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Privacy and Security of Criminal History Information

PRIVACY AND THE MEDIA

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Privacy and Security of Criminal History Information

PRIVACY AND THE MEDIA

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PREFACE

In recent years, a critical issue impacting criminal justice information policy has been the extent of access which the news media should have to information about the criminal justice process. The question of news media access, in reality, is the question of public access.

How much should the public know about the functioning of the criminal justice process? In a democracy, the public is entitled to know a great deal. But, is there information which should be withheld? What of information that would deprive defendants of a fair trial or would improperly infringe on individual privacy rights? What of information that would interfere with the ability of law enforcement officials to apprehend and prosecute wrongdoers?

Courts, legislatures and executive branch agencies all have tried to define standards which would govern access by the news media. Thus far, however, no approach has satisfied all of the interests in this continuing debate.

Recognizing the complexity of the issue, SEARCH Group, a consortium of criminal justice practitioners appointed by the governors of each state, has sponsored several national conferences to explore news media access to criminal justice information. These meetings gave impetus to the report that follows. Here the underlying law and policy issues are discussed and divergent views are summarized.

Readers will find that there is a clear understanding of the policy questions and of the interests at stake. In short, we are beginning to explore the right questions. The challenge ahead is to find workable answers.

STEVE E. KOLODNEY
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INTRODUCTION

This report describes the legal and policy aspects of the relationship between the news gathering process and the criminal justice process. As such, it is a report about the conflict between those who believe that most, if not all, of the workings of the criminal justice process ought to be public and those who believe that only some parts of that process should be public.

The ultimate outcome of this conflict is important. Participants in this increasingly heated debate are especially apt to describe the conflict in apocalyptic terms. However, even after allowing for the fervor of affected groups it is unquestionably true that this debate raises fundamental questions about the nature of our society. Three interests are directly affected: the public's interest in receiving sufficient information to effectively monitor and participate in the functioning of the criminal justice system; the defendant's interest in limiting the availability of embarrassing and stigmatizing information; and the criminal justice system's interest in limiting the availability of information that, if released, might undermine the system's effectiveness. Ultimately the balancing of these three interests affects the relationship of the public to its government and the relationship of citizens to both the body politic and the government.

The report has eight substantive chapters. Chapter I analyzes the role of the media. Are the media simply representatives of the public or do they have (should they have) special or different rights?

Chapter II focuses upon the policies and laws that shape and control media access to criminal justice information.*/ In the last few years, the question of access to and handling of criminal justice records by the news media has emerged as

*/ For definitions of the various types of criminal justice information see the Appendix.

perhaps the most significant issue confronting the continued development and implementation of standards for the security and privacy of criminal justice information. In fact, legislators and executive branch officials cite the issue of media access to criminal justice information as the major dilemma obstructing the further development of criminal justice information policy. Chapter II presents an overview of the constitutional and statutory provisions that govern access to criminal justice records.

Chapter III discusses both the policy and legal issues raised by media access to specific types of criminal history record information. The discussion differentiates between raw arrest information and conviction record information as well as chronologically filed data and name-indexed cumulative records.

Chapter IV deals with the access question regarding the highly sensitive nature of information found in investigative and intelligence files as well as in correctional and release records.

Chapter V identifies the policy issues and legal standards that pertain to media access to on-the-scene events such as terrorism and hostage situations. These types of situations ordinarily involve a conflict between the media and criminal justice officials. Unlike most of the issues discussed in this report the potential criminal defendants often encourage media access and involvement.

Chapter VI discusses media access to criminal justice physical facilities such as jails and prisons. The media's purpose in seeking such access is to obtain information about the operations and conduct of government. Here, too, it is not uncommon for criminal justice subjects (prisoners) to support media demands for access.

Chapter VII deals with one of the most analyzed and significant aspects of the media/criminal justice relationship -- media access to trials and other judicial proceedings. Free press, fair trial issues have been the subject of numerous court decisions including a recent Supreme Court opinion.

Chapter VIII takes a brief look at the obverse of media access to criminal justice data. That section discusses the policy issues and legal standards regarding governmental access to personal data of criminal justice interest held by the media.

In each of the six substantive sections the report uses a similar format. It first identifies and describes the issue. Second, it presents the opposing policy arguments or points of view. For some issues the media, criminal record subjects and criminal justice record keepers each have differing points of view. For other issues only two opposing points of view have surfaced. Finally, constitutional and statutory provisions as well as significant case law are discussed in each instance.

This report does not propose policy or attempt to evaluate arguments. Rather, the report is intended only to familiarize the reader with relevant issues, current arguments and related legal materials.

The reader should recognize, however, that in light of the complexity of issues involved, alternative interpretations and/or additional factors may also be relevant to particular policy decisions. The reader should recognize also that the materials included in the document were prepared under a grant to SGI and do not necessarily reflect the view of BJS or the Department of Justice.

CHAPTER I

NATURE OF THE NEWS MEDIA

SPECIAL NEWS GATHERING AND ACCESS RIGHTS

Media spokesmen often argue that the media should have a substantive right to criminal records that exceeds the public's right to such data.

These spokesmen point out that the media represent all of the public and therefore should be able to make a stronger claim to access than an ordinary citizen. This reasoning is accepted and sometimes forcefully advanced by criminal justice officials. It is not uncommon for criminal justice agencies to grant greater access to media representatives than to the public generally. Many criminal justice officials support the notion that media scrutiny of criminal justice activities and facilities is an important protection of the interests of the public and of persons involved in the criminal process.

However, the Supreme Court has held, on numerous occasions, that the media's right of access to criminal record information (and to restricted governmental criminal justice facilities and to judicial proceedings) is no greater than the right of the public generally. Thus, in Branzburg v. Hayes, the court, in concluding that reporters do not have a constitutional right to protect the identity of their confidential sources, states:

> [T]he First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally. 1/

Although the press cannot be denied access to information already in the public domain,2/ the Court has made it clea

that such public information would be available generally and without discrimination to any member of the public.

> The Constitution does not . . . require government to afford the press special access to information not shared by members of the public generally. It is one thing to say that a journalist is free to seek out sources of information not available to members of the general public, that he is entitled to some constitutional protection of the confidentiality of such sources . . . and that government cannot restrain the publication of news emanating from such sources . . . . It is quite another thing to suggest that the Constitution imposes upon government the affirmative duty to make available to journalists sources of information not available to members of the public generally. That proposition finds no support in the words of the Constitution or in any decision of this Court. 3/

DEFINITION OF THE NEWS MEDIA

In those cases where criminal justice officials have given special access rights to the press, a problem often arises in defining who represents the press. Many criminal justice officials have restricted access to "accredited" or "responsible" news organizations and individual reporters. Some agencies themselves determine which media applicants are accredited and responsible; others accept credentials issued by media associations or particular newspapers or media organizations; and still others grant access to anyone claiming to be a media representative.

However, government attempts to discriminate among different newspapers may be unlawful. In Quad-City Community News Service, Inc. v. Jebens,4/ the court held that where criminal justice officials denied an "underground

newspaper" access to police department records which were available to other members of the media on the grounds that the underground newspaper was not a "legitimate" or "established" paper, the officials had violated the equal protection clause of the Fourteenth Amendment. The court found that the officials could not show a compelling governmental interest to justify the refusal of access to one newspaper while allowing access to other members of the media.

In Branzburg the Supreme Court took into account the difficulty and inherent unfairness of governmental determinations of legitimate and illegitimate newsmen in making its decision that the Constitution does not give reporters a privilege to refuse to identify their confidential sources. The Court reasoned that "[t]he administration of a constitutional newsman's privilege would present practicial and conceptual difficulties of a high order," in part because such a privilege would require the courts to draft a definition of the newsman:

> Sooner or later, it would be necessary to define those categories of newsmen who qualified for the privilege, a questionable procedure in light of the traditional doctrine that liberty of the press is the right of the lonely pamphleteer who uses carbon paper or a mimeograph just as much as of the large metropolitan publisher who utilizes the latest photocomposition methods 5/

Thus, the Supreme Court has apparently defined media in a way that would alleviate the problem of press credentials. All "newsmen," i.e., any member of the public claiming to be a media representative, should have equal access to criminal records and trial proceedings.

CHAPTER II

CRIMINAL JUSTICE INFORMATION LAW AND POLICY

PUBLIC INTEREST

The issues raised by media handling of criminal justice information involve the right of the public (media) to collect, use and disseminate information versus the interest of individuals in preserving their privacy and the interest of society in assuring the proper functioning of criminal justice agencies and the judicial process.

First Amendment

The First Amendment to the Constitution states that the Congress "shall make no law abridging the right of speech or of the free press . . . ." As interpreted by the Court, the free speech clause, despite its absolute language, does not altogether prohibit the government from regulating speech.6/ However, the effect of the Amendment is to place substantial restraints on the government's (including both federal and state entities) ability to regulate the public's exercise of its right to speak and to hear.7/

The First Amendment serves many purposes including, to some extent, safeguarding the public right to be informed of interesting or noteworthy events.8/ The public has a legitimate curiosity and interest in the criminal justice system and the people who become involved in it. Criminal proceedings are by their nature interesting, often sensationally so, as are the participants, including the suspects and defendants as well as

as the public officials who administrator and run the system. The media therefore have a legitimate role in responding to the interest of the public in newsworthy criminal proceedings.

Aside from its interest in particular criminal justice events and participants, the public has an interest in insuring that the criminal justice system and the officials responsible for its operation are visible and accountable. The Court has said that the First Amendment is also intended to insure that the public can participate in and monitor government activities in a pluralistic and vigorous manner.9/ Public scrutiny is the best way to prevent corruption in government and uneven or miscarried justice. If public officials know that their activities will be monitored and reported by the media they are more apt to be honest and conscientious. Similarly, public scrutiny can help to insure the integrity, efficiency and fairness of criminal recordkeeping systems and the accuracy of the records maintained. Further, the availability of the criminal records of persons who are nominated or appointed to public office can protect against unqualified and corrupt persons being elected or appointed to positions of public trust.

Constitutional Privacy Rights

The "right of privacy" is not expressly guaranteed in the Constitution. However, a long series of Surpeme Court decisions have indicated that individuals have constitutionally protected rights of privacy that are implicit in several of the Amendments in the Bill of Rights.10/ Although the Court has rejected arguments that public disclosure of criminal records necessarily violates subject privacy rights, nevertheless constitutional privacy considerations are relevant to media access issues.11/

This privacy right includes, in general, the individual's interest in avoiding unnecessary intrusions into his personal life and maximizing the confidentiality of personal data about him maintained by public agencies. In addition, it is generally conceded that public disclosure of a criminal record of any type can damage the reputation of the record subject and limit his opportunities for employment, licensing, credit and other valued benefits.

CONSTITUTIONAL RIGHT TO OBTAIN GOVERNMENT INFORMATION

The Supreme Court has said that news gathering warrants some degree of First Amendment protection.12/ However, the extent of such protection remains uncertain. Clearly, the protection includes the right to gather and use information that is a matter of public record.13/ Thus, in Cox Broadcasting Corporation v. Cohn 14/ the Court struck down a Georgia statute that prohibited the publication of a rape victim's name because in that instance the name was contained in a public record of a court.

> By placing the information in the public domain on official court records, the State must be presumed to have concluded that the public interest was thereby being served. Public records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media. The freedom of the press to publish that information appears to us to be of critical importance to our type of government in which the citizenry is the final judge of the proper conduct of public business. In preserving that form of government the First and Fourteenth Amendments command nothing less than that the State may not impose sanctions on the publication of truthful information contained in official court records open to public inspection.15/

However, if the government chooses not to place information, even arguably public information, in a public record, the extent to which the First Amendment gives the media or the public a right to obtain such data is uncertain. The First Amendment merely prohibits the government from improperly

restraining individual free speech. The language of the Amendment does not guarantee that government held data will be made public.

For example, in Houston Chronicle Publishing Co. v. City of Houston, 16/ a Texas state court upheld the validity of provisions in Texas' Open Records Act that discontinued public disclosure of some criminal history information. The opinion acknowledged that both the press and the public have a "constitutional right of access to information concerning crime in the community." However, in the court's opinion this constitutional right must be balanced against other competing interests such as the state's legitimate interest in preserving the secrecy of their records from the eyes of the defendants and their counsel and in protecting those defendants from excess publicity, and the defendants' right to be protected from unwarranted invasions of privacy.

