

No Standing News

Since we have no standing, we stand with those left standing.

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THE RUCKUS IN OUR COURTROOM

The Bailiff Speaks? A few weeks ago Robert Nash was called for jury duty with about 200 other Phelps County citizens. On the way in, he and other potential jurors were handed some papers by a man outside the courthouse. Many people took the papers and went on into the courtroom to wait for the jury selection process to begin. Carol Gaddy, Circuit Clerk and Recorder, started the routine briefing. When Carol finished, a sheriff's deputy serving as bailiff began to "instruct" these unsuspecting people to pay no attention to the handouts or the people who were handing them out. His tone and manner clearly gave the impression that there was something bad or dangerous about both. Many jurors dropped their handouts on the floor as if they had been caught with pornographic material.

And the Judge's Two Cents... Then, Circuit Judge Douglas Long made his entrance. His job at that point was simply to instruct them on the procedure of jury selection, caution them about a few rules and let them know how many ways you can't get out of jury duty. Much to Nash's surprise, Judge Long also had something to say about the materials they had been handed. His remarks weren't as blunt as the deputy's, but it was clear that he didn't approve of what was in the handouts, didn't want anyone on the jury "contaminated" by them and didn't want anyone thinking it was connected to the court. At this point, a few people who hadn't already been intimidated by the deputy dropped their handouts or got them out of sight. Nash kept his. He

figured anything that gets people that wound up was worth reading.

The Dangerous Idea. Upon examination it seems the ruckus in our little country courtroom was caused by three publications. The first was a copy of a proclamation by our own Governor, Mel Carnahan, proclaiming September 5, 1995, as "Jury Rights Day." The official State Proclamation says:

"Whereas, September 5, 1995, will mark the 325th anniversary of the day when the jury, in the trial of William Penn, refused to convict him of violating England's Conventicle Acts, despite clear evidence that he had acted illegally by preaching a Quaker sermon to his congregation, gathered on a London street after being locked out of their meeting house; and

"Whereas, the Penn jury, by refusing to apply what they determined was an unjust law, not only served justice in the case before it, but provided a basis for the United States Constitution's First Amendment rights of freedom of speech, religion, and peaceable assembly; and

"Whereas, September 5, 1995, also commemorates the day when four of Penn's jurors began nine week(s) of incarceration for finding him not guilty, after which with release and exoneration established forever as English and American legal doctrine that it is the right and responsibility of the trial jury to decide both on matters of law and fact in the case before it; and

"Whereas, Article 3, Section 2 of our Constitution and the Sixth and Seventh Amendments in the Bill of Rights all preserve the right of 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; and

"Whereas, the State of Missouri recognizes these rights as true and unalienable:

"NOW, THEREFORE, I, MEL CARNAHAN, GOVERNOR OF THE STATE OF MISSOURI, do hereby proclaim Tuesday, September 5, 1995, as **JURY RIGHTS DAY** in Missouri.

An interesting part of our judicial history; an event worthy of the honor the Governor gave it. The second item was a small booklet of about fourteen pages with information about the trial process and what it means to be on a jury. It explains some terminology used by lawyers and judges and explains how jurors should conduct themselves both in the courtroom and during jury deliberations. This booklet, published by the Missouri Bar Association, is used in many courts in the state and it is sometimes used in classrooms. Why would Judge Long disclaim information from the Missouri Bar Association?

The third handout started with, **"Congratulations! You have been summoned here for possible selection as a trial juror! Excited? Yes or no, here are three great reasons why you should be."** It lists questions and answers similar to those covered in the Bar pamphlet. Some of the questions were, **"Must I show up for jury duty?" "If I disagree with the law, must I use it anyway?" "If all the jurors but me agree, should I give in?" "Am I able to ask questions as a trial juror?"** All are questions that jurors may wonder about but seldom get to ask. Again, neither the questions nor the answers are unusual or

objectionable. The only thing we could find to make the bailiff and Judge Long so uptight is the caricature and the question on the back. On the back a cartoon shows a judge holding a jury in chains (if that upset him we suggest he's taking himself much too seriously). The question below is: **“DO JUDGES COMMIT FELONIES? Are judges guilty of jury tampering...when they instruct jurors to ignore their own sense of right and wrong in order to enforce the law as given by the judge? ...when they attempt to identify and then excuse from jury duty anyone who knows that juries can refuse to use bad laws? ...when they issue ‘jury instructions’ or make jurors take ‘oaths’ calculated to guide them to a guilty verdict?”**

