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COMMENTARY

Common Law set basis for jury trials

By Shackley F. Raffetto

Most people know that the right to a trial by jury is guaranteed to each citizen in the constitutions of the United States and the state of Hawai'i.

We inherited that right from the English Common Law. The Common Law is the basis for legal systems in nations that share a historical connection with England. Common Law nations guarantee trial by jury in some form or another.

Many other nations base their legal systems on the Civil Law system developed by the ancient Romans. Civil Law nations do not feature trial by jury; consequently, there is no citizen participation in the justice process unless a person is a party to the case.

Why did the English Common Law system adopt trial by jury? There is no clear answer. We do know that in England around 1100, society began using citizen juries to decide disputes. Before that, guilt or innocence and serious civil disputes were decided under the auspices of the church.

The methods used were severe. For example, trial by water involved placing the accused on a dunking stool and lowering the person into water. If the accused sank, he was deemed innocent; if he floated, he was found guilty and possibly executed.

Trials by combat pit the accused or his appointed warrior in battle against the accuser. The survivor would win the case. Trial by ordeal required the accused to hold a red-hot piece of iron. That person's guilt or innocent was determined by how well and how quickly the wound healed.

Juries did not always have 12 members. Early English juries, in fact, could have as many as 100 members. Around the 13th century in England, 12-member juries were common and continued to modern times.

Historians speculate that the number of jurors is derived from the Twelve Apostles, the Twelve Houses of the Zodiac or the Twelve Tribes of Israel. But no one really knows.

At a minimum, the number 12 promotes a large enough group to encourage fair discussion, protects against strong-willed persons dominating deliberations and increases the possibility for obtaining a representative cross-section of the community.

In Hawai'i the right to trial by jury was first written down in the 1840 Constitution enacted by King Kamehameha III. Hawai'i's state constitution guarantees trial by 12 jurors for any citizen accused of a serious crime (i.e., possible imprisonment of more than six months) and for most civil cases where more than \$20,000 is in dispute.

The real benefit of having inherited the jury system is that our citizens actually create justice as a result of jury service. About 35,900 citizens in Hawai'i report for jury service each year, providing them with firsthand exposure to the judicial process.

Those who serve on a jury not only help to create justice for Hawai'i and its citizens, but also have an opportunity to learn about a process that governs all of our lives. Because of citizen participation, our justice system is transparent, fair and accountable.

When you are summoned for jury service, remember that one of the most important duties and rights of citizenship is joining together with other citizens to ensure that justice is truly done in your community. This active participation in the process of creating justice

Law Week

This is the first in a series of articles written for The Advertiser in collaboration with the state Judiciary and Hawai'i State Bar Association that will run this week in conjunction with Law Day and Juror Appreciation Week.

makes the United States the strongest democracy in the world and a society with a powerful sense of justice and respect for the rule of law.

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