

JURY NULLIFICATION -- What can I do?

Since the English Magna Carta in 1215, one of the major purposes of a citizen jury is to NOT CONVICT under laws they feel are unfair. Citizens can't assume the politicians are passing good laws and the unconstitutional ones have been weeded out by the courts. For example, since slaves can't properly judge the principles of liberty, jury service should be voluntary.

Before the Civil War, there was a famous case called the Dred Scott decision about a fugitive slave. The courts said he had to be returned to his owner like any other property. This judgement was unpopular with northern juries and they wouldn't convict others being prosecuted under similar laws.

The government saw this could get out of hand, if citizens wouldn't convict under the ever increasing laws. The juries could veto political schemes. The authorities wanted control and only wanted juries to decide the breaking of the law, not the law itself. Some judges said that since they were no longer the Kings appointees, but now members of the democratic process, they could be trusted to have the citizens best interests at heart; nullification of judge's instructions was no longer necessary. Also, it would put too great a mental strain on jurors. This question was debated back and forth. Then in 1895 (*Sparf v U.S.* 156 U.S. 51, 1895), the U.S. Supreme Court ruled that although juries have the right to ignore a judge's instructions on the law, the jury shouldn't be aware of it. The judicial hypocrisy on this issue started with this decision that has never been changed. If it seems strange that citizens have a right they aren't supposed to know about, it IS strange.

Jury nullification isn't taught in compulsory government schools. The term isn't in your encyclopedia or dictionary and it's dropped from law schools and references. This is an example of George Orwell's "1984" fictional "Newspeak": the concept doesn't exist if the phrase is banned. All judicial mention since the 1895 Supreme Court ruling acknowledges its existence only grudgingly, and judges refuse to tell juries about the power or to allow defense attorneys to refer to it. It's treated like a haunting, persistent ghost from the past, whose rare appearances are tolerated, deliberately ignored, and certainly not encouraged. This conspiracy of jury ignorance on the part of the judiciary is one of the strengths of government--

IGNORANCE IS STRENGTH.

Many of the current powers of government could be reduced if juries knew their rights and responsibilities. We see the jury veto at work in modern times, naturally without being taught. In many areas juries won't convict for marijuana and other "morals" laws, so they aren't enforced. Critics fear this will lead to anarchy and chaos. Yet in some states, the right to tell juries about nullification is a constitutional part of the state judicial process. These states haven't suffered, and can be leaders in a citizen re-awakening.

- Chief Justice John Jay, U.S. Supreme Court *Georgia v Brailsford* (3 Dallas 1, 1794)

"The jury has a right to judge both the law as well as the fact in controversy."

- Samuel Chase, Supreme Court Justice 1804 signer of The Declaration of Independence.

"The jury has the right to determine both the law and the facts."

- Lysander Spooner "An Essay On the Trial by Jury" 1852

"There are five separate tribunals to veto laws: representative, senate, executive, judicial and jury. It's the right and duty of juries to hold all laws invalid that are unjust or oppressive, in their opinion. If a jury does not have this right, the government is absolute and the people are slaves. Is it absurd that twelve ignorant men should sit by and see the law decided erroneously? The justices are untrustworthy and are fond of power and authority. To allow them to dictate the law would surrender all property, liberty and rights of the people into the hands of arbitrary power."

- Dean Roscoe Pound, 44 Am L Rev 12 at 18 (1910)

"Jury lawlessness is the great corrective of law in its actual administration."

- Oliver Wendel Holmes, *Horning v DC* 254 US 35,138 (1920)

"The jury has the power to bring in a verdict in the teeth of both law and facts."

- U.S. v Moylan 417 F.2d 1002 at 1006 (1969)

"If the jury feels the law is unjust, we recognize the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by the judge and contrary to the evidence. This power of the jury is not always contrary to the interests of justice."

- U.S. v Dougherty 473 F.2d 1113 at 1130 (1972)

"The pages of history shine on instances of the jury's exercise of its prerogative to disregard instructions of the judge; for example, acquittals under the fugitive slave law."

None of the four references since 1895 (Pound, Holmes, Moylan and Dougherty), taken in their full context, encourage a modern jury veto. They simply recognize it as history that refuses to die. However, one modern judge stands out with common sense on the subject. In his Dougherty dissent (at 1138-44), Washington D.C. Chief Federal Judge David Bazelon shows considerable courage in challenging the two-faced judicial recognition of the jury veto power by his brethren, while refusing to tell juries about it:

"Deliberate lack of candor... sleight-of-hand... a haphazard process. Is it true that nullification which arises out of ignorance is in some sense more worthy than nullification which arises out of knowledge? Nullification can and should serve an important function in the criminal process. Trust in the jury is, after all, one of the cornerstones of our entire criminal jurisprudence, and if that trust is without foundation we must re-examine a great deal more than just the nullification doctrine. The noble uses of the power provide an important input to our evaluation of the substantive standards of the criminal law. The reluctance of juries to convict under the prohibition and fugitive slave laws told us much about the morality of those laws. A doctrine that can provide us with such critical insights should not be driven underground. We should grant the defendant's request for a nullification instruction, or at least permit the defendant to argue the question before the jury. If revulsion against the government has reached a point where a jury would be unwilling to convict, we would be far better advised to ponder the implications of that result than to spend out time devising stratagems which let us pretend that the power of nullification does not even exist."

Source: <http://www.stormy.org/jurynull.htm>