

depressing lives these people led. Even a lecturer with nothing much to say was a relief to husbands and wives who, for years, had even less to say to each other.”

The chautauqua was not just a rural phenomenon, Johnson notes. It was “one of the first attempts to deliver a truly national culture to the masses—a culture linking rural and urban, East and West, North and South. Although the Midwest, and especially the state of Iowa, became the center of chautauqua activity, pro-

grams were held in all regions of the nation and in the largest cities,” including New York and Chicago.

The early 1920s, Johnson notes, saw “the emergence of rival means of delivering a national culture to even the most isolated parts of the nation: radio and motion pictures.” Only some 500 cities held chautauquas in 1928. By the 1950s, only one chautauqua was left—in Mediapolis, Iowa. It was no longer “the most American thing.”

PRESS & MEDIA

Watching the Feds

“Where are the Watchdogs?” by Lucinda Fleeson, in *American Journalism Review* (July/Aug. 2001), Univ. of Md., 1117 Journalism Bldg., College Park, Md., 20742-7111.

Are federal agencies too boring to cover on a regular basis? Editors at most major newspapers seem to think so. According to a recent *American Journalism Review* survey, a number of government bureaucracies are not covered by any full-time newspaper reporters, including the \$46 billion Department of Veterans Affairs, which is the third-largest federal employer after the Pentagon and the Postal Service.

Critics warn that the change leaves government agencies less accountable to the public. Consumer advocate (and erstwhile presidential candidate) Ralph Nader argues that to cover government, reporters must “get inside, you’ve got to get the leaks, and the whistle-blowing, and you can’t do that once in a while.”

Editors are generally unapologetic, notes Fleeson, a former *Philadelphia Inquirer* reporter. “We don’t cover buildings,” says Sandy Johnson of the Associated Press. At the *Washington Post*, national editor Liz Spayd says that her staff of 50 isn’t big enough to do the job, even if she wanted it to. Editors also insist that the old approach often lost sight of larger issues in a sea of trivia, or yielded stories of marginal interest. Besides, Reuters and the Associated Press (as well as trade publications) still cover the old beats. Today’s editors prefer to assign reporters to cover several agencies at once, or to produce thematic or issue-oriented “enterprise” stories.

Out of the changes has emerged what Fleeson calls “the New Washington Reporter,” who gives “only part-time scrutiny to the busi-

ness of the federal government.” One of them is Lisa Hoffman, a Scripps Howard reporter charged with covering the Pentagon, the State Department, and the Internet. She still stalks the halls of the Pentagon on occasion, and she’s a good reporter, Fleeson says. But Hoffman is stretched thin and there’s a limited payoff to covering the Pentagon: The chain’s papers don’t always run her defense stories. Readers aren’t interested, editors say.

Another member of the new breed is the *Los Angeles Times*’s David Willman, who won a Pulitzer Prize for his 1998 stories revealing that the Food and Drug Administration (FDA) had given fast-track approval to seven drugs over the objections of its own experts and other warnings. Willman reported that one drug, Rezulin, a diabetes treatment, was linked to 33 deaths. After Willman’s story broke, the drug was recalled by the FDA. But it was a triumph of enterprise rather than beat reporting: it took almost two years to complete the story, and Willman had to be freed from covering campaign finance reform and other matters.

Willman’s *Times* colleague, Alan C. Miller, scored a coup in 1994 by uncovering ethical misdeeds by then Agriculture Secretary Mike Espy. He went back to Agriculture two years later and wrote about the theft of timber in national forests. “Every time I dug into something at the Ag Department, we hit paydirt,” Miller told Fleeson. But the *Times*, based in the nation’s biggest agricultural state, doesn’t have anybody “covering the building.” The department “is

largely uncovered except by the AP, Reuters, and the *Des Moines Register*.”

Fleeson is not unsympathetic to the editors’ dilemma: hard news or enterprise. But she

reaches an “uncomfortable” conclusion: Despite all the talk, “fewer and fewer mainstream news organizations bother any anymore with dailies or enterprise stories.”

Privileged Reporters?

“The Reporter’s Privilege, Then and Now” by Stephen Bates, in *Society* (July–Aug. 2001), Transaction Periodicals Consortium, Rutgers Univ., P.O. Box 10826, New Brunswick, N.J. 08903.

There’s one story the news media never tire of running: Somewhere in America, a reporter has gone heroically off to jail after defying a court order requiring him to turn over notes or tapes to the authorities. It’s a First Amendment issue, journalists cry. Without a “right to silence” they will become de facto investigators for the state, and the chilling effect on sources will compromise the constitutional guarantee of a free press. In the eyes of government, however, journalists have the same obligations as other citizens.

The law is equivocal, notes Bates, literary editor of the *Wilson Quarterly* and formerly a lawyer in the office of the Whitewater Independent Counsel. There’s no record of any reporter claiming such a privilege before 1848, when John Nugent of the *New York Herald* refused to reveal to Congress who had supplied him with a secret draft treaty with Mexico. He was jailed for 10 days but kept his secret. By 1896, the question of privilege apparently had arisen often enough that Maryland passed a “shield” law protecting journalists from state subpoenas. (Today, 31 states have such laws.) It wasn’t until 1957 that a case involving a clear First Amendment argument reached a high federal court. The reporter lost.

Things changed in the 1960s, as a new generation of politically liberal and generally more adversarial journalists took the stage. Early in the Nixon administration, moreover, federal prosecutors aggressively pursued media subpoenas, as did Congress. News organizations mostly complied but warned loudly of the dangers to liberty. Finally, in 1972, the Supreme Court weighed in. In *Branzburg v. Hayes*, it rejected by a 5-4 majority three reporters’ separate claims of journalistic privilege, noting that the only “testimonial privilege” afforded by the Constitution is the Fifth Amendment’s protection against self-incrimination. Worries

about a chilling effect, the Court said, were largely “speculative.” It pointed out that judges could still intervene if a malicious prosecutor used subpoenas to harass the press.

However, Justice Lewis E. Powell, Jr.’s concurring opinion left a number of doors open, and some lower federal courts have marched through, often recognizing a testimonial privilege after applying a three-point test to media subpoenas. The Supreme Court, while sticking by *Branzburg* in principle, according to Bates, has passed up opportunities to correct the lower courts.

What to do? Above all, Bates argues, government and the news media must strive to avoid situations in which journalists defy the rule of law. “The law suffers when court orders are flouted without shame—or, indeed, with pride.” Strict guidelines already limit the number of media subpoenas pursued by the U.S. Department of Justice to one or two dozen annually. (In 1997, there were 2,725 media subpoenas, mostly from civil litigants and criminal defendants; federal prosecutors accounted for fewer than 25.) Some federal independent counsels may arguably have been incautious in seeking *particular* media subpoenas, but Congress isn’t likely to reenact the now defunct law needed to create future independent counsels. (It has also declined to pass a shield law or other limits on media subpoenas.)

The news media must also exercise self-restraint, Bates says. When the New York State police posted newspaper photos on its Web site to aid in the identification of criminals at the Woodstock ‘99 festival, the Associated Press and Syracuse Online forced their removal, claiming copyright infringement. That was simply bad citizenship, declares legal ethicist Stephen Gillers. He warns, says Bates, that inflating such “trivial incursions . . . may numb the public to the dangers posed by true First Amendment violations.”