

SPIRITUALISM AND CRIME¹

To most lawyers criminal law is a disagreeable subject, redeemed only by the possibility of fees for advising how to keep clear of its clutches. Spiritualism has been considered still worse, if not a form of insanity, at least, to borrow a favorite quotation from Vice Chancellor Giffard, "mischievous nonsense, well calculated, on the one hand to delude the vain, the weak, the foolish, and the superstitious; and, on the other, to assist the projects of the needy and of the adventurer."² Fortunately, however, spiritualism is now formidable only to those who have not investigated it. As a credential of its sincerity, belief in spiritualism comes down to us from the earliest times.³ Men have been punishing it as a form of magic from ancient days, often with torture, frequently with death.⁴ Still we are not rid of it by any means. Perhaps it would do no harm for those of us who find everything in human nature interesting, to examine the legal status of this occult practice, which has survived all the rest of our magical lore. We need not pass upon its merits.⁵ We are here interested in the belief only as it affects conduct, and has made its impress on the law.

We will consider first the theory of the subject and then the decided cases. From a theoretical point of view, the question what to do with spirit mediums is not simple. To begin with, it is quite a step to assume that what are called spiritualistic phenomena, such as apparitions, hauntings, second sight, informative dreams, premonitions, prophecies, lights, voices, rappings, clairvoyance and the like, never occur at all, since literature, especially sacred literature, is rather full of them, and one can hardly pick up a newspaper without seeing an account of one. Such phenomena occurring spontaneously are indeed sufficiently rare to be considered news. There are said to be over eight hundred

¹ For a discussion of the law of spiritualism on its civil side, see *Psychic Phenomena and the Law* (1921) 34 Harvard Law Rev. 625.

² *Lyon v. Home* (1868) L. R. 6 Eq. 655, 682.

³ A general reference may be made to Andrew Lang, *The Making of Religion* (1898); and Tylor, *Primitive Culture* (6th ed. 1920). See also 1 Vinogradoff, *Historical Jurisprudence* (1921) 183n., 206 (reincarnation), 226 (ancestor worship); H. N. Wright, *Primitive Law and the Belief in the Survival of Death* (1918) 34 Law Quart. Rev. 380-91.

⁴ *Exodus* 22:18, "Thou shalt not suffer a witch to live"; *Leviticus* 19:31; 20, 27. The witch of Endor evidently considered herself as under this ban. 1 *Samuel* 28:3-25. Roman Emperors imposed frightful punishments on sorcery. Cod. Jur. Civ. 9:18. Hammurabi had the good sense to punish the false accusation of sorcery with death. Code of Hammurabi § 2. See also *infra*, footnote 34. For other references see (1921) 34 Harvard Law Rev. 629n. 17.

⁵ For a critical and carefully considered statement of the evidence of survival, see *The Foundations of Spiritualism* (1920) by a recent president of the English Society for Psychical Research, W. Whartely Smith.

apparitions recorded in Gurney's *Phantasms of the Living*,⁶ a careful book. Of course, the question whether or not spirits have anything to do with the phenomena reported is another matter altogether.

The problem of life after death is more or less involved. Enough people believe that spirits are concerned to give their views a kind of religious standing and protection under the wise legal policy of refusing to condemn religious beliefs so long as no serious public mischief results from the acts of the believers. Belief in witchcraft used to have the best of standing, in the law and out of it,⁷ and doubtless things just as erroneous are now very generally accepted. Under all the circumstances, therefore, the law cannot very well take the dogmatic position that every phenomenon of the class called spiritualistic is a delusion. For example, automatic-writing, which is sometimes one of the most interesting of these phenomena, whether or not it has any connection with spirits, must be regarded as indubitably occurring and even as a practice rather widespread among amateurs.

On the other hand, it must be admitted that the possibilities of fraudulent simulation of such phenomena are almost unlimited. To take the case just mentioned of automatic-writing, the writer may produce whatever he pleases and claim it was automatic. Where the writing purports to occur in trance, the trance may be a sham. The phenomenon called direct-voice, if it occurs, must be rather difficult to simulate, but all admit it is rare.⁸ As for materialization, slate-writing, table-turning, the movement of physical objects without contact, spirit-photography, and the like, they can be done so as to deceive the very elect, and some well-qualified investigators during many years of research have never found a single case they considered genuine.⁹ Yet of course they could not declare dogmatically that there never was a genuine case. We do not know exactly what happened, for example, at Belshazzar's feast,¹⁰ but we may fairly assume that what occurred in the past was not different, at least in kind, from what occurs to-day. The fact is plain that very many so-called spirit mediums are arrant frauds and dupe people in the most shameless way. But even here it is evident that there are

⁶ Gurney, *Phantasms of the Living* (1886).

