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Judge-Jury-Counsel Relations in Kentucky

BY JOHN E. KENNEDY*

Editor's Note: The following article is based upon a report of the 1964 seminar for Kentucky Circuit Judges sponsored by the Joint Committee for the Effective Administration of Justice, American Bar Center, Chicago. This part of the seminar was chaired by Honorable George B. Richter, Judge of the Thirteenth Judicial Court of Iowa, Waukon, Iowa. For reports of the other seminars, see Volz, Court Administration, and Thompson, Control Over Demonstrative Evidence, 29 Ky. Bar. J. 39, 44 (Jan. 1965).

I. Introduction

Judge Richter defined the seminar's initial purpose to be the search for ways of improving the image of justice as observed through the eyes of the jury. The discussion was therefore directed toward methods of handling the attorneys and the jury during pretrial, trial, and post-trial settings. The second purpose of this seminar was to examine the judges' role in politics and the relation of this role to improved standards of justice.

II. Pretrial Orientation of Jurors

A) The Summons

The first identifiable contact of the prospective juror with the court is the summoning of the person for jury duty. Under the provisions of Ky. Rev. Stat. 29.135 sixty summonses may be issued and a panel of thirty-two persons may be seated. There is no state-wide jury information book in use. Only one judge, Robert O. Lukowsky, of the Kenton Circuit Court reported using a jury guide book which he attaches to the initial summons. He reported a practical advantage is that this guide book tends to eliminate telephone calls by prospective jurors to the clerk of court or to the judge himself. These telephone calls typically ask for routine information or exemptions. The book also has the

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good effect of anticipating some of the usual excuses for not serving on the jury and disposes of them in a neutral manner without provoking personal animosity toward the judge for refusing to grant jury exemptions. In a positive vein, the booklet often gets the prospective juror interested in service and thus overcomes his reluctance to serve. Judge Lukowski felt that it is all-important to induce the ordinary citizen to serve on juries and not to grant exemptions loosely. Otherwise the process has a tendency to backslide and result in a group of professional courthouse jurors.

B) The Surroundings

The second set of details for the judge to focus upon relates to the sensory perceptions of the juror as he first appears in the courthouse. It was suggested that it might be desirable to hang framed reproductions of the juryman’s creed on the walls outside the courtroom, or to post other symbols about the ideals of justice. All judges reported having a United States flag and a State flag behind the bench. Some judges reported extremely antiquated physical facilities and that until new courtrooms could be constructed it would be difficult to upgrade the formality of the courtroom. If a new courtroom is being planned it was pointed out that it is important to investigate some of the new design arrangements that have developed to allow the jury, the judge and the attorneys to function at maximum efficiency and to accommodate scientific demonstrative evidence such as movie films, tape recorders, view boxes, microphones—rather than automatically allowing the design of a courtroom to be made in an unfunctional style. An example of possible new designs is the courtroom with the judge’s bench located diagonally across a corner. The judge at least has the responsibility in the planning of new courtroom facilities to see that future generations do not become saddled with designs that are already out-moded when built.

Of the judges present when a poll was taken, twelve judges followed the practice of not wearing judicial robes, while twenty-five judges did wear robes. Those not wearing robes were generally of the opinion that they did not wish to begin this observance on their own motion, but they would be in favor of it if the Court
of Appeals made a rule to that effect or if the local or state bar association passed a resolution. They also felt that the robes should be paid for out of an appropriation by the County Fiscal Court. The general consensus was that the wearing of judicial robes was an important aspect of raising the level of respect for the judge and justice.

The poll of the judges failed to indicate any uniform rules as to whether smoking was allowed in their courtrooms, whether certain standards of dress were required of the attorneys, parties and spectators, or whether they had specific rules requiring attorneys to stand when addressing the bench. There was general agreement that these matters could stand some general upgrading. In handling the psychological strategy of this upgrading, one judge reported he had adopted a rule that lawyers sixty-five years of age and under must wear ties. The net effect was that none of the older lawyers would admit to being over sixty-five and the others readily complied with the good feeling that they were still young men.

