



PRESIDENT'S PAGE

By Tim Newsom

IF THEY TAKE JURY TRIALS, THEY CAN TAKE YOUR GUNS, AND THEN . . .

Everyone in a courtroom stands up when the jury enters and exits—even the trial judge. This is a symbol of the reverence and respect our country has for the jury. Standing for the jury is also a symbol of the jury's power. And, just like any other institution that holds significant power, there is always a faction that wants to take the power away so they can have it for themselves. But, the American jury is not just any other institution of power. As stated by Thomas Jefferson, the jury is "the only anchor yet imagined by man, by which a government can be held to the principles of its constitution."

"Ninety percent of the jury trials on the planet take place in the United States of America." Judge William G. Young, *In Celebration of the American Jury Trial*, VOIR DIRE MAGAZINE, Fall/Winter 2014, at 7 (citing Fred Graham, *American Juries, an Anatomy of a Jury Trial*, 14 EJOURNAL USA 7, 4 (2009)). Based on the statistics from Judge Young's article, if American citizens sit idly by and allow jury trials to continue on a declining course, then jury trials run the risk of extinction on Earth. Numerous articles have been written over the past two or more decades about the dwindling number of jury trials in America. Just as many articles have been written about the cause of the decline in jury trials. Lawyers understand this problem, but must do more to correct it. We cannot rely upon business interests to preserve jury trials, because business factions consider the jury as an uncontrollable risk to their business model. Nor can we rely upon politicians, because most, but not all, are more interested in getting re-elected and must rely upon their anti-jury business backers for financial support. So, lawyers must turn to the general public to preserve the jury trial. The key is how to get the general public invested in this debate. This article will suggest an approach to educating the general public on why they should fight against the forces trying to limit to extinction the role of the jury in our society.

We must start with the United States Constitution and the Texas Constitution. If you believe in the Constitution of the United States and of our state, then you must believe in the right to trial by jury. Period. Do not ask citizens to just take your word for it. Tell them what the Constitutions say about trial by jury. The right to trial by jury is not only in the 5th, 6th, and 7th Amendments to the Bill of Rights, but is also in Article III of the Constitution, which says "The Trial of all crimes, except in cases of Impeachment, shall be by Jury." U.S. CONST. art. III. The right to trial by jury was so important to the framers that they insisted on placing it in both the body of the Constitution and the Bill of Rights. See also Young at 8. The Texas Constitution likewise guarantees an impartial jury to a person accused of a crime and, as applied to civil cases, states the "right of trial by jury shall remain inviolate." TEX. CONST. art. I, §§ 10, 15.

Citizens will acknowledge they believe in the Constitution but will ask if the right to a jury trial is that important, because most of them have never needed one. Now, turn toward something Americans do hold very important. Americans will not give up their right to own a gun. Nor will most Americans (and particularly those in our area) agree to their 2nd Amendment right being restricted in any manner. After all as the argument goes, a slight restriction now will result in wholesale abolition later. Of course, any faction desiring to restrict

our 2nd Amendment rights will not promote an all-out weapon ban; they will restrict our rights in creative ways that stay under the radar to most citizens who will only realize the magnitude of the restriction after it becomes law. This is what happened with the creative restrictions on the right to jury trials that were passed in the 2003 Texas legislature and then voted into law that same year by Texas voters. Business and insurance lobbyists disguised the tort reform laws as a Trojan horse to preserve a single profession when, in fact, the legislation was a direct limitation on our right to trial by jury.

Once citizens commit to the Constitution and their right to own a gun, ask them what entity has the power to stop a creatively disguised unconstitutional restriction on their right to bear arms. The answer is a jury of their peers. If they do not believe you, tell them the National Rifle Association has a division that performs that very task by enforcing the 2nd Amendment through use of the 7th Amendment. See Brett Emison, *Defending the 2nd Amendment*, KANSAS CITY LEGAL EXAMINER, Feb. 14, 2013. In addition, the NRA website asks people to sign a "Declaration of Individual Rights" that lists all fundamental rights bestowed upon American citizens in the Bill of Rights, including the right of trial by jury.

In conclusion, the fundamental rights given to us by the Bill of Rights—freedom of speech, freedom of religion, the right to bear arms, and the right to trial by jury, just to name a few—are dependent on one another. We cannot pick and choose the fundamental rights to enforce. "We must preserve and protect each fundamental right if we are to protect any of them." *Id.* So, bring the right to jury trial home for American citizens and they will fight to preserve their rights from becoming extinct just as they have done for over 200 years.