

“ALL THE NEWS THAT’S FIT TO PRINT”: THE *NEW YORK TIMES*, “YELLOW” JOURNALISM, AND THE CRIMINAL TRIAL 1898-1902

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The study of criminal trials during the late 1890s and early 1900s has largely focused on the nature of the criminal justice “system,” but little research has been done on the interaction of the press and the criminal courts and how each institution influenced the other. With “yellow” journalism at its height, the press during this era was eager to cover murder trials, especially ones with bizarre facts, gory details, or sympathetic defendants. Examination of the criminal trial through the lens of the press yields two unexpected insights. First, while not traditionally labeled as “yellow,” the New York Times’ murder coverage exhibited most of the same “yellow” characteristics of Hearst’s World and other markedly “yellow” papers. Given the fact that court records are sparse and historians must rely on newspaper accounts, this suggests that the Times is not more or less reliable a source than other papers. Second, the newspaper coverage supports the “multiple layers” theory of criminal justice—that not all defendants were treated equally or were even given full trials—and suggests one modification. This Article suggests that the press likely played a role in determining which trials were given significant courtroom time. As the press picked up on a particular trial, it was more likely that the defendant would attract a good lawyer (or at least someone committed to the adversarial process) and that the judge would ensure the prosecution carried its burden. Focusing on these insights, this Article takes the first step of describing this interplay and exploring the interaction between press and the courts.

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It will be my earnest aim that The New-York Times give the news, all the news . . . impartially, without fear or favor, regardless of party, sect, or interest involved.

Adolph S. Ochs, *New York Times*, Aug. 19, 1896

I. INTRODUCTION

The criminal courts at the dawn of the twentieth century were not as organized as they are today, nor did they operate in a way that could be termed a “system.” Justice was meted out on an ad hoc basis where some defendants were forced to take a plea agreement; others were given “slapdash” trials that only involved a thin amount of process to cover up a result that appeared to be all but a foregone conclusion. Yet some matters became full-blown trials, great public spectacles, widely attended and reported on by the press. Research in this area has chronicled this multi-tiered approach to criminal justice,¹ yet there has been little offered by way of explanation as to why this dual system arose.² Even less energy has been devoted to studying the role of the press in shaping the way criminal trials were conducted.

During the late 1890s and early 1900s, “yellow” journalism was at its zenith. The price of newspapers dropped precipitously,³ and the news, for the first time, became a commodity, widely consumed and digested by the general public.⁴ The media played an important role at the time: it was both the main source of information for most people regarding the courts and was also, put simply, good entertainment. This was the age of Hearst where gripping stories sold papers and newspapers evolved from publications primarily interested in promoting politics to papers designed to attract readership in order to obtain the greatest amount of advertising dollars possible.⁵ Among the sensational report-

¹ See, e.g., LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 576 (2d ed. 1985). Friedman was, perhaps, the first to identify this phenomenon noting that almost half of the criminal matters were disposed of in plea agreements. *Id.* Some of the remaining trials were “show trials,” which “were ‘propaganda plays, plays of morality, cautionary tales’ . . . [where the public] saw that justice was real; but they also saw that it was absurd. They saw careful meticulous justice; but they also saw justice ‘as a ham, a montebank, a fool.’” *Id.*

² Some explanations have been offered for the rise of plea bargaining, but little has been devoted to explaining why some trials became public spectacles and others were handled in a “slapdash” manner. For theories on the rise of plea bargaining, see Lawrence M. Friedman, *Plea Bargaining in Historical Perspective*, 13 *LAW & SOC’Y REV.* 247 (1979); Milton Heumann, *A Note on Plea Bargaining and Case Pressure*, 9 *LAW & SOC’Y REV.* 515 (1975).

³ TED CURTIS SMYTHE, *THE GILDED AGE PRESS, 1865-1900*, at 174 (2003).

⁴ See W.W. Hallock, Letter to the Editor, *Pernicious “Yellow” Papers*, *N.Y. TIMES*, Mar. 28, 1898, at 5; see also W. JOSEPH CAMPBELL, *YELLOW JOURNALISM: PUNCTURING THE MYTHS, DEFINING THE LEGACIES* 54-63 (2001).

⁵ In the 1880s, there were roughly 3300 magazines in the U.S., the best of which had a circulation of roughly 100,000. By 1905, the number had grown to over 6000 and *Ladies’*

ing, no stories were more sensational, more fantastic, or more spellbinding than the New York murder trial. The murders of the day, as reported by the newspapers, involved surprise witnesses, dramatic turns of events, inter-family conflicts, and, of course, gruesome murders. It is no surprise that the media was captivated by the criminal justice system and reported on murder investigations and trials with great detail and frequency. Because courts in New York at the time kept spotty records when they kept them at all, these newspaper accounts are a valuable source of information about the trials of the day.

The *Times* was a growing competitor in the news world during this period and positioned itself as an alternative to the base “yellow” press. When the young Adolph Ochs took the helm of the *New York Times* in 1896, he wrote in a letter addressed to his readers, “It will be my earnest aim that *The New-York Times* give the news, all the news . . . impartially, without fear or favor, regardless of party, sect, or interests involved.”⁶ The *Times*, in its modern version, was a conscious reaction against the rising tide of “yellow” journalism and an attempt to print “the facts” in an objective and impartial manner. This mantra was embodied in the slogan “All the News That’s Fit to Print,” which Ochs placed on the front page of the paper. Yet, examining the criminal justice system and the press side by side reveals some interesting insights that alter such conventional wisdom. First, the *Times* may not have been as “objective” as many have thought. The paper was initially selected for this Article as a lens through which to study the murder trial because it is generally not considered a “yellow” paper and one would assume, therefore, that perhaps its reporting is more reliable than other papers such as the *World*.⁷ However, a careful comparison of the *Times*’ trial coverage to that of the *World* reveals that, contrary to conventional wisdom, the *Times* exhibits many of the “yellow” characteristics of the *World*, if only in its coverage of murder trials. Neither paper seems to be particularly more “reliable” than the other; both report on the murder trials in roughly the same manner.

Second, the newspaper coverage supports the “multiple layers” theory of criminal justice. This theory suggests that only a small portion of criminal matters were actually resolved in a full-fledged trial, where the vast majority of

Home Journal that year sold nearly one million copies. These new magazines exerted great pressure on the press in several ways. First, they began to carry advertisements, for which they charged roughly \$400 per page. The advertising dollars helped publishers improve their bottom line while simultaneously allowing them to slash newsstand prices. Even “high brow” publications such as *Cosmopolitan* and *McClure’s* soon dropped their prices to ten cents. DAVID MARK CHALMERS, *THE MUCKRAKE YEARS* 11-12 (1974).

⁶ Adolph S. Ochs, Business Announcement, N.Y. TIMES, Aug. 19, 1896, at 4.

⁷ As one historian noted, the *Times* during this period strived to remain “untainted by partisanship, free from self-aggrandizing additives”; in short, of all the publishers during the Gilded Age, the *Times* publisher Ochs strived the most to create *objectivity*. ANDIE TUCHER, *FROTH & SCUM: TRUTH, BEAUTY, GOODNESS, AND THE AX MURDER IN AMERICA’S FIRST MASS MEDIUM* 196-98 (1994) (internal quotation omitted); *see also* LINCOLN STEFFENS, *THE AUTOBIOGRAPHY OF LINCOLN STEFFENS* 179 (1931). Eric Alterman argues that the *Times* was a conservative paper, and although not strictly objective, it appeared to be objective and that appearance is what counted. ERIC ALTERMAN, *SOUND AND FURY: THE WASHINGTON PUNDITOCRACY AND THE COLLAPSE OF AMERICAN POLITICS* 28 (1992); *see also* Karen S.H. Roggenkamp, *A Front Seat to Lizzie Borden: Julian Ralph, Literary Journalism, and the Construction of Criminal Fact*, 8 AM. PERIODICALS 60 (1998).

cases were decided by pleas or “slapdash” trials. The newspaper coverage also suggests one wrinkle to this theory, namely, that the media coverage may have influenced whether a criminal matter became a “show trial” or was rapidly disposed of through other means. Once the media became interested in a trial, it was logical that it would become a full-blown “show trial.” The main players all had incentives to make it such: prosecutors, accountable to elected officials, had incentive to showcase their efficiency and “tough on crime” record; lawyers who depended largely on word-of-mouth advertising clamored to represent high-profile defendants; and judges ensured at least the appearance of process when under the magnifying glass of public scrutiny. Even if a defendant’s guilt or innocence was all but a foregone conclusion, the person at least received what appeared to be more exhaustive “process.”

Historical causation is always tricky and difficult to prove definitively. The main purpose of this Article is not to establish causation, but rather to suggest that press coverage and the criminal justice system were interrelated. Each group of actors influenced the other and drove many of the common practices. Part II of this Article describes a murder trial during the period that garnered extensive newspaper coverage. This trial provides an interesting case study to analyze the interaction between the press and the criminal courts. Part III puts the *Times* and *World* in the context of the “yellow” journalism that dominated newspaper coverage in New York during that time and argues that there is little difference in murder trial coverage between the decidedly “yellow” *World* and the *Times*, which has managed to avoid such a label. Part IV examines the criminal justice system through the lens of the press. It provides evidence supporting the division of criminal matters into “show trials” and the “other layers” but argues that criminal justice in the early twentieth century was a fluid process (as opposed to a more rigid system employed today where a person either takes a plea or has a full-blown trial). The extent of the legal process accorded the accused was driven, in part, by the press as newspaper coverage could, conceivably, shift a matter from a cursory trial to a full blown “show trial.” This Article takes a first step towards understanding this complex interaction and suggests that the press is best viewed as a participant in the legal system, not merely a chronicler of the objective “facts” of what happened in the courtroom.

II. THE VAN WORMER TRIAL: A CASE STUDY IN TRIALS AND COVERAGE OF TRIALS

The Van Wormer trial serves as a good case study of what we can learn about the criminal justice system through the newspaper coverage and additionally what the newspaper coverage of murder trials tells us about journalism at the time. Although the murder itself occurred in a town in New York State, and not New York City itself, the trial is still relevant to this Article.⁸ The trial

⁸ I should note that the Van Wormer murder did not actually occur in New York City, but rather a small town a short distance outside. I feel the case is better for the purpose of this Article than other trials that occurred within New York City for several reasons: 1) it received extensive coverage *both* in the *Times* and the *World*; 2) it hasn’t been written about in any secondary literature I have found; 3) it is a good illustration of the *Times* murder trial

is emblematic of the coverage during the time, and because the murder occurred near New York City, the papers likely had their own correspondents covering the trial, rather than using the AP or other wire services. The coverage, in some ways, reads more like a Hollywood mystery rather than an actual trial: there is surprise evidence, stool pigeons, attempts at (what would today be impermissibly) influencing the outcome, and finally an execution by electric chair. This coverage demonstrates how the *Times* shared many similar traits with its more "yellow" sister publications, such as the *World*, particularly in its coverage of murder trials. It also provides insight into the criminal justice system at the time and the fluid way of disposing of criminal matters. The trial helps bolster Friedman's theory of multiple "layers" of justice.

