

CHAPTER VII.THE PRESS AND THE POLICE

The relationship existing between the Press and the Police is perhaps the most unstable of all the Press relationships which are being considered. There are occasions when a pseudo-harmony exists between the reporters and the policemen, detectives, and other representatives of the Law, and there are also occasions when a bitter conflict of interests arises and each party in the conflict is determined to force the issue to a conclusion favourable to itself. It is natural that there should be a conflict between Police and Press whose essential elements are secrecy and publicity respectively and any negotiations which tend towards a more harmonious co-operation between these two forces can only lead to a weakening of the strength of one of the two forces, and, from the very nature of things, that force would inevitably be the Press.

The attitude which members of the Police and detective Forces adopt in their dealings with the Press, acting under instructions from higher authorities, is largely consonant with that adopted by the Civil Service as a whole. A "hush-hush" policy is maintained as a general rule, being relaxed on occasions when the particular merits of a specific case seem to warrant it. The Press is not welcomed with open arms by responsible members of the Civil Service and news-gathering from Government Departments is one of the most difficult and thankless tasks that a journalist has to undertake. In many cases /

cases, no doubt, the decision to withhold news from the general public is based upon sound logic, as in the case of preliminary negotiations with some trade agreement, but more often a dogged attitude of silence is preserved in the face of all the laws of reason and commonsense.

Before returning to the question of the Police policy in regard to the Press, the writer would draw attention to one or two aspects of a general character in regard to the civil service, of which the Police forms an important part. Not only do officials in Government employ refuse to give information when it is within their discretion and power to do so, but they sometimes show active resentment when such news is obtained from other equally reliable and authentic sources, and published. Thus, following upon a "scoop" in the "Rand Daily Mail" ³³³ Mr. A.T. Roberts, a member of the Wage Board, ²³⁴ characterised the report "as a damned piece of impertinence" and refused either to confirm or deny it.

It is also significant that British journalists have less difficulty in obtaining official information from Governmental sources than have the newspapermen of this country. For instance, when it was rumoured from overseas that General J.B.M. Hertzog (Prime Minister) had cabled the President of the Irish Free State in connection with his attitude regarding the oath of allegiance, the Secretary for External Affairs, Mr. Bodenstein, told the Capetown correspondent of the "Star" that he could make no statement in regard to the report. Two days later the full text of General Hertzog's message was published in a cable from the "Star's" London correspondent.

These ,

333. February 24th, 1931.

334. In the "Pretoria News", February 24th.

These points serve to indicate briefly the unfavourable background against which journalists in this country have to work. That they themselves are partly to blame for building up the wall of secrecy with which they find themselves confronted will be argued subsequently.

The more discerning Police officials, whose clarity of thought and powers of commonsense have not been impaired as a result of rapid promotion or of years of "official thinking" have attempted a "give and take" policy whereby Pressmen coming for information are at liberty to use whatever these officials care to tell them regarding certain crimes and incidents, provided they agree not to publish developments in connection with other matters in regard to which information may have come into their possession. This is not a procedure of attenuated blackmail but a genuine attempt to enable both parties to the agreement to work on a "50--50" basis for the mutual benefit of both. ²³⁵ As a general rule the scheme works well, but unscrupulosity on the part of one or two journalists whose enthusiasm has overcome their discretion, is sufficient to throw the whole plan out of gear. Police confidence, once lost, is extremely difficult to regain.

If there were only two sides to the question the situation would be fairly simple, but the relationship between the Press and Police is complicated by the part which the Editors and leader writers play in the matter. Constant attacks upon the Police for incompetence, for indiscretion of members, or for unfair promotions, inevitably tend to

235. ^{make/} "The (English) Police are well aware that they cannot ignore the Press in their fight against crime, and I know of many instances in which detectives of national repute have asked the opinion of journalists covering a murder story. It is perhaps in the finding of important witnesses that the Press are able most frequently to help the Police. It was undoubtedly due to the "Daily Chronicle" (now the News-Chronicle) that Norman Thorne, who murdered and buried on his poultry farm, his fiancée, was brought to justice"---"When Fleet Street Calls", by J.C.Cannell, pages 177-178.

make the visits of the reporter to Police or C.I.D. Headquarters both unpleasant and unfruitful, in spite of the fact that the journalist concerned was in no way involved in the article which has caused umbrage and has no control over the free expression of opinions of the Editor or leader writer. Such articles make the difficult task of the "crime expert" still more difficult, and, by continually rapping the Police over the knuckles, the "powers that be" tend to render the task of this particular member of their staff almost impossible.