⁷ *Addington v. Wilson* (1854) 5 Ind. 137, 139. For a list of articles in legal periodicals relating to witchcraft, see an earlier article, *The Conjuror* (1921) 7 Virginia Law Rev. 370, 373. For a French case in 1920 where the defence of witchcraft on the part of the plaintiff was set up, see Dr. W. L. Sullivan, *A Case of Witchcraft in a Modern Court* (1921) 15 Journ. of the Amer. Soc. for Psychological Research 133. For witchcraft trials see 2 Howell, *State Trials* (1616) 1049; 4 *ibid.* (1645) 818; 6 *ibid.* (1682) 647; 8 *ibid.* (1682) 1018. See also 4. Bl Comm. *60.

⁸ An account of this alleged phenomenon, for those who are able to receive it, will be found in Vice-Admiral Osborne Moore, *The Voices* (1913). He writes as a spiritualist. In Appendix A he collects a long list of Bible references on the subject.

⁹ For a glowing account of the magnitude of these frauds, see E. H. Smith, *Crooks of Ghostland* (1920) 192 Saturday Eve. Post 14.

¹⁰ *Daniel* 5:5.

some mediums, mostly amateurs if you like, who are trustworthy, and yet produce communications, sometimes interesting, purporting to come from the dead. No well-informed person regards Mrs. Piper as a conscious fraud, while she has produced a great deal of automatic-writing which is very baffling indeed.

The business of taking money for services as a spirit medium has its distinctly evil side. Sitters insist on getting results whether or no, and mediums are evidently very suggestible. The fee is a temptation to produce spurious phenomena. It may be that some persons who really have a peculiar gift which works only occasionally, produce frauds the rest of the time. This is said to have been the case with Eusapia Palladino. A liberal allowance must be made also for hysteria and for unconscious fraud.¹¹ In view of the fact that conspicuous psychic phenomena are certainly rare, and cannot be produced to order—as to this investigators apparently agree—the system of paid public performances by mediums is deplorable. Here, however, we have to face another consideration. There are apparently great differences in mediumistic gifts. If there should be an honest medium, who really has the faculty of producing easily and freely on occasions, communications purporting to come from the dead, and people who are bereaved, or are concerned about the immortality of the soul (and who is not?), not having appreciably any such faculty themselves, want to employ his services, has the law any moral basis to forbid the exercise of his powers? Would it not be an unjustifiable interference with human liberty to forbid a genuine medium to make a living in this way? Take the case of a medium who gives herself up exclusively as a subject for scientific study for years, like Mrs. Piper for example, or “Eva C.,” Baron von Schrenk-Notzing’s patient, should she not be allowed to take pay for it? And if it is lawful to take money for it, should not the medium be allowed to advertise, and hold himself out to the public, which wishes to employ him? Suppose the medium is really giving the sitters back again material from their own minds which has passed below the level of consciousness. Is this an illegitimate experiment, assuming there is no deceit practiced on the part of the medium?

We need to bring the mediums into the light, not drive them back into the darkness, to carry on their pursuits. Would it be entirely desirable in the interests of science, religion or even amusement, to put an end altogether to the development of public mediums? Undoubtedly,

¹¹ This idea of unconscious fraud has great possibilities. For instance, when a man, like the late Wm. T. Stead, is his own medium and writes automatically his own messages, his subconscious mind may be giving him all the time nothing but his own thoughts, and the personation of the dead in the apparent communications may be all his own unconscious fraud. On this hypothesis it is necessary to endow the subconscious mind with all the accomplishments of the supposed spirits and to say with the Psalmist that all men are liars, at least in their subconscious minds. See especially Dr. Millais Culpin, *Spiritualism and the New Psychology* (Amer. ed. 1921) a positive and plausible book.

