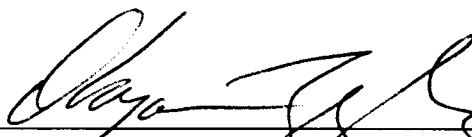


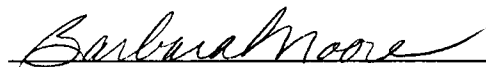
To the Graduate Council:

I am submitting herewith a thesis written by Stephynie Maurene Chapman entitled "Tennessee Broadcasters' Use of Information Access Laws." I have examined the final copy of this thesis for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Science with a major in Communications.



Dr. Dhyana Ziegler, Major Professor

We have read this thesis
and recommend its acceptance:



Accepted for the Council:



Associate Vice Chancellor and
Dean of The Graduate School

TENNESSEE BROADCASTERS' USE OF INFORMATION ACCESS LAWS

**A Thesis Presented
for the
Master of Science Degree
The University of Tennessee, Knoxville**

**Stephynie Maurene Chapman
August 1995**

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DEDICATION

This thesis is dedicated to my parents,
Mr. Morris E. Chapman III and Mrs. Irene B. Chapman,
for their unwavering support and love.

Thank you.

ACKNOWLEDGEMENTS

I would like to thank the members of committee, Dr. Dhyana Ziegler, Dr. Herbert Howard and Dr. Barbara Moore, for the expertise they brought to this project. I must also thank my many friends and relatives who buoyed me with their immeasurable support during the last two years, especially during the completion of this thesis. Thank you for your patience.

ABSTRACT

This research examined how Tennessee broadcasters use information access laws, particularly the Freedom of Information Act, Tennessee's Open Meetings Law and Tennessee's Open Records Law in daily newsgathering. These laws were written with the intent of making government more accountable to its citizens. Journalists played a major role in pushing for these laws' enactment, and they were anticipated to be the primary users of the law.

Nineteen radio and television news directors from five Tennessee markets participated in the survey over a six-week period. Their responses help paint a picture of news coverage in the state's demographically diverse regions.

With a response rate of 76 percent, the study found that news directors from all markets have a general understanding of access laws, even if they do not have to actively enforce them every day. The participants said financial and time limitations within broadcast newsrooms and peculiarities within the laws that prevent them from using the open records law, open meetings law and FOIA in daily collection. However, the laws' very existence allows journalists greater access to meetings and records, which allows the media to relate the business of government to the public.

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CHAPTER I

INTRODUCTION

Background

A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or Tragedy, or perhaps both. Knowledge will forever govern ignorance. And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.¹

James Madison eloquently spoke of the founding fathers' recognition, at least in theory, of the necessity of an informed public in preserving democracy. Yet the cornerstone of American government, the Constitution, was drafted in secrecy.² The history of officials withholding information from the public pre-dates America's establishment as a nation; however, the government's reticence has been paralleled by the tenacity of the public and the press in demanding that information be released.

The conflict between the state's interest in withholding information and the

¹Madison, James, Letter to W. T. Barry, August 4, 1822. Quoted in *The Complete Madison: His Basic Writings*. Edited by Saul K. Padover. (New York: Harper & Brothers Publishers, 1953), 346.

²William Thomas, "The Freedom of Information Act: A Reappraisal," *The Public's Right to Know*. (Washington, D.C.: Congressional Quarterly Inc. 1980), 131.

public's "right to know"³ is an on-going tug-of-war as the government's information-gathering activities expand into the confines of public lives and peek into the recesses of state secrets. The insistence on knowing about government activities laid the groundwork for legislation that has opened meetings and documents to public scrutiny. The federal Freedom of Information Act and its companion open records and open meetings laws (also known as "Sunshine" laws) create a general climate of openness⁴ to public records and meetings. However, the courts, legislators, public and the press are continually searching for a balance that allows the public to keep tabs on the government, respects the privacy of individual citizens and protects certain secrets of government and industry.

The media have played a significant role in the development of these access-to-information laws. In the 1950s, newspaper editors and reporters joined national legislators in the fight for a freer flow of information that culminated in the Freedom of Information Act. In Tennessee, state legislators, many of whom were also members of the press, were influential in shaping the state's open records law and open meetings law. Although these laws were intended to benefit the public at-large, journalists, as the public's proxy, were supposed to be prime benefactors. Journalists often turn to local, state and federal agencies for information because

³Former Associated Press editor Kent Cooper coined the phrase "the right to know" in the 1950s the press' efforts to gain access to government information.

⁴John D. Zelenzy, *Communications Law: Liberties, Restraints and the Modern Media* (Belmont, California: Wadsworth Publishing Co. Inc., 1994), 215; Dorothy Bowles, *Media Law in Tennessee* (Stillwater, Oklahoma: New Forums Press Inc., 1993), 25.

they are some of the main storehouses state-held data.⁵

The FOIA's passage marked the end of a 12-year Congressional battle to open federally held documents to public inspection.⁶ In the wake of the FOIA, many states passed their own open records laws. Tennessee's open records law had been on the books since 1957. State legislators enacted Tennessee's open meetings law 17 years later in 1974. Despite these laws' collective intent, information-seekers still find their access impeded, to which the press can and has testified. Four years after the FOIA was passed, a Congressional panel determined that the media were infrequent users, due to the slow response to their requests.⁷

Almost 30 years after the FOIA became a law, complaints that bureaucratic red tape limit the Act's usefulness persist.⁸ Now that a wealth of materials are deposited in digital form -- a method of storage not specifically addressed in the FOIA -- requestors who seek materials from federal, state or local agencies are running into new technological roadblocks.⁹ And reporters suspect that clandestine meetings are still held among officials, especially in small, close-knit communities. Information is journalism's lifeblood, and its continuous flow is essential for the

⁵John Soloski, "Sources and Channels of Local News," *Journalism Quarterly* 66 (Winter 1994): 864.

⁶Thomas, 131.

⁷William E. Francois, *Mass Media Law and Regulation* (Prospect Heights Illinois: Waveland Press, Inc., 1994), 272.

⁸Thomas, 126.

⁹Tess Chichioco, "Making it hard to get records," *Editor & Publisher* (31 March 1990): 16.

nourishment of the public. Without access to these records and meetings, journalists would have to rely on leaks and other unofficial sources, a practice that raises a host of ethical concerns. The FOIA and the states' open records and open meetings laws, ideally, guarantee journalists and any other citizen the ability to examine the government's business without interference.

Statement of the Problem

While much research has been done on the FOIA and its use by the national media, little or no research has been conducted about how local news executives in Tennessee and other states use the federal law or its companion state access laws. This study, therefore, seeks to determine Tennessee news directors' knowledge of access laws and its impact on news coverage. This study also seeks to assess the knowledge and variance by medium (radio or television) and market size.

Purpose of the Study and Research Questions

The purpose of this study is to provide a historical overview of the development of federal and state access-to-information laws and their use by journalists in general. With this background as a framework, the study attempts to determine how aggressive Tennessee broadcasters have been in their use of the FOIA, Tennessee's open meetings law, and the state open records law. The research

will assess broadcasters' familiarity with these laws, their efforts to invoke them, and the laws' influence on the content of television and radio newscasts.

This study will also assess the variety of sources Tennessee broadcasters rely on for its news coverage, how often specific sources are consulted, and the genre of the data (such as crime statistics, financial reports, etc.) that may be more difficult to obtain. The study seeks to answer whether news organizations face internal or external barriers to obtaining information. This study poses the following research questions:

1. What type of government-related stories do Tennessee
broadcasters pursue?
2. What governmental sources do Tennessee broadcasters use?
3. Do Tennessee broadcasters have to invoke access laws in order to
get information?
4. Are radio and news directors familiar with the FOIA, state open
records law and state open meetings law?
5. How does a station's location in a large or small market in
Tennessee affect the availability of information?

Significance of the Study

The media provide the daily journal for the public by recording the day's events purported to be the most important, interpreting their significance, and

disseminating the information as "news." According to Gaye Tuchman, the news reflects reality and helps create it.¹⁰ It is, therefore, essential to understand the source of news, the factors that influence it and shape its perspective.

Local television newscasts are considered the dominant source of news in the United States.¹¹ Academic studies and television ratings indicate a half-hour newscast in the typical U.S. market has a slightly larger audience than the network news.¹² Studies on individual markets, however, are hard to come by in trade magazines or academic publications. Information about radio listenership or television viewership in Tennessee -- a state with no markets in the Top 20 -- is harder to glean, although it is no less important to understand.

The news director is the person most directly responsible for the content and shape of the news product at a radio or television station. He or she is a top-level manager in charge of hiring, firing and supervising personnel and setting the standard for the station's approach to news.¹³ It is the news director who helps determine the content of newscasts, as well as deciding when news bulletins, updates

¹⁰Quoted in Soloski, 864.

¹¹Mark D. Harmon, "Mr. Gates Goes Electronic: The What and Why Questions in Local TV News," *Journalism Quarterly* 66 (Winter 1989): 864.

See also Walter G. Mayer, "The polls: trends in media usage," *Public Opinion Quarterly* 57 (Winter 1993): 593-612.

¹²Harmon, 864.

See also "TV makes more gains in latest Roper TIO poll," *Broadcasting*, March 30, 1987, 163-4, about increasing television viewership and attitudes about television news.

¹³ Lynne S. Gross, *Telecommunications: An Introduction to Electronic Media*, (Dubuque, Iowa: William C. Brown Publishers, 1992), 312.

or special events warrant pre-empting regular programming.¹⁴ Many factors influence the news values, such as timeliness of the event, proximity to the community, size of the market, competition from competing media and economic condition of the station. Together, these considerations affect how a station fulfills its so-called "watchdog" function as it relates to keeping an eye on government. These factors also directly influence the daily agenda the station sets before the community in its newscast. The collective effect suggests to the community the events that are most pertinent.

The results of this study, although taken from Tennessee's news operations, might indicate how these forces affect other newsrooms, especially those serving cities of comparable market size and character.

Definition of Terms

For the purposes of this study, the following terms are defined as:

News Director: The head of the news department's administration and news production. The executive in charge of personnel and budgetary decisions. He or she determines the philosophy and content of news. In smaller operations, such as radio stations, the news director may also perform a variety of other functions, including reporter.¹⁵

News values: Judgement used to determine what stories are covered and at what length. News values in print and broadcast journalism have some differences, based

¹⁴ Herbert H. Howard and Michael S. Kievman, *Radio and TV Programming* (Ames, Iowa: Iowa State University Press, 1986), 127.

¹⁵Maury Green, *Television News: Anatomy and Process* (Belmont, California: Wadsworth Publishing Company, Inc., 1969), 17-18.

on the medium's constraints. In television, some considerations are time limitations, time of the broadcast, audience and visual elements.¹⁶

Competition from news organizations in the same area also shapes news value. In-house considerations include the station's willingness to invest in equipment and personnel.

Newscast: The on-air, broadcast news product. A newscast varies in length depending on the medium. Radio newscasts may be as short as one or two minutes. Television newscasts are typically longer.

Market: The geographic area in which a station is located. Designations are slightly different for television and radio.

Market Size: Based on population. In 1995, Arbitron designated 261 radio markets, with 1 being the largest market.¹⁷

Designated Market Area (DMA): A term used by Neilsen to group television stations in exclusive markets according to geographic boundaries. In 1995, there were 211 markets, with 1 being the largest. The DMA consists of counties in the station's home market that receives the preponderance of viewing to stations licensed to the major city (cities) of that market. There is no overlap between markets.¹⁸ A pictorial representation of the DMAs used in this study are included in Appendix A.

Market Characteristics: Encompass racial, economic and educational demographics of the population in a particular region. Designation as an urban area or a rural area is based on eleven characteristics. For example, areas of greater population density, higher median family income and more physical connections (i.e. interstates) to other areas and government institutions are considered urban. Rural areas are more remote and sparse; less physical and symbolic connectivity.¹⁹

¹⁶Ibid, 33.

¹⁷*Broadcasting & Cable Yearbook 1995*, Compiled by R. R. Bower. (New Providence, New Jersey: Reed Reference Publishing Co.), C-135.

¹⁸Ibid.

¹⁹Based on Dr. Charles L. Cleland's measurement of rurality. The formula was originally published in 1994, and portions of it were reprinted by Marti Davis in "UT Professor's formula redefines which counties are really 'country'," *The Knoxville News-Sentinel*, 4 June 1995, A1, A3.

Agenda setting: The belief that the media, by its presentation of news, determines what the public thinks and talks about.²⁰

Watchdog Function: Media's role in alerting the public to machinations of government.²¹

Organization of Chapters

Presented in five chapters, this study examined Tennessee broadcasters' knowledge and use of state and federal access laws, chronicled the growth of access legislation and reviewed previous research about the media's role in keeping the public informed about the government's business.

Chapter I is an introduction to the role of the Freedom of Information Act, the Tennessee Open Meetings Law and Tennessee Open Records Law in opening the government to public inspection. The purpose and significance of the study and five research questions are also included. Definition to key terms used throughout the study are also defined in this chapter.

Chapter II reviews literature related to the "right" of a democratic citizenry to know what its government is doing; the press' push for access to government records and documents; access to records in a computer age; and the importance of

²⁰Werner J. Severin and James W. Tankard, Jr. *Communication Theories: Origins, Methods, and Uses In the Mass Media*, (White Plains, New York: Longman Publishing Group, 1992), 207.

²¹Fred H. Cate, D. Annette Fields and James K. McBain "The Central Purpose of the FOIA," *Administrative Law Review* 46 (Winter 1994), 43.

broadcast news programs to the communities they serve.

Chapter III details the methods used to survey news directors in Nashville, Memphis, Knoxville, Chattanooga and the Tri-Cities. The demographics of these markets are also defined in this chapter.

Chapter IV presents the research findings and divides them according to response rates, news coverage, news directors' familiarity with access laws, their experience using the laws and concerns about the availability of electronic records.

Chapter V contains the Summary, Conclusions and Recommendations for further research and limitations of the study.

CHAPTER II

REVIEW OF RELATED LITERATURE

Introduction

A discussion of the Freedom of Information Act, state access laws and the media's role in society must open with a review of an American citizen's basic "right" to be informed, especially about the government's conduct. This undergirding right provides the skeleton to which access laws and newsgathering privileges cling. A discussion of Tennessee's Open Records Law, the FOIA and Tennessee's "Sunshine" Law will follow, with an emphasis on the press' interest in the laws' continuing evolution. The review of related literature will conclude with a discussion of the importance of broadcast news to local communities, especially as it relates to informing the public about the business of government.

The Right to Gather Information

A democratic citizenry's ability to make informed decisions is believed to be rooted in its ability to glean information from a variety of sources. In theory, the free flow of information helps a citizen form a more well-rounded perspective of

reality, one that is less dependent on the ideas propagated by any one source. There are numerous books and articles about the right to gather information.²²

A *Harvard Law Review* article encapsulates several of the issues journalists confront on a daily basis in their pursuit of news, particularly gathering information from the government when agencies are willing and unwilling sources.²³ The review acknowledges Supreme Court's interpretation of the First Amendment as the protector of the cross-current of ideas with its provisions for free speech, freedom of the press, and the right to petition the government for the redress of grievances.²⁴ However, the article asserts that in the full cycle of information exchange -- sending, receiving and gathering -- the right to gather information has not received equal protection.²⁵ The right to gather information has, instead, been carved out by case law and legislative provisions, and it has not been determined to be absolute. Neither the press nor the public can have everything it wants, when it wants or how it wants. Generally, the right to gather information teeters between the rights of the information-seeker, the interest of the public and the state's concern and the source

²²See Mark G. Yudof, *When Government Speaks* (Berkeley, California: University of California Press, 1983), 246-255.

See also "The First Amendment Right to Gather State-Held Information," *Yale Law Review* 89 (1980), 923-939.

²³"The Rights of the Public and the Press to Gather Information," *Harvard Law Review* 87 (1974), 1505.

²⁴*Ibid.*

²⁵See *Richmond Newspapers Inc. v. Virginia* 448 U.S. 555, 6 Med. L. Rep. 1833 (1980).

See also Harold Cross, *The People's Right to Know* (Morningside Heights, N.Y.: Columbia University Press, 1953), 179-82.

of the information.²⁶

The first cases in which the Supreme Court began to define the right to seek information from a private, willing source are *Kleindienst v. Mandel*²⁷ and *Branzburg v. Hayes*.²⁸ Only Branzburg directly involves the media, but both cases relate to how far reporters can go to get information, the sources from which they may seek it, and their ability to protect source confidentiality.

In *Kleindienst*, American scholars wanted to bring Mandel, a Marxist economist from Belgium, to the United States to lead a series of lectures at American universities. Congress had prohibited visas for non-citizens who advocated "the economic, international and governmental doctrines of world communism or the establishment of the United States as a totalitarian dictatorship."²⁹ The Court determined that as a non-citizen, Mandel had no constitutional right to enter the States, but the Court found some merit in the scholars' right to seek information. The Court said that reading Mandel's works or hearing tapes of his lectures lacked the same flavor as face-to-face exchange.

²⁶Constance Y. Singleton and Howard O. Hunter echo this idea conflicting interests in "Statutory and Judicial Responses to the Problem of Access to Government Information," *Detroit College of Law Review*. 1979, 51-87. The authors discuss the tangle of federal statutes and the conflicting decisions that make it difficult to fulfill the laws' laudable intent.

²⁷408 U.S. 753 (1972).

²⁸408 U.S. 665 (1972)

²⁹Quoted in T. Barton Carter, Marc A. Franklin and Jay B. Wright. *The First Amendment and the Fourth Estate*. (Westbury, New York: The Foundation Press Inc., 1993), 24.

