

Restore the Bill of Rights with FULLY INFORMED JURIES

Find out how ordinary people, as trial jurors,
can repair years of legislated special-interest
damage to our rights, simply by saying
“NO!” to bad laws!

Phone 1-800-TEL JURY for a free
“Jury Power Information Kit”!

Trial by Jury



- ☞ Did you know that the trial jury was intended by America's Founders to be a political institution?
- ☞ Did you know that jurors under our system of justice have the responsibility to protect our rights from infringement by the government?
- ☞ Did you know that jurors can judge the fairness or constitutionality of the law itself?
- ☞ Did you know that judges, prosecutors, and many lawyers don't want you to know the truth about your power as a juror?

The Fully Informed Jury Association (FIJA) wants you to know! For more information, call 1-800-TEL-JURY for a free information packet. Our web site is www.fija.org

AM I ABLE TO ASK QUESTIONS AS A TRIAL JUROR?

Request the judge ahead of time to define what to do if you want a witness to answer a question that the attorneys have not asked. There should be an orderly procedure for this, and for asking the judge any questions you may have about the law both during the trial and while you're deliberating.

WHAT ABOUT TAKING NOTES OR TAPING THE TRIAL?

Judges may allow note taking, but taping is often prohibited by law. Ask.

WILL I EVER HAVE TO REVEAL HOW I VOTED OR WHY?

Never. But you may be asked, and there is no reason you should not explain what happened, if you wish. Other jurors are likely to do the same, especially if interviewed by the media. Also, your commentary may be important—to the public, to the defendant, or to the police, prosecutors, and legislators.

REMEMBER, as a juror your job is justice, and the hard part is to keep your eye on that ball. If it ever seems you're being told how to think, recall that the jury is the most powerful participant in the trial: no one can punish jurors for their decision, nor overturn a jury acquittal, nor make a juror account for his or her decision. Besides, the jury is supposed to be an independent force in the courtroom—the direct voice of the community, not controlled by politics or special interests or anything besides common sense and conscience.

YOU CAN ONLY USE YOUR POWER IF YOU KNOW ABOUT IT.

We just told you the basics. Ready for more? Visit our website at www.fija.org for more information about joining FIJA, contributing, or getting actively involved educating all Americans in their powers, rights, and responsibilities as trial jurors.

Or call our 800 line for more information, plus an opportunity to tell us where to send you a free Jury Power Information Kit.

CALL FOR YOUR FREE INFORMATION PACKET

1-800-TEL-JURY (835-5879)

www.fija.org

JURY NULLIFICATION BIBLIOGRAPHY

Anonymous, "Note: The Changing Role of the Jury in the Nineteenth Century", *Yale Law Journal*, 74, 1, 170-192 (Nov. 1964). Focuses on the erosion of jury veto power during this period.

Barkan, Steven E., "Jury Nullification in Political Trials", *Social Problems* 31, 1, 28-44 (Oct. 1983). History of the impact of jury veto power on important political conflicts, with particular emphasis on the Vietnam War protest movement and on the denial of jury nullification as a means to suppress dissent. This essay also appears in Mike Timko's reproduction of Lysander Spooner's classic book *An Essay on the Trial by Jury* (1852), which is the hardest-hitting defense of jury nullification available. It can be ordered from FIJA (see back page).

Creagan, M. Kristine, "Jury Nullification: Assessing Recent Legislative Developments", *43 Case Western Reserve Law Review*, 3, 1993, 1101-1150.

Gray and Shiras (Justices), *Dissent: Sparf and Hansen v. U.S.*, 156 U.S. 51, October Term, 1894. The classic opinion of the two dissenting justices on the case which effectively ended routine instruction of juries in their right to judge both law and fact. The majority ruled that while jurors do have the power to nullify the law, judges need not tell them about it, except in cases where state laws or constitutions specify that jurors must be told.

Green, Thomas Andrew, *Verdict According to Conscience: Perspectives on the English Trial Jury, 1200-1800*; University of Chicago Press (1985).

Hans, Valerie P. and Neil Vidmar, *Judging the Jury*, New York: Plenum, (1986). Includes discussion of empirical evidence that jurors behave responsibly when given nullification instructions.

Abramson, Jeffrey, *We the Jury: The Jury System and the Ideal of Democracy*, Basic Books, (1994). Good discussion of the history of jury nullification and an analysis of issues affecting the modern jury.

