You are summoned for jury duty

Relax. Jury summons aren't being issued by email yet. But it is likely that some day you will receive a summons to serve on a jury. The first reaction of many people is to seek a way to avoid jury duty. Don't. Our way of life depends on good people doing that duty.

But during the questioning of jurors, don't admit that you received this message. It contains information that the legal establishment doesn't want you to know, information that you need to do your duty as a citizen to uphold the Constitution.

When this nation was founded, the jury system was made a part of our system of government. This was done for one main reason: because the Founders did not trust judges, prosecutors, investigators, and other officials to administer justice. The jury is the ultimate safeguard of our constitutional rights, and never before in our history have those rights been in greater danger.

There are two kinds of juries: trial and grand. In a jury trial, the jury is the real judge. The "judge" who presides over the trial is really the president of the court. His proper job is only to control procedure.

There are two kinds of trial: criminal and civil. In a civil trial, the jury decides based on a preponderance of evidence, and a unanimous vote is not required. In a criminal trial, the jury has the duty to acquit the accused unless the prosecution proves guilt beyond a reasonable doubt, and it takes the vote of all twelve jurors to convict. Once acquitted, the accused may not be retried for the same offense.

A grand jury does not decide guilt. It investigates the facts in a case and recommends a course of action. The most common issue put to a grand jury is to decide if there is sufficient evidence in a case to prosecute the accused. The finding that there is sufficient evidence is called an indictment, and there is a constitutional requirement that persons accused of serious crimes must be indicted by a grand jury before they may be prosecuted in a trial. This is to protect innocent persons from being prosecuted by corrupt, abusive, incompetent, or overzealous prosecutors. However, a grand jury can investigate any issue. They have the power to decide what issues to investigate, the power to subpoena witnesses to testify before them, and to make any finding or recommendation that they think their investigation merits. Such a finding and recommendation is called a presentment.

But most grand juries today don't do their duty the way the Founders intended they should. They too often serve as rubber stamps for prosecutors, who often joke that they can "indict a ham sandwich". Judges and prosecutors prevent private citizens from bringing cases before the grand jury directly, which is the way the system is supposed to work, and used to work when this country was founded. Prosecutors will remain with the grand jury throughout their proceedings, although the grand jury is supposed to work without anyone else

present, unless they request it. Grand jurors are sworn to secrecy to prevent public knowledge of their proceedings, but this duty is to the other members of the grand jury, not to the court. The original system was for grand juries to decide what to disclose, how, and when. If the grand jury tries to investigate the judge, the prosecutor, or law enforcement officials themselves, they will often be dismissed, even though the grand jury, once convened, is supposed to be able to remain in session regardless of what the judge may do, until it completes its work.

The constitutional duty of the grand jury is not just to decide on the cases brought to it by the prosecutors. It is also to investigate cases that the prosecutors don't want them to consider, cases of official and high-level corruption, abuse, incompetence, and misconduct. Later in this message some advice will be given on how you as a member of a grand jury can get your fellow grand jurors to break out of this improper control and do your real duty.

But let us turn back to jury trials, particular criminal trials, and especially trials in federal courts.

In a typical criminal trial, the judge will demand that you promise to "follow the instructions" he gives you, and he will tell you to consider "only the facts" in the case, and leave consideration of the "law" to him. The problem is, in our system of law, the "law" in a case is also a kind of fact. Judges don't make the law by their decisions. They only "find" what the law is, based on the original understanding of the lawgivers. One of those laws, the Constitution for the United States, and, in a state trial, the constitution of the state, is the supreme law, which is superior to any statute or other official act that may conflict with it. Deciding whether a statute or other official act is consistent with either or both constitutions is not a question only for a judge to decide. It is also a question for anyone who is involved in the legal system, especially the jury. If the case against the accused is based on a statute or other official act that is not authorized by the applicable constitution, then it is unconstitutional, and you as the jury have the duty to acquit, no matter how heinous the offense or how evil the accused might be. Being a bad person is not a crime. The accused must have violated a specific statute that was in effect at the time and place the offense was committed, and that statute must be based on powers to make that act a crime delegated to the constitution.

