

# The case for the defence



DARYL SHADRACK

**E**ddie Greenspan is one of the most colourful and controversial criminal lawyers in Canada today. Since rising to prominence in the mid-'70s during the Peter Demeter appeal, Greenspan has constantly been in the limelight because of his cases and his crusade against capital punishment. Following his speech at Osgoode Hall last week, Greenspan spoke to *Excalibur's* Lorne Manly about his experiences over the past 20 years and his recent book, *The Case For The Defence*, which is co-authored with George Jonas.

**EXCALIBUR:** What reasons did you have for writing the book at this time when you are only 43?

**GREENSPAN:** Winston Churchill said that you should write your autobiography when you're 65, after you've retired. Arthur Koestler said to write it when you're in your 40's when your memory is best and more importantly, when your passions are at the height, when you feel strongest about the issues. And I would add to Koestler, I might not be alive when I'm 65 and George Jonas, my co-author, is in his mid 50's. So for all those reasons we decided to do it now.

**EXCALIBUR:** What induced you since the age of 10 to pursue a career in the legal profession?

**GREENSPAN:** It was the atmosphere I grew up in. My dad's closest friends were the local crown attorney in Welland, a provincial court judge-criminal division in Niagara Falls, and a police officer who later became the commissioner of the Ontario Provincial Police. It was that climate that I grew up in that pretty well pre-determined my future.

**EXCALIBUR:** I'm sure one of the most frequent questions you get is; how you can defend someone like that? What is your reaction to such queries?

**GREENSPAN:** Enough people ask it that it has to be answered. It's not that lawyers have to justify ourselves but we have two constitutional guarantees to uphold: the presumption of innocence and the requirement of the state to prove beyond a reasonable doubt that someone is guilty before they can be deprived of their liberty. There's an entire police force out there to arrest them and charge them. There's an entire prosecutorial team to persecute them and we as criminal defense lawyers are entrusted with the responsibility of defending those two constitutional guarantees. That's our social duty and we cannot reject clients on principle no more than a doctor can reject a patient suffering from AIDS or syphilis.

We as lawyers have an absolute duty to defend all those who seek representation. The Charter of Rights and Freedoms says that every accused has the right to retain and instruct counsel. It doesn't exclude certain types of accused people; it doesn't exclude

thieves or gamblers or narcotics offenders or members of organized crime. It includes everyone, and if that right is to have any meaning then every lawyer has the duty to defend all those who seek representation.

**EXCALIBUR:** Despite those feelings, have you ever found yourself hesitating in accepting a client because of the atmosphere surrounding the case?

**GREENSPAN:** Sometimes I've been in cases where my own mother has been upset—Gregory Guerin (who was accused in the murder of six-year-old Lizzie Tomlinson and later found to be innocent) is a notable case. To me the opprobrium that falls on a client, the more revved up I get to defend them. The more people conclude that they're vile, the more the finger of guilt points strongly at them, the more I feel that that's the case I like.

**EXCALIBUR:** In a situation like the Lizzie Tomlinson case, where there is a lynch mob mentality in the air, have there been threats made against you?

**GREENSPAN:** Everyone who acts in those cases that create a very emotional reaction on the part of the public, may find themselves the recipients of threats. I understand the anger, but it doesn't bother me because people

**"You can't tell me that there's any day in this world where a murder short of killing a head of state, has to get front page coverage."**

who vent their anger by way of a letter or a phonecall have generally vented their anger—they're not going to follow through. Although I've received threats, some veiled and some not so veiled, I've never been harassed.

**EXCALIBUR:** You've had some choice words for the media in the past regarding their coverage of trials and what you see as their jeopardizing of a fair trial. What has incensed you so much?

**GREENSPAN:** I think the media, in its quest for sensationalism under the guise of the public right to know, and their desire for an immediate impact on the public so that they'll outsell their competitors, ignore the rights of the accused to a fair trial. They simply forget that accused people have a right

to a fair trial. Even though they'll tell you they understand it, they don't act that way. They're more concerned with getting the news out and beating the competition. What they have shown in this country through many, many cases is that they can't be trusted.

Now, that doesn't mean that the law can in any way interfere with the freedom of the press, but I think they've shown a certain irresponsibility and it is best translated in the fact they will not create enforceable guidelines for themselves. They'll have press council guidelines and ethical standards, but there's no punishment if you breach those standards. . . . That to me shows that we have to be very vigilant about the media. Although we need a vigilant media to ensure our democracy, they will trample over people's reputations without blinking an eye.

**EXCALIBUR:** What kind of guidelines could be instituted?

**GREENSPAN:** If lawyers can come up with professional guidelines for themselves, and have proceedings of expulsion for lawyers that do not act in accordance with set standards, I can't see why the press can't come up with similar guidelines and punish individual offenders. Yet the media would see that as another infringement on the freedom of the press.

**EXCALIBUR:** But where would you draw the line between reporting the story and jeopardizing a fair trial. Isn't that a pretty fine line?

**GREENSPAN:** The fine line is only there because the media, in their quest for the story, will define for themselves what a fair trial ought to be.

**EXCALIBUR:** So what, in your opinion would jeopardize an accused's right to a fair trial?

**GREENSPAN:** A high degree of sensationalism in an article which they say is news. Covering the funeral and making it a front page event, constant front page headlines, the newspaper calling for the return of the death penalty after someone is killed. They say it's front page news yet I look at all kinds of other cities where it's handled in a dignified, non-sensationalistic manner.

But when you hype the public with the murder, although the media will tell you they're a mirror image of public concern, they're (the ones who) create public concern. The *Toronto Sun* is a classic example of a paper that will have a front page headline followed up by a call for the return of the death penalty. They will play to the emotionalism. In that kind of climate can the accused really get a fair trial? That story could be reported on page three just as effectively. You can't tell me that there's any day in this world where a murder short of killing a head of state, has to get front page coverage.

**EXCALIBUR:** Couldn't the mere reading of the story also jeopardize a fair trial? It seems almost an impossible task to draw the line.

**GREENSPAN:** But the hype, the sensationalism of it is what insidiously permeates into the mind of the jurors—that they can't eliminate from their minds. Now there are also many things the press can write about that can affect a fair trial, like if the accused has a prior criminal record. If publishing that the accused made a confession when he didn't that can affect a fair trial.

**EXCALIBUR:** During the capital punishment debate, you embarked on a cross country speaking tour against its rein-

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