

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 18, 2009

1:09 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative Carl Gatto
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative John Coghill

OTHER LEGISLATORS PRESENT

Representative Berta Gardner

COMMITTEE CALENDAR

HOUSE BILL NO. 15

"An Act relating to prohibiting the use of cellular telephones by minors when driving a motor vehicle; and providing for an effective date."

- HEARD & HELD

HOUSE RESOLUTION NO. 7

Requesting the United States Congress to permanently repeal the federal unified gift and estate tax.

- MOVED HR 7 OUT OF COMMITTEE

HOUSE BILL NO. 140

"An Act relating to juries in criminal cases; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 15

SHORT TITLE: BAN CELL PHONE USE BY MINORS WHEN DRIVING

SPONSOR(S): REPRESENTATIVE(S) GARDNER, TUCK

01/20/09 (H) PREFILE RELEASED 1/9/09
01/20/09 (H) READ THE FIRST TIME - REFERRALS
01/20/09 (H) JUD, FIN
03/16/09 (H) JUD AT 1:00 PM CAPITOL 120
03/16/09 (H) Moved CSHB 15(JUD) Out of Committee
03/16/09 (H) MINUTE(JUD)
03/18/09 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HR 7

SHORT TITLE: URGE REPEAL OF FEDERAL ESTATE/GIFT TAX

SPONSOR(S): REPRESENTATIVE(S) FAIRCLOUGH

02/23/09 (H) READ THE FIRST TIME - REFERRALS
02/23/09 (H) JUD
03/18/09 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 140

SHORT TITLE: JURY NULLIFICATION

SPONSOR(S): REPRESENTATIVE(S) COGHILL

02/18/09 (H) READ THE FIRST TIME - REFERRALS
02/18/09 (H) JUD
03/18/09 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

RICK SVOBODNY, Acting Attorney General
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 15, spoke to Amendment 2.

CRYSTAL KOENEMAN, Staff
Representative Anna Fairclough
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HR 7 on behalf of the sponsor, Representative Fairclough.

RYNNIEVA MOSS, Staff
Representative John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 140 on behalf of the sponsor, Representative Coghill.

MARGIE CROOK, Member
Fully Informed Jury Association
Alabama

POSITION STATEMENT: Testified on HB 140.

ROB CLIFT
Anchorage, Alaska

POSITION STATEMENT: Encouraged the committee to move forward with HB 140.

STEPHEN LAFFERTY
North Pole, Alaska

POSITION STATEMENT: Testified in support of HB 140.

FRANK TURNEY, Member
Fully Informed Jury Association
Fairbanks, Alaska

POSITION STATEMENT: Expressed hope that HB 140 is forwarded to the full body for a vote.

RICK SIKMA
North Pole, Alaska

POSITION STATEMENT: Testified in support of HB 140.

WAYNE MCCREADY
Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of HB 140.

SHAWN KITTLE
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 140.

NATHAN SMOOT
North Pole, Alaska

POSITION STATEMENT: Testified in support of HB 140.

OLIVER FLESHMAN
Fairbanks, Alaska

POSITION STATEMENT: Requested the committee's support for HB 140.

KAREN VERNON
Salcha, Alaska

POSITION STATEMENT: Urged the committee to pass HB 140.

LONNIE VERNON

Salcha, Alaska

POSITION STATEMENT: Requested the committee's support for HB 140.

RITA HYMES

Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of HB 140.

VICTOR BUBERGE

North Pole, Alaska

POSITION STATEMENT: Testified in support of HB 140.

ADAM BIJAN

Fairbanks, Alaska

POSITION STATEMENT: Testified that although he supports HB 140, it could use some changes.

RANDY GRIFFIN

Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of HB 140.

MARK RICHARDS

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 140.

MIKE PRAX

North Pole, Alaska

POSITION STATEMENT: Testified in favor of HB 140.

KEN THESING

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 140.

SCHAEFFER COX

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 140.

RICK SVOBODNY, Acting Attorney General

Department of Law (DOL)

Juneau, Alaska

POSITION STATEMENT: Testified on HB 140.

ACTION NARRATIVE

[1:09:52 PM](#)

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:09 p.m. Representatives Ramras, Holmes, Gatto, and Gruenberg were present at the call to order. Representative Lynn arrived as the meeting was in progress.

HB 15 - BAN CELL PHONE USE BY MINORS WHEN DRIVING

1:11:17 PM

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 15, "An Act relating to prohibiting the use of cellular telephones by minors when driving a motor vehicle; and providing for an effective date."

1:11:28 PM

REPRESENTATIVE DAHLSTROM made a motion to rescind the committee's action of 3/16/09 in reporting CSHB 15(JUD) from committee for the purposes of a specific amendment. There being no objection, HB 15, as amended by Amendment 1 on 3/16/09, was back before the committee.

