

HEADLINE TRIALS IN THE TWENTIETH CENTURY: A LOOK AT FRONT-PAGE CRIMINAL TRIAL COVERAGE IN 1910, 1950, AND 1990

Lawrence M. Friedman & William E. Havemann***

Americans have long been captivated by criminal trials. Trials are the subject of countless movies, television dramas, books, and plays. They also frequently make the front page of the newspaper. This essay tries to analyze how the coverage of “important” criminal trials has evolved over the course of the twentieth century. Of course, what constitutes an important trial is a matter of judgment. For our purposes, an important trial is defined as one that makes the front page of a major newspaper. This essay represents a modest attempt to evaluate the types of important trials and to determine how their coverage in the press has changed over time.

We reviewed the front pages of three major American newspapers—the New York Times, the Los Angeles Times, and the Atlanta Constitution—on each day of the first three months of 1910, 1950, and 1990. We counted the number of times that stories about criminal trials appeared on these front pages. We also classified each trial in one of three categories. By evaluating newspapers’ coverage of criminal trials over time, we were able to get a preliminary look at how criminal trials—and American society’s fascination with them—have evolved over the course of the twentieth century.

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* Lawrence M. Friedman is the Marion Rice Kirkwood Professor of Law at Stanford Law School.

** William E. Havemann is a J.D. candidate, 2013, at Stanford Law School. He received his B.A. in 2007 from Amherst College.

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INTRODUCTION

Criminal trials are inherently dramatic. They often capture the public imagination. In fact, hardly any other aspect of the legal system seems to be quite so fascinating to the public.

The story behind a major trial usually begins with a crime; then with an arrest; and then the trial itself, which can be full of suspense and surprises. Forensic evidence, witnesses on the stand, cross-examination, the jousting and tilting of lawyers: all of these elements only add to the drama. Then there are the speeches to the jury (if there is a jury), the judge's charge, and finally, the culminating moment, when the verdict is announced.

Like works of fiction, big trials have heroes, villains, intrigue, and (at times) a convoluted plot; or, rather, two competing plots. Not to mention, many times, an air of mystery, with questions and doubts hanging in the air, which the verdict cannot completely resolve. However, trials are not fiction; they decide guilt and innocence and dispense what is meant to be justice. The right to a fair trial is embedded in the United States Constitution;¹ and the concept of due process is a pillar of America's civic and constitutional framework. At the same time, many trials appeal to darker emotions; they speak to the voyeur and the snooper in most of us. They may expose the secret underbelly of society. They may pose fascinating questions of life, death, sex, and policy.

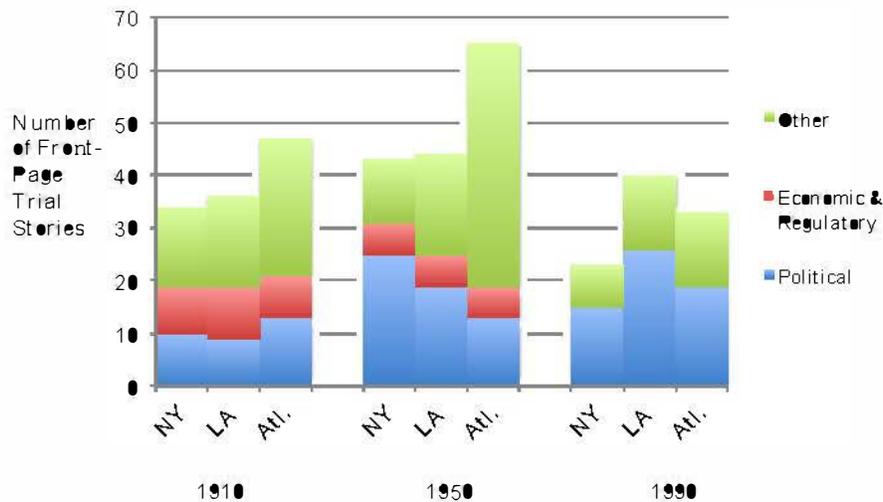
It is no surprise, then, that trials have an important role in popular culture. Countless movies and television dramas turn on, or feature, a criminal trial. Nor is it surprising that important trials frequently make the front pages of the newspaper. What constitutes an important trial—a trial that raises important questions, or which for any other reason fascinates the public—is a matter of judgment. This essay uses a

1. Much of the Bill of Rights, indeed, concerns fairness in trials, particularly criminal trials—see, e.g. U.S. CONST. amend. VIII.

somewhat crude measure. What lands on the front page of a major newspaper is, for our purposes, a major trial. This essay is a modest and preliminary attempt to take a quantitative look at the types of major trials and how their coverage in the press has changed over time.

We reviewed the front pages of three important American newspapers—the *New York Times*, the *Los Angeles Times*, and the *Atlanta Constitution*—on each day of the first three months of 1910, 1950, and 1990. We chose years at the beginning, middle, and end of the century, each separated by forty years, in order to evaluate how criminal trial coverage evolved over the course of the century. We counted the number of times that stories about criminal trials appeared on each front page during these months. We then divided these trials into three broad categories: (1) political trials, (2) trials for economic and regulatory crimes, and (3) trials for other types of crimes—for example, crimes of passion, and what we might call tabloid crimes.² The basic results appear below:

Front-Page Criminal Trial Stories
(Jan. to Mar. of Each Year)



2. There are, of course, many ways to classify trials. See Lawrence M. Friedman, *Front Page: Notes on the Nature and Significance of Headline Trials*, 55 ST. LOUIS U. L.J. 1243 (2011), which divides "front page" trials into nine distinct categories. For the purposes of this essay, however, we use a simpler scheme.

In general, in terms of sheer quantity, 1950 had the greatest number of front-page trial stories, and 1990 had the least. Coverage of political trials seems to have increased over time—especially as a proportion of total trial coverage. In 1910, approximately one-fourth of all front-page trials were political trials; by 1990, well more than half of all front-page trials involved politics. By contrast, the coverage of trials for economic and regulatory crimes decreased over time, disappearing altogether by 1990.

However, a number of caveats need be addressed. The front page of a newspaper is not a static phenomenon. The sheer *number* of stories on the front page of a newspaper will, of course, vary from time to time and from city to city. This variation complicated the task of comparing results from newspaper to newspaper and from year to year. Further, because we only studied front pages from the first three months of each year—a relatively short timeframe—the results can be heavily influenced by a few particularly sensational trials going on at the time. To make comparison more accurate, we calculated the average number of total stories appearing on each front page; then, for each newspaper during each year, we determined the *proportion* of the paper's total front-page stories that reported on criminal trials. These findings are detailed at the end of this essay. Even these results, however, may not permit a perfect comparison, because the amount of space on a newspaper's front page most likely would have affected editorial choices about which stories to feature. Nonetheless, the results strike us as at least suggestive of what the press considered newsworthy, and how this has varied over time.

METHODOLOGY

The research proceeded in two phases. First, we measured the number of times a story about a criminal trial appeared on the front page of the given newspapers in the years and months specified. A story about a criminal trial, for purposes of this essay, is defined as one detailing any criminal court or military court-martial proceeding, in the United States or abroad, or any story about the life course of a trial, beginning with an indictment, and ending with a verdict and sentencing. Also included were stories about events that occurred in court—the testimony of a witness, or the announcement of a verdict, for instance—as well as reports on events that were directly relevant

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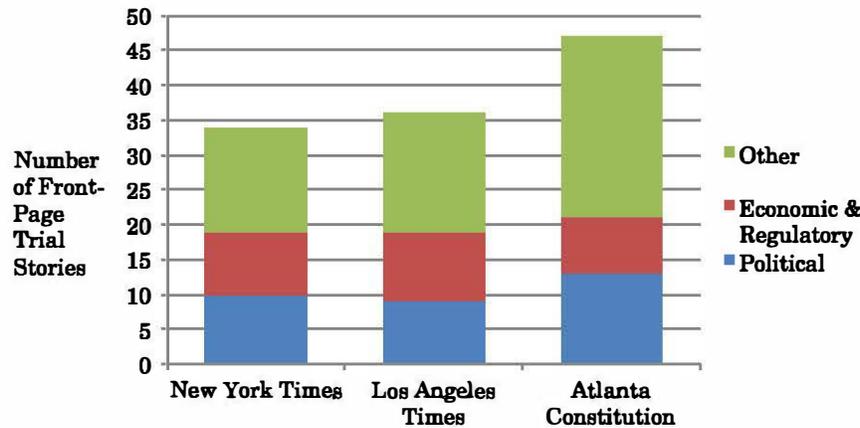
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to ongoing trials, but which occurred outside of court—for example, a defendant’s out-of-court confession, the refusal of a witness to testify, or details about the crime for which a defendant was being tried. We also included reports about trials that had yet to begin, as long as these stories discussed the upcoming trial itself, rather than the crime alone. Excluded were stories about events that took place before an indictment, the predicate crime itself, or the arrest of a suspect, as well as those stories about post-trial events—appeals, civil suits that followed criminal cases, or stories about a defendant’s life in prison. We did, however, include coroner’s inquests, insofar as these operated much like a trial, complete with jury and witnesses.

