

**LDIR#013**

**CRIMINAL  
JUSTICE AND  
RIGHTS OF  
PRIVACY  
1972-1973**

PROPOSED

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REGULATIONS GOVERNING LEAA FUNDED  
CRIMINAL JUSTICE INFORMATION SYSTEMS

OCTOBER, 1972

TO: [

The Governor's Commission  
on the Administration of Justice

DATE : January 18, 1973

FROM:

Daniel W. Hickey

SUBJECT:

Staff Proposed Revisions  
to Regulations Governing  
LEAA Funded Criminal Justice  
Information Systems

*I believe these  
were incorporated  
into the  
regulations*

The following staff proposed amendments to that draft of the proposed regulations date October, 1972, reflect an incorporation of a number of very useful suggestions and criticisms offered at public hearings held in November, 1972, various comments and suggestions offered by members of the Commission, and criticisms contained in a preliminary review of the proposed regulations undertaken by another attorney in the Department of Law at my request prior to the issuance of the formal opinion required after adoption by AS 12.62.060.

6 AAC 60.020: Add a new subsection to read: "an identifying number which each criminal justice information system may assign to an individual to whom criminal justice information, otherwise collected and stored under authority of this section, relates;"

6 AAA 60.020(6): Change to read: "information, which shall include the date of collection and storage, originating from a source that is reasonably considered reliable by the law enforcement agency collecting the information indicating that an individual who is the subject of an arrest warrant or a police investigation may be armed or dangerous, has attempted suicide, or has a disabling medical condition which may require immediate attention or treatment;"

6 AAC 60.020(7): Change to read: "an individual's current driver's license class and number, the issuing authority, the date of expiration, any suspension, revocation or cancellation of the license and a record of prior recorded violations of state statutes, regulations or local ordinances pertaining to the operation of a motor vehicle;"

*T. Hannon  
Hans  
Dan Hickey  
D.W.H.*

STATE OF ALASKA  
CRIMINAL JUSTICE PLANNING AGENCY

ORGANIZATIONAL ANALYSIS

January 1973

Arthur Young & Company



A Tribute to

Cooperative Spirit

*The FBI's National Crime Information Center, more popularly and internationally known as NCIC, began its sixth year of service to the criminal justice community on January 27, 1972. There is scant time to engage in an anniversary celebration, however, for NCIC and its supporting State and metropolitan area computer systems are busy implementing further advances involving the interstate exchange of criminal justice information.*

the employment of private investigators has also been raised under existing provisions of the legal Canon of Ethics by the Special Committee on Science and Law of the Association of the Bar of the City of New York. This ferment promises to increase within the professional groups as public attention is focused on the ethical questions involved.

#### THE ROLE OF GOVERNMENT ACTION

Development of the five private forces just described should provide important new supports for privacy. But ethical and professional commandments will not always be sufficient to control the conduct of criminal elements, over-zealous government officials, profit-seekers, or insensitive researchers. At this point, governmental action serves to create clear boundary lines of permissible and forbidden conduct and to put fresh moral force behind enforcement of the newly fashioned rules.

*Legislative Action to Control Unreasonable Invasions of Privacy.* There is good reason to believe that the Supreme Court will soon issue a broad, path-breaking decision on the right to privacy from technological intrusion. However, this expectation ought not to prevent serious legislative debates at the present time. There is no guarantee that the Court will issue a ruling in the near future; the right case might not arise, or the Court might find itself divided internally in a way that would inhibit early declaration of a new position. Furthermore, the specific nature of some issues of technological surveillance calls for detailed control legislation; a judicial opinion drawing a line between constitutional and unconstitutional conduct and relying on exclusion of illegally obtained evidence to compel obedience is not the most promising way of properly balancing the interests of privacy, disclosure, and surveillance. Finally, forsaking a serious attempt to secure legislation in order to pressure the Justices into undertaking an essentially legislative responsibility ignores the separation-of-powers principle. On the other hand, the expression of public policy in new statutes would probably enhance the Court's ultimate role in this area. For these reasons, serious attention should be given now to the legislative possibilities for controlling modern means of invading privacy.

