

## JURY NULLIFICATION

### *Memorandum of Law*

5 The purpose of this memorandum is to clarify for the court that the People being the author and source of law have the unalienable right as jurist to judge the law as well as the facts in controversy, to exercise its prerogative of nullification, sentencing, and to disregard instructions of the judge. It is the Jury that is the final arbitrator of all things and not the judge, this is government by consent! Any judge who forces his will upon the jury would be guilty of jury tampering. It would be an ‘absurdity’ for jurors to be required to accept the judge's view of the law against their own opinion, judgment, and  
10 conscience. Since natural law was thought to be accessible to the ordinary man, the theory invited each juror to inquire for himself whether a particular rule of law was consonant with principles of higher law.

### THE PEOPLE ARE THE AUTHOR & SOURCE OF LAW

15 *“Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts, And the law is the definition and limitation of power...”<sup>1</sup>*  
*“‘Sovereignty’ means that the decree of sovereign makes law, and foreign courts cannot condemn influences persuading sovereign to make the decree.”<sup>2</sup> “The people of this  
20 State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative.”<sup>3</sup> And “the state cannot diminish the rights of the people.”<sup>4</sup> “Supreme sovereignty is in the people and no authority can, on any pretense whatsoever, be exercised over the citizens of this state, but such as is or shall be derived from and granted by the people of this state.”<sup>5</sup>*

25 We the People ordained and established the Constitution for the United States of America.<sup>6</sup> We the People vested Congress with statute making powers<sup>7</sup>. We the People

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<sup>1</sup> Yick Wo v. Hopkins, 118 US 356, 370 Quotiens dubia interpretatio libertatis est, secundum libertatem respondendum erit.

<sup>2</sup> Moscow Fire Ins. Co. of Moscow, Russia v. Bank of New York & Trust Co., 294 N.Y.S. 648, 662, 161 Misc. 903.

<sup>3</sup> Lansing v. Smith, 4 Wend. 9 (N.Y.) (1829), 21 Am. Dec. 89 10C Const. Law Sec. 298; 18 C Em.Dom. Sec. 3, 228; 37 C Nav.Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7.

<sup>4</sup> Hurtado v. People of the State of California, 110 U.S. 516.

<sup>5</sup> NEW YORK CODE - N.Y. CVR. LAW § 2: NY Code - Section 2.

<sup>6</sup> We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. Preamble.

defined and limited that power of statute making<sup>8</sup>. We the People limited law making powers to ourselves alone.<sup>9</sup> We the People did not vest the Judiciary with law making powers. We the People are the “judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of Natural Law.”<sup>10</sup>

“The constitutions of most of our states assert that all power is inherent in the people, that they may exercise it by themselves, in all cases to which they think themselves competent, as in electing their functionaries executive and legislative, and deciding by a jury of themselves, both fact and law, in all judiciary cases in which any fact is involved.”<sup>11</sup>

### THE JURY DECIDES LAW AND FACTS

The trial of all crimes ...shall be by jury.<sup>12</sup> “A trial is the judicial examination, in accordance with the law of the land, of a cause, either civil or criminal, of the issues between the parties, whether of law or fact, before a court that has jurisdiction over it.”<sup>13</sup> “For purpose of determining such issue”<sup>14</sup> “It includes all proceedings from time when issue is joined, or, more usually, when parties are called to try their case in court, to time of its final determination.”<sup>15</sup> “And in its strict definition, the word “trial” in criminal procedure means the proceedings in open court after the pleadings are finished and the prosecution is otherwise ready, down to and including the rendition of the verdict.”<sup>16</sup>

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<sup>7</sup> **Article I Section 1:** ALL LEGISLATIVE POWERS herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

<sup>8</sup> **Article I Section 8:** To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

<sup>9</sup> “Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts And the law is the definition and limitation of power...” Yick Wo v. Hopkins, 118 US 356, 370 Quotiens dubia interpretatio libertatis est, secundum libertatem respondendum erit.

