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## THE FOURTH ESTATE AND COURT PROCEDURE AS A PUBLIC SHOW

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HARVEY M. WATTS<sup>1</sup>

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The countrywide comment on what was considered as the astounding revelations of a report made, on February 27th, to the National Crime Commission by a sub-committee, headed by former Governor Frank O. Lowden, of Illinois, which dealt with the police, court procedures, pardons, paroles, probation, penal laws and institutional correction, curiously enough came at a critical moment when the country had been aroused as never before by the way in which offenders against society of the most unspeakable character, men and women murderers, had been practically treated as heros and heroines, protagonists in melodramas of a presumably entrancing character. This report of the Crime Commission concentrated its attention, for one thing, on the maladministration in the issue of criminal law brought about by the "Low average mentality among policemen, poor character of the minor judiciary, lax bail methods, irresponsible work of prosecuting attorneys, uncontrolled court systems, needless use of juries and lack of adequate criminal statistics." Naturally the comment of responsible and conservative newspapers followed the trend of the general indictment and editorials pointing out that odds favored the American criminal and that the uncaught and pampered criminal was a menace to the country echoed the logic of the investigators and was along the familiar lines of such indictments which have been presented before by the newspapers themselves and by other agencies not connected with the National Crime Commission. But, so far as this report went, it was made clear to many who were unfamiliar with the general situation that, as it has been well put, the country is confronted with the fact that

"The criminal may escape arrest: if arrested, he may jump his bail or may not be held by the police; if held, he may not be indicted; if prosecution be started it may be dropped; if tried, he may be acquitted; if convicted, he may be released under suspended sentence; if sentenced, he may gain acquittal or a lighter penalty through appeal and retrial; if lodged in prison, he may be paroled or pardoned."

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In fact two months before the report of the Crime Commission came out, the Philadelphia *Record* in an editorial on "Why Criminals Rely on 'American Justice,'" had noted that

"Miscarriage of justice in this country, through scandalous perversion of the criminal law and its administration, is a condition which grows more menacing as it becomes more familiar by repetition. No public problem has been more widely discussed in recent years or has inspired so much radical theorizing and experimentation.

"It is notorious that criminals have a diminishing fear of suffering the just consequences of their acts, because of defects in the elaborate machinery set up for their detection and punishment. They are emboldened by reason of their wide chances of escaping arrest and then of evading penalty through bail releases, legal delays, mistrials, inadequate sentences, appeals, paroles, pardons and the other multiple loopholes in the system."

However, in analyzing the factors that were the cause of this situation, the *Record* believed that responsibility lay "less upon police inefficiency and faulty legal processes than upon the American public" itself, as represented in the American public's "behavior in jury trials." And even after the report of the Crime Commission came out though there were all sorts of variations in the editorial comment as to the determining factors for the most part the opinions followed the lines that have been gathering force for years, taking the form of extremely vehement rhetorical objections to certain procedures in the various courts of the land dealing with murder cases of a socio-political or socio-psychologic nature, such as the Leopold-Loeb, Hall-Mills, Remus, Snyder-Gray, Sacco-Vanzetti and Hickman cases, for instance. All these editorials were quite justified, however, by other reports that came out at about this time from various bar associations, state and national, and the offices of district attorneys discussing the evils of straw bail and the universal range of gross perjury, and a certain dramatic touch was given to the situation when in the first week of March, a few days after the report of Governor Lowden's sub-committee came out, Chief Justice Von Moschisker of the Supreme Court of Pennsylvania, called a meeting of all the judges of the various courts of the state to meet in a common conference with the district attorneys of the state, in order to discuss and suggest remedies for all the factors contributing to the maladministration of the criminal law that had now taken on the seeming proportions of a public scandal.<sup>2</sup>

<sup>2</sup>As a result of this call a highly successful meeting of practically all the judges and district attorneys of the State was held in Philadelphia April 6-7, at which a number of important administrative reforms were suggested. The judges and the district attorneys, by unanimous vote urged the repeal of the

Moreover, as a certain academic background to all this, the judges and lawyers were awaiting with some interest the results of the special investigation into legal procedures instituted by the American Law Institute which report on the possible revisions of procedure has been under the general direction of William Draper Lewis, Professor Edwin H. Keedy and Dean William Mikell, of the Law School of the University of Pennsylvania, since 1923.