Legislation might well be considered for each of the three areas discussed previously: psychological, data, and physical surveillance. In regard to the first two areas, it may be proper initially to restrict the new controls to the actions of the federal government. The example of the federal government setting its own house in order may do much to persuade (rather than coerce) the states and private organizations to undertake their own reforms. If the example is not followed, Congress can then broaden the statutory coverage and will have the advantage of its previous experience in formulating and enforcing standards. With re-

# STATE OF NEW YORK

9915

## IN ASSEMBLY

February 15, 1972

Introduced by Mr. GOTTFRIED—read once and referred to the  
Committee on Judiciary

### AN ACT

to amend the civil rights law, in relation to confidentiality

*The People of the State of New York, represented in Senate and  
Assembly, do enact as follows:*

1 Section 1. The civil rights law is hereby amended by adding  
2 thereto a new section, to be section fifty-two-a, to read as follows:

3 § 52-a. Confidential information. (a.) No person, including a firm,  
4 corporation, banking organization, public utility company, telephone  
5 or telegraph company, or educational institution, nor any state or  
6 local governmental agency, public authority, or any instrumentality  
7 thereof shall divulge, reveal, or provide any information relating to  
8 any person, where such information is private or confidential infor-  
9 mation as to such person, including but not limited to employment

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

C

Check Calif — public records  
sections  
~~USA~~  
Laws Containing Problems by Kenneth Hunt  
"The Files" Leg Controls over the Access, Availability of Stored

STATEMENT TO THE GOVERNOR'S  
CRIMINAL JUSTICE COMMISSION  
BY  
COMMISSIONER FREDERICK MCGINNIS  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Today has been set aside for this distinguished Commission to consider the final Regulations for the Alaska Criminal Justice Information System.

As early as 1967, Senator Edward V. Long in a forward to Survey of Information Contained in Government Files, said "More than two years of hearings have shown us that one of the most subtle invasions of privacy is that which is accomplished through the use of the information which the Government maintains on American citizens." Since that time, five years ago, the amount of information and the danger have increased due to the sophistication of electronic data collecting systems and the increase in assignment of identifying numerals, such as Social Security numbers. The very features that the proponents of extensive data systems herald, such as "improving the efficiency of Government operations through use of more and faster moving information," are suspect by numerous individuals and organizations and, for good reason. (See attached article from Washington Monthly, September 1972.)

No matter how small or large the system contemplated, one of the most important considerations is that of its relationship to the form of government in which it is intended to operate, or in this case, which also sponsors it. The Government under which C.J.I.S. is proposed is not dedicated to comprehensive information retrieval,

it is dedicated to the maintenance of democracy. One of the most brilliant facets of democracy is the doctrine of separation of powers, which makes it difficult for governmental branches to jeopardize fundamental

to exonerate defendants' speeches from such responsibility.

Because the testimony of the expert witnesses on the subject of crowd or riot control could have negated a crucial element in the proof of the Government, and in the absence of countervailing considerations, we conclude that it was an abuse of discretion to foreclose that possibility. \* \* \*

[W]e are unable to approve the trial in this case as fulfilling the standards of our system of justice. \* \* \*

The district judge's deprecatory and often antagonistic attitude toward the defense is evident in the record from the very beginning. It appears in remarks and actions both in the presence and absence of the jury. \* \* \*

It does appear \* \* \* that in comparable situations, the judge was more likely to exercise his discretion against the defense than against the Government.