On Christmas Eve, 1901, three brothers—Frederick, Burton, and Willis Van Wormer, aged twenty, twenty-two, and twenty-six respectively⁹—along with their cousin, Harvey Bruce, age twenty-one, hired a wagon and set off to pay a visit to their uncle, Peter A. Hallenbeck. The Van Wormer boys lived in the village near their uncle; their cousin, Harvey, was visiting from Newark. It was a short drive from where the Van Wormers lived in Kinderhook, New York to Hallenbeck's farmhouse.¹⁰ Fresh snow covered the ground. Harvey Bruce and Willis had previously stopped in a store in town and bought "false faces" or masks for each of the party.¹¹ Bruce testified that the Van Wormers were "going to give Uncle Peter a surprise" and had rented a horse and buggy for that purpose.¹² They tied up the horse at the barn, turned their overcoats inside out, donned the masks, and made their way through the orchard up to the kitchen door of the Hallenbeck house.¹³ At this point, accounts differ as to what exactly transpired. What is clear is that Mr. Hallenbeck came to the door, the boys forced their way inside and shot him over eleven times. In the scuffle, Mrs. Hallenbeck entered the room, and the boys took a shot at her as she fled. During the scuffle, Mr. Hallenbeck managed to reach his own gun before he died.¹⁴ A neighbor heard the shots fired and found Mr. Hallenbeck's body lying under the stove with a gun lying across it; the gun had two hammers down and there were caps in the gun.¹⁵ The boys retreated to Kinderhook, burned the masks in the stove, and made sure that they were seen by bystanders on the street (who could be potential alibi witnesses).¹⁶

The Van Wormer boys were charged with the murder of Peter A. Hallenbeck on December 26, 1901, and their stepmother provided a solid alibi.¹⁷ The

coverage during the early 1900s; and 4) the *Times* reporters likely covered the trial personally, as opposed to trials held outside of the state, which were often covered by other papers or the AP and transmitted to the *Times* and *World* via wire reports.

⁹ *Charged with P.A. Hallenbeck's Murder*, N.Y. TIMES, Dec. 27, 1901, at 3.

¹⁰ *Van Wormers Executed*, N.Y. TIMES, Oct. 2, 1903, at 8.

¹¹ *Harvey Bruce Tells His Tale of Murder*, N.Y. TIMES, Apr. 15, 1902, at 5.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Hallenbeck Murder Case: Widow Reported Ill from Testifying Against Her Nephews*, N.Y. TIMES, Apr. 9, 1902, at 6.

¹⁶ *Harvey Bruce Tells His Tale of Murder*, *supra* note 11.

¹⁷ *Confesses to Murder of Peter A. Hallenbeck*, N.Y. TIMES, Dec. 29, 1901, at 3; *Charged with P.A. Hallenbeck's Murder*, *supra* note 9.

tide of events turned, however, on December 29th, when Harvey Bruce, the Van Wormer's accomplice, turned state's evidence. On that Sunday, Harvey confessed, in the form of a statement to his mother witnessed by the Mayor and County Treasurer, to committing the murder along with his cousins.¹⁸ A grand jury returned an indictment against the defendants on January 18, 1902, and council was assigned for each boy. At the same time, the district attorney applied to the governor for an extraordinary session of the supreme court so the trial could be handled relatively quickly. The motion was granted and the case scheduled for trial during the last week of March 1902.¹⁹

The defense proffered evidence that the murder was unintentional. As Burton Van Wormer testified, and the reporter dutifully related, "I went to the Hallenbeck house to have some fun and did not go there with any other intent There was a controversy between my mother and uncle about the payment of the . . . bills."²⁰ The boys testified that Hallenbeck struck them and was the first to reach for his gun and fire. One testified that shots were fired as they were running away and intimated that there may have been another person at the house who actually shot Hallenbeck.²¹ All three of the boys ended up testifying during the defense's case in chief and cried when the defense made its closing argument.²² This was of no avail; the jury found all three guilty of first degree murder.²³

The Van Wormers filed a notice of appeal immediately,²⁴ which ultimately proved unsuccessful. The three brothers were executed on October 1, 1903, early in the morning by the electric chair.²⁵ They were buried on October 3rd in Kinderhook in a funeral the *Times* reported was attended by "several thousand persons," some who may have come out of curiosity to see the bodies that were displayed in open caskets.²⁶

III. THE *NEW YORK TIMES* AND THE "YELLOW" PRESS

Although the *New York Times* is generally considered more independent and less "yellow" than other papers in the late 1890s and early 1900s,²⁷ it did exhibit some distinctly "yellow" elements. Its sensationalistic tendencies were

¹⁸ *Confesses to Murder of Peter A. Hallenbeck*, *supra* note 17.

¹⁹ *Van Wormer Boys Indicted*, N.Y. TIMES, Jan. 19, 1902, at 7.

²⁰ *The Van Wormers' Trial: Prisoners Charged with Hallenbeck Murder Testified*, N.Y. TIMES, Apr. 16, 1902, at 3.

²¹ *Id.*; *Van Wormers' Testimony Finished*, N.Y. TIMES, Apr. 17, 1902, at 5.

²² *Jury Has Van Wormer Case*, N.Y. TIMES, Apr. 18, 1902, at 5.

²³ *Van Wormers Are Guilty*, N.Y. TIMES, Apr. 19, 1902, at 2.

²⁴ *Notice of Appeal for Van Wormer Boys*, N.Y. TIMES, May 2, 1902, at 3.

²⁵ *Van Wormers Executed*, *supra* note 10.

²⁶ *Van Wormer Boys Buried*, N.Y. TIMES, Oct. 4, 1903, at 13.

²⁷ The success of The New York Times has astonished and pleased those publishers who feared the 'yellow peril' The answer is found in 'All the News That's Fit to Print.' It has modestly attempted to reflect, not to make public opinion. It has aimed to be a complete daily newspaper It does not print pictures, neither does it indulge in freak typography. It has avoided sensationalism and fakes of every description. . . . It has cultivated impartiality and independence.

MEYER BERGER, *THE STORY OF THE NEW YORK TIMES 1851-1951*, at 137-38 (1951) (first omission in original) (internal quotation omitted).

clear in its coverage of the criminal justice system and, in particular, its reporting on murder trials. Both the *Times* and the *World* covered the Van Wormer trial fairly extensively. By juxtaposing the coverage from both papers, one can better identify common "yellow" elements and examine the differences in their coverage. This Part will briefly provide background on the origins of the "yellow" press and then describe how the *Times*, at least in its murder coverage, exhibited many common characteristics of the decidedly "yellow" *World*.

A. Origins of "Yellow" Journalism

The term "yellow paper" or "yellow journalism" grew out of a competition between its two biggest practitioners—Joseph Pulitzer of the *New York World* and William Randolph Hearst of the *New York Journal*. Both publishers in the late 1890s were competing over hiring a popular cartoonist, R.F. Outcault, who drew a witty cartoon depicting a character called the Yellow Kid, an irreverent kid from the New York tenements.²⁸ Ultimately, Hearst was successful in luring him away from the *World*, but soon thereafter, Pulitzer started a rival cartoon that was strikingly similar.²⁹ The word "yellow" came from the fact that the cartoon was often printed in both black and yellow ink.³⁰ The term "yellow journalism" was first used by the press in 1897 by the *New York Tribune* to refer to the sensational press (namely the *World* and *Journal*).³¹ These publications reflected "the familiar aspects of sensationalism—crime news, scandal and gossip, divorces and sex, and stress upon the reporting of disasters and sports"³² As recent historians have noted, "yellow" journalism "must not be considered as synonymous with sensationalism."³³ The genre exhibits other common characteristics. For example, it was defined by a unique style, including prominent headlines, lavish use of pictures (many without significance), faked interviews and news stories, color comics, a Sunday supplement, and overt sympathy for the "underdog" coupled with "campaigns against abuses suffered by the common people."³⁴ Other historians refined this definition and have described the "yellow" press in terms of the papers' "look and feel."³⁵

"Yellow journalism" grew out of significant technical innovations in the late nineteenth century that allowed publishers to produce papers more quickly, cheaply, and in greater numbers than had before been possible. Web-fed rotary presses,³⁶ electrically run machinery, typesetting machines,³⁷ wood-based

²⁸ CAMPBELL, *supra* note 4, at 25.

²⁹ *Id.*

³⁰ *Id.* at 25, 32.

³¹ *Id.* at 5.

³² FRANK LUTHER MOTT, *AMERICAN JOURNALISM: A HISTORY OF NEWSPAPERS IN THE UNITED STATES THROUGH 260 YEARS: 1690-1950*, at 539 (3d ed. 1956); *see also* SMYTHE, *supra* note 3, at 183.

³³ MOTT, *supra* note 32, at 539.

³⁴ *Id.*

³⁵ One historian identified the new use of multicolumn headlines, a variety of topics reported on the front page (including sports, society, politics, and international news), liberal use of illustrations, and bold new layouts. CAMPBELL, *supra* note 4, at 7-8.

³⁶ DON C. SEITZ, *JOSEPH PULITZER: HIS LIFE AND LETTERS 174-76* (1924).

white paper,³⁸ and halftone engraving³⁹ allowed editors to do larger runs, extend deadlines, improve the look and feel of the publication,⁴⁰ and expend greater resources on news gathering.⁴¹ This allowed publishers to slash labor costs, further reduce the newsstand price, and make newspapers available to larger segments of society.⁴²

The “yellow” press’ sensationalism dramatically changed the face of newspaper reporting: it helped shift papers from covering politics to covering news;⁴³ prodded editors to add “departments” covering sports, religion, society, and business;⁴⁴ and increased coverage of vice and crime.⁴⁵ Hearst was described as a “homicide hound”⁴⁶ and was rumored to brag that his reporters comprised “a detective force at least as efficient as that maintained at public expense by [New York] or any other city.”⁴⁷ When a murder happened, the *Journal* (along with other papers clamoring for the story) was often there at the crime scene following detectives, interviewing witnesses, and trying to be the first to “solve” the crime or get the story,⁴⁸ no matter what the cost.⁴⁹ The

³⁷ Prior to the invention of the Rogers Typograph and the Mergenthaler Linotype, papers had to set type by hand and publishers spent thousands of dollars a year on new dresses of type. SMYTHE, *supra* note 3, at 124-27.

³⁸ The late nineteenth century saw the invention of new mechanical and chemical processes to produce white paper from wood pulp at an extremely low cost. Prior to this invention, newsprint was made from rags, many of which had to be imported from Europe. In fact, several countries banned the export of rags or placed heavy taxes on them in an effort to keep resources at home. Companies experimented with processes to create newsprint from grasses or other natural fibers, but were unsuccessful. In 1867, a mechanical process was developed to grind wood into a pulp that made a passable paper and some New York papers, such as the *Times*, began using it. However, it was not until the early 1880s, when a sulfite process was developed, that companies could produce cheap newsprint strong enough to withstand the high-speed presses. By 1882 every major paper in New York was using this new paper. *Id.* at 124.

