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A Judge Takes the Stand, by Joseph N. Ulman

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A Judge Takes the Stand, by Joseph N. Ulman—Alfred A. Knopf, New York—1933—pp. viii, 285—\$3.00.

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 juryman'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 juryman 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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