However, despite saying it was "loathe to hold on to this record that existence of other alternatives extinguishes altogether any constitutional interest on the part of the [scholars] in this particular form of access," the Court turned down the request. The government's interest in the power to make rules to exclude aliens was the overriding consideration.³⁰

The *Branzburg* decision involved three cases, each of which concerned reporters who had been called to testify before grand juries and reveal their confidential sources. In the namesake case, reporter Paul Branzburg refused to identify two people mentioned in a story he had written about marijuana and hashish for a Kentucky newspaper. In the second case, New York Times Reporter Earl Caldwell was subpoenaed to present evidence give to him by the Black Panthers in California. The third case involved television reporter Paul Pappas, who had been allowed to enter the Massachusetts Black Panthers' headquarters to cover an anticipated police raid that never materialized. A county grand jury summoned Pappas, but he refused to answer any questions. He was called before the panel a second time and attempted to quash the summons. The trial judge denied Pappas' motion, saying neither the state nor the federal constitution provided for journalists privilege which prevents reporters from disclosing confidential sources in court testimony. The Massachusetts state supreme court upheld the lower court's ruling, and the case was appealed to the Supreme Court.

In the majority opinion, Justice White said the only issue at hand was "the

³⁰Ibid.

obligation of reporters to respond to grand jury subpoenas as other citizens do and to answer questions relevant to an investigation into the commission of a crime."³¹ A minority of states had granted varying degrees of reporter privilege, but he echoed the lower court's ruling about the lack of such an option in the federal constitution. At the same time, White said he appreciated the possible threat to the flow of news if reporters were compelled to testify in acknowledging "without some protection for seeking out the news, freedom of the press could be eviscerated."³² However, the court ruled 5-4 to uphold the lower-court decisions, forcing all three reporters to tell the grand juries what they knew.³³

Justice Powell, who voted with the majority in *Branzburg*, penned a concurring opinion that some interpret as undercutting the court's decision and providing some residual relief to journalists.

The Court does not hold that newsmen, subpoenaed to testify before a grand jury, are without constitutional rights with respect to the gathering of news or in safeguarding their sources. ... The solicitude repeatedly shown by this Court for First Amendment freedoms should be sufficient assurance against any such effort, even if one seriously believed that the media -- properly free and untrammelled in the fullest sense of these terms -- were not able to protect themselves."³⁴

Justice Stewart's dissenting opinion suggests three concerns that might be

³¹Quoted in Carter et al., 775.

³²408 U.S. 665 (1972), 681.

³³Carter et al., 775-76.

³⁴Quoted in Carter et al., 776.

taken into consideration in giving reporters qualified privilege. When the government calls a journalist to testify, it must demonstrate 1) that there is probable cause to show the reporter possesses relevant information about a violation of the law; 2) that the information cannot be obtained by other means less intrusive on First Amendment rights; and 3) that there is a "compelling and overriding interest in the information."³⁵ Lower courts have taken a case-by case approach to this heavily litigated issue. In criminal proceedings, the courts have often rejected testimonial privilege for reporters, and been more likely to protect confidentiality in civil cases.³⁶

In its web-like information gathering activities, the government also snares information that might help the public evaluate the performance of officials and agencies. It is not unusual for the government to be the sole repository of this information, which it might prefer not to divulge. Press releases may tell only part

³⁵Ibid., 777.

States have used at least some of these provisions in setting up "shield laws" to protect reporters' ability to keep confidential sources secret. The Tennessee Shield law, passed in April 5 1973, keeps reporters from divulging sources unless the state can prove the information cannot be obtained otherwise. There have been several incidents involving civil and alleged criminal activities in which the press has invoked the law.

See *The Chattanooga News-Free Press*, 20 August 1973, 2, and 5 September 1973, A9 about the law's earliest invocation during a child custody case.

See also *The Chattanooga Times*, 29 November 1972, 1; 28 April 1973 about a Chattanooga broadcaster jailed for failing to reveal a confidential source.

See also *The Chattanooga Times* 10 October 1986, B1; 12 November 1986, B1 and 6 October 1987, B1 about a broadcaster who refused to release the identify the name of a self-professed murderer.

³⁶*Harvard Law Review*, 1532.

of the story. Yet, as the government's interest in concealing the information heightens, so does the public and the press interest in access.³⁷ This conflict has raised the perplexing question of the most effective way to guarantee the flow of information in light of the inherent problems: compliance with access to information laws depend on the good-faith efforts by government; governmental agencies may not be able to ensure information is properly released with each request; and even when information is known to exist, the government has the upper hand in determining what will be released. Agencies may base their justification on the interest of individual privacy³⁸ or avoiding professional embarrassment, which has been granted fewer protections.

Other tactics for withholding information include bureaucratic red tape and "footdragging" can effectively halt the release of information or tie it up for so long that it is no longer useful, especially for the deadline-driven media.³⁹ It has also

³⁷Ibid., 1511.

³⁸Laws regarding access to information show a strong deference to individual privacy. The Privacy Act requires federal agencies to limit their record-keeping activities and prevents disclosure, except special instances. The Privacy Act also allows citizens to review any records the government have about them and change incorrect information. There are apparent conflicts between the FOIA's presumption of openness and the Privacy Act, but in 1984, the Supreme Court ruled that no agency should look to Privacy Act exemptions as a reason to withhold information.

See also Teresa Pritchard-Schoch, "The Right to Government Information about Individuals." *Online*, March 1993, 99-102.

³⁹A Congressional panel found in 1972 that slow response times kept the media from using the FOIA. A 1993 study showed journalists continued to be in the minority of users. Harold C. Relyea, *The Administration and Operation of the Freedom of Information Act: An Overview, 1966-1991*. (Washington D. C.: Congressional Research Service, 1993), 9.

been a common complaint that the penalties against agencies that improperly withhold information may not be severe enough to deter those tactics.⁴⁰ There are also instances in which the government may influence the release of information, for example, by punishing employees who release information; however the Court has not established a hard-and-fast standard when considering cases in which an employee is dismissed for this reason.⁴¹

Issues concerning national security have represented the most direct conflict between the public's "right to know" and the government's interest in keeping the public in the dark. In *New York Times Co. v. United States*,⁴² for example, the Supreme Court would not enjoin the newspaper from publishing a classified study about the decision making processes in the Vietnam War. In this case, government attorneys were unable to make an argument strong enough to overcome the Court's general dislike for prior restraint.⁴³

⁴⁰*Harvard Law Review*, 1512

⁴¹See *Pickering v. Board of Education*, 391 U.S. 563 (1968), in which the court said an employee shouldn't be enjoined from releasing information or held up to a different standard than any other citizen. But in *Arnett v. Kennedy*, 94 S.Ct. 1633 (1974), where an employee's job was closely related to the content of information, the employee was fired on the basis of maintaining departmental efficiency. Quoted in *Harvard Law Review*,

⁴²403 U.S. 713, 723-24 (1971)

⁴³Prior restraint is the prohibition of the publication rather than imposing sanctions after the information has been distributed, and it is generally considered unconstitutional.

The Supreme Court first ruled against prior restraint in *Near v. Minnesota*, 283 U.S. 697. The court struck down a Minnesota statute allowing officials to stop the publication of "malicious, scandalous, and defamatory" periodicals and permitted publication to resume after a judge had approved the content. Prohibitions against prior

Although the right to collect information is basic to any citizen, the press by its nature has been in the cutting edge of forcing legislatures and the courts to define and refine its parameters. Some of the ripple effect have been the development of access laws on the state and federal levels, which allow the media and the public to keep constant watch over government.

Tennessee's Open Records Law

Public records provide a trail through which private lives and government dealings can be traced. They remember birthdays, recall transactions with accuracy and in detail.

Since 1983, all 50 states and the District of Columbia have had some form of open records legislation that provides an avenue to research a wealth of information. The largest number of open records laws were passed after the FOIA, which opens federal records to inspection, became law in 1966.⁴⁴ Tennessee legislators were

restraint are not absolute. Publications that inhibit military recruiting or announce the time of troop transports, for example, are exceptions. Carter et al. 25, 26.

The Court, however, was divided in its decision: Justices Black and Douglas concurred in their argument for an absolute prohibition against prior restraint; Justices Brennan, Stewart and White said *The Times* might be enjoined if its publication of the so-called "Pentagon Papers," had posed a certain and immediate harm to national security; Justice Marshall concurred on other grounds and did not reach the question of what evidence the state would have to present to justify prior restraint. *Harvard Law Review*, 1527.

⁴⁴"RFK Killing Report to be Opened." Quoted by Elinor Kelley Grusin in "A Descriptive Study of the Working Relationship between Tennessee Law-Enforcement Reporters and Sources" (Ph.D. diss., Ohio University, 1987), 13.

slightly ahead of the national curve, passing the state's open records law in 1957. It was the first step in making the state's business an open book to the public.⁴⁵

Several members of the Tennessee media had a hand in fashioning House Bill No. 187, which eventually evolved into the Open Records law.⁴⁶ The legislation required "all state, county and municipal records shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee," and that the records' custodians not refuse inspection, "unless otherwise provided by law or regulations made pursuant thereto."⁴⁷ In 1984, this passage was amended to include "unless otherwise provided by state statutes."

Over the years, numerous amendments designed to make the law more precise have in fact made it more difficult to apply.⁴⁸ For example, 10-7-504 of the Tennessee Code Annotated (TCA) which refers lists 10 categories of information that required to be withheld; the act also more cross-references more than 80 other

⁴⁵Numerous academic studies have examined the development of open records laws across the nations; for example, Murray Charles Harris, "Openness vs. Confidentiality of Government Records: An examination of Exemptions and the Opinions of Journalists and School Officials" (Ph.D. diss., University of Texas at Austin, 1982); Wayne A. Norton, "Sunshine in the Show-Me State: Open Records and Open Meetings Legislation and Litigation in Missouri" (Ph.D. diss., University of Southern Mississippi); Charles Nelson Davis, "The Georgia Open Records Act: An Historical Analysis" (Ph.D. diss., The University of Georgia, 1993).

⁴⁶Representative R. Baird of Roane County was a newspaper publisher; B.C. Durham Jr. of Lauderdale County also published a county newspaper. Rep. Dalton McKellip was PR counsel; the Other five sponsors, James L. Bomar, Barton Dement, Wesley P. Flatt Jr., Harry L. Senter and James H. Henry were attorneys.

⁴⁷Tennessee Public Acts, Chapter 285. 1957, 932.

⁴⁸Personal interview, Attorney Rick Hollow. February 1995. Knoxville, TN.

exemptions in other passages of the TCA.⁴⁹ Some frequent users of the law have described its far-flung nature as "a mess."⁵⁰

Other changes have provided denied requestors an avenue for challenging an agency that withholds information through the state court system.⁵¹ The burden for justifying a denied request is borne by public officials, who must demonstrate that the information should be exempted, according to a "preponderance of the evidence."⁵² If the courts determine records have wrongfully and willfully been withheld, the offending agency bears the related court costs and attorneys' fees.⁵³ In sum, the law is intended to give the most accessible possible to the public.

Nevertheless, there have been problems putting the theory of openness into practice. The press has continued to fight for access to records despite the 20 years the law has been on the books. Some of the high-profile cases have involved access to records concerning the death of a celebrity,⁵⁴ and access to jail records.⁵⁵ Two

⁴⁹Bowles, 28.

⁵⁰Interview, Hollow. Hollow said the statute is hard for media clients to use because the amendments are so spread out.

⁵¹TCA 10-7-505(a).

⁵²TCA 10-7-505(d).

⁵³TCA 10-7-505(g).

⁵⁴In *State Ex Rel. Cole v. Francisco*, Tenn., 643 S.W.2d 105, reporters from the ABC news magazine 20/20, tried to get the toxicological results completed when Elvis Presley died. The state supreme court said autopsy had been performed at the family's private request and was, therefore, not a public record. Further, the records were no longer in possession of Dr. Jerry Francisco, the Shelby County Medical Examiner, and he could not be forced to produce them.

See also *Wall Street Journal*, 30 September 1994, A7 concerning attempts to

recent cases involving the press' efforts to view student records,⁵⁶ and records about a police shootout⁵⁷ changed the law's scope.

Elinor K. Grusin's study of Tennessee newspaper reporters and their police sources illustrates some of the subtleties of how officials can use the open records

review the records a decade after Presley's death.

⁵⁵In September 1993, Knox County Sheriff Tim Hutcheson barred the press from round-the-clock access to jail records, saying 24-hour access interfered with normal jail operations. *The Knoxville News-Sentinel* filed suit against the department. Two television stations and the East Tennessee Chapter of the Society of Professional Journalists also joined the suit.

In October 1993, Chancellor Sharon Bell ruled in favor of the media, saying restricted access eroded the free flow of information to the public. *The Knoxville News-Sentinel*, 29 September 1993, A1 and A7; and *The Knoxville News-Sentinel* 14 October 1995, A1.

⁵⁶Student journalists at the University of Tennessee, Knoxville raised the issue of access to crime records after student Thomas Baer was murdered at his fraternity house in August 1988. After the Baer murder, *The Daily Beacon* joined a student newspaper in Colorado in successfully pushing for information about crime on campus. See *Knoxville News-Sentinel*, 11 February 1989, A1, A3. As a result of the student push, legislation such as the *Student Right to Know and Campus Security Act of 1990* was passed. The law required colleges receiving federal monies to publish crime statistics. Bowles, 44.

⁵⁷The state supreme court ruled that inactive police files should be open to the public in *Memphis Publishing Co. v. Holt*, 710 S.W.2d 513 (Tenn. 1986.)

The ruling grew out of efforts of the Memphis police department to keep files around a police hostage situation closed. The shootout, which came to be called the "Shannon Street Incident," occurred after negotiations between the city's SWAT team and seven people who had taken a police officer hostage failed. All the suspects were killed, and the hostage was found beaten to death.

Memphis police investigated the way the situation had been handled and turned the files over to the Federal Bureau of Investigation for review. When a *Memphis Commercial Appeal* reporter asked to see the Memphis files, his request was denied.

The newspaper's petition to the Shelby County Chancery Court to open the records was turned down, as was the subsequent appeal to the Tennessee Court of Appeals. Grusin, 30, 31. The state supreme court finally granted the newspaper's request in 1986.

law to their advantage. Grusin found that journalists and police had developed a "friendly relationship" that kept reporters and the public in the dark, to some degree. The police representatives controlled the flow of information so that reporters got less information than they were entitled to under the state open records law. Police were using "supplemental reports," which are excluded from public release, to hide information they did not want to release. Reporters, however, believed their sources were cooperative and didn't want to make access an issue in order to stay remain in a source's good graces.⁵⁸

Technology has introduced a new way for officials to keep records hidden. In many states, including Tennessee, the laws defining records are light years behind the possibilities of technology and do not make provisions for obtaining information stored on laser discs or computer software.⁵⁹ In Tennessee, the joint legislative services committee has the sole power to determine in what form information will be reproduced.⁶⁰

Limited case law has raised more questions than answers. Some of the

⁵⁸Ibid., 130, 131, 133.

⁵⁹Jamie A. Grodsky, "The Freedom of Information Act in the Electronic Age: The Statute is Not User Friendly." *Jurimetrics Journal*. 31 (Fall 1990): 18.

Carolyn Beth Williamson Roth also addresses the problems technology has created for the FOIA in her dissertation, "Implementing Public Information Policy in the Electronic Age: The Case of the Freedom of Information Act" (George Mason University, 1994).

Nedda C. Allbray also discusses the impact of technology of technology on the ability of the public to inform itself in her 1990 dissertation, "Government, Science, Technology and the People's Right to Know" (Columbia University).

⁶⁰TCA 3-10-108(d).

unresolved issues include: 1) what constitutes a "search" and what exactly is a "record"; 2) what is a reasonable amount of search time; 3) should information be available in a machine-readable form; and 4) what types of documents should be available.⁶¹ Information requestors around the country are also grappling with these issue, and some are finding law not in their favor. A California newspaper stumbled into these gray areas during a routine request for records.

In the early 1990s, *The Sacramento Bee* requested information about the city's homeless population from the police department. The department refused, at first, to tell reporters how the information was stored. The department later said the information required a special program that cost \$315, and once written, there would be an additional \$2,600 charge for clerks' time to retrieve the information on the computer. *The Bee* took the case to Superior Court, which ordered the newspaper to pay the \$315 programming cost, but ordered the city to pay for information retrieval.⁶²

Many of these state access issues are expected to be influenced by federal legislation, particularly by the Freedom of Information Act, which is being revised to accommodate many of the problems created by digital information storage.

⁶¹Grodsky, 19, 20.

⁶²M. L. Stein, "Newspapers battle to obtain database records," *Editor & Publisher*. 125 (7 March 1992): 25.

The Freedom of Information Act

The Freedom of Information Act (FOIA) allows any person to inspect any federal record they wish to see, unless the information falls within nine categories of exceptions or one of the three special exclusions for law enforcement records.⁶³

When the law was passed in 1967, it was not as well-defined, but it represented a turnabout in government philosophy regarding records that had traditionally been closed to the public. To help underline the law's unprecedented permissiveness, then-Attorney General Ramsey Clark issued a memo that read in part:

If government is to be truly of, by and for the people, the people must know in detail the activities of government. Nothing so diminishes democracy as secrecy.... How can we govern ourselves if we know not what we govern?⁶⁴

The FOIA had been a long time in the making, and the press played an integral part in its creation. American newspapers in particular began pressuring the government for access to federal documents in the 1950s. Newspapers argued that the public -- and the press as its proxy -- had a right to view records long. *The People's Right to Know* is Harold Cross' call to arms to newspaper editors. His "cause" was what he called the American government's habit of suppressing

⁶³The 1986 Amendments made special provisions to withhold records pertaining to a criminal violation of the law in which the subject may not know he or she is being investigated; records on informants; and FBI records related to foreign surveillance.

⁶⁴Quoted in Francois, 271.

information⁶⁵ and the tendency of the press to let problems go unchallenged.⁶⁶

Similarly, James S. Pope, who in 1950 served as chairman of the American Society of Newspaper Editors' (ASNE) committee on freedom of information, sounded an alarm. Roadblocks to information, he said, were popping up all too frequently.

