jury nullification override state law? Could for example, if one "created" a religion, yet the beliefs of this religion conflicted with state law, but one person on the jury felt that 'religion' had the right to exist, even it conflicted with state law, would it then be allowed to exist regardless? Would it "over-ride" state law? Justme

Hi Justme,

As I understand jury nullification and the authority of the jury, the actual fact is that in this one case, in this one instance, the jury will simply hold the law as not being applicable. The jury will hold the law in this instance as naught. It would apply only in this case. It does not over-ride the state law, because the law still exists and can be applied in other cases. It is just that the jury has refused to apply the law in this specific, single, special case.

In fact, there have been times when juries have refused to apply laws that violated the right to practice a religion (with the understanding that no other human beings were hurt by these religious practices, which would make the practices against other laws!).

If I recall correctly, juries refused to convict some people for peyote use, because it was part of their Native American religious practices. But I may not be remembering this correctly. You might want to check around more on this, or maybe someone else on the forum knows more about this.

In any event, the law is not "over-ridden" so much as it is held as simply not applicable in this specific case before the jury. I don't know it that helps at all. I hope so. Hypathia

Thank you, Hy, It does help. Thank you. But you said it would apply to this 'one' case right. Would that then mean 'my' religion could then exist? And others in my state could join, regardless of state laws conflicting with it's beliefs? Like the peyote case you mentioned? Justme

Hello Justme,

If your religion exists for you, I would encourage you not to seek sanction from any government authority, because then you are subject to all the rules imposed on religions. If you need sanction from the government, you might want to examine your religion more closely to find out why you think you need this sanction.

As Hypathia wrote, this case would cover only this one, specific, isolated instance of the law, and this one jury trial, for you as an individual.

Not knowing the scope of your thinking, nor the nature of your religious practices, and not to give legal advice, but just an opinion, you will not be able to do, in the name of your personal religion, any things which you could not do outside of your religion.

On the peyote case: I believe that involved a lawsuit brought by Native Americans against the local courts' jurisdiction to interfere with long-established religious practices. You should, if you are interested, research these types of cases on line through Google.

In any event, I do not think that there is any instance of a nullification verdict being successfully used as a shield by others to escape prosecution under an existing law.

IMJ

Thank you Iloilo. But regarding this quote: "In any event, I do not think that there is any instance of a nullification verdict being successfully used as a shield by others to escape prosecution under an existing law."

Do you of know of any instances where this has been attempted?

Let's just say for example the religion I created was intended to give back the American citizens in my state the right to control their own body's and minds, as I feel the Constitution and the Bill of Rights states we have. I also feel it's a God-given "inalienable" right. So my religion would also in essence give 'responsible' and 'non-violent' people in my State the "right" to say, smoke marijuana, a MUCH more benign plant than tobacco or alcohol.

The first amendment states:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

So I don't feel it applies only to "long-standing" religions. We have the "right" to create new ones.

American Juror Q & A

I am already ordained and intend to right the guidelines of this religion. The state I live in is pretty "liberal", so I feel there's a good chance that with "jury nullification" it 'might' exist and others could join.

Am I missing something? And I am aware of the federal implications that 'any' drug use in religion must involve "sincere religious practice" in order to get First Amendment and/or Religious Freedom Restoration Act protection. But many of God's gifts do indeed have spiritual and life-changing power, which allow churches like the Native American Peyote Church, the UDV, etc to 'exist'. These gifts have definitely improved 'my' life for the better. I have learned and evolved over the years both mentally and physically from them, and so have millions of others across the nation.

Hello Justme,

I hope I can clarify the concept of jury nullification for you with this post.

Jury nullification is when a jury refuses to apply or enforce the law in one individual case. The jury verdict in that case has no bearing on any other case of any other individual, other than the possibility that a number of nullification cases concerning the same law will, in effect, put prosecutors and legislators on notice that the law will be difficult to enforce in this community.

This is what happened during prohibition, when the cumulative result of many "not guilty" verdicts contributed strongly to the repeal of that law.

