

# The Mind of the Juror as Judge of the Facts (Book Review)

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Looking at the situation as a whole the author concludes that while defaults have been numerous they have been negligible when compared with the total number of municipalities throughout the United States. Furthermore, while defaults have not been restricted to any one section of the United States, and have occurred in every type of bond, losses to bondholders upon defaulted bonds have been relatively negligible when compared with the total amount of bonds outstanding at any one time or with the total bonds in default within any given period. "Defaults have been neither so numerous nor so acute as to warrant a lack of confidence in the soundness of municipal credit, or in the character of local administration." In short, municipal bonds are still a good investment provided the investor exercises a reasonable amount of care and thought in his buying.

The Foreword to this volume states that one purpose in writing it is to lay the groundwork for further studies in municipal debt administration. This purpose has been amply accomplished. The author is to be congratulated on making such an excellent contribution to the developing science of municipal finance administration and the Municipal Finance Officers' Association of the United States and Canada can take pride in having sponsored the book.

WILLIAM M. HUDSON.\*

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THE MIND OF THE JUROR AS JUDGE OF THE FACTS. By Albert S. Osborn. Albany: The Boyd Printing Company, 1937, pp. xiii, 239.

There seems to be abroad in this land of ours a serious confusion of concepts which threatens the very supports of our democracy. Too many there are who have concluded that the scientific approach in sociology and law is synonymous with science in its broadest implication. As a consequence, thousands of facts are laboriously assembled and classified, arbitrarily or otherwise; and eventually and perhaps in many cases insidiously, a new order of human conduct is manufactured. What began as a voyage of discovery ends by calling the old land a new name.

Things being as they are, it is not surprising that the highly human institution, the jury, has been scientifically "approached". Researchers report, for instance, that in the County of *X* a specified number of juries have reached a certain result on a certain problem while in the County of *Y* they have done the opposite under similar circumstances. So far so good, at least mathematically. But then follows the absurd deduction that since juries do not manufacture the same pattern day in and day out they are useless machines and should be abolished. Although no one has seriously urged it to date, it is assumed that the same conclusion might be reached on judges who have been known to disagree on the law as well as the facts. Juries being human do act according to their species in their deliberations. Indeed, intuitively, if not

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scientifically, they probably know how to react to other members of the same species. Hence, before we eliminate humanity from our system of justice, great care must be exercised in selecting and appraising a substitute fact finder. Facts found with a human approach may not always be true, but in the long run will prove more satisfactory than those objectively discovered, whatever that may be.

In "The Mind of the Juror as Judge of the Facts", Mr. Osborn, who is known and respected in the courts throughout the land as an expert on handwriting, gives us his impressions of the jury from a unique point. It is not the point of view of a lawyer nor of a judge, nor of an average layman, but rather of one who is constantly trying to persuade juries as to the accuracies of his deductions in a highly specialized field of practical science. It is natural that one so thoroughly qualified in this highly technical profession, would find the verdicts of juries unsatisfactory at least occasionally. Although the author is aware of many faults in the jury system, some of which have been pointed out by others, his condemnation is far from universal. He pleads not for abolition but for reform;<sup>1</sup> he wants trials to be "dignified investigations" and not "plain fights";<sup>2</sup> he urges that judges be given the right of comment in all jurisdictions;<sup>3</sup> and he is impatient with appeals to the jury other than logical.<sup>4</sup> It is indeed refreshing to learn that one with so much experience is unwilling to throw over the jury system, even though he is critical of it.

This is a volume which might well serve as a manual for prospective jurors. The ins and outs of trial by jury are laid bare. The scene in the court room is adequately and clearly portrayed. No prospective juror who reads it could approach his assigned duty without a great awe for the majesty of the law and a deep sense of his great responsibility. The many anecdotes which the author interweaves in his text serve to illuminate the points which he makes and to stimulate interest.

There are many members of the bar who must remember how in their early days they acquired their advance information on jury trials from Mr. Francis L. Wellman's work on "The Art of Cross-examination". The book under review may be used by the young lawyer today for the same purpose. It will serve as an excellent preview of the terrain where some day he must battle for justice. Mr. Osborn's book is certainly more comprehensive, if not more dramatic, than Wellman's. Although the author is frank, he is neither disillusioning nor discouraging. The unfavorable criticisms which he makes of lawyers in their trial practice are for the most part well deserved. However,

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<sup>1</sup> "It sometimes seems a hazardous thing to put liberty and rights into the control and custody of weak, prejudiced human beings swayed by passion and emotion, but there seems to be no better way to do it. Every reasonable precaution should of course be employed to prevent error, but even then ignorance and the weaknesses of human nature may sacrifice truth and reward wrong. If justice and liberty are to be protected eternal vigilance must be the watchword." P. 101.

<sup>2</sup> P. 9.

<sup>3</sup> P. 12.

<sup>4</sup> P. 25.

they should serve as caveats rather than deterrents to the young practitioner who stands on the threshold of the temple of justice.

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CASES AND MATERIALS ON CONFLICT OF LAWS. By Ernest G. Lorenzen. St. Paul: West Publishing Co., 1937, pp. i, 1138.

Great strides have been made in the teaching of conflict of laws in the last decade. The course is usually a popular one with students, since conflict of laws has some contact with almost all other law courses in the curriculum and so serves as a review of these courses in the best possible manner by an approach from a different point of view. Conflict of laws lends itself to a scholarly emphasis on legal principles.

With the increased interest in conflict of laws has come the publication of a number of casebooks to meet the needs both of teachers and students. Following the publication of the "Restatement of the Law of Conflict of Laws" by the American Law Institute in 1934, and Professor Beale's noteworthy contribution<sup>1</sup> to legal scholarship, three new casebooks have appeared in the space of two years. First came Cheatham, Dowling and Goodrich,<sup>2</sup> bringing to the subject a fresh viewpoint, the latest cases, and modern pedagogical methods. Then came Harper and Taintor,<sup>3</sup> a rather difficult and terrifying volume for undergraduates. Finally, as if in response to so much competition, the publishers must have prevailed upon Professor Lorenzen, a familiar and able scholar in the field, to revise his "Cases and Materials on the Conflict of Laws." The West Publishing Company now offers the teaching community the fourth edition.

Any work of Professor Lorenzen is welcome. This edition includes cases on Domicile, omitted from the third edition. Such omission had left a void that teachers of the subject felt should be filled. A second change in the new edition is the inclusion of provisions of the "Restatement of the Conflict of Laws" in all parts of the book. This is quite helpful to students and, one might add, to courts. The excellent features of the Cheatham, Dowling and Goodrich book, especially the chapter on Sources and Choice of Law, have been met in part in this new edition by an introductory chapter on the history of the conflict of laws and a general survey of the subject plus introductory notes to each chapter and section. As a further inducement to the student and teacher to use the Fourth Edition, there are dissenting opinions, excerpts from law reviews, and statutory provisions, and, finally, a more palatable presentation of the cases, through a rigorous "cut" in the presentations of the facts,

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<sup>1</sup> BEALE, CONFLICT OF LAWS (1935).

<sup>2</sup> CHEATHAM, DOWLING AND GOODRICH, CASES ON CONFLICT OF LAWS (1936).

<sup>3</sup> HARPER AND TAINTOR, CASES ON CONFLICT OF LAWS (1937).