

MAY 14, 2008
ABOTA PROGRAM
LISBON, PORTUGAL

As part of the ABOTA international trip of 2008, an all day program was conducted on Wednesday, May 14, 2008 at the auditorium Cardenal 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 short presentation was made by Joel Collins, President of the ABOTA Foundation. He was asked to speak on the benefits of the American jury system. Attached as Exhibit 1 is a copy of the program. Also attached is a copy of the newspaper article which appeared in the May 15, 2008 edition of "Publico," the largest newspaper in Portugal.

SUMMARY OF REMARKS MADE BY JOEL W. COLLINS, JR.

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 ten 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 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 to the Constitution. Alexander Hamilton,

another Founding Father, wrote 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 Ten 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 court room where the jury is seated. It is normally surrounded by a low railing of some sort so as to enclose it. This is the jury box.

Slightly paraphrasing Winston Churchill, I submit to you 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 twelve or some lesser number of people off the street decide a complicated dispute? We do not simply take twelve people off the 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 their service is the highest peace time 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 in either case, he should be there." Needless to say, the Judge got 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 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 their 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 the 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 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 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

¹ Fado is the 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 and the city to which there are pilgrimages each year on the anniversary date. Football, the game which we call soccer, is the dominant sport in all of Europe.

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 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, in other words, 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 experience and the impression it likely made on the many people who saw him on that show.

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