Of course, every newspaperman is used to a nominal tussle over news that reflects some discredit on elected or employed public officials ... this is a conflict as old as government and news of government. ... But the conflict has gone beyond that simple ceremonial. Only recently have most editors begun to realize that these familiar little guerilla skirmishes now are part of a broad-scale offence against freedom of information-against the basic principle of the citizen's right to know, so that he may govern himself.⁶⁷

In his 1951 address to ASNE, Pope exhorted his fellow journalists to take action.

Every editor is in an intelligent man. We hope all of you are beginning to feel greatly abominated. ... If we can serve to arouse into action all of the dormant power of American newspapers, we have no

⁶⁵Cross' comments stemmed in part from censorship in World War II to which the media acquiesced. The American press had long history of allowing government censorship, dating back as far as 1704 when *The Boston News-Letter* permitted itself to be censored, as noted in paper's flag, which read, 'Published by Authority.' Francois, 5.

The Civil War was the first time the American press was put under military censorship to keep Confederate spies from learning of troop movements. Thomas, 126. The press later cooperated with the government during World War I and World War II to withhold information. In 1917, the Committee on Public Information (CPI) was put in charge of "censorship and publicity." Ibid, 128. In 1941 President Roosevelt created the Office of Censorship. Like the CPI, this office had to approve what information the press could release.

⁶⁶Cross, 12-13.

⁶⁷Ibid., xv.

fear of the outcome.⁶⁸

Pope seemed to imply that, up until that point, the printed press was not living up to its full potential as public guardian and informant. And by not mentioning the electronic media -- which had delivered news since the 1920s via the radio⁶⁹ and since 1947 via television⁷⁰ -- Pope seemed to have doubly indicted broadcasters. Thus, even as journalists were in the midst of pushing for access to information, broadcasters seemed not to have been considered part of the movement or, perhaps, were not being taken seriously by their print brethren, a contention that persists 40 years later.⁷¹

Four years after Pope's exhortation, the press joined forces with the House of Representatives' Foreign Operations and Government Subcommittee to sow the seeds that would bring forth the FOIA.⁷² William E. Francois described those congressional proceedings, which began in 1955, in *Mass Media Law and Regulation*.⁷³ Sen. John E. Moss spearheaded the move, which was also supported by the American Civil Liberties Union, the American Bar Association and legal

⁶⁸*Ibid.*, xiii.

⁶⁹Herbert H. Howard and Michael S. Kievman, *Radio and TV Programming* (Ames, Iowa: Iowa State University Press, 1986), 43.

⁷⁰*Ibid.*, 58.

⁷¹"Monday Memo," *Broadcasting & Cable*, 123 (5 July 1993): 42.; "Indictment of TV News," *Editor & Publisher* 125 (18 July 1992): 4.

⁷²Thomas, 131.

⁷³Quoted in *Mass Media Law and Regulation* by William E. Francois. (Prospect Heights, Illinois: Waveland Press, 1994), 271.

scholars.⁷⁴ After 13 years of deliberations and numerous committee discussions, the Congress passed the FOIA in 1966.

Public Law 89-487, as the FOIA was officially designated, was unlike any mandate the federal government and its employees had seen before. The Act replaced Section 3 of the Administrative Procedure Act (APA) of 1946. For years, the APA had been criticized for its vagueness,⁷⁵ which permitted public records to be seen by "persons properly and directly concerned" with the subject, unless the records were confidentially held "for good cause." This nebulous caveat hindered even minimal inspection of documents.⁷⁶ The FOIA was intended to clarify these ambiguities.

Since 1967, the FOIA has been amended several times through court cases and Congressional proceedings to provide greater openness.⁷⁷ In 1995, the law applies to every unit of the executive branch, except the president and the president's staff. It also exempts the legislative and judicial branches of

⁷⁴Francois, 271.

⁷⁵Thomas, 131.

⁷⁶Cate et al., 46.

⁷⁷ The FOIA has been amended several times since it was codified to open more records to public inspection. Public Law 90-23, effective June 5, 1967, codified the Act as Section 552(a) under Title 5 of the United States Code [81 Stat. 54]; Pub.L. 93-502 Sections 1-3, effective Nov. 21 1974, [88 Stat. 1561]; Pub.L. 94-409 Section 5(b), effective Sept. 13, 1976, [90 Stat 1247]; Pub.L. 95-454, Title IX, section 906 (a)(10), effective Oct. 13, 1978 [92 Stat. 1225]; Pub.L. 98-620, Title IV, Section 402(2), effective Nov. 8, 1984 [Stat. 3357]; Pub.L. 99-570, Title I, Sections 1802, 1803, effective Oct. 27, 1986 [100 Stat. 3207-48, 3207-49].

government,⁷⁸ the government of the District of Columbia, courts martial and the military during times of war from disclosure.

Cate, Fields and McBain outline the FOIA's three-fold purpose as preventing the writing and enforcement of laws in secret; empowering citizens with knowledge to make informed decisions; and giving citizens the right to scrutinize their government.⁷⁹ The authors assert that the right to keep an eye on the government, the so-called "watchdog" emphasis, is the FOIA's defining point⁸⁰ because it is essential to delineating what type of information can be released to the public. Specifically, that the FOIA "is to ensure that the Government's activities be opened to the sharp eye of public scrutiny, not that information about private citizens that happens to be in the warehouse of the government be so disclosed."⁸¹

Officials ranking as high as the president of the United States have also claimed the FOIA infringes on the government's rights to conduct business, but these claims have found less favor than non-disclosure for the sake of individual privacy.⁸² When the courts rule in favor of releasing government information, they

⁷⁸Zelenzy, 215.

⁷⁹Cate et al., 42.

⁸⁰Ibid.

⁸¹Ibid., 43, 52. Quoting *Reporters Committee for Freedom of the Press v. Department of Justice*, 831 F.2d 1124, 1130.

⁸²Law enforcement agencies have been very critical, saying the FOIA confounds their operations at the local, state and federal levels. Thomas, 121. Some law enforcement agencies' reluctance can be traced to their suspicion that many of the requests they receive are from law-breakers and prisoners. Ibid. 126. However, in a 1993 report to Congress, evaluators say the FOIA's restrictions have been effective in

frequently cite the public interest of "knowing what the government is doing" as the overwhelming consideration.⁸³

Recent history has many examples of officials whose actions⁸⁴ were traced with the FOIA, and the law has been credited with uncovering numerous instances of corruption and fraud.⁸⁵ However, for various reasons including slow response time and expense, journalists have been infrequent users of the FOIA. As a result, some agencies have become inflexible in releasing information.⁸⁶ In 1988, Assistant Attorney General Stephen J. Markham told the Subcommittee on Technology and the Law of the Senate Committee on the Judiciary that the FOIA was being misused:

weeding out those types of requests. Relyea, 10.

⁸³Francois, 262. As the government's information-collecting grew, so did the concern that individual privacy might be compromised. The same day Congress passed amendments to broaden the FOIA in 1974, the Senate also passed the Privacy Act of 1974.

⁸⁴Of the most infamous examples is the Watergate scandal, which ended in the resignation of president Richard Nixon. See *United States v Nixon*, 418 U.S. 683 (1974).

See also: "Exclusive: Reading Ollie's E-Mail," *New York* 27 no. 23 (6 June 1994): 20.

⁸⁵Senate, *Subcommittee on the Judiciary, Electronic Freedom of Information Improvement Act of 1994*, report prepared by Joseph Biden, 103rd Cong., 2d Session, 1994, 2, 9.

⁸⁶In 1972 the Congress' Foreign Operations and Government Information Subcommittee determined that only 90 of the more than 254,000 information requests came from the media. None came from broadcasters. *Francois*, 251. In 1984 it was estimated that only one of every 20 FOIA requests were from journalists, scholars and authors. Eighty percent of the requestors were from business people and their attorneys involved in civil litigation. *Cate et al.*, 50.

Today, a typical FOIA scenario is not as [originally] envisioned by the Congress, the journalist who seeks information about the development of public policy when he will shortly publish for the edification of the electorate. ... And if these uses do not diverge enough from the Act's original purpose, it is the public _ the intended beneficiary of the whole scheme _ who bears nearly the entire financial burden of honoring those requests while often reaping virtually none of the benefits from them.⁸⁷

Now that more information is being stored digitally, there are concerns that electronic searches will place an additional burden on governmental agencies by forcing them to respond to requests that don't meet the "watchdog" standard and, in turn, delay the responses that illuminate the government's activities.⁸⁸ But the FOIA, in its present form, has been ineffective proven in opening electronic government records. In 1990, Rep. Bob Wise, who in 1990 chaired the House Committee on Government Information, Justice and Agriculture, observed the Act as written, is not working. "One [agency] ploy is to agree to provide the data on paper, but to deny the data base in electronic format. ... This prevents others from using the data independent of the agency and preserves the agency's monopoly over its information."⁸⁹

Senate Bill 1782 represents Congress' boldest attempt to close the potential

⁸⁷Ibid, 51.

Thomas, 127, also placed the blame for the information bottleneck squarely on the media's shoulders when he suggested the inherent nature of journalism's constraints (i.e. time, space and finances) keeps news organizations from effectively providing the public with information.

⁸⁸Cate et al., 46.

⁸⁹M. L. Stein, "Computers and the FOIA," *Editor & Publisher*. 123 (9 June 1990.): 16.

information gap, which threatens to widen as government's information gathering and computerization becomes more ubiquitous.⁹⁰ Senators passed the bill in August 1994 and it was reintroduced in October. A similar bill was introduced in the House of Representatives August 8, but no further action was taken.⁹¹ When the "Electronic Freedom of Information Improvement Act" comes up before further consideration it will contain many of the proposals suggested for making the act more responsive to the needs of a computerized society, and it is expected to have a trickle-down effect on state legislation.⁹²

The federal bill address many of Grodsky's concerns, which have been echoed by others. For example, the amendment would change the Act to include "machine-readable materials or other information ... regardless of physical form or characteristics"; it would also expand the definition of "search" to include "manual or automated review of agency records" and the use of an electronic retrieval system to gather information would be unlimited; agencies would be required to tell the requestor the number of pages and the number of records withheld; and agencies would also have to indicate when information is deleted from a record and "the extent of such deletion shall be indicated on the released portion of the record at the

⁹⁰Congress, Senate, *Electronic Freedom of Information Improvement Act*. 103rd Congress. 2d sess., S. 1782.

⁹¹Congress, House, *Electronic Freedom of Information Improvement Act* 1994. 103rd Congress. 2d sess., H.R. 4917.

⁹²*The FOIA Update*, "Senate Passes FOIA Amendment Bill," 1. Vol. XV. No. 3. Summer 1994. Published by the U. S. Department of Justice. The Office of Information and Privacy.

place in the record where the deletion is made."⁹³ The hope is that the overall effect of the amendment will make the law more useful, rather than circumventing its spirit.

Tennessee's Open Meetings Law

The tidal wave of public dissatisfaction with the government crested in the 1970s in the wake of the Watergate scandal. That shenanigans could occur so high up within the federal government prompted lower-level officials to assess the possibility of similar incidents in state and local offices. In Tennessee, it rekindled the movement to adopt an open meetings law, a move initiated and put down in 1957.⁹⁴ Seventeen years after signing the open records law, Tennessee's legislature adopted the Open Meetings law, becoming the 46th state to enact a "Sunshine law."⁹⁵

⁹³S. R. 1782.

⁹⁴Sandra K. Cottrell, "Tennessee Sunshine Law -- Clouding the Clear Skies: A Survey and Historical Study," (thesis, University of Tennessee Knoxville, 1983), 23.

⁹⁵*Rick Hollow, Sunshine Law in Summary* (Summer 1994). The phrase "Sunshine law" was first used in Florida in relation to Florida's "Government in the Sunshine campaign," which led to the enactment of that state's open meetings law in 1967.

There were many arguments made for and against opening public meetings. Those in favor of "Sunshine" legislation said it would make the government more responsive, restore faith in government and engender public support. "Open Meetings Statutes: The Press Fights for the Right-to-Know," *Harvard Law Review* 75 (1962), 1201. Those against opening meetings to the public argued officials would not be able to discuss opinions openly, increase the chances of sensational media reports and discourage qualified citizens from running for public office. *Ibid.*, 1202.

The law "declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret."⁹⁶ The directive includes all meetings of any governing body ... to be public meetings open to the public at all times, except as provided by the constitution of Tennessee."⁹⁷ Apparently, it was a law worth waiting for. Shortly after Tennessee's Open Meetings Law was passed, it was rated as one of the best in the nation, in terms of providing maximum openness.⁹⁸

In his research of the act's evolution, Knoxville attorney Rick Hollow determined the majority of the original legislation remains intact in the 1994 version of the act.⁹⁹ The contours have been defined and changed over the last 20 years. The very constitutionality of the act was challenged only months after it came into being. The focus of *Memphis Publishing Co. v. City of Memphis*¹⁰⁰ was the portion of the act that required adequate public notice before a meeting can convene. A Chancery court judge agreed with the council's contention that the provision was "so vague and ambiguous that men of reasonable minds would have to guess at its meaning." The state Supreme Court disagreed and overturned the lower court

⁹⁶TCA 8-44-101.

⁹⁷TCA 8-44-102(a).

⁹⁸ John B. Adams, "State Open Meetings Laws: An overview," *Freedom of Information Series*, No. 3. (Columbia, Mo.: Freedom of Information Foundation, 1974), 5-6, 14-15.

⁹⁹Interview, Hollow.

¹⁰⁰13 S.W. 2d 511 (Tenn. 1974).

ruling, saying adequate notice was relative to the circumstances. Because the statute did not assess criminal penalties, more specific language was not needed, the court said.

The open meetings law's constitutionality was challenged a second time in *Dorrier v. Dark*,¹⁰¹ a case that was eventually settled in the state supreme court. The case arose after Nashville teacher James O. Dark was charged with neglect of duty and conduct unbecoming a teacher and subsequently fired by the Metropolitan Board of Education. Dark said the decision was invalid because the board decided to terminate him during a closed session. A chancery court judge agreed with Dark, and the board appealed to the state's highest court. The board raised four issues in questioning the law's constitutionality. The board said 1) the act is void because of its vagueness 2) it abridges free speech 3) it is overly broad and exceeds its caption; and 4) the act is unreasonable and arbitrary for disallowing closed meetings under any circumstance.

The state Supreme Court, however, found the charges "without merit" and upheld the act's constitutionality. The court further said if the act were to negatively effect the public, the legislature should make necessary changes.¹⁰² The decision has been reaffirmed several times. The challenge was July 1994 in *Lakeway Publishers v. Morristown Civil Service Board*.¹⁰³

¹⁰¹537 S.W. 2d 288 (Tenn. 1976).

¹⁰²Hollow, 8-9.

¹⁰³Tenn Ct. App. July 5, 1994.

The Sunshine Act's design was also shaped by a number of amendments. The first amendment¹⁰⁴ was the result of a lawsuit brought by a member of the Memphis media against the city. In *Memphis Publishing Co. v. City of Memphis*,¹⁰⁵ the Tennessee Court of Appeals determined that labor talks between city firefighters union and the mayor's negotiators were not required to be opened to the public.¹⁰⁶ To avoid similar rulings in the future, the legislature fashioned an amendment that required labor negotiations between public employees' unions and governmental entities -- regardless of the branch of government under which they served -- to be open to the public. Either side, however, may meet separately without the public's presence and not be in violation of the act.

The second amendment¹⁰⁷ was written four years later. It specifically prohibited governing bodies from casting secret ballots. The act's original act required notes taken at a meeting to include the results of any votes and individual votes. The trial court in *Tennessean Newspapers, Inc. v. Metropolitan Government of Nashville*¹⁰⁸ ruled the secret balloting violated the Open Meetings Act. The question was moot on appeal because the council voted on the action again in public

¹⁰⁴1979 Tenn. Pub. Acts 41. March 1979.

¹⁰⁵Tenn. Ct. App. Aug 7, 1978.

¹⁰⁶Hollow, ii.

¹⁰⁷1989 Tenn. Pub. Acts 800.

¹⁰⁸Tenn. Ct. App. Oct 15, 1980.

and Davidson County voters also cast their ballots at the polls.¹⁰⁹

The portion of the Sunshine Law that spelled out "governing body" and "meeting" have been the target of frequent cases. This section was changed in 1985, 1986 and 1988.¹¹⁰ The most recent change was a 1990 amendment that allowed bodies to participate in meetings through electronic communications, as long as members could simultaneously hear and speak to one another.¹¹¹ There must be notice, however, that there will be electronic communications, and technology must not be used to circumvent the spirit of the Sunshine Law. The act also makes narrow provisions for a governing body to meet privately with its attorney. The purpose is to protect the confidential attorney-client privilege, however, once the body begins to discuss what course to take, the meeting must be opened to the public.¹¹²

According to state law, "governing bodies" include, but are not limited to members of a public body with two or more members with the power to influence policy-making decisions or recommendations about administration or policy to a

¹⁰⁹Hollow ii, 10.

¹¹⁰The scope of "governing body" now includes board of directors of non-profit corporations that contract with the state agency to receive community funds, 1985 Tenn. Pub. Acts 290, but excludes the board of directors of those groups when the board meets to discuss confidential personnel or doctor-patient matters, according to 1986 Tenn. Pub. Acts 594. Governing bodies does, however, include the board of directors of non-profit groups approved by Tennessee law to act on behalf of a local government. 1988 Tenn. Pub. Acts 908.

¹¹¹1990 Tenn. Pub. Acts 815.

¹¹²*Smith County Education Association v. Anderson*. 676 S.W.2d 328 (Tenn. 1984).

public body; a community action organization that administers community action programs; a public body that serves as a negotiating committee in bargaining processor or strategy sessions of negotiations.¹¹³

The law also provides for certain circumstances under which a meeting may be closed to the public.¹¹⁴ It further requires bodies to give the public "adequate" notice of regular and special meetings.¹¹⁵ In addition, minutes of the meetings must be kept and made available to the public in a timely fashion. When a public agency meets secretly, the actions taken within that meeting are invalid.¹¹⁶ There is also a provision that allows meetings to take place with the assistance of electronic devices so that members do not have to be in the same place or city to conduct a meeting.

