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BOOK REVIEWS

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FAIR TRIAL AND FREE PRESS, by Paul C. Reardon and Clifton Daniel (American Enterprise Institute for Public Policy Research, 1968. Pp. 181. $4.50).

The sixth amendment guarantees the accused the right to speedy and public trial by an impartial jury, and the first amendment guarantees freedom of the press. In trying to prevent prejudicing the jury, what restrictions can be put on arrest and pre-trial information without seriously hampering the right and ability of news media to report the news as they see fit?

For lawyers and journalists who have not yet found an articulate and spirited confrontation on this issue of fair trial versus free press, we heartily recommend this book. It is indeed an encounter of first rank, a debate followed by rebuttals and intelligent discussion by the principals and other interested participants.

No lawyer needs to be introduced to Justice Reardon, associate justice of the Supreme Judicial Court of Massachusetts. Also, no knowledgeable editor is likely to ask the identity of Mr. Daniel, managing editor of the New York Times. Both men are well known and respected in their respective fields. Justice Reardon served for seven years (1955-62) as chief justice of the Superior Court of Massachusetts, and Daniel was a foreign correspondent for the Times and the Associated Press before assuming his present position. (Daniel is also son-in-law of former President Harry Truman.)

The encounter which produced this book was one of the Rational Debate Series, sponsored by the American Enterprise Institute for Public Policy Research, held at George Washington University and televised nationally. While neither man could be accused of a detached viewpoint, the debate, rebuttals and discussions were free of name-calling and emotional outbursts. Both had points of view and expressed them ably.

Probably the warmest exchange occurred when Daniel accused the American Bar Association of using "a sledge hammer to kill a gnat" and Justice Reardon said that he felt a great deal of the reporting of criminal matters was "careless, imprecise and inept."

The heated controversy which sparked these exchanges was the outgrowth of recommendations to the American Bar Association by a committee whose chairman was Justice Reardon and whose members included Dean Robert McC. Figg, Jr. of the University of South Carolina Law School. This Advisory Committee on Fair Trial-Free Press of the American Bar Association Project on Minimum Standards for Criminal Justice was charged with reviewing Canon 20 of the American Bar Association. Canon 20 of the Canons of Legal Ethics generally condemns a lawyer's statements to the press which could interfere with a fair trial in pending or anticipated litigation. According to Justice Reardon, "The canon was demonstrably weak, inexact, and did not lend itself to enforcement."

New recommendations of Justice Reardon's study group, now famous as the "Reardon Report," were aimed primarily at lawyers and law enforcement agencies and included these significant points:

Part One. Lawyers should not release information or opinion likely to interfere with a "fair trial or otherwise prejudice the due administration of justice," including an accused's prior criminal record, confession, refusal to make a statement, identity or credibility of prospective witnesses, or opinion of accused's guilt or innocence. Violations of the above guidelines should be grounds for reprimand, suspension or disbarment.

Part Two. Law enforcement agencies should adopt the provisions recommended for lawyers. Too, judges should refrain from conduct or statements in pending cases which could interfere with a fair trial.

Part Three. Trial judges could use their discretion as to whether pre-trial hearings, at the request of defendants, could be closed to the public, including news media, on the chance that evidence or agreement adduced at the hearing might be inadmissible at the trial.

Finally, the Reardon committee recommended restricted use of contempt powers against those who (1) released information for publication designed to affect outcome of trials or (2) who knowingly violated a judicial order not to release, until completion of a trial, specified information in a pre-trial hearing closed to the public.

When the Reardon committee recommendations were released to the public in October, 1966, and later adopted by the Ameri-

can Bar Association, they met extremely strong opposition from the press. The opposition of the news media to the Reardon Report, as summarized by Mr. Daniel, includes the following pertinent points:

1. It appears the legal profession has become so preoccupied with the rights of the individual—the criminal defendant—that it may lose sight of the public interest, the rights of society as a whole, and the rights guaranteed in the first amendment, including freedom of speech and of the press.

2. That abuses can occur when the work of the police, the courts and the prisons is hidden from public view.

3. That we insult the intelligence of juries when we assume they will not do their sworn duty in a trial just because they have seen or heard the case talked about in the press.

4. That while the intent of the Reardon Report was to put the legal profession's own house in order, risks and evils can occur by restricting the free flow of information to the public.

5. That newspapermen do not believe that a law degree necessarily makes a man more honorable than a journalism degree, or that elevation to the bench amounts to canonization.

6. That while newspapers, magazines, radio and television are not without blame or blemish, the free press in America has prevented and corrected far more injustices than it has committed.

Judge Reardon made these significant points:

1. Prejudicial publicity has marred the conduct of altogether too many American trials.

2. His report guidelines were aimed at making criminal convictions stick, to prevent reversals of convictions because of publicity about defendants.

3. That the conscience of the press has been aided by the report, and a great deal of progress has been made. Some media have already set standards of restraint on themselves in reporting criminal news.

4. That a great deal of criminal news reporting is careless and inept and would benefit by having more specialized and trained reporters in the field.

5. That in notorious cases, the media should have a pooling arrangement of reporters to prevent such shambles as occurred in the Dallas courthouse after the Kennedy assassination.

6. That there is a positive necessity of continuing the fair trial-free press dialogue between heads of communication media organizations and those who lead the organized and responsible bar.

We are certain that the dialogue will continue. Members of the legal profession and mass media feel too strongly on the issue to allow it to die peacefully. One can hope that hardened polarization of views will not result in restrictions on the mass media at the expense of the public's right to be informed. At the same time, the press should assume more responsibility for dedicated, accurate, informed reporting and for avoiding prejudicial news coverage or the appearance of such.

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