

# HOW FIJA SAVED MY LIFE

BY D. PAUL SANFORD

The Fully Informed Jury Act saved my life and I'm happy to be a free man today to tell this story. I am both the founder of Tree Free EcoPaper, the oldest hemp business in the USA today, and one of the activists who formulated a proposal to regulate cannabis, the Oregon Cannabis Tax Act of 1997 that is being advanced via the initiative process in Oregon by our PAC, Pay for Schools by Regulating Cannabis. I was acquitted of growing marijuana in federal court in a trial in December 1993. If I had not been acquitted I would be in a federal prison until the year 2003. FIJA activists and marijuana anti-prohibition activists, of whom I count myself one, played a crucial role in what I consider to be an event that quite literally saved my life. Being a captive for a decade, a victim of the War on Drugs, is not my idea of living. My children and family agree. For those who ask how FIJA has ever helped anyone, I proudly raise my voice.

I must add that I have spent six months in prison for what many consider the most political marijuana arrest in U.S. history. In July of 1986 I was arrested for growing 13 cannabis plants in my basement in Portland. This was used by the federal government in their campaign to defeat an initiative that we, the Oregon Marijuana Initiative (OMI), placed on the Oregon ballot for a vote in November 1986 which would have allowed adults to possess and grow their own marijuana. The police decided to take my OMI tee-shirts, hats and newsletters and line them up for display at a news conference they held in downtown Portland before they even transported me to jail. There were no packaged drugs or money, what you see in most drug bust news conferences; instead they put my political material on display and used this, in what was carried by all the media in the state as the lead story that day, as a way to discredit the OMI's ballot measure. Unfortunately, this had a chilling effect on activists in our campaign and was used by our opposition in their campaign against us. We lost that election 10 years ago with 26% of the state voting for our proposal. George Bush, Vice President at the time, toured the state for two weeks building opposition to OMI. Nancy Reagan spent three days. Oregon's U.S. Attorney said publicly that Ed Meese had directed the Justice Department to actively oppose OMI. Though this violates the Hatch Act that prohibits non-elected public officials from using public funds and office in political campaigns, Meese ruled that OMI was not a political issue but a law enforcement issue. U.S. Attorneys from Alaska, Idaho, Washington and California campaigned against us. Even the USDA campaigned against the 1986 OMI initiative. This story deserves much more detail, but not here and now.

Fortunately in Oregon a convicted felon can still vote and even hold public office, unlike in many places, and so I remain very much a political activist. I look forward to the day, and I am obviously fighting for this right, when I can grow my own ganja again, legally, without fear of arrest, when my children don't have to think their father is breaking the law by simply growing a plant. I look forward to buying cannabis at a store and knowing that the money I use isn't going to support the black market and all that this entails. I will also mention that the first time I was arrested was for blocking a train carrying hydrogen bomb warheads to Trident submarines on March 22, 1983. But back to FIJA.

In 1992 government agents kicked in my door again and they took my wife and seven month old baby boy hostage at gun point. I was accused of growing marijuana by the federal government in another person's house. I had worked at a horticulture / metal halide shop in Portland, Hydro-Tech, from 1987 to 1988. Hydro-Tech's shops in Portland and Seattle were targeted in the federal 'Operation Green Merchant' sting and they were raided with about 90 others across the country in 1989. Hydro-Tech's owner was not initially charged with marijuana offenses but several of his employees were. A few employees were charged in federal court, one to a six-year prison term. Eventually, with the plea bargain of another employee, they built a case against Hydro-Tech's owner but the charges were primarily for violations committed prior to the 1988 institution of new mandatory minimum sentences. Then, in this 1992 raid, he and I were accused of growing 110 cannabis plants in another person's home in Portland.

After the arrest, in April 1992, I was released without charges. I didn't know until May of 1993, when I answered my door and several U.S. Marshals hauled me away, that I was indicted by a federal grand jury for cultivation of marijuana. In the course of my defense my attorney, Paul Patterson, who now works for the National Association of Criminal Defense Lawyers (NACDL) in Washington, D.C., discovered documents that Hydro-Tech's owner's attorney had filed outlining how Hydro-Tech's Seattle store was operated by the Drug Enforcement Administration as a sting, arresting among others the drummer of Pearl Jam and the owner of Seattle night club RK\*NDY. Hydro-Tech's owner was using his grow store as a tool to save his hide from a new charge that could carry a sentence of life in prison without the possibility of parole. As soon as my attorney (who I will praise until the day I die) gave me court documents and affidavit from the store owner detailing the DEA operation of Hydro-Tech, I faxed them to California NORML, *High Times* and a few other interested parties. California NORML and Washington NORML staged a protest in front of Hydro-Tech a few weeks later and the DEA sting was a big Seattle area media story. Needless to say this didn't win me any popularity with the DEA and U.S. Attorney's office. The prosecutor in my case on several occasions brought out the fact that my attorney was the only person ever to check that file of the federal records.