<sup>10</sup> Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689.

<sup>11</sup> Thomas Jefferson, letter to John Cartwright; June 5, 1824.

<sup>12</sup> Article III; Section 1.

<sup>13</sup> People v. Vitale, 364 Ill. 589, 5 N.E. 2d 474, 475. Gulf, C. & S. F. Ry. Co. v. Muse, 109 Tex. 352, 207 S.W. 897, 899, 4 A.L.R. 613; State v. Dubray, 121 Kan. 886, 250 P. 316, 319; Photo Cines Co. v. American Film Mfg. Co., 190 Ill.App. 124, 128.

<sup>14</sup> City of Pasadena v. Superior Court in and for Los Angeles County, 212 Cal. 309, 298 P. 968, 970; State ex rel. Stokes v. Second Judicial Dist. Court, in and for Washoe County, 55 Nev. 115, 127 P.2d 534.

<sup>15</sup> Molen v. Denning & Clark Livestock Co., 56 Idaho 57, 50 P.2d 9, 11.

<sup>16</sup> Thomas v. Mills, 117 Ohio St. 114, 157 N.E. 488, 489, 54 A. L.R. 1220.

- John Jay<sup>17</sup> - *“The jury has a right to judge both the law as well as the fact in controversy.”*
- Samuel Chase - *“The jury has the right to determine both the law and the facts.”*<sup>18</sup>
- 50 • Oliver Wendell Holmes<sup>19</sup> - *“The jury has the power to bring a verdict in the teeth of both law and fact.”*
- Kentucky Resolutions: A series of resolutions drawn up by Jefferson, and adopted by the legislature of Kentucky in 1799, protesting against the “alien and sedition laws...” declaring their illegality, announcing the strict constructionist theory of the federal government, and declaring “nullification” to be “the rightful remedy.”
- 55 • NY Constitution Article I §8: *“... and the jury shall have the right to determine the law and the fact.”*
- Marbury v. Madison - *“All laws, rules and practices which are repugnant to the Constitution are null and void”.*
- 60 • Miranda v. Arizona - *“Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.”*

**JURY'S RESPONSIBILITY IS TO DELIVER JUSTICE  
NOT UPHOLD THE LAW**

*"The pages of history shine on instances of the jury's exercise of its prerogative to disregard instructions of the judge."*

**Jury Nullification, by Dr. Julian Heicklen**

65 Jury nullification was introduced into America in 1735 in the trial of John Peter Zenger, Printer of The New York Weekly Journal. Zenger repeatedly attacked Governor William Cosby of New York in his journal. This was a violation of the seditious libel law, which prohibited criticism of the King or his appointed officers. The attacks became sufficient to bring Zenger to trial.

70 He clearly was guilty of breaking the law, which held that true statements could be libelous. However Zenger's lawyer, Andrew Hamilton, addressed himself to the jury, arguing that the court's law was outmoded. Hamilton contended that falsehood was the principal thing that makes a libel. It took the jury only a few minutes to nullify the law and declare Zenger not guilty.

75 Ever since, the truth has been a defense in libel cases.

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<sup>17</sup> John Jay, 1st Chief Justice United States Supreme Court, 1789.

<sup>18</sup> Samuel Chase, U.S. Supreme Court Justice, 1796, Signer of the unanimous Declaration.

<sup>19</sup> Oliver Wendell Holmes, U.S. Supreme Court Justice, 1902.

Several state constitutions, including the Georgia Constitution of 1777 and the Pennsylvania Constitution of 1790 specifically provided that “the jury shall be judges of law, as well as fact.” In Pennsylvania, Supreme Court Justice James Wilson noted, in his Philadelphia law lectures of 1790, that  
80 when “a difference in sentiment takes place between the judges and jury, with regard to a point of law,...The jury must do their duty, and their whole duty; they must decide the law as well as the fact.” In 1879, the Pennsylvania Supreme Court noted that “the power of the jury to be judge of the law in criminal cases is one of the most valuable securities guaranteed by  
85 the Bill of Rights.”

