

tion to take this act, and after looking at the cases I can understand why — because I think they would have nearly unrestrained power to take away from a defendant his right to a jury trial.

Now, Judge Henderson has spoken to the right of appeal and Delegate Weidemeyer has spoken to the fact that it would be very expensive in any event for a defendant to take his problem to an appellate court.

I will speak to a third point in that regard, because when and if the case reaches the appellate court there is apparently no relief for this defendant against whom the judge has directed a verdict. While the majority of courts hold you cannot direct a verdict it is still possible, and the appellate courts approve it, for a judge to command that a jury return a verdict.

I would like to read from the Horning case that Delegate Weidemeyer cited, because this is the Supreme Court's most recent word on what a judge has power to do, and it is an interesting decision because Justice Holmes —

THE CHAIRMAN: Your time has expired.

DELEGATE BOTHE: May I read one paragraph, because I want the delegates to know what the Supreme Court says is an appropriate direction to a jury?

THE CHAIRMAN: Proceed.

DELEGATE BOTHE: That judge said, and the Supreme Court said it was all right. "In conclusion, I will say to you" — that is the members of the jury — "that failure by you to bring in a verdict in this case can arise only from a flagrant disregard of the evidence and the law as I have given it to you and a violation of your obligation as jurors. Of course, gentlemen of the jury, I cannot tell you in so many words to find the defendant guilty, but what I say amounts to that."

THE CHAIRMAN: Delegate Armor.

DELEGATE ARMOR: It has been mentioned several times here that there are eighty-odd attorneys in this group. I want to present to you the view of an odd businessman.

Now, since I have been down here I have had three jury calls. I do not object to serving on the jury, but what happens when I do appear? Some of you attorneys challenge me because I have had formal education, because I am a businessman.

I think, from my point of view, that what some of you attorneys are doing is getting a jury of lower intelligence.

Now, I submit to you that these juries are not able to judge the law. Let them judge the facts.

Therefore, I am against reopening this issue.

THE CHAIRMAN: Delegate Kosakowski.

DELEGATE KOSAKOWSKI: Mr. Chairman, it would be repetitious on my part if I mentioned the arguments for the proponents of this section. I will urge the assembly here, this Convention, to vote for reconsideration.

I served for eight years on the judiciary committee in the legislature, and I speak as a layman. I have seen lawyers argue before. They are split over this issue.

We are here to put into the constitution a section for personal rights, the rights of all people, and I know it sounds difficult for a lawyer to think that another lawyer would not understand the law — it sounds odd and strange, but in many instances there are non-lawyers, well educated people with experience in law offices who later serve on these juries, and I think they would be able to determine the law.

Quite a bit of the State Bar Association appeared at our Committee and I, as a layman in my naive way hearing the arguments pro and con by the lawyers who could not decide themselves, said to this learned lawyer: "Sir, if your life was at stake, would you want to be judged by the system that you are proposing now, by your peers of all lawyers who really know the law, or would you rather put your life at stake under the present system?"

I never got an answer, and I say to this body, vote to reconsider and give the other 28 members who did not have an opportunity to vote either way on this issue a vote to reconsider.

Thank you.

THE CHAIRMAN: Delegate Carson.

DELEGATE CARSON: Mr. Chairman, ladies and gentlemen, I will be very brief.

It seems to me that the real reason for taking up this antiquated provision is because it permits uneven and unequal justice, something that we cannot permit. It permits one jury to find that "X" is the law and therefore that a defendant is guilty, but it permits at the same time