CHAIR RAMRAS directed the committee's attention to Amendment [2], labeled 26-LS011\E.1, Luckhaupt, 3/18/09, which clarifies that a peace officer can make a stop authorized by law.

1:12:32 PM

RICK SVOBODNY, Acting Attorney General, Department of Law (DOL), offered his understanding that the last time this legislation was before the committee there was debate as to whether probable cause or reasonable suspicion was required in these stops. He specified that it could be either. Therefore, Amendment 2 doesn't pick, and therefore the law remains the same for stops whether it's reasonable suspicion or probable cause.

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CHAIR RAMRAS moved that the committee adopt Amendment [2], labeled 26-LS011\E.1, Luckhaupt, 3/18/09, which read:

Page 1, lines 10-11:

Delete "has probable cause"

Insert "is authorized by law"

REPRESENTATIVE HOLMES objected for the purpose of discussion.

CHAIR RAMRAS requested that Acting Attorney General Svobodny delineate the difference between terms "probable cause" and "authorized by law".

ACTING ATTORNEY GENERAL SVOBODNY explained that probable cause, in simplistic terms, means more likely than not. Therefore, it's probable that a crime is being committed. However, reasonable suspicion is a lower standard in which a police officer can take into consideration several factors and determine there to be a suspicious circumstance. There may be legal disputes regarding what standard the law requires for an event when a car is stopped. The adoption of Amendment 2 would leave the determination with the court and case law that exists now. The problem, he explained, arises, because it's a secondary event. The police aren't supposed to stop people as an underage person using a cell phone. The stop would be for driving under the influence, reckless driving, or speeding.

CHAIR RAMRAS surmised then that this is a narrow policy call to determine whether the standard is probable cause or authorized by law.

ACTING ATTORNEY GENERAL SVOBODNY relayed that the DOL views [Amendment 2] as a way not to choose between the two standards but rather leave it up to the court.

The committee took an at-ease from 1:18 p.m. to 1:19 p.m.

CHAIR RAMRAS withdrew his motion to adopt Amendment [2]. There being no objection, HB 15, as amended, was before the committee.

CHAIR RAMRAS made a motion that the committee rescind its action on 3/16/09 in adopting Amendment 1. There being no objection, it was so ordered, and HB 15 was before the committee.

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CHAIR RAMRAS again made a motion to adopt Amendment 2, labeled 26-LS011\E.1, Luckhaupt, 3/18/09. [Text provided previously.]

REPRESENTATIVE HOLMES objected for the purpose of discussion.

ACTING ATTORNEY GENERAL SVOBODNY related that the department believes that the law as it applies today to stops should apply to HB 15. Amendment 2 would accomplish the aforementioned. In further response, Acting Attorney General Svobodny clarified that the adoption of Amendment 2 would maintain a police

officer's ability to stop a vehicle for probable cause because that's the law as it applies today. "And so, this language [with the adoption of Amendment 2] says that whatever the law is today, whether it's reasonable suspicion or probable cause, that would be the law as it relates to minors using a cell phone," he explained.

REPRESENTATIVE GRUENBERG said he would have interpreted the phrase "as authorized by law" to mean as authorized by law at the time of the trial not frozen in time at today. He suggested that to interpret the language as Acting Attorney General Svobodny does it should say, "was authorized by law on the date of enactment".

CHAIR RAMRAS inquired as to which standard Representative Gruenberg preferred.

REPRESENTATIVE GRUENBERG said that he prefers the language "authorized by law" as inserted by Amendment 2. However, he highlighted the importance of clarifying the legislative history with regard to the time to which the law refers.

ACTING ATTORNEY GENERAL SVOBODNY stated, "Either we know it today because there's a case that's decided on a particular fact pattern or it's going to be new law a year from now when the kid gets stopped with the phone."

[1:24:50 PM](#)

REPRESENTATIVE HOLMES surmised that the intent of [Amendment 2] is that whatever the underlying law required to stop an individual for whatever reason applies.

ACTING ATTORNEY GENERAL SVOBODNY replied yes.

REPRESENTATIVE HOLMES clarified then that there's no attempt to lower the standard, but rather to defer the discussion.

ACTING ATTORNEY GENERAL SVOBODNY noted his agreement that it's not an attempt to lower or raise the standard.

REPRESENTATIVE HOLMES pointed out that the legislation creates a secondary offense and the language in HB 15 is identical, using probable cause, to the seat belt and booster seat sections.

CHAIR RAMRAS interjected and asked if Representative Holmes approves Amendment [2] or not.

REPRESENTATIVE HOLMES said that she didn't know.

[1:26:37 PM](#)

CHAIR RAMRAS announced that HB 15 would be set aside [with the motion to adopt Amendment 2 left pending].

