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## The National District Attorneys' Association

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# Articles, Reports, and Notes OF THE NATIONAL DISTRICT ATTORNEYS' ASSOCIATION

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## A HANDBOOK FOR JURORS IN CRIMINAL CASES

JIM THOMPSON\*

*"No person has a right, constitutional or otherwise, to have his case tried before an ignorant juror."<sup>1</sup>*

In 1947, a handbook for jurors in criminal cases, prepared by the then Judge Julius Miner of the Criminal Court of Cook County, Illinois, and subsequently printed in the *Journal*,<sup>2</sup> was distributed to a panel of jurors in the trial of *People v. Schoos*. Judge Miner encouraged the jurors to read the pamphlet and intimated that he might question them the next day concerning the contents of the handbook to see if his instructions had been carried out.

The defendant, Schoos, was convicted and he appealed to the Illinois Supreme Court. That court reversed the conviction;<sup>3</sup> it disapproved the use of the jury handbook on the ground that it was erroneous on several points of law and changed the method of trial by jury from its common law antecedents.<sup>4</sup>

In other jurisdictions, both before and after the *Schoos* case, the same problem was presented to various appellate courts in cases where trial judges had attempted a pre-trial education of jurors in criminal cases through the medium of handbooks or oral instructions. Most courts held that the use

of the handbooks or oral instructions was entirely proper.<sup>5</sup>

In 1958, a jury panel of the Criminal Court of Cook County, Illinois, received general pre-trial information on criminal cases from the presiding justice of the court. Later, members of that panel sat on the case of *People v. Izzo*. Following a conviction, the defendant appealed to the Illinois Supreme Court alleging as error the pre-trial remarks of the chief justice and citing the *Schoos* case as authority for his contention. The conviction was unanimously affirmed.<sup>6</sup>

"No litigant has a right, constitutional or otherwise, to have his case tried before an ignorant juror," wrote Justice Walter V. Schaefer for the court. Though some of the comments by the judge below had not been technically correct, they were dismissed as harmless error. While declining to disapprove the oral indoctrination of jurors, the court said that pre-trial orientation of criminal juries might better be accomplished by means of a carefully written, uniform pamphlet which could be distributed to all jurors throughout the state. *People v. Schoos* was expressly overruled.

Following the decision in the *Izzo* case, the Illinois Judicial Conference appointed a committee

\* The author served as Editor-In-Chief of the student section of the Journal in 1958-59.

<sup>1</sup> *People v. Izzo*, 14 Ill.2d 203, 151 N.E.2d 329 (1958).

<sup>2</sup> Miner, *The Jury Problem*, 37 J. CRIM. L., C. & P.S. 1 (1946).

<sup>3</sup> *People v. Schoos*, 399 Ill. 527, 78 N.E.2d 245 (1948).

<sup>4</sup> See 38 J. CRIM. L., C. & P.S. 620 (1948).

<sup>5</sup> See the collection of cases in 43 IOWA L. REV. 654 (1958).

<sup>6</sup> *People v. Izzo*, *supra*, note 1.

to draft handbooks for use in Illinois civil and criminal cases and for grand juries.<sup>7</sup> This committee was aided in its work by the members of an advanced seminar at Northwestern University School of Law,<sup>8</sup> who prepared a preliminary draft of a handbook for use in criminal cases.

After many months of labor, the committee presented the final drafts of the civil and criminal handbooks to the 1959 Illinois Judicial Confer-

<sup>7</sup> The members of this committee are seven circuit and superior court judges of Illinois: Judge Henry L. Burman, Chairman, Judge Cassius Poust, Judge Randall S. Quindry, Judge Harold R. Clark, Judge Charles S. Dougherty, Judge Robert E. English, Judge Alan E. Ashcraft. The committee was assisted by Professor Francis C. Sullivan, Loyola University School of Law, and the author, representing Northwestern University School of Law.

<sup>8</sup> Graduate students Duane Nedrud and Douglas Cook; senior law students Francis A. Heroux and Jim Thompson; junior law students Donald Basta, Matthew Beemsterboer, Edward Einhorn, Melvin Pearl. The seminar advisor was Professor Fred E. Inbau.

ence. The pamphlets were overwhelmingly accepted and endorsed for use throughout Illinois.

The free, orderly and efficient administration of justice is, of course, a prime goal of our society. Justice, however, cannot be so administered if we continue to accept trial by juries untutored in the elementary principles of criminal and civil trials. Perfunctory admonitions and tardy trial instructions cannot do the job. Jury handbooks are not the complete answer, of course, but they are a big step forward in the improvement of the jury system which, if it is to occupy a vital place in the administration of justice, must itself be kept vital.

