

JURIES: AMERICA'S HISTORIC BARRIER AGAINST OPPRESSIVE LAWS AND GOVERNMENT TYRANNY.

By Senator Wayne Stump

Editor's Note: Former State Senator Wayne Stump of Arizona and a former member of the NRA board of directors. His article covers jury nullification of unjust laws. Alcohol prohibition failed and the politicians turned away from it because it was very difficult to get a conviction. NRA failure to publish this article was another in a long series of giving in to tyranny. It is another good reason to vote for the Second Amendment Action slate on Neal Knox's web sight www.nealknox.com The biographies of our candidates can be seen on: <http://www.paulrevere.org/nrabad/index.htm>

Now the article:

Prior to the American revolution an English general was overheard to say, "You can not pull the wool over the eyes of those Americans; they are all a bunch of lawyers." Book stores in London at that time sold more law books in the American colonies than any book except the Holy Bible. The American revolution and the American Republic were rooted in a climate of knowledge. Americans knew their law! They also knew their Bible, upon which the principles of the English common law are based. Thomas Jefferson said, in effect, that a people who wished to remain ignorant and to be free, desired something that never had been and never would be.

The N.R.A. has launched a grass-roots campaign to help its members, their families, and friends become informed activists in the fight to keep and regain our God-given rights, including those protected by the second amendment.

In the fight to regain our rights, most of our effort is, and has to be, in the political arena, however, in addition to political action, there is another area in which NRA members, their families, and friends can be effective in stopping the government dead in its tracks, whenever it attempts to infringe upon our rights, **IF THEY HAVE KNOWLEDGE!**

Any Citizen when serving on a jury, if he KNOWS his rights and duties as a juror, can in the case he is on, stop the government cold if he believes the statute to be unconstitutional or unfair simply by voting not guilty. When juries find a defendant not guilty in cases where the defendant did in fact violate the statute, it nullifies the statute in that particular case. Repeated and continuous JURY NULLIFICATION of a law makes it impossible for the government to enforce it and will lead to repeal of that law.

The power of the jury to nullify was first exercised in a seventeenth century English court and was discussed in an article by Godfrey Lehman in the November 1988 issue of The Justice Times.

"The ordeal suffered by twelve anonymous in London over 300 years ago is recorded obscurely in history under the colorless, non-descriptive title of "Bushell's Case." Its 20th century oblivion belies the respect it commanded in the 18th, and conceals its enduring multiple influences upon our Constitutional republic. Fully understood, it can be appreciated as one of the most influential single events in the entire history of our imperfect species* because of its impact upon the writers of our Declaration of Independence and Constitution. Most significantly it was spontaneous, unlike any other great charter of liberty.

"It was accomplished without deliberate, conscious planning; without great public agitation, and did not require the signing of a formal document. It did not involve any highly-placed persons. It arose directly from the people.

It is the story of the trial of William Penn, who had committed no more serious offense than preach Quakerism in spite of an official "law," known as the Conventicle Act, intended to proscribe all religions except the Church of England. The jurors suffered up to nine weeks of torture to stand by the principle that every person has a right to worship according to his own conscience. Because they did not waver, they finally won.

"The Conventicle Act fell before these twelve inconsequential "bumble heads" - these twelve "simple-witted cockneys" without rank nor position in the government. There were no further prosecutions under that act. It was not necessary to importune vote-seeking legislators to pass repealing legislation. The entire government was humbled before them. They gained no material benefits for themselves, they blended back into their pre-trial anonymity.

"By nullifying, the jury corrects governmental abuses and usurpations one at a time without violence, within the arena of the courtroom, preventing the formation of a long chain, which unchecked, could lead to revolution, as it did in 1776. The jury should be highly respected and honored."

The right of juries to judge the justice of laws was eloquently discussed in 1852 by author Lysander Spooner in his, "ESSAY IN THE TRIAL BY JURY."

