

Yellow Justice: Media Portrayal of Criminal Trials in the Progressive Era

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In Yellow Justice, Shannon Petersen rediscovers a number of once famous and distinctly American headline news stories that shed light on the influence of the media on public opinion regarding criminal justice in early twentieth century America. He argues that newspapers engaged in yellow journalism during the Progressive Era through sensationalist reporting of instances of murder, bigamy, and other criminal trials capturing the public's interest, and in the process reinforced and often contributed to the creation of "existing social perceptions" regarding gender and racial stereotypes, class differences, and societal moral ideals that the newspapers purported to merely "report." Mr. Petersen further argues that media portrayal of criminal trials during the Progressive Era may have actually influenced the outcome of those trials by diminishing the objectivity of juries and judges. He discusses the views of criminologists from the time period who, distrustful of the jury's capacity for objectivity, sought to eliminate this problem primarily by recommending policies that curtailed the freedom of expression in the name of justice. Mr. Petersen concludes that yellow journalism led to yellow justice during the early years of the twentieth century.

INTRODUCTION

Early in 1905, the *New York Times* reported that city police had arrested Josephine Noble for killing her husband, Paton Noble. The very same day the police came to her door, the grand jury indicted Josephine for murder in the second degree. Mrs. Noble, the reporter wrote, "wept bitterly over her arrest."¹ She "seemed more shaken than at any other time after the shooting."² How the journalist was able to comment on Josephine's state of mind since the shooting two months earlier is unclear.

The *New York Times* followed Josephine's trial to its conclusion. District Attorney Gregg attempted to show that on November 12, 1904, Josephine and Paton fought, and that Josephine eventually became so angry she drew a pistol and shot her

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¹ *Mrs. Noble Is Indicted*, N.Y. TIMES, Jan. 12, 1905, at 1.

² *Id.*

husband twice in the chest. After the state rested, Josephine took the stand in her own defense. “She was calm at first,” wrote the reporter, “but broke down when she came to tell how her husband met his death.”³ She said that on the night of the shooting she was unpacking a trunk, as she and her husband had recently returned from a visit to the Maine woods. In the trunk she found a revolver, which she laid upon a table. Later on, she said, she picked up the revolver and “playfully”⁴ aimed it at her husband. He warned her that it was loaded, but she laughed at him. Josephine and Paton then “playfully” struggled for possession of the gun, when it suddenly discharged and her husband fell to the floor.⁵

On cross-examination, District Attorney Gregg asked Josephine to explain how two bullets were found in her husband’s body. She replied that after the first accidental shot, she threw herself upon her husband and in her grief the revolver discharged again. The District Attorney then asked Josephine to show the court how she had been holding the pistol when it was discharged, but “Mrs. Noble recoiled with a scream and refused to touch the revolver.”⁶ After twelve minutes of deliberation, the jury returned a verdict of not guilty. The *New York Times* reporter wrote, “[t]he defendant’s own story and her manner of telling it seemed to convince the jury that she was innocent.”⁷

This may have been true, but the *New York Times* and its manner of telling Josephine’s story also helped acquit her. Her jury was not sequestered. After a long day of listening to testimony, members of the jury were allowed to go home where they could have read the papers and discussed the case with their friends and family. The New York newspapers in 1905, like papers around the country, loved sensational stories. If the story was not sensational to begin with, it would be by the time the reporter and the editor were through with it. In the age of yellow journalism, little excited the press and titillated the public more than a good trial.⁸

News stories like Josephine’s reveal much about the criminal justice system and society in general during the Progressive Era. Of course, one need look no further than the case of O.J. Simpson to conclude that the media today still covers criminal trials with enthusiasm.⁹ Yet the reporting of criminal trials today differs significantly from what it

³ *Jury, in 12 Minutes, Acquits Mrs. Noble*, N.Y. TIMES, Apr. 28, 1905, at 2.

⁴ *Id.*

⁵ *See id.*

⁶ *Id.*

⁷ *Id.*

⁸ *See* LAWRENCE M. FRIEDMAN, CRIME AND PUNISHMENT IN AMERICAN HISTORY 253 (1993) [hereinafter FRIEDMAN, CRIME AND PUNISHMENT].

⁹ *See generally* THE PRESS ON TRIAL: CRIMES AND TRIALS AS MEDIA EVENTS (Lloyd Chiasson Jr. ed., 1997); *See generally* POPULAR TRIALS: RHETORIC, MASS MEDIA, AND THE LAW (Robert Hariman ed., 1990).

was nearly a hundred years ago. News reporters early in the twentieth century regularly employed blatant racial and gender stereotypes to color their articles. “Negroes,” for example, were “giant” and invariably guilty.¹⁰ Women wept, wailed, and frequently fainted.¹¹

In addition, newspapers during the Progressive Era reported about different kinds of crimes than would be reported about today. Cases of bigamy frequently made news, due, in part, to the fact that bigamy was more common in an age when divorce was difficult to obtain, desertion was frequent, and anonymity was easier to achieve. The media was also more interested in reporting matters of family and sex than newspapers are today. One hundred years ago, marriages, divorces, and adultery made headlines daily. Moreover, while a ground for divorce could not be considered a crime, cases of divorce often went to trial, where squabbling spouses were motivated to bring criminal accusations if they could.¹² The yellow press followed such trials closely.

During the first decade of this century, the media also reported on another kind of crime that would not likely be considered newsworthy today: automobile speeding. Early in the twentieth century, speeding drivers were at times subject to arrest, trial, and conviction with a jail sentence. The media paid attention not only because of the public’s fascination with this new innovation, but because the automobile, for nearly two decades, remained little more than a toy for the wealthy.¹³ Hence, trials over traffic violations dramatically encapsulated many of the economic and social tensions of the industrial age.

Media coverage of criminal trials early this century provides more than just a mirror of Progressive Era society. Like the contemporary media, its early twentieth-century counterpart acted as an intermediary between the criminal justice system and the public, teaching the American people about the law and the rights of the accused.¹⁴ However, by reporting crimes and cases selectively, the media also reinforced certain biases in the minds of citizens. Tension has always existed between the First Amendment guarantee of freedom of the press and the Sixth Amendment right to a fair trial.¹⁵ However, the risk of undermining a defendant’s right to a fair and impartial jury was perhaps greatest during the first decade of the twentieth century.

¹⁰ See, e.g., *Negro Giant Guilty*, N.Y. TIMES, July 28, 1905, at 4.

¹¹ See, e.g., *Caused Uproar in Court*, N.Y. TIMES, May 1, 1905, at 2.

¹² See, e.g., *Mrs. Madden’s Accusations*, N.Y. TIMES, Sept. 13, 1905, at 1.

¹³ See JAMES WEST DAVIDSON ET AL., *NATION OF NATIONS: A CONCISE NARRATIVE OF THE AMERICAN REPUBLIC* 658 (1996).

¹⁴ See LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 576 (2d ed. 1985) [hereinafter FRIEDMAN, *A HISTORY OF AMERICAN LAW*].

¹⁵ See Jonathan Remshak, Comment, *Truth, Justice, and the Media: An Analysis of the Public Criminal Trial*, 6 SETON HALL CONST. L.J. 1083 (1996); see U.S. CONST. amend. I (“Congress shall make no law . . . abridging the freedom of speech or of the press”); see also U.S. CONST. amend. VI (“In all criminal

Historians have characterized the age of yellow journalism as a time when crime news was “shrill and sensational” and the press frequently jumped to conclusions about guilt or innocence long before a jury returned its verdict.¹⁶ One historian characterizes yellow journalism by its use of bold headlines that “screamed excitement . . . about comparatively unimportant news,”¹⁷ lavish pictures, and “faked”¹⁸ interviews, as well as an “ostentatious sympathy with the underdog.”¹⁹ Yellow journalism “began with William Randolph Hearst’s *New York Journal* and the *New York World* in 1896, spread rapidly among other papers throughout the nation in 1898, and reached its height at the turn of the century.”²⁰ It then felt a slow decline. Near the end of the first decade of the twentieth century, there were not many yellow papers still in print.²¹

Although attacked by many critics past and present, yellow journalism contributed to the success of news print. The period of yellow journalism coincided with the dramatic rise in the circulation of the major newspapers.²² For example, during the decades before and after the turn of the century, the *New York World* became a flag-bearer for yellow journalism as well as America’s largest newspaper, with a total circulation of one million in March of 1897.²³ Greater New York City was incorporated the next year with a population of 3.4 million. By the turn of the century, the nation’s leading yellow paper reached nearly a third of the nation’s largest city.²⁴ The growing circulation of the yellow newspapers increased the risk that the jury pool would be contaminated with prejudice, diminishing the probability of an impartial jury.

In addition, because the criminal justice system had not yet taken measures to sequester juries, the risk of an unfair trial was perhaps greatest during the first decade of the twentieth century. Sensational media coverage of trials was only one of the many challenges that the criminal justice system faced during the beginning of the twentieth

prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . .”).

¹⁶See LAWRENCE M. FRIEDMAN & ROBERT PERCIVAL, *THE ROOTS OF JUSTICE: CRIME AND PUNISHMENT IN ALAMEDA COUNTY, CALIFORNIA 1870–1910*, 237–38 (1981).

¹⁷FRANK LUTHER MOTT, *AMERICAN JOURNALISM: A HISTORY, 1690–1960* 539 (3d ed. 1962) [hereinafter MOTT, *AMERICAN JOURNALISM*].

¹⁸*Id.*

¹⁹*Id.*

²⁰*Id.* at 539.

²¹See *id.* at 540–41.

²²See *id.* at 519.

²³See *id.* at 546.

²⁴See SIDNEY KOBRE, *THE YELLOW PRESS AND GILDED AGE JOURNALISM* 29 (1964).

century. The criminal justice system responded in a typically progressive fashion by adhering to principles of professionalism, rational administration, and efficiency. Slowly, bureaucratic institutions like the professional police force, district attorneys, and a reorganized judiciary displaced “traditional means of securing social stability through family, friends, and church.”²⁵ By 1900, however, only the general framework of the modern criminal justice system had appeared.²⁶

Along with the coverage of the impact of yellow journalism on the criminal justice system in early twentieth century, this survey also addresses criminologists’ conception of the problems the mass media imposed on the administration of justice and how they attempted to address these problems. Criminologists certainly feared that the yellow press subverted the Sixth Amendment right to a fair and impartial jury. However, they were more concerned that news reports of crimes and criminal trials actually incited crime. Future President of the United States and Supreme Court Chief Justice William Taft proposed that judges receive more power over juries in criminal cases.²⁷ However, the consensus was that the solution to these problems was to limit the freedom of the press.²⁸ I have found no contemporary commentator proposing that juries be rigorously screened for bias during voir dire or sequestered during trial.

