Journal of Criminal Law and Criminology

Volume 28
Issue 5 *January-February*

Article 3

Winter 1938

Cooperation Between Press, Radio and Bar

Paul Bellamy

Stuart Perry

Newton D. Baker

COOPERATION BETWEEN PRESS, RADIO AND BAR[1]

PAUL BELLAMY, STUART PERRY AND NEWTON D. BAKER

To the American Bar Association:

The Special Committee on Cooperation between the Press, Radio and Bar in the matter of trial publicity was appointed in January, 1936. While technically a special committee of the American Bar Association, it is in fact a composite body consisting of six members of the American Bar Association appointed by its President, seven representatives of the newspaper publishers appointed by the President of the American Newspaper Publishers Association, and five representatives of newspaper editors appointed by the President of the American Society of Newspaper Editors. The appointments of representatives of publishers and editors were made in response to an invitation from the President of the American Bar Association, and the stated object of the committee's appointment is an effort to agree upon standards of publicity of judicial proceedings and methods of obtaining an observance of them, acceptable to the three interests represented.

The membership of the three groups is as follows:

American Bar Association

Mr. J. W. Farley, Boston, Mass.
Mr. John G. Jackson, New York City.
Judge Oscar Hallam, St. Paul, Minn.
Mr. Merritt Lane, Newark, N. J.
Mr. Giles J. Patterson, Jacksonville, Fla.
Mr. Newton D. Baker, Cleveland, Ohio, *Chairman*

American Newspaper Publishers Association

Mr. Paul Bellamy, *Cleveland Plain Dealer, Chairman*
Mr. Emanuel Levi, *Louisville Courier Journal*
Colonel R. R. McCormick, *Chicago Tribune*
Mr. J. R. Knowland, *Oakland Tribune*
Mr. A. H. Sulzberger, *New York Times*

[1] Report of the Special Committee on Cooperation between Press, Radio and Bar as to Publicity Interfering with Fair Trial of Judicial and Quasi-Judicial Proceedings.

Mr. W. F. Wiley, *Cincinnati Enquirer*
Mr. Roy C. Holliss, *The New York News*

American Society of Newspaper Editors
Mr. Stuart H. Perry, *Adrian, Michigan, Telegram, Chairman*
Mr. Tom Wallace, *Louisville Times*
Mr. O. S. Warden, *Great Falls, Montana, Tribune*
Mr. David Lawrence, *United States News*
Mr. Albert O. H. Grier, *Wilmington Journal-Every Evening*

Since the joint committee includes members who are not lawyers and not members of the American Bar Association, and since the members of the committee are widely scattered and frequent meetings for direct consultation have been impossible, it may be worth while to describe the method followed in reaching the report and recommendations herewith submitted.

After the selection and appointment of the several members of the three component parts of the committee, a preliminary conference was held in the offices of the *New York Times* in New York City on the 24th of April, 1936. By way of preparation for the conference, the chairmen of the three constituent groups, by correspondence, had undertaken to direct the attention of the members of the committee to the general subject and to collect, in their respective fields, as much of the literature of the subject as was readily available for general distribution. Mr. Giles J. Patterson prepared and circulated a comprehensive examination of the American and English authorities dealing with cases of contempt growing out of publicity deemed prejudicial to the administration of justice. Mr. A. H. Sulzberger of the *New York Times* had two expert members of the staff of that paper prepare résumés of the subject from the newspaper point of view. These were submitted in print and were of great value.

The committee had before it confidential copies of the report of the Special Committee on Publicity in Criminal Trials, which, under the chairmanship of Judge Oscar Hallam, made an exhaustive examination of the publicity attending the trial of Bruno Richard Hauptmann. This valuable report was not published by the Association for the reason that before it could be published the so-called "Hauptmann Case" took a new and controversial turn centering around the action of the Governor of New Jersey and the Court of Pardons of that State. Into this controversy it was thought

improper to inject the American Bar Association by giving publicity to the Hallam report, which was of course, an *ex parte* critique of a situation which had suddenly become involved in a heated political controversy. The committee had, however, the full advantage of the exploratory and specialized work done by the Hallam Committee.

The general treatment of the subject in professional and general literature, examined by the committee, has been extensive but no attempt is here made to set up a bibliography of the subject.