He wrote, "For more than six hundred years - that is, since Magna Carta, in 1215 - there has been no clearer principle of English or American constitutional law, than that, in criminal cases, it is not only the right and duty of juries to judge what are the facts, what is the law, and what was the moral intent of the accused; but that it is also their right, and their primary and paramount duty, to judge of the justice of the law, and to hold all laws invalid, that are, in their opinion, unjust or oppressive, and all persons guiltless in violating, or resisting the execution of, such laws.

"Unless such be the right and duty of jurors, it is plain that, instead of juries being a "palladium of liberty" - a barrier against the tyranny and oppression of the government - they are really mere tools in its hands, for carrying into execution any injustice and oppression it may desire to have executed.

"That the rights and duties of jurors must necessarily be such as are here claimed for them, will be evident when it is considered what the trial by jury is, and what is its object.

"The trial by jury," then, is a "trial by the country" - that is, by the people - as distinguished from a trial by the government. It was anciently called "trial per pais" -that is, "trial by the country."

"The object of this trial "by the country," or by the people, in preference to a trial by the government, is to guard against every species of oppression by the government. In order to effect this end, it is indispensable that the people, or "the country," judge of and determine their own liberties against the government; instead of the government's judging of and determining its own powers over the people. How is it possible that juries can do anything to protect the liberties of the people against the government , if they are not allowed to determine what those liberties are?

"To secure this right of the people to judge of their own liberties against the government, the jurors are taken from the body of the people, by lot, or by some process that precludes any previous knowledge, choice, or selection of them, on the part of the government. This is done to prevent the government's constituting a jury of its own partisans or friends. In other words, to prevent the government's packing a jury, with a view to maintain its own laws, and accomplish its own purpose."

Things have come a long way since 1852. I'm sure that Mr. Spooner would cringe if he were to witness jury selection today. Both sides try to stack the jury. If you were to serve on a jury on a gun case it is not unrealistic to expect the government to ask if there are any gun owners, or maybe even NRA members, in the jury pool. Sometimes jurors are asked to answer questions by raising their hands. In that situation it is possible to not volunteer an answer by not raising ones hand. Quoting further from Mr. Lehman's Justice Times article:

"Almost universally, judges would extricate from jurors the false oath to "Take the law as I dictate it to you, no matter how you feel about it." Judges who do this are acting criminally as they are violating their own sacred Constitutional oaths. They would dominate the jury. Principled jurors refusing to take the oath are forcibly removed from the panel (also illegal).

"My position as a juror is to take the oath but, if the law is repugnant, to repudiate it in the jury room. Since to insist upon the oath is duress, and since it demands yielding inherent, Constitutionally guaranteed rights and powers, it is a lie from the beginning. It is not valid. It is the gun to your head and the offer you can't refuse. Jurors who have ostensibly sworn to the oath have remained on juries to prevent what would have been miscarriages of justice.

"The intense inquisition of jurors before trial is also to destroy jury independence by attempting to stack the jury with only compliant non-questioning jurors. The Constitution does not permit the court to invade the private lives of jurors with these outrageous inquisitions.

"That all of this is done in defiance of the Constitution is only partial demonstration of the extent we have progressed toward judicial oligarchy - despite those repeated Constitutional guarantees. The most valuable lesson we can learn from the ordeal of the Bushell jurors is that we do not require legislation nor other official act to save this grand bulwark of liberty, and liberty itself. We require only ourselves, knowledgeable and refusing to submit.

"And because our liberty depends principally upon the honesty of jurors, we the people, can overcome the oligarchy by doing nothing else than following, as jurors, the Bushell example of acting on conscience and principle."

Knowledgeable grass-roots political activity is absolutely necessary if we are to keep and regain our unalienable rights, protected by constitutional prohibitions on government. However, by serving on juries, when given the opportunity, with knowledge, acting on conscience and principle we can, once again, make the jury (at least the one we serve on) a "palladium of liberty."

It is my hope that all N.R.A. members will become informed regarding the power of juries and that they will share their knowledge with family, friends, and neighbors. It is far easier to stop the enemies of liberty in the jury box than it is at Concord's bridge (shot heard around the world).

