Liberty Tree

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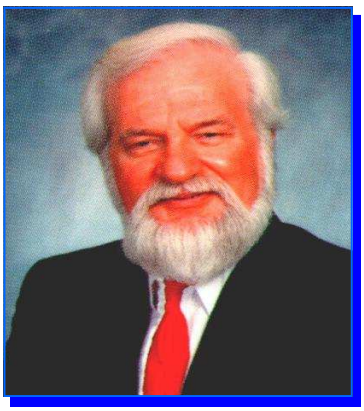

John B. Kotmair, Jr. Rests from his Labors

It is with great sadness that we at Save-A-Patriot Fellowship must inform you that America has lost a true hero and patriot, John Baptist Kotmair, Jr., 83, of Westminster, Maryland. John, the founder and first fiduciary of the Fellowship, passed from this world into eternal rest on December 13, 2017. Many of our members were well-acquainted with John personally, and they will know that the following summation of his life cannot even begin to adequately express this brave man, his contributions to American patriots, and the great loss we feel at his passing.

John is survived by his wife, Nancy L. (Blunt) Kotmair, two daughters, two sons, 10 grandchildren, 17 great-granchildren, and many American patriots who will always remember his unremitting efforts on their behalf.

John served in the Navy for four years and with the Baltimore Police for eight years. He was a custom home builder during the 1970s, served as a patriot in federal prison camp in the early 1980s, and was the founder and fiduciary of Save-A-Patriot Fellowship from 1984 onward.

Most patriots will remember John Kotmair as one of the strongest voices of the tax honesty movement, fearlessly striving to educate the public about the limited application of the federal income tax. He and his wife Nancy took to the road for two and a half years, visiting patriots and recruiting for the Patriot Network and then for the National Patriot Association. In addition to founding Save-A-Patriot Fellowship, he was founder and fiduciary of Liberty Works Radio Network Fellowship.

John Kotmair's passion was, and the mission of Liberty Works Radio Network is, to educate the public about the Christian heritage and legacy of a Constitutionally limited government left to Americans by the founders of our nation. He fervently desired that government at all levels be held to the confines of the Constitution. He was no fair-weather patriot, but rather, as his hero, Samuel Adams, he desired to be a grand incendiary in the great cause of Liberty, understanding that it takes a "tireless minority, keen on setting brushfires of freedom in the minds of men" to prevail.

To that end, he was identified as an enemy of the Department of Justice and the Internal Revenue Service, and they attacked him and the Fellowship without cause numerous times. In 1981, using a stacked jury, they convicted him of "failure to file" and sentenced him to two years in federal prison. In 1993, they raided the Fellowship and attempted to shut its doors and put him in prison once again. God, the Author of Liberty, caused those attempts to come to naught, and John and the members of the Fellowship prevailed.

After the raid, John Kotmair and numerous Fellowship members set up Liberty Works Radio Network to inform Americans of their God-given heritage. Among other accomplishments, he recorded a 12-hour lecture series entitled "Just the Facts" on the taxing powers of the Constitution and the application of the income tax, wrote a book entitled *Piercing the Illusion*, and published a booklet entitled "Do Courts have Law-making Powers?"

Despising Liberty and all those who exercise their First-Amendment rights, the Department of Justice sued in federal court to shut down Save-A-Patriot Fellowship, an action which —without the benefit of any trial on the facts — culminated in a permanent in-

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junction in 2008 against Mr. Kotmair and some of the First-Amendment activities of the Fellowship. However, due to the faithfulness and dedication of fellow patriots, the Liberty Works Radio Network Fellowship and the Save-A-Patriot Fellowship are still active.

Above all, John Baptist Kotmair believed in the Lord Jesus Christ, and looked to him, the Author and Finisher of his Faith, for help in the battle for Liberty. He often quoted Galations 5:1:

"Stand fast therefore in the liberty wherewith Christ hath made us free, and be not entangled again with the yoke of bondage."

May you and your family do the same.

Tributes to John B. Kotmair and his accomplishments, and memories of how his passion for justice and liberty affected you, are very welcome!

The Fellowship hopes to publish some of them in our next *Liberty Tree*. You may email your memories and tributes to nobile@save-a-patriot.org or mail them to SAP Fellowship, P.O. Box 91, Westminster, MD 21158.

"Stand fast therefore in the liberty wherewith Christ hath made us free, and be not entangled again with the yoke of bondage."

The funeral of John B. Kotmair, Jr., was held at Eline Funeral Home, in Hampstead, Maryland on Friday, December 22, 2017.

PLEASE NOTE THAT GIFTS will be much appreciated to help defray the costs of the funeral. Please send your gifts – and any personal correspondence – to:

SAP Fellowship
ATTENTION NANCY
P.O. Box 91
Westminster, MD 21158

Only completely blank postal money orders or federal reserve notes (a.k.a. "cash") can be accepted as gifts.

NOW IS NOT THE TIME TO QUIT! NEVER GIVE UP!