There is absolutely nothing in a nullification verdict in an individual case which establishes precedent for any other individual to break the law in question. It is usually very difficult to identify exactly why a particular jury has nullified a law: compassion, mistrust of court officials, refusal to change community standards, a sense that the law was misapplied in this specific instance, and other reasons, can contribute to a jury nullification verdict.

So, to respond to your speculation: No, a jury finding you not guilty in a particular instance will not set the stage for any future case to be decided the same way, nor will one case establish any immunity for others from being tried under that same law. For instance, if a college student might be on trial for shoplifting medicine, and the jury hears all the evidence and believes that perhaps the student simply forgot to pay, or perhaps was so impoverished that she was unable to pay, or that his infection was so bad he was confused and left the store simply to hurry and take the medicine, the jury might return a not guilty verdict out of compassion. This in no way absolves any future shoplifter from being prosecuted or found guilty if that is the verdict of another jury in another case.

A jury, much less one juror, does not "over ride" state law - or federal law - but simply refuses to enforce the law in this one instance. This one instance has no effect on other cases tried under that same law, the exception being a trend of refusals to convict, as noted above.

If I read your posts correctly, you hope to expand a single instance of jury nullification to have a comprehensive affect on a specific law and its application in many instances, but jury nullification does not accomplish this. You may recall that many cases on questions of this nature reach the Supreme Court before they are settled. IMJ

Hi Iloilo,

I realize now that Federal Law is the 'last test' to one ensure protection of my religion under the First Amendment 'regardless'. The only solution to my problem is to create my religion, my Bible, my beliefs, guidelines, etc and submit it directly to the Federal Government "itself", while possibly getting 'arrested' with a small personal amount of my "sacrament". Then it's up to them to decide the "sincerity" of my religion.

Here's a nice read on the subject for anyone interested....http://www.reason.com/news/show/119721.html

But jury nullification is a 'very' handy tool indeed in what I feel is a 'very' unjust War on Drugs and the Mandatory Minimums that follow. I will be spreading it like wildfire. It was 'indeed' what ended Prohibition itself.

And thank you very much for the advice.

Peace.

Hi FIJA,

I have supported FIJA and other causes over the years. The check is literally in the mail.

Question: When I first was introduced to

Q & A continued on page 7

"A constitution is not the act of a government, but of a people constituting a government; and government without a constitution is power without a right. All power exercised over a nation, must have some beginning. It must be either delegated, or assumed. There are not other sources. All delegated power is trust, and all assumed power is usurpation. Time does not alter the nature and quality of either." ~ Thomas Paine (1737-1809)

"Violent resistance against the power of the state is the last resort of the minority in its effort to break loose from the oppression of the majority. ... The citizen must not be so narrowly circumscribed in his activities that, if he thinks differently from those in power, his only choice is either to perish or to destroy the machinery of state." ~ Ludwig von Mises (1881-1973) Economist and social philosopher Source: Liberalism. The Classical Tradition (1927), Fourth American Edition (Irvington-on-Hudson: Foundation for Economic Education, 1996), p. 59

"Absolute, arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority." ~ Wyoming Declaration of Rights Art. I, Sec. 7 also found in the Kentucky Declaration of Rights - Art. I, Sec. 2

"Our inalienable rights cannot shield us from our own follies." ~ Eric Schaub, Editor/ Publisher of Liberty Quotes

"We are reluctant to admit that we owe our liberties to men of a type that today we hate and fear – unruly men, disturbers of the peace, men who resent and denounce what Whitman called 'the insolence of elected persons' – in a word, free men."
– Gerald W. Johnson
(1890-1980)
Source: American Freedom and the Press, 1958

"The objector and the rebel who raises his voice against what he believes to be the injustice of the present and the wrongs of the past is the one who hunches the world along."
– Clarence S. Darrow
(1857-1938)
Source: Address to the Court, The Communist Trial, People v. Lloyd, 1920

"Non-cooperation with evil is as much a duty as is cooperation with good."
– Mahatma Mohandas K. Gandhi
(1869-1948)

"I had reasoned this out in my mind, there was one of two things I had a right to, liberty or death; if I could not have one, I would have the other."
Harriet Tubman