We then classified the trials into the three categories mentioned: (1) political trials, (2) trials for economic and regulatory crimes, and (3) trials fitting into neither of the first two categories. A trial is “political” if the defendant is a current or former politician, or if the trial has political overtones—the trial of an alleged spy, for example.³ Of course, there are borderline cases; but some trials fall easily into this category: treason trials, trials of spies and foreign agents, trials of dissidents, and so on. If the crime impacted the national economy, or the regulatory state, or arose under regulatory laws, or the internal revenue code, or the Sherman Antitrust Act or the like, we placed these trials into the second category, which also included contempt trials of defendants who disobeyed labor injunctions. Admittedly, these trials too are trials that reverberate in the political system; and the line between categories was therefore not always as distinct as one might like. All other trials, including drug crimes, crimes of passion, and murder trials, fell in the third category. This category includes trials for robbery, fraud, counterfeiting, and embezzlement—crimes against individuals and companies that, although “economic,” did not implicate regulatory laws. Here, too, the line between categories was somewhat indistinct.

3. Although it did not involve an elected politician, the trial of John Poindexter for his role in the Iran-Contra scandal would be an example of a political trial.

I. CRIMINAL TRIAL COVERAGE IN 1910

Front-Page Criminal Trial Stories
Jan.-Mar. 1910

Criminal trial coverage in 1910 was surprisingly similar across all three newspapers despite the differences in geography. In the America of 1910, we expected each newspaper's coverage to focus primarily on smaller-scale local trials. However, trials that made the front pages were routinely big news nationally. Differences can be explained largely in terms of the coverage, by each paper, of a few smaller trials of more provincial interest.

In all three newspapers, trust busting was big news. There were more stories in 1910 about trials for criminal violations of the Sherman Act than about trials for any other crime. During the first three months of 1910, the U.S. government indicted members of the beef,⁴ sugar,⁵ and poultry⁶ trusts for price-fixing in violation of the United States antitrust law. The indicted companies included some of the country's most prominent corporations, and all three newspapers closely followed the

4. *Big Meat Packers Indicted in Jersey: Six Corporations and Their 21 Individual Heads Accused of Conspiracy*, N.Y. TIMES, Feb. 26, 1910, at A1.

5. *Indicts Secretary of the Sugar Trust: Federal Grand Jury Charges Charles R. Heike with Fraud and Conspiracy*, N.Y. TIMES, Jan. 15, 1910, at A1.

6. *"Poultry Trust" Indicted: New York Grand Jury Accuses Many Dealers With Conspiracy in Restraint of Trade*, L.A. TIMES, Mar. 24, 1910, at A1.

details of the grand jury proceedings against them. Newspaper coverage also detailed the popular reaction against the trusts. For example, all three newspapers covered the nationwide boycott of the beef trust.⁷ In the South, a vigilante group—the so-called “Night Riders”—terrorized local tobacco producers. One Night Rider was tried in early 1910 for burning a tobacco factory and whipping the farmer; this trial was covered in the *Atlanta Constitution*,⁸ but not in the other two papers.

Newspapers in 1910 also covered stories of corporate corruption. One front page headline in the *New York Times* had a strikingly contemporary flavor: on January 1, 1910 the story read: “Wall Street Bonuses Large.”⁹ All three newspapers closely followed the stories of two bankers—Charles Morse of New York and John Walsh of Chicago—who had been convicted of helping themselves to funds from their banks. These trials took place before 1910 (and so are not included in our tally), but there were nearly daily stories about these two bankers: their journeys to prison, the families they left behind, and their insistence in their innocence.¹⁰ President Taft would ultimately grant medical pardons to both of them. Walsh’s illness seems to have been legitimate; he served two years of a five-year sentence and died nine days after his release.¹¹ But Morse’s release was more suspect. While serving in an Atlanta prison (alongside Charles Ponzi), he maneuvered to earn a pardon by convincing a medical examiner that he was fatally ill.¹² He lived for more than 20 years after his release.¹³

7. *Meat Boycott Aids Germany on Tariff: Belief in Berlin Is that Taft Will Abandon Support of American Packing Trust*, N.Y. TIMES, Jan. 25, 1910, at A1; *Million and Half People Quit Meat*, L.A. TIMES, Jan. 21, 1910, at A1; *Meat Combine Being Probed by Uncle Sam: Federal Grand Jury at Chicago Begins Inquiry Into High Prices: Meat Prices Dropping Because of the Boycott*, ATLANTA CONST., Jan. 25, 1910, at A1.

8. *Alleged Night Rider Acquitted*, ATLANTA CONST., Mar. 31, 1910, at A1.

9. *Wall Street Bonuses Large*, N.Y. TIMES, Jan. 1, 1910, at A1.

10. *Morse, Prison Bound, Near a Breakdown: Tears in His Eyes and a Choking in His Voice as He Starts For Atlanta*, N.Y. TIMES, Jan. 3, 1910, at A1; *Walsh Is Doomed: Banker Is En Route to Prison: Famous Financier Loses Last Chance for Freedom by Court’s Ruling*, L.A. TIMES, Jan. 20, 1910, at A1; *Would Serve for Walsh: Widow He Had Befriended Frantically Pleads for Convicted Banker*, L.A. TIMES, Jan. 20, 1910, at A1; *At Prison Gate Walsh Fights: Chicago Banker Making Last Effort for Liberty*, ATLANTA CONST., Jan. 18, 1910, at A1.

11. *John R. Walsh Dies; Free Only Nine Days*, N.Y. TIMES, Oct. 24, 1911, at A6.

12. *Taft Is Chagrined Over Morse Pardon*, N.Y. TIMES, Nov. 16, 1913, at A5.

13. *C.W. Morse Dead; Former Financier*, N.Y. TIMES, Jan. 13, 1933, at A15.

Political corruption coverage in 1910 bested financial corruption coverage as often as not. In March 1910, a former Pittsburgh city councilman named John Klein admitted that he took bribes while in office. He also implicated many of his colleagues who had allegedly done the same.¹⁴ More than forty councilmen were implicated in the “Pittsburgh Graft;” it turned into a national spectacle when many of the councilmen confessed in court as part of a plea deal with the prosecutor.¹⁵ All three papers featured almost daily stories about the Pittsburgh Graft.¹⁶

The *New York Times* and the *Atlanta Constitution* also covered the trial of Binger Hermann, an ex-congressman from Oregon charged with conspiring to defraud the government in connection with the Blue Mountain Forest Reserve.¹⁷ In New York, the leader of the State Senate, Jotham Allds, made news when he was accused of taking bribes from bridge companies.¹⁸ This particular scandal did not lead to a criminal trial, but a committee of the state legislature investigated Allds.¹⁹ Eventually, it decided he was guilty of corruption, and he was forced to give up his Senate seat.²⁰

Nationally, the Pinchot-Ballinger controversy made headline news. Gifford Pinchot had been famous as chief of the United States Forest Service under President Theodore Roosevelt; in the new Taft administration, the Secretary of the Interior, Richard Ballinger, worked to undermine his authority. The two men

14. *Say Klein Has Confessed: Ex-Pittsburg Councilman, Convicted of Bribery, Said to Have Implicated Others*, N.Y. TIMES, Mar. 20, 1910, at A1.

15. *Id.*; *Pittsburg Grafters Hasten to Confess: Ten Men Take Advantage of District Attorney's Proffer of Clemency*, N.Y. TIMES, Mar. 22, 1910, at A1; *Flock to Confess: Pittsburgh Grafters Clog Court: Forty Councilmen Indicted and All Hustle for Immunity Bath*, L.A. TIMES, Mar. 22, 1910, at A1.

16. *See, e.g., Pittsburg Grafters Hasten to Confess: Ten Men Take Advantage of District Attorney's Proffer of Clemency*, N.Y. TIMES, Mar. 22, 1910, at A1; *Flock to Confess: Pittsburgh Grafters Clog Court: Forty Councilmen Indicted and All Hustle for Immunity Bath*, L.A. TIMES, Mar. 22, 1910, at A1; *40 City Fathers Must Answer for Grafting*, ATLANTA CONST., Mar. 22, 1910, at A1.

