HB 315

<TARGET><BILL>HB 315</BILL><SUBJECT>HB 315</SUBJECT><COMM>HJUD28</COMM></TARGET>

Alaska State Legislature
House of Representatives
Representative Tammie Wilson

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House Bill 315

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

Before one is able to understand why jury nullification is a good idea, one must understand the importance of a trial by jury. Our Founding Fathers considered them to be a powerful weapon in the war against tyranny. Thomas Jefferson wrote, "I consider trial by jury as the only anchor yet imagined by man, by which a government can be held to the principles of its constitution". In the *Federalist Papers,* Alexander Hamilton wrote that trial by jury was the "very palladium of free government" and a "valuable check upon corruption".

Given the strength of these opinions, then, it is no surprise that the denial of trials by jury was one of the foremost acts of despotism listed by Thomas Jefferson in the Declaration of Independence.

As for the concept that juries have not only the power but the obligation to nullify unjust rulings of a judge, John Adams wrote, "It is not only (the juror's) 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".

Our Founding Fathers zealously defended this right and recognized that only an informed and empowered jury could effectively protect a defendant from the potentially harmful effects of autocratic judges. Jury nullification allows citizens to have the final say on what is fair in a court of law.

Therefore, I ask for your support of HB 315. Jury nullification is a good idea and one supported by Constitutional principles of freedom.

LEGAL SERVICES

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MEMORANDUM February 26, 2014

SUBJECT: Jury Nullification; HB 315 (Work Order No. 28-LS1467\U)

TO: Representative Tammie Wilson
Attn: Barbara Barnes

FROM: Doug Gardner
Director

You provided an e-mail attachment of a bill from New Hampshire described as N.H. Rev. Stat. sec. 519:23-b, which provides that a court shall provide the following jury instruction during a trial:

> The concept of jury nullification is well established in this country. 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.

This statute also provides that if this instruction is not given by the court to the jury in a criminal trial, that a mistrial shall be declared.

Jury nullification is not the law in Alaska, and was rejected in *Harley v. State*, 653 P.2d 1052 (Alaska App. 1982). In *Turney v. State*, 2000 WL 422636, p.4 (Alaska App.), Court of Appeals Judge David Mannheimer provided the following discussion regarding jury nullification, summarizing the arguments some persons make in support of jury nullification, and the argument others provide against it:

> The first principle is that all persons are entitled to have their cases decided by unbiased juries and judges, based on established rules of law and the evidence presented in court. Not just litigants, but all members of society have a right to demand that court decisions be based on the merits of the case, not on the personal prejudices or private interests of the decision-makers. To ensure that the people who decide the outcome of trials are not swayed from their duty, society has enacted laws to deter and punish those who would exert outside influence on juries and judges.
>
> The competing principle is that citizens have a right to speak out against perceived injustices in our system of government. The First Amendment

> guarantees the right to condemn unfair laws and to protest unfair actions taken by public officials. Legal proceedings often become the focal point of disputes concerning the fairness or adequacy of our laws, or the wisdom or justice of particular government actions or policies. For this reason, courthouses have traditionally been the site of speeches, demonstrations, and protests.

With this backdrop, and the policy considerations summarized above, which are for the legislature to decide, I turn to your question. In my view, your question involves policy and judgment regarding whether the New Hampshire statutory language should in whole, or part, be used to amend HB 315. It seems to me, that there are three points on which HB 315 and the New Hampshire statute differ, and choices could be made by the legislature regarding concepts to include in HB 315.

First, the New Hampshire statute requires that a court provide a jury instruction, as set out above, regarding jury nullification in all criminal cases.[1] HB 315 provides that nullification is a matter that can be addressed, not by way of a jury instruction, but by way of evidence the *defendant* chooses to introduce at trial, or during jury selection. So, under HB 315, nullification is in the control of the defendant, and is not an issue raised by the court or the state. I also note that HB 315 prevents jurors from being excused or disqualified from serving on a criminal jury based on their views regarding nullification.

If you would like to include the instruction to the jury on nullification in the same manner as N.H. Rev. Stat. sec. 519:23-b, at a minimum, a bill draft would require a direct court rule amendment, amending Criminal Rule 30, to provide that the court must advise the jury on nullification in all criminal cases, and would also require an amendment to Criminal Rule 24 providing that jurors can not be challenged for cause, or removed by exercise of a preemptory challenge, for expressing a view on jury nullification. A direct court rule amendment requires a vote of two thirds of each body, as provided in art. IV, sec. 15, Constitution of the State of Alaska.

In addition to the court rule amendments that would be required to add the jury instruction and juror disqualification aspects from N.H. Rev. Stat. sec. 519:23-b, and the two-thirds vote, I want to also note, a limitation on legislative power to amend rules that involve the court's inherent judicial power under art. IV, sec. 1 of the Constitution of the State of Alaska. If the Alaska Supreme Court or Alaska Court of Appeals reviewed the court rule changes required as discussed above, and determined that advising the jury and providing jury instructions as required for the unique facts of a criminal jury trial is

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[1] In *State v. Prudent*, 13 A.3d 181, 184 (N.H. 2010), I note that a case was appealed by a defendant where the court presented a substantial discussion of jury nullification. The defendant argued that the discussion went beyond what was necessary under New Hampshire law, and "chilled" the jury's ability to nullify. For this reason, the legislature might want to provide specific language for the court to read to the jury in nullification cases to avoid such disputes.

within the inherent judicial power of the court under art. IV, sec. 1, Constitution of the State of Alaska, incorporating the jury nullification language into the jury instructions under Criminal Rule 30, would be beyond the legislative power of amendment, and unconstitutional. See generally, *Citizens for Tort Reform v. McAlpine*, 810 P.2d 162 (Alaska 1991); *In re Stephenson*, 511 P.2d 136 (Alaska 1973).

Second, in HB 315, once the defendant raises the issue of jury nullification by admitting evidence in support of a nullification argument, HB 315 allows the state to respond in rebuttal with similar evidence. The New Hampshire statute is silent on this matter. Generally, when one party is allowed to present evidence and open the door to areas on inquiry, such as evidence in support of nullification, the state is allowed to rebut this evidence as allowed by the court.[2]

Third, the New Hampshire bill provides that it is automatic grounds for a mistrial if during a criminal trial, the court fails to advise the jury on nullification as set out above.

Because jury nullification encourages jurors to disregard the law and apply their own sense of justice in criminal cases, and because jury nullification is contrary to the law in Alaska, it is hard for me to advise you on which, if any, of the provisions in the New Hampshire bill should be included in HB 315. These choices seem to me to be policy considerations. Please let me know if you would like any proposed amendments to the bill, or a proposed committee substitute incorporating any of these policy decisions in a new version.

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14-094.lnd

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[2] In *State v. Mueller*, 2014 WL521390, N.H. June 30, 2014, the defendant presented an argument on nullification, and the state responded, arguing that the comments made by the defendant regarding nullification amounted to an admission that the defendant had committed the offense charged. The trial court appears to have allowed the state to respond and rebut the defendant's argument. The appellate court reversed the conviction, holding that the state took the defendant's nullification remarks too far, and incorrectly argued to the jury that the defendant's nullification argument was a confession to the offense. In short, this case suggests that nullification raises issues that are not otherwise admissible, and that may cause the state, in response, to rely on arguments and possibly rebuttal evidence that can be highly prejudicial. The *Mueller* case suggests that once nullification arguments are raised, it may be difficult for the court to prevent prejudice to the defendant as the state responds to the defendant's arguments.

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MEMORANDUM February 18, 2014

To clerk 2/18 1:20 pm

SUBJECT: Jury Nullification (Work Order No. 28-LS1467\U)

TO: Representative Tammie Wilson
Attn: Theresa Woldstad

FROM: Doug Gardner
Director

I want to make you aware of a potential constitutional argument raised by the issue commonly referred to as "jury nullification" in the bill that is enclosed with this memorandum. While jury nullification is not likely inherently unconstitutional, constitutional issues relating to due process and equal protection could eventually develop. *See*, *Sparf v. United States*, 156 U.S. 51, 102 (1895) in which the United States Supreme Court ruled that judges have no duty to inform jurors that they have an inherent ability to judge the law ("it is the duty of juries in criminal cases to take the law from the court, and apply that law to the facts as they find them to be from the evidence.").

A basic tenet of our criminal justice system is that the criminal laws should be applied fairly and equally to all. If defendants are allowed to argue to the jury that the law should not apply to them in an individual case, how are we to know that the law is being applied fairly and equally to all? Further, it is the legislature's duty, on a statewide basis, to enact the laws and to decide what actions or inactions, and the circumstances thereof, that are to be subject to criminal penalties. Will the law be applied fairly and equally to all if the law is subject to argument in each individual case that it should not be applied to an individual defendant? Will juries in certain areas of the state decide that certain laws will not apply to individuals in those areas? Should an unpopular criminal law be rejected by the public by its application only on an individual basis based upon an argument by the defense or should it be rejected by referendum in the manner provided by the constitution? I do not know the answers to these questions and am only able to identify the issues.

DDG:lem
14-080.lem

Enclosure

Fully Informed Jury Association
Post Office Box 5570 Helena, MT 59604-5570 1-800-TEL-JURY www.fija.org

REPRINT

State Language on Jury Nullification

Citizens Must Claim Rights: Founders Gave Juries the Right to Determine Law

Spotlight March 20, 2000

Some say jury nullification is the most practical way to stop the juggernaut police state.

By Tom Stahl

The "Washington Post published a front page story entitled, "In Jury Rooms, a Form of Civil Protest Grows," last year. According to the Post article, jurors are not always following judges' instructions to the letter.

The article recounted that sometimes in jury trials, when those facts which the judge chooses to allow into evidence indicate that the defendant broke the law, jurors look at the facts quite differently from the way the judge instructed them to. The jurors do not say, "On the basis of these facts the defendant is guilty."

Instead, the jurors say, "On the basis of these facts the law is wrong," and they vote to acquit. Or, they may vote to acquit because they believe that the law is being unjustly applied, or because some government conduct in the case has been so egregious that they cannot reward it with a conviction.

In short, a passion for justice invades the jury room. The jurors begin judging the law and the government, as well as the facts, and they render their verdict according to conscience. This is called jury nullification.

Dr. Jack Kevorkian, recently convicted, was acquitted several times in the past, despite his admission of the government's facts, of assisting the suicide of terminally ill patients who wanted to die. Those acquittals were probably due to jury nullification. And Kevorkian might have been acquitted again if the trial judge had allowed him to present his evidence, testimony of the deceased's relatives, to the jury. A corollary of jury nullification is greater latitude for the jury to hear all of the evidence.

The Post took a dim view of this and suggested that jury nullification is an aberration, a kind of unintended and unwanted side-effect of our constitutional system of letting juries decide cases. But the Post couldn't be more wrong. Far from being an unintended side-effect, jury nullification is explicitly authorized in the constitutions of 24 states.

ALL CRIMINAL CASES

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

Article 23 of Maryland's Constitution states:

In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact, except that the Court may pass upon the sufficiency of the evidence to sustain a conviction. The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of five thousand dollars, shall be inviolably preserved.

Art. 1, Sec. 19, of Indiana's Constitution says:

In all criminal cases whatever, the jury shall have the right to determine the law and the facts.

Oregon's Constitution, Art. 1, Sec. 16, states:

Excessive bail shall not be required, nor excessive fines imposed. Cruel and unusual punishments shall not be inflicted, but all penalties shall be proportioned to the offense. In all criminal cases whatever, the jury shall have the right to determine the law, and the facts under the direction of the Court as to the law, and the right of new trial, as in civil cases.

Art. 1, Sec. 1 of Georgia's Constitution says:

The right to trial by jury shall remain inviolate, except that the court shall render judgment without the verdict of a jury in all civil cases where no issuable defense is filed and where a jury is not demanded in writing by either party. In criminal cases, the defendant shall have a public and speedy trial by an impartial jury; and the jury shall be judges of the law and the facts.

These constitutional jury nullification provisions endure despite decades of hostile judicial interpretation.

LIBEL CASES

Twenty other states currently include jury nullification provisions in their constitutions under their sections on freedom of speech, specifically with respect to libel cases. These provisions, listed below, typically state:

.... in all indictments for libel, the jury shall have the right to determine the law and the facts under the direction of the court.

But New Jersey, New York, South Carolina, Utah and Wisconsin omit the phrase "under the direction of the court." South Carolina states:

In all indictments or prosecutions for libel, the truth of the alleged libel may be given in evidence, and the jury shall be the judges of the law and facts.

Alabama (Article I, Sec. 12); Colorado (Article II, Sec. 10); Connecticut (Article First, Sec. 6); Delaware (Article I, Sec. 5); Kentucky (Bill of Rights, Sec. 9); Maine (Article I, Sec, 4); Mississippi (Article 3, Sec. 13); Missouri (Article I, Sec. 8); Montana (Article II, Sec. 7); New Jersey (Article I, Sec. 6); New York (Article I, Sec. 8); North Dakota (Article I, Sec. 4); Pennsylvania (Article I, Sec. 7); South Carolina (Article I, Sec. 16); South Dakota (Article VI, Sec. 5); Tennessee (Article I, Sec. 19); Texas (Article 1, Sec. 8); Utah (Article I, Sec. 15); Wisconsin (Article I, Sec. 3); Wyoming (Article 1, Sec. 20).

Delaware, Kentucky, North Dakota, Pennsylvania and Texas add the phrase "as in other cases." Tennessee adds the phrase "as in other criminal cases."

These phrases suggest that the jury has a right to determine the law in more than just libel cases.

The Tennessee Constitution, Art. I, Sec. 19, says:

... and in all indictments for libel, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other criminal cases.

The phrase "under the direction of the court," omitted by five states, provides for the trial judge to give directions, like road directions which the jury may or may not choose to follow, to assist the jury in its deliberations.

Our forefathers did not intend by this phrase for the trial judge to infringe in any way upon the sole discretion of the jury in rendering its verdict. Although later courts have held otherwise, the Tennessee Supreme Court in Nelson v. State, 2 Swan 482 (1852), described the proper roles of the judge and jury as follows: The judge is a witness who testifies as to what the law is, and the jury is free to accept or reject his testimony like any other.

The Maine Constitution affirms these roles in its section on libel:

... and in all indictments for libels, the jury, after having received the direction of the court, shall have a right to determine, at their discretion, the law and the fact.

In addition, 40 state constitutions, like the Washington state Constitution in Article I, Section 1, declare that "All political power is inherent in the people," or words to similar effect.

And 34 state constitutions expound on the principle of all political power being inherent in the people by saying that "the people ... have at all times ... a right to alter, reform, or abolish their government in such manner as they may think proper," or words to similar effect.

For example, the Pennsylvania Constitution declares that:

All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.

If the people have all power, and have at all times a right to alter, reform or abolish their government in such manner as they may think proper, then they certainly have the right of jury nullification, which is tantamount to altering or reforming their government when they come together on juries to decide cases.

A single nullification verdict against a particular law may or may not alter or reform the government, but thousands of such verdicts certainly do. Witness the decisive role of jury nullification in establishing freedom of speech and press in the American Colonies, defeating the Fugitive Slave Act and ending alcohol prohibition.

Of special note is the right of revolution in the New Hampshire Constitution.

Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

If the people have the ultimate right of revolution to protect their liberties, then they certainly also have the lesser included and more gentle right of jury nullification to protect their liberties.

It should also be noted that New Hampshire declares an unalienable "Right of Conscience":

Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience.