"Every collectivist revolution rides in on a Trojan horse of 'emergency'. It was the tactic of Lenin, Hitler, and Mussolini. In the collectivist sweep over a dozen minor countries of Europe, it was the cry of men striving to get on horseback. And 'emergency' became the justification of the subsequent steps. This technique of creating emergency is the greatest achievement that demagoguery attains."
– Herbert Hoover

LETTERS TO EDITORS

To the White Salmon Enterprise for publication: May, 2007

Thanks to Judge William Nix for setting the record straight with regard to Judge E. Thompson Reynolds' sentencing a sick woman to house arrest for medical marijuana use. I was disturbed by the postcard I received and am glad to know the facts.

I have had several opportunities to observe Judge Reynolds in court as opposing litigant (before he became a judge), witness, and juror, and I have considerable respect for his fairness and integrity. After thinking about the postcard, I suspected that he was constrained by the law to act as he did, and am pleased to have that guess confirmed.

I heartily concur with Judge Reynolds' appeal to citizens to fulfill their civic duty when called for jury service. If the sick woman had been tried by a jury rather than a judge, she might well have been acquitted, and the issue of sentencing might never have arisen.

It is not well enough known that juries have the power and the duty to judge bad laws as well as criminal conduct and civil wrongs.

Unfortunately, prospective jurors are often given misinformation on this subject. The right to a trial by a jury of one's peers is a proud tradition that goes back to the Magna Carta, enacted in 1215. William Penn was tried in London in 1670 for preaching his Quaker faith, an illegal act in a country that recognized only the official Church of England. Even after the jurors were ordered by the judge to convict Penn, and imprisoned when they refused, they held fast to their convictions, and eventually the government gave up. Our founding fathers had Penn strongly in mind when they enacted our Bill of Rights with its guarantees of freedom of speech, assembly, religion, and trial by jury. Juries are mentioned five times in the Constitution.

If you are called, please serve, and please know your rights, duties, and responsibilities. You can learn more about the role of jurors from the Fully Informed Jury Association, www.fija.org or 800-TEL-JURY.

When our nation prohibited alcohol in 1919, organized crime swelled to fill the demand for the suddenly illegal recreational drug, and a large segment of the population broke the liquor laws, which fostered disrespect for law in general. Eventually we recognized and corrected (to some extent) our mistake with regard to liquor. Now we are repeating the painful lesson with marijuana and drug lords. It seems Americans (or at least our politicians) are slow learners. For some conditions, marijuana is the best medicine. It is outrageous that some people have to jeopardize their freedom by taking their medicine. Even people who deny that marijuana should have the same legal status as alcohol should favor the legalization, on both federal and state levels, of medical marijuana, for reasons of compassion.

Carolyn Simon, White Salmon

Date: Sat, 19 May 2007 16:37:51 -0700
From: R Givens

WHERE ARE THE STEALTH JURORS???
Rosenthal Jury Pool - Idiots On The Loose

"Potential jurors repeatedly regaled the court with anecdotes about medical marijuana, mini-speeches about the need to legalize marijuana, and expressions of disgust for the people behind the federal raids and prosecutions of medical marijuana operations in the state."

Perhaps prospective jurors feel noble by expressing their contempt for marijuana prohibition, but if they give the subject a few seconds thought, they will realize that removing themselves from the jury pool only leaves those guaranteed to convict. Better to express your contempt with an acquittal or a hung jury.

If they need a moral alibi for deceiving the court let them say "I changed my mind about ignoring my conscience after the deliberations began, what the hell are you going to do about it!" Or "I thought every prosecution witness lied!" (Anyone who cannot find a lie in a nark's testimony is really dim-witted. One lie is all it takes to reject every word.)

Concealing the truth can be done without lying if a person is clever enough. Mainly by just keeping your mouth shut. Better to think of ways to get on the jury and sink the prosecution than making soap box speeches.

The impact of a nullification verdict would give the US Prosecutor far more pause for thought than the best speech.