Most significant, however, were remarks in the presence of the jury, deprecatory of defense counsel and their case. These comments were often touched with sarcasm, implying rather than saying outright that defense counsel was inept, bumptious, or untrustworthy, or that his case lacked merit. Sometimes the comment was not associated with any ruling in ordinary course; sometimes gratuitously added to an otherwise proper ruling; nearly always unnecessary. Taken individually any one was not very significant and might be disregarded as a harmless attempt at humor. But cumulatively, they must have telegraphed to the jury the judge's contempt for the defense. \* \* \*

Remarks made by the prosecutors in considerable number, and before the jury, were not called for by their duties, and, whatever contribution the defense conduct may have made to the deficiencies of this trial, these remarks were not justified thereby and fell below the standards applicable to a representative of the United States. \* \* \*

[T]he court's narrow interpretation of leading questions does not appear to have been equally restrictively applied when the Government questioned its witnesses. \* \* \*

It is true that the occurrence of such errors and procedural irregularities would not be fatal if other errors did not exist. \* \* \*

There is evidence that, if believed, the defendant's confession would have

**Dissent in part.** [Text] I entertain no doubts but that the statute under which the appellants were prosecuted is facially unconstitutional in that it is clearly violative of the First Amendment right of freedom of speech. \* \* \*

[A] federal statute could be drawn, sufficiently narrow and precise, to accomplish punishment of such activity without running afoul of First Amendment rights. In my view, that was not done here. \* \* \*

Speech without effective communication is not speech but an idle monologue in the wilderness. Communication involves listeners. A "law" which upon reasonable construction would, by its deterrent threat of punishment for the mere expression of ideas or beliefs, cellularly isolate the speaker from potential listeners in all of the states of the Union except his own would, in my opinion, abridge freedom of speech. \* \* \*

Also, the overly broad language of the statute already referred to has other constitutional significance in its discouraging impact on the freedom to travel. [End Text]—Pell, J.

—CA 7; U.S. v. Dellinger, 11/21/72.

#### RIGHT OF PRIVACY—

Colorado's recognition of right of privacy entitles arrestee subsequently acquitted to recovery of arrest records and fingerprints if state is unable to establish compelling need to retain them.

Following acquittal of a loitering charge the plaintiff sued the chief of police and custodian of the records for recovery of her fingerprints and arrest records. Basing her claim on the right of privacy, she argued that the police retention of the records violated that right. The trial court dismissed the action for failure to state a claim upon which relief could be granted.

[Text] In *Rugg v. McCarty*, 476 P.2d 753, this court recognized the right to privacy, stating: " \* \* \* We are urged to specifically recognize the theory of tortious conduct designated as the invasion of the right of privacy. We now do so, noting that our general assembly gave legislative recognition of the right of privacy by the enactment of 1967 P.L.R.S. 1967-11, 1968, 49-4-33, in connection with the wiretapping and eavesdropping statute, which provides: 'There exists in the state of Colorado a right of privacy which shall be protected by law. Any person who intentionally invades the privacy of another shall be liable to the person so invaded for damages and costs. The damages shall be such as to protect the citizen from what might develop upon its facts to be an unconstitutional invasion of his right of

consider to be persuasive and which lead to the result we here reach, has held that a court should expunge an arrest record or order its return when the harm to the individual's right of privacy or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records in police files. U.S. v. Kalish, 271 F. Supp. 968; *Kowall v. U.S.*, 53 F.R.D. 211; *Eddy v. Moore*, 487 P.2d 211. \* \* \*

The record here is silent concerning the findings of the trial court in granting defendants' motion to dismiss for failure to state a claim. The trial court did not have the benefit of *Rugg v. McCarty*, which was subsequently decided by this court. The right to privacy having been specifically recognized by this court in *Rugg*, the question is whether the complaint tested by our rules of pleading, C.R.C.P. 8(a), (e) and (f), states a claim upon which relief could be granted. Motions to dismiss for failure to state a claim are viewed with disfavor and are rarely granted under our "notice pleadings." \* \* \*

The question in the present case resolves itself into whether, in the light most favorable to the plaintiff, with every doubt resolved in her favor, it can be said beyond doubt she can prove no set of facts in support of her claim which would entitle her to relief. We answer in the negative and hold that the court erred in dismissing plaintiff's complaint on the basis of the pleadings alone.

The complaint presents an extremely important issue, novel in our jurisdiction, involving a constitutional right of the highest magnitude—an individual's right to privacy vis-à-vis the propriety of the police retaining that person's arrest records in police files after he had been acquitted of criminal conduct.