If the right of conscience is unalienable, then it can not be taken away from people when they enter the courthouse door to serve on juries. The people have an inherent and unalienable right to vote their conscience when rendering jury verdicts.

There is no doubt that jury nullification was one of the rights and powers that the people were exercising in 1791 when the Bill of Rights of the United States Constitution was adopted. As legal historian Lawrence Friedman has written:

In American legal theory, jury-power was enormous, and subject to few controls. There was a maxim of law that the jury was judge both of law and of fact in criminal cases. This idea was particularly strong in the first Revolutionary generation when memories of royal justice were fresh.

Jury nullification is therefore one of the "rights ... retained by the people" in the Ninth Amendment. And it is one of the "powers ... reserved ... to the people" in the Tenth Amendment.

Jury nullification is decentralization of political power. It is the people's most important veto in our constitutional system. The jury vote is the only time the people ever vote on the application of a real law in real life. All other votes are for hypotheticals.

Tom Stahl is a former FIJA Board member and practicing attorney from Waterville, Washington

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REPRESENTATIVE JOHN COGHILL

HB 140
Jury Nullification

House Bill 140 addresses jury nullification. Representative Coghill is asking 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.

HOUSE BILL NO. 140

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES COGHILL, Kawasaki

Introduced: 2/18/09
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 12.45 is amended by adding a new section to read:

Sec. 12.45.017. Role of jury. (a) Except as otherwise provided by law, the jury is the exclusive judge of the facts. The jury is bound to receive the law from the court and be governed thereby, except if a jury determines that a defendant is guilty according to the law and that the law is unjustly applied to the defendant, the jury may determine not to apply the law to the defendant and find the defendant not guilty or guilty of a lesser included offense.

(b) A defendant has the right to inform the jury of the jury's power to judge the just application of the law and to vote on the verdict according to conscience. Failure to allow the defendant to inform the jury of the jury's power is grounds for a mistrial.

(c) Notwithstanding any other law, the court shall allow the defendant to present to the jury, for its consideration, evidence and testimony relevant to the

exercise of the jury's power under this section.

(d) The state may rebut any evidence introduced under this section with evidence of a similar nature.

(e) This section applies only to an action tried to a jury under applicable criminal law. This section does not create a right to a jury.

(f) A potential juror may not be excused or disqualified from serving on a jury because the juror expresses a willingness to exercise a power granted to the jury under this section.

*** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to juries impaneled on or after the effective date of this Act.

*** Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).

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.

1:38:48 PM

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.

1:44:34 PM

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.

1:47:49 PM

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.

1:53:54 PM

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.

1:56:01 PM

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.

1:58:27 PM

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. Buberge 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. Buberge'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. Buberge 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. Buberge pointed out that the law specifies that [the parties] are supposed to have access to the original evidence.

2:17:20 PM

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.

2:21:54 PM

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.

2:25:13 PM

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."

2:32:11 PM

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.]

2:42:45 PM

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.

2:47:36 PM

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.]

2:55:45 PM

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.

3:02:06 PM

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.

3:06:35 PM

ADJOURNMENT

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

POSITION STATEMENT: Provided comments during discussion of HJR 30.

ACTION NARRATIVE

1:07:52 PM

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:07 p.m. Representatives Ramras, Holmes, Coghill, Gatto, and Lynn were present at the call to order. Representatives Dahlstrom and Gruenberg arrived as the meeting was in progress. Representative Chenault was also in attendance.

HB 140 - JURY NULLIFICATION

1:08:38 PM

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

CHAIR RAMRAS noted that public testimony on HB 140 was closed.

REPRESENTATIVE COGHILL, speaking as the sponsor, indicated that HB 140 is meant to provide jurors with more of an independent voice because currently they are totally under the control of the judge, and thus need more discretion of their own; "My general move is to try to include the jurors in the application of the law ... and the exoneration or conviction of people who are charged by the state." He relayed that he favors Amendment 1, which, he posited, would address concerns regarding what he called "renegade juries"; Amendment 1, labeled 26-LS0603\A.1, Luckhaupt, 3/31/09, read:

> Page 1, line 1, following "**cases;**":
> Insert "**amending Rule 16, Alaska Rules of Criminal Procedure;**"
>
> Page 2, following line 8:
> Insert new subsections to read:
> "(g) Except as provided in (h) of this section, Rule 16, Alaska Rules of Criminal Procedure, applies to discovery in cases where the defendant requests that the jury be informed of the jury's power to judge the just application of the law and to vote on the verdict according to conscience.

(h) At least 30 days before trail, the defendant shall disclose to the prosecution

(1) the defendant's intent to request that the jury be informed of the jury's power to judge the just application of the law and to vote on the verdict according to conscience;

(2) the legal theory of the defendant's claim that the law is unjustly applied to the defendant;

(3) a list of witnesses, other than expert witnesses, that the defendant is likely to call in support of the claim that the law is unjustly applied to the defendant."

Page 2, following line 8:
Insert a new bill section to read:
"* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section the read:

INDIRECT COURT RULE AMENDMENT. AS 12.45.017(g) and (h), added by sec. 1 of this Act, have the effect of amending Rule 16, Alaska Rules of Criminal Procedure, by requiring certain disclosures by the defendant."

Renumber the following bill sections accordingly.

CHAIR RAMRAS offered his belief that Amendment 1, by amending Rule 16 of the Alaska Rules of Criminal Procedure, would provide safeguards for jury nullification.

1:14:25 PM

RICK SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), said Amendment 1 would allow for discovery of the legal theory that's going to be presented to the jury. Presently, both sides know what the theory [for the prosecution] is going to be because that information is provided in the indictment, and although the prosecution doesn't get information about the defense's case because Alaska doesn't have reciprocal discovery, that generally hasn't been a problem because the prosecution can usually figure out what the factual disputes will be. However, in instances where the defendant seeks jury nullification, there is no way for the prosecution to know what theory will be used in an attempt to justify the defendant's actions in committing a crime. He indicated a preference for having that type of discovery if HB 140 ends up passing.

REPRESENTATIVE HOLMES asked why [Amendment 1's reciprocal discovery] wouldn't be barred by existing Alaska Supreme Court decisions, given that it would occur before the guilt phase of a trial is over.

MR. SVOBODNY pointed out that Amendment 1 simply stipulates that the prosecution shall be informed of what theory will be used in an attempt to justify the defendant's actions in committing a crime. He explained that in the Alaska Supreme Court case, Scott v. State, 519 P.2d 774 (Alaska 1974), the court allowed the State to be notified of legal defenses - theories - but not of who the defense's witnesses would be. Under HB 140, "it'll be cowboy time" with no one knowing beforehand what legal theory would be presented by the defense.

CHAIR RAMRAS made a motion to adopt Amendment 1 [text provided previously].

1:19:12 PM

REPRESENTATIVE HOLMES objected.

REPRESENTATIVE GRUENBERG asked whether the DOL would support HB*140 if Amendment 1 were not adopted.

MR. SVOBODNY said no. In response to other questions, he clarified that [the DOL] doesn't support HB 140, either with or without Amendment 1, but feels that HB 140 would be "less worse" with the adoption of Amendment 1. In response to further questions, he acknowledged that Amendment 1 has potential constitutional difficulties, but doesn't think it would increase the risk that the whole bill would be found unconstitutional. House Bill 140 is doing away with representative government, he remarked, adding that although it is technically correct to say that the concept of jury nullification is not inherently unconstitutional and simply has equal protection and due process problems, and although constitutional scholars differ on what "deciding law" means, "under either theory, this is new." In response to questions, he reiterated his comments regarding Scott.

REPRESENTATIVE GRUENBERG pointed out, though, that [counter to Scott,] Amendment 1 requires the defense to provide the prosecution with a list of the witnesses the defense will be calling. Doesn't this increase the risk of unconstitutionality?

MR. SVOBODNY observed that there is always a risk of something being declared unconstitutional whenever the prosecution asks for information from the defense. "My view is, the bill will be found unconstitutional and it is less likely that ... [Amendment 1] - if it were attached to another bill that dealt with something else - would be found unconstitutional than the entire idea of the bill."

1:23:38 PM

A roll call vote was taken. Representatives Coghill, Gatto, Lynn, and Ramras voted in favor of Amendment 1. Representatives Dahlstrom, Gruenberg, and Holmes voted against it. Therefore, Amendment 1 was adopted by a vote of 4-3.

1:24:08 PM

REPRESENTATIVE COGHILL moved to report HB 140, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE DAHLSTROM objected.

REPRESENTATIVE COGHILL said he disagrees with the argument that passage of HB 140 would result in lawlessness, surmising that everyone in the criminal justice system except for jurors are currently entrusted with understanding their roles in the system.

REPRESENTATIVE DAHLSTROM said, "We as a legislature determine the law, and I think we run into a huge problem when we have different regions of the state interpreting the laws ... [differently]." If HB 140 were to pass, it would become common knowledge that a person could go to a particular area of the state and get away with certain crimes simply because of how jurors in that area are applying the law.

REPRESENTATIVE GATTO said he's seen this occur in situations involving the crime of driving under the influence (DUI); jurors that have been convicted of DUI themselves are willing to forgive defendants charged with DUIs. "I'm very concerned about application, here; ... I believe in trusting the citizens, but laws are difficult to understand," he remarked, adding that jurors would have to read all laws, which even legislators don't do except in part.

REPRESENTATIVE COGHILL offered his belief that Amendment 1 addresses the jury's power to judge the just application of the law.

CHAIR RAMRAS noted that the appointee to the position of attorney general, Wayne Anthony Ross, has bragged about his use of jury nullification in a case in Kotzebue.

REPRESENTATIVE GRUENBERG said he opposes HB 140 because it only goes one way, and if a guilty defendant is acquitted then that can't be cured because the case would then not be reviewable.

CHAIR RAMRAS indicated that he agrees with Mr. Ross regarding jury nullification.

1:30:36 PM

A roll call vote was taken. Representatives Coghill and Ramras voted in favor of reporting HB 140, as amended, from committee. Representatives Gatto, Lynn, Gruenberg, Holmes, and Dahlstrom voted against it. Therefore, HB 140, as amended, failed to be reported from the House Judiciary Standing Committee by a vote of 2-5.

HB 194 - LOW-SPEED MOTOR VEHICLES

1:31:42 PM

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 194, "An Act relating to the operation of low-speed vehicles." [Before the committee was CSHB 194 (TRA).]

1:32:07 PM

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, sponsor, noted that HB 194 was introduced at the urging of constituents in two of her communities, and offered that low-speed vehicles ("LSVs") are very useful in small communities such as those in her district, and fill a transportation niche not being met by standard passenger vehicles, which are not efficient at low speeds or over short distances. House Bill 194 would give smaller communities - those with [a population of less] than 35,000 - the option to allow LSVs on roads that have a maximum speed limit of 45 miles per hour (mph).

1:33:07 PM

REID HARRIS, Staff, Representative Peggy Wilson, Alaska State Legislature, added on behalf of the sponsor, Representative Wilson, that the intent of HB 194 is to increase the number of roads available to LSVs in order to promote their use in small communities, and that the bill does so [in part] by allowing LSVs in certain, qualifying communities to be used on roads that have a maximum speed limit of 45 mph; currently, LSVs cannot be used on roads that have a maximum speed limit of more than 35 mph. The National Highway Traffic Safety Administration (NHTSA) and Alaska's Division of Motor Vehicles (DMV) define an LSV as a passenger vehicle that has four wheels, has a maximum gross vehicle weight rating (GVWR) of 3,000 pounds, and can attain a minimum speed of 20 mph and a maximum speed of 25 mph. The NHTSA has adopted regulatory standards for LSVs that require much of the same technology found in standard passenger vehicles, including headlights, taillights, turn signals, reflectors, a windshield that conforms to federal standards, and seatbelts for all designated seats.

MR. HARRIS noted that the term "low-speed vehicle" refers to a legal class of vehicle that meets the aforementioned standards, and not to slow-moving vehicles such as farm, construction, or snow-removal equipment. The bill provides a unique opportunity for small and rural communities to allow themselves a new form of transportation. Such vehicles are convenient and can be cheaper for short trips than standard passenger vehicles; not all people want to drive their full-size vehicle the short distance to the grocery store, for example, particularly given the high price of gasoline in rural communities. Low-speed vehicles can reduce gasoline usage, dramatically cut down the amount of air-borne pollution a community produces, satisfy the demand for reduced-emission transportation, and be powered by gasoline, electricity, or a combination of both gasoline and electricity.

MR. HARRIS said that although there are concerns that LSVs will cause congestion on public roads, the bill seeks to alleviate those concerns by requiring that qualifying communities have a population of less than 35,000 and not be connected by road to Anchorage or Fairbanks. Furthermore, the bill stipulates that an LSV may only cross a highway that has a maximum speed limit greater than 45 mph if the crossing is made at an intersection where the roads on both sides of the highway are eligible for LSV use. In conclusion, he mentioned that the bill also stipulates that otherwise qualifying communities must also pass a local ordinance allowing for the operation of LSVs as provided for in the bill; this will ensure that LSVs are welcome in the

communities that choose to accept them, and not a burden on those communities that do not.

REPRESENTATIVE DAHLSTROM, noting that she believes in the intent of HB 194, asked what position law enforcement agencies, the DMV, and insurance companies have taken on the bill.

MR. HARRIS said he's not yet spoken with representatives from any of those groups, but surmised that law enforcement officers would be able to ticket any LSV that isn't complying with the law. In response to other questions, he reiterated that LSVs are required to have all the standard safety features that regular passenger vehicles are required to have, and indicated that studded tires are probably available for LSVs, and that certain models might come with all-wheel drive and traction control.

REPRESENTATIVE GATTO expressed concern that LSVs be capable of driving in [winter] conditions.

CHAIR RAMRAS, in response to comments, noted that existing law already addresses LSV usage, and that HB 194 would just be expanding that existing law.

MR. HARRIS remarked that it would be up to an LSV's owner to decide whether he/she wanted to drive his/her LSV in less than optimum driving conditions. In response to a question, he reiterated that LSVs can be powered by gasoline, electricity, or a combination of both gasoline and electricity, adding that LSVs are required to be self propelled. In response to another question, he offered his understanding that [Segway-type] vehicles are not LSVs, and would probably not be practical for the communities HB 194 is intended to address.

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GERALD HERBRANDSON, Solar Wind of Alaska, said that there are currently 10 LSVs operating in Petersburg, with a combined mileage of well over 10,000 miles. These LSVs are small, four-door sedans with hatchbacks; they seat four adult passengers comfortably; they have all the same lights that conventional cars have; and, with snow tires or studded tires, they are very aggressive in snow and slush, and have bypassed four-wheel drive vehicles that have gotten stuck. The only difference between regular vehicles and LSVs is that the LSVs go slower and conserve energy. In Petersburg, there a couple of short stretches of the highway that have a maximum speed limit greater

than 35 mph, and so passage of HB 194 would allow LSVs on even those stretches, thereby making LSVs ideally suited for the community of Petersburg and other similar communities.

MR. HERBRANDSON offered his belief that regular passenger vehicles are not well-suited to driving short distances, whereas LSVs are ideal for such trips, and that most drivers [in Petersburg] generally don't drive very far when taking care of daily errands. Low-speed vehicles are energy efficient, convenient to use, and can be fully insured through numerous insurance companies. He mentioned that he's given the local police chief a ride in an LSV, and found the police chief to be supportive of the concept of LSVs. In conclusion, he mentioned that LSVs do have heaters, and that he appreciates the opportunity [being provided via HB 194] for people to be more energy conscious.