C) The Initial Orientation

Once the prospective jurors have been assembled in the courtroom, additional impressions are made. All judges reported a formal opening of the court by the bailiff, and all reported giving an orientation to the jury, some lasting from two to three minutes, on the theory that this is all that is necessary. Others reported orientations lasting up to thirty or thirty-five minutes. The subject matter of these orientations vary greatly. Typically, however, they cover such things as the physical facilities and lavatories available, what will be expected of the jurors, how long they will have to serve, and how much they will be paid. Some judges also give a series of cautionary instructions about not talking with the witnesses or the attorneys during the trials and against talking with each other about the cases until they meet for final deliberations. Other judges gave specific instructions on subjects in which they had experienced difficulty in the past, e.g. an instruction against quotient verdicts. In response to a description of the Indiana procedure of giving standardized preliminary instructions to the jury, there was a general feeling among the Kentucky Circuit Judges that under present practice they were not allowed on
their own motion to give preliminary instructions. They were not aware of any movement to copy the Indiana practice.¹

D) The Voir Dire: Mechanics

The Kentucky practice, which follows the federal rules, presumably would allow the trial judge to conduct the voire dire to the exclusion of the trial attorneys, with the attorneys being forced to make specific requests to the judge for him to ask questions of the jurors. However the overwhelming sentiment and philosophy of the judges was to “let the lawyers try the case.” Most of the judges do ask some preliminary questions of the jury and then turn the voire dire over to the attorneys. Generally they require the lawyers to address the panel as a whole in civil cases, but do not in criminal cases. The judges stated that they control the voire dire at all times under the primary test of whether the lawyer’s conduct is consuming an undue amount of time. The general observation was that the Kentucky attorneys did not abuse the voire dire by lengthy questioning. The idea was promoted that formal biographical questionnaires should be filled out in advance by each prospective juror and should be made available to the lawyers in order to eliminate some of the questioning on voire dire. A poll of the judges indicated that none were following this procedure, though some judges have their clerks fill in basic biographical data for use by the attorneys. It seems to be an unknown factor the degree to which prospective jurors’ backgrounds and privacy are subjected to scrutiny by professional investigators who report their findings to the attorneys. The overall question was posed as to what effect these practices might have upon the jurors’ attitude toward the judge, attorneys and parties to a law suit. To the extent that this is or may become a problem, formalized questionnaires may help in minimizing it.

E) Voir Dire: Content of Questions

As to the proper limitations upon the content of questions that could be asked upon voire dire, there was no substantial agree-

¹A strong plea for better informed juries through jury books and preliminary instructions is made by Judge Earl E. O’Conner, in The Right to Trial by an Ignorant Jury, 3 Trial Judges’ Journal (July 1964). Some cases dealing with the objections that must be overcome are United States v. Gordon, 196 F.2d 896 (7th Cir. 1952), vacated 253 F.2d 177 (1958); People v. Izzo, 14 Ill.2d 203, 151 N.E.2d 329 (1958); People v. Schoos, 399 Ill. 527, 78 N.E.2d 245, 2 A.L.R.2d 1096 (1948).
The general sentiment however seemed to run in favor of, the Illinois rule prohibiting questions on specific elements of law or evidence to be adduced in the case, though some dissented from this view. Again there was substantial agreement against allowing what was termed “Belli-type questions.” However, when confronted with a concrete case, the judges were divided as to the propriety of *voir dire* questioning of the juror about his feelings toward the proper amount of damages. This question was posed in the 1963 West Virginia case of *Thornsbery v. Thornsbery*, where in an automobile case for wrongful death, plaintiff’s counsel propounded to the jury this question: “Should the evidence disclose to you and you should be of the opinion that the plaintiffs are entitled to win, entitled to recovery, do you feel that 25,000 dollars is too much for the death of a sixteen year old girl?” The trial court refused to allow the question and the appellate court affirmed it on this point on the theory that the question made no contribution to accomplishing a fair trial or to the proper administration of justice.