In balancing these interests, the court held that the press was entitled to some records, such as the "arrest sheet" and "police blotter" and the first page of the "offense report." In the court's view these records supplied enough information to report on crime and criminal activities. But it denied access to other records where the risk of personal injury was high. These included personal history and arrest records (rap sheets) containing arrest notations without dispositions and inaccurate or misleading entries, and the body of the offense report which includes information about the detection and investigation of crime and notations intended for internal use. The court recognized the need of the press for background information on arrested persons, but noted that such information could be obtained through interviews and other sources.

Because criminal justice events are matters in which the public has a legitimate interest, it appears that the First Amendment's "right to hear" and to gather information provides the media and the public with a guarantee that some types of criminal justice record information must be made available. However, at this point the nature and scope of this constitutional access right is not fully defined.

RIGHT TO USE AND DISSEMINATE PERSONAL INFORMATION

First Amendment Right to Publish

Although the media's First Amendment right to obtain government held criminal justice data is uncertain, there is little uncertainty about the media's First Amendment right to publish such data once it has fallen into their hands. The First Amendment clearly prohibits the government from acting to limit the media's dissemination of criminal justice record information. In numerous recent opinions the Supreme Court has restated the prevailing constitutional view that the press has a right to publish any information it obtains without government restraint except in the most limited and extreme circumstances.17/

Media Liability Under Common Law Libel and Privacy Theories

However, a criminal record subject's interest in safeguarding his privacy and confidentiality is not wholly unprotected. The Supreme Court has said that despite the media's First Amendment right to publish, such publication can result in civil liability for the press when the disclosure defames the individual or invades his privacy. In the leading case of Time, Inc. v. Hill 18/ the Court rejected an invasion of privacy claim made against Life Magazine for publishing an account of a family's ordeal as the captives of three escaped convicts. The Court said that involvement as victims in this crime made the family and their ordeal newsworthy. Consequently, the Court held that the family could not recover unless they could show that the information was published with "actual malice" -- i.e., with knowledge that it was false or with reckless disregard of whether it was false or not.

The opinion in Time v. Hill is significant as an analysis of media handling of criminal record information for two reasons. First, it makes clear that criminal record subjects who are victimized by a purposely or recklessly inaccurate disclosure of their criminal records would prevail in an invasion of privacy action. Second, the opinion indicates that individuals

who are involved in criminal events (presumably as a defendant, victim or witness) may be, in some circumstances, involved in a matter of public interest. Consequently, in order for such a person to prevail in a privacy or libel lawsuit he must be able to show actual malice by the media as opposed to merely meeting the normal privacy standard (public disclosure of private facts) or libel standard (publication of untruthful and harmful information).

In two decisions in the mid-70's, Gertz v. Robert Welch, Inc. 19/ and Time, Inc. v. Firestone 20/ the Court somewhat increased the privacy protection by narrowing the definition of a public figure. In Gertz a prominent Chicago attorney who had been defamed in a publication called American Opinion, a monthly outlet for the views of the John Birch Society, sued for libel. The Court said that Gertz was not a public figure even though he had "long been involved in community and professional affairs" and was "well-known in some circles." Consequently, Gertz did not have to show actual malice in order to prevail.

In Firestone the former wife of the head of a major corporation sued Time Magazine for misinterpreting a divorce judgment. Time had reported erroneously that the divorce had been granted on grounds of adultery as well as extreme cruelty. The majority rejected Time Magazine's claim that the Time, Inc. v. Hill actual malice standard of liability should apply because Firestone was a "public figure." The Court found that Mrs. Firestone was not a "public figure" because she had not "thrust herself to the forefront of any particular public controversy in order to influence the resolution of the issues involved in it." Accordingly, she was not a person who had "voluntarily exposed [herself] to increased risk of injury from defamatory falsehoods." The Court rejected the argument that the act of initiating or otherwise becoming involved in a lawsuit makes a person a public figure.

On June 26, 1979, the Supreme Court handed down an opinion which squarely held that a person who engages in criminal conduct does not by virtue of that conduct alone automatically become a public figure. Wolston v. Reader's Digest Assoc. 21/involved a libel suit against the publisher of a book about

Soviet spying by an individual who was named in the book as a Soviet spy. In 1958 the individual had refused to testify before a grand jury investigating Soviet intelligence activities. He was subsequently convicted for contempt but was never proven to be a Soviet agent. The Supreme Court said that the individual's failure to testify before the grand jury did not mean that he had voluntarily thrust himself into the public eye.

> This reasoning leads us to reject the further contention that . . . any person who engages in criminal conduct automatically becomes a public figure for purposes of comment on a limited range of issues related to his conviction.
>
> * * * *
>
> To hold otherwise would create an 'open season' for all who sought to defame persons convicted of a crime.22/

The California Surpreme Court has also spoken to this issue and has said that even a convicted felon does not by virtue of that conviction remain a public figure indefinitely. In Briscoe v. Reader's Digest Association 23/ the California Supreme Court, basing its decision in part on California's Constitutional privacy provision, held that publication of information about an individual's conviction 11 years after the event did not constitute a matter of valid public interest. Therefore, the California Court refused to apply Time v. Hill's actual malice standard.

STATUTORY PROVISIONS AFFECTING NEWS MEDIA ACCESS TO CRIMINAL JUSTICE INFORMATION

The preceding discussion indicates that the Constitution does not settle the question as to whether criminal justice records are public or private. Rather, that discussion indicates that within broad limits state legislatures, the Congress and executive branch agencies have discretion to balance First Amendment interests with privacy and criminal justice interests in setting their own disclosure rules. The form that these rules should take has been the subject of heated debate.

FOIA, Privacy Act and Subpart C of the U.S. Department of Justice Regulations.

At the federal level the Freedom of Information Act 24/(FOIA), the Privacy Act of 1974, 25/ and Part 20, Subpart C of the Department of Justice Regulations "Dissemination of Criminal History Information" 26/ set the basic rules for public and media access to federally held criminal record information.

The Freedom of Information Act requires that agencies of the federal government make available to the public all written information in their files unless the withholding of the information can be authorized under one of the Act's nine exemptions. The extent to which specific FOIA exemptions can be used to limit media access to specific types of criminal justice information is an area of unsettled and changing law.

Generally speaking, only three of the FOIA's exemptions are potential sources of authority for denying access to criminal justice information: subsection (b)(3) if the information has been specifically exempted from disclosure by statute; subsection (b)(6) if the disclosure would constitute a clearly unwarranted invasion of personal privacy; and subsection (b)(7) if the information is investigatory records and disclosure would result in one of six types of harm identified in the subsection and discussed later in this report.

The Privacy Act, despite popular misconceptions, has little effect on media access to criminal justice information. The Privacy Act prohibits federal agencies from releasing most types of personal information without the individual's written consent unless the release is permitted under one of that Act's eleven exceptions. One of those exceptions permits agencies to release information that must be disclosed under the FOIA. Thus, if a criminal record is to be withheld it must qualify for one of the FOIA's disclosure exemptions. Otherwise the FOIA requires its release and therefore the Privacy Act's exemption is met.

In interpreting the FOIA the Department of Justice has taken a restrictive, pro-privacy view of the release of criminal

record information. Its Subpart C Regulations prohibit the release of summaries of arrest and conviction information (rap sheets) to the public. The only exception made is for arrest record information that is "reasonably contemporaneous" with the event to which it relates.

There has not yet been a direct test as to whether the disclosure of either conviction or arrest information constitutes a clearly "unwarranted invasion of privacy" as that term is used in the FOIA's (b)(6) exemption. As discussed later in the Report, it appears that a better privacy argument could be made for the sheltering of arrest records than for conviction records. The Supreme Court has held that to determine if an invasion of privacy is "clearly unwarranted" the government -- and ultimately the courts --must in each case balance the extent of the privacy injury against the benefits of disclosure.28/ This determination requires the court to take into account the identity of the requestor and his purpose. The effect of this standard is to require that each evaluation of a media request for criminal history information be done on the basis of the facts of that particular case.

State Law and the LEAA Regulations

At the state level there is an increasing amount of legislation that affects media access to criminal justice information. All fifty state jurisdictions now have some type of open-record or freedom of information act. The majority of these acts have been patterned after or amended to reflect the federal Freedom of Information Act. A review of a representative sample of these acts suggests that these statutes contain at least some exemptions for withholding some types of criminal justice information. In addition, a growing number of states including Alabama, Alaska, Connecticut, Georgia, Hawaii, Iowa, Maryland, Maine, Massachusetts, Montana, Nebraska, Pennsylvania, Virginia and Washington, have enacted statutes that comprehensively regulate and limit public access to criminal history information (both arrests and convictions) maintained in criminal justice information systems.29/ Many other states have laws that regulate at least some aspects of disclosure. Furthermore, at last count, 39 states had specific legislative provisions that permitted sealing or expunging of

criminal history record information under enumerated circumstances.30/

In conformance with the Crime Control Act of 1973, the Law Enforcement Assistance Administration (LEAA) has promulgated regulations which set disclosure standards for state and local criminal justice information systems funded by LEAA.31/The regulations do not affect disclosure of conviction information, investigative and intelligence information and correctional and release information. However, under the regulations, criminal justice agencies cannot, with minor exception, disclose arrest record information outside of the criminal justice community unless the disclosure can be made consistant with a federal or state statute, ordinance, executive order or judicial decree.

CHAPTER III

ACCESS TO PARTICULAR TYPES OF CRIMINAL HISTORY RECORD INFORMATION

CHRONOLOGICALLY ARRANGED ARREST RECORD INFORMATION

Although the types of information recorded and the types of documents in which the information is recorded and maintained differ greatly from jurisdiction to jurisdiction, chronologically arranged arrest record data typically includes: the basic data surrounding the fact of the arrest (time, location, circumstances, identity of arrested person, charges); and may include other relevant information, such as names of victims and names of witnesses. It is common for the basic factual data to be recorded in chronologically arranged "arrest books" or "police blotters." In most, but not all jurisdictions, the arrest books or blotters are open to the public by law or long-standing tradition.

Accounts of criminal court proceedings, including indictments and arraignments, and arrest and conviction information, are also arranged chronologically. Court record information of this type has always been considered public.32/

Media Viewpoint

There is a broad consensus that the basic facts surrounding arrests should be open to the public and the media on a current basis. The available data should include the factual information relating to the occurrence of the arrest, the identity of the arrested person, the basic circumstances of the offense and the arrest charges.

The media's argument that criminal justice events and the workings of criminal agencies are matters of legitimate public

interest has been persuasive in the context of access to chronologically arranged arrest information. Proponents of broader access rights argue that because criminal justice agencies are public agencies, therefore criminal records should be public records. If criminal proceedings are open to the public, they argue, the records of these proceedings should also be open to the public. Further, the recordkeeping systems of criminal justice agencies are, like all of their other activities, financed by public funds and administered by public employees and, therefore, the systems and the records themselves are public property. If this public property interest does not require that every type of record of every type of criminal justice proceeding be open to the public in every instance, it creates, at least in the view of many people, a strong presumption in favor of public access. Of course, presumptions can be overcome by compelling privacy or confidentiality considerations in individual cases. In the case of chronologically arranged, factual arrest data, the general view is that this presumption cannot be overcome.

Another important argument often made in favor of media and public access to chronologically maintained arrest information is that public scrutiny of criminal justice processes protects against such abusive practices as secret arrests, "dragnet" arrests designed to harass or oppress certain groups, incommunicado detentions, "star chamber" interrogations, and the like.

State of the Law

No reported decision has ever found that individuals' privacy interests require that chronologically arranged, factual arrest data be treated as non-public information. Indeed, to the extent that the courts have ever been faced with this issue, they have ruled the other way. For example, as noted earlier, in Houston Chronicle Publishing Co. v. City of Houston 33/ a Texas state court ruled that the media have a First Amendment right to have access to certain chronologically arranged factual data such as the arrest sheet and police blotter and the first page of the offense report which supply basic information needed to report on crime and criminal activities.

