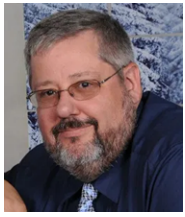


# Importance of Jury Duty



By Paul Engel

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- Do you try to get out of jury duty?
- Have you considered how important jury duty is?
- What would America be like if people put as much effort into understanding jury duty as they do getting out of it?

Most of us have had the experience of picking up the mail, only to get that small pit in our stomach. Maybe we utter a curse or two and immediately begin thinking of ways to get out of it. The piece of mail that has caused these reactions is a jury summons. Almost no one looks forward to jury duty, and the efforts to get out of it are legendary. Which makes me wonder: If We the People put as much effort into understanding jury duty as we did trying to get out of it, would America be a better nation?

Like most Americans, most of my life I dreaded even the idea of jury duty. It's disruptive, inconvenient, and generally something people avoid for a reason. That is, until I started studying the Constitution. That was when I realized that jury duty is probably the second most important civic duty citizens have. How can that be? Let's start with a little history.

## **Declaration of Independence**

Most Americans know that the colonies declared independence from Great Britain because of the way they were being treated. While most schools focus on the issue of taxation without representation, there were 27 specific grievances listed in

the Declaration of Independence. Number 9 is:

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

### [Declaration of Independence](#)

This means that the corruption of the judiciary was well ahead of taxation without representation, which came in at number 17. One of the questions the framers of the Constitution had to deal with was how do we keep federal judges, who after all are government employees, appointed by politicians, and paid out of the federal treasury, from biasing their decisions toward their government masters? The answer did not come until 1791 with the ratification of the ratification of the Bill of Rights, which included the Due Process Amendments.

### **Right to a Jury**

Within the Bill of Rights, the Fourth through Eighth Amendments are known as the Due Process Amendments. This is because they protect a person's right to due process, which is defined as:

An established course for judicial proceedings or other governmental activities designed to safeguard the legal rights of the individual.

### [Due Process: The Free Legal Dictionary](#)

That means that half of the amendments in the Bill of Rights are designed to make sure the government, including the judicial branch, protects your rights as an individual. And of those five Due Process Amendments, three of them protect your right to a jury.

### **A Grand Jury**

We start with the Fifth Amendment and its protection of your

right to a grand jury.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,

### [U.S. Constitution, Amendment V](#)

While there are exceptions for the military, including the militia when in service to the United States, you cannot be tried for a capital offense, or otherwise infamous crime (felony), until a grand jury says so. The Free Legal Dictionary defines a grand jury as:

A jury convened to determine if there is sufficient evidence to warrant the indictment of a suspected offender. A federal grand jury consists of between 16 and 23 persons and is required by the Fifth Amendment to the US Constitution before a person can be indicted for a serious criminal offense under federal law.

### [Grand Jury: The Free Legal Dictionary](#)

This definition focuses on a federal grand jury, most likely based on the legal fiction called the [Incorporation Doctrine](#), made up by the Supreme Court in the 1833 case [Barron v. Baltimore](#). However, since the Constitution, as the supreme law of the land, states that no person shall be held to answer for such crimes except for a presentment or indictment of a grand jury, that supersedes the erroneous decision of the court.

Unlike a petit jury, a grand jury not only has more members, but a very different task. Their job is not to try the case, but to determine if there is sufficient evidence to indict the accused. Because of the task at hand, a grand jury is not an adversarial event. Only the prosecution is present and allowed to provide evidence. No counter-point is given and there is no access to any evidence other than what the prosecutor brings. For that reason, grand juries tend to issue indictments in

most cases. This has led to the saying “A good prosecutor can get a grand jury to indict a ham sandwich.” After all, the process is completely one sided, and the defense is not allowed to participate. In this country, and contrary to what many talking heads imply, a person is considered innocent until proven guilty. While an indictment is a major decision, it is not, in any way shape or form, proof that someone is guilty. That is the role of the petit jury.

## **A Petit Jury**

The role of a petit jury is quite different from that of the grand jury.

A body of persons selected to decide a verdict in a legal case, based upon the evidence presented, after being given instructions on the applicable law. Also called petit jury, trial jury.

### [Jury: The Free Legal Dictionary](#)

Unlike a grand jury, a petit jury, or trial jury, is known as the trier of facts. Their job is to look at the facts of a case and ultimately render a verdict. Yes, the judge will give instructions on the applicable law, but ultimately, the fate of the case rests in the hands of those men and women on the jury. While the law is important, it is up to the jury to seek justice for both parties in the case. This is why the Bill of Rights protects a person’s right to a jury trial in both criminal and civil cases.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed

### [U.S. Constitution, Amendment VI](#)

If you are accused of a crime, you have the right to a trial.

