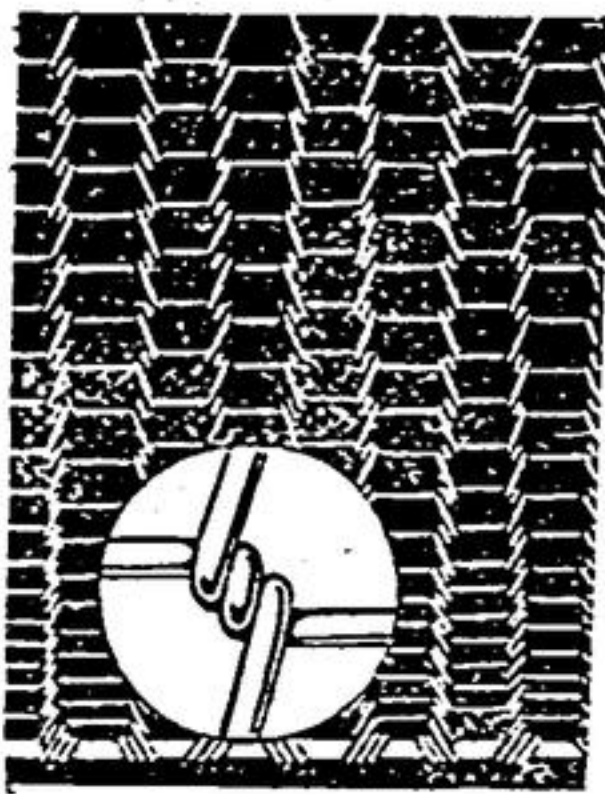




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PORT PERRY 75 YEARS OLD years. However, that is not important, it is what the town or community stands for today that counts, so runs a statement in the Port Perry Star. If that observation made by our friend Editor Sam Farmer is correct we hasten to add that the Scugog town must have been an awful place to start with, having regard for the yearly improvement with the march of 75

"Gentlemen of the Jury"

By Horace Brown

(This is the third of five articles published in Saturday Night by Horace Brown, relating his experience and observations of the jury system, while a member of the jury panel at the Spring Assizes of the Supreme Court of Ontario, held at Whitby in 1944.)

The charge was rape. The accused was a curly-headed, well-built young man in his early twenties with a vacant, frightened face. The accuser was a girl of eighteen who was still in Entrance class in public school.

For the better part of the day we of the jury had been listening to the threads of evidence leading to their sordid centre, where the spider of conviction worked to entrap the struggling fly. In our hands was a man's life, for rape is, theoretically at least, a capital charge.

There were twelve of us, most of us never before met, sworn to judge the facts and render a verdict according to the best of our abilities—a manager of a lumber firm, a war-worker, an electrician, a laborer, some farmers, myself, an author. No women, for in this enlightened land, women are accorded the privilege of sitting on juries but the privilege is withering away for lack of exercise.

The case was painful in the extreme, in that both prisoner and complainant were obviously morons. While the prisoner's astute counsel did not place him in the box, we had his statement to the police (finally admitted to the jury after considerable argument, during which we sat in the doghouse twiddling our thumbs) and it was a masterly delineation of a low-grade intelligence.

The complainant, who looked like a little girl of twelve, often took as long as thirty seconds to frame an answer to a question, and was saved from complete mental collapse by the kindness and patience of the presiding judge, Mr. Justice Roach, who had yet to learn that undoubted eminence as a jurist and as a man does not necessarily qualify one as an arbiter of disputes between Capital

and Labor. Where I had seen many a member of the Bench in my newspaper days explode over trifles (for instance, I went to sleep one day in Judge Morson's court, not a difficult feat, only to be awakened by the thunder of that peppery gentleman urging a startled constable to "Wake that man up!" a fact gleefully chronicled in a rival paper), Mr. Justice Roach waited with unfailing courtesy for what the poor girl had to say. Where she was rattled by some question from counsel, he would take the question and rephrase it several times until her slow mind gathered its import. Then he would smile at her sweetly, and thank her. It was an exhibition of fact we of the jury did not lightly forget. Nor were we unimpressed by the unfailing courtesy of Crown Attorney Annis and Defence Counsel Frost towards the witness.