Horowitz, Irwin A., "The Effects of Jury Nullification Instructions on Verdicts and Jury Functioning in Criminal Trials", *Law and Human Behavior*, 9, 1, 25-36 (1985); see also *L&HB* 12, 4, 439-453 (1988). Study of the effects of giving jury nullification instructions; responsible behavior is the norm.

Horowitz, Irwin A. and Thomas Willging, "Changing Views of Jury Power: The Nullification Debate, 1787-1988", *Law and Human Behavior*, 15, 2 (1991).

Howe, Mark DeWolfe, "Juries as Judges of Criminal Law", *Harvard Law Review* 52, 582-616 (1939). Discussion of the history of state constitutional provisions for jury veto power and attacks upon this power by the judiciary.

Lehman, Godfrey D., *The Ordeal of Edward Bushell*, Lexicon, San Francisco, 274 pp (1988). Historical novel about the trial of William Penn and the imprisonment of the recalcitrant jurors. An absorbing and well-researched story. Available from FIJA national headquarters.

Schefflin, Alan W., "Jury Nullification: The Right to Say No", *Southern California Law Review* 45, 168-226 (1972). Excellent general legal history of the doctrine of jury nullification, or "veto power".

Schefflin, Alan and Jon Van Dyke, "Jury Nullification: Contours of the Controversy", *Law and Contemporary Problems* 43, 4, 51-115 (Autumn, 1980).

Schefflin, Alan and Jon Van Dyke, "Merciful Juries: The Resilience of Jury Nullification," *Washington and Lee Law Review* 48, 1, 165 (Winter, 1991). A history of jury nullification, including FIJA.

Van Dyke, Jon M., *Jury Selection Procedures: Our Uncertain Commitment to Representative Panels*, Ballinger, Cambridge, Mass. (1977).

Congratulations!

You have been summoned here for possible selection as a trial juror!

Excited?

Yes or no, here are three great reasons why you should be:

Reason #1

POWER TO PEOPLE LIKE YOU

This may be the most powerful moment of your life! If you are selected to sit on a jury, no one, not even the president, can make you change your vote on the verdict!

No one can make you apply a law you don't approve of. No one can punish you for your vote on the verdict, or force you to agree with the other jurors. The whole jury system depends on people like yourself using your own best judgment and conscience to decide the fate of an accused person.

Reason #2

JUSTICE IN YOUR TOWN

You can do yourself and your community a great service as a juror. True justice by jury discourages crime, while a jury's tolerance of harmless differences in the way people think and act makes life easier for everyone, maybe someday including you.

Reason #3

FEEDBACK TO GOVERNMENT

The verdict reached by your jury may be so important that legislators will use it to guide them in making needed revisions in the law!

Why? Certainly, a jury's decision to apply the law shows community support and respect for that law. On the other hand, its refusal to do so, even when the evidence shows the law has been broken, shows that the community will not tolerate disobedience, and the law needs to be changed or eliminated.

Learn more about your powers and responsibilities as a trial juror by visiting our website at www.fija.org or calling 1-800-TEL-JURY.

The Jury's Secret Power

JUDGES WON'T TELL YOU THIS, but when you sit on a jury in a criminal trial, you have the right to vote according to your conscience, no matter what the judge says about the law. As a juror, you are the final safeguard for justice. If you think that the criminal charge is based on a bad law, or a good law that is not being applied properly, or that there are other factors that would make you regret a vote to convict someone, then it is your right and duty as a juror to vote "Not Guilty".

When our country was young, all jurors were told of their right to judge the law, as well as the person charged with a crime. It was then recognized that our lawmakers sometimes pass bad laws, and that at times good laws are misused. But juries ignored bad laws "too often". They wouldn't convict those who aided runaway slaves, they acquitted striking coal miners, and they freed bootleggers who were charged under prohibition laws, until judges decided that juries should no longer be told of their power to act as a safeguard against bad laws or unethical lawmakers. Now, all jurors are instructed to accept the law, as it is given to them by the judge, even in cases where the law is clearly unjust.