The 1954 federal case of *Terminal Transport Co. v. Berry*, fairly well restates Kentucky law as to prejudice in raising the fact that the defendant is insured. The court there asserts that under Kentucky law in personal injury actions, it is prejudicial error to permit plaintiff to place before the jury the fact that the defendant carried indemnity insurance and judgement will be set aside where it appears that such facts are intentionally injected in a manner evidencing bad faith. On the other hand, when the existence of such indemnity insurance is inadvertently injected into the case in the absence of bad faith, with no purpose to profit thereby, the error will be regarded as not prejudicial. The court thus refused to reverse when one of the plaintiff's witnesses gratuitously referred to the defendant's “insurance man”. *Hall v. Ratliff*, and *Herald v. Gross*, represent the two most recent application of these rules. In the first case, it was reversible error for the plaintiff's attorney to pursue cross examination as to state-

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1 131 S.E.2d 713, 720 (W.Va. 1963).
2 217 F.2d 32 (6th Cir. 1954). *Caveat*, a recent decision has held that a state’s restrictive practice on *voir dire* is no bar to federal court inquiry into prospective juror’s connection with insurance companies. *Kiernan v. Van Schalk*, 347 F.2d 775 (3d Cir. 1965).
3 312 S.W.2d 473 (Ky. 1958).
4 343 S.W.2d 831 (Ky. 1961).
ments made by the defendant that he was insured, whereas in the second case it was not a basis for a mistrial for the plaintiff's doctor to state inadvertently he had sent a claim for services to the insurance company.

The application of these standards is the same in relation to questioning the prospective juror on the *voir dire* examination. Thus if an attorney in good faith pursues questioning as to a prospective juror's business relationship with the defendant and does not bring in unnecessary references to liability insurance, there is no prejudicial error if the subject of insurance is mentioned.  

III. Conduct of the Trial

A) Control of the Attorneys

During the course of the trial the judge is continuously affecting the jury's impression of justice. The manner in which the judge reprimands counsel, in which he demands respect from the attorneys, and in which he makes rulings—in short, his total actions and inactions in controlling the course of the trial are important in improving the jury's respect for justice.

Probably the most important index of this respect is the integrity of the relationship between the judge and the attorneys. Since the judge has a prime responsibility in enforcing the lawyers' code of professional responsibility, every question involving the control of the attorney's conduct during the course of a trial is a legal one, but it should also be given added consideration from the viewpoint of the psychological impact on the jury.

B) Control of the Jury

Some features of jury control may appear to be irrational in the eyes of the jury unless some explanation is made by the judge. For example in *Gipson v. Commonwealth*¹, one familiar ground of a claim for new trial was that after submission of the case a

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¹ Compare Bourland v. Mitchell, 335 S.W.2d 567 (Ky. 1960), with Potter v. Trent, 262 S.W.2d 186, 187 (1953), where it was prejudicial error to examine insurance salesmen as to whether they sold auto liability insurance, when the fact was already within the knowledge of counsel.


³ 193 Ky. 398, 118 S.W. 834 (1909).
JUDGE-JURY-COUNSEL RELATIONS

A juror took it upon himself to reduce to writing the testimony of each witness, which writing it is claimed was used by the jury in arriving at a verdict. The opinion states that it appears that the writing was made in the presence of all the members of the jury, and in the absence of proof to the contrary, must be presumed to have been the joint production of all, though actually written by only one of their number. The writing was not preserved, and not being in the record, its accuracy could not be tested. The court said: "we do not mean to commend such a practice, but it does not appear to have been prejudicial in this case to the rights of the appellant." In Miller v. Commonwealth, the mere fact that a juror had made some brief notes during the trial was not a sufficient showing for a new trial. The Kentucky cases thus seem to hold that while the taking of notes by the jury is not commended, a reversal will not result in the absence of some showing of prejudice. The judges present at the seminar had various attitudes towards the propriety of jurors taking notes; some considered it a fairly serious ground for mistrial; most judges generally stated they discouraged the practice; others stated that they encouraged the practice of taking notes in fairly complicated cases, such as condemnation awards, but that ordinarily they obtained the consent of the attorneys in order to avoid possible claims of mistrial. In any event, it was urged that when the question arises, the judge should explain briefly why the jury is not allowed to take notes.