At the preliminary conference in New York, the day was spent in a frank interchange of views. At the conclusion of the conference it was agreed that the chairmen of the three sections which constitute the special committee should canvass, by personal consultation and correspondence, the opinion of the bodies which they represent. On the basis of the opinions thus gathered, the sub-committee was directed to prepare a preliminary report for discussion and criticism by the entire committee. This having been done, a full and final meeting of the committee was held at New York on the 15th day of January, 1937, which approved and authorized the submission of this report to the American Bar Association.

Approaching the problem from radically different points of view, it was natural that there should develop differences of opinion between the representatives of the Bar on the one side and of the Press on the other. These differences had primarily to do with the best method of attaining the common object rather than as to what the common object was. The committee is unanimous in believing that the highest interests of society require a system of judicial administration which, without fear or favor, will protect the rights both of society and of persons accused of breaching its peace. We are likewise unanimous in believing that all extraneous influences which tend, or may tend, to create favor, prejudice, or passion should be eliminated.

The complexity of our problem arises from attempts to answer the question, "What are such prejudicial extraneous influences and by what methods shall they be controlled?"

On the one hand we have the hierachy of the judicial system consisting of judges, lawyers, court attaches, and juries. It has come down to us, in the course of our institutional development, bound and sometimes inhibited by traditions appropriate enough under simpler conditions, but in effect transplanted to a soil out of which it did not grow and which is often not congenial of its effective working. The whole hierarchy has become inextricably en-

tangled in politics, and the tradition of a learned, dispassionate, and detached judiciary often fails badly when judges are chosen by popular election, and judicial tenure, as well as legitimate aspirations for judicial advancement, depend, not upon capacity or character, but rather upon subserviency to a popular opinion which, in the nature of the case, can have no knowledge of the demands of judicial office but in fact responds to adroitness in the arts of political appeal. The members of the legal profession are not themselves unanimous either in their appreciation of the evils of this system, or as to the methods by which it should be corrected. The consequences are, of course, not always uniformly bad. Many elected judges serve with devotion, intelligence, and distinction. This is particularly true in smaller communities where the personal qualifications of occupants of the Bench are widely known from intimate association. The system often breaks down in those communities where intimate personal knowledge is impossible and where the political process is in the hands of machines which do not scruple to regard judicial preferment as a patronage asset. In these circumstances, judges are frequently chosen because of their political usefulness, and sometimes even when they have come to be judges, they find it impossible to forget their political obligations.

To this we must add a frank recognition of the change which has come about in the legal profession itself. The historical position of the law, as one of the three learned professions, has been changed by the multiplication of professions and the wide dissemination of education on relatively high academic levels. The Bar is no longer a caste governed by an internal discipline applying traditional rules of behavior and requiring character and educational qualifications which set it apart. The multiplication of day and night law schools has opened up opportunity for entrance into the profession which did not exist when young lawyers were trained in old lawyers' offices and the number possible to be trained was limited to the ability of old lawyers to find accommodations, in their offices, and leisure, in their lives, to act as guides and mentors to young men. Serious and partially successful efforts have been made, and are in the process of being made, to establish increasingly adequate standards for admission to the Bar, but no workable tests have yet been devised by which character qualifications can be certainly measured in young men and young women who have not yet been subjected to the temptations and distractions of life. As a consequence the Bars of the great cities of the country often contain

relatively young and inexperienced men who are unfamiliar with the traditions which used to restrain the members of the profession, but are rather thrust into a highly competitive life, trained technically, but not disciplined for the contest.

The Bar has always been regarded as the nursery of political careers. Lawyers have, therefore, yielded to the temptation to seek publicity for their professional efforts as a basis for careers which they hope to achieve either on the Bench or in executive or legislative office. This takes place in a country in which advertising has enormously increased in volume and attained a competitive vividness which makes the vendors of all services or wares compete for attention by spectacular and clamorous appeals. There is enough of the old tradition left about the Bar to prevent direct advertising, but the indirect form of advertising one's professional skill, by seeking publicity for activity in conspicuous cases, is still open, and undoubtedly much of the publicity attending sensational cases, which has seemed unfortunate, has been directly due to efforts by public prosecutors and defendants' counsel to center the spotlight of public attention upon themselves.