³⁹ *Id.* at 123-43.

⁴⁰ *Id.* at 123.

⁴¹ *Id.* at 123-24, 143.

⁴² For example, the introduction of reliable Linotype machines near the turn of the twentieth century allowed newspaper editors to reduce labor costs and speed the process by eliminating the need to pay between \$25 and \$45 a day in overtime to typesetters. As the machines became more reliable, newspapers were able to pay off their capital investment in just a few months. *Id.* at 127.

⁴³ *Id.* at 149-52.

⁴⁴ *Id.* at 149.

⁴⁵ *Id.* at 182-90.

⁴⁶ JOHN LOFTON, *JUSTICE AND THE PRESS* 83 (1966).

⁴⁷ MOTT, *supra* note 32, at 523-24.

⁴⁸ For example, after an assassin blew himself up in the office of a wealthy millionaire in 1892, a reporter from the *World* was able to obtain from the police a button taken from the remains of the bomber (whose body was so mutilated it could not be identified). He eventually identified the suit maker who made the button who, in turn, was able to piece together who the bomber was based on customer records. CHARLES EDWARD RUSSELL, *THESE SHIFTING SCENES* 298-300 (1914). Hearst once remarked, “The reason the old journalism, [Hearst’s pejorative term for the traditional press] doesn’t like the *Journal* is that the *Journal* gets the news, no matter what it costs.” *Truth About the Old Journalism*, N.Y. J., Feb. 2, 1897.

effort at times resulted in significant "scoops"⁵⁰ over the more "traditional" press.⁵¹ Such "exclusive" or "sensational" stories sold papers, increased advertising revenue,⁵² and became an obsession of editors.⁵³ The drive for increased circulation soon erupted into a price war that drove the newsstand price of a paper to as low as a penny⁵⁴ and made papers available to the masses.⁵⁵ With these developments, it is unsurprising that papers focused on the juiciest murders, the most sordid scandals, and the most salacious intrigue.⁵⁶

But even the *Times* was forced to compete on these terms by shaking off its conservative niche roots⁵⁷ and lowering its newsstand price. When Alfred Ochs—the *Times*' first "modern" editor and the man widely credited for saving the paper from bankruptcy—dropped the price for the paper from three cents to

⁴⁹ Sometimes these costs became absurd, such as when Hearst sent his personal yacht to transport a reporter to Cuba to cover the Spanish-American War. CAMPBELL, *supra* note 4, at 73-74.

⁵⁰ Reporters were paid based on exclusive "scoops" in addition to the amount of column space their article occupied in the paper. This provided a significant incentive for exaggeration and embellishment. As Allan Forman, the editor of the *Journalist* wrote in 1887, "Ninety percents of the exaggeration in news stories" could be explained by the space system and the incentives it created. SMYTHE, *supra* note 3, at 155 (quoting *The Space System*, JOURNALIST, Aug. 1887, at 5, 6, 8).

⁵¹ Some examples are the *Journal* revealing the content of the peace treaty between the United States and Spain in 1899, exposing Robert Van Wyck's—the first mayor of the consolidated boroughs of New York—monopoly on the sale of ice in 1900, and the details of a failed arbitration treaty with Britain. CAMPBELL, *supra* note 4, at 3-4.

⁵² GERALD J. BALDASTY, *THE COMMERCIALIZATION OF NEWS IN THE NINETEENTH CENTURY* 139-46 (1992).

⁵³ Joseph Pulitzer commonly wrote to his editors urging them to produce gripping exclusive stories and reminded them that the paper should contain "some striking development or feature in the news line that will lift it away from its competitors and make it talked about[.] 'Did you see that in the World?' should be asked every day and something should be designed to cause this." SMYTHE, *supra* note 3, at 155 (alteration in original) (quoting Memoranda of Talks with Mr. Pulitzer, Giving His Views in Regard to the World and Its Conduct, Pulitzer Papers, Box 2, July-Aug. 1899).

⁵⁴ *Id.* at 174.

⁵⁵ Some observers at the time criticized the yellow press as catering to the lower class of uneducated immigrants. One comment published in Britain was enlightening in stating that the yellow press "is written for immigrants, who have but an imperfect knowledge of English, who prefer to see their news rather than to read, and who, if they must read, can best understand words of one syllable and sentences of not more than a dozen words." CHARLES WHIBLEY, *THE AMERICAN YELLOW PRESS* 242 (1907); see also Hallock, *supra* note 4 (arguing that the banality and sensationalism of the bad papers are a shade above the banality and coarseness of the people who read them). Yet, recent scholars have analyzed census data and conclude that the yellow press was much more mainstream than many previously thought. CAMPBELL, *supra* note 4, at 54-63.

⁵⁶ Analysis of newspaper coverage during the late 1890s shows that there was a dramatic increase in crime reporting, which coincides with the rise of "yellow" journalism and sensational reporting. See generally BALDASTY, *supra* note 52.

⁵⁷ An example of just how conservative the *Times* readership was is the fact that its mostly Republican readership fled the paper en masse when it refused to support the Republican nomination for President and instead helped elect Grover Cleveland. Profits plummeted from \$188,000 in 1883 to \$56,000 in 1884, significantly contributing to its decline. This slide continued into 1895, when the paper was losing roughly \$1500 a week. BERGER, *supra* note 27, at 68.

one cent in 1898,⁵⁸ demand for the *Times* went up five to eight times.⁵⁹ Yet, despite the business pressures, the paper attempted to avoid what it viewed as the more egregious embellishments of its “yellow” sisters.⁶⁰ Ochs sought to report the facts and eschewed opinion and gross editorializing.⁶¹ Despite (or in spite of) his principles, Ochs was ultimately a publisher and had to look at making the *Times* profitable. After assuming control, he both slashed costs dramatically and started to look for ways to improve the bottom line by expanding circulation⁶² and increasing ad revenue.⁶³ He discontinued publishing fiction instead opting for specialized news⁶⁴ and introduced special interest sections, such as the wildly popular “Book Review” starting in 1896.⁶⁵

B. *The Times as a “Yellow” Paper*

Coverage of the Van Wormer trial reveals some of the more striking ways the *Times* adopted some “yellow” characteristics. Specifically three shared traits are easily identified: shared narrative style; sympathy for the “wayward sinner”; and a keen interest in forensic evidence and science. These elements suggest that the *Times* shared many similar characteristics with its “yellow” cousins, such as the *World*.

1. *Narrative Style*

Both the *Times* and *World* employed a narrative style common in reporting at the time—they described events in a manner that told a story in a conversational manner and provided “play-by-play” coverage of the trial itself. In the era before radio and television, newspapers were the way most people were able to get a glimpse of the inside of the courtroom and know what was happening. Consequently, the newspaper reports did not merely seek to summarize or highlight the most relevant aspects of the trial, they often reported everything that happened during a day in court. As Friedman suggests:

[O]nly a few people could actually be present in the courtroom. The rest had to attend vicariously. But this was the age of the yellow press, the age of “sob sisters,”

⁵⁸ *Id.* at 124-28.

⁵⁹ *Id.* at 126.

⁶⁰ From the beginning, Adolph Ochs, the *Times*’ first “modern” publisher, tried to create a mainstream paper that was decidedly *not* the *World* or *Journal* and made his intentions clear from the beginning. The day after assuming control, Ochs published his famous declaration of principles, which included a pledge to present the news “impartially, without fear or favor.” RICHARD F. SHEPARD, *THE PAPER’S PAPERS* 44 (1996).

⁶¹ *Id.* at 44, 74-75.

⁶² *Id.* at 54.

⁶³ Even Ochs was focused on attracting new advertisers. At Thanksgiving in 1896, one account records that Ochs was overjoyed that the *Times* “beat the Tribune this morning in advertising, the first time.” “I hope not the last time,” he quickly added. *Id.* at 60.

⁶⁴ For example, he published lists of daily buyers in the city, expanded the business and financial news, published court calendars, and focused on local news and events. Chester Lord, managing editor of the *Sun*, wrote that Ochs gave

to each reader the things in which he was personally interested, printing the news in such volume as to attract a great variety of interests. The lawyer found the full court calendar, the real estate man a record of each sale, the sporting enthusiast the result of every game.

CHESTER S. LORD, *THE YOUNG MAN AND JOURNALISM* 91 (1922).

⁶⁵ SHEPARD, *supra* note 60, at 242.

the age of Hearst. The newspapers were only too happy to report these trials, and the more sensational, the more prurient, the better.⁶⁶

And why better? The answer is simple: better for circulation, better for advertising dollars, and better for boasting rights in the press corps.

In the Van Wormer trial, for instance, the reporters for the *Times* chronicled the testimony summarizing each witness in turn and gave information on prior testimony.⁶⁷ Reporters from both papers (although the *Times* appeared to employ this technique more often) used quotation marks and a first person narrative, which gives the impression that the text was transcribed verbatim from the testimony.⁶⁸ However, despite this quality, it is highly unlikely that these passages were actual transcriptions. First, they are fairly short and do not include foundational or clarifying questions the attorneys likely used during direct examination even in those days. Second, the prose is very lucid and does not exhibit the stream-of-consciousness that is virtually unavoidable when a person is speaking extemporaneously. Nonetheless, the stylistic use of quotations helps create the illusion that the reader is right there in the courtroom and witnessing the proceedings firsthand.

Both papers were keenly interested in the human aspect of the Van Wormer trial and reporting on both the defendants and their family members. They provide vivid descriptions of key players at trial in a way that added color, interest, and drama to the situation. The *World*, for example, spent significant space recounting how Bruce's aunt came to jail to bail him out. The coverage described how she was rich, smartly attired, and showed up at the prison to beg Bruce to confess and turn states' evidence.⁶⁹ It continued to describe Bruce's mother's arrival and her hysterical actions. Apparently she came in screaming and threw her arms around her son's neck imploring him to confess and save himself from a "murderer's grave."⁷⁰ The *Times*, perhaps surprisingly, spent two stories recounting the Van Wormer's stepmother's travels to Albany to beg the governor to grant her stepsons clemency. Her attempt was ultimately unsuccessful. The governor denied the meeting and the paper reported that he told the woman through an assistant "that an interview would afford only needless anguish to her and pain to him."⁷¹ The *Times* also noted during the trial coverage that Mrs. Hallenbeck was "reported ill" from testifying against her nephews;⁷² the paper extensively covered the disposition of the

⁶⁶ LAWRENCE M. FRIEDMAN, *AMERICAN LAW IN THE 20TH CENTURY* 86 (2002).

⁶⁷ *Hallenbeck Murder Case: Widow Reported Ill from Testifying Against Her Nephews*, *supra* note 15.