1:46:45 PM

MEGAN PASTERNACK, in response to a question, relayed that her LSV, which she has owned for more than a year, still has less than 3,000 miles on it. She offered her understanding that currently there are at least nineteen LSVs in Southeast Alaska, two in Kodiak, and possibly more throughout the rest of the state. Her LSV is a fully enclosed vehicle with a crush-proof body; it has lights, windshield wipers, mirrors, front wheel drive, and turn indicators; it meets or exceeds the federal motor vehicle safety standards for LSVs - "FMVSS 500"; and it is fully insured. She opined that HB 194 is about much more than just cheap transportation - it is also another much-needed step toward helping eliminate pollution and protecting the environment, and will help legislators, Alaska's communities, the state of Alaska, the United States, and the world. House Bill 194 will help those who must transit 45-mph zones for work or other purposes and who have had reservations about owning an LSV because of the current 35-mph limitation; if the bill passes, such people would then be able to make the decision to join others who are trying to [lessen] their carbon footprints.

MS. PASTERNAK said that as an LSV driver, she is very conscious of the traffic around her, and does not impede others who wish to go faster than her allowed speed of 25 mph; that to that end, she waits to enter a roadway until approaching traffic [has gone past], and pulls over whenever possible to allow other drivers to pass her. She surmised that other LSV drivers are just as conscientious. Many LSVs are in use in Europe, and have been for quite some time. She offered her understanding that one of

the reasons LSVs are safe is that when involved in a crash, they are so lightweight that they tend to just bounce away rather than absorb the full force of the impact. House Bill 194 has great flexibility in that it requires individual communities to decide, based on local conditions, whether to allow LSVs to travel in 45-mph zones. Although some have argued that owners of LSVs won't be contributing to the building and upkeep of roads and highways because they won't be purchasing [as much if any] fuel and thus won't be paying the associated taxes, she would be more than willing to pay a tax or fee specific to LSVs when registering or renewing license tabs, she relayed. Furthermore, she posited, her 1,200-pound LSV does far less damage to the roads then overloaded dump trucks that traverse them.

MS. PASTERNAK, in conclusion, opined that if legislators would like to do more to encourage LSV usage, they should also consider allowing LSVs to be modified so that they can go 35 mph; her LSV had that capability but the modification allowing such had to be removed in order for her to comply with Alaska's LSV registration and licensing requirements.

REPRESENTATIVE DAHLSTROM asked whether the DMV supports HB 194.

1:50:55 PM

CARL SPRINGER, JR., Registrar, Director's Office, Division of Motor Vehicles (DMV), Department of Administration (DOA), said the DMV is not opposed to the bill and has the understanding that it would only change which roads LSVs could travel on and would have no effect on the DMV's workload. In response to another question, he said that the two-year registration fee of $100 is the same for LSVs as it is for regular passenger vehicles. In response to a further question, he explained that the federal and state definitions of what constitutes an LSV address the minimum and maximum speeds at which an LSV can travel, not the size or type of engine or how much horsepower it has; if an LSV is modified to exceed that maximum speed, it cannot be registered as an LSV in Alaska. In response to more questions, he said that LSVs are manufactured to meet their own standards, which are not as stringent as those of regular passenger vehicles; that such standards [in part] address the crash-worthiness of vehicles in head-on collisions; that he does not have any information regarding rear-end collisions of LSVs compared to regular passenger vehicles; that any such collisions will most likely cause damage unless the vehicle impacting the LSV is traveling at a very slow speed; that because LSVs are

required to have seatbelts, they can therefore also accommodate child restraint systems; and that LSVs do not have airbags.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 194.

REPRESENTATIVE GRUENBERG, in response to a question, relayed that he would not be offering the amendment labeled 26-LS0715\P.3, Luckhaupt, 4/1/09, which read:

> Page 1, line 6, following "may":
> Insert "**operate that vehicle**"
>
> Page 1, line 7:
> Delete "**operate that vehicle**"
>
> Page 2, lines 3 - 8:
> Delete all material and insert:
> "**(2) across an intersection with** [CROSS] a highway that has a maximum speed limit **greater than is permissible** [OF MORE THAN 35 MILES AN HOUR IF THE CROSSING IS MADE AT THE INTERSECTION WITH A HIGHWAY THAT IS AUTHORIZED] for low-speed vehicles **under this subsection**."

REPRESENTATIVE HOLMES said she thought that that amendment would clarify the one part of the bill that she found confusing.

REPRESENTATIVE WILSON, in response to a question, relayed that both she and the Department of Transportation & Public Facilities (DOT&PF) prefer the language currently in [CSHB 194(TRA)].

MR. HARRIS, in response to a question, relayed that LSVs cannot drive on the shoulder of the road but can pull over on it in order to let other vehicles pass; LSVs are to be operated in the same fashion as regular passenger vehicles.

1:58:15 PM

REPRESENTATIVE LYNN moved to report CSHB 194(TRA) out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 194(TRA) was reported from the House Judiciary Standing Committee.

HB 138 - CRUELTY TO ANIMALS

1:58:53 PM

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 138, "An Act relating to cruelty to animals."

CHAIR RAMRAS moved to adopt the proposed committee substitute (CS) for HB 138, Version 26-LS0351, Luckhaupt, 4/2/09, as the work draft. There being no objection, Version P was before the committee.

REPRESENTATIVE GATTO, speaking as the sponsor, pointed out that currently a person could be charged with a felony for destroying a painting of a family pet, but could only be charged with a misdemeanor for destroying the actual pet the painting is of, and opined that this doesn't make any sense to him; HB 138, therefore, is intended to correct this by amending the cruelty to animals statute.

2:02:22 PM

SANDRA WILSON, Staff, Representative Carl Gatto, Alaska State Legislature, relayed on behalf of the sponsor, Representative Gatto, that HB 138 would establish the two separate crimes of cruelty to animals in the first degree and cruelty to animals in the second degree. Under the proposed crime of cruelty to animals in the first degree, knowingly inflicting severe and prolonged physical pain or suffering on an animal, [committing the crime of cruelty to animals in the second degree three or more times within 10 years,] killing or injuring an animal by use of a decompression chamber, or intentionally killing or injuring a pet or livestock via poison would be a class C felony, whereas under the proposed crime of cruelty to animals in the second degree, failing - with criminal negligence - to care for an animal and thus causing the death of or severe physical pain or prolonged suffering to an animal, or knowingly killing or injuring an animal with the intent to intimidate, threaten, or terrorize another person would be a class A misdemeanor.

REPRESENTATIVE GATTO indicated that the proposed crime of cruelty to animals in the first degree pertains to intentional acts, whereas the proposed crime of cruelty to animals in the second degree could in part pertain to unintentional acts.

MS. WILSON, in response to a question, pointed out that Section 3 of HB 138 establishes the crime of cruelty to animals in the second degree.

REPRESENTATIVE GATTO, in response to questions, expressed doubt that anyone would report the accidental death of a family pet.

MS. WILSON added that under current law, the definition of the term "animal" [for purposes of Title 11] excludes fish, and that [although it might not ever be reported] under both the bill and current law, even the accidental death of a family pet would constitute a class A misdemeanor.

CHAIR RAMRAS asked how proposed AS 1161.142(f)(3) would be enforced; under that provision, the court could "prohibit or limit the defendant's ownership, possession, or custody of animals for up to 10 years.

REPRESENTATIVE GATTO said the enforcement of that provision would fall to others rather than to the legislature. In response to further questions, he offered his understanding that the humane destruction of animals, even via the use of poison, is exempted; the bill's primary intent is to address willful and deliberate acts of animal cruelty.

2:10:15 PM

CHAVA LEE, Executive Director, Gastineau Humane Society (GHS), pointed out that slitting open the belly of a guinea pig, nailing one end of its intestines to the ground and then watching it run around in circles is a deliberate act and constitutes animal cruelty; currently, however, there's not much that can be done about such behavior. Accidentally stepping on a cat, for example, and killing it is still just an accident, whereas throwing a bag kittens into a body of water and watching them drown is animal cruelty. She said that although the GHS doesn't get many calls about acts that turn out to be actual cruelty, the GHS does get a lot of calls about acts that turn out be the result of stupidity. With the latter type of calls, staff attempts to educate callers about how to care for their and their children's animals. From her perspective, she remarked, she can see a big difference between stupidity and cruelty: cruelty constitutes a deliberate, obvious, and disgusting act.

MS. LEE said that that type of animal cruelty is perpetrated by human beings committing deliberate and painful acts of violence on innocent animals, and it is a known fact that such people often go on to commit similar acts of violence on human beings. She offered her hope that [the legislature] will pass HB 138,

surmising that it will put some teeth into the animal cruelty statutes so that such crimes can be prosecuted. She noted that not all reported instances of animal cruelty end up being prosecuted; once such cases are investigated, they are often found to be situations in which people are behaving stupidly rather than intentionally cruelly.

CHAIR RAMRAS - noting the existing pressures on law enforcement, the Alaska Court System (ACS), and the Department of Law (DOL) - questioned at what point would pursuing animal cruelty cases begin to encroach on the resources necessary for pursuing cases involving crimes against a person.

REPRESENTATIVE GATTO pointed out that 70 percent of the abused women at shelters say that their abuser first started abusing animals; there is a direct link between those who abuse animals and those who abuse women. "Perhaps a call early on would result in no call later on," he remarked.

CHAIR RAMRAS reiterated his concern about putting pressure on the existing criminal justice system.

REPRESENTATIVE GRUENBERG disclosed a possible conflict of interest in that he and the next testifier are married.

2:17:52 PM

KAYLA EPSTEIN, after mentioning that she serves on two animal-related boards, said that she is for HB 138. She then recounted a few instances wherein animals have warned human beings of danger and/or sacrificed themselves on their human's behalf, and then indicated that she was providing the committee with a picture of some Malamutes and of a cat that was burned alive. She said that a few years ago, she learned about a police officer who refused to charge a man for kicking a dog sufficient to break its ribs. How can a police officer charge a man with a misdemeanor for kicking a dog, when burning a cat alive is also only a misdemeanor, she queried. She offered her understanding that [law enforcement] is now being more proactive towards animal cruelty because they now see the relationship between animal cruelty and cruelty towards humans. Animal cruelty is very significant in domestic violence (DV) cases, is often used by abusers to punish their partners and children, and many women won't leave a bad situation for fear of what their abuser will do to their pets or livestock when they leave.

MS. EPSTEIN offered her understanding that members' packets include a letter from a friend who's dog was seriously injured when it attempted to protect its owner from an attacker, a man who was well known by the police as a violent man with a criminal record; the officer who investigated her friend's case didn't think he could charge the attacker with anything significant, and so suggested she not pursue charges even for the animal abuse. Referring to a recent case involving a drunken man who'd stabbed several of his neighbor's sled dogs, she raised the question of what would happen if next time this man instead goes into a school yard.

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DALE BARTLETT, Deputy Manager, Animal Cruelty Issues, The Humane Society of the United States (HSUS), indicated that he would be speaking in support of HB 138. He acknowledged that under both current law and HB 138, three or more convictions for the crime of cruelty to animals within a 10-year period would be a felony, and that HB 138 provides that certain other types of cruelty to animals crimes would also be a felony. Although Alaska law is in line with most of the rest of the country - with 46 states having felony animal cruelty laws - Alaska is the only state that requires previous convictions in order to charge the person with a felony.

MR. BARTLETT - with regard to the link between animal cruelty and violence against people, particularly women - noted that the latest research indicates that those who are capable of horrendous acts of violence against animals are likely to be involved in other violent crimes. For example, the Chicago police department released a study in 2008 illustrating a startling propensity of offenders charged with crimes against animals to commit other violent offenses toward human victims. In that study, investigators found that 86 of those arrested for animal cruelty or animal fighting had two or more past arrests; 70 percent had been arrested for felonies - including homicide; 70 percent had been arrested for narcotics crimes - including trafficking crimes; and 65 percent had been arrested for battery crimes. A study conducted in Massachusetts of those arrested for animal cruelty illustrates that 70 percent had been convicted of other crimes within 10 years - either post or prior to their animal cruelty arrest. A Canadian police study illustrates that 70 percent of those arrested for animal cruelty had prior records of violent crimes, including homicide.

MR. BARTLETT opined that it's clear from all this research that those capable of atrocious acts of animal cruelty are dangerous to society, and therefore stronger laws are needed in order to properly deal with such people. In the largest study of serial killers ever undertaken, nearly half admitted to committing animal cruelty as adolescents, and over one-third admitted to harming or killing animals as adults. Referring to earlier comments, he opined that if a person is able to slit an animal open and nail its intestines to the floor, then that is indicative of a level of violent criminal behavior that most people are simply not capable of; such an act constitutes a significant crime. On the issue of using limited resources to pursue cruelty to animals crimes instead of property crimes, he said that if someone broke into his garage and stole some property, he would be far less concerned than if that person had broken into his garage and killed his dog.

MR. BARTLETT, in conclusion, opined that there really should be a distinction in the law for the willful and malicious killing of an animal. In response to a question, he remarked that theoretically, having a stronger punishment would be a greater deterrent, and that deterrence is not the only goal of the law. He elaborated:

> I think that ... by classifying something as a felony, it clearly indicates that the legislature believes that this is a serious offense, and that message is taken up by investigators, by prosecutors, and by judges. Often, with animal cruelty cases, one of the biggest ... challenges we face is for ... officers and judges who see rape and murder [cases] on a regular basis to [be convinced] ... that these significant animal cruelty crimes are a part of that same paradigm ....

2:30:05 PM

NANCY K. EDLUND said that as families in society become more dispersed, more and more people are viewing their animals as extended family members, and so abuse of these animals, no matter what their species, is a very serious matter to these people. As such a person herself, she said in conclusion, she supports HB 138.

2:30:42 PM

LUCINDA EDLUND said it has been difficult to hear examples of severe animal cruelty and then find that they are just misdemeanor crimes. This is really an embarrassment to her as a human being, she remarked, adding that she doesn't know how serious and prolonged abuse of animals cannot be taken seriously; it's outrageous to think that such atrocities are not felonies. In conclusion, she said she supports HB 138, and implores the legislature to adopt HB 138 and show that the abuse of animals is being taken very seriously.

2:32:33 PM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), relayed that the DOL opposes raising the penalty for the crime of cruelty to animals from a class A misdemeanor to a class C felony. In 1978, the criminal code revision committee debated this same issue, whether the crime of cruelty to animals ought to be a felony or a misdemeanor, and although the State's first chief prosecutor advocated for it to be a felony, the vote was in strong opposition based on the concept of proportionality, which is also the basis, now, for the DOL's opposition to HB 138, particularly since in Alaska, most domestic violence assaults are resolved only as class A misdemeanors due to a lack of resources. This opposition doesn't mean that the crime of cruelty to animals isn't an important or serious offense, but it is the DOL's position that one year in jail is enough of a penalty for such behavior.

MS. CARPENETI noted that last year, when the legislature made a third conviction for such an offense within a 10-year period a class C felony, that was thought to be a pretty reasonable compromise, particularly in terms of proportionality and the way [the DOL] deals with limited resources in the criminal justice system. In conclusion, she said that the DOL opposes raising the penalty for first and second convictions of this crime.

REPRESENTATIVE GRUENBERG asked whether a history of animal cruelty is an aggravating factor.

