



Episode 314: The Juror's Unknown Rights

Guest: James Babb

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James Babb is a libertarian activist in Philadelphia. Among his projects is WeWontFly.com, a campaign against the TSA.

WOODS: I want to talk about the juror education campaign that's taking place thanks to the donations of concerned citizens everywhere. First of all, tell me where this is happening before we get into the nuts and bolts of what you're telling people.

BABB: This is an education campaign to inform the general public about their rights if they are selected for jury duty, and this campaign is focused around the courthouse in southern Manhattan at 500 Pearl Street. It involved kiosk advertisements that surround the courthouse as well as a pamphlet and campaign to distribute leaflets on the sidewalks.

WOODS: All right, so it's not exactly a coincidence that you would concentrate your efforts in a place like that, and that's why, no doubt, I saw a headline—well, this was from late 2013 with a similar effort—saying that “Jury Nullification Campaign Sparks Free Speech Debate.” And Jim, I thought to myself” why doesn't it spark a *jury nullification debate*, of course, and naturally they don't want that. But why is this a free speech issue in particular?

BABB: Well, that's a good question. Because what we're talking about is extremely powerful information, and it's a threat to those that are trying to run the justice system to some kind of assembly line directly into jail. What we're doing is we're letting people know that if they're selected for jury duty, they have the power to judge the law itself, not just the facts of the case. So if a law is unjust, or if it's being misapplied, the juror can say, you know what? I think he did smoke a joint, but so what? I don't think that's a legitimate crime. There's no victim. So I'm going to say not guilty.

Now, if you're a prosecutor, this is the worst thing in the world. They control everything else. They lock down the entire procedure from beginning to end. But there's this one little part they can't control, and that's an informed juror with their conscience. So a lot of courtrooms have even forbidden discussion of jury nullification. If you mention that, you'll get a contempt of court despite the fact that it is a centuries-old tradition, completely legal. The Supreme Court's ruled on it. It's indisputably legal and appropriate for a juror to do this, but it sort of upsets their apple cart.

WOODS: You can trace it back through American history, through just the understanding of what a jury trial meant—the very definition of a jury trial and a jury involved the idea that you could indeed judge not just the facts of the case, but also the law. In the show notes for this episode—what number is this? This would be episode 314. So it would be TomWoods.com/314. I will link to a couple of episodes where I've talked about this subject, and people can get some of that background, but you're right: it's not like James Babb thought this up in the year 2014, 2015. This is part of what it means to be American.

Now, does this free speech aspect of the question have to do with the following: are they saying, it's one thing for Mr. Babb to have his thoughts about jury nullification and talk about it to his friends, but to be putting up signs that are right outside a courthouse—that's obviously meant to get jurors to act on his crazy ideas, and that's going too far. Is that what they are saying?

BABB: Well, some might make that argument. In fact, Professor Julian Heicklen was actually charged with jury tampering for passing out pamphlets at that very courthouse several years ago, and he was facing very serious charges. The statute basically says you can't give written communications with the intent of influencing a particular jury on a particular case. And it was ruled on by the courts, and they said, well, passing out pamphlets and reaching out to the general public is not trying to influence a particular case, and they graciously allowed us permission to pass out truthful information on a public sidewalk.

WOODS: But did you guys have any concern in light of what happened to him? Did you have any concern about the type of campaign you're engaged in that you might get into trouble? After all, when it comes to a billboard or something on the side of a bus thing, or whatever, the city had to approve that. So presumably, you had a little bit of a buffer.

BABB: I don't know. I don't think the city has any say in those ads. It's a private advertising company that owns those kiosks.

WOODS: Oh! I didn't know that. Okay.

BABB: Yeah. So, no, they did not. In fact, the approval process took place very quickly, to lead me to believe that there wasn't a bureaucracy in place. We've done these campaigns in other cities where they do have to be approved by a transit authority or something, and that takes a lot longer, and it could be a little more challenging, but they went up quickly.

What I'd really like is the prosecutor gets kind of grumpy about it, because when we did this campaign in D.C. last year surrounding the court house there, a prosecutor complained to a judge during, I think it was a murder trial or something, and the prosecutor said, judge, we need to exclude any jurors that saw those billboards out there, and so they are talking about it. Meanwhile, there's a *Washington Post* reporter observing the trial, and he's like, what? Billboards? What? So he goes out. The *Washington Post* runs a picture of the billboard on the front page.

WOODS: Yes, I saw that. I saw that. Well, tell us what's exactly on these billboards. Of course, on a billboard, you're not going to have a whole book on jury nullification. You just want to pique their interest. What are you saying on them?

BABB: Well, the main headline is jury duty—know your rights. And Google “jury nullification,” or good jurors nullify bad laws, and then there's more details that they stand there and read a few bullet points, but mainly I want them to do their own research, learn for themselves, find out about this centuries old tradition.

WOODS: You're right that I've also been reading this in articles on this general subject that inside the courtroom jurors have been asked, have you seen these billboards? Have you been influenced by these billboards? Now, I wonder if I am putting you on the spot by asking this, but suppose I'm a juror. I saw your billboard. I am influenced by it. I want to engage in jury nullification if the circumstances call for it, and I have just been asked have I seen the billboard. What should I say?