I was given a plea bargain offer of five years without the possibility of parole and I was told to accept it or I would get 10 years. I believe, as Gandhi said, that non-cooperation with tyranny is a duty. I pleaded not guilty.



The trial started on December 6, 1993, my daughter's first birthday. Outside of the police detectives, the only witness that the government produced was the man whose house had the herb growing in it. My attorney had discovered so much dirt on the store owner that the government didn't dare call him as a witness, though they had the person who lived at the grow operation point to him in court.

Outside the courthouse, FIJA activists were on the street by 7 a.m. handing out information to all who entered the federal courthouse's only public entrance. The prosecutor complained several times during the trial about the FIJA activists and he was quoted in a local paper when he told the lie that jury members were given leaflets in the bathroom. His motion that FIJA buttons not be allowed worn in court was granted. On the second day a local activist's banner was seized outside the courthouse. Members of the jury pool who had been rejected wished me luck during a lunchbreak. Several jurors got to see me eat and read to my children during these breaks. Prohibitionist warriors from Drug Watch International came to witness my impending incarceration. (DWI later issued a statement that my case proves you can break the law and get away with it.) The government took two days to present its case. We did not call any witnesses, though my attorney mounted effective cross-examinations. The man who had the plants in his house said that the only reason he was testifying was so he would not spend 10 years in federal prison. At one point the prosecutor (Assistant U.S. Attorney John Hobbe) brought out books from my home as exhibits when he questioned a narcotics detective. Among them was Grinspoon's *Marijuana Reconsidered*, Abel's *Marijuana: The First 12,000 Years* and a book from 1979, *Marijuana & Your Legal Rights*. My attorney (Paul Patterson) asked the detective to turn to a certain page in *Marijuana & Your Legal Rights* and read the chapter headline. The detective stammered for half a minute and never said a word. Finally my attorney announced that the chapter title was "Juries can decide not to convict defendants even if they are guilty" and he said that it detailed jury nullification (which is the "power of a jury to acquit and thus nullify or neutralize a bad, unjust, confusing or misapplied law.")

The jury was given the case to decide at the end of the second day. They were to decide if I was guilty of growing marijuana, guilty of the lesser charge of possession of marijuana or not guilty. As I had two cannabis buds in my shirt pocket when arrested my attorney argued that all they should find me guilty of

was the lesser charge of possession of marijuana. The jury sat until 8 that night, and were out the entire next day. They sent several messages to the judge, one asking that if they convicted me of possession would that mean all the cannabis the other fellow had growing in his house or just the buds in my pocket? The judge told them he couldn't answer that question, and repeatedly said he did not want to retry the case while the jury was out. My attorney said that if the jury was hung the prosecutor would fare better in any retrial now that he knew our defense strategy. On the third day, as the jury continued its deliberations, the judge offered to take the case from the jury and find me not guilty of growing the herb but guilty of possession. To avoid the incredible stress of a retrial and the possibility of whatever came of that, I took the judge's offer. The jury was relieved after two and a half days of deliberation. (They would not even convict me of possession though my own attorney had argued they should!)

A week later I was found not guilty of growing marijuana but guilty of the lesser charge of possession by the judge. In Oregon state court simple possession is an infraction which carries a penalty of a fine. In federal court, since I had a prior conviction, it is a felony with a mandatory 30 day sentence for possession. The judge sentenced me to 30 days in a halfway house and six months supervised release. That sure beats 10 years! I finished the supervised release in November 1994.

Today I am operating my nonwood paper business, Tree Free EcoPaper, working as a Chief Petitioner on an Oregon initiative petition campaign to tax and regulate marijuana sales through our state liquor stores in 1997 and helping my local FIJA coordinators, Bill Vossberg and Floyd Landrath. The presiding judge for Multnomah County has issued a jury instruction telling jurors to ignore FIJA leaflets, that they cannot judge the law and must abide by what the court says the law is even though the Oregon Constitution explicitly says that jurors *should* judge the law as well as the facts. Judging by the judge's reaction, we must be doing something right.

