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Editorial: Trial by Tabloid

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the humanitarian view of law to the defense of which Justice Holmes dedicated his life, a man whose views are well expressed in his decision on the constitutionality of the New York permanent housing statute where he wrote:

"* * * The multiple dwelling act is aimed at many evils but most of all it is a measure to eradicate slums. It seeks to bring about conditions whereby healthy children shall be born and healthy men and women reared in the dwellings of the great metropolis. To have such men is not a city concern merely. It is the concern of the whole state. * * * The end to be achieved is quality of men and women. If moral and physical fibre of its manhood and womanhood is not a state concern the question is, what is. Till now the voice of the courts have not faltered for an answer."

Nor while there are men of the calibre of Benjamin Nathan Cardozo upon Supreme Court benches will that voice falter in the years to come. For his elevation to his new position of dignity and responsibility the nation will remain eternally grateful, "Justice" Anderson to the contrary notwithstanding.

ROBERT W. HANSEN

TRIAL BY TABLOID

In 1915 an eminent American jurist appeared before the New York Constitutional Convention and delivered this somber declaration: "The greatest evil and the most vicious one in this state is that of trial by newspapers. I don't see anything that can mitigate this evil. I don't see why in making this new constitution you cannot do something to protect the administration of justice, even if it should involve a modification of the freedom of the press."

The audience was respectfully attentive. Even after the suggestion of the abridgement of a constitutional right no murmur of "heresy" could be heard. The man who had spoken was William Howard Taft, former Chief Justice of the United States.

The indictment of this phase of our judicial system is well founded, and not even the most optimistic among the members of the bar would be so audacious as to assert that present-day newspaper accounts of judicial proceedings do not tend to influence the decision of courts and juries.

This is especially true in the case of criminal prosecutions where the newspaper accounts of the arrest and arraignment of the accused are often of such a nature as not only to deprive the accused of his right to a presumption of innocence, but also to create a presumption

of his guilt. The result has been, in some cases, the almost farcical prolonging of voir dire examinations, such as in the Thaw case in New York where three weeks were required and in the Shea case in Chicago where six months were required and six thousand talesman were examined. Such delay might be justified, if it would insure the accused of a trial by an impartial jury, but unfortunately some people are accepted for jury service who sincerely believe they have not been prejudiced by reading newspaper accounts of the accused's arrest and yet to whom a suspicion of the guilt of the accused has been insidiously imparted through a subtle process of suggestion and insinuation.

Not long ago in the municipal court of Milwaukee County an individual by the name of James Kane was tried for the crime of bank robbery. For several weeks before the trial the Milwaukee newspapers carried accounts of his capture and arrest, in which he was referred to as "the Minneapolis bad man" and "a veteran bank robber." His home was referred to as a "robber's lair," and mention was made of his affiliations with the I. W. W. and of a rumor that he was a friend of Jack Zuta, Chicago gangster. Whether the verdict of guilty which the jury found was correct or incorrect, there is a strong possibility that some of the jurymen in the case brought into the courtroom with them a belief that he was guilty, or, at least, deserving of punishment.

But even more unfortunate, as Henry W. Taft, of the New York Bar, observes "In spite of warnings, what the newspapers say does leak to the judge and jury during the trial, and, in proportion as a case excites public interest, it affects their deliberations." While the judge has usually built up an armour against such outside influence, the jury very often has not, and the danger is omnipresent that the jury will accord the witnesses of the respective sides only so much credibility as the newspaper accounts give them.

Who can deny that in the case, State v. Kane, which I have already referred to, the newspaper accounts were such as would tend to influence the jury to believe certain testimony and disregard others. The newspaper headlines during the trial were these: "'Lies,' Is Hurled At Witnesses to Kane Alibi;" "Convicts Wife Faces Grilling In Kane Trial;" "Kane Tangled by Quiz;" "Kane Hedging on Alibi." It cannot be disputed that these headlines dealt with matters which it was for the jury, and the jury alone, to decide, and if during the trial, these headlines, or the contents thereof, reached the eyes or ears of the jury, grave injustice may have been done the defendant.

In Heileman v. State, the defendant, Heileman was tried in the Municipal Court of Milwaukee County for the crime of Manslaughter. The issue in the case was whether the defendant had been guilty of criminal negligence in operating his automobile, thus causing a head-on

collision and the deaths of several people. The case began on a Monday morning and ended the next day, and the Monday evening paper carried an account of the trial with this sub-headline, "Defendant Traveling 60 Miles an Hour; "State's Star Witness Avers." The entire article was devoted to the testimony of this one witness, and, though testimony to the contrary had been given by at least six other witnesses, no mention of such testimony was made in that article or in the article which appeared in the morning paper the next day. The next morning the jury acquited the defendant, much to the surprise and indignation of the newspaper reading public. It must have been a trying thing for the jury to do, to disregard the dictates of a misled public opinion, and, had the jury been possessed of less moral courage, a miscarriage of justice might have occurred.

These cases are but two of a great many. Every day individuals are being deprived of their Constitutional and Common Law rights in the very proceedings that are brought to preserve them. Injustice will continue to be done as long as newspapers continue to emphasize irrelevant but sensational details, as long as newspapers continue to take sides in cases, such as by appointing themselves assistant prosecutors of the accused, as long as newspapers continue to decide cases for judges and juries, sometimes even before the trial begins, and as long as newspapers continue to exploit false rumors about the accused or sordid details of the accused's life, causing him, though acquitted, to have his entire life clouded with guilt.

Reform must come from the newspapers themselves, it must come from within and be self imposed. The passage of the Minnesota "gag law," making it a criminal offense to publish a false or grossly inaccurate report of court proceedings, should sufficiently impress upon newspapers the fact that some of thier practices are arousing public opinion and, if they will not reform themselves, the legislatures throughout this land will do it for them, a course of action repugnant both to them and to their readers.

Mr. Average Newspaper Editor has been spending too much of his time in the circulation department scrutinizing circulation figures. He has lost his sense of human values and has forgotten to respect the rights of the unfortunate persons whose troubles are discussed in the columns of his paper each day. The question which every jurist and every legislator is propounding to himself is this: "Will Mr. Newspaper Editor heed the rising winds of public indignation and take the precautions necessary to avert the storm of public wrath which otherwise must inevitably follow?"

CHARLES ROWAN