STRAWS IN THE WIND

SIGNIFICANT NOTES IN WORLD AFFAIRS TODAY

Why Blame It on the Papers?

A Footnote to Crime

By Paul Hutchinson

All the ballyhoo, all the destructive effect of the handling of crime news by the press could be stopped at once — and without passing a single law

SOMETHING must be done about crime. The American public seems to be as united on this as Ed Howe once claimed it was in its opposition to the man-eating shark. Articles galore and editorials without number call attention to the continuing increase in our criminal statistics, and insist on action. Universities open laboratories of crime detection and professors go forth to instruct women's clubs on the operations of the lie detector and similar gadgets by which Science—ah, Science!—is once more to come to the rescue of society. Radio and movie serials press home the solemn thought that "crime does not pay." Settlement houses (see news reels) exhort young hoodlums to grow up to be G-men. To cap it all, the Attorney-General of the United States holds a national conference, which is opened by the President, addressed by members of the Hoover cabinet, and played up in every newspaper as the start of the greatest of all offensives against the nation's most dangerous foe. "Crime," as the slogan has it, "must go."

All this is impressive in the picture it suggests of a mighty people rousing to grapple with the forces of evil. The only trouble is that we all know that crime is not going to go, and that all such reform drives are doomed to fall far short of their announced objectives. To put it crudely but realistically, we all know that while there is money to be made out of it, crime will not go, but will go right on, aided and abetted by slipshod police work, crooked lawyers, political protection, and newspaper and movie exploitation.

Because under all our bluster we know this to be true, we have widely fallen into the familiar psychological trick of looking for a scapegoat on which to blame our troubles. If only we can fasten on some outside influence which can be held responsible for our failure then we can gain two things. We can gain freedom from any sense of responsibility for dealing with the ugly economic facts that are at the bottom of the crime problem. And we can gain the emotional satisfaction of having a new object on which to exercise our powers of indignation, reprobation, and moral admonishment.

In our search for such a scapegoat, the press, by almost unanimous consent, has been chosen "it." Never a woman's club hears a paper on "The Menace of Crime" but the newspapers come in for a whacking. Never a preacher expounds this theme—and it has become a favorite of the contemporary pulpit—but the editor and the make-up man are singled out as the devil's agents at the bottom of all the increase in lawlessness. (There was a time when the movies shared this scapegoat rôle, but under the suave ministrations of Elder Will Hays the country is fast being persuaded that the forces of Hollywood are on the side of righteousness and J. Edgar Hoover.)

Now it is no purpose of mine to absolve the press from blame for its treatment of crime news. If it were not so obvious that grave abuses exist it would not have been so easy to build up this legend with regard to the malign powers of the newspapers. But there are certain aspects of this situation which seem to be commonly overlooked, yet which in fairness should be borne in mind. For example, it is at least worth remembering that if the press is guilty of exploiting crime and our criminal procedure for its own selfish ends, it is doing no more than everybody else connected with this mat-

ter is doing. That, I will admit, is not saying much in behalf of the press, but it nevertheless deserves saying.

More important, however, is the fact that the principal anti-social effects which are alleged to flow out of the paper's handling of crime *could be eliminated tomorrow without passing a new law, holding another convention, or adopting a single additional resolution if the courts really wanted it done.* The plain truth is that if the press is making a scandal of our treatment of crime—and I will not argue to the contrary—it is doing so only to the extent to which our officers of justice are willing, and frequently eager, to have it do so. When I listen to indiscriminate damning of the papers for turning our criminal processes into a circus, I become convinced that it is time for some candid speech. It is a modicum of that which, in the present instance, I desire to offer.

II

Criminal trials are of two kinds. There are the cases of the poor, the friendless, Negroes, the foreign-born, the slum dwellers—those without social importance whose misdeeds offer no temptation for dramatic journalism. They slide through the courts and to their allotted punishments almost as automatically as a motor-car through a Ford assembly line. As Warden Lawes has pointed out, these are the criminals who, with minor exceptions, go to the chair. On the other hand there are the cases which, for various reasons, have news value. News value to the press, and publicity value to the officers of the court. And such cases are almost invariably treated in such a way as to extract from them the maximum of both sets of values—circulation for the papers, and personal prestige for police, prosecutors, and defense counsel, and even for the judge. The outcry against the press has been shriller since the Hauptmann trial, yet the Flemington performance differed only in degree from the treatment accorded most major criminal cases in most states.