science would lose some good material. And if it were desirable, would it be possible to accomplish this result of suppressing mediums, in view of the experience of many rulers from King Saul down, who in one way or another have vigorously tried to stop them? Will our easy-going popular government succeed where such capable autocrats have failed? Did even the Holy Inquisition succeed? Behind spiritualism is the pathetic and majestic strength of bereaved affection. Human nature takes hold on immortality with an awful and august power; a faith that will live as long as the human heart itself. "We feel that we are greater than we know." So long as the production of spurious phenomena is punished, the law has gone about as far as it can wisely afford to go in the present state of our knowledge of the subject. Those who consider all spiritualistic phenomena to be fraudulent cannot object to such a rule. If in a criminal case a medium proves in his defence that there was no misrepresentation or fraud of any kind and that he acted in good faith, in fair play he ought not to be punished. Suppose, however, that frauds are produced in a state of hysteria, or even in a real trance. Since the abnormal state is voluntarily produced, it is suggested that it should not be any better defence than drunkenness would be.¹² Sometimes people deceive simply to attract attention to themselves, or in a spirit of mischief. Ought they to escape punishment on that account? Suppose, as is said to have been the case with D. D. Home, a medium makes no charge for his services. In a case of fraud, morally the matter of gain ought not to be material. Yet this is where the discrimination is made in case of obtaining money by false pretences. From another point of view, the best way to distinguish between the professional and the amateur medium is by the test of taking pay in one way or another. We apply this rule in our sports. For a practical rule it might be well to draw the line at pecuniary gain, even if it lets the practical joker escape. Suppose the accused claims to have had no control over the phenomena, as in the case of Abby Warner, who was brought before the magistrate in 1852 for disturbing divine worship with raps.¹³ At any rate it should be an offence for a conscious carrier of raps to stay in church after the raps begin. In the present state of human knowledge, to require a medium to prove, in order to make out his defence, that spirits in fact communicated with him, would practically be to convict him in advance. But it would be only fair to let him try to prove it, if he wanted to.

¹² This would be a helpful rule for hysteria, while, if there were real trance, possibly the probability of fraud would diminish, although this does not necessarily follow. A convenient general reference is 16 Corp. Jur. 104-11 discussing somnambulism, somnolentia, intoxication, narcotics, and hypnotism, of which hypnotism presents perhaps the nearest analogy. Indeed' the Italians treat the topics together. Lapponi, *Hypnotism and Spiritism* (Eng. tr. 1907); Ottolenghi, *La suggestione e le facoltà psichiche occulte in rapporto alla pratica legale e medico-forense* (1900).

¹³ A pamphlet account of this curious case, which resulted in an acquittal, will be found in the Library of Congress.

When we quit theory, however, and come to the decided cases, there is a painful lack of authority. In *Nurse v. State*¹⁴ the defendant, who was indicted for the statutory offence of swindling, represented that he worked with spirits, and for twenty dollars would disclose the hiding place of buried money. There had occurred, according to the testimony, from time to time, lights and raps in the vicinity. Money, forty-two dollars or more, was actually found in the course of the digging, but it was buried again by the defendant's advice, and later mysteriously disappeared, it was claimed, by his act. The court ruled that since the money was actually found as the defendant represented it would be, there could be no conviction for swindling. In *Dean v. Ross*¹⁵ in a civil action, it was ruled by the lower court that if a medium really received the message from the deceased person as she claimed and delivered the message in good faith, she was not guilty of any fraud. One is not surprised to learn that her testimony failed to convince the jury on this point. If proof could be made that the same message, or different parts of it, came through different mediums, who had no connection with each other, the probability of the good faith of each medium would be increased.

In 1441, Chief Justice "Hody tried and condemned Roger Bolingbroke, 'a gret and konnyng man in astronomye,' for attempting 'to consume the king's person by way of nygromancie.' The unfortunate scientist was sentenced to death and executed."¹⁶

The trial of Richard Hathaway¹⁷ in 1702, at the direction of Lord Chief Justice Holt, and Hathaway's conviction for a cheat and impostor, for pretending to have been bewitched by Sarah Morduck, went far to put an end to witchcraft trials in England. At this trial Elizabeth Willoughby testified that when she was a girl she had been bewitched, and while in this condition, said she.

