
Grace “Billy” Brown.⁴ Gillette was born in Montana, but had spent much of his adolescence traveling – to Washington, Oregon, Wyoming, California, and Hawaii. With the assistance of a wealthy relative, he enrolled at the Oberlin Preparatory School but left in 1903 after only about two years. Gillette then worked at various jobs, until 1905, when his uncle, Noah H. Gillette, gave him a job at the Gillette Skirt Factory in Cortland.

As a member of one of Cortland’s wealthier families, Gillette had entrée to the upper levels of local society, but he also was having an affair with Brown, a farmer’s daughter from South Otselic, N.Y., who was employed at the skirt factory. His regular clandestine, nocturnal visits to her lodgings had predictable results. By July 1906, Brown was pregnant and pressuring Gillette to marry her. In an apparent effort to resolve their situation, the couple took a trip to the Adirondacks, arriving at Big Moose Lake on July 11, 1906. Gillette rented a rowboat, and during their meander around the lake, Grace Brown ended up in the water. She did not resurface. The next day, the overturned boat was spotted floating near the shore and a rescue team subsequently located Brown’s body on the lake bottom.

Meanwhile, instead of seeking help, Gillette walked several miles through the woods, eventually arriving at a hotel in Inlet, N.Y., where he took a room. When confronted there by Herkimer County authorities a few days later, Gillette claimed that the drowning was an accident. Finding Gillette’s actions both before and after Brown’s death to be highly suspicious, and in possession of letters exchanged by the couple, Herkimer County District Attorney George W. Ward had him arrested and held at the county jail. Gillette’s subsequent trial, which took place during late November and early December of 1906 fascinated the public, drew intense media attention, and later inspired the Theodore Dreiser novel *An American Tragedy*.

The Judge

Justice Irving R. Devendorf, who presided over the Gillette trial, was a newcomer to the state supreme court bench. He was elected in November 1905, having been selected as a dark horse compromise Republican candidate for justice in a protracted convention battle that lasted 145 ballots.⁵ Devendorf may have been new to the supreme court, but he was a well-known figure in Herkimer County. He previously had served as district attorney and county judge, which had involved him in several notable cases, including homicides. In 1891, he successfully prosecuted Frank Swackhamer of Dolgeville, who was charged with manslaughter for the fatal dinner-table stabbing of his inebriated brother.⁶ Ten years later, Devendorf, as county judge, presided over the 1901 trial of a Little Falls saloonkeeper John McClelland, who had shocked local sensibilities by abducting a young woman for “immoral purposes.”⁷ Devendorf also presided over

the 1906 manslaughter trial of David Edwards, who was convicted of causing the death of a newborn child, whose body had been found buried in a woodshed.⁸

One of Devendorf’s final cases as county judge, which received particularly thorough coverage in the local press, was the 1906 murder trial of Vincenzo “Jim” Collangelo of Rome, N.Y. The defendant, a 19-year-old former barber and hotel employee, was accused of fatally stabbing a young woman of dubious reputation during a night of drinking, a crime initially described in the press as “heinous” and “disgusting.”⁹ Articles on Collangelo’s trial appeared regularly in the Utica and Rome newspapers from January 31 until February 7, 1906, when the defendant was found guilty of manslaughter and sentenced to 13 years, five months, in prison.¹⁰

The Trial

Until the Gillette case, Herkimer County murders had aroused only local interest. The one exception was that of farm wife Roxalana Druse, who in 1884 was convicted and hanged for the murder of her allegedly shiftless, abusive husband. The murder’s gruesome facts – Druse had dismembered the body, burned the pieces in the stove, and then threw what was left into a swamp – and the possibility that a woman might be hanged, brought national attention. However, the public interest and media frenzy over the Gillette trial far exceeded interest in the Druse case. The trial of a young man who had allegedly murdered his pregnant lover out on a remote mountain lake brought large numbers of reporters and spectators to Herkimer. They packed the small village during the trial, causing prices to reach what was described as “World’s Fair” levels, forcing hotels to serve meals in shifts, and compelling some visitors to sleep in chairs.¹¹ The Gillette trial presented the hordes of reporters with plenty of good material, some of which was provided by District Attorney Ward, who had referred to Gillette as a “degenerate” soon after the arrest.¹² The DA’s dramatic reading of Grace Brown’s pitiable love letters (obtained during a warrantless search of Gillette’s room) reduced many in the courtroom to tears. When Gillette testified, Ward’s cross-examination was so aggressive that one reporter described his manner as “brutish.”¹³ Finally, there was his scathing summation, in which he described the defendant as “a wolf with raving fangs” and made an unsubstantiated claim that Gillette had raped Grace Brown.¹⁴

