

JURY NULLIFICATION SUMMARY

Concept:

- Jurors in criminal trials have the power to vote "not guilty" if enforcing the law would violate their conscience because juries cannot be punished for any verdict and jury acquittals cannot be overturned. An accused party's rights to trial by jury, where government is an opposing party, includes the right to inform the jurors of their power to judge the law as well as the evidence, and to vote on the verdict according to conscience.

History:

- Both English and American juries were told about their power until the late 1890s. The following freedoms were protected by jury refusing to convict:
 - Freedom of religion, speech, and assembly - William Penn (London, 1670).
 - Freedom from witch hunts - 50 acquittals in a row stopped witch trials (Salem, 1693).
 - Freedom of the press - John Peter Zenger (New York colony, 1735).
 - Freedom from slavery - fugitive slave laws (America, 1850s).
 - Freedom to strike - anti-strike laws (late 1800s), which caused business interests to pressure judges to stop informing juries of their power.
 - Freedom to drink alcohol - Prohibition (1930s). Convictions became rare even without instruction.
- Noah Webster, whose purpose in publishing a dictionary was to preserve the meaning of the language used in the Constitution, in his first Dictionary of the English Language (1828), included the following in his definition of "jury":

"Petty juries, consisting usually of twelve men, attend courts to try matters of fact in civil causes, and to decide both the law and the fact in criminal prosecutions."
- The Texas Bill of Rights, using language from early federal legislation, already states that juries have the right to determine matters of law as well as fact. The last sentence of Article I, Sect 8 of the Texas Constitution reads:

"And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, *as in other cases.*" (emphasis added).

Issues:

- Jury judgment of law can operate in only one direction - that of mercy. It cannot create new law, nor may jurors convict under nonexistent law, or escalate charges.
- Jury refusal to apply a law does not abolish it. A jury may be merciful only in the case before it.
- Jury refusal to apply a law does not set precedent, nor can a jury declare a law unconstitutional.
- Jury nullification is an important way to inform governmental representatives about the changing conscience and values of the community, free from special interest pressure.
- Fully informed jurors can better dispense justice, thereby preventing people from being imprisoned wrongly and reducing prison overcrowding.

CITIZEN CONTROL OF GOVERNMENT THROUGH FULLY INFORMED JURIES

Many Americans are looking for a way to halt the unchecked growth of government in the United States. The list of options being tried include term limits, line item veto, balanced budget amendment, initiative and referendum, campaign finance reform, and third parties.

Thomas Jefferson gave us his opinion on the subject when he said, "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." (emphasis added)

The kind of juries Jefferson was thinking of were discussed in Jacob's Law Dictionary (1782): "Juries ... are not fineable for giving their verdict contrary to the evidence, or against the direction of the court; for the law supposes the jury may have some other evidence than what is given in court, and they may not only find things of their own knowledge, but they go according to their consciences."

Jefferson believed that juries can hold governments in check because they have the power and the right to find verdicts of "not guilty" when they think the law is unjust - even when the facts say that the accused has broken the law.

Up until about 1900, judges routinely told juries in criminal trials that they had the right to vote their conscience. In the twentieth century, with few changes in law, the judicial practice has evolved to a completely different stance.

Today, in trials involving controversial laws, during the jury selection process, the judge will strike "for cause" anyone who states that he or she disagrees with the law. They go even further by telling juries that they are only judges of the facts. Judges tell juries that even if they disagree with the law, if the accused is found to have broken it, the juries must convict. Finally, the judges can hold anyone in contempt of court who tries to inform juries of their right to judge the law.

At the end of World War II, in the Nuremberg trials, Americans told Germans that they should have followed their conscience instead of their government when it did wrong. Yet, in America's courtrooms today, judges routinely tell jurors to follow the government, not their conscience. This courtroom practice is fundamentally un-American.

The mission of the Fully Informed Jury Association (FIJA) is to let Americans know about this forgotten tool to keep government from overstepping its legitimate role in our society. Lone Star FIJA is also working to change the law to allow the accused (and their attorneys) to tell juries (without challenge by the judge or prosecution) of their power to vote their conscience, and to prevent judges from striking prospective jurors because they disagree with the law.

FIJA attracts Americans across the political spectrum from civil libertarians on the left to limited government advocates on the right.

The group that educates and seeks legislation to enable informed juries is the Lone Star Fully Informed Jury Association (FIJA) at website, <http://www.juryduty.org>. We also have a Facebook group called [Lone Star FIJA – Jury Nullification in Texas](#).