Signed, R Givens

Q & A continued from page 5

FIJA there was a factoid that the Georgia Constitution was only one of three state constitutions that specifically mentioned the fact that juries have the right not only to judge a persons guilt, but the law (crime) itself. I just downloaded 86 pages of GA constitution, haven't found it yet. Any directions or has it, as well as the other two states, amended their constitutions?

Be Well,
James Creighton

Hello, This May Help:

Current Constitutional Authority for Jury Nullification:

"The Constitutions of Maryland (Art. XXIII, entire), Indiana (Art. I, sec. 19), Oregon (Art. I, sec. 16), and Georgia (Art. I sec. 1, para. 11, subsec. A), currently have provisions guaranteeing the right of jurors to "judge the law"; that is, to nullify the law.

For example, the Georgia Constitution says: "In criminal cases, the defendant shall have a public and speedy trial...and the jury shall be the judges of the law and the facts."

Although these provisions have not been strong enough to withstand decades of hostile judicial interpretation, and have relatively little current impact, they do remain "on the books". Attorneys in Georgia and Indiana reportedly are able to request nullification instructions from the judge to the jury and generally receive them, and are sometimes able to argue the law.

Twenty states currently include jury nullification provisions in their Constitutions under their sections on freedom of speech, specifically with respect to libel and sedition cases:

Alabama (Art.I, Sec. 12); Colorado (Art II, sec. 10); Connecticut (Art. I, sec. 6); Delaware (Art. I, sec. 5); Kentucky (Bill of Rights, sec. 9); Maine (Art. I, sec. 4); Mississippi (Art. 3, sec. 13); Missouri (Art. 1, sec. 8); Montana (Art. II, sec. 7); New Jersey (Art. I, sec. 6); New York (Art. I, sec. 8); North Dakota (Art. I, sec. 4); Pennsylvania (Art. I, sec. 7); South Carolina (Art. I, sec. 16); South Dakota (Art. VI, sec. 5); Tennessee (Art. I, sec. 19); Texas (Art. I, sec. 8); Utah (Art. I, sec. 15); Wisconsin (Art. I, sec. 3); Wyoming (Art. I, sec. 20).

Of these, Texas, Delaware, Kentucky, North Dakota and Tennessee say that the jury is the judge of the law in libel and sedition cases." Source: Alan W. Scheflin, "Jury Nullification: the Right to Say No", Southern California Law Review, 45, p. 204 (1972). [List has been updated to 1996.]

For example:

The Texas Constitution - Art 1 - Sec 8

Article 1 - BILL OF RIGHTS

Section 8 - FREEDOM OF SPEECH AND PRESS; LIBEL

Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Missouri Constitution

Article I - BILL OF RIGHTS

Section 8 - Freedom of speech--evidence of truth in defamation actions--province of jury.

That no law shall be passed impairing the freedom of speech, no matter by what means communicated: that every person shall be free to say, write or publish, or otherwise communicate whatever he will on any subject, being responsible for all abuses of that liberty; and that in all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and in suits and prosecutions for libel the jury, under the direction of the court, shall determine the law and the facts. Hope that answers your question. IMJ

"Our constitutions purport to be established by 'the people,' and, in theory, 'all the people' consent to such government as the constitutions authorize. But this consent of 'the people' exists only in theory. It has no existence in fact. Government is in reality established by the few; and these few assume the consent of all the rest, without any such consent being actually given."

~ Lysander Spooner (1808-1887)
Political theorist, activist, abolitionist

"It has been thought a considerable advance towards establishing the principles of Freedom, to say, that government is a compact between those who govern and those that are governed: but this cannot be true, because it is putting the effect before the cause; for as man must have existed before governments existed, there necessarily was a time when governments did not exist, and consequently there could originally exist no governors to form such a compact with. The fact therefore must be, that the individuals themselves, each in his own personal and sovereign right, entered into a compact with each other to produce a government: and this is the only mode in which governments have a right to arise, and the only principle on which they have a right to exist."

~ Thomas Paine (1737-1809)

"The right to defy an unconstitutional statute is basic in our scheme. Even when an ordinance requires a permit to make a speech, to deliver a sermon, to picket, to parade, or to assemble, it need not be honored when it's invalid on its face."

