

JOURNALISM SERIES, No. 51

ROBERT S. MANN, *Editor*

Newspapers and the Courts

Addresses by STUART H. PERRY, Editor and Publisher of
The Adrian (Mich.) Daily Telegram,
and by EDWARD J. WHITE, Vice-President
and General Solicitor, Missouri Pacific Railroad



ISSUED FOUR TIMES MONTHLY; ENTERED AS SECOND-CLASS MATTER AT THE
POSTOFFICE AT COLUMBIA, MISSOURI—2,500

JULY 21, 1928

JOURNALISM SERIES, No. 51

ROBERT S. MANN, *Editor*

Newspapers and the Courts

Addresses by STUART H. PERRY, Editor and Publisher of
The Adrian (Mich.) Daily Telegram,
and by EDWARD J. WHITE, Vice-President
and General Solicitor, Missouri Pacific Railroad



THE ADDRESSES in this pamphlet were delivered in May, 1928, at the School of Journalism of the University of Missouri, as part of the annual Journalism Week exercises.

MR. PERRY's address begins on the page facing this one; MR. WHITE's address, entitled "The Press and the Judiciary," begins on.....page 18.

The Press Under Fire

BY STUART H. PERRY

Editor and Publisher The Adrian (Mich.) Daily Telegram

I.

Yes, the newspaper press of America is under fire. There can be no uncertainty as to that, for it has been under fire continuously for more than a hundred years. If the barrage should stop it would leave us with a queer feeling in the ears, and perhaps a certain lightness in the head, we have grown so used to it. Indeed we are so used to it that we are in some danger of accepting it as a normal condition—of failing to note whether it is changing in character or intensity, and whether it calls for any positive measures either for self-protection or for the welfare of society.

The last decade has been especially noteworthy for its varied and widespread criticism of the press, from writers and speakers of every type, both within and without its ranks. Yet this flood of criticism, though vastly greater in volume and more intelligently analytic, differs little in substance from what was heard fifty or a hundred years ago. In 1859 a little-known book entitled "Our Press Gang" was published by Lambert A. Wilmer of Philadelphia, an editor with a varied and unhappy career in his profession. It is devoted to an arraignment of the press on all the charges that could well be imagined, and the bitterness of his attack fully equals the maximum of Mr. Mencken's virulence or of Upton Sinclair's denunciations. Wilmer's opinions were matched by those of Dickens, of Captain Marryatt, of writers in the *Fortnightly Review* and *Blackwood's Magazine*, and of other foreign observers. Half a century earlier Washington denounced the scurrility of the newspapers, and Jefferson said that even the truth was under suspicion when it came by such a polluted vehicle.

The press as a whole has improved immeasurably since those days, and many of the faults that prompted such attacks have disappeared. From the standpoint alike of truth, of good taste, and of political and pecuniary honesty, the press is far better than it was even twenty years ago, and incomparably better than in Wilmer's day or Jefferson's. Yet criticism continues and increases because the public is more socially conscious, because it demands higher standards, and because changing conditions have caused certain evils to appear in new form or in greater degree. The criticisms of today do not reflect merely a general disgust and contempt; they reflect the scrutiny of intelligent minds analyzing the situation from many angles—the minds of officials, students, welfare workers, publicists, of many editors, and of a very large number of thoughtful readers. Out of this almost universal discussion demands for certain reforms are clearly shaping.

It behooves us as journalists to appraise this current of criticism, to see whither it is leading, and to shape our course accordingly. Ought we to cling to the serene optimism of the past, defending the existing status on all proper occasions, deprecating any hint at regulation by law, and confident that everything will right itself in due time? Or has the time come for us to envisage the subject of legal regulation as an imminent possibility and meet it in the way that seems best for the public and for ourselves?

To answer that question involves an analysis and classification of the criticisms. Some of the evils complained of are from the nature of things impossible to deal with in any manner, as they are due to the inherent imperfections of humanity. In this first category we find such faults as ignorance; cowardice; insincerity; bad taste; slovenly style; triviality; offensive partisanship. These are shortcomings of papers, due to the personality of their publishers, and they will exist here and there just as long as the press is free and every person is at liberty to publish a newspaper.

A second category of charges is directed against faults that are self-correcting. Among them are inadequate news service, inaccuracy, blunders and misquotation; faking of news; malice; dishonorable methods in news or business policy; trouble making; pernicious political doctrine; failure to serve worthy causes; betrayal of public interests to personal, political or pecuniary ends.

These and similar faults affect directly the popularity, circulation, and earning power of a newspaper, and therefore they tend to correct themselves through changes in management or the effects of competition. The unfit paper—unfit in the eyes of the public—cannot survive indefinitely. All such shortcomings are sporadic—attributable to individual management and not forming a definite type of journalism, nor one built upon a definite type of reader patronage.

A third class of criticisms, which are the most widely expressed and the most seriously urged, has to do with certain definite infringements upon the social and moral well-being of the community and of the public at large. They are so definite and grave in character, and they so strongly invite positive regulation, as to challenge our most thoughtful consideration. These are:

1. The degrading moral effect caused by printing unwholesome details of crime, divorces, scandals, and sex stories.
2. The crime-producing effect of sensational publicity in criminal cases, through arousing sympathy or admiration for criminals.
3. The direct interference with the administration of justice through unbridled treatment of crime stories, both before and during trials.

Three important points are to be noted wherein these faults differ from the other classes mentioned. They are the most conspicuous and the most prevalent. They are not temporary or sporadic, but are committed systematically and consistently by a class of newspapers that appeal to a certain permanent clientele of readers. They are not likely to cure themselves, because they are not a source of weakness from a business standpoint, but in the right circumstances are highly profitable.

This group of faults, generally covered loosely by the term "yellow journalism," either separately or collectively form the burden of the great majority of all written and spoken criticisms of the press. They are the subject of countless editorials, magazine articles, books, sermons, addresses, statements by publicists and public officials, and conversations among thoughtful persons.

None of these journalistic offenses is new. They have all been in evidence for a century or more. They have increased in importance as a social problem, however, by reason of certain changed conditions, chief among which are these:

1. The growth of urban population in large centers, with aggregations of low-class readers who not only support sensational journalism but are most susceptible to its evil effects.
2. The fact that compulsory education has resulted in almost universal literacy, enabling newspapers to dip into a stratum of readers of lower culture and mentality.
3. An enormous increase in material prosperity among the lower classes, which has increased the returns from advertising among them, and thereby augmented the profits of papers that cater particularly to them.
4. The great prosperity to which the newspapers themselves have attained, especially in large cities, has given rise to intense competition which has forced many papers of the better class to cater to low-class readers to a greater or less degree in order to attain a maximum circulation in their entire communities.
5. The standardization of the smaller papers through the use of the same telegraph services, news pictures, features and syndicated matter. As all such matter

is metropolitan in its origin and viewpoint, the effect is to extend throughout the country the peculiar evils of the metropolitan press.

II.

That these three sorts of matter—sensational treatment of crime news, unwholesome scandal, and unlimited publicity in pending criminal cases—are detrimental to the public interests, in my judgment may be accepted as a fact. It is true that arguments to the contrary are offered, but such arguments run counter to the consensus of almost all disinterested critics, to all codes of journalistic ethics, and to the positive declarations of innumerable editors and publishers. They are further disproved by the admissions and apologies offered by various publishers who print such matter.

The higher view of the journalistic profession itself is well reflected in the following editorial comment in *Editor & Publisher*:

A *New Yorker* of unsavory reputation sues for divorce naming several co-respondents. It has nothing of news value, but by the use of the words "bathroom," "bedroom" and "pink nighties" it is carried to every American fireside from the Atlantic to the Pacific—common filth sold as news.

Last week news was flashed across the country that a New York banker had sued for divorce and that a counter-suit had been entered by his wife. Neither party, it was announced, could be located and the lawyers for neither side would talk, but for ten days the story in all its salacious details was played all over the first pages of the metropolitan press and real news of importance to the education and upbuilding of the world has gone on the floor wasted. * * * * The present wallowing in crimson news is a disgrace to American journalism.