If there is a violation of the Open Meetings Act, a Tennessee resident may ask a state court for equity jurisdiction in the form of an injunction, penalties or enforcement.¹¹⁷ The court delivers a finding of fact, a conclusion of law and a

¹¹³For a full listing of public bodies, as defined by state statute, see TCA title 7, chapter 54, TCA Title 7 Chapter 58; 8-44-101, 8-44-107, 8-44-201, 2-1-113, 2-13-108, 4-5-312, 4-10-105, 10-1-102, 38-6-101, 49-5-611, 64-5-203.

¹¹⁴Constitutional exceptions are listed in TCA 8-44-102. Statutory exceptions are also listed in TCA 5-3-2013, TCA 9-4-518(f), TCA 17-5-304 and TCA 68-52-105. The Tennessee Supreme Court has also made provisions for exclusions regarding pending litigation in *Smith County Education Association v. Anderson*, 676 S.W. 2d 328 (Tenn. 1984), and when a public body is name in a lawsuit.

¹¹⁵*Memphis Publishing Co. v. City of Memphis*, 513 S.W. 2d at 513.

¹¹⁶TCA 8-44-105.

¹¹⁷TCA 8-44-106(a).

final judgment, which are entered into the minutes of the defendant's records.¹¹⁸

If there has been a violation, the court then permanently enjoins the further infringement¹¹⁹ and retains jurisdiction over the case for a year. The violator has to file semiannual reports of their compliance with the court.¹²⁰

Yet, there was still misunderstanding about the Open Meeting law's purpose and scope, even by the public agencies that were obligated to abide by it. In her 1983 thesis, Sandra K. Cottrell interviewed public officials about their knowledge of Tennessee's "Sunshine" law and found their knowledge lacking.¹²¹

Cottrell attempted to survey 200 mayors, school boards, city/county attorneys and judges from across the state, and 66 officials, or 30 percent of the target sample, responded. The study posed 10 questions to determine the officials' knowledge of the Open Meetings Law, litigation involving alleged violations of the law, and opinions of the "Sunshine" law.

The portion of the survey that assessed general knowledge of the law's

¹¹⁸Ibid (b).

¹¹⁹Ibid (c).

¹²⁰Ibid (d).

¹²¹Cottrell, 55, 57.

Several other academic studies have addressed the subject of open meetings. A sampling of related studies include: Jerry Lee Hilliard, "Tennessee's 'Model' Open Meetings Law: A History" (Ph.D. diss., University of Tennessee, 1980); Stephen Hall Williams, "An Analysis of the Contents and Development of Open Meetings Laws in the United States with an Emphasis upon Public Education and the Iowa Open Meetings Law," (Ph.D. diss., University of Iowa, 1980); Imogene E. Atkins, "Development and Interpretations of Open Meetings Laws," (Ph.D. diss., University of Missouri-Columbia, 1990).

provisions was encouraging. Most respondents answered correctly that there were very few exceptions for closing public meetings. However, one mayor admitted that the city council conducted some business over the telephone to avoid press and public surveillance. Further, 27 respondents, about 40 percent, answered correctly that business conducted outside a duly opened meeting would be invalidated. Some incorrectly answered that participants in closed meetings could be imprisoned or fined.

Questions about case law elicited even fewer correct responses. Less than half of the respondents, 48 percent, knew how many recent cases involving closed meetings violations had been tried in court. One official said there was no way to keep abreast of those cases. When asked about the number of cases that had determined public bodies had violated the Open Meetings law, most officials said they did not know, and again, that there was no way of keeping track of litigation. About one-third of the officials didn't know the specifics of the *Dorrier v. Dark* ruling, which the state supreme court had ruled the Open Records act to be constitutional a year before Cottrell's study; however, most knew that the law was constitutional. Regarding opinions of the law, about 56 percent said the act had room for improvement. When pressed for specifics, seven officials said the law should be repealed. Other officials had a list of suggestions for making the act more permissive for officials, such as exceptions to allow discussion of personnel and consulting with attorney.

The officials said they gathered most of the information about changes in the

law from state agencies, such as the Municipal Technical Advisory Service, the County Technical Assistance Service, the Tennessee Municipal League's publication, *Tennessee Town and City*. Other sources included interpersonal contacts from the state legislative delegation, the city/county and county attorney and state attorney general. However, almost half said they didn't get the information they needed about the laws affecting them and believed that other officials were in a similar predicament.

Cottrell concluded Tennessee's public officials received little guidance about conducting public meetings. The information they did receive was unwieldy and irrelevant.¹²² Administrators' misunderstanding of the laws defeated the purpose of the legislation by cutting off the flow of information at the source. The effect is negative for individual citizens, but when the media, who attend meetings in the public's stead, is locked out of public discussions.

Importance of Television News

Since American audiences began tuning in, television has had a tremendous impact on the public. In 1947, fewer than 10 years after its debut, television was being called "the most powerful single influence shaping American culture and

¹²²Ibid., 57.

opinion,¹²³ and news represented a large portion of television programming. By 1974, television appeared "to have replaced magazines and newspapers as the public's primary source of information."¹²⁴

National networks were the powerhouses, but affiliates were recognized as having a substantial impact on the programming of their parent network, especially as it was reflected in local stations' ability to reject network programming or change affiliation.¹²⁵ In 1994, network executives continued to recognize the power of local stations. NBC commended Knoxville affiliate WBIR for bringing *NBC Nightly News* its largest lead-in audience in the nation.¹²⁶

News programs help stations distinguish themselves from other media outlets.¹²⁷ However, many television stations condensed their local newscasts in the 1980s as a result of the economic slowdown and several radio stations dropped their news programming altogether.¹²⁸ But 40-year broadcasting veteran Tom

¹²³Ernest W. LeFever, *TV News and National Defense: An Analysis of CBS News, 1972-1973*. (Boston, Virginia: Institute for American Strategy Press, 1974), 4.

¹²⁴Ibid, 3.

¹²⁵Ibid., 19.

¹²⁶Letter to WBIR, May 1994.

¹²⁷"P-N's Snyder Warns Against News Cuts," *Broadcasting & Cable*, 121 (23 September 1991): 17.

¹²⁸For example, in 1991, WKXT-TV in Knoxville compressed its 11 p.m. newscast from 30 minutes to five minutes in favor of airing more profitable sitcoms. Beth Kinnane, "For WKXT, Less News is Good News," *The Knoxville Journal*, 27 August, 1991, 2A.

The cutbacks were not limited to the Southeast region. Network bureaus in Boston, Chicago, Dallas, Denver, New York and San Francisco closed or trimmed back

Snyder warned that laying the budget axe to news programs is a short-sighted remedy that does a disservice to the community.

Local news is the number-one function of a local station. ... Sure it does entertainment, but the thing that makes it really distinctive is the kind of news job it does. Those stations that have created a loyal audience for themselves are the ones that are going to survive.¹²⁹

Some media observers have said if local television stations are to survive in an increasingly fragmented universe, they will have to improve the quality of their product, especially news.¹³⁰ Critics such as Jon Katz have suggested that only one television station will survive per market in the future, and the one most likely to

their news operations. Local stations such as KIRO-TV in Seattle and WLNE-TV in Providence lost more than a dozen staff positions each that same year. "All the news that fits the budget: cutbacks, consolidation are rule, but some stations look for alternatives," *Broadcasting*, 23 September 1991, 15.

The cuts diminished the number of local investigative reporting teams, limiting the amount of in-depth reporting television stations produced. "Investigative teams on the wane at local stations," *Broadcasting*, 23 September 1991, 26, 27. See also "Local News directors grapple with smaller budgets, changes in compensation, tabloid TV," by Steve McClellan, in *Broadcasting* 21 September 1992, 50.

McClellan also talks about upbeat predictions for news in the 1990s in "Networks nourish news offerings; local support provided to affiliates in form of more live shots, story packages," *Broadcasting & Cable*, 18 July 1994, 30 and "Recession doesn't rock RTNDA," *Variety*, 28 September 1992, 17.

Local radio news programs were especially hard hit by budget cut-backs. Many stations substituted local news for network cut-ins or abandoned news altogether. See aforementioned "All the news that fits the budget," and "Flip side of more choice may be less local news." *Broadcasting*, 23 September 1991, 35.

¹²⁹*Broadcasting & Cable*, Sept. 23, 1991, p. 17.

¹³⁰"Memo to Local News Directors, Re: Improving the Product," *Columbia Journalism Review*, (May/June 1990): 44.

succeed will be the one with a strong emphasis on news and public affairs programming.¹³¹ He cites the plummeting viewership of the "Big Three" networks (ABC, NBC and CBS), which have traditionally brought in a large portion of revenue for their affiliates, as a primary reason for improving the local product.¹³²

The implications of the media as an interpreter of events has been the topic of numerous studies.¹³³ Bernstein and Lacy examined the impact of television news in areas in which there are a limited number of media outlets, particularly newspapers. The authors determined that contextual coverage of news by television was of greater significance in one-newspaper towns, as might be the case in many Tennessee cities.¹³⁴ The researchers concluded however, that television coverage was less likely to be in-depth or provide coverage that added another dimension to

¹³¹Ibid.

¹³²Ibid.

In 1980, the ABC, CBS and NBC collectively captured 95 percent of the viewing audience. By 1990, their share had declined to 60 percent. The introduction of the Fox network and cable programming are blamed for the drop in ratings. Ibid, 40.

¹³³David L. Altheide also echoed the ability of the news to shape policy issues through its presentation and definition of news. In helping the public interpret events, television news provided repetitive images and formats that reduces complex ideas to familiar ideals. That power, he says, is both to television's credit and detriment; the negative side is evident when ideas are over simplified and fail to explain complexity of issues or question stereotypes. "The Impact of Television News Formats on Social Policy," *Journal of Broadcasting & Electronic Media* 35, No. 1 (Winter 1991): 3-21.

¹³⁴James M. Bernstein and Stephen Lacy, "Contextual coverage of Government by Local Television News," *Journalism Quarterly* 69, no 2 (Summer 1992): 329-340.

the audience's understanding.¹³⁵

Soloski took a different approach by examining how the news gathering process at its root level impacted the surrounding community. His examination of medium-sized newspapers asserted that reporters' heavy reliance on government sources for information reinforces the status quo and incorporates the paper into the power structure. Although the articles examined in the study were purported to be objective, Soloski said they were actually colored by reporters' relationships with sources. As a result, the newspapers functioned as a mouthpiece for government ideas, whether or not that was the intended effect. Soloski's study pointed out the need for consulting varied sources. A diversity of voices, he said weakens the influence a single source and provides the audience with more comprehensive coverage.¹³⁶

In "Mr. Gates Goes Electronic," Mark D. Harmon explored the power of

¹³⁵The concerns were originally raised in 1947 in the Hutchins Commission report, *A Free and Responsible Press: A General Report on Mass Communication: Newspapers, Radio, Motion Pictures, Magazines and Books*, about the effects of media concentration on providing diverse perspectives.

Although the commission's report related to radio and film, Bernstein and Lacy, 330, applied the findings to television. The authors' concluded this concern, though 35 years old, was still valid. There was no determination, however, whether the lack of coverage was related to differences in communities or financial resources. Ibid., 340.

¹³⁶Soloski 864, 866.

David McKean also took a critical look at the way newsroom factors influenced news coverage in "Why the News Media Took So Long to Focus on the Savings and Loan and BCCI Crisis." McKean suggested the media had failed to recognize the magnitude of these financial crises and then failed to devote resources to investigate them. McKean suggested television's response was especially slow because these stories were not "sexy" because they lacked interesting visual elements and soundbites.

local television news and the gatekeeping function of news producers. The study examined 1) whether local television stations allowed newspapers and breaking news events to set their agendas and, 2) the decisions that determined daily events would be elevated to the status of news. Harmon concluded that local television news programs were not entirely passive in newsgathering, nor were newspapers the dominant source of information for television news, as he had originally hypothesized. Television, he said, plays a different role from newspapers by functioning as a "repackager," customizing stories to fit a community angle. Harmon said there were sporadic instances of "classic enterprise" reporting, in which the reporter wades through documents and tracks down leads, but local stations are more likely to reprocess information. That new homogenized package, however, is often a unique source of information.¹³⁷

The overall quality of television news has long been debated. Some have said the product was good at one time, but is now on the decline. University of Miami professor S. L. Harrison attributed the diminished quality to "television news ... taking on the trappings of public relations puffery and huckstering for advertisers."¹³⁸ Harrison was particularly incensed by the coverage NBC affiliates gave the final episode of the long-running situation comedy, *Cheers*, in 1993. Many of the networks' larger markets led their evening newscasts with interviews of the show's stars, prompting Harrison to say, "When network news succumbs to the

¹³⁷Harmon, 888.

¹³⁸S. L. Harrison, "Monday Memo," *Broadcasting & Cable*, 5 July 1993, 42.

pitchman's product as content for its news presentation, that's bad news. ... A news-hungry public is still short-changed."¹³⁹

Editor & Publisher, a magazine published by American newspaper editors, took a dimmer view of its electronic cousin, calling television "chewing gum for the mind."¹⁴⁰ In a 1992 column, the editors used a poll conducted by Times Mirror as evidence that television news viewers are less informed than newspaper readers. In quoting the 1990 survey, *E & P* said:

A majority of people under 35 rely solely on tv for campaign news. ... The Times Mirror survey has consistently shown that people who rely on television only for campaign news know less about the campaign than people who use newspapers to follow the election. In the current poll this is illustrated by the finding that only 25% of the 'tv exclusives' know that the Democrats control Congress, while 45% who read newspapers do.¹⁴¹

E & P concluded that television attracts those who "know less and care less about what's going on," and that the television continues to feed their ignorance.¹⁴²

There continues to be debate about the ability of television news to provide its audience with detailed coverage or whether that should be its role. Television's strengths can also be its weaknesses: it is an audio-visual, immediate, time-

¹³⁹Ibid.

¹⁴⁰"Indictment of TV News," *Editor & Publisher*, 18 July 1992, 4.

¹⁴¹Ibid.

¹⁴²Ibid.

constrained medium, and those factors influence its message.¹⁴³ Television, nevertheless, exerts a powerful influence over its viewers, who tune in for information about their local communities more frequently than they turn to newspapers. Understanding the processes that shape broadcast news, then, is important.

Summary

The right to gather information has been legislated to the public, and the press helped push for and set new standards of openness. Three specific access laws, the Tennessee Open Records Law, the Freedom of Information Act and the Tennessee Open Meetings Law, allow citizens to monitor their federal, state and local governments leaders and examine the business officials conducted on their behalf.

Access laws have increased government's accountability to the public. Although they have not eliminated corruption, the open records and open meetings laws have provided means to trail most of the business conducted on the public's

¹⁴³Numerous studies have examined the forces that shape local television news. See "Television News Values in the Knoxville Market," by Robert D. Thomas, (M.S. thesis, The University of Tennessee), 1993.

See also "Work rules and news selection in local TV: examining the business-journalism dialectic," *Journal of Broadcasting & Electronic Media* 37 (Winter 1993): 67-81; and "Assessing forces in the selection of local television news," *Journal of Broadcasting & Electronic Media* 35 (Spring 1991): 245-251. These articles, both by Dan Berkowitz, discuss factors that shape newsgathering, such as electronic equipment and budgetary constraints.

behalf. Journalists, congressional leaders and the public are now working together to make sure that trail is not obscured by technicalities in the law that allow digital information to remain inaccessible.

The FOIA, open records and "Sunshine" laws were intended to benefit the general public, although members of the media were expected to use them in their daily news collection. Newspapers have been the traditional news leaders, but the broadcasters have emerged as the dominant provider of news in the last 40 years. Nevertheless, the content of television news has been called underdeveloped. This study asks what kind of news coverage Tennessee broadcasters provide and whether that coverage is augmented by detailed information made available through open records and open meetings laws.

CHAPTER III

METHOD

Introduction

In order to determine the impact of the Freedom of Information Act, Tennessee's Open Records Law and Tennessee's Open Meetings Law, news directors were selected as the sample for this study. News directors are the focus because of their influence over the shape and content of the newscast. Their responses provide insight into the decision-making processes that determine how aggressively particular stories are pursued. These news values reflect the stations' "watchdog" function and explain their "agenda setting" effect on the respective markets they serve.

Research Method and Questions

This study uses in-person interviews and mail surveys, defined as Wimmer and Dominick as qualitative methods,¹⁴⁴ to collect the data for this study. There are several research questions:

¹⁴⁴Roger D. Wimmer and Joseph R. Dominick, *Mass Media Research: An Introduction*. (Belmont, Ca.: Wadsworth Publishing Co., 1994)

1. What types of stories do Tennessee broadcasters pursue most often?
2. What are some of the primary sources used to collect information?
3. Do Tennessee broadcasters have occasion to use access laws to gain information?
4. How familiar are radio and television news directors with state and federal laws governing the accessibility of public documents and meetings?
5. Does a station's location in large or small city affect the availability of information?

Techniques

The researcher designed a questionnaire to guide in-person interviews and to serve as a mail survey for news directors unable to participate in face-to-face interviews. This type of survey tool has been shown to be effective in eliciting personal insight.¹⁴⁵ The questionnaire asked a combination of open-ended and close-ended questions to elicit some specific basic information in three specific areas: the station's news-gathering techniques; incidents in which the stations used access laws; and the news directors' professional backgrounds.

The primary method of data collection was in-person interviews. This approach was chosen because it has been shown to be accommodating to the

¹⁴⁵Ibid., 140, 151.

interviewees.¹⁴⁶ This flexibility was especially necessary to get as much information as possible from this participants in this study, who have to respond to unpredictable and immediate situations. This method takes some of the control from the interviewer and allows the climate to be influenced by the events in the newsroom; however, it also allows the respondents and the researcher to establish a rapport and encourage more detailed answers. In-person interviews enable the researcher to gather information quickly and get immediate feedback from the participants.

Mail surveys were chosen as the secondary technique. This back-up approach allowed news directors the opportunity to answer questions at their leisure. The tandem technique was used to increase the rate of response to the survey. As is the case with qualitative studies, conclusions draw from the results of this study are not be based solely on statistics.