⁶⁸ See, e.g., *Boy Confesses to Murder of Hallenbeck*, N.Y. *WORLD*, Dec. 30, 1901, at 8; *Hallenbeck Murder Case: Widow Reported Ill from Testifying Against Her Nephews*, *supra* note 15; *Harvey Bruce Tells His Tale of Murder*, *supra* note 11; *Trial of Van Wormers: Testimony of Witnesses Related to Footprints in Snow*, N.Y. *TIMES*, Apr. 11, 1902 at 6; *Van Wormers' Testimony Finished*, *supra* note 21; *The Van Wormers' Trial: Prisoners Charged with Hallenbeck Murder Testified*, *supra* note 20.

⁶⁹ *Boy Confesses to Murder of Hallenbeck*, *supra* note 68.

⁷⁰ *Id.*

⁷¹ *Mrs. Van Wormer's Last Hope*, N.Y. *TIMES*, Sept. 29, 1903, at 6.

⁷² *Hallenbeck Murder Case: Widow Reported Ill from Testifying Against Her Nephews*, *supra* note 15.

brothers at various points of the trial, especially the period leading up to their execution.⁷³

One might expect to see such sensational “human interest” stories from the *World*, not the venerable *Times*. However, the *Times* reported such details with as much gusto as its “yellow” competitors. Both papers described the inside of the prison and reported on conversations between the brothers on the night before their execution.⁷⁴ Finally, the *Times* even wrote a blurb about Mrs. Van Wormer’s re-marriage seven months after the execution.⁷⁵ Although a modern reader may blanch at such stories, these often gratuitous details sold papers. “[Murder trials] were lush dramas, embroidered with juicy details (some of them fake) in the daily press,” writes Friedman, “[t]hese trials satisfied some deep-seated hunger of the bourgeoisie. The newspapers clucked and scolded and pretended to be appalled; but these sordid affairs gave off the rotting perfume of forbidden fruit.”⁷⁶

One key question is how much the reporter infused the story with fabricated or exaggerated details, and how much of the reported account actually happened because neither paper generally attributed statements or provided corroborating sources. This is a difficult task, and comparing the two papers provides little insight. The *World* contains several details that were not included in the *Times* coverage; given the *Times*’ self-purported dogged focus on the “facts,” it is possible that these instances are evidence of exaggeration or embellishment on the part of the *World* reporters. For example, the paper describes the actual murder in vivid detail chronicling the events leading up to the shooting, most of which is consistent with the *Times* coverage. However, only the *World* discusses where the other family members were during the shooting (evidently at a Christmas tree lighting ceremony), or the fact that the victim’s wife hid in the attic and was nearly shot herself.⁷⁷ Furthermore, the *World* gives a detailed account of the events that later transpired including the police response and the family’s fear that the woods were full of “Ku Klux” and that the attack may begin again at any moment.⁷⁸ The *Times* largely avoided these embellishments. This is not to say that the *Times* version is, necessarily, more accurate, but rather suggests that the *World* coverage likely displayed an important aspect of “yellow” journalism—the reporter’s tendency to embellish and fabricate—although the *Times* may have been just as susceptible.

⁷³ Both papers liked reporting on the “nature” or “disposition” of the brothers, especially in the time leading up to their execution. See, e.g., *Death Chair Prepared for Van Wormers*, N.Y. WORLD, Sept. 30, 1903, at 2; *Mrs. Van Wormer’s Vain Trip*, N.Y. TIMES, Sept. 30, 1903, at 3; *Van Wormers Are Guilty*, *supra* note 23; *Van Wormer Boys Die To-Day*, N.Y. TIMES, Oct. 1, 1903, at 3.

⁷⁴ *Death Chair Prepared for Van Wormers*, *supra* note 73; *Van Wormer Boys’ Execution*, N.Y. TIMES, Sept. 27, 1903, at 13.

⁷⁵ *Weds Mrs. Van Wormer*, N.Y. TIMES, Apr. 14, 1904, at 9.

⁷⁶ FRIEDMAN, *supra* note 66, at 87.

⁷⁷ *Four Suspects Held for Murder of Hallenbeck*, N.Y. WORLD, Dec. 27, 1901, at 1.

⁷⁸ *Id.*

2. *Sympathy for the Wayward Sinner*

During the late 1800s and early 1900s, many people still adhered to the idea that there were two categories of criminals: those whose crime was a mere lapse in their personality, "a quirk, a sport, a failing, a weakness, a temporary lapse,"⁷⁹ and those who were hardened criminals. The first group could be reformed, changed, and forgiven; the second could not.⁸⁰ Consequently, groups sprang up across the country with the goal of suppressing vice (such as gambling, alcohol, prostitution, etc.) and saving such wayward sinners from corruption and sin.⁸¹ During the late nineteenth century, "advances" in medicine and the rise of eugenics convinced many people that these hardened criminals were bad not because of their upbringing, but due to their degenerate genetics.⁸² This second group did not deserve the public's sympathy and should be managed, isolated, and in some cases, not allowed to reproduce.

Both the *Times* and the *World* expressed this dichotomy, which could be seen as a "yellow" feature when taken to the extreme. In many of the trials, they expressed sympathy bordering on tenderness for the accused, although the *World* did so in a more flamboyant manner. During certain trials, such as the Van Wormer trial, the papers seemed to think that the criminality of the defendants was a mere lapse and that they were capable of reform. The papers generate sympathy largely by focusing on both on the boys' upbringing and also on God's mercy.

The *World* offers a bit of insight into the boys' background. They lost their mother early on in their lives; their father remarried, but died shortly thereafter leaving his second wife and three sons destitute.⁸³ Their uncle, Peter Hallenbeck, let them live on one of his many farms and "never pressed them for payment," but when the boys grew older had them evicted.⁸⁴ The *World* treated them like the products of a rough upbringing, which it suggested explained their criminal behavior. If the boys had been given a good home with plenty of food on the table, they would not have been on the criminal path that took them down a gradual slope from petty theft to murder.⁸⁵

Both papers, throughout the trial but especially as the execution drew nearer, emphasized God's mercy. The *Times* reported several visits from a minister and that "the three young men have received scores of letters from people in all parts of the country . . . assuring them of the divine forgiveness and urging them to be brave and to trust in God's mercy."⁸⁶ The *World* described in great detail the priest who administered their last rights, counseled them before the execution, gave each of them a cross to carry into the chamber, and murmured a prayer.⁸⁷ It also dramatically described how each boy's gaze was fixed on the cross during the execution and even after the current was

⁷⁹ LAWRENCE M. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* 141 (1993).

⁸⁰ *Id.* at 134-39.

⁸¹ *Id.*

⁸² *Id.* at 140-42.

⁸³ *Four Suspects Held for Murder of Hallenbeck*, *supra* note 77.

⁸⁴ *Id.*

⁸⁵ *Three Brothers Must Die in the Electric Chair*, N.Y. WORLD, Apr. 21, 1902, at 2.

⁸⁶ *Mrs. Van Wormer's Vain Trip*, *supra* note 73.

⁸⁷ *Van Wormers Die Calmly, Eldest First*, N.Y. WORLD, Oct. 2, 1903, at 1.

applied, Willis' hand clutched the crucifix and after he died, his hand "dropped limp over the side of the chair, still retaining its hold [on the crucifix]."⁸⁸ The message was clear: justice had been done and the defendants were now subject solely to the divine mercy of God. The papers implied that God would have mercy on the Van Wormers and suggested through their narrative style that the public should have sympathy for their terrible tragedy as well.

3. *Interest in Forensic Evidence, Science, and Technology*

A third "yellow" theme in the *World* and *Times* coverage was their deep interest in science, technology, and forensic evidence. The early 1900s was a period of industrialization and the rise of a professional police force.⁸⁹ New scientific discoveries were applied to solving crimes, reforming prisoners, and reforming the penal system.⁹⁰ The *Times* and *World* both focused on the scientific aspects of the investigations and the electric chair, which was a new technology, designed to make the execution more "humane."

Consistent with this increased interest, the *Times* emphasized the forensic evidence the sheriff gathered from the Van Wormer crime scene. Because the suspects in the Hallenbeck murder were wearing masks, eyewitness identification would be difficult. Police, however, used other clever means to link the Van Wormers to the crime. Police matched the wagon tracks at the Hallenbeck farm to those of the wagon the Van Wormers had rented that day. Additionally, the horse pulling the rented wagon had a "peculiar shoe" that matched impressions in the dirt around the house, and finally police claimed to have matched footprints left in the snow to boots in possession of the Van Wormer boys.⁹¹ While these techniques were not "new" per se, the papers were very impressed with this pseudo-scientific approach to crime scene investigation. The papers (and defense, for that matter) accepted the evidence as true and reliable without question. Nobody asked questions a rookie criminal defense lawyer today would ask, such as how many shoes of the same type were produced that year, whether the wagon wheel was a type common on wagons, or what the prosecution meant by a "peculiar" horseshoe. The *Times* simply reported that the evidence was circumstantial and the defense would likely produce an alibi, but not try to rebut it on its face.⁹²

Both papers seemed fascinated with the execution by electric chair. The method was fairly new and generally seen as "an extraordinarily humane and expeditious execution of the law."⁹³ Indeed, the governor of New York heralded "the chair" as a "way to put criminals to death in a less barbarous manner."⁹⁴ Both papers described the process of strapping the defendants into the chair, where the electrodes would be placed, how much voltage would pass

⁸⁸ *Id.*

⁸⁹ FRIEDMAN, *supra* note 79, at 149-55. Friedman remarks that the path to professionalism in no way meant that the police force at the time was, by any means, professional or even very regimented.

⁹⁰ *Id.* at 159-68.

⁹¹ *The Hallenbeck Inquest*, N.Y. TIMES, Dec. 28, 1901, at 2.

⁹² *Id.*

⁹³ *Van Wormers Executed*, *supra* note 10.

⁹⁴ FRIEDMAN, *supra* note 79, at 171 (internal quotation omitted).

through the defendants' bodies, and how long the current would stay on. Interestingly, both papers recorded with a great deal of precision that the entire execution took exactly fifteen-and-a-half minutes.⁹⁵

The *World's* coverage was, unsurprisingly, more colorful than that of the *Times*. It described in graphic and often gratuitous detail the order the boys entered the death chamber, who was there to witness the execution, what the hood and electrodes looked like, how the light from the test bulbs played on the walls, how the defendants' bodies tensed up when the current was applied, precisely how long it took to kill them, and the voltage.⁹⁶ It also included details such as how the holding cells were specifically padded for the occasion to keep the brothers waiting for execution from hearing the screams of their siblings.⁹⁷ The paper provides so much detail that a reader with a weak stomach may not be able to make it all the way through the description. The *Times's* description was a bit more restrained but not markedly different.⁹⁸ Such coverage was characteristic and highly indicative of the "yellow" press at the time.

The *Times's* coverage was more extensive, often interspersing longer stories with short blurbs updating its readers on the procedural aspects of the trial.⁹⁹ This pattern seems to fit with the *Times's* mantra of reporting on "the facts" of the case; part of providing complete and accurate coverage is updating readers on the important procedural milestones of the trial: arrest, indictment, jury charge, verdict, appeal, and petition for clemency. The *Times* covers all of these, even if it is in a story that is only two sentences long.¹⁰⁰ However, the bulk of the *Times's* stories resemble the dramatic, sensational recounting of murder trials that came to be a recognizable feature of "yellow" journalism. With respect to homicide reporting, the conventional mantra of not labeling the *Times* as a "yellow" paper may not be entirely accurate. While certainly the *Times* avoided many other aspects of sensationalism, a reader should be wary of assuming that just because historians have not affixed the "yellow" label, the *Times* somehow reported facts more accurately or dispassionately than the *World* and *Journal*.

