

## COVERING CIVIL LIBERTIES:

## The Somnolent Press

By Nat Hentoff

Some months ago, I proposed to the editor of a New York magazine that I do a series on the criminal courts—making real, making palpable the normative transmogrifications of such abstract terms as “due process.”

The editor, a serious young man and a civil libertarian in private life, was not interested. “It’s not a sexy subject,” he instructed me. But would I be interested in following a case he’d heard of that had many of the elements of *The French Connection*? Now that would make a “sexy” story.

The subject of civil liberties, in and out of courtrooms, does not intrigue many editors and reporters. Some agree with that New York editor that civil liberties stories do not “grab” readers, and others are just plain ignorant or somnolent about the civil liberties implications of all kinds of news.

New York City’s Police Commissioner, Patrick Murphy, for instance, has received a remarkable amount of press space in his attempts to reform the Department; but the dailies, magazines and local television have virtually ignored his overseeing of the largest cadre of secret police (what used to

be called “the Red Squad”) in the country. Even *The New York Times* gave only cursory attention to the admission by the police commissioner — in an affidavit trying to quash a suit against the practices of his secret police — that these camouflaged worthies do indeed secretly survey individuals and infiltrate groups who are only exercising their rights of speech and association.

Student Rights

Nor, despite rising activity by public school students to define and assure their constitutional rights, has that continuing story received anything like substantial coverage. (One of the exceptions is the Dayton, Ohio, press because there, Dr. Arthur Thomas and his Center for the Study of Student Citizenship, Rights and Responsibilities keep alerting

the press to the significance of what’s being done with regard to the issue in the Dayton schools. Thomas, as do a number of CLU affiliates, operates on the conviction that although not much self-initiated reporting on civil liberties will come from the media, persistent campaigns to educate certain reporters

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and editors by providing hard leads can eventually pay off in space.)

Rarely, and valuably, a reporter emerges who decides independently to focus on civil liberties because, from a journalistic viewpoint, there are so many exclusives to score in so under-reported a field. One such journalist is Diane Bauer of the *Washington Evening Star* (which recently absorbed Ms. Bauer’s former paper, the *Washington Daily News*). A brief account of several of her exclusives indicates how rich a harvest exists anywhere in the country for an inquisitive, civil liberties-oriented reporter.

In March of this year, Ms. Bauer illuminated a hitherto hidden plan of the Washington-area Metropolitan Council of Governments to form a secret intelligence unit to combat organized crime. A virtuous endeavor on the face of it—until Ms. Bauer revealed that this unit was asking for \$2.5 million in Federal Law Enforcement Assistance Administration funds to create “a network of paid informers, set up a data bank, and use sophisticated electronic spy equipment” that could secretly survey all kinds of citizens without accountability.

Among the ramifications of the plan, as revealed by Ms. Bauer: “Despite Defense Department promises . . . that the Army would get out and stay out of domestic spying, the intelligence unit would ask to have Army CID men as top advisors and on its staff.”

Interpretation

Ms. Bauer also pointed out—as a legitimate, interpretative part of a news story—that “although an accountant would probe financial affairs of suspected persons or groups, and the intelligence unit would tap the Internal Revenue Service for help, *no mention is made of how the intelligence unit would get around federal laws forbidding the use of IRS information by other agencies.*” (Emphasis added: N.H.)

These, and other questions raised by Ms. Bauer, are making it much more difficult for this super-spy network to get started than if no press attention had been brought

to the plan.

In July, 1972, Ms. Bauer discovered that “Maryland juveniles in the hands of the law could have their fate—jail or freedom—decided by a computer in Colorado that spews six to eight feet of pink computer print-out every two minutes, giving a psychological evaluation plus recommendations for \$7. Tests may be given any juvenile facing court action, either on trial as a suspect in a criminal case or as a neglected or dependent child. The computer plan is now used in some court systems in 15 states, and Maryland would become the 16th if adopted.”

How many newspaper readers in those 15 states know of the use of this scientifically dubious (to say the least) “diagnostic” plan which, besides, is rampant with abuses of civil liberties? (In some areas, by the way, it is federally financed.)