Said trial must not only be speedy and public, but by an impartial jury made up of people where the crime was committed. Notice, the accused is not tried by a judge or the prosecutor, but by the jury. The prosecution and the defense both bring forth their evidence, the judge oversees the process to make sure it's fair and impartial, but it's the jury that is trying the case, testing the facts, and ultimately making the decision about the accused's guilt, though not all cases are criminal.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,

### [U.S. Constitution, Amendment VII](#)

Should you be involved in a lawsuit, whether you are the plaintiff or the respondent, you have a right to a trial by jury as long as the value in question is greater than \$20. This means that if you sue someone, or are sued by someone, you have a right to have that case heard and determined not by a judge, but by a jury. There is one other point about juries in the Seventh Amendment:

and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

### [U.S. Constitution, Amendment VII](#)

That means, win or lose, there is limited opportunity to re-examine the facts tried by a jury. That's not to say there aren't any ways to appeal a jury decision, but they are limited by the rules of common law. What is common law? Most people define common law as:

Law established by court decisions rather than by statutes enacted by legislatures.

## [Common Law: The Free Legal Dictionary](#)

There's a fundamental flaw with that sense of the phrase, at least in the United States. The Constitution states:

All legislative Powers herein granted shall be vested in a Congress of the United States

## [U.S. Constitution, Article I, Section 1](#)

All legislative, all law making power, is vested in Congress, so it's impossible for a court to establish law. Which means the second sense of the phrase 'common law' is more applicable here in the United States.

The law of England adopted by its territories and colonies, including the United States at the time of its formation.

## [Common Law: The Free Legal Dictionary](#)

The basis of English Common Law was custom and court decisions. Which means the rules by which a jury decision in a civil case can be appealed are found in that common law, and that is the limit of its power.

## **Second Most Important Civic Duty**

Recently, I wrote about the most important civic duty we have as American citizens, the duty to vote. You may be asking yourself, why should I consider jury duty the second most important civic duty?

If we look at the Preamble to the Constitution, we find the second reason we ordained that document was to establish justice. How can we establish justice if government is allowed to accuse and try without any checks or balances? Juries are meant to be that check and balance on the judicial branch. A legislature can pass a law, the executive branch can charge someone with violating that law, but with rare exceptions, a court cannot try the facts; only a group of American citizens

can.

I was summoned for jury duty once. While waiting my turn to answer questions from the attorneys, a gentlemen before me said he could not convict someone because the bible said "Judge not, lest ye be judged." I really dislike it when people only quote part of Scripture to get what they want. I sat behind this man thinking, "Quote the rest of the phrase."

Judge not, that you be not judged. For with what judgment you judge, you will be judged; and with the measure you use, it will be measured back to you.

### [Matthew 7:1-2 \(NKJV\)](#)

I've always wondered if that man were accused of a crime, would he want to be judged the same way he had judged in that case? Would he be happy with being judged by people who could not be bothered to care about his case? Because the right of the accused to a jury trial, the right in a civil case to a jury trial, is about due process, protecting the rights of the individual accused. American's aversion to this civic responsibility has become so pronounced there's even a joke about it. "You're not judged by a jury of your peers, but by twelve people who couldn't get out of jury duty."

I know answering that jury summons is difficult. It's even worse if you get called to serve. Most of us have lives that demand most of our time. Who will watch the children? Can I get time off work? And, depending on the state you live in, the stipend you receive may not even cover your pay for an hour of work. Then there's the responsibility of sitting in judgment of another human being. It's an awesome responsibility, so I can understand why so many want to shirk it. So why should you give up your time, effort, and money to serve on a jury? Because one day, it may be you sitting at the defendants table. Or maybe a friend or family member will be sitting there with their life in the balance. Imagine sitting

there yourself. Maybe you've been arrested, or served a lawsuit. You may be looking at jail time or financial ruin. You've also had to take time away off, just like those jurors, but they don't have any skin in the outcome of this case like you do. Now imagine looking over at those twelve jurors. Do you want to see twelve faces who couldn't care less, or worse, faces that are angry about being there? Do you want to see frustration or concern, boredom or engagement? As Jesus said in Matthew 7, you will be judged as you have judged others. Think of that the next time that jury summons appears in the mail.

## **Conclusion**

There are many things in life that we do not enjoy, but we do them anyway. Why? Because it is our responsibility, our duty, and the price of living in a free country. We go to work, pay the bills, and do chores around the house, not because we like to, but because we need to. Yet here we have the opportunity to seek justice for another human being and most Americans see it as an imposition rather than an opportunity.

If you've seen the movie [12 Angry Men](#), you've seen the importance not only of jury duty, but the power a single member can wield. As the jury begins their deliberations, it's quite apparent that they are ready to quickly convict the accused. That is all except one man. As the deliberations go on, the frustrated jurors just want to go home. One by one, the single hold-out shows, by the evidence provided, that the accused is not guilty. What if that single individual had been excused? What if they had found a way to avoid jury duty? Then the accused would most likely have been put to death for a crime he did not commit. That's an awesome responsibility, one that is rare, even among juries.

If We the People are not willing to sit in judgment of our fellow man, who will? Wouldn't it be the judge? The government employee acting as judge, jury, and possibly executioner?



Would that be a free country? Not according to those 56 men who signed the Declaration of Independence. They recognized that freedom is not free. While they were willing to sacrifice their lives, fortunes, and sacred honor to the cause of liberty, shouldn't you be willing to sacrifice a few hours or days of your lives? Isn't the right to trial by jury worth giving up some of our fortune? Do we not want people honor-bound to establish justice, even if it's an inconvenient and awesome responsibility to hold? To my mind, the alternative is a horror not worth considering.

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