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OPINION	:	No. 83-906
of	:	OCTOBER 11, 1984
JOHN K. VAN DE KAMP Attorney General	:	
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THE HONORABLE ROBERT H. PHILIBOSIAN, DISTRICT ATTORNEY, LOS ANGELES COUNTY, has requested an opinion on the following question:

May a district attorney publish or cause to be published in a newspaper the names of absent parents for whom warrants of arrest have been issued for failure to provide child support when the purpose of such publication is to obtain public assistance in locating such absent parents?

CONCLUSION

A district attorney may publish or cause to be published in a newspaper the names of absent parents for whom warrants of arrest have been issued for failure to provide child support when the purpose of such publication is to obtain public assistance in locating such absent parents.

ANALYSIS

At the outset we will discuss in general terms the federally mandated child support enforcement program contained in title IV-D of the Social Security Act (42 U.S.C. §§ 651-665) and in the federal regulations (45 CFR §§ 300-305) promulgated to implement the enforcement program. The purpose of the program is to obtain child support from those obligated to furnish such support. Each applicant for or recipient of Aid to Families with Dependent Children (AFDC) is required as a condition of eligibility to make an assignment of support rights to the state. Such person is also required as a condition of eligibility to cooperate with the state in securing support, unless such cooperation is not in the best interest of the child. In turn, the state is mandated to establish or designate a single and separate organizational unit to administer the enforcement program. This unit is responsible for securing support on behalf of an AFDC child for whom there has been an assignment of support rights. Support moneys collected by the unit serve to remove the applying or recipient family from public assistance or to reimburse the state and the federal government for the public assistance funds furnished to the family. In addition, the state is required to make its enforcement services available to persons who are not applicants for or recipients of AFDC and may charge such persons for this service.

Often the whereabouts of the parent obligated to provide support is unknown and such parent is deemed an absent parent. A state must establish a parent locator service for the purpose of locating absent parents, and this service is required to utilize appropriate sources of information at the federal, state and local levels.

Pursuant to title IV-D California has established a program for enforcing the child support obligations of absent parents and for locating such parents. (Welf. & Inst. Code, §§ 11475-11492.) Under this program a unit in the district attorney's office in each county is assigned the responsibility for enforcing the absent parents' support obligations. As provided in part in section 11475.1:[1]

> "Each county shall maintain a single organizational unit located in the office of the district attorney which shall have responsibility for promptly and effectively enforcing child and spousal support obligations and determining paternity in the case of a child born out of wedlock. This responsibility shall apply to spousal support only where the spousal support obligation has been reduced to an order of a court of competent jurisdiction and the spouse (or former spouse) is receiving aid to families with dependent children for a child or children of the marriage or former marriage of the

[1] All statutory references will be to provisions of the Welfare and Institutions Code unless otherwise indicated.

obligated spouse or former spouse. *The district attorney shall take appropriate action, both civil and criminal, to enforce this obligation when the child and the spouse or former spouse is receiving public assistance.* When the child is not receiving public assistance, the district attorney shall take appropriate action to enforce the child support obligation. There shall be prominently displayed in every public area of every office of the units established by this section a notice, in clear and simple language prescribed by the Director of Social Services, that child support enforcement services are provided to all individuals whether or not they are recipients of public social services and that spousal support enforcement services are available to those receiving public social services." (Emphasis added.)

Penal Code section 270 enables the district attorney to bring a criminal action for nonsupport. That section provides in part as follows:

"If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter or medical attendance, or other remedial care for his or her child, he or she is guilty of a misdemeanor punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. If a court of competent jurisdiction has made a final adjudication in either a civil or a criminal action that a person is the parent of a minor child and the person has notice of such adjudication and he or she then willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter, medical attendance or other remedial care for his or her child, this conduct is punishable by imprisonment in the county jail not exceeding one year or in a state prison not exceeding one year and one day, or by a fine not exceeding two thousand dollars ($2,000), or by both such fine and imprisonment. This statute shall not be construed so as to relieve such parent from the criminal liability defined herein for such omission merely because the other parent of such child is legally entitled to the custody of such child nor because the other parent of such child or any other person or organization voluntarily or involuntarily furnishes such necessary food, clothing, shelter or medical attendance or other remedial care for such child or undertakes to do so."

