

BOOK REVIEWS

THE MIND OF THE JUROR AS JUDGE OF THE FACTS OF THE LAYMAN'S VIEW OF THE LAW. By Albert S. Osborn. Albany, Boyd Printing Company, 1937. XII, 239 pp. \$4.50 (Library Edition), \$3.50 (Students' Edition).

The field of the law and many related disciplines, it is hoped, will be greatly enriched some day when someone will publish a summary of the effects of Professor Wigmore's book reviews upon readers, thinkers and research workers. His influence as a writer of prefaces for some of our outstanding books in the field of law has been so well known that such an introduction is frequently sufficient to induce an individual to read a volume. This book bears such an emblem.

In the last two decades there have been several books written on the jury. In the same period the yearly indices to Legal Periodicals show so many references to the jury system as to be almost discouraging to anyone wishing to keep abreast of current thought on this question. As Professor Wigmore points out, Mr. Osborn's position as an expert observer of the jury system is difficult to equal. His experience is so much wider than that of the typical lecturer or author on this topic that his contributions will be given much more consideration than is usually accorded such a book.

In a previous work, "The Problem of Proof," Mr. Osborn wrote on the psychology of the lawyer. The title of the present work implies that it is on the psychology of the juror, but it might be more truthfully entitled, "The Mind of the Juror and Related Problems," for the area which he covers is much greater than is conveyed by either the main title or the sub-title.

Mr. Osborn's emphasis upon the task of the juror in our legal system can be seen in his phrase "as Judge of the Facts" in the title. He makes this issue even more pointed by saying that too many lawyers are interested in the "fact of evidence" rather than in the "effect of evidence".

One might describe this volume as an evaluation of the jury in our present judicial system, as a handbook for lawyers in their work before the jury, or as a critique of our whole judicial system. It is all of these. The following selection of chapter headings, of which there are thirty-three, will give some conception of the inclusiveness of the volume. The Jury System, The Majesty of the Law, Dignifying the Jury System, The Jury's Errors, Testing and Instructing Jurors, The Jurors Look at the Lawyers, The Jurors Look at the Witnesses, Human Nature, Psychology in the Courtroom, Tactful Tactics, Steps toward Persuasion, Cross-examination, Number of Jurors, Unanimous Verdicts, Reform and Reformers, The Lawyer and the Defense of Crime.

If one has to be placed as for or against the jury system, certainly there would be no doubt but that Mr. Osborn belongs on the side which some have labelled as reactionary. On the other hand, the main theme of this work is a

criticism of the present jury system accompanied by suggestions for the remedy of many of its ills. He discusses the quality of most of our juries and believes that we can eliminate some of the worst disadvantages which arise from this poor selection. Among the proposals which he adds to those usually stated, are the use of intelligence tests to eliminate the obviously unfit, increasing the dignity of the jurors by the treatment accorded them. The author also considers the possibility of the use of gowns for the jurors as well as for the judge. He further advocates the education of the juror for his task and makes suggestions as to what should be taught to them. The point which he stresses more than any other, however, is the limitation of judges so that "as umpires, in what has come to be the trade of the law, they are not permitted to do anything whatever to assist a jury in understanding and interpreting the evidence . . ." Mr. Osborn is also in favor of getting rid of the "gag rule" for jurymen in certain cases.

A considerable portion of the book might be described as advice to lawyers regarding their work with the jury. Much of this will probably prove valuable to many practitioners who seldom are in a position to have their "best friend tell them" about their courtroom behavior. Unfortunately, much of Mr. Osborn's advice will never be read by those who need it most. Certainly this is true of such suggestions as acquiring that skill known as speaking English so that it can be understood by the audience, learning to read, reading the *Journal of the American Judicature Society* or the *Journal of Criminal Law and Criminology*.

Many readers are going to expect to find considerable psychology in this volume. They may expect this from the title and from some of the chapter headings in the prospectus. The author mentions one psychologist, William James, and he approves of James' opposition to the "brass instrument" psychology of the nineteenth century German psychologists. He is also opposed to psychologists who conduct a "few experiments with immature boys and girls in classrooms" and then seek to advise judge and lawyers. Finally, he finds "positively repelling" the books of some psychologists who give the impression of a "smug self-satisfaction".