John Jay, the first Chief Justice of the U. S. Supreme Court stated in 1789, “The jury has the right to judge both the law as well as the fact in controversy.” Samuel Chase, US. Supreme Court Justice and signer of the Declaration of Independence, said in 1796: “The jury has the right to  
90 determine both the law and the facts.” U.S. Supreme Court Justice Oliver Wendell Holmes said in 1902: "The jury has the power to bring a verdict in the teeth of both law and fact." Harlan F. Stone, the 12th Chief Justice of the U.S. Supreme Court, stated in 1941: “The law itself is on trial quite as much as the cause which is to be decided.”

95 In a 1972 decision (U.S. v Dougherty, 473 F 2nd 1113, 1139), the Court said: "The pages of history shine on instances of the jury's exercise of its prerogative to disregard instructions of the judge."

Likewise, the U.S. Supreme Court in *Duncan v Louisiana* implicitly endorsed the policies behind nullification when it stated, “If the defendant preferred the common-sense judgment of the jury to the more tutored but  
100 less sympathetic reaction of the single judge, he was to have it.”

In recent times, the courts have tried to erode the nullification powers of juries. Particular impetus for this was given by the fact that all-white juries in the southern states refused to convict whites of crimes against blacks. As  
105 a result, there is a practice of judges to incorrectly instruct the jury that the judge determines the law, and that the jury is limited to determining the facts. Such an instruction defeats the purpose of the jury, which is to protect the defendant from the tyranny of the state. The purpose of the jury is to protect the defendant from the tyranny of the law.

110 The problem with the all-white juries that refused to convict whites that committed crimes against blacks was not in jury nullification, but in jury

selection. The jury was not representative of the community and would not provide a fair and impartial trial.

115 In recent years, jury nullification has played a role in the trials of Mayor Marion Barry of Washington, DC for drug use, Oliver North for his role in the Iran-Contra Affair, and Bernhard Goetz for his assault in a New York City subway.

120 In *Les Miserables*, Victor Hugo highlighted the difference between justice and law. The jury's responsibility is to deliver justice, not to uphold the law. Judges in Maryland and Indiana are required by law to inform the jury of its right to nullification. Article 23 of the Maryland Bill of Rights states:

“In the trial of all criminal cases, the Jury shall be the judge of Law, as well as of fact, except that the Court may pass upon the sufficiency of the evidence to sustain a conviction.”

125 Nullification applies just as much in other states, including Pennsylvania. Article I of the Constitution of the Commonwealth of Pennsylvania states in Section 6, “Trial by jury shall be as heretofore (emphasis mine), and the right thereof remain inviolate.” Section 25 states: “To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.” Taken together, these two sections mean that juries shall have the powers that they had “heretofore”, i. e. when the Constitution was adopted.

135 Judges usually do not inform the jury of this right. Even worse, some judges instruct the jury that it does not have the right to interpret or nullify the law, but only to determine the facts. Near the end of alcohol prohibition, juries refused to convict for alcohol violations. Has the time arrived for juries to do the same for marijuana violations?

140 **NULLIFICATION WAS NEVER MOOT**  
*“it would be an 'absurdity' for jurors to be required to accept the judge's view of the law, against their own opinion, judgment, and conscience” John Adams*

“It is useful to distinguish between the jury’s right to decide questions of law and its power to do so. The jury's power to decide the law in returning a general verdict is

145 indisputable. The debate of the nineteenth century revolved around the question of whether the jury had a legal and moral right to decide questions of law.”<sup>20</sup>

150 “Underlying the conception of the jury as a bulwark against the unjust use of governmental power were the distrust of ‘legal experts’ and a faith in the ability of the common people. Upon this faith rested the prevailing political philosophy of the constitution framing era: that popular control over, and participation in, government should be maximized. Thus John Adams stated that ‘the common people...should have as complete a control, as decisive a negative, in every judgment of a court of judicature’ as they have, through the legislature, in other decisions of government.”<sup>21</sup>