Curiously enough neither the Lowden report nor any of the reports issuing from legal circles and practically none from the newspaper circles took up for discussion a new and startling extra legal factor that has intruded itself on the familiar if indicted procedure of judge, jury and attorneys for the state and the defense, which factor has taken the form of certain scandalous and unethical members of the fourth estate arrogating to themselves the right to be considered as a fourth, though uncoordinated and irresponsible factor in all legal proceedings, to the undermining of the general newspaper morale, as well as hampering and interfering with the cause of justice through trial by newspapers before the cases come to trial, and, what is more significant, trial by this particular class of newspapers while the case is going on in the court room itself. That in a perfectly familiar, honorable, and even distinguished way in the past, newspapers have played an important part as ferreters out of crime as well as privileged recorders of events is, of course, well known. And that the more conservative and more honorable newspapers have continued to play what might be called a modest and proper, if wholly unofficial part, in all court proceedings in the interest of the community and common justice, is also a well known fact.<sup>3</sup> But what has not been so generally

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so-called Ludlow Act which, by allowing an indeterminate sentence, has brought it about that the minimum sentence, even in murder cases, has been automatically the good fortune of notorious offenders. And there was also a unanimous opinion that some law similar to the Baumes Law but fitting in with Pennsylvania procedure should be passed along with the clearing up of the stultifying confusion between misdemeanors and felonies, which are not properly classified as to the proper degrees of criminality in the present laws existing in the State. The judges recommended seven important changes in stiffening procedure in an endeavor to combat crime, and the district attorneys favored legislation permitting the decision of ten jurors out of twelve to stand as a verdict.

<sup>3</sup>In view of the indictment of the incompetency of the police and the detective bureaus by the National Crime Commission, attention should be called to the splendid work done by the leading papers of the country in the past in working out clues and running down the criminal in celebrated cases. Naturally, the editors and reporters representing a high level of trained intelligence have been able to succeed where the police fail and nothing can exaggerate the nature of the service to the community rendered by journalism in this particular. But it is to be remembered that this service in the past, and in the present in the case of the responsible newspapers, has been undertaken in an effort to help the state and protect the community, and, in the most striking examples, it never

recognized is that the new arrogation, the new intrusion, the new claims which have been set up, and which, as it were, would seemingly compel the courts and all officials dealing with criminals to recognize an extraordinary and anti-legal and anti-social extension of what are supposed to be the rights of newspapers, as part of the public audiences in courts, as well as recognized recorders of court procedures, is something that has been slowly developing within the last generation among the less creditable and the more wholly sensational and unethical newspapers and of late has come rapidly to a head in the behavior of the so-called illustrated tabloids, published, as has been wittily said, not only for those "who can't read" but for that section of the public that "can't think," but is perfectly willing to have its thinking done for it along the lines of an abhorrent morbid psychology.

This modern intrusion on court procedure has taken on a very physical as well as a professional form. The newspapers which are practicing this new technique not only go in for a perverse interpretation and a gross misrepresentation of court procedures, without scruples, but have demanded that they be allowed a personal and physical and semi-official part in the everyday court-room procedures, and, at the same time, claiming the right to exploit sensationally certain kinds of cases which appeal to the lowest and vilest imaginations and emotions of human beings. This intrusion has, moreover, been raised to the Nth power of a first class nuisance and grave menace through what, at the first aspect, seems a very innocent and simple thing, dating from the invention of the moving picture and the appearance of the news-reel photographers representing the great national moving-picture companies which force themselves on each and every and all functions of American life, public and private. This movie-reel intrusion again has intensified and quickened the development of the reportorial photographic squads of the newspapers, decent or otherwise, which began to figure in American journalism from the days of the invention of the half-tone (1893). Today in competition with each other and with the movie-reel people, an astounding state of affairs has been developed by the pictureizers of news which has not only added to the complication of life in general but particularly has added to the other weaknesses of court procedures in criminal cases, which professional or legal weaknesses the Lowden report discussed

