

Juries Are Key In Protecting The Rule Of Law

By **Clint Townson** (July 15, 2025)

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Clint Townson

Within the last few months, there have been numerous news stories on the rule of law and competing efforts to either undermine or fortify its role in the American social structure.

News stories have highlighted, among other things, actions taken by attorneys during "National Law Day of Action" rallies; bipartisan alliances forged among major corporations' general counsel to discuss issues that could affect the rule of law; warnings offered by judges about a "rule of law recession"; and coalitions formed by former judges that seek to defend the apolitical role of the judiciary.

But absent from much of this discussion is the role of jurors. Conceptually, the rule of law includes the constellation of structures within our justice system designed to enforce society's prescribed rules equitably for all citizens. Jurors are one such structure.

Indeed, the right to be heard by a jury of one's of peers is a seminal component of the Bill of Rights. In his inaugural address, President Thomas Jefferson said that trial by jury, among other principles, "should be the creed of our political faith."

It was likewise viewed as fundamental by President John Adams, the most prominent legal scholar among the Founding Fathers, who referred to trial by jury as "the lungs of liberty." He controversially represented British soldiers in the wake of the Boston Massacre in front of two separate juries — ones that ultimately faced rancor for their decision to acquit all but two of the accused soldiers. This saga has been described as one of the original tests of the rule of law in America.

The decline of jury trials long predates the developments of just the last few months: Over the last 20 years, the rate of federal and state jury trials in both criminal and civil cases has dropped precipitously to below 4%.^[1]

Such a decline is troublesome for several reasons. First, it concentrates the justice system's power into the hands of individual decision-makers — i.e., judges — who now determine the overwhelming majority of outcomes in legal cases, rather than a group of diverse voices.

Second, it distances important legal decisions from the general public. When laypeople are unable to directly weigh in on important cases, the decisions that render social change may mismatch the will of the general public. Indeed, a 2023 survey from the Trust in Justice Project found that nearly three-quarters of respondents believed that judges allowed their personal biases or politics to interfere with their judgments at least some of the time.^[2]

More than 70% of the respondents felt that judges allowed their personal biases or politics to interfere with their judgment sometimes, most, or all of the time, with less than 30% believing that a judge's biases or politics rarely or never interfered with their judgment.

And third, moving away from jury trials undercuts a guaranteed right of the U.S. Constitution: the right to a trial by one's peers.

So what role do jurors play in upholding the rule of law? For one, they are the finders of fact in instances where two parties cannot find agreeable compromise. They have the unenviable position of rendering decisions in the face of public outcry or pressure. Occasionally, they render a verdict that no other trial participant — judge, attorney, plaintiff or defendant — finds equitable, but they are empowered to do so anyway.

Further, research shows that jurors take their role seriously and value their civic contribution. Despite some occasional misgivings about serving, jurors tend to have a positive view of their experience after serving.[3] Research also shows that the act of serving on a jury and reaching a verdict can increase overall civic engagement, including voting in subsequent elections.[4]

In other words, the stereotype of apathetic, inattentive jurors just looking to get their service over with is not supported by research. Instead, most jurors feel positively affected by engaging in the process and feel a greater enthusiasm when acting upon their civic duties in the future.

Moreover, the general public appreciates that jurors serve to represent pillars of fairness and justice in their community. The Trust in Justice Project found that "respondents on average indicated they had the highest confidence in juries to deliver justice," as compared to lawyers, judges and law enforcement.

Data from the National Center for State Courts shows similar findings among lawyers, judges and law enforcement: They believe juries mostly get it right.[5]

So it is curious that jurors' roles have become so marginalized in the grand scheme of the American system of justice. This is likely due to several pervasive myths about juror decision-making, specifically related to their potential inability to correctly apply the law and instances of jury nullification.

Regarding the former, jurors' comprehension of jury instructions does indeed tend to be quite low.[6] However, this is largely a product of how complex and multifaceted jury charges — often fraught with legalese — are actually communicated to jurors, rather than a lack of willingness or effort on the part of jurors to apply the charge faithfully.[7] Again, juries have been shown to take their role seriously and want to render a proper verdict, so this more often boils down to communication challenges.

Regarding the latter issue of jury nullification, much of the fervor is driven by the intensity of media attention when nullification occurs, which perhaps belies how infrequently it actually does occur. Indeed, instances of jury nullification are salient in the legal community precisely because they are so rare.