17. *Land Fraud Jury Still Out: Long Delay in Settling the Fate of Binger Hermann*, N.Y. TIMES, Feb. 14, 1910, at A1; *Hermann Faces Federal Jury on Charge of Conspiring to Defraud Government*, ATLANTA CONST., Jan. 10, 1910, at A1.

18. *Says Allds Got \$1,000 From Him: H.G. Moe Tells Senate that Other Senators Took \$4,000 and \$1,000: Letters From Him and Allds Show That He Was Consulted About the Bills Affecting Bridges*, N.Y. TIMES, Feb. 9, 1910, at A1.

19. *Allds Resigns, Found Guilty: Senate, 40 to 9, Sustains Bribery Charge After Accused Senator Gives Up Seat*, N.Y. TIMES, Mar. 30, 1910, at A1.

20. *Id.*

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leveled accusations against each other in the national media.²¹ Pinchot was eventually fired; this was a factor in the rift between Roosevelt and Taft. When Taft ran for re-election in 1912, as a Republican, Roosevelt ran as a third-party candidate, and the Democrat, Woodrow Wilson, was elected.²²

Much of the violent crime that made the front page in 1910 was crime within the family. These tragedies were covered in detail, although there were no actual trials in the sample.²³ There were also stories centering on couples from prominent families who eloped.²⁴ The most sensational trial of early 1910 arose out of a situation of this sort. Dr. Bennett Clark Hyde was accused of poisoning Colonel Thomas Swope, a Missouri millionaire.²⁵ Dr. Hyde had married Swope's niece against the wishes of her mother; Hyde was accused of poisoning Colonel Swope, because the colonel, according to rumor, was planning to alter his will and leave more to charity (and less to his family).²⁶ All three newspapers closely covered the coroner's inquest, which found that Swope had indeed been poisoned.²⁷ The grand jury indicted Dr. Hyde in March 1910, and this too made the front pages.²⁸

21. See, e.g., *Pinchot Ousted: Party War On: President Dismisses Forester, Censuring Him In Letter: Republicans Badly Split*, N.Y. TIMES, Jan. 8, 1910, at A1; *Clavis Stirs Hornet's Nest: Accused Congressmen to Turn on Pinchot's Man*, ATLANTA CONST., Jan. 31, 1910, at A1.

22. On the Ballinger-Pinchot affair, see JONATHAN LURIE & WILLIAM HOWARD TAFT: *THE TRAVAILS OF A PROGRESSIVE CONSERVATIVE* 108-17 (2012).

23. See, e.g., *Beautiful Young Bride Chased Through Streets and Caught by Husband*, N.Y. TIMES, Jan. 28, 1910, at A1; *Son and Daughter to Convict Father and Mother of Murder*, ATLANTA CONST., Mar. 22, 1910, at A1; *Accused of Killing Sister to Get Latter's Wardrobe*, ATLANTA CONST., Mar. 22, 1910, at A1.

24. See, e.g., *Miss Case Surprises by Sudden Wedding: Singer Recently Reported Engaged to Young Spreckles Gives Friends Shock by Marrying Nephew of Ex-Secretary of Navy Metcalf*, L.A. TIMES, Jan. 22, 1910, at A1; *Bride of Carnegie Hero: L.E. Clark, Bowdoin Junior, Wedded to Miss Colcord Secretly, Just Found Out*, N.Y. TIMES, Feb. 18, 1910, at A1.

25. See *Jury Finds Dr. Hyde Poisoned Col. Swope*, L.A. TIMES, Feb. 10, 1910, at A1.

26. Nadia Pflaum, *Dr. Bennett Clark Hyde's Trial in the Swope Family Poisonings Provoked Media Frenzy*, PITCH.COM, Mar. 23, 2010 <http://www.pitch.com/plog/archives/2010/03/23/dr-bennett-clark-hydes-trial-in-the-swope-family-poisonings-provoked-media-frenzy>.

27. See, e.g., *Dr. Hyde Is Stoic: Swope's Physician Human Icicle*, L.A. TIMES, Feb. 8, 1910, at 1.

28. *Hyde Killed 3 Men, Indictments Charge: Attempted to Murder Eight Others in Swope Household, Grand Jury Decides*, N.Y. TIMES, Mar. 6, 1910, at A2. Dr. Hyde was, in fact, suspected of poisoning, or trying to poison, other members of the family.

In the American south, the criminal justice system was tied into the structure of white supremacy. African Americans were not permitted to serve on juries, never held public office, and could expect little or no justice from the courts of the white regimes.²⁹ In January 1910, however, two white Georgia defendants were found guilty of “unmerciful[ly] beating” a black man.³⁰ In a number of trials of black defendants covered by the *Atlanta Constitution*, white mobs tried to invade the proceedings and lynch the defendant.³¹ Lynching was a common practice in southern communities, typically done with appalling savagery and sadism.³² In Cairo, Illinois (a city in southern Illinois, bordering on the south, and culturally southern), a mob threatened the white police sheriff when he tried to protect a black defendant.³³ On another occasion, the *Los Angeles Times* and the *Atlanta Constitution* both described how a black man led a mob into a Dallas courthouse to lynch “one of [his] own race.”³⁴ A rope around his neck, the victim was thrown from a second story window in the presence of the judge.³⁵

Lynching suggests a certain cultural primitiveness—in an age when the country was experiencing rapid technological advancement. In 1910, the United States was at the early stages of the automotive society; and the even earlier stage of the airplane society. All three newspapers closely covered advances

He was tried three times, but went free in the end. The circumstances suggest quite strongly that he was guilty. For a complete account of this tawdry affair, see GILES FOWLER, *DEATHS ON PLEASANT STREET: THE GHASTLY ENIGMA OF COLONEL SWOPE AND DR. HYDE* (2009).

29. See LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 524 (3d ed. 2005).

30. *Badge of Guilt Put On Vining And Cornett: They Were Charged With Giving an Unmerciful Beating to Negro*, ATLANTA CONST., Jan. 13, 1910, at A1.

31. See, e.g., *Lynchers Seek Convicted Negro*, ATLANTA CONST., Feb. 16, 1910, at A1.

32. There is, of course, a large body of literature on lynching. See, e.g., LEON F. LITWACK, *TROUBLE IN MIND: BLACK SOUTHERNERS IN THE AGE OF JIM CROW* 280-325 (1998).

33. *Negro at Cairo is Found Guilty: Given Heavy Sentence for Purse-Snatching: Threats Are Being Made Against the Sheriff who Defended His Prisoner*, ATLANTA CONST., Feb. 19, 1910, at A1.

34. *Aged Negro Led Mob to Lynch One of Own Race: Courthouse and Jail at Dallas Stormed by 5,000 Men*, ATLANTA CONST., Mar. 4, 1910, at A1; *Lynched in Court: Dallas Mob Defies the Law: Rope Placed About Prisoner's Neck in Presence of Judge; Negro Hurlled from a Second-Story Window of Hall of Justice*, L.A. TIMES, Mar. 4, 1910, at A1.

35. *Id.*

in airplane technology.³⁶ Technology also brought with it new hazards. Stories about horrific train accidents were fixtures on the front pages in 1910.³⁷ The newspapers covered a number of trials for criminal negligence—some of these for reckless driving, some for reckless blasting; and more often in New York, which was highly urbanized, compared to Atlanta or Los Angeles.³⁸ These criminal trials were a byproduct of an emerging awareness of the problem of personal injury in the age of the industrial revolution. Tort law itself grew to enormous size, from almost nothing, in the nineteenth century.³⁹

In sum, headline news in 1910 reflected a system of criminal justice that responded to the excesses of modernization. Personal injuries were the collateral damage of industrial technology. Frauds like those perpetrated by Charles Morse and John Walsh were the collateral damage of the ascendance of the financial sector in the age of big business. And fears of the overwhelming power of giant corporations were at the base of the Sherman Act, the key statute of the criminal antitrust laws. The front pages of early 1910 portray a criminal justice system working to keep pace with a country pressing rapidly ahead.