The trial included the appearance in the courtroom of the actual boat rented by Gillette on the fatal day, with some of the victim’s hair still caught on a cleat; the display of clothing from the trunk Grace Brown took on her final trip; and the introduction into evidence of a bottle that contained the dead girl’s preserved three-month-old fetus. The press also published stories about Grace Brown’s weeping family who were present at the trial, the daily crush of unruly spectators fighting to gain access to the courtroom, and defense counsel Albert M. Mills’s

charge that the physicians who had examined the dead girl's body had conspired against his client.¹⁵

These events, however, did not provide the press with enough exciting copy, so in addition to inadvertent inaccuracies and trivia, there were misleading headlines, and so-called "dope tales," which contained exaggerations, unsubstantiated rumors, and outright fabrications. For example, the unremarkable testimony of Harriet Benedict, a socially prominent young woman from Cortland who was acquainted with the defendant, had been predicted to be the key moment in which Gillette would be saved by the woman he loved.¹⁶ Other false reports included that Gillette had both attempted suicide and confessed,¹⁷ that a package of poison had once been sent to Grace Brown,¹⁸ and that angry Herkimer-area citizens planned to lynch Gillette.

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Reports about a possible lynching appeared after Ward's reading of Brown's love letters to Gillette. On November 20, the *Syracuse Herald* claimed, "Threats of lynching were heard everywhere . . ." ¹⁹ Two days later, an article in the same paper stated: "There would be short shrift for Chester Gillette if the citizens of Herkimer County doubted that the law will deal with him according to what they believe to be his just desserts."²⁰ Another article reported that a group of three men, believed to be Adirondack woodsmen, had attempted to enter the Herkimer jail to "take the law into their own hands and to make quick work of the case of Chester Gillette."²¹ A week later, there were reports that Mrs. Margaret Hubbard, the owner of a Herkimer hotel, had offered the prison barber \$1,000 to cut Gillette's throat.²²

By December 3, reports about lynching reached their peak. There were stories claiming that the Herkimer County sheriff had received letters from Amsterdam and Watertown threatening Gillette with lynching²³ describing Herkimer as "little more than an armed camp,"²⁴ and saying that detectives and officers had been brought in from Utica and other nearby towns and a company of militia was ready to be rushed to the courthouse if needed. That same day, another report stated that although nobody mentioned lynching openly, it was said with "uncommon emphasis" that there wouldn't be a second trial.²⁵

The most sensational coverage, however, was provided by the big New York City "yellow press" dailies controlled by Joseph Pulitzer and William Randolph Hearst. While their coverage of the case was not all Gillette, all the time,²⁶ daily articles, often accompanied by photos or drawings, were frequently on page one, and

if not, were prominently featured on an interior page. As the trial drew to a close, these papers heightened the drama with hyperbolic headlines about threatening mobs. While other papers had discussed the possibility of a lynching, the big New York City dailies' articles on this topic pulled out all the stops. Hearst's *Evening Journal* ran the screaming headline: *ORGANIZATION FORMED TO LYNCH GILLETTE!* Pulitzer's *Evening World* provided its readers with a full-page headline proclaiming, *GILLETTE IS THREATENED BY MOB AS COUNSEL PLEADS FOR HIS ACQUITTAL.*

Local Reaction

Residents of Herkimer and nearby areas reacted to out-of-town newspaper coverage with anger and derision. The *Utica Herald-Dispatch* reported that Gillette's jailers

had laughed at the story that he had attempted suicide.²⁷ The late-November reports of possible lynch mobs were met with a firm denial by Sheriff J.H. Richards, who stated flatly, "Lynchings do not take place in Herkimer County."²⁸ The early December reports that people were organizing to lynch Gillette were mocked by an article suggesting that the New York Central Railroad should have scheduled special trains for the lynch mobs.²⁹ After the trial ended, an article in the *Utica Saturday Globe*, which was accompanied by a drawing of a mob of rag-tag, would-be lynchers marching on Herkimer, claimed that the articles exposed the "rotteness and unreliability of metropolitan journalism," and maintained that the "lynchers" were hired by the reporters themselves.³⁰ As for the Masterson column, a Syracuse newspaper commented: "It is a shame that such things should be said about Herkimer county and its people and there ought to be a law which would reach the publishers of a paper which would print an article of such character . . . and if it doesn't make your blood boil with righteous indignation you are not a loyal citizen of Herkimer County."³¹

The coverage also displeased the chief participants. Before the trial had even started defense counsel Mills complained that many newspaper articles were "a pack of lies."³² After its close, DA Ward stated that "the slush, gush, and luridity sent out from Herkimer by newspaper reporters, mostly those of the metropolitan papers, were disgusting and absurd . . ." ³³ Justice Irving Devendorf made similar comments, saying that "some of the stories sent out of Herkimer during the Gillette trial were outrageous to public decency. . . . If the people who read newspapers demand such stories, why don't they write them without any pretence of their being true? Why don't

they have the President assassinated every day?"³⁴ Even Gillette was displeased, complaining that the newspaper stories made him appear to be heartless.³⁵

