Book Review: The Press in the Jury Box, by Howard Felsher and Michael Rosen

Brock Grant Jr.

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Book Review

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Brief to become aware of the type of thinking that permeates the higher echelons of law enforcement.

Solutions to these problems are not easy to find.

The obvious one suggested by the author is to raise the general level of the police department by a combination of higher admission standards and longer and better training. However, better educated and trained law enforcement officers deserve much higher salaries than they are at present receiving and government seems reluctant to provide this.

The other solution advocated by Cray is the formation of an independent civil review board that would investigate complaints of police injustice and would have the power to discipline the offending officer if the facts so warranted. The police, however, are violently opposed to this idea on the grounds that it would fan the existing flame of distrust between police and private citizen and it would greatly undermine police morale which is already at a very low ebb.

One thing is clear. Until these problems are resolved, the incidents, the beatings, and the riots depicted in this book are only a mere fore-runner of things to come.

NORMAN J. FREEDMAN.*


A rather compelling argument for some type of legal regulation of criminal news reporting is presented by the authors. Michael Rosen, a lawyer, has done a vast amount of research and Howard Felsher has organized the material in such a way that it is difficult for the reader to disagree with the conclusions reached in the book.

The book, throughout its entirety, continues to hammer home the thesis that the present techniques being employed in criminal reporting severely prejudice an accused's case, the result of which is to deny him "full protection of due process of law". The reader is continually reminded that a crime is not solved until after the defendant is convicted by a jury, but that newspapers, television and radio persist in referring to a crime as having been solved after a suspect has been arrested and charged. The authors cite a California case where eight of twelve jurors openly admitted that they believed that the defendant was guilty as a result of reading newspaper reports of the case prior to trial. Mr. Felsher then states that although some flagrant instances of convictions as a result of pre-trial publicity have been overturned by courts of appeal, there is no guarantee that this will occur in every case.

*Mr. Freedman, LL.B. (Osgoode Hall), is a practising lawyer in Toronto.
The book particularly attacks editorial comment in well known and influential newspapers which attempt to influence public opinion against a suspect. A good example of this type of reporting is the Sheppard case, where the authors have printed a series of editorials directed specifically at Dr. Samuel Sheppard over a period of months, before and after his arrest. Another area to which a whole chapter is devoted, is what the authors refer to as “leaks” by the police and the prosecution of vital evidence and information about a case to the press in order to influence public opinion. To emphasize the extent to which this technique is used, the authors cite the case where Earl Warren (now Chief Justice of The United States Supreme Court) in his capacity as district attorney in California used the press to prod a grand jury to bring down indictments against a number of private citizens and public officials in a construction scandal. The authors charge that Warren first used the press to acquire the indictments and then employed the grand jury’s evidence to strengthen his case at trial by leaking the evidence to the press.

The newspapers are allowed to defend their position throughout the book, especially on their stand for non legal interference with their right to report and what they refer to as the “public’s right to know”. However, this position is presented in a rather unimaginative manner as compared to the authors’ criticisms and the defences presented by the press are always strategically placed after describing a particularly egregious violation of a defendant’s rights as the result of over zealous reporting. The position of the press is probably best described by F. R. McKnight, a former president of the American Society Of Newspaper Editors, where he indicates that “trial by newspaper” and sensationalism as a basis for increasing circulation is “irresponsible journalism”, but that newspapers should be self-policing and therefore he objects to any form of legal regulation of newspapers. The authors substantiate their arguments that newspapers are incapable of self-regulation by citing numerous examples throughout the book, of instances where the press has disregarded court instructions as to the type of reporting to be allowed and the prohibition of photographs.

One chapter of the book is devoted to a fairly detailed examination of the traditional safeguards available to a defendant to counteract the effect of prejudicial publicity, all of which the authors conclude are grossly inadequate. Another chapter is dedicated to an examination of the British legal system and the length to which it goes to ensure a defendant’s fair trial. Suggested American reforms are also discussed in detail along with attempted voluntary sanctioning in Massachusetts and the merits of a code drawn up by the Philadelphia Bar Association in 1964. The authors conclude that the only realistic approach is to pass legislation which would prevent the press from publishing “prejudicial information until such time as that information could no longer prejudice”
It is difficult to disagree with this conclusion although the methods used to arrive at this conclusion are fertile grounds for disagreement.

BROCK GRANT JR.

JURISPRUDENCE: READINGS AND CASES. MARK R. MACGUIGAN. University of Toronto Press. 1966. pp. 666 ($20.00)

This book is a revised and slightly enlarged edition of a multilithed edition that was published in 1963. The new material is composed partly of extra cases (there are now 34 reproduced as opposed to 28) and a few more extracts rather than longer extracts. Some of the longer extracts have been shortened to make way for new material. The book contains five chapters and an appendix.

The first chapter is an introduction. Here the most important case of the four reproduced is the case constructed by Professor Fuller of Harvard, "The Case of the Speluncean Explorers". The readings in this section include Holmes, "The Path of the Law" (and other shorter extracts). The second chapter, "Positivism" begins with extracts from four cases: Jacobs v. L.C.C.; Scruttons Ltd. v. Midland Silicones; Magor and St. Mellons R.D.C. v. Newport Corporation; and British Movietoonews Ltd. v. London and District Cinemas Ltd. The readings include the expected passages from Hobbes and Austin and also extracts from Bentham ("The Principles of Morals and Legislation" and "Principles of the Civil Code"), Gray, Kelsen, and Hart. There is also an interesting short extract from Rawls, "Justice as Fairness", and from Ross, "On Law and Justice". Chapter three, Natural Law Thought contains parts of the judgment in D.P.P. v. Shaw; Lochner v. N.Y.; and seven other cases. The readings contain extracts not only from Aquinas and the modern Catholic natural lawyers, but also from Fuller. There is also a very interesting extract from a work by Margaret Mead, "Some Anthropological Considerations Concerning Natural Law". Chapter four, Sociological Jurisprudence includes parts of seven cases, including Donoghue v. Stevenson, Fender v. Midmay, and three cases on the meaning of "good moral character" in the U.S. Nationality Act. The readings include Savigny, Dewey, Pound and extracts from recent works on sociological research. Chapter five, The Judicial Process, is concerned with problems of precedent and the judicial function. The readings in this chapter contain extracts from Dewey, Goodhart, Llewellyn, Cardozo, Cohen, and Frank, and an article on jurimetrics. The Appendix contains a note by the editor, an extract from McWhinney, "Legal Theory and Philosophy of Law in Canada" and a speech by

*Brock Grant, Jr., B.A. (Sir George Williams), is a member of the 1967 graduating class at Osgoode Hall Law School.