

Newsletter  
of the  
American Jury  
Institute

and the  
Fully Informed Jury  
Association

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AMERICAN JURY INSTITUTE  
Fully Informed Jury Association

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# AMERICAN JUROR

## VIN SUPRYNOWICZ: Can We Vote Our Conscience?

As if planning to affix Radio Frequency ID “scanner” tags to medication bottles (so they can be picked up at airports, etc.) wasn’t bad enough, the government now wants to share your records of personal prescriptions for anxiety, depression, insomnia, and pain with ... the cops.

According to the American Association of Physicians and Surgeons, a bill before Congress, The National All Schedules Prescription Electronic Reporting Act (HR 3015), has been passed by the House and is being considered by the Senate.

“While masquerading as a law enforcement tool to help control the illegal use of painkillers, the national bill would ... create a central database affecting tens of millions who are not even suspected of a crime,” the AAPS warns. “And the information will be shared with state and local law enforcement.”

See [www.aapsonline.org/alerts/nasparalert.htm](http://www.aapsonline.org/alerts/nasparalert.htm)

“I would like to thank you for your book, ‘Send in the Waco Killers,’” writes M.K. of Syracuse, N.Y.

“I have recently been summoned and empaneled for grand jury duty in Syracuse. I am going to request a jury kit from the Fully Informed Jury Association but was wondering if you could refer me to any other references.

“I asked the D.A., which was probably a waste of breath, if we were to consider the law as well as the facts. He said just the facts, the judge will give you the law; the court is not the place for political expression. Exactly what you said (I’d be told) in the voir dire chapter of ‘Send in The Waco Killers.’

“I pointed out that it was rather queer that the commissioner of jurors introduced us to our role as jurors with a video highlighting the Peter Zenger trial. It conveniently left out the part about the jury ruling against the law. Where is it in the law, so I can point to it, that the law is on trial as well? And how does this apply in a grand jury as opposed to other juries?”

I replied:

Ah, the judge will “give you the law.” And

here I thought we had a legislative branch to “give us the law.” And they don’t do it orally; they write it down. Will the judge let you read the law, from the state revised statutes? Why not? If the answer is that you, as a layman, couldn’t understand the law, then the law is void, moot and should be treated as though it does not exist, based on vagueness and incomprehensibility.

I’m not a lawyer and I can’t offer you legal advice. But even if I did, you’re going to tell some \$150,000 prosecutor in an \$800 suit with an armed cop on either side of him that “some newspaper guy in Nevada told me you’re wrong ...”?

My books and the AJI/FIJA folks ([www.fija.org](http://www.fija.org)) have already provided you with dozens of court citations, from, “The jury has a right to judge both the law as well as the fact in controversy.” (first Chief Justice John Jay, U.S. Supreme Court, 1794) to, “The jury has an unreviewable and irreversible power ... to acquit in disregard of the instructions on the law given by the trial judge. The pages of history shine upon instances of the jury’s exercise of its prerogative to disregard instructions of the judge; for example, acquittals under the Fugitive Slave Law” (U.S. v. Dougherty, 1972).

Yet you seek somewhere else where it’s “written down in law” (so you can “point to it”) that you’re “allowed” to acquit (or refuse to indict) a fellow citizen who you believe had done no one any harm, but who is instead the victim of a malicious prosecution under a bad law that lacks 96 percent public support (the percentage at which the state has a 61 percent chance of conviction with a random jury.)

In a purely pragmatic sense, this ongoing “debate” with the authorities about whether you’re “allowed” to vote your conscience can have only one result:

You will be removed from the jury, which will thereupon be stacked with a dozen stooges willing to swear in advance to ignore

Conscience continued on page 16

## From the Executive Director

Greetings from Montana,

If you haven't been getting the *American Juror*, and this is the first issue you've seen in a while: check the expiration date on the mailing label. It may be past time for you to renew, and we are sending this issue as a reminder of what you'll be missing if we don't hear from you. Please take the time to send your renewal today. You can also renew on-line at our [www.fija.org](http://www.fija.org) web site.

Yes, this newsletter is almost a month late. I took a couple of trips to do some speaking and fund-raising for us, and then returned home just in time to fall prey to some sort of serious flu bug, which swept the office and forced us to close for an entire week while we all worked on recovering from the attack. We are all better now. I was waiting for a couple of articles that I wanted to include in this issue, but since they have not arrived, perhaps they will make the next issue. This and the next issue of the *American Juror*, as you will notice, focus the *Authority of the Jury: Contract and Conscience*.

Jurors have an implied contract with their fellow citizens to serve as both final arbiters of the law, and to serve as protectors of the welfare of private citizens, both those on trial and those who deserve to be protected from dangerous individuals. Jurors further have a relationship with their individual conscience that both informs and compels them to render a verdict such that each juror believes that his or her own individual liberty and justice are protected by their verdict and the verdict serves the societal ends of justice and liberty in this country.

In this issue and the next issue, we explore the underlying assumptions of the Constitutional guarantees to trial by jury, the role of the jury in the courtroom, the authority of the jury in our country, and the historical or traditional perspective of the role and function, as well as the authority, of the jury.

Since it has been some time since we have explored these concepts in our newsletter

in a comprehensive and specific manner, I hope that several of you will take the time to submit articles on this subject. If you have the time and enthusiasm to be a speaker, to serve as a state contact, or to assist in other ways, please let me know. We are finishing up our new state contact directory, which will be on both our web sites as well, and we want to include you if you'd like to be listed as a source of information and literature.

As you all know, implicit in the authority of the American Jury is the assumption of the sovereign identity of the private citizen, and the government as the entity created by a sovereign people and therefore granted only limited agency to act on behalf of the private citizen to protect our rights. We, the individual people of this nation, do not employ government to grant, define or arbitrate our rights: we employ government to protect our individual rights.

The jury is a primary mechanism to prevent the failure of government to do so and further to prevent government from usurping any of those rights held by each and every individual citizen. Government, by its very nature an agency formed by consent of each of the individual people, has no rights, and has only those duties entrusted to its office by the individual people who hold all rights.

We will continue to explore and discuss the concept that the highest and best function of the jury is not, as many think, to dispense punishment to fellow citizens guilty of breaking the law, **but rather to protect fellow citizens from tyrannical prosecutions and bad laws imposed by a power-hungry government.**

Juries protect society from dangerous individuals and also protect individuals from dangerous government. Jurors have a duty and responsibility to render a just verdict. They must take into account the facts of the case, mitigating circumstances, the merits of the law, and the fairness of its application in



*Our new poster on display at a coffee house in Indiana - thank you Johnnie!*

### **The American Juror**

Newsletter of the American Jury Institute/Fully Informed Jury Association

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each case. The recognition of the authority and right of jurors to weigh the merits of the law and to render a verdict based on conscience, dates from before the writing of our Constitution, in cases such as those of William Penn and John Peter Zenger. Should this right ever be suppressed, the people will retain the right to resist, having an unalienable right to veto or nullify bad and oppressive laws, and in fact then would be morally compelled to do so.

Jurors, as the representatives of the people, hold no personal agenda during any trial and most certainly not the government's agenda. Let us not forget that the prosecutors, judges, arresting officers - and the forensic investigators in most cases - are all a part of and receive their paychecks from government, with personal power bases to build and personal careers to protect through the "productivity" of successful prosecutions resulting in convictions. Jurors have no such stake in the outcome, and are, in fact, the only truly objective individuals in the courtroom.

The role of our jurors is to protect private citizens from dangerous, unconstitutional government laws and actions. Many existing laws erode and deny the rights of the people. Jurors protect against tyranny by refusing to convict harmless people. Our country's founders planned and expected that we, the people, would exercise this power and authority to judge the law as well as the facts every time we serve as jurors. Juries are the last peaceful defense of our civil liberties.