The committee took an at-ease from 1:26 p.m. to 1:30 p.m.

HR 7 - URGE REPEAL OF FEDERAL ESTATE/GIFT TAX

[1:30:48 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE RESOLUTION NO. 7, Requesting the United States Congress to permanently repeal the federal unified gift and estate tax.

[1:31:00 PM](#)

CRYSTAL KOENEMAN, Staff, Representative Anna Fairclough, Alaska State Legislature, speaking on behalf of Representative Fairclough, sponsor, explained that HR 7 urges Congress to repeal the federal estate tax. The Economic Growth and Tax Relief Reconciliation Act of 2001 made significant changes to the Internal Revenue Service's (IRS) Revenue Code. She noted that between 2002 and 2009 federal estate taxes and exemption amounts have been gradually reduced and will be fully repealed in 2010. However, in 2011 they will be re-implemented.

REPRESENTATIVE GRUENBERG noted that members' packets now include information regarding the amount of Alaska's estate tax. The handout relates that in 2005 the state estate tax brought in nearly \$2.5 million and is phasing down to zero in fiscal year 2008.

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REPRESENTATIVE GRUENBERG moved to report HR 7 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HR 7 was reported from the House Judiciary Standing Committee.

HB 140 - JURY NULLIFICATION

[1:33:40 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 140, "An Act relating to juries in criminal cases; and providing for an effective date."

[1:34:09 PM](#)

RYNNIEVA MOSS, Staff, Representative John Coghill, Alaska State Legislature, speaking on behalf of the sponsor, Representative Coghill, began by relating that HB 140 is not new as the sponsor introduced similar legislation in 2002. Ms. Moss then paraphrased from the following sponsor statement [original punctuation provided]:

House Bill 140 addresses jury nullification. Representative Coghill asks the legislature to consider this legislation as an acknowledgement that the jury is the exclusive judge of the facts and may decide that the law is unjustly applied to the defendant.

This legislation enacts provisions in law instructing the court to allow a defendant the right to inform the jury of their right to judge the defendant and to judge the law as it applies to the defendant.

Current jury instructions for Alaskan jurors require them to "accept and follow the law as instructed by the judge even though they may have a different idea about what the law is or ought to be".

HB 140 allows a jury to fully understand their role and exercise their responsibility as a jury. A jury is the only thing standing in the way of a government out of check and inherent rights of citizens being judge by the law. Jury nullification allows citizens to have the final say on what is fair in a court of law.

Indiana, Georgia, and Maryland currently have provisions in their state constitutions guaranteeing jurors the right to "judge" or "determine" the law in all criminal cases.

MS. MOSS then informed the committee that in 2002, then Senator Donley said, "Today government more often tells American citizens what to do rather than the other way around." She then reminded the committee that the forefathers of this nation

founded it on the basis of "for the people and by the people." However, today there are activist courts, judges, and lawyers. Furthermore, laws are being passed that engender fear of aggressive governments, she opined. The sponsor, she relayed, feels that the jury in a court case should be the last check when there is a government that's diminishing people's rights.

[Chair Ramras passed the gavel to Vice Chair Dahlstrom.]

MS. MOSS said that although cynics will claim that judges and lawyers don't trust individuals and want to hold the power, she didn't believe that to be the case. "We feel the balance would be jury nullification," she related. Ms. Moss explained that HB 140 instructs the court to allow a defendant the right to inform the jury of its right to judge the defendant and the law as it applies to that defendant.

REPRESENTATIVE GATTO questioned whether [this legislation] sets up an activist jury.

MS. MOSS replied yes and offered that this occurred when the colonists were still under British rule. There were activist juries that were judging British laws applied to colonists.

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REPRESENTATIVE GRUENBERG mentioned that Legislative Legal and Research Services is in the process of drafting a legal opinion, and therefore he requested that the committee be allowed to review the opinion prior to voting on the legislation. He then referred to language on page 2, lines 4-5, and related his understanding that this won't apply in civil cases.

MS. MOSS concurred.

REPRESENTATIVE GRUENBERG surmised then that per HB 140 only the defendant has a right to such a jury instruction, the prosecution doesn't have a similar right.

MS. MOSS concurred.

REPRESENTATIVE GRUENBERG asked whether the sponsor has any legal opinions on HB 140.

MS. MOSS answered that although she doesn't have a legal opinion from Legislative Legal and Research Services, she does have a memo from Mr. Luckhaupt, legislative counsel. The memo from Mr.