IV. INSIGHTS INTO THE CRIMINAL JUSTICE "SYSTEM"

A. *The Underlying Homicide Rate*

The *Times* and *World* coverage of criminal proceedings, such as the Van Wormer trial, is a rich source of information about the legal system in New York City at the turn of the twentieth century. Examining the newspaper cov-

⁹⁵ *Van Wormers Die Calmly, Eldest First*, *supra* note 87; *Van Wormers Executed*, *supra* note 10.

⁹⁶ *Van Wormers Die Calmly, Eldest First*, *supra* note 87.

⁹⁷ *Id.*

⁹⁸ *See Van Wormers Executed*, *supra* note 10.

⁹⁹ *See, e.g., Charged with P.A. Hallenbeck's Murder*, *supra* note 9; *Notice of Appeal for Van Wormer Boys*, *supra* note 24.

¹⁰⁰ *Charged with P.A. Hallenbeck's Murder*, *supra* note 9; *Jury Has Van Wormer Case*, *supra* note 22; *Mrs. Van Wormer's Last Hope*, *supra* note 71; *Notice of Appeal for Van Wormer Boys*, *supra* note 24; *Van Wormers Are Guilty*, *supra* note 23; *Van Wormer Boys Indicted*, *supra* note 19.

erage of trials against the backdrop of the overall homicide rate for the period provides support for Friedman's "multiple layers" theory of criminal justice—namely that the majority of criminal matters were disposed of through pleas or slapdash trials and few actually received a full adjudication in what he terms a "show trial." The newspaper coverage reveals that the criminal justice "system"—if it can be termed any sort of system that functioned on an established set of rules—was extremely fluid. Cases were given varying amounts of attention or court time depending on a variety of factors: the notoriety of the victim or defendant, the amount of money the parties had to hire lawyers, and, as this Article suggests, whether the circumstances were such that they captured the minds and imaginations of reporters and by extension the New York public. Intriguing trials were picked up by reporters who diligently recounted their details to the public; if the story were compelling enough, it drove circulation and produced even greater scrutiny by the press corps. Although causation is all but impossible to determine, one would logically assume that increased public scrutiny would translate into a more complete trial or greater adherence to procedural aspects we take for granted today. A trial being closely followed by the press seems less likely to be disposed of in a patently slapdash proceeding.

A good place to start is with the background rate of homicides. Academics, such as Eric Monkkonen, have attempted to develop reliable crime statistics for New York City during the period.¹⁰¹ Monkkonen compiled his data into useful graphs charting the homicide rate in New York City for the period.¹⁰² His research shows that New York City experienced a "slump" in homicide during the late 1890s and into the early twentieth century; however, it is difficult to attribute causes to these slumps and the subsequent increases in violent crime.¹⁰³ While impossible to precisely fix the homicide rate for this time period,¹⁰⁴ Monkkonen estimates the homicide rate for New York City at

¹⁰¹ Eric H. Monkkonen, *New York City Homicides: A Research Note*, 19 SOC. SCI. HIST. 201, 210 (1995) [hereinafter Monkkonen, *New York City Homicides*]; see also Eric Monkkonen, *Homicide Over the Centuries*, in THE CRIME CONUNDRUM: ESSAYS ON CRIMINAL JUSTICE 163, 163 (Lawrence M. Friedman & George Fisher eds., 1997) [hereinafter Monkkonen, *Homicide Over the Centuries*] (discussing how the author assembled his data set to estimate homicide rates in New York City).

¹⁰² Monkkonen, *New York City Homicides*, *supra* note 101, at 210.

¹⁰³ ERIC H. MONKKONEN, MURDER IN NEW YORK CITY 7-25 (2001) (refuting common explanations for increases in murder rates such as population growth, poverty, corruption, and veterans returning home from war; although he does not offer an alternative explanation, Monkkonen does chronicle the "waves" and "troughs" of homicide in New York City over the last two centuries).

¹⁰⁴ As Monkkonen points out himself, even his study is far from a perfect estimation of homicide rates. Even if he could find better corroborating sources and more detailed information, he would still have to overcome several barriers. First, many murders are underreported (such as infanticide), and "[t]he line between intentional and accidental homicides is sometimes blurred." Eric H. Monkkonen, *Estimating the Accuracy of Historic Homicide Rates*, 25 SOC. SCI. HIST. 53, 55 (2001). Second, some kinds of murders are tolerated or overlooked. *Id.* at 55. Finally, newspapers stopped reporting each murder in the 1880s, and estimating the homicide rate, necessarily, has to rely on the coroner's report and other corroborating sources. Monkkonen, *New York City Homicides*, *supra* note 101, at 210; see also Monkkonen, *Homicide Over the Centuries*, *supra* note 101, at 163 (discussing how the author assembled his data set to estimate homicide rates in New York City).

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roughly four murders per 100,000 people for the years 1898-1903,¹⁰⁵ which translated into roughly 138 murders per year during that period.¹⁰⁶

Police arrest data corroborates this estimate. In mid-nineteenth century New York City, over ninety-five percent of homicides resulted in arrests, many in the arrest of several suspects. About forty percent of homicides came to trial and about one in fifty resulted in an execution.¹⁰⁷ The chart below shows the number of arrests for homicide, which are only slightly higher than Monk-konen’s homicide estimate; the discrepancy is explained by several factors: the police consistently arrested multiple suspects for every case, the reporting data of the time was inaccurate, or the police had a strong political incentive to inflate arrest numbers in their annual reports.¹⁰⁸ The homicide rate summarized below is for the greater city of New York starting in 1898 and drawn from the annual reports of the police department.¹⁰⁹

ARRESTS MADE IN NEW YORK CITY (ALL BOROUGHS)

	Homicide (male)	Homicide (female)	HOMICIDE TOTAL	TOTAL ARRESTS
1898	311	11	322	141,745
1899	373	15	388	138,875
1900	398	24	422	132,805
1901	384	19	403	133,749
1902	463	23	486	145,936
1903	541	20	561	175,871

Source: *Report of the Police Department of the City of New York, 1898, 1899, 1900, 1901, 1902, 1903*, New York.

Assuming Monk-konen’s murder rate of approximately 138 murders in the New York boroughs, the *Times*’ coverage of roughly twelve murders per year during this time period barely scratches the surface. Although historians have

¹⁰⁵ MONKKONEN, *supra* note 103, at 7-25.

¹⁰⁶ This calculation is based on the 1900 census data that lists the combined population for New York City (all boroughs) at 3,437,202 people. U.S. Bureau of the Census, Population of the 100 Largest Urban Places: 1900, <http://www.census.gov/population/documentation/twps0027/tab13.txt> (last visited Jan. 31, 2008). The population multiplied by the rate of four murders per 100,000 people yields the total estimated murder rate.

¹⁰⁷ Eric H. Monk-konen, *The American State from the Bottom Up: Of Homicides and Courts*, 24 *LAW & SOC’Y REV.* 521, 528 (1990). Although this is a slightly different period from that being examined in this Article, it is hard to imagine that the arrest rate would change dramatically over the course of a couple of years.

¹⁰⁸ Robert D. McCrie, *Crime in a City: Urban Disorder and Its Consequences in New York, 1890-1990*, at 31-32, 43-50 (1995) (unpublished Ph.D. dissertation, The City University of New York). Two factors contribute to the potential unreliability of police department data. First, crimes were often reported as crimes of negligence rather than homicide. For example, police department data for 1890 lists 1449 deaths by negligence or accident as a separate category apart from homicide. Of those, 731 died by fractures and contusions, 62 by poison, 32 by wounds, and 4 by cuts or stabs. *Id.* at 57. It is unlikely that all of these incidents were truly “accidental.” Second, the New York police department as late as 1890 had two specialized groups, the Detective Bureau and the Sanitary Squad, which generally reported arrest statistics separately from the regular police officers. *Id.* at 31.

¹⁰⁹ See *ANNUAL REPORT OF THE POLICE DEPARTMENT OF THE CITY OF NEW YORK* 9 (1899).

noted that the “yellow” press had higher rates of crime reporting than non-yellow papers,¹¹⁰ the *World’s* murder coverage was over double that of the *Times* (around thirty murders a year), it still covered only a fraction of the murders that took place in New York City. While the *World* covered more discrete murders during this time, the *Times* covered the murders it did report in greater depth both in the actual articles themselves and in the frequency with which it ran reports. Absent a police blotter, even the murder-friendly yellow press could not (nor would they want to) cover each murder in New York. So, why did some trials get more coverage than others? Friedman’s theory is a compelling answer to this question. As he notes, most cases were resolved by slapdash trials or plea bargaining and only a small number—for whatever reason—involved extensive trials, which attracted the attention of the media. In studying criminal justice during the late 1890s and early 1900s, Friedman found that murder “trials” could be roughly divided into two categories: “show trials” where defendants were given some individualized attention and “slapdash trials” or plea bargaining, which were cursory and resolved a surprisingly large number of cases.¹¹¹

B. *The “Multiple Layers” of Justice*

The *New York Times* coverage supports Friedman’s “multiple layers” hypothesis of the courts at the time. The top layer consisted of the “show trials,” such as the Van Wormer trial, which lasted for months if not years, received extensive newspaper coverage, and captivated the minds of local citizens. As Friedman explains, these trials were the “only cases that were truly *individual* in treatment; every potential juror was screened, every fact sifted, every point contested.”¹¹² The Van Wormer trial presented detailed evidence over months about where the boys were at the time of the murder, who saw them, where they rented the buggy and bought their “false faces,” and exactly what happened on the day of the murder.¹¹³ The defense was allowed to put on witnesses during the coroner’s inquest and attempt to provide an alibi.¹¹⁴ Star lawyers, such as former Judge Cage in the Van Wormers’ case, were able to convince the court and prosecution to grant them enough time to prepare a full case and knew how to ensure that their clients received a trial that was not slapdash.¹¹⁵

It is difficult to divine which trials the court *ex ante* singled for preferential treatment, but it is fairly clear why these trials received such extensive coverage in the newspapers. These trials made excellent copy—they were trials where witnesses cried, fainted, and cross-examination was an art form. “They were good copy; they were mighty engines for selling newspapers—

¹¹⁰ See *supra* note 56.

¹¹¹ FRIEDMAN, *supra* note 1, at 576.

¹¹² FRIEDMAN, *supra* note 79, at 253.

¹¹³ See, e.g., *The Hallenbeck Inquest*, *supra* note 91; *Important Evidence at Hallenbeck Inquest*, N.Y. TIMES, Jan. 1, 1902, at 2; *Witnesses Tell of Hallenbeck Shooting*, N.Y. TIMES, Apr. 8, 1902, at 5.