My heartfelt thanks, gratitude and encouragement to all FIJA activists.

Paul Stanford lives in Portland. He can be reached at Tree Free EcoPaper or at Pay for Schools by Regulating Cannabis (503) 299-0428.

## JURY POWER: THE FINAL VETO

Unjust laws exist. Today, more than at any time in our country's recent history, U.S. Citizens suffer under oppressive laws and abusive prosecutions. Jurors are tricked into convicting for what many believe are minor violations without knowing the insanely harsh sentences courts are required to give. As a result, we have the highest rate of imprisonment of any country on earth.

Civil asset forfeiture laws allow law enforcement to seize property for the personal benefit of agents and prosecutors. Both are corrupted, concentrate on collecting bounties and ignore true crime. Forfeiture is only used for crimes *against government*, not for crimes against people.

Government has perverted civil courts to unjustly punish innocent citizens by taking property while denying Constitutional rights guaranteed in criminal trials. Juries are asked to pretend money or property is "guilty" whether or not the owner ever committed a crime.

Trial by jury is trial by the people. When juries are not allowed to judge law it becomes trial by the government. In that case "government determines what are its own powers over the people, instead of the people's determining what are their own liberties against the government. In short, if the jury have no right to judge the justice of a law of the government, they plainly can do nothing to protect the people against the oppressions of government; for there are no oppressions which the government may not authorize by law." (Lysander Spooner, 1852).

Jury nullification is the power of the jury to acquit (a not guilty verdict) and thereby "nullify" or "neutralize" a bad, unjust, confusing or misapplied law. The jury may acquit even if it is obvious the defendant broke the law. This power has been recognized as an essential safeguard to our liberties by the founders of our country and by the highest federal courts in America. The founders were concerned that government might become too powerful, pass unjust laws and might bring arbitrary and oppressive prosecutions against citizens.

The jury may be considered as the fourth and supreme branch of government, without whose approval one of its own, one of "the people", may not be punished. Jury nullification is actually the fifth veto in our constitutional framework.

The House of Representatives can veto a bill passed by the Senate, which can veto a bill passed by the House. The President can veto a bill passed by both houses of Congress. The Judicial Branch can declare a law unconstitutional and

thereby veto the law. But these four vetoes leave the people with no control over government except for power to elect legislators and the President at two, four or six year intervals. The people would have no control over individual cases of injustice if the Constitution had not solved the problem by guaranteeing the right to trial by jury in criminal and civil cases. This was intended to be trial of the law itself with jury power to veto application to particular facts.

In practice, potential jurors are questioned and any who admit knowing the jury's lawful power or refuse to "follow the law" as instructed are disqualified, which reduces proceedings to trial by government. Jurors must be able to survive this "screening process" if they wish an opportunity to temper inflexible law with the community's common sense of justice and fairness. "The way a jury operates may be radically altered in the way it is told to operate. The jury knows well enough that its prerogative is not limited to the choices articulated in the formal instructions of the court." (District of Columbia Appellate Court in *United States v. Dougherty*, 1972) Chief Justice of the U.S. Supreme Court Oliver Wendell Holmes said, in *Horning v. District of Columbia* (1920), "The judge cannot direct a verdict...and the jury has the power to bring in the verdict in the teeth of both law and facts."

If the defendant is acquitted, the decision of the jury is final. Acquittal affects only the case at hand and does not set a precedent for subsequent cases. The court may not question the decision of the jury. The verdict of innocence cannot be overturned. Jurors cannot be punished for judging the law and its application according to their consciences.

It takes only one "not guilty" vote in federal court (three in Oregon courts except murder cases) to cause a mistrial or "hung jury". One federal juror voting on principle can stop enforcement of oppressive laws. Mistrials are better than wrongful acquittal of a guilty person or worse, a wrongful conviction, and force government to either retry or drop the case.

Jurors have a duty to judge the laws of the land before applying those laws to each other. If rights can be denied to one of us, none of us are safe from tyranny.

This has been excerpted from a leaflet written and circulated by the Portland Fully Informed Jury Association (FIJA), P.O. Box 219115, Portland, Oregon 97225.

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