



STATE OF FLORIDA
CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

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CIRCUIT COURT JUDGE

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To: David R. Ellspermann
Clerk of the Court

From: David B. Eddy *DBE*
Administrative Judge

Date: February 8, 2010

Re: Handouts

In response to your memorandum on this date, your description of our conversation this morning is accurate. Based on principles of free speech, I believe that whoever is distributing the handouts in question has a right to do so. Accordingly, I see no reason why the handouts must be excluded from the jury assembly room. I believe we may trust jurors to follow the law as instructed by the judge.

A copy of this memorandum is being distributed to the Marion County judges, with a copy of the handouts, in case they want to address them during voir dire. For the judges' reference, the leaflet titled Jury Nullification Our Last Peaceful Safeguard Against Tyranny is a one page handout. The document titled Your Jury Rights: True or False? is a two sided, tri-folded pamphlet.

cc: Brad King, State Attorney
Howard "Skip" Babb, Public Defender
Marion County judges



Clerk of the Circuit Court

Marion County

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David R. Ellspermann
Clerk of the Circuit Court

February 8, 2010

Telephone (352) 671-5604
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To: Honorable David Eddy
Administrative Judge

From: David R. Ellspermann 
Clerk of the Circuit Court

With regard to our telephone conversation on the morning of February 8th, I am forwarding you two written handouts given to the public, specifically summoned jurors, by an individual in the parking garage. In discussion with the County Attorney addressing the right of free speech, we have concluded the distribution is to allow such publications to be handed out in the parking garage area so long as they do not interfere with normal operations at the Judicial Center.

During a phone conversation and subsequent conversation with Katherine Glynn, Clerk Counsel, you indicated you did not believe the pamphlets needed to be excluded from the jury room. Please provide your directions of this in writing so this office is not considered as causing a mistrial because the pamphlets were allowed in the jury room.

Your immediate response is needed.

DRE/ppm

c: Brad King
"Skip" Babb

JURY NULLIFICATION OUR LAST PEACEFUL SAFEGUARD AGAINST TYRANNY

Jury Nullification is defined as the right of the jury to judge not only the guilt or innocence of an individual, but also to determine whether or not the law under which they are charged is a just law. It is one of our fundamental rights, and a protector of our liberty, but jurors are not told that they have this right. A juror should vote a defendant innocent of any law a juror feels is unjust, oppressive or unconstitutional even if a defendant is guilty of breaking the unconstitutional law of which they are charged.

The Founding Fathers all intended the jury to serve as a final safeguard of our liberties. In 1804, Samuel Chase, Supreme Court Justice and signer of the Declaration of Independence said: *"The jury has the Right to judge both the law and the facts". This power which Americans possess is to nullify oppressive acts of the legislature.*"

Thomas Jefferson said, *"I consider trial by jury as the only anchor, ever yet imagined by man, by which a Government can be held to the principles of it's constitution."*

John Jay stated that *"juries have the right to take upon themselves to judge both the law as well the facts."*

John Adams said, *"it is not only his (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 direction of the court."*

An example: If a state passes a law that it is unlawful to own a gun, and a citizen is indicted for breaking the law, the jury should vote him innocent since the law itself is unconstitutional.

In our Constitutional Republic the people have granted certain limited powers to government, preserving and retaining their God-given inalienable rights. *Citizens should know what their rights are. They need not be told by the courts. The Constitution makes us the masters of the public servants. Should a servant have to tell a master what his rights are? Of course not, it's our responsibility to know our rights!*

The idea that juries are to judge only the "facts" is absurd and contrary to historical fact and law. *Are juries mere pawns to rubber stamp tyrannical acts of the government? We The People wrote the supreme law of the land, the Constitution, to "secure the blessings of liberty to ourselves and our posterity." Who better to decide the fairness of the laws, or whether the laws conform to the Constitution?*

For more information: www.fija.org www.floridajurypower.org

True or False?

When you sit on a jury, you may vote on the verdict according to your conscience.

"True", you say—and you're right. But then...

Why do most judges tell you that you may consider "only the facts"—that you must not let your conscience, opinion of the law, or the motives of the defendant affect your decision?

In a trial by jury, the judge's job is to referee the event and provide neutral legal advice to the jury, properly beginning with a full explanation of a juror's rights and responsibilities.

But judges only rarely "fully inform" jurors of their rights, especially their right to judge the law itself and vote on the verdict according to conscience. In fact, judges regularly assist the prosecution by dismissing prospective jurors who will admit knowing about this right—beginning with anyone who also admits having qualms with the law.