All of this is perfectly true but the part that "brass instrument" psychology plays in the total field of American psychology today is decreasing in proportion to the rate with which psychologists are going into other fields. Although some experimentation in legal psychology has been conducted with "immature boys and girls," it seems appropriate to mention some work which has used practicing lawyers as subjects. Finally, "smugness" is a trait which is frequently found among psychologists as well as in other professions.

Although these criticisms are harsh, the reviewer feels that an individual of Mr. Osborn's talents can contribute much more to lawyers and psychologists than he has. It is not enough to tell a lawyer that he should be a master of psychology, which Osborn does, and to give him no other guides than those

found in this book. A critique by Mr. Osborn of what little there has been done in this field, and some of it has been published in the *Journal of Criminal Law and Criminology*, which he recommends to lawyers, would be greatly welcomed by many psychologists.

In conclusion, it may be said that this volume will be a landmark in the field of administration of justice for many decades; probably for too many decades for Mr. Osborn does not appear to believe that reform will come about very quickly. He is very straightforward in placing the blame where it belongs and goes so far as to say: "One would think that lawyers and judges in certain places would hang their heads in shame for being part of a clumsy system so out of harmony with progress."

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HANDBOOK OF THE LAW OF PARTNERSHIP AND OTHER UNINCORPORATED ASSOCIATIONS. By Judsen A. Crane, Professor of Law, University of Pittsburgh. St. Paul: West Publishing Co., Horn Book Series, 1938. Pp. 535.

With the rise of the corporation as the dominant form of business organization, has come a proportionate decline in interest and use of the partnership and other forms of unincorporated associations. In such a situation, Mr. Crane's book is a valuable treatise welcomed by everyone engaged in the practice or study of law. Arranged and written in such form as to be adaptable for use by student and practitioner, the book sets forth in logical sequence, in text form, amply annotated, the principles of the Common Law as well as those under the Uniform Partnership Act.

The chronological arrangement of the subject matter of the hand book is commendable. Beginning with a series of concise and terse definitions, the author proceeds on a course that leads through the successive stages of the formation and continuance of the partnership to its dissolution and winding up.

In order to assure a better understanding of the partnership, the early introductory sections are devoted to explanations of every important form of unincorporated association with a discussion of their particular peculiarities and their connection if any with the partnership. The chapter divisions were selected with a view toward the simplest method of material association and will undoubtedly be of great aid as a text for the student. The wise use of full and clearly stated headnotes for each chapter serve, not only as a valuable review outline for the student, but also as a quick crystallization of the law for the practitioner.

In view of the fact that not all the states have adopted the Uniform Act, the author very wisely discusses the outstanding principles of the common law and explains any contrasts with the Uniform Law that may exist with ample citations for both.

The cases cited although far from being exhaustive, sufficiently explain

and illustrate the questions involved and display a keen sense of discrimination in their selection. The discussion throughout the entire book is replete with carefully selected quotations from cases decided in various state and Federal courts, chosen for their intrinsic value and ability to expound and clarify particular principles of the law of partnership. There are omissions and compression of material, which in view of the extent of the subject matter, together with the author's consideration of the relative amount of time devoted to the subject in law schools and the decrease in popularity of that form of organization in present day business practices, seem wisely made. Even the phases of the subject that are presented are not all fully and completely discussed because of the fact that other courses cover similar material and the repetition would make the treatise unnecessarily cumbersome. Yet, though no attempt is made to develop completely all aspects of the law, there is contained a sufficient mention and discussion of them to constitute the entire volume a worthwhile analysis of the subject. To those who should desire to delve deeper or treat more extensively of any particular topic, sufficient supplementary material and readings are supplied. The footnotes contain much discussion and numerous analagous cases briefed and collected beneath those appearing in the text. Facts and law, in footnote cases, have been skillfully abstracted so as to eliminate the necessity of wading through pages of irrelevant verbiage in order to understand the point under discussion. The book does not emphasize the cases from any one particular jurisdiction, nor does it place undue emphasis either upon early or very recent decisions and a rational continuity is secured.

As a whole, Mr. Crane's book offers a complete picture of the partnership together with its variations such as the limited partnership, joint stock company, business trust and even non-profit associations. The material is presented as a logical orderly entirety, useful in any jurisdiction and offering from a teaching standpoint an opportunity for a well proportioned course and for comparing and evaluating the various types of associations and the various principles of law.

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