



# The Trial Jury in Oregon's State Courts: Where Oregonians share the power and the responsibility

Trial by jury is a right established in both the United States Constitution and the Oregon Constitution. Citizens who serve as jurors bring life to the constitutional right to trial by jury. This pamphlet presents a very general overview of a juror's role in Oregon state trial courts.



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## Why do we need juries?

In a "criminal" trial jurors stand between a person accused of a crime and the power of the government to convict the accused person and, as a penalty, to deprive the person of life, liberty, and/or property. In a "civil" lawsuit jurors reflect the conscience and the common sense of the community as they work to resolve disputes over such things as contracts and injuries.

A juror's public service is essential to operating the judicial branch of our government and is one of the most important functions of our democracy.

## Who can be a juror?

Under Oregon law, any person is eligible to be a juror if that person is a citizen of the United States, lives in the county where called to serve as a juror, and is at least 18 years old. A person is not eligible for jury service if that person has served as a juror in a state or federal court in the previous 24 months. In a civil case no one is eligible for jury service who has been convicted of a felony and is serving a sentence for that crime. In a criminal case no person may serve as a juror if he or she (1) has been convicted of a felony or has served a sentence for a felony within the past 15 years or (2) has been convicted of a misdemeanor involving violence or dishonesty or has served a sentence for such a misdemeanor within the past five years.

To learn about how jurors are selected and what to expect if you are chosen to be a juror in a trial, see the Handbook for Jurors published by the Oregon State Bar at [www.osbar.org/public/jurorhandbook.htm](http://www.osbar.org/public/jurorhandbook.htm).

## What do jurors do?

Once jurors are selected, they take an oath of office, joining the judge and lawyers as "officers of the court."

Jurors listen to testimony and observe the evidence presented by the different sides during the trial. Jurors receive instructions about the law from the judge. The judge sends the jurors to meet in private to think about and to discuss the evidence they have heard and seen, in the context of the law, and to decide the outcome of the case. That process is called the jury's "deliberations." During their deliberations the jurors decide whether to accept as true the testimony of each witness. The jurors resolve any important conflicts in the evidence; they apply the law to the facts; and, finally, they reach a decision called the "verdict."

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## What does the Oregon Constitution say about jury trials?

The right to trial by jury in both criminal and civil cases is included in Article I of the Oregon Constitution, also known as Oregon's "Bill of Rights."

Article I, section 11 says: "In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury ... ." The accused may "waive" (give up) the right to trial by jury.

Article I, section 17 states: "In all civil cases the right of Trial by Jury shall remain inviolate." This means the right cannot be taken away.

The drafters of Oregon's constitution took those provisions directly from the Indiana Constitution of 1851. Voters adopted the Oregon Constitution in 1857. It became effective in 1859 when Oregon was admitted as a state.

By 1910 there was concern that Oregon's trial courts and appellate courts were "second guessing" the decisions made by juries. For example, sometimes the party who lost at trial felt that the jury

had awarded too much money to the winning party. Sometimes the winning party felt the jury had not awarded enough. A party who did not like the result of a jury trial would ask the judge to "set aside" the jury's verdict and to grant a new trial. In response to such a request, the trial judge would review all the evidence

presented at trial. If the judge concluded that the jury's verdict was not supported by the evidence, the judge could set aside the verdict and grant a new trial.

In response to that practice, the people of Oregon voted to amend the Oregon Constitution to provide that "no fact tried by a jury shall be otherwise re-examined in any court of this state, unless the court can affirmatively say there is no evidence to support the verdict." (Oregon Constitution, Article VII (Amended), section 3.) That amendment prevents a trial court judge or an appellate court from re-examining any fact decided by a jury unless the court finds that, considering the evidence in the light most favorable to the winning party, no evidence was presented at trial to support the jury's finding.

The amendment strengthened the power of the jury and made the right to a jury trial more secure.

### What does that word mean?

The different sides in a case are called the "**parties**" in the case. In a criminal case the parties are the government (represented by a prosecutor) and the person or persons accused of a crime (called the "defendant(s)"). In a civil case, the parties can include persons, corporations, organizations, or government units.

A "**court**" is (1) the place where a trial takes place or (2) a judicial institution such as the Supreme Court of Oregon. The word "court" may also refer to the judge who presides over a trial or other court proceeding.

In a trial court, a judge is in charge of the trial. (It is said that the judge or "the court," and any jury, "**hear**" the case.) Lawyers for the parties introduce evidence and "**argue**" the case on behalf of their clients in front of the judge and the jury.

## The Jury as a “Bulwark against Tyranny”

Roughly 80%, and perhaps more, of the jury trials in the world today occur in the United States. But the jury trial system has an important influence on government in the United States aside from the jury's role in resolving disputes.

In the early 1830's Alexis de Tocqueville, a young Frenchman, toured the United States and observed the people and the operation of government at all levels. He saw the United States as an example of a government that preserved the liberty of its people within a democratic society. De Tocqueville hoped his observations of the United States would influence the new government in France. In Volume I of his *Democracy in America*,\* he included a discussion of the jury, of which he said:

“It would be a very narrow view to look upon the jury as a mere judicial institution; for however great its influence may be upon the decisions of the courts, it is still greater on the destinies of society at large. The jury is, above all, a political institution, and it must be regarded in this light in order to be duly appreciated.”

De Tocqueville believed that the jury, whether sitting in a criminal or a civil case, “cannot fail to exercise a powerful influence upon the national character.” The jury, he said, “invests each citizen with a kind of magistracy; it makes them all feel the duties which they

are bound to discharge towards society and the part which they take in its government. By obliging men to turn their attention to other affairs than their own, it rubs off that private selfishness which is the rust of society.”

