

# A Wyoming History of the Jury Trial

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The history of the jury trial in Wyoming does not begin in Wyoming. It begins with the history of Western culture and civilization.

Forms of jury trial existed in ancient Greece and Rome. There are extensive recordings of the jury orations of ancient lawyers, such as Cicero, addressing juries in the Roman forum.

Ancient Danes settled in England and formed committees of twelve hereditary "law men." Henry II began the practice in England of having juries decide land disputes and began also the use of grand juries.

In 1215 A.D. trial by jury became an explicit right in the Magna Carta that the King could not withhold. According to some scholars, the Magna Carta established *due process of law*, which in those times was a trial by twelve peers.

By the time of the founding of the United States, the grand jury, criminal petit jury and the civil petit jury were as firmly established rights of Americans as the right to vote. The right to criminal and civil jury trials in the federal courts was enshrined in the United States Constitution in the Bill of Rights in Amendments 6 and 7. U. S. District Court Judge William L. Dwyer in his book *In the Hands of the People* has said in summarizing the early history of the founders in regard to juries:

....When they wrote the Constitution, trial by jury was widely seen as 'the very palladium of free government,' to use the phrase from *The Federalist Papers*, and would no more had been abandoned than would the ballot box. Thomas Jefferson, while serving as Ambassador to France, wrote in a 1789 letter: 'Were I called upon to decide whether the people had best be omitted in the Legislative or Judiciary department, I would say it is better to leave them out of the Legislative.'....

The Wyoming Constitutional Convention of 1890 established in Wyoming with statehood the American tradition of the grand, criminal and civil juries. The minutes of the debates of the Constitutional Convention record in part the discussion of the delegates on limiting jury awards in civil cases. Territorial Wyoming had limited damages which a civil jury could repay injured persons or families of the wrongfully killed to \$5,000.00.

The railroad was the principal beneficiary of the territorial cap on civil damages. And upon a voice vote convention delegates decided that juries in Wyoming were capable of deciding the appropriate amount to compensate those entitled to compensation. Convention delegate Mr. Morgan said in summing up the discussion:

"I don't see why any maximum should be fixed for damages to persons injured or killed. You might as well fix by law the maximum at which I shall sell my house. I think a man ought to have the right to settle on the best grounds he can get. It is an interference with human rights it seems to me. It can't injure anyone to leave it just as it is in this provision."  
(Allowing juries by provision of the Constitution to decide the amount of damages).

So in Wyoming juries have traditionally been able to decide the most important issues of life and death in capital murder cases and in civil trials the amount necessary to repay all losses incurred by the injured and the families of the deceased.

Most recently, in the general election of 2004, the Wyoming electorate rejected a proposed constitutional amendment which would have limited the right of a citizen to have a jury decide how much is necessary to compensate him or her for the wrongful negligence of a medical provider. So in Wyoming the right to have a jury decide in serious criminal and civil cases continues in the tradition of the Wyoming founders.

Recently a gathering of Wyoming clerks of court gathered in Casper, Wyoming. Clerks of Court, or their deputies, are usually present at every jury trial in Wyoming. During the meeting the clerks were asked if they had witnessed any jury that had not performed its duties appropriately. The clerks, some of whom had served on juries themselves, could not think of a single instance in which a Wyoming jury had acted inappropriately or frivolously. Later, the clerks were addressed by the Honorable William Downes, U. S. District Court Judge for Wyoming; a man who has seen many jury trials. Paraphrasing the Judge, he noted that he particularly trusted in two institutions in America: the United States Marines and 12 people in a jury box. Summing up the history of the jury trial in America, of which the Wyoming jury trial remains a vital part, Harry Kalven, Jr. and Hans Zeisel said in their famous 1966 work *The American Jury*:

The Anglo-American jury is a remarkable political institution... It recruits twelve laymen, chosen at random from the widest population; it convenes them for the purpose of the particular trial; it entrusts them with great official powers of decision; it permits them to carry on deliberations in secret and to report out their final judgment without giving reasons for it; and after their momentary service to the state has been completed, it orders them to disband and return to private life... The jury is thus by definition an exciting experience in the conduct of serious human affairs....