But the judicial system today doesn't want jurors to consult the constitution to determine the constitutionality of the case. Try to bring a copy of the applicable constitution with you, and the judge is likely to take it away from you, and threaten you with contempt of court if you try to do it again. You have to ask yourself why he would do that. If he is complying with the constitution, then why should he care whether you consider it as well? It is meant to be understood and enforced by ordinary people. It doesn't require a priesthood of lawyers and judges to tell you what it does and doesn't mean.

Varieties of Unconstitutionality

There are several ways in which statutes or other official acts may be unconstitutional:

(1) It may be contrary to a right guaranteed under the Constitution.

(2) It may not be based on one of the powers delegated to the government under the Constitution.

(3) It may violate the provisions for the structures and procedures of government, such as the delegation of legislative or judicial powers to an executive agency in violation of the separation of powers principle of the Constitution.

(4) It may neglect to perform some duty imposed under the Constitution.

(5) It may involve the operation of government outside its constitutional jurisdiction.

(6) It may not be applied in the way it was intended by those who wrote and adopted the original act.

(7) It may be vague or incomprehensible to the people who must obey or enforce it.

(8) It may have been intended to be applied selectively, or have come to be applied selectively, in violation of the equal protection provision of the Constitution that all laws must be applied uniformly.

(9) Proper notice of the law or act may not have been given in a way that would allow people subject to it to become aware of it.

(10) The aggregate of laws or regulations may become so burdensome that it becomes unreasonable for everyone subject to it to be sufficiently familiar with it to comply with all of it.

(11) It may have never been properly adopted, or due process may not have been practiced.

(12) Information needed to make a proper determination may have been withheld or distorted in a way that is intended to mislead or which has that effect through negligence.

The judge typically also won't let you have copies of the statutes the accused is charged with violating. Or books on the case law concerning those statutes. He also won't let you have the legal pleadings of the lawyers, the ones that may argue that the court does not have jurisdiction in the case, or that the statute is unconstitutional, or that the constitutional rights of the accused have been violated by the way the case was investigated or prosecuted, or argument in which the defense attempts to present evidence of government wrongdoing or that other persons may have committed the offense.

You have to ask yourself why the judge would not permit the jury to have this information, and whether you can really judge the guilt of the accused without it.

This is not the way things have always been. When this nation was founded, juries got all this information. They could even ask their own questions of the witnesses, or call other witnesses. The present system is unconstitutional.

Judges have a lot of power over lawyers, and not just in the courtroom. They now forbid defense lawyers to inform juries that they have the right and the duty to decide the law as well as the facts in a case, and threaten them with jail for contempt or with disbarment if they try, so that they could no longer practice law. They can also prevent court-appointed lawyers from being assigned cases, which can be important to their income. Never forget who pays for court-appointed lawyers, and then ask whose interests they are really serving when they represent a client.

You have to ask yourself what kind of judicial system is it that forbids lawyers from informing juries of their rights and duties, even while admitting that they have those rights and duties. Does it make sense that juries will do their duty better if they don't know what it is?

Judges and prosecutors have been trying to control juries ever since the jury system was established, and they have gotten pretty good at it. The schools today don't teach people how to counter this kind of manipulation, although they once did, in the early days of this nation. Now we have to teach one another the best way we can.

This kind of manipulation arose out of an 1895 U.S. Supreme Court case, /Sparf v. U.S./ The accused appealed on the grounds that his lawyer failed to inform the jury of their duty to decide the law as well as the facts in the case. The ruling was that it was not a reversible error to fail to so inform them. It was considered common knowledge. But ever since then, by the "logic" judges are fond of, they have taken that decision as a license to forbid lawyers from informing juries of their duties. You don't have to be an expert in real logic to figure out that doesn't follow.

The most serious violations of the U.S. Constitution today are being committed by federal judges and prosecutors. Most people are not aware of how bad it has become. They see an accused being prosecuted in a federal court and think everything is okay. After all, if the guy did it, what difference does it make whether he is tried in federal court or in state court? Let the federal government spend the money. Well, it makes a lot of difference.