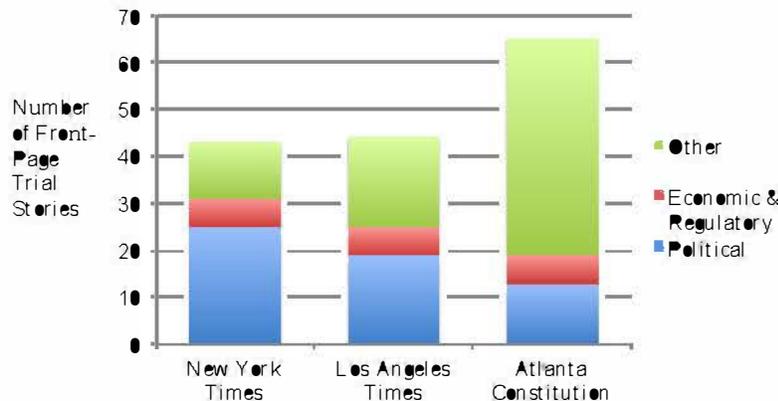
36. See, e.g., *Crowd Balks Paulhan: Swarms Over the Field in Denver—Only One Short Flight Made*, N.Y. TIMES, Feb. 2, 1910, at A1.

37. See, e.g., *Slide Buries Train: 20 Dead, 25 Missing: Great Northern Express Swept from Track Near the Cascade Tunnel*, N.Y. TIMES, Mar. 2, 1910, at A1; *Cars Plunge Into River Through Ice: Dead in Canada's Worst Railroad Wreck May Number Two Score*, L.A. TIMES, Jan. 22, 1910, at A1.

38. See, e.g., *Jail for Careless Blaster: Clementi's Conviction of Manslaughter the First on Such a Charge*, N.Y. TIMES, Mar. 18, 1910, at A1; *Two Chauffeurs Get Six Months*, N.Y. TIMES, Mar. 23, 1910, at A1.

39. See FRIEDMAN, *supra* note 29, at 350-66.

II. CRIMINAL TRIAL COVERAGE IN 1950

Front-Page Criminal Trial Stories
Jan.-Mar. 1950

All three newspapers covered more trials during the first months of 1950 than during the same period in either 1910 or 1990. It would be rash to assume a shift in general attitudes toward criminal justice. Perhaps, by chance, some truly sensational trials were covered during the first three months of 1950, perhaps making our results something of a statistical anomaly.

Among the more sensational trials of 1950 were the spy trials that marked the early phases of McCarthyism. The Korean War began in 1950, and the Cold War was escalating rapidly.⁴⁰ Senator Joseph McCarthy of Wisconsin made a household name of himself through his sensational claims about Communist infiltration, espionage, and subversion of American institutions. These charges made headlines, as did the counter-accusations of witch-hunting and demagoguery. On January 22, 1950, jurors reached a verdict in the trial of Alger Hiss.⁴¹ Hiss was a former official of the State Department. He was a man of impeccable

40. Hanson W. Baldwin, *Blocking the Red Conquest Program*, N.Y. TIMES, June 28, 1950.

41. William R. Conklin, *Hiss Guilty On Both Perjury Counts; Betrayal of U.S. Secrets Is Affirmed; Sentence Wednesday; Limit 10 Years*, N.Y. TIMES, Jan. 22, 1950, at A1.

background with friends in high places, including in the White House—which made it all the more shocking when Hiss was accused of spying for the Soviet Union. Hiss denied it, but was tried and convicted for perjury.⁴² The Hiss trial was a dramatic and climactic moment in Cold War politics: it pitted the Democratic administration against hard-line anti-communists in Congress, who condemned the Truman administration for appeasing the Soviet Union and tolerating treason. The trial reinforced McCarthy's status as the country's leading anti-communist and helped launch the career of Richard Nixon, who took a strong line against Hiss in 1950 in the House of Representatives. At the time, liberals generally believed that Hiss was an innocent man.⁴³ Today, however, there is something of a consensus that he had indeed been an agent of the Soviet Union at some point in his career.⁴⁴

The Hiss affair was not the only spy drama of 1950. In February, a German scientist named Klaus Fuchs admitted that he had passed nuclear secrets to the Soviets shortly after World War II.⁴⁵ Fuchs had worked on the Manhattan Project (the code name for the project that developed the atom bomb). Fuchs' confession and subsequent trial in Great Britain received wide coverage in all three newspapers.⁴⁶ He was given the maximum possible sentence—fourteen years in prison.⁴⁷ American and British officials felt he helped the Soviets develop their own atomic bomb. The importance of information he actually transferred remains unclear. But, at the time, the newspapers suggested that Fuchs had been a key figure in Soviet nuclear progress.⁴⁸ His treachery may have convinced many people, in both the public and private sector, that the United States needed

42. Conklin, *supra* note 41. On the Hiss affair, see ALLEN WEINSTEIN, *PERJURY: THE HISS-CHAMBERS AFFAIR* (1978).

43. *Won't Turn Back on Hiss, Acheson Says*, L.A. TIMES, Jan 26, 1950, at A1.

44. See Ron Rosenbaum, *Alger Hiss Rides Again*, SLATE (July 16, 2007, 7:20 PM), http://www.slate.com/articles/life/the_spectator/2007/07/alger_hiss_rides_again.html.

45. Raymond Daniell, *Fuchs Admits Giving Soviet Atom Secrets from 1942 On, But Says He Quit A Year Ago*, N.Y. TIMES, Feb. 11, 1950, at A1.

46. See, e.g., *Trial of Fuchs, British Scientist Who Sold Atomic Secrets to USSR*, L.A. TIMES, Mar. 2, 1950, at A1; *Fuchs Admits Giving Soviet Atom Secrets from 1942 on, But Says He Quit a Year Ago*, N.Y. TIMES, Feb. 11, 1950, at A1; *Betrayed Secrets 7 Years, Fuchs' A-Confession Says*, ATLANTA CONST., Feb. 11, 1950, at A1.

47. *Atomic Spy Sentenced to 14 Years: Swift Trial Yields Information on Red Agents, Lawyer Says*, L.A. TIMES, Mar. 2, 1950, at A1.

48. See, e.g., *World Spy Hunt Looming: Fuchs Sentenced to 14 Years, Gives Leads to Reds*, ATLANTA CONST., Mar. 2, 1950, at A1.

to press forward with development of the hydrogen bomb.⁴⁹

A month after the Fuchs story broke, all three newspapers carried front-page stories about the trial of Judith Coplon, accused of spying on behalf of the Soviet Union.⁵⁰ Coplon was a young analyst in the Justice Department; she was found guilty of passing secrets to Valentin Gubitchev, a KGB official affiliated with the United Nations.⁵¹ Coplon and Gubichev were romantically involved. After the trial, Gubitchev was allowed to return to the Soviet Union rather than face prison in the United States;⁵² Coplon's conviction was overturned on appeal, on the grounds of prosecutorial misconduct.⁵³ She was never sent to prison.

Finally, Harry Bridges, the leader of a union of longshoremen on the west coast, faced trial in 1950, charged with lying about his membership in the Communist party.⁵⁴ Oddly, the Bridges trial was front-page news in the *New York Times* and the *Atlanta Constitution*, but not in the *Los Angeles Times*.

The Western allies were not the only governments conducting espionage trials. The Hungarian government put Robert Vogeler, a British businessman, on trial in February 1950. Vogeler was accused of transferring Hungarian state secrets to the United States.⁵⁵ Officials in Hungary claimed that Vogeler

49. William S. White, *British Jail Atom Scientist As a Spy After Tip By FBI: He Knew of Hydrogen Bomb*, N.Y. TIMES, Feb. 4, 1950, at A1.

50. Charles Grutzner, *Judith Coplon and Gubitchev are Found Guilty in Spy Case: She is Convicted on Two Counts, Acquitted on One—Both Are Remanded to Jail Pending Sentencing Tomorrow*, N.Y. TIMES, Mar. 8, 1950, at A1; *Judith Coplon and Gubitchev Found Guilty: Pair Convicted in Federal Court on Charges of Spying*, L.A. TIMES, Mar. 8, 1950, at A1; *Coplon Conviction Held Warning to All*, ATLANTA CONST., Mar. 8, 1950, at A1.

51. Charles Grutzner, *Judith Coplon and Gubitchev are Found Guilty in Spy Case: She is Convicted on Two Counts, Acquitted on One—Both Are Remanded to Jail Pending Sentencing Tomorrow*, N.Y. TIMES, Mar. 8, 1950, at A1.

52. Charles Grutzner, *Gubitchev to Sail March 20; Soviet Envoy Sees Acheson: Russian, Accepting U.S. Offer to Escape 15-Year Prison Term, to Go on Batory—Bail for Him, Miss Coplon Delayed*, N.Y. TIMES, Mar. 11, 1950, at A1.

