

Trial by Jury: Background

The right to trial by jury of one's peers is a cornerstone of the individual freedoms guaranteed by the U.S. Constitution. Thomas Jefferson described 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."

Juries in the Constitution

The basics of public participation in the federal justice system are set out in the United States Constitution. Article III specifies: "The trial of all Crimes, except on Cases of Impeachment, shall by Jury." The Fifth Amendment specifies that no person "shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." The Sixth Amendment says that "in all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . ." The Seventh Amendment extended the right of trial by jury in certain civil suits. In 1868, these guarantees were made applicable to state courts by the Fourteenth Amendment.

The reference to juries in the Declaration of Independence and the Constitution strongly suggest that the Founders, who had experienced the arbitrary and capricious use of power, saw juries as a safe-guard against the power of government to suppress liberty. America was founded on the principle that the people would have the decisive voice in administering justice, in determining who would be brought to court on criminal charges, who would be convicted, and who would prevail in civil disputes.

Today, the right to trial by jury is protected by the federal Constitution, as well as the constitutions of every state.

The Modern Trial Jury

The trial jury decides guilt in criminal cases, or liability and monetary damages in civil cases. Typically composed of 6 to 12 citizens, trial juries hear evidence in cases and render verdicts, which direct actions of a judge. In most serious criminal cases, the defendant has a right to trial by jury, but this is a right that he or she may waive, choosing instead to be tried only before a judge (bench trial). In civil cases, the uses of a trial jury depends on the law of the particular jurisdiction and the type of case. In some types of cases, juries are not used at all. For example, they are not used in juvenile courts, domestic relations cases, or most traffic cases.

Grand Juries

Grand juries are not used as often as trial juries, and in some jurisdictions, they have a very limited role. The grand jury came to America with a long history of protecting the innocent from unfounded charges. Grand juries often shielded the colonists from abuses at the hands of English prosecutors. The role of the grand jurors is not to decide if the person accused of a crime is guilty, but to determine whether this is enough evidence to charge the accused with a crime. Historically, this enabled ordinary individuals, chosen as jurors, to determine whether a trial should take place. They functioned as another brake on the power of government. Today the grand jury assesses evidence during the investigative stages of a criminal case and issues a decision as to whether to charge an individual with a crime. Legal researchers are concerned that grand juries are less apt to be an independent brake today. Most of the time, the only

lawyer they hear is the prosecutor. Without a defense lawyer present, they hear only one side of a case, and are more likely to bring criminal charges.

Grand juries differ from state to state. They range from six to twenty-three jurors but generally are comprised of more than twelve people.

- Grand jurors serve for a longer period of time than most trial jurors, often several months or even a year or more (most trial jurors sit only for the duration of one case).
- They may only meet a few times a week or a few times a month, unlike trial jurors, who are usually in court every work day while hearing a trial.
- Unlike trial jurors, they almost always hear more than one case, and usually hear many.

The Juror's Role during the Trial

In general, the role of the juror is to listen to the evidence conscientiously and impartially, not to draw premature conclusions, evaluate the evidence fairly, and, with the other jurors, determine a verdict in the case. Although the role of jurors is changing in some courtrooms, the traditional pattern is that they are spectators rather than participants in the trial. Jurors must make their judgment on the evidence presented in open court. They are not to rely on private sources of information and should avoid any media accounts of the case.

Qualifications for Jury Service

Each state makes its own laws regarding the qualifications for serving on a jury. Most states require potential jurors to be at least 18 years old, to be a U.S. citizen, and to be able to understand English.

Understanding Jury Service: Frequently Asked Questions

Does the U.S., Constitution guarantee every defendant a right to a jury trial in every case?

No. In a civil case the Seventh Amendment guarantees the right to a jury trial in "suits at common law." These are civil suits in which money is sought for an alleged injury or loss-for example, breach of contract or person injury actions. The right to a jury trial does not apply if the plaintiff is seeking something other than money-for example, an order to cease certain conduct or to turn over certain property. Congress also has provided for a jury trial in some instances in which the federal Constitution does not require it. The U.S. Supreme Court has also ruled that a defendant who is facing jail time of six months or longer is entitled to a trial by jury. In both criminal and civil cases, state constitutions may also guarantee broader rights to a jury trial.

How are potential jurors selected?

Jurors may be representative of the community in which the trial is being conducted. Courts usually obtain the names of prospective jurors from a maintained group of lists, such as registered voters, licensed drivers, or the census. When a case is set for trial by jury, the court randomly selects a pool of potential jurors. The jurors who will actually hear the case are then chosen by a process, known as voir dire, in which the members of the jury panel are questioned.

What should potential jurors expect during voir dire?

Potential jurors are questioned in open court either by the judges or by the parties' lawyers, depending on local laws and court rules. The goal is to discover any potential bias or prejudice relating to the parties or to issues in the case. If a potential juror states that he or she has such a bias or prejudice, or if evidence suggests that he or she may, the lawyer can ask the court to remove him or her as a potential juror.

How many jurors sit on a jury?

That depends on where the case is being heard. A federal criminal trial jury usually has twelve members. In some states, there may be fewer than twelve jurors in less serious criminal cases. In more serious state cases, in which the punishment may be more than a year of imprisonment in jail, twelve jurors are often required.

Must all jury verdicts be unanimous?

In the federal system, jury decisions must be unanimous. If the jury cannot reach a unanimous decision, it is considered a "hung jury" and a mistrial is declared, meaning a trial will end without a decision. After a mistrial, another trial may be held. In the state court system, requirements regarding unanimity vary. In more than a third of the states, agreement of only three-fourths or five-sixths of the jurors is needed to render a verdict in civil cases.

Who Gets Chosen, and Why

In the federal courts, the list of potential jurors in a community, the venire, is generally a random sampling of citizens' names taken from voter registration lists. Many state and federal courts supplement this with names from lists of licensed drivers. In Wisconsin, for example, the courts use the Department of Transportation's drivers' license and ID list, which accounts for more than 96 percent of the adults in the state.

Individuals whose names are drawn through random selection receive questionnaires from a court's jury management office. They return the questionnaires, and the jury office reviews them to determine whether an individual meets the legal requirements for jury service.

In the federal system, you are eligible for jury service if you are:

- A citizen,
- 18 years old or older,
- resident for a year within the judicial district,
- able to read, write, understand, and speak English,
- capable because of having no mental or physical infirmity, and
- free of any pending felony charge or released from a felony sentence, meaning your rights have been restored.

In the federal system, there are three groups that are exempt from jury service:

- members of the armed services on active duty,
- members of professional fire and police departments, and

- “public officers” of federal, state, or local governments who are actively engaged in the performance of public duties.

In state courts, the number of automatic exemptions has dropped sharply in recent years. Many states exempt no category of workers from jury service.

Role of Juries in a Changing Democracy

Some say that trial juries are declining in importance because they decide so few cases. Jury trials take place in only a very small percentage of cases. The vast majority of civil cases are settled before trial and most criminal cases are settled by plea agreements. The jury system has a big impact on these cases disposed of before trial, because the lawyers’ estimates about how a jury would decide a case help shape the terms of the settlement or plea agreement.

For those cases that do go to a jury, ordinary men and women are the decision-makers. As Jeffrey Abramson notes in *We, the Jury*, “No other institution of government rival the jury in placing power so directly in the hands of citizens.” Juries help us play an active role in our government and system of law. They give us firsthand experience with the legal system and generate support for it.