

Letter

Have you ever considered that police must obey the law?

Dear Mr. Beal:

I have had an opportunity to become acquainted with some of the members of the Edmonton Police Force. As a result, I read Dave McCurdy's article on Dr. Craig (Jan. 20 issue) with considerable interest. Dave McCurdy seems to indict the Police Department for certain acts which, I am sure he felt, were wholly within the Department's discretion. I beg to disagree. Set me call these to your attention.

1) One does not need to be arrested to have his files seized. Dr. Craig's files were subpoenaed, an act which can be performed independently of an arrest. Moreover a subpoena is not a Police decision to seize files as evidence, but a judicial decision.

2) Bail is not set by the Police Department, but by the Department of Justice. The Police Force can only function as the enforcer of legislative codes, laws and judicial orders. It is indeed unfortunate that Dr. Craig had only \$148.00, \$4.00 less than necessary for bail and by implication Dave McCurdy suggests that the Police Force was heartless and cruel in not advancing him the necessary scratch.

3) Finally, Dave McCurdy alleges that the Police Department had within its discretion the authority to issue a summons to appear rather than arrest Dr. Craig. This would certainly be true if Dr. Craig was thought to have stolen \$43.00 from the Alberta Health Care Insurance Commission, because policemen are permitted to issue a summons to appear where the theft is less than \$50.00 and maximum penalty for the crime is less than 5 years. But the legislation concerning criminal codes makes a distinction between THEFT and FRAUD. FRAUD has no subdivision of above and below \$50.00. Moreover maximum penalty for fraud is 10 years. Both of these conditions, under Canadian law, as I understand it, leave no option. He must arrest the suspect.

So to conclude, I felt in reading Dave's article that he made the Edmonton Police Force and policemen all over the world whipping boys for decisions over which they have no control. The function of the peace officer is to enforce the laws. When a magistrate issues a warrant for seizure of personal property as evidence the Police Force is in no position to refuse. When a magistrate sets a bond at \$150.00, the Police Force cannot accept less. When the members of parliament say that under certain circumstances a policeman *must* arrest the accused he cannot refuse.

Have you ever considered, Dave, that policemen are not exempt from the very laws that govern the rest of society?

Cordially
D. Otto, Ph.D.

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Crusading against the forces of the English Dept. Heads (still), Religion and all other forms of niceties are the emperical forces of righteousness and good in the form of the U of A's beloved Bi-weekly news rag are: The very sexy and very womanly Fiona Campbell, Our contingent for Woman-of-the-Year, Elsie Ross, The hordes of mauling typists who devote hours of wear and tear on their itty-bitty fingers and take heartless abuse from lay-out people, like Ron Yakimchuk and Jim Selby and Marilyn Strilchuk, include in honorable mention Ann, Meredith, Lana, and Elke, Our fabulous staff of reporters and journalists who can type the fantastic 30 errors/minute in 25 sec. consisting of people like the inevitable Dave McCurdy, the lovable Rick Grant, The frozen cadaver of Bob Blair, The calmness of Stu Layfield and Ron Ternoway (despite their sick jokes), Fujii, who unaware of the fact that he is number 101 still tries harder, The talented fingers of Ross Harvey, The sea-gull cry of Dawn Kunesky, The nimble mind of Henri Pallard, The somnabulistic Beth Nilsen, all headed by our Sun-God Robert Frost Beal and directed by ME Harvey G. (for Gucker Balls) Thomgirt.

Departments Editor-in-chief-Bob Beal (432-5179), news-Elsie Ross(432-5168) Sports- Ron Ternoway(432-4329), advertising Percy Wickman (432-4241) production-Bud Joberg and Ron Yakimchuk, Photo-Barry Headrick and Don Bruce(432-4355) arts-Ross Harvey, and last but not least, publisher Harvey G.Thomgirt (432-5168).

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IMPORTANT GATEWAY STAFF MEETING TODAY

3:30
Room 282 SUB
OPEN TO THE PUBLIC

Editorial Reply

Yes but sometimes the police decide which laws to use

David Otto, Ph.D. has conveniently avoided the major issues in the Dr. Craig affair.

The police apparently spent nine months investigating Dr. Craig's dealings with the Alberta Health Care Insurance Commission. They allegedly found nine cases of fraud totalling \$43. This amounts to an average of almost five dollars an instance. How much time and money did the police spend, in those nine months, to come up with an alleged \$43 fraud?

Mr. Faulkner, Director of the AHCIC, denied any collaboration in the police action against Dr. Craig. Apparently AHCIC's normal procedure is to rectify such discrepancies in private negotiations with the doctor concerned. Before the Craig affair, said Faulkner, "No doctor, to my knowledge, has been arrested for fraud" in dealings with the AHCIC.

