

# The White Rose



## Jury?

By: Jim Burns

I hate the draft. When I was a young man, the government was using the draft to coerce men to fight a war in Vietnam. The government's need to use the draft was, in my opinion, one good indication that the war should not have been fought. Anytime the government uses the draft, I feel that until and unless shown otherwise the draft is in and of itself sufficient proof that the government should not engage in the activity proposed. The government drafts people to sit on juries. Perhaps, the judicial system needs review. Why do we need a court system and if we do need a court system what do we want a court system to do? To protect people? From what and who needs protection? If we did not have some system to protect the lives, liberty, and property of people, it seems self evident to me that chaos might prevail. I believe that a court system should provide or at least attempt to provide what most people should want: justice. By justice, I mean what is deserved, and what people deserve, in my view, is not to have their lives, liberty, or property taken so long as they allow others their lives, liberty, and property. In my view, to achieve justice the first prerequisite (not the only) is impartiality and the opposite of impartiality is bias.

Webster's New Collegiate Dictionary defines a kangaroo court as "a mock court in which the principles of law and justice are disregarded or perverted." I accuse the courts of the United States and all the States thereof of being kangaroo courts. This may seem outrageous to most Americans. After all, if you attend any court in the land, you will no doubt see and hear what appears to be justice, and if you ask anyone there, I'm sure that almost everyone would say and most likely believe that justice is being done, and if they did not think that justice was being done, they would most likely say that too many people are being set free. So, if it walks as duck and quacks as a duck, then it must be a duck: Right? Well, what about decoys?

To make my case, I start with the question why do we need juries? Surely, judges are more qualified to ascertain the facts and the law: they have both training and experience. Picture Judge Wapner, he seems fair and experienced. Yet, Judge Wapner is human and subject to the same frailties as anyone else: corruption and bias. If only a few people dispense justice, it becomes easier to bribe those people since everyone knows who they are and that they judge many cases as apposed to a jury who should be selected at random and only set for one case. If judges are appointed, they will in the vast majority of cases represent the biases of those who appoint them, and if judges are elected, they will in the long run represent the biases of those who elect them. On the other hand, a jury if it is selected at random should represent the whole community and in so doing reduce or at least broaden the bias. If judges judge only the law, they can, will, and do bring their bias to their interpretation. In order to receive the benefit of the impartiality of a jury, the jury must be the judges of the whole case.

The benefits of the high degree of impartiality of a jury can and often is thwarted by the fact that the people who sit on juries do not hear all of the evidence and only judge parts of the case. Add to this the fact that lawyers are licensed and thus controlled by the government and the reason for the bias lawyers

often display becomes apparent. Further, if a case is controversial, that is when the law in question does not have the full support of the community, the courts often permit or the judge himself or herself questions prospective jurors as to their opinions of the controversy and disqualify those who disagree with the governments position and by so doing are actually stacking the jury. Thus, juries are not selected at random and therefore reflect the bias of the court, which makes our courts nothing more than kangaroo courts (courts which are biased in favor of the government).

Consider, if the American Judicial system were transported to communist China, would liberty and justice be protected? If the communists made the laws, selected the people to sit on juries, licensed only lawyers who obeyed their edicts, and appointed the judges, would liberty and justice prevail. The answer, of course, is **NO**, and the American Judicial system does not now protect liberty or justice and will not until and unless reforms are made. Namely, 1) jury duty must be voluntary (if people are drafted, they are slaves while in service and how can slaves be depended upon to protect liberty and justice), 2) judges must act as a referee (that is, his or her job is to insure order without interference), 3) the defendant should be allowed to select anyone, who wish to, to defend him without governmental interference, 4) the defense should be allowed to make any argument on its own behalf, 5) court procedures must be straight forward so that anyone of reasonable intelligence can use them, 6) jurors must be selected at random with no questions asked of their opinions of law, and 7) juries must judge the whole case, the facts, law, and the sentence (no more than the law allows but less if the jury chooses). If we can make these changes, juries can once again be catalyst of liberty and justice.