BABB: Well, I'm not going to tell somebody to lie, but if it suits your conscience, I think it's perfectly fine to just shut up. They are going to ask you a lot of questions when you go up for potential jury duty. Are you going to believe whatever the police say? Will you obey the judge no matter what? Questions like that. I'd personally plug those in the same category of: do you have any jewelry hidden in the house that we might want to steal? Or are you hiding Jews in the attic? These questions that you can answer any way you want without any kind of feeling like you're dishonest if your intent is to prevent an immoral kidnapping, then let your own conscience be your guide. But I think under most circumstances, just don't volunteer a lot of information during that process. Just sort of nod through the questions as best you can, and just try to blend in. At least that's what I would do.

WOODS: Let's get back to this jury tampering issue. You could be accused of jury tampering with regard to spreading information about jury nullification if you can plausibly be accused of trying to influence a particular jury. This is a fuzzy distinction here, because if you're trying to influence jurors in general, that seems to be okay, but you can't influence this juror right here.

BABB: That's basically it, and I sort of understand where they are coming from to have these types of laws in place. They want the entire process to go on inside the courtroom. And if we had a fair justice system, that would be perfectly reasonable. So when I do these campaigns, I am not trying to influence anyone in particular. A courthouse like 500 Pearl Street in Manhattan has got thousands and thousands of victims being processed through there. So there are so many cases this could affect. Victimless crimes are completely out of control in the system. The federal prisons are just stuffed with people for drug laws or possessing maybe a firearm in the wrong location. You could be arrested for almost anything these days. So there's really no need to worry about a particular case because in that environment, there are so many cases where we can have a potential to have an influence.

WOODS: Who exactly is behind this campaign? I know you raised some money privately, and there's been a lot of Bitcoin that's been donated. But is there an umbrella organization that's organizing it?

BABB: Well, it's really a grassroots effort. With the help of George Donnelly, we're building a platform called the Jury Rights Project. People can get information about this project. It's JuryRightsProject.com/NYC. It will take you right to this project. The idea is to attempt to build more communities and get people spreading these types of campaigns in their own towns amongst their own groups within their own community organizations because that's really the only way we can get this information into the hands of everybody. So the Jury Rights Project is a great source there. I have done a lot of work with the Fully Informed Jury Association. I also refer people there for more information—FIJA.org. They have got great materials—flyers that we can download, pass out, things like that—excellent resources. But the funding has really been all grassroots. We used Indiegogo for this one and Bitcoin, and most of the money—over half the money has come in from Bitcoin. I think we're well over 60 contributors now that have made this happen. So it's a bottom-up campaign, and I think people are going to get their money's worth on this because it's really starting to take off in the media, and if we can get a similar result that we had in D.C., people are going to be reading about this all over the country.

WOODS: And that's what's great about it. First of all, I'm going to link to everything you just said at TomWoods.com/314. It's a great idea because it does two things. First, it absolutely does educate people on this subject because there will be people who never even heard of this idea. It's like Google Ron Paul. Once you do it, you say, okay, not only am I hooked, but now I demand to know why I never knew about this before. Why has this been kept from me? So that's great. But secondly, by placing them strategically in these ways, you are practically inviting controversy, and that's what we need to break through the media silence on this subject. You are generating your own publicity.

BABB: And don't tell the prosecutors this, but if they were smart, they will just ignore it.

WOODS: Right!

BABB: But I am counting on them to help me with some of the Streisand effect. The grumpier they get—and if they could complain about it, that would really do me a favor.

WOODS: Well, that was so interesting that it turned out that that whole *Washington Post* article with the billboard on the front page, got its start when a prosecutor said, hey, don't you look at these billboards. So the journalist thought, ah, billboards, let me go look. So apparently there are still some decent journalists in this country. Is it the same billboard in all the different places? Are you imagining that people will just do their own thing? What's the idea here?

BABB: Well, the campaigns that I've been involved in—we started in D.C. We've done Phoenix and now New York. There are similar messages on these billboards, a similar look, but if people want to do the same thing in their own towns, they can use what I've got as an example. They

could even contact me, and I would help them design artwork for a particular location. Every town has different types of opportunities, whether it's at a subway, an illuminated subway sign, or a train platform or like these kiosks on the sidewalk in New York. So the sizes are all different, the prices are all different, but there's a lot of opportunities out there.

WOODS: Of course, people can do this in their own towns, as you say, but how about for somebody who is in New York City and wants to support you. This is an ongoing effort, right? They can make a donation.

BABB: Yeah, if they go to the JuryRightsProject.com/NYC, it will connect you to the Indiegogo page, and right now we're raising money for the month of February. January has been covered, but now we're going to try to extend it into February, and as long as there's interest, and people want it to continue, it will continue.