It is NRA policy, established by the members at an annual meeting, to support fully informed juries. For more information, write to the Fully Informed Jury Association (FIJA), P.O. Box 59, Helmville, Montana, 59403, Phone (406) 793-5550

Jurors' Handbook: A Citizens Guide to Jury Duty

Did you know that you qualify for another, much more powerful vote than the one which you cast on election day? This opportunity comes when you are selected for jury duty, a position of honor for over 700 years. The principle of a Common Law Jury or Trial by the Country was first established on June 15, 1215 at Runnymede, England when King John signed the Magna Carta, or Great Charter of our Liberties. It created the basis for our Constitutional, system of Justice.

JURY POWER in the system of checks and balances: In a Constitutional system of justice, such as ours, there is a judicial body with more power than Congress, the President, or even the Supreme Court. Yes, the trial jury protected under our Constitution has more power than all these government officials. This is because it has the final veto power over all "acts of the legislature" that may come to be called "laws".

In fact, the power of jury nullification predates our Constitution. In November of 1734, a printer named John Peter Zenger was arrested for seditious libel against his Majesty's government. At that time, a law of the Colony of New York forbid any publication without prior government approval. Freedom of the press was not enjoyed by the early colonialists! Zenger, however, defied this censorship and published articles strongly critical of New York colonial rule. When brought to trial in August of 1735, Zenger admitted publishing the offending articles, but argued that the truth of the facts stated justified their publication. The judge instructed the jury that truth is not justification for libel. Rather, truth makes the libel more vicious, for public unrest is more likely to follow true, rather than false claims of bad governance. And since the defendant had admitted to the "fact" of publication, only a question of "law" remained.

Then, as now, the judge said the "issue of law" was for the court to determine, and he instructed the jury to find the defendant guilty. It took only ten minutes for the jury to disregard the judge's instructions on the law and find Zenger NOT GUILTY. That is the power of the jury at work; the power to decide the issues of law under which the defendant is charged, as well as the facts. In our system of checks and balances, the jury is our final check, the people's last safeguard against unjust law and tyranny.

A Jury's Rights, Powers, and Duties: But does the jury's power to veto bad laws exist under our Constitution? It certainly does! At the time the Constitution was written, the definition of the term "jury" referred to a group of citizens empowered to judge both the law and the evidence in the case before it. Then, in the February term of 1794, the Supreme Court conducted a jury trial in the case of the State of Georgia vs. Brailsford (3 Dall 1). The instructions to the jury in the first jury trial before the Supreme Court of the United States illustrate the true power of the jury. Chief Justice John Jay said: "It is presumed, that juries are the best judges of facts; it is, on the other hand, presumed that courts are the best judges of law. But still both objects are within your power of decision." (emphasis added) "...you have a right to take it upon yourselves to judge of both, and to determine the law as well as the fact in controversy". So you see, in an American courtroom there are in a sense twelve judges in attendance, not just one. And they are there with the power to review the "law" as well as the "facts"! Actually, the "judge" is there to conduct the proceedings in an orderly fashion and maintain the safety of all parties involved.

As recently as 1972, the U.S. Court of Appeals for the District of Columbia said that the jury has an " unreviewable and irreversible power... to acquit in disregard of the instructions on the law given by the trial judge.... (US vs Dougherty, 473 F 2d 1113, 1139 (1972))

Or as this same truth was stated in a earlier decision by the United States Court of Appeals for the District of Maryland: "We recognize, as appellants urge, 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 is a power that must exist as long as we adhere to the general verdict in criminal cases, for the courts cannot search the minds of the jurors to find the basis upon which they judge. If the jury feels that the law under which the defendant is accused, is unjust, or that exigent circumstances justified the actions of the accused, or for any reason which appeals to their logic of passion, the jury has the power to acquit, and the courts must abide by that decision." (US vs Moylan, 417 F 2d 1002, 1006 (1969)).