Masterson Weighs In

The lurid headlines appear to have been taken at face value by Bat Masterson. His column, calling the Gillette trial a travesty of justice and referring to Herkimer County residents as bushmen, appeared after the trial's conclusion. The column stated: "Besides being a flagrant travesty on justice, [the trial] was an inexcusable insult to the intelligence and civilization of the State of New York."³⁶ Masterson

went on to say that there was nothing to substantiate the allegations made against Gillette, but that what the prosecution lacked in evidence was more than made up for by the angry mob that surrounded the courthouse every day. The mob "not only declared its purpose to lynch Gillette if the jury failed to convict him of murder in the first degree, but it went so far as to send word to the jury that it would meet a similar fate if it did not return a verdict that would send the defendant to the electric chair."³⁷ Masterson concluded by saying that Gillette's guilt or innocence should have been "proven by clear and competent testimony and not by the demonstration of an infuriated mob who set law and order at defiance by its lawless conduct."³⁸ This was a turning point.

Indictment of the Press

It was the Masterson column that turned talk into action. For such an article to appear after the sensational coverage of the Gillette trial seemed to finally be at an end was just too much.

After the close of the Gillette trial, reports circulated that charges might be brought against some of the newspapers that had published false stories.³⁹ When asked about this, Devendorf responded, "I have an idea that some action will be taken. . . . I think it is high time that some of these newspaper men were landed in jail."⁴⁰ The grand jury promptly returned a sealed indictment, stating that there had been no mobs or threats to lynch Gillette, and charged Masterson, *Morning Telegraph* editor Henry N. Cary,⁴¹ and the paper's publisher, William E. Lewis,⁴² with criminal contempt of court for publishing a "false or grossly inaccurate" report of the Gillette proceedings. Justice Devendorf commented: "We hope to make this a lesson. . . . I believe that the height of yellow journalism



is reached in the present instance and measures strict enough should be taken so as to insure no more it . . ."⁴³

Public and press reaction to the indictments varied. Chancellor J. R. Day of Syracuse University supported Devendorf, telling students that he was glad that Masterson and his associates were being prosecuted and that it was time for papers to start publishing honest news.⁴⁴ An editorial in a Duluth, Minnesota, paper stated: "The natural sympathy of a newspaper man is of course with his craft But we can not sympathize with any newspaper that deliberately sets out to defeat the ends of justice, or to bring contempt upon the constituted legal authorities."⁴⁵

Not every commentator supported Devendorf. An Ohio paper expressed disapproval of the indictments and speculated on the fate of "others who did not properly 'kow tow' to the upstate justice and the 'farmer' district attorney"⁴⁶ Also taking a dim view was a *Brooklyn Daily Eagle* editorial that characterized the legal proceedings as "anomalous and absurd" and maintained that "Mr. Ward's campaign of indictment should stop right where it is. It has already gone too far."⁴⁷ A humorous take on the case was provided by a *Syracuse Herald* editorial, which suggested that "[i]n the good old days the man who attempted to arrest 'Bat' Masterson for criminal libel might as well have prepared himself for exhibit in a Coroner's jury called to sit on a case of sudden and violent death."⁴⁸

After the indictment was returned by the grand jury, Deputy Sheriff Granville S. Ingraham was dispatched to New York City, armed with a bench warrant signed by Ward. After arriving in New York, Ingraham, along with New York City Detective Sergeant Chambiss, went to the *Morning Telegraph* offices and arrested Masterson and Cary. Lewis, who was ill at home, was telephoned to come

to the office and, after he arrived, was also arrested. The three men were then hauled before John Goff, Recorder of the Court of General Sessions.⁴⁹ Bail was set at \$500, and the cash was produced by the newspapermen's attorney, McDonald DeWitt, but District Attorney William Travers Jerome demanded a real estate bond. Fortunately for Masterson and his colleagues, one Henry G. Bicknell of Brooklyn gave his house as security, meaning that the defendants escaped spending the night in the Tombs.⁵⁰

Masterson's reaction to the indictment was to say, "I always expected to get into trouble when I went into this journalism business."⁵¹ Noting the dangers that he had experienced in the West, Masterson said that it was a "funny trick of fate"⁵² that he had now been arrested for writing an article in the paper. Lewis's comments emphasized the legal issues presented by the case, saying that the article in question had been published five days after Gillette was convicted. He stated: "If it is contempt of court to print such an article after a trial is ended, when it can have no influence on the jury, I want to know it. . . . We propose making a test case of this and settling the matter once and for all."⁵³ An article in the *Morning Telegraph* reiterated the defendants' intent to make the indictments a test case, adding that the paper had given scant coverage to the Gillette trial, and claiming that Masterson, who was now being charged with criminal contempt, had once risked his life as a peace officer to uphold the law and the dignity of the courts.⁵⁴

The Statute

The statute whose meaning Lewis claimed that he planned to ascertain was a provision of the Code of Civil Procedure of 1877, which was originally enacted as part of the Revised Statutes of 1829.⁵⁵ It replaced the old common-law contempts, and according to the Revisers, was intended "to define and limit undefined powers wherever it was possible, as well for the information and protection of the citizen . . ."⁵⁶ Like the virtually identical section in the current Judiciary Law,⁵⁷ it stated that it was a contempt to publish "a false, or grossly inaccurate report" of a court's proceedings, and added, "no court can punish as a contempt, the publication of true, full and fair reports of any trial, arguments, proceedings, or decision had in such court."⁵⁸ Not specifically addressed were articles like Masterson's, which were published after the conclusion of a trial.