We can only speculate on why: Disrespect for the idea of government "of, by, and for the people"? Unwillingness to share power? Distrust of the citizenry? Fear that prosecutors may damage their careers, saying they're "soft on crime"? Ignorance of the rights that jurors necessarily acquire when they take on the responsibility of judging an accused person?

How can people get fair trials if the jurors are told they can't use conscience?

Many people don't get fair trials. Jurors often end up apologizing to the person they've convicted—or to the community for acquitting a defendant when evidence of guilt seems perfectly clear.

Something is definitely wrong when the jurors feel apologetic about their verdict. They should never have to explain "I wanted to use my conscience, but the judge made us take an oath to apply the law as given to us, like it or not."

Too often, jurors who try to vote their consciences are talked out of it by other jurors who don't know their rights, or who believe they "have to" reach a unanimous verdict because the judge said that a hung jury would "unduly burden the taxpayers."

But if jurors were supposed to judge "only the facts", their job could be done by a judge. It is precisely

because people have individual, independent feelings, opinions, wisdom, experience and conscience that we depend upon jurors to refuse to mindlessly follow the dictates of a judge or of a bad law.

So, when it's your turn to serve, be aware:

1. You may, and should, vote your conscience;
2. You cannot be forced to obey a "juror's oath";
3. You have the right to "hang" the jury with your vote if you cannot agree with other jurors!



What is FIJA, the Fully Informed Jury Association?

FIJA is a national educational non-profit organization which tells citizens more about their rights, powers, and duties as jurors than they are likely to be told in court.

FIJA believes that "liberty and justice for all" won't return to America until citizens are again fully informed of — and using — their power as jurors.

Return? Did judges fully inform jurors of their rights in the past?

Yes, it was normal procedure in the early days of our nation, and in colonial times. And if the judge didn't tell them, the defense attorney often would. America's founders realized that trials by juries of ordinary citizens, fully informed of their powers as jurors, would confine the government to its proper role as the servant, not the master, of the people.

Our third president, *Thomas Jefferson*, put it like this: "I consider trial by jury as the only anchor yet imagined by man by which a government can be held to the principles of its constitution."

John Adams, our second president had this to say about the juror: "It is not only his right, but his duty. . . to find the verdict according to his own best understanding, judgment, and conscience, though in direct opposition to the direction of the court."

These sound like voices of experience. Were they?

Yes. Only decades had passed since freedom of the press was established in the colonies when a jury decided *John Peter Zenger* was "not guilty" of seditious libel. He was charged with this "crime" for printing true, but damaging, news stories about the Royal Governor of New York Colony.

"Truth is no defense," the court told the jury! But the jury decided to reject bad law and acquitted Zenger. Why? Because defense attorney *Andrew Hamilton* informed the jury of its rights: he told the story of *William Penn's* trial—of the courageous London jury

which refused to find him guilty of preaching what was then an illegal religion (Quakerism). His jurors stood by their verdict even though they were held without food, water, or toilet facilities for several days.

They were then fined and imprisoned for acquitting Penn—until England's highest court acknowledged their right to reject both law and fact, and to find a verdict according to conscience. It was exercise of that right in the Penn trial which eventually led to recognition of free speech, religious freedom, and peaceful assembly as individual rights.

American colonists regularly depended on juries to thwart bad law sent over from England. The British then restricted trial by jury and other rights which juries had helped secure. Result? The Declaration of Independence and the American Revolution. Afterwards, to protect the rights they'd fought for from future attack, the founders of the new nation placed trial by jury—meaning tough, fully informed juries—in both the Constitution and the Bill of Rights.

Bad law—special-interest legislation which tramples our rights—is no longer sent here from Britain. But our own legislatures keep us well supplied. Now more than ever, we need juries to protect us!

Why haven't I heard about "jury veto power" or "jury rights" before?

During the 1800s, powerful special interest groups inspired a series of judicial decisions which tried to limit jury veto power. While no court has yet dared to deny that juries can "nullify" or "veto" a law, or "bring in a general verdict (i.e., judging both law and fact)", the Supreme Court in 1895 held, hypocritically, that jurors need not be told **their** rights!

That's why, these days, it's a rare and courageous attorney who will risk being cited for contempt for informing the jury about its rights without obtaining the judge's prior approval. It's also why the idea of jury rights is not taught in (public) schools.

Still, the jury's power to reject bad law continues to be recognized, as in 1972 when the D.C. Circuit Court of Appeals held that the jury has an ...

