

# Appendix

IN THE DISTRICT COURT OF APPEAL  
FIFTH DISTRICT OF FLORIDA

CASE NO. 5D11-\_\_\_\_\_

FULLY INFORMED JURY ASSOCIATION,  
on behalf of itself and on behalf of its volunteers,  
and JAMES COX, individually,

Petitioners,

vs.

HON. CHIEF JUDGE OF THE  
NINTH JUDICIAL CIRCUIT,

Respondent.

\_\_\_\_\_ /

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ADMINISTRATIVE ORDER  
NO. 2011-03

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE AND OSCEOLA  
COUNTIES, FLORIDA

**ADMINISTRATIVE ORDER GOVERNING EXPRESSIVE CONDUCT TOWARD  
SUMMONED JURORS, ORANGE AND OSCEOLA COUNTIES**

**WHEREAS**, pursuant to Article V, section 2(d) of the Florida Constitution and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and the power to do everything necessary to promote the prompt and efficient administration of justice; and

**WHEREAS**, pursuant to the chief judge's constitutional and statutory responsibility for administrative supervision of the courts within the circuit and to create and maintain an organization capable of effecting the efficient, prompt, and proper administration of justice for the citizens of this State, the chief judge is required to exercise direction, *see* Fla. R. Jud. Admin. 2.215(b)(2), (b)(3); and

**WHEREAS**, to ensure the safe and orderly use of court facilities, and to minimize activities which unreasonably disrupt, interrupt, and interfere with the fair and orderly conduct of jury trials, and the orderly and peaceable conduct of court business in a neutral forum free of actual or perceived partiality; and

**WHEREAS**, expressive conduct and the dissemination of leaflets and other materials containing written information tending to influence summoned jurors as they enter the courthouse may be in violation of section 918.12, Florida Statutes; and

**WHEREAS**, pursuant to a defense motion to strike, a Ninth Judicial Circuit Court judge recently found a jury panel had been tampered with per section 918.12, Florida Statutes, and *Nobles v. State*, 769 So. 2d 1063 (Fla. 1st DCA 2000), as members of the jury were in possession

of leaflets containing information attempting to influence the jury. Such occurrences severely impact the court's ability to conduct the efficient, prompt, and proper administration of justice; and

**WHEREAS**, restriction upon expressive conduct and the dissemination of leaflets and other materials containing written information tending to influence summoned jurors as they enter the courthouse is necessary to serve the State's compelling interest in protecting the integrity of the jury system; and

**WHEREAS**, any such restriction will be narrowly drawn to achieve that end; and

**WHEREAS**, such regulation is a proper exercise of the Court's inherent authority to take supervisory and administrative actions necessary to implement its judicial functions; and

**WHEREAS**, the power of courts to punish for contempt is of immemorial antiquity, and is inherent in all courts as a necessary power belonging to them in order to enable them to accomplish the purposes for which they were designed; that is, the orderly trial and decision of causes, the enforcement of public order, the prevention of interferences with their proceedings, and the enforcement of the due respect belonging to them as institutions of the country;

**NOW THEREFORE, I**, Belvin Perry, Jr., in order to facilitate the efficient administration of justice, pursuant to the authority vested in me as Chief Judge of the Ninth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.215, hereby order the following, effective **immediately**, and to continue until further order:

1. The dissemination of all leaflets and other materials to summoned jurors containing written or pictorial information tending to influence summoned jurors, as well as approaching a summoned juror for the purpose of displaying a sign to, or engaging in oral protest, education or counseling with information tending to influence summoned jurors on any matter, question,

cause, or proceeding which may be pending, or which may by law be brought, before him or her as such juror, shall be prohibited on the Orange County Courthouse complex grounds.

The term “courthouse complex” and any restrictions on expressive conduct contained herein shall apply to the Orange County Courthouse complex grounds, which includes the adjacent courthouse parking garage, the courthouse courtyard, and all other grounds surrounding the courthouse, from the intersection of Orange Avenue and Livingston Street, to the intersection of Livingston Street and Magnolia Avenue, to the intersection of Magnolia Avenue and Amelia Street, to the intersection of Amelia Street and Orange Avenue, to the intersection of Orange Avenue and Livingston Street. The public sidewalks that comprise the boundaries of this designated perimeter are excluded from this designation of the courthouse complex grounds.

2. The dissemination of all leaflets and other materials to summoned jurors containing written or pictorial information tending to influence summoned jurors, as well as approaching a summoned juror for the purpose of displaying a sign to, or engaging in oral protest, education or counseling with information tending to influence summoned jurors on any matter, question, cause, or proceeding which may be pending, or which may by law be brought, before him or her as such juror, shall be prohibited on the Osceola County Courthouse complex grounds.