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occurred to the reporters or the editors concerned that they should use their skill to locate the criminal only in an effort to exploit him, even protect him from the just desserts of his crime in order to print sensational inside articles or promote circulation by means of sympathetic stories detailed by the criminal or by his family, a thing which apparently is to become a not uncommon phase of tabloid journalism.

so freely and frankly.<sup>4</sup> For the consequence of this photo-squad intrusion is that the latest and most anti-social demands of the most extreme of the tabloids as to "their right" to play their part in any criminal case in and about the court and in the court itself, has taken on not only the form of a physical interference with court procedures but has led to claims and demands that are an extraordinary misinterpretation of the rights of the press—no one seems to talk of duties and responsibilities these days in any of these matters—to keep in touch with, even advise the worst of criminals and to report pictorially all procedures, to intrude in all jails, cell-rooms, penitentiaries and death chambers and set out by picture and pen everything and anything that they can privileged or non-privileged; and, and this is the crux of the matter, often in association with the typical shyster or great criminal lawyer, who, indifferent to his attorney's oath, is busily engaged in behalf of his client in interfering with every orderly and proper procedure and even in defeating the very ends of justice itself.

This abhorrent combination which in one phase or another has figured recently in any number of celebrated cases the country over, has brought it about that court procedures have become highly dramatized "shows," or "circuses" as the phrase goes, in which all questions of the guilt or innocence of the accused, or dignified procedure of the courts in great criminal cases, even in those wherein the guilt is not denied but is even brazenly admitted, are submerged and sacrificed for purely sensational purposes. These sensational purposes, largely a matter of circulation getting, vary in detail, since, sometimes,

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<sup>4</sup>Naturally wishing to stand well with their own community, newspaper photographers on the staff of the more responsible newspapers have been more or less self-restrained in the matter of intruding improperly on public and private individuals, but since the movie-reel people are not at all concerned about the feelings of "localities" they have carried the intrusions of photographers to an unrestrained degree of insolent audacity, which, in turn, has keyed up the local newspaper photographers thus brought into a fierce competition into doing things and, to their editor in allowing them to do things, if not ordering them, which a few years ago would have been considered most unjournalistic. Moreover it is becoming self-evident that the issue of the intrusion of news-reels and newspaper photographers on private life is a very much broader one than any phase of it which concerns their intrusion in criminal cases and has aroused all over the country the greatest resentment, since, in certain familiar cases in the life of public officials, the news-reel and newspaper photographers have forced themselves into the most intimate privacies even intruding at the grave-side, and, in the case of some of what are considered the more interesting phases of this intrusion, newspapers whose photographers were the greatest offenders actually have had the audacity, for partisan purposes, to criticize the public official thus intruded upon as eager for "pictorial publicity" when he and all others in like positions in the public life would be only too glad to be let alone.

those who are making a show of criminal cases by pen and picture, especially by pictures, faked or actual, are in favor of the conviction of the accused, while, at other times, they are rabidly for the defense. In the latter case through this very mischievous newspaper backing, shameless and unrestrained, the power of shrewd and unscrupulous criminal lawyers to clog court procedures, to throw dust in the eyes of the jury, to confuse the public mind as to the guilt of the accused, is intensified—just as in these days the microphone and other modern mechanisms intensify a whisper into a roar or the walk of a fly into the thud of a herd of elephants—and in the hugger-mugger of the noisy sensationalism the keen edge of public indignation over great offenses against public order and public decency and even life itself is dulled and all true sense of the hideousness of atrocious crime is lost in the welter of jazz descriptions of the criminal and her family and social relationships, with bewildered juries and judges apparently unable to cope with the psychical and physical, as well as legal phases of the court room procedure, and attorneys apparently engaged in mere frenzied rhetorical displays or in a kind of highly specialized stadium combat.<sup>5</sup>

It is true, of course, that certain publicists and certain great newspapers have recognized all phases of this growing evil and some have commented upon it unfavorably, not hesitating to put their fingers on the evil part that the fourth estate has played in certain cases. But in many cases the newspaper comment has dwelt more on the supposed evils inherent in the behavior of the three familiar factors, the judges, the juries and the members of the bar, than on the fourth factor, the antics and behavior of modern reporting carried to the extreme of passionate misrepresentation assisted by a photographic inquisition which takes in the court room, the judges, in their official posi-