To stimulate interest and discussion in other jurisdictions, and to show what has been attempted in Illinois, we are presenting on the following pages a reproduction of the jury handbook to be used in Illinois criminal cases.<sup>9</sup>

<sup>9</sup> Minor changes may be made before the final printing. The draft presented here is the one adopted by the 1959 Illinois Judicial Conference.

## A HANDBOOK FOR JURORS IN ILLINOIS CRIMINAL CASES

### PREFACE

This book is written to help you understand your work as a juror in criminal cases. You have been summoned to render interesting and important service as a juror. Your services will be as important as those of the judge. You are obligated to perform these duties honestly and conscientiously without fear or favor.

### THE JURY

Long ago, men charged with crime were required to prove their innocence by submitting to savage tortures such as the infamous "trial by battle" or "trial by fire." If they escaped unharmed they were declared innocent. If they lost, they were condemned as guilty.

In this day and age such procedures for determining guilt or innocence in a criminal case are unthinkable. As Americans, we believe that the right and fair way is to submit the case to a group of persons selected from all parts of the community and from all walks of life. We are willing to put our life and liberty to the test of the reasoned judgment of twelve of our fellow citizens—The Trial Jury.

### HOW A JURY IS CHOSEN

Duly appointed persons prepare a list of legal voters. This is known as the jury list. Names of

jurors are drawn by lot from this prepared jury list. You were selected in this manner. During the time of your service you should report promptly as directed and accept your duties with seriousness.

### IMPORTANCE OF JURY SERVICE

Personal inconvenience may be caused by jury service, but if we are to preserve trial by jury as part of our democratic way of life it is necessary that citizens of all walks of life serve on juries. As a juror, you will serve as an officer of the court along with the lawyers and judges. Only a small percentage of citizens are ever privileged to serve as jurors. This may be your only chance to be a juror and to be a part of our judicial system.

Jurors are paid an amount per day set by state law. This is a low amount, but you should consider jury service as a privilege of citizenship and your compensation in the nature of an honorarium. To serve as a juror is one of the highest responsibilities of citizenship, just as it is to vote or to serve in the defense of your country. Once you have served on a jury you will find this experience worthwhile and important and you will always remember the part you played in the court system.

### OATH OF A JUROR

The entire group of jurors sent to a courtroom is called a jury panel. You will be asked to rise and

to swear or affirm to answer truthfully all questions asked of you touching upon your qualifications to act as a juror in the case.

#### SELECTION OF A TRIAL JURY

You will be questioned by the judge and the lawyers. If you cannot be fair and impartial after you learn the nature of the case you may be excused from serving. The lawyers have a duty to ask proper questions to assist them in deciding which jurors to select. You should be patient and cooperative. It may seem to you that some of the questions are personal, but it is not intended that any question should embarrass or reflect upon a juror in any way. No person should be offended if he is excused from sitting as a juror. The law permits each attorney to excuse a certain number of jurors without giving reasons. Each juror may be asked whether he has a personal interest in the outcome of the case, has preconceived opinions about it, or is prejudiced in any way.

Everyone is entitled to a jury of fair and impartial persons who will listen attentively and decide the case only upon the evidence and instructions of the court.

After the jury has been selected, the jurors will be asked to rise and to swear or affirm to well and truly try the matters in issue and a true verdict render according to the evidence and the law.

#### THE CHARGE AGAINST THE DEFENDANT

The laws of this state require that the defendant be indicted by a Grand Jury or be named in an *information* filed by the State's Attorney before he can be made to stand trial.

An *indictment* is a written complaint voted by a majority of the members of the Grand Jury after having heard only evidence presented by the state. The defendant is usually not present nor is his attorney there to represent him. Neither an indictment nor an information is evidence in the case or proof of guilt. It is merely the legal means by which the defendant is brought before the court.

In all cases with which you, as a juror, are concerned, the defendant has answered the charge of the indictment or information by pleading "Not Guilty."

#### PRESUMPTION OF INNOCENCE

The defendant is presumed to be innocent throughout the trial. Because this is so, the state has the burden of proving the defendant guilty

beyond all reasonable doubt—the defendant is not required to offer any evidence.

#### THE STATE'S ATTORNEY

It is the duty of the State's Attorney, and his assistants, to prosecute, on behalf of the people, the criminal cases in this county. His duties do not end with the presentation of evidence against the defendant, however, because he is also responsible for seeing that justice is accomplished through a fair trial of the defendant.