Luckhaupt read as follows: "While jury nullification isn't inherently illegal or unconstitutional, allowing instruction and argument to jurors regarding jury nullification could result in due process or equal protection violations as the law may not be fairly applied in an equal, consistent, and nondiscriminatory manner." The aforementioned, she opined, is exactly why the sponsor introduced the legislation. The sponsor, she went on to relay, is concerned that people have been charged with felonies instead of misdemeanors due to pleading down and not fully prosecuting misdemeanors. Furthermore, the sponsor believes that the committee should review the trial and jury process. In further response to Representative Gruenberg, Ms. Moss specified that the sponsor hasn't requested an opinion from the attorney general or anyone else.

REPRESENTATIVE GRUENBERG asked whether Ms. Moss has knowledge of any trial court in the state being asked to give a jury nullification question. If so, he asked whether it was given in any trial court in the state.

MS. MOSS recalled receiving testimony in 2002 that confirmed such.

REPRESENTATIVE GRUENBERG requested then that the witnesses comment whether they have been instructed or requested an instruction, or refused to give instructions. He referred to the aforementioned as unreported rulings. Representative Gruenberg related his gut belief that jury nullification has been requested, but it hasn't been allowed.

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MARGIE CROOK, Member, Fully Informed Jury Association, explained that she was asked to be part of the Fully Informed Jury Association after helping women in prison in Alabama, many of whom should never have been convicted. She said that she'd learned that America has 5 percent of the world's population and 25 percent of the world's prisoners. Although DNA has proven many to be innocent, not all prisoners can be proven innocent that way. The aforementioned is why it's important, she opined, for jurors to know their rights and that they can judge both the law and the facts in order to avoid incarcerating the innocent. Ms. Crook offered her belief that in Marbury v. Madison, the court said that any law which is repugnant to the constitution is null and void and jurors have the right to so judge it and refuse to convict somebody who's being tried under such a law. She thanked the committee for reviewing this legislation, and

expressed her hope that Alaska will lead the way for other states in regard to returning justice to the courts.

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ROB CLIFT shared his belief that it is the right of the jury to judge the law, not just the facts in the case. He relayed that he's sat at jury selection and has observed potential jurors being dismissed from service when the individual indicated he/she would [utilize jury nullification]. Furthermore, Mr. Clift said he has heard judges instruct jurors that they are not allowed to [utilize jury nullification]. Therefore, if the desire is to protect individual liberty, then HB 140 is important legislation. Mr. Clift opined that juries are in place so that they can judge the law. Since the nation is founded on common law, every jury should be informed of [jury nullification]. In conclusion, Mr. Clift encouraged the committee to move HB 140 forward.

[1:49:56 PM](#)

STEPHEN LAFFERTY related his support for HB 140 and encouraged the committee to vote in support of the legislation as well.

[1:50:29 PM](#)

FRANK TURNEY, Member, Fully Informed Jury Association, noted that he provided the committee with an educational packet from the American Jury Institute, the Fully Informed Jury Association, a white paper on the history of jury nullification, as well as an essay by former Supreme Court Justice William Goodloe on jury nullification. Former Supreme Court Justice Goodloe, he relayed, points out the following:

The Founders view of the jury as being of paramount importance in defending liberty is easily seen when examining the words of the Constitution. There are only 14 words describing freedom of speech and of the press in the Constitution. But there are 186 words describing trial by jury in the Constitution. It is guaranteed in the main body in Article 3, Section 2, Paragraph 3, and in two amendments, the Sixth and the Seventh. No other right is mentioned so frequently, three times, or has as many words devoted to it. It is plain that our Founders viewed the jury trial right as the most important right since it gave birth to, and defended, all other rights.

MR. TURNEY then highlighted that Oregon, Maryland, Georgia, and Indiana specify in their constitutions that a jury has the right to judge the law as well as the facts and controversy. Furthermore, over 20 states, under free speech, recognize jury nullification under liable and civil cases. Those states that include jury nullification in liable cases include criminal cases. Mr. Turney opined that the Bill of Rights is in more jeopardy than ever. He expressed hope that HB 140 will be passed out of committee and on to the full body for a vote. With regard to jury instructions, he noted that he and other defendants have requested jury nullification instructions in Alaska and have been denied by the court and the judges. He then turned attention to the Vietnam era when people absconded and left the state. In those cases, some jurors were given instructions while others were not. In the cases in which the jurors were given instructions [regarding jury nullification], the individual was found not guilty whereas when the instructions [regarding jury nullification] weren't given to the jury, the individual was found guilty. Therefore, it's important for the jury to receive instructions from the judge that it has the right to nullify. He noted that the defendant has the right to inform the jury of its nullification rights. In conclusion, he expressed hope that HB 140 passes.