Several years ago Maureen Watkins, then a sob-sister on *The Chicago Tribune,* wrote a play giving a detailed account of one criminal trial in that city. To it she gave the title "Chicago." For obvious reasons, when the show came to Chicago its producers advertised it as a burlesque of criminal trials in that town. But any one who knew the case which Miss Watkins used as her model —knew the lady murderer involved, the eminent counsel for the defense and his methods, the states attorney and *his* methods, the judge and his courtroom—would have found it exceedingly difficult to point out in the script of the show where accurate reporting ended and the burlesque began.

The scenes at which audiences laughed most uproariously, taking them for unadulterated farce, were almost literal transcripts, not only of what went on in that particular case, but what continually goes on in news-worthy criminal trials. From the frenzied competition in the first scene between uniformed police and plain-clothes men to be photographed with the beautiful, though gin-dazed, defendant at the time of her arrest ("And be sure you get the name spelled right!"), through the hair-pulling jealousies between the several lady killers in the county jail over the size of their respective newspaper scrapbooks, down to the climactic courtroom scenes—the cameramen shooting from the floor at the defendant's crossed legs as she sat in the witness chair, and after her acquittal photographing her with her arms around the neck of judge and jury foreman—the play was as factual a presentation of important sociological data as any Ph.D. thesis turned out that year at the University of Chicago.

This sort of thing is undoubtedly the most scandalous perversion affecting criminal justice in the United States. It is hippodroming, and it does more to bring the efforts of the community to restrain lawbreaking into contempt than all other influences put together. But the observer who sees here only the malpractice of the press, and does not perceive that at every step in this process the press is under pressure to do precisely what it does, fails to grasp the realities of the situation.

Let us begin at the beginning, when the crime has been committed and the police set out on the criminal's trail. Immediately, we are told, the press does its best to thwart police efforts. All the criminal has to do is to read the papers and he will learn precisely where the net is being spread to catch him and how, therefore, to escape it. Very often this is true. But who gives the reporters their information as to what the police are doing? Sometimes, it must be admitted, the reporters, versed in police methods, make it up. But for every time they do so there are a dozen times when the police themselves come hotfoot with every development, all on the understanding that the newspapers shall give all credit to Captain Doyle of the Twelfth Precinct and Detective Sergeant Pestalozzi of the Homicide Squad and Patrolman O'Flaherty on whose beat the crime occurred as the men who are running the criminal to earth. The reporter who uses the tips these cops give him during this phase of the case can go as far as he likes in embroidering the story, but if he fails to play the game—that is, if he fails to see that the captain and the sergeant and the patrolman get the publicity they are after—he might as well turn his talents to the reporting of hotel arrivals or ship news.

Well, the arrest is made and the prosecution takes hold. The prosecuting attorney, or an assistant assigned to the case, meets the press daily, always assuring the reporters that he has "something new" ready for release. This begins with an announcement that the wretch now in jail is unquestionably the guilty party, and details are added to persuade the public that it knows exactly how the crime was committed. The next day there is promise of an impending confession. This confession may continue to impend for three or four days. Finally it comes, and is given to the papers to be printed in full. (Later the confession may not be so much as introduced in the trial; if it is introduced the chances are better than even that it will be thrown out.)

Then follow, during the weeks before the trial, day by day announcements of corroborative evidence unearthed, of "surprise" witnesses uncovered whose testimony will shatter the defense, of sinister facts discovered in the past life of the defendant, and of the thwarting of plans made by the defense to tamper with the jury. After the trial actually starts there is a daily forecast of what the prosecution intends to prove at the next day's session, a daily demonstration of the failure of the defense to establish its case, and a daily summary of the devastating nature of the points scored by the prosecution.

The printing of columns of this sort of thing before and during the trial undeniably makes the prospect for even-handed justice considerably less than zero. But where does the public suppose the newspaper gets it? And would there be hell to pay if a paper should refuse to play ball with a district attorney's office by printing such stuff! (Always, of course, being careful that due tribute is paid to the superlative legal talents of "Assistant District Attorney Cecil Sternberg, who is conducting the prosecution under the personal supervision of District Attorney Francis X. Flynn.")

But what is the defense doing all this time while the prosecutor's office is thus using the press to establish the prisoner's guilt in the public mind? Plenty! So far as criminal procedure is concerned, it is safe to say that in the most populous centers of the United States no lawyer can build a criminal practice capable of paying his office rent unless he can demonstrate that he is as proficient a newspaper space-grabber as the late Ivy Lee. The defense lawyer also has his press conferences. In them he asserts, as a matter of routine, that his client's confession has been extracted by third-degree methods; that he has an unbreakable alibi; that almost every day yields another "surprise" witness whose testimony will shatter the prosecution; that if the truth about the *corpus delicti* were known—assuming that this is the kind of case which has a *corpus delicti*—there would be civic mass meetings to honor the agent of retribution, whoever he may have been. And so on.