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<sup>5</sup>In view of the fact that the tabloids in certain celebrated cases have not hesitated to employ the families either of the victims or of those guilty of committing murder, Theodore Dreiser must wonder over his moderation in his court scene in "The American Tragedy" where he represents the mother of the accused as acting as a reporter. He does this with artistic restraint and real pathos in striking contrast to the retained behavior of the families in the Snyder-Gray case, not the least of the revolting incidents being the studied efforts of counsel and the tabloids to secure the body of the woman executed in an endeavor to stage a sensational resuscitation scene. In the so-called Flapper Hammer Murder case out in Ohio, a murder which the judge in the case referred to as "a most unspeakable crime," it is an open question whether the decision of the counsel for the state and for the prosecution not to seek an open trial, but to take a verdict of second degree murder was not largely due to the way in which the public mind had been confused by all sorts of maudlin matter issuing from the family presumably, but really bearing all evidence of a perfectly planned and faked series of interviews, in which the real facts were concealed and an endeavor made to build up a psychic personality too frail, too delicate, too refined, too sensitive to have committed the murder in question.

tion, in their home and family life, the lawyers, the witnesses, the jurors, in all their relationships, as well as the accused and all their families and friends and supporters. All this in certain courts and communities that do not seem to be able to protect themselves, has added a curious element of actual hidden duress if not open terrorism, coming from those who are presuming on their journalistic rights, under the general but false claim of complete and untrammelled freedom for the press, to do pretty much as they please under circumstances that tend very largely not only to turning court procedures into a farce, but to glorifying lawlessness, and, in every way, working along lines which are wholly prejudicial to the general interests of the community. It is unfortunate, therefore, that the Lowden Commission did not discuss this new if extra-legal phase of the situation since it is known that the very able members of the American Law Institute, whose reports on the proposed reforms in criminal procedure are well under way, have not found it germane to their contentions to go into the part that this fourth and "outside" element has played in the patent assaults on the dignity and honesty and impartiality of court procedure. It has not escaped their attention, however, nor the attention and concern of lawyers and judges who know and believe that if attorneys lived up to their attorney's oath and newspapers lived up to the codes of ethics and ideals, which have been set forth by the National Editorial Associations, even the most cumbersome and faulty procedure of any court would yield perfectly wholesome results, as they do in so many cases which neither attract the attention of the cunning criminal lawyer, nor the desire of the irresponsible press, tabloided or otherwise, to exploit them.

The instances of the most sensational character that have been before the public the last few years through the intrusion of the fourth estate on legal procedures have been many and are known to the public at large, as well as to lawyers and newspaper men, even if the significance of all that has happened has not been clear to all those concerned. It may be recalled, for instance, that a judge in one of the Common Pleas Courts of Philadelphia, Harry S. McDevitt, himself an ex-newspaperman, went as far as the comities and amenities of his relation to brother judges went, when after sitting with the Chicago judge in the Leopold-Loeb case he came back to Philadelphia and denounced the circus-like procedure by which special writers, "sob-sister" interpreters, psycho-analysts, telegraphers and typewriters, artists of all kinds and photographers, moving and static, were allowed in the court room, who, by their movement and noisy performances, made