In holding that the press can obtain chronologically arranged, factual arrest data which does not contain the personal history or arrest record of the defendant, the Houston Chronicle opinion is consistent with other state court decisions. Thus, in Holocombe v. State 34/ the Alabama Supreme Court held that jail dockets and records which contained information describing each prisoner received into a local jail, his age, sex, identifying characteristics and the charged offense were public records and could be inspected by newspapers. In Dayton Newspapers, Inc. v. City of Dayton 35/ the Ohio Supreme Court held that a city jail log, which listed arrest numbers, names of prisoners, charges, dates, times and dispositions, was a public record and could be disclosed to a newspaper.36/

NAME-INDEXED CUMULATIVE RECORDS

In addition to current arrest record information, criminal justice agencies have long kept name-indexed cumulative records showing the involvement of identified individuals in criminal proceedings. These records, commonly called "criminal histories" or "rap sheets," show not only the outcome of successive stages of the criminal process relating to a particular arrest, but also a history of all previous arrests of the individual concerned and the outcomes of those arrests.

Privacy Viewpoint

The question of media access to rap sheets has generated great controversy. Many privacy advocates contend that the media does not need access to all types of criminal records to carry out its public information responsibilities. Since the media's responsibility is to inform the public about criminal proceedings and to monitor the quality of justice, their responsibilities can be discharged through access to criminal proceedings and to chronologically arranged records. According to privacy advocates, media access to proceedings and to the original source documents maintained by criminal justice officials to record their activities on a chronological basis is all that is required. It is argued that the need for media access to noncurrent cumulative records is slight and, where such records are necessary, media representatives can compile the information by using the chronological records.

A further argument advanced by privacy proponents is that these original records are more apt to be complete and are less subject to misinterpretation than the cumulative "rap sheet" type records maintained by criminal justice agencies. In addition, some of the advanced automated systems now in increasing use actually magnify privacy concerns by bringing together diverse items of information that may be incomplete or may be misleading, at least if obtained by persons not familiar with a system's limitations or its information format. Weighing the increased privacy risks of this type of information against the limited needs for media access to it, privacy advocates conclude that media access should be presumptively limited to current chronological records.

Criminal Justice Viewpoint

A final consideration raised by criminal justice officials is that, since criminal history record systems, particularly when they are automated, actually increase privacy risks, criminal record custodians have an active responsibility to be extremely cautious in granting access to such systems. Some officials have stated publicly that they worry that it is not practical to rely on the responsibility of the media to protect the privacy interests of record subjects because the interests of the media often are at cross purposes with societal privacy concerns.

According to this view, newspapers and other news media organizations are, after all, businesses, engaged in a competitive enterprise. It is claimed that decisions about whether or not to publish particular information can be influenced by business and competitive considerations, as well as considerations of public interest. According to this theory, it is not realistic to expect organizations that have an economic interest in the outcome of publication decisions to give due weight to the privacy interests of individuals involved in sensational or otherwise newsworthy criminal proceedings. Nor is it practical to rely on post-publication lawsuits to remedy privacy harms.

For these reasons, some criminal justice representatives argue that criminal justice personnel, who have little personal or

economic interest in disclosure decisions and who are charged with the responsibility of protecting both public and individual interests, are better qualified to fairly weigh the competing interests, and therefore have a positive duty to exercise discretion in releasing potentially harmful criminal records.

Media Viewpoint

Media representatives respond that the public has an interest in the criminal history of individuals and that the public interest can be served effectively only by giving the media access to cumulative criminal history records. Because the information is ultimately available from court records, restriction of access to cumulative records does not protect privacy interests but merely serves to delay and inconvenience the press.

Furthermore, access proponents contend that the extent of a subject's privacy interest in avoiding media access to his record is often overstated. They argue that the only significant rationale for denying access to criminal records is to safeguard against the use of criminal records for improper business purposes or the use of inaccurate, incomplete or misleading records in making employment or economic decisions about individuals -- not for problems caused by media access. They contend that by far the greatest number of abuses occur when applicants are denied jobs on the basis of criminal records that are not relevant to their job qualifications or are incomplete or inaccurate. Other frequent abuses occur in connection with the licensing of individuals for various public and private professions and extension or denial of credit and other economic benefits or statuses. Compared to these abuses, media representatives claim that the number of instances of privacy infringement or tangible harm resulting from improper publication of criminal records is inconsequential.

According to this interpretation, privacy remedies should seek to prevent and punish the misuse of criminal records by employers and other frequent offenders rather than restricting access to the records at their source. Media representatives have said that this is particularly true in the case of the

media, since the value of the public information services that they provide greatly outweighs the slight risk of damage from improper publication of criminal records.

Furthermore, if the media have a duty to inform the public about criminal justice proceedings, media representatives argue that they must be free to perform that duty as they perceive it. This argument is often advanced against restrictions on press access based on the claimed irresponsibility of the media.

Most observers agree that the media generally conduct themselves in a responsible manner, weighing individual privacy interests against the interest of the public in being informed; but the exercise of this responsibility, according to media representatives, must be left up to the media's discretion. If the discretion is abused in particular instances and individual rights are infringed, remedies may be pursued in the courts through damage actions or other available tort and criminal remedies. Media supporters insist that press responsibility cannot be enforced through imposed prior restraints on what may or may not be made available to them.

Criminal history record information includes two important subcategories of record data: (1) cumulative conviction record information; and (2) cumulative non-conviction record information including arrest records. It is generally agreed that the nature and extent of a subject's privacy interest in criminal history records differs depending upon the subcategory of information involved.

CONVICTION RECORDS

Media Viewpoint

Where the access requested involves only cumulative conviction records, many agree that the presumption of innocence is overcome and that the subject has forfeited his privacy rights by engaging in proven criminal conduct. In such a case the interest of the public in knowing about the individual's criminal history is great. This increased interest is particularly true of employers who may be considering the record subject for a position of trust and responsibility.

A closely related argument advanced by media advocates and criminal justice officials alike is that society's concern with conviction records should focus on making them accurate and complete and, if these goals were achieved, there would be little need for access restrictions.

This argument is based on the premise that persons who engage in criminal conduct forfeit a substantial measure of their right of privacy. A number of court decisions upholding public access have been based at least in part on this "waiver" theory.37/ The theory posits that one consequence of this "forfeiture" is that a record of an individual's criminal involvement will be made and maintained. It is argued that the subject's only legitimate concern is that the record be accurate and complete and fairly reflect the nature of his illegal acts and involvement in the criminal justice process. Thus, the proponents of this approach argue that if reasonable efforts are made to insure that conviction records are accurate, complete, and not in any way misleading, access to them can safely be unrestricted, thereby guaranteeing full scrutiny by the media and the public and freeing criminal justice record custodians from the burden of having to make access decisions.

Privacy Viewpoint

There are, of course, several important arguments that support limitations upon media access to cumulative conviction information. For one thing, dissemination of this information unquestionably stigmatizes and harms the subject. Privacy proponents point out that once a period of time has passed, the extent of the public's interest in the conviction decreases and the subject's and society's interest in "forgetting" the conviction increases. To the extent that society has a realistic interest in rehabilitating criminal offenders, the confidential treatment of their criminal records is thought to release them from a "record prison" and contribute to their ability to re-enter the job market and otherwise acquire full citizenship status. Such rehabilitation is essential to eliminate the record subject's economic necessity to continue his criminal career.

Although employment discrimination on the basis of conviction records can be made unlawful, in practice such an approach does not provide a feasible remedy. Such laws can be circumvented easily and most offenders are not able or willing to avail themselves of legal remedies. According to privacy advocates the only practical way to deal with the problem is through the sealing or confidential treatment of conviction records. Thus, they conclude that the release of non-current conviction records, even if they are accurate, can cause substantial harm to the subject and can frustrate the public's interest in achieving the re-employment and rehabilitation of former prisoners.

Criminal Justice Viewpoint

An argument sometimes made by criminal justice officials in support of placing media access limitations upon cumulative conviction information is that the time and labor spent in servicing requests for access from the media and the public detract from effective operation of criminal record systems. These officials have no objection to media attendance at open criminal proceedings and access to record systems that are open to the public, such as arrest books and court dockets; but they believe that criminal justice personnel should not be required to make the job of the media easier by granting access to cumulative criminal history record systems and by assigning criminal justice personnel to service media requests.

State of the Law

The issue of media access to conviction records has generated relatively little judicial controversy. Disclosure policy for conviction records is set by statute and regulation in almost all jurisdictions. As previously noted, pursuant to the Department of Justice Subpart C Regulations, federally held cumulative conviction information is not available to the media. At the state level the LEAA Regulations leave conviction record disclosure policy to state law. Most jurisdictions generally treat cumulative conviction information as public -- at least for a five to seven year period after the conviction. In the absence of a statutory limitation upon disclosure, the courts have generally been unwilling to limit the availability of conviction records.38/

ARREST RECORDS AND NON-CONVICTION RECORDS

Privacy Viewpoint

The privacy arguments against disclosure of cumulative arrest record information are usually viewed as quite persuasive. In addition to the general concern that disclosure of a criminal record stigmatizes and harms subjects, many feel that disclosure of an arrest record unjustly harms subjects.

A subject with an arrest record must legally be presumed innocent and, as a practical matter, may not in fact have done anything wrong. The Supreme Court has often made this same point.

> The mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct.39/

Nevertheless, disclosure of cumulative arrest history information outside of the criminal justice community can be almost as damaging to the subject as disclosure of a conviction record. Although it can be argued that individuals who have been convicted of criminal conduct have waived their rights of privacy, this is not true of persons who have merely been arrested for, but never convicted of, wrongdoing. In view of our society's presumption of innocence, privacy proponents claim that persons who have been arrested but not found guilty of any wrongdoing should not be considered to have lost their privacy rights. Thus, according to this theory, it is not enough merely to insure that cumulative arrest history record information is accurate; protection of the privacy rights of arrestees requires that their records be kept confidential absent compelling circumstances justifying disclosure.

Media Viewpoint

Advocates of expansive media access rights argue that there are circumstances that justify media access to cumulative, name-indexed arrest record information. For example, they

contend that cumulative arrest information should be available if all of the cumulative data is recent. Existing statutory and regulatory law supports this argument in that it indicates that a subject of a recent arrest is a person in whom the public has a legitimate interest. Based on this rationale, the Department of Justice Regulations and the LEAA Regulations treat contemporaneous arrest information as public data.40/

Where arrest is recent and the charges are still actively pending, the courts are also likely to be more persuaded by disclosure arguments. The courts have noted that in this circumstance there is no indication that the arrest was improper or mistaken. Furthermore, the public interest in the information is great because the information relates to a recent, newsworthy event.

A recent federal district court decision, Tennessean Newspaper, Inc. v. Levi 41/ suggests that in the absence of a clear statutory command to the contrary the courts will insist that at least reasonably contemporaneous arrest record information be made available to the public. In Tennessean the court upheld a newspaper's request for arrest information and biographic and investigative data in part on the grounds that recent criminal conduct is not the type of personal activity that the FOIA's (b)(6) privacy exemption should shelter. The opinion suggests that individuals who are arrested, notwithstanding the presumption of innocence, "waive" a right to remain protected by societal privacy rights. The court remarked that individuals who are arrested or indicted:

> become persons in whom the public has a legitimate interest, and the basic facts which identify them and describe generally the investigations and their arrests become matters of legitimate public interest. The lives of these individuals are no longer truly private... this right becomes limited and qualified for arrested or indicted individuals, who are essentially public personages.42/

However, in light of the Supreme Court's recent decision in the Wolston case discussed earlier, the view of the Tennessean court that arrested individuals are public figures for disclosure purposes, is undermined.

Even when the cumulative arrest information is not recent, media advocates urge that cumulative arrest information should be available. It is argued, for example, that if a person who had been previously arrested and released without being charged were running for public office the public should have a right to know the circumstances of the arrest and the decision not to prosecute.

It is also pointed out that the entry of a non-conviction disposition to criminal charges may have resulted from a negotiated plea of guilty to a lesser offense, and there are circumstances when the public should know of the more serious charges and the method of disposition. For these reasons, media representatives argue that the records should be open.

Some media representatives have noted that the media should use their discretion to accord non-conviction records a high degree of confidentiality; however, they believe that the media must be free to publish information from such records when warranted. Another consideration cited by media proponents in support of the access position is that these records may be necessary to prove that the subject was in fact acquitted in the event an employer or other person later learns of the arrest but is unaware of the favorable disposition.

