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# Study Raises Questions About Mitchell-Stans

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A new study of the 1974 conspiracy trial of John N. Mitchell and Maurice H. Stans raises questions about the veracity of the most influential juror on the panel that acquitted the former high Nixon administration aides.

According to the study, juror Andrew Choa repeatedly told the trial judge in the case that he was not on friendly terms with a member of the prosecution's staff despite strong evidence to the contrary.

The study said U.S. District Court Judge Lee P. Gagliardi's refusal to dismiss the juror was critical to the verdict because Choa, a vice president of the First National City Bank of New York, became the dominant influence in the jury's deliberations.

Mitchell, former Attorney General, and Stans, former Secretary of Commerce and chief Nixon campaign fundraiser, were acquitted of conspiring to impede an investigation of fugitive financier Robert L. Vesco in return for a \$200,000 contribution to the 1972 Nixon re-election campaign.

After the 10-week trial it became known that the jury voted initially 8 to 4 for conviction but reversed itself largely because of the persuasive manner of Choa, an international banker and graduate of Harvard Business School. Only one other juror had as much as a year of college.

News accounts of the trial

told of government attempts to have Choa dismissed as a juror for lack of candor during the pretrial jury screening process. But the new study, by Hans Zeisel and Shari Seidman Diamond, disclosed the extent of the conflict and the vigor of Choa's denials that a friendly relationship existed between him and John Kenney, an assistant U.S. attorney.

Zeisel, a law professor at the University of Chicago and a nationally known authority on juries, and Diamond, a teacher, described their findings in the first issue of a new periodical, the Research Journal of the American Bar Foundation, an arm of the American Bar Association.

They described this sequence of events: In March, 1974, shortly after the jury had been selected and sequestered, Kenney read the jurors' names in the newspaper. Knowing that prospective jurors were routinely asked whether they knew anyone in the prosecutor's office, he was puzzled and reported to the prosecution team that he and Choa had known each other for five years.

Such friendships do not automatically disqualify a jury candidate, but candid answers to questions on the subject are used to explore the possibility of prejudice. Jurors who gloss over possibly disqualifying factors frequently are challenged by trial counsel who fear that their eagerness to serve



Maurice H. Stans, left, and John N. Mitchell talking to the press in New York after their acquittal in April, 1974.

Associated Press

reflects a hidden bias on the issues to be decided.

Choa had remained silent when Judge Gagliardi asked whether "any member of the panel . . . knows any of these attorneys or had any dealings with the U.S. Attorney's Office" and whether any panelist was "a close relative or a close friend, friendly with anybody employed in the U.S. Attorney's Office."

Kenney told his colleagues that his wife, a First National City Bank employee, had been Choa's secretary, that they called each other "John" and "Andy," that he and his wife had dined with Choa in a New York restaurant, that Choa had introduced him at social events as an assistant U.S. attorney, and that just before reporting for jury duty Choa had told Mrs. Kenney he would call her husband "and

maybe we can go to Chinatown for lunch."

At the trial's outset Choa was one of six alternate jurors, first in line to join the regular jury should one of its members become ill. The government moved to have Choa dismissed, telling the judge, "It appears that this juror has violated his oath in failing to give true answers" at the pretrial screening. Judge Gagliardi did not act

on the motion until it was renewed several weeks later when one of the regular jurors became ill and was excused. The judge heard separately from Choa and Kenney in a secret session in his chambers.

The judge asked Choa: "Now, it's been a long time since I asked you some questions, and I am going to ask you one that was asked before and see if your recollection is refreshed in any way. Do you know or have you any acquaintances, business or social or otherwise, with anybody in the United States Attorney's Office?"

"I used to have a girl that worked for me," Choa replied. "She still works in the bank . . . She is married to a gentleman who works here, I believe, Assistant U.S. Attorney John Kenney. I have met him twice at social parties."

The judge later asked, "You would not consider in any way that you were that friendly, that it is a matter that should be called to our attention?" Choa's response was, "No, I have never spoken to him . . . There were usually 20 people there."

Over the prosecution's protest, the judge refused to dismiss Choa from the panel and permitted him to join the regular jury. He said:

"The juror's recollection of the association here is one of casual acquaintanceship, which didn't call for, as he saw it, anything more than what he has done here. While Mr. Kenney indicates a more detailed association, I still think that it would be classified as a casual basis and therefore I am not going to excuse this juror."

Zeisel and Diamond called Choa's responses to the judge's questions "interesting."

Ironically, Choa's background had made him appear initially as the kind of juror the defense would attempt to keep off the panel.

# Juror

Defense counsel, using the results of an opinion survey, had developed a profile of desirable and undesirable jurors that led them to favor candidates with little education and little interest in public affairs, especially Watergate. The prosecution favored better-educated and better-informed jurors.

Although the prosecutors knew little about Choa, Zeisel and Diamond concluded on hindsight that they should have exercised a peremptory challenge against Choa — thereby dismissing him without having to give a reason — during the initial jury selection, if only because “the defense wanted him” and the prosecutors knew the defense had investigated the jurors’ backgrounds.

Zeisel and Diamond said they sent Choa a galley proof of their article and that Choa, in a written reply that he refused to permit the authors to publish, had contradicted their narrative only once, saying the transcript was incorrect as to his response to one question. Choa did not respond to a telephone inquiry yesterday.

Assistant U.S. Attorney John R. Wing in New York refused to comment on the case beyond acknowledging that he had provided Zeisel with a copy of the transcript at Zeisel’s request. A law clerk to Judge Gagliardi said the judge would adhere to his practice of declining comment on matters that had been before him for decision.