Approved 3/31/92
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative John Solbach at
Chairperson

1:15 ~~x.m.~~/p.m. on March 6, 19~~92~~ in room ~~313-S~~ of the Capitol.

All members were present except:

Representatives Carmody, Heinemann, Lawrence & Smith who were excused.

Committee staff present:

Jill Wolters, Revisor of Statutes
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

Randy Hearrell, Judicial Council
Gerry Ray, Johnson County Commissioner
Kelly Wendelyn, Chanute, Ks
Walter Myers, Informed Voters Alliance
Cary Scott, Wichita, Ks
Karen Barrett Olson
Ron Smith, Kansas Bar Association

The chairman called the meeting to order.

HB 2756 was taken up for consideration. Randy Hearrell testified in favor of the bill and explained why the Judicial Council wanted the bill.

Rep. Snowbarger made a motion to conceptually amend HB 2756 that a spouse would have right to elect against any instrument which they did not consent. Rep. Vancrum seconded the motion. Motion carried.

Rep. Douville moved to recommend HB 2756 as amended favorably for passage. Rep. Macy seconded the bill. Motion carried.

HB 3146 was considered.

Gerry Ray, Johnson County Commissioner, testified in favor of HB 3146. (Attachment #1) She answered members questions.

Rep. Parkinson moved to report HB 3146 favorably for passage. Rep. Macy seconded the motion. Motion carried.

HB 3145, jurors right to judge the law and fact during trial, was opened for hearing.

Kelly Wendelyn, Chanute, testified in favor of HB 3145. (Attachment #2) He answered committee members questions.

Walter Myers testified in favor of HB 3145. (Attachment #3) He answered questions from members.

Cary Scott, Wichita, testified in favor of HB 3145. (Attachment #4) He answered committee members questions.

Karen Barrett Olson testified in favor of HB 3145. She agreed to provide written testimony to committee members at a later date. Ms. Olson is from Manhattan. She is a K-State instructor, however was not testifying on behalf of the University, but as an individual.

Ron Smith, Kansas Bar Association, testified in opposition to HB 3145. He said the power of the legislature is to define public policy. He answered questions.

No action was taken on HB 3145. Rep. Pauls agreed to work with conferees on current PIK guidelines.

Meeting adjourned at 2:30 P.M.

GUEST LIST

COMMITTEE: House Judiciary DATE: 3-6-92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATIO
KARREN BAIRD-OLSON	701 Leandale Rd.,	Manhattan FIJA 66502
Robin L Cordan	3312 SW Twilight	Topeka 66614
MARY E. SCOTT	2320 LORI LN.	WICHITA FIJA
KEITH R LANDIS	TOPEKA	ENRATING SERVICES CORP. ON PUBLICATIONS FOR KS
Paul Shelby	Topeka	OJA

MEMORANDUM IN SUPPORT OF
PROPOSED LEGISLATION FOR
JUDICIAL POWERS IN ENFORCEMENT
OF COUNTY CODES AND RESOLUTIONS

INTRODUCTION

In 1988, at the request of Johnson County, the Legislature enacted a comprehensive code for the enforcement of county codes and resolution. That act was modeled after and is very similar to the code for municipal courts applicable to cities. It is used primarily for the enforcement of housing, zoning, sanitary and environmental codes of the county, but also for park regulations. It does not apply to traffic violations.

Johnson County implemented the code in 1989. It has been reasonably successful and is fully supported by the district court judges. In constructing and implementing the code, however, we did minimize the arrest powers. Our experience, unfortunately, has demonstrated that some persons accused of violations simply fail and refuse to appear in court in response to the summons and notice to appear or fail to pay the fines. To rectify that problem, we are proposing that the powers of the court specifically provide for contempt citations and bench warrants. The proposed legislation is requested by the district court judges.

II. CHANGES SOUGHT

The proposed legislation clarifies the existing provisions of K.S.A. 19-4718 related to appearances. The proposed

change specifies that the judge may issue contempt orders, may require appearance bonds, or may issue bench warrants for the purpose of compelling the appearance of an accused person.

The proposed legislation adds a new section that expressly relates to failures to appear and authorizes bench warrants to be issued and serve. The proposed change is modeled after and consistent with K.S.A. 12-4306, which applies to traffic violations in municipal court and failure to appear on a notice.

Finally, the proposal amends K.S.A. 20-310a, which designates the powers of pro tem judges appointed to hear code violation cases. The powers specified are consistent with the authority to compel appearances.

III. RATIONALE FOR CHANGE

Without the proposed changes, the appointed judges have limited authority to control and compel appearances. The changes provide limited judicial powers, consistent with the municipal court powers.

HJC
3-6-92
#1
2 of 2

Testimony for

The Kansas House Judiciary Committee

concerning

HB 3145, Jury nullification law

on March 6, 1992

from

Mr. Kelly Wendeln
919 S. Highland
Chanute, KS 66720

Subject covered

Several court cases confirm a jury's right to nullify the law

This was the very first jury trial before the U.S. Supreme Court in 1794. On the following page is the charge to the jury by Chief Justice John Jay, former President of the Continental Congress, and this illustrates the true power of the jury.

Supreme Court of the United States.

3 U.S. (3 Dall.) 1

1*] *FEBRUARY TERM, 1794.

IN the meeting of the court, a commission was read, dated the 28th of January, 1794, appointing William Bradford, Esquire, attorney general of the United States.[1]

The STATE of GEORGIA,
versus
BRAILSFORD, *et al.*

A law of a state during war, sequestrating debts, does not vest the same in the state. It only prevents the creditor recovering while the war continues. His right to recover revives on peace being made. Sequestration does not divest the property in the thing sequestered. On questions of fact, it is the province of the jury, on questions of law, it is the province of the court, to decide.

