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Editorial

EDITORIAL

IT CAN BE DONE

Ask a thoughful layman what was the most important problem for American lawyers to consider at the annual Bar Association meeting of 1936, and he would probably answer, "Trial of criminal cases in the press." Then examine the proceedings of the meeting as reported in the Journal of the American Bar Association for October, 1936. On page 694 you will find one brief reference to this subject; there is mentioned a "Special Committee on Co-operation Between the Press, Radio and Bar Against Publicity Interfering with Fair Trial of Judicial and Quasi-Judicial Proceedings." This Special Committee is headed by Mr. Newton D. Baker; and, if it does not choke to death over its own name, in due time it will make a report.

The appointment of this committee by the Executive Committee of the American Bar Association shows that the organized legal profession is not entirely unmindful of this major problem. But the very name of the committee indicates the faint-hearted approach of lawyers toward its solution. Can this be because they do not know how easily it may be solved? Do they go roundabout to induce voluntary "cooperation" because they know no other way; or do they simply lack courage to demand that judges shall use fearlessly the power they already possess?

More than a year has passed since the Hauptmann trial, with its orgasm of sentimental, sensational, disgusting publicity. But the excesses committed in this case differed only in degree from what happens every day in one part or another of our country; the scandal of the Hauptmann case could not have occurred unless thousands of lesser scandals had paved the way for it. A supine bench and a bar too deeply concerned with its own selfish interests have allowed the situation to get out of hand. Proprietors of newspapers and radio stations must not be blamed too much if competitive business policy has led them—or forced the more public-spirited among them—into practices that make mockery of even-handed justice and bring disgrace upon America in the eyes of the world. The sin lies at the very door-step of our own profession;

and we only dodge responsibility when we talk about eradicating it by gentle cooperation with the sinners.

When publicity mongers reproduce photographs of prisoners being led into court for trial, or of scenes in the court room, or of State's Attorneys and defense counsel posing in the corridor with their witnesses and clients; when they run private wires into a courthouse; when they set up microphones in a court room; when they publish interviews with trial lawyers commenting upon cases about to be tried or announcing to the world what evidence will be introduced; when they send staff artists or notorious sob-sisters into court and print pictures or stories artfully contrived to inflame public opinion on the merits of pending litigation; when they do these things, let no lawyer either denounce the press or talk plaintively about trying to curb the evil by an idealistic cooperation with the press. Instead, let him admit, to the shame of the greater part of the American judiciary, that the real culprits are weak judges. Let him not demand new laws or cooperating committees of pious defenders of public decency; let him rather insist upon courageous judges who will crack down on the offenders.

The State of Maryland has shown what can be done. So long ago as in 1926, the Hon. Eugene O'Dunne, a member of the Supreme Bench of Baltimore levied a $5,000 fine against the proprietor of a great newspaper chain and sent the editor and four of its reporters to jail for a day. In the same year he manifested equal firmness toward the head of the City Detective Bureau who had given an interview to the press concerning a criminal prosecution. Judge O'Dunne acted without waiting for the report of a committee and without specific legislative sanction. He simply invoked the common law power of judges to punish contempt of court; the Maryland Court of Appeals upheld him; and the people of Baltimore promptly re-elected him for a fifteen year term. In Vol. 10, No. 5 of the Journal of the American Judicature Society there appears a full report of these incidents, including both a scholarly opinion by Judge O'Dunne and the far-reaching and vigorous opinion of the Maryland Court of Appeals. For the latter, see also *Ex Parte Sturm, 152 Md., 114.*

Recently, the Maryland courts have had another opportunity to vindicate their authority. Once again courageous judges imposed a heavy fine and a term in jail, this time for the premature publication of the result of judicial proceedings held *in camera.*

Once again the highest State court affirmed their action. See *In Re Lee, 183 Atl. Rep. 560.*

The important thing to remember about these Maryland cases is that they illustrate and typify a continuing judicial attitude and practice. As a consequence, the worst abuses of the privilege of the press, so characteristic of America, seldom occur in this State; Maryland newspapers are forced to draw their sensational crime news from outside the State. This still leaves something to be desired and presents a difficulty hard to overcome, for obviously the power of a court to punish for contempt stops short at the State line. But even with this limitation, the common law permits any self-respecting judge to dry up most of the evil at its source; an imaginative and courageous judge treats this permission as a categorical imperative.

The Journal of the American Judicature Society has shown itself keenly alive to this situation. In Vol. 8, No. 5 (1925), and in the issue for October, 1936, Vol. 20, No. 3 one finds a full and enlightening discussion which should be read in connection with the reference cited above. These are all referred to the prayerful attention of Mr. Newton D. Baker's American Bar Association committee.

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