

From: Mike Prax [<mailto:gmprax@gmail.com>]
Sent: Friday, April 11, 2014 3:56 AM
To: Rep. Wes Keller
Subject: HB 315 Act Relating to Juries

Dear Chairman Keller and Members of the Judiciary Committee;

I am writing to encourage the Judiciary Committee to support HB315.

The Legislative Research Division's assertion that "Jury nullification is not the law in Alaska" in their Feb. 26 memo indicates that the legislature needs to clearly state that the jury has the responsibility of deciding whether a statute is being applied justly to a given situation, as well as the evidence presented, to determine whether a defendant is guilty in a criminal proceeding.

Recognizing this responsibility is a fundamental part of affording a defendant the right to be judged by a jury of his peers instead of simply subjecting him to agents of the government. It is the most personal application of "All political power is inherent in the people. ..." as is proclaimed by Article 1. section 2 of Alaska's State Constitution.

Even though the legislature makes every effort to pass just laws, we cannot assume that it can foresee every circumstance to which their statutes might apply, nor can we assume that those who enforce the statutes will have perfect understanding of legislative intent. Furthermore, it is conceivable that a statute passed by the legislature becomes stale with the passage of time and no longer expresses the will of the people. There are any number of reasons that strict enforcement of a statute might result in a miscarriage of justice.

That is one reason that our Governor is given the power to issue a pardon to someone who has been convicted of a crime. If a governor, whose authority comes from the people, is given that power; then we must assume that the people sitting as a jury have at least the same authority to protect a fellow citizen from an injustice when it seems to them appropriate.

But this important check on the excess of governing power becomes underappreciated as we become more accustomed to dependency on government protection. Many people now seem to think that the government is something separate from ourselves and rights are granted by the government instead of an endowment from our Creator and our judicial system seems to be reinforcing this misconception.

I have attached a copy of the instructions a judge gives to the jury before they are empanelled. Not only do these instructions fail to remind the jurors of the full scope of their responsibility, which is to ensure just application of the law - not simply to render judgment as to some facts - but they seem to imply dire consequences for an ordinary citizen in an unfamiliar setting who might dare to hold an opinion contrary to the court's.

Ideally, the court would remind juror's of their full responsibility to carry out justice, because this would also remind the defendant that they are being judged by a jury of their peers - not the government. If the jury then returned a guilty verdict, the defendant would have to confront the fact that his peers found the law just as well the fact that he violated it. That is a much more

serious conviction, than one handed down by a jury that the defendant thinks is only a puppet of the government.

On the other hand, if juries start finding defendants not guilty in spite of obvious facts, it sends a signal to the legislature that it needs to adjust its statutes or to the prosecutor that he needs to adjust his enforcement effort.

This would increase everybody's respect for the law.

But the court appears unwilling to draft their instructions accordingly, so it is up to the legislature to remind us all of the important responsibility of the jury to be a final check to ensure that justice is indeed being served. And this is why it seems important to me to pass HB315.

Thank you,

Mike Prax
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You have been selected as jurors in this case. Before you take the juror's oath, I want to remind you how serious and important it is to be a member of a jury. Trial by jury is a fundamental right. In a jury trial, the case is decided by citizens who are selected fairly, who are not biased, and who will try their best to give a fair verdict based on the evidence.

In the juror's oath, you will swear or affirm that you will decide the case based solely on the evidence and will follow the law as I will instruct you. You will swear or affirm that you gave complete and correct answers during the jury selection process, that you are truly impartial, and that there is nothing else that I or the parties should know about your ability to be a juror.

If any of you do not feel you should take this oath or if any of you have additional information that I or the parties should know, please let me know now. You will have an opportunity to give your information in private.

The oath will now be administered.

USE NOTE

This instruction will help jurors understand the importance of not withholding relevant information if called upon to do so during the jury selection process.

In Manrique v. State, 177 P.3d 1188 (Alaska App. 2008), the Alaska Court of Appeals remanded a case involving possible juror misconduct. The court held that misconduct occurs if a juror understands the relevance of information during the jury selection process and consciously withholds that information in the face of questions and admonitions that reasonably call for it. Id. at 1192. A mistrial can be ordered even though the juror would not have been removed for cause. Id. The court also set out the factors that should be considered in deciding whether a mistrial should be granted. Id. at 1192-93.