THIS cause was now tried, by a special jury, upon an amicable issue, to ascertain, whether the debt due from Spalding, and the right of action to recover it, belonged to the state of Georgia, or to the original creditors, under all the circumstances, which are set forth in the pleadings and arguments on the equity side of the court? See 2 vol. Dall. Rep. 403, 415.

For the plaintiff, *Ingersoll* and *Dallas*, proposed two objects for inquiry:—1. Was the debt due from Spalding, at any time the property of the state?—2. Has the title of the state ceased, or been removed, and the right of action re-vested in the defendants?

1. On the first point, they contended, that Georgia as a sovereign state, had power to transfer the debt in question from the original creditor, an alien enemy, to herself, notwithstanding some of the debtors were citizens of another state; that by her confiscation law she had declared the intention to make the transfer; and that without an inquest of office, her intention had been carried into effect in due 2*] form, and according to *law, as well in relation to her own citizens as to the parties who were citizens of South Carolina. In support of these several propositions the following authorizies were cited: 1 H. Bl. 149; Vatt. B. 3, c. 77; Lee on Capt. Bynk. B. 1 c. 7; Vatt. B. 3, c. 18, s, 295; Jenk. 121; Sir T. Park 121; Plow. 243, 324; 1 H. Bl. 413; 2 Bl. Com. 405, 409; 2 Wood. 130; 4 Bl. Com. 386; 1 Hal. P. C. 413; 3 Inst. 55; 1 Hawk. 68; 3 Bl. Com. 259; 3 T. Rep. 731–734; 1 Woodes. 146; Cro. Car. 460; 16 Vin. Abr. 85, 86; 3 Bl. Com. 260; Park. 267; 1 P. Wm. 307; 1 Dall. Rep. 393; Hind. ch. 129; 1 Vern. 58.

2. On the second point, it was urged, that although the word, "sequestration" was used in the Georgia law, yet, that the law directed the debt to be collected, in the same manner as debts confiscated, and to be put into the treasury, for the use of the state, until it should be otherwise appropriated; and that the state had never made any other appropriation; but on the first opportunity, claimed it as a forfeiture. The election, therefore, to consider it as a confiscation, was reserved by the state to herself; and her subsequent conduct makes the reservation absolute. The exception of debts in the South Carolina law cannot govern the case as to Powell & Hopton; for that law is only referred to for the manner and form, not for the subjects of confiscation. It only remains, therefore, to inquire, whether, independent of Georgia, the operation and existence of her law can be, and has been, defeated and annulled. The peace merely does not effect the right of the state; for, the condition of things at the conclusion of the war is legitimate; and all things not mentioned in the treaty, are to remain as at the conclusion of it. The treaty of 1783 does not affect the right of the state; for, though it provides, generally, in the 4th article; that creditors on either side, shall meet with no lawful impediment, in recovering their debts, this ought to be understood merely as a provision that the war, abstractedly considered, shall make no difference in the remedy, for the recovery of subsisting debts; that the remedy shall not be perplexed by instalment laws, pine-barren laws, bull laws, paper money laws, etc.; but it does not decide, what are subsisting debts, which can only, indeed, be decided on the general principle of the law of nations. Laws of sequestration and confiscation, are not, however, the object of the 4th article of the treaty of peace; but of a subsequent article, in which Congress only promise (all, indeed, that they could do) to recommend to the states, revision and restitution. Debts discharged by law, where they originated, are every where discharged. Such is not only the doctrine of Georgia, but of the British statesmen and judges wherever the question has arisen. The federal constitution does not affect the right of the state; for, though *it gives effect to the treaty of [*3 peace, it furnishes no rule for construing the meaning of the parties to that instrument. In relation to these arguments, the following authorities were cited:—State papers, Jefferson to Hammond, Hinde. Ch. 127; 1 Br. Ch. 376; 3 Bac. Abr. 310; Caermarthen's Memorial, American Museum, May, 1787; 1 Hen. Bl; 123, 135; 3 T. Rep. 732; 1 H. Bl. 149; 2 Br. Ch. 11; 1 B. Bl. 146.

For the defendants, *Bradford* (the attorney-general) *E. Tilgman* and *Lewis* made the following points:—1st. That the debts due to Pow-

1.—Mr. *Bradford* was appointed in the room of *Edmund Randolph*, Esq. who had accepted the office of secretary of state.

HJC 3-6-97 #2 25

ell & Hopton, had not been confiscated by the law of South Carolina, and, therefore, were not confiscated by the words of reference in the law of Georgia; nor had Georgia a right to confiscate the property of the citizens of other states. 2d. That even if the law of Georgia had confiscated Brailford's interest in the debt, the right to recover the two-thirds belonging to Powell & Hopton was unimpaired. 3d. That the debt, as it respects Brailsford himself, is not confiscated, but sequestered; and that the sequestration had not been enforced by any inquest of office, seizure, or other act tantamount to an office or seizure. 4th. That the peace alone, without any positive compact, restored the right of action to the original creditors. 5th. That without recourse to the general principle of the law, of nations, the treaty expressly revives the right of action, by removing all legal impediments to the recovery of bona fide debts, and the treaty is the supreme law of the land, by virtue of the federal constitution. In support of these propositions the following authorities were cited: —3 Bac. 203; 2 Co. Co. 67; 1 P. Wm 307; Curs. Canc. 89; 1 Dom. Civ. L 138, 147; Magna Charta. Sir T. Park. 277; 3 T. Rep. 734; Vatt. b. 4; c. 1; s. 8, iv. c. 2, s. 20, 22; Burn. Ec. L. 157; Carth. 148; Grot. b. 3, c. 20 s. 16, p. 700; 1 Dall. Rep. 233; 1 H. Bl. 123, 136; 2 Bro. Ch. 11; 1 Bl. c. 409, 240; Sir T. Raym. Saunf. 15; Plowd. 259; 3 Inst. 55; 1 Hawk. 68; State papers Bynk. b. 1, c. 7; 1 Ver. 58; Circular Letter of Congress.