To explore the media portrayal of criminal trials early in the twentieth century, one can examine relevant articles from the *New York Times* in 1905. By focusing comprehensively on a single year, one can obtain a more accurate picture of newspaper reporting than by selecting articles from, for instance, a decade of reporting. A problem with this approach, however, is that there were few criminal cases in 1905 that generated more than just one or two newspaper stories. While this article will draw from less prominent stories of the period as well as more notable ones, more attention will be paid to the two cases that generated the largest press coverage: the trial of Nan Patterson for murder and the court martial of Midshipman Meriwether Lewis for manslaughter. This survey does not focus on trials reported in the *New York Times* in 1905 that were for corruption, fraud, anti-trust violation, or abuse of political office. Instead, it concentrates on the coverage of sensational crimes of the period, such as, murder, bigamy and traffic violations.

The choice of the *New York Times* as the ideal newspaper for the analysis of media portrayal of criminal trials in early twentieth century requires some additional commentary. One hundred years ago, the *New York Times* was not the news leader that it is today. When Adolph S. Ochs took over the management of the paper in 1896, the

²⁵ KERMIT HALL, *THE MAGIC MIRROR: LAW IN AMERICAN HISTORY* 187 (1989).

²⁶ *See id.* at 189.

²⁷ *See Criminal Law System National Disgrace—Taft*, N.Y. TIMES, June 27, 1905, at 5.

²⁸ *See, e.g.*, Editorial, *Trial by Newspapers*, 1 J. AM. INST. CRIM. L. & CRIMINOLOGY 849, 850 (1910) [hereinafter Editorial, *Trial by Newspapers*].

paper had a circulation of only 9,000.²⁹ By 1900, however, circulation had expanded exponentially to 100,000, doubling to 200,000 by 1910.³⁰ Mr. Ochs created a conservative but enterprising paper that quickly became one of the most widely read in the nation.³¹ On January 1, 1905, the *New York Times* marked its success by moving into a new building in Times Square.³²

Ironically, however, the *New York Times* presents a good example of the impact of the media on the criminal justice system precisely because it professed to reject yellow journalism. In 1896, Ochs committed his paper to publishing “All the News That’s Fit to Print.”³³ By adopting this slogan, he expressed his disdain for the “sensational newspaper indulging in coarse, vulgar and inane features.”³⁴ Instead, Ochs deliberately set his paper apart from the more lurid *New York Journal* and *New York World* by attempting to not engage in yellow journalism. Most historians agree that the *New York Times* trafficked relatively little in yellow journalism.³⁵ Nonetheless, news articles from the *New York Times* in 1905 reveal that even such a conservative newspaper employed many techniques of the yellow press. Its influence over the New York jury pool, therefore, was insidious and increasingly significant as circulation grew.

I. POPULAR SUBJECTS OF PROGRESSIVE ERA YELLOW JOURNALISM

Newspaper reports of criminal trials from the first decade of the twentieth century tell us as much about Progressive Era society as they do about journalism and justice. For example, racial and gender stereotypes reflected in newspaper reports and jury verdicts provide further evidence that “equal protection of the laws”³⁶ remained elusive decades after the passage of the Fourteenth Amendment. In addition, the kinds of crimes tried and reported expose the concerns and problems particular to early twentieth-century Americans. In this way, trials served as “social barometers.”³⁷

²⁹ See MOTT, *AMERICAN JOURNALISM*, *supra* note 17, at 549.

³⁰ See ELMER DAVIS, *HISTORY OF THE NEW YORK TIMES, 1851–1921* 310 (Greenwood Publishing Group 1970) (1921).

³¹ See GEORGE HENRY PAYNE, *HISTORY OF JOURNALISM IN THE UNITED STATES* 342 (Greenwood Publishing Group 1970) (1920).

³² See MEYER BERGER, *THE STORY OF THE NEW YORK TIMES, 1851–1951* 156–57 (1951).

³³ Adolph S. Ochs, *Introduction* to ELMER DAVIS, *HISTORY OF THE NEW YORK TIMES, 1851–1921* at xvi–xvii (Greenwood Publishing Group 1970) (1921).

³⁴ *Id.* at xvi.

³⁵ See, e.g., MOTT, *AMERICAN JOURNALISM*, *supra* note 17, at 540; See also KOBRE, *supra* note 24, at 99.

³⁶ U.S. CONST. amend. XIV, § 1.

³⁷ THE PRESS ON TRIAL, *supra* note 9, at 208.

A. *Portrayal of Gender Stereotypes*

Henry Weitz's case typifies the way that women were reported to behave in the courtroom. On May 1, 1905, in the Essex Market Court, Magistrate Barlow imposed a \$3 fine on Henry Weitz for disorderly conduct. His wife, identified only as "Mrs. Henry Weitz,"³⁸ then approached the rail to give her husband the money with which to pay the fine and obtain his release. But "a court officer roughly threw her aside."³⁹ The police then dragged Henry from behind the rail, from where he had gone to get the money. "Mrs. Weitz screamed"⁴⁰ and clung to her husband as police dragged Henry to the court prison. Henry then either fell or was pushed down a flight of stairs, tumbling into the courtyard. As the story goes: "'They are murdering my husband!' screamed Mrs. Weitz. 'Won't some one help me?' Then she fainted."⁴¹ The reporting of emotional outbursts by women was common and certainly influenced public perception of criminal defendants.

Sometimes, early twentieth-century notions of true womanhood and marriage may have earned defendants' acquittals despite evidence and law to the contrary. One headline almost speaks for itself: "She Shot Her Husband, But Court Says Go Free: And Judge, Jury, Prosecutor Give Money to Distaught Wife: Hiss Man Who Scorned Her: A Case in General Sessions Which the Court Clerk Says Was Never Equaled for Its Sadness."⁴² The headline refers to the felony assault case of Mrs. Elizabeth Wilson, formerly Elizabeth Ludwig. For the reporter it was significant that Elizabeth came from a "respectable German family."⁴³ She and Edward Wilson met at a dance and married in 1903 when she was twenty-two and he was twenty-seven.

Only a few weeks after the marriage, however, Edward left his wife and refused to support her. "She was too proud to let her family know"⁴⁴ of her husband's desertion. For a time, she managed to support herself as a stenographer, but then she bore a child. She appealed to the courts, and Edward was ordered to pay her \$5 a week to support her and her baby. Edward refused, despite the court order.

On September 14, 1905, Elizabeth went to speak with her husband at Sillson & Co., where Edward worked as a printer and bookbinder. "She begged him to give her

³⁸ *Caused Uproar in Court*, N.Y. TIMES, May 1, 1905, at 2.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *She Shot Her Husband, But Court Says Go Free*, N.Y. TIMES, Dec. 22, 1905, at 4.

⁴³ *Id.*

⁴⁴ *Id.*

some money for her support. He refused.”⁴⁵ As he turned to walk away from her she pulled a revolver and shot him in the back, seriously injuring him. She then “calmly waited for a policeman to arrest her. She made no attempt to deny what she had done.”⁴⁶ After an investigation of the case by Assistant District Attorney Hart, “an attempt was made”⁴⁷ to release Elizabeth without a trial, but the request was denied. The state then charged Elizabeth with felony assault.

At the trial, the defense argued that Elizabeth was not guilty by reason of temporary insanity. Without leaving the courtroom, the jury found Mrs. Wilson not guilty. Her husband, however, “was hissed out of court.”⁴⁸ One of the members of the jury asked the judge that Mr. Edward be charged with some crime and sent to prison. The court clerk even attempted to collect cash for Elizabeth. The entire jury, all the court clerks and attendants, several of the witnesses, the judge, and even the two assistant district attorneys contributed. All told, \$41.55 was collected and given to Elizabeth. “In all the eleven years I have been in this court,”⁴⁹ said Clerk Brophy afterward, “I have seen much that was heart-rending, but nothing that was worse than the case of that woman.”⁵⁰

Mrs. Hattie Munckton walked away from an even more serious crime, the murder of her husband. While on the witness stand, she testified that her husband made her work “hard and long”⁵¹ in the fields and that he kicked and beat her if she failed to work to his standard. She also testified that he accused her of being lazy and unfaithful. On several occasions when she was ill she said he required her to get up and work until she dropped from exhaustion. She further declared that her husband “brutally ill-used”⁵² her the night before the killing, and that the next morning he was trying to kill her with an axe when she fired at him with a shotgun, intending only to maim him. After two hours of testimony, Hattie fainted, and the court had to suspend while she was revived. Wrote the reporter, “[t]ears were in the jurors’ eyes, and it was a dramatic scene.”⁵³ It was also a dramatic and effective defense.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Woman’s Story Moves Jury*, N.Y. TIMES, Dec. 16, 1905, at 1.

⁵² *Id.*

⁵³ *Id.*

After four days of trial, the jury acquitted Hattie from the charge of murdering her husband. The jurors deliberated through the night for ten hours, coming into court three times to ask questions from the judge. Ultimately, the jury agreed with the defense theory of justifiable homicide. After three-and-a-half months in jail, Hattie was released. Upon the news, she was “almost overcome.”⁵⁴ She managed to collect herself, shook hands with each juror and thanked them.

Journalists, of course, not only stereotyped female defendants, but frequently described female victims in ways that might have unduly prejudiced juries against male defendants. For example, early in January of 1905 the *New York Times* reported about the double murder of Mrs. Clara Klopmann and George Fricke, which, the newspaper concluded, had been “long planned.”⁵⁵ The *New York Times* described Mrs. Klopmann as thirty-nine-years old and “good looking, but far from beautiful. She was not remarkable for intellect, but she seemed to exercise wonderful power over the other persons concerned in the tragedy.”⁵⁶ Interestingly, the *New York Times* ignored the *male* victim except to identify him as a baker.

B. *Portrayal of Racial Stereotypes*

Gender stereotypes often overlapped with racial stereotypes in news articles charged with sexual undertones. For example, in June of 1905, the *New York Times* reported on a case recently decided in Waco, Texas. After only twelve minutes of deliberation, a jury convicted Lee Robertson, “a negro,”⁵⁷ of “attempting to attack a white woman.”⁵⁸ The man was sentenced to 1,001 years in jail and transferred away from Waco to avoid lynching. In such cases, journalists of the *New York Times* would often not specifically mention “rape” or “sexual” assault.