Arising out of the Swaziland Border Raid incident, which will be the subject of close scrutiny at a later stage in this chapter, the Commissioner of Police (Col.-I.P. de Villiers, M.C.) issued instructions warning members of the Force not to impart any information to newspapermen. "Even enquiries as to street accidents now meet with the bland reply, 'Please communicate with the Commissioner at Headquarters',
 236
 stated the "Rand Daily Mail". The position became so serious that a Sergeant even refused to say whether a certain victim in a street accident had been a pedestrian or a motor-cyclist. The Commissioner's orders were the subject of scathing comment in the "Sunday Times" which asked whether Col. de Villiers had consulted with the Minister of Justice (Mr. O. Pirow) in this matter before coming to his decision.

"Some time ago Mr. Pirow - evidently bent upon taking a leaf out of the book of New Scotland Yard - was of opinion that friendly relations between Police and Press might be extended to the advantage of both. Whatever developments Mr. Pirow may have had in his mind, it is certain that Col. de Villiers has banged the door upon them. "Probably the Commissioner of Police imagines that he is acting in a politic fashion in endeavouring to starve the columns of newspapers so far as the criminal activities of the Transvaal are concerned.
 Actually /

Actually he is placing a heavy handicap on the work of his own department. The methods advocated in the new order of the Commissioner were practised by New Scotland Yard a score of years ago, and, it was found, entirely to the disadvantage of rapid investigation. As a result of this experience, it was decided to take the Press into Police confidence and to rely on the wisdom and the honour of reputable representatives of the newspapers not to place difficulties in the way of investigation by a too premature publication of information".

The newspaper pointed out that, as a result of the arrangement whereby the criminal reporter became a liaison officer between Fleet Street and Scotland Yard, the newspapers, with their wide circulations, were able greatly to assist the Police by the publication of the portraits of wanted men, together with their descriptions, to assist in the identification of handwritings, and to help in other ways to bring a stop to certain criminal activities.

"The identification of Allaway with the Bournemouth murder was precipitated by the publication of his handwriting in the newspapers, and the arrest of the Brixton taxi-driver murderer, Mason, was due to the reproduction of a photograph of a walking-stick found near the spot where Dickey was murdered. Reputable officers are permitted to take equally reputable journalists into their confidence and invoke their assistance. In the days of official secrecy, before this arrangement was reached, the Press often refused—as it had every right to—to be catspawed by the police and, perhaps, was the more critical of police failure.

"Colonel De Villiers must realise—as probably the Minister of Justice has realised—that the police cannot have it all their own way. This order wilfully jettisons a valuable aid to police efficiency. The Minister of justice should insist, with as little delay as possible, on the police ostrich removing its head from the sand".

The plea proved unavailing. The Police Ostrich, instead of removing its head from the sand, stuck it still more deeply in and the next move was the issue by the

Commissioner /

Commissioner of Police of instructions to members of the Force that no information was to be given to anyone until a Press Pass had been produced. The system of Passes is in vogue on the Continent and admits Pressmen through cordons of Police, into the Press Gallery of the Chamber of Deputies in France, and to other places which are sacrosanct to members of the public, but it has never found favour in South Africa, and a proposal that such a system should be introduced was rejected at the annual Conference of the South African Society of Journalists in Durban in January, 1931. When the proposal came early in the following year from the Commissioner of Police it met with strong opposition.

The "Rand Daily Mail", in a leading article on March 2nd, 1932, stated :

"The relationship between officialdom and the Press has so little of cordiality in it in these days that any arrangement of the sort (a conspiracy between the two) would be quite impossible. For some time past there has been an ever-increasing tendency on the part of the authorities, particularly in the Police Department, to close all avenues of information to the Press. To-day, even the humblest officer in the Police Force cannot be approached by a representative of the Press in search of news unless he is able to produce a special Police Pass, the issue of which has been authorised by the Minister, who also claims the right to withdraw it at a moment's notice at his own sweet will. No such Pass is held by any member of the staff of the Rand Daily Mail, which does not approve of this system of official restraint upon the free publication of news and will never subscribe to it. The newspaper has been able to get along without Police Passes in the past. It will do so in the future. Its readers are entitled to the news, and they will continue to get it. If they prefer the official "dope" they must go elsewhere in search of it".

