

Danger of Secret Arrests

by Francis Bennion

One restriction on press freedom proposed in the Leveson Report involves the reporting of arrests: ‘To avoid . . . the risk of violating the private rights of individuals . . . it should be made clear that save in exceptional and clearly identified circumstances (for example, where there may be an immediate risk to the public), the names or identifying details of those who are arrested or suspected of a crime should not be released to the press or the public.’ (Executive Summary, para. 95).

Disquietingly, this was adopted by Lord Justice Treacy and Mr Justice Tugendhat in ‘A Judicial Response to Law Commission Consultation Paper No 209’. This was said to reflect the views of other senior judges.

Their grounds were: ‘The police arrest many people who are never charged. If there were a policy that the police should consistently publish the fact that a person has been arrested, in many cases that information would attract substantial publicity, causing irremediable damage to the person’s reputation. Even if the fact that the person was not charged were subsequently published, that would not receive the same publicity, and would not prevent subsequent internet searches disclosing that the person had been arrested.’

However the principle of open justice requires that arrests be publicised so as to alert the public. Witnesses previously unknown may then come forward. When it is borne in mind that a person may now be arrested simply for questioning, and that many arrested persons are released, there need not be irremediable damage to an innocent person’s reputation.

Secret arrests should not be possible. In many countries they are the notorious instrument of oppression.¹

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References:

None

¹ *The Times* 15 April 2013