On the other side, we have the newspapers and other agencies of publicity which have three functions: the dissemination of news, the editorial guidance of public opinion, and the conduct of a commercial business. As applied to the subject of publicity in sensational criminal trials, these three functions necessarily complicate matters. In the purveying of news, accuracy and relative importance are the only standards. In the guidance of public opinions, newspapers may, of course, at time be affected by political partisanship, but more often they are conscious of an obligation to protect the public against the maladministration of justice due to political or other improper interferences, with the consequence that judges and judicial proceedings are regarded as within the general field of official conduct, the purity of which can be preserved only by fearless and outspoken criticism.

As a commercial business, the newspaper is interested in selling papers. The profit of the business depends upon its returns from advertising, which in turn rise or fall with the increase or decrease of a paper's circulation. More papers are sold when a people are excited about an exciting subject. The temptation to make subjects exciting beyond their intrinsic importance is, therefore, great. The preservation of the balance among these three functions is, of course, best attained by newspapers published and

edited by men who are themselves conscious of the social and political importance of their calling. But the newspaper enjoys the protection of one of the most important of our constitutional immunities. The freedom of the press is not only guaranteed by our laws but is protected by a wise public opinion which is quick to resent any form of censorship. An unhappy but inescapable consequence of this is that the most constructive and valuable newspapers are constantly subject to inroads both upon their influence and their property values from publishers who either from temperament or the profit motive disregard the higher ethics of the newspaper profession.

Your committee is especially aware of the fact that it must consider its problem in the light of the American mind, which both our judicial system and our agencies of publicity seek to serve. Public opinion entertains certain expectations both of the Bar and of the Press which it will not willingly permit to be disappointed. The fact is of particular importance as a warning against attempts in America to rely upon the analogy of practices in other countries. Any helpful suggestions which this committee can make must not only be acceptable to lawyers and publishers but to the people. From this point of view it is important to remember that the agencies of publicity have multiplied in number and kind and have enormously increased in effectiveness and economic availability. Radio, telegraph, telephone, and news-reel, and no doubt very shortly television, compete with the printing press for the privilege of informing us, and likewise for the privilege of both stimulating and gratifying our love of excitement and our fleeting curiosity about the novel and the strange. The swift and ephemeral vividness of our current literature shows that it is addressed to a public which has learned to get its information with both ears and both eyes at once. No publicity written in simple style and attempting merely to recite facts would satisfy a people who have come to depend upon overdoses of rhetoric.

The foregoing observations are not intended as criticisms. They are not made to include a remedy for the conditions which they present as any part of the problem of your committee. We do not undertake to make suggestions which will reform either the Bench or Bar, or the Press, or our educational processes, or the temperament of the American people. The conditions described are, however, a part of our problem in the sense that they must be kept in mind when we undertake to agree upon practical standards of con-

duct for the Bar and the Press. The most we can do is to set forth clearly the paramount task and the commanding obligation which both lawyers and press have to that permanent thing in our social order which demands an effective administration of the law, and then to make such practical suggestions as we can to restrain things which endanger it.

It may be helpful to state our problem in its simplest terms and then add such complicating elements as may be necessary.

An arrest is made either upon a warrant based upon the affidavit of a single accuser, or upon an indictment by a grand jury. The offense is an ordinary breach of the criminal law, the accused a man without a conspicuous criminal record, the victim undistinguished by any elements exciting unusual sympathy or interest. The court before which the accused is brought has no special record of undue leniency or severity and the case, therefore, is allowed to take a normal and largely unnoted course through the courts.

When any of the assumptions in this description are varied, the problem of the relation between the administration of justice and publicity begins to emerge. If the accused has a bad criminal record for similar offenses, or if the victim is young or very old and so presumptively more defenseless, or if the crime is in itself odious or its perpetration is alleged to have been accompanied by circumstances of unusual brutality, the so-called "human interest" story is presented. If the judge before whom the accused is arraigned has by his past conduct given grounds for the suspicion that improper influences of any sort exerted on behalf of the accused will secure unmerited lenity, or if the accused is thought to be connected with a powerful underworld organization or to be able to summon political or other improper influence, a question of public interest immediately arises.

