



People all over the world yearn to be free and wish to participate in their government



By Joel W. Collins, Jr.

Most citizens feel better about the American trial system after serving on a jury

The American Board of Trial Advocates conducted an all-day program on Wednesday, May 14, in the auditorium Cardinal Medeiros at the Catholic University Law School in Lisbon, Portugal. The ABOTA-sponsored conference was entitled “Judges and Attorneys in Interaction: The Commonalities and the Differences in Portuguese and American Legal Systems.”

Prior to the Masters in Trial Program, which included a jury of eight Portuguese jurors, all of whom spoke excellent English, a presentation was made by Joel W. Collins, President of the ABOTA Foundation. He was asked to speak on the benefits of the American jury system.

Good afternoon, Ladies and Gentlemen. I am honored to serve this year as President of the Foundation of the American Board of Trial Advocates. You may be interested to know that six of the 10 ABOTA Foundation Trustees are here today. We are very honored to be allowed to participate in this program, and we appreciate the efforts by everyone, especially the attorneys and employees of the Lisbon law firm of Miranda Carreira Amendoeira & Associados. I have enjoyed today getting to know the Chairman of this Firm, Agostinho Pereira deMiranda.

Before I begin speaking of jury trials, let me share with you a wonderful quotation from a famous American author, Mark Twain. He wrote a book in 1869 entitled “Innocents Abroad,” in which he stated, “Travel is fatal to prejudice, bigotry and narrow mindedness... many of our people need it sorely.” Traveling to Portugal has been a broadening and enlightening experience for our group of American lawyers, spouses and guests.

Jury trials in America are not merely a custom or tradition. Jury trials are a cherished and precious American right. Our Founding Fathers, the men who drafted our Constitution in 1787, over half of whom were lawyers, spoke often of their firm support of making trial by jury, including civil cases, part of the Constitution. You may be interested to know that one of these Founding Fathers, Eldridge Gerry of Massachusetts, refused to sign the Constitution as originally drafted because it contained no provision guaranteeing jury trials. This right was later made part of the Constitution as the Seventh Amendment. Alexander Hamilton, another Founding Father, wrote

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referring to the delegates to the Constitutional Convention, "If they agree on nothing else, they concur at least in the value they set upon trial by jury." We call the first 10 Amendments to the United States Constitution "The Bill of Rights." Thomas Jefferson, the third American President and the man credited with drafting The American Declaration of Independence from Great Britain, once stated, "I consider trial by jury as the only anchor yet imagined by man by which a government can be held to the principles of its Constitution."

Our Founding Fathers believed in participatory government, namely, democracy and participatory justice, namely, trial by jury. Jury trials had been an English tradition for centuries. Jury trials are specifically mentioned in the famous Magna Carta, signed by King John of England at Runnymede in the year 1215.

Citizens in the United States have two ways to participate and influence the standards and rules of everyday life. These two ways are through the ballot box and the jury box. The ballot box, now infrequently used because of electronic voting, was the box in which voters deposited their paper ballots in American elections. The jury box is that area of the courtroom where the jury is seated. It is normally surrounded by a low railing of some sort so as to enclose it.

Slightly paraphrasing Winston Churchill, I submit to you that most Americans agree that trial by jury is the worst way to resolve a dispute, except for all the others which have been tried from time to time.

You may ask, why would we let 12 or some lesser number of people off the street decide a complicated dispute? We do not simply take 12 people off the

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- Jurors bring their common sense and experiences of life with them.
- The jurors represent the conscience of the community.
- Jurors are excellent judges of credibility, which simply means believability.
- Juries are impartial.
- Jury service empowers citizens to be involved in, and invested in, their judicial system.
- Trial by jury is a way for the government to show its trust in the wisdom and fairness of its citizens.
- Juries, by their verdicts, can influence the conduct and practices of the government, of corporations and of individuals.
- By making the ordinary citizens part of the justice system, the system is continually cleansed and kept honest.

street. Using lists of registered voters and licensed drivers, a jury venire is compiled. A jury summons is then sent to those persons randomly selected, telling them when and where to report for jury service. Sometimes people who have received a jury summons call me and ask how they can avoid jury service. I always tell them you have called the wrong person. I tell them it is your obligation as a citizen to report. Judges sometimes tell jurors

that their service is the highest peacetime service any citizen can render to his or her country. In most states, jurors receive only small compensation and reimbursement of their travel expenses to and from the court house.