"I flew over them all . . . one held me by one arm, another

¹⁴ (1910) 59 Tex. Cr. 354, 128 S. W. 906. The accused was lucky not to have come into the world too soon, or he might have died in an interesting way, as a sorcerer or a heretic.

¹⁵ (1901) 178 Mass. 397, 399, 60 N. E. 119.

¹⁶ John M. Zane, *The Five Ages of the Bench and Bar of England*, 1 *Select Essays in Anglo-American Legal History* (1907) 673. The whole unhappy history is quaintly told in the *English Chronicle* (Davies ed. 1866, 64 Camden Soc.) 57-60, along with the tragic fate of "the Wicche of Eye," who also perished on account of the fall of Eleanor, Duchess of Gloucester. While Bolingbroke went to the scaffold and the witch to the stake for fictitious crimes, Eleanor was clever enough to escape with a penance. The story is preserved in King Henry VI, Part 2. Bolingbroke's necromancy is in Act I, Scene 4. The King delivers sentence in Act II, Scene 3, which is, of course, legally impossible, while Eleanor's penance will be found in Act II, Scene 4. The characteristic doctrine of spiritualism is that the dead communicate with the living. Most of Shakespeare's spirits as he imagined them, were never human.

¹⁷ 14 Howell, *op. cit.* 639, 674; referred to in 2 Pike, *History of Crime in England* (1876) 289. This incident is taken from Thayer, *Legal Essays* (1908) 353. Cf. F. J. Lippitt, *Psychic Facts in Courts of Law* (1890) 24 *American Law Rev.* 1008.

by the other, and another behind, and I flew sheer over their heads.'

"Lord Holt—"Woman, can you produce any of these women that saw you fly?"

"Witness—"It was when I was a child; they are dead.'"

The significant thing is that the great judge did not deny the possibility of the marvel; he simply called for the proof. This attitude, we suggest, is the sensible one for the law to take toward spiritualistic "miracles." While we may be sure that the laws of nature have not been suspended, in our incomplete knowledge of the entire circumstances there may have been causes at work of which we are still ignorant.

The criminal cases about spiritualism are most easily found under "vagrancy," and this for a historical reason. The modern outburst of spiritualism, characterized by intelligent communications, dates from almost the middle of the nineteenth century.¹⁸ At that time in England, by successive ameliorating statutes nothing had been left of the witchcraft acts which, it was thought, would apply to a practicing spiritualist at least so long as he made no pretence of magical powers, stuck to his calling and refrained from such things as fortune-telling and finding lost articles.¹⁹ The Act against Rogues and Vagabonds was at any rate the one considered best available for use against fraudulent mediums.

The leading English case on the subject is *Monck v. Hilton*,²⁰

¹⁸ The Hydesville, N. Y., rappings of the Fox Sisters were in 1848, and the experiments of Alphonse Cahagnet in France began in 1845. Spence, *Encyclopaedia of Occultism* (1920)

¹⁹ For the history of sorcery in England, see 2 Pollock and Maitland, *History of English Law* (2d ed. 1899) 552-56. *Of Felony by Conjuraton, Witchcraft, Sorcery or Enchantment*, 3 Co. Inst. ch. 6, p. 43, deals not only with evil spirits, but also with clairvoyant indication of hid treasures or lost articles. For the witchcraft acts and the convictions under them, see 2 Stephen, *History of the Criminal Law of England* (1883) 430-36. For a history of the acts against vagrancy, see 3 *ibid.* 266-75. The last witchcraft act, St. 9 Geo. II, c. 5, § 4, (which punishes *pretending* magical powers) dates from 1735 and parts of it are still in force in England and in Ontario—indeed it has been re-enacted as far off as Papua. See *Prohibition of Fortune Telling and Kindred Offences* (1913) 43 L. R. A. (N. S.) 203; *Legal Status of Seers and Necromancers* (1914) 21 Case and Comment 445, 451; *Fortune Telling and the Supernatural* (1917) 81 J. P. 155-56.