In another case taking place in Bloomington, Indiana, the *New York Times* reported that a “negro”⁵⁹ attacked Mrs. Frank Mulky, “a well-known member of clubs,”⁶⁰ in her home. According to the *New York Times*, the defendant, Leasy Johnson, gained entrance to Mrs. Mulky’s bedroom by climbing a veranda, but she “fought the man so desperately that he fled.”⁶¹ Mrs. Mulky then called the police, and the “entire police

⁵⁴ See *Mrs. Munckton Acquitted*, N.Y. TIMES, Dec. 18, 1905, at 1.

⁵⁵ *Says Double Murder Was Long Planned*, N.Y. TIMES, Jan. 2, 1905, at 2.

⁵⁶ *Id.*

⁵⁷ *Negro Gets 1,001 Years*, N.Y. TIMES, June 24, 1905, at 2.

⁵⁸ *Id.*

⁵⁹ *Woman Fought Off Negro*, N.Y. TIMES, Oct. 12, 1905, at 2.

⁶⁰ *Id.*

⁶¹ *Id.*

force started on a hunt.”⁶² The police found “a negro with his face and hands badly scratched”⁶³ and took him before Mrs. Mulky, who identified him as her attacker. However, when indicted by the Grand Jury for attempted criminal assault, “he refused to plead guilty.”⁶⁴ The *New York Times* reported that the case had aroused “much excitement”⁶⁵ in Bloomington and that the defendant was being closely guarded.

During 1905, the *New York Times* frequently reported about lynching or the threat of lynching faced by African-American suspects and defendants elsewhere in the country. In another example, the *New York Times* reported that James Fowlkes, a “colored”⁶⁶ man, had been charged with “assault on a white woman”⁶⁷ in Clinton, Kentucky. According to the *New York Times*, Fowlkes’ trial was held in a baggage car on an Illinois Central train because authorities feared that he would be lynched if tried in a Clinton courthouse. Although Fowlkes avoided lynching, the jury promptly convicted him.⁶⁸

While emotion, raised by prejudice and stereotype, operated unfairly against defendants in these kinds of cases, it worked to the advantage of the prosecution. For example, the *New York Times* reported that, according to supposed “indications,”⁶⁹ Miss Daisy Wilkinson would not be arrested for shooting and killing Herman Nolan, “a negro”⁷⁰ who allegedly attacked her. Miss Wilkinson, a schoolteacher, was walking to work through some woods near the Guyandotte River in West Virginia when she was “overtaken by the negro.”⁷¹ Since she boarded half a mile from her school, friends had advised her to carry a pistol to protect herself during her commute. According to the *New York Times*, “[h]e attacked her, and Miss Wilkinson drew a pistol and sent a bullet through his brain.”⁷² After fleeing to a nearby farmhouse, Miss Wilkinson told her story and a group of men went in search of Herman’s body. After finding it, these “citizens”⁷³

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Sentenced Negro on Train*, N.Y. TIMES, Oct. 8, 1905, at 3.

⁶⁷ *Id.*

⁶⁸ *See id.*

⁶⁹ *Girl Kills Her Assailant*, N.Y. TIMES, Dec. 17, 1905, at 3.

⁷⁰ *Id.*

⁷¹ *See id.*

⁷² *Id.*

⁷³ *Id.*

threw it into the Guyandotte River. The *New York Times* described Miss Wilkinson as twenty-years old.

These are but a few examples of the gender and racial stereotypes that permeated the reports of criminal trials early in the twentieth century. Such reports both mirrored and reinforced societal norms. In turn, these values and prejudices reflected themselves in the administration of criminal justice—through judges, attorneys, and jurors.

C. *Portrayal of Bigamy*

Cases of bigamy reveal more specific concerns of Progressive Era society, namely, how the criminal justice system attempted to preserve traditional ideals of marriage and family, using the law as an instrument in the pursuit of social morality. In a time when divorce was difficult if not impossible to obtain, and anonymity easier to achieve, desertion and bigamy were far more widespread than now. Bigamy cases were also peppered with gender stereotypes. Most significantly, however, these cases reveal a media and a criminal justice system that scrutinized certain areas of private life more closely and eagerly than today.

Before examining some specific cases of bigamy, however, a word or two more should be said about divorce during the Progressive Era. Contemporary no-fault divorce was not available to married couples during the early years of the twentieth-century. A plaintiff, in that era, had to prove grounds for divorce with evidence of, for example, extreme cruelty, habitual intemperance, or a commitment to an insane asylum. In New York, the only ground for divorce was adultery. While a study of family law is beyond the scope of this paper, it is interesting to note that the *New York Times* in 1905 frequently reported divorce cases, often on the front page and in bold headlines. Divorce proceedings in 1905 were not only rarer than today, but were considered more scandalous and, therefore, more newsworthy.

Divorce proceedings in 1905 were not criminal cases *per se*, but sometimes divorce trials produced incriminating testimony of one spouse against another that would lead to a criminal trial. Media reporting of divorce cases would overshadow any criminal case arising from a divorce proceeding. The case of *Madden v. Madden*⁷⁴ is a good example of this phenomenon. In September of 1905, the *New York Times* reported on the divorce of Anna Louise Madden from her husband, John Madden, a “well-known turfman,”⁷⁵ a horse breeder and racer. While on the stand, Anna testified that John had forced her to make false entries about his horses, change entries in his books, and make false reports to the Jockey Club. For example, Anna alleged that her husband ordered her to make a report to the Jockey Club that one of his horses was recorded as a foal when the animal was really a yearling, which allowed John Madden to race the horse a

⁷⁴ 99 N.Y.S. 1142 (1906).

⁷⁵ *Mrs. Madden's Accusations*, N.Y. TIMES, Sept. 13, 1905, at 1.

year under its class. According to the reporter, attorneys and spectators in the courtroom were “astounded.”⁷⁶

Reporting of the Madden divorce case focused on whether Anna’s accusation against her husband was credible. Counsel for John questioned the validity of Anna’s accusation through character evidence testimony. For example, on cross-examination John’s attorney asked Anna,

“Haven’t you a habit of using profanity at time?”

“I don’t think so,” the witness answered, her lips quivering.

“Haven’t you often called your husband a d—d liar?”

“Certainly not. I have said he was a liar and I say so right now,” was the reply.⁷⁷ Later, the defense called a witness who testified that he had heard Anna exclaim, “Oh, I know he won’t give me the children, so let him take the brats and go.”⁷⁸

The reporter also noted that “Mrs. Madden shook her head emphatically and frowned when she heard this, as she sat beside her attorneys.”⁷⁹

Finally, John Madden took the stand in his own defense. According to the reporter, he “said nothing harsh about his wife, and often alluded to her in a kindly way.”⁸⁰ On the stand, he denied the allegations made by his wife that he had told her to falsify entries and misrepresent the condition of his horses. He further testified that he had been away from home a great deal in order to make money because his wife said that she would leave him if he lost his money. John claimed that he had never been a prizefighter, although he had boxed a good deal and played baseball in his younger years. He also testified that “he swore a little, never using any stronger oaths than damn; drank only an occasional drink, and never smoked.”⁸¹ The reporting of this divorce proceeding must certainly have influenced any subsequent trial against John Madden for fraud.

Bigamy cases attracted more media attention than divorce proceedings. The criminal justice system had little sympathy for alleged bigamists. Indeed, it sometimes seemed to treat bigamists with inordinate harshness. The case of Francis Fritz provides a good example. Francis lived with his first wife for twenty-three years, with whom he had six children. He then deserted her and remarried. When charged with bigamy, he claimed, unsuccessfully, that since “no legal ceremony had tied him to the first wife, he

⁷⁶ *See id.*

⁷⁷ *Wife Calls Madden Liar*, N.Y. TIMES, Sept. 14, 1905, at 1.

⁷⁸ *Called by Mrs. Madden, Testifies for Husband*, N.Y. TIMES, Sept. 16, 1905, at 4.

⁷⁹ *Id.*

⁸⁰ *Madden Contradicts Wife*, N.Y. TIMES, Sept. 20, 1905, at 2.

⁸¹ *Id.*

did not see what could prevent him from contracting a legal marriage.”⁸² After the jury convicted him, however, Judge Newburger remarked that it was only the third time in his judicial career when he felt regret at not having the power to inflict a more severe punishment than the law prescribed: “‘You are about the most contemptible specimen I have ever had to sentence,’ he remarked to the prisoner, and the man cowered under the words as if in fear of a blow.”⁸³ The Judge then sentenced Fritz to five years in state prison.

Interestingly, female bigamists seemed to be treated with equal harshness by the judicial system. For example, Florence Ferrest was arrested for bigamy after admitting to having several husbands in New York City and elsewhere. According to the reporter, she was “not very chastened in spirit when seen at the jail today.”⁸⁴ The *New York Times* noted that Mrs. Florence wept after saying the following:

“Just think . . . here I am under \$1,000 bail for doing nothing more than trying to establish a home for myself. I told Ferrest I was divorced from Chabbenou, and thought the other marriages not important enough to count. And to think I shall have to stay in jail just for trying to make myself happy.”⁸⁵

Eventually, Florence was charged with having four living husbands, “one of them being a negro.”⁸⁶ The jury convicted her on all four counts of bigamy. In sentencing her, Judge Scott commented: “You seem to be a professional husband gatherer, and have a peculiar idea of the marriage vow.”⁸⁷ He then sentenced her to hard labor in the state prison for four years, “one year for each husband.”⁸⁸

As these cases illustrate, the Progressive Era public perceived bigamy as a moral crime against not just the spouse of the accused, but against society itself. In the eyes of the public, bigamists undermined social structure by breaking the sacred vow of marriage that tied the family and the greater community together. Judges and juries were outraged by instances of bigamy, at times reacting as though it was their spouse that had been unfaithful to them. In search of greater profits, newspapers found bigamy to be an ideal subject of yellow journalism, and through their sensational reporting, reinforced existing social perceptions regarding bigamy and in certain ways contributed to the creation of the

⁸² *Court Rebukes Bigamist*, N.Y. TIMES, Sept. 30, 1905, at 6.

⁸³ *Id.*

⁸⁴ *Mrs. Ferrest Weeps*, N.Y. TIMES, Sept. 4, 1905, at 3.

⁸⁵ *Id.*

⁸⁶ *See Woman Bigamist Sentenced*, N.Y. TIMES, Sept. 9, 1905, at 5.

⁸⁷ *Id.*

⁸⁸ *Id.*

moral ideals that they purported to merely “report.” Finding themselves in this atmosphere, juries and judges were undoubtedly influenced by the newspapers’ articulation of “existing social perceptions,” thereby finding it more justifiable and “legal” to inflict severe punishments on lecherous bigamists, regardless of their gender.