State of the Law

In most jurisdictions, arguments in favor of public access to non-contemporaneous cumulative arrest information have not been successful. At the federal level the Department of Justice Regulations do not permit media access to such information. At the state level the LEAA Regulations prohibit public and media access to non-contemporaneous arrest data unless a federal, state or local statute, ordinance, executive order or judicial decree permits the disclosure. Despite what appears to be a recent state trend toward adoption of open

record policies, most state statutes or regulations still prohibit the release of non-contemporaneous, cumulative arrest data to the public or the press.

When given the opportunity, the courts have generally recognized and protected a subject's privacy interest by rejecting public access claims to non-contemporaneous arrest data. This concern is reflected in language used by an Ohio state court in discussing the arrest record issue:

> It is the opinion of this court that there exists in the individual a fundamental right of privacy, the right to be left alone. The potential economic and personal harm that result if his arrest becomes known to employers, credit agencies or even neighbors, may be catastrophic.43/

A recent decision in a Massachusetts state court held that a state could even deny the public access to a court's cumulative name-indexed list of individuals and their arrests and charges. In New Bedford Standard-Times Publishing Co. v. Clerk of the Third District Court of Bristol, 44/ the court said that this type of privacy protection statute does not violate the media's First Amendment rights and it does not violate the principle of the separation of powers, even though it regulates disclosure by the judicial branch.

A fear that arrest record information will unfairly penalize subjects if the data leaves the criminal justice community has led several courts to interpret statutory provisions so that the result is to curtail disclosures to the public. In the Houston Chronicle Publishing Co. v. City of Houston, 45/ the court upheld provisions in Texas' Open Records Act that stopped public disclosure of criminal history information which included arrest data. The opinion acknowledged that both the press and the public have a "constitutional right of access to information concerning crime in the community." However, in the court's opinion this constitutional right must be balanced against other competing interests such as the state's legitimate interest in preserving the secrecy of their records from

the eyes of defendants and in protecting those defendants from excess publicity.

The court denied the public access to that part of the rap sheet that included the personal arrest record, remarking that "many persons arrested are wholly innocent." Furthermore, in the court's view such records often include misleading and erroneous entries. The court recognized the need of the press for background information about arrested persons, but noted that such information could be obtained through interviews and other sources. The opinion concluded that weighing the need for background information against individual privacy compelled the conclusion that disclosure should not be permitted.

The U.S. Court of Appeals for the District of Columbia has also recognized deficiencies in cumulative arrest records that make their disclosure dangerous outside the criminal justice community. Morrow v. District of Columbia 46/ affirmed an order of the federal district court prohibiting general dissemination of an individual's arrest record. The order was fashioned to comply with the recommendations of a federal report which had suggested that such information not be disseminated to employers but that distribution to law enforcement agencies be permitted. The basis for the ruling was the fact the employers cannot or will not distinguish between arrests resulting in convictions and those which do not. Underlying the rationale was the feeling that tremendous harm can be caused to an individual by the public distribution of criminal history information. Particularly where an arrest is shown to be arbitrary or where the adjudication is not expeditious, courts are inclined to interpret statutes so that public access to the arrest record is prohibited or curtailed.47/The policy basis for such rulings is identical to the rationale that underlies expungement orders to prevent the maintenance of inaccurate or incomplete criminal justice information - an individual should not be the victim of the maintenance or disclosure of unreliable information.

In Menard v. Mitchell 48/ the plaintiff sued the FBI to expunge his fingerprint and arrest record. The arrest did not lead to a subsequent prosecution. Menard had been taken into custody

and held for two days in California. After that time, the police determined that they did not have sufficient grounds for the charge against Menard, and he was released. Under a California statute, the arrest was classified as "detention only." The District Court denied Menard's motion, but the Court of appeals reversed that holding and said that in view of possible adverse effects on the plaintiff, including possible dissemination of records, such an arrest does not justify maintenance of the information in the FBI's files.

A recent Supreme Court decision, Paul v, Davis 49/ may cause lower courts to be less inclined to place limits on criminal justice disclosure of arrest records to the public. In Davis the Court held that a police chief's action in distributing a flyer of "active shoplifters" which included the plaintiff's name and photograph did not deprive the plaintiff of his constitutional rights of liberty and due process and thus did not give rise to a cause of action under 42 U.S.C. §1983 for deprivation of consitutional rights.

The plaintiff had been arrested for shoplifting, but 17 months later when the flyer was distributed, he had still not been prosecuted. The Supreme Court's decision characterized the plaintiff's claim in part as resting on an assertion that "the state may not publicize a record of an official act such as an arrest." The opinion concluded:

> None of our substantive privacy decisions hold this or anything like this, and we decline to enlarge them in this manner.50/

Although the Court's discussion of the privacy issue was not necessary to the holding in the case, and therefore not necessarily binding in future cases, the decision may nevertheless be read by lower courts as a sign in support of more liberal rules for public and media access to arrest record information.

CHAPTER IV

ACCESS TO INVESTIGATIVE, INTELLIGENCE AND CORRECTIONAL AND RELEASE INFORMATION

INVESTIGATIVE AND INTELLIGENCE INFORMATION

Criminal intelligence files contain information on identifiable individuals compiled in an effort to anticipate, prevent or monitor possible criminal activity. Criminal investigative files contain information on identifiable individuals compiled in the course of an investigation of specific criminal acts. This background data may be speculative or evaluative information recorded for internal use of law enforcement personnel and not intended to be made public. Investigative reports may include such things as a synopsis of a purported confession, the arresting officer's speculation as to the arrested person's guilt or the credibility of witnesses, statements and identities of informants, the identity of and information about the victim and other sensitive and possibly unreliable data.

Privacy and Criminal Justice Viewpoint

According to many representatives of the law enforcement and privacy communities, there are compelling considerations in favor of treating such information confidentially. It is apt to be inaccurate, since much of it is speculative and unsubstantiated at the time it is first recorded. Release of it may endanger the safety of police informants or divulge investigative techniques or may disadvantage the prosecution in the trial of the case. The information may unjustly damage the reputation of victims or witnesses and may in fact endanger them or make them less likely to cooperate with prosecution efforts. Moreover, the concept that persons who engage in criminal conduct waive their privacy rights does not apply to

some of the people mentioned in investigative background reports, such as victims and witnesses. Witnesses and victims' involvement in the criminal process is not intentional and the resulting damage to their reputations and employment potential is more unjust.

Media Viewpoint

Some media representatives have pointed out that access to these records is not always necessary in order for the public to be informed about the criminal justice process.51/ In some cases apparently, the basic facts about the arrest provide the media with adequate initial information and leads for follow-up. If more information is needed or desired, the media can sometimes use other means of acquiring additional details through interviews with the arresting officer and with participants and witnesses. This method is more time consuming and costly than direct access to police background reports, but in the opinion of some members of the media, this method produces more reliable information.

However, media advocates also point out that in many jurisdictions much of the background information in police arrest reports must be made publicly available at the arraignment or probable cause hearing that takes place usually within 24 hours of the arrest. Where this is the case, it may make little sense to restrict media access to information that must in any event be made available 24 hours later.

In addition, some media representatives charge that police sometimes purposely release background information for their own ends.52/ They claim that unauthorized disclosure may occur, for example, to reassure the public that a dangerous suspect has been arrested and confined or to enlist the aid of the public and the media in locating additional suspects or evidence. Media representatives also claim that police may release information for the purpose of punishing or deterring individuals who cannot be arrested or charged. Media spokesmen conclude that media access to intelligence and investigative data is preferable to an agency's piecemeal disclosure to favored recipients.

Media advocates suggest that the privacy interests of arrested persons and witnesses and victims can be protected adequately by the exercise of responsible judgment by newsmen as to whether particular information should be made public or whether additional investigation should be undertaken to insure that the information is accurate and reliable. They are especially insistent that all information relevant to an arrest should be publicly available and a decision as to whether or not it is published should be left to the exclusive discretion of the media.

Media representatives state that it is not uncommon for the media to decline to publish information about an arrest subject in order to check the accuracy of information, to protect privacy or to cooperate with an ongoing police investigation.

It is also pointed out that some degree of media or public access should be permitted, especially to police intelligence files, to insure that improper files are not maintained and that intelligence and investigative information is not used for improper purposes.

State of the Law

As a general proposition, the law at both the federal and state levels permits criminal justice agencies to withhold active or pending investigative and intelligence files and to a lesser extent closed investigative and intelligence files from media access. The federal FOIA's (b)(7) exemption permits federal agencies to deny access to investigatory records compiled for law enforcement purposes where disclosure would result in any of the six harms enumerated in the statute: (1) interfere with enforcement proceedings; (2) deprive the subject of a fair trial; (3) constitute an unwarranted invasion of personal privacy;53/ (4) disclose the identity of a confidential source or, in some instances, information obtained from a confidential source; (5) disclose investigative techniques and procedures; and (6) endanger the life or physical safety of law enforcement personnel.

A sizeable body of decisional law indicates that in most instances federal criminal justice agencies can use the (b)(7)

exemption effectively to prevent public access to their investigative and intelligence files. For example, in Congressional News Syndicate v. Department of Justice 54/the Court said that a criminal justice agency can deny the public access to investigatory records about an individual in order to protect the individual's privacy even though the investigation was closed and even though the subject was a convicted felon. The investigative file included records compiled by the Watergate Special Prosecution Force which concerned Robert Conkling's role in the "Townhouse Operation" which, in the 1970's, allegedly dispersed secret funds to certain Republican campaigns. Conkling was the landlord of the house in which the operation was based. Although Conkling had been previously convicted of a number of felonies unrelated to the Townhouse Operation, the court held that disclosure of information concerning Conkling would be an unwarranted invasion of personal privacy under exemption (b)(7)(C).

However, under some circumstances the six part withholding standard in exemption (b)(7) may not protect all investigative and intelligence records. For instance, there is some dissension in the federal courts regarding the application of the confidential source exemption in (b)(7)(D). Under this exemption, federal agencies may deny access to investigatory records compiled for law enforcement purposes where disclosure would reveal the identity of a confidential source.

In Church of Scientology v. U.S. Department of Justice 55/ a federal district court held that where confidential information had been given to the Federal Drug Enforcement Agency, by local law enforcement agencies, the definition of "confidential source" could include non-natural persons such as law enforcement agencies. However, in Ferguson v. Kelley 56/where a private person brought suit against the FBI to obtain information about himself, a federal district court in Illinois held that under exemption (b)(7)(D), the term "confidential source" applied only to persons providing information under an express or implied assurance of confidentiality and the definition was not to be extended to include "entities such as corporations, credit bureaus, or other organizations, including law enforcement agencies."

In another decision involving the question of what effect the circumstances under which information is collected has upon an agency's ability to use the (b)(7) exemption to withhold information, the Providence Journal sued the FBI under the FOIA for logs derived from electronic surveillance made between the years of 1962 and 1965 in violation of the Fourth Amendment.57/ A well known organized crime leader in Rhode Island was the target of the electronic surveillance.

The court first found that the Omnibus Crime Control and Safe Streets Act of 1968 did not exclude the surveillance data under exemption 3 of the FOIA because the surveillance had been made prior to the effective date of the Act. The court then rejected the argument that information obtained in violation of the law was excluded from disclosure under the FOIA. Treating the privacy standards in exemptions 6 and 7 of the FOIA as identical in meaning, the court declared that the manner in which information was obtained was only one factor to be taken into consideration when balancing the public interest and the public's need to know about its elected officials against the privacy right of the individuals involved. "No court has withheld disclosure solely on the grounds that the manner in which the information was obtained forbids release." The Court also declared that the fact that some of the conversations were hearsay, and thus contained allusions to third parties not involved in the conversations, was irrelevant to the privacy interest at stake under the balancing test of exemption (7)(C).

The Court concluded that the public's interest in this figure and his dealings with public officials outweighed his privacy rights and the people referred to in the conversations and therefore the logs of the electronic surveillance should be disclosed to the newspaper. Recently, the First Circuit issued an injunction in order to hear the argument on the appeal of the Providence Journal case.58/

It is important to note that under the (b)(7) exemption, intelligence information will qualify for withholding only if it has a connection with an investigation of a matter of law enforcement interest. For example, in Black v. Sheraton Corp. 59/ the court rejected the FBI's attempt to withhold a

file which contained information for "intelligence purposes only" where no action was contemplated against the subject.