Even more important, however, is the attempt to get special reporters assigned to the defendant's side of the case. It is not often, to be sure, that a paper can be induced to order a star sob-sister to move in and live with the defendant's wife, as one of Mr. Hearst's journalistic handmaidens lived with Mrs. Hauptmann at Flemington, but the sentimental gush favoring the defendant which an adept journalist can turn out without going to such lengths is sufficiently familiar to require no description.

The point is that it is as much the desire of the defense as of the prosecution to try its case in the papers before it ever comes to trial in the courts. And after the trial is under way, the more successful the defense counsel in reducing public opinion to blubbering sentimentalism or cynical indifference, the more roseate his prospects for the future. The net result is that, although the defense is likely to wheedle the papers where the prosecution may try to put on pressure, the end both have in view is the same—publicity for the lawyer.

And the judges? Well, judges differ. But the number is few who do not have a vivid sense of the personal advantage to be gained from presiding at extensively reported trials. Veteran reporters and cameramen could tell amusing tales, if they wanted to, of the lengths to which judges will maneuver to see that the press pictures and the leads in the news stories are devoted to the wisdom of the bench rather than to defense counsel, prosecution, or even defendant.

This is the barest sketch of what lies behind the distortion of criminal procedure of which the press is undoubtedly guilty. It does not begin to make the situation out as bad as it really is. But it should be enough to make clear the basic fact, namely, that at every step in this anti-social process the press is bedeviled *by officers of law and courts* to do precisely what it does do.

III

They do these things better in England. I hesitate to say that, because there has been so much nonsense talked about the superiority of the English press and of English jurisprudence. But with respect to this particular matter, it is true that England is almost entirely free from abuses of the kind under consideration.

This is not to say that there is no vulgarity, no sensationalism, in the treatment of crime news by English papers. There is plenty; the public taste is continually titillated—and debauched—by crime stories which are printed with as much gory detail, and with as much "glorifying" of the criminal, as any printed in this country. If it is sensational crime news that the public wants, a large portion of the British press sees that its appetite is satisfied. But there is no hippodroming of trials. There is no trying of cases in advance in the newspapers. And there is no making the judicial process *as such* an adjunct in a feverish race for personal publicity.

When Mr. Stimson addressed the Attorney-General's conference he emphasized the difference between the time schedule for criminal procedure in England and in the United States. A sensational murder was committed in England, he recounted, as a party of American lawyers was leaving New York to hold joint sessions with the British bar in London. The criminal had been apprehended, indicted, and all preparations for his trial made by the time the Americans docked at Southampton on a Saturday. The trial was held the following Monday and Tuesday. Conviction came Tuesday afternoon. The appeal was heard by a court presided over by the Lord Chief Justice, and sentence confirmed, on Thursday. As the group started home at the end of the week, the guilty man was hanged.

There are few parallels to that sort of judicial speed in the United States, except in states like Michigan and Wisconsin, where the absence of the death penalty seems to have speeded up court procedure. But the point which Mr. Stimson was making was not that speed is desirable as an end in itself, but that it is desirable as a means toward making the more brazen forms of judicial hippodroming impossible. "So far as I can remember, there was absolutely no indication of drama either attempted or allowed. No sentimental life histories were published. No prison matrons or prosecutors were photographed with their arms around the prisoner's neck."

But there were a number of other things which did not appear in the English papers whose absence Mr. Stimson perhaps did not notice. Yet that absence was fully as important as speed in making it easier for the court to insure that justice was done. During the time in which the police were hunting for that criminal, the press was not filled with theories as to how the crime had been committed, and—unless the London Commissioner of Police or a chief constable asked for such publication—nothing was said as to whom the police "wanted," much less suspected. After the arrest, nothing was reported about it except the facts recorded on the official charge sheet. Up to the very end of the trial, nothing was said about the character of the accused or his previous record. Such a thing as comment

by the lawyers on their own or their opponents' cases never crept into the columns. While the trial was in progress, all that was reported was what came out in the actual evidence,* and nothing was so much as hinted as to the bearing of this evidence on a final verdict, or as to the manner in which the evidence was given. In other words, all the methods by which the American press might take such a case and poison the mind of the public in advance of its trial, or submerge it in slobbering sentimentality or prejudice while the trial was in progress, were out.