This editor's allusion to New York scandals being carried to every American fireside is worth more than a passing reference. The truth is that such matter is not a spontaneous outgrowth from the general field of American journalism; it is distinctly metropolitan in origin, and is foisted on the press of the country through the influence of the metropolitan press, more particularly that of New York. These unwholesome stories told in exaggerated detail, which are found in hundreds of papers from sea to sea, are usually from New York or from the immediate environs of New York—near enough to appeal to New York editors and readers.

Can one imagine any such deluge of nation-wide publicity for the divorce of an Omaha banker, or the marriage of an obscure young man of a good Detroit family to a mulatto, or a Dayton clerk murdered by his uninteresting wife and her equally uninteresting paramour, or the antics of a fairly wealthy real estate man and a girl in Denver? If the Rhineland case or the Snyder case, or the others, had been sent out on the wires from New York at their proper news value for the country at large—which would have been a stickful—how many editors in Missouri or Michigan or Alabama would have picked them out and played them up, and begged for more? Not many even in the larger towns; none in the small ones.

As it was, they appeared on a thousand first pages from Maine to Arizona. Why? Partly because the larger cities have more or less of the class of readers that make a market for yellow news; partly because papers even in the smallest towns take their cue more or less from the metropolitan press; but most of all because such matter is thrust upon the newspapers in the smaller cities. When such a story is laid down before a small-town editor he is apt to use it because it is impliedly recommended to him and its value advertised. Its length indicates that New York or Chicago considers it one of the big stories of the day. There is the element of competition too; his local competitor probably will use it, or if he has no local competitor it surely will come into town in papers from the near-by large cities. He does not, in

many cases, use his own free news judgment; the news judgment of the metropolis is imposed upon him.

Precisely the same observations apply to the syndicated news pictures and features which have operated so strongly to standardize the daily press of the smaller cities. Metropolitan in their origin, and proceeding from a very few sources, they carry into villages and country homes the devices that are intended to sell pink-sheet extras to subway crowds.

This aspect of the situation is of prime importance, because of the fact that the whole problem of anti-social news is essentially a problem of the large cities, where certain newspapers cater to a specialized class of readers. This fact has an important bearing on the question of what remedial measures are desirable or practicable.

III.

The situation clearly calls for reform, and the first thing to consider is whether that is likely to be accomplished by the action of the newspapers themselves, either voluntarily or through the operation of public opinion or of competition.

Can it be brought about by improving the practice of journalism through better training, higher standards, and codes of ethics? We might as well expect to stop highway robberies by ourselves going to church oftener and bringing up our own children more carefully. Codes of ethics and higher standards benefit only the newspapers that accept and practice them; the worst offenses are committed by newspapers that flout such principles. Publishers with high ideals can continue to improve themselves, to cultivate a sound public taste, and to convert some newspapers that are in the twilight zone; but those that most need to change their methods are impervious to criticism, argument, or exhortation, and their reader clientele forms a permanent class whose taste cannot be cultivated nor its standard raised.

As a step toward such an improvement in the practice of journalism the licensing of journalists has been suggested. It has found some worthy advocates, including my friend, Mr. William Allen White. Nevertheless it strikes me as a counsel of perfection quite impossible in practice. The comparison of the profession of journalism with that of law or medicine is a false analogy. We regulate the practice of law and medicine to insure a proper technique where technique is everything. In those professions there is only one end—the trial of cases or the healing of the sick; therefore we properly make rules as to who may do it, and if any individual is excluded no general interest suffers. In journalism technique is subordinate, while the end is all-important and Protean in its variety of forms—to express any thought and to further any policy, cause or object. Every man must be free to publish a newspaper for any legitimate purpose. Freedom of the press would be gravely undermined if any educational or technical standards were set up which might forbid an inexperienced or uneducated man from putting out a newspaper. It would be just as improper, and just as dangerous to liberty and public welfare, as it would be to require an examination in English and a license before permitting a man to make a speech. Some tentative steps toward licensing journalists have been taken or proposed in Illinois, Pennsylvania, Oklahoma, Washington, and perhaps other states, but the suggested requirements have mostly been either needless, impractical, or harmful from the standpoint of public policy.

Will reform come through an improvement in public taste, and ought we therefore to bend our energies toward elevating the general mental and moral level? That is easy to preach and pleasing to the ear, but it is illusory. Improvement in public taste is a slow and uphill process as long as the flood of sensation and filth continues to pour from a certain definite source which itself cannot be reached by edifying in-

fluences. Additional fresh water cannot purify a river as long as a sewer continues to empty into it; the best that can be hoped is a certain dilution of the sewage.

Will reform come about automatically through decreased patronage of offending papers? We have had a century's experience with that process, and behold the results. How can public opinion punish or reform a newspaper when the only opinion that could affect it is the opinion of the peculiar class of readers to whom it caters, and whose patronage proves that they approve of its conduct? Can anyone doubt that in the year 1950 or 2000 there will still be millions who would revel in a Rhineland or a Browning serial news story, or that there will be publishers who for large profits will be ready to cater to their desires?

The evil of anti-social news of the three kinds under discussion—sensational treatment of crime news, unwholesome scandal, and unlimited handling of pending criminal cases—therefore is unlikely to abate either automatically or through voluntary efforts. It is not self-curing or even self-limiting, because the offensive practices are profitable, and because the progressive urbanization of the country will augment the market from which such profits are drawn. No effective pressure or suasion can be directed upon them. They are not likely to abandon their present methods voluntarily, and even if they did other less scrupulous publishers would promptly fill the gap.

The situation thus presents only two alternatives: either let events take their course, or resort to some form of positive regulation. The *laissez-faire* principle has been followed up to now; but with the continuance and aggravation of the evil, and with no slightest indication that it will abate, a distinct demand has arisen for positive regulation. If such a policy should take form, to what subjects would legislation be inclined to address itself, and where would such action be most practical, most salutary, and open to the least objection? In answering those questions the press can exert a profound and highly constructive influence.

IV.

Let us now consider more particularly the three outstanding kinds of anti-social news, and the demands for regulation which they have prompted. To repeat, the three principal charges made against the press from the standpoint of the social and moral welfare of the public are:

1. The degrading moral effect caused by printing unwholesome details of crime, divorces, scandals, and sex stories.
2. The crime-producing effect of sensational publicity in criminal cases, through arousing sympathy or admiration for criminals.
3. The direct interference with the due administration of justice through the unbridled treatment of crime stories, both before and during trials.

I have stated these charges in the inverse order of their importance from a sociological standpoint, but in the order in which I believe they rank in the public mind. The reaction of the public is natural—first to evil influences affecting children and home life; second, to those affecting public order and security; and lastly to those specifically affecting the actual mechanism of legal prosecutions and trials, the operation of which is only vaguely understood by most persons and its vital importance only imperfectly realized. The first and second evils, though they operate more strongly and directly on the public mind, are intimately bound up with the third. Therefore they are of especial interest because in a degree they may serve as the avenue whereby the public will approach the more definite and vital problem of the administration of law. That is most important of all, because it affects the public most profoundly, because it can be dealt with most feasibly, and because its solution would automatically mitigate the first charge and virtually dispose of the second.

Taking up, then, the first of the three charges—morally unwholesome matter—, it is not necessary to spend time building a foundation of fact. That there is an excess of such matter in a great many papers, even of the better class, and that some papers carry it to preposterous extremes, is self-evident. Certain nauseating cases of the most exaggerated character are too recent to call by name. The charge is controverted by few. It is uttered, repeated and urged—often with extreme harshness—by almost everyone that discusses the press at all, including critics of all types, the general reading public, and the newspapers themselves. Any frank defense of this practice in its more extreme forms must be very rare indeed; though I recall that one tabloid editor had the temerity to make such a defense in a magazine article. The rest of the profession almost unanimously shows its disapproval in some manner—by condemning it and refusing to use it; by condemning it and making only sparing use of it; by using it reluctantly under stress of competition, and not infrequently at the same time making some manner of explanation or apology.

