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The Reardon Report . . . By Alfred Friendly

Dangers to Flow of Information Noted

IN ITS REPORT on "free press, fair trial," the American Bar Association's prestigious Reardon Committee notes with indisputable accuracy that the overwhelming bulk of information that can prejudice a defendant's chances for a fair trial in a criminal case stems from disclosures of the police and other agents of the law.

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It proposes, accordingly, that lawyers, court functionaries and police be permitted only a statement about the facts of the crime, the circumstances of the arrest and the evidence that has been found. Observations about the suspect's previous record and reputation, his certain guilt and his "voluntary" confession would be barred, with violators to be punished by the bar associations, the courts and the law enforcement agencies themselves.

COMPLAINTS from some elements of the press that the rules amount to prior restraint and supply a "blanket blessing for secrecy" that denies necessary and proper news were predictable and doubtless overstated.

But there are, in fact, some grave dangers in the Reardon report to the proper flow of information. They derive less from the words of the proposals than from the excuse they may give to the police for suppressing what should not be suppressed and what the Reardon group is perfectly willing to have released.

A corrupt, inefficient or basically anti-law police and courthouse gang may seize on the proposals to withhold not only what they should remain silent about, but also what they should make public.

Thus the danger of the Reardon formula, ironically, is less to the press and public than to the very group—criminal defendants—whose rights to fair trial the Reardon Committee set out to protect.

THE MENACE, at the present moment in history, comes principally in civil rights cases. As any reporter can testify who has covered such stories, particularly in the South, nothing would please a redneck sheriff or policeman so much as an official sanction to keep utterly silent. It would help immeasurably to harass, if not frame and convict, a civil rights activist, and to help a segregationist bully slide through court to an acquittal or evade prosecution entirely.

To be sure, no such grant of silence is offered. But to some extent what the Reardon report recommends can be perverted — especially where community feeling parallels that of the law officers — into secret procedure.

No one wants "trial by newspaper." But in a hostile community, where a frame-up is planned or at a minimum a savage persecution is contemplated, the defendant's only recourse may be to shout his plight before the case has come to the point of no return.

But a defense counsel would be subject to disbarment for contempt if he talked about his client's case—other than to state merely that the defendant denies the charge—anywhere else than in the courtroom. The same fate could come to a complainant eager to bring to book a racist whom the community, police and court have decided to protect.

IF ONE is concerned principally about the rights of defendants—and that is the principal concern of the Reardon Committee — the argument that because police and prosecutors should not prejudice a suspect, his own counsel must also say nothing "extra-judicial," is not nearly as plausible and even-handed as it sounds.

The Reardon Committee airily dismissed this danger, saying that it does not believe "the restrictions would make it easier to 'frame' a defendant or to 'fix' a case." Full of documentation for its arguments elsewhere, the Committee supplies none on this point. A few days in Bull Connor's purlieus might change its disbelief.

In what circumstances and against whom would the penalties for out-of-court news releases be involved? One need not ponder the answer for long. The sanctions would rarely run against a prosecutor or a policeman, serving together in the same self-protective club along with the court functionaries. The answer goes double when the community's views of law and justice run parallel to theirs.

The penalty would be invoked against defense counsel, the unpopular man defending an unpopular client, and against a complainant making charges about a segregationist operating within the protection of the local Establishment.

GIVEN a racist local community, a racist police force and a racist local judge, an attorney needs no great acuity to realize that if he pops off about his case, he will be had up quickly enough for violating the fine new regulations, impeccably grounded on the Reardon proposals.

The Reardon report is a moderate, nonvindictive document, especially considering what could have been expected from those segments of the bar determined to punish the press or convinced that they have the exclusive concern for the administration of justice. One of the Committee's wisest aspects is its call for discussion on its proposals before they are submitted to the American Bar Association next year.

Up for discussion first should be those particular proposals that could well enforce a silence dangerous to a defendant rather than helpful to his fair trial.