The need for Save-A-Patriot Fellowship and the Liberty Works Radio Network is more acute than ever before, as the federal government continues to attack Americans' liberties and the globalists continue to tear down our heritage of Christian Liberty. Save-A-Patriot Fellowship continues to stand for and explain the true application of the income tax to Americans, as well as to assist Patriots in all confrontations with various government agencies involving tax issues, social security numbers, government overreach or usurpation at any level. Your contributions are desperately needed to strengthen what remains. As John Baptist Kotmair, Jr., was fond of saying, "Never give up!"

LIBERTY WORKS RADIO NETWORK

NEEDS YOU TO DONATE!!!

The simple truth is that if we do not receive financial help the Fellowship may not be able to continue the work we have begun with Liberty Works Radio Network. It does not take much, just $5 or $10 a month — SO PLEASE PRAY ABOUT IT, AND CONTACT THE FELLOWSHIP!!

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Deadlock & Double Jeopardy

The Bundy ranch "standoff" against BLM in 2014.

In April of 2017, a federal jury was "deadlocked" on all charges brought against defendants Eric J. Parker, O. Scott Drexler, Richard R. Lovelien and Steven A. Stewart. The four were considered low-level supporters of Cliven Bundy and his family in the Bundy Ranch standoff with the Bureau of Land Management in 2014.

Because the federal courts allow retrials in the case of deadlocked, or hung, juries — juries who cannot come to a unanimous agreement on either guilt or innocence — the four defendants were retried.

In August of 2017, another federal jury acquitted Lovelien and Stewart of all charges against them. That jury also acquitted Parker and Drexler of almost all charges, but were 11-1 in favor of acquittal on four and two charges, respectively. Thus, one lone juror deadlocked a jury who wanted to acquit the two of all charges.

Prosecutor Steven Myrhe vowed to retry Parker and Drexler for the third time, and sadly, his repeated attempts to gain a victory for the feds paid off. In October of 2017, under pressure of a third trial, both defendants pled guilty to a misdemeanor charge of obstructing a court order as part of a plea deal that allowed them credit for the time they already spent in jail.

Why didn't the Constitution's prohibition of "double jeopardy' protect these defendants from being retried? Because the Supreme Court clings to an absurd proposition: that a deadlocked jury is simply a "mistrial."

The meaning of the double jeopardy provision

Presumption of innocence is a bedrock of our justice system. Further, an accused's guilt is a conclusion reached by each and every juror. Thus, where even one juror is not convinced beyond a reasonable doubt of the accused's guilt, the presumption of innocence prevails, and the accused ought to be acquitted of the charge(s), and not retried.[1]

The abhorrence of governmental power to try a person twice for the same conduct is one of the oldest ideas in western civilization. In the Roman Republic, an acquittal by a magistrate in a criminal case barred further proceedings against the accused, and there was no appeal or review of a jury verdict.

In England, by the 15th century, an acquittal by a jury in a criminal cause (such cause often brought by the victim themselves to the court) barred a prosecution for the same offense by indictment. By the last half of the 18th century — the time of the drafting of the American Constitution — a person who was subjected to the threat of being tried for the same offense twice could plead, under common law, that he had already been acquitted, convicted, or pardoned.

The original Constitution of these united States did not contain a Bill of Rights. James Madison introduced a series of proposed amendments safeguarding certain rights in the First Congress on June 8, 1789, and one of those was that "[n]o person shall be subject, except in cases of impeachment, to more than one punishment or one trial for the same offence ..." Unfortunately, this explicit wording did not win the day; eventually, Congress adopted these Fifth Amendment words: "[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb; ..."

In 1957, Justice Hugo L. Black expressed the reasoning behind the Fifth Amendment protection:

> The constitutional prohibition against "double jeopardy" was designed to protect an individual from being subjected to the ***hazards of trial and possible conviction more than once for an alleged offense***. ... The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty. *Green v. United States*, 355 U.S. 184, 187-88 (1957).

In other words, the State's interests in a conviction must be limited by the individual's interest in maintaining his property, his right to (one) fair trial, his mental repose, and — dare we say it — the presumption of innocence.

The meaning of mistrial

In describing a mistrial, *Black's Law Dictionary*, 5th Edition, makes clear that it is a trial that for legal reasons is erroneous, invalid or worthless:

> **Mistrial.** An erroneous, invalid, or nugatory [null or valueless] trial. A trial of an action which cannot stand in law because of want of jurisdiction, or a wrong drawing of jurors, or disregard of some other fundamental requisite before or during trial. Trial which has been terminated prior to its normal conclusion. The judge may declare a mistrial because of some extraordinary event (*e.g.* death of a juror, or attorney), for prejudicial error that cannot be corrected at trial, or *because of a deadlocked jury*.