To trace the source of the trouble which brought to a climax the friction which has always existed,

in a small or large degree, between the Press and the Police in South Africa, the Swaziland Border Raid must be investigated. This affair originated out of reports appearing in the "Rand Daily Mail" and "Star" ²³⁷ in connection with alleged drug traffic from Mozambique, a shooting incident in which the Swaziland Police were said to be concerned, and the transmission from Lourenco Marques to the Transvaal of lottery tickets and prize money. The accuracy of these reports was publicly challenged by the Commissioner of Police who stated that "The highly-coloured reports appearing in the Johannesburg daily papers were entirely inaccurate". The "Rand Daily Mail" challenged the Police's denial of the original newspaper report and disclosed the source of his information as being "a senior Police officer". In a lengthy statement the journalist recapitulated in detail the facts of the case, and on the following day the Commissioner of Police, on having his attention drawn to certain of these facts admitted that they were correct. The "Star" devoted a leader to the subject, stating that "If the reports were highly-coloured, the responsibility does not rest with us. Our representative obtained most of his information from Colonel A.A. Celliers- Deputy Commissioner of Police- himself after he had returned from what he said was a raid against opium smugglers on the Swaziland border.... In view of the publicity given to the statement from Police Headquarters, we think it only fair to ourselves that the above facts should be placed on record".

A Police enquiry followed at which an Assistant Editor of the "Star" made a statement, extracts from which follow, exonerating both the Police Officer and the journalist concerned /

concerned, following upon a personal investigation into the situation as far as it could be constructed a few days' after the occurrences.

"As regards the responsibility for publication of the report, our reporter acted bona fide in believing he had received from Colonel Celliers confirmation of the essential features of information concerning the 'raid' which he had collected at Carolina. We are, however, satisfied, as a result of inquiries into all available facts, that this assumption by our reporter, though it appeared reasonable enough in the circumstances of the case, was incorrect and was due to a mutual misunderstanding.

"It would serve no useful purpose to discuss other aspects of this unusual episode or origin of fictitious accounts of the affair that were current in Carolina at the time and contributed to the misunderstandings that led to the publication of the report in question".

The South African Society of Journalists also had the matter under consideration and passed the following Resolution by a large majority, and ordered its insertion in this issue of The Journalist:-

"Doubt having been cast on certain Press reports of the raid by the Union police on the Swaziland border on February 22nd last written by two members of the South African Society of Journalists, the Council of the Society has made inquiry into the accuracy of these reports and the circumstances under which they were obtained. The Council wishes to place on record its conviction that the pressmen in question believed the information supplied to them by the police to be accurate, and that they duly forwarded it from Carolina in all good faith to their respective newspapers".

There were no dismissals either from the Police Force or from the Press but the incident is one which has shaken the foundations of Press and Police co-operation in this country and the wound created by the shattering blow to mutual trust dealt at Carolina in February, 1931, will take years to heal.

This conflict between Press and Police may

tend /

tend to the belief that the Press has not the welfare of the general good at heart, for, if the maxim is accepted that the Police are established for the maintenance of peace and order in the community, and the Press is in conflict with the Police, then the Press are opposed to peace and order. The supposition is, of course, absurd. Bentham's ominous forebodings in connection with sinister acts done in the dark have already been quoted. The publicity of the Press is one of the safeguards which minimises the "sinister acts" which Bentham so greatly feared.

The Press, for instance, has drawn attention to many a wrong done, to many a grievance requiring redress, and to many "things left undone which ought to have been done". By insistence and re-iteration, the Press is invariably able to have the desired reforms carried into effect. The American Press, in dealing with the kidnapping of the Lindbergh baby²³⁹ pointed out that no fewer than 382 kidnappings had taken place during the last three years.²⁴⁰ It demanded to know "What are we to do about a situation like this?" and advocated a dictatorship to curb crime in America. The Press also made some remarkable revelations in connection with the activities of Al Capone, the American "Crime King". It alleged that books had been found showing regular payments to Police Officers; to public officials; and to a member of Congress; while a modern ledger showed the overhead charges in disorderly houses. It also revealed the fact that 77 innocent young women were serving imprisonment in America on false charges of prostitution. The London Correspondent of the "Rand Daily Mail" commenting upon these facts, states:

"City /

239. April, 1931.

240. Quoted in the "Rand Daily Mail".

"City officials who tried desparately to prevent the investigation are now refusing to release these unfortunate victims, arguing that all that can be done for them is to have them re-tried". Whatever the measure of redress afforded was, this was gained through the agency of the Press, the publicity given to the matter focussing the searchlight of public opinion upon the plight of the unfortunate women.