That is why we are here: to educate everyone on the role of the jury to protect the rights of individuals. AJI works to restore and protect the role of the juror, and the institution of Trial by Jury. We continue to sponsor educational seminars for legal professionals, publish commentary, develop and present Amicus briefs when the institution of the jury is at issue, provide interviews to the media, speak at functions and in classrooms, and of course distribute educational literature. This, our newsletter *The American Juror*, is published quarterly. We articulate that the authority of the jury

and the right to judge the law as well as the facts is the right that protects all other rights.

We are going to try a new campaign strategy this year, involving county-level educational campaigns. If you are interested in organizing and working to educate everyone in your county on the authority of the jury, let us know. We hope to undertake this educational campaign in at least one county in at least ten states this year. If you live in a county where there is a Federal Courthouse, we are especially interested in having an active campaign in your county.

We want to educate the jurors, the judges, the attorneys - especially the defense attorneys - and the court officials. We want to be sure that in at least a few counties, the people understand their position of political and moral authority in the courtroom. Then, we will ask you to assist us in tracking the jury cases and their outcomes for the next couple of years after the educational campaigns.

We have a grant now to write a series of focused essays to reach specific audiences across the country, and we hope to be able to have some of these essays printed and available for the county campaigns. Our survey and study of attitudes and school curricula is being refined and is the subject of much discussion. We are still looking for qualified participants to serve on the study committee. Let me know if you have an interest, especially if you are an educator or law student or law professional.

We also need some college students to help with this work, so please contact me if you have some time to help out.

Please check your expiration date to see if you need to renew, and please do renew by sending your renewal contribution and current mailing address to us at:

AJI/FIJA

Post Office Box 5570

Helena, Montana 59604-5570

Thank you for all you are doing to promote the role and authority of the jury, and for your work on behalf of our rights!

For Liberty and Justice for All,

Iloilo Marguerite Jones

*"Human freedom involves the capacity to pause, to choose the one response toward which we wish to throw our weight."*  
- Rollo May (1909-1994)

*"Every man - in the development of his own personality - has the right to form his own beliefs and opinions. Hence, suppression of belief, opinion and expression is an affront to the dignity of man, a negation of man's essential nature."*  
- Thomas I. Emerson  
Source: *Toward A General Theory of the First Amendment*, 1966

*"The only way to make sure people you agree with can speak is to support the rights of people you don't agree with."*  
- Eleanor Holmes Norton  
Source: *The New York Post*, 28 March 1970

*"A society that does not recognize that each individual has values of his own which he is entitled to follow can have no respect for the dignity of the individual and cannot really know freedom."*  
- Friedrich August von Hayek (1899-1992)  
Nobel Laureate of Economic Sciences 1974

*The main political problem is how to prevent the police power from becoming tyrannical. This is the meaning of all the struggles for liberty.*  
-Ludwig von Mises

## THE JURY BOX

### Juries in Indiana To Discuss Cases, Ask Questions, During Trials

From a correspondent in Indiana

*"There are two kinds of restrictions on human liberty – the restraint of law and that of custom. No written law has ever been more binding than unwritten custom supported by popular opinion."*

– Carrie Chapman Catt (1859-1947)

Source: *Speech*, 8 February 1900

*"There is one, and only one, thing in modern society more hideous than crime – namely, repressive justice."*

– Simone Weil (1909-1943)  
Source: *Human Personality*

*"Whenever justice is uncertain and police spying and terror are at work, human beings fall into isolation, which, of course, is the aim and purpose of the dictator state, since it is based on the greatest possible accumulation of depotentiated social units."*

– Carl Gustav Jung (1875-1961)

Source: *The Undiscovered Self*, 1957

*"I do not feel obliged to believe that the same God who has endowed us with sense, reason, and intellect has intended us to forgo their use."*

– Galileo Galilei  
Astronomer (1564 - 1642)

*"Do not expect justice where might is right."*

– Plato (429-347 BC)  
Source: *Phaedrus*, 360 B.C.

A new rule that takes effect in January could alter the dynamics of jury trials in Indiana by permitting jurors to freely discuss elements of a case before they begin deliberating. Combined with another recent change that allows jurors to ask questions of witnesses, the new rule could lead to shorter deliberation times for Hoosier juries.

At a minimum, jurors might ask witnesses even more questions. And, having sorted out some of the trial's issues before final arguments, they might spend less time deliberating verdicts, judges predict.

The change applies both to criminal and civil cases and is mandated by a new jury rule adopted by the Indiana Supreme Court on Sept. 30 that takes effect Jan. 1. Under the old rule, jurors are ordered not to discuss the case until they start deliberating.

But trials can last days or weeks, and evidence may include technical testimony from expert witnesses. Throughout that time, jurors must keep silent about the case, both inside and outside court. The change will mean jurors can talk about evidence among themselves in the jury room, as long as they reach no conclusion about a verdict.

Magistrate David Kiely of Vanderburgh Circuit Court sees positives in permitting jurors to discuss evidence during trial recesses. "Why shouldn't they discuss it while it's fresh in their minds? It only makes sense," Kiely told the *Evansville Courier & Press* for a story published Sunday.

Vanderburgh Superior Court Judge Robert Pigman believes courts will see more

questions from jurors followed by shorter deliberations "and I think better decision-making."

In a criminal trial, the prosecution presents its case first. Vanderburgh County Prosecutor Stan Levco sees a potential benefit for the prosecution in the rule change. "I wouldn't think it would be problem for us," Levco said. "If anything, (jurors) would be discussing our evidence first. I think that will be good thing."

However, jurors might conclude that an accused person is guilty before ever hearing the defense's evidence, said Chad Grove, a public defender in Evansville. "It may give some undue importance to some issues that may not be fully developed," he said.

During a trial, jurors still will be forbidden from talking about the case with any non-jurors, including their spouses, children or co-workers. The new jury rule is modeled on one in Arizona, which pioneered the concept.

At the request of Indiana Chief Justice Randall Shepard, a committee of judges reviewed the idea for two years before the Indiana Supreme Court adopted it.

The new rule comes on the heels of another rule change two years ago that spelled out jurors' right to ask witnesses questions. Since then, most trial juries pose at least a handful of questions, sometimes more, judges say.

In the current format, a juror individually thinks of a question, jots it down on note paper and passes it to the judge. Starting Jan. 1, jurors might draft questions as a group in the jury room, depending on when trial recesses are taken.



## The Future We See

Iloilo M. Jones

Imagine a courtroom in our country. Imagine a group of people walking in, and each being given a numbered slip of paper. The people are politely invited to take a seat.

One by one, the bailiff draws fourteen numbered slips of paper from a small wire cage, and the people with the corresponding numbers rise, step forward, and either stand, or if they prefer, sit near in a row of chairs near the front of the courtroom. When all fourteen slips have been drawn and the people have come forward, the judge asks if any of them know of any reason why they cannot serve as fair and impartial in this case of *Doe v Smith*. No one volunteers any reason.

The judge then asks if any of them have any other compelling reason why they would not be able to participate in the justice system by serving on this jury. One elderly woman raises her hand, and the judge invites her to approach the bench, where she hands a letter to the judge. The woman is receiving dialysis treatment, and cannot change her schedule of treatments under risk of death. She is excused.

The bailiff draws another slip of numbered paper, and another person comes forth from the group still seated in behind those who have been called. The judge asks the new citizen the same two questions, and then invites that last person to take a seat, explaining that they will now be sworn in as the jury in this case.

The judge reminds the jury that two of them will be alternates; in fact, the first and last chosen by this lottery process will be the alternate jurors to serve on the jury in case any of the main body of jurors fall ill or not be able to continue for any compelling reason.

