

This issue is dedicated to the memory
of
PROFESSOR-EMERITUS EDWIN BORCHARD
1884-1951

EDWIN BORCHARD

By CHARLES E. CLARK†

EDWIN BORCHARD was my colleague and intimate friend for many years. When I came to the Yale faculty in 1919 he was one of the younger members, although a mature and recognized scholar in spite of his youthful appearance. We were thus thrown together and found much in common. For many years we were tennis opponents; on one famous New Haven day we were on our way for some sets at the Lawn Club only to discover the Club on fire and a complete loss, even down to our own tennis equipment. We were neighbors and our families were also intimate. Thus we saw at first hand his beautiful home life with his lovely wife and his two daughters, whom he, quite understandingly, adored.

Borchard was not only an indefatigable worker, but a man of varied interests. His lifelong specialty, international law, to which he brought a breath of honest realism, served him ill in one sense; for twice in his lifetime his most cherished convictions and beliefs were set at naught by the impact of worldwide war. I would be wanting in frankness if I did not say that in his general outlook and in various particular details I could not share his point of view, although I always respected the conviction and honesty of his expression. There were, too, sometimes difficulties developing in university administration from his able advocacy as a lawyer of legal contentions on behalf of various international claimants. But these were problems of the sort that a vigorous and forthright personality would produce; I was bound to recognize them as such and thus to review them in the retrospect of years.

Of his other interests, that of constitutional law produced his largest classes and his most continuous teaching. Here he had his direct impact upon hundreds of students who came to know him well and for whom his wide contacts among public men were always available for assistance and placement. Particularly in the early days he was the School's closest contact with govern-

†Circuit Judge, United States Court of Appeals, Second Circuit.

ment; he stimulated many to public careers; his unobtrusive help is fondly remembered by, I am sure, many more than we, his colleagues, knew. One bit of Yaleania deserves recall. He was in the habit of giving examinations of the true-false type; and students asserted that from year to year he changed not the questions, but the answers! That, however, was only the growing constitutional law of the glorious thirties.

Among his other scholarly interests, his research resulting in his book "Convicting the Innocent" is most widely known to the general public. That was not only a series of fascinating, if disturbing, tales, but at the time a bold and courageous utterance. It had certainly much to do with the developing thesis that adequate defense against criminal charges is the constitutional privilege of even the veriest criminal. Among all his legal activities, however, I would cite his work upon the declaratory judgment as the most complete and the most successful. It is, so far as I know, the greatest one-man job of legal reform to occur in this country. Here he, practically singlehanded, rediscovered a useful English reform, advocated it strenuously in this country, aroused the powerful concern, if not outright opposition, of Justice Brandeis and other justices of the Supreme Court as well as of state tribunals, battled unceasingly to show how threadbare was the objection of no constitutional "case or controversy" to afford court jurisdiction, and lived to see the reform adopted universally and himself the recognized authority on its manifold uses. In the days of strenuous battle, Chief Justice Taft used to chuckle to his law clerks how Justice McReynolds wanted to know who this persistent declaratory judgments fellow was and whether he ought not to be held in contempt of court. I have no doubt but that Borcharde would have faced contempt, rather than have yielded an inch in his battle for the reform in which he believed. I had the honor of collaborating with him in a brief amicus curiae which had some effect, as we have believed from traces in the opinion (*Nashville, C. & St. L. Ry. v. Wallace*, 288 U.S. 249, 87 A.L.R. 1191), on the ultimate victory first in the Supreme Court and thereafter elsewhere. Most of us have to be content with the hope that reforms started will produce results some day, even beyond our ken; he had the unusual satisfaction of seeing them achieved in his lifetime.

Bochard's interests were not confined to the law. He wrote from time to time as a publicist on political and governmental matters, and was consulted by and regularly advised with such liberal statesmen as the late Senator Borah. He was devoted to music and for years played a first violin in the New Haven Symphony Orchestra. Nor did his interest stop there; for he became President of the Orchestra Association and threw himself into the managerial and always troublesome financial problems of one of the worthiest and most satisfying of the city's cultural institutions. His leadership there was not the least of the contributions of a busy and useful life. He was a versatile scholar, a gentleman, and a useful citizen. His death on July 22, 1951, after a lingering and painful illness was tragic. He will be sorely missed.