The argument having continued for four days, the Chief Justice delivered the following charge on the 7th of February.

JAY, *Chief Justice:*—This cause has been regarded as of great importance; and doubtless it is so. It has accordingly been treated by the counsel with great learning, diligence and ability; and on your part it has been heard with particular attention. It is, therefore, unnecessary for me to follow the investigation over the extensive field into which it has been carried; you are now, if ever you can be, completely possessed of the merits of the cause.

4*] *The facts comprehended in the case, are agreed; the only point that remains, is to settle what is the law of the land arising from those facts; and on that point, it is proper, that the opinion of the court should be given. It is fortunate on the present, as it must be on every occasion, to find the opinion of the court unanimous. We entertain no diversity of sentiment; and we have experienced no difficulty in uniting in the charge, which it is my province to deliver.

We are then, gentlemen, of opinion, that the debts due to Hopton & Powell (who were citizens of South Carolina) were not confiscated by the statute of South Carolina: the same being therein expressly excepted. That those debts were not confiscated by the statute of Georgia, for that statute enacts, with respect to Powell & Hopton, precisely the like, and no other, degree and extent of confiscation and forfeiture, with that of South Carolina. Wherefore it cannot now be necessary to decide, how far one state may of right legislate relative to the personal rights of citizens of another state, not residing within their jurisdiction.

We are also of opinion, that the debts due to Brailsford, a British subject, residing in Great Britain, were by the statute of Georgia subjected, not to confiscation, but only to sequestration; and, therefore, that his right to recover them, revived at the peace, both by the law of nations and the treaty of peace.

The question of forfeiture in the case of joint obligees, being at present immaterial, need not now be decided.

It may not be amiss, here, gentlemen, to remind you of the good old rule, that on questions of fact, it is the province of the jury, on questions of law, it is the province of the court, to decide. But it must be observed that by the same law, which recognizes this reasonable distribution of jurisdiction, you have nevertheless a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy. On this, and on every other occasion, however, we have no doubt, you will pay that respect, which is due to the opinion of the court. For, as on the one hand, it is presumed, that juries are the best judges of facts; it is, on the other hand, presumable, that the court are the best judges of law. But still both objects are lawfully, within your power of decision.

Some stress has been laid on a consideration of the different situations of the parties to the cause. The state of Georgia, sues three private persons. But what is it to justice, how many, or how few; how high, or how low; how rich, or how poor; the contending parties may chance to be? Justice is indiscriminately due to all, without regard to numbers, wealth, or rank. Because to the state of Georgia, composed of many *thousands of people, the litigated [*5 sum cannot be of great moment, you will not for this reason be justified, in deciding against her claim; if the money belongs to her, she ought to have it; but on the other hand, no consideration of the circumstances, or of the comparative insignificance of the defendants, can be a ground to deny them the advantage of a favorable verdict, if in justice they are entitled to it.

Go then, gentlemen, from the bar, without any impressions of favor or prejudice for the one party or the other; weigh well the merits of the case, and do on this, as you ought to do on every occasion, equal and impartial justice."

The jury having been absent some time, returned to the bar, and proposed the following questions to the court.

1. Did the act of the state of Georgia, completely vest the debts of Brailsford, Powell & Hopton, in the state, at the time of passing the same?

2. If so, did the treaty of peace, or any other matter, revive the right of the defendants to the debt in controversy?

In answer to these questions, the chief justice stated, that it was intended in the general charge of the court, to comprise their sentiments upon the points now suggested; but as the jury entertained a doubt, the enquiry was perfectly right. On the first question, he said it was the unanimous opinion of the judges, that the act of the state of Georgia did not vest the debts of Brailsford, Powell & Hopton, in the state at the time of passing it. On the 2d question he said, that no sequestration divests the property in the thing sequestered; and, consequently, Brailsford, at the peace, and indeed, throughout the

v. Brailsford, 3 Dall. 1, 4, 1 L.Ed. 483, in which Chief Justice Jay declared:

> * * * for as, on the one hand, it is presumed that juries are the best judges of facts; it is, on the other hand, presumable, that the court are the best judges of law. But still, both objects are lawfully within your power of decision.

In criminal cases juries remained the judges of both law and fact for approximately fifty years after the Revolution. However, the judges in America, just as in England after the Revolution of 1688, gradually asserted themselves increasingly through their instructions on the law.

[3] We recognize, as appellants urge, the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by the judge and contrary to the evidence. This is a power that must exist as long as we adhere to the general verdict in criminal cases, for the courts cannot search the minds of the jurors to find the basis upon which they judge. If the jury feels that the law under which the defendant is accused is unjust, or that exigent circumstances justified the actions of the accused, or for any reason which appeals to their logic or passion, the jury has the power to acquit, and the courts must abide by that decision.

Concededly, this power of the jury is not always contrary to the interests of justice. For example, freedom of the press was immeasurably strengthened by the jury's acquittal of John Peter Zenger of seditious libel, a violation of which, under the law as it then existed and the facts, he was clearly guilty. In that case Andrew Hamilton was allowed to urge the jury, in the face of the judge's charge, "to see with their own eyes, to hear with their own ears, and to make use of their consciences and understanding in judging of the lives, liberties, or estates of their fellow subjects." [11]

[4] No less an authority than Dean Pound has expressed the opinion that "Jury lawlessness is the great corrective of law in its actual administration." [12] However, this is not to say that the jury should be encouraged in their "lawlessness," and by clearly stating to the jury that they may disregard the law, telling them that they may decide according to their prejudices or consciences (for there is no check to insure that the judgment is based upon conscience rather than prejudice), we would indeed be negating the rule of law in favor of the rule of lawlessness. This should not be allowed.