155 “Since natural law was thought to be accessible to the ordinary man, the theory invited each juror to inquire for himself whether a particular rule of law was consonant with principles of higher law. This view is reflected in John Adams’ statement that it would be an ‘absurdity’ for jurors to be required to accept the judge’s view of the law, ‘against their own opinion, judgment, and conscience.’”<sup>22</sup>

160 “During the first third of the nineteenth century,...judges frequently charged juries that they were the judges of law as well as the fact and were not bound by the judge’s instructions. A charge that the jury had the right to consider the law had a corollary at the level of trial procedure: counsel had the right to argue the law, its interpretation and its validity to the jury.”<sup>23</sup>

**NULLIFICATION  
THE UNALIENABLE RIGHT OF THE PEOPLE  
THIS IS GOVERNMENT BY CONSENT**

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170 “*The pages of history shine on instances of the jury’s exercise of its prerogative to disregard instructions of the judge*”<sup>24</sup>. “*It is presumed, that the juries are the best judges of facts; it is, on the other hand, presumed that the courts are the best judges of law. But still, both objects are within your power of decision. You have a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy.*”<sup>25</sup>

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<sup>20</sup> ANON (Note in "The Changing Role of the Jury in the Nineteenth Century, Yale Law Journal, 74, 170, 1964):

<sup>21</sup> ANON (Note in "The Changing Role of the Jury in the Nineteenth Century, Yale Law Journal, 74, 172, 1964):

<sup>22</sup> ANON (Note in "The Changing Role of the Jury in the Nineteenth Century, Yale Law Journal, 74, 172, 1964):

<sup>23</sup> ANON (Note in "The Changing Role of the Jury in the Nineteenth Century, Yale Law Journal, 74, 174, 1964).

<sup>24</sup> " U.S. v. Dougherty, 473 F.2d. 1113, 1139 (1972).

<sup>25</sup> US Supreme Court State of Georgia v. Brailsford, 3 DALL. 1,4.

- Thomas Jefferson<sup>26</sup> - *“I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.”*
- 175 • John Adams<sup>27</sup> - *“It's not only ... (the juror's) right, but his duty, in that case, to find the verdict according to his own best understanding, judgement, and conscience, though in direct opposition to the direction of the court.”*
- John Jay<sup>28</sup> - *“The jury has a right to judge both the law as well as the fact in controversy.”*
- 180 • Alexander Hamilton<sup>29</sup> - *Jurors should acquit even against the judge's instruction.... “if exercising their judgement with discretion and honesty they have a clear conviction that the charge of the court is wrong.”*
- Samuel Chase<sup>30</sup> - *“The jury has the right to determine both the law and facts.”*
- 185 • Justice Thurgood Marshall<sup>31</sup> - *“Illegal and unconstitutional jury selection procedures cast doubt on the integrity of the whole judicial process. They create the appearance of bias in the decision of individual cases, and they increase the risk of actual bias as well.”*
- Chief Justice Mathew<sup>32</sup> - *“...it was impossible any matter of law could come in question till the matter of fact were settled and stated and agreed by the jury, and of such matter of fact they [the jury] were the only competent judges.”*
- 190 • Sir John Vaughan<sup>33</sup> - *“...without a fact agreed, it is impossible for a judge or any other to know the law relating to the fact nor to direct [a verdict] concerning it. Hence it follows that the judge can never direct what the law is in any matter controverted.”*
- 195 • Lysander Spooner<sup>34</sup> - *“The bounds set to the power of the government, by the trial by jury, as will hereafter be shown, are these -- that the government shall never touch the property, person, or natural or civil rights of an individual, against his consent, except for the purpose of bringing them before a jury for trial, unless in pursuance and execution of a judgment, or decree, rendered by a jury in each individual case,*

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<sup>26</sup> Thomas Jefferson (1789).