Another question raised was the propriety of allowing the jurors to question the witnesses. As a purely legal question the resolution of the problem seems to be vested in the sound discretion of the trial judge. The general consensus of the judges on this point was that the judge should discourage the jury from asking questions, but if they are allowed to, the judge should screen the question first. On the basis of their own past experience that the jury usually asks pertinent, valid questions, other judges advocated free questioning by the jury.

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9 Id. at 336.
10 175 Ky. 241, 194 S.W. 320 (1917).
11 On jury note taking as a basis of mistrial, see Annot., 154 A.L.R. 878 (1945).
12 See United States v. Witt, 215 F.2d 580, 584 (2nd Cir. 1954).
C) Control of the Witnesses

The problem of whether the judge should interrogate witnesses and to what extent apparently is a more serious one. For purposes of discussion, Judge Richter related the case of *Ratton v. Busby*.\(^{13}\) This case involved a five-day trial arising out of the collision of two airplanes in their approach to landing. Witnesses who knew and flew planes used vocabulary almost unknown to persons not air-minded. In order to understand the testimony, the court asked some 160 questions, and the jurors asked forty-five or more. There was a verdict for the plaintiff, and the defendant sought a new trial, claiming impropriety and prejudice because of the number of questions propounded by the court and because the court invited the jurors to ask questions of the witnesses while testifying. On the second day of the trial, and before any objection had been interposed, the court, on its own motion, told the jury that it was asking questions simply for the purpose of determining the law to be given to the jury and "as I have told you in the general instructions at the time the general charge was given to the jury panel, no question asked by the court is ever intended or meant as a comment upon the testimony or credibility of any particular witness. . . ."\(^{14}\) On the third day, defendant's counsel moved for a mistrial. In the absence of the jury, the court then explained to counsel:

The court is not trying to try your lawsuit. The court has some obligation to see justice is done and jurors can intelligently pass on the facts. . . . I am afraid you gentlemen are overlooking one thing: trial of a lawsuit is not a battle of wits. Trial of a lawsuit in a court of justice is to arrive at justice, and that is what the court is trying to do.\(^{15}\)

Immediately thereafter, the judge in open court told the jury:

Ladies and gentlemen of the jury, the court in the general instructions at the time the entire jury panel was present in court instructed the jury that from time to time the court might ask questions, either for the purpose of determining the law applicable to the case, the instructions to be given, or for the purpose of clarifying something in the court's mind. The

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\(^{13}\) 326 S.W.2d 889 (Ark. 1959).

\(^{14}\) *Id.* at 896.

\(^{15}\) *Ibid.*
court in this case has asked a number of questions. The jury is instructed and told at this time, as they were in the general instructions, that no question asked by the court is intended or meant as any comment upon the weight of the evidence or the credibility of the witness. The jury is the sole and exclusive judge of the evidence, of the weight thereof, and of the credibility of the witnesses, and no question asked by the court should be taken by the jury as any inference or comment by the court in any manner on the testimony of any witness or the credibility of any witness or the weight you should give them.¹⁶

The Arkansas Supreme Court observed that the questions asked by the trial judge were not objectionable as violating rules of evidence, and that none of the questions, separately or collectively, showed any view of the judge or the exertion of a conscious or unconscious influence on the jury’s verdict.