A principal judicial dispute concerning investigative files has not concerned the issue of whether disclosure can be denied but for how long. Prior to the 1974 FOIA amendment, one group of federal decisions held that investigatory files must be released once enforcement proceedings were no longer contemplated. Another conflicting group of decisions held that investigatory files were exempt permanently from disclosure on the ground that the purpose of the exemption was to keep confidential the process by which an investigation is conducted.

The Supreme Court alluded to this split of authority in NLRB v. Sears, Roebuck & Co. 60/ However, the Court felt that it was unnecessary to resolve the split because the statutory amendment repudiated the line of cases holding that once withheld, always withheld. Investigative information connected with pending or contemplated proceedings will ordinarily remain secret because disclosure would interfere with investigative or enforcement proceedings. However, under present federal law, investigative data not connected with pending federal proceedings will also be secret if the government can establish that disclosure would produce one of the other four types of harm identified in the exemption.

State courts have relied heavily upon the analysis in federal decisions in interpreting analogous investigative and intelligence exemptions in their own state's open record laws. In Jensen v. Schiffman, 61/for example, an Oregon state court interpreted Oregon's open record law in light of the line of federal decisions that holds that the termination of an investigation makes disclosure of investigative files more likely.

CORRECTIONAL AND RELEASE INFORMATION

Correction and release information includes information or reports on individuals compiled in connection with bail, pretrial or post-trial release proceedings, pre-sentence investigations, proceedings to determine physical or mental condition, participation by inmates in correction or rehabilitative programs, or probation or parole proceedings.

As thus defined, correctional and release information encompasses two distinct types of information maintained by criminal justice agencies relating to the correctional phase of the criminal justice process. The first type is criminal history information relating to correctional disposition, including initial confinement, conditional release (such as probation, parole or work release) and final release from supervision. The second type includes a variety of subjective treatment and evaluation information accumulated about offenders while they are in correctional custody. The privacy and disclosure considerations applicable to the two types of information are distinctly different.

Media Viewpoint

As to the first type of correctional and release data, media representatives believe that it is similar to conviction data and thus there should be a similar presumption that it will be publicly available.

Criminal justice representatives point out that some criminal justice agencies follow the practice of alerting local law enforcement authorities when offenders are placed on probation, parole or work release. Normally employers of such persons are also made aware of their criminal records. Because such persons have usually secured employment and places to live prior to commencement of the conditional release status, the damage to the subject from disclosure may not be as great as in cases of final release from supervision.

Privacy and Criminal Justice Viewpoint

On the other hand, the argument against disclosure of information about participation in release programs or final release from supervision is strengthened according to some observers by the fact that media representatives admit that normally the media has little interest in release events unless the offender is well known. Criminal justice representatives state that at least partly for this reason, criminal justice agencies in most jurisdictions do not normally disclose information about final releases from supervision. Information concerning releases may be available from chronological files but it is not

generally made available to the media on a current basis nor is it normally available from name-search files.

However, it is generally agreed that media access to some types of correctional disposition data, such as information about current participation in special work release programs, presents an especially hard decision. On the one hand, the privacy interests of the individual are compelling because he will be re-entering the job market and will be attempting to re-establish credit and other indicators of personal reliability. For these reasons, disclosure of the fact of his special release status may be particularly damaging at a critical time. On the other hand, the interests of the public in knowing of his ongoing supervision by criminal justice officials may be significant, particularly in the case of potential employers.

The second, or subjective, type of correctional and release information includes medical and psychiatric reports, performance reports, disciplinary reports and other such information. Much of this information is subjective and evaluative and is not intended for release outside of the criminal justice system. In any case, the media are seldom interested in this information, except as it relates to notorious or otherwise newsworthy subjects. The media's interest ordinarily focuses upon the operation of correctional facilities and their conditions and programs. Privacy advocates argue that this interest usually can be accommodated without permitting media representatives to have access to inmate correctional records in personally identifiable form.

State of the Law

Very few reported decisions have considered the disclosure issues associated with correctional and release information. Those that have indicate a concern for the need for confidentiality in order to insure candor and subjectivity in the non-dispositional type of correctional report. For example, in Turner v. Reed, 62/ the court upheld an Oregon Parole Board's decision not to disclose certain correctional and release records. The court found that Oregon's law permits withholding if the interest in confidentiality outweighs the interest in disclosure. The statute permits withholding of:

> Information or records of the Corrections Division, including the State Board of Parole and Probation, to the extent that disclosure thereof would interefere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure.63/

The court held that corrections psychiatric reports containing the literal findings expressed in the professional's own words should not be disclosed in view of the potential "chilling effect" on the candor of the reports. Similarly, the subjective evaluations and recommendations of the Parole Board must be candid and consequently could be protected from public scrutiny. The interest of the public in monitoring such transactions is not sufficient to overcome the negative effects of disclosure. The court upheld the denial of disclosure of personal information about the individual's family. However, the court ordered the disclosure of internal memoranda that could be interpreted to indicate overzealous monitoring of the subject's activities while he was on parole. The court felt that citizens were entitled to know the government's shortcomings as well as its successes and concluded that governmental embarrassment was not a justification for confidentiality.

CHAPTER V

ACCESS TO "ON-THE-SCENE" CRIMINAL JUSTICE EVENTS

Recent instances of terrorist activities, especially those involving the use of hostages, are increasingly being covered in depth by the media. The "live action camera" or "mini-cam" permits the broadcast media to bring a violent scene into the living rooms of millions within minutes of the occurrence of the crime. Media access to "on-the-scene" events sometimes involves a clash between criminal justice officials desiring to maintain the tightest possible control of events and newsmen desiring to maximize coverage. Unlike the issues raised by criminal justice recordkeeping, media access to on-the-scene events has only a marginal effect on privacy interests.

Criminal Justice Viewpoint

Some criminal justice officials have charged that a terrorist's knowlege that he can achieve "instant celebrity" status may even be a cause for the terrorist action. In addition, the terrorist has the means to instantly communicate his views to an extremely large audience. Media access to hostage and terrorist events may unwittingly assist the terrorist in achieving his purposes and endanger the lives of hostages or innocent bystanders.

Representatives of law enforcement agencies also state that the use of live media is frequently a leverage employed by the police in bargaining with terrorists. For example, a terrorist may be told that he will be allowed to speak to the press or appear on television if he will release the hostages. If the media have already interviewed him either by telephone or in person, law enforcement officials are not able to use the lure of media access as a bargaining point. Criminal justice officials also assert that media access to such events has the effect of encouraging greater numbers of onlookers.

Media Viewpoint

Media representatives contend that such fears are overstated. In especially sensitive situations law enforcement and media representatives can and do work out suitable arrangements. Furthermore, media spokesmen argue that terrorist events are the kind of contemporaneous, newsworthy events in which the public has a strong and legitimate interest. Therefore, the media have a right and a duty to be present.

State of the Law

The Supreme Court has never directly dealt with the question of whether the media have a First Amendment right to be physically present at criminal justice events. However, the Court has observed, in dictum, that the press enjoys no greater right of access to on-the-scene events (the Court had in mind such things as terrorist activities, disasters, and hostage situations) than does the general public.

> Despite the fact that news gathering may be hampered, the press is regularly excluded from grand jury proceedings, our own conferences, the meetings of other official bodies gathered in executive session, and the meetings of private organizations. Newsmen have no constitutional right of access to the scenes of crime or disaster when the general public is excluded, and they may be prohibited from attending or publishing information about trials if such restrictions are necessary to assure a defendant a fair trial before an impartial tribunal.64/

This is, of course, in line with the Court's observation that the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally, "[d]espite the fact that news gathering may be hampered."

In Pell v. Procunier, 65/ the Court said: "[t]he Constitution does not . . . require government to afford the press special access to information not shared by members of the public generally . . . ." In Zemel v. Rusk, 66/ the Court sustained the government's refusal to validate passports to Cuba even though that restriction "render[ed] less than wholly free the flow of information concerning that country," for "[t]he right to speak and publish does not carry with it the unrestrained right to gather information."67/

CHAPTER VI

ACCESS TO PRISONS AND OTHER CRIMINAL JUSTICE FACILITIES

On several recent well-publicized occasions, the press, usually with the cooperation of prisoner groups, has sought to gain special access rights to prisons. With few if any exceptions, criminal justice officials have refused to give the media special access rights.

This issue presents many of the tensions that are involved in the issue of media access to on-the-scene events. In both instances the need of criminal justice officials to effectively control a situation must be balanced against the importance of permitting the media to report newsworthy events. In both instances privacy concerns are only tangentially involved.

Media Viewpoint

Media spokesmen make strong arguments that the public has a legitimate interest in the operation of prisons and other criminal justice facilities. The public's ability to know about and ultimately to oversee the operation of such facilities is greatly dependent upon the press. Furthermore, media representatives point out that press access to such facilities, far from embarrassing or stigmatizing individual inmates, serves as an important protection. According to this view, inmates are far more likely to receive humane, fair and proper treatment if prison activities are subject to close press monitoring.

Criminal Justice Viewpoint

Criminal justice officials have not argued that all media access to prisons and other criminal justice facilities should be

prohibited. Rather, criminal justice officials have made two points about media access. First, prison officials must retain discretion to control the access of the press and the public to prisons and inmates. Without such discretion officials fear that they will not be able to operate their facilities in a safe manner or an effective and cost efficient manner. Second, prison officials have said that the press should not be given greater access rights than those enjoyed by the public. They fear that from both a legal and a practical standpoint it would not be possible to make that kind of distinction work.

State of the Law

The Court has consistently held that the media do not have a constitutional right of access to prisons and to other criminal justice facilities. This holding is based on the Court's view that the First Amendment does not give individuals a right to gather information from the government.

In Houchins v. KQED, 68/ the Court held that the news media and the public could be excluded from physical access to prisons without violating their First Amendment rights -- at least where other mechanisms existed to permit the press to review prison conditions.

The Court reasoned that the public importance of conditions in penal facilities and the media's role of providing information afford no basis for reading into the Constitution a right of the public or the media to enter those institutions, gather information, and take pictures for broadcast purposes. The First Amendment, in short, does not guarantee a right of access to sources of information within government control. Thus, those cases which concerned the freedom of the press to communicate information already obtained were seen as easily distinguishable from a prison access case, in which the broadcasting company sought a special privilege of access so as to compel the government to provide the press with information.

Still, the Court was careful to point out that its holding did not foreclose all access to the jail. Indeed, it expressly articulated some alternative means of access to prisons, including: the media's First Amendment right to receive

letters from inmates criticizing jail officials and reporting on conditions;69/ the media's right to interview those who render legal assistance to which inmates are entitled; and the media's right to seek out former inmates, visitors to the prison, public officials, and institutional personnel.

In Pell v. Procunier, 70/ the Court rejected an attack on a California rule providing that "press and other media interviews with specific individual inmates will not be permitted." The Court specifically noted that the challenged restriction on access was not "part of an attempt by the State to conceal the conditions in its prisons or to frustrate the press' investigation and reporting of those conditions. Indeed, the record demonstrates that, under current corrections policy, both the press and the general public are accorded full opportunities to observe prison conditions."71/ Still, the Court declared, explicitly and without reservation, that the media have "no constitutional right of access to prisons or their inmates beyond that afforded the general public," and on that basis the Court sustained prison regulations that prevented media interviews with inmates.72/

CHAPTER VII

FREE PRESS--FAIR TRIAL

Media Viewpoint

Courtroom proceedings are ordinarily of real interest to the public. The public is interested in knowing whether its judicial system is working in an impartial and effective manner. What's more, as has been noted throughout this Report, the public is interested in the fate of those who have been accused of breaking the law. For these reasons media representatives argue strongly that the media must have access to courtroom proceedings and their right to publish an account of those proceedings must be assured.

Privacy Viewpoint

Public and press access to and scrutiny of judicial proceedings has been viewed traditionally as a protection for criminal defendants against informal, unfair, secret or otherwise inappropriate judicial behavior. However, in practice, criminal defendants may or may not want such scrutiny depending upon the nature of the crime, the status of the defendant, and the type and location of the court. In almost every instance defendants balance the benefits of publicity and public scrutiny against the loss of privacy and stigmatization, as well as the potentially prejudicial effect that negative publicity may have upon jurors.