The term “courthouse complex” and any restrictions on expressive conduct contained herein shall apply to the Osceola County Courthouse complex grounds, which includes the adjacent courthouse parking lot, the courthouse courtyard, and all other grounds surrounding the courthouse, from the intersection of Bryan Street and Rose Avenue, to the intersection of Rose Avenue and Patrick Street, to the intersection of Patrick Street and Bryan Street, to the intersection of Bryan Street and Rose Avenue. The public sidewalks that comprise the boundaries of this designated perimeter are excluded from this designation of the courthouse

complex grounds.

3. Regardless of whether the conduct at issue occurs on the courthouse complex grounds, any person who influences the judgment or decision of any grand or petit juror on any matter, question, cause, or proceeding which may be pending, or which may by law be brought, before him or her as such juror, with intent to obstruct the administration of justice, may be in violation of section 918.12, Florida Statutes.

4. Anyone engaging in the type of expressive conduct as contemplated by this Order may be in violation of section 918.12, Florida Statutes, and/or may be found in contempt of court.

5. The Orange County Sheriff's Office, the Osceola County Sheriff's Office, or any other law enforcement agency, shall give a copy of this Order and advise anyone who is within the courthouse complex grounds, as described herein, violating the provisions of this Order, of the restrictions on expressive conduct contained within this Order. Further, law enforcement shall instruct anyone violating the provisions of this Order to cease and desist immediately.

6. Anyone who is observed continuing to engage in such conduct as contemplated by this Order, after receiving a copy of this Order and being instructed to cease and desist by law enforcement, may face indirect civil contempt of court proceedings. If found to be in contempt of court, penalties include confinement, fine or both.

**DONE AND ORDERED** at Orlando, Florida, this 31st day of January, 2011.

\_\_\_\_\_/s/\_\_\_\_\_  
Belvin Perry, Jr.  
Chief Judge

Copies provided to:

Clerk of Court, Orange County  
Clerk of Court, Osceola County  
General E-Mail Distribution List  
<http://www.ninthcircuit.org>

IN THE DISTRICT COURT OF APPEAL  
FIFTH DISTRICT OF FLORIDA

CASE NO. 5D11-\_\_\_\_\_

FULLY INFORMED JURY ASSOCIATION,  
on behalf of its volunteers, and JAMES COX,  
individually,

Petitioners,

vs.

HON. CHIEF JUDGE OF THE  
NINTH JUDICIAL CIRCUIT,

Respondent.

\_\_\_\_\_ /

**AFFIDAVIT OF ILOILO MARGUERITE JONES**

**ON BEHALF OF FIJA**

STATE OF MONTANA  
COUNTY OF (Gallatin)

BEFORE ME, the undersigned authority, personally appeared Iloilo Marguerite Jones, who, after being duly sworn, deposes and says:

1. My name is Iloilo Marguerite Jones, I am competent to make this Affidavit and all statements made herein are based on my personal knowledge.

2. I am the Executive Director of the Fully Informed Jury Association; <http://fija.org> ("FIJA"), and have been affiliated with the group since 1990.

3. FIJA is a non-profit association organized under the laws of the State of Montana, and has been in existence since 1989. FIJA received its 501(c)(3) charitable organization status effective January, 1992, and has since that time engaged in efforts to:

- A. educate all Americans in their rights and responsibilities when serving as jurors.
- B. conduct research and inquiry, acquire, collate, compile, publish, and broadcast information, facts, statistics, and scholarly works on the origins, development, and current status of jurors' rights and responsibilities.
- C. encourage, sponsor, and facilitate the cultivation and understanding of jurors' rights and responsibilities, including those protected by the Constitution, statutes, and laws of the United States of America or the various states and territories thereof, or which are established by common law.

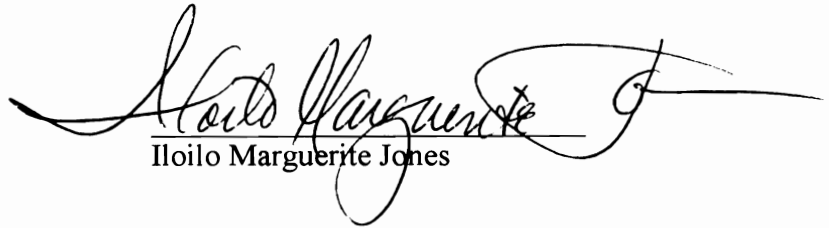
4. Since the Administrative Order was issued, FIJA has instructed its volunteers to abide by the restrictions contained therein, unless and until modified by Chief Judge Perry, or another court of competent jurisdiction.

