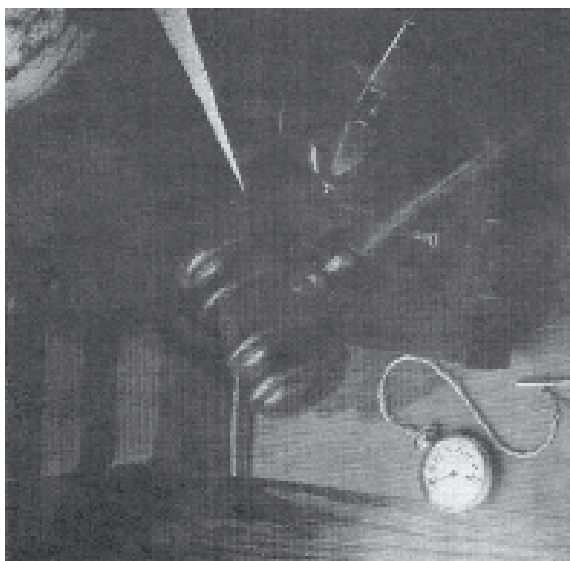


THE INFORMED JUROR



By Paul deParrie

This year tens of thousands of people will be summoned for jury duty. Many view jury duty as a chore or simply as time wasting “rubber-stamp” for the court.

Yet in reality, it is the single most powerful tool against the abuse of excessive power by the government against the people. Both its design and purpose are for the protection of the ordinary citizen.

You are encouraged to read on and become an informed juror.

THE HISTORY AND PURPOSE OF JURIES

The nature of juries, since the founding of the United States, has been to put a check on the power of the three branches of government (executive, legislative and, judicial) by putting an ultimate power in the hands of individual citizens.

This was primarily motivated by the innate mistrust the Founding Fathers had for human nature. This mistrust prompted Thomas Jefferson to say, “Let no more be said of confidence in man, but bind him down from mischief by the chains of the Constitution.”

For this reason the Founders designed a republic. This republic gave each citizen three votes. The first was the free elections vote in order to choose their representatives, the second was the Grand Jury vote which was to prevent overzealous prosecutors from harassing the citizens and the third was the jury vote to prevent the courts from unjustly

applying the law or from applying unjust laws.

As a matter of fact, juries are referred to as “a safeguard against tyranny in the law.”¹

Justice Holmes acknowledged that “the jury has the power to bring in a verdict in the teeth of both law and facts.”²

The supreme court refers to jurors as “triers of fact.” What this means is that a single juror has the power to determine that a defendant in a criminal trial is not guilty for the reason that a particular law is unjust or because the individual in question had compelling reasons for violating a particular statute. The verdict of “not guilty” is irreversible.

This power is called “jury nullification” and is caustically referred to by judges as “jury lawlessness.” In times past juries could be imprisoned for not returning the “right” verdict.

“The power of the courts to punish jurors for corrupt or incorrect verdicts, which persisted after the medieval system of attain by another jury became obsolete, was repudiated in 1670 when *Bushell’s Case*, 124 Eng. Rep. 1006 (C.P. 1670) discharged the jurors who had acquitted William Penn of unlawful assembly. Juries in civil cases became subject to control of ordering a new trial; no comparable control evolved for acquittals in criminal cases.”³

Such luminaries as John Adams and Alexander Hamilton have viewed the right of jury nullification as essential to the security of

citizens.⁴

“A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government. Those who wrote our constitutions know from history and experience that it was necessary to protect against judges too responsive to the voice of higher authority. . . . Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corruption of overzealous prosecutors and against the compliant, biased, or eccentric judge. . . . Fear of unchecked power, so typical of our State and Federal Government in other respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence.”⁵

Probably the most prominent use of jury nullification was the 19th century acquittals in prosecution under the fugitive slave law. These jurors did not consider themselves second class citizens who needed to disqualify themselves from sitting on a jury because they had strong feelings concerning the issue of slavery. To the contrary, they felt they were being truly impartial and serving ultimate justice in serving as jurors and striking down laws which were clearly unjust and denied fellow human beings the basic right of liberty.