53. Sam Roberts, *Judith Coplon, Justice Dept. Analyst Who Fell for Soviet Spy, Is Dead at 88*, N.Y. TIMES, Mar. 2, 2011, at A22. Her conviction for espionage was overturned because federal agents overheard conversations with her lawyer; her conviction for conspiracy was overturned because she was arrested on probable cause, but without a warrant. *Id.*

54. Lawrence E. Davies, *Key U.S. Witness Admits Perjury But Sticks to Charges on Bridges*, N.Y. TIMES, Jan. 10, 1950, at A1.

55. *Experts to Testify in Vogeler Trial: Technicians Called by Hungarian Reds to*

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had confessed to his crimes, and, after a short trial, Vogeler was sentenced to 15 years in prison.⁵⁶ The Vogeler affair severely damaged relations between the United States and Hungary.⁵⁷ All three newspapers ran stories about the trial and reported a sense of outrage at what was widely viewed to be a phony conviction in a kangaroo court.⁵⁸

Another major trial in early 1950 was the trial of the members of the United Mine Workers (UMW) for criminal contempt. Members of the UMW had gone on strike demanding higher wages. President Harry Truman, facing the prospect of a crippling coal shortage, invoked the Taft-Hartley Act—a law he had previously, but unsuccessfully, vetoed—to force the miners back to work. Union members simply failed to comply with the orders to do so, and the government began criminal contempt proceedings against the UMW and its notorious leader, John Lewis. Lewis was responsible, it was claimed, for the refusal of the miners to comply.⁵⁹ After a short trial, the judge found the union innocent. Lewis had insisted that the union was not to blame for the failure of the miners to work. The miners acted, he claimed, on their own, and the government failed to prove otherwise.⁶⁰

Beyond the sphere of national economics and Cold War politics, another, more unusual sort of trial was making headlines in 1950: trials for so-called mercy killings. In two trials, the defendants were accused of killing victims who suffered from fatal diseases. The first was the trial of Carol Paight. The charge

Tell of Alleged Damage Through Spies, L.A. TIMES, Feb. 20, 1950, at A1.

56. Associated Press, *Avowal of Guilt Made By Vogeler in Budapest Trial: I.T.&T. Executive, on Stand After 3 Months in Prison, Testifies to 'Espionage'*, N.Y. TIMES, Feb. 19, 1950, at A1; *Vogeler Receives 15 Years in Prison: British Associate Sentenced to 13 in Budapest Spy Trial*, N.Y. TIMES, Feb. 22, 1950, at A1.

57. *U.S.-Bulgarian Relations Broken: Washington Blasts Hungary Over Vogeler's Conviction*, ATLANTA CONST., Feb. 22, 1950, at A1.

58. See, e.g., *Briton in Hungary Pleads Spy 'Guilt': Communist Court Skips Over Vogeler*, N.Y. TIMES, Feb. 18, 1950, at A1; *Vogeler Gets 15 Years on Spy Charges*, L.A. TIMES, Feb. 22, 1950, at A1; *U.S.-Bulgarian Relations Broken: Washington Blasts Hungary Over Vogeler's Conviction*, ATLANTA CONST., Feb. 22, 1950, at A1.

59. Louis Stark, *Judge Limits Issue of U.M.W. Contempt to Obedience Alone: Keech Rules Sole Question Is Whether Coal Union Obeyed Two Restraining Orders*, N.Y. TIMES, Mar. 1, 1950, at A1.

60. *Miners' Union Held Innocent of Contempt*, L.A. TIMES, Mar. 3, 1950, at A1. This contempt trial certainly had political implications; indeed, extremely significant ones. However, it is classified as an Economic & Regulatory trial by virtue of the fact that it arose under the Taft-Hartley Act.

against Paight, a 21-year-old college student, was that she shot her father, a man diagnosed with terminal cancer, as he lay in a hospital bed in Stamford, Connecticut.⁶¹ A distraught Paight admitted to the shooting immediately after it happened, but the next day she claimed to remember nothing.⁶² The jury found her not guilty by reason of insanity.⁶³

The second mercy-killing trial was even more sensational. The defendant was Herman Sander, a New Hampshire doctor accused of killing a patient by injecting air into her veins.⁶⁴ The patient, like the victim in the Paight trial, was dying of an agonizing form of cancer; she had only days to live, and Dr. Sander claimed that both the patient and the patient's husband had begged him to end her pain. The defense lawyer, somewhat implausibly, claimed that Dr. Sander had injected air into the patient's veins *after* she was already dead (the lawyer even enlisted a Harvard scientist to testify to this end).⁶⁵ Still, despite these side issues, the trial was essentially a referendum on euthanasia. The newspapers claimed that people across the country were sharply divided on the question. Members of Dr. Sander's New Hampshire parish wrote a letter to the court, pleading for a lenient sentence,⁶⁶ while the young Reverend Billy Graham apparently supported conviction.⁶⁷ Ultimately, the jury was unwilling to find that this mild-mannered, upstanding doctor was guilty of committing a crime.⁶⁸

But ambivalence about euthanasia continued, even after the

61. *Girl Killed Cancer-Doomed Dad: 4 Mothers Chosen Paight-Trial Jurors*, ATLANTA CONST., Jan. 26, 1950, at A1.

62. *Id.*

63. Harold Faber, *Carol Paight Acquitted as Insane at Time She Killed Ailing Father*, N.Y. TIMES, Feb. 8, 1950, at A1.

64. Russell Porter, *First Nine Jurors, All Men, Chosen in 'Mercy' Death Trial of Dr. Sander*, N.Y. TIMES, Feb. 21, 1950, at A1.

65. Russell Porter, *Defense Opens Case, Says Sander Will Testify Air Followed Death*, N.Y. TIMES, Mar. 3, 1950, at A1; Russell Porter, *Harvard Expert Defends Sander; Says Air Injections Did Not Kill*, N.Y. TIMES, Mar. 8, 1950, at A1.

66. *'Mercy Doctor' Supported By 600 Hometown Citizens*, ATLANTA CONST., Jan. 2, 1950, at A1.

67. Rick Holmes, *Before Kevorkian Controversy, There Was Derry's Dr. Sander*, DERRYNEWS.COM (June 30, 2011), <http://www.derrynews.com/opinion/x357283107/Column-Before-Kevorkian-controversy-there-was-Derrys-Dr-Sander/print>.

68. Russell Porter, *Sander Acquitted in an Hour; Crowd Outside Court Cheers: New Hampshire Doctor Says He Never Had Doubt About Verdict in Death of His Patient: He and Wife Plan Trip*, N.Y. TIMES, Mar. 10, 1950, at A1.

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verdict. The *Atlanta Constitution's* banner headline on the day of the acquittal read: "Acquittal Cheered + But Mercy Deaths Deplored + Over Country."⁶⁹ Public attitudes toward the Sander trial reflected a paradox: many Americans sympathized with Dr. Sander's act of mercy, but were still repelled by the idea of euthanasia. The Sander trial was headline news across the country. All three newspapers followed the trial from jury selection, through the witness's testimony, and finally through acquittal. (They even reported on Dr. Sander's vacation plans after he was found not guilty). The *Atlanta Constitution* paid close attention to the Sander and Paight trials. Stories about mercy-killing trials largely account for the spike in front-page trial stories in the Atlanta newspaper in 1950.

The trials of 1950 were, for the most part, products of the political environment of the times. The Cold War was a dominant issue. The public was fascinated—even obsessed—with the worldwide struggle against Soviet communism and the effort to bring Soviet spies to justice. The newspapers were not responsible for this obsession, but they certainly helped fan the flames.

The trials of 1950 also reflected the discontents of life in the period shortly after the Second World War. The Lewis trial grew out of labor unrest; and the struggle between right and left over the role of unions in economy and society. The Harry Bridges trial was an echo of this struggle—and also the crusade against communism. The mercy killing trials raised profound issues about how to die with grace and dignity in post-War America. Advances in medicine were prolonging life; but at what cost? The national conversation about euthanasia persists to this day.

69. *Acquittal Cheered + But Mercy Deaths Deplored + Over Nation*, ATLANTA CONST., Mar. 10, 1950, at A1.

III. CRIMINAL TRIAL COVERAGE IN 1990



Fewer criminal trial stories were on front pages in early 1990 than in either of the earlier years. But all three newspapers carried fewer *total* front-page stories in 1990 as well;⁷⁰ the decline in front-page trial stories may mean nothing more than a reduction in front-page stories overall.