If the public had complete confidence in the fidelity and integrity of the processes by which justice is administered, intervention by agencies of publicity would plainly not be necessary to assure the purity of their operation. When doubt exists on this subject, intervention by publicity agencies is one of the safeguards upon which society must rely. It is quite impossible to lay down rules to determine either when and how far confidence in the judicial processes must be shaken before unusual intervention is justified, or the character and extent of the intervention when some action is conceded to be proper.

By a happy provision of our laws which has stood the test of

experience and proved an enormous safeguard to the innocent, an accused person is presumed to be innocent until the state, as his accuser, convinces the jury of his guilt. No degree of hysterical accusation, no personal unpopularity on the part of the accused either because of his supposed character or his associations, no assumptions by peace officers or prosecuting attorneys, can safely be allowed to prejudice the completeness of the presumption of innocence. The jury system is a part of our law. Its preservation is among the constitutional guarantees and whenever it is possible to prove that the jury has been even unconsciously prejudiced or influenced by matters other than the evidence produced at the trial, under the safeguards of direct and cross examination and judicial control to prevent the introduction of gossip, hearsay and irrelevance, it has been found wise to declare a mistrial and start all over again. We are here dealing with very solemn matters. The assumption of the man in the street that an accused person is a bad lot at best and that if he has not been guilty of the particular thing with which he is now charged, he will only be getting his just desserts on general principles if he is convicted, cannot be accepted as the substitute for the unprejudiced judgment of a jury. Any generalization of an opposite policy exposes its fatal tendency. We clearly could not live under a system which would send people to jail merely because they are unpopular or because their guilt has been assumed by persons who have not seen all the witnesses and heard both sides of the story. It, therefore, becomes necesary for us to recognize as a limitation upon publicity the exclusion of anything that would tend to corrupt the judgment of the jury by introducing prejudice or substituting somebody's else uninformed judgment for the deliberate and supported judgment which they are expected to render.

The arrest and *a fortiori* the indictment of an innocent man is in itself a tragedy. The social importance of minimizing as far as possible that tragedy is apparent.

The position of the judge in a criminal trial entitles him to a very high degree of consideration during the progress of the trial. In the nature of the case, he cannot indulge in newspaper controversy about his actions until after the trial is over. There is entire unanimity among the members of this joint committee in believing that judges, like any other public officers, must expect to have their conduct subjected to the freest criticism. Good judges welcome such criticism and slothful and incompetent judges should have it

whether they welcome it or not. But during the course of the trial, the judge is inevitably estopped from making defensive replies to criticisms which affect him either personally or judicially. All of his thought must be given to assuring the accused and the state a dispassionate administration of justice between them, and if he allows himself to be sensitive to external criticism or to harassing comment to which he can make no reply, the likelihood of his detachment is diminished and his efficiency as a public officer is decreased.

The jury are presumably denied access to newspapers during the course of the trial but as they sit in their jury box in a crowded court room, the probability of headlines or photographs in the hands of spectators catching their eye and influencing their judgment is obvious. Notable criminal cases, which last many days and are discussed from hour to hour by newspapers and broadcasts, no doubt often present the situation of a jury surrounded by an audience which has made up its mind and whose attitude toward witnesses, perhaps unconsciously evinced, creates an atmosphere of which even a blind jury could not remain unconscious. It is for this reason that trial by popular emotion may find the way of enforcing its own verdict and it is for this reason that the courts of England, through long courses of years, have gradually evolved repressions of publicity until after the verdict which are quite inapplicable in American courts at the present time. The rule in Great Britain is that conduct outside of the courthouse likely to prejudice or obstruct the administration of justice will be punished as contempt. Everybody will be disposed to agree with the object of that rule, but the members of this committee are widely varied in their views as to whether the English judges have not gone too far and been too exacting in its application.

In the United States we have tempered our attitude by concessions which some of the members of this committee feel are both unnecessary for the protection of the interests of society and highly perilous to the interests of either the state or the accused, as the case may be, in particular trials. So far as these concessions are the result of the misconduct of lawyers, they seem to be wholly without justification and ought to be under the control and discipline both of the courts and of an organized bar. Your committee is unanimous in the belief that neither prosecuting attorneys nor counsel for the accused ought, during the course of the trial, to give newspaper interviews or make radio broadcasts either forecasting

the effect of evidence yet to be produced or commenting upon evidence already introduced.