"... Unreviewable and irreversible power . . . to acquit in disregard of the instruction on the law given by the trial judge. The pages of history shine upon instances of the jury's exercise of its

prerogative to disregard instructions of the judge; for example, acquittals under the fugitive slave law." (473 F.2d 1113)

And let us never forget that in the Nuremberg trials of Nazi war criminals, the defendants argued that they were "only following the law." The Tribunal's response was, quite correctly, that they each had a personal responsibility to judge the morality of the law, and should have acted according to conscience!

How can one person make a difference?

I BE ALERT! Almost everyday, new attempts are made to limit jury power, mostly via subtle changes in the rules of the courtroom procedure, sometimes by court decisions, legislation, or by the creation of special courts that do not allow jury trials for the accused.

I BE AWARE! Thousands of harmless people are in prison simply because their juries weren't fully informed. U.S. now leads the world in percent of population behind bars! New prisons are springing up everywhere, and too many of them are filling up with people whose only "crime" was to displease the government "master", not to victimize anyone (in other words, political prisoners).

I BE ACTIVE! Tell others what you know about jury veto power!* Before a jury reaches a verdict, each member should consider:

1. *Is this a good law?*
2. *If so, is the law being justly applied?*
3. *Was the Bill of Rights honored in the arrest?*
4. *Will the punishment fit the crime?*

Is there a local FIJA group?

Probably—most people who receive this leaflet get it from someone on a team of local activists. Local activists may also be working with lawmakers for passage of FIJA legislation; others may be participating in radio talk shows or placing ads and public service announcements, speaking to other local groups, or otherwise getting the word out.

Since 1991, local FIJA groups in 18 states have persuaded their state governors to proclaim September 5 (the day of Penn's acquittal) as "Jury Rights Day", often celebrating it by issuing news

releases and leafleting courthouses—thus using our First Amendment right to explain how juries can protect the rest of our rights, simply by acquitting defendants been charged with breaking a bad law.

*Discretion may be the better part of valor: FIJA activists have been so effective at telling jurors the truth about jury veto power that judges and prosecutors nowadays not only try to keep fully informed citizens off of juries, but also have sometimes charged those who do inform them with contempt of court, even with jury tampering. So, if you decide to "be active", we advise you to observe any court order directed at your leafleting or other educational activity, and if you are empaneled to serve on a jury, not to distribute jury-power educational literature to your fellow jurors.



- TO RECEIVE MORE INFORMATION -

Call **1-800-TEL-JURY**, and tell FIJA where to send your free Jury Power Information Package. It contains a history of jury veto power and tells what to do if you're going to be on a jury (or facing one).

It also includes information on how you can support FIJA and a form for ordering materials.

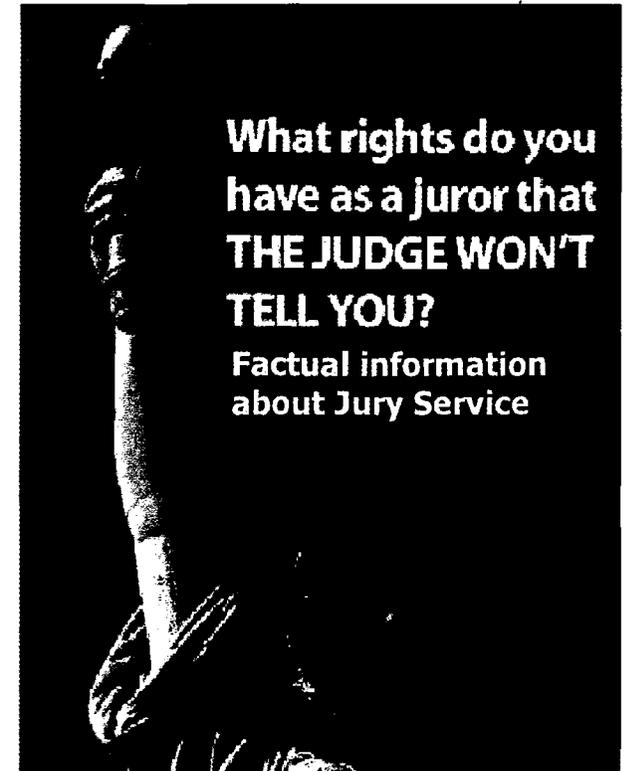
The Fully Informed Jury Association maintains a useful web site. It contains additional information about jury veto power, about FIJA, lists state coordinators and has archived files of our newsletters.

Our site is www.fija.org.

Restore liberty and justice by jury!

This leaflet is distributed locally by:

Your Jury Rights: True or False?



**What rights do you
have as a juror that
THE JUDGE WON'T
TELL YOU?**

**Factual information
about Jury Service**

Distributed by
Fully Informed Jury Association
P. O. Box 5570 Helena, MT 59604

www.fija.org

1-800-TEL-JURY



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