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Cheerleading for the Police

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CHEERLEADING FOR THE POLICE

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Almost from the moment Eric William Irby died while hogtied in police custody in a rural part of Athens-Clarke County last July 19, local and area law enforcement officials have been acting as if they are afraid of the truth and have something to hide. They have circled the wagons and behaved defensively. They have refused to express regret over Irby's death or sympathy for his family. Usually eager to trumpet their activities to the world, they have been strangely mute. Usually open and friendly to the press, they have treated reporters' inquiries into Irby's death with sullen coldness.

Even the fact that Irby had died in police custody had to be pried from the police. Two days after Irby's death local police agencies were keeping the public in the dark about the matter and responding in the negative to inquiries by newspapers as to whether anything unusual had happened in their jurisdictions within the last few days.

When the fact of Irby's death became known, police agencies invoked technicalities and formalism to explain their odd silence. "[T]here is no law that requires us to call the media when something happens," a GBI agent was quoted as saying in the newspaper. "It's the media's job to find out what the news is and when they call us we release to them what information we can ..."

Now that it is clear that police have engaged in what smacks of a mysterious coverup, it is, unfortunately, necessary to report that the Athens-Clarke County district attorney is not acting in such a way as to expose any possible coverup.

On Oct. 9, the district attorney announced no police officers would be criminally charged in connection with Irby's death. In that announcement the district attorney demonstrated that, like too many other district attorneys, he has forgotten that it is dangerous in a free society for prosecutors to sink into the role of cheerleader for the police no matter what they do. Thus, he stated that in the Irby case we are dealing with nothing more than "a normal arrest under the circumstances." He refused to accept the medical finding that Irby suffocated due to being hogtied, even though it was made by the GBI crime lab. He refused to release the GBI report. He admitted that he decided not to prosecute any officers two months before he announced his decision. His insensitivity to possible human rights violations manifested itself when

he found Irby's death to be appropriate for jocose banter, referring to "positional asphyxiation" (a medical term which originated because of numerous suffocation deaths of citizens hogtied by American police) as "the latest fad." Incredibly, he predicted similar deaths of Athens-Clarke County citizens ("it is going to happen again"), even though hogtying is expressly forbidden by Athens-Clarke County police regulations.

On Oct. 22, the district attorney finally released a written report on the Irby case to the public, an 8-page letter to the local police chief "Re: Death of Eric Irby." That letter should be read by all citizens who want to know why lawlessness in law enforcement by American police thrives and why it is not suppressed by American prosecutors. It is a weird compendium of attacks on the press and the victim, unproven or suspicious factual allegations or omissions, and nitpicking over definitions. It is imbued with a pro-police bias and an unwillingness to recognize that even bad people may have rights and that even good policemen may do wrong. Its heartlessness is repelling and its message is strident: in Athens-Clarke county alleged human rights violations by police have a very low priority with this district attorney.

This bizarre letter begins with a hate-filled diatribe against a conservative Republican newspaper ("The Athens Banner Herald shows itself to be incapable of dealing with legal issues intelligently") and then immediately complains that both the police department and the coroner have released "untimely" information to the public.

The letter then notes self-righteously that in the Irby case neither the investigators, the GBI, the medical examiner, nor the coroner "has ever suggested that anyone should be prosecuted." This, of course, may be literally true but is essentially misleading. It is hardly to be expected that the police would recommend that they themselves be prosecuted; besides, it is not routine procedure for police, medical examiners, or coroners to recommend criminal prosecutions.

Since the official GBI report and most of the other reports and documents in the case had not been released when the letter was made public (and were still unavailable when I wrote this guest editorial), it is often difficult to judge the accuracy of the facts alleged in the letter. However, it is apparent the district attorney wholeheartedly swallows the police version of all the relevant facts; the possibility that police might be stretching or slanting the truth to protect themselves was not considered.

One of the surreal aspects of the district attorney's letter is its absurd refusal to accept, and its quibbling with, the finding of the GBI crime lab pathologist who performed the autopsy on Irby's corpse the day after Irby died and who reported the cause of death to be asphyxiation resulting from police having hogtied the victim with "a short cord." It is highly unusual for a prosecutor to dispute the autopsy reports of police

crime labs. The letter, however, maintains that because it was 4 feet long the cord connecting Irby's bound hands and feet behind his back was not "short." The letter does not consider the possibility that only part of the cord was used to hogtie Irby, and it accepts unquestionably the self-serving statement of the police that Irby "was able to lie almost perfectly flat." The letter denies the hogtied Irby was placed face down (a dangerous practice, creating the possibility of suffocation), even though at least one policeman at the scene filed a written report that Irby was "laid face down."

In rejecting asphyxiation due to hogtying as a cause of death, the district attorney's letter relies not on the pathologist who did the autopsy, nor on anyone who examined the corpse, but instead on the opinions of two doctors, one in California and the other in North Carolina, to whom the district attorney says he "submitted this case for review"!

Other surreal aspects of the district attorney's letter:

Two paragraphs are devoted to trying to prove that even if Irby died due to hogtying his death was an "accident" rather than a "homicide" (even though everyone familiar with criminal law knows that a homicide is the killing of one human being by another).

No mention is made of the proven dangers of hogtying suspects, of the numerous deaths that have resulted from hogtying, or of the fact that at the time Irby was hogtied local police regulations prohibited the procedure.

Even though Irby was struck on the head with the butt of an officer's pistol (which discharged, without anyone being hit by the bullet) and then incapacitated by pepper spray, no consideration is given to the possibility that these factors, when combined with the hogtying, were contributing factors in his death.

Even though Irby is dead and cannot defend himself or give his side of the story, the letter not only blames him for his own death, but also convicts him of burglary, possession of stolen property, and gang membership.

Stanford University law professor Anthony G. Amsterdam has observed that the rights and liberties of Americans are now "enjoyable only at the sufferance of expanding, militaristically organized bodies of professional police." The unadmirable way police and prosecutors have handled the case of the July 19, 1997 death of Eric William Irby tends to confirm the accuracy of Prof. Amsterdam's frightening observation.