The Supreme Court, in the landmark case of Sparf and Hansen v. United States, 156 U.S. 51, 15 S.Ct. 273, 39 L.Ed. 343 (1895), affirmed the right and duty of the judge to instruct on the law, and since that case the issue has been settled for three-quarters of a century. Justice Harlan's scholarly opinion traced the history of the rights of juries in criminal cases. He distinguished *Brailsford* as a civil case and therefore not controlling in criminal trials. Justice Harlan further deprecated that decision, going to the extreme of questioning whether it was in fact reported properly, since he doubted that Chief Justice Jay could ever have held such an opinion even in a civil case. The Justice concluded finally that

> Public and private safety alike would be in peril if the principle be established that juries in criminal cases may, of right, disregard the law as expounded to them by the court, and become a law unto themselves. Under such a system, the principal function

11. Alexander, James, A Brief Narrative of the Case and Trial of John Peter Zenger (Harv.U.Press 1963) ed. by Stanley Nider Katz at 93.

12. Pound, Law in Books and Law in Action, 44 Am.L.Rev. 12, 18 (1910). *Also see, e. g.*, Sparf and Hansen v. United States, *supra* 156 U.S. n. 6 at 110, 15 S.Ct. 273 (Gray and Shiras, JJ., dissenting); United States v. Sisson, infra n. 15; Howe, *supra* n. 6.

#JC 3-6-92 #2 AB5

ago in Brown v. United States, 105 U.S. App.D.C. 77, 84, 264 F.2d 363, 370 (1959) (en banc) (dissenting opinion). I believed then, and I believe today, that the sixth amendment guarantees a defendant the right to act on his own behalf in resisting a criminal prosecution.

My disagreement with the Court concerns the issue of jury nullification. As the Court's opinion clearly acknowledges, there can be no doubt that the jury has "an unreviewable and unreversible power * * * to acquit in disregard of the instructions on the law given by the trial judge * * *." Majority opinion at 1132. More important, the Court apparently concedes—although in somewhat grudging terms—that the power of nullification is a "necessary counter to case-hardened judges and arbitrary prosecutors," [1] and that exercise of the power may, in at least some instances, "enhance, the over-all normative effect of the rule of law." *Id.* at 1137. We could not withhold that concession without scoffing at the rationale that underlies the right to jury trial in criminal cases,[2] and belittling some of the most legendary episodes in our political and jurisprudential history.[3]

The sticking point, however, is whether or not the jury should be told of its power to nullify the law in a particular case. Here, the trial judge not only denied a requested instruction on nullification, but also barred defense counsel from raising the issue in argument before the jury. The majority affirms that ruling. I see no justification for, and considerable harm in, this deliberate lack of candor.

At trial, the defendants made no effort to deny that they had committed the acts charged. Their defense was designed to persuade the jury that it would be unconscionable to convict them of violating a statute whose general validity and applicability they did not challenge. An instruction on nullification—or at least some argument to the jury on that issue—was, therefore, the linchpin of the defense.

At the outset it is important to recognize that the trial judge was not simply neutral on the question of nullification. His instruction, set out in part in the margin,[4] emphatically denied the existence of a "legal defense" based on "sincere religious motives" or a belief that

1. Majority opinion at 1136 and n. 52, *quoting* Fortas, Follow-Up/The Jury, Center Magazine 61 (July, 1970).

2. *See* Williams v. Florida, 399 U.S. 78, 100, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970); Duncan v. Louisiana, 391 U.S. 145, 155–156, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968); United States v. Spock, 416 F.2d 165, 180–182 (1st Cir. 1969); United States v. Bennett, 148 U.S.App. D.C. 364, at 368, 460 F.2d 872, at 876 (1972); United States v. Eichberg, 142 U.S.App.D.C. 110, 113, 439 F.2d 620, 623 (1971) (Bazelon, C. J., concurring); Scheflin, Jury Nullification: The Right to Say No, 45 S.Cal.L.Rev. 168, 187–88 (1972).

   In *Duncan* the Supreme Court stated:

   > A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government. Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. * * * Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the complaint, biased, or eccentric judge. * * * Fear of unchecked power, so typical of our State and Federal Governments in other respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence.

   391 U.S. at 155–156, 88 S.Ct. at 1451.

3. *See generally* Scheflin, *supra*, note 2; H. Kalven & H. Zeisel, The American Jury 310–11 (1966); J. Alexander, A Brief Narration of the Case and Trial of John Peter Zenger (1963); *cf.* Duncan v. Louisiana, 391 U.S. 145, 155–156, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968).

4. Transcript at 825–27:

   > Finally, ladies and gentlemen, you are not trying the Vietnam war. The Vietnam war is not an issue in this case. You are not trying ideas. You are not trying the United States. You

HSC 3-6-92 #2 5 of 5

Rep. Solbach; Members of the Committee

I am Walter Myers, a native of Kansas, a resident of Douglas County and National Co-chairman of the Informed Voters Alliance (IVA).

IVA was organized in 1987. Our goal is to help reinstate the lawful government of the United States as set forth within the spirit and intent of the Declaration of Independence, Constitution fo the United States, Bill of Rights and Constitution's for the individual states.

Our foremost objective is to create an unbeatable political force. Our strategy for doing so is to unify people, ***not in body but in spirit, purpose and the timing of their actions on issues of mutual interest.***

This strategy demands that IVA be extremely judicious in the issues selected for action. Because of this, our National Steering Committee has chosen to address but eight which we feel must be successfully addressed if there is to be any hope of realizing our goal.

These issues are summarized in the draft flyer at attachment 1. As legislators, you are in a position to help directly solve or alleviate the impact of five of them (numbers 1, 4, 6, 7 and 8). You can also help insure the remainder receive proper attention. I want to briefly touch on two of these issues before addressing the need for a fully informed jury amendment to our State Constitution.

