'Search for Justice' Assaults Bench, Bar

A SEARCH FOR JUSTICE. By John Seigenthaler, James Squires, John Hemphill and Frank Ritter. Aurora. $10.95.

Reviewed by JOHN J. HOLLINS

A Search for Justice is a hard-hitting attack on the administration of justice in the United States, based primarily on three nationally significant lawsuits of 1969: the State of Louisiana vs. Clay Shaw, the State of Tennessee vs. James Earl Ray, and the State of California vs. Sirhan Bishara Sirhan.

It is a harsh, at times bitter indictment of justice, the most far-reaching attack on justice and the legal profession that I have ever read.

EARLY IN the book, the authors — all newspapermen — pose this question about their own opinions: "Are they the rantings of four emotional, angry journalists overreacting to assaults on their profession, integrity and performance?"

I submit here that whether or not the four authors are overreacting, they are certainly reacting in a most emphatic manner.

But because so much conversation is being directed toward a need for court reform, and because the media drumbeat against the bar is increasing in tempo, those of us who are lawyers may well find warnings in what these newspapermen insist is valid criticism. Those of us who want to protect the system of justice and keep the essence of how it operates will find in this book a rather detailed catalog of criticism, some fair and some unfair.

THIS ASSAULT on the bar and bench is cleverly put together and interesting, but the danger is that laymen unfamiliar with the courts will accept the total assault as being an accurate statement of why court reform is needed.

The authors themselves admit it is impossible to make such a far-reaching indictment on the basis of only three criminal cases of unusual significance. But they proceed to do just that. Laymen may read this book and come away with a serious doubt about the system of justice, believing as the authors contend, that the system works — "accidentally if at all."

I submit that the system works very well, and the authors themselves present a good argument that it works well.

BASED ON their conclusions they suggest eight major court reforms:

- A uniform method of selecting judges and prosecutors to assure men who are qualified to perform their duties in court.
- Some new method of investigating and disciplining prosecutors, defense lawyers and judges who . . . undermine justice.
- A critical re-examination of the adversary system.
- Plea bargaining should be sharply curtailed and more strictly supervised.
- There should be a more sensible role provided "expert witness" testimony in criminal cases.
- The contempt power recommended by the Reardon Committee . . . should be stripped from the hands of judges.
- The death penalty should be abolished.
- There should be a uniform national system of justice to somehow parallel but still be independent from the federal system of justice.

THE DIFFICULTY a lawyer has in reading **A Search for Justice** is in coping with the ambivalence that comes from agreeing with many of the random criticisms and still rejecting some of the major conclusions about what is

wrong and how it should be corrected.

The authors — John Seigenthaler, editor of THE NASHVILLE TENNESSEAN, Jim Squires and Frank Ritter, both TENNESSEAN staff members, and John Hemphill, a member of the Washington bureau staff of the New York Times, present a rather stinging indictment of the Reardon Report, which is a report of the American Bar Association committee headed by Justice Paul Reardon of Massachusetts dealing with the free press fair trial question.

The authors refer to the report as a "ghost story whose solutions are designed to intimidate, not reform. "They feel a judge should not be allowed, as was the late Judge Preston Battle in the Ray case, to use contempt powers against the news media to prevent pre-trial publicity concerning a pending criminal case to insure a defendant's right to a fair trial.

HERE, WHERE Editor Seigenthaler has taken a very strong stand in opposition to the Reardon Report, I must support the feeling of the bar generally that: If a trial judge did not have the power to punish by contempt the court's orders against pre-trial publicity concerning a pending criminal case any person violating the order—whether a member of the news media or not — the court's attempt to prevent pre-trial publicity

Clay Shaw
Gary Gore Drawing

of a prejudicial nature would be quite ineffective.

The authors are particularly critical of New Orleans Dist. Atty. James Garrison, New Orleans Judge Edward A. Haggerty, and Memphis Judge Preston Battle. They consider Judge Herbert B. Walker of Los Angeles to be adequate but not outstanding. Judge Haggerty allowed too much publicity, they complain, and Judge Battle too little.

THEY FAULT the system of allowing a judge like Haggerty on the bench and for permitting a prosecuter like Garrison to severely disrupt the life of what later proved to be an innocent man. However, after the acquittal of Shaw, this same system, through the Louisiana Supreme Court, removed Haggerty from the bench in connection with another matter, and when Garrison brought perjury charges against Shaw, the perjury prosecution was stopped by a federal judge. There are good prosecutors and bad, good judges and bad, good defense lawyers and bad, good newspapermen and bad.

The authors take a position that the prosecution of Shaw should have been prevented. It is difficult to see how this could have been done when no one outside the district attorney's office knew what evidence Garrison would produce at the trial.

Though the "evidence" may have appeared faulty from the beginning, Garrison, too, was entitled to his day in court. Shaw had a legal remedy, a suit for damages, and as the authors correctly pointed out in a footnote, "On Feb. 28, 1970, Clay Shaw filed a $5,000,000 damage suit against Jim Garrison."

CERTAINLY justice was done in the case of Louisiano vs. Clay Shaw, and the very adversary system which is taken to task so harshly by the authors through competent crossexamination rendered the testimony of prosecution witnesses, Vernon Bundy and Perry Raymond Russo worthworthless and of no profitable value.