While recognizing this, defendants argue that no claim for relief has been stated because the regulation of use of arrest records is a matter for the legislature, which has not spoken on the subject. We agree that disposition of arrest records is subject to legislative control and we note that our legislature has dealt with the expungement problem in juvenile court proceedings. 1967 Perm. Supp., C.R.S. 1963, 22-1-11. However, this is not to say that, absent legislative action, a similar statute may not be imposed to protect a citizen from what might develop upon its facts to be an unconstitutional invasion of his right of

tion in the records may be disseminated, and what justification exists for their retention in the police files, are all questions, among many, which must be left to the trial court fact-finding process. After factual development, relief may or may not be warranted. Should the court determine the precise relief requested is not appropriate, other means may be formulated to protect plaintiff's right of privacy from any improper invasion. C.R.C.P. 54(c). [End Text]—Lee, J.

—Colo. SupCt, Davidson v. Dill, 11/13/72.

## Evidence

### HEARSAY—

**List of overtime hours prepared by Government employee-claimant from diaries previously submitted to congressional subcommittee considering bill for his private relief but now lost, which is best and only evidence of time worked, is admissible in trial before U.S. Court of Claims Commissioner even though technically hearsay.**

This is a congressional reference case submitted pursuant to 28 U.S.C. § 1492 and 28 U.S.C. § 2509.

The list was presented by the claimant to a House subcommittee considering a bill for his relief. He testified before the subcommittee that he compiled the list of the hours he had worked from diaries he had kept and that the list and the diaries were then in the possession of the subcommittee. Admission in evidence of the transcript of testimony and the list has been objected to as hearsay. Their author was not present in court, under oath, and subject to cross-examination. Direct testimony of the circumstances surrounding the creation of the list was not possible, since the claimant suffered a stroke shortly before trial and could not testify. His wife, the main witness on his behalf, testified that he made up the list from diaries he had kept throughout his employment and that the diaries had been lost in a household move some years ago.

There is increasing disaffection with the hearsay rule, at least in civil nonjury cases. A large part of the rule's purpose—protection of jurors deemed impressionable—is lost in the trial conducted by a trial judge alone. In civil bench trials, therefore, many experienced judges admit hearsay they deem reasonably reliable and probative, either "for what it is worth" or on some explicit rejection of the hearsay rule and its some exceptions.

Hearsay is the staple of the evidence in administrative proceedings

to a point that an agency may disbelieve live medical testimony and credit hearsay medical reports. This court customarily reviews administrative decisions based on hearsay and will inquire only into the degree and reasonableness of the reliance on hearsay.

There can no longer be any doubt that hearsay is regularly admitted in federal civil bench trials when it is the best evidence available and it is deemed to have assurances of accuracy and, therefore, probative force. The precise standard is still undergoing development. Some circuit courts hold that Fed.R.Civ.P. 43(a) and 44 authorize the admission of any relevant probative evidence that in the considered exercise of judicial judgment is deemed trustworthy.

The proposed new federal rules of evidence, 41 LW 4021, propose an exception to the hearsay rule directly relevant to the documents here in question. By proposed Rule 804(b) a former statement of an unavailable witness is to be admissible in five stated situations and, by Rule 804(b) (6) in any other cases where there are circumstantial guarantees of trustworthiness comparable to those in the five explicit exceptions. The Advisory Committee notes to the rules state that they intended to "provide for treating new and presently unanticipated situations which demonstrate a trustworthiness within the spirit of the specifically stated exceptions."

Assurances that the proffered evidence is trustworthy and the best available are the requisites for either the utilization of an established exception to the hearsay rule or an ad hoc decision of admissibility. The transcript of testimony and the list of hours worked offer such sufficient assurances. The solemnity and formality of an appearance in courtroom are deemed to encourage truth-telling in testimony. Hearsay is in part deemed unreliable for the lack of such an appearance. The claimant's appearance before the congressional subcommittee in this case was comparably solemn and formal.