The key to understanding this problem is the question of jurisdiction. Jurisdiction is territorial. The U.S. Constitution is fairly clear on this. It delegates to the U.S. Congress fairly broad powers, including powers to adopt criminal laws and prosecute people for violating them, over what we can call "federal territory": parcels of land which are ceded to the jurisdiction of the U.S. Congress by an act of the state legislature. This includes the District of Columbia, certain enclaves for things like military facilities and federal buildings, coastal waters, U.S.-flag vessels at sea, and the grounds of U.S.

embassies abroad. It used to include all the territory that hadn't been admitted as states yet, but there isn't much of that left.

However, except for those ceded parcels, very few powers were delegated to the national Congress to adopt or prosecute criminal statutes for offenses committed on state territory. Originally, the national government had criminal jurisdiction on state territory for only four classes of offense: counterfeiting, treason, piracy and felonies on the high seas, and offenses against the laws of nations. Offenses against the laws of nations meant things like war crimes, attacks on embassies and ambassadors, plundering of shipwrecks, and attacks against foreign nations without the authority of a declaration of war or other authorizations called "letters of marque and reprisal".

After the Fourteenth Amendment was adopted, authority was delegated to the national Congress to adopt criminal statutes for a fifth subject: against deprivations of civil rights by government agents.

Except for pirates, the only authority the national Congress has to adopt criminal statutes for offenses committed outside the territory of the United States is for offenses committed by military personnel and militia personnel when in federal service. It has no such authority over U.S. private citizens.

It is also an ancient principle of law, which we inherited and made part of the Constitution, that an offense occurs where the offender was when he did it, not where the effects of his action take place. If a Canadian fires a gun from Canadian soil and kills an American standing on U.S. soil, it is Canada or one of its provinces, not the United States, or the state where the victim died, which has jurisdiction over the offender. It shouldn't be difficult to see why this principle has to be followed, and what a legal mess would result if it were not.

So, you might ask, how could the federal government be prosecuting all these crimes it does in federal court, on federal charges? Surely if that were unconstitutional, their lawyers would raise the issue that the statutes were unconstitutional and the cases would be dismissed, right? Well, once in a while a judge will comply with the Constitution and do that, but most of the time, even if the lawyer challenges the constitutionality of the statute, the judge rules against him. In a few rare cases, the case might be overturned on appeal, but not very often.

What has happened in this country is that a political faction, which dominates both of the two main parties, has gained control over all three branches of government, the legislative, executive, and judicial, and is adopting and enforcing whatever statutes they want, without regard for whether they are constitutional. Once in a while they will try to pretend there is constitutional authority for such statutes. The most common way they do that is to cite the "commerce clause" granting authority to Congress to "regulate" "commerce among the states", and arguing that everything that "affects" commerce is included in "commerce" and that criminal penalties are "necessary and proper" powers under that clause. This is contrary to the expressed intent of the

Founders, for whom the power to "regulate" did not include the power to "prohibit" and it did not include the power to prosecute criminally, only civilly, that is, to impose fines and loss of privileges.

In most cases, this Establishment will just win a case against a weak defendant, then cite that bad precedent as authority for doing more of the same against other people. Law schools don't even teach the original intent of the Founders of the Constitution anymore. They just teach the precedents, many of which are bad, and built on other bad precedents.

That is the way governments accumulate power. And a lot of that is popular with people who don't know any better. They want the government to "do something" and don't always think about how if they let the government exercise powers that haven't been delegated to them, sooner or later we will lose our rights and freedoms.

You may have heard about "jury nullification". You may have heard it discussed in the context of blacks refusing to convict blacks and whites refusing to convict whites, but that is not jury nullification, and it is wrong. Jury nullification is voting to acquit because the court lacks jurisdiction, or the statute is unconstitutional, or is misapplied in that case, or because of misconduct by the judge, prosecutor, or police, or the rights of the accused have been violated. In other words, it is doing what a judge is supposed to do, but which too few of them do. Remember, in a jury trial, it is the jury who is the real judge, both of the law and the facts.