D. *Portrayal of Traffic Violations*

Today, although less common of an offense, bigamy remains a crime punishable by imprisonment. In contrast, minor traffic infractions are treated far more leniently today than during the early years of this century. A cursory look at media portrayal of traffic crimes reveals how the criminal justice system attempted to cope with a dramatic technological innovation that held both promise and peril. Because automobiles in 1905 remained little more than toys for the wealthy, media reports of traffic crimes and their prosecution expose the particular class tensions inherent in the industrial age. The combination of technological curiosity, class conflict, and criminal prosecution attracted the press to traffic violations nearly to the same degree as the scandal of bigamy.

The case of William G. McAdoo is a good example of the class tensions associated with traffic crimes early in the twentieth century. William McAdoo, cousin of Police Commissioner McAdoo, was arraigned for violating the speed limit by driving twenty-five miles an hour. McAdoo admitted he was guilty but complained that the officer was “insolent in making the arrest, and I will complain of him.”⁸⁹ “No you don’t,” interrupted Magistrate Crane, saying in outrage:

You rich men think you can abuse the police. . . . They have enough to contend with. You people are sane before you get in an automobile, but the very minute you get in one you become insane. You forget everything. You forget that you are still on earth. Some don’t care for the men, women, and children on the streets.⁹⁰

Magistrate Crane then complained about how rich men in these traffic cases have been abusing the police, and how it was a wonder to him that the police do not “resent it by thrashing some of them.”⁹¹

Jurors, too, seemed to share Magistrate Crane’s anger toward the insolence of wealthy traffic offenders. Dr. J.R. Jacoby of New York, for example, found it difficult to obtain an impartial jury among residents of Babylon, Long Island, in his traffic case. He was charged with violating the speed limit, but the court had to adjourn twice before being able to empanel an impartial jury. All jurors were asked if they entertained a

⁸⁹ See *Frees McAdoo’s Cousin*, N.Y. TIMES, Oct. 16, 1905, at 1.

⁹⁰ *Id.*

⁹¹ See *id.*

prejudice against automobiles. One, for example, replied: “Automobiles? I wish they was [sic] all swamped ten miles off Fire Island.”⁹² Another juror, responding to the same question, replied, “I would like to see all them [sic] red devils sent back.”⁹³

As the above cases illustrate, wealth differences between owners of vehicles and the general public in the Progressive Era, underscore the tension in which juries and judges decided cases of traffic violations. The media’s choice of subject matter and method of coverage of such incidents reinforced existing social dynamics that had resulted in the perception of drivers as irresponsible individuals subject to punishment. Furthermore, such yellow journalism arguably contributed to the creation of the public disdain for wealthy automobile drivers and the resulting biased jury pool that decided traffic cases.

At least in one case, however, judicial sympathy toward women trumped class resentment against traffic offenders. In September of 1905, the *New York Times* wrote an article with the headline, “Wife’s Plea Freed Cheever.”⁹⁴ Therein, the *New York Times* reported that Durant Cheever had been tried for violating the automobile laws of Connecticut. According to testimony during the trial, Durant and his wife were traveling up Greenwich Avenue on Saturday morning when they turned to pass a carriage and hit a rubber tire on an adjacent funeral coach, knocking the driver off his seat. The police faulted Durant for the accident, claiming that he had been speeding. Durant, however, blamed the accident on the wet pavement. The testimony of Mrs. Cheever proved pivotal. According to the reporter, Mrs. Cheever, “in smiles,”⁹⁵ took the stand to explain how the accident occurred. “She was extremely nervous, she said, having been in two automobile accidents in New York due to wet roads, and kept warning her husband to be careful.”⁹⁶ At this point in her testimony she began to weep. “In a twinkling,”⁹⁷ Judge Burnes dismissed the case. This case suggests that the media portrayal of gender stereotypes may have been more influential in shaping public perceptions and juror belief sets than portrayal of class conflicts.

Aside from raising issues of class and, at least in the previous case, gender, traffic crimes also posed unique problems of proof. The *New York Times* noted in the summer of 1905 that during the past year or so there had been many arrests for violations of the new automobile speeding law. It commented that in most of these cases the offender pled guilty and paid a fine, unless it was a repeat offense, in which case the defendant spent a few days in jail. In one case, however, Warner Van Norden pled not guilty to a charge of

⁹² *Hard to Get Auto Jury*, N.Y. TIMES, June 24, 1905, at 1.

⁹³ *Id.*

⁹⁴ *Wife’s Plea Freed Cheever*, N.Y. TIMES, Sept. 6, 1905, at 1.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

speeding and demanded a trial. Van Norden argued that the prosecution had no means to prove beyond a reasonable doubt that he had been speeding. Justice Wakefield agreed and dismissed the case.⁹⁸ Needless to say, such deference to the driver would be unlikely in courts today.

II. PRESS AND PREJUDICE

I argue that aside from reinforcing and at times contributing to the creation of public perceptions regarding gender and racial stereotypes as well as moral outrage for certain crimes, media portrayal of criminal trials early in the twentieth century may also have influenced the outcome of those trials. This occurred through the prejudicing of the jury pool and at times the sitting jury itself, which, in 1905, was neither sequestered nor prohibited from reading newspapers or talking with others about the case. The longer a trial, the greater the potential that the media would prejudice a sitting jury. Newspaper reports probably prejudiced jurors in a number of ways. Frequently, reports of crimes asserted as fact issues that were in dispute at trial. Reporters also created prejudice with their depiction of the character of the defendant, the victim, important witnesses, and even the prosecuting and defending attorneys. This was frequently done through racial or gender stereotypes. Finally, newspapers often reported what they believed to be the general public's view of the guilt or innocence of a particular defendant.

It is, of course, impossible to point to any particular case in 1905 and conclude with assurance that the jury reached its verdict as a result of newspaper reports. Nevertheless, the risk of prejudice from media portrayal of criminal trials was pervasive in Progressive Era society. The pervasiveness of this prejudice seemingly operated to undermine the Sixth Amendment guarantee of an impartial jury.

The following cases provide a good introduction to the ways in which media reports could affect jury deliberations. In July of 1905, the *New York Times* reported that Mrs. Annie Gades was arraigned for the murder of her child. According to the *New York Times*, “[e]xciting scenes marked the arraignment in the Manhattan Avenue Court, Williamsburg, yesterday of Mrs. Annie Gades, who a week ago yesterday in her home at 49 Driggs Avenue, Williamsburg, in a fit of insane jealousy, stabbed to death her nineteen-month-old child Hans.”⁹⁹ Well before the trial, the *New York Times* informed its readership of its view that Annie was guilty. The *New York Times* also reported that while Annie was being arraigned, she spied her husband in the courtroom and rushed toward him screaming for her lost child. As she was led out of the courtroom, she “dashed past the policemen guarding her and ran up a flight of stairs to the second floor. Two policemen seized her just as she ran into a room where there was an open window. Mrs. Gades fought desperately again, and she had to be dragged down the stairs.”¹⁰⁰ Not only did the *New York Times* decide Gades was guilty, it implied she was insane, and, by

⁹⁸ See *Autoists Illegally Fined*, N.Y. TIMES, July 10, 1905, at 2.

⁹⁹ *Woman Violent in Court*, N.Y. TIMES, July 27, 1905, at 2.

¹⁰⁰ *Id.*

mentioning that she ran into a room with an open window, it further implied that she was suicidal. Any juror who had read this article would struggle to remain impartial.

In another case, the *New York Times* reported that Dr. Oliver Hart of Chicago was charged with the murder of ten-year-old Irene Klokow. The article presented the prosecution theory that Dr. Hart killed the girl when he recklessly administered bomidia-chloral to her after she had swallowed a large number of sugar-coated morphine pills believing them to be saccharine pills. But the article did more than just report the prosecution's theory, it substantiated it. The doctor, the *New York Times* reported, was "said to be addicted to morphine."¹⁰¹ According to the reporter, during the arraignment, the doctor "gazed stupidly at the walls of the courtroom . . . and did not speak."¹⁰² It probably did not help the defendant in winning sympathy from the public when the *New York Times* reported that the drug-addicted doctor was represented by an "eminent lawyer."¹⁰³

A. *The Trial of Nan Patterson*

No case in 1905 generated more press than the murder trial of the notorious dancer and actress, Nan Patterson. Nan Patterson's case had all the elements of a sensational story—sex, adultery, bribery, murder, and uncertainty about what really happened. Early in the trial, the *New York Times* lost its objectivity and subtly attempted to convince most of its readers that Nan was innocent. Intrigued by news reports about the case, New Yorkers filled the courtroom daily, packed the streets to be the first to hear the latest news, and, during jury deliberations, chanted for Nan's freedom.¹⁰⁴ The jury, too, had access to these news reports and interacted daily with the public as it made its way to and from the courtroom—coming from home, going out for meals, and returning home at the day's end. When the jury eventually became hung and Nan Patterson was set free, the District Attorney blamed the press for a miscarriage of justice.¹⁰⁵

Nan Patterson, a nineteen-year-old actress, was accused of killing her former lover Caesar Young, a wealthy New York bookmaker. Both were married, but they soon began an adulterous relationship. Caesar eventually paid for Nan to divorce her husband, after which she lived "on Young's bounty."¹⁰⁶ According to the prosecution's theory, Caesar also promised Nan that he would divorce his wife. On June 4, 1904, Caesar Young planned to board a steamship and depart for an extended trip overseas with his wife. That same day, he was traveling with Nan in a carriage down Broadway toward the

¹⁰¹ *Dr. Hart Held for Murder*, N.Y. TIMES, Oct. 8, 1905, at 6.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *See Disagreement in Patterson Case*, N.Y. TIMES, May 4, 1905, at 1.

¹⁰⁵ *See Nan Patterson Free; Jerome Blames Press*, N.Y. TIMES, May 13, at 3.

¹⁰⁶ *Recorder Will Charge Patterson Jury To-Day*, N.Y. TIMES, May 3, 1905, at 1.

port to meet his wife. Caesar never left the carriage alive. He died from a gunshot wound.¹⁰⁷

Soon after, police arrested Nan Patterson and the state prosecuted her for the premeditated murder of Caesar Young. Her first trial, in 1904, ended in a hung jury. Undeterred, the District Attorney tried her a second time in the late spring of 1905. The prosecution had a strong case. It was undisputed that Caesar died of a gunshot wound while in a moving carriage with Nan. Therefore, there seemed to be only three reasonable explanations for Caesar's death: Nan shot him intentionally, Caesar was shot accidentally in a struggle over the gun, or Caesar killed himself.

