*(**Editor's note**: "Fully Informed Juries: A New Hope for Freedom," Don Doig's commentary on jury nullification, can be found here .)*

Like most people, Mike Angelos was surprised to learn about the power of juries to disregard the law. "The courts are really stacked against people," he said.

And he's trying to change that.

For more than a year, Angelos (a retired electrical engineer) and three other people have been handing out information regarding jury rights, including the power to return a verdict of "not guilty" if jurors believe that the law itself is unjust -- regardless of the facts of the case. This is commonly called "jury nullification" of laws, and the effort to spread the word about that power is known as the "fully informed jury" movement.

"The message we try to get to people is that it's the jury's right and duty to judge the law -- laws are arbitrary, bad, and misapplied -- as well as the facts of the case," Angelos said. "This was a new concept to me."

The Drug Policy Alliance offers several historical examples of jury nullification at DrugPolicy.org/law/marijuana/jurynull
: "In the mid 1800s, juries in Northern states practiced nullification in prosecutions brought against individuals accused of harboring slaves in violation of the Fugitive Slave Act. Later, during prohibition in the 1930s, many juries acquitted individuals accused of violating alcohol-control laws. In the high-profile case of Dr. Jack Kevorkian, the jury acquitted Dr. Kevorkian despite the uncontroverted evidence that Kevorkian had violated Michigan law by helping the deceased commit suicide.

"But jury nullification has its dangers as well. For example, in the 1950s and 1960s, some all-white southern juries refused to convict white supremacists for killing black individuals or civil-rights workers despite evidence of the defendants' guilt."

The Fully Informed Jury Association Web site says that its purpose is to "educate Americans regarding their full powers as jurors, including their ability to rely on personal conscience, to judge the merit of the law and its application, and to nullify bad law, when necessary for justice, by finding for the defendant."

That education is what Angelos is trying to accomplish by handing out literature. He and others most often distribute information at the Scott County courthouse, and have on occasion given out pamphlets at the Rock Island County courthouse and the federal courthouse in Davenport. (PDF versions of the literature can be downloaded here and here .)

"It is an uphill battle, but you only need one informed juror on a jury to nullify," Angelos said. "That one person on the jury is enough to not convict. The goal is for that informed juror to inform the rest of the people on the jury." True nullification requires a unanimous not-guilty verdict; otherwise, the defendant may be retried.

The ultimate aim of jury nullification, Angelos said, is not anarchy but sending a message to legislators that citizens find their laws unjust. "This is one way to put bad government in its box," he said. "If that jury keeps nullifying bad laws, then the community would hopefully wake up ... and repeal that law."

Nobody disputes the power of juries to nullify the law in individual cases. As retired Washington state Supreme Court Justice William Goodloe wrote in his article "Jury Nullification: Empowering the Jury as the Fourth Branch of Government"
: "Jury nullification remains the law of the land in every American jurisdiction. The ruling of Chief Justice Vaughan in
Bushell's Case
that the jury cannot be punished for its verdict stands today in every jurisdiction, state and federal. This, coupled with the rule that verdicts of acquittal are final, is the substance of the power of jury nullification. Unless either or both of these two pillars of freedom are eroded away, the power of jury nullification is and will always be the law of the land. If the original intent of the Founders is our guide to the Constitution, then there is no doubt that jury nullification is a Constitutional right of both the defendant and of the jurors themselves, an unalienable part of

the jurors' identity as sovereign citizens with the power to judge laws. ...

"In addition, the state Constitutions of Maryland (Article 23), Indiana (Article I, Section 19), Oregon (Article I, Section 16), and Georgia (Article I, Section I, Paragraph XI) expressly guarantee the right of the jury to judge the law in criminal cases."

But outside of those states, juries don't hear from a judge or defense attorneys that they're entitled to judge the law. This has its roots in the 1895 U.S. Supreme Court decision in *Sparf and Hansen V. United States*. The ruling, written by Justice John M. Harlan, said: "Public and private safety alike would be in peril, if the principle be established that juries in criminal cases may, of right, disregard the law as expounded to them by the court and become a law unto themselves." (See sidebar for the basic arguments against jury nullification.)

"Juries clearly have the power to nullify," wrote Douglas O. Linder -- a University of Missouri-Kansas City professor of law -- in a 2001 article . "Whether they also have the right to nullify is another question."

Linder outlined efforts to discourage juries returning verdicts independent of the law: "Courts recently have been reluctant to encourage jury nullification, and in fact have taken several steps to prevent it. In most jurisdictions, judges instruct jurors that it is their duty to apply the law as it is given to them, whether they agree with the law or not. Only in a handful of states are jurors told that they have the power to judge both the facts and the law of the case. Most judges also will prohibit attorneys from using their closing arguments to directly appeal to jurors to nullify the law."

Nearly all states have pattern jury instructions. Iowa's, for example, reads: "You must determine whether the defendant is guilty or not guilty from the evidence and the law in these instructions." Illinois' reads: "You are to apply the law to the facts and in this way decide the case." These, of course, indicate that juries have no role in evaluating the law itself.

Furthermore, Linder wrote: "Recently, several courts have indicated that judges also have the right, when it is brought to their attention by other jurors, to remove (prior to a verdict, of course)

from juries any juror who makes clear his or her intention to vote to nullify the law."

The United States Second Circuit Court of Appeals in 1997 affirmed that right in its decision in *U.S. V. Thomas*
: "The power of juries to 'nullify' or exercise a power of lenity is just that -- a power; it is by no means a right or something that a judge should encourage or permit if it is within his authority to prevent. ... Courts have consistently recognized that jurors have no right to nullify. ... A presiding judge possesses both the responsibility and the authority to dismiss a juror whose refusal or unwillingness to follow the applicable law becomes known to the judge during the course of trial."

That, of course, makes jury nullification even more difficult. A juror who argues in favor of nullification during deliberations risks getting kicked off the jury. And while a juror who supports nullification but remains silent about it can still vote against conviction -- perhaps resulting in a hung jury -- that's different from genuine nullification.

Sidebar: Arguments Against Jury Nullification

While some people view anti-nullification efforts in pure power terms -- that the jury should be subservient to the judge -- there are arguments against nullification. The American Judicature Society summarized three:

1) "Law should be made by elected legislators, not by jurors chosen randomly from the population."

2) "Jury nullification would be inconsistent with the law's aspiration that similar cases should be treated similarly because nullification would have unpredictable results in similar cases based on the preferences of different juries regarding the desirability of the same law."

3) "The system has worked well for over a century without jury nullification."

The full American Judicature Society discussion can be found through RCReader.com/y/ajs .

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