The absent of opportunity to probe testimony by cross-examination is another of the grounds for hearsay's presumed unreliability. The transcript of testimony itself, however, offers some assurances that the diaries once existed and that the list was in fact based on them. Claimant submitted the diaries as proof of the accuracy of the list without fear that close scrutiny or cross-examination would uncover an error. It therefore appears that the diaries were once in evidence, were the source of the data on the list, and they are now lost. There is no other source of evidence on the number of hours of overtime worked. The list is the best and the

only evidence available and it may admitted as having the assurance of trustworthiness that it was once presented as true, by claimant, to a committee of the Congress, with the diaries to support it.

—US CtClis (Review Panel of Comrs.) McQuown v. U.S., 11/6/72.

## Federal Courts and Procedure

### DISCOVERY—

**Intra-agency policy memoranda and interagency policy statements of overlapping, although antagonistic, agencies are entitled to executive privilege if such privilege is asserted, with specificity, by agency heads but not if asserted by agencies' trial attorneys.**

This antitrust suit was instituted against the stock exchange by a non-member broker-dealer, and challenges the validity of the exchange's anti-rebate rule which prohibits members from rebating any portion of their commission to a nonmember. Within the past year, the Securities and Exchange Commission (SEC) and the Antitrust Division of the Department of Justice, after acting as amici for some time, have intervened on opposite sides.

The stock exchange then asked Justice and the SEC to produce all documents, correspondence, reports, studies, and legal memoranda or briefs containing discussions, analysis, or comments on the legality, under the antitrust laws, of the anti-rebate rule. Both Government agencies objected to the production of intra-agency and interagency documents and communications on four grounds: (1) irrelevance; (2) executive privilege; (3) attorneys' work products; and (4) attorney-client privilege.

[Text] I cannot find that the information requested by the exchange is irrelevant. In order to establish immunity from the antitrust laws, the [stock] exchange must be given the opportunity to show that "the anti-rebate rule must be preserved as 'necessary to make the Securities Exchange Act work.'" *Thill Securities Corp. v. New York Stock Exchange*, 433 F.2d 264, 270, 39 LW 2129 (CA 7, 1970), quoting *Silver v. New York Stock Exchange*, 373 U.S. 341, 357 (1963). If the exchange fails to establish immunity, presuming the [broker-dealer] satisfies its burden, it then may have to convince the court that the anti-rebate rule does not violate the antitrust laws and that there are affirmative defenses which bar liability for any violations. To satisfy this burden, the exchange's attorneys will have to develop a full understanding

ence will take place here next week, but the FJCC is considered by many to be transitional, because it takes on many of the aspects of the new conferences. After 20 years of twice-a-year meetings, the old joints give way to a single, national, annual show, as of next June.

The meeting at the Anaheim Convention Center, Dec. 5-7, will see some as-  
**FJCC coverage begins on page 25.**

sociated events held at the nearby Disneyland Hotel and the Royal Inn.

**User Emphasis**

Part of the new look is an emphasis on user topics, with 50% of the FJCC technical Program devoted to users.

Additionally, four all-day user seminars are being conducted for DP people in manufacturing, banking, medicine and information data centers.

These vertical adjunct seminars are expected to grow into more comprehensive seminars planned and presented by some of the industry-oriented societies such as the American Bankers Association, according to sources at the American Federation of Information Processing Societies (Aflips), conference sponsor.

Besides the technical program with 60 sessions, exhibits will feature over 150 firms showing their wares in 410 booth spaces, a sellout and a significant upturn

**On the Inside This Week**

APL/Ascii Terminals Include Graphics, Character Set *-Page 19*

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because of either a lack of interest or because of competitive rates already offered.  
*(Continued on Page 2)*

**On Freed Individuals**

**Some Arrest**

By a CW Staff Writer  
 DENVER — In what could become a precedent-setting action, the Colorado Supreme Court has barred the compilation of arrest records on persons who have not been convicted of crimes.

The move makes it illegal for police agencies, at least those here, to store or transmit criminal history information or rap sheets on persons arrested for criminal acts but never convicted.

**FBI System**

The criminal history information is the backbone of the FBI's nationwide Computerized Criminal History system which collects such information from local state agencies for storage on a national scale.

"There exists in the individual a fundamental right of privacy — the right to be left alone," the court stated in making the decision.