²⁰ (1877) L. R. 2 Ex. D. 268; see also *Regina v. Middlesex Justices* (1877) L. R. 2 Q. B. D. 516; *In re Slade* (1877) 36 L. T. R. (N. S.) 402, s. c., (where that celebrated medium narrowly escaped). An amusing account of it, for which I am indebted to Mr. Edward B. Adams, is given by Mr. Serjeant Ballantine, *Experiences of a Barrister's Life* (Amer. ed. from 6th Eng. ed. 1882) 357-58. At p. 355 of the same book is an account of the notorious libel case of *Morrison v. Belcher*. Admiral Belcher accused Lieutenant Morrison, author of Zadkiel's *Almanac*, of being a cheat and impostor for claiming to communicate with spirits by means of a crystal ball. Morrison recovered twenty shillings damages. At one time it was held that the element of deceit was a necessary ingredient of the crime. *Regina v. Entwistle* [1899] 1 Q. B. 846 (a case of a fortune teller); and that good faith was a defence, *Davis v. Curry* [1918] 1 K. B. 109. In *Laing v. Macpherson* (1918) J. C. 70, the defendant offered proof by witnesses of having the powers professed, but failed to convince the court. In an interesting pamphlet, Richard W. Waddy, *Legal and Medical Aspects of Spiritualism* (1907), it is argued that in *Monck v. Hilton* the court should have enforced the last witchcraft act, *supra*, footnote 19, §§ 3, 4, against *pretended* conjuration, instead of the act against vagrants. Upon conjuration, see that title in (1917) 12 Corp. Jur.

where it was held that under the Vagrancy Act²¹ one who gave a fraudulent seance in a dark room with raps, tambourine playing, and slate-writing was punishable as a rogue and vagabond. In this case the defendant had been rather careful about his oral statements, but had used mechanical tricks to produce the appearance of supernormal physical phenomena. By the section referred to, "every person . . . pretending or professing to tell fortunes or using any subtle craft, means or device by palmistry or otherwise to deceive and impose on any of his Majesty's subjects . . . shall be deemed a rogue and vagabond, etc.," (punishable by hard labor in the house of correction for not exceeding three months). References are given in the opinion to the earlier statutes showing that the act actually applied was the last of a series of statutes directed against gypsies, jugglers and the like, and not one of the entirely different series relating to witchcraft.

When a fee is charged, a fraudulent medium may be guilty of obtaining money by false pretences.

"The pretence of power, whether moral, physical, or supernatural,

504; (1921) 7 Virginia Law Rev. 370. Dr. Powell claims that the incident in the New Testament known as the Transfiguration would have been punishable both under the witchcraft and the vagrancy acts. See *infra*, footnote 33, p. 20. This view does not recognize good faith as a defence. Upon the question whether the genuineness of the phenomena would be a defence, at least their genuineness would be evidence of good faith. Mrs. Fletcher was indicted in London under the last witchcraft act, and the question of her good faith was left to the jury. Thayer, *op. cit.* 328.

But in *Stonehouse v. Masson* [1921] 2 K. B. 818, it was unanimously held that under the Vagrancy Act, (1824) St. 5 Geo. IV, c. 83, § 4, professing to tell fortunes is an offence without regard to whether or not the person so professing believes he has the power to tell fortunes, and *Davis v. Curry* was overruled. To this conclusion the court was led by examining the earlier vagrancy acts, especially (1597) St. 39 Eliz., c. 4, and by concluding that under them the intent to deceive was not necessary. Counsel for respondent indeed pointed out that fortune telling *simpliciter* is an offence under the Witchcraft Act, (1735) St. 9 Geo. II, c. 5, § 4, still in force. (The phrase is "undertake to tell fortunes" in § 4 of the latter act.) The Scotch case of *Bee or Smith v. Neilson* (1896) 23 Rettie 77, should also be consulted, which takes a different view. The case of *Stonehouse v. Masson*, *supra*, however, sticks very close to the words of the statute, and confines itself to the offence of "professing to tell fortunes" and is not an authority that a person participating in a seance in good faith, believing himself to be a spirit medium, and not professing to tell fortunes, is guilty of an offence. Suppose, however, he gave a message containing a prediction. The Lord Chief Justice "could not imagine anyone's holding himself out to tell fortunes who did not himself know that he was deceiving the persons whose fortunes he told." Unhappily, in the dark underworld of the subconscious mind, self-deceit is a commonplace. Without questioning the correctness of the interpretation given the act, it is submitted that it is not very moral to inflict severe punishments on persons acting in good faith. There is no particular connection between spiritualism and fortune telling. Some of the reported cases indicate a performance more like what has been called psychometry, which, if it is real, may not involve the operation of any other mind than that of the person supposed to have the gift of seeing visions when holding a significant object. As for lost articles, if they can be located at all by a clairvoyant, the readiest explanation is that the clairvoyant directly reads the subconscious memory of the sitter. This would not, however, explain locating the dead bodies of lost persons, which has sometimes been claimed to occur.

