

JURY RIGHTS PRIMER

"In all criminal cases whatever, the jury shall have the right to DETERMINE THE LAW AND THE FACTS."
[Article 1, Section 19, of the Indiana Constitution, our state's highest law.]

What does this mean to you? As a juror, **YOU ARE THE LAW** in the case before you; not the police, not the prosecutors, not the judge, not even the governor or the President. You **"DETERMINE THE LAW"** and your function is to act as a buffer between the potentially overbearing power of our government and the rights of an individual accused of a crime. We are a government of, by and for people. "We the people" means you, the juror. As a juror, it is your duty, and you have the authority, to enforce our constitution and protect our rights. It is your job to hold our government (those same police, judges, prosecutors, and all elected officials) to the principles of our constitution. Much of what the founders included in our constitution dealt with protecting our individual rights and limiting the power of the government. *A trial by a jury of your peers is fundamental to keeping the power of government in the hands of the people.* **Always remember, it could be you or someone close to you who stands accused of some crime. You should approach jury duty responsibly, seriously, and fully informed.**

The word DETERMINE means to resolve, decide, ascertain, restrict, and decree. This, in turn, means that you, the juror:

CAN JUDGE the law as well as the evidence in the case before you. You decide not only if the defendant "broke the law" but whether the law is just and is being justly applied in this case. You determine what the law is and how it applies in this case.

YOU HAVE THE UNDENIABLE POWER TO REFUSE TO CONVICT, regardless of the evidence presented, regardless of the law as written, and regardless of the judge and the judge's instructions. IF YOUR CONSCIENCE, your SENSE OF JUSTICE, OR your OPINION of the law DOES NOT PERMIT YOU TO CONVICT someone, YOU DO NOT HAVE TO!

YOU HAVE THE RIGHT TO "HANG" THE JURY. If no one else on the jury agrees with your verdict but you feel strongly about it, you do not have to change your mind. A retrial is possible with a hung jury, but you never have to go against your conscience.

Once a jury says "NOT GUILTY," that person cannot be retried for the same offense.

A jury cannot be punished in any way for its verdict.

If the verdict is "guilty," a defendant may appeal, although this is a difficult and expensive process.

GUIDELINES

Keeping all of this in mind, here are some guidelines to help you DETERMINE THE LAW AND THE FACTS with relevant references to our Constitution. To DETERMINE THE LAW ask yourself:

- *Is this a good law according to our constitution [Art. 1, Sec. 19, 25]?
- *Is this law being justly applied in this case [Art. 1, Sec. 19]?
- *Was there a victim [Art. 1, Sec. 17]?

- *Did the authorities act properly, according to our constitution [Art. 1, Sec. 11, 15]?
 - *Are you certain that the accused was treated properly when arrested [Art 1Sec15]?
 - *Are you certain that an illegal search and seizure did NOT occur [Art. 1, Sec. 11]?
 - *Did the prosecution prove that the authorities had "probable cause" to act [Art. 1, Sec. 11]?
 - *Does the punishment suit the crime Art. 16, 18, 21, 30]?
- IF YOU ANSWERED "NO" to ANY of these questions, your verdict should be "NOT GUILTY."

If you answered "YES" TO ALL of these questions, it is time to DETERMINE THE FACTS. Now ask yourself:

- *Did the defendant break the law, as you have determined it?
 - *Did the prosecution prove "beyond a reasonable doubt" that the defendant committed the crime?
 - *Is the mandated punishment appropriate for such a crime?
- Again, if you answered "NO" to any of these questions, your verdict should be "NOT GUILTY" and, if you answered "YES" to all questions, your verdict should be "GUILTY." *Remember, if you cannot, in good conscience, convict someone, you NEVER have to. You are the power in that courtroom and you can disregard these guidelines as well as the judges. Please confirm this information for yourself.*

BE A FULLY INFORMED JUROR!

PROPER JURY INSTRUCTIONS

The jury in a criminal cause are the exclusive judges of both the law and the evidence, and the duty of the court, in giving them instructions, is merely advisory. McDonald v. State, 62 Ind. 544 (1878)

The jury's constitutional right to determine the law and the facts may not be modified or minimized by instructions or otherwise. Steinbarger v. State, 226 Ind. 598, 82 N.E.2d 519 (1948)

Article 1, Section 19 of the Indiana Constitution provides that "in all criminal cases whatever, the jury shall have the right to determine the law and the facts." However, jurors should be bound by their conscience and their oaths, and not act arbitrarily, capriciously, upon a whim or prejudice. Beaver v. State, 236 Ind. 549, 141 N.E.2d 118 (1957)

The jury has the power to substitute its own conception of the law for the court's instructions. Candler v. State, (1977), Ind. 363 N.E.2d 1233; Abercrombie v. State, (1985), Ind. 478 N.E.2d 1236, [see also State v. Mike Tyson, 619 N.E.2d 276 (Ind.App.2d Dist, Aug 6, 1993)].

WARNING!!!

There are forces within our court system right now that try to restrict the right of jurors to judge the law as well as the facts.

BE ON THE LOOKOUT:

The jury selection process is designed to weed out conscientious jurors so that the jury becomes a rubber stamp for the will of special interest groups (for example, the police). We believe that only informed jurors can serve justice, and that only a "conflict of interest," such as knowing the defendant, should prevent you from being a juror.

We believe that all legally obtained evidence and testimony from either side should be allowed in court. However, evidence and testimony that you would consider to be important may have been excluded before you came in the courtroom. Further, a defense attorney is probably restricted by the judge from arguing the justness of the law to the jury! *The jury is usually prevented from being told what the sentence for this offense is should the defendant be found guilty.*

The role of a judge is to be an impartial advisor to the jury and a referee in courtroom disputes. Yet, this very person whom the jurors look to for guidance will often mislead them, and judges' instructions are often confusing. Contrary to their fears for the efficient administration of the system, informed and knowledgeable juries can bring back respect for OUR law, bring back respect for OUR police, bring back respect for OUR courts, and bring back respect for OUR government.

How can anyone get a fair trial if jurors are sworn to ignore their own rights and their own sense of justice? It is the duty of our legislators to make and pass laws and it is the duty of the jury to determine, on a case by case basis, how those laws apply in each particular trial. It is fundamentally wrong for the government (judges) to determine and define the laws and then to falsely tell the people (jurors) that they must abide by those definitions. If a jury determines that dispensing justice means that they must acquit someone not because of a lack of evidence but because of misconduct by authorities, then justice was served and the court functioned properly and constitutionally. We are a government of, by, and for... people; NAZI GERMANY was a government of law always putting the full force of those laws on anyone who displeased them.

In America we temper our laws with the discretion and compassion of a jury of our peers; Who do you trust more to dispense justice, an impartial jury of your peers or a courthouse full of governmental bureaucrats? *Most judges and prosecutors would feel the same way if the tables were turned.*

Now that you know what your rights as a juror are, SPREAD THE WORD. Be sure to give anyone about to become a juror one of these flyers (feel free to copy this pamphlet and pass it along).

We need members, ideas, donations and resources. We are dedicated to informing the public of their rights and responsibilities as jurors and sovereign citizens.

Hoosiers are singularly blessed by Article 1, Section 19 being recognized in the body of our Constitution, but these basic concepts apply in all states.

Nationally, The Fully Informed Jury Association is working for the addition of a constitutional amendment in States lacking this essential directive.

Call 1-800-TEL-JURY.