Test Population

A pre-test was conducted in February 1995 to determine the survey instrument's readability. Preliminary interviews were conducted with Margie Nichol, a veteran television reporter and former television news producer and Rick Hollow, an attorney who specializes in First Amendment law. As a result, some questions were added to the survey tool, and the sequence of some segments were changed.

¹⁴⁶Ibid., 151-2.

Sampling of Tennessee News Directors

The sample was drawn from the five of Tennessee's six DMAs that have a full complement of the major network affiliates, ABC, CBS and NBC. The target cities are Nashville, Memphis, Knoxville, Chattanooga and the Tri-Cities area, which includes Johnson City, Kingsport and Bristol, Tn.-Va. These cities provide blanket coverage of the Tennessee audience and include a broad range of demographics. The DMAs will be described in more detail in the following section.

The stations' affiliations with older networks increase the likelihood of their having local news operations and significant news competition. The radio stations were selected on the basis of their emphasis on news, as demonstrated by the presence of a news director, the size of their news staff and amount of time allotted each week to local news, as recorded in the 1995 *Broadcasting & Cable Yearbook*, which is recognized as having the most up-to-date information on radio and television stations. Expert advice from industry observers also guided the selection of the radio stations that provide the most significant news coverage. College radio stations were excluded, due to their general reliance on college personnel in newsgathering rather than professionals. These criteria significantly narrowed the sample size of radio stations. Two stations from each market were chosen as a representative number of the relatively few station that demonstrated a commitment to providing news coverage. The target sample that emerged consisted of 15 television news directors and 10 radio news directors.

Designated Market Areas

For the purposes of this study, the following DMAs were defined. A pictorial representation of the areas is included in Appendix A.

Nashville: The counties in this DMA constitute the largest mix of urban and rural areas; however, the majority of counties are urban. Davidson County, in which Nashville is located is a highly urban area. The media outlets in Nashville include two daily newspapers. There are 12 AM radio stations and 14 FM stations. The television market is ranked 33rd in the nation.¹⁴⁷

The DMA includes 749,060 homes in Tennessee and Kentucky: Allen, Christian, Clinton, Cumberland, Logan, Monroe, Simpson, Todd and Trigg counties in Kentucky; Bedford, Benton, Cannon, Cheatham, Clay, Coffee, Davidson, DeKalb, Decatur, Dickson, Franklin, Giles, Henry, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Macon, Marshall, Maury, Montgomery, Moore, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Smith, Stewart, Sumner, Trousdale, Van Buren, Warren, Wayne, White and Wilson counties in Tennessee.

Memphis: The Memphis DMA has a mixture of rural and urban areas, although not as diverse as the Nashville DMA. Shelby County, which includes Memphis, is a very urban area. Several of the surrounding counties are defined as very rural areas. The media outlets include one daily newspaper, 12 AM radio

¹⁴⁷Nielsen Media Research, 1994. Quoted in *Broadcast & Cable Yearbook*, 1995.

stations and 13 FM stations.

The television market DMA is ranked 42 and includes 605,930 households in Tennessee, Missouri, Arkansas and Mississippi.¹⁴⁸ The counties include Crittendon, Cross, Lee, Mississippi, Phillips, Poinsett and St. Francis counties in Arkansas; Alcorn, Benton, Coahoma, De Soto, Lafayette, Marshall, Penola, Quitman, Tate, Tippah and Tunica counties in Mississippi; Pemiscot County, Missouri; Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lauderdale, McNairy, Shelby and Tipton counties in Tennessee.

Knoxville: Knox County, in which Knoxville is located, is a very urban area. Several of the surrounding counties are predominantly rural. Some of the most rural counties in the state are in this DMA. The media outlets include one daily newspaper, 11 AM radio stations and 12 FM stations.

The television market DMA is ranked 63.¹⁴⁹ It includes 418,120 homes in two states: Bell, McCreary and Whitley in Kentucky; Anderson, Blount, Campbell, Claiborne, Cocke, Cumberland, Fentress, Grainger, Hamblen, Hancock, Jefferson, Knox, Loudon, Monroe, Morgan, Roan, Scott, Sevier and Union counties in Tennessee.

Chattanooga: Hamilton County, for which Chattanooga is the county seat, is a very urban area, but it is surrounded by several very rural counties. The media outlets include two daily newspapers, 8 AM radio stations and 11 FM stations.

¹⁴⁸Ibid.

¹⁴⁹Ibid.

The television DMA is ranked 82nd.¹⁵⁰ It includes 317,560 households in four states: Jackson County, Ala.; Catoosa, Dade, Fannin, Murray, Walker and Whitfield counties in Georgia; Cherokee County, N. C.; Bledsoe, Bradley, Grundy, Hamilton, Marion, McMinn, Meigs, Polk, Rhea and Sequatchie counties in Tennessee.

Tri-Cities: It is a diverse and complex market composed of three medium-sized cities located in two urban counties. These are surrounded by more rural counties. One newtwork affiliate is located in each of the three cities. This is a very difficult market to cover from a news standpoint.

The media outlets include 12 AM stations and 7 FM outlets. The television market DMA is ranked 93.¹⁵¹ It includes 281,470 households in three states: Leslie and Letcher counties in Kentucky; Carter, Greene, Hawkins, Hohnson, Sullivan, Unicoi and Washington Counties in Tennessee; Buchanan, Dickenson, Lee, Russell, Scott, Smyth, Washington and Wise Counties in Virginia.

The Study

Letters of introduction were mailed to news directors in Chattanooga, Knoxville, Memphis, Nashville and the Tri-Cities area the second week of March to set up interviews during the following month. The letters explained the purpose of

¹⁵⁰Ibid.

¹⁵¹Ibid.

the research, emphasized the need for participation, and suggested tentative interview dates. One week after the letters were mailed, calls were made to the individual stations to schedule appointments.

One Memphis radio station included in the original target population was replaced with another station after repeated attempts to reach the news director proved unsuccessful.

The news director from one Memphis television station refused to participate in the study after being contacted by phone. "We have a young, inexperienced news staff. I have been at the station for four months, and right now, we are concerned with other things. We're being bought out by (another network.) We plan to go after information, with (the new network's) support." The station was not replaced because there was no other television station in the market affiliated with the same network.

In-person interviews were scheduled during April to avoid interference with "Sweeps Month," which many news directors said would have precluded their participation.¹⁵² News directors in Chattanooga were interviewed the first week of April; Knoxville news directors during the second week; and interviews in Nashville and Memphis were scheduled during the third week of the month. News directors from the Tri-Cities areas were contacted by phone and agreed to participate in the

¹⁵²"Sweeps" is the four-week period during which Arbitron measures television viewership. These ratings are the main tool stations use to sell time to advertisers and to compare their programming to the competition. *Broadcasting in America*, Sydney W. Head, Christopher H. Sterling and Lemuel B. Schofield. Boston: Houghton Mifflin Co. 1984), 384, 386.

study via mailed surveys.

Telephone calls and letters were used to contact the nine news directors from Chattanooga, Nashville, Knoxville and Memphis who failed to respond to previous contact. Three additional surveys were returned after follow-up contact. The results of this study reflect the responses of journalists from 10 radio stations and nine television stations from the state's five DMAs. The news directors' backgrounds are described in Appendix B. The participants were promised anonymity, which prevents disclosing their names or station affiliation.

The researcher compiled the information the first week of June 1995 after the last of surveys were returned through the mail. Each participant's responses were recorded on a duplicate of the questionnaire, which served as a tabulation sheet. The number of responses for each question was tallied and rechecked for accuracy. Answers to closed-ended questions were grouped by the limited choice of responses; similar comments in open-ended responses were grouped together. Ambiguous answers were explained in the text of the results. Trends according to market and medium were of particular interest, as noted in the results chapter.

CHAPTER IV

RESULTS

To understand the role of access laws in newsgathering in Tennessee broadcast operations, this study looked at the emphasis placed on using the Freedom of Information Act, the state open records and state open meetings laws as keys to unlocking sealed information. It also asked about the type of information news teams were most interested in reporting and the types of barriers that existed to disseminating that information to the public.

The results are divided into four sections. The first section examines the response rates by city and medium. The second section looks more at how stations define their news coverage. The third assess the use of sources and knowledge of the state and federal access laws. The following section is broken down into an examination stations' experience using the laws. The final section talks about the future of newsgathering as access laws are redefined by technology.

Response Rates

Twenty-five news directors were contacted to participate in the study, and 19 station representatives responded through in-person interviews or by returning the questionnaires through the mail. Eight of the respondents from radio stations were

news directors; one was an interim news director. Nine of the respondents representing television stations were news directors; one was an investigative reporter. The overall response rate for radio stations was 80 percent, slightly higher than the 73 percent response rate for television stations. Table 1 illustrates the response rate by medium.

TABLE 1: Statewide Survey Response Rates

	Radio	Television	Total
Surveys Attempted	10	15	25
Surveys Completed	8	11	19
Response Rate	.80	.73	.76

The participation varied by city as well as by medium. The most complete results were drawn from Nashville and the Tri-Cities area, respectively the largest and smallest markets in the sample. News directors from all of the targeted television and radio stations in these cities completed the survey, resulting in a perfect response rate (100%).

The responses for Chattanooga and Knoxville were slightly lower than the Tri-Cities and Nashville results. Chattanooga and Knoxville each had a response rate of 80 percent, reflected by the participation of news directors from two television stations and two radio stations in both markets. Radio stations had a response rate of 100 percent; the rate for television was 66.7 percent, the result of

two of three television news directors in both cities participating in the study.

The results for Memphis were markedly lower than other cities' which created the strongest, single downward pull on the results. Table 2 shows the participants by city and medium.

TABLE 2: Response Rate by City

	Nashville	Memphis	Knox- ville	Chatt- anooga	Tri- Cities	Total
Radio Survey Returns	2	0	2	2	2	8
TV Survey Returns	3	1	2	2	3	11
Total	5	1	4	4	5	19
Return Rate	1.00	.20	.80	.80	1.00	.76

With a complete sample from the largest and smallest markets in Tennessee, the results should provide a range of responses that are fairly representative of the situations in large and small newsrooms in Tennessee. The high response rate from Knoxville and Chattanooga provide a perspective of mid-sized markets. Taken together, these responses, should provide a fairly accurate representation of news outlets from participating markets. The lack of participation by Memphis stations, which serve a different demographic (market size, racial composition, education

level), prohibits generalization to the entire state.

News Coverage

One of the ways in which news operations divide the labor is by assigning reporters to areas or "beats." Beats, theoretically also allow a reporter to develop expertise in an area and help him or her cultivate personal sources through constant contact. Fifteen stations used this system, and four news directors said there was no formal assignment system in their newsrooms. However, the stations that did not use a formal beat designation covered many of the same offices and stories as stations that assigned reporters to a particular area.

The beat mentioned most often by radio and television directors was the crime/police beat, which provides the most immediate and typically the most dramatic news events. Regional beats, which include neighboring municipalities and activities outside the station's home county, were mentioned numerous times. The health and local/county government beats, and state government, rounded out the top five most common beats. This type of coverage suggests stories focused on a central area that can be covered and broadcast quickly. They each have the potential of promoting an "institutionalized" view rather than focusing on people.

The courts and related offices were mentioned as beat areas, though less frequently than the aforementioned categories. Other beats included a potpourri of

"nightside," schools/education, hospitals, neighborhoods, religion, waste in government, consumer affairs, business, agriculture and features. Many of these topics lend themselves to generating people-oriented stories, helping to round out the edges of the governmental agency beats.

In Nashville, the news directors mentioned crime/police the most times, indicating a heavy concentration on immediate news. The other frequently mentioned beat, as Table 3 shows, is health, which is typically less "flashy" and less intense than dramatic police news.

TABLE 3: Nashville Beats

	Crime	Health	Court	State government	Region	Other
Nashville Radio 1			X	X		
Nashville Radio 2						X
Nashville TV 1	X					X
Nashville TV 2	X	X			X	X
Nashville TV 3	X	X		X		X

Nashville stations also provide more coverage of state government, which is related to the city's designation as Tennessee's capital city. Other popular beats included

"nightside," schools, youth, government waste and neighborhoods. The combination seems to provide Nashville with the broadest diversity of coverage. By the same token, Nashville stations serve the most demographically diverse population in the state.

Knoxville news directors mentioned the crime and courts beats more than any other beats. Local government, state government and politics were also mentioned frequently, as outlined in Table 4.

TABLE 4: Knoxville Beats

	Crime	Health	Court	Local Govern- ment	State Govern- ment	Poli-tics
Knoxville Radio 1					X	
Knoxville Radio 2	X			X		
Knoxville TV 1			X			
Knoxville TV 2	X		X			X

News directors' responses indicate a strong emphasis on fast-breaking events that happen close to the Knoxville vicinity. News teams travel beyond the Knoxville DMA to gather news, but the major focus is on news in the region.

In Chattanooga, news directors indicated an emphasis that is very centralized,

very close to home, as Table 5 shows. One television news director said the station uses a general assignment approach, not "beats." News coverage provided by radio and television in the Chattanooga DMA focused on crime and local government/politics.

TABLE 5: Chattanooga Beats

	Crime	Court	Local government	Region	Politics	Other
Chattanooga Radio 1	X	X			X	
Chattanooga Radio 2	X		X			
Chattanooga TV 1	X		X			X
Chattanooga TV 2						X

News teams in the Tri-Cities area place a heavy emphasis on regional news, as Table 6 shows. One of the responding television stations did not assign reporters to beats, and that response is recorded as "other." Perhaps the focus on regional happenings is because each of the three television stations is located in a different city, and coverage must include a heavy dose of news from other areas because these cities are a close-knit community.

TABLE 6: Tri-Cities Beats

	Crime	Health	Court	Local government	Region
Tri- Cities Radio 1				X	X
Tri- Cities Radio 2					X
Tri- Cities TV 1	X	X	X		X
Tri- Cities TV 2					X
Tri- Cities TV 3					

The Memphis news director indicated the his station's coverage included crime, health, regional news from nearby states, family and agriculture. Without the participation of other Memphis stations, however, it is not possible to illustrate the variety of coverage provided by broadcast outlets in that city.

Sources and Use of Access Laws

Tips can be drawn from any number or combination of contacts, and news directors indicated a cross-section of story leads. News directors said reporters listened to scanners, which transmit the radio traffic of emergency personnel, generated their own story ideas, borrowed from news services such as the Associated Press and thumbed through government records. However, the wellspring of information cited most often was "sources," people who give information to reporters.

When government information was required, news teams turned to official sources more often than records, according to news directors' responses. Most news directors said their news teams talk with official sources daily. This held true at the state and local levels, but at the federal level, records were consulted more often than officials. Four news directors in the survey said reporters never consulted federal records; all news directors reported using state and local records at one time or another.

News directors were asked how often they used records and sources at the local, state and federal levels. Their responses are outlined in Tables 7 - 10 as daily, frequently, seldom and never. "Seldom" was defined as once or twice a week; frequently as three or four times a week.

Four of five Nashville news directors reported daily contact with state and

local officials; half of these executive said their news teams consulted local and state records daily, as Table 7 shows. Use of federal records and officials was "seldom" for three of five stations.

TABLE 7: Use of Government Information in Nashville Stations

	Never	Seldom	Frequently	Daily
Federal Officials	1	3	1	
Federal Records	1	3	1	
State Officials			1	4
State Records	1	1	1	2
Local Officials			1	4
Local Records	1	1	1	2

These results indicate state and local officials have a strong influence on Nashville news; the use of records is not as strong; and the impact of federal information is weaker still. The heavier use of state and local officials seems to coincide with Nashville station's strong emphasis on local and regional coverage. Despite the impression of news directors from smaller areas, Nashville stations do not appear to make more use of records than other stations.

Knoxville news directors reported the most daily contact with officials and

records at all three levels of government, as Table 8 illustrates. This seems to indicate a local and state news coverage is strongly influenced by the respective officials; news from federal sources is less frequent but more than other cities surveyed.

TABLE 8: Use of Government Information in Knoxville Stations

	Never	Seldom	Frequently	Daily
Federal Officials	1	1	1	1
Federal Records		1	3	1
State Officials			1	3
State Records			1	3
Local Officials				4
Local Records				4

The news directors did not indicate why Knoxville stations seem to use federal sources more than stations in other markets. This use of federal contacts could be related to Knoxville serving as home of the University of Tennessee's flagship campus and headquarters to the Tennessee Valley Authority, a federal agency. Knoxville is also in close proximity to Oak Ridge National Laboratory and the Great Smoky Mountains, both of which have strong ties to federal agencies.

In Chattanooga, two of four stations reported using local officials daily; one

of four stations turned to state records and sources daily, as Table 9 shows.

Consultation of federal officials and records at any level of government was "seldom." The responses coverage is very localized around the city of Chattanooga, which is in the heart of a predominantly rural DMA. The coverage seems to suggest there is less information provided by the government at any level, especially at the federal level. The stations' coverage may reflect the audience's greater concern about what is happening in local communities.

TABLE 9: Use of Government Information by Chattanooga stations

	Never	Seldom	Frequently	Daily
Federal Officials		3	1	
Federal Records		3	1	
State Officials		2	1	1
State Records		3		1
Local Officials			2	2
Local Records		1	2	1

In the Tri-Cities area, news directors reported frequent or daily contact with local and state officials, as Table 10 shows. Contact with officials on these levels was typically three or four times a week. All five respondents said contact with federal officials was seldom; three said they never used federal records, and two said

their usage was seldom. These responses indicate a reliance on local officials and less dependence on records.

The results from Memphis represent only one station. The news director reported daily contact with officials and records on the state and local levels and seldom use of federal officials and records.

TABLE 10: Use of Government Information at Tri-Cities stations

	Never	Seldom	Frequently	Daily
Federal Officials		5		
Federal Records	3	2		
State Officials			3	2
State Records		2	3	
Local Officials			3	2
Local Records		2	3	

Eleven of 19 news directors categorized public officials as willing to release information. Others said officials' cooperation depended on the type of information; only one news director said officials were outright unwilling to release information.