Speaking of British monarchs of past centuries whose desires were frustrated by juries, de Tocqueville said: “All the sovereigns who have chosen to govern by their own authority, and to direct society instead of obeying its directions, have destroyed or enfeebled the institution of the jury.”

History supports de Tocqueville's observations about the influence of the jury on government.

In 12th century England early jury trials began to replace the barbaric and senseless “trial by ordeal” and “trial by battle” that had been used to determine guilt or innocence of an accused. By the 15th century England had developed its Common Law (judge-made law that was consistent all over the land) and a jury fairly similar to ours. However, during the same period of time, English kings introduced the “Star Chamber,” a court without a jury. It was the court where judges appointed by the king or queen exercised arbitrary power resulting in the torture and execution of those who challenged the king or queen. England's Parliament abolished the Star Chamber in 1641. Trial by jury survived.

Yet another product of the times was the practice of punishing jurors for a “wrong” verdict. In 1670 William Penn (later, the founder of Pennsylvania) and a small group of Quakers held a public meeting in a London street. They had been shut out of their meeting house under a law that outlawed any meeting for worship other than according to the practices of the Church of England. It was a time of religious repression for those who did not worship in the Church of England and, particularly, for Quakers. Penn and his friend William Mead were charged with disturbing the peace. Four jurors at the trial refused to convict Penn and Mead. The judge threatened the leader of the four, Edward Bushel, with “branding” with a hot iron in the way that we brand cattle. After further deliberation, the jurors gave a unanimous “not guilty” verdict. The judge ordered Bushel and the other jurors to be locked in prison without food or water. After four days and the jury's continued refusal to change their verdict, the judge ended the trial, fined the jurors “40 marks,” and ordered them held in prison until they paid the fine. Bushel and his fellow jurors filed with the Court of Common Pleas a request to be let out of prison. They won. That decision, it is said, established the independence of the jury. It ended the practice in English courts of pressuring jurors to decide a case a certain way and of

### Where does the jury fit into Oregon's State Courts?

There are three types of Oregon state courts: trial courts, appellate courts, and tax court.

Trial courts are located in every county in Oregon. There are about 170 judges who conduct trials and other proceedings in those courts. If a party to a civil or criminal case asks for a jury, a jury will participate in the trial of that case. If no party asks for a jury, the judge will decide the case without a jury. For some types of cases, the law directs that a judge will decide the case without a jury.

“Appellate” courts hear “appeals” of cases after the cases have been decided in a trial court. There are two appellate courts: the Oregon Court of Appeals and the Supreme Court of Oregon. Typically, a matter comes to an appellate court at the request of a party who lost in the trial court. The job of the appellate courts is to review the work of the trial court judge for errors. There are no juries in the appellate courts.

Tax court is also a trial court. It has one judge who hears only disputes involving the state's tax laws. There is no jury in tax court.

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\* The quotations from Alexis de Tocqueville's *Democracy in America*, Volume I are taken from a revised translation of that work corrected and edited by Phillips Bradley (Copyright, 1945, by Alfred A. Knopf, Inc.) published by Alfred A. Knopf, Inc., and Random House, Inc., and are used with permission of Alfred A. Knopf, Inc.

punishing jurors for verdicts the judges considered to be wrong.

In America, colonists rebelled against similar efforts by the British to manipulate juries. The colonies adopted their own laws to allow for trial by jury. Nonetheless, it was often the local sheriff who drew up the list of possible jurors. He selected those who were sympathetic to the King's interests. Also, the British Parliament required more and more disputes to be tried in the Court of Admiralty without a jury, rather than in colonial courts.

At the beginning of the American Revolution, Thomas Jefferson wrote in the Declaration of Independence that "The History of the present King of Great-Britain is a History of repeated Injuries and Usurpations, all having in direct Object the Establishment of an absolute Tyranny over these States." Among a list of those acts Jefferson included a complaint against the King for "depriving us,

in many Cases, of the Benefits of Trial by Jury."

Some delegates to the Constitutional Convention refused to sign the Constitution because it did not contain a guarantee of trial by jury in civil cases. With the approval of the Bill of Rights by the last of the 13 states in 1791, the right to trial by jury in criminal cases (Sixth Amendment) and in civil cases (Seventh Amendment) was assured.

More recently, Justice (later Chief Justice) William H. Rehnquist of the United States Supreme Court said: "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 ... ." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 343, 99 S.Ct. 645, 657-58, 58 L.Ed.2d 552 (1979) (dissenting).

## What kinds of courts are there in Oregon?

There are four court systems in Oregon. Each is established by a different government unit.

- **State courts** are funded by the State of Oregon. They hear many types of cases including traffic violations, family disputes, contract disputes, personal injury cases, landlord-tenant matters, criminal violations arising under Oregon law, and other matters. In some types of cases, the law does not allow for a jury trial.
- **"Special courts"** are trial courts funded by a county or city. Some, but not all, cities and counties have these courts to hear matters such as traffic violations.
- **Federal courts**, funded by the United States government, hear criminal and civil cases arising under federal law and some other types of cases.
- **Tribal courts** are funded by their Native American tribe or nation. They interpret tribal law and hear cases brought under tribal law.

To learn more about Oregon's courts, see "An Introduction to the Courts of Oregon" at [www.ojd.state.or.us/aboutus/courtsintro/index.htm](http://www.ojd.state.or.us/aboutus/courtsintro/index.htm).

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Anyone who wants legal advice on any of the issues discussed in this pamphlet should consult a knowledgeable lawyer.



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