The judge then reads a short statement on the authority and scope of the function of the jury, its role as protectors of society, ensuring that anyone who constitutes a danger to society is removed from that society, and that anyone being unjustly prosecuted, based on the jurors sense of moral, legal and community standards, must be protected from the unjust prosecution and set free. In other words, the jury has a duty to protect society from the actions of dangerous persons, and to protect persons from the dangerous actions of government.

The judge reminds the entire group that as sovereign citizens, it is their final vote in the jury room that validates or vetoes the law, and that the founders of our country intended that the jury should perform this function. Then, as his final statement, the judge reminds the jury that they are the highest authority in the court room, and their verdict is the law in this case.

Now, the group of people sitting further back – the jury pool – is dismissed, and the jurors are seated in the jury box, with the alternates seated in the back row. Pads of paper and pencils are distributed to all the jurors so that they will be able to take notes. A smaller pad is handed to each juror as the bailiff tells them that the smaller pads are to submit questions they wish to have the judge ask during the case.

The trial begins. Both parties to the proceedings argue the merits of the law being applied, or lack of merits, before any evidence is heard. The jurors understand that they must consider the merits of the law as a part of their responsibility to render a just verdict.

The facts of the case are set forth, and because the parties to the proceedings know the jury is competent to judge the evidence, very little is excluded as being of no relevance, so the jury has the opportunity to consider whether the evidence being presented is relevant or not.

The jurors hand several questions to the judge, who in turn addresses the litigants and asks the questions of the appropriate party. The jurors take notes and ask more questions. Then, during the summary, both parties again argue the merits of the law, remind the jurors of their role as arbiters of both the law and the facts, and emphasize that while elected officials may pass bad laws, the jury is not bound to enforce them if such enforcement is repugnant to their consciences.

The jury retires to the deliberation room, and returns after a few hours with a verdict. As they leave the courtroom, the jurors are paid for their time at a rate equal to the prevailing wages for their community. Their travel allowance will arrive in the next two weeks.

*"In a constitutional democracy, persons owe loyalty to the constitution rather than to the government."*

- James Buchanan

*"The simple step of a courageous individual is not to take part in the lie. One word of truth outweighs the world."*

- Alexander Solzhenitsyn  
(1918- ) Russian writer, Soviet dissident, imprisoned for 8 years for criticizing Stalin in a personal letter, Nobel Prize for Literature, 1970

*"Courage is the first of all the virtues because if you haven't courage, you may not have the opportunity to use any of the others."*

- Samuel Johnson  
(1709-1784)

*"Never do anything against conscience even if the state demands it."* - Albert Einstein  
(1879-1955) Physicist and Professor, Nobel Prize 1921

*"A 'No' uttered from the deepest conviction is better than a 'Yes' merely uttered to please, or worse, to avoid trouble."*

- Mahatma Mohandas K. Gandhi  
(1869-1948)

*I would rather be exposed to the inconveniences attending too much liberty than those attending too small a degree of it.* - Thomas

Jefferson

*Future continued on page 8*

## Letters

*To My Newspaper Editor:  
I know that the DOC commissioner wants more money for his department, but quoting misleading figures is not the way to go. Your paper and the Columbus Ledger (Ga) both quoted in December 2004 a figure of 1 corrections officer per 8.8 inmates. That is a far cry from 1 officer for 118 inmates quoted by the commissioner in his budget request, although he does go on to say, "on some shifts". Obviously the department is not being run efficiently in that area. It would seem the commissioner should be firing some of the schedulers. You ask why Alabama has the 5th highest incarceration rate in the nation. I work with female prisoners and have stated many times that women are not allowed to defend themselves in Alabama. Many women are in prison for nothing more than self-defense, which is a right.  
Release these women for starters.  
Judges, DAs and police have an agenda - get victims for the system. Prisons and Prison Industries are big business in the country, not just in Alabama. Paying prisoners 25 cents per hour for work is slave labor. Alabamians need to know their rights when called to Jury duty. Jurors cannot be prosecuted for voting their conscience. US v Dougherty, "The pages of history shine on instances of the jury's prerogative to disregard the instructions of the judge. For*

*continued on page 7 sidebar*

## American Juror Q & A

**Q:** I have been summoned and empaneled for a grand jury. I have read a bit about the power of the jury but don't know enough about it to tell the other jurors. Can you please send me a jury kit?

Michael

**A:** Hello Michael:

We mailed a complete jury information kit with a copy of our most recent newsletter, which focuses on the Grand Jury. Remember, you have all human rights except those you expressly, by written law, allow to be regulated by others. And, even so, you cannot give away or share or abrogate the possession of your unalienable rights, for those human rights are, as the word defines them, unalienable. You will appreciate the definition when you look it up.

Iloilo Marguerité Jones

**Q:** Hi, I have one of your Freedom Calendar 2005. As I work in the set dressing department of the TV show, CSI:, one of my jobs is to acquire items for our sets. Could we get permission to use your calendar as "general set dressing"? Thanks, Paul

**A:** Hello Paul:

Yes, please use it, and also let us know when you will be using it so we can watch! You have our permission.

Iloilo Marguerité Jones

**Q:** My problem is that I do not know the AJI's LEGAL basis for its position. Where are the documents that establish the jury's right to judge the law? Can someone list them by paragraph and verse? Thanks! – Bill (From the website forum at [www.americanjuryinstitute.org](http://www.americanjuryinstitute.org))

**A:** Hello Bill:

There is no need for any documents that establish the jury's right to judge the law, just as there is no need to any documents to establish the jury's right to breathe: all powers and authority – except those duties and those delegated, limited powers specifically granted to government by the constitution – are retained by the people.

Just as the people retain their unalienable right to breathe, and for their hearts to beat, so we also retain the authority and right and power to judge the law as well as the facts in every case.

Congress has no need to put into law that jurors have the right to determine the law as well as the facts, because all of those powers and all of that authority that is not specifically enumerated and granted with limitations to government, by the people, continue to reside with the people. Not Congress, nor the judicial nor executive branches, have any power to make any laws that grant any rights or authority to the people: the people, including our representatives of agency in the courtroom, the jury, retain all powers and right and authority other than that very limited authority specifically granted to government by that legal contract we call the Constitution.

It is we who grant limited power to government, not the other way around. Again, no act of congress or any other political entity is needed to provide and secure to the people, including those serving on a jury, those rights that we, the people, hold as unalienable rights.

Iloilo Marguerite Jones

**Q:** Does anyone know of a way to increase probability of being called for Jury Duty? I've heard that Jury Pools are pulled from registered voters and from licensed drivers. (Currently living in AZ, I have previously lived in IL, MO, & CA for longer than 1 year.) I have had Drivers License since I was 16. I have been registered to vote since 18. Voted in every national election eligible for. I am 37, and have NEVER been called for jury duty! Vik

**A:** You might try moving to a more litigious county...In general, it takes a few years for someone to end up on the jury lists. After about two years at the same address, your chances of being called increase greatly. CSC

**Q:** Dear AJI/FIJA,  
A recent grand jury action is at issue in our

community. If I were to write a letter-to-the-editor pointing out that jurors can (and should) follow their consciences –even if that’s contrary to both the law and the judge’s instruction. Would I be at risk of being charged (perhaps by an outraged, imperious judge) with “practicing law without a license”? I notice that non-lawyers –and even lawyers who are not in their state of license, are often most circumspect about venturing opinion or even quoting law. Craig Daniels

A: Absolutely nothing to worry about. Practicing law requires more than mailing an opinion letter to the editor. You are not representing anyone or giving legal advice to any specific individual or entity. The Unauthorized Practice of Law (UPL) statutes do not override First Amendment concerns when an individual addresses the general public.