It has been taken for granted that the reporting of crime is a natural function of a newspaper. No valid argument can be brought against that view, for, literature being as large as life and the Press being closely allied with literature, it follows that its ramifications must lead it into all the multitudinous phases of life. No single aspect may legitimately be ignored, if the Press is to fulfil its functions, to discharge its duty to the public, and to maintain its self-imposed position of public trust. The intimate bond which can be traced between crime and human nature is one of the principal reasons for the "display" which is given to crime and criminals. The Press must give the public what it wants. If it does not, the public will go elsewhere for its information and circulation will suffer. The view has been expressed that the reporting of crimes has the effect of nourishing an inherent faith in human nature by showing what the majority of people are not.

241

A writer in a London newspaper has written an illuminating treatise on the subject of "Why Newspapers report Crimes". After referring to a definition of a journalist as a man who has renounced everything except

"The/

"the world, the flesh, and the devil", the writer makes the point that it is possible for the journalist to be entirely detached from the subject matter of his work, whatever its nature may be:

"There is a saying that he who drives fat cattle should himself be fat, but it would be unfair if, we were to suspect a reporter of being an adulterer because he reported divorce cases, or lacking in moral earnestness because he chronicled the follies of the idle rich, or of being tarred with the vices of politicians because he was frequently to be seen in the Press Gallery of the House of Commons. The follies and wickedness of the world as he sees them leave no stain on the coat of the reporter. Let anyone try to offer him a bribe not to report a case in which he is concerned and he will soon find out that he has made an awful mistake in his man".

The writer ventures the opinion that the average newspaperman would take more delight in rescuing a noble deed from its obscurity into publication than in ferretting out the details of the latest crime. "Unfortunately, however, human excellence is not news", he proceeds.

"A police-court magistrate said that after 30 years on the Bench he was a convinced optimist, with an infinite belief in the goodness of human beings. Newspaper reporters, in my experience, are rather like him, for the more folly they see the wiser they become; the more wickedness, the more virtuous. The more folly and wrong-doing that is reported in the newspapers, the stronger the proof of the essential soundness of mankind. For it is the exceptional that gets reported, and the real attraction of the news columns of newspapers is not that they hold up the mirror to human nature, but that in showing what the few exceptional people are who qualify for the news columns they show what the vast majority of mankind are not,"

the writer concludes.

This survey of the relationship between Police and Press must lead to a consideration of the larger issue of Crime and Publicity. The relation-- as in the case of the Police and Press-- is a delicate one, for there

is no clear-cut issue. There enter into the analysis such considerations as publicity given to the criminal himself, to the witnesses both for the prosecution and for the defence, to the past record of the criminal, to his methods of operation, to the alleged habits of his victim; while the position is further complicated by the effect of this publicity upon the public in general. Persons devoid of criminal tendencies but craving publicity, and knowing no other way of getting "in the news" might be tempted, on reading the glorified exploits of Al Capone, to emulate his example. Persons ignorant of the methods of crime, of the means of disposal of goods through "fences" might be initiated into a life of crime through mere attendance at Court where evidence of this nature is being given, or by reading such evidence in the daily Press.

Evidence relating to sexual offences and to unnatural acts also tends to have a demoralising effect upon the general public who become acquainted with this kind of vice through the Press reports of Court cases. Although the outspoken language of the public prosecutor cannot be repeated in the newspaper, some euphemistic way of saying the same thing in different words is usually contrived and the reader can easily interpret the words to find their true meaning. It would be undesirable, in the writer's opinion, for any curtailment of court reporting to be enforced, but just sufficient publicity should be given by a trustworthy journalist, conscious of his grave responsibilities to the "indecent" cases to make the accused person realise that his acts have not been committed unknown to the world at large and that the sanctions not only of the Law but also of Society have been applied.