5. FIJA has no formal members, but instead work through a network of supporters and volunteers. A substantial number of FIJA's supporters and volunteers are located in Central Florida, and are substantially affected by the challenged Order.

6. The Administrative Order has adversely affected FIJA's efforts in Orange County and Osceola County by causing FIJA to scale back its efforts in those counties.

7. If the Administrative Order is lifted, FIJA's volunteers would immediately engage in their expressive activities around the Orange County and Osceola County courthouses.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
Iloilo Marguerite Jones

STATE OF MONTANA

COUNTY OF Lewis & Clark

Sworn to and subscribed before me this 26 day of February 2011, by Iloilo Marguerite Jones.

( ) who is personally known to me, or

(x) who produced the following identification: US Passport.

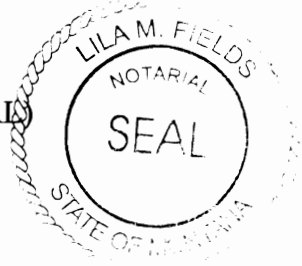
NOTARY PUBLIC:

SIGN: Lila M Fields

PRINT: Lila M Fields

*Notary State of Montana  
Lewis & Clark County Helena, MT*

Commission Expiration Date & Commission Number: 04/29/2012 (SEAL)



## 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 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.

The jurors were fined and imprisoned for acquitting Penn—until England's highest court acknowledged jurors' 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 laws—special-interest legislation that tramples our rights—is no longer sent here from Britain. But our own legislatures keep making bad laws. Now more than ever, we need juries to protect us!

**Why haven't I heard about "jury veto power" or "juror 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 Nuremburg 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?**

**⚖ BE ALERT!** Almost everyday, new attempts are made to limit jury power, mostly by changes in what government judges and prosecutors will tell you. Be highly skeptical of all that these government agents say: they often lie to take away your power as a juror to judge the law as well as the facts. Always be alert for collusion and deceit from these government employees.

**⚖ BE AWARE!** Thousands of harmless people are in prison simply because jurors weren't informed of their right to judge the law and the facts, and to render a verdict based on personal conscience. U.S.A. 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 injure anyone (in other words, political prisoners).

**⚖ 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.

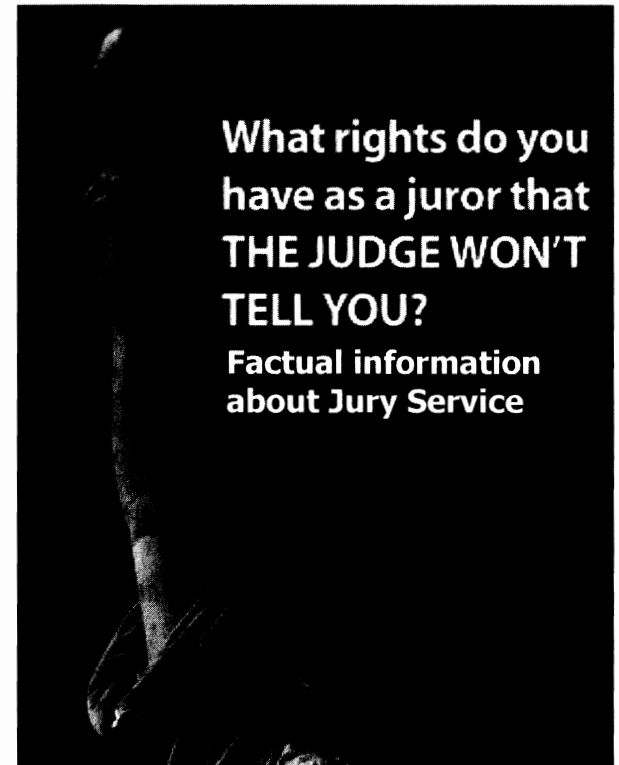
### **- For MORE INFORMATION -**

Visit [www.fija.org](http://www.fija.org), or call 1-800-TEL-JURY, for 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.

### **Restore liberty and justice by jury!**

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# 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](http://www.fija.org)**  
**1-800-TEL-JURY**



IN THE DISTRICT COURT OF APPEAL  
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CASE NO. 5D11-\_\_\_\_\_

FULLY INFORMED JURY ASSOCIATION,  
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NINTH JUDICIAL CIRCUIT,

Respondent.