Remember, if you're ever selected as a juror, that you have a right and a duty to do the right thing, to follow your conscience, even if you're the only juror who does. It is the only way to keep government in the hands of the people. Judge Theo. Parsons said: "If a juror accepts as the law that which the judge states, then the juror has accepted the exercise of absolute authority of a government employee and has surrendered a power and right that once was the citizen's safeguard of liberty..."(1788)

Don't accept the judge's bluff. Know your true rights and powers as a juror. To receive a sample newsletter, contact the FULLY INFORMED JURY ASSOCIATION, PO Box 5570 Helena, MT 59604-5570

Call 1-800-TEL-JURY for a free Jury Information Packet. Visit our web site at www.fija.org

The Jury's Secret Power

JUDGES WON'T TELL YOU THIS, but when you sit on a jury in a criminal trial, you have the right to vote according to your conscience, no matter what the judge says about the law. As a juror, you are the final safeguard for justice. If you think that the criminal charge is based on a bad law, or a good law that is not being applied properly, or that there are other factors that would make you regret a vote to convict someone, then it is your right and duty as a juror to vote "Not Guilty".

When our country was young, all jurors were told of their right to judge the law, as well as the person charged with a crime. It was then recognized that our lawmakers sometimes pass bad laws, and that at times good laws are misused. But juries ignored bad laws "too often". They wouldn't convict those who aided runaway slaves, they acquitted striking coal miners, and they freed bootleggers who were charged under prohibition laws, until judges decided that juries should no longer be told of their power to act as a safeguard against bad laws or unethical lawmakers. Now, all jurors are instructed to accept the law, as it is given to them by the judge, even in cases where the law is clearly unjust.

Remember, if you're ever selected as a juror, that you have a right and a duty to do the right thing, to follow your conscience, even if you're the only juror who does. It is the only way to keep government in the hands of the people. Judge Theo. Parsons said: "If a juror accepts as the law that which the judge states, then the juror has accepted the exercise of absolute authority of a government employee and has surrendered a power and right that once was the citizen's safeguard of liberty..."(1788)

Don't accept the judge's bluff. Know your true rights and powers as a juror. To receive a sample newsletter, contact the FULLY INFORMED JURY ASSOCIATION, PO Box 5570 Helena, MT 59604-5570

Call 1-800-TEL-JURY for a free Jury Information Packet. Visit our web site at www.fija.org

ANSWERS & EXPLANATIONS

1. TRUE: The criminal trial jury was created by the constitutions of the Federal and State governments to be a guardian of the individual's rights. Its purpose is to prevent oppression by the Government. A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government. – Justice Byron White, U.S. Supreme Court *Duncan v. Louisiana*, 391 US 145, 155 (1968) The purpose of a jury is to guard against the exercise of arbitrary power... – Justice Byron White, U.S. Supreme Court *Taylor v. Louisiana*, 419 US 522, 530 (1975)
2. TRUE: The Constitution divided the government into three branches –the Executive, Legislative, and Judicial – in order to prevent an unhealthy concentration of government's powers. And it created the Jury – the Fourth Branch of Government – in order to hold the first three branches in check. In order to fulfill its purpose, the Jury must be independent of the other branches of government. 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 its constitution. – Thomas Jefferson letter to Thomas Paine, 1789
3. TRUE: Under our system of government, it is a sacred principle of criminal law that the government has the burden of proving every element of a crime beyond a reasonable doubt and that the defendant has no burden to prove his innocence. The government makes the criminal accusation and must prove its accusation to the

satisfaction of the jury.

