

This is an old relic that goes back 500 years, back to before the Revolution when judges were ignorant and did not know what it was all about and peers were allowed to decide the law.

I believe the most telling argument made against this particular ancient rule is simply this, that a person in a criminal action is entitled to be tried with the true law, or with the law established.

Now, under this, a defendant's lawyer, a clever defendant's lawyer can argue whatever he wants and, as I think Delegate Carson has pointed out, an equally clever prosecutor can put out whatever he wants, and the jury is left in the middle. I just do not think that, being the only State in the union to have this archaic law, we should continue it. I do not think that the argument that was made is a valid argument.

The argument made before our Committee was that it gives the defendant one last chance to have some opportunity to get off because of his attorney being able to argue the law. I do not particularly feel strongly about it personally. I am not a criminal lawyer. It just seems to me it is archaic, and that in view of recent rulings it has no proper place in our declaration of rights.

I want also to point out that we did do research on this. Delegate Willoner has used the term "blackjack" a number of times here. He has not defined what "blackjack" means. It seems as though it is something sinister if we conduct our criminal procedure the same way as the other forty-nine states, but I do not believe this is so.

We in our investigations have determined very conclusively that a court cannot direct a verdict of guilty against the defendant, and that it never does happen.

I therefore believe we should continue our same course of action and reject this amendment.

THE PRESIDENT: Delegate Marvin Smith.

DELEGATE M. SMITH: Mr. President, I did not speak on this matter when it was before the Convention previously. There have been statements made here that are just not in line with the practice as I know it from the standpoint of the trial of criminal cases.

I do not know how many cases I have tried over the period of the last 22 years,

but it has been a substantial number. Never have I had the experience in a small town, in a small county, of a juror coming up to me and saying "We did not understand the law that you lawyers were putting to us", but, Mr. President, I have had the experience of the jurors coming up to me and saying in a civil case, "We do not or did not understand the instruction of the court to the jury."

The experience, as I have known it, has not been getting together a mass of out-of-state decisions or anything of that sort. Usually it has been reading from Hocheimer on Criminal Law, which is the bible, the handbook of those who try criminal cases in this State.

I think this is a defense mechanism insofar as the rights of the people are concerned.

Now, I have never known of a serious miscarriage of justice in the trial of cases in our area. I have known of at least one case in a neighboring county where, technically, probably, a person was guilty of a violation of the law in that he was involved with a young lady who was 13 years and 11 months and 28 days old, and had she been about three days older it would not have been a hanging offense.

The attorney defending the accused quite properly made the point to the jury that they were in fact judges of the law and the fact, and they might well consider all factors in the situation, and they brought in a verdict of not guilty.

Now, I do not ask for this as something just for those of us who practice a little bit, and I do not practice much any more, the defense of criminal cases. I do ask for it as a protective mechanism insofar as the people of Maryland are concerned. I support the amendment.

THE PRESIDENT: Is there any further discussion?

Delegate Gill.

DELEGATE GILL: Mr. President and fellow delegates, I would like to present the other side of the picture.

I have served on a jury. Of course I am not a lawyer. I can understand reasonably well, and I do appreciate the instructions that come from the judges. In September, when I came down here, I received another notice to serve on a jury, and I would have enjoyed doing so, knowing that I would get instructions from a judge. However, I do not think I would have accepted if it were