I trust you understand that the New World Order being pursued can only be built on the ashes of our lawful government. Since the Constitution provides our **only** basis for derailing this NEW WORLD ORDER, it must be retained. In an effort to formally replace it, many states were fraudulently convinced to request that Congress call a Constitutional Convention for the promoted purpose of obtaining a balanced budget amendment. As you will find in studying Attachment 2 of my testimony, a balanced budget is already required by PL 95-435. Additionally, a balanced budget is a mathematical impossibility under our debt dominant system of money creation. **Talk of it is a sham and a fraud!** *Available facts make it clear that the target of the convention is not the budget, but our Constitution.* Therefore, SCR 1661, the Kansas call for the Convention should be expunged or rescinded. I hope you will support doing so in this legislative session.

I'm confident you're well aware of our individual, state and nations financial woes. On Feb. 10, 1992, the leaders of several Kansas organizations presented Governor Finney a decision paper which concluded that: ***left unchallenged and unchanged, the only possible mathematical outcome of the debt dominant system of money creation employed by the privately owned Federal Reserve System is the FED's direct ownership of all real wealth of its choice and a mortgage on the remainder.*** Governor Finney and Senator Burke have agreed with this conclusion. Kansans have three choices regarding this issue. We can gracefully accept our role as economic hostages (slaves) to the Fed; act to insure the Constitutional concept of money creation is reinstated; or reassert this State's sovereignty and independence. I suggest that you study this issue as a decision on which choice to pursue will be made soon, either thru an act of ommission or commission.

Re the need for a Fully Informed Jury Amendment (FIJA). In his first inaugural address, President Lincoln said: *"I do not forget the positions assumed by some, that Constitutional questions are to be decided by the Supreme Court, nor do I deny that such decisions must be binding in any case upon the parties of a suit, as to the object of that suit, while they are also entitled to every high respect and consideration in all parallel cases by all other departments of the government. And while it is obviously possible that such decisions may*

H JC 3-6-92 Attach #3 1 of 5

be erroneous in any given case, still the evil effects flowing from it, being limited to that particular case, with the chance that it may be over ruled and never become precedent for other cases, can better be borne than could be evils of a different practice."

"At the same time, the candid citizen must confess that if the policy of the government upon vital questions affecting the whole people is to be irrevocably fixed by decision of the Supreme Court the instant they are made in ordinary litigation between parties in personal actions, then the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal. Nor is their in this view any assault upon the Court or the judges, it is a duty from which they may not shrink to decide cases properly brought before them, and it is not fault of theirs if others seek to turn their decision to political purposes."

IVA believes President Lincoln's remarks are applicable to the relationship between our legislatures, bureaucracies and juries. If we accept every legislative and administrative action of government as absolute, we will in essence abrogate what was intended to be our most important votes and power; **the power and Right of juries to nullify bad law.** This is the power to which President Thomas Jefferson was referring when he wrote: ***"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."***

Today, it is politically incorrect to be a Constitutionalist. Our prisons are full of political prisoners. Free speech and a free press are myths. Those of us daring to "sound the trumpet" with truthful testimony are subject to persecution and prosecution. And though it is sad, it is also true that many legislators frown upon our efforts to encourage them to honor their oath of office and support the Constitution. Fully informed juries can help insure compliance with the Constitution and that justice prevails. **We agree with Pres. Jefferson and we hope you do!** If so, you can support the Constitution and demonstrate a commitment to your oath of office by voting for HB 3145. I ask that you do so as fully informed juries are a vital link in IVA's effort.

I thank you for your time, attention and consideration. May God give you courage and wisdom as you deliberate your decision.

Walter L. Myers
Co-chairman
Informed Voters Alliance

2 Attachments:
1. draft flyer
2. 2-7-89 Ltr. to legislators

HJC 3-6-92 Attach #3 2 of 5

We firmly believe the only peaceful way to avoid the NEW WORLD ORDER is for voters to wrest control of government from those holding it. Doing so demands:

1. a national repentance. We must acknowledge and regret past mistakes and begin correcting them.

2. the creation of an unbeatable political force capable of replacing a substantial majority of our incumbent, corrupt and unqualified politicians.

3. a means of identifying and electing political candidates having the honesty, integrity, ability and courage to stand for righteousness.

IVA believes many voters are beginning to repent. This number will increase as the economic, environmental, and social conditions in America continue to deteriorate. We believe they can meet the challenge if organized – ***not as one entity or single organization, but in unity of spirit, purpose, thought and action on vital efforts of mutual benefit.***

To help transform voters concern into meaningful and efficient action, IVA developed a unique coordinating and operating concept, organizational structure and program. A four page description of it is included in every membership package or is available separately for $4.00. The Concept permits participants to coordinate their efforts on an issue by issue basis and yet retain their own identity and freedom to pursue other issues within their area of special interest. Its acceptability has been well demonstrated.

"...and to the Republic for which it stands...."

A CONCEPT IS A CONCEPT

It can never be anything more without good people at every level of government who can and will help provide the leadership and effort to implement it; people who will faithfully participate in telephone trees, sign and carry petitions for worthy causes and candidates, register voters, speak on the issues, run for public office, write letters to the editor, put out yard signs, initiate, orchestrate or otherwise participate in special events, function as a leader and more.

If you believe in the **"miracle of Philadelphia"** and want to help fill one or more of the needs, **please join us.** Complete and mail the attached application. ***Together, we can, we must and we will SAY NO to the NWO and rebuild the American Dream!***

IVA
Informed Voters Alliance

YES! I want to help the INFORMED VOTERS ALLIANCE build an unbeatable political force and reinstate our lawful government for all Americans within the spirit and intent of our Declaration of Independence, Constitution, and Bill of Rights.

