Can I even talk about “jury rights” with fellow jurors? Certainly. You can talk about anything you want to during your deliberations. It is certainly appropriate to discuss the role of the jury, the history of the jury, and the powers and rights of jurors, just as you would any other topic.

Back to America’s founders. What exactly did they say?

Our third president, Thomas Jefferson, in 1789 wrote a letter to Thomas Paine, saying, “I consider trial by jury as the only anchor yet devised by man by which a government can be held to the principles of its constitution.” [8]

Our second president, John Adams, in 1727 said about the trial, “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.” [9]

John Jay, the first U.S. Supreme Court Chief Justice, in 1794 said that jurors have a right “to determine the law as well as the facts in controversy.” [10]

From history and experience, the Founders were well aware that citizens and jurors would be the best protection against damage to our unalienable rights. That’s why they insisted on trial by jury in the Declaration of Independence, Constitution, and Bill of Rights (for jury gets more than any other right). In fact, many of the rights and freedoms that they treasured, and that we still treasure today (free speech, religious freedom, peaceable assembly, free trade, property rights, freedom of the press) had been identified and established by militias and juries in the first place, both in England and her American colonies, where (sometimes at great cost to their own safety and liberty) jurors had refused to enforce what they felt were unjust laws restricting what they saw as “natural rights.” Juries exist to protect fellow citizens from government tyranny.

Could you give me some examples?

Perhaps the landmark case was the 1670 trial of William Penn. Our right to freedom of speech, religion, and peaceable assembly were established when a London jury refused to convict him for violating the Comemtice Act, which made Anglicanism the official religion of England. Penn was apprehended delivering a Quaker sermon on a street corner, after the police had locked the doors to the meeting house. The jury could see no harm in what he did, and refused to convict even though there was plenty of evidence of Zenger’s “guile.” The jury brought in a “conscientious verdict” in the face of a bad law.

So, what happened between those days and the present?

Certainly big-business interests saw their influence and profits cut by juries which refused to enforce laws those interests had spent a lot of money lobbying the government to pass (especially the laws which made it illegal for workers to strike). When men with ties to these groups came to constitute a majority of the membership on our Supreme Court in the late 1800s, they made the decision which to this day allows judges to try to keep the power of nullification from jurors. [11]

Though our government only rarely admits it, [12] the power still exists, secret or not. That is why a “fully informed jury” movement is underway to tell you the secret the courts will not. It’s a secret that lawyers, for fear of being punished by judges, dare not tell.

In summary, the secret is merely this: you, the juror, are the most powerful person in the courtroom because you alone have the last say on both the law and the evidence. If you acquit the defendant in a criminal case, that ends it. The defendant cannot be tried again for the same crime. This is the essential power that we citizens must have over both the law and the evidence. If you acquit the defendant in a criminal case, that ends it. The defendant cannot be tried again for the same crime. This is the essential power that we citizens must have. If we are to retain control over our government servants, so that no matter what actions the government makes illegal, it is we, not they, who have the power to perform it, we must have the last say over both the law and the evidence. If you acquit the defendant in a criminal case, that ends it. The defendant cannot be tried again for the same crime. This is the essential power that we citizens must have.

I have more questions. Does AJI/FIJA have more answers? Yes. We’ll mail you a jury Power Information Kit (“JPK”) to you if you call 1-800-TELJURY and tell us where to send it. The JPK has detailed information on what to do if you’re called for jury service, or if you’re going to face a trial by jury, or want to know more about the history of the doctrine of jury nullification. For a rich source of more information, please visit our website at www.fija.org. These sites contain a huge list of readings, downloadable documents and masters. Also on the website are sites of contacts for the many independent state and local-level jury rights groups that have formed around the country, so if you want to get actively involved in educating fellow citizens about their rights and powers as jurors, you should be able to find someone fairly nearby who can help you get started.

If I can’t get actively involved, what can I do? We know many people are very busy. We can always put a contribution from you to good use, and remember that we are a 501 (c) 3 for tax purposes. And when you’re done reading this brochure (and after the trial, if you’re a juror), give it to a friend, co-worker, or relative in case he or she ever needs to refer to it, or wants to call for a JPK, or get in touch with FIJA headquarters, or find some local jury rights activists.

You thank you for taking the time to read this brochure. If you’re ever fortunate enough to be empaneled on a jury, here’s hoping that the information it contains helps you make a decision you can be proud of! 

[17] The U.S. Supreme Court periodically acknowledges the political function of the jury as in Duncan v. Louisiana, 391 U.S. 145,155 (1968), wherein Justice Byron R. White wrote, “A right to trial by jury is granted to criminal defendants in order to prevent oppression by the government.” (FIJA: Publication: Q & A Primer for Prospective Jurors)

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PROSPECTIVE JURORS

Provided as a public service by FIJA/AJI, the Fully Informed Jury Association/American Jury Institute, whose goal is to restore the true function of the jury and inform all Americans of their authority and responsibilities as jurors.