Pursuant to this statute a criminal complaint may be filed against an absent parent and a warrant of arrest issued. (See Pen. Code, §§ 806-829, 1427.)

We are asked whether a district attorney may publish or cause to be published in a newspaper the names of absent parents for whom warrants of arrest have been issued

for failure to provide child support when the purpose of such publication is to obtain public assistance in locating such absent parents. We conclude that a district attorney may do so. Indeed, we determine that absent parents who are the subjects of arrest warrants are not different from other wanted criminal defendants and that a district attorney's office may properly seek the assistance of the public in locating such persons.

A warrant of arrest is issued by a magistrate when a criminal complaint is presented and the magistrate is satisfied from the complaint that the offense has been committed and there is reasonable ground to believe that the defendant has committed it. (Pen. Code, §§ 813 and 1427, subd. (a).) The facts that a complaint has been filed and that a warrant of arrest has been issued will appear in the court's docket. Penal Code section 1428 provides:

> "A docket must be kept by the judge or clerk of each justice court and by the clerk of each municipal court having jurisdiction of criminal actions or proceedings, in which must be entered the title of each criminal action or proceeding and under each title all the orders and proceedings in such action or proceeding. Wherever by any other section of this code made applicable to such courts an entry of any judgment, order or other proceeding in the minutes is required, an entry thereof in the docket shall be made and shall be deemed a sufficient entry in the minutes for all purposes."

The usual practice is for the clerk of the court to open a criminal case file under an assigned docket number and to enter in the docket the fact of the filing of the complaint and the fact of the issuance of warrant of arrest.

A warrant of arrest may be executed by any of those officers to whom it is directed and delivered. Penal Code section 816 provides in part:

> "A warrant of arrest shall be directed generally to any peace officer, or to any public officer or employee authorized to serve process where the warrant is for a violation of a statute or ordinance which such person has the duty to enforce, in the state, and may be executed by any of those officers to whom it may be delivered."

The complaint for a violation of Penal Code section 270 will normally be prepared at the behest of the district attorney as the public prosecutor and the public officer with the duty to enforce child support laws; the warrant of arrest will be delivered to a peace officer (e.g., sheriff's deputy, policeman, investigator) for execution.

In this opinion we are not concerned with the execution of the warrant of arrest. If the whereabouts of the defendant is known to the police agency which has the warrant it is unlikely that such agency would publicly disclose the existence of the warrant for fear that the defendant would flee before it could be served. On the other hand, if the location of the defendant is unknown the police agency may elect to send copies of the warrant or abstracts thereof by telegraph, teletype or other electronic devices to other police agencies to allow other police officers to locate and apprehend the defendant. (Pen. Code, § 850.) The familiar "all points bulletin" often reaches the general public when media attention focuses on the defendant sought through the arrest warrant. The question we are asked assumes that the defendants' whereabouts are unknown and that the publication will assist in locating such persons. It further assumes that the district attorney would be cooperating with the police agency or agencies seeking to execute the warrants and would not publish information which would jeopardize the execution of the warrants.

The fact of the filing of the criminal complaint and the fact of the issuance of a warrant of arrest, however, are matters of record in the court. (Pen. Code, § 1428.) Ordinarily, court records are public records as explained in *Estate of Hearst* (1977) 67 Cal.App.3d 777, 782-783:

> "Although the California Public Records Act (Gov. Code, § 6250ff) does not apply to court records (see § 252, subd. (a)), there can be no doubt that court records are public records, available to the public in general, including news reporters, unless a specific exception makes specific records nonpublic. (See *Craemer* v. *Superior Court* (1968) 265 Cal.App.2d 216, 220-222 [71 Cal.Rptr. 193].) To prevent secrecy in public affairs public policy makes public records and documents available for public inspection by newsmen and members of the general public alike. (*Craemer*, *supra*, at p. 222; *Bruce* v. *Gregory* (1967) 65 Cal.2d 666, 677 [56 Cal.Rptr. 265, 423 P.2d 193].) Statutory exceptions exist (see e.g., exemptions, under Gov. Code, § 6254; see also list of statutory exceptions in *Craemer*, *supra*, at pp. 220-221, fn. 4); as do judicially created exceptions, generally temporary in nature, exemplified by such cases as *Craemer*, *supra*, and *Rosato* v. *Superior Court* (1975) 51 Cal.App.3d 190 [124 Cal.Rptr. 427], which involved temporary sealing of grand jury transcripts during criminal trials to protect defendant's right to a fair trial free from adverse advance publicity. Clearly, a court has inherent power to control its own records to protect rights of litigants before it, but 'where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed.' (*Craemer*, *supra*, 265 Cal.App.2d at p. 222.) The court in *Craemer* suggested that countervailing public policy might come into play as a result of events that tend to

> undermine individual security, personal liberty, or private property, or that injure the public or the public good." (Fn. omitted.)