²¹ (1824) St. 5 Geo. IV, c. 83.

made with the intent to obtain money, is within the mischief of the law, and sufficient to constitute an offence within the language of the statute."²²

The false pretence of power to communicate with deceased persons is indictable under the statute.²³ In view of this excellent criminal remedy against fraudulent mediums it is difficult to see the need of additional legislation. Indeed the recent penal codes of Japan and Switzerland, and the new draft of the Chinese Penal Code do not seem to deal directly with the subject at all.²⁴ The offence of giving fraudulent seances seems to be entirely a statutory one in the United States, so that the text of the act must be carefully examined in each case. Of course, a fraudulent medium can do things which will bring him within the purview of widely different statutes. For instance, he may conduct himself in such a way as to be practicing medicine without a license.²⁵ Or he may coöperate with assistants so as to be guilty of conspiracy to defraud.²⁶ And especially should he beware of telling fortunes and locating lost articles.

The New York Code of Criminal Procedure, Section 899, punishes as a disorderly person among others "persons pretending to tell fortunes, or where lost or stolen goods may be found." Under the statute it makes no difference that the accused claims to predict the future by the aid of departed spirits. In *People v. Ashley*²⁷ the defendant, who

²² Erle, C. J., in *Rex v. Giles* (1865) 10 Cox C. C. 44, 48 (an indictment for false pretences under (1861) St. 24 & 25 Vict., c. 96, § 88).

²³ *Regina v. Lawrence* (1877) 37 L. T. R. (N. S.) 404; *Commonwealth v. Keeper County Prison* (Pa. 1884) 16 Wkly. Notes Cas. 282. In these cases a fee was charged. The prosecutions in France, Germany and Italy appear to be based upon the notion of gain by intentional deceit. This seems to be the sound theory. See especially *City of Chicago v. Westergren* (1912) 173 Ill. App. 562, 564.

²⁴ The Japanese legislation on sorcery is not without interest. In the appendix to de Becker's translation of the Criminal Code of Japan (1918) dealing with infractions of the police regulations, (Home Department Ordinance No. 16 of the year 1908), the following are punished with detention for less than thirty days or a police fine of less than 20 yen (art. 2, §§ 17-19):

"17. Persons who have recklessly told fortunes or forecast the future or practiced invocations, spells, etc., or given amulets and charms and thus deceived or imposed upon people;

"18. Persons who have practiced magic formulas, invocations, spells for sick persons or given them "holy" amulets, "holy" water, etc., and thus prevented them from obtaining regular medical treatment;

"19. Persons who have unwarrantably practiced hypnotism."

It will be observed that there is nothing here about locating lost articles. Note the word "recklessly" in § 17. In the Criminal Code for the Dutch East Indies, in force Jan. 1, 1918, by art. 545, fortune telling, predicting the future or interpreting dreams is forbidden. Art. 546 punishes the selling of amulets and the teaching of spells with the intention of creating the belief that thereby protection will be given while violating the law. Art. 547 punishes witnesses who testify while wearing amulets believed to protect them in committing perjury. For these citations I am indebted to the International Intermediary Institute at The Hague. Cf. Penal Code of the Philippine Islands, art. 5.

²⁵ *People v. Vogelgesang* (1917) 221 N. Y. 290, 292, 116 N. E. 977.

²⁶ *People v. Gilman* (1899) 121 Mich. 87, 80 N. W. 4. In this case only one dollar a head was charged to see a spirit materialization.

²⁷ (1918) 184 App. Div. 520 172 N. Y. Supp. 282.

was convicted, represented herself to be a medium and the president and minister of the "Brooklyn Spiritualist Society." The statute was held constitutional so far as the free exercise of religion is concerned, for which there is indeed no lack of authority. In the civil case of *Fay v. Lambourne*,²⁸ the court said, citing Section 899,

"The pretense of occult powers and the ability to answer confidential questions from spiritual aid is as bad as fortune telling and a species of it and is a fraud upon the public."