<sup>27</sup> John Adams (1771).

<sup>28</sup> John Jay (1794).

<sup>29</sup> Alexander Hamilton (1804).

<sup>30</sup> Samuel Chase (1804): (Justice, U. S. Supreme Court and signer of the Declaration of Independence).

<sup>31</sup> Justice Thurgood Marshall (1972) *Peters v. Kiff*, 407 US 493, 502.

<sup>32</sup> Chief Justice Mathew Hale 2 Hale P C 312 1665.

<sup>33</sup> Sir John Vaughan, Lord Chief Justice ("Bushell's Case, 124 Eng Reports 1006; Vaughan Reports 135, 1670).

<sup>34</sup> Lysander Spooner (An Essay on the Trial by Jury, 1852).

- 200 upon such evidence, and such law, as are satisfactory to their own understandings  
and consciences, irrespective of all legislation of the government.”
- John Adams<sup>35</sup> - “It is not only his right, but his duty...to find the verdict according to his own best understanding, judgment, and conscience, though in direct opposition to the direction of the court.”
  - William Kunstler<sup>36</sup> - “Unless the jury can exercise its community conscience role,  
205 our judicial system will have become so inflexible that the effect may well be a progressive radicalization of protest into channels that will threaten the very continuance of the system itself. To put it another way, the jury is...the safety valve that must exist if this society is to be able to accommodate its own internal stresses and strains...[I]f the community is to sit in the jury box, its decision cannot be legally  
210 limited to a conscience-less application of fact to law.”
  - Lysander Spooner<sup>37</sup> - “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  
215 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.”
  - Alexander Hamilton<sup>38</sup> - “That in criminal cases, nevertheless, the court are the  
220 constitutional advisors of the jury in matter of law; who may compromise their conscience by lightly or rashly disregarding that advice, but may still more compromise their consciences by following it, if exercising their judgments with discretion and honesty they have a clear conviction that the charge of the court is wrong.”
  - Alan Schefflin and Jon Van Dyke<sup>39</sup> - “When a jury acquits a defendant even though he or she clearly appears to be guilty, the acquittal conveys significant information about community attitudes and provides a guideline for future prosecutorial discretion in the enforcement of the laws. Because of the high acquittal rate in  
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<sup>35</sup> John Adams (Second President of U.S.) (1771) (Quoted in Yale Law Journal 74 (1964): 173).

<sup>36</sup> William Kunstler (quoted in Franklin M. Nugent, "Jury Power: Secret Weapon Against Bad Law," revised from Youth Connection, 1988).

<sup>37</sup> Lysander Spooner (An Essay on the Trial by Jury, 1852, p. 11).

<sup>38</sup> Alexander Hamilton (as defense counsel for John Peter Zenger, accused of seditious libel, 7 Hamilton's Works (ed. 1886), 336-373):

<sup>39</sup> ("Jury Nullification: the Contours of a Controversy," Law and Contemporary Problems, 43, No.4, 71 1980):