The opinion then quoted from an earlier criminal case,¹⁷ which stated that the judge has the right to interrogate witnesses but not to usurp the place of the state’s attorney or the defendant’s counsel. The opinion in this earlier case states, in part:

It would be a reproach to the laws of the state if [the judge] was required to sit and see the guilty escape, or the innocent suffer through a failure of parties or their attorneys to ask a witness a necessary question. . . . In all trials the judge should preside with impartiality. In jury trials especially, he ought to be cautious and circumspect in his language and conduct before the jury. He should not express or intimate an opinion as to the credibility of a witness, or as to controverted facts. . . .¹⁸

The opinion of the three dissenting judges emphasizes a different aspect of the court-counsel relationship. It refers to the reluctance of lawyers to take exceptions to the trial judge’s actions in interrogating witnesses, for fear of adverse reaction by the judge. Further, when a fact is developed by questions asked by the court, such fact carries far greater weight than if it had been proved by testimony developed by counsel for the side helped by

¹⁶ Ibid.
¹⁷ Sharp v. State, 51 Ark. 147, 10 S.W. 223 (1889).
¹⁸ 326 S.W.2d at 897.
the fact. Moreover, when the court asks a large number of questions, there is extreme danger of one or more jurors getting an impression from the questions asked and the facts thereby developed, that the court has an opinion on the merits of the case, when in fact the court has no such opinion. It was because the dissenters thought this was the very thing that may have happened in the case at bar that they felt a new trial should be granted.

Referring, however, to the situations where the court aids a lawyer who is young or inexperienced, the dissenting opinion states:

This is not to say, however, that the court must sit quietly by and see a miscarriage of justice take effect because a lawyer on one side is completely outclassed by his adversary, nor does it mean that the trial court should not aid a young and inexperienced lawyer who needs help. From time immemorial it has been the custom and practice of courts to take care of situations of that kind. But where both sides are represented by counsel of the caliber appearing in the case at bar, they should be allowed to try their case and develop it according to their own judgment, complying, of course, with the rules of evidence.\(^{19}\)

The judges present at the seminar showed a split in viewpoint similar to that of the majority and dissenting opinions in the \textit{Ratton} case. The judges were, however, in substantial agreement that the outer limits of the judge's propriety in interrogating witnesses and commenting upon the evidence had been reached in the case of \textit{Collins v. Sparks},\(^{20}\) when the judge's manner of questioning a witness left the definite impression that the judge did not believe the witness.

D) Presentation of the Law to the Jury

The seminar discussions also spent some time in examining the methods by which jury instructions are formulated between the attorneys and judge and are submitted to the jury. There was substantial feeling that this area of Kentucky practice could be improved. Judge Richter commented upon the Illinois and Ohio projects for standardized jury instructions and Judge Prager, of

\(^{19}\) Id. at 900.
\(^{20}\) 310 S.W.2d 45 (Ky. 1958).
the Kansas District Court, recounted the successful Kansas experience in promoting standardized jury instructions. A possibly revolutionary approach was reported where, with the consent of the attorneys in the case, the jury had been instructed simply to "do right." It was felt that this process was much more satisfactory to all concerned than the lengthy elaboration of over-complicated jury instructions which the jury did not seem to comprehend anyway.

E) Jury Deliberations

Other problems raised were those connected with keeping a jury together overnight and, on the other hand, the necessary cautionary instructions and supervision in allowing the jury to separate both overnight and during recesses in the trial. There seemed to be a reluctance to utilize the full power that the trial judge may have in giving further instructions calculated to break a hung jury. Typical of these is the so-called "Allen" or "dynamite" charge approved in the case of Allen v. United States.21 Two old Kentucky cases apparently would allow the Kentucky trial judge to go fairly far in attempting to break a deadlock. In City of Covington v. Bostwick,22 an instruction was given in substance that the issue must be decided by this jury or another jury and that, if they did not decide it, it would cause expense to the parties and to the Commonwealth and that, though the jurymen should not sacrifice their consciences; they should endeavor to come to agreement, but that the court did not mean to attempt to force the jury to agree. This was held not to be an objectionable instruction. Similarly in Monroe v. Brann,23 the court held it was not an abuse of discretion to keep the jury together a day and a half after they reported they could not agree; and to instruct the jury, saying "the parties are entitled to a verdict" and that the jury should "exhaust all reasonable means in order to find a verdict." A version of the "Allen" charge which had been used in some cases but never tested by the Court of Appeals of Kentucky was, in substance, the telling of the story of the two billy goats in Aesops Fables who met head-on coming around a narrow mountain trail and proceeded to butt their

21 164 U.S. 492 (1896).
22 26 Ky. L. Rep. 780, 82 S.W. 569 (1904).
heads together until they both fell off the mountain. The moral of the story was that if the billy goats had stopped for a minute, stepped back and looked around, they could have observed that there was a pathway wide enough for both of them to pass by. Whether this instruction could survive the Kentucky Court of Appeals was up for speculation.