MS. CARPENETI said it's not a provision of law, but judges do take all evidence of past behavior into consideration.

REPRESENTATIVE GRUENBERG pondered whether another approach might be to simply make a history of animal cruelty an aggravating factor when sentencing someone for a felony-level crime against

a person; doing so could perhaps address the issue of escalating behavior.

MS. CARPENETI indicated that she would research that point further. In response to another question, she said she would research what sentence the crime of cruelty to animals typically results in, but surmised that most cases don't result in a multi-year sentence, so there might be room for more serious sentences.

2:38:10 PM

REPRESENTATIVE LYNN questioned whether the bill could be altered so that the proposed class C felony would only apply to the most egregious behavior.

MS. CARPENETI offered her belief that that provision of the bill is already limited to only the most egregious behavior; regardless, the DOL would still argue that the existing penalty of one year in jail is adequate. In response to further questions, she pointed out that current law already prohibits the poisoning of pets or livestock, the torturing of animals, and knowingly killing or injuring an animal with the intention of intimidating, threatening, or terrorizing another person; such behavior is currently a class A misdemeanor, and the bill, in part, is proposing to make some of those behaviors a class C felony.

CHAIR RAMRAS relayed that HB 138, Version P, would be held over.

HB 9 - CAPITAL PUNISHMENT

2:43:08 PM

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 9, "An Act relating to murder; authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing sentencing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure." [Before the committee was the proposed committee substitute (CS) for HB 9, Version 26-LS0036\E, Luckhaupt, 2/18/09, which had been adopted as the work draft on 2/23/09, and amended on 4/6/09.]

CHAIR RAMRAS noted that public testimony on HB 9 was closed.

2:43:56 PM

REPRESENTATIVE GRUENBERG mentioned that he'd read a newspaper article indicating that the U.S. Supreme Court has recently ruled that [giving weight to] confessions, even voluntary ones, if they are the product of prolonged interrogation, is unconstitutional.

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

REPRESENTATIVE GRUENBERG indicated that this ruling appears to be in conflict with the provision of Amendment 3, as amended, that stipulated the death penalty could be sought if there is a videotaped voluntary confession by the defendant to the murder, and characterized this ruling by the U.S. Supreme Court as a significant one. Noting that he would be opposing passage of HB 9, he suggested that the committee consider either removing that potentially conflicting language from the bill or holding the bill over in order to do more research regarding whether that U.S. Supreme Court opinion really would impact the language of Amendment 3, as amended.

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

2:47:50 PM

REPRESENTATIVE LYNN remarked that HB 9 raises life and death issues, not only for murderers but also for potential future victims. He then spoke a bit about religion and some religious beliefs and stories, but acknowledged that from a religious perspective, there don't appear to be any absolutes with regard to the death penalty. Murder victims have no choice and receive no trial; in contrast, murderers make the choice to kill - and such choices have consequences - and they receive a trial. At trial, when defendants are found guilty of murder, the odds are that they actually are guilty. He likened having the death penalty to allowing for abortion, and surmised that from a logical perspective, if one is provided for, then the other should be provided for as well. Being prolife, which he is, he remarked, means protecting citizens from murderers, and many believe that capital punishment provides the best way of providing that protection. On the question of whether capital punishment is a deterrent, he said he doesn't know if that is really the case, but noted that although most statistics indicate that it is not, once a person has been executed, that certainly deters him/her from killing in the future.

REPRESENTATIVE LYNN observed that ample evidence provided indicates that many innocent people have been wrongfully convicted and sentenced to death; odds are, therefore, that if Alaska institutes capital punishment, innocent people will be put to death by the State, in other words, in part, by legislators. He added: "Would any of us here, at this committee table, pull the switch or personally inject the poison, inject that needle? If we can't do that maybe we shouldn't ask somebody else to do it." A person serving a life sentence but later found to be innocent could be released from prison and perhaps compensated to some small degree. However, an innocent person that's been executed can't be resurrected. Some have argued that a life sentence without possibility of parole is worse punishment than execution, but families of murder victims suffer their own life sentence - a lifetime sentence of sorrow. From a practical standpoint, if the State executes several murderers but no deterrence results, at least those dead murderers won't murder again, but if murderers are not executed and then kill again, then the State will, in effect, have enabled the murder of more innocent people.

REPRESENTATIVE LYNN offered an example of one murderer who'd killed a 14-year-old girl, and then, after he was released from prison, murdered a mother of three children; because this murderer was not executed for the murder of the girl, another person was murdered. Can a sentence of life in prison without the possibility of parole take the place of capital punishment and provide for the desired level of public safety? Sure it can. But can the judicial system be depended upon to protect people via appropriate sentencing? "I have my doubts on that," he remarked, surmising that if the judicial system did a better job of protecting the public's safety, then perhaps there would be less demand for the death penalty. Furthermore, he queried, if a judge sets a violent criminal with multiple prior offenses loose on society, and that criminal commits additional heinous crimes, should that judge then be removed from the bench, suffer liability, or be put in jail himself/herself as an enabler?

REPRESENTATIVE LYNN, on the issue of whether the death penalty would be disproportionately applied to minorities, opined that it is probably more accurate to instead say that the death penalty would be disproportionately applied to poor folks, who, regardless of their race, won't have the money to hire a "legal dream team." Being a member of a minority, or being poor, or living in a horrific environment is problematic, but it's no excuse for committing crimes. "Unfortunately, we do live in an

imperfect world, where prejudice too often translates [into] ... gross unfairness, ... and bigots still exist, ... [but] that's reality " he added. With regard to the issue of cost and the question of whether a life sentence without the possibility of parole is more expensive than the death penalty, he said he doesn't care about which is more expensive because he believes that cost shouldn't be the determining factor for whether or not to establish capital punishment - life shouldn't have a price tag.

REPRESENTATIVE LYNN also questioned how much sense it makes to impose a death penalty but then not carry it out for 10-20 years [due to numerous appeals]; to be any kind of a deterrent, the punishment should come shortly after the sentence. He relayed that when he ran for U.S. Congress in 1972 in California, he supported capital punishment and stated so in his campaign literature; however, even then, he believed that any capital punishment law should be applied fairly and be limited to only the most egregious and most heinous of crimes, and that's still his position today. He said that his sympathy for victims and their families is boundless. Although imprisonment without the possibility of parole sounds good, in today's tolerant judicial system, how many judges can be trusted to put murders in prison and then truly throw away the key? Probably not enough, he surmised.

REPRESENTATIVE LYNN recalled prior testimony indicating that it is quite difficult to empanel a jury for a major trial in Bush Alaska due to the limited number of residents and close family relationships in such areas. He also offered his understanding that any jury members empanelled for a capital punishment case must be "death penalty qualified." Such a requirement would narrow the pool of prospective jurors in rural Alaska even further. Moreover, if such a jury ever were empanelled, would that really be a jury of one's peers, since all jurors would have to be in favor of the death penalty? He questioned whether to truly be a jury of one's peers, jurors empanelled for a death penalty case should instead be made up of people with differing views on the subject - just like in everyday life - and whether this issue could raise constitutional concerns.

REPRESENTATIVE LYNN noted that the bill prohibits the execution of the mentally retarded and defines mental retardation as an intelligence quotient of 70 or below. In other words, when it comes time to receive a sentence, if the defendant has an intelligence quotient of 71, then he/she will be executed, but not if he/she has an intelligence quotient 70. This raises the

question of who would be picking the intelligence quotient test, from the many that are out there, that would be used to determine mental retardation for purposes of possibly instituting the death penalty. Would an intelligence quotient of 70 on one test also be an intelligence quotient of 70 on another test? Furthermore, which type of intelligence would be being tested? His concerns about this issue, he remarked, have not yet been answered to his satisfaction, and opined that this issue needs to be addressed before the State starts putting people to death. These aspects of the bill and the complex questions surrounding them are another illustration of the practical difficulty of writing fair capital punishment legislation.

REPRESENTATIVE LYNN concluded by saying that although he worries about the effectiveness of lifelong imprisonment compared to capital punishment, he is not convinced that any legislature in the world is capable of creating capital punishment legislation that has the level of fairness that should be demanded of it before it's used, and by saying that he would be voting "No" on HB 9.

3:01:18 PM

REPRESENTATIVE GRUENBERG provided members with a copy of the aforementioned newspaper article regarding the recent U.S. Supreme Court ruling that even a voluntary confession may not be used in federal court if the defendant was held in questioning for more than six hours before he/she made the confession, citing the fact that there have been a number of people who've confessed to a crime but were later proven to be innocent by DNA evidence and had simply confessed because of undue police pressure. This highlights three points: one, that scientific evidence can change; two, that legal standards can change; and three, that they can be changed via a single vote on the U.S. Supreme Court. The issue, here, is finality: when all is said and done, a death sentence [that has been carried out] is final - there is no reconsideration, there is no appeal, and it cannot be undone to correct a mistake. He said he would strongly support legislation that established lifetime sentences without possibility of parole, because then if something changes, justice in an individual case could still be provided for. The U.S. Supreme Court ruling, with its limitation of six hours, sets a bright line demarcation for ease of administration, but in the case of HB 9, such a ruling and the difference of a mere 15 minutes of police questioning could mean the difference between taking someone's life or not.

3:05:06 PM

REPRESENTATIVE COGHILL noted that the issue of confidence in the people who operate the judicial system has been raised, and indicated his belief that the bill's standard of proof beyond a reasonable doubt will address that issue. Noting that there are several advocacy groups standing up for the rights of those on death row, he questioned who would be standing up for the rights of the innocent people who were murdered, particularly given the extensive judicial process already in place for those accused of murder compared to the lack of any such process afforded to murder victims or their families. He said he thinks instituting the death penalty, regardless of the costs involved, is the way to rectify the apparent lack of recognition afforded murder victims and their families. In conclusion, Representative Coghill added:

> I think if we move forward with this bill, what we do is we make our system stand up and take note of its failures, number one, because if we're failing people who are sentenced to death, then we're certainly failing people who are sentenced to life in prison - ... and they never even get a second look, nobody goes out and takes a look at ... [their cases]. So I think it's good for the justice system to have to bear the responsibility, and therefore I'm voting for the bill.

CHAIR RAMRAS agreed, adding that he is satisfied with having had Amendment 3, as amended, adopted, and with moving the bill forward.

3:10:10 PM

REPRESENTATIVE HOLMES relayed that for a variety of reasons, she would be voting against HB 9. One reason pertains to the cost of the bill; the fiscal notes, which she surmised are probably conservative, total about $85 million in the first five years, and that's before the State would even come close to actually executing someone under the bill. Moreover, because the fiscal notes only estimate costs over the next five years, they don't include a lot of the implementation costs because they wouldn't occur within the first five years. For that same money, there are a lot of other things the legislature could be doing. New Jersey, in recent years, repealed its death penalty laws, but only after spending about $.25 billion and never actually

executing anybody, and New Mexico has also recently repealed its death penalty laws.

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

REPRESENTATIVE HOLMES said she is also opposed to HB 9 because according to information from other states, it's pretty clear that innocent people will be executed despite any procedural safeguards that might be put in place - as long as its humans running the system, there are going to be errors, some due to problems with contaminated biological samples, and some due to problems with false confessions. Testimony has indicated that racial elements were at play back when Alaska had the death penalty, and so she is worried that the death penalty will again be disproportionately applied to minorities. She said she is also concerned about the requirement that jurors be "death penalty certified," concurring that defendants would be disenfranchised because such a jury would not really be a jury of one's peers.

REPRESENTATIVE HOLMES said she is also worried about the moral issues raised, and that the bill won't actually be applied only to the most heinous of crimes because what constitutes heinous would be hard to categorize in law. She said she has concern that the bill is unconstitutional for a variety of reasons, among them that it [doesn't specifically prohibit] the execution of a minor, and, with the adoption of Amendment 2, now contains a reciprocal discovery provision. Another concern she said she has is that the ongoing appeal process for death penalty cases will simply run the families of victims through the wringer over and over again when appeals come up.

REPRESENTATIVE HOLMES concluded by saying that in the end, she is deeply troubled by the potential for a system that is run by humans in all of its phases to result in human errors with regard to only executing those who are actually guilty, and so she will therefore be voting "No" on the bill, and urges other members to do the same.

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

3:15:38 PM

REPRESENTATIVE GATTO offered his understanding that the cost of incarceration can at times be even higher than the cost of an execution, and indicated a belief that because other states have the death penalty, that Alaska's legislation will be found

constitutional. He said he wants certain people to know that the penalty for heinous murders will be the harshest of punishments - execution - surmising that it is the fear of possibly being executed that will deter crime. He expressed favor with having a death penalty process that takes a long time, because that will give plenty of opportunity for [an innocent] person to be exonerated before he/she is executed.

3:17:55 PM

REPRESENTATIVE DAHLSTROM said she has some reservations about HB 9, acknowledging that the potential for human error is one of the biggest risks that all legislation faces. She said she believes, however, that there are some acts so heinous that the person committing them is more of an animal than a human being, and so she will therefore be voting "Yes" on HB 9.

3:19:04 PM

REPRESENTATIVE DAHLSTROM moved to report the proposed committee substitute (CS) for HB 9, Version 26-LS0036\E, Luckhaupt, 2/18/09, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVES HOLMES and GRUENBERG objected.

3:19:20 PM

A roll call vote was taken. Representatives Gatto, Dahlstrom, Coghill, and Ramras voted in favor of reporting the proposed CS for HB 9, Version 26-LS0036\E, Luckhaupt, 2/18/09, as amended, from committee. Representatives Lynn, Gruenberg, and Holmes voted against it. Therefore, CSHB 9(JUD) was reported from the House Judiciary Standing Committee by a vote of 4-3.

HJR 30 - DEATH PENALTY FOR JOSHUA WADE

3:19:46 PM

CHAIR RAMRAS announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 30, Relating to the case of the United States v. Wade and to the decision of the Attorney General of the United States with respect to that case.

3:20:41 PM

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, sponsor, relayed that HJR 30 has a very narrow focus on a specific issue, that of asking the federal government to consider whether capital punishment should be a sentencing option in the case of Joshua Wade. He noted that the language on page 2 lines 13-22, read:

> **WHEREAS** the United States Department of Justice has created a capital case review procedure to assist the United States Attorney General in making decisions on whether to seek the death penalty; and
> **WHEREAS** the capital case review procedure requires each United States Attorney to submit for review all cases involving a pending charge of an offense for which the death penalty is a legally authorized sanction, regardless of whether or not that United States Attorney recommends seeking the death penalty; and
> **WHEREAS**, during the capital case review, a review committee makes a recommendation to the United States Attorney General as to whether the death penalty should be sought in a case; and

REPRESENTATIVE STOLTZE noted that the language on page 2, lines 26-28 read:

> **BE IT RESOLVED** that the Alaska State Legislature urges the United States Attorney General to consider all the evidence and, if justified by the evidence, carefully consider the death penalty as a sentencing option for Joshua Wade.

REPRESENTATIVE STOLTZE explained that under current federal procedure, the issue of whether a particular case warrants consideration of the death penalty as a sentencing option must be determined before the trial starts, and that HJR 30 is merely a statement that the legislature wants to have the death penalty be considered in this situation. In conclusion, he mentioned that he has not yet spoken with the victims' families about HJR 30.

REPRESENTATIVE GRUENBERG expressed concern about getting involved in ongoing litigation in a criminal case, in that doing so would be setting a precedent such that the legislature's involvement in a variety of cases would be requested in the future.