Judicial Precedent

Probably the first judge to invoke the contempt statute against a newspaper was Justice Florence McCarthy, who was angered by a humorous *New York Daily Times* article, published in February 1855, titled "The Marine Court – What Was Not Done There." It claimed that when the court opened, none of the justices, including McCarthy, or any of the witnesses, were present. McCarthy declared this to be "maliciously untrue" and instituted contempt

proceedings against the paper's editor and publisher for publishing a false or grossly inaccurate account of his court's proceedings. After a hearing in which one of the defense attorneys invoked freedom of the press, while another warned McCarthy of possible impeachment proceedings, court was adjourned and the case was never taken up again.⁵⁹

Another judge so offended by an article that he charged a publisher with criminal contempt was Justice George G. Barnard of the state supreme court.⁶⁰ He took offense when an editorial in Horace Greeley's *New York Tribune* claimed that his assurance to a juror at the start of a murder trial that it would not involve the death penalty indicated that he was "ignorant of his duty and his solemn responsibilities."⁶¹ To the disappointment of courtroom spectators, the much-awaited confrontation between the Tammany Hall judge and the leading Republican publisher, abolitionist, and reformer came to an abrupt end when Greeley appeared in court and stated that the editorial was based on criticism published in another paper, and Barnard then declared himself satisfied with this explanation.⁶²

A case involving criminal contempt proceedings for the publication of a false or grossly inaccurate misleading publication finally reached the Court of Appeals in 1895. Once again, the case did not involve an article published after the completion of a trial. Instead, the publishers of the *Albany Morning Express* had been found in contempt for an editorial denouncing a county judge named Jacob H. Clute for his choice of lawyers to defend men who had been arrested for attempting to vote illegally. It said that the judge's choices had "added to his unsavory notoriety" and went on to denounce some of his prior decisions.⁶³ The General Term had upheld the finding of contempt, but the Court of Appeals reversed, stating: "These accusations and denunciations may be libelous, but they were not within the statute . . ."⁶⁴

The Trial Begins and Ends

Proceedings for the first case involving a post-trial publication began on Monday, December 17, when Masterson and Cary, accompanied by Clarence Shearn, the well-known attorney for publisher William Randolph Hearst, arrived in Herkimer. (Lewis was excused because of illness.) At the arraignment before Justice Devendorf, Shearn claimed that the article was not a report on a judicial proceeding but was instead commentary on a trial that had concluded. He argued that the contempt statute barred a paper from publishing false information only if it would influence a jury while a trial was in progress. He also declared that the case "will determine whether the public press is to remain a free press," adding, "We purpose to fight for a principle."⁶⁵

Despite the lack of any adverse New York precedent and the fact that contempt cases from other jurisdictions generally involved publications that impugned the

integrity of a court or an individual judge or had been published with the intent to influence a pending or current case,⁶⁶ when Shearn and his clients appeared in court at noon on Tuesday, the result was anti-climactic. Instead of taking a bold stand in defense of freedom of the press, Shearn presented an affidavit stating that Masterson was not in Herkimer for the trial and the *Morning Telegraph* had given scant coverage of the proceedings, unlike certain other New York papers that had published sensational stories about lynch mobs. Masterson added that,

papers.”⁷² Other suggestions for the trial-by-newspaper problem included having lawyers write the articles on criminal trials, better cooperation between the press and the bench and bar, and self-regulation by the newspapers.

Despite tough talk, the New York contempt statute was rarely utilized against the alleged excesses of the news media, and when it was, no publication was found guilty of criminal contempt. In 1909, a man named William S. Brewer, who was involved in a contentious divorce, caused to be published in several newspapers

The contempt statute barred a paper from publishing false information only if it would influence a jury while a trial was in progress.

since writing his column, he had done some investigation and learned that conditions in Herkimer were different from what he’d imagined. He regretted his article and never meant to hold the court up to contempt.

Curbing the Press?