An attempt was made during the period of Office of Mr. (now Mr. Justice) Tielman Roos as Minister of Justice to introduce legislation prohibiting the reporting of divorce Court cases. This was not successful and the marital troubles of scores of couples are reported in the daily Press each month. While divorce is to be recommended as an instrument whereby an attempt may be made to reconstruct broken lives and to end unhappy marriages, it should be the exception rather than the rule and any attempt towards "cheapening" divorce which would tend to provide a state which would rival Nevada as the "Mecca of Divorce" is to be discouraged. It may be undesirable to report ad nauseam the trivialities of a couple's love affairs, but the restraining influence that the thought of publicity exercises should not be withdrawn, for it is common cause that persons seeking for divorce have been reconciled at the last minute. Where this is possible it is infinitely to be preferred to that unhappy expedient of incurring legal expense to "wash one's dirty linen in public" in order to obtain a restitution order.

242

Mr. Ferdinand Tucky expressed views which bear out those expressed above that "sometimes publicity is an inspiration of the criminal; frequently an inspiration of the crime". In taking a counter view to the writer of this thesis in connection with the publication of crime stories for the satisfaction of the public demand, Mr. Tucky writes :

"This debit side, a minor leavening of life, is distorted out of all proportion because of the public hungering for sensation. Must such craving be unfailingly pandered to?. Do not many of us hunger for things we may not come by?. I know a person who wades through every murder with the rarest morbid thrill. I do

not /

242. Writing in the "Sphere" on May 9th, 1931, on "Crime and Publicity".

not believe that is doing her any more good than a whisky and soda after hours would do others harm. Considering the things we are prohibited from doing, for the good of our own morals or for the protection of the community, it does seem little less than extraordinary that we should still be in a position to lap up crime-poison - I am not referring to England only - to saturate ourselves at a penny a time in such stuff as Blackheath murderers are made of".

Mr. Tuohy's example of Kuerten, the Dusseldorf murderer, further bears out the argument of the writer that some crimes are committed by persons for the express desire to gain publicity thereby. "The widespread publicity achieved by Kuerten was by his own showing, chiefly what he desired to encompass. Kuerten wanted to become the biggest, most talked-of murderer in the world.

"He wanted, particularly, to outdo Haarmann, of Hanover. One can see the fellow gloating over himself in the newspapers; that, probably, gave him his real thrill. Kuerten merely had a rabid publicity bug. He was unable to gratify it by riding round the town with giraffes or by giving an Eskimo bridal party, so he killed people. We have reached a stage where, for crime to act contagiously, it is not necessary that its call should operate only upon the criminal or mad. Like Leopold and Loeb, like that Southend youth hanged not long ago through wanting to see his picture in the papers, Kuerten carries forward the new-fangled publicity-criminal as forged by publicity in many lands. And Kuerten was lucky, having his craving gratified up to the last by a kindly bench which sentenced him nine separate times to death for as many different murders".

The matter of crime suggestion is an abhorrent one to Mr. Tuohy, who holds the opinion that the flare of publicity now being given to crime is the last full blast before the turn of events.

"An especially obnoxious feature of the present publicity given to crime concerns the manner in which, because there do not happen as yet to be any real gunmen in England, few opportunities are lost to slip the word "gunman" into crime reports. Presently we may expect the alchemy to work, with the result that we shall have gunmen".

Mr. Tuohy writes.

In drawing to a close his argument in favour of less crime publicity, which he hopes will be attended by less crime, Mr. Tuohy declares that it does no one any good to read in extenso about crime, while it does a whole lot of harm, and will continue to do so. He answers the time-honoured arguments in favour of publicity (1) that justice requires a maximum of publicity, and (2) newspapers can be of much assistance in tracking criminals, by affirming that the jury system and the access of the Press to the records would be sufficient guarantee that justice would be done, guilty parties stigmatized, and progress reported, while newspaper assistance to the Police would not in any way be affected.

The arguments raised by Mr. Tuohy are sound and call for careful and critical analysis. He has set out with the pre-determined object of establishing a fact or set of facts and has succeeded fairly well. In order to do this, however, he had fallen a victim to just one of those weaknesses which the Press must overcome before it can become a still greater force in the world than it is at the present time. He has quoted only those cases from the annals of crime which support his case. His survey is therefore not scientific, and the picture he has attempted to draw has become distorted in the process. While it is true that newspaper assistance in tracing down criminals would not be withheld from the Police in the event of Court reporting being curbed, the views of eminent English jurists are against him in his contention that publicity in regard to the trials of accused persons should be strictly limited, and that the efficient administration of justice would not suffer in the process.