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REPRESENTATIVE GATTO asked if Mr. Turney knows what a stacked jury is.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

MR. TURNEY replied yes, adding that it's probably the most illegal thing: jury consultants, who choose the jury scientifically. The aforementioned is done in Fairbanks, he noted. Mr. Turney highlighted that Former Supreme Court Justice Sandra Day O'Connor has spoken about the unfairness of jury consulting, which results in no checks and balances. Jury stacking is one reason jurors should be fully informed of their rights and responsibilities to render a verdict. In conclusion, he relayed that those who are interested in more information about their rights and responsibilities can call 1-800-Teljury or visit www.sfija.org.

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RICK SIKMA related his support for HB 140. He opined that it's very important for juries to be informed and given the freedom to make decisions as to what is right. This topic, he said, reminds him of the following quote from John Adams: "It is not only right, but his duty to find the verdict according to his own best understanding, judgment, and conscious though in direct opposition of the court." When people reach into their consciousness to make decisions in court that's when fairness will be found in the court, he opined. He expressed hope that the committee would vote to pass HB 140.

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WAYNE MCCREADY testified in favor of HB 140. He pointed out that citizens pass judgment on the lawmakers at the ballot box, and therefore he said he believes citizens are just as capable of passing judgment on the laws state lawmakers pass. He relayed that he was a potential juror under Judge Funk when he said he couldn't swear to that oath. The aforementioned resulted in Judge Funk stating that it wasn't the job of the jurors to judge the law, but rather is the job of the lawmakers. The judge went on to say that any individual who had a problem with the law should testify to the lawmakers as to the need to change the law. Mr. McCready said he totally disagrees with that.

REPRESENTATIVE GRUENBERG relayed that the content of the jurors' oath can be found in the Alaska Rules of Criminal Procedure, Rule 24(f), as follows:

Do each of you solemnly swear or affirm that you will well and truly try the issues in the matter now before the court solely on the evidence introduced and in accordance with the instructions of the court?

REPRESENTATIVE GRUENBERG noted that these rules could be found on the Internet or in any library. He then referred to the 1982 Alaska Court of Appeals case, Hartley v. State, 653 P.2d 1052, 1055, in which the court says, "We reject this argument and the doctrine of nullification". He surmised that HB 140 would overrule that portion of the Hartley case.

[2:03:13 PM](#)

SHAWN KITTLE related his support for HB 140 and asked the committee to approve the legislation.

2:03:28 PM

NATHAN SMOOT stated that the founding documents weren't meant to be parsed by lawyers and judges. He highlighted that one of the wonderful aspects of the rights afforded by the creator and recognized by the constitutions of the state and the nation is that the founding documents are understood by the common citizen. Jury nullification, he opined, merely allows jurors to be informed of their rights. Mr. Smoot related his support for HB 140 and expressed hope that the committee will forward it on so that the defense is able to educate jurors of their rights. He then questioned why the government or elected officials would prefer a jury that's ignorant of its rights, unless they desired tyranny. Mr. Smoot said that the purpose of his 11 years of military service was to defend the U.S. Constitution and the rights he holds dear. He expressed disbelief that elected officials would prefer an ignorant constituency.

MR. SMOOT, in conclusion, drew attention to a proclamation that was first recognized by former Governor Walter Hickel and has been signed twice by Governor Sara Palin. He read the proclamation as follows [original punctuation, along with some formatting changes, provided]:

WHEREAS, September 5, 2008, will mark the 338th anniversary of the day when the jury refused to convict William Penn of violating England's Conventicle Acts, despite clear evidence that he acted illegally by preaching a Quaker sermon to his congregation.

WHEREAS, by refusing to apply what they determined was an unjust law, the Penn jury not only served justice, but provided a basis for the U.S. Constitution's First Amendment rights of freedom of speech, religion, and peaceable assembly.

WHEREAS, September 5, also marks the anniversary of the day when four of Penn's jurors began nine weeks of incarceration for finding him not guilty. Their later release and exoneration established forever the English and American legal doctrine that it is the right and responsibility of the trial jury to decide on matters of law and fact.

WHEREAS, the Sixth and Seventh Amendments are included in the Bill of Rights to preserve the right to trial

by jury, which in turn conveys upon the jury the responsibility to defend, with its verdict, all other individual rights enumerated or implied by the U.S. Constitution, including its amendments.

NOW, THEREFORE, I, Sarah Palin, Governor of the state of Alaska, do hereby proclaim September 5, 2008, as: Jury Rights Day in Alaska, in recognition of the integral role the jury, as an institution, plays in our legal system.

[2:07:58 PM](#)

OLIVER FLESHMAN relayed that one of the things that keeps him in Alaska is how much liberty is valued. Therefore, Mr. Fleshman said that he is in favor of any legislation that promotes liberty. In conclusion, he asked the committee to support HB 140.

[2:08:35 PM](#)

KAREN VERNON urged the committee to pass HB 140 as she firmly believes in the legislation. She noted her agreement with the prior speakers.