WOODS: Well, of course, it so happens that next week it's going to—as you and I are talking, it's January—is today the 7th? I haven't got my new 2015 calendar. Yeah, it's the 7th. Normally I have a Charlie Brown calendar for every day, but this year my wife got me the brain puzzles calendar. I left it at home. But anyway, it's next week—I think next Tuesday that the case begins for Ross Ulbricht, the alleged Silk Road operator. And what's interesting about that is that from what I've seen, the prosecution is actually concerned that the idea of jury nullification might throw a monkey wrench into their whole effort because they are afraid of a jury nullification outcome in this case. Can you comment on that?

BABB: Yeah, somebody forwarded that to me, and I thought that was very interesting. It basically confirmed that I think that this work is very important. It's very normal for any prosecutor to go to the judge and say, look, I don't want this talked about. I don't want that talked about. I don't want the jury to hear about this. I don't want the jury to hear about that. In the case that you're referring to, my understanding was that the defendant has, for instance, a free-market philosophy—a pro-freedom, free-market philosophy. No, we can't talk about that. And they don't want to talk about the possible sentence that the defendant is going to receive. So they send out these memos and say, look, we don't want this talked about, and there was a memo that particularly in that case, where the prosecutor actually says such arguments and evidence only serve to invite jury nullification and should therefore be excluded. So you can tell what's on his mind. They are like, wait a minute, if they find out a defendant is not the evil monster we're punishing him as, or if they find out that we're going to send him to jail for the rest of his life, their conscience might wake up. So let's not let that happen.

WOODS: Is there a strategy here that you guys have? It's not just that we want to educate people, roll the dice, and see what happens. Is your thinking that if people actually do begin doing this in a number of high-profile cases, that the result could be that the prosecutors get frustrated, and maybe the authorities take on fewer of these cases and harass fewer people to begin with?

BABB: Yes. And in fact, there's historical precedent for that. For instance, jury nullification was practiced in 1850 in response to the Fugitive Slave Act, where it became a federal crime, even in the northern states, to harbor a fugitive slave. And because jurors refused to convict because that's a stupid law, and they refused to convict people for hiding slaves, basically they nullified the Fugitive Slave Act, and they said, well, okay, we can't enforce that. It's a waste of our time. Prohibition—the end of alcohol prohibition—a big part of that was the fact that juries refused to convict people for alcohol-related crimes. Finally, they are just like, okay, how many times can we put all these people in a courtroom and then get a not guilty? It's a waste of time. So it certainly sends a message back up the food chain to the people making laws that you know what? Maybe that's a waste of our resources, and we should think about maybe crimes that actually have victims. So that would be a wonderful outcome if we could make it just impossible for them to get convictions for victimless crimes. That would be amazing.

WOODS: Jim, let me ask you a personal question, if I may, and if this is out of bounds, I understand completely. But suppose you get a jury duty notification in the mail. The standard approach that most people take is, oh, I don't want to do this, and I hope there's some way I can weasel out of it. Are you going to try to weasel out of it? Or are you going to think to yourself, maybe there's somebody about to get screwed, and I might be able to help that person?

BABB: Well, I would definitely think the latter. Let's face it. There are so many people that are just ground—their lives are destroyed—their lives are ground to hamburger in that justice machine—that I would certainly be looking for an opportunity to stand in the way of that, and if that means a few days taking off from other responsibilities sitting in a courtroom, I would see that as a big opportunity. I totally understand, though, when people get that notice—you must appear—it's completely normal to say, no, I am not.

WOODS: Yeah, exactly. How dare you? But we have to look past that. Offhand I can't remember which guest it was, but I had somebody on who really was unhappy and impatient with people who were looking for ways to weasel out of jury duty and said, look, we understand it's coercive, and we obviously don't like that, but there's the possibility that somebody's life is about to be completely ruined. There's at least the chance that that could happen, and there's also the chance that you could play a life-changing role for this person. So maybe we should think of it differently.

I did get a jury notification notice about two or three months ago, and day after day I was supposed to call in and see if I was needed, and this was the first time, thanks to this show, my own show educating me, that I thought to myself, well, I'm not going to try to think of any excuse. And I have a lot of excuses. We've got health problems and things that we've got to deal with in the family. I could have probably gotten out of it. But I just called in every day legitimately to see if my number would be called, and it never was, but I was prepared to do it because of basically people like you reminding me that there are people's lives at stake here, and it's a small sacrifice for me and a potentially big outcome for that person.

BABB: It really is, and if more people did that, a lot of lives could be improved dramatically. So let's hope people get that, and you know what? If somebody really needs to get out of jury duty, just say jury nullification.

WOODS: Yeah, that's right. There you go. You can make a statement and get out of it at the same time. Well, Jim, I am going to link people to everything you've talked about—the Jury Rights Project, the Fully Informed Jury Association. I want people to donate to what it is that you're doing. I want to give people background on jury nullification. I want to link to previous episodes on it. I have even talked to Judge Napolitano about it. He's a big supporter of it. That will all be at the show notes page, and if you haven't checked out my new show notes pages, by the way, they are a thing of beauty, and you're breaking my heart if you're not going there. So TomWoods.com/314. Every once in a while we get a mobile device that won't bring that up. So in that case, do www.tomwoods.com/314, and that baby will come right up. Jim, best of luck in this project. I appreciate what you're doing as we all do. Thanks for being here today.

BABB: My pleasure, thank you.