¹¹⁴ *The Hallenbeck Inquest*, *supra* note 91.

¹¹⁵ See, e.g., *The Hallenbeck Murder: Shoes of Prisoners Fitted Tracks in Snow, Say Witnesses*, N.Y. TIMES, Apr. 10, 1902, at 16; *Van Wormer Boys Indicted*, *supra* note 19.

better than anything else, perhaps, except war or a good execution. The papers often vied with each other for the fullest, most sensational coverage of great criminal trials."¹¹⁶ These "show trials" served the purpose of presenting and teaching social norms to the masses.¹¹⁷ People learned about procedure and due process, but they also saw how carefully the courtroom state was prepared and manipulated by skillful lawyers.¹¹⁸ These trials, like the Van Wormers', occupied the highest rung of the criminal court ladder. They were trials that appeared, at least from the newspaper accounts, to be the fairest (though not entirely fair) to defendants and take the time necessary to conduct a thorough investigation, carefully question witnesses, and select a jury. The Van Wormer trial, for example, took over two years from the arrest to execution.

Beneath this "show trial" layer was another group of cases, which courts disposed of with little thought, virtually no process, and a strong desire to move defendants off their dockets. As the statistics in Section A of this Part demonstrate, only a small portion of arrests ever went to trials or were covered by the *Times*. While not conclusive, it suggests that the vast majority of defendants made their way through an entirely different system. This "second layer" consisted of courts that practiced swift justice, often convicting and sentencing defendants without a trial. Plea bargaining became increasingly prevalent as "[d]efendants in increasing numbers pleaded guilty; in some cases, there was an obvious 'deal'; in others, defendant simply entered such a plea, in hopes of getting better treatment. By the turn of the century, less than half of all felony defendants went to trial in some communities."¹¹⁹ As Friedman and Percival found, it was common in California, at least, to change pleas from not guilty to guilty, often in exchange for a lighter sentence.¹²⁰ There was both an explicit deal and also "implicit" bargaining where defendants plead guilty and hoped that the state would reward them with a lighter sentence for saving them the time and expense of a trial.¹²¹ Even those cases that went to trial received varying amounts of attention. Most of the "second layer" cases were quick with cursory evidence and little deliberation.

Harvey Bruce, the Van Wormer accomplice that turned state's evidence, is an example of plea bargaining in the "show trial" system. Ultimately, Bruce avoided the electric chair in exchange for testifying against the Van Wormers.¹²² Bruce had obviously made an explicit deal with the prosecutors to avoid trial, but many defendants pled guilty without such a deal on the table. Some pled guilty to avoid the slapdash trials (which they presumably felt could only lead to a conviction) and hoped that the guilty plea would move the court to mercy.¹²³ Plea bargaining of this sort became so common that during the final years of the nineteenth century, plea bargaining was commonplace even for serious felonies, such as murder. In New York County by 1900, there were

¹¹⁶ FRIEDMAN, *supra* note 79, at 253.

¹¹⁷ *Id.* at 254.

¹¹⁸ *Id.*

¹¹⁹ FRIEDMAN, *supra* note 1, at 576; *see also* FRIEDMAN, *supra* note 79, at 235-36.

¹²⁰ FRIEDMAN, *supra* note 79, at 252.

¹²¹ *Id.*

¹²² *See Boy Confesses to Murder of Hallenbeck*, *supra* note 68.

¹²³ FRIEDMAN, *supra* note 1, at 576.

more than three times as many guilty pleas for felony offenses than there were convictions.¹²⁴ Additionally, only a small percentage of criminal cases were ever appealed.¹²⁵

The newspaper coverage during this time suggests one refinement to Friedman's theory. The *Times* mostly covered full-blown "show trials" occurring both in New York City and from across the country. These trials were showy, involved prominent figures, or bizarre circumstances sufficient to help the publisher sell papers.¹²⁶ Coverage of these trials was typically done in considerable depth devoting a dozen or so stories (or more) to each murder. During the years 1898-1902, several of these trials occurred in New York City. The Van Wormer trial is a good example of a "show trial" that gained extensive coverage.

In addition to the Van Wormer trial, several other trials garnered extensive coverage during the period, such as the trial of Doctor Samuel Kennedy, a prominent New York dentist who was accused and tried for the gruesome murder of Dolly Reynolds in 1898. He was granted two new trials before being set free from Sing Sing to a cheering crowd of well-wishers.¹²⁷ The Scharn trial also received a good deal of press. This was the bizarre trial of a young boy accused in August of 1900 of strangling his sister. The trial was replete with gory coroner's reports and last minute revelations from mystery witnesses who miraculously appeared in the courtroom and saved the poor boy from a certain guilty verdict.¹²⁸ The *Times* dutifully covered the trial from the coroner's inquest through the case's dismissal.¹²⁹ The trial of Miles McDonnell was heralded by the *Times* editorial page as "the most dramatically human and thrilling performances that the New York public has for a long time been privileged to 'assist at.'"¹³⁰ McDonnell was accused of shooting George Price during a dispute at a café in New York.¹³¹ His attorney argued self-defense, which apparently worked. The jury acquitted even after McDonnell himself took the stand, admitted his killing, and showed remorse.¹³² The trial was a spectacle involving a blood feud and hysterical wives calling for vengeance.¹³³ Roland Molineux was found guilty of murder in the first degree for killing Katherine Adams

¹²⁴ FRIEDMAN, *supra* note 79, at 251.

¹²⁵ *Id.* at 256.

¹²⁶ See, e.g., *Arsenic in Oyster Fritters*, N.Y. TIMES, Jan. 15, 1899, at 7; *Goebel's Murder Planned*, N.Y. TIMES, June 21, 1900, at 3; *Murder in a Havana Camp*, N.Y. TIMES, Jan. 19, 1899, at 2; *Woman Indicted for Murder*, N.Y. TIMES, Mar. 15, 1901, at 2.

¹²⁷ See, e.g., *Dr. Kennedy Free: Greeted With Cheers*, N.Y. TIMES, June 19, 1901, at 1; *New Kennedy Witness*, N.Y. TIMES, June 1, 1901, at 16; *New Point for Kennedy*, N.Y. TIMES, May 15, 1901, at 6.

¹²⁸ See, e.g., *Brother Finds Body of Murdered Sister*, N.Y. TIMES, Aug. 20, 1900, at 2; *Scharn's New Witness*, N.Y. TIMES, Aug. 25, 1900, at 2; *Young Girl Saves Scharn*, N.Y. TIMES, Oct. 13, 1900, at 14.

¹²⁹ See, e.g., *Scharn Girl Strangled*, N.Y. TIMES, Aug 21, 1900, at 2; *Young Scharn Discharged*, N.Y. TIMES, Oct. 17, 1900, at 16.

¹³⁰ *M'Donnell Acquitted*, N.Y. TIMES, July 13, 1901, at 6.

¹³¹ See, e.g., *M'Donnell Nervous at the Price Inquest*, N.Y. TIMES, Jan. 4, 1901, at 14; *Say M'Donnell's Life Was in Danger*, N.Y. TIMES, Jan. 5, 1901, at 2.

¹³² See, e.g., *Miles M'Donnell Is Free*, N.Y. TIMES, July 13, 1901, at 14.

¹³³ *George Price's Widow Called for Vengeance*, N.Y. TIMES, June 28, 1901, at 14; *M'Donnell Nervous at the Price Inquest*, *supra* note 131.

with poison on December 28, 1898.¹³⁴ Coverage focused on expert testimony on poison and handwriting, and included dramatic speeches on the part of the defendant and other third parties who had attempted to commit suicide.¹³⁵ One of the experts even took a dose of cyanide to “prove” that when the poison was mixed with seltzer water, it became innocuous.¹³⁶ This demonstration was supposed to help Mr. Molineux’s defense (cyanide was allegedly his poison of choice), but in the end the expert got sick and Molineux was marched to Sing Sing while thousands cheered him outside the courthouse.¹³⁷

Those prominent trials received extensive coverage by the *Times*. While there is no evidence in newspaper coverage that the press corps regularly covered plea bargains, there is some evidence that they covered hasty trials that were more than a plea bargain, but not as extensive as the full-blown “show trials.” An examination of the coverage unearths roughly twenty-five of these trials that occurred within the confines of New York from 1898-1902. Here, the trials were short, often did not involve many witnesses, and to a modern reader may seem to have been lacking in “process.” Coverage of these trials typically involved aspects of interest outside the courtroom. These trials all involved trial formalities: voir dire and impaneling a jury, presentation of testimony by witnesses for both the prosecution and defense, and jury deliberations of some length. What is truly remarkable, however, is the speed with which the court raced through the proceeding.

For example, a seventy-five year old man was put on trial for first degree murder for stabbing a drinking buddy of his who told him he was planning on returning to Italy to kill the King and Queen and create anarchy.¹³⁸ His capital trial lasted only two days. On January 15, 1902, the prosecution began the day with jury selection.¹³⁹ The same afternoon, the trial began and the jury was given the case at one o’clock.¹⁴⁰ They deliberated until the dinner hour, at which point the court provided them with dinner and then sent them back to the jury room. At 11:25 pm, they still had not reached a decision and were locked up for the night, presumably rendering a verdict the next morning.¹⁴¹

The trial of Aaron Halle is noted for setting new speed records for criminal prosecutions in New York. On May 17, 1900, Halle allegedly shot and killed his girlfriend in a Rheinhardt & Sons store. The following Monday, Halle was brought before the coroner’s jury, which held him responsible for the murder after an hour of deliberation. The same day the coroner’s jury brought its verdict, the District Attorney’s office went before the grand jury, which

¹³⁴ See, e.g., *Dreyfus in Molineux Case*, N.Y. TIMES, Jan 10, 1900, at 1; *Molineux Jury Complete*, N.Y. TIMES, Nov. 30, 1899, at 3; *Molineux Murder Trial*, N.Y. TIMES, Jan. 4, 1900, at 3; *Molineux Wins in Court of Appeals*, N.Y. TIMES, Oct. 16, 1901, at 1.

¹³⁵ See, e.g., *Dramatic Scene in Court*, N.Y. TIMES, Feb. 17, 1900, at 2.

¹³⁶ The expert apparently experienced a shortness of breath and numbness in his limbs, but after three hours fully recovered. *Molineux Juror Better*, N.Y. TIMES, Jan. 28, 1900, at 9.

¹³⁷ *Molineux Guilty in First Degree*, N.Y. TIMES, Feb. 11, 1900, at 1; *Molineux Murder Trial: More Physicians Say Barnet Died of Mercurial Poisoning*, N.Y. TIMES, Jan. 23, 1900, at 3; *Mr. Hay Names Molineux*, N.Y. TIMES, Jan. 9, 1900, at 4.