I will content myself with one quotation of editorial opinion. In the law of evidence an "admission against interest"—that is, an admission made by the party to a suit that is clearly against his interest in the litigation—is deemed of high probative value. A striking example of that sort of evidence is afforded in the declaration of *The New York Daily News* apropos of the Browning trial, in which it not only recognizes the evil and pleads guilty to participation, but frankly demands regulation. Says *The Daily News*:

In this Peaches-Daddy Browning trial some of the publications reporting it have gone so far beyond the line of decency as to seem insane. * * * * *The News* also has gone too far. But the point is this: As long as there is more money in more smut, some theatrical manager will go a step farther than before. And so long as there is more newspaper circulation in more smut, some presses will be found to roll out the smut. Some unusually ruthless manager or editor leads the parade toward smut's farthest boundary line. The others—or many of the others—follow. They may follow reluctantly, but they do follow. Editors are people, and all people will do things under the stress of competition which they will not do ordinarily.

We see no end to competition in New York's newspaper field. Hence we see no end to the smut parade unless the authorities intervene. We hate the suppression of free speech. But unless the minds of the children of New York are to be drenched in obscenity, it seems to us that a censorship of the press, as well as of the theater, must come. The censorship, of course, should extend only to matters of common decency. Free speech as to public affairs must remain as free as now. * * * *

These suggestions will at first seem radical to other publishers. But we believe if they give the matter thought they will see that such a censorship would not bother the papers that wish to stay within the bounds of decency. It would restrain only those that wanted to go beyond. And in the long run even these would profit from being held in check.

Though censorship is often mentioned, as in this editorial, the demands for moral reform in press methods are generally vague, because the subject bristles with practical difficulties. By comparison, the regulation of general crime news is a simple problem. It would be quite feasible to make our newspaper conform with the English standard as to the scope of permissible crime news; standards could be defined and enforced. On the other hand when we attempt to deal with matter from the standpoint of morality and taste, we confront the lack of definite criteria. Whether it be a question of censorship before publication or of prosecution afterwards, the decision in any given case must be a matter of opinion; and there is a great diversity of opinion, even among those of the best motives, as to what should be printed and how a story should be told. The use of pictures complicates the problem still further.

Censorship in advance of publication is something that most publishers cannot conceive of as tolerable—unless, like the New York Daily News, they welcome it in desperation as a *pis aller*. Even prosecution after publication would depend on the discretion of officials, it would be influenced by their fear of the offending newspaper, and it would be vitiated by politics, and it would suffer from all the abuses and absurdities of trial by jury. Its results at best would be capricious, and in the end it probably would be ineffective.

One modified form of censorship might be considered—giving a judge power to forbid publication of such details or phases of the evidence as he might designate in cases involving immorality. This power properly used, would accomplish the desired results, as far as court trials are concerned. No public interest would suffer because such cases are of a personal nature involving very rarely any matter of genuine public importance. If sometimes the public interest might conceivably be served by printing such details, in the overwhelming majority of cases it would better be served by their suppression. Such a measure of regulation, however, would not affect the publication of unwholesome news other than from court proceedings.

At one point this problem of immoral and scandalous matter presents a particularly definite and practicable point of attack—the reporting of divorce cases. English law already has dealt with that subject stringently in the Judicial Proceedings Act of 1926, by restricting reports of divorce to a brief statement of the nature of the proceeding, the names of the parties, the grounds on which divorce is asked, and the decision. Such a law is workable, and its enforcement involves no official discretion. Its social value, however, cannot yet be safely appraised. The new law is said to have caused an increase in the number of divorce cases, by relieving the parties of the odium of the former excessive publicity. Granting the truth of that assertion, it might still be argued that a larger number of divorces at the worst involves a limited number of persons, and that it is a lesser evil than a flood of demoralizing news that contaminates the minds of the whole public.

The fact that this particular form of morally unwholesome news—the most definite and regulable of all its forms—should present such uncertainties illustrates the extreme difficulty of the problem as a whole. The same English statute also forbids broadly the publication of details of any court proceeding calculated to injure public morals, but I do not know how effective it is proving to be.

V.

The second widespread charge against the press—crime-producing news—is prompted by the very general belief that a flood of detailed crime news, treated with high color and sensational methods, and often in such a manner as to heroize the criminal, tends to incite youthful and ill-balanced minds to crime.

Though supported, in my own judgment, by a strong preponderance of opinion, that proposition is frequently challenged. Few question the bad moral tendency of obscene matter, but there is a considerable body of apologists for the free and unlimited reporting of crime news who deny that the reading of such matter encourages the commission of crime. That it does have that tendency, however, is a conclusion supported by the consensus of a very large number of persons whose positions qualify them as experts—such as judges, prosecutors, police officers, wardens, probation and parole officers, educators, clergymen, social workers, and persons having to do with juvenile delinquents. It is supported also by a large number of editors and publishers. As in the case of morally unwholesome matter, many editors condemn it, many curtail it and play it down, while others print it reluctantly, pleading the force of conditions beyond their control. I feel sure that many would welcome some form of

regulation by law that would relieve them from the necessity of competing in that regard with less scrupulous newspapers.

While the extent of such suggestion and incitement will always be debatable, the suggestibility of crime seems itself to be a fact beyond reasonable question. If not, then advertising is all a delusion. Without discussing it at length, I may suggest a few simple tests:

Would you like to have your bank clerk read news stories telling in sensational detail how cleverly checks were raised and the defalcations successfully covered for years by false entries?

Do you play up in your paper news of libel suits against other publishers?

Do you play up suicides and specify the kind of poison used?

Do you print news of threats against the life of the president?

Do you not handle with especial care any story of a run on a bank?

If you have children, do you not find a sensational kidnaping story somewhat disquieting?

The arguments for the suggestibility of crime are so clear that the advocates of unlimited publicity often resort to a plea in confession and avoidance; without denying the main assertion, they point out what they contend are collateral advantages from such publicity. They say, for example, that the odium of such publicity is a deterrent; to which the answer can be made that a very large number of criminals enjoy it beyond measure. They say that it aids in the apprehension of criminals, sometimes quoting prosecutors or police officers to that effect. There is, however, almost unlimited testimony from the same kind of officials to the opposite effect—that such publicity is an aid to criminals and a great hindrance to the police. They say the public demands it; which is not an argument at all as to its usefulness or moral value. They say it tends to warn and protect honest people; if so, life and property ought to be extraordinarily safe in the United States, instead of less safe than in any other of the leading nations of the world.

The real reason for publishing excessive and sensational crime news is the fact that a part of the public likes to read it, and newspapers compete with one another in furnishing marketable wares of this kind just as some of them do in purveying morally unwholesome matter. It is one more example of an evil competition which tends to drag down the better papers to the level of the least conscientious, and to drive unscrupulous ones to the most pernicious lengths. If that competition were removed the former could afford to do right and the latter would have to.

To forestall any quibble over words "crime news," such as I have seen in discussions of this subject, let me make it clear that what I refer to is not the legitimate news of the commission of crimes, properly told, but the sensational and exaggerated manner of presenting such news. The idea that news of crime should be suppressed is utterly erroneous. That would keep the public in the dark as to the conditions of the world in which they live. It would deceive the reading public almost as much as the publication of false news. It would aid criminals and hamper the law. The objection does not lie against news of crime—not even of the most repulsive crime; for even the worst crimes can be reported in a decent and constructive manner. The objection lies against the sensational and demoralizing treatment of such news—the exaggerated detail, the lurid color, the interview, the pictures, the sob-stuff, the heroizing and martyring of criminals, the grewsome and revolting incidents, the faked articles attributed to criminals, and the ineffable rot that is turned out under the names of "special writers."

