

**SUGGESTED ADDITION TO
TEXAS RULE OF CIVIL PROCEDURE 226a APPROVED INSTRUCTIONS:**

“Ladies and gentlemen welcome to the _____ District Court of _____ County, Texas. I am (name & official title of Judge).

First, please stand with me, facing our American Flag with our right hands over our hearts, and recite our Pledge of Allegiance.

“I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation, under God, indivisible, with liberty and justice for all.”

Now please be seated. We have important work to do here.

Each of us and every other American citizen enjoys the right to a civil trial by jury and you have been summoned at the request of the parties to serve as jurors in this case.

The founders of our Nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign ¹

On June 8, 1789, in the very first session of the first United States Congress, James Madison, then a 38 year old member of the first House of Representatives, proposed to his colleagues the first 10 amendments to our Constitution (which we know as our Bill of Rights).

During his lifetime, he was honored by his peers as, and ever since has been acknowledged by historians and scholars, to be the father of our Constitution and Bill of Rights, because he was the primary author of both.

In presenting to his fellow congressmen the proposed Constitutional Amendment to establish our right to trial by jury *in civil cases*, which became enshrined in our Constitution as its 7th Amendment, Madison declared:

¹ Dorsaneo, *Reexamining the Right to Trial by Jury*, 54 SMU Law Review 1695 (2001) at 1696 and see Powell, *THE TEXAS CIVIL JURY TRIAL AND THE CALIFORNIA CONDOR: ENDANGERED SPECIES?*, presented in State Bar of Texas, SOAKING UP SOME CLE: A SOUTH PADRE LITIGATION SEMINAR, May 10-11, at 11, quoting Alexander Hamilton in Federalist No. 83
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**“In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, *ought to remain inviolate.*”
(Emphasis added)**

and:

“... trial by jury ... is as essential to secure liberty of the people as any one of the pre-existent rights of nature.”²

Thomas Jefferson, principal author of our Declaration of Independence, asserted:

"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."³

Patrick Henry, who we remember best for his “give me liberty or give me death” speech which inspired George Washington, Thomas Jefferson and our other Founding Fathers⁴ to revolt against the tyrannical oppression of the arrogant British king George III and his cohorts, proclaimed:

"Trial by jury is the best appendage of freedom by which our ancestors have

² Wolfram, *The Constitutional History of the Seventh Amendment*, 57 Minn. L. Rev. 639, 657 (1973) note 258 at 728, 1 Gales, *DEBATES AND PROCEEDINGS IN THE CONGRESS OF THE UNITED STATES* (Washington, 1834—also cited as “*Annals of Congress*”) at 454, Quoted in Furgeson, *CIVIL JURY TRIALS R.I.P.? CAN IT ACTUALLY HAPPEN IN AMERICA?*, 40 St Mary's Law Journal 795 (2009) at 812—most recently presented by Dicky Grigg, also quoted in Bennett, *Judges' Views on Vanishing Civil Trials*, 88 JUDICATURE, Vol 88 No. 6 (2005) at 307, and Powell, *supra*, note 1 at 1; Madison is referred to in Wikipedia article, *James Madison*, available online at http://en.wikipedia.org/wiki/James_Madison, as the “Father of the Constitution”, at page 2 and 4 for being the primary author of the Constitution, and as “Author of the Bill of Rights” at pages 2 and 6 for being the primary author of the Bill of Rights

³ Dorsaneo, *supra* note 1 at 1696; Powell, *supra*, note 1 at 1 and Smith, *THE VANISHING JURY: A VIEW FROM THE BENCH* presented at the State Bar of Texas 5th ANNUAL BILL OF RIGHTS COURSE, May, 2011 at 1, Jefferson is referred to as “the principal author of the United States Declaration of Independence” in Wikipedia articles, *Thomas Jefferson* at page 2, available online at http://en.wikipedia.org/wiki/Thomas_Jefferson, and *United States Declaration of Independence* at page 2, available online at http://en.wikipedia.org/wiki/United_States_Declaration_of_Independence