¹³⁸ *Gagliardo Jury Locked Up*, N.Y. TIMES, Jan. 16, 1902, at 3.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

returned a formal indictment.¹⁴² A week later, Halle entered his plea and the case was set for trial on June 11th.¹⁴³ His lawyer strenuously argued for more time to prepare the case, but the judge refused.¹⁴⁴ After learning that the District Attorney would be ready in three days time, the judge decided to give the defense a mere three days to prepare for trial.¹⁴⁵ Two days were spent impaneling the jury, and the trial occupied a mere day and a half.¹⁴⁶ Halle was convicted of murder after the jury deliberated for thirty minutes.¹⁴⁷ He died by electric chair on August 6, 1900.¹⁴⁸

Other cases fit in this middle ground between the “slapdash trials” and full blown “show trials.” It is unclear why this grouping received preferential treatment. Unlike the trial of Halle, the prosecution did not appear to be attempting to set a record or demonstrate the speed and efficiency of the justice system. These trials, perhaps, were plucked from the quick resolutions because the press took an interest in them. The press coverage supports this hypothesis as it covers a wide range of events outside of the actual trial. For example, John Clancy, a local politician and saloon owner, was accused of shooting and killing a man after an altercation. A good deal of the press covers the fact that he got married while out on bail; in some respects the coverage is more of a society piece than a true report on a murder trial. It intertwines the story of the murder and their wedding nuptials, and then coverage discontinues until Clancy is acquitted by the jury.¹⁴⁹ In the story on the acquittal, the reporter, again, spends a great deal of time discussing Clancy’s wife and her decision to marry him while he was under \$20,000 bail.¹⁵⁰

Peter Austin was accused of stabbing a friend and throwing the body down a well.¹⁵¹ Austin was indicted,¹⁵² and then a few months later took the stand, admitted his wrongdoing, was described as a poor, wayward sinner,¹⁵³ and shortly thereafter convicted. Coverage was brief, but it appears that the full adversarial process of a modern murder trial or even the show trials of the late nineteenth century was not present. Austin’s guilt was never contested; it was rather freely admitted as he threw himself on the mercy of the court. Although the trial did involve “witnesses” of sorts and a formal return of a verdict, it more resembled a plea bargain situation than an actual trial. The defendant admitted his guilt in exchange for clemency, yet he still was held for a period of time and actually received a trial. These trials suggest that the judicial system

¹⁴² *Swift Trial for Halle: Coroner’s Jury Finds Him Guilty of Killing Shop Girl*, N.Y. TIMES, May 22, 1900, at 5.

¹⁴³ *Halle to Be Tried on June 11*, N.Y. TIMES, May 29, 1900, at 14.

¹⁴⁴ *Swift Trial for Halle: Judge Refuses to Delay Case of Mary McCarthy’s Murderer*, N.Y. TIMES, May 23, 1900, at 5.

¹⁴⁵ *Id.*

¹⁴⁶ *Halle Tried for Murder*, N.Y. TIMES, June 21, 1900, at 14.

¹⁴⁷ *Halle Guilty of Murder*, N.Y. TIMES, June 22, 1900, at 14.

¹⁴⁸ *Halle to Die in August*, N.Y. TIMES, June 26, 1900, at 5.

¹⁴⁹ *Indicted for Murder, Clancy Takes a Wife*, N.Y. TIMES, Feb. 15, 1902, at 2; *Clancy Found Not Guilty by the Jury*, N.Y. TIMES, May 28, 1902, at 16.

¹⁵⁰ *Clancy Found Not Guilty by the Jury*, *supra* note 149.

¹⁵¹ *Peter Austin Found Guilty*, N.Y. TIMES, Dec. 14, 1900, at 6.

¹⁵² *Peter Austin Indicted*, N.Y. TIMES, Sept. 16, 1900, at 11.

¹⁵³ *Peter Austin Found Guilty*, *supra* note 151.

was not as formalized as it is today—where a person either takes a plea or proceeds to a full-blown trial—rather it was a fluid process where varying factors came into play and dictated how extensive the process was. This was a middle ground between the hasty plea agreements or cursory trials and full courtroom spectacles; witnesses were interviewed, but the procedural protections were not always strictly followed¹⁵⁴ and the trial became more of a formality with a forgone conclusion.

We may never know why certain murder cases proceeded to a full-blown trial and others were resolved in slapdash trials or plea bargaining while a third group was given some minimal process. One explanation why these trials did not follow the normal “slapdash” pattern is that they were capital trials. It is possible that the system treated capital trials with greater gravity and care than the slapdash trials, which often lasted less than half an hour,¹⁵⁵ or the plea bargaining system where large numbers of defendants pled guilty regardless of their actual guilt.¹⁵⁶ Perhaps, judges gave more weight to these trials and insisted on following rudimentary procedure.

Another explanation is that the system itself provided some protection. New York continued to require a grand jury to bring an indictment before the case went to trial.¹⁵⁷ More importantly, in murder trials, the state assigned defendants legal counsel who was entitled to a fee for his services.¹⁵⁸ This provided some economic incentive for lawyers to take these cases in the first place; even an incompetent lawyer could insist on a trial by jury or some basic protections that would force the court to at least go through the motions of voir dire, calling witnesses, and hearing evidence.¹⁵⁹

Publicity could be another incentive for lawyers to advocate vigorously for defendants in murder cases. If lawyers were able to get a “real” trial, they were more likely to get their name in the paper. Lawyers, like other citizens, read the paper. They knew that the “yellow press” loved a good salacious murder trial, and if the press became interested, it could mean publicity for the lawyer. Criminal lawyers at the time liked to call attention to themselves. The bar had largely stamped out the practice of advertising to get business, and because criminal lawyers have very few repeat clients, they needed to advertise by word of mouth; getting themselves in the newspapers was key to a successful practice. “It was publicize or die.”¹⁶⁰ If a lawyer sought out an appointment to a particularly sensational or salacious murder case, he would be more likely to get press coverage of the trial. If the press became interested, he had an even greater incentive to produce a good outcome for his client (or at least be perceived in the press as being a vigorous and competent advocate), for after all,

¹⁵⁴ But see *Duncan Young to Be Tried Again*, N.Y. TIMES, May 10, 1902, at 16, which covered the trial of Duncan “Scotty” Young, who was tried twice (because of an erroneous admission of hearsay evidence during the first trial) for second degree murder, and was eventually convicted. *Duncan Young Convicted*, N.Y. TIMES, Nov. 2, 1902, at 8.

¹⁵⁵ FRIEDMAN, *supra* note 66, at 85.

¹⁵⁶ FRIEDMAN, *supra* note 79, at 252.

¹⁵⁷ *Id.* at 242; see also ARTHUR TRAIN, *THE PRISONER AT THE BAR: SIDELIGHTS ON THE ADMINISTRATION OF CRIMINAL JUSTICE* 111 (1906).

¹⁵⁸ FRIEDMAN, *supra* note 79, at 245.

¹⁵⁹ FRIEDMAN, *supra* note 66, at 84.

¹⁶⁰ FRIEDMAN, *supra* note 1, at 573.

future clients may be reading the paper. A trial that established criminal procedure, called witnesses, and generated good publicity was decidedly good for the lawyer's career. The motivation of defense lawyers and their insistence on prolonging the trial to maximize publicity could also explain the disparate treatment in cases. Even if a trial seemed particularly weak, the attorneys whose reputations were on the line would likely insist on, at least, following rudimentary procedure. Even if the trial only ended up lasting two days, it was an improvement on the thirty-minute slapdash trial and gave the defense a better chance of winning.

Finally, there may have been a connection between the newspaper coverage and how extensive the trial eventually was. Public interest in the trial may have played a factor; when the press became interested in a particular trial, it seems logical that the presiding judge would ensure he did not cut corners at trial. Anytime a person is under the lens of public scrutiny, he would tend to be more careful, deliberate, and make sure that enough evidence was gathered and presented to produce a definitive result. This explanation seems to have the most force with cases involving prominent members of society or facts that are sufficiently odd to attract media attention. The anticipation of media attention may have factored into prosecutors' and judges' decisions to resolve the matter through trial, rather than plea bargaining. If the media spotlight remained on the trial, the newspaper coverage suggests that there was more likely to be a full-blown trial involving extensive examination of witnesses, expert testimony, and a true adversarial process. The reported trials involving confessions, the lack of an adversarial process, and sharply swift justice seem to be instances where coverage wanes and then suddenly resumes at the most exciting moments;¹⁶¹ absent the scrutiny of the press, the incentives to produce a "dramatic" trial or at least a more complete trial diminished.

From the *Times*' selection of which trials to cover, we can draw a general conclusion—that coverage of salacious murder trials sold papers. These were juicy stories that gave people something to talk about and debate. Like the modern day soap opera, trials that were suspenseful and dramatic got people hooked and wanting to buy future editions of the paper so they could follow the case to its conclusion. This helped increase newspaper circulation, which was king because high circulation numbers commanded higher advertising dollars. One other piece that likely contributed to the type of criminal adjudication a particular defendant received was the press coverage. To understand fully how the press covered murders, one needs to understand a bit about the historical moment in which the *Times* operated, a moment that was largely influenced by what has become known as the "yellow press."

C. *The Evolution and Professionalization of Criminal Investigation*

Newspaper coverage also provides insight into criminal investigations, which were a somewhat messy and haphazard affair during the late nineteenth and early twentieth centuries. This was during a time when the modern police department was being created and procedures for investigation had not yet been

¹⁶¹ Compare *supra* notes 119-37 and accompanying text, with *supra* notes 138-54 and accompanying text.

standardized nor had authority for investigations been centralized in detective bureaus. During the period leading up to 1898, police were largely focused on what has been described by Friedman and Monkkonen as “class control,” where the police rounded up vagrants and drunkards and often ran a primitive welfare system to sober them up and keep them off the streets.¹⁶² Eric Monkkonen links the end of this era with a shift of the police toward “crime control.” During this period, the police force “withdrew from their intimate *working* connection with the poor and their neighborhoods” in favor of cracking down on and investigating crime.¹⁶³ The focus on solving crimes often had a dark side. The police used torture to extract confessions, such as confining the prisoner to a “sweat box,” where the prisoner was held in a cell in close proximity to a stove that burned pieces of bone and rubber (to produce a noxious smell) and left there until he confessed. Police also used fists, blackjacks, and clubs to get people to talk.¹⁶⁴ These techniques were not much of a secret. In fact, as Friedman notes, the general public at the time “liked strong action, directness, force.”¹⁶⁵ The police commissioner, therefore, did little to suppress the evidence.¹⁶⁶

In the period of 1898-1902, the police force of New York City undertook changes that made it more professional.¹⁶⁷ This was in response to the negative opinion the public had of the police at the time. In the late 1800s, the police were generally believed to be dishonest, corrupt, and unethical. For example, a death that was a possible homicide could be deemed an “accident,” if you knew the right person.¹⁶⁸ If one had the right connections and enough money, one could literally “get away with murder.” Police appointments at the time were also quite political and the subject of great largesse.¹⁶⁹ In 1894-1895, the governor established the Lexow Committee to investigate the police department and provide documentation into its corruption. The committee produced a scathing report and strongly condemned the Democratic Tammany Hall political machine.¹⁷⁰

¹⁶² FRIEDMAN, *supra* note 79, at 152.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 153.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ FRIEDMAN, *supra* note 1, at 286-89, 577-78.