After all, if we have juries because judges can't be trusted, then why should we be able to trust them to be the only ones who rule on the law? We can't, and you shouldn't. They will impress you with their learning and bearing, but don't be fooled. The government employs the best actors money can buy, and many of them are quite good at it. Persecutors and police even have a name for what they often present: "testilying". Many state trials and most federal criminal trials today are unconstitutional, and you can't trust what any of them say or do.

You need to take special care in political cases. Watch out for prosecutions of whistleblowers, investigators, political reformers and dissidents, or cases in which the law enforcement agency involved may be under heavy pressure to get a conviction. Political activists do get set up and framed, and ambitious prosecutors are not above convicting persons they know to be innocent for their own reasons. That is not to say that political activists don't sometimes commit crimes, and when they do they should pay the price, but sometimes it is a way to silence them. Learn to watch for clues to the real agenda of the prosecution.

If you find yourself on a grand jury, your first job is to break free from the control of the prosecutor. Invite the other members to meet with you at a good all-night restaurant in the area that has private meeting rooms. Then start informing them of their duty to investigate wrongdoing that the prosecutors

might not want investigated, and take cases directly from the public. In most communities there are activists who are aware of what is going on, and who have a lead on cases that need to be considered. Track them down and ask them to present their cases or to testify. When you get the support of the majority of the grand jury, start demanding that the prosecutors leave the room, and to ask your own questions. If he refuses, threaten to indict him for prosecutorial misconduct, tampering with the grand jury, and obstruction of justice. If the judge gives you trouble, you may have to threaten him the same way, but in his case it would be for judicial rather than prosecutorial misconduct. Go to a law library and read everything they have on grand juries. If you are asked to bring an indictment against someone, ask questions about the strength of the evidence, and if you have any suspicions, subpoena the accused to get his side of the story.

If you find yourself on a trial jury in a criminal case, especially in a federal court, you need to research the Constitution and the laws applicable to the case. You will be instructed not to do that, but do it anyway. Your duty to the Constitution overrides any promise you make to the judge. If the judge and the prosecutors are lying to you, that may make it necessary to deceive them and to violate the instructions of the court in the cause of justice and constitutional compliance. It is sad that it has come to that, but it has. If the jury is not sequestered, that is, if it is allowed to go home in the evening, then visit a law library or legal resources on the Internet. Don't go to the local law libraries where someone might see and recognize you. You may need to go some distance away to avoid detection. Study the Constitution for the United States. You should even try to memorize it. That may be the only way you can get it into the jury room. Compare the charges against the statutes. Sometimes they don't match. The accused may be charged with "crimes" that aren't. You won't get to read the legal briefs filed in the case, but you may be able to find legal briefs filed in similar cases that can give you some idea of the legal issues in the case.

There are ways you can introduce questions that need to be asked, and may not be asked by either side in a case. You will need to pass them to the judge, and he may not ask them, but how he handles them can provide a clue to what is going on. For example, in a federal criminal case, you might ask for evidence that the accused was standing on federal territory when he committed the offense. If not in the District of Columbia, they need to come up with the record of an act of the state legislature ceding jurisdiction. A general cession of anything the federal government might purchase won't do. It has to be a specific parcel. There should also be a deed. If the prosecution can't prove where the offender was when he committed the act, then they don't have proof beyond a reasonable doubt.

And don't worry that acquitting an offender in federal court will let him get off. If it is state court that should be trying the case, the state can still do that, and they are the ones that should.

Lagniappe:

A judge is an officer of the court, as well as are all attorneys. A state judge is a state judicial officer, paid by the State to act impartially and lawfully. A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. State and federal attorneys fall into the same general category and must meet the same requirements. A judge is not the court.

People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).

To which might have been added that anyone sworn to duty in the court is an officer of the court. That includes jurors, witnesses, bailiffs, court reporters, and other such actors. The court is a deliberative assembly composed of all of these actors, with authority, called jurisdiction, to make certain kinds of judicial decisions. The bench might speak for the court in issuing the final order, but it is a mistake to speak of the bench and the court as synonymous.

--- Jon Roland

Constitution Society, 7793 Burnet Road #37, Austin, Texas 78757
512/299-5001 www.constitution.org jon.roland@constitution.org

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