The /

The leading members of the English Bench, however they may differ in their interpretation of legal phrases, appear to present a fairly united front in regard to the value of publicity in the administration of justice and of the necessity of the liberty of the Press. The Lord Chief Justice of England, Lord Hewart, of Bury, states:²⁴³

"The Liberty of the Press is a mere application of the principle that no one is liable to be punished or condemned in damages except for a breach of the Law. Under recent statute newspapers have certain privileges relating to the publication of fair and accurate reports, published contemporaneously, of proceedings in Courts of Justice and of public meetings, and the publication at the request of any Government Department, the Commissioner of Police, or Chief Constable of any notice or report issued for the information of the public... Persons responsible for publications in the Press are subject to precisely the same liabilities, civil and criminal, and the same jurisdiction, and course of procedure, for any libellous, seditious, or blasphemous matter in their publications as if it were published in any other way".

Dealing with the importance of judicial proceedings in Civil Service Departmental enquiries being held in public so that the public may know whether justice is being done, the Lord Chief Justice states further (page 47): "The Departmental policy of secrecy, which is inveterate is itself sufficient to condemn the system under which the public departments act as tribunals to decide disputes of a judicial nature. This secrecy naturally leads to the conclusion that the departments are afraid of their proceedings being made public /

243. "The New Despotism", page 31.

public, and tends to destroy confidence in the fairness of their decision... Save in one or two instances, none of the departments publishes any reports of its proceedings, or the reasons for its decisions, and as the proceedings themselves, if any, are invariably held in secret, even interested parties have no means of acquiring any knowledge of what has taken place... It is suggested that the department is afraid to disclose inconsistencies and a want of principle in its decisions. "However that may be, the policy is fatal to the placing of any reliance on the impartiality and good faith of the tribunal. It is a queer sort of justice that will not bear the light of publicity."

Point is given to the above remarks by the unusual procedure adopted at the commencement of the trial of Mallalieu and Tollput at Durban in March 1931 on a charge of the murder of a Maritzburg taxi-driver named Kimber. Application was made by Counsel for the defence of the first accused for a separate trial. Mr. Justice Mathews, in declaring that he would hear argument on this point, in view of the objection of the Attorney General to this course being pursued, cleared the Court not only of the public but also of the Press. No reason was given for this unusual procedure, and a journal-
244
ist who investigated the matter reported that there was no precedent for such action being taken. The application was ultimately granted and the Court furthermore laid down that the male accused should be tried first, in spite of the fact that this matter was one which lay entirely within the discretion of the Attorney General.

The /

The extent to which a Court may legitimately go in suppressing reports of proceedings and decisions of the Court was strikingly presented in the case of Scott vs. Scott. (Quoted in Lord Hewart's "The New Despotism"). In this case the Court went further than it was allowed to, and the charge subsequently brought against Scott for contempt of Court could not be sustained.

The question in issue was whether, in a wife's suit for nullity of marriage, the Court had jurisdiction to order a hearing in camera, and the House of Lords decided the question in the negative. "The judgments of the Law Lords are important" stated Lord Hewart, in that they emphasise the great importance of publicity in the administration of Justice. It is laid down that, in contests between parties, secrecy is permissible only in those exceptional cases, such as litigation in reference to a secret process, where publicity would necessarily prevent justice from being done. Mere expediency is not enough to displace the principle that the Courts are bound to administer justice in public. A departure from this principle is permitted only when to apply it would be a negation of justice".

The Chief Justice was strongly supported in this view by Lord Shaw who described publicity in the administration of Justice as one of the surest guarantees of liberty; His Lordship further characterised a violation of such publicity as an attack on the very foundations of public and private security. In this connection he aptly quoted Bentham as follows :

"In /

245. Scott vs. Scott. The petitioner, after a decree nisi had been pronounced, published to certain persons copies of the shorthand writer's notes of the proceedings. The publication having been held to be a contempt of Court it was decided, on an appeal to the House of Lords that the Court had no jurisdiction to make the order for a hearing in camera.

246. "The New Despotism.

"In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice speak. Where there is no publicity there is no justice." "Publicity is the very soul of Justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the Judge himself while trying under trial." The security of securities is publicity."

While it can clearly be seen from the quotations given above that the Law Lords are among the champions of the liberty of the Press, it must be equally obvious that the liberty so deeply cherished and so jealously preserved is open to abuse and that such abuse, so far from making "publicity one of the surest safeguards of liberty" makes premature or unwise publicity a hindrance to the efficient administration of justice, and may even amount to contempt of Court. Attention was, in fact, drawn to this point by Lord Darling in the English House of Lords ²⁴⁷ when he inquired

"whether the Government was aware that certain newspapers published what they alleged were confessions made while in prison by that convict (248) and asked "whether they intended to take any action to prevent a recurrence of such conduct". He also called attention to the publication by newspapers of the evidence given before the justices in the case of Rouse, and suggested the advisability of restricting such publication in the case of charges of the commission of indictable offences."

