

## ***INTRODUCTION***

In a poorly lit hallway, on an uncomfortable bench, a young man sits wringing his hands. Around him hums the bustle of an urban courthouse. Uniformed police officers, slick-suited lawyers, and casually dressed witnesses go in and out of the courtroom doors. Were he paying close attention, the young man could witness the anguished aftermath of a murder sentencing or a messy divorce down the hall.

But at that moment, the man is concentrating on himself. Or perhaps, more specifically, the man is concentrating on twelve jurors behind a closed door—twelve jurors deliberating his fate. The man has just witnessed a trial—his own. He has seen due process of law firsthand. He faces accountability and the stark choice of incarceration or liberty. A choice that now belongs to the jurors in his case.

Inside that jury room, twelve citizens sit around a wooden table. They share little in common save for the

jury badges affixed to their chests. Despite different backgrounds, they face one another as equals, each person given no more power than anyone else. No matter their position in society, in that jury room they have but one vote. And vote they must. They have been asked to participate in a fundamentally American process—the deliberation of guilt or innocence in a criminal trial. They have just experienced a legal process that they hope was fair and just. Today is their day of decision.

As a public defender practicing in an urban courthouse, I have sat on that uncomfortable bench with my clients many times. And occasionally, during those nervous waits, I turn to the document that brought me there—the United States Constitution. In the copy I carry, the print is small and the words old-fashioned. Yet that single document influences everything that is happening in the courthouse. I watch as constitutional ideals such as civic participation, deliberation, fairness, equality, liberty, accountability, freedom of conscience, and the common good come alive through the practice of ordinary citizens. I witness jurors applying constitutional principles to reach a fair verdict. I wonder if they know their closeness to the Constitution.

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This book began on that courthouse bench, observing constitutional values in action. It was written with the realization that most of us—my client, the litigants, the witnesses, and most especially the jurors—do not see the constitutional principles all around us. These good citizens are playing a role at the heart of our constitutional structure without realizing their connection to the larger principles of our nation.

This is not to say that citizens do not value the Constitution. To the contrary, the United States Constitution

remains our most sacred national document. Most citizens would lay down their lives to preserve it. Yet, despite an abstract faith in the Constitution, we remain disconnected from its practice. Most decent and well-meaning citizens haven't read the text of the Constitution since high school (if then). Many otherwise conscientious Americans remain constitutionally uninformed, knowing more about current television contests than current legal decisions.<sup>1</sup> And while we might read about the latest hot-button issue ending up before the Supreme Court, only a handful of us ever have a direct connection with a legal issue, much less a constitutional court case.

Yet the truth is that we are all constitutional actors. As a citizen—regardless of whether you want to accept it—you have been entrusted to act within the constitutional system.

This book seeks to reconnect you to those constitutional principles through one of the last unifying acts of citizenship—jury duty. Yes, jury duty—our recurring civic obligation to head down to the courthouse and participate in resolving a criminal or civil case involving members of the community. It is an important but usually much dreaded task. It presents a necessary but inconvenient moment of civic responsibility. A sad reality, really, as jury trials were notably at the forefront of our established constitutional rights.

The premise of this book is simple: imagine that instead of considering jury duty an inconvenience, you considered it a day of reflection—a day to reevaluate your role as a constitutional actor. After all, a jury summons provides a government-provided free pass from your normal family and work responsibilities. It is literally the law of the land that you cannot complete your everyday routine. Jury duty thus provides an opportunity (with plenty of waiting time) to reflect on our constitutional values. In addition, you have the chance to practice the

constitutional principles that have served this country well.

Why care about constitutional principles? The United States Constitution exists as the repository of our national ideals. We are “Americans” because of ideals, not ethnicity, religion, or culture. Remember, we live in a country where it is permissible to salute the flag or burn it as a constitutional expression of the First Amendment’s right to free speech.<sup>2</sup> In the name of being American, you can accept or reject the symbols of America.

But the insight of the Founders was not simply to put our ideals down on paper, but to create mechanisms to practice those ideals. The Constitution provides a framework not only for government, but also for civic and political engagement. The jury is but one of the institutional structures designed to turn ideals into reality. You might believe in fairness and accountability, but as a juror you get to apply those principles to the young man sitting twenty feet from you at the defendant’s table. As a juror you are forced to translate ideals into action. In many ways, that is the hope of this book—to translate shared constitutional principles into daily practice in an effort to strengthen our nation’s constitutional character.

Why jury duty? The fact is that jury duty is one of the few constitutional rights that every American has the opportunity to experience. It remains an American civic ritual. It connects people across class, national origin, religion, gender, and race. It creates habits of focus and purpose, and teaches values necessary for democracy. No matter your education level or importance, you share this constitutional right and obligation. And, truth be told, as a trial lawyer who relied on criminal juries for the liberty of my clients, I can think of no institution more deserving of a sustained project of reflection and respect.