In 1990, there were no front-page stories covering trials for Economic and Regulatory crimes. The Taft-Hartley Act was a relic by 1990, and while the Sherman Act was still in force, there were no prominent criminal antitrust suits in early 1990. This might be mere accident. By contrast, coverage of political trials continued to be strong. Political misbehavior, of one sort or another, does seem to be a constant in American history. It may change its form, but political scandal is probably inevitable in a large, complex system of government, with a huge civil service, and in which money has enormous influence.

In January 1990, Panamanian dictator Manuel Noriega turned himself over to American forces after President George Bush overthrew Noriega's regime with a military action, and brought Noriega to the United States to face drug charges.⁷¹

70. Based on our review of front pages, the *New York Times* declined from an average of eighteen front-page articles in 1910 to an average of nine front-page articles in 1990. The *Atlanta Constitution* declined from an average of thirteen front-page articles to seven front-page articles from 1910 to 1990. And the *Los Angeles Times* went from an average of nine front-page articles in 1910, to sixteen front-page articles in 1950, and back down to seven front-page articles in 1990.

71. Richard L. Berke, *Noriega Arraigned in Miami in a Drug-Trafficking Case*;

Although the trial itself would not begin until 1992, all three newspapers covered Noriega's arraignment in a Miami federal courthouse and ran occasional stories about the political implications—and practical difficulties—of prosecuting a former head-of-state.⁷²

The Cold War was ending in 1990. Every day all three newspapers carried stories about the collapse of the Eastern Bloc and about Gorbachev's efforts to oversee peaceful reform in the Soviet Union.⁷³ In Romania, the new post-communist government was busy prosecuting representatives of the hated Ceausescu regime. The *New York Times* ran two front-page stories in early 1990 about the trial of former high-level officers in Romania's secret police.⁷⁴ And even as Eastern European countries prosecuted their communist-era criminals, the United States in 1990 was prosecuting its own overzealous Cold Warriors. On March 9, John Poindexter, who had been the United States National Security Advisor under President Ronald Reagan, went on trial for conspiracy and perjury—charges which arose out of his involvement in the Iran-Contra affair.⁷⁵ Iran-Contra was a scheme to funnel money to anti-Communist forces in Nicaragua (the "Contras") with the proceeds of secret sales of arms to Iran.⁷⁶ Before the trial began, there was discussion of whether President Reagan himself would be required to testify or whether he would be required to let the court see his presidential diaries. Reagan refused to hand over the diaries, invoking

He Refuses to Enter a Plea, N.Y. TIMES, Jan. 5, 1990, at A1. See also Maureen Dowd, *Noriega's Move Meets Approval at White House*, N.Y. TIMES, Dec. 25, 1989.

72. See Robin Wright & Ronald J. Ostrow, *Noriega's U.S. Intelligence Ties Could Vex Prosecution*, L.A. TIMES, Jan. 16, 1990, at A1; Richard L. Berke & David Johnston, *U.S. Prosecution of Noriega: Signs of Trouble at the Start*, N.Y. TIMES, Jan. 23, 1990, at A1; *Bush: No Deal with Noriega*, ATLANTA J.-CONST., Jan. 6, 1990, at A1. Note also that in 1982, the *Atlanta Constitution* merged newsroom staffs with the *Atlanta Journal* to become the *Atlanta Journal-Constitution*. See *Atlanta Journal-Constitution*, NEW GEORGIA ENCYCLOPEDIA, available at <http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-1807>.

73. See, e.g., *Soviets Can Have Choice of Parties, Gorbachev Says*, ATLANTA J.-CONST., Jan. 14, 1990, at A1.

74. Celestine Bohlen, *Ceausescu's Aides Recall Last Days: Courtroom Told of Execution Threats Against Ministers*, N.Y. TIMES, Jan. 28, 1990, at A1; Celestine Bohlen, *Trial of Former Secret Police Agents Begins in Romania*, N.Y. TIMES, Mar. 3, 1990, at A1.

75. David Johnston, *Blunt Arguments By Lawyers Open Poindexter Trial: North Is To Testify First*, N.Y. TIMES, Mar. 9, 1990, at A1.

76. See Julie Johnson, *Reagan Asserts Iran-Contra Defendants Are Not Guilty*, N.Y. TIMES, Mar. 26, 1988, at A1.

executive privilege.⁷⁷ The judge required him to testify—but in a videotaped deposition rather than in person.⁷⁸

President Reagan insisted that his subordinates hatched and carried out the scheme, and that he knew nothing about it.⁷⁹ Another witness at the trial was Colonel Oliver North, who planned the Iran-Contra operation and who had already been convicted for his role in it.⁸⁰ North reluctantly testified that Poindexter was aware that funds for the Contras came from dirty money out of Iran.⁸¹ In April, a jury would find Poindexter guilty on five separate charges.⁸² In the end, the D.C. Circuit overturned the conviction on the grounds that Poindexter had been granted immunity at the time he made incriminating statements that were later used against him at trial.⁸³ The Supreme Court declined to reconsider the verdict.⁸⁴

Political misbehavior in 1990 was in the headlines almost daily. On January 19, Marion Barry, Washington, D.C.'s charismatic mayor, was arrested in a Washington hotel on drug charges (he was caught on videotape smoking crack cocaine during an FBI sting operation).⁸⁵ Barry was indicted in February 1990,⁸⁶ and was later convicted and sentenced to a six-month prison term.⁸⁷ His political career, however, barely suffered for it; he was reelected as mayor in 1994 and remains a D.C. City Councilman today.⁸⁸ The *Los Angeles Times* covered the story of

77. Norman Kempster, *Reagan Invokes Executive Privilege to Retain Diaries*, L.A. TIMES, Feb. 8, 1990, at A1.

78. Norman Kempster, *Reagan Told He Must Testify Via Videotape*, L.A. TIMES, Feb. 6, 1990, at A1.

79. David Johnston, *The Reagan Tape; Reagan Testifies He Did Not Order Any Illegal Acts*, N.Y. TIMES, Feb. 23, 1990, at A1.

80. Stephen Engelberg, *North Guilty on 3 of 12 Counts; Vows to Fight Till Vindicated*, N.Y. TIMES, May 5, 1989, at A1.

81. Norman Kempster, *Poindexter Was 'Aware,' North Says: The Former Marine Officer Reluctantly Testifies that His Superiors Were Kept Informed About Aid to the Nicaragua Rebels*, L.A. TIMES, Mar. 10, 1990, at A1.

82. David Johnston, *Poindexter Is Found Guilty of All Five Criminal Charges for Iran-Contra Cover-Up*, N.Y. TIMES, Apr. 8, 1990, at A1.

83. *United States v. Poindexter*, 951 F.2d 369, 388 (1991).

84. *United States v. Poindexter*, 506 U.S. 1021 (1992).

85. B. Drummond Ayres, Jr., *U.S. Agents Arrest Washington Mayor on Drug Charges*, N.Y. TIMES, Jan. 19, 1990, at A1.

86. B. Drummond Ayres, *Mayor Barry Indicted on Charges of Possessing Cocaine and Lying*, N.Y. TIMES, Feb. 16, 1990, at A1.

87. *4 Jurors Biased in Barry's Favor, Judge Says*, ASSOC. PRESS, Nov. 1, 1991.

88. *Council of the District of Columbia, D.C. Councilmembers: Marion Barry*, D.C.

a former California state senator who was indicted for illegally soliciting campaign contributions;⁸⁹ it also ran a story about the trial of Robert Peter Aguilar, the first federal judge ever indicted in California.⁹⁰ In Georgia, a county sheriff was found guilty on four counts of extortion and tax evasion in a trial that was covered in detail by the *Atlanta Journal-Constitution*.⁹¹

The most sensational non-political trial of early 1990 was the infamous McMartin trial. This trial had been underway for more than two years; it finally staggered to an end in January 1990.⁹² The chief defendants were a mother and son who ran a preschool in California. They were accused of a rather bizarre shopping list of crimes against the children: sexual abuse, bestiality, blood-drinking, human sacrifice, and Satan-worship.⁹³ The dreary event began when a mother of one of the preschool students made sensational accusations against the McMartins. The woman was mentally unstable, and she died of alcoholism before the trial began.⁹⁴ Much of the evidence consisted of statements that psychologists wheedled out of small children using methods that now seem extremely unreliable, to say the least. At any rate, on January 19, 1990, the McMartins' ordeal—after the longest and most expensive criminal trial in United States history⁹⁵—came to

COUNCIL, <http://www.dccouncil.washington.dc.us/council/marion-barry> (last visited Jan. 30, 2012).

