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as I see it;  
trying not to  
offend  
those who will  
disagree."

# The truth as I see it™

Idaho Common Sense™



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## Edward Bushell, juries, and the First Amendment

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Can a citizen exert power over the government? Can a citizen be protected from government enacting bad law? Can a citizen do anything about bad law? Does the jury represent the citizen, the government, the court, or do they represent the Constitution of the United States of America? Does the jury answer to the court or do they answer to their judgment and conscience? Can a jury rule on law, or must they only rule as the court directs? How do juries relate to the branches of government that have the power to enact and interpret the law?

To a significant degree, these questions were answered in London, England in 1670, leading to profound changes in English law that would ultimately influence our own Constitution. A mere 338 years ago there was a trial in England with ordinary citizen jurors.

A Quaker Pastor took offense to the English law called the Conventicle Act of 1664, that forbade religious assemblies of more than five people. The Act was passed to maintain the Church of England as the sole church. This young, defiant, Quaker Pastor flagrantly challenged the law by having a peaceful assembly of Quakers outside Grace Street Church in London. The meeting was short-lived, the Pastor and his assistant quickly arrested and charged. The Pastor claimed innocence, stating he had assembled peacefully and had not injured either person or property.

Following testimony, the court recorder directed the jury that this was a "cast iron" case, retiring them to deliberate. A short time later the jury returned with juror Edward Bushell doing what had not been done before; he challenged the bench saying, "We

don't countenance the way this whole matter is conducted." The jury was repeatedly retired to deliberate, often overnight without food and water, with instructions to return a "proper verdict." Each time the verdict for the men was unchanged – "not guilty." The judge said the jury "shall not be dismissed until we have a verdict that the court will accept."

The jurors were fined and put in prison. The matter finally reached Chief Justice Vaughan of the Court of Common Pleas, who reviewed the case and found in the jury's favor saying, "A jury must be independently and inscrutably responsible for its verdict free from any threat from the court." Freeing Edward Bushell and the jury from the abuse of the court, Judge Vaughan issued the first writ of habeas corpus. This historic trial is remembered in the hall of London's Central Criminal Court with a plaque honoring the jury of 1670 and Edward Bushell who risked his freedom to do what he determined was right, nullifying bad English law.

But what of the Quaker Pastor? The Pastor, William Penn, emigrated from England to the Colonies, founding what would become his namesake, Pennsylvania. He and others brought with them the lessons learned from the trial of 1670; the trial that challenged bad law.

Over 100 years later, at the time of our American Revolution, the jury had the power to be judge of both the law and the facts of the case before them. John Adams defined the jury's power saying, "It is not only (the juror's) right, but his duty – to find the verdict according to his own best understanding, judgment, and conscience, though in direct

opposition to the direction of the court."

Our founding fathers, heeding their common sense fear of the power of government, actually created four different institutions, each of which must agree with a law for it to be accepted as law; the Legislative Branch, the Executive Branch, the Judicial Branch, and the jury. Isn't that amazing; the final protection of the ordinary citizen from the powers of government gone astray is a jury. Thomas Jefferson eloquently surmised, "I consider trial by jury as the only anchor yet imagined by man, by which a government can be held to the principles of its constitution."

A simple Englishman sitting on a jury in 1670 England refused to do what the court ordered, refused to support bad law, and changed English Common Law to protect freedom of religion. This same case led to other rights incorporated into the First Amendment of our Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

What if Edward Bushell had done what the court ordered? What if he had voted guilty, affirming that government could enact law as it chose, without challenge? What if juries had to live in fear of retaliation by the court if they failed to do as ordered? What if? One person can make a difference.

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