[2:09:14 PM](#)

LONNIE VERNON requested the committee's support for HB 140 as it is necessary. [Jury nullification] is part of the constitution, he pointed out.

[2:09:55 PM](#)

RITA HYMES related that she is in favor of HB 140. She informed the committee that she was born in a foreign country and in order to become a citizen she had to learn the U.S. Constitution. In fact, she opined that she is likely more familiar with the U.S. Constitution than most high school graduates. Although the U.S. Constitution is a very important document that judges take an oath to uphold, regrettably they seem to forget it once on the bench. She opined that HB 140 is merely reaffirming the jury's right to utilize jury nullification. She further opined that it should be reaffirmed simply as a matter of checks and balances, especially since jury instructions at the state and federal level have ignored [jury nullification]. In conclusion, Ms. Hymes encouraged the committee to review this matter and support HB 140.

2:11:48 PM

VICTOR BUBERGE related his support for HB 140. He shared his belief that juries should be fully informed and that all jury cases, including civil cases should have a fully informed jury. Mr. Buberger also suggested that defendants should have better access to discovery in all cases.

2:13:01 PM

ADAM BIJAN reminded members that they are all servants of the people, who are the masters that set the rules. Mr. Bijan said that although he supports HB 140, there are some changes that need to be made to it. One small change he recommended was to [acknowledge] that the jury is the exclusive judge of the facts and the law. Furthermore, if a judge doesn't inform/instruct the jury, the judge should be dismissed. He noted his support of Mr. Buberger's comment that juries should be fully informed in criminal as well as civil cases. "How can people be the masters and not be able to decide and judge the facts and the law," he questioned. In conclusion, Mr. Bijan reiterated his support of HB 140 as written, although he noted the need for a few changes.

REPRESENTATIVE GRUENBERG asked Mr. Buberger whether he had anything specific in mind with regard to his comments about greater access.

MR. BUBERGE informed the committee that he has been fighting a traffic ticket for nearly three years, a situation with which Representative Coghill is familiar. He explained that he passed a parked emergency vehicle that had its lights flashing. Although the law was appropriate as written, law enforcement officials were writing tickets inappropriately. He further explained that he has been attempting to obtain evidence since he filed the case. The case is currently in appeal, and he still doesn't have access to some of the tapes and notes. In fact, some of the information of the tapes and videos happens to be missing or have been altered. Mr. Buberger pointed out that the law specifies that [the parties] are supposed to have access to the original evidence.

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RANDY GRIFFIN related that he is in favor of HB 140. The legislation, he observed, has the following two elements: the defendant has the right to inform the jury of its right to judge

the application of the law and a juror may not be disqualified for expressing a willingness to perform the things mentioned in this particular law. He expressed concern that during the initial screening of prospective jurors they aren't asked whether they are knowledgeable about jury nullification or the Fully Informed Jury Association. The language on page 2 somewhat covers the aforementioned, but perhaps contains a loophole in that jurors could be dismissed without specifying it's because of the juror's knowledge of jury nullification or the association. He then highlighted the Lautenberg Act in which the federal government attempts to take away the right to keep and bear arms when an individual has been convicted of a misdemeanor domestic violence. The aforementioned, he said, is horrendous and is a violation of the Second Amendment. Although he said that he has never been involved in domestic violence, he could see the potential for this to apply to anyone who might get caught in a shoving match when tempers flare. He opined that such a situation is ripe for jury nullification. He held up poaching as another example of a matter that some might view as a situation in which jury nullification could come into play. In conclusion, Mr. Griffin characterized HB 140 as a good thing to preserve.

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MARK RICHARDS related his support for HB 140 and requested that the legislators support it as well. He characterized jury nullification as a critical and essential right that was given by our forefathers.

[2:22:29 PM](#)

MIKE PRAX spoke in favor of HB 140, which he characterized as necessary to correct a misunderstanding by the courts. He then pointed out that the Alaska State Constitution specifically says, "all political power is inherent in the people". The aforementioned is important and isn't an empty statement. He noted that the governor has clemency power and prosecutors can exercise discretion with regard to prosecuting a case, and therefore they essentially have veto power. Since the power is inherent in the people, even when giving the aforementioned power to the governor and prosecutors, the people should retain the power to decide the fairness of the law as well as the facts of the case. He relayed that when he was called for jury duty there were questions about whether jurors were aware of the Fully Informed Jury Association and people were excused if they were knowledgeable of the power of the jury to judge the law.

The aforementioned is tantamount to the court stacking the jury in favor of the state, he opined. "It just makes complete sense to me that the juror should have the ability to vote their conscience as applied to the law," he remarked.

