

JURIES...

'Sniffing out Fraud: A Tribute to the Collective Nose of the Jury'

Trial by jury has long been a thorn in the side of those who would like their own way regardless of true justice or morality. Much has been said by such people about the jury's inability to comprehend the intricacies of complicated fraud cases.

Supporters of the jury system, however, point out that whether or not they comprehend the specific intricacies of such cases is not relevant as long as they have grasped the overall picture. Has the dishonesty alleged been proved beyond a reasonable doubt? The essential ability of a jury is to 'suss' out fundamental immorality or dishonesty and it is the latter that all fraud cases are about.

The collective nose of the average jury is an excellent detector of dross and dishonesty!

The suggestion that juries be replaced by some other form of tribunal invariably comes from the ranks of those with a vested or political interest in a greater number of convictions. There are many prosecutions which are enthusiastically pursued for reasons unconnected with the morality of the persons charged, or with less than enthusiasm when circumstances force the authorities to take action when they would prefer not to, (*ie: over the cases that just escape being swept under the carpet by those in power*).

The jury are an excellent body to ensure the fundamental reality of approach is discovered and not hidden.

Noises are frequently heard in various places about the length of trial, with the jury often designated as the scapegoat for these unnecessary delays. One oft-cited reason is the claim that juries cannot understand complicated accounts and figures.

This is just not so. Every jury (unless very unlucky) possesses amongst its numbers those who are numerate and have some experience in these matters. Can the same be said of judges who have no practical commercial experience, or barristers who frequently have difficulty making out their own VAT returns?

The other suggestion that faceless accountants should be used, because they may comprehend the figures better, is not only giving them a humanity which their professional calling inhibits but is a trifle inappropriate at a time when many

of them are having great problems keeping their own houses in order, no matter how mighty.

If the presentation of cases to juries were improved, the length would diminish, possibly in the same ratio. Fraud cases are frequently presided over and presented by persons with little or no experience of matters commercial in law or in practice. This practice should cease because it only serves to confuse if not to deceive the jury and it is they who have to, and do, do the unravelling. The lawyers concerned should have the necessary commercial expertise not detracting from an ability to present a fair picture to the jury. Steps should be taken to achieve this end so as to simplify, and not to complicate, the task of the jury.

Anyone who enters the portals of a court of law trying a large fraud case will see enormous bundles of documents behind which you will see many bored if not sleepy faces. It is often the case that it is the jury who are the most alert and trying the hardest, because they do not have amongst their number cynical old hacks who do the same thing day in and day out to the end of their lives. And in these large bundles you will find the identity of the true defendant - **the photocopying machine.**

They invariably contain large amounts of unnecessary material, some badly copied and frequently repeated. The compilers, the presenters are at fault. This is often made worse by overloaded indictments and an excessive number of defendants. **Prune down the paperwork to the bare essentials and do the same with indictments and defendants and -hey presto - shorter fraud cases!**

The above will only be achieved by utilising the expertise referred to earlier; assuring early preparation by those who are charged with the presentation and content of such large cases, with interlocutory processes similar to those (as appropriate) utilised in the civil process.

Judges with such expertise should be given the powers of interlocutory process, and such orders should have *bite* so that the rumps of both prosecutors and defenders are at risk. **At the end of the day, the jury should remain untouched and uncriticised for the better interests of true justice** - its collective nose continuing to sniff out fraud and other dishonesties that pass before it. *Amicus juriae.*

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THEN AS NOW...



19th century London had its share of white-collar criminals, frauds and cheats - according to Henry Mayhew.....

'These defalcations often arise from fast life, extravagant habits and gambling. Many fashionable clerks in lawyer's offices, banks and Government offices, frequent the Oxford and Alhambra music halls, the West End theatres, concerts and operas. They attend the Holborn Assembly Room and the Argyle Rooms, and are frequently to be seen at masked balls and at Cremorne Gardens during the season. They occasionally indulge in midnight carousels in the Turkish divans and supper rooms.

Some Government clerks have high salaries, and keep a mistress in fashionable style, with brougham and coachman, and footman; others maintain their family in a state their salary is unable to support, all of which lead step by step to embezzlement and ruin.'

(Henry Mayhew: London's Underworld, edited by Peter Quennell, section on Cheats & Embezzlers, Spring Books 1969. p 330.)

NOTHING CHANGES!