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Abstracts of Recent Cases

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aid the jury in recalling the testimony of witnesses. If the testimony of witnesses is conflicting, the attorney will tell you why the witnesses on his side of the case should be believed rather than those on the other side. Or he may explain why the evidence on his side of the case is strong, while that of the other side is weak. In short, during the closing arguments each attorney will explain the reasons why he thinks that you should, under the evidence, reach a verdict of "Guilty" or "Not Guilty." You should listen to these arguments carefully, but it is well to remember that they are not evidence in the case.

INSTRUCTIONS OF THE COURT

The judge will instruct the jury as to the law. You must apply the law as given you by the court to the facts in the case as you find them. You should listen to these instructions very carefully,

bearing in mind that it is your sworn duty to follow the law.

CONDUCT AND DELIBERATION IN THE JURY ROOM

Your first duty upon retiring at the close of the case is to select your foreman. The foreman acts as chairman. It is his duty to see that the discussion is carried on in sensible and orderly fashion and that every juror has a chance to say what he thinks. Discussion in the jury room should never be so loud that it can be heard outside.

Jurors should deliberate with open minds, give respectful consideration to the opinions of fellow jurors, freely exchange views or opinions concerning the case and not be hesitant to change their minds when reason and logic so dictate. To reach a verdict, all jurors must agree.

ABSTRACTS OF RECENT CASES*

Handbook Furnished to Prospective Jurors Not Basis For Challenge To Array—At the time of their selection for future service, all prospective jurors in the jurisdiction were given a book of elementary instructions which was intended to acquaint the jurors with their duties. This handbook contained an outline of court procedures which was supplemented by the Judge when the jurors were assigned to a particular court. Detailed instructions were later given to the jurors when they were sworn to serve in a particular case. Defendant was convicted of suborning police officers under his command to commit perjury as prosecuting witnesses in a lottery case. Upon appeal, the Court of Appeals of Maryland affirmed, holding that the trial court properly overruled a challenge to the array based upon the distribution of the handbook. *Goldstein v. State*, 150 A.2d 900 (Md. 1959).

It was contended on behalf of the defendant that the distribution of the "*Handbook for Jurors*" violated the right of the accused to be present at every stage of his trial "from the time the jury is impaneled." This right, the court said, is not infringed by communications between the court and prospective jurors at the beginning of jury duty but only by communications after the trial

of the particular case against the accused has begun. Defendant further contended that the general statements in the handbook were not completely accurate as they did not contain all the technical qualifications and exceptions. The challenged statements in the handbook were said to be substantially correct, involving no prejudicial error and thus did not provide grounds to reverse.

Prosecutors Legal Staff Serves At Will Of Prosecutor—The plaintiff, former legal assistant prosecutor of Essex County, New Jersey, instituted this proceeding for declaration that he was entitled to tenure in his position under the provisions of the *Veteran's Tenure Act*. His duties as assistant prosecutor had been terminated by the Deputy Attorney General of the state who had been appointed to administer the office following the resignation of the county prosecutor. The Superior Court of New Jersey, granting defendant's motion for summary judgment, held that employment in the office of the county prosecutor was dependent upon the will of the prosecutor and could not extend beyond the term of the former prosecutor and was therefore beyond the protection of the *Veteran's Tenure Act*. *Cetrulo v. Byrne*, 150 A.2d 287 (N. J. 1959).

Plaintiff contended that he was appointed by resolution of the county Board of Chosen Freeholders and therefore was a county employee with

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no definite term of office fixed by law. As an honorably discharged veteran of the United States Army Air Force he would be entitled to tenure in such a position. The county prosecutor, the court said, is unquestionably an officer of state rank and is responsible for the actions of his assistants. In the event of any violation of the duties imposed by law upon his assistants, the prosecutor himself may be supplanted by the Attorney General. Thus if appointments can be made to the position of Legal Assistant Prosecutor by the board of freeholders prior to the superseding of a prosecutor by the Attorney General, the board could continue to make such appointments after a prosecutor had been superseded and in effect would be making appointments on behalf of the Attorney General. Such a result, the court concluded, would be incongruous and therefore the appointment of the plaintiff to the position of Legal Assistant Prosecutor was beyond the scope of its power.

Convicted Kidnapper Chessman Loses Another Round in 12-Year Fight To Vacate Death Sentence—Petitioner was under sentence of death upon conviction of seventeen felonies including first degree robbery, kidnapping with infliction of bodily harm, and various sex offenses. The case has achieved great notoriety, not exclusively because of the substantive issues involved, but also due to the exhaustive resort to the appellate process which has kept petitioner in the death house since May, 1948. During this time the petitioner has published a best selling account of his efforts as counsel on his own behalf.

The official court reporter at the trial died shortly after its close and before his notes were transcribed. Another court reporter, who was able to read the original reporter's notes, transcribed them, and they were certified in a settlement of transcript proceeding at which petitioner was not present. Incorporated in the settled transcript were approximately eighty of two hundred specific corrections suggested by petitioner. Petitioner's request to leave prison and personally attend the proceeding was denied, and he made no

request for the appointment of counsel in his behalf.

After a series of fruitless resorts by petitioner to the state appellate process, the United States Supreme Court, on *certiorari* to a federal district court in *habeas corpus* proceedings, held that the manner of preparation of the transcript denied defendant procedural due process of law; accordingly, it vacated the judgment denying the writ with instructions to allow California reasonable time for review upon a properly settled record. Petitioner was personally present at the re-settlement of transcript proceeding, at which 2,000 changes were ordered. The clerk in charge of the preparation of the corrected transcript reported that 90 of the ordered changes could not be made. A further order was then issued instructing the clerk to omit some of the ordered changes and to make others in a different manner. Petitioner challenged this supplementary order and second re-settlement hearings were held to determine his opposition to the 90 changes. The judge who had conducted the re-settlement proceedings refused to testify concerning the changes in transcript, and petitioner refused to make specific his objections to these changes. The objections to the changes were disallowed, and upon this record the Supreme Court of California reviewed the original conviction. *People v. Chessman*, 341 P.2d 679 (Calif. 1959).

In a unanimous opinion, the California court affirmed the conviction, holding that the judge at the second re-settlement proceeding was under no obligation to explain his informal action as to the 90 changes, and that petitioner had not been denied due process of law since he had "full opportunity to object to those changes" but "refused to make a record defining any error in the making of the 90 changes." The substantive issues presented by the record, including the admission of incriminating statements made by petitioner, were decided adversely to him, and the judgment and orders below were affirmed.

(For other recent case abstracts see pp. 275 and 320).