So far as lawyers are concerned, the place to try their cases is in the courthouse and only the rarest combination of circumstances can justify their participation in any publicity prior to or during the trial. It can proceed from only one or the other of two motives. One is self-advertisement and the other an attempt to influence the trial by affecting that public opinion which constitutes the atmosphere in which the trial is to take place. Many of the canons of professional ethics approved by the American Bar Association undertake to prescribe the limits of propriety for professional action. Canon 20 is as follows:

"20. *Newspaper Discussion of Pending Litigation*
Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the court; but even in extreme cases it is better to avoid any *ex parte* statement."

This committee is clear that if local bar associations would resolutely enforce the obvious and known requirements of the code of professional ethics upon the lawyers who are subject to the disciplinary actions of the Bar, a very substantial part of the most glaring evils of improper publicity would be overcome.

A dignified statement, prepared by counsel for the accused, asking the public to suspend judgment upon the accused until the charges against him can be fully and fairly investigated, would seem to be the limit beyond which counsel ought not to go. The spectacle of counsel either for the state or the accused giving interviews to the newspapers as to their opinions, or making radio addresses during the trial of a case, is plainly in violation of the acknowledged ethics of the profession and in the opinion of this committee has a greater tendency to obstruct the fair administration of justice than any other kind of publicity now under examination.

The committee is especially impressed with the danger arising from the misuse of the radio in connection with trials. Practically everybody, nowadays, has a receiving set (there are said to be more than 30,000,000 in use in the country) but we have not yet undertaken to measure the effect of radio advocacy upon public opinion

nor have we set up the machinery for correctives in radio news which are obvious in the printed page. If a newspaper prints an incorrect account of a trial or an improper plea by an advocate engaged in a trial, the likelihood of the prejudicial statements being brought to the attention of persons interested on the other side or of the court, so that steps can be taken to prevent the corruption of the trial, is at least fair. Misleading satements and improper pleas made over the radio are fleeting and impermanent. Any attempt to correct them has to be addressed to what is supposed to have been said rather than to a printed statement which can be quoted and refuted with definiteness and accuracy. The responsible broadcasting companies, for obvious reasons, protect themselves against the misuse of their facilities in this direction but local broadcasting companies are under a severe temptation to permit the dramatization of a local trial which is exciting public interest and danger of having two trials going on at the same time—one in the courthouse and one in the circumambient air—is obvious. The one in the courthouse aims to arrive, dispassionately, at a result which will be just to the accused and just to the state. The object of the trial in the air is to achieve a dramatic result, to arouse sympathy and perhaps even to create prejudice. The trial in the courthouse is surrounded by the rules of evidence which require the exclusion of hearsay and gossip and assure the full presentation of both sides of the issue. The trial in the air has no safeguards and the narrator is not subject to cross examination, nor is there any requirement that the narrator shall himself be either intelligent or just or that he shall even attempt to present both sides. The evil of the trial in the air, when it is participated in by prosecuting attorneys and counsel for the accused, is peculiarly great. Errors made in the record of the trial in the air are not subject to judicial review and the air audience, when it has made up its mind upon such a presentation, may well come to distrust the whole process of judicial administration when the jury, acting under the responsibility of their oaths, reach a different result by judging the weight of the evidence from witnesses whom they have seen and whose credibility they alone have had an adequate opportunity to measure. The evil here referred to, of course, is the larger evil of a breakdown in public confidence in judicial processes. There is, however, a grave danger that the trial in the air may affect and obstruct the trial which is contemporaneously going on in the courthouse. One of the causes long recognized by the law for a change of venue

is that a fair trial cannot be had in the community where, under ordinary circumstances, the case would come on for hearing. This does not mean merely that it is difficult or impossible to find 12 jurors who have not made up their minds, but it does mean that any 12 so found would find themselves, or the witnesses testifying before them, either afraid to do their duty or unconsciously prejudiced by the passions of the community which surround them on every side. For even a greater reason, therefore, after a trial has started in the courthouse every precaution should be taken to prevent the creation of a passionate and distorted public mind around it.

Your committee has considered with great care recommendations which close the so-called "Hallam Report." They deal in great detail with the particular problems suggested by the trial of Bruno Richard Hauptmann, which exhibited, perhaps, the most spectacular and depressing example of improper publicity and professional misconduct ever presented to the people of the United States in a criminal trial. It is possible that this publicity overreached itself.

