

ABA Expert Says Remark Was Mistake

By John P. MacKenzie
Washington Post Staff Writer

A principal draftsman of the famous Reardon Report on "Fair Trial and Free Press" said yesterday that President Nixon made "an awful mistake" in commenting on the ongoing Charles Manson trial.

But David L. Shapiro, law professor at Harvard and top staff member for an American Bar Association study directed by Massachusetts Supreme Court Judge Paul C. Reardon, said the report had little to contribute to the new question posed by Manson yesterday—what to do when the defendant himself carries the inflammatory comment to the jury.

Shapiro said the report, which was adopted as ABA policy in February, 1968, assumed that a securely locked-up jury could remain impartial despite widely publicized comments by lawyers or even outsiders and that trial judges, though "human," were tough enough to withstand the pressures of prejudicial publicity.

Mr. Nixon's remark, later amended, that Manson "was guilty, directly or indirectly, of eight murders without reason," was criticized also by the American Civil Liberties Union, as showing "an extremely unfortunate insensitivity to the judicial process" and an infringement of the accused's right to be presumed innocent.

Norman Isaacs, past president of the American Society of Newspaper Editors, called the President's statement "startling and bewildering, an incredible lapse for a lawyer."

"Who would have thought

"wilfully designed by that person to affect the outcome of the trial, and that seriously threatens to have such an effect."

Shapiro pointed out that the language of the ABA report was tightened in response to press outcries about the sweep of an early version.

Shapiro said the Reardon committee of leading lawyers and judges discussed the problem of prejudicial comment by outsiders but decided that by far the greatest part of the "fair trial" problem concerned the activities of officials and attorneys closest to any given criminal case.

The subject was raised, Shapiro said, because of President Johnson's television appearance of March 26, 1965, in which he announced the solving of the murder of civil rights worker Viola Liuzzo in Alabama.

Mr. Johnson, flanked by Attorney General Nicholas deB. Katzenbach and FBI Director J. Edgar Hoover, said the men "charged with this heinous crime" were members of the Ku Klux Klan. The defendants failed to press the point in appealing their convictions.

The administration avoided further comment yesterday, but the President was defended by Sen. Gordon Allott (R-Colo.), who said that such a mistake was "bound to happen." Allott told newsmen, "Anyone who speaks extemporaneously is going to slip."

This was the second time President Nixon has been faulted for infringing defense rights. Lawyers for several servicemen accused in the Mylai cases say their clients can't get a fair trial because Mr. Nixon used the word "massacre" at a press conference to describe the deaths of Vietnamese civilians. The ACLU at the time joined the President in using the word "massacre."

Lawyers were uncertain of the effect of Manson's courtroom action yesterday in flashing a newspaper headline at the jury. Last spring the court said that an unruly defendant may lose even such a fundamental constitutional right as the right to be present at his own trial, but did not say whether an accused could forfeit his right to an impartial jury.

that the President of the United States would do that in view of all the advances that have been made by the press and bar?" said Isaacs, executive editor of the Louisville Courier-Journal. "This is not a press case, this is a lawyer's case."

The ABA report, which has been adopted by some courts and is embodied in voluntary press-bar codes in several states, condemns out-of-court statements by prosecutors, defense attorneys and court personnel about the evidence against the accused.

The bar's code also recommends punishment as contempt of court for "any person" who circulates comments about a trial in progress if the comments are