- 230 *prohibition cases during the 1920s and early 1930s, prohibition laws could not be enforced. The repeal of these laws is traceable to the refusal of juries to convict those accused of alcohol traffic.”*
- Clarence Darrow<sup>40</sup> - *“Why not reenact the code of Blackstone's day? Why, the judges were all for it -- every one of them -- and the only way we got rid of those laws was because juries were too humane to obey the courts. "That is the only way we got rid of punishing old women, of hanging old women in New England -- because, in spite of all the courts, the juries would no longer convict them for a crime that never existed.”*
  - 235 • Oregon Constitution<sup>41</sup> - *“...the jury shall have the right to determine the law, and the facts...”*
  - 240 • Indiana Constitution<sup>42</sup> - *“In all criminal cases whatsoever, the jury shall have the right to determine the law and the facts.”*
  - New York Constitution<sup>43</sup> - *“...the jury shall have the right to determine the law and the fact.”*
  - Constitution of Maryland<sup>44</sup> - *“In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact...”*
  - 245 • Hansen v. U.S.<sup>45</sup> - *“Within six years after the Constitution was established, the right of the jury, upon the general issue, to determine the law as well as the fact in controversy, was unhesitatingly and unqualifiedly affirmed by this court, in the first of the very few trials by jury ever had at its bar, under the original jurisdiction conferred upon it by the Constitution.”*
  - 250 • Morisette v. United States<sup>46</sup> - *“But juries are not bound by what seems inescapable logic to judges.”*
  - U.S. v. DATCHER<sup>47</sup> - *“Judicial and prosecutorial misconduct still occur, and Congress is not yet an infallible body incapable of making tyrannical laws.”*
  - 255 • U.S. v. WILSON<sup>48</sup> - *“In criminal cases, a jury is entitled to acquit the defendant because it has no sympathy for the government's position.”*

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<sup>40</sup> Clarence Darrow, (Debate with Judge Alfred J. Talley, Oct. 27, 1924):

<sup>41</sup> Oregon Constitution, Article I bill of rights 16

<sup>42</sup> Indiana Constitution Article 1, Section 19:

<sup>43</sup> New York Constitution Article I - Bill of Rights §8:

<sup>44</sup> Constitution of Maryland Article XXIII:

<sup>45</sup> Justices Gray and Shiras, United States Supreme Court (Sparf and Hansen v. U.S., 156 U.S. 51, 154-155 (1894)).

<sup>46</sup> Justice Robert H. Jackson (Morisette v. United States, 342 U.S. 246).

<sup>47</sup> Judge Wiseman U.S. v. DATCHER 830 F.Supp. 411, 413, M.D. Tennessee, 1993.

<sup>48</sup> U.S. v. WILSON (629 F.2d 439, 443 (6th Cir. 1980).

## JURY TAMPERING

Thomas Jefferson - *“To consider the judges as the ultimate arbiters of all constitutional questions is a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy.”*

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- Theophilus Parsons<sup>49</sup> - *“If a juror accepts as the law that which the judge states then that juror has accepted the exercise of absolute authority of a government employee and has surrendered a power and right that once was the citizen's safeguard of liberty, -- For 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.”*
- C.J. O'Connel v. R.<sup>50</sup> - *“Every jury in the land is tampered with and falsely instructed by the judge when it is told it must take (or accept) as the law that which has been given to them, or that they must bring in a certain verdict, or that they can decide only the facts of the case.”*
- Taylor v. Louisiana<sup>51</sup> - *“The purpose of a jury is to guard against the exercise of arbitrary power -- to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps over conditioned or biased response of a judge.”*
- U.S. v. DATCHER<sup>52</sup> - *“A defendant's right to inform the jury of that information essential to prevent oppression by the Government is clearly of constitutional magnitude.”*

## UNALIENABLE RIGHT OF THE JURY IN SENTENCING

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*“There is no statutory proscription against making the jury aware of possible punishment. Instead, courts that have disallowed juror awareness of sentencing contingencies have peremptorily resorted to the fact finding - sentencing dichotomy to justify this denial. For example, the Eighth Circuit, in United States v. Goodface, merely stated that ‘the penalty to be imposed upon a defendant is not a matter for the jury’ and so it was proper not to inform the jury of a mandatory minimum term.<sup>53</sup> No further justification is given. In making this facile distinction, the courts have created an artificial, and poorly constructed, fence around the jury's role.”* *“The Supreme Court has not mandated that juries be in the dark on the issue of sentence. Those courts so*

<sup>49</sup> Theophilus Parsons (2 Elliot's Debates, 94; 2 Bancroft's History of the Constitution, p. 267).

<sup>50</sup> Lord Denman, (in C.J. O'Connel v. R. ,1884).

<sup>51</sup> Justice Byron White (1975): Taylor v. Louisiana, 419 US 522, 530.