Clay S. Conrad

Q: Mr. Conrad, I am researching jury nullification and have read your old article “Should Juries Nullify Laws They Consider Unjust or Excessively Punitive? You co-authored this article with Nancy King in 2002.

I have surfed your website looking for specific cases of jury nullification. It is hard to find cases where jury nullification has actually succeeded in freeing defendants. Do you have any cases that I can use as examples?

I remember seeing a case in our country (unknown location & name of case) where a father shot and killed a suspected child molester being extradited. The suspect had molested the father’s son or daughter. This incident was videotaped and the jury acquitted him of all charges. Do you know about this case or know the name of it? I am looking for several cases to use as examples. So far, I’m using Jack Kevoorkian, OJ Simpson, and the nameless case of the father shooting the child molester. If you have some other applicable cases, I would appreciate your help. Thank You,

Robert Smith

A: Dear Mr. Smith:

First, thank you for your inquiry. I am not familiar with the specific case you cited,

although I remember one such case out of California.

Next, it can be very difficult to determine when nullification has occurred. The best we can often do is to compare what a judge thought the outcome should have been, and his view of the atmosphere in the courtroom, and a reading of the trial evidence, to determine when nullification has occurred. The jury does not announce that it has nullified, it merely returns a verdict of not guilty, so it is always a judgment call on the part of the researcher.

The O. J. Simpson case is a good example of that. I do not believe it was a nullification case. I believe it was a case of prosecutorial and judicial incompetence, combined with excellent defense lawyering, that essentially allowed the prosecution case to be torn apart when a good prosecutor could have put it back together. You can’t fault (or credit, depending on perspective) the jury for failing to convict based on evidence the prosecutor never communicated.

If you look in my book, *Jury Nullification: The Evolution of a Doctrine* (Carolina Academic Press, 1998) you can find dozens of cases from the seventeenth century forward that were likely nullification cases – and several that are popularly believed to be nullification cases that, as I show, probably were not. I hope this helps.

Clay S. Conrad

Q: Hello:

I thought that I would pass this by you and see if you could assist me with info on this case. I recently obtained a video in which the speaker stated that some case (Georgia vs. Berelsphered) was instrumental in assisting in juries obtaining MORE power.

I believe it was from something like 1875 – but, thought that I would ask and see if you knew anything about it. I will probably be going back to court in another month or two and it could help out a lot. NOTE: I probably misspelled “Berelsphered” – although that is what it sounds like to me. Thank you. God Bless.

Odell Edward Hobbs, Springfield, MO

A: The case is *Georgia v. Brailsford*, 3 U.S.

Q&A continued on page 14

continued from page 6 sidebar

instance, in self-defense cases, if the judge tells the jury, “you just have to decide if she/he did it, jurors get confused, but should vote “not guilty” anyway, even if she did it - it was self-defense.

“All laws which are repugnant to the Constitution are null and void.” *Marbury v Madison*. Jurors do not have to convict someone of breaking an unconstitutional law.

Drug laws are nconstitutional.

The Innocence Project has obtained the release of many innocent people. In Alabama, they don’t want to release the innocent prisoners. Take the case of Patrick Swiney. His wife and legal team have proven his innocence, but the State will not release him.

No wonder our prisons are overcrowded. Go to [www.fija.org](http://www.fija.org) and read up on jury rights. I am the contact for AL and GA and will be glad to speak with any groups on this subject. There is so much more to be said.

“Testilying” by police, (they do, you know) coerced confessions, unconstitutional plea bargaining. If all people being prosecuted would insist on their constitutionally mandated right to a jury trial, they would shut down the criminal courts.

There would not be so many innocent people in prison and everyone would be better off.

Margi Crook

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## China to Start Holding Own Version of “Jury” Trials December, 2004

*“The particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void; and that courts, as well as other departments, are bound by that instrument.”*

– John Marshall: *Opinion as Chief Justice in Marbury vs. Madison, 1802*

*“We are of course a nation of differences. Those differences don’t make us weak. They’re the source of our strength.”*

– Jimmy Carter  
[James Earl Carter] (1924 -  
39th US President

*“Toleration of people who differ in convictions and habits requires a residual awareness of the complexity of truth and the possibility of opposing view having some light on one or the other facet of a many-sided truth.”*

Reinhold Niebuhr (1892-  
1971)

*“When even one American – who has done nothing wrong – is forced by fear to shut his mind and close his mouth, then all Americans are in peril.”*

– Harry S. Truman (1884-  
1972), 33rd US President  
August 14, 1951

BEIJING – China will start holding jury trials next year as part of court reforms that also will increase the number of judges, state media reported Monday.

Jurors will be elected to five-year terms and must have at least two years of university education, the Xinhua report and other state media said. Under the current system, judges are the sole arbiters in court cases.

Elections are not unheard of in China. The communist government has used nonpartisan “village elections” in recent years to pick its lowest-level officials and members of local legislatures.

It is unclear how the use of juries would affect the two biggest public complaints about Chinese courts – corruption of numerous court officials and interference with legal proceedings by politicians and members of the Communist Party.

The courts are to become tougher on corruption and intellectual property theft – two politically sensitive issues – as well as smuggling and dereliction of duty, the reports said.

Courts face rising numbers of cases involving state-owned company reforms, disputes of back pay, illegal land acquisitions and burglaries.

### New Jersey Grand Jury, knowing their Authority, Refuses to Indict Killer of Would-be Thief

MOUNT LAUREL New Jersey – The man who shot and killed a would-be thief in his yard will not face murder charges after a Gloucester County grand jury voted against indicting him. The grand jury took the actions Wednesday, but the Gloucester County Prosecutor’s Office did not announce them until yesterday. The grand jury did return one indictment in the case: The alleged accomplice of the victim was indicted on charges of burglary and theft.

Neighbors had protested when Robert J. Clark Jr. was first charged with murder after slaying a man who was trying to steal his all-terrain vehicle from a backyard shed. Authorities initially charged Clark with murder, aggravated assault and a weapons offense after he killed William Hamilton April 26. The grand jury voted against indicting Clark on those charges or any others, including lesser offenses such as manslaughter.

Prosecutors are not giving up.

After the shooting, prosecutor Sean F. Dalton defended the charges, saying that New Jersey state law does not allow the use of deadly force to protect property. That’s still his argument. Spokesman Bernie Weisenfeld said prosecutors are considering all their options on where to continue, including presenting the case to a second grand jury. *(Here’s a needed reform: only one grand jury may be empaneled to hear a case - double jeopardy should apply here as well as with a petit jury. - ed.)*

*Future continued from page 5*

Returning home, not one juror is plagued by doubts that the verdict rendered was a just and fair one. If there was a hung jury, the holdouts know they cannot be punished for their refusal to cave in and vote “guilty” or “innocent.”

If there is an acquittal, the jurors who argued against bad laws know they have done

their duty by holding to their conscience, even in the face of pressure from the judge and prosecutor to find a person guilty. And if there has been a “not guilty” verdict in this case, and the verdict reflects the sentiment of the community against a bad law, then the message is sent to elected politicians that they have passed a law that is not acceptable to the people.



## An Oath for Jurors

From the web site of Kelly Ross, PhD.

