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AN INDEPENDENT NEWSPAPER

The Reardon Committee

The report of the Reardon Committee of the American Bar Association on "Fair Trial and Free Press" springs from a proper concern with the rights of accused persons. It would be alarming if conscientious lawyers and judges were not concerned about these rights.

The public, at the same time, must be concerned with the effect of the bar's recommendations upon other rights of equal private and public importance.

The Reardon Committee concedes that "in relative terms, when compared with the total number of crimes or even the total number of criminal proceedings, the problem is of limited proportions." Remedies must also be kept of limited proportions. And some of the recommendations of the committee are not limited enough.

The chief objection to the report, in general, is its tendency to diminish public scrutiny of the law-enforcement process. As James Bryce observed in 1893: "Democratic theory, which has done a mischief in introducing the elective system (for judges) partly cures it by the light of publicity which makes honesty the safest policy." This light of publicity must not be so eclipsed to shield the accused that it also provides a shield for corruption, malpractice and fraud in the law-enforcement process.

The Reardon Committee would close many official records of prior convictions of accused persons, even where large public interest attends that disclosure. It would encourage the courts to use of the contempt power against the press—although it commendably safeguards that use by requiring the cause to be tried before a different judge from the one bringing the charge. It would shut off public knowledge of bench conferences during a trial. It would bar, on defense request, information on pretrial proceedings until the record is made up. This is to narrow public information until after the point where it might be most useful. It would silence defense counsel no matter what the provocation.

The Reardon Committee was confronted with the enormous difficulty of making a distinction between newspapers that exploit the public's prurient interest or attempt improperly to influence a trial and the newspapers engaged in keeping the courts under proper scrutiny. It is a very difficult thing to do and it is not remarkable that it has not wholly succeeded.

To the extent that pre-trial publicity diminishes the presumption of innocence that theoretically clothes the accused person, it is unfortunate. But, whatever the legal fiction that is maintained by the bar, it is doubtful if the ordinary accused person really enjoys the jury's presumption of total innocence and it is doubtful if publicity alone measurably alters the plight of the accused in very many cases.

That it alters it in even a few cases is a justifiable concern. But to remedy that, steps must not be taken that weaken the surest safeguard of the rights of the accused and the interests of the public—the fullest disclosure of the law-enforcement process from beginning to end. The Reardon Committee's sober examination of the problem, if nothing further is done about its recommendations, may help to stir press and bar to a more acute awareness of the responsibilities of both.