\_\_\_\_\_ /

**AFFIDAVIT OF JAMES COX**

STATE OF FLORIDA     )  
COUNTY OF SEMINOLE )

BEFORE ME, the undersigned authority, personally appeared James Cox, who, after being duly sworn, deposes and says:

1.     My name is James Cox, I am competent to make this Affidavit and all statements made herein are based on my personal knowledge.

2.     I am a supporter of the Florida Fully Informed Jury Association;  
<http://florida.fija.org/>, and help coordinate and organize the Florida activities of the Association,

on a contract basis.

3. I have been a supporter of, and a volunteer with, the Florida branch of FIJA for approximately nine (9) months. During that time, I have engaged in efforts to educate the public, including potential jurors, regarding their legal and constitutional rights when serving as a juror, at or near courthouses throughout the State of Florida.

4. When conducting an outreach campaign, our supporters and volunteers normally start at a state or federal courthouse and hand out literature such as the pamphlet attached as an Exhibit to the Petition. We further engage passing individuals in conversation in an effort to communicate our message and inform willing individuals of our political viewpoint and message. To my knowledge, and based on my involvement with various FIJA outreach programs, FIJA volunteers do not force any individual to take their literature, do not target identifiable jurors, and do not engage in any aggressive communications or tactics whatsoever. FIJA volunteers only engage in conversation with those individuals who are interested in communicating.

5. We also attend meetings on college campuses, and conduct association meetings with our supporters and volunteers.

6. I have engaged in these educational outreach efforts at the Orange County, Florida courthouse in downtown Orlando, Florida at 425 N. Orange Avenue, Orlando, Florida 32801. I have also engaged in these outreach efforts in Fort Lauderdale, Miami, West Palm Beach, Orlando, Tampa and Jacksonville.

7. In addition to handing out literature, volunteers of FIJA desire to, in the future,

hold signs, wear t-shirts, and engage in other expressive activities that communicate FIJA's message to the public.

8. Volunteers of our organization have been threatened and told to move away from the courthouse doors at the Orange County, Florida courthouse in the past. On one occasion, John Kurtz, a FIJA volunteer, was stopped and interrogated by an Orlando police officer at the Orange County, Florida courthouse because he was distributing FIJA material. A video of the officer demanding that Mr. Kurtz cease filming an encounter with a public official, in a public place, can be seen at <http://www.youtube.com/watch?v=iqlwQpwcHUo>.

9. I have seen representatives of other groups handing out literature and collecting signatures at the Orange/Osceola Courthouses, but I have never observed law enforcement interfere with the expressive activities of those individuals.

10. All of the literature that FIJA supporters hand out in Florida can be found on the following link: <http://florida.fija.org/fija-information/>.

11. My desire to inform citizens, including potential jurors, of their legal and constitutional rights consistent with the FIJA message is motivated by my belief that individuals are often wrongfully prosecuted, and falsely imprisoned. Jurors are the last line of defense to guard against malicious prosecution and corruption, and I believe it is important to educate potential jurors of their right to peacefully engage in a check on the judicial system, and refuse to enforce laws that are not supported by the community and the defendant's peers. It is my desire to restore freedom and true justice for all citizens.

12. I am aware of the Administrative Order issued by Chief Judge Belvin Perry,

imposing restrictions on expressive activities near the Orange County and Osceola County courthouses.

13. It is my belief that the Administrative Order was issued as a direct response to FIJA's educational outreach activities, in the attempt to censor our group's message, and silence our viewpoint. I am not aware of any other groups or individuals that currently seek to engage in any protests, demonstrations or educational outreach programs at the Orange County and/or Osceola County courthouse complexes, besides FIJA.

14. I desire to continue engaging in expressive activities at or near the Orange County and/or Osceola County courthouses, in furtherance of the FIJA educational campaign, but believe that if I continue to do so, I will be subjected to arrest, incarceration, and contempt of court proceedings. I have discontinued my expressive activities at or near the Orange County and Osceola County courthouses in order to avoid being arrested or held in contempt of court under the Administrative Order. A substantial number of FIJA volunteers and supporters are affected by the issuance and potential enforcement of the Administrative Order.


15. Restricting my expressive activities to the public streets and sidewalks near the courthouse would not be an adequate alternative, since the individuals we are seeking to communicate with would more likely be driving near those locations at close to forty (40) miles per hour, and not walking into the courthouse. Accordingly, we would be unable to deliver our message to those individuals without causing a traffic disruption or hazard, and thereby risk prosecution for disorderly conduct under state law. I am not aware of any blanket restriction on any other expressive activities in the area covered by the Administrative Order – it only restricts the kind of expressive activities that I have engaged in and in which I want to continue to

engage.