Despite Devendorf’s tough talk after the Gillette trial – he had declared, “We hope to make this a lesson severe enough so that this faking business will cease hereafter, so far as court proceedings go”⁶⁷ – he accepted the defendants’ lack of intent to commit contempt as a mitigating circumstance. He then fined them \$50 each, an amount he regarded as nominal.⁶⁸ Cary paid the court clerk \$100 and the indictments against him and Masterson were dismissed, as well as the writs against them and Lewis. Immediately afterwards, Masterson explained that although he had intended no contempt, paying the fines seemed the easiest and simplest way of settling the matter. Once back in New York, he wrote a column in which he said, “Herkimer is not such a bad place after all . . . and there are worse people on the map than those in Herkimer.”⁶⁹

At the close of the Gillette trial, Devendorf had stated, “The Gillette case undoubtedly will result in legislation placing the public press of New York State under the control of the courts to a greater extent than it is at present.”⁷⁰ Three years earlier, Assemblyman Charles F. Bostwick had introduced a bill aimed at the excesses of the press, which would have amended the contempt statute to strike out the words “of a false or grossly inaccurate report of its proceedings,” and inserted “publication of any writing or picture during the pending of any civil or criminal action, special proceeding, or other judicial inquiry tending to prejudice or obstruct the course of justice.”⁷¹ Curbing the press was also on the mind of former president William Howard Taft when, at the 1915 New York State Constitutional Convention, he called for a change in the state constitution to allow for the enactment of laws that would “mitigate the evil of trial by news-

a letter that purported to be a true account of the ongoing court proceedings. The trial judge, Justice M. Warley Platzek, was not amused and found Brewer in criminal contempt, sentencing him to either a \$250 fine or 30 days in the Ludlow Street jail. When the case reached the First Department, the court determined that a reexamination of the letter showed that it did not purport to be a complete account of the trial proceedings and therefore was not a false or grossly inaccurate account of the proceedings.⁷³

Twenty-five years later, the Fourth Department held that a radio broadcast charging a judge with the gross mishandling of a case was not a “publication” within the meaning of the statute.⁷⁴ Finally, in 1963, in the last reported case involving the contempt statute, the Court of Appeals reversed the Third Department, holding that an article in the *Syracuse Post-Standard* that misstated the name of a police officer mentioned in trial testimony could only be criminal contempt if the article was false and grossly misleading, instead of being “merely erroneous in some minor particular . . .”⁷⁵

Chester Gillette, whose trial led to the unlikely scenario of Bat Masterson being charged with contempt of court, was executed in Auburn Prison on March 8, 1908, after the Court of Appeals upheld his conviction.⁷⁶ As for Justice Devendorf, during his long judicial career, he presided at several other murder trials, including two in which the defendant was sentenced to death and subsequently executed.⁷⁷ As for the Gillette trial, he professed not to understand why there had been such widespread interest. He was presented with a copy of *An American Tragedy* but reportedly never looked inside it; he was in New York during the staging of the play based on the novel but did not attend it.⁷⁸ Devendorf retired from the bench on January 1, 1927, and died in 1932 at age 75.

Bat Masterson’s next appearance in court came in May 1913, after he sued a newspaper publisher for libel because it ran an article claiming he had gained his reputation in the West by shooting drunken Mexicans

and Indians in the back.⁷⁹ During the trial, the fact that Masterson had been fined \$50 in Herkimer was briefly mentioned.⁸⁰ Although the defendant publisher was represented by Benjamin Cardozo, Masterson won a jury award of \$3,500, which was reduced to \$1,000 by the Appellate Division.⁸¹ Masterson continued writing his column until October 25, 1921, when he died at his desk. He is buried in Woodlawn Cemetery in the Bronx. ■