⁴ Wikipedia Article, *Give Me Liberty or Give Me Death*, page 1, available online at http://en.wikipedia.org/wiki/Give_me_liberty_or_give_me_death

secured their lives and property." ⁵

Before trial by jury, disputes were resolved by methods which did not rely on objective evidence, such as trial by combat or trial by ordeal. In trial by combat, the parties or their champions fought each other with deadly weapons and the survivor was decreed the winner. ⁶

In trial by ordeal, the parties were subjected to unpleasant and dangerous experiences, such as exposure to fire, red hot iron or boiling oil or water. The party who survived or whose resulting injuries healed was determined to be the victor. ⁷

Loss of life and serious injury often resulted from these methods of dispute resolution, and, unlike trial by jury, they did not rely on objective evidence and therefore failed to provide a reliable means for determining the truth.

Trial by jury, which succeeded trial by combat and ordeal, ⁸ has been developed over centuries into a just and efficient process, relying on objective evidence, to search for and reveal the truth.

The right to trial by jury was first established in the year 1215, more than 800 years ago, when abuses by the English king John caused a revolt compelling him to sign the *Magna Carta*, which secured the right of trial by jury for all free Englishmen. ⁹

William Blackstone, an 18th Century scholar upon whom our Founding

⁵ Powell *supra* note 1 at 1

⁶ Wikipedia article, *Trial by Combat*, available online at http://en.wikipedia.org/wiki/Trial_by_combat and Vidmar & Hans, *American Juries, the Verdict* (New York, 2007) at 21

⁷ Wikipedia article, *Trial by ordeal*, available online at http://en.wikipedia.org/wiki/Trial_by_ordeal, also Vidmar & Hans, *supra* note 6 at 21

⁸ Harrington, *The Economic Origins of the Seventh Amendment*, 87 Iowa Law Rev 145-233 (2001) Note 44 at 155

⁹ Devlin, *Trial by Jury* (London, 1956) at 164-165; Text of the *Magna Carta* on the website of The Constitution Society available online at <http://www.constitution.org/eng/magnacar.htm>
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Fathers relied heavily ¹⁰ in creating our Constitution and Bill of Rights, long ago summarized the common sense reasons why trial by jury is so crucial in preserving a free society such as ours. He said:

“[A] competent number of sensible and upright jurors, chosen by lot from among those of the middle rank, will be found the best investigators of truth, and the surest guardians of public justice. For the most powerful individual in the state will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression must be examined and decided by twelve indifferent jurors, not appointed till the hour of trial ... This therefore preserves in the hands of the people that share which they ought to have in the administration of public justice, and prevents the encroachments of the more powerful and wealthy citizens. Every new tribunal, erected for the decision of facts, without the intervention of a jury....is a step towards establishing aristocracy, the most oppressive of absolute governments.” ¹¹

and he warned against misguided attempts to replace trial by jury:

“...by introducing new and arbitrary methods of trial And however convenient these may appear at first, (as doubtless all arbitrary powers, well executed, are the most convenient) yet let it be again remembered, that delays, and little inconveniences in the forms of justice, are the price that all free

¹⁰ Wikipedia article *William Blackstone*, available online at http://en.wikipedia.org/wiki/William_Blackstone at 7 stating that from 1770-1772 more than 1,000 copies of Blackstone's *Commentaries* were sold in the Colonies, Wolfram, *supra*, note 2 referencing Blackstone in note 45 at 654, quoting Patrick Henry in the Virginia Ratification Convention at 683, quoting Judge Samuel Bryan in the Pennsylvania Ratification Convention at 695-696, and quoting Elbridge Gerry writing about the new Constitution and in the Pennsylvania Ratification Convention at 708-709; Furgeson, *supra*, note 2 describing the Founding Fathers as “steeped in Blackstone” at 801; Landsman, *The Civil Jury in America: Scenes from an Unappreciated History*, 44 Hastings L. J. 579 (1993) at 599; 3 Jonathan Elliott, *The Debates in the Convention of the Commonwealth of Virginia on the Adoption of the Federal Constitution, June 20, 1788*, available online at <http://teachingamericanhistory.org/ratification/elliott/vol3/june20.html>, quoting George Mason citing Blackstone at Page 10 of 23, cited as *Elliott's Debates* in Harrington, *supra*, note 8 quoting George Mason in the Virginia Ratification Convention, at 197

