

1 The second reason for abandoning this provision
2 is that some 50 years ago there were ten other jurisdictions
3 at least that had it. All of them have abandoned it one way
4 or the other except for Indiana, and Indiana, as is pointed
5 out I think in the committee report, has rendered it virtually
6 useless because the judge is not required to charge the
7 criminal jury that they can disregard the instructions. This
8 is a requirement under Maryland law.

9 The main present effect, and this the bad reason,
10 is that it tends to confuse criminal juries and subverts
11 justice. What happens is that prosecutors and defense counsel
12 get up and argue different propositions of law to the jury
13 and each of these may differ from the judge's instructions.

14 I have done this myself as a prosecutor and at
15 least on one occasion when it was done I think that an in-
16 justice occurred, that is to say that someone was convicted
17 of an offense for which he probably should not have been
18 convicted and the reason for it was that I was permitted, in
19 fact expected, to argue the law to the jury.

20 It puts a undue emphasis on clever advocacy and
21 persuasiveness and I suggest that there is sufficient realm