89. Richard C. Paddock, *Montoya to Face New State Counts on Campaign Fund*, L.A. TIMES, Jan. 6, 1990, at A1.

90. Dan Morain, *Aguilar Cleared on 1 Count; Jury Hung on Others*, L.A. TIMES, Mar. 20, 1990, at A1. Aguilar, a federal judge, was accused of trying to influence another federal judge in favor of a defendant. The first trial was inconclusive; on retrial, he was convicted. But his conviction was overturned on appeal, and Aguilar returned to the bench. Associated Press, *Conviction Of U.S. Judge Is Overturned*, N.Y. TIMES, Apr. 20, 1994, at B12.

91. Michelle Hiskey, *Lankford Jury: Guilty Times 4: Jurors Reach Impasse on 21 Other Charges*, ATLANTA J.-CONST., Mar. 29, 1990, at A1.

92. Lois Timnick & Carol McGraw, *McMartin Verdict: Not Guilty: Justice: The Jury's Findings Close the Longest and Costliest Criminal Trial in History. No Decision Has Been Made on Retrying Ray Buckey on 13 Undecided Counts*, L.A. TIMES, Jan. 19, 1990, at A1.

93. Robert Reinhold, *The Longest Trial – A Post-Mortem; Collapse of a Child Abuse Case: So Much Agony for So Little*, N.Y. TIMES, Jan. 24, 1990, at A1. On this celebrated—or notorious—trial, and similar trials elsewhere, see DEBBIE NATHAN & MICHAEL SNEDEKER, *SATAN'S SILENCE: RITUAL ABUSE AND THE MAKING OF A MODERN AMERICAN WITCH HUNT* (1995).

94. See Reinhold, *supra* note 93, at A1.

95. See Timnick & McGraw, *supra* note 92.

an end. The defendants were found not guilty.⁹⁶ Meanwhile, the trial had given rise to similar prosecutions across the country; some defendants in these trials were less fortunate than the McMartins. Actually, it would be hard to call the McMartins “fortunate.” They lived through two years of blazing and lurid publicity, and their personal and professional lives were wrecked beyond repair. The verdict led to a certain amount of soul-searching in the media: Was the whole thing a witch-hunt? Were the media too quick to swallow the fantastic stories that set the whole process going? Should they have been more skeptical from the outset?⁹⁷ On the day the verdict was delivered, the *Los Angeles Times* ran four front-page stories about the trial.⁹⁸ A few days later, the *New York Times* ran a long front-page story, with the headline “The Collapse of a Child Abuse Case: So Much Agony for So Little.” The article listed, in detail, mistakes made by the prosecution.⁹⁹

Another notable trial of 1990 was the trial, for criminal negligence, of Joseph Hazelwood, captain of the *Exxon Valdez*.¹⁰⁰ Prosecutors claimed that Hazelwood had been drunk when he crashed the oil tanker into a reef off the coast of Alaska. The result was a colossal and devastating oil spill. But the prosecution failed to convince a jury in Alaska that Hazelwood had been criminally negligent. The jury found him guilty only on a minor negligence count.¹⁰¹ Hazelwood was fined and sentenced to 1,000 hours of community service—cleaning oil-soaked beaches on the Alaska coast.¹⁰²

96. Timnick & McGraw, *supra* note 92.

97. In what appeared to be a blatant conflict of interest, the *Los Angeles Times* editor in charge of covering the trial had become engaged to the trial’s lead prosecutor. See Reinhold, *supra* note 93.

98. See Timnick & McGraw, *supra* note 92; David Shaw, *Where Was Skepticism in Media? Pack Journalism and Hysteria Marked Early Coverage of the McMartin Case. Few Journalists Stopped to Question the Believability of the Prosecution’s Charges*, L.A. TIMES, Jan. 19, 1990, at A1; Tracy Wilkinson & James Rainey, *Tapes of Children Decided Case for Most Jurors*, L.A. TIMES, Jan. 19, 1990, at A1; David Freed, *Cost of Case Is Measured in Reputations and Emotions*, L.A. TIMES, Jan. 19, 1990, at A1.

99. See Reinhold, *supra* note 93.

100. *Ship Captain Acquitted of Felony But Is Convicted on Minor Charge*, N.Y. TIMES, Mar. 23, 1990, at A1.

101. *Id.*

102. William C. Rempel, *Judge Orders Hazelwood to Clean Benches*, L.A. TIMES, Mar. 24, 1990, at A1.

In New York, John Gotti, head of the Gambino crime family, was found not guilty of ordering the murder of a union official; (it was his third acquittal in four years).¹⁰³ Other front-page stories concerned senseless, violent crimes. In Georgia, Emmanuel Hammond, a black man, was found guilty of raping, strangling, and shooting Julie Love, a young white school teacher whose car ran out of gas in Hammond's neighborhood.¹⁰⁴ He was sentenced to death,¹⁰⁵ and was executed in January 2011, more than 22 years after the crime.¹⁰⁶ The *Atlanta Journal-Constitution* also covered two trials of juvenile offenders accused of committing similarly senseless murders. The first was the trial of a fourteen-year-old who confessed to shooting a pizza delivery girl.¹⁰⁷ The second was the trial of six young teenagers accused of killing a motorist during a botched carjacking.¹⁰⁸ One of the children allegedly shot the man, who was waiting for his wife at a train station, after the man laughed when the children told him to get out of his car.¹⁰⁹ A few days before the second murder, the *Atlanta Journal-Constitution* ran a story titled "Juvenile Courts Shorthanded as Cases Rise: Funds for New Judges, Caseworkers Lagging."¹¹⁰ And on March 9, two California brothers were formally named as suspects in the murder of their parents in their Beverly Hills mansion.¹¹¹ These were the infamous Menendez brothers—spoiled, psychopathic siblings who would ultimately be convicted in the double-murder. The trial itself would not begin until 1993, but by the end of March 1990, television networks were already haggling over who would have

103. Selwyn Raab, *Gotti Not Guilty On All 6 Charges in Assault Trial*, N.Y. TIMES, Feb. 10, 1990, at A1.

104. Duane Riner, *Hammond Guilty in Love Slaying: Verdict Will Allow Victim to Rest, Boyfriend Says*, ATLANTA J.-CONST., Mar. 8, 1990, at A1.

105. Duane Riner, *Hammond Gets Death for Murder: Father of Slaying Victim Julie Love Calls Sentence 'Justice,' But a 'Shallow Victory'*, ATLANTA J.-CONST., Mar. 10, 1990, at A1.

106. Kim Severson & Robbie Brown, *Murderer Is Executed in Georgia After Losing Stay*, N.Y. TIMES, Jan. 25, 2011, at A13.

107. Katie Long, *Teen Expected to Plead Guilty in Delivery Woman's Death*, ATLANTA J.-CONST., Feb. 2, 1990, at A1.

108. *Victim in MARTA Slaying Hit Gunman with Book, Police Say Suspect's Story Told at Hearing; Two More Teens Held*, ATLANTA J.-CONST., Mar. 7, 1990, at A1.

109. *Id.*

110. Douglas Blackmon, *Juvenile Courts Short-Handed as Cases Rise: Funds for New Judges, Caseworkers Lagging*, ATLANTA J.-CONST., Mar. 3, 1990, at A1.

111. Ronald L. Soble & John Johnson, *Sons Named in Double Slaying in Beverly Hills*, L.A. TIMES, Mar. 9, 1990, at A1.

rights to broadcast the trial.¹¹²

In sum, the trials that captured the nation's attention in early 1990 differed in many respects from the trials of 1910 and 1950. Trials for economic and regulatory crimes disappeared by 1990—at least in our sample. As in 1950, the Cold War was still a rich source for criminal trials; but the nature of these trials had shifted dramatically. Rather than spies and traitors, the defendants in 1990 were men like John Poindexter—men accused of taking the Cold War too far. Of course, political corruption still resulted in a number of criminal trials in 1990. But it is noteworthy that two of the major political trials of that year—the Noriega trial and the Barry trial—both involved illegal narcotics. In these cases, the so-called war on drugs added a twist to the conventional story of political sin and venality.

And in many front-page trials, the crushing reality of urban poverty and racism was on full display. Violent, lurid, senseless crimes made their first significant appearance in the newspapers. These trials reflected the huge spike in violent crime—including crimes committed against total strangers—that was so depressing a factor in social life in the period after the Second World War.

IV. A COMPARISON OF RESULTS

As already noted, each newspaper during each year carried a different number of total front-page stories. Simply comparing the raw number of front-page stories in each newspaper does not tell us precisely which newspapers covered criminal trials the most extensively. Newspapers with many front-page stories would be expected to run more trial stories than newspapers with fewer front-page stories, other things being equal. We have corrected for the difference in total front-page stories by determining the proportion of each newspaper's *total* front-page coverage dedicated to criminal trials.

