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## Vanderbilt: Judges and Jurors: Their Functions, Qualifications, and Selection

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practice in legal research. His functional approach to the fundamentals merits the attention of the practicing attorney and the law student alike.

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*Judges and Jurors: Their Functions, Qualifications, and Selection.* By ARTHUR T. VANDERBILT, Chief Justice, Supreme Court of New Jersey. Boston: Boston University Press, 1956. Pp. 79. \$3.00.

The pressure for judicial improvement, both in personnel and methods of operation, has become stronger and stronger since the beginning of the century. Throughout the country prominent judges and lawyers have been devoting their talents to devise means for reaching that objective. Their efforts have been fruitful to a considerable extent in the field of practice and procedure. In many of the state jurisdictions, as well as in the federal courts, common-law methods of pleading and practice have been replaced by modern codes either by legislative enactments or through the rule-making power of courts of last resort.

Of the host of contemporary advocates for procedural and judicial reform, one man stands out pre-eminently as the leader in the field. It is his good fortune to be able to add to his advocacy—through speeches, lectures and writings—power and authority to demonstrate the wisdom of his theories and their workability. Judge Arthur T. Vanderbilt has enriched the literature on the subject of judicial reform and has attracted the attention of judges and lawyers throughout the country to the character of his work. As Chief Justice he has led the bench and bar of New Jersey in the accomplishment of reorganizing the judicial system of his state.

His latest contribution consists of three Gaspar G. Bacon lectures delivered by him and now published, in book form, by the Boston University Press under the title of: *Judges and Jurors: Their Functions, Qualifications and Selection*. It is a work of extraordinary merit and should attract a reading public of not only judges and lawyers but of laymen as well. I suspect that the author intended it primarily for the enlightenment of laymen.

The book is exceptional in this respect. Dealing as it does with the complex problems of the judicial office, the judicial function, qualifications and selection of judges and the functions, qualifications and selection of jurors, it crowds into seventy-nine pages a wealth of information which should enable any lay person of average intelligence to discuss major judicial problems understandingly and well. The book has still another great value. It points out the way toward a new literary goal, namely, the writing of textbooks on law—its history, its philosophy and its impact upon our civilization—for use in our primary and secondary schools and colleges.

Under our Constitution and in the spirit of the institutions which developed under it, the Bible and other sacred literature may not be studied or even read in the public schools. In the patterns of human behavior woven into the substance of the Bible, there is to be found a vast display of universal civil and criminal laws. This is kept from the children and adolescents (who do not attend religious schools) at a time when coming into contact with them would vitally help shape their behavior. It is altogether right that no place should be

given to religious literature in our public schools, but should we not, within such schools, expose our children, during their impressionable years, to at least those moral principles which have become a part of our law? Is there not room in our public schools, indeed in our society, for a sort of supplementary, but secular, bible which would expound our contemporary mores and the law's sanctions of them?

With respect to the contents of the book under review, Judge Vanderbilt reminds us that the courts provide the instrumentality which protects the state and its citizens from internal dangers. Courts are constituted for the settlement of disputes between individuals and between the state and individuals so as to provide protection for human beings living in organized society. In simple understandable language he explains how the courts are organized, how they function, how dependent they are upon the public respect for their effectiveness and points out that, though ours is a government of laws, the interpretation and application of the laws are, inescapably, left in the hands of men who of necessity are vested with large discretionary powers.

He sketches the history and development of our judicial institutions from the days of the Norman Conquest up to the founding of our colonies and thence forward to the present day. He briefly surveys the growth of our common law—that part of it which we inherited from England and that part of it which we are constantly building ourselves. He traces the main events which ultimately enabled the courts to gain their independence; how, through eight centuries or more of growth of Anglo-American systems of law, there have evolved three primary essentials of the true judge—impartiality, independence and immunity—and observes that assured tenure is the safest guarantee for the preservation of these essentials. As long as a judge is subject to removal or a threat thereof, he is subject to pressures or influences and his judicial decisions cannot be expected to be impartial. With tenure assured the judge can be independent—absolutely free of all influence and control so that his judgments remain unfettered, unbiased and without fear. To maintain his independence and impartiality, the judge must enjoy judicial immunity—freedom from recriminations for the consequences of his decisions. The author pointedly recalls the performances of the colonial judges in consequence of their offices being held merely at the pleasure of the Crown.