3:27:29 PM

SUSAN C. ORLANSKY, Attorney at Law, Feldman Orlansky & Sanders, asked the committee to vote against HJR 30, adding that her position on the resolution is not based on whether the U.S attorneys prosecuting Joshua Wade should or should not seek the death penalty, but rather on a separation of powers issue and division of responsibility. She surmised that the legislature would not appreciate the U.S. Attorney's Office telling the legislature how to do its job, even if such advice were to come in the form of a mild resolution. Similarly, she said, she thinks it is not appropriate for the legislature to seek to influence the handling of a particular criminal case. The U.S. Attorney's Office already has standards, guidelines, and procedures for determining when to treat a case as a capital case; such a determination influences the office's budget, its allocation of manpower, may require a decision to not investigate or prosecute someone else, and reflects its obligation to have consistent, nationwide standards so that the government can't be accused of behaving in an arbitrary or unfair fashion when deciding to ask for the most extreme penalty.

MS. ORLANSKY pointed out that those outside of the U.S. Attorney's Office don't have all the facts that weigh into such decision making, and so for the legislature to start telling prosecutors what to consider or how to exercise their discretion in a particular case appears to her to set a bad precedent. She surmised that everyone has recently seen how high profile cases can be mishandled, especially when decisions are rushed or when prosecutors are perhaps influenced by a desire to make headlines. Winning a conviction or a particular penalty doesn't accomplish anything if the process is flawed and has to be set aside. If the goal is to see Joshua Wade prosecuted fairly and effectively and be punished appropriately if convicted, then the best approach would be to let the prosecutors do their job in a professional manner uninfluenced by public pressures. She said she is not aware of the legislature having previously taken a public position on how federal or state prosecutors should handle a particular case, and she thinks, therefore, that the legislature's not having done so reflects a wise deference and appropriate perspective on the different roles of different branches of government. In conclusion, she urged the committee to follow that same course and vote against HJR 30.

3:30:30 PM

RICH CURTNER said he would be speaking against HJR 30, opining that it sets bad public policy by attempting to influence ongoing litigation and the discretion of the [U.S. Attorney] The U.S. Department of Justice (DOJ) has strict protocol for handling [death penalty cases], and HJR 30 could be seen as possibly having influenced the U.S. Attorney's Office decisions. House Joint Resolution 30 sends some bad messages to the citizens of Alaska: one, it disregards the verdict of the 12 Alaskan jurors who initially found Mr. Wade not guilty; two, it makes an assumption about the State's criminal justice system and the presumption of innocence, since Mr. Wade has not yet been convicted, and so the resolution could be viewed as an attempt to presume guilt and influence the system; and three, it could potentially result in a change of venue due to additional pretrial publicity. In conclusion, he pointed out that HJR 30 would be speaking to the same people that prosecuted then U.S. Senator Ted Stevens, and opined that caution should be taken whenever the legislature proposes any resolution that could be viewed as an attempt to influence the DOJ's treatment of ongoing litigation.

3:33:22 PM

SUE JOHNSON, Coordinator, Alaskans Against the Death Penalty (AADP), said that HJR 30 appears to involve one branch of government - the legislative branch - attempting to influence another branch of government - the judicial branch. The federal government already has a thoughtful process in place that allows a criminal case to be elevated to the level of a death penalty case. She said she thinks that it would therefore be very inappropriate for the legislature to get involved in such a decision or to even be perceived as getting involved. She also pointed out that many family members of murder victims are very opposed to executing those who have killed their loved ones.

REPRESENTATIVE HOLMES said she would be voting against HJR 30 because she feels it would be setting a bad precedent for legislators to be weighing in on criminal cases.

CHAIR RAMRAS, having previously ascertained that no one else wished to testify, closed public testimony on HJR 30.

3:35:25 PM

REPRESENTATIVE DAHLSTROM moved to report HJR 30 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE HOLMES objected.

A roll call vote was taken. Representatives Dahlstrom, Coghill, Gatto, and Ramras voted in favor of reporting HJR 30 from committee. Representatives Lynn, Gruenberg, and Holmes voted against it. Therefore, HJR 30 was reported from the House Judiciary Standing Committee by a vote of 4-3.

3:36:41 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:36 p.m.

HOUSE BILL NO. 463

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES COGHILL, Hayes, James

Introduced: 2/19/02
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 09.20 is amended by adding a new section to read:

Sec. 09.20.085. Role of jury. (a) Except as otherwise provided by law, the jury is the exclusive judge of the facts. The jury is bound to receive the law from the court and be governed thereby, except if a jury determines that a defendant is guilty according to the law and that the law is unjustly applied to the defendant, the jury may determine not to apply the law to the defendant and find the defendant not guilty or guilty of a lesser included offense.

(b) A defendant has the right to inform the jury of the jury's power to judge the just application of the law and to vote on the verdict according to conscience. Failure to allow the defendant to inform the jury of the jury's power is grounds for a mistrial.

(c) Notwithstanding any other law, the court shall allow the defendant to present to the jury, for its consideration, evidence and testimony relevant to the

exercise of the jury's power under this section.

(d) The state may rebut any evidence introduced under this section with evidence of a similar nature.

(e) This section applies only to an action tried to a jury under applicable law. This section does not create a right to a jury.

(f) A potential juror may not be excused or disqualified from serving on a jury because the juror expresses a willingness to exercise a power granted to the jury under this section.

*** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to juries impaneled on or after the effective date of this Act.

*** Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).

instead, HB 396 focuses on collecting funds to purchase equipment that would assist law enforcement agencies in fighting alcohol-related crime. He opined that in addition to assisting law enforcement officers, a lot of the equipment that would be purchased with HB 396's surcharge monies could also shorten the time and frequency, and therefore the expense, of going to trial, because better evidence will be collected. With regard to the amount of the surcharge proposed in HB 396, he offered that the APD does not feel that $100 is too much. People who go out drinking often spend $100 very quickly, he observed; therefore, if people can afford to spend $100 on alcohol, they can afford the surcharge, and if for some reason they can't, there is the option of performing community work service. He asked the committee to continue its work on HB 396 so that the bill can become an effective law.

CHAIR ROKEBERG announced that HB 396 would be held over.

HB 463 - INFORMED JURY

Number 2001

CHAIR ROKEBERG announced that the last order of business would be HOUSE BILL NO. 463, "An Act relating to juries; and providing for an effective date."

Number 1982

REPRESENTATIVE COGHILL, speaking as the sponsor, explained that HB 463 addresses the role of the jury and what has come to be known as "jury nullification." He relayed that Section 3 of the [Alaska Statehood Act] says, "The constitution of the State of Alaska shall always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence"; that the Constitution of the United States starts out with the words, "We the People"; and that the Declaration of Independence states, "[all men ...] are endowed by their Creator with certain unalienable Rights," which, he inferred, included forming governments "for justice and for the various other things that were declared." He opined that in order to bring [about] a republican form of government, "we want a constitution, and we want the people to have the right to maintain their government," adding that there were several ways to accomplish that: "we do it by voting; we do it through referendums; [and] we do it through this legislative body, the judicial body - through the three branches of government."

REPRESENTATIVE COGHILL then remarked, "We also have the people having the right to, really, judge the law, if you think about it." Quoting from the Declaration of Independence, he said: "... Men, deriving their just powers from the consent of the governed, ... it is the Right of the People to alter or abolish it...." He observed that "the way we stay engaged, quite often, is through the jury process." He said that via HB 463, he is asking that Alaska consider the proposition that the jury is the exclusive judge of the facts, that a jury may determine not to apply the law to the defendant under the condition that the jurors feel the law "is unjustly applied," that the defendant has the right to inform the jury of that particular right, and that - per statute - the court allow the defendant to do so. He noted that HB 463 has some safeguards built in: for example, the state may rebut the evidence, it only applies to an action tried [by] a jury, and a juror can't be excused if he/she is willing to exercise his/her "powers." Representative Coghill said that HB 463 is coming from [his] deep-seated belief that "our constitution" needs continual maintenance and protection.

Number 1816

CHARLES KEY, Executive Director, Fully Informed Jury Association (FIJA), testified via teleconference in support of HB 463. After mentioning that he was an Oklahoma State Representative from 1986 to 1998, he noted that he'd proposed similar legislation in Oklahoma. He said that HB 463 is important because it allows the citizens on a jury panel to fully exercise and understand their role and responsibility when serving. He remarked that the history of jurors' rights is very well established and [those rights have] been affirmed by federal and state courts time and time again in various decisions and statements.

MR. KEY said:

> The benefits of the jury being able to know and use this right and this power has many other residual benefits, which would include allowing legislators ... to know what the community ... thinks about certain laws from time to time. Some historical examples of that would include the fugitive slave laws in the early 1800s, and other laws related to slavery; it was juries - mostly white Americans - that continued to bring in "not guilty" verdicts regarding people that were actually guilty of breaking the law and harboring

runaway fugitive slaves. Some other examples would be Prohibition, and we could point [to] others in which the conscience of the community, the conscience of the citizenry, was brought to bear on the system to bring about important changes. I would urge you to support this legislation; I think it would be very beneficial and pay great residual benefits to the state of Alaska. And, hopefully, it will have an affect on the rest of the nation.

Number 1656

LARRY PRATT, Executive Director, Gun Owners of America, testified via teleconference in support of HB 463. He described the case of a man who defended himself from four armed attackers, with a gun he did not have permit for. He was convicted, after which three of the jurors went to the defense attorney and relayed that they felt they were forced into handing down a conviction because the judge commanded the jury to follow his [instructions] regarding the law. Had those jurors been informed about [jury nullification], he surmised, they would have been able to make a decision based on their conscience.

Number 1520

NANCY LORD JOHNSON, M.D., J.D.; Member, Board of Directors, Fully Informed Jury Association (FIJA), testified via teleconference in support of HB 463. After noting that she is a private attorney in Pahrump, Nevada, she said she finds HB 463 to be an excellent bill. She elaborated:

It addresses the problem faced in courts today when jurors are deprived of their traditional right to prevent the oppression by the government, even when they learn of this right from outside sources. The general trend has been to inform jurors they have a duty to follow the court's instruction, and leave them to learn [of] their right to jury nullification to informal or unofficial sources; this has been documented in numerous cases. Unfortunately, over the past few years, there have been several attempts around the country to prosecute persons for even distributing this truthful information on the jury's historic right, and this legislation would put an end to that, at least in Alaska.

There was a case in Colorado where a juror was prosecuted, allegedly for failing to volunteer her potential bias against a particular law, and she was charged with that; well, the real reason is that she gave jury information to her fellow jurors. In another case that I tried in Pennsylvania, the foreman attempted to get a juror off the jury because he claimed that she indicated she would not follow the law - when, in fact, she had a problem with the government's facts, which was her duty as a juror.

We have a lot of unfair laws about firearms. Now, what is a firearm? A firearm should be a gun that shoots, but people have been prosecuted for "kits" and for other guns that couldn't be fired, and the deficiencies get instructed away by the prosecution. I tried a hemp case several years ago where people were prosecuted for planting seeds that were just bird food; the inability to reproduce was defined as inability to sprout, and that distinction was, again, instructed away, and they were only saved from conviction because one of the jurors happened to be a biologist.

Number 1462

MS. JOHNSON continued:

I do a lot of work with the [Food and Drug Administration (FDA)], and we get charges of unapproved new drugs when people are selling vitamins. There was also a case in Texas where a doctor was prosecuted for innovative products that had saved the lives of children with brain tumors. And then we have conspiracy - as (indisc.) once wrote, "the darling of the prosecutor's nursery".... And in all of those cases jurors had a gut sense - they found it on their own factual findings - that the person had done nothing morally or legally wrong, but the instructions get so technical that only a very highly skilled trial attorney and strong-willed jurors can fight the judicial pressure to convict.

It sometimes becomes, almost, directing a verdict of conviction. This bill would make that impossible. The power of the jury to nullify is well recognized; it's been established for centuries. Three states -

Georgia, Maryland, and Indiana - specifically mention this power and allow the lawyers to argue that the juror can judge the law as well as the facts, and this has not resulted in any disruption of their court proceedings.

The bill would remove Alaska from the number of jurisdictions that do not permit specific jury instructions regarding nullification. And I think it's a very good bill and would benefit Alaska enormously. This is a power that has been recognized uniformly throughout the country, and while it's been questioned, there is no means to compel a juror to convict. This would only make the rule clear. The jurors would be told exactly what their rights and powers are, and it would eliminate the confusion and some of the litigation we've had concerning the historic role of juries.

Number 1331

DAVID C. BRODY, J.D., Ph.D.; Associate Professor and Coordinator, Criminal Justice Program, Department of Political Science, Washington State University Spokane, testified via teleconference in support of HB 463. He said:

Through my graduate school training and my work as a professor, I've done a great deal of research, both legally and social-scientifically, regarding the issue of jury nullification. And I don't belong to any organization; I'm just going to ... speak about what my research has shown and what the general research has shown regarding the effects of such a bill as is being considered today. Without getting into whether or not it's legally appropriate to instruct juries regarding nullification - because I think it is mandated, but regardless of that point - I think that almost every one would agree that there are times when we want juries to nullify. There are appropriate times where laws aren't fair when applied and are inappropriate, or prosecutors have overcharged. And in those instances, which are quite rare, we want the jury to do the right thing and say, "Not guilty."

As it stands now, we're rolling the dice hoping that, in such cases, [the] jurors know that they have that right - that they'll figure it out themselves. And

the reality of the situation is, they don't know that. I've conducted research in New York state, where we did a survey of residents regarding whether or not they knew of jury nullification. And it wasn't worded that inartistically, but that's essentially what it came down to. And the vast majority of people had no idea what jury nullification is: they had no idea that they could find someone not guilty for various reasons or no reason whatsoever.

Number 1098

MR. BRODY continued:

So, when we put jurors in a situation where we want them to do something, without telling them what to do, we're essentially causing them a great deal of frustration and defeating the purposes of what the jury system is all about. The jury system is [designed] to put the individual citizen in a position to judge his peers and to be the conscience of the community, and to be able to do that, they have to know exactly what they can do. In reality, just because jurors are told that they have the power to nullify, it's very, very, very rare that they're going to do it. There aren't too many people that support murderers or rapists and things of that nature, where they're going to find, because they feel like it. It's not going to happen. And it's especially not going happen when you have unanimous-verdict requirements, where you have to have 12 jurors agree on acquittal.

In my opinion, if you have 12 people agree that a law is unjust, that is the conscience of the community, and that should tell the legislature - or, more specifically, the prosecutor - something. An important aspect of this, which a lot of people have concerns over, is you'll end up with jurors that will let drug defendants off or abortion protestors off or things of that nature, just because they don't feel [the] laws are just. Well, we have jury selection processes that deal with that: prosecutors have a duty to "voir dire the jury" and find out whether someone is in favor of marijuana being legalized, or something of that nature. And if they find that out, I'm sure they will use a preemptory challenge or

challenge for cause to remove that juror. So, the concern that runaway juries with specific agendas will take place, I find [that to be] kind of a specious argument because the people with true agendas can be weeded out through the jury selection process.

MR. BRODY, in summation, said of HB 463:

There is very little risk of harm involved in it. It will only affect a minority of cases, and it won't lead to an abundant number of acquittals; it won't lead to anarchy. There is very little harm that can be done, but for individual people and individual cases, it can be the difference between being free and being in prison. And the last item I mention is kind of political-scientific. It is: giving juries this power and letting them know they have this power is a good message to society and the community, and it gives people an increased sense of trust in the government - an increased sense of trust in the court system. [It] makes them feel part of it, which increases social capital, which can increase the community ... development and make society a much more healthy place for people to live. Thank you.

