

Juror in Landmark IRS Trial

Tells Hidden Side of Story

Whenever the criminal system, the modern development of our constitutional law, sorts out and creates public opinion in defense of the social good against potential enemies, we find the definition of accused. That so called definition can become the revenge upon the accused it wishes to crush. So was established a fiery sword that was drawn upon Joseph R. Banister, CPA.

In this case, it was the purpose of the criminal court to prove that Mr. Banister did or did not commit a certain act as defined by statute. It was such postulation that led to the idea that conviction or punishment was an achievement to be reached for the good of society and that both should be just and expedient. There existed a presupposed attitude by the prosecution that Mr. Banister drew an ill feeling that threatens all of us. At this point, the law became the weapon for calming any “aggression” on the part of defendant.

The prosecution sought a conviction but the defendant set a defense against any preconceived assault. These were the emotions of battle! Fortunately, the scales of justice called for adjudication with ultimate impartiality. The duty of the court was to monitor fair play while the contending parties did almost anything to win. Tactics of win or lose by the prosecution and defense teams did not support intentions of fairness. They were all about who told the most compelling story or who did not have a good story to tell. These diverse scenarios cautioned the jury about the importance of thorough deliberations based only on the evidence and testimony of the witnesses. In this case, it

seemed as if a lack of fair play began with the first arguments and ended with the closing arguments. Emotional outbursts and subtle insinuations by the attorneys on both sides became cumbersome weapons of attack and defense. That climate reinforced the idea that a collective impartiality was out the door save for the objectivity of the presiding judge, evidence on hand and testimony of credible witnesses. The judge's statements of the law became vital as litigation proceeded. Such wisdom was tremendously important to the jury.

I quickly found out that the magnificence of law can become an ugly angel with a fiery sword at the gate that can cut any accused from the world in which he lives. It not only cuts and serves to exile rebellious individuals but awakens the community of those inhibitions that make rebellion impossible to them.

We gain respect for laws that are justly metered and abhorrence when that is not the case. We must keep in mind that the law can become the safeguard of one's interest or a directed hostility against what an accused represents. It was quite evident that hostility was levied against Mr. Banister. In such case, it was not the detailed operations of the law that were sought but the capture of a common enemy, at which point the law became a weapon to overwhelm the defendant.

Mr. Banister was justified in defending a right of principle and in so doing may have been defending the whole body of analogous rights which our society may or may not be intent to preserve. The price was high for such justification. Though such position may have been out of proportion, it may well have answered to the needs of society as whole. Proportionality does not exist between sin and suffering but does exist between sin and the amount of suffering.

In the case, *The People vs. Joseph R. Banister*, a “Tax Honesty Advocate”, the jury was instructed that the case before it had been separated from another one. This jury had no knowledge of the previous one. It was only aware of Mr. Banister being in the court room, the charges so stated by the prosecution and instructions given by the court. In a previous case another “Tax Honesty Advocate”, as we later found out, had been charged with having conspired to commit fraud in conjunction with Mr. Banister but not found guilty. As the evidence and testimony in our case were presented, it became difficult to subscribe an equal relationship between Mr. Banister who was not against taxes and taxation but against administration of laws that go beyond allowable parameters and Mr. Thompson who supposedly withheld paying of federal taxes. The essence of this legal argument revolved around the idea that tax laws as written do or do not apply to certain people, (Americans working abroad , foreigners working, investing or conducting business in this country etc.) yet, the IRS seems to be administering tax laws of limited scope as if they have broad application across the board. If that is the case, then the IRS is an enfant terrible! That thought sounds revolting, if true! I would not be surprised that different perceptions and actions that sprung from unusual impulses may have led to evaluations that had something in common.

It appeared that Mr. Banister was defending a right of principle regardless of its importance simply because it represented a body of analogous rights or values inherent in our existing culture. To the contrary, evidence provided by the IRS did not support its own right of principle. So what were the hidden motives behind the government’s charges against Mr. Banister?

Now, if the game was all about silencing a functionary, then no wonder the prosecutorial team sought every possible avenue to convict him. Bringing charges of conspiracy against Mr. Banister even though Mr. Thompson had long before been acquitted of conspiracy now seem a bit farfetched. (Note: I emphasize the information about the acquittal of Mr. Thompson on conspiracy charges did not come to light until Mr. Banister's trial had ended and the jury had been dismissed.) Question: If the first alleged "coconspirator" was not found guilty as charged then what were the grounds for bringing conspiracy charges against Mr. Banister? A conspiracy is defined as a secret plan by a group to do something unlawful or harmful. A conspirator is defined as someone who takes part in a conspiracy. Can a person conspire with his alter ego and be charged of so doing? Granted, the government may bring forth any charges it so wishes and the court may allow them to be presented. But, does it not sound reasonable that if Mr. Thompson was not found guilty of a conspiracy then there were no grounds to support conspiracy against Mr. Banister? This makes one wonder as to the standards of evidence required for admitting or excluding cases by the court system. Sure makes one think! Could the scales of justice have tilted their fiery sword to slice the abstract rights of Mr. Banister? Could the effort by the prosecution have been more of a drive to suppress potential violators by swinging a double edged sword upon the emotional solidarity embedded in the heart and thinking of Mr. Banister? Did I witness the thin veil by which dissent is squashed in America? If that was the case, then we are in trouble! Could it be that the government was going after what one could call a whistle blower? I am still puzzled by the lack of evidence provided by the government.

One does not second guess a court, but: Citing Rule 29. “Motion for a Judgment of Acquittal” (The jury was not present for Rule 29 discussions). It appears that after the government closed its evidence or after the close of all evidence, the court on the defendant’s motion could have entered a judgment of acquittal on the alleged offense. The court could, on its own, have considered whether the evidence was sufficient to sustain a conviction. In this case, the court reserved decision on the motion, proceeded with the trial and submitted the case to the jury which found that evidence presented by the prosecution was not sufficient to support a conviction on any of the charges. I believe in our legal system and I am not suggesting a short circuiting of legal procedures. If there was no case, then why did the defendant have to shoulder such financial obligation and emotional turmoil? So why did he have to go to trial?

This jury, like others, worked in a partial vacuum as it deliberated toward a fair verdict, one based on the evidence presented by the prosecution and defense. The burden of proof rested with the prosecution. But, was the case put by the government, by design, meant to be a weak one? It is still bothering that there was no factual or circumstantial evidence that supported a guilty verdict. Even a blind man could have seen that! Again, what were the motives of the government if it did not have a case? Were they:

- To dissuade other “Tax Honesty Advocates” from challenging application of regulations by the Internal Revenue Service?
- To paint Mr. Banister as a mole thus diminishing his credibility?
- To cast a general lack of credibility upon those who dare challenge the Internal Revenue Service?

- To cast a veil so that business can continue as usual in the Internal Revenue Service?
- To use Mr. Banister as a whipping boy?
- Or, was it seen that even a weak offense is the best defense for the IRS? Time will only tell!

A fair application of our laws is in everyone's interest and any hostile application smacks of criminal aggression against all citizens. Let us hope that the charges were not a sham or pathology that managed to slip into the legal process?

There are citizens who often second guess decisions by juries. I say to them, "You have not been a juror until you have served." Serving in a jury is a serious social responsibility of the citizenry in our country! We took our responsibility seriously.

Oscar S. Ramirez, Ph.D.