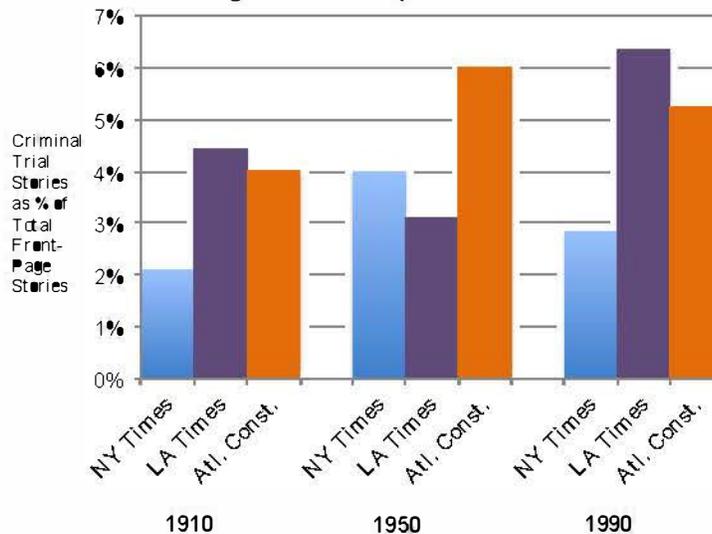
112. Diane Haithman & Scott Harris, *Menendez Murders Spark Stampede for TV Rights*, L.A. TIMES, Mar. 23, 1990, at A1.

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Criminal Trial Stories as Percentage of All Front-Page Stories (Jan.-Mar. of Each Year)



The proportion of front-page stories devoted to criminal trials ranged from just over 2% to just over 6%. The newspaper with the largest proportion of coverage was the *Los Angeles Times* in 1990. The *Los Angeles Times* ran forty front-page trial stories in 1990; on average, there were only seven total stories per page. The runner-up was the *Atlanta Constitution* in 1950. While the *Atlanta Constitution* carried about twelve stories per page—a fairly large number—it ran sixty-five total trial stories, the most of any newspaper in any year. The newspaper that dedicated the smallest proportion of its front-page coverage to criminal trials was the *New York Times* in 1910. While the total number of trial stories run by the *New York Times* in 1910 was roughly comparable to the number of trial stories run in the other two papers, the *New York Times* carried eighteen stories on its front page, and so, as a proportion of total front-page stories, criminal trials were featured much less frequently.

Even these figures do not permit a perfect comparison between results. Newspapers with different numbers of total front-page stories may make different editorial choices about the types of stories to feature. For example, most of the eighteen front-page stories in the *New York Times* in 1910 were short, one-paragraph stories about the weather, or a new feat of aviation, or the most recent train wreck. It seems likely that stories about

criminal trials could not be so neatly summarized, making them poor candidates for the front page. (It is noteworthy in this regard that most front-page stories in 1910 appeared only on the first page, without a jump to another page deeper in the paper). Similarly, because many criminal trial stories, like Dr. Sander's acquittal or Hiss's conviction, were national news, all three newspapers were guaranteed to cover these stories regardless of how much front-page space they had available. It would be premature, then, to conclude that newspapers with fewer front-page stories emphasized these stories more. Finally, the results do not account for the size of each trial story or the prominence of its headline, both of which are relevant to the question of emphasis and should be included in any authoritative comparison.

A CONCLUDING WORD

In 1910, the most common trial stories dealt with criminal violations of the Sherman Act; in 1950, spy trials and mercy killings predominated; and by 1990, trials for economic and regulatory crimes were entirely overshadowed by political misconduct and a few sensational violent crimes.

A lot had changed in the eighty years between 1910 and 1990. Some problems that generated front-page trials survived all the ins and outs of social change. Americans throughout the twentieth century found themselves on trial for age-old defects—greed and megalomania, envy and lust, psychopathy and carelessness. And throughout the twentieth century, trials arising out of these motives found an eager audience in the readers of the daily newspapers. Political figures used their power for self-enrichment; scandals still plagued government at all levels. Major disasters—oil spills, for example—and sensational business failures, tainted by fraud, were another source of scandal. And the public was enthralled by violent and sensational crimes. The proportions, and the exact types, did change over time. For example, the panic in 1950 over communist infiltration vanished; after September 11, 2001, panic over terrorist attacks replaced it. Lurid crime stories became more dominant over time and attracted more attention from the media; but, by 1990, it may well be true that there were more of these crimes than before.¹¹³

113. RAY SURETTE, MEDIA, CRIME, AND CRIMINAL JUSTICE: IMAGES, REALITIES,

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The front pages of major newspapers have constituted, and still constitute, an important window into the American soul—although, of course, the internet is rapidly eclipsing the newspaper as Americans’ primary news source. The data reported here represents a kind of exploratory study. Our figures are too small, and too crude, to capture the nuances of historical evolution. But we do feel this is a subject worth pursuing.

For all three newspapers, coverage of criminal trials seems to have increased between 1910 and 1990. The coverage in these three newspapers was, on the whole, quite sober. We did not expect them to behave like shameless tabloids; and in fact they did not. But we did not expect political and economic trials to play so large a role.

In 1910, newspapers *were* mass media. The movies were in their infancy. Radio and television were just over the horizon. By 1990, newspapers were clearly overshadowed by radio, television, and the movies; and the internet, blogs, YouTube, Facebook, and Twitter were yet to come. Now we are in a world in which information (or misinformation) spreads literally at the speed of light; a world in which news and opinion are far more interactive than ever before. An entertaining criminal trial can still command miles and miles of newsprint—think of the O. J. Simpson trial, or, more recently, the Casey Anthony trial. But it would be fair to say that these trials were basically television trials. Television coverage tends to be more significant than newspaper coverage; Internet coverage may prove to be more significant still.

“News” about criminal justice also dominates prime time television. Mostly this takes the form of fiction—crime and cop dramas. But, as the O. J. Simpson case illustrates, the line between fiction and news tends to blur. They both become forms of entertainment. And both, no doubt, influence what people think about crime and criminal justice in ways that are significant, but difficult to measure. In a society like ours, the relationships between the media, public opinion, and the law is crucial. These relationships are complex, perhaps more so than ever before. There is a small but growing literature on the relationship between law and popular culture. Hopefully, the amount of such research will increase in coming years.

APPENDIX OF DATA

Total Criminal Stories

Number of Criminal Trial Stories			
	New York Times	Los Angeles Times	Atlanta Constitution
1910 (Jan-Mar)	34	36	47
1950 (Jan-Mar)	43	44	65
1990 (Jan-Mar)	23	40	33

New York Times

Breakdown of Criminal Trial Stories by Category (Jan-Mar)				
	Political	Economic/ Regulatory	Other	Total
1910	10 (30%)	9 (26%)	15 (44%)	34
1950	25 (58%)	6 (14%)	12 (28%)	43
1990	15 (65%)	0 (0%)	8 (35%)	23

Criminal Trial Stories as Proportion of Total Front-Page Stories (Jan-Mar)			
	Total Stories Per Page	Criminal Trial Stories Per Page	Trial Stories as % of Total Stories
1910	18	0.39	2.10%
1950	12	0.48	4.00%
1990	9	0.26	2.84%

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Los Angeles Times

Breakdown of Criminal Trial Stories by Category (Jan-Mar)				
	Political	Economic/ Regulatory	Other	Total
1910	9 (25%)	10 (28%)	17 (47%)	36
1950	19 (43%)	6 (14%)	19 (43%)	44
1990	26 (65%)	0 (0%)	14 (35%)	40

Criminal Trial Stories as Proportion of Total Front-Page Stories (Jan-Mar)			
	Total Stories Per Page	Criminal Trial Stories Per Page	Trial Stories as % of Total Stories
1910	9	0.40	4.44%
1950	16	0.49	3.10%
1990	7	0.44	6.35%

Atlanta Constitution

Breakdown of Criminal Trial Stories by Category (Jan-Mar)				
	Political	Economic/ Regulatory	Other	Total
1910	13 (28%)	8 (17%)	26 (55%)	47
1950	13 (20%)	6 (9%)	46 (71%)	65
1990	19 (58%)	0 (0%)	14 (42%)	33

Criminal Trial Stories as Proportion of Total Front-Page Stories (Jan-Mar)			
	Total Stories Per Page	Criminal Trial Stories Per Page	Trial Stories as % of Total Stories
1910	13	0.57	4.02%
1950	12	0.72	6.02%
1990	7	0.37	5.24%