1. Hard copy, microform or digital copies of the issue of the *Morning Telegraph* in which the column appeared are apparently not available. However, the full text of the column was reprinted in the indictment against Masterson and his *Morning Telegraph* colleagues and was published in an upstate newspaper under the title of *Three Indicted for Criminal Contempt* (Dec. 13, 1906). A clipping of the article is held by the Herkimer County Historical Society.
2. For a full biography of Masterson, see Robert K. DeArment, *Bat Masterson: The Man and the Legend* (1979); see also Robert K. DeArment, *Broadway Bat: Gunfighter in Gotham* (2005) (focusing on Masterson's life in New York City).
3. William Barclay Masterson, *Take a Run in Broadway and Watch a Mob Gather*, N.Y. Morning Telegraph, Apr. 30, 1905, at 5 (complaining about "hoodlumism" in public places); William Barclay Masterson, *Woman Suffrage Law Is a Disgrace to Colorado*, N.Y. Morning Telegraph, Sept. 29, 1905, at 5 (claiming that women's suffrage had led to increased election fraud); William Barclay Masterson, *Will Police Tell the Truth to Jerome?*, N.Y. Morning Telegraph, Mar. 12, 1906, at 5 (discussing police corruption).
4. For a thorough account of the Gillette case, see Craig Brandon, *Murder in the Adirondacks: 'An American Tragedy' Revisited* (1986).
5. Irving R. Devendorf, *Watertown Herald*, Oct. 14, 1895, at 1.
6. See *Swackhamer's Sentence*, Little Falls Evening Times, Jan. 17, 1891 (Devendorf sentenced Swackhamer to the state reformatory rather than prison).
7. See *The Abduction Case*, Utica Sunday J., June 2, 1901, at 1. McClelland was convicted and Devendorf sentenced him to four years in Auburn Prison. See *McClelland to Prison*, Utica Observer, June 13, 1901, at 6.
8. See *Edwards Case Still on Trial*, Utica Herald-Dispatch, Jan. 9, 1903, at 5; *Brought in a Verdict of Guilty*, Utica Herald-Dispatch, Jan. 10, 1903, at 5.
9. *The Murder Trial Opened*, Utica Herald-Dispatch, Jan. 31, 1906, at 2.
10. See *The Murder Trial Opens*, Rome Daily Sentinel, Jan. 31, 1906, at 2; *Much Delay in Securing Jury*, Utica Herald-Dispatch, Feb. 1, 1906; *Eyewitnesses to Fatal Brawl*, Utica-Herald Dispatch, Feb. 2, 1906; *Quizzing Murder Case Witnesses*, Utica J., Feb. 4, 1906; *Will Go to Jury Tonight*, Rome Daily Sentinel, Feb. 6, 1906, at 2; *Italian Convicted of Manslaughter*, Utica Herald-Dispatch, Feb. 7, 1906.
11. *Gillette's Fate May Be Decided by the Girl He Loves*, N.Y. Evening World, Nov. 14, 1906, at 2.
12. See *Chester Gillette Arrested for the Murder of Pretty Grace Brown*, Utica Sunday Trib., July 13, 1906, at 1.
13. Viola Rogers, *She Got Up and Jumped Into the Water, Says Gillette*, N.Y. American, Nov. 29, at 4.
14. Appellant's brief, *People v. Gillette*, 83 N.Y. 680 (N.Y. 1908), vol. 3, fol. 2348, <http://murderpedia.org>; see also Thomas G. Smith, *People v. Gillette: The Trial of the 20th Century Lives on in the 21st*, N.Y. St. Bar Ass'n J., Aug. 2006, at 15 (discussing whether the conduct of the *Gillette* trial would meet modern standards of justice).
15. See *Sensation at Trial; Deception Is Charged*, N.Y. Trib., Dec. 4, 1906, at 4.
16. See *Gillette's Fate May Be Decided by Story of the Girl He Loves*, *supra* note 11, at 2.
17. See, e.g., Charles Sommerville, *Guard Gillette Against Suicide*, N.Y. Evening J., Dec. 1, 1906, at 1; *Gillette Had Planned Suicide by Gas*, Syracuse J., Dec. 5, 1906, at 1; see, e.g., Viola Rodgers, "Yes, I Killed Her, I Hit Her Twice," *Gillette's Reported Confession*, N.Y. American, Dec. 6, 1906, at 1; "I Struck Grace Brown in Water," *Gillette Admits*, N.Y. Evening World, Dec. 6, 1906, at 3.
18. *Package of Poison Was Sent to Grace Brown*, Syracuse J., Nov. 18, 1906, at 2.
19. Edith Cornwell, *Lynching Is Threatened*, Syracuse Herald, Nov. 20, 1906, at 1.
20. Mrs. Carey Tells of Awful Shriek, Syracuse Herald, Nov. 22, 1906, at 8.