~ Justice Potter Stewart (1915-1985), U. S. Supreme Court Justice Source: Walker v. Birmingham, 1967

"Extremism in defense of liberty is no vice. Tolerance in the face of tyranny is no virtue."

~ Barry Goldwater (1909-1998) US Senator (R-Arizona)

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Hist. 1408

In the similar Case of Shebbeare, in 1758 (Starkie, Sland. & L. 56, 616), Mr. Pratt, as attorney general, when moving before Lord Mansfield for leave to file the information, said: 'It is merely to put the matter in a way of trial; for I admit, and his lordship well knows, that the jury are judges of the law as well as the fact, and have an undoubted right to consider whether, upon the whole, the pamphlet in question be or be not published with a wicked, seditious intent, and be or not a false, malicious, and scandalous libel.' Second postscript to Letter to Mr. Almon on Libels (1770) p. 7; 4 Collection of Tracts (1763-1770) p. 162. And at the trial, as he afterwards said in the house of lords, he 'went into court predetermined to insist on the jury taking the whole of the libel into consideration,' and 'so little did he attend to the authority of the judges on that subject that he turned his back on them, and directed all he had to say to the jury.' 29 Parl. Hist. 1408. And see 20 How. State Tr. 709. But Lord Mansfield instructed the jury that the question whether the publication was a libel was to be determined by the court. 4 Doug. 169.

Lord Camden, when chief justice of the common pleas, presiding at criminal trials, instructed the jury that they were judges of the law as well as the fact. Pett. Jur. (1769) cited in 21 How. State Tr. 853; 29 Parl. Hist. 1404, 1408.

The act then provides - First, that the presiding judge may, at his discretion, give instructions to the jury; second, that the jury may, at their discretion, return a special verdict; and, third, that the defendant, if found guilty, may move in arrest of judgment. The first of these provisos, and the only one requiring particular notice, is that the judge shall, at his discretion, give 'his opinion and directions to the jury on the matter at issue,' 'in like manner as in other criminal cases.' His 'opinion and directions' clearly means by way of advice and instruction only, and not by way of order or command; and the explanation, 'in like manner as in other criminal cases,' shows that no particular rule was intended to be laid down in the case of libel. And that this was the understanding at the time is apparent from the debate on the proviso, which was adopted on the motion of Sir John Scott (then solicitor general, and afterwards Lord Eldon) just before the bill passed the house of commons in 1791. 29 Parl. Hist. 594-602.

The clear effect of the whole act is to declare that the jury (after receiving the instructions of the judge, if he sees fit to give any instructions) may decide, by a general verdict, 'the whole matter put in issue, ' which necessarily includes all questions of law, as well as of fact, involved in the general issue of guilty or not guilty, and to recognize the same rule as existing in all criminal cases.

Not only is this the clear meaning of the words of the act, but that such was its intent and effect is shown by the grounds taken by supporters and its opponents in parliament, as well as by subsequent judicial opinions in England. Mr. Fox, upon moving the introduction of the bill in the house of commons in 1791, after observing that he was not ignorant that 'power' and 'right' were not convertible terms, said that, 'if a power was vested in any person, it was surely meant to be exercised'; that 'there was a power vested in the jury to judge the law and fact, as often as they were united, and, if the jury were not to be understood to have a right to exercise that power, the constitution would never have intrusted them with it'; 'but they knew it was the province of the jury to judge of law and fact, and this was the case, not of murder only, but of felony, high and of every other criminal indictment'; and that 'it must be left in all cases to a jury to infer the guilt of men, and an English subject could not lose his life but by a judgment of his peers.' 29 Parl. Hist. 564, 565, 597. And Mr. Pitt, in supporting the bill, declared that his own opinion was against the practice of the judges, 'and that he saw no reason why, in the trial of a libel, the whole consideration of the case might not go precisely to the unfettered judgment of twelve men, sworn to give their verdict honestly and conscientiously, as it did in matters of felony and other crimes of a high nature.' 29 Parl. Hist. 588.