Equally important, juries were foundational to America. It is no overstatement to say that those who created

this nation ranked the right to trial by jury as the greatest source of liberty.<sup>3</sup> A jury trial was guaranteed in the Charter that founded the first English settlement at Jamestown in 1607.<sup>4</sup> The lack of jury trials was an explicit grievance listed by Thomas Jefferson in the Declaration of Independence—“depriving us in many cases, of the benefit of trial by jury”<sup>5</sup>—a complaint that helped spark the American Revolution. Between the Declaration of Independence in 1776 and the signing of the Constitution in 1787, each of the colonies established the constitutional right to a criminal jury trial for its citizens.<sup>6</sup>

At the founding of the United States, the right to a jury trial was one of the first constitutional rights agreed to at the Constitutional Convention in Philadelphia.<sup>7</sup> And it is the *only* right that appears in both the text of the Constitution and the Bill of Rights.<sup>8</sup> In the Bill of Rights, three of the first ten Amendments expressly protect juries. The Fifth Amendment protects the grand jury, the Sixth Amendment protects the criminal jury, and the Seventh Amendment protects the civil jury.<sup>9</sup> Further, at the time of the drafting of the Constitution, both the First Amendment protection from prior restraint of speech<sup>10</sup> and the Fourth Amendment’s protection from unreasonable searches and seizures<sup>11</sup> were effectuated by civil jury trials—meaning *that half* of the Bill of Rights was, in one way or another, focused on the right to a trial by jury.<sup>12</sup> In fact, the right to a jury was one of the only things all the Founding Fathers could agree on. As Alexander Hamilton wrote in *Federalist* No. 83:

The friends and adversaries of the plan of the [Constitutional] convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury: Or if there is any difference between them, it consists in this; the former regard it as a valuable

safeguard to liberty, the latter represent it as the very palladium of free government.<sup>13</sup>

From this historical foundation, jury trials have remained at the center of our American justice system. There are approximately 150,000 jury trials a year with more than 1.5 million actual sitting jurors.<sup>14</sup> Almost 32 million of your fellow citizens receive a jury summons.<sup>15</sup> One in three Americans will serve on a jury in their lifetime.<sup>16</sup> The American Bar Association has determined that 78 percent of the public rates the jury system as the fairest method to determine guilt or innocence in a criminal case, and 69 percent consider juries to be the most important part of our justice system.<sup>17</sup> It is an American practice, crafted around our common law tradition and incorporating our fundamental values. The result is that the United States currently holds 90 percent of the world's criminal jury trials and almost all of its civil jury trials.<sup>18</sup>

Moreover, even though the history of the jury (in actual practice) has not always lived up to its stated ideals, the modern jury stands as success story, remaining consistent with our constitutional standards of fairness and inclusion. We have moved past the ugly history of direct racial and gender discrimination,<sup>19</sup> as well as “blue ribbon” or “key-man”<sup>20</sup> jury systems that invariably selected only “qualified” jurors and excluded people of color and women.<sup>21</sup> State by state, the rule of law has been systematized so it applies fairly across courtrooms and the nation.

Today's jury should be celebrated. As currently constituted, the jury is an institution that connects local farm towns and urban metropolises. It strives for fairness and equality. It remains localized and democratic. It has developed into a model for how we should behave as citizens. Jury experience exists as one of the remaining connecting threads in a wonderfully diverse United States. It

links us to our founding principles and challenges us to live up to them.

Each chapter in this book takes a constitutionally grounded principle and shows how it applies in jury duty. The principles discussed here represent an incomplete and probably contestable list of core constitutional values. Legal scholars may debate the original intent of the Founders, parsing textual fragments and citing ancient cases, but there is little question that “liberty,” “due process of law,” “accountable government,” and “participation” were considered fundamental values. Whatever your political background or legal views, recognizing the ideals of “equality,” “freedom of conscience,” or “deliberation” as essential to the national character allows you to appreciate constitutional values without choosing political sides. Jury service is apolitical, as should be a solid grounding in American constitutional history and text.

Of course, the constitutional principles discussed in this book extend beyond jury service. This is but an introduction to the Constitution and the value and values of jury duty. I encourage you to go beyond this brief beginning to understand both the foresight of our Founding Fathers and the history of the United States Constitution. This book has a simple goal: to reconnect each of us with this important document and reclaim a sense of constitutional character while on jury duty.

*The jury system postulates a conscious duty of participation in the machinery of justice. . . . One of its greatest benefits is in the security it gives the people that they, as jurors actual or possible, being part of the judicial system of the country can prevent its arbitrary use or abuse.*

—Chief Justice William Howard Taft



**U.S. Courthouse (1900, 1938)** Completed in 1882

**SUPERVISING ARCHITECTS:** William Appleton Potter and James G. Hill  
Extension completed in 1938

**SUPERVISING ARCHITECT OF EXTENSION:** Louis A. Simon

The United States District Court for the Middle District of Tennessee met here until 1952; the United States Circuit Court for the Middle District of Tennessee met here until that court was abolished in 1912. Now owned by the city.

**SOURCE:** UNITED STATES TREASURY DEPARTMENT, *A HISTORY OF PUBLIC BUILDINGS* (WASHINGTON, DC: GPO, 1901), 556–57.