

It must be obvious that once we undertake to test newborns, we cannot walk away from the results. Those babies, if they were able to give consent, would be pleading for protection from the AIDS virus, just as adult AIDS victims are insisting on state of the art medical treatment. We make medical decisions for those infants, and our highest priority must be their lives.

Nettie Mayersohn

Gun Sweeps: A National Lesson

It is no accident that the gun sweeps in Chicago's public housing projects have caught the nation's attention. The legitimacy of these sweeps has profound implications for the future of civility in American society. We have become so inured to violence that the 15 shootings and eight fatalities during one far-from-atypical weekend in the Robert Taylor Homes do not faze us. We tend to forget that in civil societies children can play outside, all people can walk the streets with impunity, and gunfire is the exception, not the rule. Indeed, if anything resembling such conditions as are now common in inner cities developed in one of our fancy suburbs, S.W.A.T. teams, if not the National Guard, would quickly be called out. The poor and largely black people of the Robert Taylor Homes are treated as second-class citizens, but not, as Congressman Henry B. Gonzalez (D-TX) claims, because of the gun sweeps. They are treated as second class citizens because they are denied the most elementary protection any state owes to its citizens: protection of life and limb.

But, argue civil libertarians, the Chicago Housing Authority (CHA) violated the individual rights of residents with warrantless sweeps. It is here that the national importance of the CHA's situation comes into focus. We are now engaged in a nationwide debate about what sort of measures public authorities may use to enhance public safety. The issues, even in the Robert Taylor Homes, encompass more than apartment searches; the same civil libertarians also try to block

the use of resident photo IDs and screening gates at public housing entrances, two other measures essential for the protection of public housing residents from gangs and drug lords. Elsewhere, the ACLU and its ilk oppose schools that search lockers, neighborhoods that set up drug checkpoints, and so on, ad nauseam.

In all these cases, the underlying issue is a recognition that a civil society requires a balance between carefully observing individual rights and attending to the common good. *Rights are not absolute*. Even the right to free speech, which many consider the most absolute, is clearly curbed by the notion that one may not shout fire in a crowded theater—such shouts endanger the public. Civil libertarians could argue that this ruling violates the right of the shouter to express himself, but such limitations of rights for the sake of the common good are a major component of America’s constitutional tradition. Indeed, while we hear frequent references to the Bill of Rights, much attention should also be paid to the statement with which the founding fathers opened the Constitution: “We the People of the United States, in Order to form a more perfect Union...*promote the general Welfare...do* ordain and establish this Constitution for the United States of America.” This dual attention to both individual rights *and* the good of the community is at the foundation of the American legal tradition.

Precisely for this reason, the Fourth Amendment reads, “the right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable* search and seizures, shall not be violated,” of course implying that there are searches that are acceptable. The courts have long upheld warrantless searches that show themselves to be in the public interest. Every time you fly (and often when you enter court buildings and legislative chambers) you pass through screening gates, backed by armed guards, that search you and your effects without warrants. This is exactly what safety at the Robert Taylor Homes requires. In other cases judges have allowed the use of warrantless searches of persons, school lockers, and homes, under a “special needs” doctrine that defines a special need as a compelling public interest (more about this in Steven Yarosh’s essay on page 29).

True, Judge Wayne R. Andersen recently stopped the sweeps. But he objected to searches that take place 48 hours or more after the

shootings. Forty-eight hours leaves police plenty of time to obtain warrants. Even this ruling, which might well be reversed, might be different next time if the searches followed the shootings more closely. Hot pursuit, after all, is considered a legitimate reason for warrantless searches. Indeed, Judge Andersen stated that his ruling does not prevent the CHA from “conducting searches in response to an existing emergency or clear and present danger....”

The “special needs doctrine” must be carefully curbed and circumscribed. Otherwise, whenever police want to search a home, they would only need to declare a special need. Three criteria for limiting such declarations come to mind. First, there should be a clear and present danger (a claim that killer bees from Mexico are attacking us doesn’t quite cut it, at least not yet). Second, an effort to find solutions that do not entail searches should be made (making ownership of guns by all but hunters and collectors illegal would be such a move). Third, any intrusion should be as limited as possible. Other criteria may need to be developed as well.

Note that support for sweeps is not based on majoritarianism, although overwhelming public support for sweeps does exist in embattled communities. In the Chicago case, only four residents lined themselves up with the ACLU attack on the sweeps, while 5,000 signed a motion requesting that sweeps continue. The petition was circulated by a communitarian group, the American Alliance for Rights and Responsibilities. The fact is that the sweeps are in the public’s interest, and the public that will benefit from sweeps includes the minority that opposes them. Even the gang members—insofar as they are frequent victims of gunfire—will benefit. Dead people, after all, have very few opportunities to exercise their rights.

Civil liberties are most directly endangered when sweeps are *not* allowed to take place, when gangs are free to terrorize neighborhoods, and when public authorities stand by helplessly. This is not to declare an open season on the Bill of Rights or suggest that anything goes for law enforcement, but under clearly established limitations we must give more leeway to provide disadvantaged citizens with what affluent Americans always insist on and still largely have in their neighborhoods: elementary public safety.

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