Criminal Justice Viewpoint

Criminal justice officials express a concern for conducting the trial or judicial proceeding in a fair, impartial and efficient manner. Because of these kinds of concerns, criminal justice officials often lean toward imposition of restraints on press access to and publication of information about judicial proceedings.

State of the Law

The Sixth and Fourteenth Amendments guarantee an accused the right to a "fair trial in a fair tribunal."73/ The constitutional standard of fairness requires an "impartial, 'indifferent' [jury].74/ To fulfill this requirement, each juror must base his verdict solely upon "the evidence developed at the trial."75/

On several occasions the Supreme Court has considered the prejudicial effect of uncontrolled publicity on the accused's right to an impartial jury.76/ The Court, however, has suggested no set formula for ascertaining whether a defendant has received a fair trial. Rather, a case-by-case analysis has been used in determining whether the facts support a conclusion of prejudice.

Press coverage of criminal proceedings can create problems regarding a defendant's right to a fair trial. However, the Court has recognized the media's First Amendment right to report matters that transpire in or concern the courts.77/Thus, press coverage of criminal proceedings can sometimes pose a conflict between a defendant's Sixth and Fourteenth Amendment rights to a fair trial and the media's First Amendment right of a free press. Two general observations emerge from a review of those court decisions that address this conflict: (1) the media's First Amendment right to publish an account of what it happens to see or hear in an open court or even what it hears about courtroom events from other sources cannot be limited;78/ while (2) the media do not have a First Amendment right of access to judicial proceeding and thus where media access to a courtroom proceeding threatens a defendant's Sixth Amendment right to a fair trial the court can bar the media.79/

In a number of instances, lower courts have cited the media for contempt because of published remarks regarding the trial process or the judge's behavior. The Supreme Court has rejected all of these decisions.

Bridges v. California, 80/ for example, concerned the publication by the Los Angeles Times of three editorials that denounced two labor leaders who were awaiting a probation hearing and sentencing. The paper warned the trial judge that to grant the defendants probation would be a serious mistake. Because First Amendment freedoms were implicated, the Supreme Court applied the "clear and present danger" test in reversing the contempt rulings. The "clear and present danger" test permits government regulation of speech when the speech presents a definite and immediate threat to a vital national interest -- usually a national security interest. The Court reasoned that because this case was controversial, the trial judge might reasonably expect public comment. Further, the Court concluded that judges are generally endowed with fortitude and are unlikely to be intimidated by newspaper commentary.

The Court's rationale in Bridges is based on the Court's view that contempt orders have a chilling effect on freedom of expression. The Court maintained that subsequent punishment could be as effective in curtailing expression as prior censorship. Contempt orders give the press no specific guidelines defining the scope of permissible conduct. This vagueness necessarily results in a system of self-censorship broader than that required to safeguard competing fair trial interests.81/

In Nebraska Press Association v. Stuart, 82/ the Supreme Court considered an order restraining the media from publishing specific information gathered during the course of a preliminary hearing and from outside sources. The purpose of the order was to secure a fair trial. The Court characterized the order as a prior restraint on speech since it directly prohibited publication or broadcast of particular information.83/ As such, the Court said that the restraint order bore a heavy presumption of unconstitutionality.

The Court admonished the Nebraska state courts for failing to determine whether alternative measures, short of prior restraint, could have mitigated the effect of adverse publicity. The Court also concluded that the restrictive order was vague and overbroad, and would likely be ineffective. Based on the

above conclusions, the Court held that insofar as the order prohibited reporting evidence brought out in open court it was clearly unconstitutional since "nothing . . . proscribes the press from reporting events that transpire in the courtroom"84/ As for trial-related information obtained from outside sources, the Court said that the presumption of unconstitutionality was not quite as strong but was still not overcome. Thus, the Court applied a different constitutional standard depending upon the source of the information.

On June 26, 1979, the Supreme Court published its first opinion regarding whether the Constitution permits a court to prohibit the media's attendance at a judicial proceeding. The Supreme Court answered in the affirmative. Gannett v. DePasquale 85/held that the Sixth Amendment's guarantee of a public trial is for the benefit of criminal defendants alone. The Constitution does not mention any right of access to a criminal proceeding on the part of the press or the public.

In DePasquale the defendants were charged with second degree murder and robbery. They requested that the press and the public be excluded from a pre-trial motion to suppress an allegedly involuntary confession as well as certain physical evidence. The defendants claimed that the adverse publicity would prejudice their eventual trial.

The Court's opinion did suggest that the First, Sixth and Fourteenth Amendment's read together gave some support for an independent right of the public and thus the media to attend judicial proceedings. However, that right, if it exists, is easily outweighed by the defendant's constitutional interest in obtaining a fair trial. The Court said that a defendant in a criminal case has a right to a public trial. Although defendants do not have an absolute right upon request to a closed trial, the Court said that a pretrial proceeding can be closed where the defendant, the prosecutor and the trial judge agree that press coverage would make it difficult to conduct a fair trial.86/

Prior to DePasquale, many lower courts had been willing to exclude the press from various pre-trial judicially supervised conferences or proceedings that fall short of the actual trial.

Thus, courts prohibited the press from attending preliminary hearings, 87/ pre-trial conferences, 88/ pre-trial suppression of evidence hearings, 89 and depositions.90/ The rationale is that accounts of these pre-trial events run a greater risk of creating prejudicial, pre-trial publicity. In addition, these types of proceedings may not be as definitive or important as the trial itself.

At least a couple of lower courts had anticipated DePasquale and had based closure decisions on the discretion of the defendant.91/ These opinions pointed out that the right to a public trial guaranteed by the Sixth Amendment belongs to the defendant. Thus, if the defendant does not want the press to be present and their presence threatens his right to a fair trial, a closure order should be made.

The lower courts have also been willing to exclude press cameras and microphones from judicial proceedings.92/ In part, this restriction appears to be based on the court's perception of the degree of intrusion posed by cameras and other broadcast equipment and in part based on the fact that the broadcast media traditionally are subject to greater regulation than the print media.93/

The media's argument that they have a constitutional right of access to courtroom proceedings is handicapped insofar as it is based on the First Amendment's right to speak and not the Sixth Amendment right to a public trial. Even before DePasquale, the Supreme Court had held repeatedly that the First Amendment right to gather news, as opposed to publishing news, is quite limited.

A recent federal Court of Appeals opinion involving press access to judicial proceedings focused in more detail than the DePasquale decision on the limited extent of this right. In United States v. Gurney, 94/ the Fifth Circuit held, among other things, that the press could be excluded from bench conferences between the trial judge and counsel, and could be denied access to documentary evidence not yet introduced at trial. While noting that the news media had a limited right to gather news, the court recognized the existence of areas to which the public, and therefore the press, "traditionally have

had no right of access."95/ Moreover, the court reasoned that since the media's right of access to sources of information has been deemed to be co-extensive with that of the general public, the press may be denied access to information where it would be appropriate to exclude the public at large.

The Fifth Circuit said that the public, and therefore the press, may be excluded from those judicial proceedings in which their presence would unduly impair the defendant's right to a fair trial or would interfere with the efficient administration of the adjudicatory process. While acknowledging that such a result would operate to deny the press access to desired information, the Fifth Circuit indicated that such exlusionary orders implemented the legitimate government interest of securing for the accused the fair trial guaranteed by the Sixth Amendment.

Thus, the current state of the "free press fair trial" doctrine permits the press to publish whatever it sees or hears in a courtroom proceeding, but also permits the courts under some circumstances to limit the press' physical ability to observe judicial proceedings.

CHAPTER VIII

GOVERNMENT ACCESS TO PERSONAL INFORMATION MAINTAINED BY THE MEDIA

In occasional instances the government turns the tables by requesting the media to provide it with personal data of criminal justice interest. Ordinarily this type of request does not seek conviction, arrest or other formal records originally obtained from a government agency. Instead, the request usually seeks investigative and intelligence type data developed by the media such as background information about suspects, victims, or witnesses.

Media Viewpoint

The media have argued that they must have the ability to protect this type of data from government access. In their view, government access to their files and sources would chill the media's ability to gather and publish information about criminal justice events. At the same time, media and some privacy advocates argue that the identity of confidential informants and witnesses should not be compromised by disclosure to the government.

Criminal Justice Viewpoint

For their part, representatives of criminal justice agencies are adamant that the police must be able to pursue investigations and seek out evidence and should not be hindered merely because a member of the press is holding the evidence.

State of the Law

Thus far, the courts have agreed with the criminal justice community. On several occasions the courts have said that the media's right to protect evidence or the identity of

witnesses and sources from proper government requests made pursuant to a legitimate law enforcement investigation is no greater than that of the public generally. Ordinarily, members of the public cannot protect such information when the government uses proper access procedures.

In Zurcher v. Stanford Daily 96/ the Supreme Court made clear that the news offices of the media are subject to search and seizure carried out pursuant to a properly issued warrant.

Zurcher involved a civil rights action brought by the Stanford University student newspaper and various staff members against, among others, police officers who had conducted a search of the newspaper premises for negatives, films and pictures revealing the identities of demonstrators who had assaulted the police during a confrontation over seizure of administrative offices at the school.97/

The district court granted declaratory relief, holding that the Fourth Amendment forbade the issuance of a warrant to search for materials in possession of one not suspected of crime unless there is probable cause to believe that subpoena duces tecum would be impracticable. Failure to honor the subpoena would not alone justify issuance of a warrant; it would also have to appear that the possessor of the objects sought would disregard a court order not to remove or destroy them. The lower court recognized that a subpoena duces tecum is less intrusive than a search warrant because the subpoena merely calls upon a party to collect and deliver the requested documents, whereas a search warrant permits government agents to search the party's premises.

The lower court also held that where the innocent object of the search is a newspaper, First Amendment interests make the search constitutionally permissible "only in the rare circumstances where there is a clear showing that: (1) important materials will be destroyed or removed from the jurisdiction; and (2) a restraining order would be futile." The Court of Appeals affirmed.

The Supreme Court reversed. The Court noted that the Fourth Amendment does not prevent a state from issuing a warrant to

search for evidence simply because the owner or possessor of the place to be searched is not reasonably suspected of criminal involvement. The critical element in a reasonable search is not that the property owner is suspected of crime, but that there is reasonable cause to believe that the "things" to be searched for are located on the property to which entry is sought. Thus, the Court held that in such third-party search situations the government is not limited to use of a subpoena duces tecum.

The Court also rejected the district court's conclusion that where the third party is a newspaper there are additional factors derived from the First Amendment that justify a nearly per se rule forbidding the search warrant and permitting only the subpoena duces tecum. Rather, the Court held that properly administered, the preconditions for the issuance of a search warrant by an independent magistrate --probable cause, specificity with respect to the place to be searched and the things to be seized, and overall reasonableness -- are adequate safeguards against interference with the press' ability to gather, analyze and disseminate news. The newspaper claimed that its news gathering and publishing ability would be compromised by the use of warrants. The Court did, however, state that the warrant requirements should be applied with "particular exactitude" when First Amendment interests would be endangered by a search.98/

For years, newsmen have attempted to convince the courts that a common law privilege for newsmen to conceal the identity of confidential sources should be recognized. Their arguments have centered around the public's interest in the flow of news and they have analogized the newsmen's privilege to traditional privileges, such as the attorney-client privilege. However, the courts have been unwilling to recognize the privilege under the common law.

In consequence, many states have enacted statutes which create a partial right for newsmen not to divulge the identity of confidential sources of information. These statutes ordinarily do not shelter the contents of a communication but only the identity of its source.99/ However, in Matter of Farber, 100/ the New Jersey Supreme Court held that the Sixth

Amendment and its New Jersey counterpart require a newsman to turn over duly subpoenaed documents that are material to the prosecution or defense of a criminal case, even if, in so doing, the source of the information is revealed. In that way, a defendant's Sixth Amendment right to confront his accusers (e.g., cross-examine individuals who have provided adverse information) is preserved.

Because the press has met with so little success in asserting a common law privilege, newsmen in recent cases have also emphasized that the right to conceal their sources is constitutionally grounded.

In Branzburg v. Hayes, 101/ three news media representatives argued that they should not be required to appear and testify before grand juries and that this privilege to refrain from divulging information, asserted to have been received from confidential sources, derived from the First Amendment.