The State argued that Nan shot Caesar to death with malice and premeditation. It proposed two possible motives: either Nan murdered out of jealous anger because Caesar refused to divorce his wife, or she killed him when she realized her attempts at blackmail were futile.¹⁰⁸ To prove its case, the prosecution first sought to show that the gun that killed Caesar belonged to Nan. According to the prosecution, Nan obtained the gun from her sister and brother-in-law, Julia and Morgan Smith. Assistant District Attorney Rand placed into evidence receipts that showed Morgan Smith had pawned his wife's jewelry to Hyman Stern, a pawnbroker, on June 3, the day before Caesar died. Rand then offered evidence to show that the very same day, Hyman Stern sold the gun that was identified as the weapon that killed Caesar. Rand argued that it had to be more than just coincidence for the pawnbroker to sell the gun that killed Young on the same day Nan's brother-in-law pawned his wife's jewelry. According to the news reporter, Rand's testimony "created a stir in the court."¹⁰⁹

Rand also called Julia Smith to the stand. According to the reporter, "she looked worn and pale, and was evidently ill at ease."¹¹⁰ She testified that on the morning of May 2, her sister Nan was very upset because she had just learned that Caesar did not intend to carry out his promise to divorce his wife and marry Nan. Julia also testified that on June 3, she, her husband, and her sister Nan went to the racetrack, where they met Caesar. On the morning of June 4, the day Caesar died, Caesar telephoned the Smiths, where Nan lived, three times. The first two times, Julia told him that she could not awaken Nan. The third time he called, Julia informed Caesar that Nan had already risen, dressed, and was on her way to meet him. District Attorney Rand, hoping to implicate Julia and her husband in a bribery conspiracy, then asked Julia whether she and her husband traveled to Hoboken on the night of June 8 and registered in a hotel there under assumed names. Julia refused to answer, invoking her Fifth Amendment right against self-incrimination.

¹⁰⁷ *See id.*

¹⁰⁸ *See id.*

¹⁰⁹ *See Will Make No Defense in Nan Patterson Case*, N.Y. TIMES, Apr. 29, 1905, at 1.

¹¹⁰ *Id.*

Rand offered to drop the indictment against her in exchange for her testimony, but Julia declined, saying, “I refuse to answer the question, I must stick to my sister.”¹¹¹

Following the last of the State’s witnesses, the defense rose and moved to dismiss the case. The defense argued that the prosecution failed to show that a crime had been committed, and that the State’s own evidence tended to show that Caesar had committed suicide. Recorder Goff, however, denied the motion. Abraham Levy, lead counsel for the defense, then announced that the defense would call no witnesses and that it was prepared for the case to go to the jury. Both the prosecution’s evidence and the defense’s trial strategy impressed the *New York Times*. The next day it ran the following headline: “Will Make No Defense in Nan Patterson Case: Decision After Prosecution Offers Striking Evidence: Smith in Pawnshop June 3: Pledged Wife’s Jewelry on Day Before Young’s Death With Man Who Sold Pistol.”¹¹² In this article, the *New York Times* also informed its readers, which most likely included the jury, that Nan’s first trial ended in a hung jury.¹¹³

On May 1, 1905, the defense presented its closing arguments. According to the reporter, “Nan Patterson, who was dressed in black, plainly realized that the critical moment in the trial was approaching.”¹¹⁴ Continuing its bold tactics, the defense urged the jury to acquit or to return a verdict of murder in the first degree, but not to settle on a lesser-included offense. “She is either guilty or not guilty. We want no compromise,” said defense attorney Levy.¹¹⁵ He also offered two alternative explanations for Caesar’s death: either he committed suicide or he died accidentally in a struggle over a weapon he brandished to frighten Nan.

Levy also sought to discredit the methods employed by Assistant District Attorney Rand:

Mr. Rand sought to impress upon you that the pawn tickets submitted in evidence were dated June 3. As a matter of fact, they bore the date of October. I had them put in evidence as an object lesson of the unfair tactics to which the prosecutor has resorted. He also told you about \$50,000 which he says was lavished by Young on the defendant when he knew the case was barren of any such evidence.¹¹⁶

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *See id.*

¹¹⁴ *Nan Patterson Case May Go To Jury To-Day*, N.Y. TIMES, May 2, 1905, at 2.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

Levy then sought to generate sympathy for the defendant. “What is there against this girl? She went on the stage, but it was to make an honest living. She met Young when she was but nineteen years old. Who was the stronger?”¹¹⁷ Levy argued that there was no evidence to show that Nan was disloyal to Caesar, and pointed out the grief Nan displayed when she learned of Caesar’s death.

Levy also contested the prosecutor’s assertion that Morgan Smith, Patterson’s brother-in-law, had purchased the murder weapon. He criticized the prosecution for calling pawnbroker Hyman Stern to the stand, but not calling Stern’s clerk. Levy also emphasized Stern’s inability to identify Morgan Smith as the man who bought the pistol. He scoffed at the idea that the Smiths, being known to Stern, would go to his shop to buy a weapon with which to do murder. “They would have been driveling idiots to go together to a shop where they were known and make such a purchase. It is just as likely that Young bought it himself.”¹¹⁸ Levy also reminded the jury that on the morning Caesar died, he called three times to speak with Nan. According to Levy, this demonstrated that Caesar wanted to see Nan that day, providing evidence against premeditated murder. Finally, Levy argued that if Nan had plotted murder she would not have planned to commit it in a moving carriage on the street in broad daylight.

Interestingly, the *New York Times* article the following day included elements prejudicial to both the prosecution and the defense. On the one hand, the headline read: “Nan Patterson Case May Go to Jury To-Day: Defense, In Summing Up, Suggests that Young Bought Pistol.”¹¹⁹ While the headline presented a crucial defense argument, it mentioned nothing regarding the prosecution’s opposing argument. In addition, the article appeared to regurgitate most of the defense’s most important points made during closing arguments. However, one remarkable detail of the report stands out as deeply prejudicial to the defense. According to the *New York Times* article, Levy argued there was no evidence that Nan threatened Caesar, “except the Julia Smith letter, which was excluded.”¹²⁰ Levy must have made a monumental mistake in referring to a piece of excluded evidence harmful to Patterson’s case, unless the reporter edited this particular bit of information.

The article also remarked that the “closing scenes” of the Nan Patterson trial were “arousing public interest to a degree almost unprecedented in the history of criminal cases in New York.”¹²¹ According to the reporter, an hour before the doors were opened for closing arguments, the court building was “besieged by a throng which numbered

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *See id.*

¹²¹ *Id.*

thousands.”¹²² That morning, Recorder Goff ordered the courtroom cleared of all spectators who were without seats. In the afternoon, the recorder ejected a score of women who were taking “undue interest” in the proceedings. According to the reporter, as these women moved toward the door “their faces were crimson with mortification.”¹²³

On May 2, Assistant District Attorney Rand took more than five hours to deliver his closing arguments against Nan Patterson. He first attacked Julia and Morgan Smith for hiding behind the Fifth Amendment. He claimed that the worst witness against Nan was her brother-in-law, Morgan, who refused to take the witness stand for fear of self-incrimination: “come up, Smith, and clear your sister-in-law of murder if you can. You hold the key to the situation.”¹²⁴ Rand also concluded that Julia Smith’s refusal to answer certain questions proved that her husband purchased the murder weapon. Rand further alluded to how Levy had successfully kept both the Smiths from testifying during Nan’s first trial.¹²⁵

In addition, Rand refuted the defense’s theory that Caesar committed suicide. First, he argued that the trajectory of the bullet did not reflect the “natural sort of way” someone would shoot oneself. A suicidal Caesar, Rand argued, “would not have held the weapon upside down when he fired the shot and sent the bullet through the apex of the left lung on its way to strike the fourth dorsal vertebra.”¹²⁶ Rand also reminded the jury that witnesses described Caesar as being happy that morning before he died and that the police found the revolver in Caesar’s pocket. Rand argued that the latter fact alone provided conclusive evidence that Caesar did not kill himself.¹²⁷

Rand also sought to attack Nan’s character, describing her in his closing argument as an angry blackmailer rather than a scorned lover. According to the reporter, Rand stated, “I don’t believe the story that Young told Nan Patterson he was going to get a divorce from his wife. It is too new.”¹²⁸ Rand reiterated that Caesar, on the eve of his departure, demanded that Nan return the letters he had written her: “Did the defendant render them? No. Was that the conduct of a woman madly in love or of a mercenary creature who wanted to keep them in her possession for blackmail purposes?”¹²⁹ Rand asked the jury not to forget that the defendant threatened Caesar the night before the

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Recorder Will Charge Patterson Jury To-Day*, N.Y. TIMES, May 3, 1905, at 1.

¹²⁵ *See id.*

¹²⁶ *Id.*

¹²⁷ *See id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

tragedy: “Did she not say, you’ll never sail on that boat because I’ll be there to stop you? And did she not keep repeating that threat until Young slapped her and put her in a cab?”¹³⁰ Rand continued:

And now as to the morning of the tragedy. . . . What were the reflections passing through this defendant’s mind as beside him she rode in a cab on the day that he was to leave her? The murder in her heart flamed into action, and she shot and killed. A little crack, a puff of smoke, and a dead man lay prostrate on this woman’s lap.

False to her husband, false to her lover, and false to her oath the defendant would have you believe by her story told at the previous trial that Young shot himself rather than be separated from her. A silly story—a lie she does not now dare attempt to support.¹³¹

According to the reporter, the Assistant District Attorney’s “final effort was a strong one,”¹³² during which the defendant “cowered in her chair, and at times evidently controlled herself with difficulty.”¹³³ Yet, Rand’s direct attack on Nan may have backfired, as the *New York Times* and the public seemed to regard her sympathetically. In addition, the reporter noted that Rand’s closing had drawn the largest crowd yet to the courthouse. Despite the presence of seventy-five policemen, efforts to keep the corridors open were vain, so the police cleared the entire floor. Even when driven away, the curious men and women refused to leave the neighborhood. The street outside the courthouse was blocked the entire day. Many offered money for admission to the court. As the jury began its deliberations, the *New York Times* reported that the jury would not soon arrive at a verdict, and those familiar with the case expected a long wait.¹³⁴

The jury began deliberating just after noon on June 3. They took a break for dinner later that day, and while on their way to and from a nearby restaurant, the jury was “dogged and jostled by the crowd that packed the streets. All the way to the restaurant the jurymen heard yells of: ‘Free Nan Patterson! Set her free! Nan’s all right! She’s done nothing! You let her loose, that’s the best you can do!’”¹³⁵ After dinner, the jury returned to the courtroom and deliberated until 1:30 a.m.