***“Whereas, no person of good moral conscience can agree to the commission of an injustice; And, according to Martin Luther King Jr., quoting St. Augustine, “An unjust law is no law at all”; And, it can thus be no crime to violate that which is no law; Therefore, as a duly sworn juror, I can find no one guilty either of violating an unjust law or of violating any law applied unjustly.”***

Judges who says to jurors that, “you will be required to follow and apply this law,” regardless of whether it seems just or not, might be asked if they would exercise this rule against Harriet Tubman (1820-1913), who violated the federal Fugitive Slave Laws by participating in the Underground Railroad for escaped slaves, or against Rosa Parks (b.1913), who was arrested in 1955 for violating the segregation laws in Montgomery, Alabama, by refusing to move to the back of the bus when the bus driver told her to give up her seat to a white passenger. If a judge bites the bullet and says that, yes, he would have to instruct juries to convict these women because the law is the law, he might be told that such blind obedience was not accepted as a defense during the War Crimes Tribunal at Nuremberg, when many Nazis claimed that they were just “following orders.” A judge who participates in injustices because he is “following orders” might be similarly called to account.

The late Justice William C. Goodloe (1919-1997) of the Washington State Supreme Court, an advocate of jury nullification, suggested that the following instruction be given by judges to all juries in criminal cases:

***“You are instructed that this being a criminal case you are the exclusive judges of the evidence, the credibility of the witnesses and the weight to be given to their testimony, and you have a right also to determine the law in the case. The court does not intend to express any opinion concerning the weight of the evidence, but it is the duty of the court to advise you as to the law, and it is your duty to consider the instructions of the court; yet in your decision upon the merits of the case you have a right to determine for yourselves the law as well as the facts by which your verdict shall be governed.”***

Justice Goodloe was one of the rare judges who voluntarily surrendered part of the power that has improperly accrued to him in the interest of justice and of the system of trial by jury as this was understood by the Founders of the nation.

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## BOOK REVIEW

by Don Doig

Neil Mavis' novel **Deorbit the Space Shuttle: Stem Cell Rescue** is the latest libertarian novel to incorporate FIJA and its message into its storyline.

It was a good read, kept me up 'till the wee hours finishing the last few chapters.

The plot revolves around a Space Shuttle damaged by a meteor impact, and rescue operations beset by Murphy's Law (whatever can go wrong, will go wrong).

The hero has secretly developed a Buck Rogers type personal flight machine powered by a small cold fusion reactor, by utilizing software and technology developed by the fedgov, then either acquired by China (whose computers he then hacked) or simply suppressed.

Facing impossibly short deadlines, he

manages to rescue NASA's bacon with the help of his propulsion device and a NASA-provided space suit, while Murphy's Law keeps up a steady pressure.

Aboard the Shuttle is his ex-fiancée, who is there to conduct medical experiments which by what seems like a bit of a stretch, just happen to provide the cure for his mother's multiple myeloma, if only he can get her blood to the Shuttle in time, and if it has enough stem cells in it.

His mother's cancer was the occasion for his arrest for providing medical marijuana to her (as told in a flashback), and the case against him was summarily rejected by the

*“I know of but one freedom and that is the freedom of the mind.”*

– Antoine De Saint-Exupery (1900-1944)

Source: *The Wisdom of the Sands*, 1950

*“You can only protect your liberties in this world by protecting the other man's freedom. You can only be free if I am free.”*

Clarence S. Darrow (1857-1938)

*“Men must have the right of choice, even to choose wrong, if he shall ever learn to choose right.”*

Josiah C. Wedgwood (1872-1943) British Member of Parliament

*“Everyone has his own conscience, and there should be no rules about how a conscience should function.”*

– Ernest Hemingway (1899-1961) Author

*“What is hateful to you, do not do to your fellow; that is the whole Law: all the rest is interpretation.”*

– Hillel (30 B.C.-10 A.D.)

Source: Talmud

*“Freedom is the emancipation from the arbitrary rule of other men.”*

– Mortimer Adler (1902-2001)

*“Character is doing what's right when nobody's looking.”*

– J. C. Watts, Jr. (1957-) US Representative from Oklahoma (R)

Review continued on page 14

## The Court Has No Use For Me

John T. Kennedy

*The lawyers didn't even get to question me. The judge dismissed me from jury duty immediately. In answer to his questions I told him that yes I could find the defendant guilty under the law but if I recognized the law to be unjust I would not convict.*

*"You are dismissed and excused from further duty. You do understand why we can't have individuals judging the law, don't you?" I understood.*

*If they had invited me to come down and offer my judgment as to whether they were acting justly in this case or not I'd have been inclined to do so. But that wasn't what they wanted at all. They required my service and threatened to fine me if I declined. And they were not interested in my full judgment, they wanted me to limit my judgment and act as their instrument.*

*In conscience I could not be their instrument.*

*Most of the people I love best are criminals. They are guilty under some law but blameless in my judgment. I would do evil to convict them. And I am useless to the state's court if I refuse to do such evil. I'd been reading Thoreau's Civil Disobedience as I waited in the jury room. A quote from King John was apt:*

*"I am too high born to be propertyed, To be a second at control, Or useful serving-man and instrument To any sovereign state throughout the world."*

*(Find more of John's writings at [www.no-treason.com](http://www.no-treason.com) - ed.)*

## Punishment Issued for Jury Duty Dodgers

By RYAN PEARSON  
Associated Press Writer

LONG BEACH, Calif. – Every month, hundreds of people are summoned to courts across the nation for a public scolding. It's no surprise that only a handful show up – after all, they are expert at that all-American custom: dodging jury duty. Fed-up judges from Los Angeles County to New York have responded by redirecting these scofflaws from the jury box to the hot seat. Residents who ignore repeated calls to appear can face fines and, in some places, even jail time. "It's not an invitation," said jury expert Tom Munsterman. "It's an obligation."

Earlier this month, only eight of 225 people identified as chronic offenders showed up to feel the wrath of Superior Court Judge James L. Wright. Those who ducked their duty were all fined, though penalties would be dropped if they actually serve. The eight who did attend had an uncomfortable time. A single mother holding her infant had her service deferred a year. A man who told the judge he ignored the summons because he hasn't mastered English was ordered to report next month.

Wright watched as tears rolled down the face of Darlene Acevedo, a 52-year-old dock worker from Wilmington. "My husband's in the hospital for a year. ... I have a certain amount of hours I have to" work, she pleaded. "I don't have the time. Right now the way I feel, I can't be a juror." The judge deferred her service to next September.

Still teary eyed outside court, Acevedo expressed anger over being required to serve. "A jury is not something you should be forced to do," she said. "It's something you want to do."

Not exactly, though court orders to serve are largely ignored. Factoring in deferrals, bad addresses and legitimate excuses, an average of 20 to 30 percent of the summonses sent out nationwide net a juror, according to Munsterman of the Virginia-based Center for Jury Studies.

Nationwide, courts are trying to do just that – make the consequences of jury dodg-

ing more painful. Since November, state trial courts around Phoenix have sent sheriff's deputies to the homes of jury dodgers with orders to appear. In New York County, officials snared 1,443 Manhattan jury dodgers last year with \$250 fines.

The massive Los Angeles County court system, which sent out 2.9 million summonses in the last fiscal year and had an initial response rate around 25 percent, is also trying to cope. Until two years ago, sanction hearings were held solely at the main downtown Los Angeles courthouse. The county's 9.9 million people weren't getting the message, so officials began rotating the hearings among various courts.

The county slapped residents with more than \$940,000 in penalties over the first six months of this year, fines that are referred to a collection agency.

Baltimore courts this month began giving jurors cheap parking and discounts at downtown restaurants. California has unveiled simplified civil jury instructions and is working to craft the same for criminal cases. Across Arizona, most of California and at least five other states, jury service now operates under a system designed to limit dreaded assembly room waits to one day. New York has increased juror's daily pay and is mulling the idea of offering free Internet access. In some jurisdictions, potential jurors first call the court to see if they are needed.

