

Press Access to Information regarding National Security and Law Enforcement

Michael Roche, Kayleigh Fladung & Caroline Parks

Advisor: Annette Taylor

Tried by peers: How much information about jurors should the press have access to?

Michael Roche

Thesis: The practice of withholding information about juries from the media is a violation of the First Amendment.

Press Enterprise II

- “Public access to such preliminary hearings is essential to the proper functioning of the criminal justices system”
- Established Reasonable Likelihood test
 - Reasonable likelihood of substantial prejudice
 - Kind/amount of community bias that endangers a fair trial
 - Size of community where jury is selected
 - Details and seriousness of offense
 - Status of victim and accused

Historical balance between 1st and 6th Amendments

- Juries have historically been compromised of neighbors
- Materials are matters of public record
- Requested materials avoid private facts

Qualifications for anonymous juries

- Defendant's involvement in organized crime
- Defendant's participation in a group with the capacity to harm jurors
- Defendant's past attempts to interfere with judicial process
- Potential that, if convicted, defendant will suffer lengthy incarceration and substantial monetary penalties
- Extensive publicity that could enhance the possibility that jurors' names would become public and expose them to intimidation or harassment



How is “National Security” exemption to FOIA being interpreted in federal courts?

Caroline Parks

THESIS: The First Amendment guarantees the freedom of speech and press; FOIA is federal law that established citizens rights to obtain information from federal government agencies. Assertion that information contains national security material imposes a prior restraint on speech because the interest in protecting and preserving first amendment rights are against the governments interest in withholding potential damaging information even if the information is arguably of public concern.

- ❖ Freedom Of Information Act and the national security exemption.
 - This exemption is intended to prevent the release of classified records, to which the release would cause impairment to national security. The material must be properly classified, meaning that the classification must be protecting an interest of national defense or foreign policy. Classified documents can still be requested and released; a person who is of authority of that particular agency must then review the classified information to determine if it still requires protection.
- ❖ The construction and scope of argument concerning the freedom of information exemption is often what is actually being argued in courts. In the cases brought upon courts about FOIA requests and the exemptions, often the structure of the dispute in the light of the law is what determines the ruling.
 - In 1979 the case of, *Holy Spirit Association v. United States Department of State*, in which the district court ordered the FBI to disclose portions of classified documents because the department's grounds for a FOIA exemption of national security was too ambiguous.
 - In the 1981 case of *Dunaway v. Webster*, although the court ruled in favor of the plaintiff and claimed that the FOIA exemption of national security did not pertain to the documents the plaintiff requested, they said that other FOIA exceptions, such as personal privacy, allowed the bureau to disclose select information in the documents.
 - *Peterzell v. Department of State* was a 1986 ruling that found FOIA exemption of national security did apply because the records were investigative and was compiled for law enforcement. The court did however, direct the State to re-categorize the information to properly determine if foreign and domestic security would in fact be detrimental to national enforcement proceedings.



Access overhaul: should private university police records be accessible to student journalists?

Kayleigh Fladung

THESIS: Though courts have varied opinions on whether private police forces are subject to public records laws, student journalists continue to push for legislation that provides clear access to these records. Ohio House Bills 411 and 429 should find supportive precedent to add private police records to the Ohio public records law, given the scope of duties performed by private police forces.

- ❖ Private police forces argue they are exempt from public records laws because they are not government agencies.
 - States are defining private campus police forces to determine if they are considered “law enforcement authority” and subject to state public records laws. In *The Corporation of Mercer University et al. v. Barrett & Farahany, LLP*, the Georgia Court of Appeals ruled that the private institution's campus police were not covered by the Open Records Act.
- ❖ Although courts have frequently ruled in favor of private police forces, the outcomes of these cases have led to a review and change in public records legislation that favor accessibility for student journalists.
 - In 2012 the Court of Appeals of North Carolina ruled in *Ochsner v. Elon University* that a private university's police force was not subject to North Carolina Public Records Law, affirming the force's ability to deny access to requested records. After this decision, the state enacted legislation that made public records on private college campuses in the state more accessible.
- ❖ FERPA and claims of exemption from state sunshine laws are commonly used as excuses to block access to public records at universities. However, FERPA is not applicable to disciplinary and law enforcement records and sunshine laws do apply to law enforcement records at universities.
 - In 1991, Southwest Missouri State University student newspaper editor Traci Bauer filed suit to obtain campus police incident reports under Missouri Sunshine Law. But the university claimed exemption under FERPA. The court ruled in favor of Bauer, finding that the requested information was not an educational record.
- ❖ If enacted, Ohio House Bill 411 would make the records of most private university police forces and police employed by nonprofit corporations public. Enacting House Bill 429 would make records of all privately employed police public.