The Lord Chancellor, in associating himself with Lord Darling's remarks said it was not for him to lay down or to formulate a code for contempt of Court. "I think," he continued, "it is due to the Press of the country to say that in the majority of cases their powers are well and wisely used. "In the event of such articles appearing on

a/

247. "Daily Express" report, 1931.

248. Rouse, the accused in the "Blazing Car Murder, who was sentenced to death and lodged an appeal against his conviction and sentence. The appeal was lost.

a future occasion they will be brought before the court so that the court may have an opportunity of considering whether a contempt has or has not been committed."

Other instances of injudicious publicity may here be briefly given. In regard to the trial of an ex-convict, Eddie Guerin, whose criminal career reads like a chapter from a drama of crime, the presiding Judge, Lord Hewart, commented on the conduct of a certain newspaper which he had previously fined £1,000 for contempt of Court for publishing details of Guerin's career before Guerin had been brought to trial. Lord Hewart said: "The fact that statements to the detriment of an accused person are true provides not the slightest palliation for the publication thereof with reference to an impending trial".

250

Similarly another newspaper was fined £500 with costs for publishing matter relating to a man charged with murder. This case also came before Lord Hewart who stated that the newspaper was entitled to report fairly and accurately the proceedings in Court but once it departed from that course, it not only took a great risk but imperilled the unfortunate man charged. "I add to the warning previously given" remarked Lord Hewart, "that if this kind of cynical indifference to the interests of accused persons continues, cases will not be met by the imposition of fines".

251

The views expressed by Lord Darling and quoted above to the effect that "it is due to the Press of the country to say that in the majority of cases their powers are well and wisely used" can be confirmed by incidents drawn from actual newspaper /

-
249. Quoted "Sunday Times".
250. The "Surrey Comet".
251. Quoted "Sunday Times", 1931.
252. See page 244

newspaper experience. Three such instances will be given. In the first case, when a young man was arrested in connection with the murder of Miss Irene Kanthack in Johannesburg in 1928, a request was made that his correct name should not be divulged in the Press. This request was acceded to and a non de plume decided upon by the Police for travelling purposes in bringing the man from the place of arrest to the seat of trial was used by the Press, until the man actually appeared in Court when the correct name was divulged. Similarly the Police were of the opinion that any photographs in the Press of either Mallalieu or Tollputt (referred to in page 242) would seriously interfere with certain identification parades which had to be held in connection with the preliminary examination and the Press once again refrained from doing anything which would hamper the Police in their already difficult task. The third instance is one which is typical of a request which is frequently made by a presiding Magistrate to the Press, namely that certain names mentioned in evidence should not be published, as this would be prejudicial to the person concerned and would cause unnecessary hardship. When a Johannesburg doctor²⁵³ was charged in Johannesburg in 1928 with assault with intent to commit rape, certain names were kept out of the newspapers, and certain statements made by a woman witness and by the defending Attorney were not reported. The matter was disposed of in the following sentences: "The Magistrate asked the Press not to report certain statements made by the witness concerning her domestic affairs", and "The Magistrate asked that this²⁵⁴ evidence (of the Attorney) should also not be published.

The /

253. Dr. Robert Alfred Tothill.

254. Report of Court proceedings, "Rand Daily Mail".

The news value of crime has been succinctly
255
demonstrated by Mr. Kingsley Martin. He said :

"I do not mean to suggest that newspapers are behaving wrongly in giving very full reports"- publicity is one of the great safeguards of justice and, apart from public reasons, we must remember that newspapers are mainly commercial concerns, whose business it is to sell as many copies as possible and therefore to provide the kind of information which people most like. Now crime is always a best seller and papers with big circulations are willing to pay high prices for any details about the lives of murderers or alleged murderers or their relatives".

