

# Jury Nullification

OK! You have been summoned for jury duty ("petty jury") for a trial in federal court. Here are a few things you need to know:

1. Art. III, Sec. 2, cl. 1, U.S. Constitution, shows that the federal courts are granted permission to hear several categories of cases. You may be called to be a juror in either a "criminal" case or a "civil" case.

a) A criminal case would most likely involve an alleged violation of the U.S. (i.e., federal) criminal code.

b) A civil case would most likely involve a case between citizens residing in different States over some non-criminal issue as breach of contract, negligence, etc.

2. The issue of jury nullification arises in criminal cases where Defendant is charged with an unjust, unfair, or unconstitutional federal law. (E.g., the "crime" of failing to buy health insurance.). Here is the Issue: Even if the Prosecutor proves beyond a reasonable doubt that Defendant failed to buy health insurance, do you, as a Juror, have the Right - or the Duty - to refuse to convict?

a) The Prosecutor & the Judge insist that you do NOT have that Right! In fact, the Judge is most likely to instruct you that if you find - as a matter of FACT - that Defendant failed to buy health insurance, then you MUST find him guilty.

b) Defense counsel desperately wants to tell you that the Judge is lying to you, and wants to tell you about your Right - really, your "Duty" - of Jury Nullification. BUT JUDGES DO NOT ALLOW US TO SO INFORM YOU! They will jail us for contempt before we can tell you.

3. So I will show you here that Jurors have the Right of Nullification in criminal cases in federal courts. Art. III, Sec. 2, last clause, U.S. Constitution, says:

"The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury..."

Now note the entry for "Jury" in Webster's 1828 Dictionary:

"...Petty juries, consisting usually of twelve men, attend courts to try matters of fact in civil causes, and to

**decide both the law and the fact in criminal prosecutions...**" [emphasis added]

So! When Our Constitution was ratified, our Framers understood that Jurors had the Right to decide the law in criminal trials! This means that the Jurors have the Right to judge the "law". And if you find the law unfair, unreasonable, unconstitutional, unfairly applied, that Defendant has been unfairly singled out , or whatever; then you have the right - the Duty, really - (in a criminal case) to find the Defendant NOT GUILTY.

Alexander Hamilton, a lawyer, was well aware of the problem of unjust criminal statutes. He says in Federalist No. 83 (12th para):

"... arbitrary methods of **prosecuting pretended offenses**, and arbitrary punishments upon arbitrary convictions, have ever appeared to me to be the great engines of judicial despotism; and these have all relation to criminal proceedings..." [emphasis added]

4. Note well: The Judge will probably require you to take an Oath that you will follow the Law as s/he explains it to you and that if you find that Defendant violated the Statute, then you **MUST** find him guilty.

If you say anything about "judging the law" or "is the Statute under which Defendant is charged constitutional", then the Prosecutor will kick you off the Jury. However, and this is important: Both counsel have the right to ask you questions during "voir dire" to determine whether you will be a good Juror for their side. **You are under Oath to tell the Truth when you are being so questioned. So, if the prosecutor asks you about "Jury Nullification", do you know about it, do you agree with it, YOU MUST TELL THE TRUTH! You don't want to be tried for perjury.**

But you have the right to assume that the Judge is fair & impartial and will obey the Constitution (since s/he took an Oath to do so - Art. VI, clauses 2 & 3). So, when you take the Juror's Oath, you have the right to assume that the Judge will obey the Constitution.

But once you are seated, and find out what Defendant is charged with, and hear the evidence, and then go into the Jury Room to deliberate; then you must do as your conscience dictates.

5. Here is a very good short article written by a law professor at Regent Law School in Virginia Beach, Virginia: "Jurors' Handbook A Citizens Guide to Jury Duty":

[http://www.fija.org/docs/JG\\_Jurors\\_Handbook.pdf](http://www.fija.org/docs/JG_Jurors_Handbook.pdf)

There is much on that web site. I had concerns about some of the stuff, and I didn't have time to read everything on the site since I want to get this to Bruce ASAP. But what the law professor says in the linked paper is Right On! PH