Number 1054

REPRESENTATIVE JAMES asked why jury nullification was suppressed.

MR. BRODY said that there are a lot of theories regarding that phenomenon. He offered that the cynic would say that judges and lawyers didn't trust individuals and thus wanted to keep the power in their own hands; they didn't want outsiders to have this power. Essentially, nullification instructions were required up until the late 1800s, when, in the case of Sparf and Hansen v. U.S. [156 U.S. 51 (1895)], the [U.S.] Supreme Court said that jurors do not have the right to nullify. Up until then, they did, he explained. He noted that the leading case nowadays is the [1972] case, U.S. v. Dougherty, and essentially the argument used is that [jury nullification] will lead to anarchy, that juries will be acquitting defendants left and right because they feel like it, and won't be reigned in. No research has ever shown that would ever occur, he argued, adding that in Maryland and Indiana, where jurors have been instructed consistently about the right of jury nullification, with the

exception of "post Final Four riots" such practice has not created a problem.

CHAIR ROKEBERG noted that according to information in members' packets, 23 states have jury nullification provisions in their constitutions specifically related to libel/sedition cases. He asked Mr. Brody to comment.

MR. BRODY said that those provisions in those constitutions are specifically limited to libel and sedition cases. He noted, however, that some constitutions have general jury nullification provisions; for example, the Maryland constitution requires that jurors be the judge of both law and fact. He did acknowledge, however, that in the 1980s, the Maryland supreme court essentially got rid of that provision by saying that it only applied to cases in which the supreme court hadn't previously decided what the law is. States have not applied [jury nullification provisions] to criminal prosecutions, he observed, and in states where those provisions are part of the constitution, jurors' ability to [engage in jury nullification] has been reduced over time.

Number 0779

JACK POLSTER, Member, Fully Informed Jury Association (FIJA), testified via teleconference in support of HB 463. He said he would suggest that jurors have both the right and the power to nullify law, but that they have simply not been made aware of that fact in the recent past. He noted that formerly, churches and private schools routinely informed the citizen of the right and the obligation to nullify. Back then, he observed, society considered it an obligation to "apply nullification to conscience when appropriate." According to his understanding of the Sparf [and Hansen] decision, he said, it was determined that the court no longer had the obligation to inform jurors that they had the right to nullify law; instead, jurors were effectively told that they were expected to come to court as informed jurors, already aware of their rights. He posited that it is still questionable whether the courts have determined that the right to nullify does not exist.

MR. POLSTER relayed that he occasionally goes to the courthouse when jurors have been called to serve, and hands out brochures to them before they have been impaneled; these brochures are put out by FIJA and provide basically the same information being presented to the committee regarding jury nullification. He noted others [in the community] routinely handout these

brochures, and they do it politely and without obstructing traffic. He said he has noticed that after being handed a brochure, many people are "put out" because they have never been informed about jury nullification; the schools have failed in that regard. He remarked that this failure on the part of government schools to provide this information is something that he would expect. The purpose of FIJA, he explained, is to provide information about the right to nullify and its importance; in addition to providing brochures, FIJA also conducts speaking engagements for small groups.

MR. POLSTER provided the following example of jury nullification:

> Way back when, a large group got together and convinced Congress that drinking of alcohol - actually, it was the selling, manufacturing, and distributing of alcohol - was inappropriate. After a while, the feds became so unsuccessful in their convictions - because of the fact that jurors, conscious or unconsciously, were aware of the possibility of jury nullification, [and] were sitting on juries and saw that their friends and relatives were in effect selling, manufacturing, [and] distributing in violation of the law and yet they were not truly a threat to the community. And they chose to acquit on that basis. And effectively the feds had to come back to the states and beg to get that monkey off their back, which eventually occurred, as you know. I'm not a drinker, I don't approve of it, [and] I'm rather neutral on the issue, but I am very definitely in favor of the concept of jury nullification appropriately applied.

CHAIR ROKEBERG asked Mr. Polster whether there was a particular incident that generated his interest in this subject.

MR. POLSTER said: "No, I've never been in court; I am a member of the Libertarian Party, [and] I would think the purpose of government is to protect rights rather than grant privilege...."

Number 0507

RUDY VETTER testified via teleconference in support of HB 463. He said that he agrees 100 percent with everything Ms. Johnson and Mr. Key said about jury nullification. He remarked that back when everyone was told that the law was the divine right of

kings, the Magna Carta gave the people of the world the freedom to contradict [laws] that constitute a breach of conscience.

Number 0414

FRANK TURNEY, Member, Fully Informed Jury Association (FIJA), testified via teleconference in support of HB 463. After thanking Representatives Coghill and Hayes for bring HB 463 forth, he mentioned that he'd provided the committee with a web site [address] by which to retrieve an essay by Lysander Spooner - "Trial by Jury" - and remarked that Mr. Spooner is one of the great historians with regard to the role of the jury. He also noted that he'd sent the committee some quotations from the Founding Fathers and the courts regarding the role of the jury. He acknowledged that the Fairbanks city founders had introduced and passed a resolution similar to HB 463 a number of years ago regarding the rights of the jury, although the Fairbanks [North Star] Borough assembly failed - by three votes - to pass a similar resolution.

MR. TURNEY mentioned that to William Penn one could attribute many of the freedoms enjoyed today: freedom of speech, freedom of assembly, freedom of religion, and freedom of the press. He acknowledged and thanked Mr. Key and Ms. Johnson for their testimony regarding jury nullification. Mr. Turney said that in addition to supporting HB 463, he is in support of any legislation that calls for informing the jury of its true rights, powers, and responsibilities. He opined that what is needed is a re-education of the citizens with regard to this issue. Referring to [subsection] (f), which says, "A potential juror may not be excused or disqualified from serving on a jury because the juror expresses a willingness to exercise a power granted to the jury under this section", he indicated that this [subsection] in particular is badly needed. He mentioned that he hoped the committee would pass HB 463.

Number 0190

SENATOR DAVE DONLEY, Alaska State Legislature, testified in support of HB 463. He opined that as society gets more complex, it seems as though governments are more often telling American citizens what to do rather than the other way around. He expressed concern that the judicial branch, over the years, is driving a wedge between [current practice] and the true meaning and original purpose of the jury system.

CHAIR ROKEBERG asked Senator Donley what value the legislature has, then, with regard to turning over to the public the determination of criminal matters.

SENATOR DONLEY said:

> I believe in the theory of jury nullification. I do believe that when government goes too far, I believe [that] the jury should have the option to make that decision. I believe it's the ultimate safeguard between a tyrannical government and justice and fairness within the judicial system. I'm also very concerned about the development where lawyers, more and more, become like a ruling oligarchy in our society in that they control the courts and the courts really have been more and more acting without limits or bounds that were originally intended under the United States Constitution. And as they absorb more and more of the power to themselves, they've tried to reduce the role of the jury more and more and increase the role of lawyers and judges. And I find that very concerning, and I think that a fully informed jury is just a very small, but meaningful, step towards creating a better balance in that system.

CHAIR ROKEBERG said: "So you don't think we're ceding any of our legislative authority by doing this, because the usurpation of our authority by the courts is more egregious than giving the average citizen - as a juror - the right to nullify a law. Is that correct?"

SENATOR DONLEY said: "Especially in this state ... where we don't elect our judges and we don't confirm our judges." He opined that states which do elect their judges [and/or] confirm their judges - as is done at the federal level - have an additional check and balance in place.

TAPE 02-41, SIDE A
Number 0001

SENATOR DONLEY mentioned that he thinks this leads to difficulty in achieving a separation of powers with the judiciary. He opined, however, that the issue is not so much one of separation of powers as it is one of the powers of the citizens versus their government. He said he believed that [having] a fully informed jury is a very reasonable proposal and allows citizens to have a final say in what is fair.

REPRESENTATIVE JAMES mentioned that it appears as though one of the court system's concerns is that costs will go up because, since the public will be aware of nullification, no one will be willing to plea bargain, and so everything will have to go all the way through the court system.

SENATOR DONLEY said:

> Obviously, the courts have the best of all worlds now: ... they get to determine what their powers are. And the lawyers: you know, we all have a license to practice law, and that gets us past the bar and makes us, ... within the judicial system ..., more influential than the average citizen. And I'm very concerned about that. And I can see where the judges and the lawyers don't want their power taken away from them, but I really believe that this is a democracy and not an oligarchy, and it shouldn't be an oligarchy run by just lawyers: it should be run by the people. ... I think this is a fair proposal. ... When you go back over the history of time, ... the juries have become almost the opposite of what they're intended to be in the first place. ...
>
> When the juries were first created in the English system, they were typically people who knew something about the case - they were people who were witnesses, they were people who knew the parties in the case - that's how they were selected. And over time, as the judiciary wanted to exert its power more and more over the citizens, that whole philosophy changed. And now, my goodness, if you know anything about the case, that becomes grounds for you not being allowed to even sit on the case or to be a citizen that participates in the jury process. It's come full circle from where it was originally intended to be, and I don't necessarily support that.

SENATOR DONLEY concluded:

> I think there are reasonable controls over who should sit on juries and [to] prevent conflicts of interest and ensure fairness; at the same time, if you look systemically back over time, you can see how we got here. And I don't think it's [necessarily] the best solution ... to keep the jury from knowing relevant,

appropriate facts. And it seems lawyers more and more want to manipulate the system to do that, and I just simply disagree with it. I support the legislation.

Number 0280

KEANE-ALEXANDER CRAWFORD testified via teleconference in support of HB 463. He said:

First, and I mean this with absolute deference and the utmost respect, the legislature doesn't make law and really can't make law, any more than a gold miner makes gold. All laws are, already - and Representative Coghill mentioned it and it's mentioned throughout our Declaration if Independence - the laws of nature and nature's god already exist. And all I can ask you as the legislature to do is to choose to recognize that law. This bill really isn't going to give anybody any rights if it passes; all it's going to do is recognize the right that does exist, has existed, and will always exist 'til the end of time while there's people on this earth. ... It's the last barrier the citizen has.... And trial by jury is very important, and [HB 463] won't really do everything - there's lots of little ... [problems to solve] - but it's good, and I like it, and I'd really appreciate it if the legislature took their time to recognize this right. Thank you.

Number 0420

MARY JANE OWENS testified via teleconference in support of HB 463. She said simply that it is bound to be a benefit to the citizenship and to the [legislature] in being able to evaluate "what you're doing." "You can't really say you have a government by the people when the people are not allowed their voice in such a basic matter," she added.

Number 0480

PATRICIA MICHL, J.D.; Member Board of Directors, Fully Informed Jury Association (FIJA), testified via teleconference in support of HB 463. She commended Representative Coghill [for sponsoring HB 463], said she fully supported it, and urged the committee to do so as well. She said:

First of all, I'd like to point out that in our country today, many people feel disenfranchised and disconnected from their government. This legislation will help citizens feel prouder to be citizens and to serve on juries. This legislation preserves the integrity of the jury system, which has been eroded - as has been pointed out numerous times in this testimony today. Specifically, in subsection (f), we refer to the fact that a potential juror cannot be disqualified or excused because of their willingness to exercise this power.

Right now what we're doing is we are taking people off juries because they exhibit a willingness to judge the law, or a propensity to judge the law or be critical of the law; we're actually losing our very best and most conscientious jurors because of the present voir dire practices, and subsection (f) would eliminate that. Also, regarding the judge, I think there's been some concern expressed by the committee about the role of the judge [and] the legislature. This statute does not allow the jury to repeal laws; it merely allows the jury to sit in judgment of one defendant on one case. But, of course, if you have a series of acquittals or hung juries in a particular area of the law, then we have a very institutionalized message being sent you, the legislators, so you can take appropriate action on that law.

And also I'd like to point out that we already have jury nullification codified in almost every state: our self-defense laws, right now, are actually jury nullification. They're saying that, yes, there was a crime committed, technically, but there was a very good reason for that crime being committed and, therefore, the defendant should be blameless. We also have the privilege of necessity; we have the battered woman's syndrome - that usually is where a battered person has assaulted the abuser or killed the abuser, and the person is allowed to make arguments to the jury regarding the reasons for doing that - and that is really jury nullification. So it's nothing new.

Number 0667

MS. MICHL concluded:

> And in the state of Washington we have, actually, a nullification statute that allows ... - for many reasons, like I think there are approximately 12 reasons stated in the statute - for prosecutors not to prosecute a case even though the statutory elements have been met. So the prosecutors are allowed to exercise mercy, and I feel the jurors should be allowed to exercise mercy also. The jury is really the forth branch of government. It's one of the very important safeguards that we have regarding our laws, and I urge you to support this measure. Thank you.

CHAIR ROKEBERG asked Ms. Michl to comment on the U.S. Supreme Court's current position in light of the Sparf and Hansen and Dougherty decisions.

MS. MICHL said:

> I believe in Sparf and Hansen the Supreme Court said that the jury has the power to nullify the law, but not the right; in other words ... they shouldn't be told about it, but they always have the power to do that. And then [in] Dougherty, the U.S. Supreme Court said ..., "We don't need to inform the jury about their right or their power to judge the law because they already know about it; it's just inherent in the process of being part of the jury." And of course this is very fallacious reasoning, and this is not really good law; it's not healthy for our country.

CHAIR ROKEBERG asked if there have since been other such cases before the Supreme Court.

MS. MICHL said that there have been other cases, among them a federal case that came out of New York, but acknowledged that "none of them have been positive cases - they've been bad cases - that's why we're urging you to turn the corner here." She explained that the New York case involved the court's invading the privacy and the sanctity of the jury room, and actually yanking a juror off the jury because he declared in the jury room, during the deliberations, that he was not going to apply the law because he didn't believe the law was a just law. And the court actually took this person off the jury - in the case of U.S. v. Thomas - and the jury came in with a verdict with only [11] jurors. She noted that there was also a case in California - People v. Williams - in which the verdict was delivered with only 11 jurors because of one juror's willingness

- and expressing that willingness - to judge the law. She opined that these are examples of very bad tendencies, which HB 463 would correct - at least in Alaska.

Number 0900

THOMAS STAHL, Member, Board of Directors, Fully Informed Jury Association (FIJA), testified via teleconference in support of HB 463. He first clarified that "Sparf [and Hansen] is the United States Supreme Court's last word, the Dougherty case was a DC Circuit case, and the U.S. [v.] Thomas is a Second Circuit case." Thus, the U.S. [Supreme] Court's last official word is Sparf and Hansen, 1895. He then mentioned that he is a retired attorney who formerly practiced in Massachusetts, where he first became involved with FIJA during the time of the Roberta Shaffer (ph) trial. He recounted that Ms. Shaffer killed an attacker and was charged with first degree murder, but the jury convicted her of second degree murder. The trial judge, however, forbade Ms. Shaffer from raising a self-defense argument, and this judge's decision was upheld during the appeal process. Because of this decision, Ms. Shaffer "went away for 20 years" for something that she would probably never have even been charged with in Alaska or Washington. He said that after seeing the conscience of the community violated in that manner he became involved with the FIJA.