¹¹ Blackstone, William (2010-12-03). *Commentaries on the Laws of England*, Vol. 3 - Private Wrongs (Kindle Locations 6361-6365). Lonang Institute. Kindle Edition, quoted in Landsman, *supra*, note 10 at 589, and Furgeson, *supra*, note 2 at 800

nations must pay for their liberty in more substantial matters.”¹²

The jury came to America with the earliest settlers, played a critical role in early Colonial history and was the central instrument of Colonial governance.¹³

Each of our thirteen original Colonies provided for the right to trial by jury¹⁴ and in Colonial America:

“Trials were not just about the rights of the defendant but also about *the rights of the community*. The people themselves had *a right to serve on the jury-to govern through the jury*.”¹⁵ (Emphasis added)

Today as then, serving as a juror is every citizen’s *only* opportunity (other than voting in our elections or running for public office) to *directly* participate in our government.

Our right to trial by jury protects all our fundamental freedoms, and our free society would be irreparably damaged by its loss.

It must be preserved.¹⁶

Your conscientious jury service is an indispensable safeguard of every other citizen’s liberty.

May we never forget that our freedoms are not free, and that our right to trial by jury and all our other personal freedoms have been bought and paid for by multitudes of Americans, men and women of every race, color and creed, who have given up their private lives and fortunes, serving in defense of our Nation and our personal freedoms guaranteed in our Constitution and Bill of Rights, including our

¹² Blackstone, William (2010-12-03), *Commentaries on the Laws of England*, Vol. 4 - Public Wrongs (Kindle Location 5511). Lonang Institute. Kindle Edition, quoted in Devlin, *supra*, note 9 at 165

¹³ Landsman, *supra* note 10 at 592

¹⁴ Harrington, *supra*, Note 8 at 160

¹⁵ Amar, *America’s Constitution, a Biography* (New York 2005) at 237

¹⁶ Hecht, *The Vanishing Civil Jury Trial: Trends in Texas Courts and an Uncertain Future*, 47 S. Tex. L. Rev. 163 (2005) at 182

right to trial by jury, with millions suffering serious injuries or death in doing so.¹⁷

Many of us have had relatives and ancestors who so served, and all of us owe our heartfelt thanks for all of the sacrifices made to preserve our freedoms.

More than 500 years after *Magna Carta*, when British authorities increasingly sought to either control or avoid jury trials in Colonial America, the right to trial by jury became an important aspect of the campaign for American independence.¹⁸

When the dictatorial English king George III tried to totally subjugate us and take away all our personal freedoms, on July 4, 1776, in our Declaration of Independence, which listed the denial of “the benefits of trial by jury” as one of the grievances against the English crown, our Founding Fathers pledged their lives, their fortunes and their sacred honor in the struggle for American independence.¹⁹

During the next several years, about 50,000 of our heroes of the American Revolution were killed or wounded in eventually forcing king George III to sign the Treaty of Paris in 1783, recognizing our United States as free, sovereign and independent, thus preserving for us our right to trial by jury and other personal freedoms.²⁰

¹⁷ Wikipedia articles, *United States military casualties of war*, available online at http://en.wikipedia.org/wiki/United_States_military_casualties_of_war, *List of Medal of Honor recipients*, available online at http://en.wikipedia.org/wiki/List_of_Medal_of_Honor_recipients, *List of Native American Medal of Honor recipients*, available online at http://en.wikipedia.org/wiki/List_of_Native_American_Medal_of_Honor_recipients, *List of Hispanic Medal of Honor recipients*, available online at http://en.wikipedia.org/wiki/List_of_Hispanic_Medal_of_Honor_recipients, *List of African-American Medal of Honor recipients*, available online at http://en.wikipedia.org/wiki/List_of_African-American_Medal_of_Honor_recipients, *List of Asian American Medal of Honor recipients*, available online at http://en.wikipedia.org/wiki/List_of_Asian_American_Medal_of_Honor_recipients; also *Women Medal Recipients - Military and Civilian*, available online at <http://userpages.aug.com/captbarb/medals.html>