There is no statutory provision making the facts of the filing of a criminal complaint and of the issuance of an arrest warrant confidential. Generally, there is no confidentiality with respect to a matter which is already public. (*Weimer* v. *Times-Mirror Co*. (1961) 193 Cal.App.2d 111, 117.)

In *Cox Broadcasting Corp*. v. *Cohn* (1975) 420 U.S. 469 a Georgia television station during a news report broadcasted the name of a rape victim which name the station's reporter had obtained from court records which were public records available to him for inspection. The station was sued for invasion of privacy, a claim based on a Georgia statute prohibiting the broadcasting of a rape victim's name. The Supreme Court, reviewing the sufficiency of the claim, noted (pp. 494-495) "that the interests in privacy fade when the information involved already appears on the public record." The court explained (p. 495):

> "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."

In *Kapellas* v. *Kofman* (1969) 1 Cal.3d 20 a newspaper published information obtained from a "police blotter" concerning criminal offenses involving several children. A suit which included a claim for invasion of privacy was brought on behalf of the children. In rejecting the claim, the court said (p. 38):

> "The editorial in question purports to disclose only incidents which had initially been recorded on the Alameda police blotter; such events would already have been matters of public record. (Cf. *Carlisle* v. *Fawcett Publications, Inc*., *supra*, 201 Cal.App.2d 733 (marriage an event 'of public record' and disclosure does not violate right to privacy); *Aquino* v. *Bulletin Co*., *supra*, 190 Pa. Super. 528 [154 A.2d 422] (same for divorce).) Thus we are not faced with an article which intrudes deeply into the children's privacy by revealing incidents of a wholly private or confidential nature. Newspapers have traditionally reported arrests or other incidents involving suspected criminal activity, and courts have universally concluded that such events are newsworthy matters of which the public has the right to be informed. (See, e.g., *Coverstone* v. *Davies*, *supra*, 38 Cal.2d 315, 323; *Firth* v. *Associated Press* (E.D.S.C. 1959) 176 F.Supp. 671.)" (Fns. omitted.)

While the fact that an arrest warrant has issued may be a public record when it appears in the court record, public access thereto may be limited by practical considerations. In *Craig* v. *Municipal Court* (1980) 100 Cal.App.3d 69 a municipal court, at the request of the criminal defendant, ordered the California Highway Patrol to produce the names and addresses of all persons arrested by officers of that department for charges similar to defendant's during the two year period preceding defendant's arrest. The Court of Appeal, in affirming a writ of mandate which vacated the discovery order, observed (pp. 78-79):

> "True, court records that have not been sealed under certain statutory authorization, are public records and persons who are the subjects of those records have no right to prevent public access thereto. From a practical standpoint, however, the likelihood that the records could be located by anyone who did not already have some knowledge of the arrests and their location is extremely remote. Thus those convicted persons enjoy a limited de facto protection against indiscriminate exploitation of the record."

The court further stated (p. 78):

> "As we have noted earlier, the discovery order here would disclose to defendant the names and addresses of persons arrested for the specified charges, whether or not they were ever prosecuted or convicted. The immediate and most obvious result would be that these persons would be sought out by defendant, his counsel or an investigator employed by him, and questioned about the prior arrest—not an entirely pleasant experience for persons who probably assumed that the 'book had been closed' on the incident. It takes no great imagination to envision other forms of mischief which could result from the indiscreet use of the information."