“No one is bound to obey an unconstitutional law and no courts are bound to enforce it.”⁶

As a decider of fact and law juries are duty-bound to decide if a law is real (Constitutional), which evidence is applicable, and

how much weight to give each piece of evidence. A juror is not required to explain how he reached his verdict.

“An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed.”⁷

The truth is that many laws on the books today are impostors, and many are mitigated in cases of necessity.

JURY NULLIFICATION TODAY

While the courts have grudgingly recognized the legality of jury nullification, they have ruled that it is not required of judges to inform jurors of this right. The courts have also ruled that judges may forbid defense attorneys from informing jurors concerning jury nullification. The fact that these decisions about juries rights were made by other judges themselves seems to present the possibility of a conflict of interest.

Prospective jurors often help undermine the system of protection by disqualifying themselves when they have “strong feelings” about an issue. However, having strong feelings does not mean that one cannot be fair. There are some issues about which nearly everyone has strong feelings (i.e. nuclear power and weapons, world hunger, abortion, etc.)

It is evident that judges and prosecutors have strong feelings about issues, they would have to be inhuman if they didn't, and

yet they continue to try cases. Yet, judges often ask prospective jurors to disqualify themselves for this reason when the only time that they should is if they find they are absolutely incapable of impartial judgment.

During jury selection it may be wise to refrain from elaborating on answers to questions asked by attorneys. Any appearance of being educated, involved or opinionated may be sufficient cause to be rejected, thus being removed from the opportunity to be a watchman for abuses by the executive and judicial departments of government. This does not mean that you would be untruthful in answering questions. Simply keep your answers brief if you would like to improve your chances of serving on a jury.

It is common for judges to instruct juries as to which laws are applicable, which evidence to accept and, at times, to tell the jury that they are not allowed to decide on the law's validity. This violates the spirit of the jury system. If a judge may tell the jury what facts and laws are pertinent, what type of deduction to make and what conclusion to come to (defining the law so narrowly that only one verdict is possible), then what is the purpose of having a jury in the first place? Juries were intended to be more than just a rubber stamp for judges.

The jury has “unreviewable and irreversible power...to acquit in disregard of the instruction on the law given by the trial judge...”⁸

Often a judge will disallow the de

fense of necessity (the defense that a lesser law was broken that a greater good might be done, i.e. breaking into a burning house to save someone from the fire). The fact is, that a jury may still consider that defense when making up its own mind if the necessity statute applies.

It is easy to understand why judges are suspicious of the power of jury nullification because it limits their power to give greater determination as to the outcome of a case. Since the purpose of juries is to protect against misuse of power, it is imperative that jurors be aware of this corrective tool which is at the heart of their very purpose in being jury members.

If a juror “hangs” a jury with his “not guilty” verdict or if a whole jury finds a person “not guilty” the judge and the entire court system have no recourse against those jurors.

“Trust in the jury is, after all, one of the cornerstones of our entire criminal jurisprudence system, and if that trust is without foundation we must re-examine a great deal more than just the nullification doctrine.”⁹

The true function of the jury then is not only to try the actions and motives of the accused, but the action and motives of the prosecution and the law. This privilege and responsibility should be carefully weighed by conscientious citizens who serve as jurors.

ENDNOTES

- 1.) US v Dougherty, 473 F2d. 1113, 1133 (1972) footnote #39
- 2.) Horning v District of Columbia, 254 US 135 (1920)
- 3.) US v Dougherty, 473 F2d. 1113, 1130 (1972)
- 4.) US v Dougherty, 473 F2d. 1113, 1132 (1972)
- 5.) Duncan v Louisiana, 391 US 145, 155156
- 6.) 16 Am Jur 2d Sec. 256
- 7.) Norton v Shelby County 118 US 425, 442
- 8.) US v Dougherty, 473 F2d. 1113, 1139 (1972)
- 9.) US v Dougherty, 473 F2d. 1113, 1142 (dissent) (1972)

**This pamphlet is not to be construed
as legal advice.**

**Quantity Reprints Available:
Grapevine Publications; P.O. Box 884
Meridian Idaho; 83680
www.grapevinepublications.com**



1-9	.25 each
10-49	.20 each
50-99	.15 each
100-999	.13 each
1000+	.10 each

All order post paid

Write for our Freedom Packet - no charge