Aided by free publicity from TV programs focusing on trials and juries – as well as celebrities such as Oprah Winfrey who serve willingly and famously – court officials insist they're making progress. Three-quarters of the people in a summer survey by the American Bar Association disagreed with the notion that jury service is a hardship.

Then there's the tiny, reluctant bunch in the Long Beach courtroom, and the thousands more who duck out of service and don't get caught. "Everybody loves jury duty," Munsterman joked, "but not this week."

## Legal Reform from the Client's Point of View

Reprinted with author's permission from San Jose Mercury, December 23, 1996

There is a way to increase the justice in our justice system and reduce the length and cost of trials. Raise the dignity and influence of the jury. Give the jury added function and responsibility. Let the jurors ask questions. Let the jurors state what they already know and so avoid repetition. Let the jury have the full story – even if information is considered inflammatory, let it be heard, and counteracted by added commentary from the opposing side. Let the jury do research. Juries need to be fully informed. We don't know which piece of seemingly irrelevant information will enable a juror to pinpoint the true criminal. Bring sunshine into the legal process.

Take the tedium and resistance to jury service away, by letting jury service provide the excitement of creative thinking and creative questioning. Let jury service be a true healthy growth experience. Our juries need substantially greater empowerment. The fact is, juries of our peers are capable. Juries are deplorably hampered today because of antiquated legal habit, and the excessive desire of judges and lawyers to maintain power and control the court process. To reduce the enormous waste in the legal process, and salvage the poor reputation of its judges and lawyers, we need to make better use of the system's most valuable and constitutionally mandated asset—the jury members.

Juries also have to be paid more. The amount they receive, divided among 12, should be comparable to that paid the lawyer and the judge. The overall cost to the state will be less because trials will be settled in less time for less cost.

Charles Walton, Los Gatos, CA

## ABA Jury System Proposals

American Bar Assn. recommendations to revamp the jury system include keeping more details about jurors private and allowing them to take notes and discuss cases with one another during trials were announced by ABA President Robert J. Grey. The ABA American Jury Project studied jury operations across the country for the last six months.

Although it was obvious to this reader, based on some of the recommendations from the ABA, that the ABA does not understand the actual authority or role of the jury, a few recommendations hint that the ABA does understand a bit of the power and purpose of the jury.

Recommendations include:

- Keep private the home and work addresses and phone numbers of jurors, unless a compelling reason exists to reveal such information.
- Allow jurors to refuse to respond to embarrassing or unnecessary questions during voir dire, with judge's permission. (*Jurors can of course refuse to answer questions with or without the permission of anyone. ed.*)
- In civil trials, allow jurors to discuss a

case among themselves before the trial concludes and submit written questions to the court.

- In all trials, allow jurors to take notes.
- Provide jurors with written instructions for deliberations. (*We hope these will not to include instructions to follow the law as given by the judge regardless of what they think of it! ed.*)
- Prohibit employers from firing or laying off people who serve on juries.
- Increase juror pay.

Some of the proposals, such as note taking, are simple and should not meet with much resistance from attorneys. Others, such as giving jurors summaries in the middle of trials, allowing them to ask questions and limiting voir dire, will likely be the subject of debate when the proposals are put up for ratification in February. To address privacy concerns, the report recommends that judges explain to jurors how the information they provide will be used and how long it will be kept on file. Jurors should also be informed that they can answer sensitive questions privately to the court and to parties, the report says.

### Theophilus Parsons,

*"... a leading supporter of the Constitution of the United States in the convention of 1788 by which Massachusetts ratified the Constitution, and became Chief Justice of Massachusetts in 1806, said: "The people themselves have it in their power effectually to resist usurpation, [the wrongful seizure of authority] without being driven to an appeal to arms. An act of usurpation is not obligatory; it is not law; and any man may be justified in his resistance. Let him be considered as a criminal by the general government, yet only his fellow citizens can convict him; they are his jury, and if they pronounce him innocent, not all the powers of Congress can hurt him; and innocent they certainly will pronounce him, if the supposed law he resisted was an act of usurpation." Elliot's Debates, 94; 2 Bancroft's History of the Constitution, p.267. Quoted in Sparf and Hansen v. U.S., 156 U.S. 51 (1895), Dissenting Opinion: Gray, Shiras, JJ., 144.*



Merry Christmas,  
Hello Iloilo,  
As a result of your  
information and my  
persistence, I was able to get  
hold of a jury list here. We  
managed to get your pamphlet  
out to slightly more than 300  
potential jurors last year.  
That resulted in one dismissal,  
one hung jury and one  
acquittal.  
Having just received your  
calendar for 2005, I want to  
know if I can buy some of  
these. I am damn outspoken  
on the rights and  
responsibilities of being an  
American. I write several  
letters to the Editor and have  
a 100% print rate, usually  
about one a month. I often  
use your information in my  
letters. A couple of examples  
are enclosed.  
Sincerely,  
Clayton L. Alfred, U. S. Mil.  
Ret.  
Indiana

*"Liberty requires restraints on  
popularly-elected leaders, as  
well as from  
minorities, so that the  
individual is protected from  
undue and arbitrary  
coercion by the state. These  
restraints are provided by a  
plurality of more  
or less equal and independent  
groups which check and  
balance one another's power."  
– William Kornhauser  
(1925-2004)  
Professor  
Source: The Politics of Mass  
Society, 1959*

## Stacking a Clueless Jury FROM MOUNTAIN MEDIA THE LIBERTARIAN, By Vin Suprynowicz

At the end of each day of the two-week trial of Wilbert Brown – a Leonia, N.J., man accused of shooting his ex-girlfriend to death – Hackensack, N.J., Superior Court Judge Patrick Roma sent the jurors home with a reminder not to watch crime shows.

Not news accounts that might mention the case in question, mind you: fictional TV shows. The kind in which cases and dialogue and outcomes are pretty much, you know ... made up.

"Given the number of law-related programs on television, one does not know whether there is a fact pattern that parallels the facts of the case being tried," the judge said. "There should not be any outside influence to intrude upon their thinking."

Trial lawyers, prosecutors and even jurors agree that judges need to emphasize the distinction between court and courtroom drama, reports Kibret Markos of the Bergen Record.

Obviously influenced by TV, some jurors have asked why detectives couldn't find fingerprints on a piece of paper, which is virtually impossible, Deputy First Assistant Prosecutor John Cosmi told the New Jersey daily. Others have asked why DNA evidence wasn't introduced in connection with a crime that involved no bodily fluids, said Mr. Cosmi, who has tried cases for more than 30 years and grew up watching "Perry Mason." Mr. Cosmi told the Record, "Many times jurors come in with ideas that they learned on TV, and they are completely erroneous."

"Every judge should order jurors not to watch any (crime-related) show or read any papers," said Diana Michaels of East Rutherford, N.J., one of the jurors who convicted Brown of murder.

The shows would "most certainly" influence a juror if a case on TV is somewhat similar to the case on trial, she said.

Coupling this juror's statement with the admissions of numerous prospective jurors in the Robert Blake murder trial now getting underway in California – that they believe the defendant starts out "presumed guilty" and is required to prove his inno-

cence – it's hard to argue that anyone is exaggerating how confused many modern-day jurors may be.

But why stop at ordering them not to watch such shows during the trial? Isn't it possible their notions of law enforcement and the justice system are already hopelessly corrupted, thanks to past "exposure"?

And why stop at the "police procedurals"? Shouldn't anyone who has ever seen a John Wayne or a Charles Bronson or a Clint Eastwood movie be barred from sitting in judgment of a defendant accused of engaging in a shoot-out with the cops? After all, the fictional version may have given them unrealistic ideas.

And as for jurors who have read popular lawyer-novelist John Grisham – forget it!

If jurors are really so ignorant as not even to understand the constitutional right to a presumption of innocence, we might start by asking why such matters are no longer rigorously covered in the eighth grade.