#### THE DEFENSE ATTORNEY

Under our system of law, the defendant in every criminal case has the right to be represented by an attorney. The Defense Attorney has the duty to see to it that the defendant's rights and interests are advanced and protected at all stages of the trial.

#### THE JUDGE

The role of the Judge is to secure a fair and orderly trial, to determine what evidence is legally admissible for the jury's consideration, and to instruct the jury as to the rules of law applicable to the case. In some cases, the law requires the Judge to fix the punishment if the defendant is found guilty. In others, the punishment is fixed by the jury.

#### OPENING STATEMENTS

After a jury has been selected, the State's Attorney and the Defense Attorney may or may not make *opening statements* outlining, in a general way, what they expect the evidence in the case to prove.

Opening statements are not evidence. They merely serve to acquaint the jury with each side of the case so that you may better understand the testimony of the witnesses and the evidence which is presented.

#### THE PRESENTATION OF EVIDENCE

Following the opening statements, the State's Attorney begins the case for the people with the presentation of *evidence*. Evidence falls principally into two classes—testimony and exhibits. *Testimony* consists of statements made by witnesses under oath. *Exhibits* are physical objects such as photographs, written documents, and so forth.

The State's Attorney may call witnesses to testify. This is called the *direct examination* of the

witness. When the direct examination has been completed, the Defense Attorney may, if he wishes, question the witness. Questions asked a witness by the attorney who did not call the witness to the stand are known as *cross examination*.

Under our system of law, the defendant may present evidence or not, as he sees fit. It is also the privilege of the defendant to decide whether or not he wishes to testify. If he does so testify, his testimony is to be considered by the same standards that are applied to the testimony of other witnesses. If the defendant chooses not to testify, that is his right and the jury must not take that fact into consideration in determining guilt or innocence.

#### WITNESSES

The jurors are the sole judges of the credibility of the witnesses and of the weight to be given to the testimony of each of them. In determining the credit to be given any witness you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

Jurors should not ask questions of witnesses, for all of the competent testimony of the witnesses should be brought out by the questions of the lawyers who have been specially trained in the rules of evidence.

#### OBJECTIONS

There are many rules regarding the presentation of evidence which the judge must apply in deciding what evidence is or is not admissible in the trial for the jury's consideration. These rules are complicated and not easily understood by people who have not devoted years to the study of law. They have been developed through the years so that we may have fair and orderly trials. When a question is asked which either attorney believes is in violation of these rules, he has a right to object to the question. Therefore, no juror must allow himself to be prejudiced for or against one side of the case on account of objections made by an attorney to the introduction of evidence. The judge then decides whether the question must be answered by the witness. A ruling by the judge does not mean he is taking sides. He is merely deciding that the law does or else does not permit the question to be answered.

At times the jury will be excused from the courtroom while objections are being discussed or for other reasons. Under the law, various matters must be heard out of the presence of the jury. When a trial is necessarily interrupted for these reasons, you should not feel that your time is being wasted.

#### JURY CONDUCT DURING THE TRIAL

Jurors are expected to bring to bear all the experience, common sense, and common knowledge they possess, but they are not to rely upon private sources of information. This rule is only fair to both the state and the defendant. It follows, therefore, that a juror should never inspect the scene of any occurrence involved in the case.

You should not talk to the defendant, the witnesses, or the attorneys about *anything*. It may be that what you say is as simple as a friendly "Good Morning" or is some remark about the weather, but your conversation may be misinterpreted by someone who may see you talking with a trial participant but cannot hear what is being said. To avoid misunderstandings, therefore, it is better to say nothing.

You may, of course, converse with your fellow jurors when the court is not in session about anything *not connected with the case*. Jurors should not discuss the case among themselves until they retire at the end of the trial to reach a verdict.

During the trial, you must not discuss the case with your family, friends or others. The reason for this is plain. You must base your verdict only upon *evidence*. The opinions or comments that friends, relatives, or other outsiders may offer are not proper evidence in the case. Of course, curiosity is only human, so if you should be asked to discuss the case by persons outside the courtroom you may simply say that the law does not permit you to do so. If anyone persists in discussing the case or tries to influence you in any manner, it is your legal duty to report this to the Judge immediately.

In the same way, you should avoid newspapers or radio and television broadcasts which may feature accounts of the trial or information about someone participating in it. These may be one-sided or incomplete.

#### CLOSING ARGUMENTS

After all the evidence has been presented, the attorneys for both sides may address the jury in *closing argument*. The purpose of these arguments is to arrange the evidence in logical order and to