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## Editorial

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## EDITORIAL

### CRIMINAL TRIALS A "PUBLIC SHOW"

It is curious enough that professional students of the law and procedure, digging into the bowels of the earth to find "existing evils" in the prosecution and defense of criminal cases in the courts, have allowed a Journalist, Mr. Harvey M. Watts of Philadelphia, to be the first to present to the public an adequate discussion of one of the most devastating "evils".

In his publication<sup>1</sup> Mr. Watts made a suggestion that seems to us to be of very great importance: ". . . 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."<sup>2</sup>

More recently Mr. Walter Lippman,<sup>3</sup> apropos of the Hauptmann case, enquires what would happen if a judge should take the position that there would be ground for a mistrial:

"If newspapers, the radio and the like commented on the evidence, gave their opinions of the witnesses, and in general took over the functions of the police, the prosecution, the defense, the judge, the jury, the Appellate Court and the Governor.

"Would the administration of justice be less certain, less adequate, less impressive?"

And further:

Would "civil liberties be impaired, or the freedom of the press, the responsibility of the judicial system or the rights of the accused, if, in trials of this sort:

" . . . Seats were provided for perhaps a half dozen reporters representing the press associations and a few law journals?

"News of the trial, while it is in progress, were limited to publication of the transcript of the testimony,

"Cameras were excluded from the courthouse?"

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<sup>1</sup>The Fourth Estate and Court Procedure as a Public Show. This Journal, XIX, 1. May, 1928, 15-29.

<sup>2</sup>Supra, p. 29.

<sup>3</sup>See "Today and Tomorrow". Philadelphia Inquirer, January 15, 1935.

Mr. Justice Henry C. Niles, President Judge of the Court of Common Pleas of York County, Pennsylvania, in the witch-craft murder cases known as the "Hexerei" cases, 1929, took just such ground as Mr. Watts and now Mr. Lippman has suggested. That is to say, Mr. Justice Niles, in the face of strong pressure to do otherwise, endorsed and confirmed the ruling of the trial judge in the cases, Justice Ray P. Sherwood, to the effect that only a few representatives of the local press, of the United Press and of the Associated Press should be permitted to be present. There were no camera squads. The public was admitted but there was no crowding and no undignified, disorderly behavior. Of sensationalism there was none. The New York *World* warmly approved the action of the Court. The clamor of the Philadelphia *Record*, on the other hand, sank to the level of plain abusiveness.

No suggestion has ever been made that the function of the court was thwarted by these limitations. Surely no rational mind can conceive that either in the long run or in the particular instance the Commonwealth suffered a loss thereby of any of its tangible or intangible goods.

The argument that first occurs to one who supports such restrictive measures as are indicated above is the obvious one that, in their absence, that is when a criminal trial is made a "public show", the court and jury may be so influenced as to impair the meting out of justice in the particular case.

But there is another angle. Perhaps it is the same one with a longer arc. There is, or should be, such a thing as the "majesty of the law and the courts." There is something to be said for the courts and the law as a kind of Olympian God. In his presence there is not an overt command for silence and for movements of respect; these are matter-of-course reactions. For its own protection; for the sake of its present and future prestige—a powerful human ally wherever it is found—the court, representing the law of the land, must surround itself with a wall against the everyday passions of men. If it is only a cross-section of the Bowery, the Bowery's respect for it is thereby dwarfed and the denizens of the Bowery are likely never to develop that attitude of the matter-of-course well-behaving citizen that is suggested by the phrase: "Majesty of the Law".

ROBERT H. GAULT.