This brochure will provide you with brief answers to some common but difficult questions about jury service.

Why read it? First, because jurors are always morally responsible for their verdict. Whoever takes on that responsibility has a right to full information, and it might be you.

Second, fully informed juror. In addition to providing justice for the accused, trial jurors were expected by the framers of our Constitution to use their verdicts to check, balance and guide all three branches of government. Jurors still have that vital role to play, and still have the power to perform it, but this part of their job rarely is explained to them by the court.

Therefore, you should look at this brochure as a more complete “job description” for jurors than you are likely to get elsewhere. Many jurors who have read it have told us after the trial that it really helped them do a good job in the very stressful task of judging the actions of a fellow human being.
A FEW QUESTIONS AND THE ANSWERS

Must I respond to a summons for jury service? Legally, yes. Moreover, FIJA encourages you to show up, even though most court jurisdictions have neither the personnel nor the money it would take to track down those who do not respond. FIJA believes that if more people knew how much good they could do by serving on a jury, and how much power they have to do that good, more of them would happily respond to summonses.

Must I answer all the questions asked of me on a juror questionnaire, or during the selection process (voir dire)? It depends. Most jurisdictions will allow you to answer a question privately, in front of the judge and lawyers only, if you feel uncomfortable about answering it in front of everyone else in the courtroom. If you object to answering a question because you feel it is too personal, you should let the judge know.

In the federal 5th Circuit jurisdiction, because of a recent case, your objection will enable the judge to ask the attorney who posed the question to explain why it is relevant to jury selection in the case at hand, or else to withdraw the question. The idea is to balance your right to privacy against the defendant's right to an impartial jury. So, at least in the 5th Circuit, unless the judge performs this test of "balance" in response to your assertion of privacy, sanctions cannot be used against you for refusing to answer.

A judge decides that the question is relevant to jury selection, and it is ruled that you must answer, it is still up to you to decide how to answer this or any other question asked. This can be very important, especially if you have moral qualms about the consequences of telling the truth. (Think of the dilemma faced by German citizens when Hitler's secret police demanded to know if they were hiding a Jew in their house.)

A couple of especially hard questions for those who understand and appreciate the political role of the jury are: "Will you follow the law as given by the judge?" Should you give answers that are likely to get you excused from jury service? The answer is "No.

The same options apply if you learn that the evidence, though true, is contaminated by extraneous factors. If you are the only one to realize that the evidence is not trustworthy or adequate, you can exclude the evidence and ask the judge to have a new trial. If no one on the jury agrees with me, do I eventually have to assess the damage? No. You can "hang" the jury with your vote if you feel it is the right thing to do. You cannot be punished for following your conscience instead of the oath you take or the instructions you are given as a juror. What if doing so would violate your conscience or sense of justice. However, just keep in mind that many people sue for no reason, or for very small amounts of money. You can refuse to answer the question by saying "Objection" and the judge will allow you to do that. If you are allowed to tell the judge that you do not "know your answer", the judge may allow you to answer the question at a later time. If not, you can refuse to answer the question and ask the judge to have a new trial. If no one on the jury agrees with me, do I eventually have to assess the damage? No. You can "hang" the jury with your vote if you feel it is the right thing to do. You cannot be punished for following your conscience instead of the oath you take or the instructions you are given as a juror. What if doing so would violate your conscience or sense of justice. However, just keep in mind that many people sue for no reason, or for very small amounts of money. You can refuse to answer the question by saying "Objection" and the judge will allow you to do that. If you are allowed to tell the judge that you do not "know your answer", the judge may allow you to answer the question at a later time. If not, you can refuse to answer the question and ask the judge to have a new trial.

May attorneys tell me about a check upon bad law, nonetheless supported and extended that Supreme Court decision by holding that jurors didn’t “need” to be told about their nullification power, they should already know about it by way of “communication from the total culture” meaning by reading books and magazines, watching TV and movies, or engaging in conversation.

In short, you are “expected to know” that you can refuse to convict if doing so would violate your conscience or sense of justice. However, a recent study demonstrates that very few people are actually aware of their nullification power. [6] This finding strengthens our argument for telling you, right now; you probably do not “already know”, and it’s an excellent but the court will not tell you!

In any event, these court rulings have enabled judges to prevent most participants in a trial from informing jurors of their veto power, and it’s not yet established in law whether that includes jurors showing literature to other jurors. Jury rights activists, such as the person from whom you probably received this brochure, are not participants in the trial, and generally stay outside the courthouse, handing out information to all who will take it, as an exercise of free speech in which the Supreme Court has described as a "free speech zone." [7]