This fault of the press, like the other two under discussion, is nothing new; it was equally evident back in Wilmer's time, and as strongly condemned. From that fact we can see that it is not curing itself. Like the others, it is not a self-limiting

evil, nor one that can be cured by higher standards of journalistic practice, or by codes of ethics, or by an improved public opinion, or by high-grade papers driving the sensational ones out of business—all for the same simple reasons that the evil itself is profitable to certain papers, that it will remain so, and competition will continue to force other papers more or less into the same practice.

This long experience, with the evil unabated and if anything increasing, has led to a widespread and vigorous protest from the thoughtful part of the public. That protest, however, is difficult to translate into action and one hears few definite suggestions as to regulation. The spirit to regulate is there, but those who demand reform have not yet envisaged the problem in its full scope. That scope involves a third phase, correlative and intimately related with the first two, and even more important than they. In that third phase, which I shall next take up, will be found the opportunity for the most important of all reforms affecting newspapers and the administration of justice—and one that incidentally will largely dispose of the problem of crime-making news.

VI.

Direct interference with the administration of justice through the unbridled treatment of crime stories, both before and during trial—that is the third and the gravest charge made against the newspaper press. The general effect of such matter upon the public mind and morals is indefinite, and from some angles debatable; but its specific effect on court procedure is direct, definite, tangible, and infinitely serious because it goes to the very root of law enforcement. Upon efficient law enforcement, and the regular and independent operation of the courts, depend the safety of our life, our property, our rights, our liberty and in the end the destiny of our government.

It is not too much to say that the strength, permanence and integrity of government depend primarily upon the effective operation of the machinery of justice. That has been conspicuously true of England. It is, and will be, still more true of this country, where so many important matters are entrusted to the courts which in other countries would be left to administrative or legislative action. More than any other nation, we are governed by courts. England's national strength and her ability to pass the most trying crises depend in large measure on the integrity of her courts, their independence, their honesty, and the very high degree of confidence that they inspire in all classes. In America, where we live under written constitutions and give the courts the power to construe them, the necessity of such prestige and confidence is even greater; and it cannot be doubted that their standing has become grievously impaired by the deplorable weakness of the law in dealing with crime.

Opinions differ as to the extent to which the press is responsible for the extensive breakdown of criminal justice and its patent inferiority to that of England. That result certainly is not all due to the press; but just as certainly it is due in large measure. If I were to pick out the greatest single evil in our judicial system I should point to the popular election of judges for fixed terms. Next to common honesty, the most important characteristic of a judge should be independence. He ought not to be beholden to any person or group—neither by any sort of political mandate, nor through fear, through gratitude, nor through a sense of possible benefits to come. All such influences and motives tend to impair the independence of the bench, and making judges elective invites precisely those influences and those motives. A judge must be a moral superman if he is to remain genuinely independent when he is compelled at regular intervals to enter a political campaign in order to hold his position—perhaps in a constituency where the vote is close, where rivalry is keen, where evil influences are strong or even dominant.

Life tenure of office is the sole means to insure such independence, and when we

departed from the English system in that respect the decline of our state courts began. That decline would have been marked, even if the attitude of the press had been ideal; but it has been greatly hastened and aggravated by the unrestrained license with which the press treats all judicial, and especially criminal, proceedings. That treatment not only directly interferes with justice in the case at bar, but tends to discredit the whole judicial system and still further to diminish the independence of the courts.

Obviously the exploitation of evidence in a criminal case—and still more the exploitation of rumor, suspicion, and inference, the distortion of the picture through sensational treatment, and the dragging in of countless irrelevancies—makes it vastly more difficult to get a fair and intelligent jury. It makes a proper verdict much less likely, even when a fairly good jury is obtained, because inevitably a jury is strongly affected by the mental atmosphere of the courtroom and of the community. The judge himself cannot always be presumed to be impervious to that subtle and potent influence—or always to forget that he must presently go before that same public and beg it to continue him in office, when perhaps his fate will depend upon the favor of the very newspapers that are making his court procedure a farce.

The ideal of a court trial is a procedure unaffected by extra-legal influences—a procedure directed by an independent judge, and in which the jury hears and decides the case upon legal evidence alone. The practice that prevails in a large part of our state courts is the very negation of that ideal. The accused is prosecuted by a politician before a political judge, and the formal evidence presented to the jurors is only the finishing touch on a picture already painted in heavy colors on their minds through a flood of newspaper publicity before the trial began—a picture made up of all kinds of evidence, true and false, relevant and irrelevant, of sensational and emotional effects, of editorial opinion, and of the popular prejudices that inevitably result from such publicity. Trial by newspaper has largely supplanted trial by law whenever the circumstances of a case are such as to render it attractive material for the sensational exploitation by newspapers. In the words of Clarence Darrow:

Trial by jury is rapidly being destroyed in American by the manner in which the newspapers handle all sensational cases. I don't know what should be done about it. The truth is that the courts and the lawyers don't like to proceed against newspapers. They are too powerful. As the law stands today there is no important tribunal case where the newspapers are not guilty of contempt of court day after day. All lawyers know it, all judges know it, and all newspapers know it. But nothing is done about it. No new laws are necessary. The court has full jurisdiction to see that no one influences a verdict or a decision. But everyone is afraid to act!

Trial by newspaper has always been recognized by sound thinkers as thoroughly evil. I have never seen a defense of it from any source that would command even a modicum of respect for wisdom or impartiality. Yet we are still afflicted in an increasing degree with an evil that has been an object of continual protest and warning for a century. To quote again from the quaint but instructive book by Wilmer printed seventy years ago:

I assert that the newspapers of the United States unwarrantably interfere with the administration of public justice; that they make it impossible for any man charged with a criminal offense to have a fair trial; that they have often caused the most desperate offenders to be acquitted and turned loose on society; and that many innocent persons by their unwise or malicious meddling, have been brought to condemnation and punishment.

And again:

The fate of any man charged with a criminal offense is generally decided by the

newspapers, even before the grand jury has found a bill of indictment. The imposing ceremonies of a criminal trial are little more than a melodramatic performance for the entertainment of the spectators.

It is impossible, in any criminal case which is tried in the United States to procure an unbiased jury. * * * * In the case of Polly Bodine (a woman charged with an atrocious murder), among six thousand men who had been returned on jury lists, no twelve could be found who were not unduly biased and therefore unfit to try the case upon their oaths. * * * * And I now assert without any fear of contradiction that the action of the newspaper press makes the trial by jury, "that principal bulwark of our liberties," not merely worthless in criminal cases but absolutely dangerous. I do not hesitate to declare my belief that unless some other remedy for existing evils can be found, the trial by jury ought to be abolished.

The optimist, or his antipode the cynic, might say, "They talked so then and they talk so now; why so much concern over such an ancient and chronic criticism?" It would be equally logical to say, "Why so much concern over an old ulcer that the patient has been complaining of in just this way for twenty years?"

The important point is that trial by newspaper is a disease that does not cure itself. For a century it has continued, changing in manners and methods but unchanging in its effect upon the administration of justice. The practice of the majority of papers has improved, but that is offset by the rise of a new class of sensational papers whose offenses are worse because of their greater circulation, their improved mechanical facilities, and the influence they have upon the press of the entire nation. What with the spur of direct competition in the large cities, the competition of metropolitan and small-city papers, and the standardization of smaller papers through telegraph and syndicate services colored by metropolitan ideas, that influence will certainly continue and perhaps increase. There is no reason to believe that the situation will improve perceptibly in ten years, or fifty, or at all.