According to the reporter, “everybody was on tiptoe”¹³⁶ as the jury filed back into the courtroom. Before hearing from the jury, however, Recorder Goff sent for the

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *See id.*

¹³⁵ *Disagreement in Patterson Case*, N.Y. TIMES, May 4, 1905, at 1.

defendant. When Nan entered the courtroom ten minutes later, “[s]he was on the verge of collapse, and could hardly drag one foot after the other. An attendant on each side fairly lifted her into her place.”¹³⁷ The recorder announced that if there was any disturbance upon announcing the verdict he would charge contempt of court. He then asked the foreman if the jury had been able to agree. “‘We have not,’ the foreman replied. ‘I am convinced that there is no hope of an agreement.’”¹³⁸ The recorder then lectured the jury on the expense of the trial and sent them back to reconsider.

According to the reporter, Nan was now in “a fainting condition”¹³⁹ as she was led back to her cell. When the jury returned an hour later, the judge again sent for Nan. She was brought into the courtroom “in a weakened condition and had to be supported to a chair.”¹⁴⁰ The foreman again reported that the jury could not agree on a verdict. The recorder then asked that the question be put to each juror separately. Each juror replied that there was no hope of an agreement. The recorder then dismissed the jury. “As the jury started out Nan Patterson fell from her chair in a faint. Her counsel and the guards picked her up and bore her back to the Tombs”¹⁴¹ where she was to be held until the State decided whether or not to pursue a third trial.

The *New York Times* reported that as soon as the news reached the waiting crowd there were cheers. When the jury got outside “it was all but mobbed.”¹⁴² While responding to questions from the press, the jury revealed that it had stood eight to four for manslaughter in the first degree. The counsel for the defense said they were convinced that there would not be another trial.¹⁴³

Five days later, however, Nan still remained in jail. District Attorney Jerome continued to deliberate over whether or not to try her before a third jury. Jerome is quoted in the *New York Times* as saying that the decision whether to try Nan a third time was a difficult one, and that he would “not permit the newspapers to decide for him.”¹⁴⁴ Meanwhile, Nan received scores of letters and postcards daily, most of them congratulating her. One, however, signed by Armedi Beauparler, threatened to avenge

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Nan Patterson Trial Question Not Settled*, N.Y. TIMES, May 9, 1905, at 2.

Caesar Young's death: "If the jury acquitted Nan," he wrote, "I would have shot her as she left the Tombs."¹⁴⁵

On May 13, Nan Patterson was set free after eleven months and eight days in prison. District Attorney Jerome announced that his office would not try Nan Patterson for a third time. Jerome asserted that although the evidence against Nan was overwhelming, the jury reached their decision based on newspaper reports sympathetic to the defendant. Jerome called the outcome of the trial a "miscarriage of justice of the most serious kind [attributable] to the attitude of the press of this city toward the accused woman."¹⁴⁶ He continued:

I feel sure . . . that a serious result has come from this trial in so far as one more step has been made in this city to substitute trial by newspapers for trial by jury. There has been a continual misrepresentation in the press of the facts and circumstances connected with this case—not on the part of those who had occasion to report the facts. But those sapient wiseacres who, in the solitude of the editorial sanctum, assume, for the benefit of the counting room end of the establishment, to conduct public affairs, have dealt with this case in a way that has aroused a feeling in this community that, in my opinion, has resulted in a miscarriage of justice.¹⁴⁷

Within a short time after she had been freed, Recorder Goff warned, "[t]his indictment, charging you with murder in the first degree, still stands against you."¹⁴⁸ He further admonished her, saying, "these trials must have been terrible ordeals for you to pass through, and I hope that in your future life the memory of them will tend to chasten you, and to remind you of the terrible experience you have undergone."¹⁴⁹

Just minutes after Recorder Goff's statement, a squad of policemen led Nan Patterson from the Criminal Courts Building. The events immediately following her release, reported by the *New York Times*, provide telling evidence of the press' influence on early twentieth-century trials:

In the street a great crowd stood waiting and the mob cheered her and yelled at her as she entered her carriage and was driven to the office of her lawyer, Abraham Levy, in the World Building. They pursued her again when she departed for an uptown hotel, and dropped behind only as the increased speed of the vehicle made it impossible for them to follow.

¹⁴⁵ *Id.*

¹⁴⁶ *Nan Patterson Free; Jerome Blames Press, supra* note 105, at 3.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

Nan Patterson and her sister went on a shopping tour in an automobile along Sixth Avenue. Then she posed for a score of photographers, and told reporters how happy she was to be free, as well as how eager she was to please them because the papers had been “so awfully nice” to her.¹⁵⁰

The *New York Times* published a final article on the Nan Patterson case several days later. New York Supreme Court Justice Vernon M. Davis, who presided over Nan’s first trial, addressed the Phi Delta Phi Club, a group of city lawyers, about his opinion of the second trial. In his address, Davis expressed his belief that most people were convinced that Nan had ended Young’s life. He said Nan’s story of the events of the morning of the murder was not consistent and accused her of lying when she took the stand during her first trial. Davis did not, however, believe that Nan killed Caesar with premeditation. Instead, he believed that Nan threatened Caesar with the gun, an argument followed, and in an ensuing struggle the gun went off. According to Justice Davis, had Nan told the jury this story on the witness stand, they would have acquitted her. In any event, he believed that because of her youth it was natural that the press and the public sympathized with her.¹⁵¹

The portrayal of Nan Patterson’s trial by the *New York Times* underscores the media’s impact upon the administration of criminal justice during the Progressive Era. Nan Patterson, during her trial, flourished in the limelight provided by the press. The jurors in her two trials may have been anything but impartial to her general disposition. As exemplified by the Patterson case, news reporting played a role in the outcome of sensational criminal matters. Media coverage, in this sense, perhaps helped to determine the events it presumably only sought to report.

B. *The Court Martial of Midshipman Minor Meriwether*

A few months after the Nan Patterson trial concluded, the *New York Times* turned its attention to the manslaughter case of Midshipman Minor Meriwether. Although, Meriwether’s case may not be an ideal example of the impact of media coverage on early twentieth century trials due to the fact that it was a court martial proceeding decided by a panel of military judges and reviewed by the Secretary of the Navy, thereby differing significantly from standard non-military criminal trials, the case is, nonetheless, noteworthy for several reasons. First, there were very few cases in 1905 that the *New York Times* covered in more than one or two articles. The Meriwether case generated nine articles and therefore provides the only example other than the Nan Patterson case of extended press coverage of a criminal trial in 1905. Second, although the procedure for a court martial differs in significant ways from a standard criminal trial, the court martial is still subject to influence and prejudice from the media. Finally, reporting about the case

¹⁵⁰ *Id.*

¹⁵¹ *Nan Patterson Held Pistol—Justice Davis*, N.Y. TIMES, May 16, 1905, at 1.

from the *New York Times* provides an excellent example of how the media would choose sides in an on-going case.

On November 12, 1905, the *New York Times* reported that at the Naval Academy in Annapolis, Maryland, military police arrested Midshipman Minor Meriwether for a fistfight that killed Midshipman James Branch. After the altercation, Meriwether was confined to his quarters under military arrest until he could be court martialed. In this article, the *New York Times* did more than report the facts of the case by noting that “evidence will be adduced before the court that will place Meriwether’s case in a better light than has been indicated.”¹⁵² The *New York Times*, therefore, took a sympathetic view of the defendant’s situation from the onset of the trial.

In its next article on the Meriwether case, the *New York Times* reported on the medical testimony offered during Meriwether’s court martial. According to several experts, Branch died as a result of blows received in his fight with Meriwether. The physicians contended that no treatment could have saved Branch’s life. The *New York Times* reported, however, that during cross examination, “the defense sought to prove that the death might have been due to organic weakness in Branch or to the unskilled treatment he received from his friends after the fight, and the delay in giving him into the care of physicians.”¹⁵³ Meriwether’s lawyer also emphasized the fact that no autopsy was done because Branch’s father refused permission.

Midshipman A.W. Fitch, who refereed the fight, also testified. Reporting on his testimony, the *New York Times*, for the first of many instances, used the Meriwether case to criticize the tradition of hazing at the Naval Academy. Fitch, the *New York Times* reported, admitted to having acted as a referee in nineteen similar fights. He testified that Meriwether used gloves during the fight to protect his hands. According to Fitch, these were the same kind of gloves used on punching bags, but he had never seen them so used in a fistfight at the Academy. The article also suggested that the prosecution would close its case the next day. More significantly, however, the *New York Times* summarized the arguments that the defense would likely present, and concluded that Branch died as a result of “organic weakness”¹⁵⁴ and poor handling after the fight.

The *New York Times’* next article on Meriwether’s case contained a lead sentence that reflected the sensationalism typical of yellow journalism. The sentence read, “[o]ne of the most remarkable incidents in the history of naval courts-martial in this country marked to-day’s session of the court which is trying Midshipman Meriwether in connection with the fight between himself and the late Midshipman Branch.”¹⁵⁵ The “incident,” however, proved not to be so remarkable. The Judge Advocate Prosecutor,

¹⁵² See *Fighting Middy Arrested*, N.Y. TIMES, Nov. 13, 1905, at 1.

¹⁵³ *Blows Killed Middy, Medical Experts Say*, N.Y. TIMES, Nov. 24, 1905, at 6.

¹⁵⁴ *Id.*

¹⁵⁵ *Admiral Challenged at Annapolis Trial*, N.Y. TIMES, Nov. 25, 1905, at 5.

Marix, challenged Rear Admiral Alexander McCormick, one member from the panel of judges sitting on the case. He requested that Judge McCormick be removed from the case because McCormick had consulted with outside medical experts, and because “he had by his repeated and continued cross-examination of the prosecution’s witnesses practically taken the place of counsel, for the accused.”¹⁵⁶ Presiding Chief Judge Admiral Ramsey, however, dismissed the challenge and allowed Judge McCormick to remain on the bench.¹⁵⁷

The *New York Times* also gave detailed reports on the testimony of the two defense witnesses. One of those witnesses, Midshipman Herbert Labhardt, a classmate and former roommate of Meriwether, testified that Branch, an upperclassman, had repeatedly harassed Meriwether. Labhardt testified that “on one occasion Branch went to their room and made Meriwether hold a book in his mouth and on another occasion Branch had spoken harshly to Meriwether. When an upperclassmen imposed upon a junior, the only possible way of mending matters, Labhardt said, was to fight.”¹⁵⁸

Midshipman Norman Smith also testified on behalf of the defense. The *New York Times* described him as “a very trim little first-class man.”¹⁵⁹ According to the *New York Times*, Smith “brought out very clearly that the Midshipmen were still compelled to do silly things and obey ridiculous rules” imposed by the upperclassmen.¹⁶⁰ If the Midshipman refused, they had to either fight or leave the Academy. Here again, both the defense and the *New York Times* used the Meriwether case as a platform to criticize training at the Naval Academy.

