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September 29, 2006

Circuit Court of the State of Oregon
Lake County
Twenty-Sixth Judicial district
513 Center Street, Lakeview, Oregon 97630

To whom it may concern,

When I attended Jury Orientation on Tuesday, September 19, 2006 at 3:00 PM, both Judge Simpson and Dan Schulze of the court offered to answer questions if we had any concerning jury duty. While attending this orientation we found a "Handbook for Jurors" placed on our chairs. In reading it over after we watched the video I came across a section of this Handbook entitled, What does the judge do? It read as follows:

"The trial judge presides over the trial and decides what laws apply. The judge then instructs the jury as the correct law in each case. Although some people may claim that a jury can "nullify" the law, this view is legally incorrect and severely prejudices the administration of justice. Jurors who disregard the trial judge's instructions have violated their oath."

Since this Handbook was written by "lawyers and judges of the Oregon Bar" and it was provided at jury orientation it should be given some credence. Yet, it seems to contradict what I have learned from a long study of American history. I recall the second President of the United States, John Adams, once said:

"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 directions of the court."

I will admit that he said this in 1771 but even Chief Justice John Jay stated in 1794 in *Georgia v. Brailsford*, in reference to the power of the jury to decide fact and law that, "you have a right to take it upon yourselves to judge of both, and to determine the law as well as the fact in controversy."

John Adams and chief Justice Jay are not just "some people" but were the founders of the Government of the United States. Even Oregon's Constitution states that "...In all criminal cases whatever, the jury shall have the right to determine the law, and the facts..." The Oregon constitution is not alone in this recognition of juries right and duty. Many other states include the same precepts.

It is the duty of the judge to give direction concerning the law, but it is the jury that has the power of determination in spite of the judge according to these men and others like Alexander Hamilton. In 1804 Hamilton said:

"Jurors should acquit, even against the judge's instruction...if exercising their judgment with discretion and honesty they have a clear conviction that the charge of the court is wrong."

Chief Justice Stone, Justices Gray, Justice Holmes all believed in and praised the right and even duty of jury nullification. Even as recent as 1969 the 4th Circuit Court of Appeals, in the US v Moylan case stated:

“If the jury feels the law is unjust, we recognize the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by a judge, and contrary to the evidence.”

Yet, the Oregon bar is telling us “this view is legally incorrect” and “jurors who disregard the trial judge's instructions have violated their oath.” Violation of an oath is a serious offense with legal, ethical and moral consequences. It seems to be a moral or ethical betrayal to waive a right or abandon a duty so hard won and secured by the blood and sacrifice of so many by taking an oath.

These contradictions can produce several possible conclusions. Either these lawyers and judges of the Oregon Bar are incorrect or there is something different about these modern juries or courts compared to those spoken of by Adams, Jay, Hamilton, Holmes and others. Is it the nature of the oath or the nature of the court or a combination of both? Can this contradiction be explained any other way?

I humbly request an answer and clarification from the court or its clerk on this paramount and fundamental question concerning jury duty.

Gregory Williams

CC: Lane Simpson