Moreover, several legal scholars have argued that jury nullification actually serves its place within the rule of law, especially when it is uncommon.[8] As University of Virginia School of Law professor Darryl K. Brown wrote in a 1997 *Minnesota Law Review* article, jurors' decisions tend to be "infused with localized, lay notions of justice" consistent with a "contemporary reconception of the rule of law." [9]

Put simply, jury nullification is consistent with the principles advocated for in the original

conceptualization of the U.S. Constitution: The enforcement of the rule of the land ultimately rests in the hands of our peers.

The net takeaway is that attorneys and judges who support the rule of law and wish to see its strength renewed in the coming years should look to one of the foundational elements of the justice system: the jury.

Litigators should cultivate the confidence to push their cases all the way to a jury trial in front of ordinary citizens. An increase in the rate of jury trials could serve enormous dividends in terms of increasing civic participation, reducing perceptions of judicial bias by putting outcomes back into the hands of a group of peers, and generating verdicts that reshape the public's perception of how their fellow citizens view social issues.

For both criminal and civil trial lawyers in court, remind jurors of their vital positions and empower them to make important decisions. Go beyond simply thanking them for their time — remind them on the very first day that you have entrusted them to weigh the evidence and render a verdict that is fair to your client, and that you do not make that entrustment lightly.

Make specific efforts to go beyond merely teaching them the core concepts underlying your case, using annotated jury instructions to teach them how the law favors your position.

Demonstrate your respect for them by actively engaging them in the process through the use of expert witnesses, dynamic graphics and animated visuals, and lively persuasive skills. Each of these can increase a jurors' sense of their ability to actively participate in deliberations.

General counsel who are reticent to take certain cases to trial should note that settlement positions are often informed by previous jury results in similar matters. When those few results are nuclear verdicts, it undoubtedly drives up amounts across the board.

Particularly for civil defendants, diluting the pool of verdicts with more defense-friendly, zero- or low-damage verdicts may be hugely beneficial in resolving many other cases. The calculus on how to spend legal resources could indeed shift entirely.

Finally, for judges, implement practices that increase juror participation, engagement and satisfaction. In parallel with the lawyers, judges can empower jurors by allowing them to ask questions of witnesses and simplifying jury instructions and admonitions. Judges can also leverage efficiencies in the jury process, including the use of online questionnaires, video screen technology and deliberate trial day scheduling. They can likewise implement juror appreciation days and encourage posttrial feedback that helps improve their experience.

Some judges put serious thought into their pretrial and posttrial speeches to jurors; every judge should be sincere in thoroughly expressing their respect and appreciation for jurors.

Adams identified it over 250 years ago: Juries are an indispensable tenet of the American concept of the rule of law. Bringing ordinary citizens back into the courtroom to perform an essential civic duty is an efficient and prosocial method of exalting the rule of law. Those in the legal space would be wise to reverse the decline in jury trials at this critical moment.

Clint Townson is the founder of Townson Litigation Consulting LLC.

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[1] Seidman Diamond, Shari, and Jessica M. Salerno. "Reasons for the disappearing jury trial: Perspectives from attorneys and judges." *La. L. Rev.* 81 (2020): 119.

[2] https://www.astcweb.org/_files/ugd/76dcb5_ddc7790e52954adaa3a8c346b52e27af.pdf.

[3] Bornstein, Brian H., Monica K. Miller, Robert J. Nemeth, Gregory L. Page, and Sarah Musil. "Juror reactions to jury duty: Perceptions of the system and potential stressors." *Behavioral sciences & the law* 23, no. 3 (2005): 321-346.

[4] Gastil, John, E. Pierre Deess, and Phil Weiser. "Civic awakening in the jury room: A test of the connection between jury deliberation and political participation." *The Journal of Politics* 64, no. 2 (2002): 585-595.

[5] Seidman Diamond, Shari, and Jessica M. Salerno. "Reasons for the disappearing jury trial: Perspectives from attorneys and judges." *La. L. Rev.* 81 (2020): 119. See also <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1350&context=facpub>; <https://www.ipr.northwestern.edu/documents/working-papers/2006/IPR-WP-06-05.pdf>.

[6] Rogers, Max. "Laypeople as learners: Applying educational principles to improve juror comprehension of instructions." *Nw. UL Rev.* 115 (2020): 1185.

[7] *Id.*

[8] Huemer, Michael. "A defense of jury nullification." *The Palgrave Handbook of Philosophy and Public Policy* (2018): 39-50.

[9] Brown, Darryl K. "Jury nullification within the rule of law." *Minn. L. Rev.* 81 (1996): 1149.