¹⁸ Landsman, *supra*, note 8 at 596

¹⁹ Landsman, *supra*, note 8 at 596, Wikipedia article, *United States Declaration of Independence*, *supra* note 3

²⁰ Wikipedia articles, *United States military casualties of war*, etc., *supra* note 17, *Treaty of Paris (1783)*, available online at [http://en.wikipedia.org/wiki/Treaty_of_Paris_\(1783\)](http://en.wikipedia.org/wiki/Treaty_of_Paris_(1783)) and *Peace of Paris* available online at [http://en.wikipedia.org/wiki/Peace_of_Paris_\(1783\)](http://en.wikipedia.org/wiki/Peace_of_Paris_(1783)), also text of *The Paris Peace Treaty of September 30, 1783* available online at http://avalon.law.yale.edu/18th_century/paris.asp
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In our new Nation which emerged from the upheaval of the American Revolution, every state constitution guaranteed the right to trial by jury in both civil and criminal cases. ²¹

Our right to trial by jury, included in our Bill of Rights as the Sixth and Seventh Amendments to our federal Constitution, was proposed by Madison to our first United States Congress on June 8, 1789, approved by joint resolution of our first House of Representatives and Senate on September 25, 1789 and ratified by each of the United States by April 19, 1792. ²²

There it has remained since that time along with our other personal freedoms of religion, speech, press, assembly, our rights to petition the government for redress of grievances, to bear arms, against quartering of soldiers, against unreasonable searches and seizures, of an accused to confront witnesses and not be a witness against himself or herself, and our right to not be deprived of life, liberty or property without due process of law. ²³

20 years after our Bill of Rights was adopted, when the autocratic and rapacious English king George III again tried to occupy and subjugate our Nation by military force during the War of 1812, about 25,000 of our brave citizens were killed or wounded in finally defeating and repelling the mercenary invaders, thus again preserving our personal freedoms for us, including our right to trial by jury. ²⁴

24 years thereafter, when Santa Anna, the cruel dictator of Mexico, refused to recognize our right to trial by jury and our other personal freedoms, the first Texans, in our Texas Declaration of Independence on March 2, 1836, declared our right of trial by jury to be:

“that palladium of civil liberty, and only safe guarantee for the life, liberty,

²¹ Harrington, *supra*, note 8 at 168

²² Wikipedia article, *United States Bill of Rights*, available online at http://en.wikipedia.org/wiki/United_States_Bill_of_Rights

²³ text of US *Bill of Rights* available online at http://www.archives.gov/exhibits/charters/print_friendly.html?page=bill_of_rights_transcript_content.html&title=The%20Bill%20of%20Rights%3A%20A%20Transcription

²⁴ Wikipedia articles, *United States military casualties of war*, *supra* note 17 and *War of 1812*, available online at http://en.wikipedia.org/wiki/War_of_1812

and property of the citizen.”²⁵

The courageous defenders of the Republic of Texas, by their blood and sacrifice, including at the Alamo, Goliad and San Jacinto, again assured the preservation of our right to trial by jury and our other personal freedoms by ultimately defeating and forcing the vicious Santa Anna to sign the Treaties of Velasco under which Texas independence was recognized and his military forces retreated back into Mexico.²⁶

These *Texians* incorporated our right to trial by jury into the Constitution of the Republic of Texas in 1836 declaring, as Madison had earlier, that “the right of trial by jury shall remain inviolate”, and it was carried forward in the same language in our Texas Constitution of 1845, when Texas became a state and is now permanent in the same language in our current Texas Constitution.²⁷

More than 80 years later, when unrestricted submarine warfare menaced our personal liberty in World War I, our president, Woodrow Wilson, urged our Congress to declare war, asserting:

"The world must be made safe for democracy. Its peace must be planted upon the tested foundations of political liberty. We have no selfish ends to serve. We desire no conquest, no dominion. We seek no indemnities for ourselves, no