¹⁶⁸ During this period, police often were used by political parties for private jobs further politicizing the department and reinforcing the perception that they were the tool of the party in power. One such notable function, recorded in the annual police report and particularly germane to this Article, was the visit of former presidential candidate, William Jennings Bryan, to the National Association of Democratic Clubs, as documented by a letter of its president, one William Randolph Hearst. ANNUAL REPORT OF THE POLICE DEPARTMENT OF THE CITY OF NEW YORK 13 (1900). Incidentally, Hearst was supporting the Democrats in the prior election and his paper, the *New York Journal*, had virtually unfettered access to the party and candidates. SMYTHE, *supra* note 3, at 176.

¹⁶⁹ At the turn of the century, police forces had been organized and become a central feature of the criminal justice system. Although, “[a]most anybody could be a policeman—there were no requirements of training or education; departments were frequently corrupt; and politics always reared its ugly head. In Cincinnati, after an election in 1880, 219 out of 295 officers were dismissed.” FRIEDMAN, *supra* note 1, at 577.

¹⁷⁰ McCrie, *supra* note 108, at 136-37. For example, the police often brutalized Republican voters (on directions from Tammany Hall) and prevented Republicans from reaching the

On the heels of this report, the governor appointed Theodore Roosevelt as the president of the Board of Police Commissioners and tasked him with reforming the department. Many of Roosevelt's proposed reforms failed. For example, he pushed to create an independent board appointed by the governor that could remove police officers for corruption without recourse to court review.¹⁷¹ However, he was successful in implementing a "rational, systematic testing procedure that became the model for police personnel selection methodology in the United States."¹⁷² This seemed to help improve the quality of patrolmen and, to a certain extent, de-politicize the hiring process. Nevertheless, despite these reforms, people still complained of corruption and uneven enforcement.¹⁷³

Similarly, crime scene investigation techniques were anything but standardized and often sloppy. It is clear from the *Times* coverage that members of the general public and even the victims' families were allowed to participate in, or at least observe, the investigation process. For example, Charles Hallenbeck, a relative of the victim, was called to testify about the bullet holes in the walls of the Hallenbeck house and about his observations from assisting the sheriff in examining the crime scene.¹⁷⁴ One witness testified about going with the coroner to witness the bullets being taken out of the victim's body.¹⁷⁵ Another backed up the report made by the sheriff matching the shoes taken from the defendants to tracks left in the snow around the Hallenbeck house.¹⁷⁶ Practices such as these, at worst, made it fairly easy to fabricate or plant evidence at the crime scene. Interested parties could distract the investigators, hide evidence, or contaminate the crime scene. At best, the system gave the victim's family or non-police personnel opportunity to influence the investigator and determine the conclusions he drew from examining the evidence. It is not hard to imagine a person drawing the investigator's attention to an object or trying to persuade them to adopt a particular theory of the case.

While this system opened the door for evidence tampering, it may have also provided a check on police corruption that was prevalent at the time.¹⁷⁷ If civilians were involved in (or at least observed) every step of the investigation, there was someone to corroborate the police officer's testimony. This check, obviously, functioned best if the observers were disinterested third parties or included representatives from both the victim and defendants. This may

polls. Additionally, they stuffed ballot boxes and commonly blackmailed people for "protection." FRIEDMAN, *supra* note 79, at 154.

¹⁷¹ McCrie, *supra* note 108, at 137.

¹⁷² JAY STUART BERMAN, POLICE ADMINISTRATION AND PROGRESSIVE REFORM: THEODORE ROOSEVELT AS POLICE COMMISSIONER OF NEW YORK 68-71 (1987). Berman terms the entrance examination "absolutely revolutionary in 1895" and claims it resulted in over 18,000 requests for applications to fill only 300 spots. Prior to the reform, Berman states that payments to Tammany Hall were required to secure a place on the police force.

¹⁷³ McCrie, *supra* note 108, at 138 (citing JOHN D. TOWNSEND, NEW YORK IN BONDAGE (1901)).

¹⁷⁴ *Id.*

¹⁷⁵ *Hallenbeck Murder Case: Widow Reported Ill from Testifying Against Her Nephews*, *supra* note 15.

¹⁷⁶ *The Hallenbeck Murder: Shoes of Prisoners Fitted Tracks in Snow, Say Witnesses*, *supra* note 115.

¹⁷⁷ *See supra* notes 168-70.

explain why courts allowed a variety of individuals (in addition to law enforcement) to testify about criminal investigations. These "civilian observers" could be useful in corroborating police testimony. For example, in the Van Wormer case, at least two witnesses (one being a relative of the victim) were put on the stand to back up the report and testimony given by the sheriff about the location of the footprints and whether the shoe taken from the Van Wormer house matched.¹⁷⁸

The press also enjoyed broad access to crime scenes and witnesses. Several newspaper accounts describe evidence and crime scenes well before the cases went to trial.¹⁷⁹ Nobody seemed to care about keeping a crime scene untainted or free from meddling. Evidence was, most certainly, tampered with from time to time. The crime scene was a free for all to gather information and opinions at any cost where very little regard was given to procedure or process. One striking example is the unfettered access the District Attorney gave to the *Times* during a murder investigation. During 1902, there was a push to move cases to trial and through the criminal courts quickly. District Attorney Jerome issued an order that year instructing the police department to notify his office immediately whenever they discovered a homicide, "the purpose being that the District Attorney's office could at once collect evidence, and if possible hurry those accused of murder to trial."¹⁸⁰ The District Attorney's system largely bypassed the coroners who would traditionally examine the body, make an assessment, call witnesses and hear testimony, and then decide whether the case merited being handed over to the prosecutors.¹⁸¹

The *Times* illustrated the new system by shadowing Mr. Jerome during the preparation for trial of a murder case involving a man who allegedly beat his wife to death. The man was arrested, and Jerome immediately sent an assistant to the crime scene to photograph it and gather evidence.¹⁸² He dispatched another assistant to interview witnesses and take testimony. The evidence was compiled by the evening to present to the grand jury the following morning.¹⁸³ He hoped that this would mean that the man would be "indicted, placed on trial, convicted, and sentenced before the Coroner's inquest [had] begun."¹⁸⁴ He spoke proudly of the fact that since assuming his position they "have disposed of fifty more cases than the new ones that have come to us since we started. That looks like clearing the calendar, doesn't it?"¹⁸⁵

This system is interesting and may trouble modern readers on many levels. First, it may seem problematic that the District Attorney would take over the function of investigation; the person who had significant political pressures to quickly prosecute crime would also be the one handling (or potentially planting or destroying) the evidence. While not an ideal situation by modern standards,

¹⁷⁸ *Trial of Van Wormers: Testimony of Witnesses Related to Footprints in Snow*, *supra* note 68.

¹⁷⁹ See, e.g., *The Hallenbeck Inquest*, *supra* note 91; *Mr. Jerome's Speedy Work*, N.Y. TIMES, Jan. 26, 1902, at 24.

¹⁸⁰ *Mr. Jerome's Speedy Work*, *supra* note 179.

¹⁸¹ See *id.*; see also FRIEDMAN, *supra* note 1, at 398-403.

¹⁸² *Mr. Jerome's Speedy Work*, *supra* note 179.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

it may not be so egregious when set in its historical context. The police force at the time was not yet professionalized with a standard set of investigative techniques or procedures; investigations were hurried and decidedly unscientific. Given the widespread police corruption, it is not clear that having the police do the investigation would produce a more equitable result.

Second, the rushed nature of the trial is likely evidence of the “second layer” of justice being dispensed throughout New York and other cities. Quick “sham” trials were the order of the day as prosecutors and judges alike tried to move cases through the system as quickly as possible. Third, it left virtually no time for the defendant to hire an attorney, much less mount a defense. Even if he were provided a lawyer, the trial was significantly stacked in favor of the prosecution. Only the prosecution had a chance to examine the evidence, interview witnesses, and put together a case in chief. The defense lawyer would likely spend most of his time responding to the prosecution and have little time to build defenses or construct an alibi. The system was decidedly unfair, and the rushed way the police or prosecution gathered evidence only made matters worse. As the *Times* coverage illustrates, it was a particularly difficult time to be a criminal defendant, or at least one without money and connections or a juicy enough story to catch the attention of a reporter lurking around the courthouse.

V. CONCLUSION

The Van Wormer trial seen through the lens of the *Times* and *World* provides a unique window into criminal trials and investigation during the late nineteenth and early twentieth centuries. These years were the height of “yellow” journalism when newspapers competed for “scoops” and readers, often by plucking obscure criminal trials from the court dockets and by doing so transforming them into “show trials” replete with pageantry, morality, and intrigue. The *Times*, although not traditionally as “yellow” as some of its competitors, participated in this news frenzy, imitating in its murder trial coverage many of the features characteristic of “yellow” journalism, such as the great interest in the sinner and morality and new technology and investigative procedures. In these respects, the *Times* exhibited some predilections of “yellow” journalism.

The newspaper reports also support Friedman’s theory that there was nothing resembling a criminal justice “system” in the late 1890s. In fact, only a few murder trials involved anything that we would, today, consider close to standard criminal procedure. Most trials were hurried, cursory affairs where defendants routinely pled guilty in hopes of receiving a lighter sentence. Only trials that were sufficiently newsworthy or involved prominent members of the community received the individualized treatment that has become the ideal and hallmark of American criminal justice. On the investigation side, although police departments were professionalizing during this era, they were still far from “professional” or systematic in their procedures. Victims or the press were routinely allowed to interview witnesses and had access to crime scenes. The *Times* coverage helps us understand this system and how defendants were treated at the time.

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“ALL THE NEWS THAT’S FIT TO PRINT”

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While we may never know exactly the “objective facts” of various criminal matters, the newspaper coverage provides another data point and an important window into understanding the criminal process during a time when trials were public spectacles and justice was often swift and harsh. Such a system may seem foreign or even slightly odd to the modern reader accustomed to a true “system” of procedural safeguards, exhaustive appeals, and strict rules of evidence. Yet, in the seemingly unfamiliar world of American criminal justice at the dawn of the twentieth century, one can see the nascent beginnings of the modern police state—the birth of the detective force and forensic science, the prosecutors’ attempt to build a case through evidence rather than extracting confessions. The courts, too, were developing the foundations of what would become a true justice “system” in the modern sense. Plea bargaining can be traced to this era and still remains an integral part of the process, albeit now governed by stricter rules. “Show trials” remain, unavoidably, part of our court system, but one would hope that the days of the slapdash trials are behind us. The interplay between the press and courts during the late 1890s and early 1900s, while potentially strange to the modern viewer, may be responsible for shaping many of the core facets that have come to define their modern analogues. The front page of the *New York Times* to this day still bears Ochs’ inscription “All the News That’s Fit to Print,” a token of the paper’s rebirth during the years of “yellow” journalism and a reminder that vestiges from the days of the Van Wormers persist and, indeed, form the core of our “modern” criminal practice.