21. *Gillette Asked About Tragedy*, Syracuse Herald, Nov. 22, 1906, at 1; see also *Woodsmen Sought Gillette's Life*, Kingston Daily Freeman, Nov. 22, 1906, at 6.
22. See, e.g., *Blows Killed Grace*, DeRuyter Gleaner, Nov. 29, 1906, at 3. Mrs. Hubbard subsequently declared the story to be "a fake and falsehood from beginning to end." *A Denial* (undated clipping from an unidentified newspaper held by the Herkimer County Historical Society).
23. *Counsel Summing Up To-day*, Oswego Daily Times, Dec. 3, 1906, at 1.
24. *Verdict in Gillette Case Expected at 7 O'Clock*, Niagara Falls Gaz., Dec. 4, 1906, at 1.
25. *Gillette Faces Full Fire of State's Summing Up*, Oswego Daily Times, Dec. 4, 1906, at 1.
26. Another trial that drew heavy attention in the New York City press was that of famed tenor Enrico Caruso for allegedly harassing a woman at the Central Park Zoo. For front-page articles on the case, see *Caruso Goes on Stand; Swears He's Not Guilty*, N.Y. Evening World, Nov. 21, 1906, at 1; *Caruso Found Guilty and Fined \$10*, N.Y. Evening World, Nov. 23, 1906, at 1; *Hannah Graham, Caruso Witness Tells Her Story*, N.Y. Evening World, Nov. 28, 1906, 1, at 1.
27. *Gillette Hears from Mother*, Utica Herald Dispatch, Dec. 5, 1906, at 2.
28. *Story of Lynching Absurd, Says Sheriff*, Utica Herald-Dispatch, Nov. 21, 1906, at 1.
29. *Yellowness*, Amsterdam Evening Recorder, Dec. 5, 1906, at 4.
30. *The Modern Munchausens*, Utica Saturday Globe, Dec. 8?, 1906, [n.p.].
31. *Travesty on Justice, reprinted in Yarn That Trial Was. . . . Arouses . . .*, Syracuse J., Dec. 12, 1906, at 1.
32. *In Doubt as to Fair Trial*, Utica Herald-Dispatch, Nov. 11, 1906, at 6.
33. See *Newspaper Punishment*, Auburn Citizen, Dec. 11, 1906.
34. *Court Gets After Newspaper*, N.Y. Sun, Dec. 13, 1906, at 3.
35. Brandon, *supra* note 4, at 250.
36. William Barclay Masterson, *New Style of Lynch Law in Northern New York. Mob Compels Jury to Do Its Work in Gillette Case. Conviction Forced by Savage Threats of Herkimer County Bushmen*, N.Y. Morning Telegraph, Dec. 9, 1906, reprinted in *Three Indicted for Criminal Contempt* (Dec. 13, 1906).
37. *Id.*
38. *Id.*
39. See *Newspaper Punishment*, *supra* note 36.
40. *Id.*
41. Cary was a veteran newspaper man who during his career held positions at many different newspapers. He died in 1922.
42. Lewis, who died in 1924, was a lawyer turned newspaperman. Like Cary, he held positions at several big-city newspapers.
43. *Against "Yellow" Journalism*, Rome Daily Sentinel, Dec. 12, 1906, at 1.
44. *Three Indicted for Contempt*, *supra* note 1 (quoting an article in the Syracuse Post-Standard).
45. *Three Charged With Contempt of Court*, Duluth News Trib., Dec. 13, 1906, at 3.
46. *Indict Scribes: Devendorf Vents Spleen*, Stark County Democrat, Dec. 14, 1906, at 1.
47. *A Judge and the Newspapers*, Brooklyn Daily Eagle, Dec. 13, 1906, at 4.
48. Untitled editorial, Syracuse Herald, Dec. 13, 1906, at 4.
49. Goff, who was once described as a "the cruelest, most sadistic judge we have had in New York in this century," is best known for his biased conduct while serving as the judge at the first trial of Lt. Charles Becker for the murder of gambler Herman Rosenthal.
50. *Get "Bat" Masterson: Gun Fighter Arrested for Contempt of Court*, Wash. Herald, Dec. 13, 1906, at 9.
51. *Id.*
52. *Court Gets After Newspaper*, N.Y. Sun, Dec. 13, 1906, at 3.
53. "Bat Masterson" Is Not Worrying Much, Syracuse J., Dec. 15, 1906, at 1.
54. *Id.*
55. 2 N.Y. Rev. Stat., pt. 3, ch. 3, tit. 2, § 10(6) (1829).
56. *Extracts from the Original Reports of the Revisers*, 5 Statutes at Large of the State of New York 426-27 (John W. Edmonds ed., 1863). The Revisers were reportedly influenced by noted New York jurist Edward Livingston's proposed code for Louisiana whose contempt section included a provision stat-

ing that it did not apply to truthful and accurate accounts of judicial proceedings. See Edward Livingston, *A Code of Crimes and Punishments* § 151, in 2 *The Complete Works of Edward Livingston on Criminal Jurisprudence* 47 (1873). For a discussion of the influence of Livingston on the Revisers, see Walter Nelles & Carol Weiss King, *Contempt by Publication in the United States to the Federal Statute*, 28 Colum. L. Rev. 401, 418-20 (1928).

57. See N.Y. Judiciary Law § 750(6) (McKinney 2003). This statute has been part of the Consolidated Laws since they were enacted in 1909.

58. Courts § 8, 1 Rev. Stats. & Codes & Gen. Laws of the State of N.Y. (Clarence Birdseye ed., Baker, Voorhis & Co. 1901).

59. See *The Daily Times Still in Contempt*, N.Y. Daily Times, Mar. 12, 1855, at 3; Lyman Abbott, *Reminiscences* 83–85 (1915).

60. Barnard is best known for being one of the judges who was impeached, convicted, and removed from office as a result of the same investigation into judicial corruption that led to the resignation of Justice Albert Cardozo, the father of Benjamin Cardozo.

61. *A Judicial Outrage*, N.Y. Trib., Apr. 14, 1864, at 4; see also *The Barnard Greeley Case*, Brooklyn Daily Eagle, Apr. 28, 1864, at 3.

