

# ACE

## Suggested Reading for Presenters

Excerpt from “Dialogue on the American Jury: We the People in Action” by the American Bar Association Division for Public Education.

"Part I: The History of Trial By Jury." *Dialogue on the American Jury: We the People in Action*. American Bar Association Division for Public Education. Web. 11 Aug. 2014.

[http://www.americanbar.org/content/dam/aba/administrative/public\\_education/resources/dialoguepart1.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/public_education/resources/dialoguepart1.authcheckdam.pdf)

### **The Jury as Protector of Individual Liberty**

The right to trial by a jury of one’s peers is a cornerstone of the individual freedoms guaranteed by the U.S. Constitution’s Bill of Rights. In a criminal case, trial by jury places citizens between the power of the government and the rights of the accused. The government cannot take away someone’s right to life, liberty, or property until it has convinced those twelve citizens of that person’s guilt beyond a reasonable doubt. In a civil (or non-criminal) case, the jury represents the community’s conscience and common sense in resolving disputes.

Trial by jury is also a vital part of our democracy. Besides voting, nothing is so active and participatory in nature. Thomas Jefferson described trial by jury as “the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.”

Early English juries came to be seen as a protector of the accused against the very harsh criminal laws of the day. For hundreds of years, the sentence for most convicted felons in England was death. Records of trials that date from the Middle Ages into the eighteenth century show jurors acquitting\* many accused felons. These records have convinced historians that early juries were often reluctant to enforce harsh criminal laws. Juries would convict serious offenders and sentence them to hang, but they would often acquit other offenders or convict them of a lesser crime that carried a less severe penalty, such as branding or whipping.

Several cases in the seventeenth and eighteenth centuries helped build the jury’s reputation as a protector of individual liberty. In the American colonies, the jury also demonstrated its resistance to what it perceived as unjust British laws. In 1735, a New York jury acquitted publisher John Peter Zenger, who was put on trial for printing articles critical of an unpopular colonial governor. The Zenger case is often cited as an early expression of the colonists’ commitment to a free press.

Perhaps most significant, however, were attempts by the British crown to deny American colonists their right to trial by jury. These efforts were most vigorous with respect to the much-hated British Navigation Acts. These acts tried to secure British control over trade with the American colonies by requiring, for example, that goods going to and from the colonies be carried on British ships.

Colonists viewed the Navigation Acts as harmful to their economy, and colonial juries would often refuse to convict individuals charged with violating these laws. In response, the British set up special courts that did not use trial by jury. This became one of the major complaints of the colonists against the British as America moved toward revolution. In the Declaration of Independence, we see this complaint appear as a charge against the British king “for depriving us in many cases, of the benefits of trial by jury.”

\*To acquit: free someone from a criminal charge by a verdict of not guilty