These conditions have led the public to seek escape in two directions. On the one hand we see a tendency to recognize that jury trial has been spoiled and to get rid of it. This spirit of surrender is reflected in the increasing use of arbitration in civil disputes and in the workmen's compensation laws which at one stroke have eliminated juries in a vast number of civil cases. Some states are giving judges more power to control trials and to comment on the evidence. Even more striking is the growing practice of permitting accused persons, even in capital cases, to waive trial by jury and the fact that the very defendants for whom trial by jury was once supposed to be such a sacred right and priceless boon are willing in so many cases to renounce it. Nearly three-quarters of the criminal cases in Connecticut are said to be thus tried, and nine-tenths in Maryland. A similar law has been enacted in Michigan, and though it is less than a year old a number of persons already have been tried without a jury for grave crimes, including murder. Trial by jury is gravely discredited in the United States. The atrophy of the system is visibly proceeding, and that process will go far unless its dignity efficiency, and prestige can be restored.

On the other hand we see public dissatisfaction and alarm expressed in a desire to regulate the interference of the press with the machinery of the law. That demand is not yet a clear and conscious popular demand. Popular protest is directed more against what the public can see more clearly—the moral effect of sensational crime publicity, its tendency to encourage crime, and its general and indirect influence against law and order. The public at large has not yet put its finger on the focal point of infection—the direct effect of journalistic license upon the actual mechanism of law enforcement—but in its groping it has approached that vital spot and surely will reach it before long. When it does, an imperative demand for legal regulation of that abuse seems inevitable.

VII.

Such regulation is accomplished in England through the application of the law of contempt of court, which is applied so rigidly as virtually to prevent the exploitation of evidence in criminal cases before trial, and to confine the news of trials to a fair chronicle of actual proceedings in open court. For the obvious reason alluded to by Clarence Darrow, there is little to hope for from that method in America; elective judges dare not enforce such a policy. In many states the law of contempt would now permit judges to regulate such publicity almost as rigidly as it is done in England, but the law is invoked only rarely and in the most aggravated cases.

Even then, every case of punishment of an editor arouses a storm of criticism in the press and is very likely to be dragged into local politics. We often hear newspapers demand that judges should be deprived altogether of the power to act except in cases of direct contempt committed in the court's presence, and that indirect contempts should be dealt with by the inefficient and discredited method of trial by jury. Not appreciating the grave issue of public welfare that is involved, and blind to the rising tide of public sentiment, many editors take a reactionary position which can tend only to increase the price that the press must pay on the day of reckoning.

With no possibility of change through the action of the courts themselves, and with no likelihood of change through voluntary reform or the pressure of public opinion, the American people must choose between two alternatives: either leave the perversion of judicial procedure to the discretion of the least scrupulous part of the press, or regulate it by legislation.

Regulation by legislation, if effective, would have to accomplish the same general results that are accomplished in England by the action of the courts themselves, for the result sought is precisely the same—freedom of court procedure from extra-legal interference. An ideal system of administering justice would demand the following policies affecting the press:

1. When a crime is committed newspapers should be free to relate all the facts and circumstances of the crime itself, but without adding any editorial conclusions or inferences as to who is guilty. This freedom should extend to publication of the names of persons arrested, and descriptions of persons for whom warrants have been issued and who cannot be found. Full publicity within these limits tends to the furtherance of justice and aids in the apprehension of prisoners.

2. After a prisoner is formally charged with the commission of a crime and held to trial, there should be no publicity bearing upon the question of his guilt or innocence. Publicity should be confined to the nature of the charge and the proceedings actually taken. There should be no exploiting of the personality of the accused, whether such exploitation be favorable, unfavorable, or neutral. There should be no interviews with the prisoner or his lawyers, with the prosecutor, the police, or any witness, touching the question of the prisoner's guilt or evidence to be produced.

3. At the time of trial newspapers should be free to print a straight narrative of the proceedings in open court, either verbatim or condensed. It is impractical to try to put a limit on the length or fullness of such reports, but they can and should be confined to a straight colorless narrative—no feature stuff by "special writers," no interviews or alleged character studies, no statements that the "defense scored heavily" or that the prosecution "dealt a crushing blow to the alibi theory"; in short, the elimination of all bias, editorial comment, and dramatic effects.

4. After the termination of the case by acquittal or conviction, interviews and comment on the evidence are proper; because fair criticism on the action of judges and juries is necessary from the standpoint of sound public policy.

The limitation as to discussing evidence and expressing opinions as to guilt before definite charges have been made, might admit of an exception in cases involving official misconduct or unfitness to hold public office. It is necessary, in the public interest, to preserve the right to make public accusation of misconduct in such cases, both to inform the public and to force official action when the proper authorities fail to move. Newspapers therefore should be free to deal with such cases without any restriction except the ordinary liability for libel in case their assertions are untrue.

Such a policy of regulation as I have just outlined looks to the one end alone—the prevention of interference by the press with the administration of justice. It does not take account of the indirect effect of crime publicity on law and order or on morals. For example it would not forbid printing sensational and even revolting details of crime, so long as such matters could not affect a pending criminal case. Nor would such a policy prevent a nauseous flood of testimony during a trial, if it were reported without color. Nor, again, would it prevent the publication of scandalous and demoralizing news if unconnected with any crime or lawsuit. All such classes of matter, if regulated at all, would have to be dealt with from one of the other two public viewpoints—that of suppressing news that is immoral or crime-producing.

Proper regulation of news affecting court procedure, however, would automatically dispose of a large part, perhaps the greater part, of the other objectionable classes of matter—the morally unwholesome and crime-producing—the effect of which, at the worst, is in my opinion far less serious than the impairment of our machinery of justice.

Of the three classes of objectionable news that I have discussed, this third class—trial by newspaper—is most susceptible of definite regulation through workable methods. As matters stand, however, it is not likely to be the first point of attack if regulatory steps should be undertaken. Reform logically should begin with the system of justice itself, demanding that the courts should effectively protect their own operation and giving them the power to do it. That, however, will be slow to come because of the tenacity of ancient prejudices, distrust of authority, and the power of demagogic argument upon uncritical minds. In the present temper of the public, trial by newspaper is a more natural point of attack. The people will be more willing to curb it by specific legislation than to let judges deal with it. Even so, however, and in spite of its paramount importance, public opinion is more likely to concern itself first with immoral and crime-producing news.

VIII.

In the foregoing survey I have tried to emphasize the fact that an increasing flood of criticism is directed against the press, and to point out the three lines of criticism that have the most justification and which are most likely to lead to legislative action. What will that action be, and what ought it to be?

I am not undertaking to treat that question definitely. The important point that I am trying to make is that in this whole matter the press of America today is under fire. It is distinctly on the defensive, and it would be self-deception to refuse to recognize the fact that we are within measurable distance of some form of legal restraint. While the sentiment in favor of such action is largely inchoate and indefinite, it is earnest and widespread, and I believe more serious than the press itself realizes.

Newspapers as a rule deprecate any interference whatever. They eloquently defend what they conceive to be the freedom of the press, and utter solemn warnings against any curtailment of that freedom. But let us not make the mistake of identifying the voice of the press with public opinion on that point. Journalistic opinion has

the floor; in fact it has almost a monopoly of expression in print. But the opposing current of public opinion, though less articulate, is positive—and it is not as many of the newspapers would like to mould it. The shibboleth “freedom of the press” does not electrify the public as it does the editorial mind. Instead of worshipping it, the man in the street regards it critically. Instead of being horrified at the thought of its curtailment, he receives the suggestion calmly; he isn’t sure but maybe it would be a good thing; perhaps even he demands it. The press and the public are not a unit in worshipping the same gods.

Even the word “censorship,” so sinister to editorial ears, does not make the public shiver. The people acquiesced in censorship of news during the war, their complaints being directed only against its methods and quality and not against the idea itself. A considerable body of opinion favors censorship of the stage and screen. The public looks on without concern when publications are in effect censored through being excluded from the mails by the Postoffice Department, or driven from the news-stands by the police. The public is not doctrinaire; it is very pragmatic. It looks to what it wants, or what it objects to, and seeks to reach the desired end by the shortest cut.