In addition, the court stated there is an increasing awareness of the potential "economic and personal harm to an individual if his arrest becomes known to employers, credit agencies or even neighbors," and that a person with a record is more likely to come under police scrutiny than one without a record.

**Determining Bail**

The court also said there is a tendency among prosecutors to use rap sheets when deciding whether or not to charge a person with a crime and that the amount of bail set in specific cases is often based on

The Benson-Fabbot program was originally rejected by the Patent Office because it was "essentially a series of

**Patent Banned**

whether or not that person has a record even if there is no conviction.

The decision, written by Justice Robert B. Lee, said the police agency would have the burden of proving it was in the public interest to keep an arrest record of a person acquitted or never tried in court.

The maintenance of arrest records was challenged by Dorothy Davidson, executive director of the American Civil Liberties Union in Colorado, in the case that led to the decision.

**Library Can't Buy His Software Due to Conflict Over State Law**

By Don Leavitt  
 Of the CW Staff

WORCESTER, Mass. — A special-purpose minicomputer for the public library is not being used because the city auditor has refused to pay for the programs to be written, citing a state law which prohibits any city or town owning a computer from buying "DP services" from outside sources. The city's legal department approves of his refusal.

The mini, a Lib-100 from Computer Library Services Inc. (CLSI), Wellesley, Mass., has not even been delivered although it was paid for last spring.

Ultimately, either the library or the city may have to hire a programmer to do the work. Beyond that, however, City Auditor Guy V. Lapriore's refusal could affect

versions of number systems, the court found.

While the court found the Benson-Fabbot patent too broad for patent protection, patent lawyers said last week that no patent on software would be accepted under the guidelines laid down by the court.

The court admitted this in its decision, passing any further action on the issue along to the Congress for action.

"If these programs are to be patented, considerable problems are raised which only committees of Congress can manage for broad powers of investigation are needed, including hearings which canvass the wide variety of views which those operating in this field entertain.

"The technological problems tendered in the many briefs before us indicate us that considered action by Congress is needed," the decision said.  
*(Continued on Page 4)*

a number of municipal DP installations in Massachusetts.

The state law referring to outside DP services includes programming and so the software acquisition part of the library's contract is illegal, according to Lapriore, Assistant City Solicitor Bennett S. Gordon agrees.

In an opinion accepted by the city council, he said the contract is for data processing services "because CLSI will set up the computer so the operator will not have to do any independent thinking" and get a desired output.

The directors of the library disagree and have voted to hire a lawyer to fight the Gordon interpretation in court. Head librarian Joseph S. Hopkins has categorized  
*(Continued on Page 4)*

*Computer World*

11-29-72

## MEMORANDUM

TO: [ Lauris S. Parker, Executive Director  
Criminal Justice Planning Agency

DATE : September 15, 1972

FROM: Lt. Archie L. Barber, Jr. *ALB*  
Technical Liaison Officer  
Department of Public Safety

SUBJECT: Comments on: Proposed  
Security and Privacy  
Regulations

6 AAC 60.030(5)

Fish & Wildlife Protection Division personnel of the Department of Public Safety should have access to stolen vehicle information. During their patrols, especially on lightly traveled roads not often patrolled by State Troopers, these personnel have the opportunity to observe what may be abandoned, stolen vehicles. They should have the capability to check status of these vehicles directly. Also, it is anticipated that in the future all vehicle registrations may be put into AJIS. Protection officers will then need access to those files to use in investigative cases. In some cases, an offender's vehicle is the best means of determining the identify of the offender.

6 AAC 60.035(a)

\* This paragraph is a matter of concern in that it seems overly restrictive in who secondary users of the information may be. The last sentence causes the problem mentioned. There are legitimate users such as insurance companies (who we are required by law to provide driving records) who could not receive the necessary information if this paragraph prevailed as it is written.

6 AAC 60.035(b)

At this point there is no good indication of how much computerized information will be transferred to secondary users. However, if there is a large volume, the log-keeping task required by this paragraph would be horrendous.