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NOTE: It has been my experience that the leadership of the Libertarian Party at all levels have not done a very good job at internal education. The tragedy of this is that fact that libertarianism is not difficult to understand nor is it time consuming to teach.

Libertarianism is the belief that people should be allowed to live as they choose so long as they allow others to do the same (or words to that effect). That is the goal of libertarianism. That is it. It is not hard. When confronted with an issue, simply ask yourself if this issue allows people to live as they choose so long as they allow others to do the same and if so, then it is OK with libertarianism (sometimes we might not approve of the activity, nevertheless it should not be against the law) and if not, then it is not OK with libertarianism. Now the test:

1. Does the I.R.S. allow people to live as they choose as long as they allow others to do the same? Need I say **NO**.
2. Does the D.E.A. allow people to live as they choose so long as they allow others the same rights? **NO**. (OK, here comes the tough one)
3. Suppose some people think that if they shave their heads and sing Hare Krishnas (and they coerce no one) that after the moon is in the seventh house, then all people will allow everyone to live as they choose so long as they do the same? Are they acting as libertarians? **YES**. Do I agree with them? **NO**.

The point I am trying to make with the third question is that libertarianism is about a goal, a purpose, or an objective and that is that all people

should be free to choose how to live as they see fit so long as they give the same freedom to others. What makes a libertarian is belief in that goal and not how he or she goes about achieving it so long as the goal is not violated in the process.

I believe that a common law jury such as I have described would enhance libertarianism and is worth great effort to achieve. Nevertheless, a common law jury is a means and not the ends. Can other libertarians disagree and still be libertarians? They can and I have little doubt that they will. Does that mean that I am wrong? No. Does it mean that they are wrong? No. Who will decide? Each person will choose where, when, and how much of their effort and money they will put to the cause and if enough people help, then we succeed and if in place a common law jury is a catalyst of liberty and justice, then those who fought for it were correct, if not then the others are correct, and we must find another way.

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**Quote**

"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." From a letter written by Thomas Jefferson to Thomas Paine.

"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." John Adams

"The jury has a right to judge both the law as well as the facts in controversy." John Jay, first Chief Justice, U.S. Supreme Court

"The jury has the power to bring a verdict in the teeth of both the law and facts." Oliver Wendell Holmes