Dr. Ivan H. Scheier, founder and director of the Probation Service Institute, Boulder, Colo.—home of the Master Computer—was a volunteer worker for nine years in Boulder’s juvenile court. On the basis of this extensive experience, he has filled his computers with some sort of predictive “information” by which the records of kids all over the country are now measured and their fates decreed. He himself admitted to the indefatigable Ms. Bauer that “much is inference and intuition, and to a large extent the program simply recapitulates the best inferences we are able to muster . . . Insofar as [my] judgment is poor, the program is poor; insofar as it is good, the program is good.”

Permanent Record

A child, without even being seen, is fed—on paper—into the computer and the results go on probation reports and other records which could follow him the rest of his life, and more immediately, can determine whether he does time. A piece of paper is sent to Colorado; another piece of paper comes back; and the “intuitive” results are stamped on a child. Or, as Ms. Bauer explicitly disclosed: “The printed test results would go in the child’s files, large portions of which are now being programmed onto a computer at Maryland state police headquarters which is hooked up to Maryland state police communications headquarters and the FBI’s national computer system.”

If the *Washington Daily News*—and Ms. Bauer—had not blown the whistle, Maryland would have become the 16th state to use this absurd and pernicious “diagnostic” plan. But the Maryland ACLU is now investigating it; and the Director of Maryland’s Department of Juvenile Services—who had planned to hook into the computer by this fall—now says he “would want advice from Maryland’s Commissioner of Mental Health before we go any further.”

On Aug. 15, 1972, Diane Bauer was the only reporter in the Washington area, to my knowledge, to disclose that “Alexandria’s senior judge testified in court yesterday that he picks the city’s grand jurors, who decide whether there is enough evidence to bring criminal charges against



suspects, *from among people he knows* . . . He testified he has been using 'substantially' the same list since 1962." (Emphasis added: N.H.)

The case at hand involved 11 defendants—all but one poor, and seven black. Of the 60 original members of the grand jury panel composed of Judge Backus's friends and acquaintances, 52 owned city property with an average value of \$75,000. The average age was 58—not a single person between the ages of 21 and 41 was on the panel. And "although half of the city's residents are women, only six female jurors were selected."

That may or may not be a "sexy" story, but it surely poses serious questions about due process and equal protection of the laws in criminal cases in Alexandria.

### Elsewhere

How many other reporters in how many other cities have investigated the composition—and methods of selection—of grand juries where they are? What of the reporters in the 15 states in which Dr. Scheier's Justice Machine is used on juveniles? Did any of them even know what was going on? How many reporters in the whole country have "juvenile justice" as a regular or even semi-regular beat? How much does anyone reading this article know of the operations of the secret police in his city, county and state? If he knows anything about them, how much has he learned from the papers he reads or the television news programs he watches?

And what of the day-to-day functioning of the courts? A young assistant D.A. working in a criminal court in New York City said to me one day, "Some incredible things go on here. But when one of you guys isn't around, it's not news and nothing gets done about it. Hell, you're the first reporter I've seen here all year."

This past summer, in Yonkers—near New York City—12 high school students spent nearly every day in the Yonkers Criminal Court, in a work-study program, to find out whether defendants get equal treatment under the laws regardless of income and color.

According to *The New York Times*, "the students have noticed things that disturb them. Judges usually set lower bail for young defendants when a parent comes to court . . . but poor black parents are less likely to appear in the court for the hearing than are middle-class white parents . . . The students are often the only spectators in the Court of Special Sessions who are not involved with one of the cases. Their presence has not gone unnoticed around the courthouse."

Imagine what the effect might be in the Yonkers Court of Special Sessions—and courts everywhere in the country—if the possibility of a reporter being present was likely on any given day.

### Court Coverage

I propose here—as I have proposed, so far without success, to a number of newspaper editors—that a work-study program of this kind for journalists be instituted so that finally the courts do begin to be reasonably well covered. And since it re-

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gards itself—and is regarded by many others—as the leading paper in the country, *The New York Times* might well institute such a program.

Editors should be included too because then, after not too long a time, I expect that their notion of daily space priorities might be considerably affected.

We live under law, but how much do most of us actually know about how the law works, day to day? And if the citizenry is largely ignorant of so crucial a process, who is to blame but the press?

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