6 AAC 60.050-055

The only time criminal offender records should be altered or deleted is when there is an error in the information and then only the erroneous part changed. No one could argue with the contention that criminal records should be factual. If they are purged for the reasons set forth in these sections, they would be neither complete nor factual. Even if the computerized files are purged, anyone could still extract the information from court paper files, news media files and other sources.

1 IN THE SENATE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act protecting the constitutional right of privacy  
7 of those individuals concerning whom records are  
8 maintained by governmental agencies."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

0 \* Section 1. AS 09.25 is amended by adding a new section to read:

1 Sec. 09.25.125. INDIVIDUAL RECORDS. (a) A state agency that  
2 maintains records concerning any person which may be retrieved by  
3 reference to, or indexed under, the person's name or a number by which  
4 a person may be identified and which contains any information obtained  
5 from any source other than the person shall, with respect to those  
6 records,

7 (1) notify the person by mail at his last known mailing  
8 address that the agency maintains or is about to maintain a record  
9 concerning the person;

0 (2) refrain from disclosing the record or any information  
1 contained in the record to another agency or to another person not  
2 employed by the agency maintaining the record, except with the permis-  
3 sion of the person concerned or, in the event the person cannot be  
4 located or communicated with after reasonable effort, with permission  
5 from members of the person's immediate family or guardian, or, only  
6 in the event that the person, members of his immediate family and  
7 guardian cannot be located or communicated with after reasonable effort,  
8 upon good cause for the disclosure; however, if disclosure of a person's  
9 record is required under any other provision of law, the person

## REMOVING THE STIGMA OF ARREST: THE COURTS, THE LEGISLATURES AND UNCONVICTED ARRESTEES

Society punishes criminal conduct by incarceration and moral condemnation.<sup>1</sup> Prior to imposing sanctions for the commission of criminal acts, the accused must be proven guilty beyond a reasonable doubt in accordance with adequate procedural safeguards. Yet each year thousands of unconvicted arrestees are subjected to the same stigma which society imposes on those who are convicted because the records of all arrestees, whether convicted or not, are retained and disseminated by law enforcement agencies.

When an individual acquires an arrest record<sup>2</sup> the data is sent to the state police and to the Federal Bureau of Investigation.<sup>3</sup> The United States Attorney General is required by statute to exchange these records with "authorized officials of the Federal Government, the States, cities, and penal and other institutions."<sup>4</sup> Despite this fairly restrictive scope of permissible dissemination, many persons and institutions who are not authorized recipients gain access to arrest infor-

1. Hart, *The Aims of the Criminal Law*, 23 LAW & CONTEMP. PROB. 401, 402-06 (1958). Professor Hart, in the context of prescribing what legislatures should consider when specifying particular conduct as criminal, suggested that these were the two basic elements of criminal punishment. He asserted that a crime should be based on blameworthiness and hence justify the punishment of social condemnation that results.

2. The term "arrest record" as used throughout this comment means both records of identification, such as fingerprints, photographs, measurements and voice prints, and the official record of arrest which indicates the suspect's name, time and place of arrest and the specific charge.

3. These steps are provided for by statute in many states. See, e.g., FLA. STAT. ANN. § 30.31 (Supp. 1972).

4. 28 U.S.C. § 534(a)(2) (1970). If the records are disseminated outside these authorized recipients, the exchange is subject to cancellation. *Id.* § 534(b). Although there are no decisions construing the term "cancellation," numerous interpretations are possible. It could mean that the exchange program between the Attorney General and the violating agency would be terminated. Two possible constructions would be more desirable. Upon cancellation the Attorney General could require the violating agency to return all records received and to retrieve those records disseminated outside authorized bounds. Cancellation could also be construed to authorize private suits in federal court by aggrieved persons to retrieve records illegally disseminated, or to recover damages for injuries sustained as a result of illegal dissemination.

The Attorney General has specified by regulation that member banks of the Federal Reserve System and those banking institutions insured by the Federal Savings and Loan Insurance Corporation are among those "other institutions" with which the FBI is required to exchange identification records. 28 C.F.R. § 0.85(b) (1965).