the court room such a bedlam that, as he put it, it was sometimes impossible to hear the witnesses. Judge McDevitt sensed at once that this was an unwarranted extension of the very proper freedom of the press and represented a fourth and very disturbing and subverting factor in the conducting of criminal trials; a factor which neither law, nor custom has recognized as an actual official factor in such trials. None of these intruders, in fact, have or admit any legal responsibility. Neither through their professional training nor through any sworn oaths as public officials are they forced to live up to certain procedures or to exemplify certain well recognized professional ethics. And, while, as of old, the whole issue of orderly procedure rests entirely on the court itself; it is very plain in many recent cases of a sensational character that the court has not felt free to act with that proper sense of all pressure and appreciation of the true dignity of the law which should prevail in serious and solemn cases and which the needs of the community, as well as the decencies of the judicial arm would suggest as the only allowed procedure.<sup>6</sup> Moreover, as a part of this admitted intention of the papers concerned to try the cases themselves as they see fit and, in addition, to the physical intrusions, the sensational and garbled reports of picturized procedures, often falsifying the actualities of the trial, a new and extraordinary doctrine has been developed as part of this technique of terrorizing the courts in the interest of certain types of criminals. Whether suggested by cunning counsel for the defense, acting in open and frank association with partisan propagandists and with the newspaper and periodicals carrying on their campaigns, or originating among the members of the fourth estate who are determined to carry out their ideas of justice whatever the laws may be, the new doctrine has taken on the form of a general indictment of judges, following in this some of the worst features of maudlin film dramas which appear to be rife everywhere, especially in states which possess no censorship of the movies, this in-

<sup>6</sup>It has been pointed out again and again that under the present conditions of procedure any judge can keep order in court and resist the unwarranted intrusion of tabloids and other irresponsible newspapers, but it has been made clear again and again and again that in certain cases and in certain communities, the judge may not be able to offer such a resistance to the ill-concealed pressure for fear of inflaming the public mind and of being accused of believing in star-chamber trials or secret trials and of evincing a prejudice against the distinguished murderess, as it were, under indictment. Moreover, in many cases when the judge would enforce a dignified discipline of service to the law and order and the community, public opinion even in the better class of newspapers cannot always be depended upon since it is possible for offending newspapers and offending photographers and reporters to make up a plausible plea that any effort to check their irresponsible methods is an attack on the freedom of the press. In such cases the judges have to fight their own battle with very little outside aid.

dictment taking the form of what is viewed as a very popular if a wholly illegal and unwarranted presentation of certain judges as "prejudiced."<sup>7</sup>

As to this issue of "prejudice" whatever regular procedure has recognized in the past as the rights and privileges involved in an appeal for a change of venue, mostly asked for where inflamed public opinion makes it difficult to secure, supposedly, a fair trial through unprejudiced jurors and a court room audience orderly in its behavior and in its attitude toward the proper determination of the issue before the court, has been more or less thrown to the wind in this newer doctrine which is just getting underway, but which has been eagerly seized upon by newspapers and periodicals given over to tabloiditis or propaganda, which concentrate an intensive attention on the judges. As they work it out, under the flimsiest of pretexts, advised and assisted by the lawyers for the defense some of who seem just to have discovered this sinister and novel means of bringing pressure on the courts, the judges are flippantly charged with "prejudice," when, as a matter of simple fact, the prejudice represents an opinion quite within their personal and professional rights in the presence of abhorrent crime, or of a brazen criminal, and which opinion can in no wise be honestly or legally made an issue in charges as to their alleged unfitness to try the particular case in court. Moreover, this new form of attack on the courts is wholly different from the old-time criticism of judges, or of procedures through which legal delays are secured, which perfectly responsible newspapers may have held were against the public interests. Newspapers as a rule in the past have discriminated between what might be called legitimate criticism of judges and district attorneys, and, also, the unwarranted abuse by the defense in criminal cases of these same officials in an unethical endeavor to cloud the issue and save the accused. But, as we now see the new doctrine of "prejudice" more or less blatantly proclaimed, as the tabloids see it—the ideal court procedure in a great criminal case would reveal the judge as a sort of bloodless visitor from Mars. He must be wholly devoid of decent human reactions,

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<sup>7</sup>Welfare and other organizations have pointed out again and again the very serious effect of present movie-picture dramas in which some of the most important factors in the community making for the most orderly forces of our civilization are either made ridiculous in the face of lawless and irresponsible individuals, or, in the case of judges and district attorneys, are represented very often as more or less repulsive characters, cruel, remorseless, hard-boiled, vindictive without human sympathies, and only concerned about meteing out the extreme of the law to those depicted either as being minor offenders, or, if actual felons, individuals about whose crime a glamor is thrown in due proportion to its most serious anti-social character.