There is also the question of the seizure of Dr. Craig's files. The court has, in the past, gone to extraordinary lengths to safeguard the confidentiality of privileged communications such as those between doctor and his patients or a lawyer and his clients.

However, in this case, the doctor's files were placed directly in the hands of the police. Most of the information in the files has no bearing on the alleged fraud case but concerns only the personal histories of the doctor's patients. This is information the confidentiality of which the police have no right to invade. The magistrate who issued the order for the seizure of the files could easily have ordered the files be sealed and placed directly in the custody of the court. This situation has been partially rectified by the Supreme Court of Alberta injunction temporarily granted Dr. Craig recently.

Instructions could have been issued also by the court to ensure that the files would be inspected by the police before a magistrate and that material which he deemed to be irrelevant to the case could have been returned.

We are not suggesting that the police, in this particular case, seized the files to obtain the confidential patient histories. However, the procedures which were used leave the possibility for abuse open.

The patient/doctor and client/lawyer relationships are confidences which should not be broken except in extreme circumstances and have evolved so that people could feel free to confide in their advisors without fear of reprisal. The action which was taken in the Dr. Craig affair seriously undermines this concept.

The Canadian Medical Association and Civil Liberties groups from nine provinces emphasized the seriousness of this particular violation of the doctor/patient relationship. The ramifications to anyone who deals with doctors or lawyers, if procedures which prevent this kind of wholesale seizure of documents are not implemented, could be severe. We wonder

about the silence of the Alberta Medical Association and the Alberta Law Society on this matter.

Moreover, Otto's analysis of the police's responsibility in this matter is incorrect. Taking his point in order:

1. It is true that "one does not need to be arrested to have his files seized". The seizure of files is authorized by a magistrate after the police have given him sufficient reason to believe the seizure is necessary. The onus is on the police to furnish grounds for the seizure of the files. In any case, the files should not have been left in the custody of the police but should have been sealed and immediately turned over to the court. It is unusual for records to be seized, irrespective of an action, such as an arrest, being taken.

2. Bail is not set by the Department of Justice. Prior to a court appearance by the accused, bail is, ordinarily, set by a bail magistrate.

A further application regarding bail may be made before the judge or magistrate at the hearing. At this time, the onus is on the representative of the Crown, either the Crown prosecutor or the police, to show cause for the kind of bail to be set. There are, generally, four ways of setting bail: releasing a person on his own undertaking to appear with no set conditions; releasing him on his own undertaking but imposing conditions; releasing him on the condition that he is required to pay a monetary sum if he fails to appear, or releasing him and requiring him to deposit a monetary sum as a guarantee that he will appear in court.

In Craig's case, a monetary deposit was required. The Crown, in showing cause for this kind of bail in court, would have had to show cause that the other less severe kinds, would not have guaranteed his appearance.

The bail magistrates, being officers of the court, should be adhering to the above court procedure. As well, the deposit required should not have been set slightly above what the accused had on his person when he was booked.

The \$150 is no more guarantee than \$146 that Craig would appear in court. This procedure resulted in humiliating Craig even though he was only four dollars short of the required amount.

The police were at least partly responsible for setting Craig's bail. There are no strict rules governing the setting of bail. As well, the police knew how much money Craig had on his person.

It is ironic that Pierre Vallieres the noted Quebec revolutionary, was released a few days ago on his own undertaking on condition that he report to the police every two weeks until his trial. Vallieres is charged with several crimes far more serious than a \$43 fraud.

3. The police could have proceeded against Craig without arresting him. The police had the discretion, even though this is a fraud charge, of either issuing Craig with a summons to appear, seeking a warrant for his arrest, or arresting him without a warrant. Presumably, since the police had a search warrant for his clinic, they also had a warrant for his arrest. The police, not the court, chose to arrest Craig for an alleged \$43 fraud.

It is not true that, in this case, we have "made the Edmonton Police Force whipping boys for decisions over which they have no control". It was, in the first place, the decision of the Edmonton police to proceed as they did. It was necessary for them to follow the correct legal procedures and convince the police magistrate to issue arrest and search warrants. They could have as easily obtained summons at the same time as they acquired the search warrant.

Alberta Liberal leader, Bob Russel, has asked both the Federal Department of Justice and the Alberta Attorney-General for a full investigation of this incident.

Those who are concerned with the indignities perpetrated on Dr. Craig by the procedures used by the Edmonton police and the violation of the confidentiality of the doctor/patient relationship, should do the same.