Mr. Martin disclosed the fact that a certain unnamed newspaper syndicate was prepared to pay the expenses
256
of Counsel for the defence on condition that the accused man gave his exclusive story to the newspaper syndicate making the offer, to such lengths will enterprising newspapers go in order to be "First with the News". "Murder cases" he proceeded "are fully reported at every stage from the inquest to the final acquittal or death of the accused person. Some people, among them speakers in the House of Lords, suggested that this had a bad effect on the healthy-mindedness of the public, and they urged that we might treat crime in the newspapers as we treat divorce, that is to say, restrict the report to the bare fact, the names of the persons involved, the nature of the charge and the result of the case. Once a trial has begun it is obviously of the greatest importance that the public should be able to know the nature of the evidence, and should be able to see for itself that the trial is fair. People would soon lose their confidence in justice if it was carried out in secret. There is the best of reasons, then, for allowing full publicity at the trial itself,
and /

255. In a broadcasting address in England subsequently reported in "The Listener", published by the British Broadcasting Company.

256. Sir Edward Marshall-Hall.

and if nothing has been published before the trial this publicity will not prejudice the jury whatever may be its effects on the general public".

Mr. Martin, who appears to have kept a more ²⁵⁷ open mind in regard to this problem than Mr. Ferdinand Tuohy proceeded to discuss the question whether there is any advantage in permitting the newspapers to give the details before the trial itself, and to consider the question of the publication of evidence led at preparatory examinations when all the Magistrate has to decide is whether there is a prima facie case against the accused man. He comes to the conclusion that the advantages, such as the coming forward of additional witnesses on reading the newspaper reports, are outweighed by the disadvantages among which the unconscious influencing of the jurymen is not the least considerable. "In his evidence before the Select Committee on Capital Punishment Lord Brentford, who has a very great experience in these matters, and whom we all knew as Joynson-Hicks when he was Home Secretary, gave it as his opinion that there was no reason for what he called 'full and morbid accounts' in the Press, that anybody who was likely to have information would be just as likely to see the report and to come forward with the information, if all the modern business of 'writing up' and featuring were abolished", Mr. Martin concluded.

The view held in South Africa does not differ greatly from that outlined above, and the Minister of Justice (Mr. O. Pirow) is understood to have prepared legislation

whereby reports of preparatory examinations will no longer be published. This will not inflict hardship on

the /

the Press as the case may still be fully reported when the accused man stands his trial in the Higher Court before a Judge. In fact, it will save a considerable amount of duplication as the proceedings in the Higher Court are often a mere recapitulation of what was said before the Magistrate.

In order to stress the fact that the relations between the Police and Press are not one perpetual antagonism, unbroken by any show of consideration on either side, the story of George Dilnot, a newspaper crime expert may briefly be given. "I happened to get on to a man suspected of murder", he stated. "It was a case which attracted a lot of attention but I'd no idea. . and, of course, I was officially thanked by Scotland Yard. I think I am the only man in Fleet Street who has ever marked down a man like that; and that is how I became labelled as a crime expert".

The fact that Mr. Dilnot happens to have been the only man to "have marked down a man like that" does not matter. It is the spirit which is of importance and it is a safe inference that others possessing the necessary ability and knowledge would have acted in a similar manner should an occasion arise. Reporters are often placed in a position to help the Police in some way or other and very frequently do. The necessity that they should investigate the same circumstances which officialdom is attempting to solve places them /

258. Quoted in Nongqai, April 1931.

259. An American publication, "True Detective Mysteries" publishes a monthly a feature called "The Line-Up" with an appeal to readers to "Watch for these fugitives!" Thereunder is published the photograph and description of men "wanted" for murder and other serious crimes. The paper offers a reward for their capture. It was stated in the May 1932 issue that "The Line-Up is a public service offered in co-operation with American Police Departments. Eight outstanding captures have been made through the pages of 'True Detective Mysteries' to date".

them in a favourable position to be of some use, although they are naturally working at a disadvantage from the fact that the Police want "no meddling" and the Press cannot obtain statements from unwilling persons in the same way as the Police can.

How the relations between Press and Police will develop in the future is a matter of speculation in which dogmatism would be out of place. The present tendency is for the Police to take advantage of all the facilities which the Press has to offer in the way of widespread publicity when required, and non-publication of certain items of news calculated to interfere with the course of justice, if published, and to give as little as possible in return. The Police being a permanent institution of organised Government, whereas the Press is an organ of capitalistic enterprise, the sympathies of the Legislature are naturally with the former, but the scales of justice are likely, however slowly, to revert to the equilibrium, provided the newspapers live up to high traditions of honesty and responsibility, and do nothing to forfeit any show of confidence in them.
