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Preliminary Remarks to Jurors

Ben Moore

Court of Common Pleas of Kanawha County

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THE WEST VIRGINIA BAR ASSOCIATION

PRELIMINARY REMARKS TO JURORS*

BEN MOORE**

Before beginning the trial of cases, I wish to speak briefly to the men who have been called for jury service.

You have been selected from among your fellow citizens to do an important work. It will be your duty to decide many serious property rights between litigants. I am sure you feel keenly the responsibility that has been placed on you, and the trust that has been confided in you. I believe you will try to bear that responsibility and fulfill that trust honestly and fairly.

Trial by jury is one of the great fundamental rights which distinguish a democracy from other forms of government. We should guard it jealously and do all in our power to see that it operates fairly and efficiently.

Your task as jurors will be to search for the truth. You are the triers of the facts. In your field you are supreme, provided you keep yourselves free from passion, partiality and prejudice, as I trust you will do. The court decides what the law is, and you are bound by the court's decision on any and every point of law. On the other hand, whenever facts are in dispute, you have the sole right to decide what the true facts are. You must make these decisions fairly and conscientiously, and then render your verdict accordingly.

Most of you are serving as jurors for the first time. Many of you are serving at considerable sacrifice. In this court we have tried to lessen that sacrifice by arranging that no juror shall be required to serve more than three weeks. At the end of three weeks, all the jurors now in attendance will be dismissed and a new group will take your place. In this way the busy man is enabled to serve the public as a juror and still is not forced to neglect seriously his private affairs. I also feel that jury service should be widely distributed among as many of our citizens as possible. By taking this part in the process of self-government, you will acquire a new interest in our system of laws and a more enlightened viewpoint from which to observe them in operation.

* Address to the jury as Judge of the Court of Common Pleas of Kanawha County.

** United States District Judge, Charleston, West Virginia.

Under our jury system as it will be practiced in this court, twenty jurors are selected by lot for each case tried. We have in the hands of the clerk a pack of cards. Each card bears the name of a juror. As a case is called, the pack of cards will be thoroughly shuffled and twenty cards will be dealt off. These twenty jurors compose the "panel." In case one or more of the twenty should be disqualified to serve, they will be excused and their places filled by drawing other cards. When twenty men are in the box, each side in the lawsuit has the right to strike off four, so that twelve jurors will be left to try the case. The rest of the jurors will then be excused until time for the next case to begin, when you must all again be in your places.

You are required to be present in court each week day morning, except Friday and Saturday, at 9:30 A. M., unless the court otherwise orders. Friday is reserved for holding juvenile court, and Saturday is set aside for chancery matters.

During the trial of a case, you should have an open mind, and should carefully weigh, without prejudice, partiality or improper influence, the testimony of all witnesses and the arguments of attorneys. A lawsuit is not a game, to be won or lost according to skillful moves made by one side or the other, or by a display of oratory on the part of attorneys. So far as the jury is concerned, a lawsuit is a search for truth. It is your task to determine what is the truth in each case. Usually, you can make your decision only by weighing and sifting a great deal of conflicting testimony. Oftentimes you may be helped by the arguments of counsel; but you should weigh these arguments carefully, accepting those only which are logical, sound and reasonable, and rejecting those which appeal to passion, prejudice or partiality. As jurors, each one of you has the right to ask questions of a witness, if you find it necessary to do so, in order to gain further knowledge of some point that has not been made clear. If the court thinks your questions are proper, the witness will be required to answer them. Of course you will exercise this right sparingly, and only when it will serve some proper purpose—never out of mere curiosity. When you have decided what the facts are, your decision must be applied to the particular case according to rules of law which the court will give you in the form of instructions, when asked for by counsel.

You should not discuss a case while you are hearing it, either among yourselves or with outsiders. The reason you should not discuss it among yourselves is that you are likely by such a dis-

cussion to make up your mind before all the testimony and arguments are finished. There is a far more serious reason why you should have no discussion with outsiders. Consciously or unconsciously, such discussions tend to influence your verdict. The parties to a lawsuit have a sacred right to receive your verdict, whatever it may be, free from any and all outside influence. Frequently during a trial you will leave the box and mingle with other persons. Sometimes a case may last more than one day. In such cases you should be particularly careful not to talk about the case with anyone, even with members of your own family, while it is in progress. When you retire to your conference room at the end of a case, you should then discuss the case fully and freely. There will often be differences of opinion among the jurors. So far as you can do so without violating your obligation as a juror, you should try to reconcile these differences of opinion and agree on a verdict. Every case must be decided at some time, and if one jury is unable to agree, the result is that the case must be tried over again by another jury. You will find it convenient, and it is the usual practice, to elect one of the twelve as foreman, so that your deliberations may be conducted in an orderly manner. You should not arrive at the amount of a verdict by the so-called quotient method—that is, by each juror writing down the amount he would award, and then adding these sums together and dividing the total amount by twelve. Such verdicts are illegal. If known to have been arrived at in that manner, they must be set aside.

If you observe any misconduct on the part of a fellow juror, or if any person whatever, whether he is interested in a case or not, tries to talk to you about a case, it is your duty to report such conduct to the court immediately. If you feel any embarrassment in making such report in open court, you may do it privately in the judge's chambers.

“The jury system in the administration of justice is founded upon the idea that jurors are intelligent; that they are honest and that they will confine themselves to their own sphere of deciding the facts and conscientiously applying the law to the facts as it is given to them by the judge. It is founded upon the theory that they will decide the facts and apply the law without regard to who is the plaintiff or who is the defendant, whether it be a man, woman or corporation, in order that all persons, rich and poor alike may obtain an honest decision of their disputes with each other. The jury is bound as a matter of law to refrain from deciding any question

of fact on a basis of sympathy or prejudice either in favor of or against any person or corporation. They are likewise bound not to permit sympathy, bias or prejudice to cause them to fail to apply the law, as it is given to them, to the facts. A jury's decision should be arrived at without regard to race, class, interest, creed or color."

The West Virginia Code provides that "A juror knowing anything relative to a fact in issue, shall disclose the same in open court, but not to the jury out of court."¹ When you are empannelled in a case, you will be asked whether or not you know anything of the facts in issue. If your knowledge is such as to influence your verdict, you will be excused from sitting in that case. But once you have been sworn to try a case, it must be tried according to the evidence produced in open court. No juror sitting in a case may divulge to any other juror, at any time, any personal knowledge he may have concerning the case being tried, where facts or hearsay known to him have not been shown in evidence. A juror may not tell the rest of the jury what he may know of the reputation, conduct or actions of a person when those facts have not been shown in evidence. If any juror attempts so to testify to the rest of the jury, or to any juror, the court should be informed of this fact. A juror failing to notify the court of a breach of this law violates the obligation of his oath. If a juror knows anything material to an issue, he should disclose the same in the presence of the court, the parties and their respective counsel.

When you reach a verdict in a case, after you are sure that each juror agrees to the verdict, the foreman should write and sign the verdict, and then signal the court by knocking on the door of the jury room. When the door is opened, the jurors should file into the courtroom and respond to the questions and instructions of the court.

If any juror wishes to ask any question as to his duties, he may do so now. If not, we are ready to proceed with the business of the court.

ADMISSIONS TO THE BAR.—The following thirteen applicants successfully passed the State Bar Examination, held at Charleston, March 12-14, 1941:

¹ W. VA. REV. CODE (1931) c. 56, art. 6, § 18.