At the end of the Hallam Report there are 16 specific recommendations. They have been carefully considered by the joint committee. Omitting those which seem inappropriate to this report and consolidating others, we recommend:

(1) "That attendance in the courtroom during the progress of a criminal trial be limited to the seating capacity of the room."

The power of the court to limit the audience to the capacity of the courtroom is beyond question. An audience so limited unquestionably fulfills the requirement of a public trial. An audience which exceeds the seating capacity of the courtroom means that the aisles or other standing room intended for safety are obstructed. Neither the quiet nor the order, necessary to assure that witnesses shall be heard, can be maintained and witnesses should not be required to testify under the excitement or apprehension which an eager crowd always creates.

(2) "That the process of subpoena or any other process of the court should never be used to secure preferential admission of any person or spectator; that such abuse of process be punished as contempt."

The evil involved in manifest. The corruption of court attendants, the artificial and preferential selection of the audience, the discrimination against the casual observer, are all theoretically offenses both against the dignity of the proceeding and the free public trial guaranteed by law to the accused. From the oldest times,

order in the courtroom and unobstructed approaches to the place where a trial is being held have been assured by the presence of officers specially designated, and in the enforcement of discipline and the admission of the public to the trial they should be wholly impersonal and unbiased.

(3) "That no use of cameras or photographic appliances be permitted in the courtroom, either during the session of the court or otherwise.

"That no sound registering devices for publicity use be permitted to operate in the courtroom at any time.

"That the surreptitious procurement of pictures or sound records be considered contempt of court and be punished as such."

With regard to the foregoing recommendations, the committee is unanimous in recommending that the use of cameras in the courtroom should be only with the knowledge and approval of the trial judge.

The lawyer members of the committee believe that in addition to the knowledge and approval of the trial judge, the consent of counsel for the accused in criminal cases and of counsel for both parties in civil cases should be required to be secured. The newspaper representatives of the joint committee believe that the consent of the trial judge is full protection both to parties and to witnesses, and that no further requirement should be interposed.

The lawyer members of the committee believe the following to be an expression of their view on the whole subject:

Whether or not pictures of witnesses should be permitted to be taken without their consent can safely be left to the determination of the trial judge whose discretion should be controlled by a desire to promote the ends of justice, broadly considered, without any unnecessary invasion of the right of privacy. Under ordinary circumstances the use of cameras and photographic appliances, if consented to by the accused and the witnesses, and approved by the judge, would seem to be of relatively small importance. Pictures of the accused, taken without his consent, and of witnesses, who are obliged to be present, often under circumstances of great emotional distress, seem to impose an unnecessary hardship upon the doing of a duty which society commands. The right of personal privacy is very little respected in America. As indicated above, the accused is still protected by the presumption of innocence and would seem entitled not to be photographed without his consent merely because he is temporarily rendered unable to protect his own rights. Women and children, whose presence at a trial is compelled, are often humiliated by the thought that they are accidentally associated with the sordid details of a criminal trial. It seems an unjustifiable addition to their distress that they should be photographed against their will, pictured in

the Press, and their personal appearance and clothes made the subject of gossiping comment. That there are witnesses who enjoy this kind of publicity is no justification for inflicting it upon those who shrink from it. Those who seek it can usually find some method of attaining it, while those who shrink from it can find no method of avoiding it unless their rights are respected by the Press and protected by the court.

The representatives of the newspapers, on the other hand, believe that the subject is adequately covered from their point of view by the following summary:

> The law requires that trials shall be public; and the appellate courts have repeatedly held that the requirement is satisfied by the attendance of the press. Although it may distress principals or witnesses to attend, their "right of privacy" in a dispute which the public, through the instrumentality of its courts, is called upon to adjudicate, is a legalistic anomaly. The public has, by constitutional guarantee, the right to the most complete information as to what is afoot in its courts. A picture may be as informing as columns of type. Provided the picture is made without disturbing the decorum of the court, or otherwise obstructing the ends of justice, the publisher of a newspaper has the right under the existing law both to make the picture and to print it.
>
> This right—which is part of the constitutional privilege of the press to print the news, and also part of the people's constitutional right to be informed by its free and full publication—the publisher members of the committee are not prepared to disavow.

