



COALITION OF
JOURNALISTS FOR
OPEN GOVERNMENT

January 29, 2007

Laurel G. Bellows, Esq.
Chair, House of Delegates
American Bar Association
321 North Clark Street
Chicago, IL 60610

Dear Ms. Bellows:

We write on behalf of Criminal Justice Journalists and the Coalition of Journalists for Open Government along with its undersigned member organizations in opposition to Part IV of the recommendation to the House of Delegates from the ABA Commission on Effective Criminal Sanctions.

We believe the recommendation that “only law enforcement agencies have access to records of closed criminal cases that did not result in a conviction” is contrary to the essential notion of an open criminal court system and could lead, directly and indirectly, to the closure of vast amounts of incident and pre-trial information that is now both open and vital to the public. .

We support the position of the Reporters Committee for Freedom of the Press in a letter sent to you on January 9, 2007. We agree with the Reporters Committee that, if enacted, the proposal “would severely hamper the ability of journalists and other members of the public to investigate and critique the workings of the criminal justice system.”

The commission states that in formulating its proposal, it sought to “balance the public’s reasonable right to know” against the government’s interest in offender re-entry. We see little evidence that the commission’s proposal would advance the public’s right to know what its law enforcement agencies are doing with respect to arrests.

When a law enforcement agency makes an arrest, records of that action traditionally are available to the public and may be reported in the news media. To seal such records if no conviction is obtained would create an anomalous situation. The records may be in the hands of any number of members of the public and the media. Yet they would now be legally sealed.

Does this mean that news organizations could not report that the case against someone who previously has been arrested has been dropped? The failure to report the disposition of a case favorable to the defendant cannot be helpful to re-entry.

The mere fact that a case was not prosecuted or a conviction was not won by prosecutors does not lessen the importance of knowing about it. Sealing records where convictions were not obtained could lead to covering up rampant abuses, such as arrests on frivolous charges, as well as corruption in the form of dismissals due to bribery or influence.

Information about the disposition of low-level offenses is important for news stories about practices like racial profiling. If the ABA's recommendation had been in effect in 1995, the *Philadelphia Inquirer* would not have been able to report thoroughly on Philadelphia police officers who were indicted for framing black defendants. The stories reported that judges and public defenders began to see the pattern of police perjury, and many of the fabricated cases were dismissed. Those records were essential to the stories about police corruption. Public defenders and judges wanted those stories to be published. That would not be possible if the records were sealed, as the ABA Commission proposes.

In Chicago, police in the 1990s arrested 44,000 people, mainly blacks and Latinos, under an anti-gang loitering law. To document practices of that type, the news media need records of arrests. The best examples of abuse may be people who have been acquitted of minor offenses; those people generally want to talk about how they have been wronged by the system.

The criminal justice process is public in the United States largely because the founding fathers were mindful of the courts of star chamber in England. The public is best served by an open criminal justice system. We are all are protected from abuses of power by public access.

Closing these records could have the effect of shielding those inside the criminal justice system who want to avoid being held accountable for actions they take on behalf of the public.

Ted Gest, President
Criminal Justice Journalists
and

Pete Weitzel
Coalition of Journalists for Open Government

The American Society of Newspaper Editors
Associated Press Managing Editors Association
California First Amendment Coalition
National Association of Hispanic Journalists
National Conference of Editorial Writers
National Federation of Press Women
National Freedom of Information Coalition
National Newspaper Association

The National Press Club