

## The Right to a Jury Trial-800 Years and Counting!

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This year is the 800th anniversary of an English document called the “Magna Carta” (or, Great Charter). King John agreed to this document in June 1215 when forced to do so by dozens of barons. The Magna Carta showed that King John was giving up his absolute power over the government and justice system. Those barons had a lot on their minds. One of the most enduring parts of the Magna Carta is its guarantee that “no free man shall be imprisoned or disseised [dispossessed] . . . except by the lawful judgment of his peers or by the law of the land.” Over the centuries, this concept has evolved to the point that these rights are guaranteed to all citizens. For example, our Bill of Rights, which became effective in 1791, guarantees the right to a jury trial in both criminal and civil trials. Our Alaska Constitution also preserves the right to jury trials.

When Alaskans statewide serve on jury duty, they are the key players making these rights available to other Alaskans and organizations involved in both criminal and civil trials. But the whole jury process may not be as clear as it should be. Here are some thoughts based on my 32 years of judicial experience in Barrow.

1. **Juries are really important.** Most countries in the world have government officials investigating civil and criminal issues and then announcing the result without citizen input. Both the United States Constitution and our Alaska Constitution include the right to have a jury trial as one of our basic freedoms. Many have fought and died to protect such freedoms in our country.
2. **Alaska has different types of juries.** There are two common types of juries in Alaska: a “grand jury” and a “trial (or petit) jury”. The grand jury is only used in serious crimes: the felonies for which someone can be sentenced to more than one year in jail. The grand jury considers a case very early after it is filed. If at least 10 members of the grand jury think the

case should go forward, the grand jury issues an “indictment” that is like a permission slip allowing the case to go into the Superior Court to be resolved. Grand jury sessions are confidential proceedings.

Grand jurors meet as scheduled by the District Attorney, often once every week or two in rural Alaska. I believe that the grand jurors find their sessions real interesting. They see how many different kinds of crimes are investigated in the entire area served by their court. If a grand juror feels he or she cannot be fair in a particular case, the grand juror can bring up the issue with the prosecuting attorney who may excuse the grand juror from that particular case.

Trial juries (sometimes called “petit juries”) are available in criminal cases and civil cases. These juries examine a particular situation in depth. The jury makes final decisions of great importance to the participants in the case. In a criminal case, the jury decides if something happened. The jury may also decide certain sentencing factors that the judge may use later on to do the sentencing. The jury in a criminal case must be unanimous before it can announce any decision.

In a civil case, the jury decides what happened and how the legal rules apply to the situation. If someone has been wronged by someone else, the jury also decides how to make things right. In a civil case, the jury does not need to be unanimous. A decision by almost all of the jurors is sufficient.

Jury trials always start with “voir dire,” which is a time for the participants to get to know the jurors and acquaint them with basic issues in the case. Depending on the case, many citizens may be excused at this point, before the final, random selection occurs to find out who will actually consider the trial.

3. **Random selection is essential.** Of course, if we are going to have a jury, the rules require that the group of people needs to be representative of the community. That includes people who want to be present and people who would prefer not to.

We start with the list of people who apply for an Alaska Permanent Fund Dividend, are residents of the community and are at least 18 years of age. Computers randomly assign people between trial juries and grand juries and decide when a person is called. People get a “questionnaire” so the court can have contact and other basic information. The person can let us know if they cannot participate during certain times.

State law protects each juror from retaliation at work for being absent from the job to be a juror. But employers have been most cooperative in my experience. Employers have the opportunity to write an excuse request if a particular person is critical to have available at work for certain days. If the request arrives before trial, the person may be excused by the judge and not have to appear. Persons bringing in a request on the day of trial must appear at court with everyone else so the judge can decide. A person can only be excused for up to ten months.

If citizens who are called to serve at a certain time simply fail to show up without letting the court know why, the court has no choice but to follow up. Court papers go out to require persons to come to court to explain to the judge.

4. **Juries get "on the job training."** Grand jurors have general instructions from the judge at the beginning of their term. At the beginning of each case, the prosecutor explains what the case is about and the criminal laws that apply. The grand jurors can send out questions to the judge if needed.

Trial jurors listen to instructions from the judge at least twice: general instructions at the beginning and detailed instructions at the end of the case. The attorneys (or self-represented litigant) have the opportunity to explain how the facts and the law mesh together. During deliberations, the jury can send out questions to the judge. The judge provides answers after consulting with the attorneys or self-represented litigant. The jury returns to the courtroom when it is finished, and the jury foreperson announces the decision.

5. **We have to be very clear about what information was used by a jury to reach its decision.** The judge's instructions are in writing and kept with case records. There is a permanent electronic record of everything that is said by witnesses and other participants during a grand jury session or any trial. There is also a record of documents, photos and other "exhibits." Of course, jury deliberations are private and are not recorded.

If a grand jury session or trial needs to be reviewed by a higher court, the appellate judges must be able to consider exactly what legal instructions were given and what facts and argument were presented.

But no one knows what is learned by an individual juror who accesses outside information through services like Facebook, Wikipedia, Google and the Court System's CourtView case management system. Jurors must not access this information during a grand jury session or a trial. The judge

instructs jurors that during the trial, they cannot discuss the case with anyone, not even their family and friends. But after the trial is over and the jurors are excused, the jurors can discuss the case if they wish to. Judges give strict instructions about these matters before and during the trial. Jurors also need to understand that the ethical rules require that the attorneys cannot have contact with the jurors during the trial. They cannot even respond to a friendly greeting in the hallway or outside the court.

6. **Jurors deserve our thanks and respect for their efforts.** Citizens leave their normal activities and jobs and spend many hours at the courthouse for jury service. I have seen the great dedication of jurors, examining the issues for a considerable time and staying into the night if they feel it is necessary. When the jury's decision is announced, one can see how the citizens have carefully evaluated all the information they received and how they have reached a reasonable result based on the facts and the law. When this happens, those 800-year-old principles still shine brightly today.