<sup>52</sup> Judge Wiseman (U.S. v. DATCHER 830 F.Supp. 411, 415, M.D. Tennessee, 1993).

<sup>53</sup> See 835 F.2d at 1237.

290 ruling have done so on unconvincing grounds. The power of jury nullification  
historically has extended to sentencing decisions, and it rightfully should extend to such  
decisions. This court finds no precedential rationale for rejecting the defendant's  
motion."<sup>54</sup>

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### PROPER INSTRUCTIONS TO THE JURY

300 Instruction to Jurors in criminal cases in Maryland,<sup>55</sup> "*Members of the Jury, this is a  
criminal case and under the Constitution and the laws of the State of Maryland in a  
criminal case the jury are the judges of the law as well as of the facts in the case. So  
that whatever I tell you about the law while it is intended to be helpful to you in  
reaching a just and proper verdict in the case, it is not binding upon you as members of  
the jury and you may accept or reject it. And you may apply the law as you apprehend it  
to be in the case.*"

305 United States v. Moylan,<sup>56</sup> "*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 a judge, and contrary to the evidence...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 or passion, the jury has the  
power to acquit, and the courts must abide by that decision.*"

310 Alan Schefflin and Jon Van Dyke ("Jury Nullification: the Contours of a Controversy,"  
Law and Contemporary Problems, 43, No.4, 1980) - "*The arguments for opposing the  
nullification instruction are, in our view, deficient because they fail to weigh the  
political advantages gained by not lying to the jury...What impact will this deception  
have on jurors who felt coerced into their verdict by the judge's instructions and who  
315 learn, after trial, that they could have voted their consciences and acquitted? Such a  
juror is less apt to respect the legal system.*"

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<sup>54</sup> Judge Wiseman (U.S. v. DATCHER 830 F.Supp. 411, 417 M.D. Tennessee, 1993).

<sup>55</sup> Instruction to Jurors in criminal cases in Maryland (Quoted by Alan Schefflin and Jon Van Dyke, "Jury Nullification: the Contours of a Controversy," Law and Contemporary Problems, 43, No.4, 83, 1980).

<sup>56</sup> 4<sup>th</sup> Circuit Court of Appeals (United States v. Moylan, 417F.2d1006, 1969).

## JURY DECISION IS FINAL THIS IS GOVERNMENT BY CONSENT

- 320 • Justice Kent<sup>57</sup> - *“The true criterion of a legal power is its capacity to produce a definitive effect, liable neither to censure nor review. And the verdict of not guilty in a criminal case, is, in every respect, absolutely final. The jury are not liable to punishment, nor the verdict to control. No attain lies, nor can a new trial be awarded. The exercise of this power in the jury has been sanctioned, and upheld in constant activity, from the earliest ages.”*
- 325 • H.G. Wells - *“The Jury is the Achilles heel of tyrants.”*

## THE FINAL ARBITRATOR OF ALL THINGS

330 *“The decisions of a superior court may only be challenged in a court of appeal. The decisions of an inferior court are subject to collateral attack. In other words, in a superior court one may sue an inferior court directly, rather than resort to appeal to an appellate court. Decision of a court of record [trial by jury] may not be appealed. It is binding on ALL other courts. However, no statutory or constitutional court (whether it be an appellate or Supreme Court) can second guess the judgment of a court of record. The judgment of a court of record [trial by jury], whose jurisdiction is final, is as*

335 *conclusive on all the world as the judgment of this court would be. It is as conclusive on this court as it is on other courts. It puts an end to inquiry concerning the fact, by deciding it.”*<sup>58</sup>

340 We the People are the most qualified to make and decide law because we are the author of the Law and we vested Congress with statute making powers<sup>59</sup> that We the People in our courts of Justice reserve the right to consent or deny by nullification according to the facts of the case as we see fit. Furthermore, as a Nation, we called upon our Creator in our founding document to be the King of our courts of Justice and not man whereas we read:

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<sup>57</sup> Justice Kent (New York Supreme Court 3 Johns Cas., 366-368 (1803)); Quoted in Sparf and Hansen v. U.S., 156 U.S.51, 148-149. (1894), Gray, Shiras dissenting.