In all of the problems dealing with jury management arising after the jury had retired to the juryroom the judges agreed it is good practice to confer with both attorneys in an attempt to obtain their consent as to any action the judge might take in order to eliminate questions of mistrial. In summary, as to the ultimate objective of maintaining a high image of justice in the eyes of the jury, all judges stressed the importance of making rational explanations to the jury of the reasons underlying procedural technicalities occurring during trial.

IV. Post-trial Settings

Judge Richter focused the discussion upon a policy conflict in the judge's supervision of the attorneys' contact with the jury once the verdict has been rendered. On one hand, all the judges assumed that it was improper conduct on the part of an attorney to harass members of the jury with phone calls after the trial in an attempt to turn up evidence of jury misconduct. The judges commented that the only direct remedy for this conduct occurred when a jury member would make a complaint to the judge and then the judge would call up the attorney and reprimand him. It is true that the rules of law which allow a new trial on the basis of jury misconduct are fairly restrictive, and thus indirectly inhibit the attorneys from post-trial jury harassment. Nevertheless, the exceptions to these rules contemplate that the attorneys will contact the jurors to determine the nature of the misconduct if it took place. The canons of ethics in fact recognize this right of the attorney. For example, the Kentucky Court of Appeals in Drury v. Franke,24 recognized the general rule that a verdict cannot be impeached by the testimony of jurors. Nevertheless, the plaintiff was able to upset the verdict on the basis that four of the jurors on voir dire examination had failed to answer truthfully and affirmatively to a question whether they had ever been involved in

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24 247 Ky. 728, 57 S.W.2d 969 (1933).
an automobile collision. The method of proving the answers false was the taking of statements from the jury members after the trial. This conflict between the interest of the jury in being left alone once the trial had ended and the interest of the attorneys in protecting themselves against improper jury conduct has in Kentucky apparently been resolved in favor of allowing the attorneys to go after the facts without much regulation other than the rule disallowing impeachment of the jury verdict by testimony of the jurors. Another version of the same technique was noted by one judge who commented that frequently attorneys for prison inmates eligible for parole were visiting the families of the victims involved in the crime and obtaining statements that they were in favor of the parole. These statements are then submitted to the parole board.

While all the Kentucky judges felt that it would be unwise for the trial judge to attempt to regulate the attorney's conduct outside of the courtroom without some further guidelines, most judges agreed that it would be a good idea for the judge to exercise his power over the conduct of attorneys in the courtroom. This can be done by a standing court rule, or by a standardized oral instruction delivered as the jury returns to the courtroom to the effect that it is not permissible for the parties to shake hands with or to congratulate the jury or in any other manner express approval or disapproval of the jury's verdict and that the attorneys are similarly restrained from talking to the jury while they are still in the courtroom.  

25 Rule 18 of the Second Judicial District of Iowa provides:

No attorney or party litigant who has taken any part in or has been any party to any litigation in any of the Courts of the Second Judicial District of Iowa shall, in the court room, express any thanks, gratitude or dissatisfaction to either the Court or the jury, or offer to shake hands with any member of any jury, or the Court upon rendition of a verdict or the announcement of the decision in any action tried and determined before such Court; nor shall any such attorney or party litigant incite, or by Court upon rendition of a verdict or the announcement of the decision in any action tried and determined before such Court; nor shall any such attorney or party litigant incite, or by action or word cause any demonstration of any kind in the court room relative to any ruling of the Court or verdict of the jury in any case tried, or being tried, in any such Court. All attorneys shall admonish their clients before the trial of such case of this Rule. A violation of this Rule of Formality may, in the discretion of the Court, render any such offending party liable to be adjudged in contempt of Court.

