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## The Mind of the Juror

Stephen Ailes

*West Virginia University College of Law*

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toriality, extradition, aliens, law of treaties, state responsibility and international claims, and the status of persons and property in time of war.

Teachers of international law will find that this book will compare favorably with the casebooks of Professors Manley O. Hudson and Edwin D. Dickinson, which have gained wide acceptance by their scholarly nature and editorial perfection.

CARL M. FRASURE.

West Virginia University,  
Morgantown, West Virginia.

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THE MIND OF THE JUROR. By Albert S. Osborne. Albany, N. Y. Boyd Printing Company, 1937. Pp. 239.

On opening this book one anticipates some psychological analysis of the actual probative effect of certain types of evidence upon the thinking process of the average juror based upon the author's many and varied courtroom experiences as a professional expert witness. It is somewhat of a surprise to find, instead, a sweeping indictment of the trial scene and its principal actors. The subtitle correctly states the nature of the contents, "The Layman's View of the Law", and the necessarily superficial treatment of certain difficult and profound questions is not cured by the citation of occasional case authorities.

The author's justifiable faith in the truth of his own testimony has led him into the belief that one side of every legal controversy must be definitely in the wrong on the facts. "In every lawsuit one lawyer seeks to prevent the facts from being shown."<sup>1</sup> Memory and observation are inefficient at best, and conflicting testimony does not indicate absolutely the presence of falsehood. Then, too, many cases involve not determination of the occurrence or non-occurrence of a given fact, but rather the application by the jury of some standard such as reasonable care as to which there is no pre-trial right and wrong.

On the theory that scientific inquiry is always possible, as it is with handwriting questions, Mr. Osborne criticizes the absurdly unscientific nature of the inquiry into the facts in the ordinary legal trial. Among the absurdities mentioned are weird phenomena such as exclusionary rules of evidence, cross-examination of honest

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<sup>1</sup> Page 82.

witnesses, inept jurors. All of these, we are told, represent anachronisms which are part of our legal system to-day only because those lawyers who are hired to obscure the facts find these methods to their advantage and therefore block all efforts toward change.

It may certainly be argued that the criticism applies to the jury system itself,<sup>2</sup> the alleged defects being inherent in that system and in the common law trial technique. If the jury is to retain its place in that trial technique,<sup>3</sup> however, certain changes are necessary, such as elimination of exemptions, acceleration of courtroom procedure to enable the busy man to serve, and use of majority verdicts, as Mr. Osborne suggests, together with a limitation of the jury's function to the answering of specific factual inquiries.<sup>4</sup>

STEPHEN AILES.

College of Law,  
Morgantown, West Virginia.

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<sup>2</sup> See Phillips, *A Practical Method for the Determination of Business Fact* (1934) 82 U. OF PA. L. REV. 230.

<sup>3</sup> McWhorter, *Abolish the Jury* (1923) 29 W. VA. L. Q. 97; Note (1929) 35 W. VA. L. Q. 277.

<sup>4</sup> Donley, *Trial by Jury in Civil Cases* (1928) 34 W. VA. L. Q. 347; Note (1929) 35 W. VA. L. Q. 359.