a character out of touch with life, if not the law, an automaton presiding in a crystalline box in a sort of impersonal physical and psychical vacuum, as if hermetically sealed, and from whom neither by gesture or look or word must the slightest hint of his thoughts come before the audience or the jury or the officials of the court. Of course, with a judge thus reduced to an impotence beyond that of a jury carefully selected because, in these days of omnipresent radio broadcasting, easy telephone communication and universal newspaper reading, it is composed of those who are so dense and so ignorant that they have not even heard of the case which has been on every tongue and which they are called upon to pass judgment upon, and with the Attorney for the State, indeed, the champion really of the public, the common people in fact, also reduced to a sort of official cipher, it can be imagined what kind of a procedure would result with the lawyers for the defense showing no concern for professional ethics or for their oath, or for the interest of the community. And then, above all, with the irresponsible fourth estate section, not under oath, doing exactly as it pleased with all concerned. For, in cases of this kind, when the jury and the judge and the prosecuting attorney have, for all practical purposes, been rendered legally innocuous, the last maudlin touch in throwing a glamor over any gross criminal who is on trial is when the tabloids indict society as being responsible for his or her place in the dock—it is usually “her”—and so the consequent obfuscation over guilt and the glorification of murderers and murderesses as heroes and heroines bring about a vicious melodrama staged in actual courtrooms which even the most lurid of movie directors in his most extravagant moments would hardly have imagined, or would have dared to put on the screen had he imagined it.

This effort to give an unwarranted extension and new and anti-social meaning to the old principles of a change of venue has also been accompanied in the irresponsible press, which has taken to indicting the judiciary in general as a pastime, by an extraordinary misrepresentation of American procedure at its best.<sup>8</sup> It is falsely as-

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<sup>8</sup>After it was all over many newspapers of the country were frank to admit, in private, if not in public, that for seven years an irresponsible group of propagandists in the Sacco-Vanzetti case had more or less paralyzed discriminating editorial supervision of what would have ordinarily been called “press-agent” matter. The most ridiculous claims and assumptions dealing with the perfectly regular procedure in the lower court were sent broadcast and printed voluminously, even those coming from hypnotized boys and girls in colleges and even preparatory and high schools. No real investigation was made as to the character of those issuing these canards, nor the authenticity of much of the matter sent out, which in its worst forms was exploited by the more irresponsible newspapers as a new gospel and a new religion. But even the responsible newspapers seemed to throw up the right of private judgment and were swept along

sumed that foreign procedure in every instance is superior to our own courts whether they be the Canadian or the British or the courts of Continental Europe, including the Latin. In the matter of Canadian and British procedure, whose salutary differences will, where they exist, presumably be pointed out by the American Law Institute specialists, it is forgotten that Canadian and British judges are by no means considered to be plaster-of-paris automatons, and in the British courts, British judges, however expeditiously they may bring cases to a speedy decision through reformed procedures, are not above sharp, trenchant, facetious references in certain lighter forms of criminal cases, nor remarks of a severe attitude in great criminal cases, where the guilt is indisputable. As for the Latin courts, and European courts generally, not only is administrative interference with court procedures allowed but even the casual American reader must recall that in Italy, before Mussolini, and in France, the judges not only do not hesitate to show prejudice but can and do denounce witnesses and attorneys and practically act as prosecutors, while opinionated hearsay evidence of all descriptions is brought into court, which the Anglo-Saxon courts would rigidly rule out. But the issue here is not a discussion of the faults that inhere in what other countries consider proper procedures in court or what our legal experts may report in the matter of reforms in our courts, but to call attention to the extent to which, as it has been said, criminal cases are not only "tried in the newspapers" outside of court, but actually by the newspapers in court; and, more particularly to the scandal of the assumption by the tabloids of pretended and extravagant rights in all court proceedings to a demoralizing degree that a generation ago one would have been believed to be impossible.