But what may be far more important is for the public to begin challenging the notion that these juries represent a fair cross-section of the American populace, at all.

The notion of the Founders was that every criminal defendant has a right to a randomly selected jury of his peers. That is far from what actually happens, today.

First, young defendants are often tried by jurors twice or three times their age – far less likely to understand or sympathize with the cultural milieu in which they act – thanks to the age bias of the voter rolls.

Next, lengthy questionnaires and extensive voir dire interviews allow and encourage the court and both sides to screen out any juror they believe may be too unsympathetic to their cause, or too resistant to following the orders of the court.

In its practical application, this often means better educated, more professionally dressed conscripts who admit to following current events are summarily sent home, until many juries resemble nothing so much as a group of sedentary citizens transported

*Stacking continued on page 13*



## Why We Are Here: One of the Issues We Address

Iloilo M. Jones

The office phone rang at about 7:10 AM, and since I was already here working, I picked it up. Mrs. Al Evans from Louisiana, was calling to find out if there were any laws in Louisiana that required her husband's employer to pay him for the day he spent in the jury pool. She had found our telephone number through a Federal Jury Information web site (go figure! but hurray!).

She said the foreman at her husband's job had told Mr. Evans that the company was not required to reimburse him for jury duty, which is of course contrary to revised Louisiana statutes. Mrs. Evans provided me with the name and telephone number of the plant foreman, and, putting on my best professorial voice and manner, I called this small plant and asked to speak to their legal department, which of course did not exist, so I asked for the human resources department, which did not exist either, so I told them who I was and asked for the plant manager or director.

At first, the manager tried to tell me that the company was not obligated to pay employees for reporting for jury service, only if they served on a jury, which Mr. Evans had not. I suggested that I fax the statutes and Louisiana Labor Board language to him, and he gave me his fax number. I also requested, in writing, a copy of their revised, in

compliance personnel policies when completed so that I could close this file, and also so that I would not think we needed to take the next step of notifying the Louisiana Labor Board.

Less than two hours after I sent the fax, I received the revised personnel policy from the company, followed shortly by a call from the manager, who said their own labor attorney was unaware of this statute. Now, all the Louisiana plants belonging to this corporation will be changing their personnel policies, and since the corporation has plants in several other states, the manager asked if the corporation could use our web site to look up regulations for other states as well. I invited them to do so, of course. I also invited them to give us a call if they had questions, because we certainly didn't want to see the corporation paying the fines that could result from noncompliance with these jury statutes.

Mr. Evans will be paid in the next few days for his day of jury service, and the policies of the plant and all other Louisiana plants of this corporation will be changed. I will follow up with Mr. Evans to make sure he is paid, and that there is no retaliation for his "whistle-blowing."

Nice holiday story!

*Stacking continued from page 12*

out of their living rooms (or the local senior center) in their sweat suits, just before their favorite soap opera comes on.

If our judges are convinced the average juror is an impressionable dolt, perhaps the physician should examine himself – and ask himself why he was so afraid to place justice and the law in the hands of all those bright and able citizens who were "screened out" and sent home, leaving him with a dozen jurors raising their hands to ask if the lunch break might be made early enough to accommodate viewing today's episode of "The Young and the Restless."

It would be easy enough to fix. There's nothing illegal about a judge announcing "There will be no voir dire. Defendant will

be tried by a jury randomly selected, as the Founders intended. Prospective jurors 7 through 18 are hereby empaneled; everyone else may go home.

If this is a drug case and the jury thus ends up containing a few people who think drugs should be legalized, the state is plumb out of luck – just as the Founders intended. Is the prosecution ready?"

Vin Suprynowicz is assistant editorial page editor of the daily Las Vegas Review-Journal and author of the books "Send in the Waco Killers," "The Ballad of Carl Drega," and the forthcoming "The Black Arrow." For information on his books or receiving his columns via e-mail, visit Web sites [www.TheLibertarian.us](http://www.TheLibertarian.us) or [www.LibertyBookShop.us](http://www.LibertyBookShop.us).

*"The liberties of our country, the freedom of our civil Constitution, are worth defending at all hazards; and it is our duty to defend them against all attacks. We have received them as a fair inheritance from our worthy ancestors: they purchased them for us with toil and danger and expense of treasure and blood, and transmitted them to us with care and diligence. It will bring an everlasting mark of infamy on the present generation, enlightened as it is, if we should suffer them to be wrested from us by violence without a struggle, or to be cheated out of them by the artifices of false and designing men." — Samuel Adams*

*There's no way to rule innocent men. The only power any government has is the power to crack down on criminals. Well, when there aren't enough criminals, one makes them. One declares so many things to be a crime that it becomes impossible to live without breaking laws. — Ayn Rand, Atlas Shrugged*

*The saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time." George Sutherland, 1862-1942 US Supreme Court*

Dear Friends,  
 I am a former policeman and have owned an investigation firm in Florida for 27 years. I read the article another organization sent out. I noted in the article you mention the DHEA case and how the prosecutor controlled the case by presenting the government's position and keeping the facts from the jury. You do an injustice by not also mentioning that many victims of crime never get justice through the courts for the very same reason. The prosecutors form a conclusion and a "Designer" case to present to the jury. Many times it is obvious to legal people that the case is designed to fail due to the prosecutor's own plan. For example: In 2001 four thugs beat my grandson to death on his way home from school. Eighteen witnesses observed it. The prosecutor was too lazy to put on four trials, so he charged the one perp who was most involved. He then only produced 12 of the 18 witnesses to the grand jury. Why twelve? Why not all the facts? Because it did not fit his plan. Many times this is done due to one man deciding what the jury will hear and what they will never know about a case. The jury then has to make a decision based on half the truth. Sometimes this results in crime victims and their families never getting true justice. The prosecutor has complete power in this, called his "discretionary" or "ministerial" duties. Yes, he also has immunity for these

*continued on page 15 sidebar*

*Q&A continued on page 7*

1 (1795). The case is the jury instruction the Supreme Court gave in a civil case, which told the jurors that if in their opinion the charge of the Supreme Court was wrong, they could use their own judgment.

Clay S. Conrad

Q: Please help me understand this,

I've been doing just a little research on jury nullification since a good friend of mine at work informed me of the concept. I, like many others I suppose, had no idea about this and thought it the duty of the jury to follow the instruction of the judge.

I have read that judges and lawyers are not allowed to tell a jury about their full rights and responsibilities. Was a law passed that disallows this information being passed to the jurors? I've read the pat answers that judges don't trust juries to use their sense of conscience or that judges are afraid to lose their power, etc. but I can't imagine that a defense lawyer (or all of them, for that matter) wouldn't inform the jury of this concept in every trial. It would certainly make the trial easier for the defense to win! Thanks in advance for your help,

P. B. Emerick

A: Judges generally won't allow lawyers to introduce the concept; judges are discouraged by appellate courts from doing so themselves. The change wasn't due to a law being passed, but by a long series of appellate court opinions. I can't recite them all here; I'm not trying to plug my book, but it's the best job I can do at explaining it!

Clay S. Conrad

Q: I found ya'll's site and have an important question. Can someone serve in a jury if they know the person being charged for something? Or the person doing the charging? Someone I know had a court case and over half the jury knew the plaintiff and the defendant. Hope you can answer this.

Thanks, Sara

A: It can happen, but it is rare, and smacks of poor jury selection skills. However, if the jurors are on equal terms with both, it might not necessarily be a bad thing: jurors who know the faults of both may not be too ready to assign all blame to one party. If the jurors

are more identified with one party or the other, it is hard to believe they are unbiased and can keep an open mind.