During the court martial, the *New York Times* demonstrated its support for the defendant when it published a telegram sent to Meriwether by his “aged” cousin. Caroline Meriwether Goodlett, “Honorary President and Founder of the Daughters of the Confederacy,”¹⁶¹ had sent a telegram to Midshipman Meriwether supporting what he had done. Meriwether, gave the telegram to the press, suggesting that he was aware of the media’s potential influence on the trial. Mrs. Goodlett was then nearly eighty years old, but, according to the *New York Times*, was “still active to the point of riding horseback every day the weather permit[ed].”¹⁶² She wrote, and the *New York Times* reprinted:

¹⁵⁶ *Id.*

¹⁵⁷ *See id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Praises Middy’s Fight*, N.Y. TIMES, Nov. 24, 1905, at 1.

¹⁶² *Id.*

“The blood of your revolutionary ancestors would have risen up against you had you done otherwise than accept the challenge of Midshipman Branch.”¹⁶³

Eventually, Meriwether himself took the stand in his own defense against the manslaughter charge. He gave a detailed account of the events leading up to the fight and of the fight itself. He said that he first met Midshipman Branch early in the school year aboard the *Santee*, a training ship for lower-classmen. Branch, an upper-classman, had been assigned there for misconduct. According to Meriwether, Branch “made himself generally unpleasant”¹⁶⁴ during the four days he was on board. Soon after classes began at the Academy, Meriwether discovered that Branch lived just a few doors away from him. “Branch began to run me,”¹⁶⁵ Meriwether said. According to Meriwether, “running” was worse than hazing, because “running” involved harassment and insult rather than just “physical persecution.”¹⁶⁶ Meriwether testified further that Branch had frequently threatened to “bilge”¹⁶⁷ him, namely, to drive him away from the Academy.

Meriwether then recounted a number of incidents that eventually provoked him into challenging Branch to a fight. On one occasion, Branch threatened to report Meriwether for another fight and for sneaking into town without permission. Another time, Branch harassed him, eventually provoking Meriwether to insult Branch. Branch then reported Meriwether for insubordination and disrespect. Branch also threatened to report Meriwether for having civilian clothing in his room, even though Meriwether informed him that the clothes belonged to his roommate. Finally, Meriwether testified that he had heard that Branch was asking other upperclassmen to report Meriwether for misconduct.¹⁶⁸

Eventually, Meriwether had had enough. One night, after consulting with some of his friends, he went to Branch’s room. He was accompanied by his roommate and friend, Midshipman Jaeger. Meriwether testified that they confronted Branch in his room where the following conversation ensued:

Branch said: “You are a damn fool to come to see me. You know that my class hates you.”

Meriwether replied: “That is not so, you are the only one who does.”

Branch then asked: “What if I do?”

¹⁶³ *Id.*

¹⁶⁴ *Had to Fight or Quit, Meriwether Declares*, N.Y. TIMES, Nov. 30, 1905, at 3.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *See id.*

Meriwether replied: “Then you are a damn sneaking coward and I will fight you though I am not in fighting condition. If you get up I will lick you.”

Branch said: “You mean you will try.”

“That’s what I will,” [Meriwether] said, “and if you get up I will show you.”

He did not get up and after a little further conversation Jaeger and [Meriwether] left the room.¹⁶⁹

Meriwether then explained that he had approached Branch because he had learned at the Academy that a fight would resolve his dispute with Branch. “Branch had told me he was going to bilge me, that is, make me fail, and I wanted to fight and end the matter.”¹⁷⁰ After he left Branch’s room, Meriwether said that he no longer intended to fight Branch. But this changed when, according to Meriwether, Branch told him once more that he intended to bilge him.

Branch and Meriwether then planned a fight according to Academy tradition. Midshipman McKittrick was appointed Branch’s “second,” and Meriwether selected Jaeger as his. As “seconds,” McKittrick and Jaeger were responsible for arranging the details of the fight, including its time and location. It was also their job to oversee the fight, keep track of the rounds, and make sure certain rules were followed, keep others from becoming involved, and tend to the fighters as necessary. In reporting their testimony, the *New York Times* made it clear that fighting at the Academy was both common and ritualized.¹⁷¹

Meriwether gave the following testimony about the fight itself:

During the fight we first fell under the blinds. About the twelfth round I rushed Branch, and both fell sideways through the door. The next round Branch hit a terrific uppercut that stunned me for some rounds. I returned to his jaw. He threw his head back, and I returned but swung my arm around his neck. We fell in that position, his head striking the floor. We were lifted up. My arm could not be used for the next two rounds. My left arm was crushed in a football game about three years ago. I had a severe operation. The arm is still weaker than the other.¹⁷²

Meriwether then showed a deep scar on the wrist of his left arm, where a plate had been inserted. After this, the defense counsel asked Meriwether why he had restrained from hitting Branch when Branch was on his knees during the fight, even

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *See id.*

¹⁷² *Id.*

though the rules of the fight allowed him to strike in such situations. Meriwether explained that he did not believe any blows should be struck when men were not on their feet. He also described how he had unintentionally fouled during the fight. Meriwether had attempted to end the fight for this reason but did not do so because “the seconds would not allow it.”¹⁷³

Meriwether testified that the fight ended at the conclusion of the twenty-third round when Branch came across the room “and we both apologized.”¹⁷⁴ Meriwether said Branch was conscious, appeared okay, and that the two “parted as friends.”¹⁷⁵ When he learned that Branch died shortly afterward, Meriwether said he “was hurt and grieved beyond expression.”¹⁷⁶ He added, however, that Branch was more fortunate than he in having peace through an honorable death rather than having to live “after this sad and deplorable affair.”¹⁷⁷ Meriwether also testified, however, that had he not stood up to Branch he would have been ostracized and, eventually, forced to leave the Academy. “Under [such] circumstances I would have to resign, and could never hold up my head again,” the *New York Times* quoted him as saying.¹⁷⁸

The prosecution then began its cross-examination. Interestingly, the *New York Times* reported little of this except where Meriwether attempted to describe the difference between running and hazing. Meriwether explained that hazing consisted of physical exercise, but that running was much worse because it involved mean-spirited intimidation and harassment designed to force the midshipman to resign and leave the Academy. The prosecution then asked Meriwether to describe particular instances of running, but Meriwether declined to respond. After whispering to the Judge Advocate, the question was withdrawn. According to the *New York Times*, it “was evident that Meriwether hesitated to mention certain things before the women in the courtroom.”¹⁷⁹

The headline of the *New York Times*’ article reporting Meriwether’s testimony revealed much about that paper’s opinion of the case: “Had To Fight Or Quit, Meriwether Declares: He Testifies Of His Troubles With Midshipman Branch: Parted As Friends, He Says: Describes Fierce Fight That Led To Opponent’s Death—Running Worse Than Hazing.”¹⁸⁰ The headline encapsulated the *New York Times*’ support for the defendant and its use of the case to criticize the Naval Academy.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

The *New York Times* continued its seemingly biased reporting in its next article headlined: “Court Hears Argument In Meriwether Trial . . . Counsel Blames System: Defense Says Meriwether Had to Fight Under the Custom or Leave the Academy.”¹⁸¹ The article purported to describe both of the closing arguments in the case, but placed far more attention to the defense’s argument than that of the prosecution. The *New York Times* quoted the defense attorney as saying, “[i]f Meriwether is convicted of anything further than disorder, he will be made a sacrifice for a system and for the sins of generations.”¹⁸² The attorney then repeated an argument that the *New York Times* itself seemed to make in its earlier reports, saying that the “traditions” and “attitude” of the Academy authorities toward fighting were as much responsible for Branch’s death as Meriwether’s blows.¹⁸³

The next day, the *New York Times* reported that the court martial had reached its verdict in the Meriwether case, but that the verdict would not be made public until the Secretary of the Navy reviewed it.¹⁸⁴ Over a week later, on December 13, 1905, the Department of the Navy announced that Meriwether was acquitted of the charge of manslaughter. He was, however, found guilty of the relatively minor offenses of conduct prejudicial to good order and military discipline. For these infractions, the court martial confined him to the limits of the Naval Academy for one year. The Department of the Navy, however, mitigated this punishment to allow Meriwether to participate in training cruises that would enable him to leave the Academy grounds.¹⁸⁵ In essence, Meriwether escaped with little more than a slap on the wrist.

In the same article, the *New York Times* noted that the Meriwether case had forced the Department of the Navy to consider “drastic measures”¹⁸⁶ to halt hazing and fighting at the Academy, but that nothing yet had been done about this matter, and that fights at the Academy “[were still] of no less frequent occurrence than before the death of young Branch.”¹⁸⁷ According to the *New York Times*, there was a fight on the very night of Branch’s funeral, and there had since then been at least five other fights.¹⁸⁸

¹⁸⁰ *Id.*

¹⁸¹ *Court Hears Arguments In Meriwether Trial*, N.Y. TIMES, Dec. 1, 1905, at 5.

¹⁸² *See id.*

¹⁸³ *See id.*

¹⁸⁴ *Meriwether Verdict Ready*, N.Y. TIMES, Dec. 2, 1905, at 1.

¹⁸⁵ *See Meriwether Punished; Cadets Keep Up Code*, N.Y. TIMES, Dec. 13, 1905, at 4.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *See id.*

The next day, the *New York Times* continued its scrutiny of the Naval Academy, reporting that another occurrence of “brutal hazing had been discovered at the Naval Academy notwithstanding sworn testimony of midshipmen witnesses before the Meriwether court martial that the practice did not exist at the Academy.”¹⁸⁹ Roommates discovered the victim of the hazing, Midshipman Jerdone Kimbough, in a coma. According to them, the coma resulted after upperclassmen repeatedly forced Midshipman Kimbough to stand on his head.¹⁹⁰

III. CRIMINOLOGISTS’ PERCEPTION OF YELLOW JOURNALISM

Early in the twentieth century, criminologists and others worried about the influence of the yellow press on the criminal justice system. Interestingly, however, they seemed more concerned about the potential of the press to incite crime. This is perhaps not surprising considering that early in the century newspapers, especially sensational newspapers, were a source of news as well as entertainment. The concerns of early twentieth century criminologists, therefore, are somewhat analogous to current concerns about television and its influence on violence. These criminologists, furthermore, were worried that the press jeopardized impartiality in many cases. To address both of these problems, most commentators proposed that the freedom of the press be restricted.