Take, for instance, this issue of prejudice which came to the fore again in the Hickman case in Los Angeles. Even before this phase of this revolting case had come up in Court the country had been made disgustedly familiar with the treatment of the murderer photographically as a sort of pictorial hero from the moment of his arrest until he came into court. Officers of the jails became the paid official interpreters for the syndicated tabloid revelations, and, against all proper precautions and reticences, which one would suppose the police and jail authorities would exercise in the case of so notorious a criminal, he was allowed to hold daily seances in the jails and prattle about many things from "cabbages to kings" and his

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by the tide in a case where neither the local courts nor the state judiciary, nor the commonwealth itself was able or even desired to carry on a campaign of honest publicity.

concern for the moral reformation of American youth, and before and even after his sentence was incessantly interviewed and "picturized," almost to the degree that Lindbergh was snapped while performing his magnificent and praiseworthy services to his country and to all peoples. Naturally, taking a leaf from the Sacco-Vanzetti case, counsel for Hickman objected to the first judge as prejudiced, though how a disqualifying prejudice could be asserted of any individual jurist, with all the circumstances of the case being known, is not clear. Yet, the objection was meekly accepted in order to grant even this most unconscionable of murderers a "sympathetic court." And, while it is a side issue, and yet not without a special significance, it must be remembered that it was about this time when an investigation into the Sewer Graft Scandal in New York (Queens) was under way that a very celebrated criminal lawyer, acting for the accused officials, in trying to check if not to hold up the preliminary steps of the investigation ordered by the Governor of the state, attacked the judicial official who was selected for this service—as "prejudiced" and took legal action to prevent him acting in the case. Whatever the legal reasons for this contention of the defense were which were allowed by the courts, despite the efforts of the legislature to give the choice of the Governor a legal right to serve, it was very apparent that the attorney sought to gain sympathy for his clients through an appeal to a public that had been more or less hypnotized by the success of tabloid propagandists in their general attack on "prejudiced judges" and "prejudiced" courts and "prejudiced" officials generally. The responsible newspapers cried out against this halt in what was viewed as a proper investigation into a very grave scandal and this case and others led to New York *Evening Post* to say editorially:

"Even in conservative breasts there must be a profound uneasiness, almost fear, at the spectacle Justice is making of herself today in the Queens sewer scandal and the infamous Fall-Sinclair-Stewart case at Washington. In each, legal trickery backed by an automatic judicialism stands squarely across the road to Truth and the interest of the public. Every advance toward the plain objective is blocked through the misuse of devices intended to preserve individual rights. Justice stands still, chained by precedent and intellectual chicanery. . . . The people of the United States are asking themselves these questions today. Confidence in our courts is being shaken, dangerously shaken, by these gentlemen of oils and sewers—and by their glib attorneys."

As for the Snyder-Gray horror, the conduct of the tabloids in making it their case, with a constant and unremitting intrusion of the photographer into every possible phase of the situation, including the

final touch of the violation of a promise and all the decencies of life and of newspaper ethics through the carrying of a camera into the death house, naturally brought out the greatest amount of indignant comment on the part of the public and the newspapers to the credit of the really responsible papers of the country. But even here when the question of the vile nature of the tabloid reports of the execution, which exhausted the language of hysterical narrative decked out with metaphors and figures of speech of a revolting and depraved character, was up for discussion in connection with the issue immediately raised as to the alleged menace to public morals that lay in execution by electricity, many newspapers that were against capital punishment made no distinction between the decent reports of responsible newspapers and the hectic reports of the tabloids. Others, however, were more discriminating as to the unethical nature of the intrusions of the tabloids in a case of this kind, the *New York World* observing of the camera episode that "Newspaper men covering the electrocutions condemned the representative of a tabloid paper who had obtained admission on the pretense that he was a reporter and then had contrived surreptitiously to take a gruesome photograph of the woman in the chair. This was construed as a violation of the Warden's courtesy and confidence."

Editorially, the *New York Times* was very emphatic and led the country in ironically indicting both the evils of tabloiditis and of the behavior of the conniving lawyers. Among other things, it said:

"The atmosphere of mawkish sentimentality which the newspaper organs of paresis had been creating for months surrounds the curious plea, which we recommend to the careful consideration of lawyers, made by counsel for the defense:

'I close the Civil Practice act and place it there on the table and cast the Criminal Code and the Code of Civil Procedure out of the window.'