The Chattanooga media reported consistent problems getting information from the mayor's and county executive's offices. As Table 11 illustrates, access to

TABLE 11: Uncooperative Public Offices

	Chatt- anooga	Knox- ville	Mem- phis	Nash- ville	Tri- Cities	Total	%
City police	2		1	2		5	16.6
Sheriff	1	1			1	3	10
State Police					1	1	3.3
Federal law enforcers				2	2	4	13.3
Hospitals	1	1				2	6.6
Courts				1		1	3.3
State Prisons				1	1	2	6.6
Local Executives	4	1				5	16.6
Regional Government	1					1	3.3
Nuclear Regulatory Commission		1				1	3.3
Military		1		1	1	3	10
Federal Elections			1			1	3.3
Internal Revenue Service				1		1	3.3
Total	10	4	2	4	6	30	100

law enforcement offices at all three levels of government was statewide problem. Other agencies made it difficult for the media to get information but none as consistently as law enforcement.

The this research indicates Tennessee stations nation have similar problems obtaining access to law enforcement agencies. The type of fast-breaking news that news executives indicated they are most likely to pursue is the information that agencies don't want released to the public. Some of those records are withheld in the interest of individual privacy. However, as the Grusin study indicated, sometimes the information is manipulated simply because it can be.

Familiarity with FOIA, Sunshine Law and Open Records Law

The state and federal access laws were drafted in response to this type of stone-walling. Many news directors understand the open records and meetings laws as giving the public as much access to the government; however, many news directors' responses indicate many of them are unfamiliar with the laws' specifics.

Of the six news directors who said they were unfamiliar with the state open records law, one had worked in Tennessee less than one year.

Another news director, who had worked in Tennessee for several years said, "Nashville (journalists are) more familiar with what can and can't be done."

In explaining their general understanding of the open records law, news

directors typically cited two or three provisions, such as the accessibility of records during business hours or particular examples of public documents, such as arrest records or court documents. Others referred to the law's general regard for individual privacy or the protection of business interests.

News directors were no more explicit about the details of the "Sunshine" law. Two directors also said they were unsure about open meeting's provisions, and two, again deferred to the Nashville media as being more knowledgeable about the law. However, one news director from the Tri-Cities area said he was well-versed in the state access laws and had participated in drafting sessions of the open meetings law.

News directors described their general understanding of the law by offering a few specifics, such as discussions between two members of a panel constituting an open meeting; another news director added that the panel had to be a policy-making body. Two news directors also mentioned the requirement for advance notice of meetings. They also listed salary discussions and personnel meetings as instances in which meetings could be closed legally. In open-ended responses, most news directors said they were skeptical that meetings are always held in accordance with the law's provisions.

Eighteen of 19 news directors described the FOIA as the legislation that opens federal records, but three said they did not know of the law's provisions. Several executives said the FOIA is based on the public's right to know about government business and described it as a law designed to "keep government honest." One said the law is for the public's benefit, not specifically the media.

Two news directors said they kept copies of handbooks about the law handy when considering to file for information under the FOIA. One news director mentioned the provision for withholding records related to contemplated litigation or active litigation closed. One news director specifically mentioned the law's nine exemptions to disclosure. Two said those exclusions were to provide individual privacy and protect national security. Another incorrectly said a media representative has to state the reason for the request.

News directors' responses indicate there is some misunderstanding about the law's provisions, or at the very least, some areas about which the news executives feel unsure. There are already a variety of sources news directors use to keep abreast of changes in the Freedom of Information Act and the state's open records and open meetings laws. Trade magazines and professional conferences were the most popular choices. Other resources included fellow journalists and professional media organizations, such as Radio and Television News Directors Association, the Reporters Committee for Freedom of the Press, the Freedom Forum First Amendment Center, Investigative Reporters and Editors, the legal firm of King & Ballew, or publications these organizations had released. Company attorneys were typically a last resort. As one news director said, "Every time I pick up the phone (to get advice from a lawyer) it costs me \$150."

In most instances, the decision to make an issue of access rested with the news director or another executive. In a few cases, the decision was made by the reporter and a news executive. Reporters at one Chattanooga television station have

FOIA forms in their computers, and the requests can be filled out at any time. Most news directors said they would like to be better-versed in each of the laws' provisions, and they want their staffs to be more comfortable using the laws, too. "It should be the reporter who understands the situation without running to the news director," one Knoxville news executive said. Another respondent said, "When the sheriff's crew is pushing you out of a meeting, somebody has got to say something then. The crew has got to understand we're regular people with cameras and recorders."

Almost of all of the news directors surveyed agreed that staff training was needed to get the most out of access laws; they also said the training would have to be relatively inexpensive. News directors also suggested that public officials invest in training so the information custodians and those seeking its release would have a better understanding of what the other side was allowed to do.

This research indicates that news directors have a general understanding of access laws, but misunderstanding persists. News directors are typically responsible for making the determination about pressing for access and are often the station representatives who confront officials about closure. These executives try to keep up with changes in the law, however concerns about access are not a primary focus of their attention.

Experience with Access Laws

Most news directors said access to meetings and records is not an issue. However, when information is hard to retrieve, news directors said the reporters usually continue calling about information and proceed up the official chain of command to get what is needed.

Of the 19 news directors surveyed, eight recalled incidents in which the FOIA was used; six recalled incidents in which their stations used the state open records law; and three cited incidents in which the stations had problems gaining access to public meetings. None of the respondents reported having to file suit to get information from local state or federal offices. News directors' experiences and inexperience point to problems within the news room, within the laws and in their administration.

Experience with Access Laws: FOIA

News directors reported different experiences using the FOIA. News directors from eight stations recalled filing FOIA requests for information ranging from military video footage to records of the Nuclear Regulatory Commission. Table 12 outlines stations' use of the FOIA by medium and city.

TABLE 12: Experience filing FOIA Requests

	Television	Radio
Nashville	2	1
Memphis	1	N/A
Knoxville	2	1
Chattanooga	0	0
Tri-Cities	1	0

In general, it was television stations that filed the larger number of requests. The Nashville stations reported using the law the most times. These stations have staffs that exceed 30 people, which may allow the stations to give reporters more time scouring records.

Stations also reported varying degrees in their satisfaction with the FOIA. One Nashville respondent succinctly said, "Persistence and FOIAs" got the desired information; but other news directors were less confident in the laws' practicality.

A Tri-Cities news director said the staff does not use the FOIA because most of the news coverage is local. A Knoxville news director said its use is sparse because the slow response times. In the incident in question, the station wanted the suicide note left by state representative Ted Ray Miller. The note allegedly contained information about questionable dealings in the General Assembly. "It took us forever to get (the note), about six months," he said. "When we got it, we couldn't tell what was going on (because of amount of redaction). It was pretty much worthless."

The Memphis news station is trying to get in cockpit conversations taped while a plane was being hijacked. A federal judge released the transcripts, refused to release the tapes, which were played in court, because of their sensitive nature and the drama of the situation. "I don't like the judge taking the editorial process out of my hands." The station's parent company is also putting its support and financial backing behind the request. Smaller stations probably would not have the same luxury, the news director surmised. "It's unfortunate smaller stations ... without big corporate offices. It's just too expensive and lengthy. The amount of time you have to devote, you have to weigh the payoff."

The research indicates most news directors said the FOIA was not effective in their daily newsgathering. One Nashville respondent said, "There's decent cooperation without it. ... Some agencies want a written request as a formality." Most news directors said the law was not used because of its limitations, mainly the long wait for information, the expense, numerous exemptions and lack of enforcement. This lack of use probably has some bearing on lack of understanding.

Experience with Access Laws: Open Records

Six of the 19 news directors surveyed recalled incidents in which their stations used the state open records law. The incidents involved requests for personnel files, hospital records, jail records, the Public Service Commission records,

court documents and information from the Tennessee Bureau of Investigations.

Table 13 graphs the use of the open records law by medium and city.

TABLE 13: Experience Invoking the Tennessee Open Records Law

	Television	Radio
Nashville	3	0
Memphis	0	N/A
Knoxville	1	0
Chattanooga	1	0
Tri-Cities	1	0

One Chattanooga TV news director said the station typically filed records requests 15 or 20 times each year, more than any other station surveyed. A Nashville station used Department of Safety records of files kept by charitable organizations on a daily basis. "Usually just telling the employee about the law frees up the information," the respondent said.

One of the news directors who did not use the Open Records Act said there was no time for in-depth stories. Another, frequent response was that stations typically did not have problems getting information. One Knoxville news director said reporters tried to establish a good rapport with officials, and those relationships helped the flow of information. The problems arose, he said, when news teams got involved with state officials or officials in surrounding counties. An incident in

Roane County illustrated his point. "I personally went to talk to the sheriff and county executive and told them that they had to release this information. Maybe they don't know what the rules are."

One Nashville news director said a station can not afford to play the "access card too often. You have to choose your battles. You don't want to throw down the gauntlet. I'm concerned about small radio and television stations who don't have that recourse and they have no recourse. The burden (to should be on the government agency for withholding. It's an unfair burden to have to prove that it should be open."

Another news director who did not use the open records, said he prefers the "embarrassment technique" on Chattanooga officials who withhold information. The technique works like this: when an office will not release information, the station talks about the incident over the air. "A little intimidation goes a long way," he said. "We let our constituents do the leg work by encouraging them to call." Another Chattanooga news director said, "I'd rather stay after the information. You have to convince the officials it's their job to answer questions."

The majority of news directors surveyed said the open records law is at least somewhat effective in the newsgathering process. One of the 19 news executives called the law "invaluable"; five rated the law "effective"; four called it "somewhat effective"; and one considered the law "not effective." If stations were able to do more in-depth reporting and hire an investigative reporter, the open records law would be more useful, executives said.

This research indicates Tennessee news directors have a lack of experience invoking the open records law. This lack of use appears to stem from several factors, not the least of which is records' general accessibility. The research also indicates that news directors have not applied the law's general use to every aspect of daily reporting. News directors said this is because of a shortage of financial and personnel resources. However, research indicates that information from state records can be used to enhance almost every type of story. The types of stories stations cover most often, such as police and government, can be enhanced by a variety of local and state records.

Experience with Access Laws: Open Meetings

Three news directors of 19 news directors recalled incidents in which access to public meetings was an issue. All of the incidents were resolved without formal grievances. Table 14 outlines the short list. The lack of use by either radio or television might seem to suggest that access to meetings is never a problem. However, news directors' responses indicate they suspect this might be the toughest of all three access laws to enforce. The problem is catching violators in the act.

"I think they hold meetings at lunch," one Chattanooga news director said. "I've gone into places where everyone, the department heads, attorneys, are piled up in tight little booths."

TABLE 14: Experience Invoking the Tennessee Open Meetings Law

	Television	Radio
Nashville	1	0
Memphis	0	0
Knoxville	0	0
Chattanooga	1	1
Tri-Cities	0	0

"The more local the governing body, the bigger the problem is because they're friends and business associates," a Nashville executive said. "It may be that they violate the spirit of the law, and that's to conduct business above board."

In one incident in Chattanooga, members of the city council began discussing business in the presence of one of the news directors surveyed. When the news director said the discussions constituted an open meeting, the council did not dismiss itself. The council continued to discuss business, and the news director stayed.

In another incident involving a Chattanooga news team, the Marion County Commission was considering a ban on smoking while several of the commissioners puffed cigarettes during the discussion. When a citizen pointed out the conflict, the commission responded that they were in closed session. When the citizens began to protest, the meeting remained open. The situation, the news director said,

emphasized the need for news teams to be knowledgeable of the law. "Generally, they understand the flag issues," he said. "They know when something is wrong there, they just have trouble articulating it."

Several news directors said they had never been denied access to meetings. One Nashville respondent said, "Experienced reporters can usually talk their way in." Most news directors said the open meetings law is effective. "We're lucky to have in place a law where officials have to be responsive," one Nashville news director said. Not all news directors are of that opinion.

"It's a joke," one Chattanooga news director said. "Small municipalities hold meetings when and where they want." To counteract that tendency -- whether intended or not -- the station sends reminders to municipality about the need to post advance notice of meetings. He suspects, however, that the letters may be received but not taken to heart.

News directors pin most of the blame for abuses of this particular law on the shoulders of public officials. They also say the law does not have enough "bite" to punish violators.

The research indicates Tennessee news directors have had some occasion to invoke the open meetings law, although not through formal channels. In the instances where violations have been apparent, news teams have generally taken a stance and challenged attempted closings. However, the research indicates the problem with the law's enforcement may be knowing when meetings take place.

Experience with Access Laws: Overall Effectiveness

News directors were of varying opinions about the effectiveness of the FOIA, the open records law and the open meetings law is helping stations gather news. Only six of 19 news directors said the law have an impact on their ability to obtain information. One Tri-Cities news director said the station uses the laws "very little," and a Nashville news director said the regulations were "practically non-existent." Another Nashville news director questioned the laws' effectiveness but didn't dismiss their impact. "I don't think the laws are as effective as they could be. It's really hard to know. Indirectly, they're in a lot of what we do. If they were clamped down, we would see what we do depends on the free flow of information. Lots of things are taken for granted."

The research indicates news directors may not have to actively invoke access laws, but the laws' existence is essential to viewing records or entering meetings.

Future of Access

The nature of the information-collection business is changing, thanks to the introduction of digital technology. Many of the capabilities of digitization are not addressed in current access legislation. News directors are divided in their opinions about their ability to gather news in an will be altered by technology.

The issue has reached legislative proportions with the introduction of a bill to reconfigure the FOIA to make digital federal records accessible to the public in a number of formats. However, in the law's existing terms, federal records do not have to be provided in a form that can be read by a compact disc, computer or any other electronic device. Three news directors, one from Knoxville and two from the Tri-Cities said this omission would not affect their ability to gather news. The responses from Tri-Cities' executives is probably related to their not using the law now. Three news directors, two from Chattanooga and one from Knoxville, said the omission would make information gathering more difficult.

The FOIA's ability to impact state legislation has already been demonstrated: the FOIA's passage promoted the enactment of access legislation in the lower levels of government. Government agencies on the local and state level are also storing information in digital formats, and many are looking to the FOIA to determine how their agencies should handle virtual information. Many journalists nationwide have already begun pushing for greater access. Tennessee executives are divided.

Three news directors said they were uncertain of the effect. Three news directors, one from Knoxville and two from the Tri-Cities, said the omission would not affect their newsgathering. Four news directors, two from Chattanooga, one from Knoxville and one from the Tri-Cities area, agreed that greater access is essential. A Nashville journalist called electronic access a crossroads issue.

"This is the major battleground," said the respondent, who is also an investigative reporter. "I have gotten electronic records from the state sentencing

commission and the Department of Charitable Solicitations with no problem. I am still negotiating for a drivers' license database and state personnel files. Some officials think we don't have a right to the information. Others are more helpful." "Electronic records are the cutting-edge tool of the future. We MUST have them."

Several of the news directors who responded to the survey said their newsrooms are now computerized and that access to information from in-house terminals would aid their newsgathering. Others are slowly joining the technological revolution.

"Once on the Internet, I understand (access) will greatly increase. We're slowly grasping how much of a tool this can be. I think it will speed the process immensely." A Knoxville news director said, "Access to that information via the Internet or DBS would obviously make life a lot easier. We're more computerized now. We have a home page on America On-Line via (our parent network.) There's lots of push toward regulating the Internet, and there's lots of information available. We're moving toward a situation in the next three or four months where we will have PCs in the newsroom and the dialogue can interface with systems elsewhere."

The Memphis news director has already discovered the increased accessibility of computer records. He was able to get the ruling on a Oxford, Mississippi case as soon as it was made available on the Internet. Instead of incurring the expense of sending a news team hundreds of miles away, he only had to pay \$82.50, the cost of the 165-page document at 50 cents per page.

"I would think agencies would appreciate the simplicity of that in reducing paper, time and effort by making information available by pressing a 'send' key."

This research indicates many Tennessee news directors are divided in their opinions about the need for access to electronic records. Several do not view access to digital information as a major concern. This may be because state and federal records are generally open and the threat of exclusion from electronic documents does not seem real at the moment. At the same time, news directors who have computerized their newsrooms and experienced some of the possibilities electronic access expressed the most concern about closure. This research indicates stations who have been most active in seeking access in the past are also concerned about access in the future.

Summary

Tennessee news directors have had varying experiences using the FOIA, the state open records and state open meetings laws, and that experience appears to account for the different levels of understanding. The research, however, does not seem to indicate these differences are related to the size of the market.

News directors from Nashville to the Tri-Cities seem to have problems getting information from law enforcement agencies, and most of the news directors seem to believe they are adequately staffed to conduct extensive research of federal

or state records.

The research indicates most news directors, regardless of market size, suspect the Sunshine Law does not keep officials from conducting private meetings that should be open to the public. However, most executives said officials are typically forthcoming with information and do not inhibit inspection of records.

News directors' responses indicate that most of them have a working knowledge of the "flag" issues that signal a possible access, and almost all news directors said they want all of their reporters, videographers and producers, to become more familiar with the laws' provisions. Despite that acknowledgement, the research indicates this training has not been a priority for stations. Many news directors said they don't believe access laws to be useful in day-to-day newsgathering.

News executives are divided about how electronic access will affect their newsgathering in the future. A few newsrooms are already on-line, and at least one Memphis operation has already reaped the benefits of access to digital information. However, unless enforcement and understanding of access laws is considered to be a necessary part of newsgathering, the research indicates many news directors may not use the growing mounds of information stored electronically or push for increased access to digital information.

CHAPTER V

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Summary

Local news is one of the primary sources from which the American public learns about the world and the context of events. In this sense, local news is one of the tools of a self-governing society to learn about the business officials are conducting on their behalf. This study sought to determine what Tennesseans are learning from broadcast news. Specifically, the study asked how Tennessee stations used access laws, such as the Freedom of Information Act, the Tennessee Open Meetings Law and state open records law, to give the public a more complete picture of how officials conduct business on their behalf.