The whole subject of sound registering devices is relatively new. Your committee does not feel that experience has yet made it possible to take an unqualified position in opposition to their use. It may be that the future will provide some method by which a faithful sound record of the proceedings of the court can be used to extend the trial beyond the limits of the audience possible in the courtroom itself. It is, however, quite clear that all mechanisms which require the participants in a trial consciously to adapt themselves to the exigencies of recording and reproducing devices distract attention which ought to be concentrated upon the single object of promoting justice. Experience has quite clearly demonstrated that even in the much simpler matter of public speaking, radio addresses and addresses to an audience which confronts the speaker are very different things requiring different techniques. Quite obviously the attention of lawyers and witnesses ought to be concentrated upon the jury who are to determine the tragic fact of guilt or innocence and ought not to be divided between the jury and an air audience who for the most part have no real interest in the proceedings but are listening in to get a thrill out of a pitiful and sordid tale. It is too much to hope that lawyers and witnesses

can do their full duty by the court and at the same time be effective actors in the highly specialized art of broadcast drama.

Your committee is in entire agreement that the surreptitious procurement of pictures or sound records is wholly indefensible.

(4) "That newspaper accounts of criminal proceedings be limited to accounts of occurrences in court without argument of the case to the public.

"That no popular referendum be taken during the pendency of the litigation as to the guilt or innocence of the accused."

Your committee has not been able to agree upon any categorical statement of limitations which should be observed by newspapers or other publicity agencies in their accounts of occurrences in court. We are agreed that no popular referendum ought to be taken during the pendency of the trial, and a majority of the committee feel that newspaper comment upon the trial should avoid speculation as to guilt and expressions of opinion as to the effect of rulings by the court or testimony by particular witnesses. The inability of the committee to agree with regard to these recommendations obviously proceeds from the fact that the members of the committee are fearful that a hard and fast rule is not elastic enough to meet extraordinary circumstances and also from the necessary difference in the personal equation when one factor in the problem may be only a matter of good taste. The committee is, however, agreed that whatever limits are set in these matters ought at least be such as to prevent any bias or prejudice in the courtroom either for or against the accused.

(5) "That broadcasting of arguments, giving out of argumentative press bulletins, and every other form of argument or discussion addressed to the public, by lawyers in the case during the progress of the litigation be definitely forbidden."

With regard to this recommendation, your committee is unanimous in believing that the conduct of lawyers in the case should be governed by the code of ethics of their profession, which has been adequately discussed above.

(6) "That public criticism of the court or jury by lawyers in the case during the progress of the litigation be not tolerated."

This is so plainly covered by the code of ethics under which lawyers act that your committee limits the subject to its general recommendation at the end of this report.

(7) "That featuring in vaudeville of jurors or other court officers, either during or after the trial be forbidden.

"That public discussion in speeches, magazine articles or newspaper interviews, by witnesses, during the progress of the litigation and covering the subject matter thereof, should be forbidden."

That jurors, witnesses, or court officers should not take part in vaudeville performances, or give interviews, or write articles for publication during the progress of the trial is unanimously agreed to by your present committee. That any attempt to regulate their conduct after the trial is over would be unjustified is our unanimous opinion. While the trial is in progress, those bearing responsible parts in it are performing a high public duty from which their attention ought not to be diverted. When the trial is over, they, like all other citizens, should be subject to the usual laws regulating speech and behavior.

General Recommendations.

In view of the considerations above set forth, the committee believes that there should be a continuing effort, local in character, to regulate the relations under discussion. We recommend that local bar associations appoint continuing committees on press relations to function with corresponding committees representing the Press and other means of publicity. So far as the legal members of such committees are concerned, they should be carefully chosen from among the more thoughtful members of the Bar and they should be men of such professional dignity that responsible editors would be willing to discuss with them, currently and frankly, the difficulties presented by any particular trial during its progress. The committee recognizes the inadvisability of a harsh use of the power to punish for contempt by courts, but at the same time appreciates that that power, inherent in every court, must be used as far as is necessary to protect the fairness of the proceedings, and that it may also be used sympathetically to protect the part of the Press which respects the real object of judicial proceedings, against the unfair competition of agencies of publicity which recklessly disregard that object and seek to capture customers of their competitors by publications of a sensational, scandalous and inflammatory kind.