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KEN THESING related his support for HB 140. He opined that jurors should have the ability to identify a bad law for what it is. He further opined that there is an opportunity for corruption at all levels. In fact, a recent development in the Obama citizenship status clearly illustrates the aforementioned. He told the committee that about 20 suits were brought to cause President Obama to provide a \$12 document that he spent over \$1.5 million to block from view. Last Saturday, an attorney from Southern California flew and drove a great distance to attend a symposium at the University of Iowa; this attorney informed Justice Roberts that criminal conduct was occurring in the highest court in the land. A clerk of the court erased pleadings from the docket and ultimately erased all the information the day before the inauguration. The power of the people to nullify a bad law or corruption has to be retained, he stressed. Mr. Thesing said that he also believes that judges and sheriffs should be elected. As has been said, the pyramid of power is turned upside down; the power should be returned to the people, he said. He further said that the common man has common sense to know right from wrong, while politics, prestige, and power corrupt it.

MR. THESING related that this morning he called Representative Holmes and Representative Gatto's offices to encourage them to support HB 140. The staffers who answered referred him to the Legislative Information Office as the most effective way to be heard. Therefore, he expressed the desire to have his call counted and to leave contact information to substantiate his view. The staffers refused to take his information. In conclusion, Mr. Thesing related the following quote: "It starts with a soapbox on the street corner, goes to the ballot box in the election cycle, and then goes to the jury box in the court room. And if tyranny cannot be overtaken and stomped down, it goes then to the cartridge box in our fight against tyranny."

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SCHAEFFER COX related his support for HB 140. He then said that he's confident that the laws passed by the Alaska State Legislature are well-intentioned, skillfully crafted, and by-

and-large serve their intended purpose. However, inevitably laws will occasionally be twisted from their original intent. The aforementioned occurs in the absence of the legislature, and therefore necessitates juries. Mr. Cox requested that the committee pass HB 140 "so that we the people can exercise discretion and mercy congruent with the original intent of the laws you craft on our behalf." He said he likes HB 140 because it is a way for the legislative branch to exercise its power to clarify and curtail the discretion of the judicial branch. Although judicial tyranny is no better than executive tyranny, it seems to be accepted more often because the judicial branch seems to be cloaked in "a shroud of feigned impartiality."

MR. COX opined that one should disclose one's partiality because no one can really be impartial. The judicial branch will be biased toward the preservation of its own power, which is a natural tendency. However, the legislature and the [jurors] are supposed to keep that in check. In response to Chair Ramras, he offered his belief that justice is in the best interest of the common man, the best interest of the jury to punish those who do evil and who are causing harm to others and exonerate people when the case isn't in the interest of the greater good or is incongruent with the intent of the original law. Mr. Cox related that he would trust a jury of his peers far more than he would trust the discretion of a judge. He expressed further concern when a judge chooses those on the jury and reminded the committee that Patrick Henry has written that a jury should consist of one's peers who personally know the accused and approach the case with bias. The aforementioned, he acknowledged, is quite different than that which is embraced today.

[Following was a brief discussion of a past federal case.]

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RICK SVOBODNY, Acting Attorney General, Department of Law (DOL), began by explaining that he was originally going to review the jury system and how it came to be, what it is today, and why some people are called more than others. However, he said that he would only like to address why some people are called more than others. In Alaska, a representative sampling of a community is chosen, which is what is now meant by a jury of one's peers. Although the language "jury of your peers" is not found in the Alaska Constitution, the language "impartial jury" is used. The Alaska courts have defined an impartial jury to mean a representative sample from the community [in which the

defendant resides]. Alaska uses the permanent fund dividend (PFD) applicant list to randomly select jurors from the area in which the crime occurred. Therefore, in some smaller population areas, some people end up serving more often than others.

ACTING ATTORNEY GENERAL SVOBODNY then turned to the legislation before the committee, which he characterized as a substantial and major change to the criminal justice system in Alaska. The aforementioned would also be the case if HB 140 were enacted in any other state. Although there was testimony to the contrary, he said he found no state constitution [referring to jury nullification]. However, he acknowledged that those in support of legislation such as HB 140 point to the state of Indiana, which has some language in its constitution about the jury trying the facts and the law. Still, the criminal jury instructions in Indiana, in essence, relate the same instructions as Alaska's jury instructions. Both relate that the jury is to determine the facts in the case while the legislature makes the laws and the courts determine the laws. He characterized the aforementioned "as part and parcel to a representative democracy." The adoption of HB 140 would result in no longer having a representative system of democracy, but rather an individual would have the ability to make the law in any particular criminal case.