I shudder to think what would have been our feeling had Defence Counsel been one of the browbeating type of attorney; he undoubtedly would have prejudiced the jury to the detriment of his client. In fact, during that whole Assizes I can recall only one attorney who lashed opposing witnesses, and, while the case was settled out of court before it came to us, we were, although trying to keep our minds clear, hostile to that lawyer from the beginning. We did not mind aggressiveness; we did object to exhibitionism. A Wm. J. Fallon, late ornament of the New York bar, would have received short shrift with us. On the other hand, I have seen my father make juries cry and courtrooms rock with laughter, for he was definitely the "actor" type of lawyer, so I suppose a great deal depends upon the time, the place, and the circumstances.

As the case dragged on towards the close of day, and the shadows lengthened in the courtroom, our thoughts, during the pauses in testimony, concerned themselves with warm homes and hot meals. There is no task I have ever undertaken, even writing, that is more physically and mentally wearing than sitting on a jury. The extreme concentration that is required, if a juror is to discharge his duties conscientiously, is

intensely fatiguing. We more than once remarked during the Assizes that we felt sorry for those juries that sit on celebrated murder cases, often for weeks, without letup, I feel that jurors on these cases, at least, should be paid a minimum of ten dollars a day, plus expenses. The present four dollars is an entire inadequate compensation, and many who would make good jurors have themselves excused one way and another because they cannot stand the economic loss attendant upon these long trials. While judges and court officials are not overpaid they would not work for the wage of a juror.

Our thoughts of the armchair and the evening newspaper were politely assailed by Mr. Justice Roach, who turned to us about recess-time and informed us that, owing to the serious nature of the charge, we were to remain together for the night, that accommodation had been secured for us in the local hotel, and that he hoped we would be comfortable and happy. Knowing small-town hotels, the Bench was surely jesting! He continued that we were to communicate with no one, that two officers were to be assigned to guard us to see that no one had communication with us, and that if we wanted to notify our families we would not be home we would please give the Sheriff the names and telephone numbers.

It was a bombshell to the jurymen. As I have remarked before, juries should be informed beforehand of all eventualities and made aware of court routine. We consulted rapidly amongst ourselves, and then our spokesman, the mill manager, whom we later made our foreman, asked the Court if we could not go in a body to the local theatre. His Lordship assented. It was just as well none of us had yet seen the doublebill, or there would have been a murder charge to add to the list. Two of the men, it developed later, did not feel like going, but when they were informed by the officers in charge of us that if they did not go we would all have to stay with them, they decided discretion was indeed the better part of valor. Another anomaly was that we had to pay our own way in. Oh, generous, generous State!

The officers were sworn, and we duly came to have a very special affection for Bob and Ron. They were swell fellows, and made what could have been a very difficult time passable.

Accommodation at the hotel was strictly on the limited side, although comfortable enough. We had to double up, Art Banks and I were the only Dunbartonites, so we slept together.

"Now, if this were only a mixed jury—" I said to Art, but he was already asleep.

Not that we went to bed early. After the movies, the obliging Bob and Ron took us into a cafe, where we had our fourth meal of the day. By that time, we were all of us, as conglomerate a mixture of humanity as you ever saw, firm friends. I started a poker game, but it wasn't too successful, because I rapidly cleaned out what spare cash there was in the "parlor" we had been allotted upstairs. I even took some dough from Bob, but evened it up by buying a round of beer. It was still the day when you could order beer delivered to your room. The good fellowship that existed is perhaps best demonstrated this way: there were two or three non-beer drinkers and non-gamblers who were intensely religious; they tolerated our beer and poker, and we joined them in a prayer before going to bed. That's possibly a recipe for the U.N.