²⁵ Smith, *supra* note 3 at 1, & *Declaration of Independence by the Republic of Texas, 1836*, University of Texas Tarlton Law Library website, available online at <http://tarlton.law.utexas.edu/constitutions/text/CdDecl.html>

²⁶ Texas A&M University Faculty article, *Hispanic Texian Patriots* available online at <http://www.tamu.edu/faculty/ccbn/dewitt/tejanopatriots.htm>, Texas State Historical Association article, *JOHN*, available online at <http://www.tshaonline.org/handbook/online/articles/fjobje>, Wikipedia articles, *List of Alamo defenders* available online at http://en.wikipedia.org/wiki/List_of_Alamo_defenders, *Battle of the Alamo*, available online at http://en.wikipedia.org/wiki/Battle_of_the_Alamo, *Goliad Massacre*, available online at http://en.wikipedia.org/wiki/Goliad_massacre and *Battle of San Jacinto*, available online at http://en.wikipedia.org/wiki/Battle_of_San_Jacinto, Texas State Historical Association article, *TREATIES OF VELASCO*, available online at <http://www.tshaonline.org/day-by-day/30780>, also Wikipedia article *Treaties of Velasco* available online at http://en.wikipedia.org/wiki/Treaties_of_Velasco#Public_treaty

²⁷ Ninth Par, *Constitution of the Republic of Texas 1836*, available online at University of Texas Tarlton Law Library Website, <http://tarlton.law.utexas.edu/constitutions/text/1836index.html>, Art 1, §12, *Constitution of the State of Texas 1845*, available online at <http://tarlton.law.utexas.edu/constitutions/text/1845index.html>, and current *Constitution of the State of Texas*, Art 1, §15 from Westlaw

material compensation for the sacrifices we shall freely make.”²⁸

Then followed the heroism and dedication of our fellow citizens, more than 300,000 of whom were killed or wounded on land, at sea and in the air, finally turning back the despotic aggressors and forcing them to agree to the armistice, signed in a railway carriage in the Compiègne Forest, France, on November 11, 1918, requiring the surrender of all war equipment and materials and withdrawal of all military forces²⁹, again preserving our right to trial by jury and other personal freedoms.

About 23 years later, when the totalitarian Axis blitzkrieg, seeking domination over the whole world, had overrun Western Europe and without warning or provocation, attacked Pearl Harbor, Clark Field in the Philippines, Midway Island and Wake Island and other US and allied military installations in the Pacific and were torpedoing American and allied ships at sea³⁰, our president Franklin D. Roosevelt asked our Congress for a declaration of war between the United States and the Japanese Empire, declaring:

“There is no blinking at the fact that our people, our territory, and our interests are in grave danger. With confidence in our armed forces with the unbounded determination of our people we will gain the inevitable triumph so help us God.”³¹

And on December 11, 1941, his message to our Congress requesting a declaration of war between the United States and Germany and Italy, warned:

"The forces endeavoring to enslave the entire world now are moving toward

²⁸ *War Message of President Woodrow Wilson to Congress April 2, 1917*, available online at <http://historymatters.gmu.edu/d/4943/>

²⁹ Wikipedia articles, *United States military casualties of war*, *supra* Note 17, *Armistice with Germany*, available online at http://en.wikipedia.org/wiki/Armistice_with_Germany, *UBoat Campaign (World War I)*, available online at [http://en.wikipedia.org/wiki/U-boat_Campaign_\(World_War_I\)](http://en.wikipedia.org/wiki/U-boat_Campaign_(World_War_I)), and *Woodrow Wilson*, available online at http://en.wikipedia.org/wiki/Woodrow_Wilson

³⁰ Wikipedia articles, *World War II*, available online at http://en.wikipedia.org/wiki/World_War_II, *Attack on Pearl Harbor*, available online at http://en.wikipedia.org/wiki/Attack_on_Pearl_Harbor, *Battle of Wake Island*, available online at http://en.wikipedia.org/wiki/Battle_of_Wake_Island, *History of Clark Air Base*, available online at http://en.wikipedia.org/wiki/History_of_Clark_Air_Base