<sup>58</sup> Ex parte Watkins, 3 Pet., at 202-203. [cited by SCHNECKLOTH v. BUSTAMONTE, 412 U.S. 218, 255 (1973).

<sup>59</sup> *We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.* Preamble.

345 *When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.*

350 *We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed... - Declaration of Independence*

355 And by His Grace and Holy Will, We the People in 1789, were gifted with His Liberty<sup>60</sup> to “*be what man was meant to be, Free and Independent.*” “*A consequence of this prerogative is the legal ubiquity of the king. His majesty in the eye of the law is always present in all his courts, though he cannot personally distribute justice.*”<sup>61</sup> “*His judges* [We the People as Jury both grand and petit] *are the mirror by which the king's image is*  
360 *reflected.*”<sup>62</sup>

Since then (1789), we have been engaged in a battle against the rulers of darkness over the control of our courts as the final day of leviathan draws nigh.<sup>63</sup> We the People<sup>64</sup> sit on the Kings bench and are able to reflect His holy will as we read in His Word:

365 “*This shall be the covenant that I will make with the house of Israel; After those days, saith the LORD, I will put my law in their inward parts, and*

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<sup>60</sup> **Leviticus 25:10** And ye shall hallow the fiftieth year, and proclaim liberty throughout all the land unto all the inhabitants thereof: it shall be a jubilee unto you; and ye shall return every man unto his possession, and ye shall return every man unto his family.

<sup>61</sup> (Fortesc.c.8. 2Inst.186).

<sup>62</sup> 1 Blackstone's Commentaries, 270, Chapter 7, Section 379.

<sup>63</sup> **Isaiah 27:1-4** In that day the LORD with his sore and great and strong sword shall punish leviathan the piercing serpent, even leviathan that crooked serpent; and he shall slay the dragon that [is] in the sea. In that day sing ye unto her, A vineyard of red wine. I the LORD do keep it; I will water it every moment: lest any hurt it, I will keep it night and day. Fury is not in me: who would set the briars and thorns against me in battle? I would go through them, I would burn them together. **Isaiah 14:1-4** For the LORD will have mercy on Jacob, and will yet choose Israel, and set them in their own land: and the strangers shall be joined with them, and they shall cleave to the house of Jacob. And the people shall take them, and bring them to their place: and the house of Israel shall possess them in the land of the LORD for servants and handmaids: and they shall take them captives, whose captives they were; and they shall rule over their oppressors. And it shall come to pass in the day that the LORD shall give thee rest from thy sorrow, and from thy fear, and from the hard bondage wherein thou wast made to serve, That thou shalt take up this proverb against the king of Babylon, and say, How hath the oppressor ceased! the golden city ceased!

<sup>64</sup> **Exodus 4:22** - And thou shalt say unto Pharaoh, Thus saith the LORD, Israel is my son, even my firstborn:

*write it in their hearts; and will be their God, and they shall be my people.”*  
God, Jeremiah 31:33.

370 *“This is the covenant that I will make with them after those days, saith the Lord, I will put my laws into their hearts, and in their minds will I write them.”* - God, Hebrews 10:16.

Therefore, to permit the servant to rule the master is absurd, and as recent years have proven, the control of our courts by BAR members throughout the last quarter of the twentieth century has brought We the People under the rule of despotism of an oligarchy as Jefferson had warned.

375 We the People of the Kings bench (jury), being the source and arbiter of the law, have a duty and an unalienable right to judge and decide in all things, which includes sentencing with an eye on restitution, as the tribunal of all lawful courts. To deny our unalienable right of consent in these things is to war against We the People; thereby, our word is final.