After the venire, the panel of persons chosen for jury service, reports to the court house, they are questioned by the court and sometimes by the lawyers to see if they are fair-minded and suitable to serve as jurors in that particular case. Questions are asked about their relationship to the parties, their relationship with the attorneys, their knowledge about the case, any prior experience which would prejudice them, such as a similar occurrence, whether they have read or heard anything about the case and whether they can give their undivided attention to the case if they are selected to serve.

This reminds me of a story involving a case which was to be tried in Horry County, South Carolina, years ago. The judge asked the venire if any of them had any pressing item of personal business or other concern which would prevent them from giving their undivided attention to the trial proceedings. A man in the court room raised his hand and told the judge, "I need to be excused, Your Honor, because any day this week my wife is going to conceive a baby." Of course, everyone in the court room laughed. A friend of this potential juror, seated beside him, then raised his hand and said "Your Honor, what my friend meant to say was that any day this week his wife is going to deliver a baby." There was more laughter. At that point, Judge Sidney Floyd said, "Well, I am going to excuse him because I believe that in either case, he should be there." Needless to say, the Judge got

A comparison of the Portuguese and American legal systems

The American Board of Trial Advocates held an open exchange of ideas and practices by comparing the Portuguese and American legal systems. Portuguese and American judges, justices and lawyers, Portuguese ministers and professors, as well as guests and members of the media, participated in the event held at the Catholic University Law School in Lisbon, Portugal, May 14, 2008.

Justices and lawyers from Latvia also served as panelists. They recounted the outcome and results of their experiences when a similar conference was held in Riga, Latvia, in June 2006.

“Comparing the strengths, similarities and differences in our legal systems is critical in cultivating the spirit of civility and developing international relationships. There is much to learn about how both countries appreciate the rule of law,” said William C. Callahan, ABOTA National President and lawyer with the Sacramento, Calif., law firm of Dreyer, Babich, Buccola & Callahan.

The conference covered several elements, such as the relationship between judges, lawyers and bar associations; the professional activities of judges and lawyers in Portugal and America; and the applicability of the American experience in Portugal.

Michael T. Callahan of the Tampa, Fla., law firm of Callahan Martinez, L.L.C. said that tension between the courts and other branches of government is normal in all countries.

But there are ways to protect the independence of the judiciary — namely supporting an increase in funding for judicial salaries and the courts, as well as defending judges from unfair criticism in the media, particularly in situations when judges are not allowed to comment.

The United States Constitution is not perfect, evidenced by the more than 230 years it has taken to evolve, Callahan said. “We continually keep trying to do better,” he noted.

The conference format was similar to previous international programs presented by ABOTA. The program included general and breakout sessions involving speakers and topics that included:

- Relationship between the lawyers and judges in both countries
- Judicial and lawyer discipline and ethics
- Cross-jurisdictional practice
- Simplification of the rules
- Use of electronic data for filings, record-keeping and court practice and procedures
- Report on the progress in Latvia since the conference there in 2006

The conference concluded with a “Masters in Trial” program that demonstrated how a trial is held in an American court of law. The mock trial dealt with a case involving a professional football player who lost his career because of a traffic accident involving an American businessman. The deliberation of the jurors was simulcast to the audience. More than 15 ABOTA members served as faculty members for the trial demonstration.

In recent years, ABOTA's international efforts have included similar programs in Prague, Czechoslovakia; Florence, Italy; Belfast, Ireland; and Riga, Latvia.





the biggest laugh.