MR. STAHL said HB 463 stands for the proposition that defendants get to tell their whole story - not that defendants shouldn't be convicted after they tell their whole story, he admitted, but they should at least have that right; the jurors should come away from the process feeling like they have at least heard the whole story and like their verdict really represents their true decision. He opined that HB 463 accomplishes those goals, and that passing it will serve to validate the [judicial] system. He posited that jurors' interpretation of the law is probably closer to what the legislature's intent is than what the judiciary interprets it to be.

Number 1077

MR. STAHL pointed out that there are still a lot of jury nullification provisions in the state constitutions. There are four explicit ones in Maryland, Indiana, Georgia, and Oregon that say that the jury should determine the law in all criminal cases. Granted, he added, the courts do not apply those provisions, but they are still on the books. He noted that there are 20 other states that have declared that the jury shall

judge the law in "seditious libel" cases, which are free-speech cases or First Amendment cases, in which someone is criticizing the government. He relayed that with regard to seditious libel cases, the constitutions of Delaware, North Dakota, Kentucky, Pennsylvania, and Texas have an additional phrase which says, "as in all other cases." He surmised this to mean that the jury would judge the law in seditious libel cases, as in all other cases. He added that Tennessee's constitution uses the phrase, "as in other criminal cases."

MR. STAHL opined that the language in the aforementioned constitutions is a strong indication that jury nullification had a very high value among early Americans. He offered that by just taking the words in those constitutions "on their face," jury nullification still exists as a right, and the judicial interpretations are wrong. He said that HB 463 provides Alaska's legislature with the chance to fulfill the original intent of the framers of several constitutions, which was that juries should judge both law and fact.

MR. STAHL, on the issue of whether HB 463 will increase costs, offered that it will save a lot of money because "prosecutors will quickly learn that they shouldn't even bring cases [to trial] that the community does not support." He opined that had jury nullification been explicitly provided for in Massachusetts in 1975, Ms. Shaffer would never have even been charged when she defended herself and her small children against "a psychopath with a knife." He said that HB 463 will also save money because there will be fewer appeals from defendants, since they will have had their full say during the original jury trial, including offering their own instructions to the jury.

CHAIR ROKEBERG instructed teleconference participants to fax any written testimony to the committee. [Per these instructions, Patrick Dalton, Sharon V. Dalton, and Seymour Mills provided written testimony.]

Number 1248

SIDNEY K. BILLINGSLEA, Attorney; President, Board of Governors, Alaska Academy of Trial [Lawyers] (AATL), testified via teleconference in opposition to HB 463. She said:

> The way the law presently works, the way the system presently works, is that the police arrest somebody - they charge somebody with a crime that's in the statute books. The district attorney's office screens

what the police officers propose to them, and they elect which charges to bring against an individual, from the statute book. The defense really is in a reactionary posture at that point. If the defendant chooses to try the case, the jury, then, is legally the judge of the facts and whether the facts meet the laws - the same laws that you all are down there working on creating. If the facts meet the laws, as charged, the person is generally convicted; if they don't, then the person is generally acquitted or convicted of a lesser included offense. We already have a mechanism for convicting somebody who's accused of a lesser included offense [rather] than the one that they were brought to court on, and that provides some safeguard.

What this [proposed] law generally does is codify jury nullification, which essentially makes a trial a popularity contest. It eliminates the rule of law, and it adds a chaotic element to equal protection for every individual under the Constitution - which equal protection is a constitutional right. It permits verdicts based on subjective reasons which ignore the law, and in Alaska especially, which is such a small state with such small towns and villages, that could be a disaster where individuals are well known. In other words, they could be judged on merits or demerits that have nothing to do with the fact situation that brought them before the jury in the first place.

When I heard the word that jurors should be allowed to discriminate about whether or not they should apply the law or not, it rang a bell to me - a different kind of bell, though, than the Senator. Discrimination is one reason why we have laws; it's the one reason why we have a constitution. People, [as] individuals, are protected by our constitutional laws and our criminal laws from ... the tyranny of the majority. This sort of - especially, again, in small towns - ... would erase that. Another thing that this particular proposal does is it sets up a cognitive dissonance where lawyers and judges who are sworn to uphold the law of the constitution are also ordered, at the same time, to tell jurors that they can ignore the law or the constitution if they feel like it's the right thing to do at that particular time.

Number 1402

MS. BILLINGSLEA continued:

> Subsection (c) and (d) is sort of the free-for-all area of this [proposed] law. It subverts the Alaska Rules of Evidence, most specifically rules 401, 402, 403, and 404, which have to do with the admission of relevant evidence before a jury. ... I can see instances or hypothecate instances where a jury trial could turn into something that looked like the Jerry Springer Show - on both sides: the defense gets to talk about all the things that he has done that merit the jury's consideration for, like, a vote, and the prosecution then gets to back up the dump truck and bring in all the things that are not so pleasant. And pretty soon the jury, hypothetically, has forgotten why they're there in the first place, which is to determine whether one galvanizing incident is a crime or not a crime.
>
> What I can see is that's setting up the opportunity for a lot more hung juries, because people will [then be] permitted to nullify a verdict and, with a lot more hung juries, that means a lot more retrials and that means a lot more prosecution resources going to retrials as opposed to initiation of prosecutions. I think where people need to change the law is legislatively [and] I think where people need to vote is in the voting booth - and not in the jury room. If there's a problem with statutes, we have, again, such a small state and such a small legislature that they are capable of being fairly responsive, on fairly short turnaround time, to problems that are perceived in the jury system. So, I really don't support - I can't support - jury nullification in this [manner].

Number 1509

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said DOL is opposed to HB 463 for a number of reasons. She elaborated:

> As legislators, you are elected by all the people of the state to make laws that create an orderly society

for us all. You do so after considering legislation in public hearings, and debating and compromising and coming to a reasonable and just conclusion. After you do that, you expect that people who are responsible for enforcing the laws and judging the facts will do so according to your enactments. I would note that I have heard, occasionally, discouraging comments in these halls about judges who (indisc.) [might] not be applying the law as you wrote it and intended it. After all the work and debate and thought over what our laws should be, I don't understand why you would want to pass a bill that authorizes a jury to disregard the law in every case, and even encourages it to do so.

If this bill were passed ... - and I'm talking about criminal cases because in criminal cases you have to have a unanimous verdict in order to convict a person - one person [on a jury], believing that domestic violence is really an issue that should be addressed at home, could prevent the verdict of conviction in a serious assault case. One person, believing that because a drunk driver did not cause damage to an individual or physical damage when he or she drove drunk for the third time, could ... prevent a verdict of guilty for a felony, or could decide that it ought to be a misdemeanor and, therefore, come back with a misdemeanor verdict or no crime at all. Or one person on a jury, believing that consensual sex between two people is not an issue that the state should be interested in, could refuse to return a guilty verdict when [an] adult engages in, quote, "consensual sex" with a fifteen-year-old or a thirteen-year-old or a ten-year-old. Also, one person, believing that the best approach to the drug problem in this state is to legalize drugs, could refuse to return a verdict of guilty in any drug case.

Number 1602

MS. CARPENETI continued:

These are just some examples. ... The examples given [regarding] murder cases and cases like that are not as troublesome as cases where the law is not as easy to enforce and to apply. Everybody agrees that you shouldn't kill somebody else, [whereas] you have

adopted laws that say the third time drunk driving should be a felony because of the disaster of drunk drivers on our roads. And those are the cases that go to trial that will be problematic in this area. The people of Alaska entrust you to enact laws based on your experience and the knowledge of the public [issues] facing the state. You do so after public hearings, debate, negotiations, and compromise. To then allow and even encourage a single person, in the secrecy of the jury room, to decide that he or she disagrees with you and doesn't want to apply the laws as instructed, is a very bad idea.

If people don't agree with the law, there is orderly procedure to attempt to change it, and one of the hallmarks of civilized society is that we have procedures like this one here, where everybody gets [a] chance to participate publicly before we enact laws. To undermine the law by allowing one person to disagree in the secrecy of a jury room would create chaos.

REPRESENTATIVE JAMES, referring to the examples Ms. Carpeneti spoke of, asked, "Don't you think that those tendencies would be found out in the jury selection?" She recounted that her husband had been called to serve on the jury in a domestic violence case; when asked how he felt about [domestic violence], his reply that he did not think it was right for a man to hit a woman - anytime, anywhere, for any reason - resulted in his being discharged from the jury. She opined that the questions asked of prospective jury members are very revealing.

MS. CARPENETI pointed out that the way HB 463 is drafted, jurors could not be excused if they express the opinion that "they would like to exercise their rights under this [proposed] law."

REPRESENTATIVE JAMES argued that "that's not the only question they're going to ask them; they're going to ask them another list [of questions], and everyone has a right to discharge people based on a lot of different things."

Number 1727

MS. CARPENETI, in response, again pointed out that HB 463 says, "A potential juror may not be excused or disqualified from serving on a jury because the [juror] expresses a willingness to exercise a power granted to the jury under this section" - that

power being the ability to nullify the law that the legislature has adopted. In response to a question, she said that under HB 463, a juror could still be excused with a preemptory challenge, but the types of preemptory challenges that could then be used would be very limited. In response to another question, she indicated that HB 463 raises concerns that "in tough cases," one juror could "return a hung verdict" because of the requirement that everyone on a jury must be convinced beyond a reasonable doubt that the defendant violated the law - as enacted by the legislature through the legislative process. She opined that [the provisions of HB 463] would counteract "all the good work that is done in these halls."

REPRESENTATIVE JAMES asked, "Isn't it true that that can happen now if there is some flaw or some little loophole in the case, that somebody could just refuse to go along with that issue, whether or not they were doing it on their own? What would keep them from doing it now?"

MS. CARPENETI said that juries do nullify prosecutions occasionally: [jurors] take an oath, before they hear evidence, that they will follow the law as the court instructs, but there are times when jurors go outside of that oath and return a verdict according to procedures or laws other than what they are instructed [on]. "It's not a perfect system, but it's the best that we know yet," she added.

REPRESENTATIVE JAMES referred to a piece of legislation that was heard on the House floor earlier that day, and opined that if the provisions of HB 463 were in place, then a jury could decide on the applicability of any broad provisions encompassed in the aforementioned legislation. She offered that legislation would not have to contain such specific definitions if jury nullification provisions were adopted.

CHAIR ROKEBERG said he was not in favor passing "sloppier law" just because the jury could be called upon to "figure it out."

REPRESENTATIVE COGHILL offered that [HB 463] highlights the classic struggle that occurs among the three branches of government as each seeks to fulfill its constitutional duties; each branch of government will always argue that it does not want to give up its power to either of the other two branches. He pointed out, however, that regardless of this inherent struggle, all government originates with the people, and thus it is wrong to hold a condescending view towards the people who serve on juries. He remarked that [via HB 463], he is merely

standing up for the rights of the jury, and does not presume that a jury "is going to get it all right ... every time," any more than any branch of government will. He opined that juries have become blind operatives of the court, and that HB 463 seeks to reverse that trend.

Number 2007

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), said that he just wanted to comment on remarks made earlier that [implied] judges are opposed to legislation such as HB 463 because they fear it "undermines their ever-expanding, illegitimate role in society." He pointed out, first of all, that the ACS has not taken a position on HB 463 and, second, that a person is charged with a crime because he/she is alleged to have violated one of the statutes that the legislature has passed, not a statute that judges have passed. Thus, if a jury decides that it is unfair, for example, to convict somebody of a felony just because it's his/her third DWI (driving while intoxicated) but no one was actually hurt, it may undermine the power of one branch of government, but it won't be the judicial branch: it will be the legislative branch's power that is undermined.

MR. WOOLIVER, referring to comments regarding the ACS's fiscal note, clarified:

> We're not asking for any money for this; we're not alleging a flood of new jury trials. Our fiscal note merely states the obvious, which is, under this law, there would be an incentive to go to a jury with a case where you would otherwise plead guilty because you did violate the law - but now you'll have the opportunity to argue that, in your case, the law is unfair. That's an incentive to go to a jury trial; our [fiscal] note merely reflects the fact that we may see more jury trials because of that, but we are not asking for any money in our fiscal note.

CHAIR ROKEBERG announced that HB 463 would be held over.

ADJOURNMENT

Number 2100

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:30 p.m.

From: Lance Roberts [mailto:roberts.lance@gmail.com]
Sent: Wednesday, March 26, 2014 5:27 AM
Subject: HB315 Jury Rights

To the House Judiciary:

I'd like to weigh in with my support of the Jury Rights bill you will be hearing today. Jury Rights have been part of our country's legal system since the beginning; allowing the public to be the final arbiter of the law. They were used a lot to stop convictions of the Fugitive Slave Act, which would have otherwise penalized people for helping runaway slaves in pre-civil war times. This is a critical right that every citizen needs to be aware of and exercise when needed. While we already have this right, the court system is constantly abusing those who choose to exercise it, and attempts to force them to take an unconstitutional oath. Please move this bill forward and protect our legal rights.

Thanks,

Lance Roberts
Fairbanks, AK

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 piers 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 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 piers - not the government. If the jury then returned a guilty verdict, the defendant would have to confront the fact that his piers 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
1015 Meadow Rue
North Pole, 99705

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.

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April 10, 2014

Honorable Wes Keller, Chair
House Judiciary Committee
State Capitol, Room 120
Juneau, AK 99801

Re: HB 315 - Jury Nullification

Dear Chairman Keller:

On behalf of the 23 member programs and affiliates that provide direct, confidential services to victims of domestic violence and sexual assault in Alaska, we are writing to provide comments on HB 315 – Jury Nullification. We ask that these comments be made part of the bill file.

In Section 1, subsection (C) of this bill, under the language "notwithstanding any other law", a defendant would be allowed to introduce evidence or testimony to the jury to support their claim for nullification. This provision would eliminate critical safety and privacy issues for victims where a defendant would not be bound by existing statutes, court rules or rules of evidence, policy decisions and laws that this legislature has played a significant role in creating. This is a great concern for us.

In particular, under this provision, it would appear that a defendant could subpoena the testimony of a victim counselor, disregarding the statutory victim-counselor privilege that has existed in Alaska statute for almost a quarter of a century (1992). This would have a chilling effect, not only on victims seeking services which would no longer be confidential, but would directly impact the ability of our programs to receive critically needed federal funding because they would be in violation of the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA); both of which expressly prohibit disclosure of confidential information by funded programs. This bill, if passed, would place victim counsellors in the untenable position of either refusing to disclose the information (likely facing contempt charges) or being forced to comply with disclosing this information in violation of federal law and risk losing funding.

Second, without the ability to assure victims that they are receiving confidential services, victims will stop seeking shelter ultimately leading to more crime, greater injury and greater likelihood of lethality; negatively impacting public safety throughout the state. Just as we have started turning the tide on this epidemic, this bill, if passed, would turn us back decades.

Third, our programs work with both adult victims of sexual assault and child victims of sexual exploitation and sexual abuse. Under this provision, the rape shield statute would essentially be repealed, a statute so important that just last year this very legislature voted unanimously to expand it in SB 22, recognizing the need to protect victims from introduction of evidence that is both irrelevant and a violation of a victim's right to privacy. Finally, regarding children of sexual exploitation and child sexual abuse, this provision would negate the testimonial protections provided by the Legislature and in our experience will lead to a decrease in reporting these insidious crimes when children do not continue to the have the protections the legislature has provided.

This bill, if passed, would be not only be a frontal assault on victims' rights but in effect would eviscerate a victim's right to be treated with fairness, dignity and respect: principles so important to Alaskans that they enshrined them in our state's constitution.

I strongly urge you to not pass HB 315 out of committee.