16. Given the hostility exhibited to FIJA supporters by law enforcement in the past, it is my belief that law enforcement officials will arbitrarily and discriminatorily enforce the Administrative Order in such a way so as to censor FIJA's educational outreach activities.

17. Since the issuance of the Administrative Order, I, along with other FIJA supporters and volunteers with whom I have coordinated in the past, have voluntarily censored our expressive activities, and ceased our education outreach campaigns at the Orange and/or Osceola County courthouses described in the Administrative Order.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
James Cox

STATE OF FLORIDA

COUNTY OF SEMINOLE

Sworn to and subscribed before me this 23<sup>rd</sup> day of February 2011, by JAMES COX.

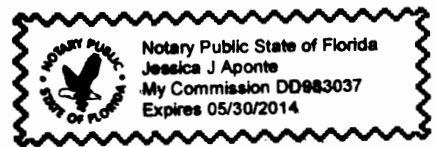
( ) who is personally known to me, or

(x) who produced the following identification: Florida DL #  
C200-452-68-308-0

NOTARY PUBLIC:

SIGN: Jessica J. Aponte

PRINT: Jessica J. Aponte



Commission Expiration Date & Commission Number: 5/30/14 (SEAL)  
DD983037



STATE OF FLORIDA  
CIRCUIT COURT  
FIFTH JUDICIAL CIRCUIT

David B. Eddy  
CIRCUIT COURT JUDGE

MARY KISICKI  
JUDICIAL ASSISTANT  
352-401-7868  
FAX 352-401-7881

MARION COUNTY JUDICIAL CENTER  
110 NORTHWEST FIRST AVENUE  
ROOM 4048  
OCALA, FLORIDA 34475

DB ✓ JS

copies to:

Katie  
Marbeth  
Ruby  
Jayne  
Sama

To: David R. Ellspermann  
Clerk of the Court

From: David B. Eddy *DBE*  
Administrative Judge

Date: February 8, 2010

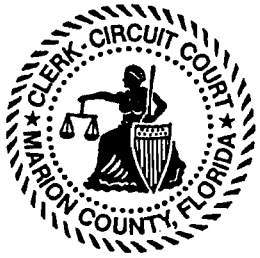
Re: Handouts

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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*


Post Office Box 1030 • Ocala, Florida 34478-1030

**David R. Ellspermann**  
*Clerk of the Circuit Court*

February 8, 2010

Telephone (352) 671-5604  
Facsimile (352) 671-5600

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 8<sup>th</sup>, 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](http://www.fija.org) [www.floridajurypower.org](http://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.

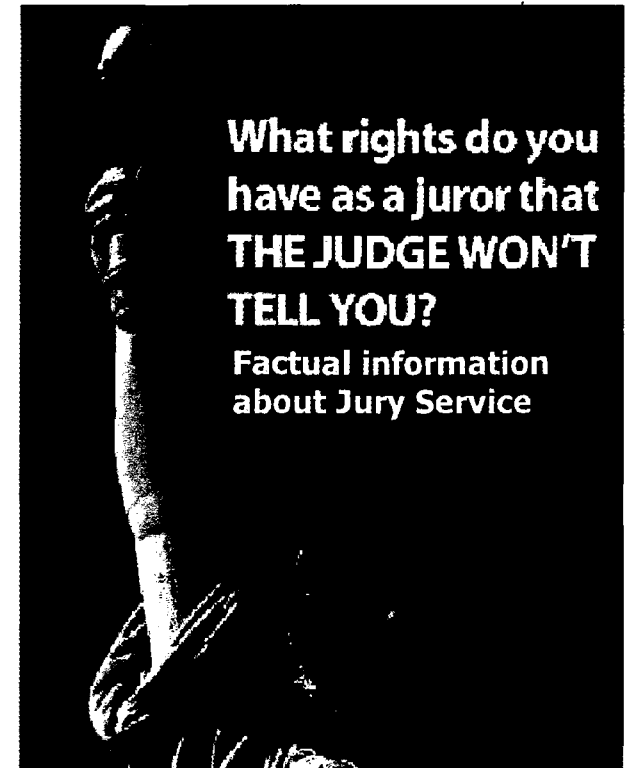
The Fully Informed Jury Association maintains a useful web site. It contains additional information about jury veto power, about FIJA, lists state coordinators and has archived files of our newsletters.

**Our site is [www.fija.org](http://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

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