

1932

Book Review. Borchard, E. M., Convicting the Innocent

Jerome Hall

Indiana University School of Law

Follow this and additional works at: <http://www.repository.law.indiana.edu/facpub>



Part of the [Criminal Law Commons](#), and the [Criminal Procedure Commons](#)

Recommended Citation

Hall, Jerome, "Book Review. Borchard, E. M., Convicting the Innocent" (1932). *Articles by Maurer Faculty*. Paper 1358.
<http://www.repository.law.indiana.edu/facpub/1358>

This Book Review is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



BOOK REVIEW

CONVICTING THE INNOCENT. By Edwin M. Borchard. New Haven, Conn.; Yale University Press. 1932. Pp. xxix. 421. \$3.75.

This collection of sixty-five cases is important because it focusses attention in a very striking manner upon many basic uncertainties in our criminal procedure. Professor Borchard has for the occasion, laid aside the robes of the scholar; he carries the shield of champion of the unfortunate persons who commend themselves particularly to our sympathies because they are the victims of an imperfect legal system. These sixty-five cases represent only a small portion of persons who are convicted of crimes they did not commit. A rather startling thought especially in these days when public opinion has been "educated" to "smash the criminal."

But aside from striking a dissenting note in a very interesting fashion, the book is worthy of notice by those who take a more sophisticated attitude towards the law and its procedure. The sixty-five cases arose in about thirty states; twenty-nine of them are murders, the rest are other felonies. The innocence of these defendants in all the cases was established in various ways; by the turning up of the alleged "murdered" person; by the corroborated confessions of the guilty person or of prosecuting witnesses; by the discovery of new evidence, and by mere chance.

Perhaps the most significant fact developed is the unreliability of identification, particularly when made by the victim of a crime of violence. The most positive identifications have proved to be sheer fantasies when the actual criminal was finally apprehended and compared with the innocent person who had been positively identified. Sometimes the prosecuting witness has been guilty of perjury in a deliberate effort to secure the conviction of an innocent person. Other times the accused person has been the victim of a chain of circumstances that convinced the jury of his guilt.

Professor Borchard concludes that there should be state indemnity for persons wrongly convicted of crime. Persons who are acquitted suffer considerably even though they escape the stigma that attaches to those who are convicted. The author's survey of the various European statutes on the subject, and his account of the relevant legal theories pro and con are of interest. However, it will be unnecessary to examine these phases of his book because the State of North Dakota is one of three American states which have already made provision for indemnity in such cases (Laws 1917, c. 172; Comp. Laws (Supp. 1925), c. 17, p. 1519).

Undoubtedly Professor Borchard has performed a service in championing so good a cause. His book is a challenge to all persons inter-

ested in the fair operation of the law in times of public hysteria as well as normally. It should, moreover, encourage the student of our criminal law and procedure to explore every possibility of making the legal machinery more certain in its operation.

JEROME HALL

University of North Dakota,
Grand Forks, North Dakota.