Lawyers for the parties have the right to challenge any particular juror for cause if it appears he or she cannot serve with an open mind. Additionally, the lawyers are given a limited number of “preemptory challenges” for which they need not state a reason. Sometimes the jury selection process can take a lengthy period of time. After the jury is selected, they are sworn to an oath to “well and truly try and a fair verdict render” in the case. While the trial is proceeding, it is improper for the lawyers or the parties to have any contact with the jurors. Jurors are instructed by the judge not to discuss the case until all the evidence has been received. At that point, the judge instructs the jury on the law they should apply. During the trial, the judge rules on the admissibility of the proffered evidence.

We American lawyers believe that jury trials have the following advantages:

1. Jurors bring their common sense and experiences of life with them. Because they come from different walks of life, different occupations and different levels of education, they bring years of varied experience, which helps them sort out the truth as they decide the case. Sometimes they are asked to answer questions presented to them on a jury verdict form prepared by the lawyers and the judge.

2. The jurors represent the conscience of the community. We believe jurors are fair

minded because they have no enemies to punish and no friends to reward. They have no promotion, demotion, pay raise or other interest which will be affected by their verdict, regardless of what that verdict is.

3. We believe jurors are excellent judges of credibility, which simply means believability. We do not believe that judges have any superior ability to evaluate the credibility of witnesses. Jurors collectively can better discuss and decide credibility. A well-respected judge once said, "The problem with judges is not that they are lazy. Many of them are diligent and work very hard. The problem with judges is not that they are ignorant. Most judges are very bright and even erudite. The problem is not that they are corrupt. Most judges have the highest integrity. The problem with judges is they are just too used to it." In other words, judges sometimes have a problem bringing a fresh eye. They can lack the eagerness to ferret out the truth and reach a fair result. A jury does not lack this fresh eye.

4. For reasons already discussed, we believe juries are impartial. While this can be a concern and

is often the subject of questions put to the potential jurors before they are seated, we believe it is more likely that these jurors will be more consistently impartial than will a single judge.

5. We believe jury service empowers citizens to be involved in and invested in their judicial system. I have heard that former Portuguese President Salazar once said the people only need "Fado, Fatima and football."¹ Such a remark would likely be offensive to Americans, as they consider themselves to be empowered by our system of justice and our system of government.

6. Trial by jury is a way for the government to show its trust in the wisdom and fairness of its citizens. Jury trials contribute to a better relationship between citizens and their governments.

7. Juries, by their verdicts, can influence the conduct and practices of the government, of corporations and of individuals. Jurors can serve notice to others about what conduct will be acceptable and what will not. Most people believe that jury verdicts have resulted in safer product designs, more careful testing, more

truthful claims in advertising and more careful and reasonable conduct by everyone.

8. By making the ordinary citizens part of the justice system, the system is continually cleansed and kept honest. Juries serve as a system of checks and balances on the judicial system.

People yearn to be free, to participate in their government, to be empowered and to be entrusted. Citizens never know when they will be a litigant, witness, a juror or other participant in the judicial system. Most American citizens, after serving on a jury, feel better about the jury trial system. The famous American actor, Steve Martin, recently appeared on The David Letterman Show, a popular late-night talk show, and told the story of his recent jury service. When this was brought to my attention, I sent him a letter acknowledging his fame, his popularity and therefore his ability to influence public opinion. I thanked him for the nice things he said about his own jury service and the impression that it likely made on the many people who saw him on that show.

We hope you enjoy the jury trial demonstration we have prepared for you and which will be presented to this selected Portuguese jury.

¹ Fado is traditional Portuguese music said to be part opera, part folk music and part blues. Fatima is the famous Portuguese city where in 1917 the Virgin Mary is said to have appeared to three children. There are pilgrimages to the city each year on the anniversary date. Football, the game which Americans call soccer, is the dominant sport in all of Europe.