While the public, if clearly informed, would undoubtedly disapprove a press censorship in the strict sense of the term—subjecting matter to scrutiny and editing previous to publication—yet there can be little doubt that a large part of the more intelligent public today would be quite willing to see the excesses of yellow journalism curbed by law. The thought is not abhorrent nor terrifying. It is not even new. Long ago a federal law forbade the publication of lottery news. State laws have been passed forbidding advertisements of intoxicants, of matrimonial offers, of treatments for certain diseases and more recently of racing news. Obviously public opinion in America has recognized and definitely approved the principle that it is proper and expedient to forbid the publication of any class of matter that it deems anti-social. In England, where similar legal and political traditions exist and where the processes of public opinion are similar, the details of divorce actions, and immoral news from other court proceedings, are suppressed by law as anti-social, the act having been approved by an overwhelming majority in Parliament. It is only a step from that to the curtailment of crime news, scandal, or any other excesses of the press which the public may deem prejudicial to morals, public order, or the administration of justice.

That step is quite likely to be taken, in some form, unless by some miracle the existing provocations should cease. The power of the press to avert it through argument may be less than we imagine. The truth is that there is not much new that the press can tell the public on that subject. The newspapers have been preaching freedom of the press for a century, and the public is fully informed both as to the theory and the practice of that freedom. If the public decides to curtail in some respects the liberty of the newspapers it will be acting open-eyed and advisedly.

Should the possibility of such action be regarded as a peril—something to be fought off if possible, and endured as a calamity if it comes? I think not. To me it looks more like an opportunity—an opportunity to accomplish something sound and constructive alike for the press and society. Public opinion as yet is without any definite objective; there is only resentment, protest and a demand for reform. The public knows the situation is wrong, believes that it can be cured, but does not know which corner of the problem to take hold of. It will take hold somewhere, sooner or later, perhaps at the wrong place—very probably at the wrong place if it meets with nothing but opposition from the press.

We do not want the press to be hampered and confused by crude and experi-

mental attempts of forty-eight legislatures to regulate the general current of news. Above all, we fear the results of any attempt at censorship. Is it not therefore the part of wisdom for the press itself to try to canalize the current of attack and direct it to the spot where reform is most needed and most feasible—where the benefits will be greatest and the detriment least? Should we not welcome and co-operate in a wise effort to abolish trial by newspaper, a reform that is feasible and indisputably for the public benefit, rather than let the impulse of reform expend itself on the much more difficult and dubious problem of unwholesome and crime-producing news, where the results of the attempt would be problematical and perhaps gravely detrimental? By so doing the press not only would protect itself and perform a great duty, but at the same time the reform would greatly mitigate these other evils that are now more obvious to the public, more irritating, and more likely to provoke legislative action.

This seems to me to be the course not only of wisdom and expediency, but of courage and honor—the course that would be most consistent with the best traditions of the press and the highest conception of its mission. To lead, not to follow—above all not to be driven resisting into acceptance of a genuine reform—that is the only role befitting an agency that rightly lays claim to first place in public leadership and public service.

The Press and the Judiciary

BY EDWARD J. WHITE

Vice-President and General Solicitor, Missouri Pacific Railroad, St. Louis

. . . Ours is a country very largely governed by public opinion, and that public opinion is very largely created by the public press.

Therefore, those who write news articles or editorials should realize that they owe a profound responsibility to the public, and that it is their solemn duty to give to the public as near as lies within their power, "the truth and nothing but the truth." In the end this course will pay the best dividends. The newspapers that have the greatest influence are those that are known for responsible utterance, it matters not what the subject.

It should be one of the fundamentals of every journalist, as a good citizen, to maintain, at all hazards, the greatest loyalty to our Constitution and our flag. We only have to look at the wrecks of other governments and consider, by comparison, the individual liberty enjoyed by the citizens of this country to understand the basic obligation of all citizens to preserve our governmental institutions. Old William and Mary College, the second oldest in the United States, has established a chair of patriotism, and other schools and colleges would do well to emulate this example.

If our fundamental institutions are to be preserved, our universities and colleges must concern themselves with the patriotism of both the teacher and the student.

Liberty is the keystone of our Republic, and its sacred fires should ever be kept burning. Printers' ink and newspapers cannot be put to better use than to encourage patriotism.

We have lived to see the dynasties of China and the monarchies of France and Germany supplanted by republics. Freedom and ancestral laws are not a matter of material birth, but of right thinking and acting. It is as true today as when it was written in Proverbs: "Where there is no vision the people perish; but he that keepeth the law, happy is he." Through the law alone we enjoy our liberties.

Let your influence always be as protectors of the majesty of the law, which was thus extolled by the martyred Lincoln:

Let reverence for the law be breathed by every woman to the lisping babe that prattles on her lap. Let it be taught in schools, seminaries and colleges; let it be written in primers, spelling books, and almanacs; let it be preached from pulpits and proclaimed in legislative halls and enforced in courts of justice; let it become the political religion of the nation.

Why should this be the fixed object of the press? In the six thousand years since governments have existed upon the earth, our government is the highest ideal of society that man has yet conceived, and it is for you exponents of the press to help the courts maintain these institutions and not to tear them down.

And now we come to a matter which interests lawyers perhaps more deeply than anything else where the public press is concerned. All of us are aware that there has been a tremendous increase in crime in the United States during recent years, and especially has this been true since the beginning of the World War. As to what has caused it, this is a matter upon which men differ. Undoubtedly the demoralization which attends every war, the slowness with which our courts frequently act in the punishment of crime, and the automobile, which enables criminals to quickly disappear from the scene of their misdeeds, all of these factors must be taken into account.

That our newspapers have a heavy responsibility on this score I believe should be apparent to all thinking men, and if I owned a newspaper, or exercised a directing

vote in the policies of one, I would instruct my reporters to give as much prominence to the punishment of crime as to its commission. Too often when a crime has been perpetrated, newspapers will announce the fact in flaring headlines on the front page, but when the criminal is apprehended or punished, this fact is less conspicuously announced. On this score publishers and reporters should ever bear in mind that every news story about a crime is read not only by normal, law-abiding men and women, but by hundreds of criminals, or youths who stand on the thin border-line of crime, wondering whether to cross that line or not—and thus when the successful exploits of criminals are told conspicuously and in glowing phrases, while the punishment of crime is minimized, such a policy is a tremendous incentive to crime. Time and again the inquisitions of our police departments and court records reveal the fact that youthful criminals started upon their careers by reading the exploits of other criminals in the public press. In my opinion it should be the deliberate policy of every newspaper in the nation not only to emphasize the apprehension of the criminal and the punishment of crime, but to point out to the youths of our land that “the way of the transgressor is hard,” and that an honest and clean life leads to the greatest happiness in the end. If there are those who will insist that this is impractical idealism, my answer is that whenever a business or profession becomes so practical that it does not subserve good citizenship, then it is a liability rather than an asset to society.

Many journalists make the driest facts seem interesting, without the slightest sacrifice of truth, and they are deeply conscious of their responsibility to the public. This is a God-given talent which a thoughtless public may not appreciate, but which gives such a journalist rank beside the poet who breathes beauty into the commonplace things of life, or the artist who helps to see the soul that shines forth from the face of a washerwoman or an humble toiler in the fields. Such journalists are indeed the advance scouts of civilization, for while outwardly appearing as impartial commentators, they are in fact subtle directors of public opinion. Sometimes I think such journalists wield a greater influence than the statesman who toils like a Titan in the halls of state, or the grim commanders of the battlefield. They appear to follow and yet they are daring mariners upon an uncharted sea, seeking havens of peace and safety.

In the great crime wave which is now spreading over our country, there has been much criticism of the press and the courts. These important institutions should have a common understanding.

One of our leading magazines recently presented a discussion between those socialists who contend that “a rich man cannot be convicted of crime,” and those sober, loyal adherents to our institutions who believe that rich men, the same as poor men, when they are brought before the bar of justice, will be convicted where they are guilty of crime.