In this case, one reporter had witnessed individuals making hashish from marijuana and had made a rather comprehensive survey of a local drug scene. He had written an article in the Louisville Courier-Journal describing this illegal activity. Another, a newsman-photographer employed by a New Bedford, Massachusetts television station, had met with members of the Black Panther movement at the time that certain riots and disorders occurred in new Bedford. The material he assembled formed the basis for a television program. The third investigative reporter had met with members of the Black Panthers in Northern California and had written an article about the nature and activities of the movement. In each instance there had been a commitment on the part of the newsman that he would not divulge the sources of his story.

Justice White, noting that there was no common law privilege, stated the issue and gave the Court's answer in the first paragraph of his opinion:

> The issues in these cases is whether requiring newsmen to appear and testify before state or federal grand juries abridges the freedom of speech

> and press guaranteed by the First Amendment. We hold that it does not.102/

However, the opinion did say that the First Amendment would permit reporters to refuse to reveal the identity of their confidential sources in response to non-legitimate demands. A demand is not legitimate when the desired information is patently irrelevant to the needs of the government or the government's needs are not manifestly compelling. Nor will the First Amendment sanction use of the government's access powers to harass the press.

The point to be made, however, is that among the First Amendment protections that may be invoked by the press there is not a privilege to refuse to reveal relevant confidential information and its sources in response to a legitimate government demand.103/

CONCLUSION

The controversy over the nature of the relationship between the media and the criminal justice process raises important societal issues. In fact, the nature of that relationship ultimately has a significant effect upon the relationship that the public has to its government.

Decisions about the extent to which the media can have access to criminal justice processes and records have an effect upon the role that the public can play in monitoring and participating in the operation of significant government functions such as the criminal justice process. Roughly speaking, the public's ability to oversee the operation of the criminal justice process is dependent upon the extent of the media's access to the process.

The media's relationship to the criminal justice process also has a significant effect upon both the nature and the degree of protection that our society offers to individuals who become personally involved in that process. Expanded media access, for example, offers participants greater protection against arbitrary government practices. On the other hand, restricted media access offers participants greater assurance against juror prejudice and greater protection of personal privacy and reputation. The attractiveness of these differing types of protections will ordinarily vary depending upon the participant's status (victim, witness or defendant) and the stage of the proceeding (investigation, arrest, prosecution or conviction).

The media's relationship to the criminal justice process also has an impact upon the effectiveness and efficiency of that process.

This report has discussed many examples of policies that restrict media participation because such participation would significantly interfere with the system's ability to apprehend or prosecute lawbreakers. In addition, media involvement in the process is costly in terms of manpower and efficiency.

Finally, the media's relationship to the criminal justice process is directly related to the media's role and status. Are the media solely representatives of the public or are they something more? Should the media have a greater right to access to records than the public; a greater right to publish information; or a greater right to protect sources or data from government access requests? And if the media should enjoy such rights, then how are the media to be defined?

It is a common polictical aphorism that decisions about issues that are likely to have a significant effect upon a society have a high potential to generate controversy and debate. The challenge for legislative and executive branch criminal justice information policy makers in the 80's is to channel that controversy and debate so as to balance the various conflicting interests.

FOOTNOTES

1/ 408 U.S. 665, 684 (1972) (citations omitted).

2/ Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975).

3/ Pell v. Procunier, 417 U.S. 817, 834-5 (1974).

4/ 344 F. Supp. 8 (S.D. Iowa 1971).

5/ 408 F. Supp. 8 (S.D. Iowa 1971).

6/ Konigsberg v. State Bar of California, 366 U.S. 36 (1961).

7/ T.I. Emerson, The System of Freedom of Expression, New York, 1970.

8/ Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748 (1976).

9/ Roth v. United States, 354 U.S. 476 (1957).

10/ See, Griswold v. Connecticut, 381 U.S. 479 (1965); and Katz v. United States, 389 U.S. 347 (1967).

11/ Paul v. Davis, 424 U.S. 693 (1976).

12/ Branzburg v. Hayes, 408 U.S. 665 (1972).

13/ See, Estes v. Texas, 381 U.S. 532 (1965).

14/ 420 U.S. 469 (1975).

15/ Id. at 495. A few state court decisions have found the press liable for invasion of privacy for publication of the name of rape victims, where the name was not obtained from a public record. See, State v. Evjue, 33 N.W. 2d 305 (Wisc. 1948); Hunter v. Washington Post, 102 Daily Wash. L. Rep. 1561 (D.C. Super. Ct. 1974).

16/ 531 S.W.2d 177 (Tex. Ct. of App. 1975). See also, Cox Broadcasting Corporation, supra. In Cox the Court disclaimed any intended implication about the constitutional questions which might arise from a state policy of not allowing access by the public and press to various kinds of official records. Nevertheless the opinion's language suggests that a state could choose to withhold the names of rape victims from the media, provided that the names were not included in public records.

> "If there are privacy interests to be protected in judicial proceedings, the States must respond by means which avoid public documentation or other exposure of private information. Their political institutions must weigh the interests in privacy with the interests of the public to know and of the press to publish. Once true information is disclosed in public court documents open to public inspection, the press cannot be sanctioned for publishing it." Id. at 496.

17/ Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976). In narrow circumstances the government can act to restrain publication of information. Prior restraint has been permitted in war time. Near v. Minnesota, 283 U.S. 697 (1931). Prior restraint was also permitted most recently in a much heralded federal district court decision rejecting a magazine's right to publish technical information about the construction of a hydrogen bomb. United States v. Progressive, Inc., No. 79-C-98 (W.D. Wisc. March 26, 1979).

18/ 385 U.S. 374 (1967).

19/ 418 U.S. 323 (1974).

20/ 424 U.S. 448 (1976).

21/ Sup. Ct. No. 78-5414. 47 L.W. 4840, 6/26/79.

22/ 47 L.W. at 4843.

23/ 483 P.2d 34 (Cal. 1971).

24/ 5 U.S.C. §552.

25/ 5 U.S.C. §552a.

26/ See, "Dissemination of Criminal History Record Information," 28 C.F.R. §20.33 and see DOJ Guidelines "Release of Information by Personnel of the Department of Justice Relating to Criminal and Civil Proceedings," 28 C.F.R. §50.2.

27/ 42 U.S.C. §§3701, 3771(b).

28/ Department of Air Force v. Rose, 425 U.S. 352 (1976).

29/

State	Statute Number
Alabama	41-9-590
Alaska	12.62.010
Connecticut	78-200
Georgia	92A-3003
*Hawaii	HB 282
Iowa	749.1
Maryland	27-735
*Montana	S.B. 270
Maine	16-601
Massachusetts	6-168
*Nebraska	LB 713
*Pennsylvania	HB 2095
Virginia	9-107
Washington	10.97.030

* Recently signed into law

30/

State	Statute Number
Alabama	41-9-645
Alaska	6AAc 60.100
Arkansas	5-1109, 43-1231-33
California	851.7-8
Colorado	24-72-308
Connecticut	54-90
Delaware	11-3904

District of Columbia	4-137
Florida	893.14,901.33
Georgia	92A-3006
Hawaii	712-1256, 831-32
Idaho	19-4813
Illinois	38-206-5
Indiana	35-4-8-1
Iowa	749B.16
Kansas	21-4616, 120-27, 21-4616-17
Louisiana	44:9
Maine	16.600, 2161A
Maryland	27-292, 27-736
Massachusetts	34,100
Michigan	335.347, 28.243
Minnesota	299c.11
Missouri	610.100
Montana	44-2-204
Nevada	179.245, 179.295, 179.285, 179.255, 453.336
New Hampshire	651:5
New Jersey	2A: 169-11, 2A: 164-27, 2A: 85-15.22
New York	160.50-60, 170.56
North Carolina	15-223, 90.96
Ohio	2953.32, 2951.04.1
Oklahoma	63-2-410
Oregon	137.225
Puerto Rico	111-2404, 119-1731
Rhode Island	12-1-12
South Carolina	17-1-40
Tennessee	40-2109, 40-4001
Vermont	77-35-17.5
Virginia	19.2-392.2, 9-111.9
Washington	1097.060

31/ 28 C.F.R. Part 20, Subpart 3.

32/ There is also a broad consensus that "wanted person information" should be publicly disclosed. "Wanted person information" is information about a named individual for whom there is an outstanding arrest warrant, including the charge for which the warrant was issued

and information relevant to the individual's danger to the community and any other information that would facilitate the apprehension of the individual. However, in cases where the subject is not yet aware of the existence of a warrant that information may need to be withheld in order to facilitate the subject's apprehension. During this period of time the warrant information is analogous to criminal investigative data. The courts have upheld the right of criminal justice agencies to deny the public or the media access to warrant information of this kind. See, for example, State v. Nolan, 316 S.W.2d 630 (Mo. 1958).

33/ 531 S.W.2d 177 (Tex. Ct. of App. 1975).

34/ 200 So. 739 (Ala. 1941).

35/ 341 N.E.2d 576 (Ohio 1976).

36/ See also, Florence Morning News, Inc. v. Building Commission of the City and County of Florence, 218 S.E.2d 881 (S. Car. 1975), (where the South Carolina Supreme Court held that a city building commission had violated the South Carolina FOIA by denying a newspaper access to a jail book and log which were considered public records open to inspection under the Act); Town Crier, Inc. v. Chief of Police of Weston, 282 N.E.2d 379 (Mass. 1972), (where the Massachusetts Supreme Court held that a newspaper could not obtain access to an arrest register and daily jail log because they were not public records made pursuant to law and therefore not open to inspection under the Massachusetts FOIA); and Bougas v. Chief of Police of Lexington, 354 N.E.2d 872 (Mass. 1976), (where the Massachusetts Supreme Court implies that the holding of Town Crier, Inc. v. Chief of Police of Weston, supra, was overruled by a 1973 amendment to the Massachusetts FOIA which broadened the definition of a public record).

37/ See, for example, Tennessean Newspaper, Inc. v. Levi, 403 F. Supp. 1318 (M.D. Tenn. 1975).

38/ See, for example, State v. Nolan, 316 S.W.2d 630 (Mo. 1958).

39/ Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232, 241 (1957).

40/ Contemporaneous arrest data for LEAA purposes means information about an arrest that is less than one year old or in regard to which changes are still actively pending.

41/ 403 F. Supp. 1318 (M.D. Tenn. 1975).

42/ Id. at 1321 (footnote omitted). See also, Christy v. United States, 68 F.R.D. 375 (N.D. Tex. 1975) and Columbia Packing Co. v. Dept. of Agriculture, 417 F. Supp. 651 (D. Mass. 1976). Note that in Tennessean the court denied the U.S. Attorney's claim that the Privacy Act limited the FOIA's disclosure standard. This decision and other analyses indicate that as a legal matter the Privacy Act has only a tangential impact on federal disclosure policy for criminal justice information for the reasons described earlier.

However, the Privacy Act's civil and criminal penalties for improper disclosure and its emphasis of privacy interests may have the practical effect of limiting the flow of criminal justice information to the media. One criminal Privacy Act case has been reported to date. In U.S. v. Gonzales [Criminal No. 76-132, unpublished opinion (M.D. La. 1977)] a former U.S. attorney entered a guilty plea and was fined $1,500.00 for disclosure of personal information from grand jury transcripts.

43/ State v. Pinkney, 290 N.E.2d 923, 924 (Ct. of Common Pleas of Ohio 1972).

44/ Mass. Advance Sheets (1979) p. 515 (Mar. 5, 1979).

45/ 531 S.W.2d 177 (Tex. Ct. of App. 1975).

46/ 417 F.2d 723 (D.C. Cir. 1969).

47/ See, for example, Hughes v. Rizzo, 282 F.Supp. 881 (E.D. Pa. 1968) and Sullivan v. Murphy, 478 F.2d 938 (D.C. Cir. 1973) cert. denied, 414 U.S. 880, in which the courts ordered expungement of records of arrests that were made for purposes of political harrassment and without use of proper arrest procedures.

48/ 430 F.2d 486 (D.C. Cir. 1970) on remand 328 F.Supp. 718 (D.D.C. 1971).

49/ 424 U.S. 693 (1976).

50/ Id. at 713.

