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License of the Press

Clarence J. Ruddy

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Dudley G. Wooten, professor of Torts and Criminal Law at the Notre Dame College of Law, is the author of the Article on The Scopes Case which appeared in the November issue, and now available in pamphlet form.

Clarence Manion is also a Professor at the Notre Dame College of Law and has recently completed a History of the United States for High Schools, which will be released in June.

THE LICENSE OF THE PRESS

Ever since the incorporation of the Bill of Rights into the Federal Constitution, anyone who ventures to attack the vaunted freedom of the press becomes the object of almost universal condemnation. The battle for free discussion was so long and so bitter that when it was finally won none felt brave enough to disclaim the victors' right to the spoils. Thus the newspapers have always been given free reign; everything save wanton disregard of private rights has been tolerated. Spirited discussion on the wisdom of almost any law is common, and opinions are divergent and contradictory on the interpretation of most constitutional guarantees; but no one questions the worth of that part of the First Amendment which provides: "Congress shall make no law . . . abridging the freedom of speech or of the press." This section has enjoyed an immunity from criticism that seems almost divine; yet the immunity may be explained by the most natural of reasons. The newspapers most assuredly will not condemn the law which protects them; and scarcely

anyone has the courage to oppose the well-defined policy of the press; the critic would soon be ridiculed out of existence. The force exercised by the combined press is tremendous, and as it is unanimous in the protection of its freedom, any opposition which might be raised against it would be puny and certain to be crushed.

And the First Amendment is a salutary one; of that there can be no doubt. If the War of the Revolution taught the colonists anything, it taught them that a muzzled press, restrained by a tyrannous government from criticizing reprehensible measures, is a thing to be avoided. No government is beyond reproach, and a free discussion of public matters is essential to honest administration. The citizens of any jurisdiction have a right to know the calibre of men they put into office, and the quality of the laws they are asked to approve. Men who submit themselves as fit to rule should not deny their constituents the right to know their qualifications—or lack of them; and when acts of a public nature are being considered, the people should be allowed to discuss them,—unrestrained except by the laws not of decency and the bounds of truth. The acts of public officers must not be shrouded in darkness, for darkness is often a cloak for infamy.

The framers of our government learned all of these elemental truths from seeing the results of their negation, and insisted that in the future such rights should not be denied. The First Amendment to the Federal Constitution is the result of the fear of a secret government. Hence, except in times of great stress, the press in the United States has been let alone, and only when it has clearly transcended its privileges has a check been applied. In no other contry has the newspaper been so free from restraint.

But every law, however salutary, is subject to perversion. The First Amendment does not surround the press with an aura of sanctity. Like every other liberty, the freedom of the press may be used as a cloak for licentiousness. When the guarantee of an unrestrained discussion of public affairs was assured, permission to abuse sacred institutions was not intended. It is sincerely to be doubted whether the fathers of our government intended that the newspapers should be allowed to impugn juries

for acquitting men after a legal trial, and to condemn lawyers for undertaking the defense of a prisoner whom the editors believe guilty. The powerful dailies should not be allowed to create public opinion to the extent that they can convict a man in editorial columns, and later suggest that the jury has been bribed when he has been legally acquitted. Newspapers are judges of neither law nor fact. Even the slightest interference with the department of justice is to be discouraged. The effects of unchecked freedom of the press are well noted by the author of *The American Newspaper*: "Too often do our newspapers intimidate jurors and judges. They question the decision of the courts, they threaten lawyers if they dare push a case, they make and unmake justice, and all this goes to create in the people a disrespect and lack of confidence in its department of justice. As soon as you impeach this arm of government, which more than any other should be kept free from politics and individual self-interest, you attack the bed-rock of organized society. Without it you have anarchy." When one daily stigmatizes a certain verdict as "inconceivable," and seriously questions the wisdom of the Supreme Court of the United States in its decision to allow the removal of cases to the Federal Courts, where prohibition agents have been charged with crimes of violence, it is to be wondered if the press should be unhindered in its policies.

To the student engaged in reading cases day after day for three years, the cursory judgement of a newspaper upon complicated points of law is inexplicable. If any editor can condemn any principle, however abstruse, and question every verdict, however legally obtained, what is the use of assiduous study? If a jury may be impugned for acquitting a prisoner, why study the rules of evidence? The newspaper can furnish all the evidence necessary, and the jury is bound to decide accordingly. Of what use are the laws of libel, if a lawyer can be charged with having no conscience, merely because a newspaper's conviction of a man is overruled by a court? If public opinion, created and solidified by the press, is to dictate verdicts, why have a jury? Why should a judge listen carefully to certain evidence, when his judgement will be attacked anyway? Why study the law of self-defense, when any layman who reads the papers is able to tell whether a killing is justified or not? Why

study the law at all? A thorough knowledge of legal principles seems to give the court no added claim to respect; the opinion of the press is accorded just as much deference.

The press has been particularly vicious of late. Perhaps remuzzling it for a time would be advisable.

C. J. R.

THE HOYNES AWARD

At the first annual "Hoynes Night" held by the faculty and students of the law school Thursday evening, March 18, announcement was made of the "Hoynes Award." According to the terms of the award a prize of \$100 will be given each year to the senior law student "averaging highest in credits for study, application, deportment, and achievement, leading to the degree of LL.B., with fitting qualifications for admission to the bar and the practice of law, under inspiration and guidance of the traditional Notre Dame spirit of courage, perseverance, trustworthiness, self-reliance, manliness, and steadfast moral character."

In manifestation of their gratitude for the prize offered them, the students unanimously passed the following resolution, presented by Lewis J. Murphy:

"WHEREAS: We recognize the fact that Col. William J. Hoynes, the dean emeritus, is justly entitled to be considered the father and founder of the College of Law of the University of Notre Dame and that a proper sense of veneration and gratitude for his loyal services in that behalf, his long and able conduct of the affairs of the college, and the pre-eminent virtues of his character and career as lawyer, teacher, patriot, and friend of the university, should find expression in public and permanent commemoration of his illustrious contribution to the up-building of the law school; and,

"WHEREAS, We believe that an annual celebration of our admiration, affection and gratitude towards Col. Hoynes should be held, with exercises appropriate to the occasion, at which he shall be the honored guest, and the faculty and students of the College of Law shall have the opportunity to meet him,