Here is my ____ 1992 IVA membership dues ($15.00) and/or a donation of
___ $10.00 ___ $20.00 ___ $50.00 ___ $500.00 ___ Other $_____

Name _____

Address _____ City _____ State _____ Zip _____

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IVA is a not for profit organization: Contributions to IVA are not deductible. Should you desire anonymity in your donation it will be respected.

The Informed Voters Alliance, RR 2, Box 157C, Baldwin, KS 66006 (913) 594-3367

The:

IVA
Informed Voters Alliance

a non partisan, not for profit, pro American organization who believes in God and HIS foundation for our Nation invites you to:

understand why

RESTORING LAWFUL GOVERNMENT BORDER TO BORDER MAKES MORE SENSE THAN A

NEW WORLD ORDER

In "Captains and the Kings," Taylor Caldwell wrote:"There is indeed a plot against the people and probably always will be, for Government has always been hostile toward the governed.... Whether they know it or not, the people of all nations are helpless. This is probably the last hour for mankind as a rational species before it becomes the slave of a 'planned society'...I hope many of my readers will avail themselves of the facts. That is all the hope I have."

In announcing "DESERT STORM", President Bush said: "We have an opportunity for a ***NEW WORLD ORDER*** where ***WORLD LAW, BASIC HUMAN RIGHTS,*** and ***FUNDAMENTAL FREEDOMS*** will prevail."

HJC 3-6-92 Attach 3 3 of 5

The reported definition of the **NEW WORLD ORDER** makes it clear it is a "planned society" to be built on the ashes of our Constitution. It is:"*A world that has a supernational authority to regulate world commerce and industry; an international organization that would control the production and consumption of oil; an international currency that would replace the dollar; a World Development Fund that would make funds available to free and communist nations alike; and an international police force to enforce the edicts of the New World Order.*"

FORGET POLITICS AS USUAL

It is self evident that both Republican and Democratic administrations have faithfully pursued this unconstitutional and anti-Christian ideology. It's time we accept this as fact and heed President Lincoln's advice saying: *"We the people are the rightful masters of both the Congress and the Courts, not to overthrow the Constitution, but to overthrow the men who pervert the Constitution."*

Together, we can build an unbeatable political force and use the next election to "overthrow" those "perverting" our Constitution. We can begin to reinstate lawful government within the spirit and intent of our Declaration of Independence, Constitution, & Bill of Rights. **But will we?** Or will we continue in our mistakes of the past? Time will tell!

NEEDED! UNITY OF SPIRIT & ACTION

The urgent need for unified action prompted IVA to concentrate on developing a viable concept for creating the unbeatable political force needed to insure these actions become reality. We pray you will help by joining the IVA team.

In announcing his intention to unilaterally disarm America on Sept. 27, 1991, President Bush said: *"Destiny is not a matter of chance; it is a matter of choice."* On this we agree! **But let's make it our choice – not his!**

Under IVAś unique coordinating concept, meetings were held with leaders of eight national political parties or factions thereof and several state parties considered pro-American. All agree that our major problems would not and could not exist except for the intentional and systematic destruction of our lawful government. They unanimously agreed on the need to urgently address the following issues, any one of which may prevent its restoration.

1. **THE CONSTITUTION MUST BE RETAINED.** It is the basis for correcting all other problems! We must stop its suspension or replacement via Executive Orders, a Constitutional Convention for any reason, or via legislative, administrative or military action.

2. **TREATY POWER** – IVA rejects the idea that America's founders intended for the Constitution's treaty provisions to be used to destroy with a pen the nation they fought a war and pledged their lives, fortunes and sacred honor to create. Future attempts to use this treaty power to amend the Constitution or alter or destroy its intended principles or concepts must be stopped!

3. **TREATY REVIEW** – Existing treaties and other documents ratified as such must be reviewed and modified to bring them into compliance with the spirit and intent of lawful government.

4. **ECONOMIC REFORM** –Liberty without opportunity for economic independence is impossible. The mathematics of today's monetary and fiscal policies can only economically enslave all Americans except the owners of the ***PRIVATELY*** owned bank deceitfully named the **FEDERAL RESERVE SYSTEM** and those they choose to prosper. ***Our American system of Economic Independence, our Constitution and the monetary and fiscal policies thereof must be reinstated.***

5. **NATIONAL DEFENSE** – Congress cannot meet its responsibilities under Art. I, Sec. 8, Clause 10, 11, 12, 13, 15 and 16 or that of Art. IV, Sec. 4 of the Constitution without access to a military force. Therefore, **Public Law 87-297** requiring the **"General and Complete"** disarmament of America must be repealed; the spirit and intent of America's Second Amendment right to keep and bear arms must be fully complied with; and a military force capable of defending the integrity and sovereignty of this nation must be reclaimed and maintained.

6. **AIDS** – Left unchecked, AIDS will demand further socialization and deny Americans their Liberty. Historically, the number of people testing HIV positive has doubled each year. At this rate and with an estimated ten million carriers today, a majority of U.S. citizens may be carrying the AIDS virus within eight years. Parallel programs must be initiated to examine every potentially viable technology for curing this dreadful disease and slowing its spread.

7. **BALLOT BOX INTEGRITY** – We must insure election results accurately reflect the will of the people.

8. **JURY POWER** – The full responsibility and authority of common law juries of a defendants peers must be restored including their right to judge the law, the facts and to determine penalties and damages.

ALL OR NONE AT ALL

IVA doesn't believe our ills can be corrected on a piecemeal basis nor by petitioning or appealing to those who have created and perpetuated our problems.