Mr. Stimson, or any others who may be interested in this difference between the English and the American treatment of criminal cases, would do well to read a booklet, *Legal Headlights for Pressmen,* prepared for the British National Union of Journalists by Mr. G. F. L. Bridgman, that organization's "honorary standing counsel." There is a chapter in it with the exceedingly pointed title, "When Editors May Go to Gaol," and the main idea seems to be that an English editor can be sent to jail—or gaol, if you insist—for doing almost anything in reporting a criminal trial that an American editor would be likely to do as a matter of course. "The publication of matter which misrepresents the proceedings before the courts or prejudices the public for or against a party" is, according to Mr. Bridgman, an editor's jail ticket in England. But that isn't all: "Especially it should be noted that the comments on pending proceedings, which the parties or their solicitors are so fond of addressing to the press, if they prejudice the other side," will produce quick trouble if printed.

Here's how they do it in England.

A few years ago, when a man named Mahon was awaiting trial for the murder of a Miss Kaye, *The Manchester Guardian, The London Evening Standard,* and *The London Daily Express* stated that Mahon had been living under an assumed name, had given Miss Kaye presents which implied a coming marriage, and so on. Now, all these statements were true, and the inference which the papers were discreetly suggesting might be drawn from them was also true. But the statements were printed before Mahon had been tried, when their printing might conceivably have helped to prejudice the public mind against him. All it cost *The Guardian* and *The Express* was £300 apiece, and *The Standard* £1000, with a warning from the Lord Chief Justice that if the offense were repeated there would be a jail sentence. Incidentally, *The Standard's* extra fine resulted from its attempt to exhibit a bit of Americanesque newspaper enterprise by printing an exclusive advance interview with a person who was expected to be an important witness.

When a man named Rouse was arrested and tried for having committed murder according to a cheerful pattern drawn in a previous case—simulating accidental death by setting fire to a motor car in which the victim's body had been placed—*The London Evening Star* drew another fine from the Lord Chief Justice for having put out street posters (what the British call "contents bills") with the headline: "Another Blazing Car Murder." Since Rouse had not yet been convicted, Lord Hewart held it contempt to refer to the case as a "murder." This, notice, was not for anything that appeared in *The Star,* but for a phrase in a street advertisement!

When the so-called "man-woman," Colonel Barker, came up for trial, the newspapers did what they could to convey an air of mystery about the case, and dwelt with avidity on slips by a police officer in his actual testimony when he referred to the apparently male prisoner as "her." But beyond that the press dared not go. Until after the verdict, no English paper could mention the aspect of the case which, in America, would have been shrieked from the newspaper housetops—making impossible an impartial trial.

When a member of the Tottenham Hotspur football team was arrested on a minor charge, only two London papers took a chance—and that after the case had been concluded!—on mentioning the fact that the man accused played on that famous professional eleven. Imagine the American press, if a member of the New York Giants fell afoul the courts, suppressing reference to that fact lest the case be prejudiced!

What do examples such as these mean? They mean, to quote Mr. Bridgman again, that an English paper will be punished for criminal contempt if it publishes "words or acts obstructing, *or tending to obstruct* (his italics)—the distinction is important—the administration of justice. . . . Attacks on, or abuse of, a party; attacks on the personal character of witnesses or a discussion as to their demeanor in the witness-box or the likelihood or otherwise of their evidence being the truth; general comment on the subject-matter of a case . . . are examples which immediately leap to mind. . . . The publication, even without comment, of the contents of the writ, or the summons, or of the other pleadings, is a highly dangerous thing, and if the pleadings of one side are published without those of the other, it is a clear contempt. . . . The courts are rightly lenient toward the press, realizing that publicity does more public weal than woe; but they have declared over and over again that they will not tolerate what has got to be known as Trial by Newspaper, or unfairness to accused persons, which would never be allowed in a court of law."

IV

Now the fact to be noted about this difference between the English and American methods of keeping the work of the courts above reproach is that its cause lies almost wholly in the difference between the attitudes taken by the two benches. The evidence is convincing that much of the English press, and a considerable part of the bar, would be only too glad to give English trials the same ballyhoo treatment that has wrought such havoc in this country. But they dare not! This not because of any wide divergence between the laws controlling criminal procedure in the two countries, but simply because the precedents governing punishment for contempt of court have developed so differently. An English judge will, by citing for contempt, make short work of newspaper or lawyer whose activities tend in the slightest degree to bring the proceedings in his court into disrepute!

When I first started inquiring among

* There is a case on record in England in which a newspaper was fined because a reporter, in quoting from a letter used as evidence, quoted the entire letter, while only a part was actually introduced into the record of the trial.