Sincerely,

Peggy Brown, Executive Director

cc: Lisa A. Mariotti, Policy Director
House Judiciary Committee Members

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 piers 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 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 piers - not the government. If the jury then returned a guilty verdict, the defendant would have to confront the fact that his piers 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
1015 Meadow Rue
North Pole, 99705

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.

From: Lance Roberts [mailto:roberts.lance@gmail.com]
Sent: Wednesday, March 26, 2014 5:27 AM
Subject: HB315 Jury Rights

To the House Judiciary:

I'd like to weigh in with my support of the Jury Rights bill you will be hearing today. Jury Rights have been part of our country's legal system since the beginning; allowing the public to be the final arbiter of the law. They were used a lot to stop convictions of the Fugitive Slave Act, which would have otherwise penalized people for helping runaway slaves in pre-civil war times. This is a critical right that every citizen needs to be aware of and exercise when needed. While we already have this right, the court system is constantly abusing those who choose to exercise it, and attempts to force them to take an unconstitutional oath. Please move this bill forward and protect our legal rights.

Thanks,

Lance Roberts
Fairbanks, AK

ABC NEWS

Legal Minds Eye Quality Control for Convictions

Legal minds say it's time for justice quality control: Routine review of wrongful convictions

By JENNIFER PELTZ

The Associated Press

NEW YORK

Hospitals have staff conferences to examine why patients died. Airline pilots have a system for voluntarily submitting information on safety concerns. Yet the life-and-death world of criminal justice often operates without a similar mechanism for probing its most feared failures: wrongful convictions.

Some legal thinkers say it's time for a criminal-justice version of quality control: frank scrutiny of cases gone wrong to identify potential weaknesses in the justice system and keep errors from happening again.

"Every time you've got a mistake, you've got all those phases in the system that failed to pick it up," says John Hollway, the executive director of the University of Pennsylvania Law School's Quattrone Center for the Fair Administration of Justice.

District attorneys, defense lawyers, police officials and law professors traded thoughts there last week with some uncommon counterparts: doctors, a National Transportation Safety Board member, a NASA official and an expert on research-lab safety.

The gathering crystallized discussions that have percolated in recent years, as DNA has exonerated hundreds of people and raised broader concerns about false convictions — concerns echoed with this week's exoneration of a New York man imprisoned for nearly a quarter-century in a murder case. A few cities are testing out problem-solving reviews of cases gone wrong.

Backers of such reviews say they can only work if people feel free to speak up about mistakes with a goal of fixing problems, not assessing blame. But that may be difficult in the inherently adversarial realm of crime and punishment.

"There's a withholding of information and a defensiveness that prevents us from getting to root causes of problems," says Jeffrey Deskovic, a reform advocate who has felt the toll of those problems firsthand.

He spent 16 years in prison in a suburban New York high school classmate's 1989 death. He lost appeals but was exonerated in 2006, after DNA linked the slaying to another man who had been convicted of killing someone else in the meantime. Jurors had known that DNA evidence didn't point to Deskovic, but they were apparently convinced by a confession he said was coerced by 7 ½ hours of interrogation when he was 16 years old.

Prosecutors, lawmakers, judicial commissions and various other panels have sometimes analyzed the causes of wrongful convictions and other criminal justice problems. And the justice system has its own checks and balances, such as appeals courts, though their task is generally case-specific.

But in recent years, some prosecutors and public defenders including San Francisco's Jeff Adachi have taken a page from "The Checklist Manifesto," Dr. Atul Gawande's 2009 book arguing that humble lists prove to be powerful tools for combatting oversights in medicine, aviation and beyond. District attorneys' offices in New York City, Dallas and Santa Clara, Calif., among other places, have launched conviction-review units meant as non-antagonistic venues for raising innocence claims.

The units review cases defense lawyers present to them, reinvestigate new leads and sometimes agree to ask a judge to throw out convictions. In a recent example, Brooklyn District Attorney Kenneth Thompson agreed last week to exonerate Jonathan Fleming of a 1989 Brooklyn killing that, prosecutors now agree, happened while he was vacationing at Disney World. A key eyewitness had recanted, newly found witnesses implicated someone else and prosecutors' review of authorities' files turned up documents supporting Fleming's alibi. He had served 25 years in prison.

And the federal National Institute of Justice has cited medicine and aviation as inspirations for upcoming experiments with "all-stakeholder, non-blaming" reviews of criminal cases in Baltimore, Philadelphia and Milwaukee.

Milwaukee District Attorney John Chisholm is asking defense lawyers, judges, child welfare officials and others connected to a prominent local case — a killing committed by a teen on juvenile-court probation for an armed robbery — to help analyze what officialdom could have done differently.

As prosecutors, "we should be open to examining the system in a collaborative way," Chisholm says.

But collaborating is not always easy when information is scattered across a criminal justice system made up of 3,000 county court systems and 18,000 police forces.

"It's like trying to reduce the numbers of deaths in the hospital when you only hear about 1 in every 100 deaths that occur," says Samuel Gross, a professor at the University of Michigan Law School, who maintains a list of nearly 1,350 exonerations but believes there are countless more.

And some caution that a non-fault-finding approach can go only so far.

"Creating a culture of blame and a punitive culture is counterproductive when you're trying to figure out what went wrong and how to fix it," says defense lawyer Barry Scheck, a founder of the Innocence Project, which works to clear wrongly convicted people. "But you have to, clearly, do something about those who are deliberate rule-breakers."

———

Reach Jennifer Peltz on Twitter at http://twitter.com/jennpeltz

Dianne MacRae
260-2665
Kasilofhome21791.com

AN ACT relative to jury nullification.

SPONSORS:

COMMITTEE:

BILL NUMBER:

ANALYSIS
This bill requires the court to give an instruction to the jury regarding jury nullification and requires the court to declare a mistrial if the instruction is not given to the jury.

STATE OF ALASKA

DATE:

AN ACT relative to jury nullification.

I. The court shall give the following instruction to the jury in all proceedings: "The concept of jury nullification is well established in this country. 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."

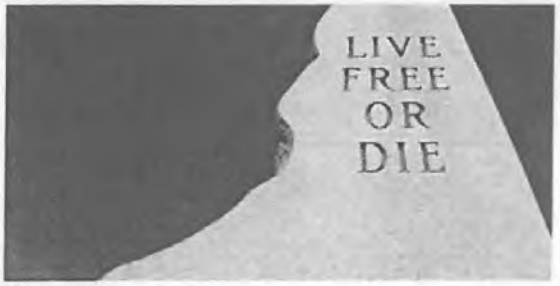
II. A mistrial shall be declared in any case in which the court fails to give the jury instruction provided in paragraph I.

Effective Date. This act shall take effect 60 days after its passage.

"Concordia res parvae crescunt" Small things grow great by concord.

TENTH Amendment CENTER

New Hampshire Bill Would Require Fully Informed .uries



introduced HB1452, to require juries to be fully informed of it's right to jury nullification.

The bill states, "The court shall give the following instruction to the jury in all criminal proceedings: 'The concept of jury nullification is well established in this country. 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.'"

Under the law, a mistrial would be declared if the jury was not informed.

Jury nullification is doctrine under which a jury is tasked to judge not only the accused and the facts of the case, but also the law itself. The principle gives the people the power and authority to directly challenge

and void unjust or unconstitutional laws, and protect their fellow citizens from unwarranted prosecution.

The Compromise of 1850 and How Abolitionists Used Nullification

In 1850, Congress compromised in order to hold the Union together against the divisive issue of slavery. Since the preservation of the Union (Northern control of the South's economy), rather than the abolition of slavery was foremost in the minds of influential Republican bankers, manufacturers and heads of corporations, this compromise made perfect sense.

Part of this compromise was the passage of more stringent fugitive slave legislation that compelled citizens of all states to assist federal marshals and their deputies with the apprehension of suspected runaway slaves. It also brought all trials involving alleged fugitive slaves under federal jurisdiction. Under the "law" northerners were subject to large fines for aiding a slave in their escape, even by simply giving them food or shelter. The act also suspended habeas corpus and the right to a trial by jury for suspected slaves, and made their testimony inadmissible in court. The written testimony of the alleged slave's master was given preferential treatment.

As would be expected, this new legislation outraged abolitionists. It also angered many everyday citizens who were previously more apathetic. In 1851, 26 people in Syracuse, New York, were arrested, charged and tried for freeing a runaway slave named William Henry (aka Jerry) who had been arrested under the Fugitive Slave Act. Among the 26 people tried was a U.S. Senator and the former Governor of New York! In an act of jury nullification, the trial resulted in only one conviction. "Jerry" was hidden in Syracuse for several days until he could safely escape into Canada.

Jury nullification has been long apart of common law stemming from the Magna Carta and brought to America during colonial times. Earlier in U.S. history, fully informed juries were common practice. However, in 1895 Supreme Court held that a trial judge has no responsibility to inform the jury of the right to nullify laws.

Despite the ruling, sate law can still require fully informed juries.

HB1452 was referred to the Judiciary Committee.

Action Items

From: herder winkelman [mailto:herderw@yahoo.com]
Sent: Monday, February 24, 2014 5:58 AM
To: Rep. Wes Keller
Cc: Rep. Tammie Wilson
Subject: Fw: HB 315

On Sunday, February 23, 2014 11:59 PM, herder winkelman <herderw@yahoo.com> wrote:
Sir: I have not read the contents of this Bill that should be before the committee, but I would urge all to consider the impetus of which I have some familiarity. It is, to be sure, a rather extraordinary or perhaps controversial issue. The consideration does have some precedence in history and has convincing argument pro and con. The final analysis, so far as I can determine, will rest ultimately in the hands of our legislature. We are living in times of difficult contrast and competing ideas for what we may construct as normative. I am compelled to the conviction that it may be in the balance better to assume the risk of arbitrary conclusion for the hope of perceiving obsolescence or constructions of law that I feel certain history will vindicate as "over-reaching" or otherwise in some manner capricious to the greater laud of a free society. I wish I could speak more to the specifics, but I would again urge serious contemplation and a willingness to consider that it may be a time for changing some perceptions we may have here-to-fore considered "settled".

Respectfully,

Herder Winkelman, Fox, AK

-----Original Message-----
From: Mike Coons [mailto:mcoons@mtaonline.net]
Sent: Monday, April 14, 2014 3:20 PM
To: Rep. Gabrielle LeDoux; Rep. Bob Lynn; Rep. Charisse Millett; Rep. Neal Foster; Rep. Lance Pruitt; Rep. Max Gruenberg; Rep. Wes Keller
Subject: HB 315

My name is Mike Coons from Palmer and speaking for myself.

I fully support HB 315!

I have been on jury duty twice and I am very aware that if you want to be on a jury not to bring up nullification. That is a sure way of the prosecution to disallow you. Defense loves it, but the courts like that dirty little secret to remain just that!

I would have no problem with jury nullification for I am sure there are many bad laws on the books. A specific one would be if a person was to carry a firearm concealed into a business that had the sign saying no concealed carry allowed. Since that business has no duty to protect anyone, it comes to the need of self protection over a business being afraid of the armed citizen. Although I do agree that being armed and having a beer in a bar is not a good idea and I agree with that law, as well as the other 3 locations we cannot carry, a business is denying our right just because they don't like the law. That is nullification in and of itself and has a direct impact on public safety, thus, I believe in the adage, "better to be tried by 12 than carried by 6". Thus if a defendant were to demand trial by jury, for a criminal trespass because he or she carried, so long as that defendant hadn't done something further outside of good law, I'd find not guilty based on nullification. Now of course, I'm sure if a good prosecutor happens to hear my testimony, now I'm never going to be on any jury!

I am sure that defense will push jury nullification for good reasons and/or any reason to get his/her client off the hook. That is up to us, the jury to see through wrong headed use of this. I am also sure that many politicians vs citizen legislator's, will not like this bill, because my understanding is that if a jury nullifies a law then that law is no longer valid or in jeopardy of being nullified from the Statutes. Since it is almost impossible to get the legislature to repeal bad law vs writing in new law (some as bad or worse than old law), this is a great method for We the People to get rid of bad law

Vote to pass out this bill and let liberty shine!

Mike Coons
745-6779

From: Maria Rensel [mailto:shapeitup2013@gmail.com]
Sent: Monday, April 14, 2014 1:59 PM
To: Rep. Wes Keller; Rep. Lance Pruitt; Rep. Tammie Wilson; Bob Bird; IM Jones; Dick; Rep. Gabrielle LeDoux; Frank Turney; Alyssa Williams; Mark Eck; Matt Buxton
Subject: HB 315 Amendments

Article 1 (c) Delete beginning phrase, "Notwithstanding any other laws," begin with "The court shall allow the defendant to present to the jury for it's consideration..." (continue through the end of subsection as written).

Add in Article 1 (g) The right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Section (g) stands on Article VI, second paragraph: "This Constitution, and the Laws of the United States which shall be made in Pursance thereof...and the Judges in every State shall be bound thereby..."

Maria Rensel
constitutionparty.com
The State Wide Teleconference
First Saturday Coffee Clatch

907-455-7008
907-590-4164
Find Us on **Facebook**

Ernest Prax

From: Rep. Wes Keller
Sent: Tuesday, April 15, 2014 2:18 PM
To: Ernest Prax
Subject: FW: HB 315

FYI*j

From: Alyssa Anne Therese Williams [mailto:alyssa_anne_williams@hotmail.com]
Sent: Tuesday, April 15, 2014 1:42 PM
To: Rep. Wes Keller; Rep. Lance Pruitt; Rep. Neal Foster; Rep. Bob Lynn; Rep. Charisse Millett; Rep. Gabrielle LeDoux; Rep. Max Gruenberg
Cc: Love Muffin; Maria Rensel
Subject: HB 315

ALASKA HB 315- Jury Rights and Jury Nullification

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

As FIJA states:
"The primary function of the independent juror is not, as many think, to dispense punishment to fellow citizens, accused of breaking various laws, but rather to protect fellow citizens from tyrannical abuses of power by government."

It is the responsibility of the government to protect our life, liberty, and property.

It is the responsibility of the juror to determine whether or not the law is justly applied and whether or not the defendant is guilty of the crime.

Currently in Alaska, if you are called to jury duty, you are expected to forget or forfeit this responsibility. You are thrown out for knowing that you are responsible for judging not only the facts but the LAW.

This is not right. The judges and the prosecutors are there to protect life, liberty, and property. They should not be allowed to sway convictions for their own benefit. They should not be allowed to take the juror's right away, they should be judged. Constitutionality should be applied in the courts, not tyranny. The defendant has the right to a fully informed jury. They should not be stuck with a jury of "useful idiots" and set up as they are now. The Department of Law claims that a fully informed jury will ignore evidence and rules; that is FALSE. The jury will determine whether or not the defendant is guilty of the crime and whether or not the law is just! A jury of fully informed individuals can make a far better judgment than a power hungry egotistical prosecutor or judge!
It should be no surprise to you as our legislature that there are laws that are unjust or too vague! The jury is the check of the judge! Why should one man, the "judge," have the right to determine the fate of a man? Before there was any government, communities formed juries of random citizens and used them to determine if the defendant was guilty and the system was far less corrupt than it is today!
We the people, reserve our right to judge not only the facts but the law as well.
WE THE PEOPLE, want this bill to be pushed through to law with the added amendments.
I ask that you, **representatives of the people**, protect our rights and push this bill through. **We** voted you in to represent **us**, please do so.
Listen to your constituents.