It may be wrongly assumed from the foregoing that our minds were on the frivolous. It would be more correct to say that the frivolous was indulged in order to keep us from dwelling on the serious. The evidence was not all in, even if we were, and we did not want to influence each other by remarks on incomplete and insufficient authority. If our jury is any criterion, no just citizen need have fear of suffering at a jury's hands. It was my experience of all the juries on which I have had the privilege of serving that they would lean over backwards in giving any accused that to which he or she is entitled, the benefit of the doubt. I make no claim as to the perfection of the jury system; it is enough to say that, with all its human imperfection and prejudices, it can be quite safely trusted with criminal and civic actions. Even where the charge is a political one, I would rather trust a jury than, for instance, those magistrates who believe that Justice should err on the side of their employers.

We discussed the case fully, of course, from all angles, as far as it had been presented. But it is worthy of note that not once in those three days and two nights for which we were together did any of us offer a single clue as to our half-informed ideas of "Guilty" or "Not Guilty." The case was a long and confusing one. It rested, as do all such cases, mainly upon the degree of consent. There was no doubt the act had taken place; was it with consent? All through the lengthy trial our minds probed here and there, weigh-

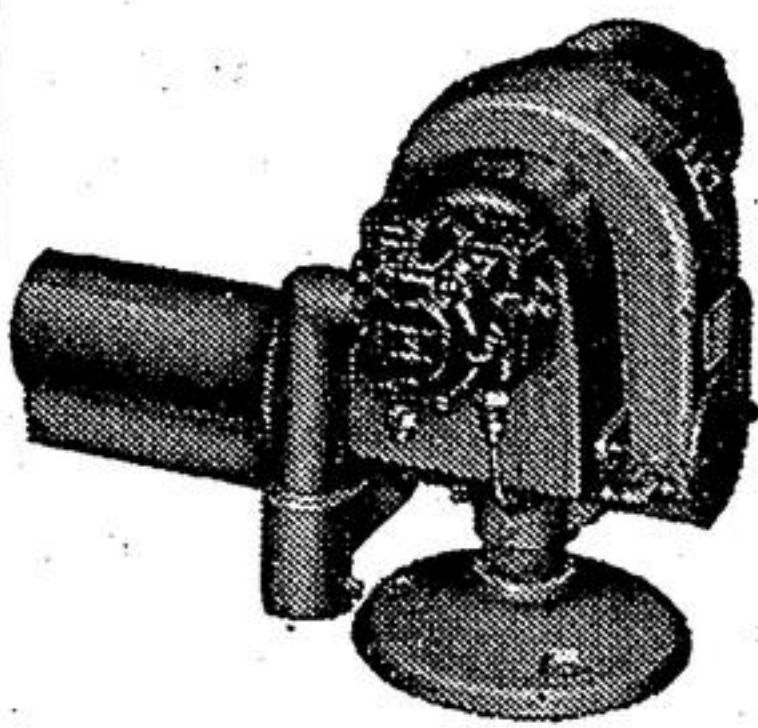
ing the evidence, judging the facts, sifting the chaff from the wheat. There was one thing the trial clearly revealed, an ugly state of affairs existed in the villages of Pickering and Ajax, a cancer of delinquency to be excised if at all possible. There was no recreation for the young and impressionable; their meeting-places were cafes, with a consequent continual seeking after "excitement." Their elders were inattentive or ignorant or both.

Within four walls of the courtroom was proof of the tiny step the human race has taken towards its civilization.

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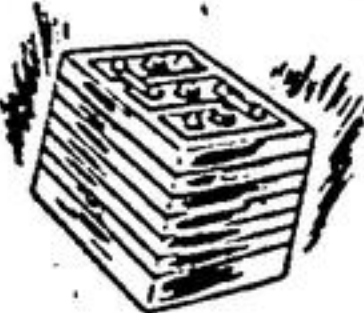
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