金融英语专业术语：TheJury陪审团 PDF转换可能丢失图片或格式，建议阅读原文

https://www.100test.com/kao_ti2020/499/2021_2022__E9_87_91_E8_9E_8D_E8_8B_B1_E8_c92_499465.htm Cursed, reviled, blessed, or praised, the jury has stood firm for seven hundred years. So firmly did our forefathers uphold the jury that we find the right to jury trial anchored in our federal and state constitutions. There are two types of juries. The first, the petit jury, is used in both civil and criminal cases. In civil cases its task is generally to determine liability to pay money damages； in criminal cases its task is to determine punishable guilt, and it usually does so with a minimum of criticism. There its position as a bulwark of liberty, a protector against executive oppression, and a mode of lessening the rigors of too-strict legislation is secure. In England, where the use of the civil jury has been greatly reduced by legislation, the criminal jury remains in its traditional form. It is a noteworthy fact, however, that the jury is not now and has never been required to be used in equity cases. The civil jury, however, is subject to much criticism. It appears, sometimes, to be a means whereby individuals can obtain unjust judgements against corporate defendants, for the jury may tend to ally itself with the underdog. The jury is, in many instances, incompetent to handle involved testimony, particularly on technical matters. In this country, nevertheless, accusations of bias, incompetence, capriciousness, unpredictability, delay, and expense usually have gone unheeded. The trial jury, to speak for the moment in its defense, is presented with a difficult task. It must reconstruct history. It must determine

the facts of a past transaction. If its verdicts seem excessive, one must keep in mind the impossibility of determining the money value of such intangibles as pain and suffering or loss of reputation. Any criticism of the jury must also take into account possible alternative methods of finding facts. And in such deliberations it must not be forgotten that jury verdicts do not create precedents. The second type of jury is the grand jury. It differs from the trial or petit jury in that it does not decide questions of guilt or innocence. Its function is accusatory. When a possible offender is brought before a magistrate, and the magistrate believes there is suspicion of guilt, the matter is presented to the grand jury for investigation. If the grand jury finds enough evidence to warrant a trial, it will issue a true bill of indictment5 and the case will proceed. If the evidence is insufficient, the case will be dismissed. On occasion, the grand jury is charged with a special commission to investigate specific types of possible criminal activity among the general population or among governmental officials, and such investigations may also result in indictments. The grand jury has been abolished in England and in approximately one-half of the states in the U. S. Its existence, however, is guaranteed by the Constitution in federal cases. Both types of juries fit the classic definition given by Frederick Maitland6 many years ago： that a jury is a body of neighbors summoned under oath by a public official to answer questions. The trial jury answers the question of guilt or innocence, liability or nonliability； the grand jury determines whether there is enough evidence to warrant a criminal trial. Not only do these juries fit the same

definition, but they derive, ultimately and in the distant past, from the same origins. The foundation of the jury system goes back a thousand years to the French empire of the Carolingian kings. Those monarchs, as part of their successful attempt to unite their empire, developed a procedure called the inquest, or inquisition, to determine the nature and extent of royal rights. They called together the people of the countryside and required them to relate their understanding of the immemorial rights of the king. The rights being ascertained, they were adopted by the central administration. There was neither accusation, verdict, nor judgement in these proceedings, but the inquest fixed the right of the state to obtain information from its citizens. 译文 不管褒贬，陪审团制度已有约700年的历史了。我们的先辈们是如此的拥护这一制度，以至于我们可以毫不费力地在联邦宪法和州宪法中找到它的踪迹。 陪审团有两种形式。第一种叫小陪审团，可用于审理民事和刑事案件。在审理民事案件中，它的主要任务是依责任程度的不同而裁定相应的损害赔偿金；在审理刑事案件中，它的主要任务是裁定该判处何种罪行，并经常会裁定至最低限度。因此，小陪审团制度有力地保障了自由，抵抗了行政压制及减轻了立法的苛刻性。在英国，小陪审团制度在民事案件中的使用由于立法而大大减少，但在刑事案件中的使用却没有多大的改变。值得注意的是，陪审团制度已不再成为趋势，而且也不能适用于衡平法中。 然而，民事陪审团制度正遭受非议。有时候，小陪审团制度显得只是一种手段，因此由于陪审团多半同情处于弱势的一方，个人常会在应付共同被告时受到不公正判决。多数情况下，陪审团对于复杂的证据无能为力，

尤其是具有科技性的证据。不过在该国，对于陪审团的偏见、无能、反复无常、无预见性、办事拖拉及费用昂贵等诸多不是通常都被忽视了。 小陪审团审理案件是一项相当复杂的工作。它必须重构历史，推断过去发生事件的细节。如果裁决看起来过分了，它就必须牢记遭受痛苦或损失声誉的不可估量性。对于陪审团的任何质疑都必须把找出事实真相的方法不唯一性考虑进去。同时也要记住陪审团的裁决是不会成为先例的。 陪审团的第二种形式是大陪审团。与小陪审团不同，大陪审团无须裁决是否有罪，它的主要功能是起诉。当犯罪嫌疑人被带到法官面前时，法官就认为该犯罪嫌疑人可能有罪，关键是大陪审团如何调查。如果大陪审团能提供足够的证据认定该犯罪嫌疑人有罪，它就可以签署正式起诉书，然后着手审理。如果大陪审团无法提供足够的证据，该案件就会被驳回。有时，大陪审团会被委任调查某些人或某些政府官员可能犯的罪行，然后提出控告。在英国和美国的约一半的州，大陪审团制度已被取消。然而，它的存在是为了保障宪法在联邦案件中的实施。 陪审团的两种形式都符合弗里德里克。梅特兰多年前给出的一个经典定义：陪审团是由一名公职官员召集起来，发誓要如实回答问题的人组成的机构。小陪审团要回答是否有罪、是否需要负责等问题，大陪审团要回答是否有足够证据起诉的问题。这两种形式的陪审团不仅符合这个定义，而且毕竟在遥远的过去起源也一致。陪审团的起源可追溯到一千多年前的英国加洛林王朝时期。作为成功统一疆土的一部分，这些君主们发展了一套审讯程序来确定皇权的本质和范围。他们把乡民们召集起来，询问他们对于古老皇权的理解。然后，行政中心对查明的皇权予

以采纳。整个过程虽然没有起诉、裁定及判决等，但是国家却采取了审讯的形式从公民中获取信息。