³¹ *DECLARATIONS OF A STATE OF WAR WITH JAPAN, GERMANY, AND ITALY* at p 6, available online at <http://www.ibiblio.org/pha/77-1-148/77-1-148.html>

this hemisphere. Never before has there been a greater challenge to life, liberty, and civilization. Delay invites greater danger. Rapid and united effort by all the peoples of the world who are determined to remain free will insure a world victory of the forces of justice and of righteousness over the forces of savagery and of barbarism." ³²

Then came the hard work, bravery and sacrifice of our heroic citizens, more than one million of whom were ultimately killed or wounded at home and abroad ³³, finally forcing the unconditional surrenders of the ruthless German Third Reich at Rheims, France on May 7, 1945 ³⁴ and brutal imperial Japan aboard the battleship *USS Missouri* in Tokyo Bay on August 28, 1945 ³⁵, thus again preserving our right to trial by jury and other personal freedoms.

More recently almost 100,000 of our courageous fellow citizens, both civilian and military, who have been killed or wounded serving in Desert Storm, 9/11, Iraq and Afghanistan, turned back grim and bloody aggression and terrorism, again preserving our freedoms, including our right to trial by jury. ³⁶

To attest to their commitment to the ideals of our Nation, honor the millions of our stalwart citizens who have served and suffered serious injury and death in defense of our personal freedoms and to reaffirm that their sacrifices were not in vain, our president and each new US citizen and government official, State and local official and all US military personnel takes an oath to preserve, protect, and defend the Constitution and laws of the United States, which includes our right to trial by

³² *Id.* at p 8

³³ Wikipedia articles, *World War II*, *supra* note 30, & *United States military casualties of war*, *supra* Note 17

³⁴ Wikipedia article, *German Instrument of Surrender*, available online at http://en.wikipedia.org/wiki/German_Instrument_of_Surrender#Surrender_ceremony

³⁵ Wikipedia article, *Surrender of Japan*, available online at http://en.wikipedia.org/wiki/Surrender_of_Japan

³⁶ Wikipedia articles, *United States military casualties of war*, *supra* Note 17, *War on Terror*, available online at http://en.wikipedia.org/wiki/War_on_Terror, *Iraq War*, available online at http://en.wikipedia.org/wiki/Iraq_War, *War in Afghanistan (2001–present)*, available online at [http://en.wikipedia.org/wiki/War_in_Afghanistan_\(2001%E2%80%93present\)](http://en.wikipedia.org/wiki/War_in_Afghanistan_(2001%E2%80%93present)), *September 11 attacks*, available online at http://en.wikipedia.org/wiki/September_11_attacks

jury.³⁷

Also, we commemorate these noble defenders of our liberty and refresh our patriotism by beginning each school day and each meeting of the US Congress and our state and federal government meetings by facing our flag, placing our hands over our hearts and reciting our Pledge of Allegiance as we have just done.³⁸

Reminding ourselves how fortunate we are to enjoy our so dearly bought personal freedoms, including our right to civil trial by jury, makes it easy for us, as Americans and Texans, to make our most sincere and thorough effort to correctly and properly do our duty as seekers of truth in this case.”

(The full recitation of the above language takes only about 15 minutes)

Instructions then continue with "The case that is now on trial is _____ vs. _____. Your duty as jurors will be to decide the disputed facts, etc." (ie, the remaining Rule 226a Approved Instructions)

³⁷ Wikipedia articles, *Oath of Allegiance (United States)*, available online at [http://en.wikipedia.org/wiki/Oath_of_Allegiance_\(United_States\)](http://en.wikipedia.org/wiki/Oath_of_Allegiance_(United_States)), *United States Armed Forces oath of enlistment*, available online at http://en.wikipedia.org/wiki/United_States_Armed_Forces_oath_of_enlistment, *Oath of office*, available online at http://en.wikipedia.org/wiki/Oath_of_office, Constitution of the State of Texas, Art 16, §1 from Westlaw

³⁸ Texas Education Code, §25.082 and Wikipedia article *Pledge of Allegiance* available online at http://en.wikipedia.org/wiki/Pledge_of_Allegiance
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