YOU, as a juror armed with the knowledge of the purpose of a jury trial, and the knowledge of what your Rights, powers, and duties really are, can with your single vote of not guilty nullify or invalidate any law involved in that case. Because a jury's guilty decision must be unanimous, it takes only one vote to effectively nullify a bad "act of the legislature". Your one vote can "hang" a jury; and although it won't be an acquittal, at least the defendant will not be convicted of violating an unjust or unconstitutional law.

The government cannot deprive anyone of "Liberty", without your consent! If you feel the statute involved in any criminal case being tried before you is unfair, or that it infringes upon the defendant's God-given inalienable or Constitutional rights, you can affirm that the offending statute is really no law at all and that the violation of it is no crime; for no man is bound to obey an unjust command. In other words, if the defendant has disobeyed some man-made criminal statute, and the statute is unjust, the defendant has in substance, committed no crime. Jurors, having ruled then on the justice of the law involved and finding it opposed in whole or in part to their own natural concept of what is basically right, are bound to hold for the acquittal of said defendant.

It is your responsibility to insist that your vote of not guilty be respected by all other members of the jury. For you are not there as a fool, merely to agree with the majority, but as a qualified judge in your right to see that justice is done. Regardless of the pressures or abuse that may be applied to you by any or all members of the jury with whom you may in good conscience disagree, you can await the reading of the verdict secure in the knowledge you have voted your conscience and convictions, not those of someone else. So you see, as a juror, you are one of a panel of twelve judges with the responsibility of protecting all innocent Americans from unjust laws.

Jurors Must Know Their Rights: You must know your rights! Because, once selected for jury duty, nobody will inform you of your power to judge both law and fact. In fact, the judge's instructions to the jury may be to the contrary. Another quote from *US vs Dougherty* (cited earlier): "The fact that there is widespread existence of the jury's prerogative, and approval of its existence as a necessary counter to case-hardened judges and arbitrary prosecutors, does not establish as an imperative that the jury must be informed by the judge of that power". Look at that quote again. the court ruled jurors have the right to decide the law, but they don't have to be told about it. It may sound hypocritical, but the *Dougherty* decision conforms to an 1895 Supreme Court decision that held the same thing. In *Sparf vs US* (156 US 51), the court ruled that although juries have the right to ignore a judge's instructions on the law, they don't have to be made aware of the right to do so. Is this Supreme Court ruling as unfair as it appears on the surface? It may be, but the logic behind such a decision is plain enough.

In our Constitutional Republic (note I didn't say democracy) the people have granted certain limited powers to government, preserving and retaining their God-given inalienable rights. So, if it is indeed the juror's right to decide the law, then the citizens should know what their rights are. They need not be told by the courts. After all, the Constitution makes us the masters of the public servants. Should a servant have to tell a master what his rights are? Of course not, it's our responsibility to know what our rights are! The idea that juries are to judge only the "facts" is absurd and contrary to historical fact and law. Are juries present only as mere pawns to rubber stamp tyrannical acts of the government? We The People wrote the supreme law of the land, the Constitution, to "secure the blessings of liberty to ourselves and our posterity." Who better to decide the fairness of the laws, or whether the laws conform to the Constitution?

Our Defense - Jury Power: Sometime in the future, you may be called upon to sit in judgment of a sincere individual being prosecuted (persecuted?) for trying to exercise his or her Rights, or trying to defend the Constitution. If so, remember that in 1804, Samuel Chase, Supreme Court Justice and signer of the Declaration of Independence said: "The jury has the Right to judge both the law and the facts". And also keep in mind that "either we all hang together, or we most assuredly will all hang separately".

You now understand how the average citizen can help keep in check the power of government and bring to a halt the enforcement of tyrannical laws. Unfortunately, very few people know or understand this power which they as Americans possess to nullify oppressive acts of the legislature.

America, the Constitution and your individual rights are under attack! Will you defend them? **READ THE CONSTITUTION, KNOW YOUR RIGHTS!** Remember, if you don't know what your Rights are, you haven't got any!