The convictions of Leopold and Loeb and of Forbes would seem to sustain the proposition that a rich man *can* be convicted in our modern courts, while the recent miscarriages of justice in the cases of Fall, Sinclair and Remus present, to say the least, a sad commentary upon our jury system. A few more cases like these, and the time-honored institution of the jury system that has evolved through the ages from the old procedure of trial by combat, trial by ordeal and wager of law, will be thoroughly discredited.

This is due, in large measure, to the fact that, under our American system, the jurors are the exclusive judges of the facts. At common-law and under the English system, and in the federal courts, the judge is permitted to interrogate the witnesses and comment on the facts. This is not true in most of the state

courts, and, under a recent bill which has passed the Senate, it is attempted to abolish this ancient and wholesome prerogative of the common law in the federal courts of this country.

If this should become the law, then the trial by jury will become even less efficient than at present, and, with the experience of future years, it may be that this will result in the passing of the jury system.

Similar results to that of the Sinclair-Fall trial are taking place all over this country, and these results are due, in large measure, to the dramatics of the courtroom, the influence upon juries, and the effect of outside influences, which do not affect the judges as they do the juries.

As administered in Great Britain and her colonies, where the judge adheres to the common-law traditions, and not only lays down the law, but also discusses the facts in detail to the jury, the institution of trial by jury has not fallen into public disfavor as it has in this country, but the majesty of the law is respected because of the judge's potent influence in jury trials.

With this object lesson before us, it is to be regretted that Congress would think of abolishing the judge's influence over juries and enlarging upon the mistake which has been made in America in the past, of emphasizing the importance of the jury and minimizing the prerogatives of the judge.

The recent action of a committee of the New York Bar Association, in recommending the amendment of the Constitution of New York, in order to permit the abolition of jury trials altogether in civil and criminal cases, is more in keeping with the demands of the times than the Act of Congress which has passed the Senate.

With the recent oil scandal in the foreground, and the failure of the jury in the Sinclair case to realize the gravity of such attempts to undermine the foundations of our government through bribery, the question may well be raised: "Is the time-honored institution of the trial jury adequate to meet the demands of our modern civilization?"

The dissemination of news of crime and scandal by the press has been the subject of agitation by publicists and criminologists, and the indictment has been leveled against the press that it is an inciter of crime.

The eminent criminologist Lombroso makes this general charge:

Civilization, by favoring the circulation and dissemination of newspapers, which are always a chronicle of vice and crime, and often are nothing else, has furthered a new cause of crime by inciting criminals to emulation and imitation.

Following this general charge, Lombroso cites the fact that a crime committed by one Troppman in France raised the circulation of the *Petite Journal* to 500,000, and then he concludes: "It was doubtless for this reason that this crime was imitated almost immediately in Belgium and Italy."

In modern times we have had repetitions of the terrible crimes committed by Leopold and Loeb, and Hickman in other sections of the country; yet we do not think the press can be held responsible for these felonies.

Hans Gross, in his *Criminal Investigation*, stresses the effect of the principle of suggestion and concludes that the press should give more attention to the problem of apprehending the criminal and the publication of the conviction of criminals, rather than giving the place of honor to the sensational reports of crime. This is largely the conclusion of Tarde, the most forceful exponent of the doctrine of imitation, and of Aubry, Ferri, Parmelee and other criminologists. Parmelee also discusses the effect of the press and public sentiment upon the courts and juries. He minimizes the effect of crime news, and Healy does not give news reports of crime as a serious cause for the crime epidemic. He says: "In no single case can we in the least show

that the reading of newspapers was a strong cause for criminology," and he concludes that: "Most criminal careers begin before there is extensive reading of newspapers."

While minimizing newspaper suggestion, Healy deplors the "pernicious printed story," particularly as it contributes to the moral breakdown of young men and women in sex affairs, and acknowledges that the "black-hand" schemes are furthered and promoted by the suggestion received through the press.

Havelock Ellis, as the result of his investigation, states, regarding "The Criminal":

There is unquestionable evidence to show that a low-class literature in which the criminal is glorified, as well as the minute knowledge of criminal acts disseminated by newspapers, have a very distinct influence on the production of young criminals.

He mentions the fact that "After the murders associated with the name of 'Jack the Ripper', several murders by young children took place throughout the country."

Dr. Frances Fenton, in a recent thesis, has made a careful study of the effect of news suggestion as bearing upon the crime wave, and a recent commentator upon the effects of news upon crime, in one of our leading law journals, has criticized Dr. Fenton's qualitative analysis in that her conclusions depend upon too many complex situations which are affected more or less by the varying percentages of news types used. This author condemns the "vicious streamers and heads in the report of crimes," the "one-sided story," the "playing up of suicide stories and executions," anything that could be construed as "hero worship of the criminal," the "flippant reporting of court activities," and criticizes any newspaper report that tend to "the break-down of our institutions."

He then concludes as follows:

. The news story of crime and scandal, when carelessly presented, or when presented in a deliberately sensational fashion, pollutes the whole stream of the news. It should be axiomatic that the report of crimes should not scandalize the community where the newspaper is published; verbal pictures in the press should not result in vulgar sex appeals to the masses; a criminal should not be deliberately turned into a heroic figure worthy of being imitated by any imaginative youth. Tales of horror in the narrating of crimes should be avoided, nor should stories be published that result in arousing undue sympathy for the criminal or criticism of the courts.

Agitation of the question as to whether newspapers should publish crime news recently led to a public debate between the publisher of the Cadillac (Mich.) Evening News, affirmative, and a minister of religion for the negative. The debate was held Sunday evening in the Congregational Church at Cadillac. Each of the gentlemen reviewed the subject in much the same vein as it has been argued, pro and con, through the press. In addition to presenting the newspaper side of the question, the editor quoted considerable history, showing the alteration of the public view, and even of ecclesiastical attitude, in matters of free speech and the duties of the press. He also quoted from prominent church authorities and others whose labor in life is to reduce crime, indorsements of the value of complete publicity as a deterrent to crime. In spite of his able presentation of the case for the newspapers, however, a vote of the meeting resulted in a verdict of almost four to one for the negative. This vote of the meeting at Cadillac furnishes some evidence of the attitude of the public regarding the publication of crime news by the press; but doubtless all those who voted to suppress the publication of crime news read all such news items with avidity.

Unquestionably the publication of stories of crime frequently helps to apprehend the criminals. This was illustrated by the activity of the reporters of Chicago papers

who helped unearth the harrowing details in connection with the inhuman crime of Leopold and Loeb, and the western press also materially contributed to the recent arrest of Hickman.

We cannot believe that the circulation of news of crime is quite as extensive in promoting crime, as some of the criminologists would have us believe. We have a signal instance in the crime situation in the city where I live. St. Louis has the second largest percentage of crime to its population in any city in the United States. The recent survey of the Society for Criminal Justice showed that there were 13,444 felonies committed in the City of St. Louis in 1926, whereas there were only 964 arrests made for these felonies. Only about 7 per cent of the criminals were ever arrested at all, while the other 93 per cent or 12,525, were permitted to escape.

The *In terrorem* effect of the law is only noted where the law is enforced in specific cases.

In St. Louis, where we are not proud of our records for crimes, we have as careful and as conservative a press as you will find in any city of the United States.

Out of a total of 7,032 felony cases which reached the courts for the year treated by the recent Missouri crime survey, a total of 2,680 were sentenced, and, deducting those discharged on preliminary examination, the circuit courts took jurisdiction of 4949.

Over 50 per cent of those which reached the circuit courts in Missouri were convicted. This shows that, where we can get the criminal into court, the courts deal with him on a very satisfactory basis. It should be apparent to all that, in order to convict the criminal, it is first necessary to catch him.

Crime costs the people of the United States thirteen billion dollars (\$13,000,000,000.00) a year.

America maintains a police force of half a million to stand off two million criminals.

In this endless war, there are 12,500 fatalities each year.

At the present time, there are two hundred thousand persons who have been incarcerated by this police force because of crime, with another two million at liberty.