As early as 1892, one criminologist rebuked the press as an “impediment to justice.”¹⁹¹ According to William Forrest, the author of an article in *The Criminal Law Magazine and Reporter* titled, “Trial by Newspapers,”¹⁹² the press made it difficult, if not impossible, to obtain a fair jury. Forrest asserted that by the time jurors are impaneled for high-profile criminal trials, “they have made up their minds on the material issues in the case from what they have read.”¹⁹³ Forrest also worried that the papers prejudiced judges and improperly pressured prosecutors. He believed that such prejudice often worked not only to deprive the defendant the right to an impartial trial, but prejudiced the jury and judge against the defendant, shifting the judicial presumption of innocent-until-proven-guilty to guilty-until-proven-innocent.¹⁹⁴ Forrest proposed that newspapers should exercise more self-control in reporting criminal cases before and during trials, and that if they could not do this themselves, perhaps the state should force them to do so.¹⁹⁵

¹⁸⁹ *Midshipman In Coma From Brutal Hazing*, N.Y. TIMES, Dec. 14, 1905, at 1.

¹⁹⁰ *See id.*

¹⁹¹ William Forrest, *Trial by Newspapers*, 14 CRIM. L. MAG. & REP. 550, 552 (1892).

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *See id.* at 553, 556.

¹⁹⁵ *See id.* at 558.

In 1905, the *New York Times* reported that William Taft, then the Secretary of War and future President and Supreme Court Chief Justice, believed the criminal justice system to be a national disgrace, pointing to the rise in felonies, lynchings, and mob rule throughout the nation. Like many commentators of the day who were elitist, Taft did not blame the newspapers directly, but blamed the jury as it was often comprised primarily of uneducated lay masses having a propensity to be swayed by irrelevant and sensational journalism. He argued that the entire justice system needed reorganization. In particular, he called for the abandonment of the jury system in civil cases and for greater power of judges over juries in criminal cases.¹⁹⁶

Five years later, in an editorial by the *Journal of the American Institute of Criminal Law and Criminology*, a commentator called the press “one of the acknowledged evils”¹⁹⁷ in the administration of criminal justice, noting in particular that an “unbridled press . . . increases a sentiment in the community as to the guilt or innocence of the accused, which makes it well nigh impossible to secure an impartial jury, and the atmosphere and sentiment thus created affect not only the jury, but the courts as well.”¹⁹⁸ This editorial repeated Forrest’s earlier conclusion that prejudice arising from yellow journalism works almost always against the defendant. Although, it is interesting to note that in the *Nan Patterson* and *Midshipman Meriwether* cases, the media attention assisted the defense. Finally, the editorial concluded that the state remedy the problem by enacting laws similar to those in England prohibiting newspapers from publishing anything concerning a case in court.¹⁹⁹

In 1926, Robert Highfill analyzed the work of a dozen prominent criminologists and summarized their conclusions about the influence of the media on public opinion.²⁰⁰ Highfill’s research is important insofar as it reflects the general perception of early twentieth century criminologists toward the impact of yellow journalism on the criminal justice system. The criminologists cited in Highfill’s work all agreed that the presentation of crime in news induces crime amongst potential criminals. They explained that the press induces crime by suggesting a criminal model for crime that could be easily imitated. The individual, they thought, is receptive to the influence of the press, and news incites crime mainly in those with criminal predilections.

Highfill argued that stories were likely to incite crime by describing the methods employed by criminals and presenting the criminal in a heroic light. He believed that

¹⁹⁶ See *Criminal Law System National Disgrace—Taft*, *supra* note 27, at 5.

¹⁹⁷ Editorial, *Trial by Newspapers*, *supra* note 28, at 849.

¹⁹⁸ *Id.* at 850.

¹⁹⁹ See *id.*

²⁰⁰ See Robert Highfill, *The Effects of News of Crime and Scandal Upon Public Opinion*, 17 J. AM. INST. CRIM. L. & CRIMINOLOGY 40, 60 (1926). Because there is little commentary from the first decade of the twentieth century on the impact of the media on the criminal justice system, I have instead examined several articles from the late 1920s and early 1930s.

sensational reports of crime led to race prejudice and to mob violence that often culminated in lynchings.²⁰¹ Highfill did not, however, criticize newspapers for their use of racial stereotypes, which also arguably contributed to race prejudice and mob violence. Neither Highfill nor the scholars he cited provided clear evidence showing that newspaper reports about crime had in fact caused crime.

Another concern of Highfill and other early twentieth century criminologists was the objectivity of the jury. Highfill noted that newspaper stories about sensational trials shaped the jury's mind as to guilt or innocence, making it "exceedingly difficult, or impossible, to secure an unbiased jury for the trial of criminal cases."²⁰² He warned that news reports about the trial itself threatened to prejudice juries even after they were empanelled. He observed that newspapers often exploited criminal trials through the use of sensationalist techniques to increase circulation and, sometimes, to support editorial policies.²⁰³ To this end, newspapers frequently turned reporters into detectives, focusing on "trivial" human interest "stories to arouse sympathy or hostility to one side or the other."²⁰⁴ According to Highfill, bold headlines, one-sided leads, and one-sided stories most influenced the public's attitude about the guilt or innocence of a criminal defendant. Highfill concluded that the aforementioned editorial practices incited crime, prejudiced juries, and often necessitated changes of venue.²⁰⁵

Highfill believed that the best way to deal with these problems would be to require the state to license and regulate journalists and their publications. In addition, he supported the adoption of state and national news organizations which would adopt a code of ethics for newspaper reporting that would be rigorously enforced. Such regulations and ethics code, he suggested, should be especially sensitive to the impact of the media on criminal activity and the outcome of criminal trials.²⁰⁶

Three years later, in 1929, Joseph Holmes agreed with Highfill's assertion that newspaper articles about crime incite criminal activity and generally interfere with the administration of justice. He wrote that newspapers encouraged crime by providing a "blueprint" for people who had criminal tendencies but did not have the capacity to plan a crime.²⁰⁷ Holmes also believed that newspapers incited crime by characterizing certain

²⁰¹ See *id.* at 73–75, 86.

²⁰² *Id.* at 91.

²⁰³ This was a common perception among early twentieth century criminologists. See, e.g., Morris Gilmore Caldwell, *Sensational News in the Modern Metropolitan Newspapers*, 23 J. AM. INST. CRIM. L. & CRIMINOLOGY 191, 196 (1932).

²⁰⁴ See Highfill, *supra* note 200, at 91–92.

²⁰⁵ See *id.* at 67–70, 94.

²⁰⁶ See *id.* at 96, 98–99.

²⁰⁷ Joseph Holmes, *Crime and the Press*, 20 J. AM. INST. CRIM. L. & CRIMINOLOGY 246 (1929).

criminal actors as heroes, or, in some cases, celebrities. Like Highfill, Holmes warned that newspapers shape the opinions of prospective jurors, creating bias and often prompting a change of venue.²⁰⁸ The similarity between the Highfill and Holmes findings suggest that there was a consensus of opinion among criminologists early in the twentieth century regarding the impact of the media on the criminal justice system. Such critical perspectives regarding the effect of yellow journalism on American society seem to have set the stage for changes that occurred within the judicial system later in the twentieth century.

CONCLUSION

Media portrayal of criminal trials early in the twentieth century reveals a great deal about journalism, the criminal justice system, and American society in general during the Progressive Era. News from this time period was yellow—that is to say it was particularly sensational, provocative, and untrustworthy. Moreover, aspects of yellow journalism were apparent in news stories in all the nation’s major newspapers, even the comparatively conservative and reliable *New York Times*. Yellow journalists paid significant attention to crimes and criminal trials. Such stories, according to legal historian Lawrence Friedman, were “mighty engines for selling newspapers—better than anything else, perhaps, except war or a good execution.”²⁰⁹ These stories not only provided a “vicarious thrill”²¹⁰ but taught the public about the law through messages of morality—showing how good and evil interacted in an increasingly complex modern criminal justice system.²¹¹

In publishing these stories of crime and punishment, however, newspapers were motivated more by profit than a sense of justice. For this reason, reports about crime were often misleading and perhaps inaccurate. This was especially true during the age of yellow journalism, when newspapers rapidly expanded with industrialization, and in the absence of much internal restraint about how and what to report. Of significance is the fact that during the first decade of the twentieth century, courts had not yet adopted procedural practices like jury sequestration to limit the influence of the media in the courtroom. For these reasons, the tension between the First Amendment right to the freedom of the press and the Sixth Amendment right to an impartial jury was probably greater during this time period than in any other. One should say “probably” because, ultimately, it is impossible to prove that any particular news report directly affected the outcome of a jury trial in any particular case. Nevertheless, the news reports described herein demonstrate that circumstantial evidence for such influence is strong.

²⁰⁸ *Id.* at 259, 261–62.

²⁰⁹ FRIEDMAN, CRIME AND PUNISHMENT, *supra* note 8, at 253.

²¹⁰ *Id.* at 398.

²¹¹ *Id.*

Finally, media portrayal of criminal trials during the first decade of the twentieth century teaches much about Progressive Era society. In particular, these reports show that racism and sexism infected credible newspapers such as the *New York Times*, and reinforced such tendencies in the public and the criminal justice system. Racial and gender stereotypes, inevitably, led to unequal treatment under the law. Stories about bigamy indicate a society and a criminal justice system struggling to reconcile human nature with strict divorce laws, and reveal a media unashamed to report about the most private actions of individuals. Reports about traffic violations demonstrate how the criminal justice system attempted to respond to new, society-altering technology, and expose a legal system still divided by class. Articles by criminologists and others from the time period show an educated elite distrustful of the public's ability to resist the power of the media and surprisingly willing to sacrifice the freedom of the press in the name of justice.

Yellow newspapers reflected and propagated ideas about race, gender, and class in the particular context of the administration of criminal justice. Moreover, while historians have written much about yellow journalism and its impact on American society, little has been written about how yellow journalism might have affected the constitutional rights of criminal defendants. The foregoing reports suggest that yellow journalism seemingly led to yellow justice during the early years of the twentieth century.