The study asked five interrelated questions to determine how these theoretical ideals are translated into practice. The questions and responses are listed below.

Question 1: What types of stories do Tennessee broadcasters pursue most often?

Tennessee news directors were most interested in stories that were immediate and central to their city of origin. Crime stories or "breaking" news events are best

suited to broadcasting's time-conscious nature. Television is especially influenced by the availability of stimulating video; radio, by the availability of interesting sound bites. These elements help the audience feel as if they're experiencing events as they unfold. The freshness and sense of urgency live broadcasts create are the medium's strengths. These trends in Tennessee newsrooms coincide with national studies that determined broadcasters nationwide emphasize the immediate.

Closely bound to the search for emerging news is the size of a station's staff: the larger the staff, the more flexible a station can be in its coverage; the more limited the staff, the more a station has to be able to juggle and justify news choices. At the same time, a station will make provisions to send a to those stories considered the most newsworthy. So what becomes news, in a very practical sense, is what a station can get to that day. The sizes of the participating stations' news staffs are listed in Appendix C.

Stories requiring more research may become secondary to those that have a quick turn around time. This appears to be especially true for radio stations, as pointed out by stations who participated in the survey. In Tennessee and across the nation, many radio news operations have continued to downsize the staff and time allotted to news. Only one station that participated in the study reported steady growth in recent years.

Some of the news directors who participated in the survey said their stations aired in-depth news "probes" on various topics; however, time- and labor-intensive reporting seems to be the exception. Less than one-third of the stations that

participated in the study employed investigative reporters, and from news directors' responses, it would be investigative reporters who would cover the more involved issues.

In keeping with the responsibility to serve its local market, broadcast news units at Tennessee stations are tightly focused on the city of origin, although counties within the television DMA also received a large share of attention. Radio news coverage is influenced even more strongly by geographic distances, again a reflection of the smaller-sized staffs. Both radio and television news directors indicated stories not covered by their staffs are supplemented with wire copy from services such as the Associated Press, which provide news of regional and national interest. Although "state" and "federal" issues receive airtime, local news teams infrequently cover those topics.

Question 2: What are some of the primary sources used to collect information?

News teams are more likely to turn to state or local officials for information than to federal officials. Reporters from most stations talked to local officials on a daily basis. This contact helps stations keep a constant pulse on their community.

However, there are caveats in any source-reporter relationship, as previous studies have indicated, that are typically in the source's best interest. Grusin and Soloski noted the potential for a source's personal biases to govern the release of information that the press ultimately transmits to the public. Without a content

analysis, it is difficult to quantify how much influence those sources actually had on the on-air product of the stations in this study. Further, news directors indicated news teams get information from other sources, such as in-house news conferences, other media outlets and other non-government agencies. These other sources may dilute the power of officials to promote their own agendas through the media.

Agency records, on the other hand, are more objective sources of information that also have the advantage of a long memory. State records, and to a greater degree local records, were used by Tennessee broadcasters more often than federal records. However, records are not used on a regular basis, in part because the process is time-consuming.

Question 3. How familiar are Tennessee news directors with state and federal laws governing the accessibility of public documents and meetings?

In general, the news directors from all five markets and both mediums understand the purpose of access laws as a window through which the public can observe the business of government at various levels. Only a few executives were comfortable listing provisions of the Freedom of Information Act, although a few more offered more details about the state open records and open meetings laws.

Most of the news directors had been in the industry 10 or more years and advanced to an executive position news after holding a variety of news-related positions, so the lack of familiarity would not appear to stem from a lack of

experience gathering news. The research indicates news directors understand the "flag" signs of a illegal closure (i.e. officials threatening to close a meeting already in progress). When unsure how to proceed, they turn to other sources when unsure of how to proceed, including "how to" guides written by media support organizations such as the Radio and Television News Directors Association or checked with a station attorney. Attorney consultation, however, is an expensive route for cost-conscious executives.

From news directors' responses, it is difficult to tell exactly how much they know about the laws, but several executives from large and small cities said they were very unfamiliar with their terms. Some of their responses seem to indicate the misunderstandings might have the effect of limiting their use of the laws.

Understanding of FOIA

The FOIA allows anyone to request information from a federal agency without providing a reason for the request. However, several paragraphs of the FOIA clearly put the onus for withholding information on the agency.

For example, under 4(A), a requestor who has been denied information can appeal the agency's decision. Under (4)(E), agencies and officials who improperly withhold information are assessed attorneys fees and court costs. Provision (4)(F) provides for the investigation and discipline of employees when information is

withheld improperly.

Several news directors noted the FOIA's exemptions are in place, generally, to protect state secrets, individual privacy and business. The last changes to the law, which resulted from the 1986 amendments concerning law enforcement, reflect changes in an area that has been particularly troublesome for journalists, but the news directors did not specifically mention these exclusions.

The research indicates new directors have a working knowledge of the FOIA. They recognize its application in the request for federal agencies, but they seem to lack familiarity with the law's specific provisions.

Understanding of Open Records

News directors listed few specifics about the provisions of the Tennessee Open Records Law. However, one recurring complaint concerned the number of exclusions that kept records from public view. The research indicates news directors understand that most state records should be accessible to the public, but they seem to be less certain of exactly which records those are.

Interestingly, one news director deferred to larger cities, specifically Nashville, as being more aware of state access laws. Nashville stations did use the open records law more frequently than other cities, but this raises the question about whether other news executives believe that the laws are used more frequently in big

cities and why that might have this belief. It is unclear whether the deference was to larger stations being more aggressive in searching for news or to information being harder to come by in larger cities. At the same time, the research indicates news directors from larger cities believe information is harder to retrieve in smaller towns.

Understanding of Open Meetings

The research shows most news directors to be familiar with the provisions of Tennessee's Open Meetings Law. They collectively cited more of the laws' specifics than those regarding the open meetings law or the FOIA. News directors listed several of the law's guidelines, such as two members of a decision-making body constituting a meeting, the requirements for advance notice and exclusions for attorney-client meetings. However, no news directors mentioned the new provisions for electronic meetings, the requirement for recorded minutes of the meeting or the invalidation of actions when meetings are held improperly.

The open meetings act is enforced by applying to a state court to penalize and enjoin a government body when a meeting is believed to have been taken place outside the parameters of the law. The court issues a finding of fact, which becomes part of the official minutes. A policy-making body found in violation of the statute is enjoined from any further violations and must file a semi-annual report with the

ruling court about its compliance.¹⁵³ Without mentioning specific reasons, news directors said the Act was not strong enough to prevent violations.

The research indicates better training for public officials might strengthen the law. Interestingly, these results fall in line with those of a Sandra Cottrell, who surveyed public officials' knowledge of the Tennessee Open Meetings Law more than 10 years ago. News directors continue to echo her conclusions: public officials do not seem to be informed of the responsibilities of open government. They are also suspicious of "inconsistencies" enforcing the open meetings law and whether it is violated willfully.

Question 4. Do Tennessee broadcasters have occasion to use access laws to gain information?

The research indicates most stations do not use Tennessee's open records law or the open meetings law to get information; none of the news directors surveyed filed formal complaints concerning access to state records or meetings. Eight of 18 news directors recalled at least one instance of using the FOIA to get information.

About 61 percent of news directors said officials were willing to release information, which may have precluded heavy reliance on state access laws. Usually, an on-the-scene reminder to an official or clerk was all that was needed to open a meeting or make records available. When information was not forthcoming -

¹⁵³TCA 8-44-106 a-d.

- which was primarily the case when dealing with law enforcers and city/county executive offices -- news directors reported success in follow-up methods. In most instances, a telephone call from the news executive did the trick; in more serious instances, a well-timed call from the station attorney was enough to loose the desired information.

The research shows Tennessee news teams typically deal with local or state officials and records; contact with federal officials was infrequent, which may have made pressing for information from federal authorities seem like an ineffective use of time. In addition, many federal officials operate under different guidelines that prohibit them, in some instances, from talking to the press or public.¹⁵⁴

When in search of federal records, reporters have had to file a formal FOIA request with a central agency or a field office, and news directors recalled invoking the FOIA more often than state access laws. At first, this may seem to be a contradiction, since news directors said they were more interested in state and local information. But while seeking access to local or state governmental information, Tennessee reporters did not always adhere to a formal process to get information, as is the case under the FOIA. Perhaps the state laws provide an "invisible" protection that makes it appear they are not being used. As one news director said perhaps the impact would be felt if the laws did not exist.

Another possible explanation for the apparent inconsistency is that the focus

¹⁵⁴Margie Nichol, Personal Interview February 1995.

on local or regional issues allowed news teams build a rapport with officials that resulted in a less heavy-handed approach to getting information, again, making it seem as if the open meetings law and open records law were not integral to the news gathering process.

The reserach indicates Tennessee news directors consider the laws generally ineffective in the daily gathering of news. They cite the FOIA in particular for its number of exclusions and slow response times, both of which make it practically useless in daily situations. These remarks correspond with complaints the media has been making for more than 20 years. The time constraints in broadcasting appear to keep the Act from being a viable tool for broadcasters. The investment in time, personnel and equipment also appear to make the FOIA cost-prohibitive, although numerous journalists around the country have used the Act to write Pulitzer-Prize winning articles.

News directors said news teams need more training on the laws' provisions to take advantage of them. The decision to follow up on information is primarily in the hands of executives, who for the most part, will take additional steps to get what station wants. However, as one news director noted, reporters and videographers are the people who counter the initial resistance, and if they are less confident in their position, it lessens the likelihood of getting the desired access. By the same token, the station would have to support training programs financially and get behind reporters when they take a stance for information.

Other circumstances, namely financial considerations, also impact news teams

use access of laws, particularly those dealing with records. Several news directors said having a larger staff would enable them to free reporters to sift through documents; yet, two of the news directors who made this comment have staffs that exceed 30 people. Several station executives said having one person dedicated to a particular area might help them make better use of the laws; however, reporters who cover a variety of stories need to know the importance of searching records for the detail, evidence, clues and accuracy they provide. However, this type of research does not appear to be a high priority.

Digital technology might make it easier in the future for any reporter to retrieve information from government files, but the research indicates station executives are divided on the importance of this form of access. Several news directors do not believe digital record keeping will impact their newsgathering; others refer to it as a turning point in journalism. Several stations, both large and small, now have computers in the newsroom and are linked to the outside world through the Internet and subscriber services such as America On-Line. Executives who had made these upgrades were adamant about keeping the federal and state records accessible, regardless of their format. At the same time, this would imply reporters will be encouraged to scour through records more than they currently do.

Question 5. Does a station's location in large or small city affect the availability of information?

The size of the city does not appear to have an overwhelming impact on the availability of information. Access to public records was in general unhampered. On the other hand, news directors in all of the markets suspect officials discuss business outside formally called meetings.

The research indicates some news directors attribute the apparent ease of getting information to a combination of reporters' savvy, cooperative officials and the rapport news crews established with officials; there were only a few instances in which a news director or station attorney had to shake loose the desired information or open a closed meeting.

There appeared to be some concern that stations in small areas may have a tougher time getting information. News directors in cities such as Nashville and Memphis said they suspected information may have been more restricted in smaller towns; however, even news teams in Nashville had occasion to "remind" officials about the provisions of the open records and open meetings laws. At the same time news directors from areas such as the Tri-Cities, however, said they can get any information they want. The research indicates that stations, regardless of market size, have common problems getting information from law enforcement officials, city/county executive offices and regional authorities in nearby towns. All of the cities surveyed are surrounded by rural areas. Chattanooga and the Tri-Cities area are surrounded some of the most rural counties in the state, as are Knoxville and

Memphis. The research indicates records are generally accessible at any level of government, if the station chooses to look for them; meetings, on the other hand, may not be as accessible. There was no clear indication whether those suspected meetings violations might have been committed unwittingly or intentionally.

Conclusions

In their daily newsgathering, Tennessee news teams do not appear to encounter many situations in which their access to public meetings or records is challenged. Perhaps this lack of confrontation masks the laws' utility and effectiveness, especially when access to state and local records is sought. Without constant confrontation, news teams are able to operate on "automatic," not having to give this aspect of their job much consideration. A reporter doesn't have to present a copy of the open records law every time he or she wants to view a record. Perhaps, this indicates that on some levels, these laws are doing what they should be doing, although they may be perceived as not having much influence. News directors, however, did point out legitimate concerns about the laws' ability to deter officials from improperly withholding information or denying access to meetings. And, although they recognized the purpose of the laws to provide access while protecting individual privacy, there are legitimate concerns about the amount of information that would be helpful in newsgathering. In many instances, the type of

information news teams desire most is the information agencies seek most to withhold.

When officials attempt to infringe on the access these laws provide, news directors recognize the signs, even if they do not know all of the intricacies of the laws. This is important in assuring that a station executive will step in when a problem arises. What is equally important is that the entire news team feels empowered to take action when these situations arise, and this may not always be the case in newsrooms. A more complete understanding of the FOIA, and state access laws would seem to be essential to every beat, not just investigative reporting.

Stations seem to provide a solid base of local coverage for their communities, but there seems to be room for improvement in providing more depth of information. Television has historically provided a broad-brush approach to news, and this continues to be the case. Yet, when considering the future of local news in a fragmented audience, improving the product by giving it more depth would seem to be a way to provide a stronger service to the audience. Many news directors said they have computer access to information now, and it would seem to be an ineffective use of their investment not to take advantage of this resource. If more information is stored digitally and stations don't go after that information, the public, particularly the television audience, might be less informed.

The news provided by broadcasters is quick and visually stimulating. Historically, it has not been as complete as print journalism in providing contextual information for numerous reasons, including time constraints and financial

considerations. It is not clear how television news will redefine itself, although several news directors believe local coverage will become even more important. The push for better coverage has to come from the top down, and it has to be supported philosophically and financially. That means stations have to make an investment in preparing news teams to understand how the FOIA and state access laws can be applied in their jobs.

Limitations of Study

The lack of participation by Memphis radio and television stations somewhat diminishes the perspective of this study. As the second-largest market in Tennessee, the Memphis DMA could have provided a better perspective about the practices of outlets that reach almost one million viewers and listeners. Memphis and Nashville help set standards for smaller areas. However, the cooperation of Nashville stations, which serve the state's largest, most diverse population does not offset the lack of participation of Memphis stations, which represent a different demographic and perhaps employ a different set of news values. With all of the targeted stations in Nashville and the Tri-Cities participating in the study, this study provides the two extreme views of the largest and smallest regions. However, without the full cooperation of all markets, this study and availability only of qualitative information, this study is only applicable to Tennessee.

Recommendations for Further Research

With these limitations outlined in the research, future studies could attempt to answer the questions such as the approach to newsgathering across the state and a more complete understanding in the differences between larger and smaller markets. One immediate starting point would be to replicate this study with the full cooperation of all of the state's markets. This would provide a clearer perspective on practices across the Tennessee and perhaps make the study more applicable to areas of similar demographic composition. An expanded study of the use of access laws in other Southeastern states might be conducted to provide a picture of their usage in this region and offer a comparison of stations in other regions of the country. Other studies to determine how much reporters, videographers and producers know about access laws would complement this study of news directors. As an outgrowth of news directors' comments about better training for officials, a replication of Cottrell's study about officials' knowledge of access laws might indicate whether the executives' perceptions are on the mark. Additional research might also examine whether computerized newsrooms help broadcasters make better use of open records laws. Such a study might indicate if there are barriers to access due to loopholes in law, limited availability of computerized records or inactivity on the part of the media.