Well, do they? It's not a new debate. It's one that's been argued by judges, trial lawyers and prosecutors for over 300 years. It's not even radical; it's just a 300 year-old legal hot button called “jury nullification”. Every time a media-spotlighted trial jury (O.J. Simpson's was one) returns an unexpected verdict, (or one that prosecutors don't like) lawyers and judges line up on talk shows to argue about whether the jury should have the right to do what they did. But the Constitution gives them that right and the lawyers and judges can only grumble and whine about it. Jury nullification is discussed in all law schools. Enter the words in your search engine and you'll see about 2000 places to read up on the subject. One is an interesting transcript from a Tom Koppel “Nightline” program, another is the Fully Informed Jury Association (FIJA), the organization that produced the third pamphlet. The pamphlet does nothing more than raise some interesting questions about an old and unresolved issue and it suggests you learn “more about the power of the jury to vote according to conscience, and thus stop the enforcement of a bad law.” Even the Bar pamphlet says, “You should never vote against your own conscience.” Nothing to cause hysteria there either; aren't we all opposed to bad laws? Sure

we are, we just don't agree on which ones are the bad ones.

We are still wondering - why were the Bailiff and Judge Long so upset about this material? Why did they find it necessary to pointedly repudiate it? Why mention it at all? No one had to take it or read it. But if they did, there is nothing bad or illegal about the information in any of the three handouts. Were they upset because jurors might learn about jury nullification and be less likely to be confined to choices formatted for them by lawyers and judges? Do they feel that people (other than themselves) have so little intellect that they can't be trusted to use good judgment? If they don't want jurors reading this information just before they come into the courtroom, when is it all right for them to see it? Would it be OK if they had read it two hours before entering the building, or at breakfast, or last week? Or would they just prefer that jurors not know about jury nullification at all? How far are they prepared to go to make sure jurors minds are properly sanitized? How uninformed do you have to be to qualify as an acceptable juror in Phelps County? Is it the message they don't approve of - or the messenger? Would their attitude about the material be so hostile if the Daughters of the American Revolution handed out the Governors Proclamation? Judge Wiggins had a confrontation about these handouts a couple of years ago and lost - he was reminded of the First Amendment the hard way. They do have the right to hand out information (i.e. express their opinions) on public property. Judge Wiggins, Judge Long and the bailiff seem to have the same problem with the First Amendment as Mayor Morgan - it depends on who wants to use it. This anti-free speech disease is becoming an epidemic.

The sheriff's deputy who serves as bailiff in OUR court should read the bailiff's job description and confine himself to providing security and giving directions to the restrooms. A bailiff has no business telling people who are about to serve on a jury what they can read, and

his personal opinions of people or groups are not appropriate while he is on duty. The circuit judges are running a very lax court when they permit, or encourage, county employees to shoot their mouths off and impose their opinions on jurors in a setting designed to intimidate. Judge Long, who hopes to be reelected this fall, is opening Pandora's box by appearing to tell jurors, from the authority of the bench, what they can read or think outside the specific parameters of the case at hand. Once he starts down that road where will he stop? Does he approve of the content of your local newspaper, your magazines, TV shows, classes you took in school? You could have been infected with this dangerous legal concept from any of those sources. If the Governor, the Missouri Bar Association and the Fully Informed Jury Association can talk about it openly - why can't people in Phelps County? It is foolish for Long to make an issue of it. If word gets out that Judge Long and the bailiff think that this material, or prior knowledge of jury nullification, disqualifies a person from serving on a jury in Phelps County - people will be lining up to get copies.

The Old Power Disease. Judges like to think they are kings of OUR courtrooms. Lawyers hope they can influence juries to render decisions in their favor because it enhances their business reputations. Both fear juries because they can't predict or control them. That's why our judicial system operates like a thieves bazaar - plea bargains, last minute deals, mediation, negotiation - anything to avoid jury trials. The unpredictability factor with the jury system is an unwelcome reminder that judges and lawyers don't really control everything and they just don't like that. Jurors do have power. That's the dangerous idea that has caused such a flap in the Phelps County Courthouse. It's about who has the power - it's about who controls the system.

Oliver Gets the Last Word. One of the handouts has a quote from Oliver Wendell Holmes - one of our most

revered U.S. Supreme Court Justices. In a 1920 decision he said, "...the jury has the power to bring in a verdict in the teeth of both law and facts." In the face of such judicial authority, who are Doug Long and a sheriff's deputy to say otherwise? It sounds like they're the ones who need to do some reading. We recommend they start with Mel's proclamation and then try the First Amendment.

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