A Judge Takes the Stand, by Joseph N. Ulman

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and municipalities. This seems to be one of the most serious problems confronting us at the present time.

Other arguments in favor of the existing system seem subject to similar observations. For instance, the author defends the income tax on the profits on the sale of capital assets by referring to the large revenues from these sources before 1929. It is probable that the Federal government and the states imposing such an income tax have lost as much or more revenue from this source during the depression. He also contends that the Federal gift tax is no harder to collect than the Federal estate tax, but the experience of the government with respect to the previous gift tax seems to rebut this argument. Finally the author admits that the present state taxes on intangibles are quite unsatisfactory and suggests as a solution a tax on intangibles at a lower rate; a solution which has recently been adopted by Indiana. The solution is undoubtedly a sensible one from the economic standpoint, but its legal validity under the common and unfortunate uniformity provisions of state constitutions is more than doubtful.

But all these criticisms and others which might perhaps be made do not affect the substantial merits of the book. We have here an excellent presentation of the whole tax problem from the economic standpoint and particularly from the standpoint of the necessities of the taxing jurisdictions—a standpoint which is certainly entitled to a hearing particularly in these times. The book points out a principle which is apt to be lost sight of by taxpayers—that simplicity and justice of taxes are very largely incompatible and that the undoubtedly unfortunate growing complications of modern tax statutes is necessitated by the endeavor to attain a larger degree of justice to the taxpayers. It is interesting also to note the author's showing that the English system of collection at the source has not worked as well as was expected and is particularly unjust to the small taxpayer. It may well be that the United States could profitably make larger use of collection at the source than it does, but the book demonstrates that this system also is not a cure-all of our tax difficulties.

An Indiana lawyer will notice that our state is not referred to as levying an income tax. Perhaps the author does not regard a gross income tax as an income tax at all—which is perhaps arguable.

On the whole the book is a very valuable one. If it is somewhat biased in its point of view it is no more so than most other books on the subject, which are biased the other way. While the book is primarily useful to legislators and perhaps administrators, it is nevertheless very worth while reading for any lawyer interested in tax matters.

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Robert C. Brown.


In this book a judge attempts to explain law to the layman. It is the opinion of the present reviewer that whatever success he achieves on that score is completely overshadowed by his success in explaining law to the lawyer.

The author has been for eight years a trial judge in Baltimore, five years in the common law courts, one year in the equity courts and two
years in the criminal court. During all of that time he kept complete notes of the cases passing through his court. The book is really a chronicle of those eight years, for his experiences form the illustrations for his explanations of law and the judicial process. The value of the book to lawyers lies in his inclusion of valuable data as to the happenings in his court, and his conclusions as to the meaning of those experiences. There is an intimate revelation of the judicial process at its best, that is, under a judge who is obviously learned, intelligent and tolerant, and who in addition has developed a philosophy as to law and the judicial process of a high order.

Probably the most interesting chapters are those dealing with jury trial. The author made a practice of making a note of his own decision of a case at the time it was submitted to the jury and his prediction as to the jury's verdict. Most lawyers will be surprised at the correlation with the actual results; they will be more surprised at the fact that the judge's award of damages averaged higher. The author's data and general conclusion rebut much current criticism of jury trial. In fact in one instance it is demonstrated that the untrained jurymen are better logicians than the judges.

Judge Ulman presents a number of cases involving a street intersection automobile collision where a statute gives the car approaching from the right the right of way. He points out that courts had attempted to explain the statute as not applying unless both machines had approached the intersection at practically the same time so that the final test of liability is the lack of due care. Almost invariably the jury decided such a case against a plaintiff who did not have the right of way under the statute, although it may have been clear to the judge that he was not negligent. Judge Ulman's explanation of this is the weakest part of the book, for he explains it on the ground that the jurymen's experience with Police Court prosecutions for violations of the statute, where the Court made no such fine distinctions, controlled his reaction. The more obvious explanation is that the jurymen was a better lawyer than the judge. The statute imposes a liability without fault, an arbitrary rule. The courts have been misled by their stock phrase as to statutory liability being "negligence per se" and have read into the law a standard of due care which is a contradiction of the statute. The jury sees the contradiction, because after all the best, if not the only, test as to whether or no the one on the right should have given way is whether or not he collided with the other vehicle.

The book contains some convincing data and conclusions on the validity of the requirement for a unanimous verdict, and the jury's attitude toward contributory negligence as a complete defense. The author's experiences with the criminal law are interesting and illuminating. In general, they sustain the validity of the current objections to criminal law and its administration, and support almost any intelligent attempt at the reformation of either of them.

Philosophically, the contribution made by the book is important. A school of behaviorism in legal philosophy has sprung into existence under the able leadership of Mr. Jerome Frank. It has raised the terrible question, "Are Judges Human?" and has concluded that if they are the law is in a terrible fix. This book is significant evidence that judges are human,
and that some of them at least are superior humans, which is all that society can rightly ask of them. Judge Ulman observes his judicial experiences and instead of taking a hop-skip-and-jump as Mr. Frank does and ending up at the end of a tangent, he sits down in the middle of his circle and does some valuable reflective thinking concerning them. The results are encouraging. Judge Ulman steers a middle course between precedent and chaos with telling effect.

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