Clay S. Conrad

Q: A defendant in a case involving shooting a threatening bear asked for a jury trial, and the jury hung. Then he accepted a plea bargain. Was this wise?

A: A hung jury is a real good sign if you are the defendant. Prosecutors really hate to retry cases. Chances are good they would have dropped the charges if he had insisted on another jury trial.

The prosecutor and the judge likely did everything they could to seat a jury inclined to support the law as written, a jury most likely to put aside questions of conscience, and still the jury hung. If you are ever on a jury where an injustice is being done by prosecuting someone for something that is not wrong, stick to your guns even if you are a minority of one. Deny the government a conviction!

Remember they multiply charges, so don't compromise either. Vote not guilty on all counts!

Don Doig

*Review continued from page 9*

jury, following FIJA pamphlet leafleting.

Murphy won't let him just simply rescue the Shuttle, however. Time and again, things go wrong, as each crisis is met, compressing the time-frame in which the rescue has to happen, to zilch. He passes out just as the window of opportunity is at hand, and isn't able to act until the available landing site turns out to be a remote landing strip in the Australian outback, which just happens to be in the eye of a record-setting typhoon.

The novel incorporates a healthy skepticism regarding the government and whatever it tries to do, a really vile and corrupt Senator who wants to be the next president, and a top-secret spy plane which is dusted off to help meet time deadlines.

Other characters include Randy, his sidekick and his mother's nurse and her friend.

Deorbit the Space Shuttle: Stem Cell Rescue, by Neil Mavis, [www.heuristicpublishing.com](http://www.heuristicpublishing.com), ISBN 0-9763863-0-5 Trade paperback, 320 pages.

## COMMENTARY

LA Times, October 27, 2004  
 Sometimes, Jurors Have to Take a Stand and Say, 'No, Not in Our Name'  
 By Lara Bazelon, Lara Bazelon is a deputy federal public defender in Los Angeles.

Picture this: On trial in a federal courtroom in Los Angeles is a woman accused of 20 felony counts of mail fraud stemming from the alleged theft of \$17,000 from the Social Security Administration. If convicted of all 20 counts, she faces a maximum penalty of 100 years in prison. The prosecution's witnesses describe how the woman repeatedly made false claims that she was not receiving her disability checks in order to get replacement checks and cash them along with the originals.

The defense attorney then calls his client to the stand. Under oath, she tells the jury that she is guilty as charged. The judge instructs the jurors to follow the law and sends them off to deliberate. But the woman is not convicted. Instead, the jury cannot reach a verdict on any of the felony counts because four of its 12 members will not vote for conviction. A mistrial is declared, and the woman walks away. That is what happened in a case that went to trial recently.

Those four jurors chose to nullify – to vote, that is, according to their gut sense of right and wrong rather than according to the strict letter of the law, a traditional right that dates back to the Magna Carta and that was strongly defended by this nation's founding fathers.

Though at first blush the story may sound bizarre, even perverse, I believe it is an example of why the jury system works. It wasn't just the woman on trial who had behaved badly, it was also those prosecuting her.

"Jury lawlessness," one distinguished legal commentator wrote nearly a century ago, "is the greatest corrective of law in its actual administration." In our legal system, a juror's refusal to convict can't be punished or reversed. For that reason, a jury may apply the law according to the judge's instructions or choose to nullify.

Jury nullification has been used to acquit

defendants charged with seditious libel for speaking out against the government, abolitionists who defied the Fugitive Slave Act and determined drinkers who chose to purchase and consume alcohol during Prohibition. Nullification is not a tool to be used lightly; it would be a mistake for juries to ignore well-thought-out laws on a regular basis.

Occasionally, jury nullification creates a terrible injustice, most infamously during the civil rights era when bigoted juries acquitted clearly guilty white defendants of lynching African Americans. But it is appropriate when a prosecutor or a judge uses a good law for a bad purpose, seeking to punish an individual in a manner that is excessive, vindictive or morally repugnant. In that rare instance, the 12 citizens called upon to endorse that abuse of prosecutorial power can and should refuse to go along.

Our country was founded by people who fled a tyrannical monarchy. Having suffered the evils of a centralized and unchecked ruling class, they were determined to create a government with limited powers – a government accountable to all of its citizens. Nullification is the last resort for those who believe that common sense and decency should win out over the letter of the law. It is what happens when the people call their government to account by standing up and saying, "No, not in our name."

That is what those four jurors did Oct. 13. They refused to convict the woman on trial, even after she confessed to the crimes, because the prosecutors who brought the case against her abused the power that had been entrusted to them.

The woman, the jury learned, was disabled and nearly deaf. Years earlier, when confronted with her theft, she had agreed to a reduction in her disability checks, which were then garnished by the Social Security Administration to repay the money that she had taken.

The jury, it seemed, saw the case for what it was. Interestingly, its judgment was orig-

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*bad decisions and half truths.*

*Victims of crime can be cheated of justice by the prosecutor just the same as an arrested person can be. My point is, this covers the entire audience seeking justice, and not just those persons who have been falsely charged.*

*Thank you,  
 Chuck Chambers  
 FindLaw: Chambers*

*"...for, as long as but a hundred of us remain alive, never will we on any conditions be brought under English rule. It is in truth not for glory, nor riches, nor honours that we are fighting, but for freedom – for that alone, which no honest man gives up but with life itself."  
 from the Declaration of Arbroath, Scotland, 1320*

*As nightfall does not come all at once, neither does oppression. In both instances, there is a twilight. And it is in such twilight that we all must be aware of change in the air, however slight, lest we become unwitting victims of the darkness.*

*– Justice William O. Douglas,  
 US Supreme Court*

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their consciences, and send a fellow citizen up the river to be butt-raped for a dozen years, even if they're convinced he did no one any harm, because, "Those were the judge's instructions."

A grand jury can investigate any official wrongdoing it pleases – not just cases brought before it by the state prosecutor. But will they tell you you have that right and power? Will they "allow" you to do it? Or will they dismiss the whole grand jury and start again if you "go out of control"?

You've got the wrong party doing the "pointing," here. Things are not made legal because it says so in law. Everything starts out legal, and only becomes illegal when it's outlawed. In writing. (Even then, a law can't take effect if it violates the Constitution.) Where in the law can they "point to" the place that says jurors can be prosecuted or punished in any way for voting their conscience, setting free a fellow citizen who they believe has done no harm, no matter what any other laws say? Make them "point to it."

There can be no such law, of course; it would be null and void on its face for violating the right to a trial by a jury of your peers as guaranteed in the Fifth, Sixth, and Seventh Amendments.

We live in a (budding?) police state. Good little citizens are conscripted down to the courthouse under threat of arrest to go through the motions of rubber-stamping and tying nice red ribbons around their atrocities against a generally peaceful people – atrocities which seem all the more normal because they indulge them daily.

You must now decide whether you're willing to go along, or whether you're going to resist, and if so, how. And no one else can tell you what to do. Good luck.

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inally shared by the prosecutor, who had at first seen fit to charge the woman with a single misdemeanor theft offense, carrying a maximum penalty of one year in prison, on the condition that she ask to be sentenced to 500 hours of community service "to aid in defendant's rehabilitation." When the woman would not agree to the condition because of its patronizing language and the difficulty of fulfilling the 500-hour requirement given her physical condition, the response from the U.S. attorney's office was swift and vengeful. Within days, a new indictment was brought, and what had been one misdemeanor count of theft ballooned into 20 felony counts of mail fraud.

But the ultimate power, the defense attorney made clear, rested with the jury. It was up to the 12 of them to decide whether the woman would be branded a felon 20 times over in their name.

The answer from four of those jurors, a resounding no, was a victory not just for the defendant but for our legal system.

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