The newspapers which assume that the courts are to blame, and such social reformers as Richard Washburn Child, who advise that a remedy for the crime wave is to kill all the criminal lawyers, lose sight of the fact that the courts are not to blame for the 93 per cent of the criminals, as in the figures disclosed in the City of St. Louis, who were never arrested. The Missouri crime survey notes the general high character and ability of the trial judges of our state. The judges could not control the dismissals and *nol prosses* in the preliminary examinations. As Judge Turner White, of our Supreme Court, has said, in commenting on the report of the crime survey and the successful administration of the criminal law by the Missouri courts:

After they got control of the cases and began to function, this is what resulted: 2,680 convictions; jury trials resulted in 323 acquittals; 251 were disposed of by action of the court. That is a total of 2,680 successful prosecutions, and 574 successful defenses. In other words, the successes were more than four to one.

All thoughtful citizens should agree that this was a very good showing for our Missouri courts. The press should always indulge the legal presumption that judges and other public officers do their duty. The courts are necessarily governed by the axiom, *Audi alteram partem*. They are presided over by men who take pains to familiarize themselves with both sides of every case, and their particular function is to redress wrongs, to enforce the law, and while they proceed orderly in the trials of criminals, it is also their duty to see that the rights of the individual charged with crime are protected by the lawful safeguards.

With the courts justice should prevail though the heavens fall.

With the press, truth, the handmaid of justice, should obtain though the courts fall.

T. J. Dillon, editor of the Minneapolis Tribune, answers the critics of crime news in the press with the assertion that the value of crime does not consist so much in the crime, itself, as in the persons involved. He maintains that Lady Macbeth was just as much a criminal as Ruth Snyder was, but the interest of the one consisted in the fact that it was literature, while the other was a cold fact.

He admits that the press, as a general rule, prints not so much for the public good as for the commercial value of the news item; condemns the "holier than thou" attitude of the critics of the press, and quotes Bishop Butler, who maintains that:

Facts will be facts, and the consequences of them will be what they will be. So why should men want to be deceived?

Unquestionably the news regarding court proceedings should require special treatment. Mr. Untermeyer of New York has suggested the enactment of laws similar to those in England, prohibiting newspapers from publishing anything concerning a case in court other than a verbatim report of the proceedings; prohibiting newspapers from commenting either editorially or otherwise upon the evidence until after the final judgment, and forbidding, under fine and penalty, the publication of an opinion regarding the guilt or innocence of an accused person, either by the prosecuting attorney or the counsel for the defense.

Nathan W. MacChesney, speaking recently before the American Academy of Political and Social Science, advocated that press comments should be stringently limited to an actual report of the proceedings, without comment editorially or otherwise, and without comment from the state's or defendant's counsel.

On the other hand, the Cleveland Survey has taken the position that "newspapers cannot be coerced by legislation or by structural reform, and improvements must come from the voluntary acceptance and enforcement of standards of public duty in the presentation of antisocial news." The standards recommended by the Cleveland Survey are as follows:

1. Adherence to the rule that newspapers are to have no direct participation in the administration of criminal justice.
2. Formulation by the newspapers, in consultation with representatives of the police, prosecution, and the courts, of rules of practice governing the publication of evidence, before its actual use in public trials, so as to avoid possible embarrassment to the official detection of crime or to the impartial processes of law in the trial of cases.
3. Increased effort to make "stories" of criminal trials sober and informative reports of the course of a trial, giving a fair perspective, however brief, of the entire evidence presented in court.
4. Recognition of the fact, as the guiding consideration of newspaper practice toward treatment of "crime" matters, that the administration of criminal justice is most potently influenced by "public opinion" and that the quality and effectiveness of public opinion in its turn largely depends on the quality of the daily news column.

Perhaps the true course lies between these two extremes.

Certainly as Casper S. Yost in his recent excellent work "The Principles of Journalism," has so well expressed: "Freedom of the press is to be guarded as a vital right of mankind. It is the unquestionable right to discuss whatever is not explicitly forbidden by law, including the wisdom of any restrictive statute."

Freedom of the press was one of the subjects discussed by Jefferson in his first inaugural address, and we agree with this great patriot and the conclusion of Mr. Yost that freedom of the press from all obligations, except that of fidelity to the public interests, is vital in our free government.

It should never be forgotten, however, that the courts are the people's institutions, selected because of their judicial ability, experience, and knowledge of law. Newspaper editors and reporters are not qualified to perform the functions of the courts. This is illustrated by a noteworthy case decided by a great judge, the foundations of our liberties were being laid by the patriot fathers.

John Marshall, who was familiar with the blood-soaked records of English trials for treason, who had himself participated in the arguments of the Virginia constitutional convention and understood the reasons underlying the provisions of our constitution in the case of treason, which is the only crime mentioned in the constitution, in the face of public clamor, decided, as a matter of law, that the popular Aaron Burr was not guilty of the crime of treason.

Following this trial and the acquittal of Burr, the great Wirt was asked by a bystander, when the decision of the judge was being discussed: "Why did you not tell Judge Marshall that the *people of America demanded a conviction?*" His reply satisfied not only the highminded professional gentleman that he was, but the patriotic citizen as well. It was: "Tell *him* that? I would as soon have gone to Herschel and told him that the people of America insisted that the moon had horns, as a reason why I should draw her with them."

The judgments of the courts cannot always agree with the prevalent sentiment of a community. It is the prerogative of the courts to decide judicial controversies and this is not the province of the press. Our courts must always approach, as near as possible, to the Horatian ideal "of the just man who, firm in his consciousness of right, disdains with equanimity the frowns of a tyrant at the clamors of a mob."

No objection can be urged against legitimate criticism of any acts of the public officials, but there is a vast difference between fair criticism and abuse of the press which is calculated to bring the judiciary into disrepute. A court that would endeavor to render only popular opinions would indeed be a pitiable court to contemplate. The most sacred rights of persons and property would be without the guarantee they now enjoy. The enforcement of such rights would not depend upon a resolution thereof by those who know the right, but rather by those who know it not. A campaign of slander and abuse of the courts would do more injury to the station of the judiciary than years of earnest labor on the part of good citizens would be able to do.

Whatever is considered popular is not always right, and it is with right that the courts have to deal. The citizen's rights exist only by reason of the law. The press, therefore, should have a care before it discredits an independent judiciary. In France and Russia, during the revolution, a dependent judiciary bowed in submission to the wholesale annihilation of individual right, because such attacks were demanded by a wrought-up public clamour. Why not profit by such an example?

When the respect of the citizen for the courts ceases, then the usefulness of the courts is correspondingly impaired; hence it behooves the press at all times to maintain the respect of the citizen for this important branch of our government and national. The press should generally adopt the watchword of the bar, that "who would coerce the courts is just as much an enemy of the state as one who hauls down the flag."

If all the leading newspapers of our state and nation would stand contirmly for a due regard for law and for the courts, as the medium whereby it is administered, this would help, in large measure, to bring about a respect for the courts and solve the prevalent crime problem.

THE
UNIVERSITY OF MISSOURI
BULLETIN

JOURNALISM SERIES

Edited by

ROBERT S. MANN

Professor of Journalism

As part of the service of the School of Journalism, a series of bulletins is published for distribution among persons interested. All the earlier numbers of this series are out of print, so that no more copies can be distributed, but they may be borrowed from the University Library by any responsible person upon application to the University Librarian.

Those which are still in print may be obtained (free unless marked otherwise) by application to the Dean of the School of Journalism, Columbia, Mo. They are:

- No. 44. "The Newspaper and Crime," by Virginia Lee Cole.
- No. 45. "International News Communications," by Eugene Webster Sharp.
- No. 48. "Deskbook of the School of Journalism," ninth edition; revised, 1928, by Robert S. Mann. (Price 25 cents.)
- No. 49. "The History of Mexican Journalism," by Henry Lepidus.
- No. 50. "Missouri Alumni in Journalism," 1928 edition, by Helen Jo Scott.
- No. 51. "Newspapers and the Courts," addresses by Stuart H. Perry and Edward J. White.

