

Judge Asks End of Public Access

By Edward Walsh

Washington Post Staff Writer

The judges of Maryland's District Court system will be asked to consider closing off public access to written statements about evidence in criminal cases before court proceedings begin.

Chief Judge Robert F. Sweeney, in response to questions about the release of written police statements concerning the stabbing death of a young woman in her White Oak apartment last week, said the information should not have been made available to reporters.

"The question has never arisen before, but I will discuss it with my administrative judges and, if they agree, issue some regulations," Sweeney said. "I will make it clear that the file in a pending criminal case is not a public record and that no one without a specific interest in the case should be allowed access to it before the trial proceedings."

Open Elsewhere

In many jurisdictions, including the courts of the District of Columbia, statements and information that police officers give to magistrates to support their requests for search and arrest warrants are made available to the public after the warrants have been served. Reporters frequently use those papers to obtain information about criminal cases.

Two years ago, in a major federal narcotics case in Washington, the Justice Department actually called reporters' attention to the existence of detailed police affidavits and made copies available.

Documents not directly related to evidence or police investigation—the indictment, motions by a defendant's lawyer, bail bond information, psychiatrists' report—have always been public, before trial and after.

Sweeney said that in his opinion, some of those documents should continue to be public, but that some others, such as the application for the

arrest warrant, should not

Sweeney was asked about the issue after it was learned the Montgomery County police department was considering asking that applications for arrest warrants not be open

to the public before a criminal trial has begun.

Col. Kenneth W. Watkins, superintendent of the Montgomery County police department, said he became concerned about the issue following the publication Tuesday by The Washington Post of excerpts from an application for an arrest warrant on file in Montgomery County District Court.

The applications, submitted to judicial commissioners who issue arrest warrants, contain statements by police on why there is "probable cause" to believe a suspect committed a crime.

The application reported by The Post contained statements by county police officers on why they believed Robert Eugene Watson, 22, a Washington furniture mover, should be charged with first degree murder in the stabbing death of Barbara Blum, 30, mother of two.

Watson, listed at 510 Kenyon St. NW, was indicted by a Montgomery County grand jury Wednesday on charges of murder, rape and robbery.

Available for Years

Files on pending criminal cases, which usually contain the arrest warrant application, have been available to reporters before a trial for years in Montgomery County. But in July, the old Peoples Courts system—in which court rules varied from one county to another—was replaced by a statewide, uniform District Court system. Regulations regarding public access to criminal files before a trial have not been established under the new system.

Police charged Watson with murder early Saturday but refused to discuss the case.

to Statements

Statements in the application for an arrest warrant were the first indication of why police had linked Watson to the crime.

According to the application, Mrs. Blum's husband, Benjamin, told police that two empty boxes found near the dead woman's body had contained between \$160 and \$185 in U.S. silver certificates. When Watson later was searched, according to the application, he had approximately that amount in silver certificates.

Silver certificates, valued by collectors, were issued by the U.S. Treasury between 1929 and the early 1960s.

Minimum Standards

Montgomery County State's Attorney Andrew L. Sonner, the prosecutor, said he was not concerned about public access to applications for arrest warrants "because they contain the kind of information that will come out at a preliminary hearing anyway."

Sonner said that, according to the minimum standards on release of pretrial information recommended by the American Bar Association, police could have told reporters about the silver certificates. The standards allow for the release of information concerning physical evidence other than confessions, Sonner said.

Watkins said he was concerned that publication of statements contained in the application could prejudice both the state's case and the defendant's case.

"It is in the interest of a fair trial that all aspects of a criminal case do not become known to prospective jurors before the trial," Watkins said. "I may be unnecessarily concerned, but I would hate for a

case to be turned around on appeal because of such a thing, or for it to be prejudicial to the defendant. The fact that the man was found with the silver certificates links him to the crime in the public mind, and I can't see that prior to the trial."

Strongly Objects

Sweeney said he strongly objects to public access to files on pending criminal cases because the files frequently contain hearsay statements or other items that later may be ruled inadmissible in court.

He said that before trial proceedings begin only those with a direct interest in the case — police officials, court personnel, prosecutors, the defendant and his attorney—should have access to the file.

The file should be closed to the public at least until a preliminary hearing on the case is held, at which time the reasons police had for arresting and charging a suspect come out in open court, Sweeney said.

A spokesman for the U.S. magistrate's office in Washington said that in the federal courts and the courts of the District of Columbia files on pending criminal cases—including "probable cause" statements by police—are open to the public after a warrant has been served and the suspect arrested and charged.

Fairfax Practice

A spokesman for the commonwealth attorney's office in Fairfax County said files on pending criminal cases in Virginia also are open to the public before trial.

However, in Virginia, the

applications for arrest warrants usually do not contain statements on the evidence police have for making a criminal charge, the spokesman said.

The type of information contained in criminal files, and their accessibility to the public, often depends on local practice and custom, according to Herbert J. Miller, deputy director of the Institute for Criminal Law at Georgetown University.

Miller said that, while applications for arrests warrants have not been an issue in disputes over release of information before a trial, "the type of information contained in this application (the Watson case) always has been an issue."

"The publication of this kind of information at this stage in a criminal proceeding could be construed as highly prejudicial and could be barred by the court," he said.