HJC 6-93 #3 Attach 3 495

An Open Letter to our Honored Kansas Legislators

The Statehouse
Topeka, Kansas 66612

Feb. 07, 1989

Dear Legislator:

You have an opportunity to help protect our Constitution from those who would use the proposed Constitutional Convention regarding a balanced budget amendment as a tool to transform our REPUBLIC into a Parliamentarian system of Government; a system which our forefathers rejected. We consider a Constitutional Convention as unnecessary for many reasons:

1. In 1978, public law P.L. 95-435 (see below) was passed. It has required a balanced budget since FY 81. This, and other facts to follow, clearly show that it is the Constitution, and not the budget, that is the target of those promoting the Constitutional Convention.

2. Our Constitution already has twenty-six amendments. All were obtained by Congress submitting the proposed amendments to the States for ratification. This method is efficient and harbors no risk to our entire Constitution.

A Constitutional Convention is extremely risky! We live in perilous times! Our citizens and elected representatives (particularly those in county and state government) must be vigilant and protect our nation from all enemies; both foreign and domestic. The intentions of the Committee on the Constitutional System (CCS) and a few extremely well financed and highly influential people to use the proposed Convention to change the structure of our Government is clear. In the CCS's book "REFORMING AMERICAN GOVERNMENT", they say that "Consideration of structural changes should be part of the bicentennial of the Constitution", (emphasis added). They also state that their desires "can only be remedied by a truly significant shift - a change to some form of parliamentary government that would eliminate or sharply reduce the present division of authority between the executive and legislative arms of government."

Mr. Richard Thornburg, now the U.S. Attorney General, Co-chairman of Citizens for a Balanced Budget Amendment and a Director of the CCS has said, "The executive and legislative branches at the federal level are, in truth, caught up in a system badly in need of STRUCTURAL ADJUSTMENT. THE BALANCED BUDGET AMENDMENT IS THE KEY ELEMENT IN SUCH AN ADJUSTMENT (emphasis added). In his book "The Power To Lead", James MacGregor Burns, another CCS director wrote: "Let us face reality. The framers (of the Constitution) have simply been too shrewd for us. They (the Founding Fathers) have outwitted us. They designed separate institutions that cannot be unified by mechanical linkages, frail bridges, tinkering. If we are to TURN THE FOUNDERS UPSIDE DOWN - to Put together what they put asunder (the Separation of Powers) we must directly confront the constitutional structure they erected".

It is precisely the "division of authority" or "separate institutions" which were so skillfully designed into our Constitution that protects us from tyranny! This "division" is the key to our liberty and of America being the envy of the World. Our history is clear! So long as America adhered to her foundation; i.e., the Declaration of Independence, Constitution, christian ethics and the intent of her governing documents as provided in The Federalist Papers, America flourished.

Our problem began when we abandoned our founding principles and the spirit and intent of the documents that constitute our only legal government. Our problems will continue to grow until enough Americans - and particularly a majority of those in public office, - accept that the systematic distortion of these documents, the unlawful seizure of power by various elements of government and the abandonment of our founding principles was a mistake.

To solve our problems, we must:: a) recognize our past mistakes, b) reverse our course to anarchy, c) live our national motto of "In God We Trust", and d) return to the principles and values upon which America was founded. The road back is our Constitution. Without it, we are lost. " So please don't entrust our posterities future to those who admit they want to destroy our REPUBLIC! Help save our precious Constitution! Please expunge the Kansas resolution (SCR 1661) urging Congress to call the Constitutional Convention.

For those who believe that a Constitutiorial Convention can be held to a single issue and therefore presents no risk, we ask that you consider the following:

1. Article V of the Constitution, in addressing this issue states that "The Congress ... on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments..." Amendments is plural. Any number of them, or a single "amendment" to replace everything after "We the People" is possible.

2. President Reagan stated: "Well, Constitutional Conventions are prescribed as a last resort because once it's open, they could take up any number of things."

3. Melvin Laird, former Secretary of Defense said that "The concept that a Constitutional Convention would be harmless is not Conservative, Moderate or Liberal philosophy. That concept is profoundly RADICAL, born either of naiivete or the opportunistic thought that the end justifies the means."

Please give this issue your careful and prayerful consideration. It could be that our future as a "free and independent state" and a free people rest upon your decision.

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Walter Myers
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PUBLIC LAW 95-435-OCT. 10, 1978
92 STAT 1053

Src. 7. Beginning with fiscal year 1981, the total budget outlays of 31 USC 27, the Federal Government shall not exceed its receipts.

Approved October 10, 1978.

HJC
3-6-92
#3
5 of 5

TRUE...

BUT it's very unlikely the judge will tell you this, because in most states the law doesn't require that you be fully informed of your rights as a juror.

Instead, expect the judge to tell you that you may consider ***"only the facts"*** of the case, and may ***not*** let your conscience, your opinion of the law, or the defendant's motives affect your decision.

How do you get a fair trial if jurors are told their sense of justice doesn't count?

A lot of people ***don't*** get fair trials. Too often, jurors actually end up apologizing to the person they've convicted!

Something is obviously wrong when jurors cry and hug the defendant after conviction, saying "We didn't really want to find you guilty, but the judge said we ***had to*** convict you if the evidence showed you broke the law as it was explained to us."

Most Americans are aware that they have a right to trial by jury, but very few know that ***the jury has more power than anyone else in the courtroom!***

In addition to the facts, the jury is free to judge the merits of the law itself, its use in the case at hand, the motives of the accused person, and anything else necessary for it to reach what it feels is a just verdict.

If juries were only supposed to judge facts, their job could be done by a computer. It is because we, the people have feelings, opinions, wisdom, experience, and a sense of right and wrong that we depend upon jurors, not machines, to judge court cases.

Why don't judges tell juries about this?

Today's judges generally don't appear to want ordinary citizens to make common-sense decisions about the law. Judges seem to have forgotten that they are supposed to serve merely as referees of courtroom disputes, and as neutral legal advisors to the jury.