51/ Characterizations of media positions contained in the report are based in part on the proceedings of two conferences sponsored by SEARCH Group, Inc. which were attended by media representatives. See, Access to Criminal Justice Information, Summary Proceeding of the Forum on Criminal Justice Information Policy Law. SGI Tech Memo No. 14 Oct. 1977; and News Media Access to Criminal Justice Information: A Workshop Review, SGI 1978.

52/ Id.

53/ The applicability of FOIA exemption (b)(7)(C) permitting withholding if the disclosure would result in an unwarranted invasion of privacy is to be determined by the same standard as exemption (b)(6) which permits withholding if the disclosure would result in a clearly unwarranted invasion of privacy. Congressional News Syndicate v. U.S. Dept. of Justice, 438 F. Supp. 538 (D.D.C. 1977).

54/ 438 F.Supp. 538 (D.D.C. 1977).

55/ 410 F.Supp. 1297 (C.D. Cal. 1976).

56/ 448 F.Supp. 919 (N.D. Ill. 1977).

57/ Providence Journal Co. v. Federal Bureau of Investigation, unpublished opinions, No. 77-0526 (D.R.I. May 15, 1978 and October 5, 1978).

58/ Providence Journal Co. v. Federal Bureau of Investigation, No. 79-1067, (1st Cir. stay granted Feb. 20, 1979).

59/ 371 F.Supp. 97 (D.D.C. 1974).

60/ 421 U.S. 132 (1975).

61/ 554 P.2d 1048 (Or. App. 1976).

62/ 538 P.2d 373 (Or. App. 1975).

63/ ORS 192.500(2)(d).

64/ Branzburg v. Hayes, 408 U.S. 665, 684-85 (1972).

65/ 417 U.S. 817, 834 (1974).

66/ 381 U.S. 1, 16-17 (1965).

67/ See also, Saxbe v. Washington Post Co., 417 U.S. 843 (1974) (companion case to Pell v. Procunier); Nixon v. Warner Communications, Inc., 98 S.Ct. 1306 (1978); Houchins v. KQED, Inc., 98 S.Ct. 2588, 2595 (1978).

68/ 98 S.Ct. 2588 (1978).

69/ Citing Procunier v. Martinez, 416 U.S. 396 (1974), in which the Court sustained the prisoners' class action challenge of mail censorship regulations that proscribed, inter alia, statements that "unduly complain" or "magnify grievances," expressions of "inflammatory political, racial or religious or other views," and matter deemed "defamatory" or "otherwise inappropriate."

70/ 417 U.S. 817 (1974).

71/ Id. at 830.

72/ See also, Saxbe v. Washington Post Co., 417 U.S. 843 (1974) (companion case) which turned back a challenge to a Federal Bureau of Prisons prohibition of personal interviews between newsmen and individually designated prisoners in most federal prisons.

And see Garrett v. Estelle, 556 F.2d 1274 (5th Cir. 1977), cert. denied, 98 S.Ct. 3142 (1978) (First Amendment does not require Texas to permit a news cameraman to film executions in state prison.)

73/ In re Murchison, 349 U.S. 133, 136 (1955).

74/ Irvin v. Dowd, 366 U.S. 717, 722 (1961).

75/ Id.

76/ See, for example, Rideau v. Louisiana, 373 U.S. 723 (1963); Irvin v. Dowd, supra, and Stroble v. California, 343 U.S. 181 (1953).

77/ Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975).

78/ Id. The Court has struck down orders restraining the press from reporting information, related to trials, obtained out of court. See Oklahoma Publishing Co. v. District Court, 430 U.S. 308 (1977); Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976). However, in Nebraska Press, the Court explicitly stopped short of saying that all such prior restraints would under any and all circumstances violate the First Amendment.

79/ Gannett v. DePasquale, Supreme Court Slip Op. No. 77-1301, 47 L.W. 4902, July 2, 1979. See Nebraska Press Ass'n v. Stuart 427 U.S. 539, 564 n.8 (1976).

80/ 314 U.S. 252 (1941). In two caes following Bridges, judicial imperviousness to public comment became the sole basis for reversing contempt convictions. In Pennekamp v. Florida, 328 U.S. 331 (1946), the Supreme Court assumed, for the purpose of argument, that the media's editorials had deliberately distorted facts to

disrupt the efficiency of the courtroom. Nevertheless, the Court found that the editorials in question did not present a clear and present danger to the administration of justice. Id. at 350.

In Craig v. Harney, 331 U.S. 367 (1947), a newspaper editorially criticized a judge's decision and implied that the judge would not continue to serve much longer if such action persisted.

81/ All of the Supreme Court's contempt cases to date have involved media comment about a non-jury trial. Therefore, these opinions do not foreclose the use of contempt orders in jury trials. Indeed, the Court has hinted that a more liberal standard may be used to determine if contempt orders should be issued in such cases. See Wood v. Georgia, 370 U.S. 375, 389-90 (1962).

82/ 427 U.S. 539 (1976).

83/ While the Court has never suggested that First Amendment rights are absolute, it has maintained that prior restraints represent the "essence of censorship." Near v. Minnesota, 283 U.S. 697, 713 (1931). Thus, prior restraints are "the most serious and the least tolerable infringement on first Amendment rights." Nebraska Press Ass'n, supra, at 559.

84/ 427 U.S. at 568 [quoting Sheppard v. Maxwell, 384 U.S. 333, 362-63 (1966)].

85/ Supreme Court Slip Op. No. 77-1301, 47 L.W. 4902, July 2, 1979.

86/ The weight of lower court judicial opinion prior to the DePasquale decision was that judicial proceedings could be closed to the press and the public where their presence involves "a substantial likelihood of pre-trial publicity or impairment of a fair trial." Stapleton v. District Court, 449 P.2d 310 (Colo. 1972).

87/ Phoenix Newspapers, Inc. v. Winsor, 533 P.2d 72 (Ariz. 1975).

88/ Stapleton v. District Court, 499 P.2d 310 (Colo. 1972).

89/ State v. Allen, 373 A.2d 377 (N.J. 1977); Commonwealth v. Jackson, 327 N.E.2d 912 (Mass. App. 1975); contra, State Ex Rel. Dayton newspapers, Inc. v. Phillips, 351 N.E.2d 127 (Ohio 1976).

90/ Time Newspapers Ltd. v. McDonnell Douglas Corp., 387 F.Supp. 189 (C.D. Cal. 1974).

91/ United Press Ass'n v. Valente, 123 N.E.2d 777 (N.Y. 1954); Azbill v. Fisher, 442 P.2d 916 (Nev. 1968).

92/ For example, the Supreme Court has distinguished between the kinds of reportorial tools journalists may bring with them into court. Notebooks and pencils are allowed while the camera is banned. See Estes v. Texas, 381 U.S. 532 (1965). Moreover, the Court has interpreted the camera-in-the-courtroom issue in the context of due process considerations rather than First Amendment claims since journalists "are free to report what they observed at the proceedings." Id. at 584. The post-Estes era has seen the courts willing to restrain news broadcasting and photography outside the courtroom. See, e.g., Seymour v. United States, 373 F.2d 629 (5th Cir. 1967) (criminal contempt order against television news photographer who violated a standing court order proscribing photography within a building on the same floor on which courtrooms are located); Dorfman v. Meiszner, 430 F.2d 558 (7th Cir. 1970) (prohibition against news broadcasting and photo press coverage on entire floor where a courtroom is located as well as at elevator entrances in the building).

93/ The Supreme Court has justified its decisions in the area of the broadcast media by pointing to the inherent physical limitations that exit in broadcasting. Unlike other media, broadcast frequencies are a scarce resource. The Court spoke to this reality when, in Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 388 (1969), it said, "it is idle to posit an unbridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write or publish."

94/ 558 F.2d 1202 (5th Cir. 1977) cert. denied, 98 S.Ct. 1606 (1978).

95/ The press and public "have historically been excluded from sensitive governmental activities such as grand jury proceedings, judicial conferences, . . . and in camera inspections of evidence." Id. at 1209.

96/ 98 S.Ct. 1970 (1978).

97/ The newspaper's photographic laboratories, filing cabinets, desks and waste paper baskets were searched. Locked drawers and rooms were not opened.

98/ Cf. the dissenting opinion of Justice Stewart. In his dissent, Stewart reasoned that by requiring the police to obtain evidence from the press by means of a subpoena rather than in a search, the newspaper would be allowed, through a motion to quash, an opportunity for an adversary hearing prior to the production of any material which the government might think is in the paper's possession. This procedure in the instant case would have demonstrated to the court what the police ultimately found to be true; i.e., that the evidence sought did not exist. 98 S.Ct. at 1987.

99/ See Note, "Chipping Away at the First Amendment: Newsmen Must Disclose Sources," Akron L. Rev. 7:129 (1973).

100/ 394 A.2d 330 (N.J. 1978).

101/. 408 U.S. 665 (1972).

102/ Id. at 667.

103/ In Matter of Farber, 394 A.2d 330 (N.J. 1978), the Supreme Court of New Jersey extended the Branzburg rationale to require a newsman to reveal relevant confidential information and its sources to the trial court in a criminal prosecution:

> "[T]he First Amendment affords no privilege to a newsman to refuse to appear before a grand jury and testify as to relevant information he possesses, even though in so doing he may divulge confidential sources . . . It follows that the obligation to appear at a criminal trial on behalf of a defendant who is enforcing his Sixth Amendment rights is at least as compelling as the duty to appear before a grand jury." 394 A.2d at 334. (Emphasis added.)

See also, Anderson v. Nixon, 444 F.Supp. 1195 (D.D.C. 1978) (newsman ordered to disclose sources in civil action.)

APPENDIX

CRIMINAL JUSTICE INFORMATION TERMINOLOGY

Criminal Justice Information is defined to include the types of records enumerated below. These definitions are taken from the Second Edition of SGI's Technical Report No. 13 or from the LEAA Criminal Justice Information Systems Regulations (28 C.F.R. Part 20).

* "arrest record information," concerns the arrest, detention, indictment or other formal filing of criminal charges against an individual, which does not include a disposition;

* "correctional and release information," includes information or reports on individuals compiled in connection with bail, pretrial or post-trial release proceedings, presentence investigations, proceedings to determine physical or mental condition, participation by inmates in correctional rehabilitative programs, or probation or parole proceedings;

** "criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system;

* "criminal intelligence information," includes information on identifiable individuals compiled in an effort to anticipate, prevent or monitor possible criminal activity;

* "criminal investigative information," is defined as information on identifiable individuals compiled in the course of the investigation of specific criminal acts;

** "disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions shall include, but not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination. deceased, deferred disposition, dismissed -- civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial -- defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision;

* "identification record information," includes fingerprint classifications, voice prints, photographs, and other physical descriptive data concerning an individual that does not include any indication or suggestion that the individual has at any time been suspected of or charged with a criminal offense;

** "nonconviction data" means arrest information without disposition if an interval of one year has

elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals; and

* "wanted persons information," is identification record information on an individual against whom there is an outstanding arrest warrant, including the charge for which the warrant was issued, and information relevant to the individual's danger to the community and any other information that would facilitate the apprehension of the individual.

* SGI Definition
** LEAA Definition

PRIVACY AND SECURITY DOCUMENTS

Other Publications of NCJISS Privacy and Security Staff

Privacy and Security of Criminal History Information: A Guide to Dissemination
(NCJ 40000)

Privacy and Security of Criminal History Information: A Guide to Record and Review
(NCJ 48125)

Privacy and Security of Criminal History Information: A Guide to Administrative Security
(NCJ 49110)

Privacy and Security of Criminal History Information: A Guide to Audit
(NCJ 59647)

Privacy and Security of Criminal History Information: A Compendium of State Statutes
(NCJ 48981)

Privacy and Security of Criminal History Information: A Compendium of State Statutes
1979 Update (NCJ 59645)

Privacy and Security of Criminal History Information: An Analysis of Privacy Issues

Privacy and Security of Criminal History Information: An Analysis of Privacy Issues
1979 Update (NCJ 59646)

Privacy and Security of Criminal History Information: Users Manual
(NCJ 59644)

Privacy and Security of Criminal History Information: Privacy and the Media
(NCJ 59643)

Privacy and Security of Criminal History Information: A Summary of State Plans

Privacy and Security Planning Instructions
(NCJ 34411)

Confidentiality of Research and Statistical Data
(NCJ 47049)

Confidentiality of Research and Statistical Data: A Compendium of State Legislation
(NCJ 44787)