English "pressmen" about the reasons for the restraint displayed in reporting incompleted criminal actions, I had a vague notion that the stringency of the English libel laws was responsible. Libel possibilities undoubtedly keep British papers from printing some things that American newspapers would print. But when it comes to keeping the press from making carnival out of the work of police and courts, the libel laws have little to do with it. The controlling factor, the thing which preserves the majesty of the English law, is this readiness of judges to punish for contempt of court.

Judges in America, quite as much as in Great Britain, are in complete control of their own courts. They have certain precedents for contempt fairly well established. But such a precedent as the British adhere to, as a means of keeping the whole judicial process from public scorn, is still waiting to be built up over here. Why, if there is so much anxiety to re-establish the majesty of the law, not begin building? The first judges who resorted to this method for cleaning up criminal proceedings, applying it against both press and bar, would bring down on themselves the loud indignation of all the interests which think they are making money or gaining prestige under present conditions. But as the public came to understand what was involved, it would approve.

The time has come, said a committee of the American Bar Association, to "consider ways and means of preventing a repetition" of the disgraceful Flemington affair. This is the way in which the British bench effectively guards British justice against any such besmirching, and as soon as the American public grasped its effectiveness, I believe that it would favor resort to a similar method in this country. At any rate, it presents one way by which the disfigured countenance of the lady with the supposedly bandaged eyes can be quickly and improvingly lifted. It is up to the judges. Without any new legislation, but with a genuine determination to protect the dignity and impartiality of every trial over which they preside, the men on the bench can impose regulations of adequate effectiveness on papers, police, lawyers, and prosecuting officers, if they so desire. *If they so desire!*

A Patient Wants to Know

By Edna Yost

Why do doctors refuse to give their patients credit for having any sense?

Suppose you are a person of intelligence who has become miserable from some illness that is not yielding satisfactorily to medical diagnosis or treatment. Of what value will your intelligence be in helping you back to health? Will your physician welcome it as a potential asset to be used in helping him discover why his treatment is not being efficacious? Or will his attitude indicate, even if his words do not, that you will do wisely to put your layman intelligence into winter quarters during the period of your illness?

It seems to me that doctors are not yet grasping at the advantages of co-operation with the intelligence of their patients. Although they themselves admit that their practice lies in two realms, one of medical guesswork and the other of scientific certainty, they still prefer to assume the mantle of authority even when it is pure guesswork, demanding a blind, unintelligent faith and obedience that smacks of the Middle Ages. This was strikingly (and unexpectedly) brought home to me recently when I asked a doctor just what or who made the ideal patient.

"A sick baby," he answered. And then corrected himself. "No; a sick baby without a mother."

"But a sick baby," I objected, "cannot be of any help to you at all. It can't even tell you what or where its symptoms are."

"That's our job to find out," he said. "And don't forget—a sick baby doesn't imagine things about himself. Nor has he been handicapped by popular health talks over the radio with that 'little knowledge' which is a dangerous thing."

In the highly important task of recovery from illness, I am told in a recent issue of a medical journal, the "good patient" is one who is willing and able to return to the dependence of childhood when "we are nursed as infants in arms," with as much "confidence in one's physician as in one's confessor, one's husband or wife," satisfied to trust that all will be done for his best advantage.

Now I wonder if this attitude of infantile trust, even if it could be proved to be the best one, is possible among intelligent people any longer. I do not believe it is. The possibility of intelligent people being able to return to the dependence of childhood has been destroyed by doctors themselves by the eagerness with which they have grasped the tenets of the newer psychology at one end only—the end that provides them with an alibi for failure rather than with a weapon for success. "Nerves," "emotions," they can say now with a shrug of the shoulders when their own inefficiencies and stupidities fail to be of help. And they point to the newer psychology for verification of the power of the mind and emotions to cause illness.

Possibly women suffer more often than men from this willingness of doctors to shrug shoulders and do nothing but pass out pills with a superior condescension. I do not know. But I do know that it is next to impossible for a woman who happens not to be of the placid, bovine type to undergo any illness which fails to respond favorably to the doctor's first prescriptions without being handicapped at this point by the doctor's quick willingness to name some nervous and emotional condition rather than a primarily physical source as the more likely cause. Too many of us by far are having the experience of being treated as if we are suffering from nerves, complexes, and inhibitions when an X-ray of our gall bladder or some intelligent co-operation on dietary matters would be more to the point.

A friend of mine who for years has been in charge of the health of student nurses in one of our largest hospitals asserts that the most difficult part of her job has been to get doctors to see the nurses' problems as physical problems in the many, many cases when