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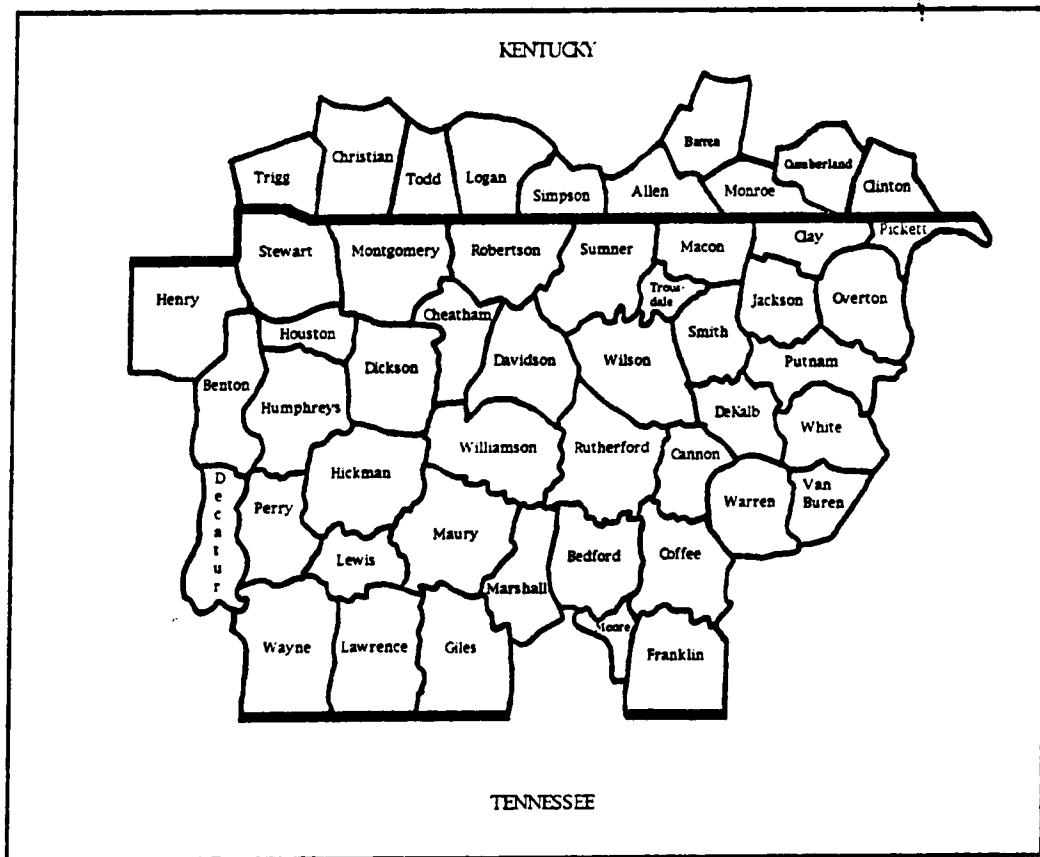
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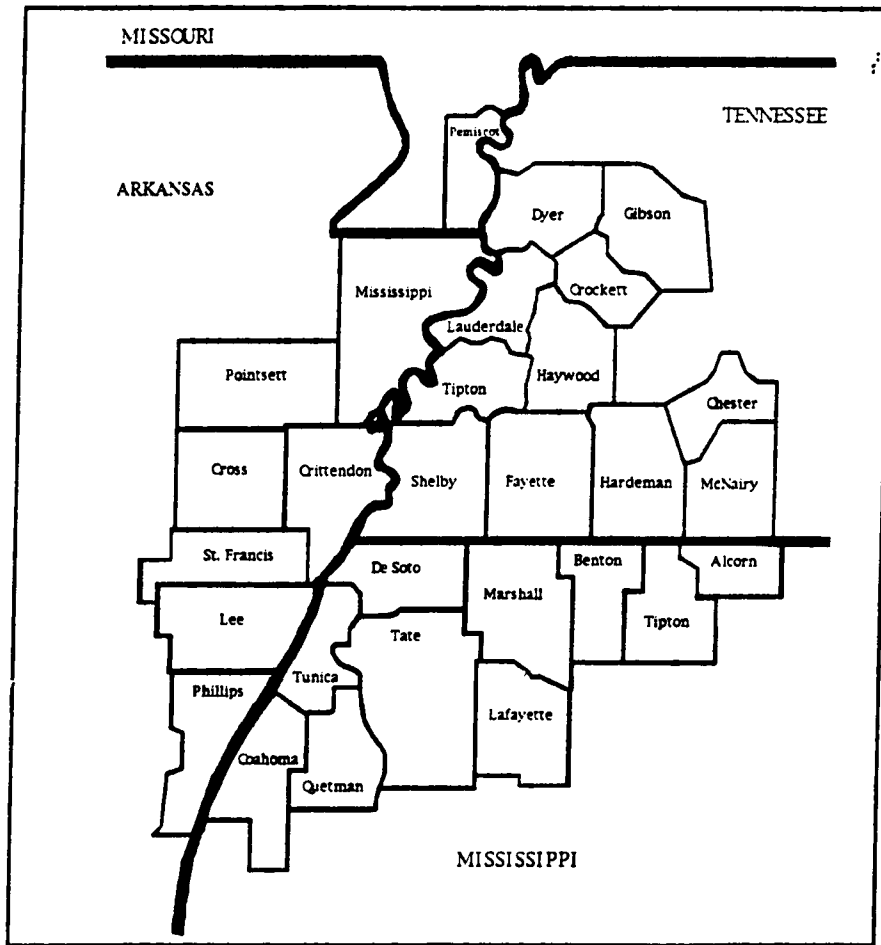
APPENDICES

Appendix A

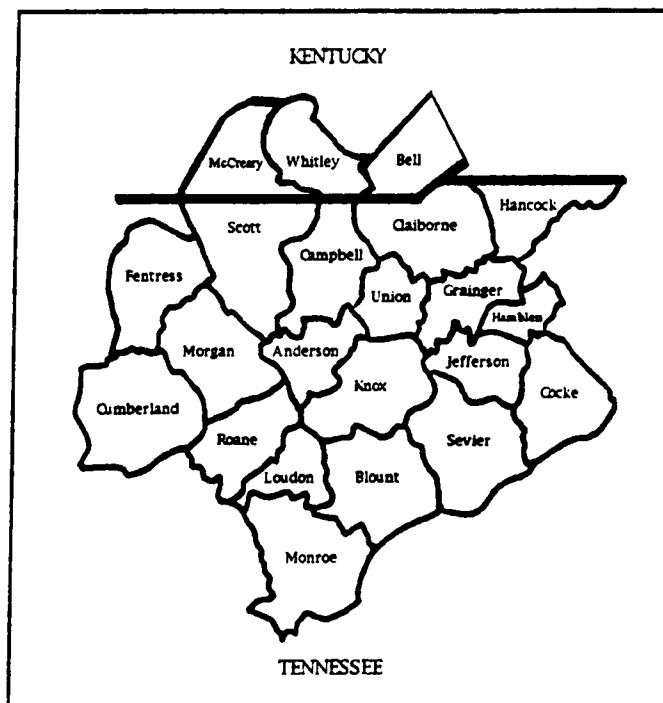
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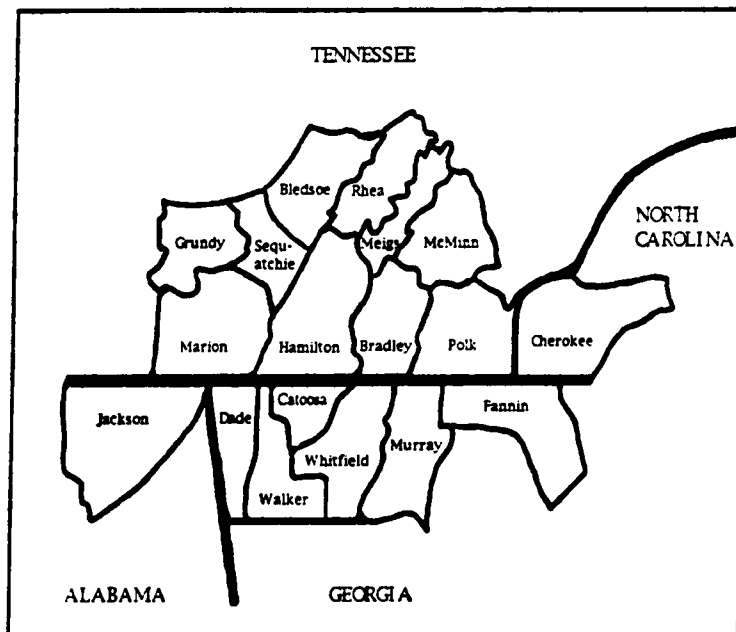
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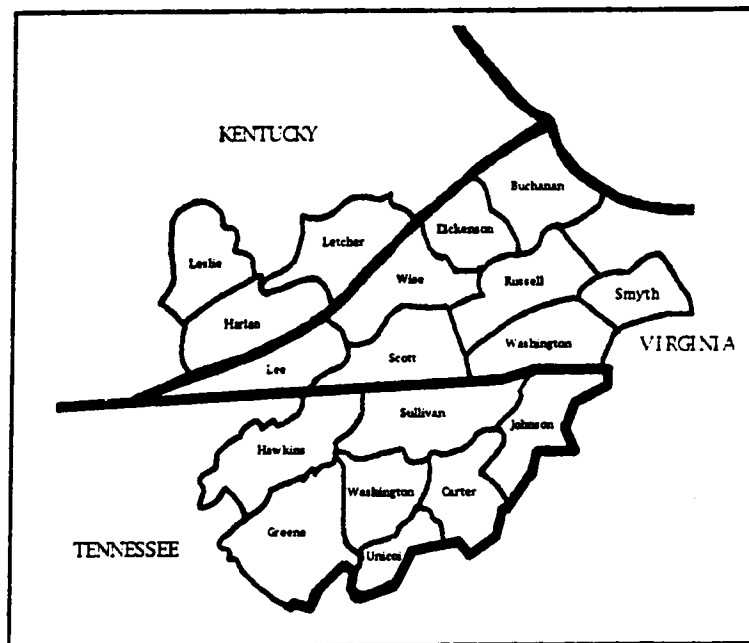
Knoxville DMA



Chattanooga DMA



Tri-Cities DMA



Appendix B

Journalist 1: News director of television station in medium-sized market. Bachelor of Fine Arts. Twenty-seven years in the media. Total of six years at current station. Worked as anchor and consultant. Has worked in Los Angeles, Buffalo and Portland, Oregon.

Journalist 2: Radio news director at large-market station.

Journalist 3: Seventeen years experience as a reporter and news executive. Worked in the Southeast and Midwest. Has been a news executive at current station for 14 years.

Journalist 4: Radio news director at large-market station. Bachelor's degree in History. Also worked as a reporter. Has been at current station 10 years.

Journalist 5: Bachelor's degree in Mass Communications and English. Twenty-five years in the media. Has worked in radio and television as a reporter, anchor and sports personality.

Journalist 6: News director at small-market radio station. Worked in the media 25 years in radio, television and newspapers. Also worked for the Armed Forces media. Bachelor's degree in Business Administration and Management.

Journalist 7: Female reporter at large-market television station. Has been a reporter 15 years in large and small Tennessee markets. Bachelor's degree.

Journalist 8: News director at small-market television station. Nineteen years in the field. News director at current station for nine years. Has been a reporter and producer at current station.

Journalist 9: Small-market news director.

Journalist 10: Television news director in medium-sized market. Bachelor's degrees in Radio and Television and Business. Worked in the media 25 years in radio and as an associate producer, photographer, anchor, assignment editor in television. Has been news director at current station for 12 years.

Journalist 11: News director at large-market television station. Bachelor's degree in Broadcast Journalism with a minor in English. Has worked in Florida, Kentucky and Pennsylvania. Experience includes, producer, reporter and anchor.

Journalist 12: News director at a small-market radio station.

Journalist 13: Television news director in a medium-sized market. Has been in the media

Journalist 14: Female radio news director in a medium-sized market. Bachelor's degrees in Radio and Television and English. Worked in the media 12 years in Midwest and Southeast. Has been a reporter, anchor and disc jockey.

Journalist 15: Radio news director in a medium-sized market. Master's degree in Urban Geography. Twenty-two years experience includes announcing, reporting, anchoring and working as political editor. Has worked in Nashville, Evanville, Indiana, and Birmingham, Alabama.

Journalist 16: Radio reporter in a medium-sized market. Bachelor's degree in Communications. Has worked 20 years in radio, 14 at the current station/

Journalist 17: News director at a television station in a medium-sized market. Twenty years' experience includes floor director, photograhper, reporter, assignment desk editor. Has worked in Indiana, New Orleans, Raleigh, North Carolina and Sacramento, California.

Journalist 18: Radio news director in a medium-sized market. Twenty-seven years in the media, 16 at current station in various positions. Worked in Birmingham, Alabam;

Journalist 19: Female news director in small-sized market. Fourteen years' experience includes 11 years at current station. Bachelor's degree in Mass Communications.

Appendix C

News Directors'/ Station Profiles

Highest Degree:

15 -- Bachelor's
1 -- Master's
3 -- Not Indicated

Area of Concentration:

8 -- Communications
6 -- Outside Communications
5 -- Not Indicated

Years at current station:

3 -- Less than 1 year
0 -- 1 - 4 years
7 -- 5 -10 years
3 -- 11-15 years

Years in the Field:

0 -- Less than 1 year
0 -- 1 - 4 years
0 -- 5 - 10 years
3 -- 11 - 15 years
4 -- 16 - 20 years
5 -- 21 - 25 years
1 -- 25+ years

Types of positions:

2 -- Anchor
3 -- Announcer/DJ
2 -- Assignment Desk
1 -- Assistant News Director
1 -- Associate Producer
1 -- Consultant
2 -- Editor
1 -- Floor Director
2 -- Photographer
1 -- Producer
1 -- Program Director
1 -- Sports
1 -- Investigative Specialist

Size of Staff:

3 -- 1 - 5
0 -- 6 - 10
2 -- 11 - 15
0 -- 16 - 20
0 -- 21 - 25
0 -- 26 - 30
1 -- 31 - 35
1 -- 36 - 40
0 -- 41 - 45
1 -- 46 - 50
1 -- 50 - 55
2 -- 55+

Appendix D

Station:

Station representative
and title:

City

Market size

PART I

What are the various beats in your newsroom?

How are story ideas developed? Please indicate as many as
apply

- a. scanners
- b. sources
- c. newspapers
- d. court documents
- e. press releases
- f. wire services
- g. if other, please specify

Are federal records a source of information?

_____ Yes _____ No

How often do you use these sources?

- _____ Never
- _____ Seldom (Once or twice a week)
- _____ Frequently (Three or four times a week)
- _____ Daily

Are federal officials a source of information?

_____ Yes _____ No

How often do you use these sources?

_____ Never
_____ Seldom (Once or twice a week)
_____ Frequently (Three or four times a week)
_____ Daily

Are state officials a source of information?

_____ Yes _____ No

How often do you use these sources?

_____ Never
_____ Seldom (Once or twice a week)
_____ Frequently (Three or four times week)
_____ Daily

Are state records a source of information?

_____ Yes _____ No

How often do you use these sources?

_____ Never
_____ Seldom (Once or twice a week)
_____ Frequently (Three or four times week)
_____ Daily

Are local officials a source of information?

_____ Yes _____ No

How often do you use these sources?

_____ Never
_____ Seldom (Once or twice a week)
_____ Frequently (Three or four times a week)
_____ Daily

Are local records a source of information?

_____ Yes _____ No

How often do you use these sources?

- ☐ Never
- ☐ Seldom (Once or twice a week)
- ☐ Frequently (Three or four times a week)
- ☐ Daily

In general, how would you describe public officials' willingness to release information?

- ☐ Unwilling
- ☐ Hesitant
- ☐ Cooperative

Is there a particular public office that makes it difficult to obtain information?

☐ Yes ☐ No

If yes, please indicate the public offices that make obtaining information difficult.

- ☐ City police
 - ☐ County Sheriff
 - ☐ State police
 - ☐ Federal law enforcement officers
 - ☐ Military offices
 - ☐ Local Jail
 - ☐ State prison
 - ☐ Hospital
 - ☐ City council/County Commission/Executives
 - ☐ State legislature
 - ☐ Voting commission
 - ☐ Local schools/Superintendent
 - ☐ Other, please specify
-
-

PART II

If there have been problems getting information, has your station taken other steps to obtain the desired materials?

☐ Yes ☐ No

What steps did you take?

Who made the decision for the station to take action/not to take action?

(TITLE) _____

What is your general understanding of Tennessee's open records law?

Of the state's open meetings (Sunshine) law?

Of the Freedom of Information Act?

Where do you get you information about the federal and state access-to-information laws?

- ☐ Trade magazine
 - ☐ Conferences
 - ☐ Staff training program
 - ☐ Consultant
 - ☐ Other: Please specify
-
-

Have you, as a news executive at your current station, had any occasion to use the Freedom of Information Act when a federal source refused to release information?

☐ Yes ☐ No

If yes, please give as many examples as possible.

Example:

Please explain the outcome of your decision:

- ☐ Information released without formal grievance
 - ☐ Decided not to file complaint/explanation:
-
-

☐ Filed complaint/Resolution:

In your opinion, how effective is the FOIA in helping your station gather information?

- ☐ Not effective
 - ☐ Somewhat effective
 - ☐ Effective
 - ☐ Other/Explain:
-
-

What suggestions would you have for making the law more effective?

- ☐ Fewer exclusions
 - ☐ Quicker response
 - ☐ Better explanation
 - ☐ Better training for public officials
 - ☐ Other/Please specify
-
-

What measures or improvements at your station would your staff make better use of the FOIA?

- ☐ Advisor on staff
 - ☐ Staff training
 - ☐ Better financial resources
 - ☐ Other/Specify
-
-

Have you used the state open records law?

☐ Yes ☐ No

If yes, please give as many examples as possible.

Example:

Please explain the outcome of your decision:

- ☐ Information released without formal grievance
- ☐ Decided not to file complaint/Explanation:

- ☐ Filed complaint/Resolution:

In your opinion, how effective is Tennessee open records law in helping your station gather information?

- ☐ Not effective
- ☐ Somewhat effective
- ☐ Effective
- ☐ Other/Explain

What suggestions would you have for making the law more effective?

- ☐ Fewer exclusions
- ☐ Quicker response
- ☐ Better explanation
- ☐ Better training for public officials
- ☐ Other/Please specify

What measures at your station could help the staff make better use of the state open records law?

- ☐ Advisor on staff
- ☐ Staff training
- ☐ Better financial resources
- ☐ Other/Specify

Have you used the "Sunshine Law" when a local or state meetings have been closed to your staff?

____ Yes ____ No

If yes, please give as many examples as possible.

Example:

Please explain the outcome of your decision:

____ Information released without formal grievance
____ Decided not to file complaint/Explanation:

____ Filed complaint/Resolution:

In your opinion, how effective is the "Sunshine Law" in helping your station gather information?

____ Not effective
____ Somewhat effective
____ Effective
____ Other/Explain

What suggestions would you have for making the law more effective?

____ Fewer exclusions
____ Quicker response
____ Better explanation
____ Better training for public officials
____ Other/Please specify

What steps could your station take to make more effective use of the state open records law?

- ☐ Advisor on staff
- ☐ Staff training
- ☐ Better financial resources
- ☐ Other/Specify

What role, overall, do the access-to-information laws play in your ability to cover news?

PART III

Under the existing terms of the FOIA, information stored electronically is not required to be released in electronic form. How would this omission affect your ability to gather information?

- ☐ Not at all
- ☐ Somewhat
- ☐ Would make it much more difficult
- ☐ Would make it impossible

Please explain your answer:

In general, how do you think electronic record collection will affect local news organizations' ability to gather information?

- ☐ Will have no effect
- ☐ Will become somewhat more difficult
- ☐ Would make it much more difficult
- ☐ Would make it impossible

Please explain your answer:

PART IV

Representative's background

Highest Degree (area)

Years in the field

Experience/Market(s)

Years at current station

Station background

Various types of news opportunities (cut-ins, simulcasts, etc.)

Total time dedicated to news

Size of news staff

VITA

Stephynie Chapman is a native of Chattanooga, Tennessee. Before enrolling in graduate school, she worked as a reporter for *The Chattanooga Times* and WIVK radio station in Knoxville, Tennessee. As a graduate student, she worked as an associate producer for WBIR-TV in Knoxville. In August 1995, she accepted a teaching position in the school of communications at the University of Tennessee, Chattanooga.