It is one matter to allow a person seeking arrest information to search the court records which are open to the public (see *Cadena* v. *Superior Court* (1978) 79 Cal.App.3d 212, 222-223 (discovery order unavailable when information may be readily found in court records)); it is another matter as to how that information once collected might be used. In *Cox Broadcasting Corp*. v. *Cohn*, *supra*, 420 U.S. 469 the court ruled that the right to privacy was not violated by the publication of a rape victim's name where the reporter obtained the victim's name from the public record. However, the court expressly refused to address the broader question of whether the truthful publication of facts obtained from a judicial record can ever be subjected to civil or criminal liability. (*Id.*, at p. 491; see *Diaz* v. *Oakland Tribune* (1983) 139 Cal.App.3d 118, 131-132.) In *Briscoe* v. *Reader's Digest Association, Inc.* (1971) 4 Cal.3d 529, 540 it was held that a

cause of action for invasion of privacy was stated by the disclosure of the public record of the plaintiff's old crime:

> "Plaintiff is a man whose last offense took place 11 years before, who has paid his debt to society, who has friends and an 11-year-old daughter who were unaware of his early life -- a man who has assumed a position in 'respectable' society. Ideally, his neighbors should recognize his present worth and forget his past life of shame. But men are not so divine as to forgive the past trespasses of others, and plaintiff therefore endeavored to reveal as little as possible of his past life. Yet, as if in some bizarre canyon of echoes, petitioner's past life pursues him through the pages of Reader's Digest, now published in 13 languages and distributed in 100 nations, with a circulation in California alone of almost 2,000,000 copies."

The publication contemplated by the question presented to us is dissimilar from a tortious disclosure of old facts. The district attorney would publish or cause to be published a current public fact that a person was wanted on a criminal charge. The apprehension of such person is a matter of legitimate public concern, i.e., enforcement of child support by the location of the absent parent. (*Diaz* v. *Oakland Tribune, Inc.*, *supra*, 139 Cal.App.3d 118, 126.)

Such publication would not be without risk. The absent parent seeing the publication of fact that he or she is a wanted person may "skip" to avoid arrest. Persons finding their names not listed may believe themselves safe from prosecution and may continue to default on payments. Moreover, an innocent person with the same or similar name to that of the absent parent may be needlessly embarrassed by the publication. And, as stated earlier, the publication should not interfere with efforts to execute the warrant.

We have had called to our attention sections 11075-11081 of the Penal Code relating to the dissemination of local criminal offender record information. Such information is defined in section 11075 as follows:

> "(a) As used in this article, 'criminal offender record information' means records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.
>
> "(b) Such information shall be restricted to that which is recorded as the result of an arrest, detention, or other initiation of criminal proceedings or of any consequent proceedings related thereto."

Such information can be disseminated only to those agencies as are authorized access thereto by statute and pursuant to regulations established by the Attorney General. (Pen. Code, §§ 11076-11077; 11 Cal. Admin. Code, §§ 700-710.) In our view, section 11075 covers summary criminal history information similar to that maintained by the California Department of Justice. (See Pen. Code, § 11105.) This ordinarily would not include the names of persons sought under warrants of arrest. In any event, the restrictions on access do not purport to prevent an agency lawfully in possession of such information from using that information for law enforcement purposes. Certainly that information may be used to assist in the apprehension of a person wanted in connection with a commission of a crime. (See Pen. Code, §§ 11144 and 13300, subd. (b).) In this respect, publication by a criminal justice agency, such as a district attorney's office, of the names of persons subject to arrest warrants is not materially different from the issuance or posting of circulars for wanted persons.

In *People* v. *McCloud* (1984) 143 Cal.App.3d 180 the defendants contended that publication in a newspaper of their "mug shots," which publication led to their arrests, was illegal because the photographs were confidential criminal offender records which the police should not have disclosed. The court rejected this argument finding no statute prohibiting such use of the photographs, stating at page 183:

> "The legislative omission was patently intentional, for if it were not so, criminal investigation would become well-nigh impossible, and photographic lineups necessarily forbidden. (Indeed, few if any post offices, or federal buildings or banks, lack a prominent public display of mug shots of 'wanted' criminal suspects.)"

The fact that a person is subject to a warrant of arrest is a public fact and may be furnished by a district attorney to a newspaper for publication.[2]

Accordingly, we conclude that a district attorney may publish or cause to be published in a newspaper the names of absent parents for whom warrants of arrest have been issued for failure to provide child support when the purpose of such publication is to obtain public assistance in locating such absent parents.

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[2] Inasmuch as the district attorney's disclosure involves public information we believe it unnecessary to discuss whether the disclosure is a privileged publication made in the proper exercise of an official duty. (See Civ. Code § 47; *Kilgore* v. *Younger* (1982) 30 Cal.3d 770, 778.)