Suppose, however, the questions related not to the future but only to the past or present. Would it really be fortune telling at all?²⁹ In *Stauffer v. State*,³⁰ under the Texas statute,³¹ it was held that a spiritualist is not punishable unless he advertises. In order to violate this statute a person must also maintain himself in whole or in part by his spiritualistic pursuits. In *City of Chicago v. Ross*³² the defendant escaped from a city ordinance directed against spirit mediums by inducing the court to hold that the city had been granted no power by the state to enact the ordinance in question. There are French and German cases, at least in the lower courts, where fraudulent mediums have been punished. They indicate the universality of such frauds. There is no particular public demand in the United States for their punishment. In England, offences of this character are apparently regarded more seriously, and the fear of punishment has in the past forced some mediums into exile or seclusion. It is hard to see how our English brethren have, on the whole, had any better results from their more vigorous policy than we have had in America from leaving the matter pretty much alone. Every conviction, however justifiable, starts up a cloud of apologists and defenders, and spiritualism gets a good advertisement. The religious aspect of the subject becomes prominent immediately. Spiritualism cannot possibly be as repugnant to anyone in our day as early Christianity was to a Roman gentleman, and we cannot hope to surpass in thoroughness his methods of eradication. The blood of the martyrs was the seed of the church. In England the suggestion has been made that professional mediums be required to take out licenses from a responsible official board.³³ Of course, everything would turn on the personnel of such a commission. Sir Arthur Conan Doyle has suggested that in addition a license be required in order to consult a medium.

Conceivably a ghost might be guilty of frightening a man to death, or haunting a too mediumistic person into committing suicide,³⁴ or might

²⁸ (1908) 124 App. Div. 245, 247, 108 N. Y. Supp. 874.

²⁹ See *State v. Neitzel* (1912) 69 Wash. 567, 125 Pac. 939; *People v. Hill* (1921) 66 N. Y. L. J. 79; *Fortune-Teller*, Bouvier, *Law Dictionary* (1914).

³⁰ (Tex. Cr. App. 1919) 209 S. W. 748.

³¹ Tex. Pen. Code (Vernon 1902) art. 634.

³² (1911) 160 Ill. App. 641, *aff'd* (1912) 257 Ill. 76, 100 N. E. 159.

³³ Dr. Ellis T. Powell, *Psychic Science and Barbaric Legislation* (1917).

³⁴ In De Maupassant's frightful story, *Le Horla* (1887), there is something

suggest the commission of a crime, or even take possession of a person and do mischief, or might set a house on fire, or smash crockery, or trespass abominably,³⁵ while the supposed spirit communicators are frequently accused of false personation, sometimes of telling fortunes falsely, even of obscene language; but I know of no way of bringing the offender into court, if such a thing should happen.³⁶ If there were parties to the crime who were in the flesh, they could be punished, whether mediums or not.³⁷ Conceivably any person might have a spirit communication in a dream.³⁸

In the *New York Times*, June 3, 1921, in an account of the trial in Berlin of Salomon Teilirian for the murder of Talaat Pasha, the defendant is stated to have testified that in a vision of a massacre he saw the dead body of his murdered mother, who stood up and reproached him because Talaat Pasha was still living. Teilirian was acquitted on the ground of insanity.

If we assume that there was anything more involved than the action of a disordered mind in a dream, obviously this story should be no more of a defence than if the mother of the accused had appeared before him while still in the flesh and said the same things. Suppose that a medium had consciously delivered to the defendant a message to the same effect, as coming from the deceased mother. The question of the criminal liability of the medium for delivering such a message ought to be solved in the same way as if the medium had delivered a similar message from the mother given before her death. In other words, the criminal problem should be dealt with as if it were based upon communications by human beings still living.³⁹

like this. In Kipling, *The Phantom Rickshaw* (1888), a man is haunted to death.
³⁵ As in Anatole France, *Histoire Comique* (1909), translated under the name of *A Mummer's Tale*. For cases of the successful defence that the house was haunted, in suits for rent, see Andrew Lang, *Cock Lane and Common Sense* (1894) 269, and the following references for which I am indebted through the International Intermediary Institute (Bulletin VI, I, 199-200, No. 768) to Professor Lordi: *Le case infestate dagli spiriti e il diritto alla risoluzione del contratto di locazione* by Conseiller d'Amilio (now a member of the Italian delegation to the League of Nations) in (1910) 1 *Rivista di Diritto Commerciale* 218; Dodsworth, *Le case infestate dagli spiriti e il diritto dell'inquilino alla risoluzione del contratto* (1910); Fr. Zingaropoli, *Memoria nella causa fra la Duchessa di Castelpoto e la Baronessa Englen* (1908).

