

cently returned by a grand jury at Los Angeles, California, "under instruction," no doubt.

3. The occasion for this indictment, briefly, is as follows: For a number of years there have been in Los Angeles three five-cent morning papers all of the class known as of the "reactionary" type. Recently a one-cent morning paper, of the "progressive" type, was established there, resulting in a "war of types." One of the old papers published a scurrilous, not to say libellous, attack upon the owner and publisher of the new paper. The proprietor of another of the morning papers (who is said to own and control the third) telephoned to the editor of the third paper, suggesting that it reproduce the attack of paper number one. The editor of the third paper being on a vacation at Avalon, and out of the reach of telephone or messenger, the matter was communicated to him by "wireless" from the wireless station in the building of paper number one. This "message" was "taken" by a fifteen-year-old boy "operator," on a private wireless apparatus rigged up in his father's house. The new paper published the wireless message as taken by the boy operator. The genuineness of the message is not denied, and the accuracy of the "taking" is not questioned. The matter of the publication of this message in the new paper was laid before the grand jury, and an indictment returned under s. 619 of the California Penal Code, relating to telegraph and telephone messages, and making it a felony to wilfully disclose the contents of such a message without the permission of the person to whom addressed.

4. If there is any statute in that state which will justify or support this indictment it is found in s. 619 or s. 640 of the Penal Code of that state, which sections are in pari materia. Neither of these sections of the Penal Code specifically provides as to a "wireless message," and neither uses any word or words of equal import indicating any intention on the part of the legislature to include within the prohibition and punishment such a message. Such an intention can not be incorporated into these by statutes by inference and construction. By express pro-