The first two examples for declaring a mistrial are obvious, but how is a deadlocked jury a mistrial? Surely the trial has been conducted, the State and defense have put on their respective cases, and the matter has been given to the jury. This is due process, not erroneous or invalid process. Despite this, when a court declares the dead-

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1. See "Innocents in Jeopardy," published in the September 2007 *Liberty Tree*.

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locked jury a "mistrial," it implies that unless a unanimous decision is reached, the jury's process is invalid.

When jeopardy attaches

In England, at common law, a jury once sworn could not be discharged before a verdict was returned unless in cases of "evident" necessity. This rule of practice led to abuses; sometimes juries were held without food and water until they reached a verdict. Obviously, this has since been recognized as leading to unsound jury decisions. Nevertheless, it is still the rule in England that jeopardy attaches only *after* a verdict of acquittal or conviction. From these roots, it can be seen how a "mistrial" came to be declared when the jury did not reach a verdict.

The alleged "fountainhead decision" on double jeopardy, according to the Supreme Court, is *United States v. Perez*, 9 Wheat 579 (1824). In that case, nearly 200 years ago, Justice Joseph Story set a similar "manifest necessity" standard for declaring a mistrial that is still used by the federal courts — and State courts — to this day. But Justice Story *did not* reference the jeopardy clause in his opinion. Instead, he applied the then-current rule of practice that jeopardy only attaches upon unanimous verdict. Because the jury was discharged before *giving* a verdict, the "prisoner has not been convicted or acquitted, and may again be put upon his defence." (*Perez*, at 580).

But the idea that jeopardy only attaches after a verdict has been displaced in America, so that in *Downum v. United States,* 372 U.S. 734 (1963), the Supreme Court clarified that under federal jurisdiction, jeopardy attaches when a jury is impaneled and sworn, well before deliberation.

Manifest necessity standard

Still, the Supreme Court has made much of the *Perez* "manifest necessity" standard for discharging a jury, to the point that if it appears to an appellate court that a judge did *not* make a sound decision to call a mistrial, the appeal court will bar retrial, citing double jeopardy.

In other words, if a judge declares a mistrial when there is obvious necessity for it, the person can be retried. If, on the other hand, the judge makes a mistake, and there wasn't an obvious necessity for it, the person cannot be retried. It is in the context of these types of mistrials that the Supreme Court has recognized that it is unjust to allow the State to pursue another trial, and stated that jeopardy attaches before the verdict is given.

It is an obvious necessity to discharge a jury that can't reach a unanimous verdict, and it is unusual if an appellate court holds it was a mistake to so discharge the jurors. But instead of analyzing hung juries in terms of the presumption of innocence, due process, and when jeopardy attaches, the courts simply stamp the *Perez* "mistrial" decision on all hung juries, allowing retrials in direct contradiction to their own declarations about the meaning of the double jeopardy provision.

Indeed, in no sense of the term ought a hung jury to be called a "mistrial." This is a mere legal fiction, woodenly applied by the courts despite the accused's exposure to the full jeopardy of trial. It is a self-serving fiction, in that it allows for the very repeated prosecutions which the courts decry as allowing prosecutors to strengthen their case and witnesses to change their stories. The rigid insistence on calling a deadlocked jury a mistrial further reveals, in this writer's view, the disdain in which the jury is held by many judges. After all, it nearly nullifies jury nullification; the strength of even a single juror refusing to convict should be enough to overturn a bad law, but it can never do so where the accused may be retried, and retried again, before other, less discerning juries.[2]

Editorial by D. Stalwart

The Bundy sons and supporters walk out of the federal courthouse on January 8th.

BUNDY walks free after over two years!

In 2014, a "standoff" occurred between volunteers who came to the support of Cliven Bundy and his sons in a dispute with the Bureau of Land Management over cattle that BLM's "contract cowboys" had rounded up. That event came to an end with BLM withdrawal. Two years later, however, federal prosecutor Steven Myhre arrested numerous supporters, as well as the Bundys, and charged them with crimes such as conspiracy, assault on a federal law enforcement officer, use and carry of a firearm in relation to a crime of violence, obstruction of justice, extortion, and aiding and abetting.

Despite Bundy defense discovery requests, it finally came to light that the prosecutor had *withheld* exculpatory material, including over 3,000 documents which show that the Bundys were being surveilled and provoked by the feds, and that snipers had been employed against them. Due to the flagrant and reckless disregard of the prosecutor for the due process rights of the defendants, Judge Gloria Navarro ruled, on January 8, that the case against Cliven Bundy, his sons Ammon and Ryan, and a supporter, Ryan Payne, was dismissed, and that they could not be retried: this is generally known as a "mistrial with prejudice."

2. *Much of the information in this article was drawn from:*
Rudstein, David S. "A Brief History of the Fifth Amendment Guarantee Against Double Jeopardy," *William & Mary Bill of Rights Journal*, Vol. 14, Issue 1, Article 8 (2005).
Findlater, Janet E. "Retrial after a Hung Jury: the Double Jeopardy Problem," University of Pennsylvania Law Review, Vol.129:701 (1981).