³⁶ This would not have stopped the ecclesiastical courts of mediaeval France. Since the courts had the power of putting a curse upon the offender, his failure to appear would not have saved him. See E. P. Evans, *Criminal Prosecution and Capital Punishment of Animals* (1906), summarized by W. F. Dodd in (1908) 20 *Green Bag* 28. Animals (including insects) which failed to appear when cited were, nevertheless, tried and excommunicated. In the case of the caterpillars in Dauphiné in 1584, a counsellor was appointed to defend them from anathema and malediction. For the procedure, see *Lawsuits Against Animals* (1902) 14 *Green Bag* 471; or *Animals as Offenders and as Victims* (1880) 21 *Albany Law Journ.* 265, citing Agnel, *Procès contre les Animaux*. It should be borne in mind that animals were supposed to be subject to possession by evil spirits, who were the real offenders. Between 1266 and 1572 we have accounts of ninety-two such trials in France.

³⁷ 1 Bishop, *New Criminal Law* (1892) § 593 (3) (witchcraft).

³⁸ Cf. *Craven v. Craven* (1913) 181 *Ind.* 553, 103 *N. E.* 333.

³⁹ Cf. the leading case of *Robinson v. Adams* (1874) 62 *Me.* 369, 409, involving

When witchcraft was believed in, bewitching a person to death was considered murder. If a superstitious person should die on account of his knowledge of malevolent prayers or magical rites being carried on intended to produce his death, this would be one form of homicide by fright.⁴⁰

The important thing to remember is that we are dealing, in any event, with acts or communications of human creatures like ourselves. This is certainly true of all that originates with the medium or ourselves, including all living persons, and if by any chance some of the acts or communications should really come from dead men, that makes no difference from a legal point of view; they would be human actions just the same.

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the validity of a will; also the rule as to insane delusions in criminal cases being treated as if true, upon the question of responsibility. (1918) 16 Corp. Jur. 101.

⁴⁰ See Wharton, *Criminal Law* (11th ed. 1912) 259. Praying people to death appears to be believed in not only in the Sandwich Islands but in Germany. Dr. Jos. B. Holzinger, *Das "Delikt der Zauberei" in Literatur und Praxis* (1904) 15 Archiv für Kriminal-Anthropologie und Kriminalistik 327, 335. In Ta Tsing Leu Lee (Pen. Laws of China, Sir George T. Staunton's tr. 1810) by § 162 "magicians who raise evil spirits by means of magical books and dire imprecations" are punished. As for witchcraft, § 289 punishes "using magical writings and imprecations with a view to endeavor to occasion the death of any person therewith" or "in order to produce disease and infirmity in any individual." It is interesting to note that there is nothing about witches as such. As to death by fright, § 299 punishes alarming a person by violent threats so that he kills himself. This is also punished in the Japanese Penal Code and the Chinese Draft Code. Belief in witchcraft prevails generally in China, with tragic consequences. E. T. Williams, *Witchcraft in the Chinese Penal Code* (1907) 38 Journ. of the North China Branch of the Royal Asiatic Soc. 61. Indeed, primitive races all over the world still suffer from this cruel superstition. In the Code of Manu IX, 290, witchcraft is punished only by a fine. 25 F. Max Muller, *Sacred Books of the East* (1886) 393-94. The practice of witchcraft is still punishable by death in Africa under the Mohammedan law, and is treated as one form of apostasy. Ruxton, *Māliki Law* (1916) 326, 327. For murder by fear caused by New Guinea sorcerers, see Capt. C. A. Monckton, *Taming New Guinea* (1921) 187, 189. In Harry A. Franck, *Roaming through the West Indies* (1920) it is stated that people are frightened to death by sorcerers the same way, in Haiti.