26 Suggested sample instruction:

APPEARANCES: All parties, counsel, and jury present.

(Continued on next page)
V. The Judge's Role in Politics

Shifting from the courtroom setting to the judge's role in the community as a whole, Judge Richter posed the problem of how to lift the judge out of politics in order to improve the quality of his administration of justice and to increase the respect which the public holds for the law and the judge's office. Judicial canons 28 and 30 of the Canons of Professional and Judicial Ethics of the American Bar Association were the subject of discussion as interpreted by opinion 113 of the Committee on Professional Ethics and Grievances. Canon 28 provides in effect that a judge, as part of his obligation not to engage in partisan politics, should not appear at political meetings and indicate his support of candidates for office, nor act as a party treasurer. Opinion 226 interpreting canon 30, concerns the question whether it is proper for an incumbent judge to accept contributions from lawyers for a judicial campaign. This opinion states that while lawyers may contribute to a campaign fund of judges whose election they honestly favor, such contribution should in every case be reasonable, and preferably be made as a contribution to a campaign committee. A further opinion on this point in the American Bar Association Journal was reported as stating that a judge should not himself make contributions to political campaigns and should not attend political meetings unless he is a candidate for office during that election.

The results presented in these opinions were subjected to some amount of criticism as applied to the Kentucky scene. The criticisms were that while the principles might represent nice ideals, Kentucky had always been governed by what was called "Mulligans Rule" to the effect that "politics in Kentucky are the damnedest." The critics pointed out that it was unreal to suppose that a judge could faithfully follow canon 28 and not

(Footnotes continued from preceding page)

THE COURT: The Court is informed that the jury is ready to return its verdict. I wish to state that it is not permissible for the parties to shake hands with or congratulate the jury, or in any other manner express approval or disapproval of the jury's verdict. The jury is only doing its duty. I ask the foreman of the jury, Mr. ........................., if you have agreed upon a verdict.

For additional suggestions, see Christenson, Courtroom Decorum as an Aid to Proper Judicial Administration, 27 F.R.D. 445, 460 (1961).
engage in politics nor make contributions during his off years and then turn around and expect the political party to support him when he was running for office. The theory would be alright, in other words, if the county campaign chairmans could be induced to believe in the rule also. The issue was posed whether a judge ought to sit on the platform with, for example, presidential candidates when they come to town. This drew a strong difference of opinion from the Kentucky judges. A similar division of opinion ran to the question whether the judge ought to serve as a bank director and to what extent all activities forbidden to the judge could ethically be carried on by his wife.

Although there was a minority of judges favoring a philosophy that it was a good thing to keep the judge in politics and thus make him responsive to the will of the people, the majority consensus was that the ideals of attempting to remove the judge from partisan politics were the proper goals to be sought. All of them generally agreed that the abstract Canons of Judicial Ethics had serious shortcomings since they did not take cognizance of local election practice and custom. The judges were of substantial agreement that great reform could come only through complete revision of the judicial article rather than through piecemeal attempts to upgrade the system. Justice Richter reported Iowa's recent experience in moving over to the system in which each judge "runs against his record." That is, the voters vote "yes" or "no" to the question "Should Judge X be retained in office?" If the response of the voters is "no," then various screening committees go through a fairly elaborate procedure to come up with candidates for the office. Judge Richter's comments were that Iowa's experience with this system had been very good to date.

Before adjournment, the Kentucky judges voiced special appreciation for Judge Richter's lively and informed leadership of this seminar.

VI. Conclusion

The seminar discussions of the above subjects produced two general responses: First, the judges developed an awareness that the passage of jurors through the courthouse has a feedback impact on the public's sense of justice, and that the judge has a
continuing, conscious duty to see that this process is improved. Second, a general consensus was reached that the idea of removing the judge from political interest is desirable, but that this goal would remain impractical until a general reform of the judicial articles of the Kentucky Constitution is accomplished.