We can only speculate on why: Disrespect for the concept of "government of, by, and for the people?" An unwillingness to relinquish power? Ignorance of jurors' rights? (Yes, some judges don't even ***know!)***

At any rate, whenever a judge tells the trial jurors they "may not" let their conscience, opinion of the law, or the defendant's motives influence their verdict, that judge is ***not*** telling it like it's supposed to be.

Worse, judges and prosecutors are prone to "stack" juries with "conviction-prone" jurors, by eliminating any prospective jurors who admit they may have qualms about the law, or who seem to know about their right to judge it. And no one informs the jurors they cannot be punished for voting their conscience, even if they've sworn to "follow the law as given."

WANTED!

SAFE, IMMEDIATE RETURN OF THE

TO AMERICA'S COURTROOMS

REWARDS!

What is the "Fully Informed Jury Association," or FIJA?

We're a nationwide network of jury-rights activists and groups. Our current project is also known as "FIJA", the Fully Informed Jury Act or Amendment.

As law, FIJA would require that trial judges resume the former practice of ***telling*** jurors about their right to judge both law and fact regarding each and every charge against a defendant. ***We want the judge, like everyone else in the courtroom, to tell the whole truth and nothing but.***

Resume the former practice? You mean judges used to do this?

Yes, it was standard procedure in the early days of our nation, and even during colonial times. In fact, the idea of FIJA is to revitalize the plan for America that was developed by the Founders. They saw jurors as the key to our continuing freedom, because the jury would always have the final say on any law that American citizens were expected to obey.

Our third president, ***Thomas Jefferson,*** put it this way: ***"I consider trial by jury as the only anchor yet imagined by man by which a government can be l 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."***

So, whatever became of this right?

During the late 1800's, elitist and special-interest pressure inspired a series of judicial decisions which sought to limit the juror's right to judge the law. While no court, then or now, has decided that jurors do not have the power to acquit despite the law or the evidence, there have been decisions holding that jurors needn't be told they have power.

Known as the right of "jury nullification of law", or "jury veto power", it's now a rare and courageous attorney who will risk being cited for contempt for telling the jury about it without the judge's prior approval.

Still, this power of the jury continues to be recognized, as in 1972 when the D.C. District Court of Appeals held that the jury has an

"...unreviewable and irreversible power...to ac in disregard of the instruction on the law given by al judge. The pages of history shine on instanc e jury's exercise of its prerogative to disregard instr ons of the judge; for example, acquittals under the fugitive slave law."

What would happen if FIJA were to become law?

Three good things: (1) Individuals would have a better chance of obtaining *justice* from the court system, because juries could take so much more into account than "facts only";

(2) Legislatures would receive regular *feedback* from ordinary people, sitting on juries, instead of mainly from special-interest groups and other very political sources. This would encourage ongoing tailoring of law to fit community standards; and

(3) More respect for the people by the lawmakers would lead to more *respect* for the law by the people.

Sounds Good! Where is the "FIJA ACTION" right now?

There are a number of current, exciting fronts: FIJA *legislation* is being pursued in some states, while in others, the effort is to put FIJA on the ballot as a *citizen initiative.* Since our primary goal is to make sure all Americans are informed of their rights as jurors, whether or not laws are ever passed requiring the judge to tell them the truth, one of FIJA's most important and popular efforts is grass roots distribution of *educational materials* --like this brochure.

Beginning in 1991, the 200th anniversary of the Bill of Rights, we will celebrate September 5 as "National Jury Rights Day", to honor the 6th and 7th Amendments to the U.S. Constitution. Both of these Amendments deal with our right to trial by jury--and both were written when the word "jury" meant a *fully informed jury.*

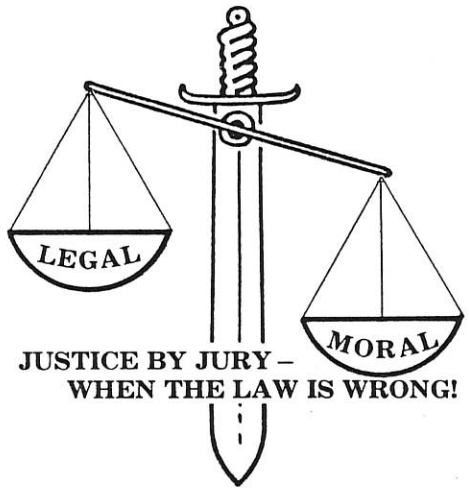
In fact, *every* day is "Jury Rights Day", since people go on trial every day, throughout America. Also every day, the power of the jury becomes more limited, and our system of "government of, by and for the people" suffers.

We believe *the remedy is for Americans to get actively involved in re-establishing the jury as the first check and balance upon government.* We also believe the best first step is to see that every jury is informed of its right to judge both law and fact before it begins to deliberate a case.

STRONG JURIES KEEP U.S. FREE.

If you agree, let's hear from you!

There is much to do, and time is short. Trial by jury is still under attack, and ***the United States already leads the world in the percentage of its population behind bars!*** Far too many Americans have been convicted by juries which would have acquitted had they been informed of their right to vote according to conscience.



JUSTICE BY JURY – WHEN THE LAW IS WRONG!

YOU CAN HELP! Just phone or write Don Doig or Larry Dodge at FIJA National HQ, P.O. Box 59, Helmville, MT 59843; (406) 793-5550. Or contact your local FIJA-supportive organization :

State Coordinator
CARY SCOTT
(316) 685-6270

*For a brief taped message on FIJA, a FIJA news update, and taped response opportunity, call FIJA's **24-Hour National Hotline**: (314) 997-8588!*

FULLY INFORMED JURY ASSOCIATION

TRUE OR FALSE ?

When you sit on a jury, you have the right to vote your conscience.