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ACTING ATTORNEY GENERAL SVOBODNY, in response to Representative Gruenberg's earlier question, related that there are a substantial number of cases in Alaska that deal with jury nullification. The cases have arisen after requests for jury nullification instructions, which the Alaska Supreme Court has said isn't allowed. It has also been determined that arguments against the law itself aren't allowed to be made, nor are questions about jury nullification allowed during jury selection. Jury nullification exists and nothing can be done about that because when jurors deliberate what is said or done isn't known and a juror may not follow the instructions to follow the law. Acting Attorney General Svobodny questioned why the legislature is present, if it allows the laws it passes to be ignored. The legislature, he opined, is present to make good public policy calls. Juries don't hear the type of information legislators hear when making public policy decisions, rather they hear evidence about the facts of a particular situation.

ACTING ATTORNEY GENERAL SVOBODNY said that in general, criminal cases aren't really that complicated. For instance, the case

may be whether an individual was driving or whether that individual was under the influence of alcohol. Those aren't complicated questions, he opined. He pointed out that currently juries may not find out why an individual was driving under the influence of alcohol, but HB 140 would change that. Under HB 140, the question could become whether it's a good/compelling reason to ignore the law if an individual says he/she drank too much because of the death of a parent. Although the jury in such a situation may decide to ignore the law in an individual case, he questioned whether that's good public policy.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

ACTING ATTORNEY GENERAL SVOBODNY opined that the entire system is different in terms of what the legislature does, that is setting public policy by hearing information in general about a particular problem versus the types of decisions juries make in criminal cases.

ACTING ATTORNEY GENERAL SVOBODNY acknowledged that during the Revolutionary War jury nullification occurred often in the Thirteen Colonies and ultimately there is language about it in the Declaration of Independence. The Declaration of Independence discussed the wrongs done by the king. For example, it said, "The king was transporting us beyond the seas to be tried for pretended offenses." Acting Attorney General Svobodny recalled testimony about the 1700s' Zanger case, which dealt with a civil liable matter and whether truth was a defense to liable.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

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CHAIR RAMRAS asked whether the administration supports jury nullification.

ACTING ATTORNEY GENERAL SVOBODNY offered his understanding that the governor has not yet offered a position on HB 140.

CHAIR RAMRAS asked whether DOL supports or opposes HB 140.

ACTING ATTORNEY GENERAL SVOBODNY offered that when he practiced law in Oregon he was interested in a district attorney position in Lake View. Upon visiting Lake View, he discovered that there had been several murders of American Indians by white people and several murders of white people by American Indians. In all the

cases in which the American Indians were murdered by white people, the white people were found not guilty whereas in all the cases in which white people were murdered by American Indians the American Indians were found guilty. Furthermore, a sign on the bridge entering Lake View said, "No Indians allowed in town after dark." The aforementioned is jury nullification and is wrong. Acting Attorney General Svobodny said that when he thinks of jury nullification, he thinks of cases such as those of O. J. Simpson, Rodney King, and cases involving the Ku Klux Klan in the 1960s. The idea behind jury nullification is to focus on criminals people believe should be given sympathy. He said that in his experience jury nullification focuses on hate. Therefore, he opined that passage of HB 140 says that some people will be convicted/not convicted on the whim of a small group of people, which he said isn't justice.

CHAIR RAMRAS noted that some who've testified today would argue that the court system is biased and that due to jury instructions the jury isn't satisfactorily hearing a case. Chair Ramras opined that folks have sensitivity toward hate crimes. He highlighted that there is an imperfection in the system and that HB 140 embodies the recognition that the judicial system and jury system is imperfect as well.

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ACTING ATTORNEY GENERAL SVOBODNY reminded the committee that at one time priests officiated over trials, which were done by ordeal. Those trials were really an appeal, he explained, because the jury consisted of 12-24 people who had to know everything about the defendant. During that time, juries could nullify and served as the accuser, judge, and finders of fact. Since then there has been a substantial change in the jury system with more guarantees to arrive at the correct result.

REPRESENTATIVE GRUENBERG asked if Acting Attorney General Svobodny saw any potential problems with HB 140 that haven't been addressed. For instance, what other matters could fit under the title of HB 140.

ACTING ATTORNEY GENERAL SVOBODNY responded that perhaps the title could include the death penalty.

REPRESENTATIVE GRUENBERG asked if there is any problem with the legislation only allowing for the jury to acquit [the defendant] despite the law. He questioned the possibility of a jury deciding it could convict despite the law.

ACTING ATTORNEY GENERAL SVOBODNY said that he doesn't believe the legislation only goes one way, rather he said he believes it allows for both. The legislation allows the jury, without instructions on the law, to find a lesser included offense. For instance, an individual is charged with keying a car. In such a case, he questioned what would stop a jury from determining that assault or sexual assault is a lesser included offense. Although the aforementioned is a ridiculous example, once the door is open to lesser included offenses there's the possibility of an individual being convicted of a crime he/she wasn't charged with.

CHAIR RAMRAS, upon determining no one else wished to testify, closed public testimony on HB 140. He then announced that HB 140 would be held over.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:06 p.m.