62. *The Horace Greeley Case*, N.Y. Times, Apr. 29, 1864, at 1. Before facing Barnard, Greeley had unsuccessfully attempted to obtain a writ of prohibition. See *People ex rel. Greeley v. Court of Oyer & Terminer* (N.Y. Sup. Ct. N.Y. Co. 1864).

63. *People ex rel. Barnes v. Court of Sessions of Albany Cnty.*, 41 N.E. 700, 700–01 (N.Y. 1895), *rev'g* 31 N.Y.S. 373 (N.Y. Sup. Ct. G.T. 3d Dep't 1894).

64. *Id.* at 701.

65. *Accused of Contempt: H.N. Cary and W.B. Masterson in Court*, Dec. 17, 1906 (clipping on file at the Herkimer County Historical Society).

66. An early New York case of this type was *People v. Freer*, 1 Caines 518 (N.Y. Sup. Ct. 1803), in which leading New York jurist Chancellor James Kent fined the publisher of the *Utica Gazette* \$10 for publishing an article that attempted to “prejudice and influence the public mind against the court and to intimidate and influence the court on the motion pending before it” *Id.* Perhaps the best known early federal case occurred in 1825 when Judge James H. Peck found the losing party in a recently decided case to be in contempt after he published an article that criticized Peck’s decision. Peck was subsequently impeached for his actions and narrowly escaped conviction. For an annotated list of cases from 1831–1927 involving contempt by publication, see Wallis Nelles & Carol Weiss King, *Contempt by Publication in the United States Since the Federal Contempt Statute*, 28 Colum. L. Rev. 525, 554–62 (1928). See also Samuel Merrill, *Newspaper Libel: A Handbook for the Press* (Ticknor & Co. 1888) (discussing 19-century contempt cases involving newspapers and noting that most of them involved attempts to influence ongoing proceedings).

67. *Against Yellow Journalism*, *supra* note 43.

68. *Pleaded Guilty and Were Fined*, *Utica Herald-Dispatch*, Dec. 18, 1906. The maximum penalty was a \$250 fine and/or 30 days in jail.

69. *Bat Masterson Again*, Dec. 24, 1906 (press clipping held at the Herkimer County Historical Society).

70. *Gillette’s Removal Delayed*, Dec. 11, 1906 (press clipping held at the Herkimer County Historical Society).

71. *To Curb Sensational Press*, N.Y. Times, Feb. 26, 1903, at 7.

72. Henry W. Taft, *Law Reform: Papers and Addresses by a Practicing Lawyer* 152 (1926).

73. *People ex rel. Brewer v. Platzek*, 117 N.Y.S. 852, 854 (1st Dep’t 1909); see also *Trick on Wife Is Contempt of Court*, N.Y. Evening World, June 11, 1908, at 2.

74. *People v. Albertson*, 275 N.Y.S. 361, 364 (4th Dep’t 1934).

75. *People v. Post-Standard Co.*, 195 N.E.2d 48, 52 (N.Y. 1963); see also ANPA Publishers Will Aid *Syracuse Newspaper*, *Amsterdam Evening Recorder*, June 7, 1963, at 7. The case involved a section of the Penal Law that made publishing a false or grossly inaccurate account of judicial proceedings a misdemeanor. The court held that conviction under the Penal Law required the intent to publish a false and grossly inaccurate opinion. In its opinion, the court referred to the criminal contempt statute in the Judiciary Law.

76. See *People v. Gillette*, 83 N.Y. 680 (N.Y. 1908).

77. See *People v. Del Vermo*, 85 N.E. 690 (N.Y. 1908) (involving a railroad section hand who fatally stabbed a companion during an argument in Rome, N.Y.); *People v. Millstein*, 114 N.E. 690 (N.Y. 1916) (the defendant was a burglar who shot and killed a Utica policeman while trying to elude capture). Another locally publicized Devendorf murder trial was that of Jennie Werner, a young woman who was acquitted of killing her husband, a verdict that reportedly outraged many Herkimer County women. See *Jennie Werner Acquitted of Killing Husband: Jurors Hissed and Booed by Women as They Quit Town*, *Rome Daily Standard*, May 12, 1921, at 8; *Mrs. Warner Is Hysterical as Jury Frees Her*, *Syracuse Herald*, May 12, 1921, at 4.

78. *An American Tragedy Never Seen by Judge: Justice Devendorf Says He Tries to Forget Gillette Case*, *Oswego Palladium-Times*, June 19, 1928, at 7.

79. For an account of this trial, see William H. Manz, *Benjamin Cardozo Meets Old West Gunslinger Bat Masterson*, N.Y. St. Bar Ass’n J., July/Aug. 2004, at 10.

80. Record at 47, 50, *Masterson v. Commercial Advertiser Ass’n*, 160 A.D. 890 (1st Dep’t 1913).

81. See *Masterson v. Commercial Advertiser Ass’n*, 160 A.D. 890, 890 (1st Dep’t 1913).

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