A long schedule of qualities and attributes which each judge should possess is listed. These are culled from the Canons of Judicial Ethics adopted by the American Bar Association. The only comment this evokes is in the nature of a question whether in real life a man can be found who possesses all the characteristics required to meet the heavy demands upon his behavior. Blessed is the man whose attributes conform to the design.

The method by which judges should be selected is by far the most troublesome problem with which the author seems to struggle. Different methods prevail not only in different civilizations and countries but in the various states of the Union. Judge Vanderbilt examines the respective methods—popular election; appointment by the executive, with or without the help of the legislature or one body of it; appointment with the aid of a council; appointment from a panel of candidates selected by an impartial commission, etc.—and calls attention to the weaknesses inherent in each. He seems to regard popular election as the least desirable method, but he fails to endorse any method unequivocally. He has not found the magic recipe for extracting politics out of a political

task. It is my view that *tradition* will ultimately solve this problem here as it did in England.

The author's essay on the functions, qualifications and selection of jurors leaves nothing to be desired. The brief history of the development of the jury system into its contemporary type should be a great aid to the understanding of what the right to trial by jury means to the citizens of our country. Trial by jury as enjoyed at common law, with minor modifications, is guaranteed by the constitution of every state of the Union as well as by the federal Constitution.

I want to emphasize my wholehearted agreement with Judge Vanderbilt's view that the modern restrictions of the powers of the judges to control the selection of the trial panel and the limitations placed upon the judge's function to charge the jury have measurably lessened the effectiveness of trial by jury as a method of doing justice according to law. We should return to the judges their common-law powers to summarize the evidence and advise the jury on the facts. Altogether too frequently do we find jury verdicts warped by conscious or unconscious illegal considerations, such as the demeanor of the lawyers, their personalities or their attractiveness. One intellectual woman, after serving two weeks on the jury before several judges of our court, came to talk to me about it. She seemed incensed over the influence of some of the lawyers upon the jurors. Her comment ran something like this: "There ought to be a law prohibiting Attorney X from pleading cases before a jury. He fascinates the women to such an extent that they just 'melt' like teen-agers do over a popular crooner."

With an impartial judge helping the jury to analyze the facts, many of these considerations which unfairly condition the minds of jurors would be eliminated. Sometime ago I read (I have forgotten where) a statement that "trial by jury is the first cousin of trial by battle, the latter being a test of physical strength and expertness, the former a battle of wits." The commentator suggested that the only thing that saves the English method of trial by jury from being less than a game is the fact that the trial is presided over by an impartial judge who at the conclusion of the trial instructs the jury as to the law, summarizes the evidence and advises them on the facts.

I sincerely hope that despite his heavy responsibilities Judge Vanderbilt will regard the privilege of guiding the bench and bar toward higher goals in the administration of justice as a mission worthy of his great talents and which as a dedicated person he must continue to serve.

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*The Law of Literary Property.* By PHILIP WITTENBERG. Cleveland and New York: The World Publishing Co., 1957. Pp. 284. \$5.00.

This interesting volume discusses at the outset, "The Concept of Literary Property" and "The Nature of Literary Property." Seventy-six pages are devoted to orienting the reader to the historicity of the topic, which includes a reference to the Star Chamber Decree of 1637, in addition to several leading cases. The role played by printers and publishers is unfolded in relation to the sad lot suffered by authors before copyright statutes were enacted.

The author states in the preface: "Out of the thousands of judicial decisions