4. FALSE: Not legally! The judge has no authority at all to compel the jury to find a defendant guilty. The jury is absolutely independent in this function. 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...If the jury feels that the law under which the defendant is accused is unjust, or that exigent circumstances justified the actions of the accused, or for any reason which appeals to their logic or passion, the jury has the power to acquit, and the courts must abide by that decision. – 4th Circuit Court of Appeals *United States v. Moylan* 417 F.2d 1006 (1969)
5. TRUE: The jury can find the defendant not guilty, regardless of what the law says, and regardless of the facts. The jury has the power to find the defendant not guilty for any reason which appeals to them. This is usually called “jury nullification” of the law. In short, the jury has a veto power over bad law and bad judges. The jury has the power to bring a verdict in the teeth of both law and fact. – Justice Oliver Wendell Holmes *Horning v. Dist. of Columbia* 249 U.S. 596 (1920) In criminal cases, a jury is entitled to acquit the defendant because it has no sympathy for the government's position. – *U.S. v. Wilson* 629 F.2d 439, 443 (1980)
6. FALSE: No one has any authority to punish a juror because of his vote. Period. This issue was resolved in 1670 in London in the case of Edward Bushell – one of the jurors in William Penn's trial. But juries are not bound by what seems inescapable logic to judges. – Justice Robert H. Jackson *Morissette v. United States*, 342 U.S. 246
7. FALSE: The judge has the authority to declare to the jury what he believes the law to be. But the jury has the authority to ignore that advice, to determine for them what the law says, and to judge for themselves the justice of the law. It is universally conceded that a verdict of acquittal, although rendered against the instructions of the judge, is final, and cannot be set aside; and consequently that the jury have the legal power to decide for themselves the law involved in the general issue of guilty or not guilty. – Justice Gray, U.S. Supreme Court, *Dissenting Sparf v. U.S.*, 156 U.S. 51, 172 (1894)
8. TRUE: A verdict is the guilty or not guilty decision of a jury. All jurors must agree to the verdict. Otherwise, they must report a “hung jury.” That means that the jury was unable to agree upon a verdict. Each juror is free to vote in accordance with his or her conscience and cannot be forced to vote for conviction or acquittal just to reach a verdict. In the event of a hung jury, the government may bring the defendant to trial again in front of another jury.
9. TRUE: The jurors have not only the right, but the obligation to vote according to conscience. If the jurors believe that the law itself is unjust – for any reason – they have the power to do justice by simply voting not guilty. Every juror has a right to leave court with a clear

conscience. ...it is the conscience of the jury that must pronounce the prisoner guilty or not guilty. – Lord Chief Justice Mathew Hale 2 Hale PC 312 (1665)

10. FALSE: The court has no authority to dictate the law to the jury. However, many courts will force jurors to swear an oath to accept the law as the Court dictates. Such an oath violates the Constitution. But anyone refusing to take the oath will be excluded from the jury, thereby depriving the defendant of an independent jury. Such an oath is taken under duress. And nothing agreed to or sworn to under duress is binding. It is ironic that the same judge who demands that jurors take such an oath is violating his own oath to uphold the Constitution. The jury has a right to judge both the law as well as the fact in controversy. – Chief Justice John Jay State of Georgia v. Brailsford, 3 DAL.L. 1,4 The right to trial by jury shall remain inviolate.... In criminal cases, the defendant shall have a public and speedy trial by an impartial jury; and the jury shall be the judges of the law and the facts. – Georgia Constitution Art. I, § I, Par. XI (a)

11. TRUE: To be faithful to their duty, the jurors must vote not guilty, if they think the law is unjust. 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 direction of the court. – John Adams (1771) Yale Law J. 74 (1964): 173

12. FALSE: "Ignorance of the law is no excuse" may have made sense centuries ago when the law confined itself to real crimes with real victims. Everyone knew that murder, rape, robbery, arson, and other such crimes were crimes. Today, with government passing thousands of new laws each year, no one can understand all his obligations under the law. If the jury does not believe that the defendant knew of his obligations under the law, it has the power to find the defendant not guilty. Ignorance of the law is an excuse if the jury says it is. This preposterous doctrine, that "ignorance of the law excuses no one," is asserted by courts because it is an indispensable one to the maintenance of absolute power in the government. –Lysander Spooner Massachusetts Attorney An Essay on the Trial by Jury, 1852

F.I.J.A.
P. O. Box 5570
Helena MT 59604-5570
Call (800) TEL-JURY
or
www.fija.org

Try your hand at...

THE JURY QUIZ TRUE OR FALSE?

1. The primary purpose of the jury is to prevent oppression by the government.
2. The jury is an independent arm of government.
3. The defendant is innocent of any criminal charge until proven guilty by the government.
4. The judge can require the jury to find the defendant guilty.
5. The jury can find the defendant not guilty, even if the defendant broke the law.
6. If the jury finds a defendant not guilty when he is clearly guilty, the judge can punish the jurors.
7. The judge decides all questions of law.
8. The jury is not required to reach a verdict.
9. The jurors can vote according to their consciences.
10. The jury must take the law as the Court gives it, whether they believe the law is right or wrong.
11. The jury can find the defendant not guilty, because they believe the law is unjust.
12. Ignorance of the law is no excuse. This pamphlet is distributed by the Fully Informed Jury Association in order to better inform the public about the jury's role in the criminal justice system. These questions concern the criminal trial jury, not the civil trial jury.

F.I.J.A.

P. O. Box 5570 Helena MT 59604-5570
Call (800) TEL-JURY or www.fija.org