In the Ray case, the authors contend, there was no attempt made to determine the truth after Ray pleaded guilty in return for a 99-year prison sentence; that Judge Battle should have followed Ray's hints that a conspiracy may have been involved in King's murder; and that defense attorneys involved in the case were somewhat less than ethical in their financial dealings with the defendant.

The authors never dispute Ray's guilt or the justness of his sentence and it is hard to see how it can be contended that justice was not done in the case of State of Tennessee vs. James Earl Ray.

Certainly, strong proof was introduced at the hearing of Ray's guilt, he acknowledged his guilty in open court. Undoubtedly a full scale trial in that case would have made very interesting reading. The sentence of 99 years was neither light nor excessive and was based on evidence introduced in the courtroom and agreed to by highly competent lawyers for both sides.

THE AUTHORS make much of the fact that one of the defense lawyers, Percy Foreman, asked that Ray be declared indigent although he was alleged to have access to large sums of money. Indeed, he had already paid Arthur Hanes, his first attorney, nearly $35,000.

Here, it must be pointed out that the responsibility for such a decision lay entirely with the trial judge. It is entirely possible that even

Several events have been scheduled honoring publication of "A Search For Justice." Mr. Seigenthaler will appear on the WSM Noon Show on Monday, August 23rd, and on the Teddy Bart Radio Show at 2:30 p.m.

Mr. Seigenthaler, Mr. Ritter and Mr. Squires will be guests of Mills Bookstores, Belle Meade, at an autographing party from 3:30 until 5:00 p.m. that afternoon with Zibart's, Green Hills, entertaining from 5:30 until 7:30 p.m. On Tuesday, the 24th, Cokesbury, 417 Church Street, is hosting still another autograph session from 12 noon until 2:00 p.m.

though Foreman may have been promised a large fee, he may have actually received ni money at the time with which to finance work in the defense of his client.

As to the size of the fees charged by the defense lawyers, it should be remembered that simply by undertaking the defense of Ray any lawyer would have been forced to neglect the rest of his practice and would have been running the risk of putting his reputation as a defense lawyer on display before an international audience.

THE CONTENTION of the authors in the Sirhan case is that his "sanity" trial was a mockery, especially in the use of expert witnesses in psychiatry who testified both that he was capable and not capable of committing first degree murder. The jury found that he was capable, and as provided in first degree murder convictions in California, legally fixed his sentence as death. There was certainly credible evidence in the records from which to draw a decision that Sirhan was legally sane.

The authors conceded that Judge Walker of Los Angeles was adequate. Their own account of the trial demonstrates that he conducted the trial with unusual ability. It is further submitted that lawyers for both sides were highly competent and that the psychiatrists who testified were for the most part highly qualified. Can it be said that justice was not done in this case?

In all three cases, the authors would say justice was done by accident?

CERTAIN OF the author's proposals, however, do merit consideration. As they point out, it is not necessary for judges or district attorneys in most states to have any specialized training. No doubt that after a person becomes a prosecuting attorney or a judge, specialized training, particularly in the field of administration, would be valuable.

It should be remembered, however, that experienced trial lawyers in criminal cases have a good working knowledge of the prosecuting attorney's role and that of the judiciary. Frequently trial lawyers sit as special judges when a judge is ill or is unable to serve for some other person. Obviously, assistant district attorneys receive valuable experience and training which would be of considerable assistance to them if they became district attorney generals.

An improvement in the method of selecting judges is in order. Many feel they should not be popularly elected. The Missouri plan which has been adopted in Tennessee on a modified basis would seem a much better system. This allows a judge to run against his own record for re-election, rather than in a popular election.

PLEA-BARGAINING is not necessarily bad as the authors suggest and works particularly well where two competent lawyers are able to reach an agreement when a defendant is clearly guilty and wants to plead guilty as to a proper sentence under the circumstances. Such agreements, which must be approved by a trial judge, are particularly valuable in the cases of first offenders who desire to plead guilty and ask for a suspended sentence.

The proposal that the death penalty should be abolished has considerable merit, even outside the moral question of whether the state has the right to take a human life. To my knowledge there exists no credible evidence that the death penalty is a deterrent to crime.

The system of justice in the United States is not perfect. No system is perfect. But it is highly superior to any other system in the world.

THIS CLAIM AN EXPERT ON INTERNATIONAL LAW?

THE MOST important part of our system of justice is the jury. The authors are correct in stating that bobtail verdicts, majority verdicts or any verdicts less than unanimous are not in the best interest of justice.

In trying jury cases, both civil and criminal, over a period of years, it has been my experience that juries do render proper verdicts and do substantial justice in the great majority of the cases.

These writers are advocates of court reform. They swing hard and their criticisms may be taken as a warning of what the organized bar must expect in trying to do the difficult job of updating court procedures.

Lawyers who read it will find it provocative. Those who care about how the press is looking at the legal profession will find it interesting. Some may find it makes them angry.

But those who have confidence in the system are aware that while the administration of justice may not be exactly as the authors state, "a search for truth," the truth is brought to the surface in the majority of cases through the adversary system. They are also aware that the system has served the country well and the system of justice will survive "A Search for Justice."

Editor's Note

Mr. Hollins, is a partner in the law firm of Edwards, Schulman, McCarley, Hollins & Pride. From 1963 to 1968, he was an assistant Davidson County district attorney general.