

EVENING ROSEBURG REVIEW

OCTOBER 21, 1911.

THE MODEL JUROR.

Portland Oregonian: Proceedings during the first few days in the McNamara trial at Los Angeles do not convince one that there is an all-pervading justice in the American jury system, with its maze of technicalities, precedents, law restrictions and court rulings. By it the man accused of crime is guaranteed a trial of 12 unprejudiced peers, but wherever public interest in the outcome is at high stakes the effort of both prosecution and defense seems to be to obtain a jury of 12 prejudiced inferiors. Selection of talesmen resolves itself into a contest between lawyers. If there is anything in the character of the prospective juror's antecedents, associates, occupation, religion, fraternal

connections or previous jury service that might prejudice him against the defense, the state seeks to conceal it and the defense to bring it out by skillful questioning. If there is anything therein that might seem prejudicial against the state the situation is reversed.

The defense has a specific number of peremptory challenges. The state, too, has a specific number. Each side may excuse a certain number of talesmen without giving any reason therefor. Each side preserves its peremptory challenges for use against talesmen who it is convinced are biased, but whose bias has not been brought out by questioning. Each side endeavors to exhaust the other's peremptory challenges but still retain on the jury men who are thought to be favorable to its cause. It is a battle of wits, not a concerted effort to obtain an open-minded, intelligent jury.

On the side of the defense the wits of the lawyers are pitted against the wisdom of the judge. If a challenge for cause be improperly denied by the court grounds for reversal and new trial are created in the event conviction is had. If the trial court fails to excuse a juror challenged for cause, and the Supreme Court finds that the juror's qualifications as indicated by answers to a thousand or more questions do not dovetail with the grooves cut by precedent, court rulings, legal restrictions and the like, the defendant is granted a new trial. It matters not that substantial justice has been done the accused. If it appears that a juror has not come up to the requisite standard of nonprejudice, the accused has not had a fair trial. All must be gone over with again. The battle of wits must be resumed. Talesmen are to be quarreled over again for days and weeks. A new jury is to be selected. The testimony is to be repeated and once more, in event of conviction, the demands of justice are to await the high court's ruling as to whether the blind goddess held the scales in her right hand or shifted them to her left.

It is by this tedious, painstaking system that we evolve the model juror. He is a man who has not read the current newspapers, who has no opinion on or knowledge of current events, who knows nothing of the crime under investigation or of anything else which his neighbors deem important or interesting. He is too often a low-brow, a plodder, a clod, one who cannot distinguish between the frank, straightforward, truthful witness and the witness who is shifty, secretive, biased or untruthful. We say too often he is thus. Occasionally an honest, intelligent citizen, with a conscientious desire to do his duty

gets by the peremptory challenges. But not often enough. He is not wanted. Another exception is the prejudiced juror, who has been slipped by the opposition by prosecutor or defense without exposing his bias in the record, who seeks jury duty for a purpose, and who will "hang" the jury if the other 11 men do not decide the case his way. It is the juror with preconceived intent to thwart the will of justice or of stubborn opinion which will not alter who is out of place in criminal trials. It is he against whom a labyrinth of technical fortifications has been erected in our jurisprudence—erected, alas, in such a way that skillful guidance of trained criminal lawyers too often finds the road to prejudicial verdicts but made the easier.

It would be useless, no doubt, to seek reform of purpose among prosecutors and their legal opponents. It is probably true that in many cases the accused is guilty and the defending lawyer honestly believes him innocent. In such event there can be no firm confidence on the part of one in the intent of the other to obtain an intelligent and free-minded jury. In its absence, wit is opposed against wit, trick against trick, skill against skill. The short cut to reform is to take from the hands of the lawyers the selection of the jury. Let the trial judge examine the talesmen. The court would seek intelligence, not stupidity, aim at justice, not personal aggrandizement of lawyers—prosecutors or defenders. The open-minded inquisitor is best able to detect an open mind in the one examined and the open mind is all that substantial justice demands.

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