**Meeting**

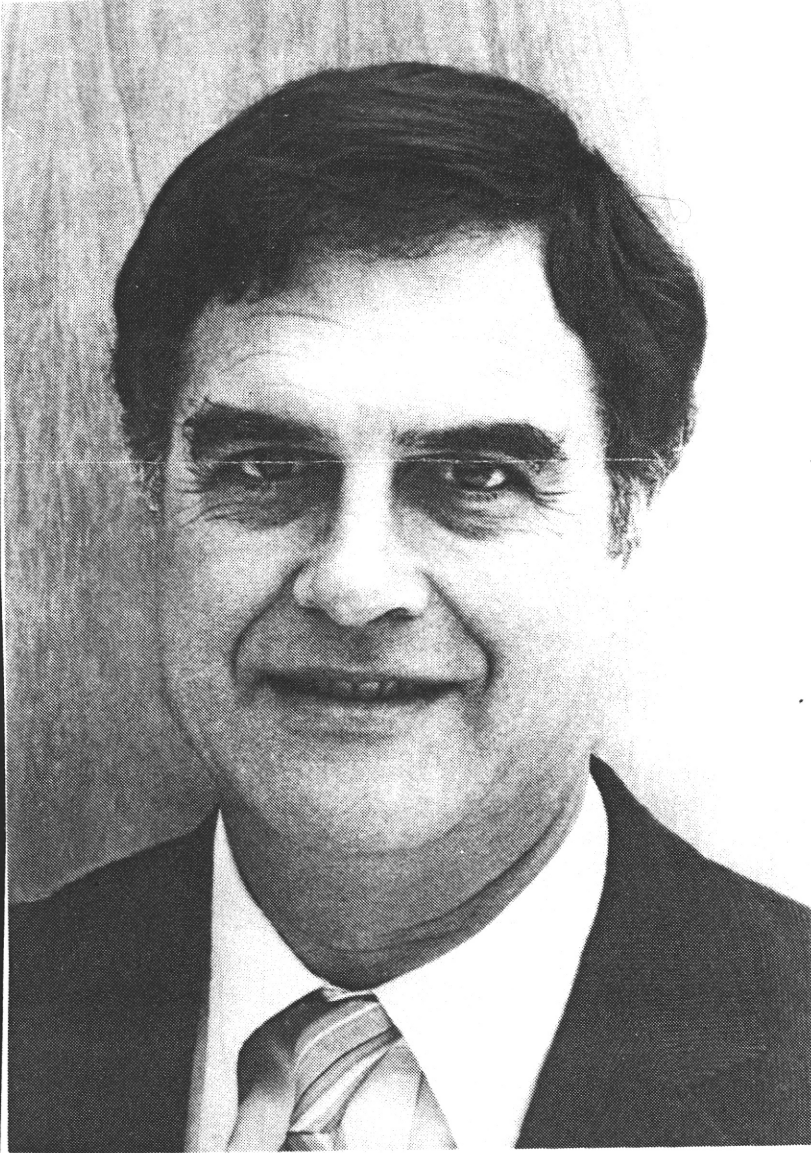
The Fully Informed Jury Amendment (FIJA) was organized by Don Doig and Larry Dodge to amend state constitutions to require judges to inform juries of their right and responsibility to judge not only the facts of a case but also the law.

Larry Dodge, FIJA Field Representative, will address a meeting here in Las Vegas on Wednesday, February 21st, 7:30pm at 1525 Linden Avenue. This meeting is being sponsored by the Libertarian Leadership Council, and all are invited to attend.

Larry Dodge has a B.A. from the University of Montana and an M.A. and Ph. D. from Brown University, all degrees are in sociology. He is currently a faculty affiliate at the University of Montana. He owns Big Sky Magic Enterprises, a color photographic picture postcard publishing and distributing company, and he is a freelance photographer. Teacher and businessman, Mr. Dodge, is concerned about liberty and was the Montana Libertarian Party candidate for the U.S. Senate (1982; 4%), Governor (1984; 4%), Secretary of State (1988; 5%). He was also involved with Russell Means bid for the Libertarian Party Presidential nomination.

Mr. Dodge is scheduled to be on the Harvey and Gayle Allen talk show on KDWN 720am radio on Sunday morning of February 18, 1990 at 1:15 AM.

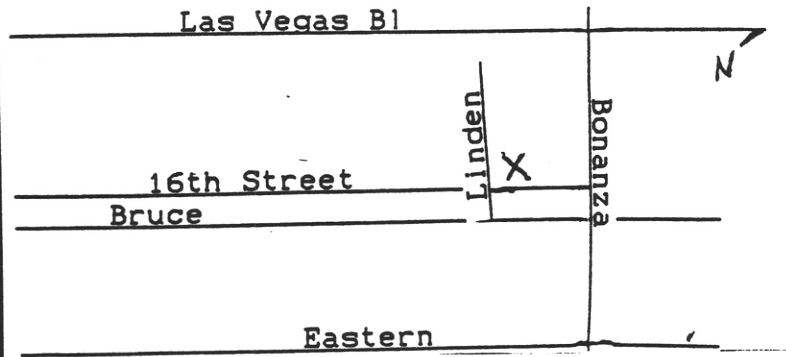
Mr. Dodge is scheduled to be heard on The Billy Goodman Happening on KVEG 840am radio on Tuesday evening at 10:15pm.



Larry Dodge

**MEETING**

Wednesday, February 21st, 7:30pm, 1525 Linden Ave.



ADDRESS CORRECTION REQUESTED

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