"Federal judges were vainly pestered. The law had its course. Even into the death chamber the organs of paresis seem to have sneaked their cameras. Their devotees crowd to view the carcasses of these sordid butchers. Who cares a rap for poor, honest, innocent, faithful SNYDER? Who of the clients of the crime-haloers has any thought that the state and not the criminal needs to be protected? It must be admitted that the woman in this case had unusual hard luck. Any murderess sufficiently young to have her face sophisticated into comeliness by the photographers of the crime-nursing press is entitled to believe that, after her glorious months of publicity, she will be acquitted by such a jury of idiots as REMUS cajoled and bulldozed. Wealth, at least offers in the movies, the making of 'Poems' and virtuous observations on conjugal love and domestic felicity, seem to lie ahead.

“Of criminal justice as melodrama the glorification of criminals, spectacular, indecent efforts to defraud justice at the last moment, there is no need to speak. There is great need to think. A murderer is probably a hero. A murderess, if she is good-looking enough, is a certificated heroine. The eyes of millions run over in sympathy and tenderness to these poor, misunderstood, persecuted creatures. The disciples of the Old Man of the Mountain lived in the wrong century. Here they could have practiced their cult with virtual impunity and been sure of veneration as holy men.”

This is well put. And while it is true that the tabloids violating the best ethics of newspapers and revealing an anti-social side in their connivances with unscrupulous lawyers have not yet been able to convince all the public that all court procedures are tyrannous and all convictions immoral and anti-social and should always be set aside, especially in capital cases, out of sheer maudlinism, the demoralization of the public mind is well under way. And it is all too-evident that through this intrusion of the least scrupulous members of the fourth estate into court procedures, with the tabloids and their supposedly huge audience of frenzied subscribers, as it were, representing the mob in any given instance, that the terrorization of judges is well under way. Hence its widening extension at the hands of the fourth estate is a fact that must be faced. Any number of cases of this new kind of duress will occur to lawyers and judges and it is plain that this phase of the situation will not be settled by any changes of legal procedure, no matter how admirable they may be. For the menace comes not from political pressure nor from antiquated procedures but from what is almost a revolutionary intrusion of super-legal factors which claim complete immunity in their mishandling of any court procedure which they insist they have a right to take under their wing through false claims as to what “freedom of the press” really means. To bring before the mind the most perfect type of this sensational interference, now uncommon the country over, one has only to bring before the mind the situation that is set up in a small rural community at whose county court a movie type of murder trial is “staged,” as the very proper slang phrase goes these days, and to realize what it means to that community when the telephone and telegraph companies install huge switchboards and elaborate apparatus and every possible phase of the town life, and, especially those phases dealing the life of those connected with the courts and who figure in the trial as jurors or lawyers, or witnesses, or the accused and all their families are hunted down and photographed for practically every minute of their waking moments. In typical cases possibly a half a hundred photographers and correspondents, taking sides,

become at once the dominant factors in the communal and official and court life and "boss the procedures." All this, indeed, might go along in a well regulated way, if the better newspapers could control the worse and see that their own established ethics were lived up to, while if judges could assent themselves and bar associations were able to make all attorneys live up to their "attorney's oath" or even to subscribe to new and more severe credos such as that suggested by Justice Joseph M. Proskauer of the Appellate Division of the Supreme Court of New York, much might be accomplished in the way of speedy and honest justice with American procedure remaining very much as it is.

But in view of all the preliminary pronouncements of those who are now looking into the situation as to "existing evils" it would seem that one of the most salutary recommendations that they could make would be for a proper control in the interest of the community at large of the tabloid efforts to make criminal cases a "show" in the interest of circulation features. They should also find a way of putting a check on officials of jails, penitentiaries and courts and lawyers for the defense acting as actual employees of the tabloid and as aiders and abettors in developing demoralizing sob-sister and lying narratives. And, finally, there should be some way of clearing up in the public mind what are the real rights of judges in any court and some way of disabusing the public of the idea that a general abhorrence of crime and criminals and an aversion toward those who are attacking the safety of the state on the part of judicial officials, who, after all, are fellow citizens, is a "prejudice" which calls for interminable delays in procedure in the interest of the lowest anti-social elements of the community.